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RHSP Fee:\$9.00 RPRF Fee: \$1.00
Karen A.Yarbrough
Cook County Recorder of Deeds
Date: 07/01/2015 02:38 PM Pg: 1 of 22

This instrument prepared by
and after recording return to:

Applegate & Thorne-Thomsen, P.C.
626 West Jackson Blvd., Suite 400
Chicago, Illinois 60661
Attn: Andrew P. Massmann

**EASEMENT AND
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This **EASEMENT AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (this "**Agreement**") is made and entered into as of the 1st day of June, 2015 (the "**Effective Date**"), between STERLING PARK DEVELOPMENT, L.L.C., an Illinois limited liability company ("**Sterling Park**"), and NEW STERLING PARK LLC, an Illinois limited liability company ("**New Sterling Park**"). Sterling Park and New Sterling Park are sometimes referred to in this Agreement individually as a "**Party**", and collectively as the "**Parties**".

RECITALS

A. Sterling Park is the owner of the land located at 3333 West Arthington Street, Chicago, Illinois, legally described on Exhibit A attached hereto and made a part hereof (the "**Administration Building Land**") and the building improvements located thereon (the "**Administration Building**"). The Administration Building Land and the Administration Building are sometimes collectively referred to in this Agreement as the "**Administration Property**".

B. Sterling Park is also the owner of the land located at 3245 West Arthington Street, Chicago, Illinois, legally described on Exhibit B attached hereto and made a part hereof (the "**Allstate Building Land**") and the building improvements located thereon (the "**Allstate Building**"). The Allstate Building Land and the Allstate Building are sometimes collectively referred to in this Agreement as the "**Allstate Property**".

C. Sterling Park is also the owner of certain vacant land adjacent to the Allstate Property and a parking structure on the northeast corner of West Arthington Street and South Spaulding Avenue in Chicago, Illinois, legally described on Exhibit C attached hereto and made a part hereof (the "**Parking Structure Property**").

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D. New Sterling Park is the owner of the land located at 3301 West Arthington Street, Chicago, Illinois, legally described on Exhibit D attached hereto and made a part hereof (the “**MD&L Building Land**”) and the building improvements located thereon (the “**MD&L Building**”). The MD&L Building Land and the MD&L Building are sometimes collectively referred to in this Agreement as the “**MD&L Property**”.

E. New Sterling Park is also the owner of the vacated portion of South Spaulding Avenue adjacent to the eastern property line of the MD&L Property legally described on Exhibit E attached hereto and made a part hereof (“**Vacated Spaulding**”).

F. The Administration Property, the Allstate Property, the Parking Structure Property, the MD&L Property, and Vacated Spaulding are sometimes individually referred to herein as a “**Property**”, and collectively as the “**Property**” or “**Properties**”, as the context requires. The fee owner of a Property is sometimes referred to herein individually as an “**Owner**”, and collectively as the “**Owners**”, as the context requires.

G. Sterling Park and The Homan-Arthington Foundation have entered into that certain Amended and Restated Operating Agreement (Garden) dated as of August 23, 2004 and recorded October 21, 2004 with the Cook County Recorder of Deeds as Document No. 0429516161 (the “**Garden Easement**”) which obligates Sterling Park (as the Administration Property Owner) to operate a garden on certain property located at the northeast corner of South Homan Avenue and West Arthington Street, all as more particularly described in the Garden Easement (the “**Garden**”).

H. Sterling Park and Homan Power House Development, LLC have entered into that certain Amended and Restated Cross-Easement Agreement dated as of December 15, 2008 and recorded December 19, 2008 with the Cook County Recorder of Deeds as Document No. 0835422062 (the “**Cross-Easement**”) which provides certain easements which benefit and burden the Administration Property, the MD&L Property, the Power Plant Property (as defined in the Cross-Easement), and the Power Plant Building (as defined in the Cross-Easement).

I. The City of Chicago Building Department has required a “no-build area” as depicted on Exhibit F attached hereto and make a part hereof (the “**No-Build Area**”) in connection with the issuance of a building permit for the redevelopment of the MD&L Building.

J. Sterling Park and New Sterling Park desire to enter into this Agreement to (i) establish certain easements affecting the Property, (ii) set forth the Parties rights and obligations with respect to the Garden Easement and the Cross-Easement, (iii) to establish the No-Build Area, and (iv) to provide for the harmonious development and operation of the Property.

NOW, THEREFORE, in consideration of the foregoing and the covenants contained herein, as of the Effective Date, the Parties, intending to be legally bound, declare that the Property and any part thereof is and shall be owned, held, mortgaged, leased or otherwise encumbered, transferred, assigned, sold, conveyed and accepted subject to this Agreement, and declare that each of the following covenants, conditions, restrictions, burdens, uses, privileges and charges created hereunder shall exist at all times hereafter amongst, and be binding upon and inure, to the extent provided herein, to the benefit of all parties having or acquiring any right,

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title or interest in or to any portion of, or interest or estate in, the Property, and each of the foregoing shall run with the land subjected to this Agreement.

AGREEMENT

1. **Easements over Vacated Spaulding for the benefit of the Allstate Property.** New Sterling Park hereby grants and conveys for the benefit of (i) Sterling Park, (ii) any existing or future tenants, owners, condominium owners, or other occupants of the Allstate Property, (iii) the guests, invitees and licensees of Sterling Park and any existing or future tenants, owners, condominium owners or other occupants of the Allstate Property, (iv) any future condominium or homeowners association at the Allstate Property, and (v) the agents, employees, utility service providers and customers of Sterling Park, any existing or future tenants, owners, condominium owners or other occupants of the Allstate Building, and any condominium association or homeowners association at the Allstate Property (collectively, the "**Allstate Grantees**") the following easements: (i) a perpetual, non-exclusive easement for vehicular and pedestrian access over Vacated Spaulding (the "**Access Easement**"); and (ii) in connection with the redevelopment of the Allstate Property, a perpetual, non-exclusive easement to tap into and utilize the existing utilities located in, on, under, over or through Vacated Spaulding, provided the Allstate Grantees use of the same does not adversely affect utility service to the MD&L Property (the "**Utility Easements**"). The Access Easement may be exercised by the Allstate Grantees from time to time and at any time without any notice to New Sterling Park. The Utility Easements may be exercised by the Allstate Grantees only upon five (5) business days notice to New Sterling Park. The Allstate Grantee exercising the Utility Easements shall be responsible for all costs and expenses related to utilizing the Utility Easements, except to the extent that such costs or expenses result from the gross negligence or willful misconduct of New Sterling Park.

2. **Additional Curb Cuts along Vacated Spaulding.** New Sterling Park hereby grants Sterling Park the right to install, at its sole cost and expense, additional curb cuts at any point along the eastern boundary of Vacated Spaulding. If any such additional curb cuts result in the reduction of parking along Vacated Spaulding that exists as of the Effective Date, Sterling Park shall provide New Sterling Park the right to use a number of parking spaces equivalent to the number of parking spaces lost in a location reasonably acceptable to New Sterling Park on the Allstate Property.

3. **Maintenance and Repair of Vacated Spaulding.** New Sterling Park shall maintain and repair Vacated Spaulding in good condition and repair, at its sole cost and expense (the "**Vacated Spaulding Operating Costs**"), except to the extent that such costs or expenses result from the gross negligence or willful misconduct of any of the Allstate Grantees. If the Allstate Property is developed such that Vacated Spaulding is the primary entrance to the Allstate Property then Sterling Park shall pay New Sterling Park a prorata share of the Vacated Spaulding Operating Costs. Sterling Park's prorata share shall be that part of the Vacated Spaulding Operating Costs multiplied by a fraction, the numerator of which is the number of residential units on the Allstate Property and the denominator of which is the number of residential units on both the Allstate Property and the MD&L Property. If the Allstate Property is not developed for residential use and the primary entrance to the Allstate Property is Vacated Spaulding, then for purposes of determining Sterling Park's prorata share of the Vacated Spaulding Operating Costs the numerator shall be the gross square footage of floor area of

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improvements on the Allstate Property and the denominator shall be the gross square footage of floor area of improvements on both the Allstate Property and the MD&L Property. Sterling Park shall pay New Sterling Park its prorata share of the Vacated Spaulding Operating Costs within thirty (30) days of receipt of an invoice. Upon written request, New Sterling Park shall provide Sterling Park with receipts and other documentation evidencing the Vacated Spaulding Operating Costs.

4. **Pedestrian Bridge Removal.** In connection the redevelopment of the MD&L Building, New Sterling Park shall, at its sole cost and expense, (i) remove the pedestrian bridge connecting the MD&L Building to the Allstate Building (the "**Allstate Bridge**"), (ii) remove the pedestrian bridge connecting the MD&L Building to the Administration Building (the "**Administration Bridge**"), and (iii) repair and restore the holes in the Allstate Building and the Administration Building caused by the removal of the Allstate Bridge and the Administration Bridge (the "**Bridge Restoration Work**"). The Administration Building has historical landmark designation. The Bridge Restoration Work for the Administration Building must conform to the historical landmark designation.

5. **Temporary Construction Easements.**

(a) During the period of time either the Administration Property Owner or the MD&L Property Owner are developing or restoring the Administration Property or the MD&L Property, each such Owner grants to the other Owner a temporary non-exclusive easement to use portions of the Property of such Owner as and to the extent reasonably necessary for the purpose of performing their construction (the "**Temporary Construction Easements**"); provided, however, the Temporary Construction Easements shall not extend to the use of any buildings located on a Property without the prior written consent of the Owner of such building, which may be withheld in such Owner's sole and absolute discretion except that in connection with the removal of the Allstate Bridge, the removal of the Administration Bridge, and the Bridge Restoration Work, New Sterling Park may place scaffolding and other equipment on the portions of the Administration Building and the Allstate Building adjacent to Administration Bridge and the Allstate Bridge necessary to complete such work. Each such Temporary Construction Easement will terminate when the construction of the building or structure which gives rise to such Temporary Construction Easement is completed, and in any event shall not extend beyond the time when it is needed under good construction practices. Upon completion of any work as to which a Temporary Construction Easement was enjoyed, the Owner performing such construction will promptly, at its own cost, repair and/or restore any damage done and leave such area affected free and clear of all loose dirt, debris and construction materials and at the original grade. In no event shall the Temporary Construction Easements permit the use any Owner's Property for the staging or storage of materials or for employee or construction parking without the prior written approval of the Owner of such Property, which may be withheld in such Owner's sole and absolute discretion.

(b) Each Owner agrees that any work performed utilizing a Temporary Construction Easement shall not materially interfere with the other Owner's use and enjoyment of its Property or access to its Property. Prior to commencing any work utilizing a Temporary Construction Easement, the Owner performing such work will provide the other Owner with a certificate of insurance from each of its contractors in a form reasonably acceptable to the other Owner and

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naming the other Owner and its managing agent as additional insureds thereunder, such certificate to evidence commercial general liability coverage in an amount of at least \$2,000,000, which amount may include umbrella coverage.

6. **Operating Standard.** Each Property Owner agrees that it will cause its respective Property to be maintained in a good and slightly manner, including, without limitation, the boarding up of any broken or missing windows, removing all rubbish, trash, refuse and similar items on a periodic basis, maintaining all landscaping that exists from time to time, removing graffiti, and clearing snow and ice from sidewalks.

7. **Garden Easement Operating Expenses.**

(a) The Garden Easement obligates the Administration Property Owner to operate and maintain the Garden at its sole cost and expense in accordance with the Operating Standards (as defined in the Garden Easement). Provided the Administration Property Owner complies with the terms and provisions of the Garden Easement, including, without limitation, maintaining the Garden pursuant to the Operating Standards, the other Owners agree to pay the Administration Building Owner a portion of the costs to operate the Garden (the "**Garden Operating Expenses**"). Each Owner's "**Proportionate Share**" of the Garden Operating Expenses shall be determined as follows: (i) the MD&L Property Owner's proportionate share shall be fifty percent (50%) until such time as a certificate of occupancy for multifamily use is issued for the Allstate Property or the Parking Structure Property (each a "**Development Trigger Event**"); (ii) upon the occurrence of a Development Trigger Event, the MD&L Property Owner's proportionate share shall decrease to twenty five percent (25%); (iii) upon the occurrence of a Development Trigger Event, the proportionate share of Owner of the Property that caused the Development Trigger Event shall be twenty five percent (25%); and (iv) if both the Allstate Property and the Parking Structure Property cause a Development Trigger Event, then each such Owner's proportionate shall be twelve and ½ percent (12.5%).

(b) The Administration Property Owner shall prepare and submit by November 30 a proposed annual budget (the "**Garden Budget**") showing the estimated Garden Operating Expenses for the next calendar year for each Owner's approval. The Owners estimate the Garden Budget for 2015 will be \$40,000. The Garden Budget shall not increase more than three percent (3%) each year (the "**Budget Cap**") without each Owner's written consent, which consent may be withheld in each such Owner's sole and absolute discretion. Each Owner shall be deemed to have approved each Garden Budget that does not exceed the Budget Cap.

(c) Provided the Administration Property Owner is not in default under the terms of the Garden Easement and continues to operate the Garden in compliance with the Operating Standards, the other Owners shall pay the Administration Property Owner on a monthly basis a sum equal to one twelfth (1/12th) of such Owner's Proportionate Share of the Garden Budget (the "**Estimated Garden Payments**"). Not later than sixty (60) days after the end of each calendar year, the Administration Property Owner shall provide the other Owners a full and complete statement of the Garden Operating Costs actually incurred by the Administration Property Owner for such calendar year (the "**Garden Reconciliation**"). If the Garden Reconciliation shows that an Owner paid more than such Owner's Proportionate Share (each an "**Overpayment**"), then such Owner shall receive a credit against its next monthly Estimated

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Garden Payments until such time as such Overpayment is reduced to zero, and if no additional Estimated Garden Payments are due, then the Administration Property Owner shall promptly refund to such Owner any remaining Overpayment.

(d) Notwithstanding the foregoing or any provision to the contrary contained in this Agreement, no Owner of any Property (other than the Administration Property) shall be responsible for any of the obligations of the Operator (as defined in the Garden Easement) under the Garden Easement or responsible for complying with the terms and provisions of the Garden Easement.

8. **Cross-Easement Provisions.** At the time the Cross-Easement was executed and delivered Sterling Park owned both the Administration Property and the MD&L Property. New Sterling Park is now the Owner of the MD&L Property and Sterling Park remains the Owner of the Administration Property. The Cross-Easement benefits and burdens both the Administration Property and the MD&L Property. As such, the Parties desire to clarify their rights and obligations with respect to the Cross-Easement as follows:

(a) Except as set forth in this Agreement, (i) each Party shall only have the rights and/or obligations under the Cross-Easement that benefit and/or burden the portion of the Property owned by such Party, and (ii) each Party agrees to comply with the terms and provisions of the Cross-Easement that burden and/or benefit their Property.

(b) The Power Plant Access Easements (as defined in the Cross-Easement) benefit both the Administration Property and the MD&L Property and may be enjoyed by either Party.

(c) The Water Easements (as defined in the Cross-Easement) expired effective as of July 25, 2012. New Sterling Park shall have no responsibility for any remaining obligations related to the Water Easements. Sterling Park shall perform any such remaining obligations at its sole cost and expense.

(d) The Sub-Basement Easements (as defined in the Cross-Easement) solely benefit the Administration Property and not the MD&L Property. Accordingly, (i) New Sterling Park shall not have any rights with respect to the Sub-Basement Easements nor any obligations related thereto, and (ii) Sterling Park shall have all the rights with respect to the Sub-Basement Easements and shall perform all the obligations related thereto at its sole cost and expense, including, without limitation, any relocation or replacement costs in connection with the development of the Property under Section 1(c)(H) of the Cross-Easement.

(e) The Administration Building Vehicular Access Area (as defined in the Cross-Easement) is located entirely on the Administration Property. Sterling Park shall perform all obligations related thereto at its sole cost and expense.

(f) The Admin/MD&L Vehicular Access Area (as defined in the Cross-Easement) is located on both the Administration Property and the MD&L Property. New Sterling Park shall maintain the Admin/MD&L Vehicular Access Area in good condition and repair. Sterling Park shall reimburse New Sterling Park fifty percent (50%) of the costs actually incurred to maintain and repair the Admin/MD&L Vehicular Access Area (the "**Easement Operating Costs**"). Sterling Park shall pay New Sterling Park its share of the Easement Operating Costs within thirty

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(30) days of receipt of an invoice. Upon written request, New Sterling Park shall provide Sterling Park with receipts and other documentation evidencing the Easement Operating Costs. The Temporary Construction Easements shall include that portion of the Admin/MD&L Vehicular Access Area located on the Administration Property.

(g) The Sterling Construction and Access Easements (as defined in the Cross-Easement) are located entirely on the Administration Property. Sterling Park shall perform all obligations related thereto at its sole cost and expense.

(h) The Sterling Maintenance and Restoration Easement and the Electrical Easements (as such terms are defined in the Cross-Easement) benefit both the Administration Property and the MD&L Property. The Party utilizing such easement shall be responsible for complying with the applicable terms and conditions of the Cross-Easement at its sole cost and expense. A Party may only exercise the termination right set forth in Section 1(g)(F) of the Cross-Easement if such termination does not affect the electrical service to the Property of the Owner that is not seeking termination of the Utility Easement.

(i) Each Party shall maintain the insurance required pursuant to Section 5(a) of the Cross-Easement.

9. **No-Build Restriction.** The Parties hereby declare that for a period of seventy-five (75) years from the Effective Date, no new buildings, improvements, alterations or additions shall be constructed or allowed to exist in the No-Build Area, other than the repair or resurfacing of the existing driveway shared by the Administration Property and the MD&L Property, and no construction, addition, reconstruction, replacement, repair or rebuilding of any existing or future improvements on either the Administration Property or the MD&L Property, whether following a fire, casualty or otherwise, shall be made so as to encroach into or upon the No-Build Area.

10. **Plans and Specifications.** Prior to commencing any work on another Owner's Property, the Party to perform the work shall provide the other Party the plans and specifications for such work, which plans and specifications shall be subject to such Owner's approval, not to be unreasonably withheld. If a Party does reject or provide comments within thirty (30) days of receipt of any plans and specifications, such Party shall be deemed to have approved the plans and specifications as submitted.

11. **Compliance with Laws.** Each Party shall comply with all Applicable Law (as defined below) in connection with the exercise of their rights and the performance of their obligations under this Agreement. For purposes hereof, the term "**Applicable Law**" shall mean all present and future laws (including environmental laws), rules, orders, ordinances, regulations, statutes, requirements, codes (including building codes), historic preservation rules, executive orders, court orders, rules of common law, and any judicial interpretations thereof, extraordinary as well as ordinary, of all governmental authorities, and all rules, regulations and government orders with respect thereto, and of any applicable fire rating bureau, or other body exercising similar functions, affecting the Property or the maintenance, use or occupation of the Property.

12. **Mechanic's Liens.** Each Owner covenants and agrees that it will not cause or permit any lien (including, without limitation, any mechanic's lien) or claim for lien to be

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asserted against another Owner's Property or any interest therein, whether such lien or claim for lien results from or arises out of any act or omission of such Owner or its employees, agents, consultants, representatives, contractors, subcontractors or materialmen, or otherwise (the "**Lien Owner**"). If any such lien or claim for lien is filed on an Owner's Property (the "**Impacted Owner**"), the Lien Owner will immediately pay and release the same. If such lien or claim of lien is not released, removed, insured over, or bonded over to the Impacted Owner's reasonable satisfaction within fifteen (15) days after notice from the Impacted Owner, the Impacted Owner, at its sole option and in addition to any of its other rights and remedies, may take any and all action necessary to release and remove such lien or claim of lien (it being agreed by the Lien Owner that the Impacted Owner shall have no duty to investigate the validity thereof), and the Lien Owner shall promptly upon notice thereof reimburse the Impacted Owner for all sums, costs and expenses, including court costs and reasonable attorneys' fees and expenses, incurred by the Impacted Owner in connection with such lien or claim of lien. The Lien Owner agrees to indemnify, hold harmless, and defend the Impacted Owner from and against any and all liens or claims for lien arising out of or in any way connected with Lien Owner's use and occupancy of the Impacted Owner's Property or any construction or other work on the Lien Owner's Property.

13. **Non-Payment Liens.** Notwithstanding the provisions of Section 12 above, in the event a Party does not pay any amount due under this Agreement within ten (10) days after receipt of written notice that such amount is past due, such amount shall bear interest from the date due until paid at the rate of four percent (4%) over the Corporate Base Rate of Interest (as announced by Citibank, N.A. (or its successors) from time to time) and the Party to whom the payment is due may place a lien on the Property of the Party who owes such payment in the amount of the outstanding payment, which lien may be foreclosed in the same manner as a mortgage.

14. **Indemnity.** Each Party will at all times (i) take any and all safety measures reasonably required to protect the other Parties and all their permittees from injury or damage caused by or resulting from the performance of its rights or obligations under this Agreement, and (ii) indemnify, hold harmless, and defend the other Party from and against all claims, demands, suits, costs, expenses and liabilities arising from or in respect to the death, accidental injury, loss or damage caused to any natural person or to the property of any Person as will occur by virtue of its acts or omission.

15. **Breach and Remedies.** In the event of a violation or breach of any of the provisions contained in this Agreement, the non-breaching Party or any successor fee owners of all or any portion of the Property shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach of any of them, and the breaching Party shall be liable for and shall reimburse the non-breaching Party upon demand for all reasonable attorney's fees and costs incurred by the non-breaching Party in enforcing the defaulting Party's obligations under this Agreement, whether or not the non-breaching Party files legal proceedings in connection therewith. Each Party shall indemnify, defend, and hold harmless the other Party from and against all actions, claims, demands, costs and reasonable attorneys' fees, which may be brought against, incurred or suffered by the other Party arising out of the indemnifying Party's use of the easements granted under this Agreement and the rights related and incident thereto, and any breach of this Agreement by the indemnifying Party.

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Nothing contained in this Agreement shall obligate a Party to indemnify another Party against the other's own gross negligence or willful acts.

16. **Entire Agreement.** This Agreement, together with the Exhibits referenced herein and thereby made a part hereof, constitutes the entire Agreement between the Parties with respect to the subject matter contained in this Agreement. This Agreement, once executed and delivered, shall not be modified or altered in any respect except by writing, executed and delivered by the Parties or their successor fee owners of all or any portion of the Property.

17. **No Dedication to the Public.** Nothing contained in this Agreement shall ever constitute or be construed as a dedication of any portion of the Property to the public or give any member of the public any rights whatsoever; it being the express intention of the Parties that this Agreement shall be for the exclusive benefit of the owners of the Property and their respective successors and assigns.

18. **No Third-Party Beneficiary.** This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity, as a third party beneficiary under any laws or otherwise.

19. **Captions.** The captions for each section of this Agreement are intended for convenience only and shall not be construed with any substantive effect in this Agreement. In the event of any conflict between statements made in Recitals to this Agreement and the provisions contained in the body of this Agreement, the provisions in the body of this Agreement shall govern. In the event of a conflict between the terms of the Garden Easement and/or the Cross-Easement with the terms of this Agreement, as between the Parties the terms of this Agreement shall govern.

20. **Severability.** Invalidation of all or any portion of any of the covenants, conditions or restrictions contained herein, by legislation, judgment or court order shall in no way affect any other provisions of this Agreement which shall remain in full force and effect and enforceable to the fullest extent permitted by applicable law.

21. **Perpetuities and Other Invalidity.** If any of the covenants, conditions or restrictions created by this Agreement would otherwise be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision; (b) the rule restricting restraints on alienation; or (c) any other statutory or common law rules imposing time limits, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the President of the United States and the members of the United States Senate as of the Effective Date.

22. **Covenants Running With The Land.** It is the intention of the Parties and their successors and assigns that the covenants, conditions and restrictions established pursuant to this Agreement shall run with the land and with title to the Property and any portion thereof, and the terms and conditions contained herein shall bind, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns. The rights, liabilities and obligations set forth herein cannot be severed or alienated from ownership of any portion of the Property.

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23. **Counterparts.** This Agreement may be executed in counterparts each of which shall constitute an original, but all taken together shall constitute one and the same Agreement.

24. **Recording.** This Agreement shall be recorded with the Recorder of Deeds of Cook County, Illinois.

25. **Notices.** Whenever notice is required to be given pursuant to this Agreement, the same shall be in writing, and either personally delivered, sent by a nationally recognized overnight delivery service, postage prepaid, or sent via United States certified mail, return receipt requested, postage prepaid, and addressed to the Parties at their respective addresses as follows:

If to Sterling Park: Sterling Park Development, L.L.C.
900 W. Jackson Blvd., 8th Floor
Chicago, IL 60607
Attn: Mordecai Tessler and David Tessler

With a copy to: Faegre Baker Daniels LLP
311 S. Wacker Dr.,
Suite 4300
Chicago, IL 60606
Attn: Barry R. Nekritz

If to New Sterling Park: New Sterling Park LLC
c/o Mercy Housing Lakefront
120 S. LaSalle St., Suite 1850
Attn: President

With a copy to: Applegate & Thorne Thomsen, P.C.
626 West Jackson Blvd., Suite 400
Chicago, Illinois 60661
Attn: Bennett P. Applegate

or at such other addresses as any Party, by written notice in the manner specified above to the other Party may designate from time to time. Unless otherwise specified to the contrary in this Agreement, all notices shall be deemed to have been given upon receipt (or refusal of receipt) thereof.

26. **Governing Law; Venue.** The terms and provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. With respect to any suit, action or proceeding relating to this Agreement (each a "**Proceeding**"), the Parties irrevocably: (a) agree that any such Proceeding shall be commenced, brought, tried, litigated and consummated in the courts of the State of Illinois located in Cook County or (as applicable) the United States District Court for the Northern District of Illinois, (b) submit to the exclusive

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jurisdiction of the courts of the State of Illinois located in the Cook County and the United States District Court for the Northern District of Illinois, and (c) waive any objection which they may have at any time to the laying of venue of any Proceeding brought in any such court, waive any claim that any Proceeding brought in any such court has been brought in an inconvenient forum, and further waive the right to object, with respect to such Proceeding, that any such court does not have jurisdiction over such Party.

27. **Waiver of Jury Trial.** The Parties waive trial by jury in any action, proceeding, or counterclaim brought by either of the Parties against the other on any matters whatsoever arising out of or in any way connected with this Agreement.

28. **No Strict Construction.** The rule of strict construction does not apply to this Agreement. The Parties acknowledge that the Parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

29. **Captions.** The section headings appearing in this Agreement are for convenience of reference only, and are not intended, to any extent and for any purpose, to limit or define the text of any section or subsection hereof.

30. **No Partnership.** None of the terms and provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall any terms or provisions of this Agreement them to be considered joint venturers or members of any joint enterprise.

31. **Further Assurances.** Each Party agrees that it will execute and deliver such other documents and take such other action as may be reasonably requested by the other Party to effectuate the purposes and intention of this Agreement.

32. **No Waiver.** The failure of either Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of such Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

33. **No Oral Change.** This Agreement cannot be changed orally or by course of conduct, and no executory agreement, oral agreement or course of conduct shall be effective to waive, change, modify or discharge it in whole or in part unless the same is in writing and is signed by the Party against whom enforcement of any waiver, change, modification or discharge is sought.

34. **Right to Grant Additional Easements.** Nothing contained in this Agreement shall be deemed to prohibit or limit the right of any Party to grant additional easements on its Property to other persons for any purpose, provided that all such easements shall be subject to

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the terms of this Agreement and no additional grant of easement or exercise thereof shall materially interfere with any other rights under this Agreement.

35. **Conveyance of Properties.** Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to such Party which accrue during the period such Party is the Owner of its respective Property; provided however, that the liability of a Party as to all or a portion of its respective Property shall terminate upon conveyance by such Party of such interest provided that such Party shall not be in default in the performance of any provision of this Agreement with respect to the portion of the Property being conveyed or shall not have committed any act or omission which with the passage of time would constitute a default with respect to the portion of the Property being conveyed, and all amounts which may be due and owing under this Agreement with respect to the portion of the Property being conveyed shall have been paid by such Party as required under this Agreement. The other party to any sale, transfer, conveyance or assignment shall be automatically and conclusively deemed to have agreed that its portion of the Property affected hereby shall be subject to this Agreement.

Signature pages follow

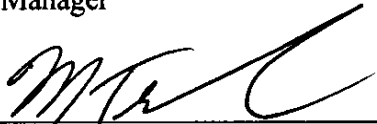
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IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

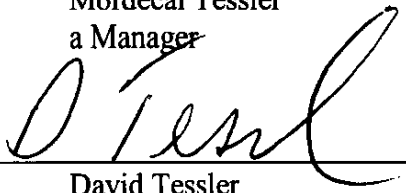
“STERLING PARK”

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: 

Mordecai Tessler
a Manager

By: 

David Tessler
a Manager

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

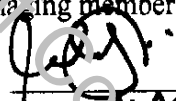
“NEW STERLING PARK”

NEW STERLING PARK LLC,
an Illinois limited liability company

By: New Sterling Park MM LLC,
an Illinois limited liability company,
its managing member

By: Mercy Sterling NFP,
an Illinois not for profit corporation,
its managing member

By:



Name: MARK A. ANGELINI

Title: PRESIDENT

Property of Cook County Clerk's Office

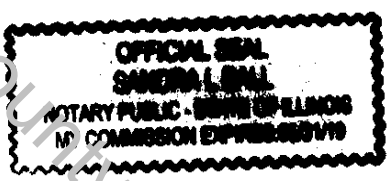
UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
 COUNTY OF ~~COOK~~)
) **DU PAGE**

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Mordecai Tessler and David Tessler, the Managers of Royal Sterling Development, L.L.C., an Illinois limited liability company, as Manager of Sterling Park Development, L.L.C., an Illinois limited liability company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Managers, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

Given under my hand and Notary Seal, this 25TH day of JUNE, 2015.

Sandra Y. Bree
 Notary Public



Property of Cook County Clerk's Office

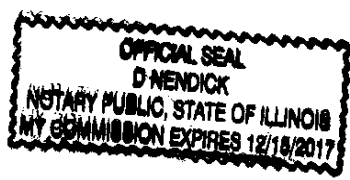
UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF ~~COOK~~)
)
WILL

I, DEBORAH MENDICK, a Notary Public in and for the County and State aforesaid, do hereby certify that Mark A. Angelini, as President of Mercy Sterling NFP, an Illinois not for profit corporation, which is the managing member of New Sterling Park MM LLC, an Illinois limited liability company, which is the managing member of New Sterling Park LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me 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 such corporation on behalf of such limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 25th day of June, 2015.

Deborah Mendick
Notary Public



PROPERTY OF COOK COUNTY Clerk's Office

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EXHIBIT A

ADMINISTRATION BUILDING LAND

THAT PART OF LOTS 8, 9, 10, 11 AND 12 IN BLOCK 1 IN HENRY E. VANCE'S RESUBDIVISION, 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 AND SAID PARCEL OF LAND HEREIN DESCRIBED CONTAINS 2.008 ACRES, MORE OR LESS.

Address: 3333 West Arthington, Chicago, Illinois 60624

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

UNOFFICIAL COPY

EXHIBIT B

ALLSTATE BUILDING LAND

THAT PART OF LOTS 3, 4, 5, 6, LOT A AND THE VACATED EAST WEST 20' WIDE ALLEY ALL 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 LOT 6 IN BLOCK 1, ALSO BEING THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF VACATED SOUTH SPAULDING 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 249.39 FEET; THENCE SOUTH 90 DEGREES 26 MINUTES 04 SECONDS WEST ALONG A LINE PARALLEL WITH SAID EAST RIGHT-OF-WAY LINE OF VACATED SPAULDING AVENUE, A DISTANCE OF 337.62 FEET TO A POINT ON THE SOUTH LINE OF SAID BLOCK 1, ALSO BEING THE NORTH RIGHT-OF-WAY LINE OF THE B.&O. C.T. RAILROAD (FORMERLY KNOWN AS 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 249.39 FEET TO A POINT ON THE WEST LINE OF SAID LOT 6, ALSO BEING SAID EAST RIGHT-OF-WAY LINE OF VACATED SOUTH SPAULDING AVENUE; THENCE NORTH 00 DEGREES 26 MINUTES 04 SECONDS EAST ALONG SAID WEST LINE OF LOT 6, ALSO BEING SAID EAST RIGHT-OF-WAY LINE VACATED SOUTH SPAULDING AVENUE, A DISTANCE OF 337.62 FEET TO SAID POINT OF BEGINNING; ALL IN COOK COUNTY, ILLINOIS. SAID PARCEL OF LAND HEREIN DESCRIBED CONTAINS 1.933 ACRES, MORE OR LESS.

Address: 3245 West Arthington, Chicago, Illinois 60627

PIN: 16-14-417-004-0000

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EXHIBIT C

PARKING STRUCTURE PROPERTY

THE WESTERLY 15 FEET OF LOT 14, AND LOTS 15 TO 42, BOTH INCLUSIVE, AND THE WEST 14 FEET OF LOT 43 IN BLOCK 12 ALSO THE VACATED EAST AND WEST ALLEY LYING SOUTH AND ADJOINING THE WEST 14 FEET OF LOT 43 AND SOUTH OF LOTS 29 TO 42, BOTH INCLUSIVE, OF AFORESAID LOTS IN BLOCK 12 IN E.A. CUMMINGS AND COMPANY'S CENTRAL PARK AVENUE ADDITION BEING A SUBDIVISION OF THAT PART OF THE SOUTHEAST QUARTER (S.E. ¼) OF SECTION FOURTEEN (14) TOWNSHIP THIRTY NINE (39) NORTH, RANGE THIRTEEN (13) EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF NORTH FORTY (40) RODS THEREOF, AND NORTH OF THE NORTH LINE OF THE RIGHT-OF-WAY OF THE CHICAGO AND GREAT WESTERN RAILROAD IN COOK COUNTY, ILLINOIS. SAID PARCEL OF LAND HEREIN CONTAINS 2.255 ACRES, MORE OR LESS.

Address: Parking Structure located on east side of Spaulding Avenue between Polk and Arthington Streets, Chicago, Illinois 60624

PIN: 16-14-415-021-0000

COOK County Clerk's Office

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EXHIBIT D

MD&L BUILDING LAND

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 21ST, 1904, AS DOCUMENT NO. 3635041, IN THE SOUTH EAST QUARTER OF SECTION 14, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE 3RD 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 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 337.62 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.

Property Address: 3301 West Arthington Street, Chicago, Illinois 60624

PIN: 16-14-417-009-0000 and 16-14-417-011-0000

UNOFFICIAL COPY

EXHIBIT E

VACATED SPAULDING

ALL THAT PART OF SPAULDING AVENUE VACATED PER DOCUMENT NUMBER 0803703000 RECORDED FEBRUARY 6, 2008 AND LYING EAST OF AND ADJOINING PARCEL 2 AFORESAID, LYING SOUTH OF THE SOUTH LINE OF ARTHINGTON STREET AND NORTH OF THE B. & O. C.T. RAILROAD (FORMERLY THE CHICAGO AND GREAT WESTERN RAILROAD), LOCATED IN THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 14, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Address: Vacated Spaulding Avenue lying east of and adjoining 3301 West Arthington, Chicago, Illinois 60624

PIN: 16-14-417-011

Property of Cook County Clerk's Office

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EXHIBIT F

NO-BUILD AREA

Key to
No-Build
Area

