

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

VILLAGE OF EVERGREEN PARK, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	NO. 08 CH 34375
	)	
SISTERS OF MERCY OF THE	)	
AMERICAS, REGIONAL COMMUNITY	)	
OF CHICAGO, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**FINAL JUDGMENT AND CONSENT DECREE**

One of the plaintiffs, VILLAGE OF EVERGREEN PARK (“Village”), and one of the defendants, SISTERS OF MERCY OF THE AMERICAS WEST MIDWEST COMMUNITY, INC. (“SOM”), hereby consent to the entry of this stipulated Judgment and Consent Decree. The court having been advised by the parties and finding that:

A. The Village is a home rule unit of local government duly organized and existing under the Constitution and laws of the State of Illinois.

B. SOM is a not-for-profit corporation duly authorized to do business in the State of Illinois with a site office located at 10024 South Central Park Avenue, Chicago, Cook County, Illinois.

C. Prior to August 9, 1954, SOM was the record owner of the property (“Greater Property”) legally described as follows:

the Southwest Quarter of Section 11, Township 37 North, Range 13, East of the Third Principal Meridian (except the North 32 feet and East 32 feet thereof and except the East half of the Northeast Quarter of the Northeast Quarter of the Southwest Quarter of said Section 11, Township 37 North, Range 13, East of the Third Principal Meridian) in Cook County, Illinois.

The Greater Property was bordered by 99<sup>th</sup> Street on the north, 103<sup>rd</sup> Street on the south, Central Park Avenue on the east, and Pulaski Avenue on the west.

D. The Village adopted Ordinance No. 141-1954 on August 9, 1954, which disconnected the Greater Property from the Village's corporate limits.

E. The City Council of the City of Chicago passed an ordinance on September 10, 1954 annexing the Greater Property into the corporate limits of the City of Chicago.

F. SOM no longer owns the majority of land that consisted of the Greater Property. SOM currently owns 13.67 acres of land bounded by 99<sup>th</sup> Street on the north, Central Park on the east, St. Xavier University on the south and Mother McAuley High School on the west ("Subject Property"). The address for the Subject Property is commonly known as 10024 South Central Park Avenue, Chicago, Illinois, 3659 West 99<sup>th</sup> Street, Chicago, Illinois, and 10000 South Central Park Avenue, Chicago, Illinois. The legal description for the Subject Property is attached hereto and incorporated herein as Exhibit "A."

G. On March 12, 2008 SOM filed an application with the City of Chicago for an "Institutional Planned Development" which would allow for all existing uses on the Subject Property (including a Regional Center for the Sisters of Mercy, Mercy Convent, and classrooms) as well as the use of the Subject Property for elderly residential units, including memory care units, assisted living units and skilled nursing units (hereinafter "Continued Care Retirement Community" or "CCRC").

H. The CCRC in the institutional planned development included, among other things, 212 dwelling units, a five-story building permitting independent living units and a four-story building permitting memory care units, assisted living units and skilled nursing units.

I. The City Council of the City of Chicago passed a zoning ordinance approving the institutional planned development on September 10, 2008.

J. The Village of Evergreen Park filed a lawsuit against SOM alleging, *inter alia*, that SOM was estopped from proceeding with the institutional planned development as proposed because it had promised the Village that if it disconnected the Greater Property from its corporate limits, SOM would use the land for educational purposes or necessary functions kindred thereto.

K. SOM has since obtained administrative relief from the City of Chicago reducing the scope of the CCRC for the institutional planned development which now allows for 146 units; 54 independent living units, 44 assisted living units, 24 memory care units and 24 skilled nursing units. The height of the independent living wing for the CCRC was reduced to three stories while the assisted living/skilled nursing building remained at four stories.

L. SOM agrees to further reduce the scope of the CCRC from that which is approved by the City of Chicago. SOM agrees that the CCRC shall be limited to up to 110 dwelling units with a mixture of independent living units, assisted living units, memory care units and skilled nursing units.

M. Mercy Circle an Illinois not-for-profit corporation now controls a portion of the Subject Property and shall implement, manage, and control the CCRC. Mercy Circle has agreed, through Exhibit "B," which is incorporated herein by reference, to be bound and be subject to this Judgment and Consent Decree and it shall have all powers of SOM under this Judgment and Consent Decree, as its designee, for purposes of enforcing this Consent Decree and implementing, managing and controlling the CCRC.

N. This court has jurisdiction over the parties and the subject matter of this proceeding, including but not limited to the Subject Property.

O. The parties agree not to contest (1) the authority or jurisdiction of the Court to enter this Consent Decree, or (2) any terms or conditions set forth herein.

P. The parties agree, and the Court by entering this Consent Decree so finds, that the terms and conditions of this Consent Decree are reasonable and adequately resolve the issues raised by the parties in this lawsuit and in conjunction with the Declaration of Restrictive Covenant which is to be executed separately.

NOW, THEREFORE, before the taking of any testimony, and without this Consent Decree constituting an admission of any of the allegations in the Complaint or as evidence of the same, and upon the consent of the parties, it is hereby ORDERED, adjudged and decreed:

I. **Definitions:** For purposes of this Judgment and Consent Decree, the following definitions shall apply: (a) “Men and Women Religious” (“MWR”) means individual men and women who are members, ministers, or associates of religious and/or faith based communities associated with an established religion such as Priests, Nuns, Brothers, Sisters, Deacons, Reverends, Rabbis, etc., or novitiates studying but not yet ordained or sanctioned by that religious or faith based community associated with an established religion as a Man or Woman Religious; and (b) “Lay Person” means any person who does not qualify as Men and Women Religious.

II. **Purpose and Intent:** The parties agree to be bound by the terms and provisions of this Judgment and Consent Decree in lieu of fully litigating their dispute. The CCRC is being developed to meet the current market need of housing and health care for MWR. The purpose and intent of this Judgment and Consent Decree is to allow SOM to proceed with the CCRC but to limit the residents/occupants thereof to users that qualify as MWR.

III. **Continued Care Retirement Community:** SOM shall construct and implement the CCRC on the Subject Property according to the following specifications:

Total Units:	up to 110 units
Independent Living:	not more than 44 units (approx. 60 individuals)
Assisted Living:	not more than 44 units (approx. 46 individuals)
Memory Care:	not more than 12 units (approx. 12 individuals)
Skilled Nursing:	not more than 10 units (approx. 10 individuals)

Maximum Height:	
Independent Living Building:	3 stories
Skilled Nursing/Assisted Living Building:	3 stories

Minimum Setbacks:	
From 99 <sup>th</sup> Street (from the front of the curb):	137 feet
From the North (from the Subject Property boundary):	102 feet
From the East (from the Subject Property boundary):	39.33 feet
From the West (from the Subject Property boundary):	5.4 feet

IV. **Construction:** The following terms and provisions shall govern the construction of the CCRC:

(A) Upon the submission of a reasonable road construction bond, construction truck access to the Subject Property shall be limited to South Central Park Avenue for purposes of constructing the CCRC. Except as necessitated by South Central Park Avenue being closed to traffic by the Village of Evergreen Park, no construction trucks shall be permitted on West 99<sup>th</sup> Street, on Village side streets or streets north of West 99<sup>th</sup> Street.

(B) Construction for the CCRC shall take place during the hours of 7:00 a.m. through 7:00 p.m. Monday through Saturday with no construction taking place on Sunday. Exception to this Section shall be made in the event of an emergency (for example, a water main break, etc.) or in the event that construction practice would require immediate attention to a particular issue at a specific time that falls outside the aforementioned hours and days.

**V. Residents of the Planned Development and CCRC:** The following terms and provisions shall govern the implementation and scope of the Planned Development and CCRC with respect to the residents:

(A) Residency and health care at the CCRC shall be limited to MWR.

(B) No Lay Person shall be permitted to reside or receive medical care at the CCRC.

(C) All amenities offered at the CCRC or in the Planned Development in conjunction with the CCRC shall be limited to the residents, their personal visitors and family, and members of the Sisters of Mercy and its visitors. Amenities shall not be open to the general public.

(D) No Lay Persons shall be permitted to reside at or receive medical care on the Subject Property.

(E) Staff and employees for the CCRC shall be permitted to be on the Subject Property.

VI. **Site Access/Curb Cuts:** The Village shall grant SOM curb cut permits for the existing access points (one off of 99<sup>th</sup> Street and two off of Central Park Avenue) for the CCRC provided SOM follows proper permitting procedures. Such permits shall allow curb cuts for substantially the same size and configuration as the existing curb cuts provided their location shall not change.

VII. **Service Trucks:** All service vehicles servicing the CCRC access the Subject Property from South Central Park Avenue.

VIII. **Privacy Fence:** SOM shall construct a privacy fence along the boundary line of Southwest Elementary School to block viewing of docking and patient transfers.

IX. **Access to Village Utilities:** No access to Village utilities shall be permitted unless agreed to by the Village in writing.

X. **Employment Times:** SOM shall stagger employment times for those working at the Planned Development in relation to the start and finish times of the surrounding schools as follows: no employment shifts shall begin or end between the hours 7:30 AM and 9:00 AM and 2:30 PM and 3:30 PM.

XI. **Restrictive Covenant:** SOM shall execute and be bound by the Declaration of Restrictive Covenant in the form attached hereto as Exhibit "C," which shall be recorded against the Subject Property in the office of the Cook County Recorder of Deeds. This Judgment and Consent Decree is contingent upon Mercy Circle's agreement and execution of the Consent of Mercy Circle attached as Exhibit "B" to the Restrictive Covenant.

XII. **Notices:** Any and all notices and or objections required by this Judgment and Consent Decree shall be made by certified mail, return receipt requested, to the following parties:

To the Village of Evergreen Park:

Village of Evergreen Park  
Attn: Mayor  
9418 South Kedzie Avenue  
Evergreen Park, IL 60805

with a copy to:

Louis F. Cainkar, Ltd.  
Attn: Joseph Cainkar  
30 North LaSalle, Suite 3922  
Chicago, IL 60602

To SOM:

Sisters of Mercy of the Americas  
West Midwest Community, Inc.  
Sister Sheila Megley  
7262 Mercy Road  
Omaha, NE 68124

with a copy to:

Daley and George, Ltd.  
John J. George  
20 South Clark St., Suite 400  
Chicago, IL 60603

**XIII. Other Agreements:** This Judgment and Consent Decree and the Declaration of Restrictive Covenant, which is to be executed separately and recorded in office of the Cook County Recorder of Deeds, are complete and supersede any negotiations and understandings regarding, and not expressly included, within those documents.

**XIV. Successors and Assigns:** The terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns. SOM has the affirmative obligation of ensuring that any person or entity that manages, controls, or possesses any legal or equitable interest in the Planned Development or the Subject Property through leases or other instruments which were executed and/or recorded before this Judgment and Consent Decree complies with the terms of this Judgment and Consent Decree. Any violation of this Judgment and Consent Decree by a person or entity that manages, controls or possesses any interest in the Planned Development or the Subject Property shall be deemed a violation by SOM.

**XV. Representations:** SOM and the Village each represent and warrant to the other that they have not transferred or assigned any claim or cause of action which they may have or

had against any other party and that they are the owner and holder of any such claims. SOM and the Village each represent and warrant to the other that they have not and shall not lodge, file or pursue any complaint against any party hereto for any claim related to the terms of the Judgment and Consent Decree except in order to enforce the terms of the Judgment and Consent Decree or the terms of the Declaration of Restrictive Covenant referenced in Paragraph XI. Each person signing this Judgment and Consent Decree represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver the same. SOM and the Village represent and warrant to the other that the execution and delivery of the Judgment and Consent Decree and the performance of such party's obligations hereunder have been duly authorized and that the Judgment and Consent Decree is a valid and legal Judgment binding on such party and enforceable in accordance with its terms.

**XVI. No Admission/Waiver:** SOM acknowledges that this Judgment and Consent Decree does not constitute an admission on behalf of the Village that the proposed use and Planned Development is educational, serves an educational purpose or a necessary function kindred thereto. SOM acknowledges that this Judgment and Consent Decree does not constitute a waiver on behalf of the Village that the land be devoted to educational purposes or necessary functions kindred thereto. The Village acknowledges that the Judgment and Consent Decree does not constitute an admission on behalf of SOM that the proposed use, the CCRC, and Planned Development is not educational or serving educational purposes or necessary functions kindred thereto. The Village acknowledges that SOM does not admit that it promised the Village it would restrict the uses of the Subject Property to educational purposes or necessary functions kindred thereto.

**XVII. Recording:** This Judgment and Consent Decree may be recorded in the office of the Cook County Recorder of Deeds.

**XVIII. Effective Date:** This Judgment and Consent Decree shall be effective upon its full execution and being entered by the Honorable Richard Billik, Jr.

**XIX. Effect:** This Final Judgment and Consent Decree is operative to the same extent for *res judicata* purposes as a judgment entered after contest and is conclusive with respect to the matters settled.

ENTER:

.....  
JUDGE Judge's No.

**AGREED TO AND ACCEPTED BY:**

Executed By:  
VILLAGE OF EVERGREEN PARK

SISTERS OF MERCY OF THE  
AMERICAS WEST MIDWEST  
COMMUNITY, INC.

By: \_\_\_\_\_  
James J. Sexton, Mayor  
Village of Evergreen Park  
9418 South Kedzie Avenue  
Evergreen Park, IL 60805

By: \_\_\_\_\_  
Judith Frikker, President  
Sisters of Mercy of the Americas  
West Midwest Community, Inc.  
7262 Mercy Road  
Omaha, NE 68124

Represented By:

\_\_\_\_\_  
Joseph Cainkar  
LOUIS F. CAINKAR, LTD.  
Attorneys for Village of Evergreen Park  
30 North LaSalle Street – Suite 3922  
Chicago, IL 60602  
312/236-3985

\_\_\_\_\_  
John J. George  
DALEY AND GEORGE, LTD.  
Attorney for SOM  
20 South Clark Street – Suite 400  
Chicago, IL 60603  
312/726-8797

**EXHIBIT A**

Legal Description

PIN: 24-11-300-013

A PARCEL OF LAND IN THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP OF 37, NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 11; THENCE NORTH 89 DEGREES 43 MINUTES 47 SECONDS WEST ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER A DISTANCE OF 366.39 FEET TO A POINT WHICH IS 33.00 FEET WEST OF THE WEST LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 11; THENCE SOUTH 00 DEGREES 00 MINUTES 19 SECONDS WEST ALONG A LINE WHICH IS 33.00 FEET WEST OF AND PARALLEL TO THE WEST LINE OF THE SAID EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST HALF OF SAID SECTION 11 A DISTANCE OF 697.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 22 DEGREES 17 MINUTES 08 SECONDS WEST A DISTANCE OF 269.58 FEET; THENCE SOUTH 63 DEGREES 58 MINUTES 20 SECONDS EAST A DISTANCE OF 463.71 FEET TO A POINT WHICH IS 52.00 FEET WEST OF THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 11; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A LINE WHICH IS 52.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 11, A DISTANCE OF 451.53 FEET TO A POINT WHICH IS 33.00 FEET SOUTH OF THE SOUTH LINE OF SAID EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 11; THENCE NORTH 89 DEGREES 44 MINUTES 50 SECONDS WEST ALONG A LINE WHICH IS 33.00 FEET SOUTH OF THE SOUTH LINE OF SAID EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 11, A DISTANCE OF 314.45 FEET TO THE POINT OF BEGINNING.

CONTAINING 133,395.555 SQUARE FEET OR 3.062 ACRES OF LAND, MORE OR LESS.

PIN: 24-11-300-014

THAT PART OF THEN NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 11; THENCE NORTH 89 DEGREES 43 MINUTES 47 SECONDS WEST ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 366.39 FEET TO THE POINT OF

BEGINNING; THENCE CONTINUING WEST ALONG SAID NORTH LINE OF THE SOUTHWEST QUARTER, A DISTANCE OF 533.62 FEET; THENCE SOUTH ALONG A LINE PARALLEL WITH THE EAST LINE OF THE SOUTHWEST QUARTER, A DISTANCE OF 738.33 FEET; THENCE SOUTH 63 DEGREES 58 MINUTES 20 SECONDS EAST, A DISTANCE OF 480.00 FEET; THENCE NORTH 22 DEGREES 17 MINUTES 08 SECONDS EAST, A DISTANCE OF 269.58 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 19 SECONDS EAST, A DISTANCE OF 697.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 419,767.249 SQUARE FEET OR 9.637 ACRES OF LAND, MORE OR LESS.

PIN: 24-11-300-021

A PARCEL OF LAND IN THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP OF 37, NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 11, THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 1465.20 FEET TO THE POINT OF BEGINNING; THENCE NORTH 64 DEGREES 30 MINUTES 34 SECONDS WEST A DISTANCE OF 470.75 FEET; THENCE NORTH 61 DEGREES 32 MINUTES 02 SECONDS WEST, A DISTANCE OF 458.64 FEET; THENCE SOUTH 63 DEGREES 58 MINUTES 20 SECONDS EAST, A DISTANCE OF 921.59 FEET TO SAID EAST LINE OF THE SOUTHWEST QUARTER; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID EAST LINE OF THE SOUTHWEST QUARTER A DISTANCE OF 16.80 FEET TO THE POINT OF BEGINNING (EXCEPTING THE EAST 52.00 FEET THEREOF.)

CONTAINING 11,671.861 SQUARE FEET OR 0.268 ACRE OF LAND, MORE OR LESS.

**EXHIBIT B**

**Consent of Mercy Circle**

Mercy Circle, an Illinois not-for-profit corporation, which is designated and entitled to control the CCRC and which shall implement, manage, and control the CCRC, hereby agrees, consents and shall be bound by the terms of this Judgment and Consent Decree. Mercy Circle agrees to the execution and recordation of this Judgment and Consent Decree by Owner and agrees that any interest it may have in the CCRC or the Subject Property, in general, is subject and subordinate to this Judgment and Consent Decree. By executing this Consent, Mercy Circle hereby consents to and acknowledges the personal and subject-matter jurisdiction of the Court over it, the Subject Property, and the matters set forth in the Judgment and Consent Decree, and may therefore stand in the place of SOM, as its designee, for purposes of availing itself of the procedural mechanisms and the substantive benefits set forth in the Judgment and Consent Decree.

IN WITNESS WHEREOF, Mercy Circle has caused this Consent of Mercy Circle to be signed by its duly authorized officer on its behalf on this \_\_\_\_ day of February, 2012.

\_\_\_\_\_  
Sister Sheila Megley, Treasurer  
Mercy Circle

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, \_\_\_\_\_, a notary public in and for said County, in the State aforesaid, do hereby certify that Sister Sheila Megley, Treasurer of Mercy Circle, personally known to me to be the same person whose name is subscribed to the foregoing Consent of Mercy Circle, appeared before me this day in person and acknowledged that she signed, sealed and delivered said instrument as her own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and seal this \_\_\_\_ day of February, 2012.

(SEAL)

\_\_\_\_\_  
Notary Public

**EXHIBIT C**

**Declaration of Restrictive Covenant**