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Eugene "Gene" Moore Fee: \$46.50
Cook County Recorder of Deeds
Date: 10/21/2004 12:58 PM Pg: 1 of 12

AMENDED AND RESTATED OPERATING AGREEMENT (GARDEN)

THIS AMENDED AND RESTATED OPERATING AGREEMENT (GARDEN) (this "Agreement") is made as of the 23rd day of August, 2004 by and between THE HOMAN-ARTHRINGTON FOUNDATION, an Illinois not-for-profit corporation ("Owner"), and STERLING PARK DEVELOPMENT, L.L.C., an Illinois limited liability company ("Operator").

WITNESSETH

WHEREAS, Owner is the owner of a fee simple interest in certain property presently used as a garden located on West Arthington Street, Chicago, Illinois and more particularly described on Exhibit A attached hereto and made a part hereof (the "Property");

WHEREAS, Owner and Cole Taylor Bank, not personally but as Trustee under Trust Agreement dated October 31, 1997 and known as Trust No. 97-7639 ("Original Operator"), entered into that certain Operating Agreement (Garden) dated November 17, 1997, and recorded with the Cook County Recorder of Deeds as document no. 98010252 (the "Original Agreement") pursuant to which Original Agreement, Operator provided certain services for the benefit of Owner and the Property;

WHEREAS, Original Operator and/or one or more land trusts, the beneficiary or beneficiaries of which were either Original Operator's beneficiary or affiliates of Original Operator's beneficiary, previously owned (i) fee title to the improvements located at 3333 West Arthington Avenue, Chicago, Illinois (the "Administration Building"), and (ii) a leasehold interest as ground lessee under that certain Ground Lease dated as of November 17, 1997 with Owner (the "Ground Lease") pertaining to the land underlying the Administration Building, as more particularly described on Exhibit B attached hereto and made a part hereof ("Administration Building Parcel") and together with the Administration Building, collectively, the "Administration Building Property";

WHEREAS, Owner has acquired the Administration Building and the leasehold interest of the ground lessee under the Ground Lease, as a result of which the Ground Lease has terminated due to the merger of the leasehold and fee interests;

WHEREAS, the Original Agreement has expired by its own terms as a result of the termination of the Ground Lease;

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WHEREAS, Owner has conveyed fee title to the Administration Building Property to Operator, together with certain other property and existing building improvements in the commercial portion of the Homan Square planned development (collectively, the "Project");

WHEREAS, the continued use, operation, management and maintenance of the Property as a garden is an integral component of Operator's plans for the redevelopment of the Project;

WHEREAS, Owner and Operator desire to amend and restate the Original Agreement to provide for the use, operation, management and maintenance of the Property by Operator, all in accordance with the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing recitals, and the mutual promises and agreements hereinafter set forth, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Owner and the Operator hereby agree as follows:

ARTICLE I

TERM; USE

1.01 Term. The term of this Agreement shall commence on the date hereof (the "Commencement Date") and terminate upon the date that Owner elects that the Property no longer be used as a garden; provided, however, that Owner agrees that the Property shall be used as a garden for a period of at least ten (10) years following the Commencement Date and shall provide Operator with no less than ninety (90) days prior written notice of any election to change such use following the aforementioned 10-year period.

1.02 Use. At all times during the term of this Agreement, the Property shall be used as a garden and for no other purpose. HAF hereby grants and reserves unto the Operator, owners and tenants of any buildings now or hereafter located in the Homan Square planned development (including the Project), residents of the Homan Square residential development, and their respective guests and invitees, during the term of this Agreement, a non-exclusive easement and right to use the Property for special events and as a "park" environment, all in accordance with rules and regulations (which rules and regulations may, at Operator's discretion, include the charging of a reasonable usage fee) to be promulgated by the Operator (subject, however, to the Owner's reasonable prior written approval, which approval shall not be unreasonably withheld or delayed).

ARTICLE II

DUTIES OF THE OPERATOR

2.01 Specific Operator Duties. The duties of the Operator hereunder shall be the following, which shall be at the Operator's sole cost and expense:

- (a) use, operate, manage and maintain the Property in a clean, safe and attractive manner, including, without limitation the following: (i) maintaining seasonally the turf, shrubs, evergreens, trees, flower beds, groundcover beds and gravel beds to present a neat

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and clean appearance by mowing, pruning, watering, edging turf adjacent to walks, curbs, beds and around lawn trees, and applying fertilizer and weed control, as applicable, on an as-needed basis; (ii) preparing flower beds each spring by installing annuals or a combination of annual and perennial flowers or such other flowers or perennial type grasses and plants as Operator may elect; (iii) removing all annual flowers after frost and installing tulip and daffodil bulbs in their place; (iv) removing leaves in autumn from turf and beds as needed; and (v) removing weeds, dead or damaged branches from trees and debris as needed (collectively, the "Operating Standards");

(b) enter into and cause the performance of all contracts, subcontracts and other third party agreements necessary for the maintenance of the Property in accordance with the Operating Standards;

(c) file or cause to be filed in a timely manner all required documents for the approval of all governmental authorities having jurisdiction over the Property; secure or cause to be secured, all necessary governmental permits, approvals and authorizations for the use of the Property from all necessary governmental authorities having jurisdiction over the Property; and otherwise cooperate with the Owner in taking all steps necessary to ensure compliance by the Property with all applicable laws, ordinances and regulations, environmental impact laws, ordinances and regulations and any other laws, ordinances and regulations of any governmental body having jurisdiction over the Property.

2.02 Operator Responsibility. In furtherance of the Operator's obligations set forth in Section 2.01 above, the Operator hereby agrees to the following:

(a) Operator is retained only for the purpose set forth in this Agreement. The relationship of Operator and Operator's employees, agents, contractors and subcontractors to Owner during the term of this Agreement shall be that of independent contractors. All persons Operator furnishes to provide services to Owner, other than persons with whom Operator contracts as agent of Owner, shall be the employees, contractors and subcontractors of Operator. Operator shall have exclusive control over its employees, contractors and its subcontractors and over the labor and employee relations, and policies relating to wages, hours, working conditions or other conditions of its employees, agents, contractors and subcontractors. Operator shall have the exclusive right to hire, transfer, suspend, lay off, recall, promote, assign, discipline, adjust grievances and discharge its employees, contractors and subcontractors.

(b) Operator will be solely responsible for all salaries and other compensation of its employees, contractors, agents and subcontractors who provide services to Owner in connection with the transactions contemplated by this Agreement. Operator will be solely responsible for making all deductions and withholdings from its employees' salaries and other compensation, and for the payment of all contributions, taxes and assessments and will comply with all other requirements of federal or state laws or regulations regarding conditions of employment with respect to its employees including, but not limited to, the Occupational Safety and Health Act, federal or state laws or

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regulations regarding minimum compensation, unemployment compensation, Social Security, overtime, hours of work and equal opportunities for employment.

2.03 Cooperation of the Owner. Owner shall furnish Operator in a prompt and timely manner with any and all information and documents reasonably required by Operator for the fulfillment of its obligations in connection with this Agreement.

ARTICLE III

OPERATING EXPENSES

3.01 Operating Expenses. Operator shall be solely responsible for the payment of all costs and expenses necessary for Operator to perform its obligations under this Agreement, including, without limitation, all lighting, electrical, plumbing, extermination, landscaping and event insurance costs. In no event shall the Operator permit or acquiesce in the filing of any mechanic's, materialmen's or other similar lien against the Property in connection with any work performed on the Property by the Operator, its agents, contractors, or subcontractors, and the Operator shall promptly pay or bond over such lien to the Owner's reasonable satisfaction.

ARTICLE IV

INDEMNIFICATION AND INSURANCE

4.01 Indemnification.

(a) Owner shall, in addition to any other obligation to indemnify Operator, and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless Operator, its members and manager and its and their respective members, managers, officers, directors, shareholders, partners, trustees, beneficiaries, affiliates, agents and employees from and against all claims, actions, liabilities, losses, costs, expenses and liens, including but not limited to reasonable attorneys' fees, arising out of any actual or alleged: bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom occurring by reason of any actual act of Owner or any contractor, subcontractor or agent thereof, excluding however any such loss arising out of or resulting in whole or in part from any actual negligent act or omission of, or breach of the terms of this Agreement by, the Operator, any subcontractor of Operator, anyone directly employed by any of them, or anyone for whose acts any of them may be liable in the performance of the work relating to the Property.

(b) Operator shall, in addition to any other obligation to indemnify Owner, protect, defend, indemnify and hold harmless Owner, its officers, directors, affiliates, agents and employees from and against all claims, actions, liabilities, losses, costs, expenses and liens, including but not limited to reasonable attorneys' fees, arising out of any actual or alleged: bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom, or any other damage or loss arising out of or resulting from any actual or alleged negligent act or omission of, or breach of the terms of this Agreement by, Operator, any subcontractor or agent, anyone directly employed by any of them or anyone for whose acts any of them may be liable in

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the performance of the work relating to the Property, excluding however any such loss arising out of or resulting in whole or in part from any actual negligent act or omission of, or breach of the terms of this Agreement by, the Owner, any subcontractor of Owner, anyone directly employed by any of them, or anyone for whose acts any of them may be liable in the performance of the work relating to the Property.

4.02 Environmental Matters.

(a) Owner hereby acknowledges and agrees that notwithstanding anything to the contrary set forth in this Agreement, Operator shall have no liability to Owner for, and hereby releases Operator from, any damages, losses, costs or expenses of any kind incurred as a result of any claims under federal, state or local law arising from the presence of any Hazardous Material (as defined below) deposited at the Property prior to the Commencement Date.

(b) The term "Hazardous Materials" shall mean any substances which pose a threat to human health or the environment, including those materials included in the definition of hazardous or toxic waste, pollutants or substances in an amount actionable under any Environmental Laws; oil, petroleum or any refined petroleum product, and chemicals known to cause cancer or reproductive toxicity. The term "Environmental Laws" shall mean any applicable federal, state or local law relating to protection of human health, welfare or the environment, including ordinances and the regulations, orders, decrees now or hereafter promulgated thereunder.

4.03 General Terms.

(a) The indemnification obligations hereunder shall not be limited by any limitation on the amount, type of damages, compensation or benefits payable by or for the Operator or Owner or any subcontractor under workers' compensation acts, disability benefit acts, other employee benefit acts or any statutory bar.

(b) Each indemnitor shall reimburse each indemnitee for any legal fees and costs, including reasonable attorneys' fees and other litigation expenses, reasonably incurred by the indemnitee in connection with investigating claims for which indemnity is sought pursuant to Sections 4.01(a) and 4.01(b) above with respect to which the indemnitee is entitled to be indemnified hereunder. If claims are asserted or threatened, or if any action or suit is commenced or threatened with respect thereto, for which indemnity may be sought against the indemnitor hereunder, the indemnitee shall notify the indemnitor in writing as soon as practicable after the assertion or commencement of the claims, which notice shall specify in reasonable detail the matter for which indemnity may be sought. The indemnitor shall have the right, upon notice to the indemnitee given within thirty (30) days of its receipt of the indemnitee's notice, to take primary responsibility for the prosecution, defense or settlement of such matters, including the employment of counsel chosen by the indemnitor with the approval of the indemnitee, which approval shall not be unreasonably withheld, and payment of expenses in connection therewith. The indemnitee shall provide without cost to the indemnitor all relevant records and information reasonably required by the indemnitor for such prosecution, defense or

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settlement and shall cooperate with the indemnitor to the fullest extent possible. The indemnitee shall have the right to employ its own counsel in any such matter with respect to which the indemnitor has elected to take primary responsibility for prosecution, defense or settlement, but the fees and expenses of such counsel shall be the expense of the indemnitee.

(c) The provisions of this Article IV shall survive the termination of this Agreement.

4.04 Insurance. Operator shall procure, pay for, and maintain during the term of this Agreement such insurance with respect to the Property as Operator shall reasonably determine to be necessary in connection with Operator's obligations hereunder. Operator shall cause Owner to be named as an additional insured on any policies of liability insurance carried by Owner with respect to the Property and upon Owner's request, shall provide a certificate to Owner evidencing such insurance.

ARTICLE V

GENERAL

5.01 Assignments. Neither Owner nor Operator shall have any right to assign or transfer all or any part of its rights or powers, nor delegate any of its duties or obligations hereunder without the prior written consent of the non-assigning party, provided, however, that (i) Operator may assign or delegate all or any portion of its rights, powers, duties and obligations to any affiliates, any owner or successor owner of any of the buildings now or hereafter constructed at the Project, or any future condominium or homeowners association at the Project, in each instance without obtaining Owner's consent, and (ii) Owner may assign all of its rights and obligations under this Agreement to any successor owner of the Property without obtaining Operator's consent. Upon any assignment made pursuant to clauses (i) or (ii) of the preceding sentence (or any other assignment approved by the non-assigning party, which approval shall not be unreasonably withheld, conditioned or delayed), the party making such assignment shall not, from and after the date of such assignment, have any further rights, obligations or liabilities under this Agreement.

5.02 Notices. All notices, demands, requests, consents, approvals and other communications (herein collectively called "Notices") required or permitted to be given hereunder, or which are to be given with respect to this Agreement, shall be in writing and (i) personally delivered, or (ii) deposited with a reputable overnight courier service for delivery on the next following business day, or (iii) sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the party to be so notified as follows:

If to the Owner:	The Homan-Arthington Foundation c/o The Shaw Company 2001 York Road, Suite 550 Oak Brook, Illinois 60523 Attention: Mr. Charles Shaw, President
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If to the Operator: Sterling Park Development, L.L.C.
c/o Royal Imperial Group
900 West Jackson Boulevard, 8th Floor
Chicago, Illinois 60607
Attention: Mr. Mordecai Tessler

with a copy to:

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

and shall be deemed received (i) in the case of personal delivery, when delivered, (ii) in the case mailing, two (2) days after the mailing thereof, and (iii) in the case of delivery to an overnight courier, the next business day following the sender's delivery of the Notice to such overnight courier. Such Notices, demands, requests, consents, approvals and other communications may also be delivered by hand, or by special courier, and shall be deemed received when receipt is acknowledged or refused by the addressee. Either party may at any time change the address for notice to such party by mailing a notice as aforesaid.

5.03 Miscellaneous.

(a) The captions of Articles and Sections are for convenience of reference only, and shall not affect the construction to be given any provision hereof. This Agreement contains the entire Agreement between the parties with respect to the subject matter hereof, supersedes all prior understandings, if any, with respect thereto and may not be amended, supplemented or terminated, nor shall any obligation hereunder or condition hereof be deemed waived, except by a written instrument to such effect signed by the party to be charged. The parties do not intend to confer any benefits hereunder on any person other than the parties hereto. Except as herein otherwise expressly provided, no waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or any other agreement or provision herein contained. No extension of time for performance of any obligation or act hereunder shall be deemed an extension of time for the performance of any other obligation or act.

(b) This Agreement and the covenants and agreements set forth herein shall run with the land and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, and the holder of any other interest in the Property; provided, however, no assignment by either party, other than as permitted pursuant to Section 5.01, shall be of any force except with the prior written consent of the other party.

(c) This Agreement contains the entire agreement and understanding between the parties with respect to the transactions contemplated hereby and shall not be supplemented, modified or amended except by a written instrument signed by duly

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authorized officers of Owner and Operator, respectively. Operator shall have the right to record this Agreement in the office of the Cook County, Illinois Recorder of Deeds.

(d) This Agreement and the rights and duties of the parties hereunder shall be governed by and construed under the laws of the State of Illinois.

[Signatures follow on next page.]

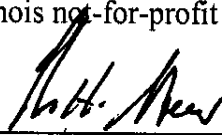
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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

OWNER:

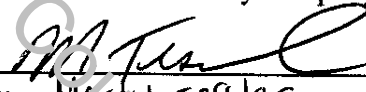
THE HOMAN-ARTINGTON FOUNDATION,
an Illinois not-for-profit corporation

By: 
Name: Charles H. Shaw
Its: President

OPERATOR:

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

By: Foyal Sterling Development, L.L.C.,
an Illinois limited liability company

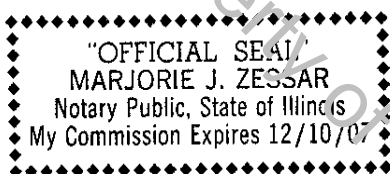
By: 
Name: Michael Tessler
Its: Manager

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STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

I, Marjorie J. Zessar, a Notary Public 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-Arthington Foundation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such _____ 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 official seal this 20th day of August, 2004.

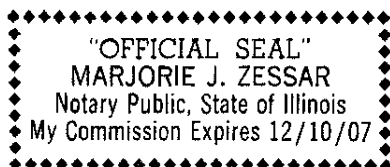


Marjorie J. Zessar
 Notary Public

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

I, Marjorie J. Zessar, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Mardy Tessler, personally known to me to be a manager of Royal Sterling Development, L.L.C., the sole manager of Sterling Park Development, L.L.C., and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such manager 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, as sole manager of Sterling Park Development, L.L.C., for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 20th day of August, 2004.



Marjorie J. Zessar
 Notary Public

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EXHIBIT A

PROPERTY (Garden Parcel)

LOTS 25 THRU 48, BOTH INCLUSIVE, IN BLOCK 11 IN E.A. CUMMINGS AND CO'S CENTRAL PARK AVENUE ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 23, 1899, AS DOCUMENT NO. 2837304, IN THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. SAID PARCEL OF LAND HEREIN DESCRIBED CONTAINS 1.715 ACRES, MORE OR LESS.

Common Address: Northeast corner of South Homan Avenue and West Arthington Street, Chicago, Illinois

PIN No.: 16-14-414-024

Property of Cook County Clerk's Office

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EXHIBIT B

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 21ST, 1904, AS DOCUMENT NO. 3635041, IN THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE 3RD 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 Street, Chicago, Illinois

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