

## **DECLARATION OF RESTRICTIVE COVENANT**

THIS DECLARATION OF RESTRICTIVE COVENANT (“Declaration”) is made this \_\_\_\_\_ day of February, 2012 by Sisters of Mercy of the Americas West Midwest Community, Inc., a not-for-profit corporation (hereinafter referred to as “Owner”)

### **RECITALS**

WHEREAS, Owner holds legal title to certain parcels of real property which are located at 10024 South Central Park Avenue, Chicago, Illinois, 3659 West 99<sup>th</sup> Street, Chicago, Illinois, and 10000 South Central Park Avenue, Chicago, Illinois (collectively, “Premises”), which is legally described in Exhibit A, attached hereto and made a part hereof. The Premises shall also include any vacated portions of 100<sup>th</sup> Street and Millard Avenue used in conjunction with Mercy Circle;

WHEREAS, Owner uses the Premises for a retirement center for religious sisters, a regional office for the Owner, and for other similar uses and facilities;

WHEREAS, on September 10, 2008 the City of Chicago City Council approved an ordinance for Institutional Planned Development No. 1119 allowing the Premises to be used for a total of 212 elderly residential units, including 116 independent living, 41 assisted living, 20 memory care, and 35 skilled nursing units;

WHEREAS, the Village of Evergreen Park (“Village”) filed a lawsuit against Owner alleging, *inter alia*, that Owner was estopped from proceeding with the 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;

WHEREAS, SOM obtained administrative relief from the City of Chicago reducing the scope of the 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 was reduced to three stories while the assisted living/skilled nursing building remained at four stories;

WHEREAS, Owner shall further reduce the scope of the Planned Development from that which is approved by the City of Chicago. Owner shall limit the CCRC to up to 110 dwelling units with a mixture of independent living units, assisted living units, memory care units and skilled nursing units; and

WHEREAS, Owner, in consideration of, and in pursuit of, the finalization of the referenced litigation, agrees to and shall encumber the Premises with a restrictive covenant as more specifically set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the purposes stated herein, Owner does hereby declare as follows:

**DECLARATIONS**

1. The recitals set forth above are incorporated herein by reference.
2. Owner does hereby agree to construct Mercy Circle on the Premises as follows:

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

Maximum Height:  
Independent Living Building: 3 stories  
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 Premises boundary): 102 feet  
From the East (from the Premises boundary): 39.33 feet  
From the West (from the Premises boundary): 5.4 feet

3. Owner hereby covenants that the Mercy Circle development proposed for the Premises, and the uses for which the Premises are to be devoted, shall not be amended or expanded from that which is identified in paragraph 2 of this covenant. The restrictive covenant is recorded against the Premises for the benefit of the Village of Evergreen Park and its residents. The consideration for such covenant, which is deemed and agreed to be valuable and sufficient, is the Village's decision to not to fully litigate its cause of action

and, instead, allow the development to proceed under the terms and conditions of the Judgment and Consent Decree and this Declaration.

4. Should Owner desire to change or expand Mercy Circle or its use in the future, Owner shall petition the Village of Evergreen Park to waive this Restrictive Covenant for a specific project in the future. In such case, the Village shall be required to hold a public hearing on the request, which shall be open to the public and shall otherwise comply with the Open Meetings Act. For such public hearing, Owner shall follow all procedural standards set forth in the Evergreen Park Municipal Code governing public hearings relating to Planned Developments, including giving all required notice of a public hearing. No project shall be commenced and the restrictive covenant shall not be deemed waived and/or terminated unless approved by a majority vote of the corporate authorities of the Village of Evergreen Park, then holding office.

5. The Premises currently consists of, and the planned development known as Mercy Circle shall include, already constructed buildings which contain a convent for the Owner, a regional office for the Owner, and classrooms and a gymnasium for Mother McAuley High School. Nothing herein shall restrict Owner, or require the Village of Evergreen Park's approval, from renovating or remodeling those existing buildings or to otherwise convert those existing buildings into green space provided those buildings are not used for residential, health care, or commercial purposes. Further, nothing herein shall restrict Owner, or require the Village of Evergreen Park's prior approval, from building or constructing on the Premises educational buildings to be used for purely educational purposes by adjoining institutions such as classrooms or dormitories. Provided, however, Owner shall give the Village of Evergreen Park notice of any such renovation, remodeling or new construction so that it can investigate to ensure no violation of this Declaration of Restrictive Covenant is occurring.

6. Notwithstanding any other provision in this Declaration, this Declaration shall be of no force or effect and shall not be effective unless and until the Judgment and Consent Decree is executed by all parties and entered by the Court.

7. Breach of any of the covenants or violation of any other portions of this Declaration shall not defeat or render invalid the lien of any mortgage or trust deed made in good faith and for value as to the Premises, but all provisions of this Declaration shall be binding and effective against any subsequent owner of the Premises whose title thereto is acquired by foreclosure, trustee sale or otherwise under such mortgage or trust deed and shall remain effective as to each portion of the Premises so acquired.

8. This Covenant shall be binding upon and inure to all successor owners or assigns of the Premises. Enforcement of the provisions of this Declaration shall be by any proceeding in law or in equity, brought by Owner, its successors and assigns, or the Village, its residents, or their successors and assigns, against any person or entity who has violated or is attempting to violate this Declaration, either to remove the violation, restrain or prevent such threatened violation or attempted violation, or to recover damages, or all of the aforementioned.

9. All covenants, conditions and restrictions contained in this Declaration shall run with the land and shall be binding upon all parties and all persons owning any portion of the Premises and all persons claiming under them for a period of 50 years after this Declaration is recorded or until an instrument signed by the Village of Evergreen Park is recorded against the Premises modifying, amending or terminating the covenants, conditions and restrictions contained herein. Mercy Circle, a not-for-profit corporation that will control the Premises and shall implement, manage, and control Mercy Circle consents and subordinates to this Declaration as provided in Exhibit "B" which is incorporated herein by reference.

10. Invalidation of any covenant, restriction or other provision of this Declaration by judgment or court order shall in no way affect any of the other provisions of this Declaration and such other provisions shall remain in full force and effect.

11. This Declaration is executed by Judith Frikker as President of Sisters of Mercy of the Americas West Midwest Community Inc. No personal liability shall be asserted or be enforceable against any officers of the Sisters of Mercy of the Americas West Midwest Community, Inc. because or in respect to this Declaration or its making, issue or transfer, and such liability, if any, is expressly waived by each taker and holder hereof; except Judith Frikker warrants that she is the President of Sisters of Mercy of the Americas West Midwest Community, Inc. and possesses power and authority to execute this Declaration. Sisters of Mercy of the Americas West Midwest Community, Inc. hereby warrants that it is the sole owner of the Premises and that it has complete authority to enter and restrict the development and uses of the Premises.

*[SIGNATURES TO FOLLOW]*



**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 Premises and which shall implement, manage, and control Mercy Circle, hereby consents to the execution and recordation of this Declaration of Restrictive Covenant by Owner and agrees that any interest it may have in Mercy Circle or the Premises, in general, is subject and subordinate to this Declaration of Restrictive Covenant and that Mercy Circle shall be bound by this Declaration of Restrictive Covenant.

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 sale this \_\_\_\_ day of February, 2012.

(SEAL)

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