

Prepared by: Rinda Y. Allison  
Klein, Thorpe & Jenkins, Ltd.  
20 North Wacker Drive  
Chicago, IL 60606

For Recorder's Use Only

**DEVELOPMENT AGREEMENT (ORLAND PARK WINE & SPIRITS,  
84<sup>TH</sup> AVENUE & 159<sup>TH</sup> STREET)**

**INTRODUCTION**

1. This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the VILLAGE OF ORLAND PARK, an Illinois Municipal Corporation (hereinafter referred to as the "Village"), MARQUETTE BANK AND TRUST, As Trustee under Trust Agreement 1-7169, dated May 18, 2004, Owner of the Subject Property (hereinafter referred to as "Owner"), and MODERN CONCEPTS DESIGN & DEVELOPMENT, LLC, an Illinois limited liability company, developer of the Subject Property described below (hereinafter referred to as "Developer").

2. The Property subject to this Agreement, legal title to which is vested in Owner (excepting such portion as is dedicated to the public), is legally described as follows:

LOT 1 IN HARRIS BANK ARGO ORLAND PARK SUBDIVISION OF THE WEST 165 FEET OF THE SOUTH 264 FEET (EXCEPT THAT PART TAKEN FOR STREETS) IN THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN NO. 27-14-401-018-0000

The said property is hereinabove and hereinafter referred to as the "Subject Property".

3. The Subject Property is generally located at the northeast corner of 84<sup>th</sup> Avenue and 159<sup>th</sup> Street in the Village and consists of approximately 27,540 square feet (0.63 acre).

4. The Subject Property is being developed by the Developer for a retail liquor store, Orland Park Wine and Spirits, in the BIZ General Business District, pursuant to the Village's Land Development Code.

5. The Village of Orland Park is a Home Rule Unit pursuant to the provisions of the Illinois Constitution, Article VII, Section 6, and the terms, conditions and acts of the Village under this Agreement are entered into and performed pursuant to the Home Rule powers of the Village and the statutes in such cases made and provided.

RECITALS:

1. The parties hereto desire that the Subject Property be developed in the Village, subject to the terms and conditions as hereinafter set forth and that the Subject Property be developed in the manner as set forth in this Agreement.

2. The Developer has petitioned the Village for approval of plans for the construction of a retail liquor establishment on the Subject Property under the BIZ General Business District, with variations from the building setback required by the Land Development Code of the Village and from the required landscape buffer and tree island widths, as more fully hereinafter set forth.

3. The parties hereto have fully complied with all relevant statutes of the State of Illinois and ordinances of the Village to enable development as herein provided. The Village has caused the issuance of proper notice and the conduct of all hearings by all necessary governmental entities to effectuate the plan of development herein set forth.

4. All reports by all relevant governmental entities have been submitted enabling appropriate action by the Village Board of Trustees to achieve the following:

(a) Adoption and execution of this Agreement by ordinance;

(b) Adoption of such ordinances as are necessary to effectuate the terms and provisions of this Agreement;

(c) The adoption of such other ordinances, resolutions and actions as may be necessary to fulfill and implement this Agreement pursuant to the terms and conditions herein contained.

5. The parties hereto have determined that it is in the best interests of the Village, the Developer and the Owner, and in furtherance of the public health, safety, comfort, morals and welfare of the community to execute and implement this Agreement and that such implementation of this Agreement and development of the Subject Property pursuant to its terms and conditions will constitute an improvement of the tax base of the Village, be in implementation of the comprehensive plan of the Village and will constitute a preservation of environmental values.

6. Developer and Owner covenant and agree that they will execute all necessary directions and issue all necessary instructions and take all other action necessary to direct and require performance of their obligations hereunder.

SECTION ONE: Zoning, Plan Approval and Design Standards.

A. The Subject Property shall be developed substantially in accordance with the Final Plan entitled "Proposed Retail Facility Northeast Corner 159<sup>th</sup> Street and 84<sup>th</sup> Avenues", by Lexmor Engineering, dated 06/21/07, revised 12/05/07, attached hereto and incorporated herein as EXHIBIT A, and in conformance with zoning variations to be granted to permit (1) an east building setback of 8 feet rather than the 15 feet otherwise required and (2) an 8 foot landscape buffer instead of the 10 feet otherwise required and (3) a tree island width of approximately 5 feet instead of the 10 feet otherwise required. Developer agrees that the Subject Property shall be developed substantially in accordance with said Final Plan (EXHIBIT A) as approved with the cited zoning variations or as may be subsequently amended and approved by the Village, and in accordance with supporting preliminary and final engineering drawings and plans to be submitted to the Village Engineering Department for review and approval, subject to the following conditions:

- 1 That a Landscape Plan meeting all Village Codes be submitted for separate review and approval within 60 days of final engineering approval. This plan shall include parkway trees along 159<sup>th</sup> Street and 84<sup>th</sup> Avenue and a tree mitigation plan; and
- 2 That all final engineering related items be met.

B. The Subject Property shall also be developed substantially in accordance with the Building Elevations titled "Orland Wine and Spirits," prepared by Michael E. Stanula, Architect, dated December 5, 2007, subject to the condition that detailed sign elevations be submitted for approval in a separate permitting process. Building signs will be constructed of individual channel-type lettering..

SECTION TWO: Contributions.

Upon, and as a condition to, the issuance of a building permit, Developer shall pay the Fair Share Road Exaction Fee as established in the Village Land Development Code, Section 5112(K)(6). For Developer's proposed 5,886 square foot building at \$1.15 per square foot, the fee shall be \$6768.90.

The Village shall solely determine how said sums so paid shall be allocated and disbursed.

### SECTION THREE: Storm Water Retention/Detention and Storm Sewers.

Storm Water run off emanating from the Subject Property shall be retained or detained in accordance with a storm water management system for the Subject Property to be constructed and installed by the Developer, as finally may be required and approved by the Village. Such system shall include all storm water management facilities, including both on-site and off-site storm sewers, if needed, in accordance with final engineering plans approved by the Village. The design criteria, construction and maintenance of the storm sewers shall be in accordance with all standards of the Village in force on the date of final plat approval for each phase, and also all standards of the Metropolitan Water Reclamation District of Greater Chicago in effect at the time of final plat approval, and shall be completed by the Developer at its expense.

### SECTION FOUR: Water Supply.

Developer shall be required to construct and install at its expense all necessary on-site water mains to service the Subject Property. All such water mains shall be constructed and installed in accordance with the Land Development Code of the Village and final engineering plans approved by the Village. Developer shall pay to the Village the required water connection charge(s) based upon the size of the connection(s) in accordance with Village ordinances.

### SECTION FIVE: Sanitary Sewers.

Developer shall be required to construct and install at its expense all necessary sanitary sewers to service the Subject Property in accordance with the Land Development Code of the Village and final engineering plans approved by the Village.

### SECTION SIX: Streets, Sidewalks and Street Lights

Developer shall construct and install all streets, sidewalks, walking paths, ramps and street lights as shown in EXHIBIT A (and as modified in accordance herewith) and in accordance with the Village Land Development Code and approved engineering.

Developer shall be responsible for restoration of any of the 84<sup>th</sup> Avenue ROW and/or pavement that may be disturbed as a result of the project's construction.

### SECTION SEVEN: Easements.

Developer agrees at the time of approval of this Development Agreement to grant to the Village, and/or obtain grants to the Village of all necessary easements for the extension of sewer, water, street, or other utilities, including cable television, or for other improvements that may serve not only the Subject Property, but other territories in the general area.

All such easements to be granted shall name the Village and/or other appropriate entities designated by the Village as grantee thereunder. It shall be the responsibility of Developer to obtain all easements, both on site and off site, necessary to serve the Subject Property. iManage 150272 1

SECTION EIGHT: Developmental Codes and Ordinances and General Matters.

The development of the Subject Property shall be in accordance with the existing building, zoning, subdivision, storm water retention and other developmental codes and ordinances of the Village as they exist on the date hereof, or as are in existence during development of the Subject Property. Planning and engineering designs and standards, and road construction and dedication of public improvements, shall be in accordance with the then existing ordinances of the Village or in accordance with the statutes and regulations of other governmental agencies having jurisdiction thereof if such standards are more stringent than those of the Village of Orland Park at such time.

No occupancy permit shall be issued for any building prior to the completion and acceptance by the Village of all of the required public improvements. All required public improvements shall be completed within one (1) year from the date hereof and Developer shall deliver to the Village an irrevocable letter of credit (the form of security Developer has elected to provide) in a form satisfactory to and from a bank or financial institution and in an amount as provided for in the Land Development Code of the Village, said Letter of Credit to include all costs related to required lighting, landscaping, sidewalk, sewer and water lines and storm water management facilities. The Village Engineer may, in his discretion, permit the amount of said letter of credit to be reduced, from time to time, as major public improvements are completed.

SECTION NINE: Utilities.

All electricity, telephone, cable television and gas lines shall be installed underground, the location of which underground utilities shall be at Developer's option.

SECTION TEN: Impact Requirements.

Developer agrees that any and all contributions, dedications, donations and easements provided for in this Agreement substantially advance legitimate governmental interests of the Village, including, but not limited to, providing its residents, with access to and use of public utilities, streets, fire protection, and emergency services. Developer further agrees that the contributions, dedications, donations and easements required by this Agreement are uniquely attributable to, reasonably related to and made necessary by the development of the Subject Property.

SECTION ELEVEN: Binding Effect and Term and Covenants Running with the Land.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, successor owners of record of the Subject Property, assignees, lessees and upon any successor municipal authorities of said Village and successor municipalities, for a period of seven (7) years from the date of execution hereof and any extended time that may be agreed to by amendment. iManage 150272 1

The terms and conditions of this Agreement relative to the payment of monies to the various contributions to the Village, construction and/or dedication of public improvements, granting of easements to the Village, dedication of rights-of-way to the Village and the developmental standards established herein shall constitute covenants which shall run with the land.

SECTION TWELVE: Notices.

Unless otherwise notified in writing, all notices, requests and demands shall be in writing and shall be personally delivered to or mailed by United States Certified mail, postage prepaid and return receipt requested, as follows:

For the Village:

- 1 Daniel J. McLaughlin Village President 14700  
South Ravinia Avenue Orland Park, Illinois 60462
- 2 David P. Maher Village Clerk 14700 South  
Ravinia Avenue Orland Park, Illinois 60462
- 3 E. Kenneth Friker Village Attorney Klein,  
Thorpe & Jenkins, Ltd. 15010 South Ravinia Avenue,  
Suite 10 Orland Park, Illinois 60462

For the Developer:

1. Modern Concepts Design & Development, LLC  
c/o Keith Martin 950 Kelsey Court Palatine, Illinois  
60067
2. Modern Concepts Design & Development, LLC  
c/o Peter Karfais 6840 North Techny Court Northbrook,  
Illinois 60062

3. Andrea Crowley Griffin &  
Gallagher 10001 South Roberts  
Road Palos Hills, IL 60465

For the Owner:

1. Marquette National Bank as Trustee under Trust Agreement  
1-7169, dated May 18, 2004 6155 South Pulaski Chicago, IL 60629

or such other addresses that any party hereto may designate in writing to the other parties pursuant to the provisions of this Section.

SECTION THIRTEEN: Signs.

The location of any sign upon the Subject Property shall be in accordance with an approved Signage Plan and the Village's Sign Ordinance, and shall have reasonable setbacks from streets and highways as the interest of safety may require.

SECTION FOURTEEN: Reimbursement of Village for Legal and Other Fees and Expenses.

A. To Effective Date of Agreement.

Developer, concurrently with issuance of a building permit for the Subject Property shall reimburse the Village for the following expenses incurred in the preparation and review of this Agreement, and any ordinances, letters of credit, plats, easements or other documents relating to the Subject Property:

- (1) costs incurred by the Village for engineering services; and
- (2) all reasonable attorneys' fees incurred by the Village; and
- (3) miscellaneous Village expenses, such as legal publication costs, recording fees and copying expense.

B. From and After Effective Date of Agreement.

Except as hereinafter provided, upon demand by the Village made by and through its President, Developer from time to time shall promptly reimburse the Village for all enumerated reasonable expenses and costs incurred by the Village in the administration of the Agreement, including and limited to engineering fees, attorneys' fees and out of pocket expenses involving

various and sundry matters such as, but not limited to, preparation and publication, if any, of all notices, resolutions, ordinances and other documents required hereunder.

Such costs and expenses incurred by the Village in the administration of the Agreement shall be evidenced to the Developer upon its request, by a sworn statement of the Village; and such costs and expenses may be further confirmed by Developer at its option from additional documents relevant to determining such costs and expenses as designated from time to time by Developer.

Notwithstanding the immediately preceding paragraph, Developer shall in no event be required to reimburse the Village or pay for any expenses or costs of the Village as aforesaid more than once, whether such are reimbursed or paid through special assessment proceedings, through fees established by Village ordinances or otherwise.

In the event that any third party or parties institute any legal proceedings against any party hereto, which relate to the terms of this Agreement, then, in that event, Developer on notice from Village shall assume, fully and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however:

(1) Developer shall not make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the Village.

(2) If the Village, in its sole discretion, determines there is, or may probably be, a conflict of interest between Village or Developer on an issue of importance to the Village having a potentially substantial adverse effect on the Village, then the Village shall have the option of being represented by its own legal counsel. In the event the Village exercises such option, then Developer shall reimburse the Village from time to time on written demand from the President of Village and notice of the amount due for any expenses, including but not limited to court costs, reasonable attorneys' fees and witnesses' fees, and other reasonable expenses of litigation, incurred by the Village in connection therewith.

In the event the Village institutes legal proceedings against Developer for violation of this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment against Developer all expenses of such legal proceedings incurred by the Village, including but not limited to the court costs and reasonable attorneys' fees, witnesses' fees, etc., incurred by the Village in connection therewith. Developer may, in its sole discretion, appeal any such judgment rendered in favor of the Village against Developer.

#### SECTION FIFTEEN: Warranties and Representations.

Developer and Owner represent and warrant to the Village as follows:



1. Owner is the legal title-holder and the owner of record of the Subject Property as indicated on the first page of this Agreement.

2. Developer proposes to develop the Subject Property in the manner contemplated under this Agreement.

3. Other than Developer and Owner, no other entity or person has any interest in the Subject Property or its development as herein proposed.

4. Developer has provided the legal description of the Subject Property set forth in this Agreement and the attached Exhibits and that said legal descriptions are accurate and correct.

5. With respect to any real estate herein which will become property of the Village, Owner and Developer warrant and represent, to the best of their knowledge, that during the period of their ownership or control over said Subject Property they have no knowledge of, nor reason to suspect, that there has been any underground storage (or other) tank or any presence, disposal, release or threatened release of hazardous substances or hazardous wastes on, from or under the property, by or through Owner or Developer or any other party whatsoever. Owner and Developer similarly represent and warrant that to the best of their knowledge, there was no underground storage (or other) tank and not any presence, disposal, release or threatened release of hazardous substances or hazardous waste on, from or under the property prior to Owner's acquisition of ownership or control of the property.

Owner similarly further represents and warrants that to the best of its knowledge, the property (including underlying soil and ground water conditions) is not in violation of any state, local, federal, municipal or other law, statute, regulation, code, ordinance, decree or other relating to hygienic or environmental conditions, and during ownership of the property by Developer, no party has stored or disposed of any flammable explosives, radioactive materials, hazardous waste, toxic substances or other related materials on, under or about the property. Developer shall and does hereby agree to indemnify, protect, defend, and hold the Village harmless from and against any claims, losses, demands, costs, proceedings, suits, liabilities, damages and causes of action, including consequential damages and attorneys' fees of counsel selected by the Village and other costs of defense incurred, arising against or suffered by the Village or its assigns as a consequence, directly or indirectly, of any misrepresentation by Owner or Developer of the foregoing representations and warranties, whether discovered before or after the conveyance of any of the Subject Property to the Village.

#### SECTION SIXTEEN: Continuity of Obligations.

Notwithstanding any provision of this Agreement to the contrary, including but not limited to the sale or conveyance of all or any part of the Subject Property by Owner, Owner shall at all times during the term of this Agreement remain liable to Village for the faithful performance of all obligations imposed upon Owner or Developer by this Agreement until such obligations have been fully performed or until Village, at its sole option, has otherwise released them from any or all of such obligations. iManage 150272 1

SECTION SEVENTEEN: No Waiver or Relinquishment of Right to Enforce Agreement.

Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

SECTION EIGHTEEN: Village Approval or Direction.

Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the Village unless otherwise expressly provided or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Agreement.

SECTION NINETEEN: Singular and Plural.

Wherever appropriate in this Agreement, the singular shall include the plural, and the plural shall include the singular.

SECTION TWENTY: Section Headings and Subheadings.

All section headings or other headings in this Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

SECTION TWENTY-ONE: Recording.

A copy of this Agreement and any amendment thereto shall be recorded by the Village at the expense of Developer.

SECTION TWENTY-TWO: Authorization to Execute.

The person or persons executing this Agreement on Owner's and Developer's behalf, warrant that they have been lawfully authorized to execute this Agreement. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Village Board of the Village to execute this Agreement. Owner, Developer and Village shall, upon request, deliver to one another at the respective time such entities cause their authorized agents to affix their signatures hereto copies of all bylaws, resolutions, ordinances, partnership agreements, letters of direction or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective entities.

SECTION TWENTY-THREE: Amendment.

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the parties hereto relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced to writing and signed by them.

SECTION TWENTY-FOUR: Counterparts.

This Agreement may be executed in two or more counterparts, each of which taken together, shall constitute one and the same instrument.

SECTION TWENTY-FIVE: Curing Default.

The parties to this Agreement reserve a right to cure any default hereunder within thirty (30) days from written notice of such default, or such additional time as is reasonably required to cure the default so long as the cure of default is commenced within said thirty (30) days, and efforts to effect such cure of default are diligently prosecuted to completion.

SECTION TWENTY-SIX: Conflict Between the Text and Exhibits.

In the event of a conflict in the provisions of the text of this Agreement and the Exhibits attached hereto, the text of the Agreement shall control and govern.

SECTION TWENTY-SEVEN: Severability.

If any provision of this Agreement is held invalid by a court of competent jurisdiction or in the event such a court shall determine that the Village does not have the power to perform any such provision, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve Village from performance under such invalid provision of this Agreement.

SECTION TWENTY-EIGHT: Definition of Village.

When the term Village is used herein it shall be construed as referring to the Corporate Authorities of the Village unless the context clearly indicates otherwise.

SECTION TWENTY-NINE: Execution of Agreement.

This Agreement shall be signed last by the Village and the President of the Village shall affix the date on which he signs this Agreement on page 1 hereof, which date shall be the effective date of this Agreement. iManage 150272 1

VILLAGE OF ORLAND PARK, an Illinois Municipal Corporation

By: \_\_\_\_\_

Village President ATTEST:

By: \_\_\_\_\_

Village Clerk

OWNER MARQUETTE NATIONAL  
BANK, as trustee u/t/n 1-7169, Dated  
May 18, 2004

DEVELOPER MODERN CONCEPTS DESIGN &  
DEVELOPMENT, an Illinois limited liability company

By: \_\_\_\_\_

Its \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Its \_\_\_\_\_

ACKNOWLEDGMENTS

STATE OF ILLINOIS )  
                          ) SS. COUNTY OF  
C O O K )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that DANIEL J. MCLAUGHLIN, personally known to me to be the President of the Village of Orland Park, and DAVID P. MAHER, personally known to me to be the Village Clerk of said municipal corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Board of Trustees of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

Notary Public

My commission expires \_\_\_\_\_.

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF                    )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named \_\_\_\_\_ and \_\_\_\_\_ of MARQUETTE BANK AND TRUST, not personally but as Trustee under Trust Agreement dated May 18, 2004, and known as Trust Number 1-7169, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ and \_\_\_\_\_ respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and the said \_\_\_\_\_ then and there acknowledged that said \_\_\_\_\_, as custodian of the corporate seal of said corporation caused the corporate seal of said corporation to be affixed to said instrument as said \_\_\_\_\_'s 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 official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

Notary Public

Commission expires: \_\_\_\_\_

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF                     )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_ and \_\_\_\_\_, personally known to me to be the and \_\_\_\_\_ of Modern Concepts Design & Development, LLC, an Illinois limited liability company, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ and \_\_\_\_\_ appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their 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 official seal, this day of , 2008.

Notary Public

My commission expires