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Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 07/01/2015 03:14 PM Pg: 1 of 8

REGULATORY AND USE AGREEMENT

BETWEEN

NEW STERLING PARK LLC,
an Illinois limited liability company

AND

CITIBANK, N.A.

Dated: June 1, 2015

Property of Cook County Clerk's Office

Development Name: Sterling Park Apartments

Development Location: 3301 West Arthington Street
Chicago, IL 60624

Retention by Ann
union retention mail ID:
CITIBANK, N.A.
390 GREENWICH ST. 2ND FLOOR
NEW YORK, NY 10013
NEW YORK TRANSFER MANUFACTURING GROUP
Doc ID # 21909

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REGULATORY AND USE AGREEMENT

This Regulatory and Use Agreement ("Agreement") is made by and between **NEW STERLING PARK LLC**, an Illinois limited liability company ("Owner"), the Owner of the fee interest in that certain real property located Chicago, in Cook County, State of Illinois, more particularly described on "Exhibit A" ("Real Estate"), and Citibank, N.A. ("Citi").

I. RECITALS

- A. Substantially concurrently herewith, Owner and Citi have entered into that certain Subordinate Loan Agreement of even date herewith ("Subordinate Citi Loan Agreement") pursuant to which Owner is borrowing from Citi and Citi is loaning to Owner \$1,000,000 secured by a subordinate lien on the Property (the "Subordinate Citi Loan").
- B. The Real Estate currently includes, or upon completion of construction will include, the following unit mix:
- 0 studio apartments
 - 79 one bedroom apartments
 - 52 two bedroom apartments
 - 40 three bedroom apartments
 - 10 four bedroom apartments
- 100% units at the Real Property are leased, or upon completion of construction will be leased, to Qualifying Tenants.
- C. Citi would not have executed such Subordinate Loan Agreement or made the Subordinate Loan to Owner without Owner's execution of this Regulatory and Use Agreement.

II. COVENANTS AND OBLIGATIONS

The parties agree that the closing and funding of the Subordinate Citi Loan to Owner constitutes adequate consideration for the obligations undertaken by Owner in this Agreement. As of the date hereof, Owner hereby imposes the following use restrictions upon the Real Estate. In consideration of these mutual undertakings and covenants, the parties further agree as follows:

- A. As a condition precedent to the funding of the Subordinate Citi Loan to Owner, Owner shall record this Agreement and its attachments with the Office of the Recorder for Cook County, Illinois, in which the Real Estate is located, to create a restrictive covenant running with the land upon which the Real Estate is situated. Owner agrees that all requirements under applicable law that must be satisfied so that the provisions of this Agreement constitute valid and binding deed restrictions and covenants running with the Real Estate. Throughout the term of this Agreement, its covenants and restrictions shall survive and be effective regardless of whether any contract, deed or other instrument subsequently executed conveying all or part of the Real Estate provides that such conveyance is subject to this Agreement.
- B. Owner shall comply with the following occupancy restrictions with respect to the improvements currently existing or to be constructed or rehabilitated on the Real Estate (the "Project"):
1. Owner shall either (i) lease not less than 20% of the units in the Project to individuals or families whose income is 50% or less of area median gross income ("50% Tenants") (including

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- adjustments for family size) announced from time to time by the United States Department of Housing and Urban Development, ("AMI") or (ii) lease not less than 40% of the units in the Project to individuals or families whose income is 60% or less of AMI ("60% Tenants" and together with the 50% Tenants, "Qualifying Tenants").
2. The rent charged to all Qualifying Tenants at the Project shall not exceed 30% of the AMI limit for the unit occupied by such Qualifying Tenant.
 3. Owner shall not refuse to lease to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.
 4. It is the intention of the parties hereto that the use and rent restrictions set forth in this paragraph be interpreted to be consistent with the restrictions and limitations applied from time to time under Section 42 of the Internal Revenue Code of 1986, as amended and the interpretations thereof by the Internal Revenue Service.
- C. Owner agrees that for the term of this Agreement Owner shall agree to accept Project based Housing Choice Vouchers if and to the extent offered to the Project by HUD and shall execute all use agreements required by HUD to encumber the Real Estate in connection therewith.
- D. Owner shall during the term of this Agreement comply in all material respects with the affirmative marketing standards set forth in 24 CFR Part 200.620. There shall be no restriction on residency based on age.
- E. Citi and Qualifying Tenant(s) (or either or all of them) are entitled, for any breach of this Agreement, to enforce specific performance by Owner of its obligations under this Agreement in a state court of competent jurisdiction, in addition to all other remedies provided by law or in equity. Owner unconditionally agrees that the beneficiaries of Owner's obligations under this Agreement cannot adequately be compensated by monetary damages in the event of any such breach.
- F. Owner shall indemnify, save and hold harmless Citi, its directors, officers, employees and agents from any and all claims, losses, damages or expenses (including reasonable attorneys' fees) arising out of or in any way related to failure or alleged failure of the Owner to strictly and timely perform its obligations under this Agreement.
- G. An Event of Default shall be deemed to have occurred hereunder if Owner shall be in breach of any its obligations under this Agreement and such breach is not be cured within thirty (30) days following the date written notice of such breach is delivered by Citi to Owner at the address listed on the signature page hereof (or such other notice address delivered by Owner to Citi during the term hereof); provided, however, such thirty (30) day cure period may be extended by Citi if Owner, during such thirty (30) day period, has commenced prosecuting a cure of such breach and thereafter continues to prosecute such cure to completion. Upon the occurrence of an Event of Default hereunder, Citi shall have all remedies afforded Citi under applicable law on account of such Event of Default including, without limitation, injunctive relief.

III. TERM, TERMINATION, MISCELLANEOUS

- A. The terms, conditions, covenants and restrictions of this Agreement commence upon the first disbursement of proceeds of the Subordinate Loan and end on the date which is thirty (30) years from such date.
- B. Reserved.
- C. This Agreement shall be binding upon the Project and shall constitute covenants running with the land. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

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- D. This Agreement may be amended only with the prior written approval of the parties hereto and no amendment shall be effective without such prior written approval. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof. All notices to be given pursuant to this Agreement shall be in writing and mailed by certified mail to the parties hereto at the addresses set forth below or to such other place as a party may from time to time designate in writing.
- E. Notices shall be given to the parties in accordance with and to the addresses set forth in the Subordinate Loan Agreement.
- F. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF OWNER AND CITI (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

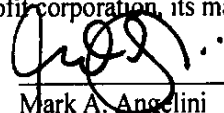
IN WITNESS WHEREOF, Owner and Citi have caused this Agreement to be signed by duly authorized representatives, on the day and year first written above.

OWNER:

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: 

Mark A. Angelini
President

Address:

New Sterling Park LLC
c/o Mercy Housing Lakefront
120 South LaSalle Street, Suite 1850
Chicago, Illinois 60603
Attn: President

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CITI:

CITIBANK, N.A.

By:



Mark G. Risch
Vice President

Property of Cook County Clerk's Office

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

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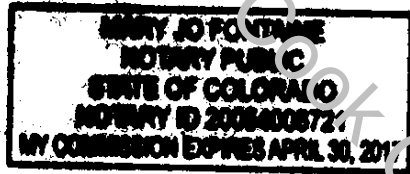
STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 26th day of June, 2015 by Mark G. Risch, as Vice President of Citibank, N.A.

Witness my hand and official seal.

My commission expires: April 30, 2017

Mary Jo Fontaine
Notary Public



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UNOFFICIAL COPY**EXHIBIT A****PARCEL 1: (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 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.

PARCEL 2:

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.

PARCEL 3:

PERPETUAL, NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY THE AMENDED AND RESTATED CROSS-EASEMENT AGREEMENT RECORDED DECEMBER 19, 2008 AS DOCUMENT 0835422062, FOR RIGHT OF WAY AND RIGHT TO USE AND UTILIZE ALL PRIVATE ROADS, DRIVEWAYS, ALLEYWAYS OR OTHER PAVED OR CONCRETE PATHWAYS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS TO AND FROM SOUTH HOMAN AVENUE AND WEST ARTHINGTON STREET; CERTAIN WATER EASEMENTS; ACCESS TO SUB-BASEMENT OF THE POWER PLANT BUILDING; MAINTENANCE AND RESTORATION EASEMENTS; AND ELECTRICAL EASEMENTS; OVER AND UPON PORTIONS OF THE LAND MORE PARTICULARLY DESCRIBED ON EXHIBIT 'A' AND AS DEPICTED ON OTHER EXHIBITS ATTACHED THERETO.

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

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