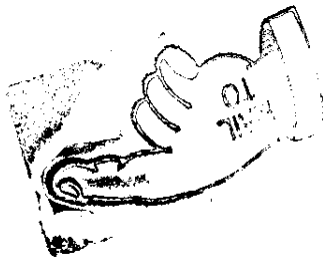


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PREPARED BY AND  
AFTER RECORDING  
RETURN TO:

Sonnenschein Nath &  
Rosenthal LLP  
8000 Sears Tower  
233 S. Wacker Drive  
Chicago, IL 60606  
Attn.: Barry B. Nekritz



Doc#: 0429516160  
Eugene "Gene" Moore Fee: \$60.50  
Cook County Recorder of Deeds  
Date: 10/21/2004 12:57 PM Pg: 1 of 19

## CROSS-EASEMENT AGREEMENT

This CROSS-EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the 23<sup>rd</sup> day of August, 2004, by and between THE HOMAN-ARTHINGTON FOUNDATION, an Illinois not-for-profit corporation ("HAF") and STERLING PARK DEVELOPMENT, L.L.C., an Illinois limited liability company ("Sterling"). HAF and Sterling are sometimes collectively referred to herein as the "Owners" and each as an "Owner".

### RECITALS:

A. HAF owns certain property located at 931 South Homan Avenue, Chicago Illinois, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Power Plant Property").

B. Sterling owns certain property located at 3301 W. Arthington Street, Chicago, Illinois (the "MD&L Building") and 3333 W. Arthington Street, Chicago, Illinois (the "Administration Building") as more particularly described in Exhibit B attached hereto and incorporated herein by this reference (collectively, the "Sterling Property").

C. The Power Plant Property and the Sterling Property are adjacent to each other.

D. HAF and Sterling desire to enter into an agreement for the grant of certain easements upon the Power Plant Property for the benefit of Sterling and for the grant of certain easements upon the Sterling Property for the benefit of HAF.

### AGREEMENTS:

NOW, THEREFORE, in consideration of the Recitals, the grant of reciprocal easements as set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby declare, covenant, and agree as follows:

#### 1. Grant of Easements.

(a) Grant of Access Easements for the Benefit of Sterling Property. HAF hereby sells, bargains, grants, quit claims, conveys, assigns, establishes and creates to and for the benefit

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of (i) Sterling, (ii) any existing or future tenants, condominium owners or other occupants of the Sterling Property, (iii) the guests, invitees and licensees of Sterling and any existing or future tenants, condominium owners or other occupants of the Sterling Property, (iv) any future condominium or homeowners association at the Sterling Property and (iv) the agents, employees, utility service providers, and customers of Sterling and any existing or future tenants, condominium owners or other occupants of the Sterling Property, collectively, the "Sterling Grantees"), the following easements (each individually a "Power Plant Access Easement" and collectively the "Power Plant Access Easements"):

(i) a perpetual, non-exclusive easement, right-of-way and right to use and utilize all private roads, driveways, alleyways or other paved or concrete pathways located on the north and east sides of the Power Plant Property as depicted on Exhibit C attached hereto and incorporated herein by this reference (collectively, the "Power Plant Vehicular Access Areas") for purposes of vehicular access, ingress and egress to and from the Sterling Property (including without limitation the right to access, ingress and egress for any and all emergency vehicles) to and from South Homan Avenue and West Arthington Street; and

(ii) a perpetual, non-exclusive easement, right-of-way and right to use and utilize any private roads, driveways, alleyways, sidewalks, trails, pathways or walkways from time to time located on the Power Plant Property (collectively, the "Power Plant Pedestrian Access Areas") for purposes of pedestrian access, ingress and egress to and from the Power Plant Property to and from South Homan Avenue and West Arthington Street.

(b) Grant of Fire Suppression Pump/Domestic Water Easement for the Benefit of Sterling. HAF hereby sells, bargains, grants, quit claims, conveys, assigns, establishes and creates to and for the benefit of Sterling the following easements (the "Water Easements"):

(i) a perpetual, non-exclusive easement, right-of-way and right to use and utilize (A) the Fire Pump Easement Areas (as hereinafter defined) as may be reasonably necessary for purposes of installing, erecting, operating, repairing, rebuilding, replacing and maintaining the fire suppression pump and related equipment where currently located in the basement of the Power Plant Property (the "Fire Pump Equipment Area") for the benefit of the Sterling Property, including, without limitation, any and all lines, pipelines, channels or conduits for the provision of water and electricity where currently located in, on, under, over or through the Power Plant Property for the use and operation of the fire suppression pump for the benefit of the Sterling Property (together with the Fire Pump Equipment Area, collectively, the "Fire Pump Easement Areas") and (B) the Power Plant Access Easements and other areas in, on, under, over or through the Power Plant Property as may be reasonably necessary for purposes of vehicular and pedestrian access, ingress and egress to and from the Fire Pump Easement Areas (the "Fire Pump Access Areas"); and

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(ii) a perpetual, non-exclusive easement, right-of-way and right to use and utilize (A) the Water Easement Areas (as hereinafter defined) as may be reasonably necessary for purposes of operating, repairing, rebuilding, replacing and maintaining the domestic water pump, pipes and related equipment where currently located in the basement of the Power Plant Property (the "Water Equipment Area") for the benefit of the Sterling Property, including, without limitation, any and all lines, pipelines, channels or conduits where currently located in, on, under, over or through the Power Plant Property for the provision of domestic water for the benefit of the Sterling Property (together with the Water Equipment Area, collectively, the "Water Easement Areas") and (B) the Power Plant Access Easements and other areas in, on, under, over and through the Power Plant Property as may be reasonably necessary for purposes of vehicular and pedestrian access, ingress and egress to and from the Water Easement Areas (the "Water Access Areas").

In addition to all other terms, restrictions and conditions set forth herein, the following terms and conditions shall be applicable to the Water Easements:

(A) Sterling shall have unrestricted access to the Fire Pump Easement Areas, Fire Pump Access Areas, Water Easement Areas and Water Access Areas twenty-four (24) hours a day, seven (7) days a week and HAF shall provide Sterling with appropriate keys therefor; provided that Sterling agrees to use commercially reasonable efforts not to compromise the security of the Power Plant Property. In the event that HAF changes any locks on doors or other entryways necessary to access the Fire Pump Easement Areas, Fire Pump Access Areas, Water Easement Areas or Water Access Areas, HAF shall promptly supply Sterling with copies of any new keys for such locks;

(B) All costs and expenses incurred in connection with the installation, operation, maintenance and use of the fire suppression pump in the Fire Pump Equipment Area as permitted hereby shall be paid solely by Sterling;

(C) All costs and expenses incurred in connection with the operation, maintenance and use of the domestic water pump, pipes and related equipment in the Water Easement Areas shall be shared by HAF and Sterling in accordance with Section 2(b) below;

(D) Sterling shall procure and maintain general liability insurance insuring Sterling, its agents and contractors with liability insurance limits of not less than \$1,000,000 combined single limit for personal injury and property damage resulting from Sterling's use of the Water Easements and naming HAF as an additional insured;

(E) Sterling shall assume the risk of responsibility for and indemnify, defend and hold harmless HAF, its employees and agents from any and all liability for any loss of or damage or injury to any person (including death resulting therefrom) or property (1) occurring in or on the Power Plant Property as a result of the exercise by Sterling of any of the rights under the Water Easements, (2) not resulting from the gross negligence or willful misconduct of HAF or its employees or agents and (3) not resulting from reasons outside of Sterling's control, including, without limitation, from pipes bursting, breaking

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or leaking, from steam, snow or ice, from running, backing up, seeping or overflowing water or sewage in any part of the Power Plant Property, from vandalism or from fire or other casualty. Sterling's obligation to indemnify HAF hereunder shall include the duty to defend against any claims asserted by reason of such loss, damage or injury and to pay any judgments, settlements, costs, fees and expenses, including reasonable attorneys' fees, incurred in connection therewith;

(F) If, as a result of fire or other casualty,

(1) the Power Plant Property is damaged or destroyed in whole or in part and the fire suppression pump and related equipment in the Fire Pump Easement Areas and the domestic water pump, pipes and related equipment in the Water Easement Areas (collectively, the "Fire/Water Equipment") are materially damaged and can no longer be utilized for their intended purposes, then, upon HAF's request, Sterling and HAF shall enter into an agreement providing for the abrogation of the Water Easements, which abrogation agreement shall be mutually acceptable to HAF and Sterling; or

(2) the Power Plant Property is damaged in part but the Fire/Water Equipment has not been materially damaged and can be repaired (or requires no repairs), then the Water Easements shall remain in full force and effect and HAF shall be responsible for promptly performing any repair or restoration work necessary at the Power Plant Property to return the Fire Pump Easement Areas, Fire Pump Access Areas, Water Easement Areas and Water Access Areas (excluding the Fire/Water Equipment) to a condition as accessible and secure as existed prior to such casualty (or such other condition as may be mutually agreed); provided, however, that if HAF fails to commence any such repair or restoration work within two (2) days following the casualty or thereafter fails to proceed with all diligence to complete such restoration work, then, upon two (2) days prior written notice to HAF (or without notice in the case of an emergency), Sterling may perform any such restoration work and HAF shall reimburse Sterling for all reasonable out-of-pocket costs incurred promptly upon demand by Sterling therefor.

Sterling acknowledges and agrees that it will be responsible for carrying its own property insurance only with respect to the Fire/Water Equipment located in the Power Plant Property and that HAF shall have no obligation to repair or replace such Fire/Water Equipment in the event of damage or destruction due to casualty;

(G) If all or any portion of the Power Plant Property is taken by power of eminent domain or condemned by a competent authority or by conveyance in lieu thereof for public or quasi-public use ("Condemnation") and, in connection therewith, the Water Easements are condemned, then HAF and Sterling shall each be entitled to pursue such separate claims as may be available to them relating to their respective interests in the Power Plant Property; it being understood and agreed that the fire suppression pump and related equipment in the Fire Pump Easement Area is the sole property of Sterling. If, as a result of Condemnation, a portion of the Power Plant Property is taken but the Water



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Easements have not been condemned, then the terms of subsection (F)(2) above shall apply to the extent that any portion of the Fire Pump Easement Areas, Fire Pump Access Areas, Water Easement Areas or Water Access Areas require repair or restoration;

(H) HAF shall have the right to relocate the Fire/Water Equipment within the Power Plant Property at its sole cost and expense upon one hundred eighty (180) days prior written notice to Sterling. HAF agrees to cooperate with any reasonable requests of Sterling so that any such relocation will occur at a time and in a manner that will cause minimal interference with, or interruption of, domestic water service to the Sterling Property. HAF shall repair, at its sole cost and expense, any damage to the Fire/Water Equipment caused by any such relocation; and

(I) HAF shall have the right to demolish and/or perform material renovations at the Power Plant Property and require abrogation of the Water Easements at any time following September 1, 2005; provided that HAF notifies Sterling thereof at least two (2) years prior to the commencement of any such demolition or material renovation. Sterling shall have the right, at its sole cost and expense, to remove the fire suppression pump and related equipment owned by Sterling in the Fire Pump Equipment Area prior to the commencement of any such demolition or material renovation work; provided that if Sterling fails to remove any such equipment prior to commencement of the demolition or material renovation work, the fire suppression pump and related equipment shall be deemed abandoned in place. Upon the commencement of any such demolition or material renovation work, Sterling and HAF shall enter into an agreement providing for the abrogation of the Water Easements, which abrogation agreement shall be mutually acceptable to HAF and Sterling.

(c) Grant of Access Easements for the Benefit of the Power Plant Property. Sterling hereby sells, bargains, grants, quit claims, conveys, assigns, establishes and creates to and for the benefit of (i) HAF, (ii) the guests, invitees or licensees of HAF, and (iii) the agents, employees, utility service providers and customers of HAF (collectively, the "HAF Grantees"), the following easements (each individually a "Sterling Access Easement" and collectively, the "Sterling Access Easements"):

(i) a perpetual, non-exclusive easement, right-of-way and right to use and utilize all private roads, driveways, alleyways or other paved or concrete pathways located on the south side of the Administration Building adjacent and to the east of South Homan Avenue as depicted on Exhibit C attached hereto (the "Administration Building Vehicular Access Area"), as well as between the Administration Building and MD&L Building adjacent and to the south of Arthington Street as depicted on Exhibit C attached hereto (the "Admin/MD&L Vehicular Access Area" and together with the Administration Building Vehicular Access Easement, collectively, the "Sterling Property Vehicular Access Areas") for purposes of vehicular access, ingress and egress to and from the Power Plant Property (including without limitation the right to access, ingress and egress for any and all emergency vehicles) to and from South Homan Avenue and West Arthington Street; and

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(ii) a perpetual, non-exclusive easement, right-of-way and right to use and utilize any private roads, driveways, alleyways, sidewalks, trails, pathways or walkways from time to time located on the Sterling Property (collectively, the "Sterling Property Pedestrian Access Areas") for purposes of pedestrian access, ingress and egress to and from the Sterling Property to and from South Homan Avenue and West Arthington Street.

(d) Grant of Reciprocal Maintenance and Restoration Easements. (i) HAF hereby sells, bargains, grants, quit claims, conveys, assigns, establishes and creates a non-exclusive easement, right-of-way and right to use and utilize the Power Plant Vehicular Access Areas and the Power Plant Pedestrian Access Areas for purposes of vehicular and pedestrian access by Sterling and its contractors and subcontractors to and from the Sterling Property (with necessary equipment and materials) to and from South Homan Avenue and West Arthington Street and for purposes of erecting, installing and maintaining construction scaffolding and barricades during such times as maintenance, repair, restoration or construction work is being conducted on the Sterling Property (the "Sterling Maintenance and Restoration Easement") and (ii) Sterling hereby sells, bargains, grants, quit claims, conveys, assigns, establishes and creates a non-exclusive easement, right-of-way and right to use and utilize the Sterling Property Vehicular Access Areas and the Sterling Property Pedestrian Access Areas for purposes of vehicular and pedestrian access by HAF and its contractors and subcontractors to and from the Power Plant Property (with necessary equipment and materials) to and from South Homan Avenue and West Arthington Street and for purposes of erecting, installing and maintaining construction scaffolding and barricades during such times as maintenance, repair, restoration or construction work is being conducted on the Power Plant Property (the "Power Plant Maintenance and Restoration Easement" and together with the Sterling Maintenance and Restoration Easement, each a "Maintenance and Restoration Easement" and collectively, the "Maintenance and Restoration Easements"), subject to the following terms and conditions:

(A) Promptly upon request (written or oral) of an Owner, the other Owner shall, at its sole cost and expense, clean any dirt and debris from the requesting Owner's property caused by the other Owner's use of the respective Maintenance and Restoration Easements. In addition, each Owner shall, at its sole cost and expense, promptly repair or restore any damage or destruction caused to the other Owner's property as a result of its use of the respective Maintenance and Restoration Easements to the same condition that such Owner's property existed prior to such damage or destruction;

(B) In the event that either Owner, or its contractors and subcontractors, intend to erect construction scaffolding or barricades on portions of their property or the other Owner's property pursuant to the respective Maintenance and Restoration Easements and the presence of such scaffolding or barricades will materially interfere with (1) the rights of the HAF Grantees to use of the Sterling Vehicular Access Areas and the Sterling Pedestrian Access Areas or (2) the rights of the Sterling Grantees to use of the Power Plant Vehicular Access Areas or Power Plant Pedestrian Access Areas, then the Owner desiring to erect construction scaffolding or barricades shall notify the other Owner at least twenty (20) days prior to erecting any such scaffolding or barricades. An Owner receiving notice pursuant to this subsection (B) shall have seven (7) days following receipt of such notice to notify the requesting Owner whether it objects to the proposed

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location of the scaffolding or barricades, failing which, any such objections shall be deemed waived; provided, however, that notwithstanding the foregoing or anything to the contrary set forth in this Agreement, (a) in no event shall HAF have the right to obstruct or otherwise interfere with Sterling's ability to utilize the Power Plant Vehicular Access Areas for ingress and egress to and from South Homan Avenue and any parking garage entrance or exit located on the south side of the Administration Building and (b) in no event shall Sterling have the right to obstruct or otherwise interfere with HAF's or the HAF Grantee's ability to utilize the Administration Building Vehicular Access Area for ingress and egress to and from South Homan Avenue and the Power Plant Property; it being understood and agreed that Sterling's installation of a gate or other security device in the Administration Building Vehicular Access Area shall not be deemed to obstruct or interfere with HAF's ability to utilize the Administration Building Vehicular Access Area so long as Sterling provides HAF with any keys or codes required to open such gate or security device;

(C) Sterling shall assume the risk of responsibility for and indemnify, defend and hold harmless HAF, its employees and agents from any and all liability for any loss of or damage or injury to any person (including death resulting therefrom) or property (1) occurring on the Power Plant Property as a result of the exercise by Sterling or any of the other grantees of any of the rights under the Sterling Maintenance and Restoration Easement (including the breach by Sterling of its obligations under paragraph (A) above), and (2) not resulting from the gross negligence or willful misconduct of HAF or its employees or agents. Sterling's obligation to indemnify HAF hereunder shall include the duty to defend against any claims asserted by reason of such loss, damage or injury and to pay any judgments, settlements, costs, fees and expenses, including reasonable attorneys' fees, incurred in connection therewith; and

(D) HAF shall assume the risk of responsibility for and indemnify, defend and hold harmless Sterling, its employees and agents from any and all liability for any loss of or damage or injury to any person (including death resulting therefrom) or property (1) occurring on the Sterling Property as a result of the exercise by HAF or any of the other grantees of any of the rights under the Power Plant Maintenance and Restoration Easement (including the breach by HAF of its obligations under paragraph (A) above), and (2) not resulting from the gross negligence or willful misconduct of Sterling or its employees or agents. HAF's obligation to indemnify Sterling hereunder shall include the duty to defend against any claims asserted by reason of such loss, damage or injury and to pay any judgments, settlements, costs, fees and expenses, including reasonable attorneys' fees, incurred in connection therewith.

TO HAVE AND TO HOLD the Power Plant Access Easements unto the Sterling Grantees, the Water Easements and Sterling Maintenance and Restoration Easement unto Sterling, the Sterling Property Easements unto the HAF Grantees and the Power Plant Maintenance and Restoration Easement unto HAF. Each of the foregoing easements is intended to and shall run with the land as a burden on the granting Owner's property, shall bind the granting Owner, its legal representatives, administrators, grantees, assigns and successors in interest, shall benefit the grantee Owner and any designated grantees as provided for herein, and shall be appurtenant to and shall run with the land as a benefit to the grantee Owner's property so that a transfer of title

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to all or any portion of the grantee Owner's property shall automatically transfer an interest in each appurtenant easement in accordance with the terms of this Agreement.

## 2. **Maintenance, Repairs and Replacements for the Easements and Expenses.**

### (a) HAF Obligations.

(i) Except as provided to the contrary in Sections 1(b) and 1(d) above or in Section 2(b) below, HAF shall be responsible for operating and maintaining the Power Plant Vehicular Access Areas, Power Plant Pedestrian Access Areas, Fire Pump Easement Areas, Fire Pump Access Areas, Water Easement Areas and Water Access Areas in good order, condition and repair, including, without limitation, all costs and expenses incurred in making or performing any repairs or replacements that HAF reasonably deems necessary or appropriate; and

(ii) Except to the extent of any damage caused by the negligence or willful misconduct of HAF or any of the HAF Grantees, HAF shall not be required to repair or replace any portion of the fire suppression pump and related equipment in the Fire Pump Equipment Area and Sterling shall be entitled, in its sole discretion and at its sole cost and expense, to remove any such pumps and equipment from time to time located in the Fire Pump Equipment Area.

### (b) Sterling Obligations.

(i) Except as provided to the contrary in Section 1(d) above, Sterling shall be responsible for operating and maintaining the Sterling Vehicular Access Areas and Sterling Pedestrian Areas in good order, condition and repair, including, without limitation, all costs and expenses incurred in making or performing any repairs or replacements that Sterling reasonably deems necessary or appropriate; and

(ii) Notwithstanding anything to the contrary contained in this Agreement, so long as Sterling requires the Water Easements granted herein for domestic water service at the Sterling Property, Sterling shall be responsible for performing any repairs or replacements that Sterling or HAF deems reasonably necessary or appropriate to keep the domestic water pump, pipes and related equipment in the Water Easement Areas in good order, condition and repair; provided, however, that HAF agrees to reimburse Sterling for its Pro Rata Share (as hereinafter defined) of any reasonable out-of-pocket costs incurred by Sterling promptly upon written request therefor, together with copies of all invoices reflecting such costs. Sterling agrees that, except in the case of an emergency, it shall not perform any repairs or replacements, the aggregate cost of which would exceed \$10,000, without first obtaining HAF's prior written consent, which consent shall not be unreasonably withheld or delayed. Should HAF discover any defects or other problems relating to the operation of the domestic water pump, pipes and related equipment, HAF agrees to promptly notify Sterling thereof. If Sterling fails to commence any repair or replacement work within two (2) days following notice of the need for such repair or replacement from HAF or, thereafter fails to proceed with all diligence to complete such



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repair or replacement work, then, upon two (2) days prior written notice to Sterling (or without notice in the case of an emergency), HAF may perform any such restoration work and Sterling shall reimburse HAF for Sterling's Pro Rata Share of reasonable out-of-pocket costs incurred by HAF promptly upon demand by HAF therefor. For purposes of this Agreement, HAF's or Sterling's "Pro Rata Share", respectively, shall be a fraction, the numerator of which shall be the amount of such Owner's most recent domestic water bill from the City of Chicago and the denominator of which shall be the sum of (A) HAF's most recent domestic water bill from the City of Chicago and (B) Sterling's most recent domestic water bill from the City of Chicago. HAF agrees that to the extent the Power Plant Property is not separately metered for domestic water service, prior to use of the domestic water system at the Power Plant Property, HAF shall arrange to have a separate meter installed to measure usage by the Power Plant Property separate and apart from the Sterling Property. Each Owner agrees to provide a copy of its most recent water bill to the other Owner promptly upon request therefor for purposes of calculating such Owner's Pro Rata Share in accordance with this provision.

### 3. Use of Easements.

(a) Subject to the limitations contained herein, the easements granted herein are non-exclusive and shall be used in common by the grantor thereof and the applicable grantees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business or other contemplated use and enjoyment of the Sterling Property or the Power Plant Property, as the case may be.

(b) Notwithstanding anything herein to the contrary, HAF shall have the right, in its sole discretion, to close temporarily any portion of the Power Plant Property for the purpose of making any repairs or replacements contemplated by this Agreement, provided, however, that (1) HAF agrees that it shall only be permitted to close the Power Plant Vehicular Access Areas, Power Plant Pedestrian Access Areas to the minimum extent and for the minimum amount of time necessary to accomplish such purposes and shall notify Sterling thereof at least twenty (20) days prior to any such closure (except in the case of an emergency in which case HAF shall notify Sterling as soon as is reasonably practicable); (2) HAF shall not be permitted to close or materially obstruct the Fire Pump Access Areas and Water Access Areas without Sterling's prior written consent, which consent may be withheld in Sterling's sole discretion; and (3) in no event shall HAF have the right to obstruct or otherwise interfere with Sterling's ability to utilize the Power Plant Vehicular Access Areas for ingress and egress to and from South Homan Avenue and any parking garage entrance or exit located on the south side of the Administration Building.

(c) Notwithstanding anything herein to the contrary, Sterling shall have the right, in its sole discretion, to close temporarily any portion of the Sterling Property for the purpose of making any repairs or replacements; provided, however, that Sterling agrees that it shall only be permitted to close the Administration Building Vehicular Access Area to the minimum extent and for the minimum amount of time necessary to accomplish such purposes and shall notify HAF thereof at least twenty (20) days prior to any such closure (except in the case of an emergency in which case Sterling shall notify HAF as soon as is reasonably practicable).

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(d) Notwithstanding anything herein to the contrary, Sterling shall have the right, in its sole discretion, to close permanently any portion of the Admin/MD&L Vehicular Access Area for any reason whatsoever; provided that (1) Sterling is closing such portion of the Admin/MD&L Vehicular Access Area for vehicular ingress and egress by Sterling and the Sterling Grantees, (2) Sterling notifies HAF thereof at least ninety (90) days prior to any such closure and (3) HAF and the HAF Grantees shall continue to have rights of pedestrian access, ingress and egress to and from the Power Plant Property and West Arthington Street pursuant to the terms of this Agreement. Upon any permanent closure by Sterling pursuant to this Section 3(d), the Admin/MD&L Vehicular Access Easements (or portion thereof) affected by such closure shall be deemed abrogated without the need to record any further instruments.

(e) Notwithstanding anything herein to the contrary, in the event that Sterling elects to permanently close any portion of the Admin/MD&L Vehicular Access Area pursuant to Section 3(d) above, HAF shall have the right, in its sole discretion, to close permanently any portion of the Power Plant Vehicular Access Areas located on the east side of the Power Plant Property; provided that (1) HAF notifies Sterling thereof prior to any such closure and (2) the Sterling Grantees shall continue to have rights of pedestrian access, ingress and egress to and from the Sterling Property to and from West Arthington Street pursuant to terms of this Agreement. Upon any permanent closure by HAF pursuant to this Section 3(e), the Power Plant Vehicular Access Easements (or portion thereof) affected by such closure on the east side of the Power Plant Property shall be deemed abrogated without the need to record any further instrument.

(f) The easements and rights created, reserved, granted and established by this Agreement, do not, are not intended to, and shall not be construed to create any easements, rights or privileges in and for the benefit of the general public.

4. **Remedies.** Only Sterling (its successors and any future condominium or homeowners association at the Sterling Property) and HAF (and its successors) shall have full power and authority to enforce compliance with this Agreement in any manner provided for by law or in equity, including but not limited to (a) an action for damages and (b) an action for injunctive relief, whether to enjoin any violation or to specifically enforce the provisions of this Agreement. Any action to enforce rights granted hereunder shall be against Sterling (or any successor and/or future condominium or homeowners association) or HAF (or any successor), as the case may be. Notwithstanding that certain of the easements granted herein benefit parties other than Sterling and HAF, no party other than those named in the first sentence of this Section shall have the right to enforce the terms of this Agreement or seek any other remedy as a result of the violation or breach hereof. Notwithstanding the foregoing, no breach hereunder shall entitle either Sterling (or any successor or future condominium or homeowners association) or HAF (or any successor) to cancel, rescind or otherwise terminate this Agreement.

## 5. Miscellaneous.

(a) **Modification.** No provision or term of this Agreement may be amended, modified, revoked, supplemented, waived, or otherwise changed except by a written instrument (designated as such a change) duly executed by Sterling (or any successor and/or future condominium or

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homeowners association) and HAF (or any successor). No consent from any other grantee shall be required in connection therewith.

(b) Separability. If any provision of this Agreement shall be held invalid, illegal, or unenforceable in any jurisdiction, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not be impaired thereby; nor shall the validity, legality, or enforceability of any such defective provisions be in any way affected or impaired in any other jurisdiction.

(c) Successors and Assigns. The terms and conditions of this Agreement bind and inure to the benefit of Sterling and HAF and each of their respective successors and assigns as owners of the Sterling Property and Power Plant Property, respectively and in the case of the Sterling Property, any condominium association or homeowners association that may hereafter be formed.

(d) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(e) Authorization. By its execution hereof, each Owner represents and warrants that it is authorized and empowered to execute this Agreement and all necessary corporate or partnership action has been taken to authorize execution of this Agreement.

(f) Recording. This Agreement shall be recorded with the Cook County Recorder in Cook County, Illinois.

(g) Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, by personal delivery or by a national overnight courier company. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party. The notice addresses are as follows:

Sterling: Sterling Park Development, L.L.C.  
c/o Royal Imperial Group  
900 W. Jackson Blvd., 8<sup>th</sup> Floor  
Chicago, Illinois 60607  
Attention: Mordecai Tessler

with a copy to:

Sonnenschein Nath & Rosenthal LLP  
8000 Sears Tower  
Chicago, Illinois 60606  
Attention: Barry B. Nekritz

HAF: The Homan-Arthington Foundation  
c/o The Shaw Company  
2001 York Road, Suite 550

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Oak Brook, Illinois 60523  
 Attention: Charles H. Shaw

with a copy to:

Bell Boyd & Lloyd LLC  
 Three First National Plaza  
 70 West Madison  
 Suite 3300  
 Chicago, Illinois 60602  
 Attention: Terence E. Budny

(h) Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart is an original and proof of this Agreement may be made without more than one counterpart.

(i) Limitation on Liability. Notwithstanding anything to the contrary in this Agreement, each Owner's liability under this Agreement shall be limited to such Owner's interest in the Sterling Property or the Power Plant Property, as applicable.

(j) Rights of Mortgagees. Notwithstanding any provision in this Agreement to the contrary, each of the easements granted herein shall inure to the benefit of and may be enforced by any the holder of any mortgage encumbering either the Sterling Property (excluding the holders of any mortgage encumbering any individual condominium unit or town home that may hereafter exist at the Sterling Property) or the Power Plant Property.

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IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year first above written.

**HAF:**

**THE HOMAN-ARTHINGTON FOUNDATION**, an  
Illinois not-for-profit corporation

By: 

Name: Charles H. Shaw

Title: President

**STERLING:**

**STERLING PARK DEVELOPMENT, L.L.C.**, an  
Illinois limited liability company

By: Royal Sterling Development, L.L.C., an Illinois  
limited liability company, its Manager

By: 

Name: Mordy Tessler

Its: Manager

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STATE OF ILLINOIS

COUNTY OF COOK

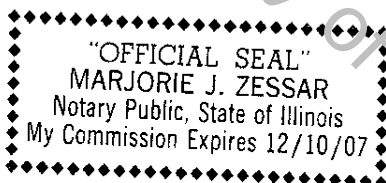
)  
) ss.  
)

I, Marjorie J. Zessar, a Notary Public in and for said County, in and for said County, in the State aforesaid, do hereby certify that Charles H. Shaw personally known to me to be the President of THE HOMAN-ARTHRINGTON FOUNDATION, an Illinois not-for-profit corporation, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 20th day of August, 2004

My commission expires:

Marjorie J. Zessar  
Notary Public



## UNOFFICIAL COPY

STATE OF ILLINOIS

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ss.

COUNTY OF COOK

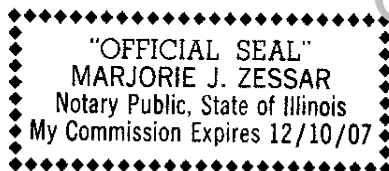
)

I, Marjorie J. Zessar, a Notary Public in and for said County, in and for said County, in the State aforesaid, do hereby certify that Mardy Tesser personally known to me to be the Manager of ROYAL STERLING DEVELOPMENT, L.L.C., an Illinois limited liability company, the Manager of STERLING PARK DEVELOPMENT, L.L.C., an Illinois limited liability company, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act and deed of said limited liability company for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 19th day of August, 2004

My commission expires:

Marjorie J. Zessar  
Notary Public



**UNOFFICIAL COPY****EXHIBIT A****LEGAL DESCRIPTION FOR POWER PLANT PROPERTY**

THAT PART OF LOTS 9, 10, 11 AND 12 IN BLOCK 1 IN HENRY E. VANCE'S RE-SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 21ST, 1904, AS DOCUMENT NO. 3635041, IN THE SOUTHEAST QUARTER OF SECTION 14 TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 1 ALSO BEING THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF SOUTH HOMAN AVENUE AND THE SOUTH RIGHT-OF-WAY LINE OF WEST ARTHINGTON STREET; THENCE SOUTH 00 DEGREES 19 MINUTES 24 SECONDS WEST ALONG THE WEST LINE OF SAID BLOCK 1, ALSO BEING SAID EAST RIGHT-OF-WAY LINE OF SOUTH HOMAN AVENUE, A DISTANCE OF 175.81 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 00 DEGREES 19 MINUTES 24 SECONDS WEST ALONG SAID WEST LINE OF BLOCK 1, ALSO BEING SAID EAST RIGHT-OF-WAY LINE OF SOUTH HOMAN AVENUE, A DISTANCE OF 161.79 FEET TO THE SOUTHWEST CORNER OF SAID BLOCK 1 ALSO BEING THE NORTH LINE OF THE B. & O. C.T. RAILROAD (FORMERLY THE CHICAGO AND GREAT WESTERN RAILROAD); THENCE SOUTH 89 DEGREES 13 MINUTES 55 SECONDS EAST ALONG THE SOUTH LINE OF SAID BLOCK 1, ALSO BEING SAID NORTH LINE OF THE B. & O. C.T. RAILROAD, A DISTANCE OF 307.81 FEET; THENCE NORTH 00 DEGREES 40 MINUTES 38 SECONDS EAST, A DISTANCE OF 157.20 FEET TO A POINT ON THE SOUTHERLY FACE OF A ONE STORY BRICK BUILDING AS SAID BRICK BUILDING EXISTED ON SEPTEMBER 15, 1997; THENCE NORTH 89 DEGREES 40 MINUTES 36 SECONDS WEST ALONG SAID SOUTHERLY BUILDING FACE AND THE WESTERLY EXTENSION THEREOF, A DISTANCE OF 16.25 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 24 SECONDS EAST, A DISTANCE OF 14.32 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 36 SECONDS WEST, A DISTANCE OF 50.54 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 24 SECONDS WEST, A DISTANCE OF 18.34 FEET; THENCE NORTH 89 DEGREES 13 MINUTES 59 SECONDS WEST, A DISTANCE OF 140.09 FEET; THENCE NORTH 00 DEGREES 46 MINUTES 01 SECONDS EAST, A DISTANCE OF 9.13 FEET; THENCE NORTH 89 DEGREES 13 MINUTES 59 SECONDS WEST, A DISTANCE OF 101.98 FEET TO SAID POINT OF BEGINNING; ALL IN COOK COUNTY, ILLINOIS. SAID PARCEL OF LAND HEREIN DESCRIBED CONTAINS 0.125 ACRES, MORE OR LESS.

Address: 931 South Homan Avenue, Chicago, Illinois

PIN: 16-14-417-010



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## EXHIBIT B

### LEGAL DESCRIPTION FOR STERLING PROPERTY

#### PARCEL 1

(ADMINISTRATION BUILDING PARCEL)

THAT PART OF LOTS 8, 9, 10, 11 AND 12 IN BLOCK 1 IN HENRY E. VANCE'S RE-SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 21<sup>ST</sup>, 1904, AS DOCUMENT NO. 3635041, IN THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE 3<sup>RD</sup> PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID BLOCK 1, ALSO BEING THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF SOUTH HOMAN AVENUE AND THE SOUTH RIGHT-OF-WAY LINE OF WEST ARTHINGTON STREET; THENCE SOUTH 89 DEGREES 14 MINUTES 04 SECONDS EAST ALONG THE NORTH LINE OF SAID BLOCK 1, ALSO BEING SAID SOUTH RIGHT-OF-WAY LINE OF WEST ARTHINGTON STREET, A DISTANCE OF 489.02 FEET; THENCE SOUTH 00 DEGREES 40 MINUTES 38 SECONDS A DISTANCE OF 179.20 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 36 SECONDS WEST A DISTANCE OF 195.37 FEET; THENCE NORTH 00 DEGREES 19 MINUTES AND 24 SECONDS EAST A DISTANCE OF 14.32 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 36 SECONDS WEST A DISTANCE OF 50.54 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 24 SECONDS WEST A DISTANCE OF 18.34 FEET; THENCE NORTH 89 DEGREES 13 MINUTES 59 SECONDS WEST A DISTANCE OF 140.09 FEET; THENCE NORTH 00 DEGREES 46 MINUTES 01 SECONDS EAST, A DISTANCE OF 9.13 FEET; THENCE NORTH 89 DEGREES 13 MINUTES 59 SECONDS WEST A DISTANCE OF 101.98 FEET TO A POINT ON THE WEST LINE OF SAID BLOCK 1, ALSO BEING SAID EAST RIGHT-OF-WAY LINE OF SOUTH HOMAN AVENUE, THENCE NORTH 00 DEGREES 19 MINUTES 24 SECONDS EAST ALONG SAID WEST LINE OF BLOCK 1, ALSO BEING SAID EAST RIGHT-OF-WAY LINE OF SOUTH HOMAN AVENUE; A DISTANCE OF 175.81 FEET TO SAID POINT OF BEGINNING; ALL IN COOK COUNTY, ILLINOIS. SAID PARCEL OF LAND HEREIN DESCRIBED CONTAINS 2.008 ACRES, MORE OR LESS.

Address: 3333 West Arthington, Chicago, Illinois

PIN: 16-14-417-007-0000, 16-14-417-008-0000

#### PARCEL 2

(MDL BUILDING PARCEL)

THAT PART OF LOTS 7, 8 AND 9 IN BLOCK 1 IN HENRY E. VANCE'S RE-SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 21<sup>ST</sup>, 1904, AS DOCUMENT NO. 3635041, IN THE SOUTH EAST QUARTER OF SECTION 14 TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE 3<sup>RD</sup> PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

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COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 1, ALSO BEING THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF SOUTH HOMAN AVENUE AND THE SOUTH RIGHT-OF-WAY LINE OF WEST ARTHINGTON STREET; THENCE SOUTH 89 DEGREES 14 MINUTES 04 SECONDS EAST ALONG THE NORTH LINE OF SAID BLOCK 1, ALSO BEING SAID SOUTH RIGHT-OF-WAY LINE OF WEST ARTHINGTON STREET, A DISTANCE OF 489.02 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89 DEGREES 14 MINUTES 04 SECONDS EAST ALONG SAID NORTH LINE OF BLOCK 1, ALSO BEING SAID SOUTH RIGHT-OF-WAY LINE OF WEST ARTHINGTON STREET, A DISTANCE OF 108.77 FEET TO THE NORTHEAST CORNER OF LOT 7, ALSO BEING THE INTERSECTION OF SAID SOUTH RIGHT-OF-WAY LINE OF WEST ARTHINGTON STREET AND THE WEST RIGHT-OF-WAY LINE OF VACATED SOUTH SPAULDING AVENUE; THENCE SOUTH 00 DEGREES 26 MINUTES 04 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 7, ALSO BEING SAID WEST RIGHT-OF-WAY LINE OF VACATED SOUTH SPAULDING AVENUE, A DISTANCE OF 337.67 FEET TO THE SOUTHEAST CORNER OF SAID LOT 7 ALSO BEING THE NORTH LINE OF THE B. & O. C.T. RAILROAD (FORMERLY THE CHICAGO AND GREAT WESTERN RAILROAD); THENCE NORTH 89 DEGREES 13 MINUTES 55 SECONDS WEST ALONG SAID SOUTH LINE OF BLOCK 1, ALSO BEING SAID NORTH RIGHT-OF-WAY LINE OF THE B. & O. C.T. RAILROAD, A DISTANCE OF 289.32 FEET; THENCE NORTH 00 DEGREES 40 MINUTES 38 SECONDS EAST, A DISTANCE OF 157.20 FEET TO A POINT ON THE SOUTHERLY FACE OF A ONE STORY BRICK BUILDING AS SAID BRICK BUILDING EXISTED ON SEPTEMBER 15, 1997 THENCE SOUTH 89 DEGREES 40 MINUTES 36 SECONDS EAST ALONG SAID SOUTHERLY BUILDING FACE AND THE EASTERLY EXTENSION THEREOF, A DISTANCE OF 179.12 FEET; THENCE NORTH 00 DEGREES 40 MINUTES 38 SECONDS EAST, A DISTANCE OF 179.02 FEET TO SAID POINT OF BEGINNING; ALL IN COOK COUNTY, ILLINOIS. SAID PARCEL OF LAND HEREIN DESCRIBED CONTAINS 1.498 ACRES, MORE OR LESS.

Address: 3301 West Arthington, Chicago, Illinois

PIN: 16-14-417-009-0000

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Exhibit C

