

Prepared by: Kathleen T. Henn
Klein, Thorpe & Jenkins, Ltd.
20 North Wacker Drive
Chicago, IL 60606

For Recorder's Use Only

**DEVELOPMENT AGREEMENT
(CULVER'S OF ORLAND PARK – 159TH STREET AND PARK HILL DRIVE)**

INTRODUCTION

1. This Agreement entered into this _____ day of _____, 2009, by and between the VILLAGE OF ORLAND PARK, an Illinois Municipal Corporation (hereinafter referred to as the "Village"), and PARK HILL PLAZA 2, LLC, an Illinois limited liability company, Owner (hereinafter referred to as "Owner"), and JUST SHORT, INC., and Illinois corporation, Developer of the Subject Property (hereinafter referred to as "Developer") of the Subject Property legally described below.

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:

THAT PART OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 15, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE WEST LINE OF PARK HILL DRIVE AS DEDICATED BY PARK HILL SUBDIVISION UNIT NO. 1-A AND A LINE 57.00 FEET NORTH AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST $\frac{1}{4}$; THENCE NORTH 89° 48'14" WEST, ALONG SAID LINE 57.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST $\frac{1}{4}$, A DISTANCE OF 324.00 FEET TO THE POINT OF BEGINNING; CONTINUING NORTH 89 ° 48'14" WEST, ALONG THE LAST DESCRIBED LINE, 151.65 FEET; THENCE NORTH 0°11'46" EAST 100.00 FEET; THENCE SOUTH 89° 48'14" EAST, ALONG A LINE 157.00 FEET NORTH OF A PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST $\frac{1}{4}$, A DISTANCE OF 152.00 FEET; THENCE SOUTH 0° 23'56" WEST 100.00 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS

The said property is hereinafter referred to as the “Subject Property.”

3. The Subject Property is generally located on 159th Street, west of Park Hill Drive, in the Village of Orland Park, and, after subdivision will consist of approximately 15,000 square feet.

4. The Subject Property will be developed by the Developer for a one-story restaurant building with a drive-through and outdoor seating having a total of approximately 4,250 square feet in the BIZ General Business District pursuant to the Village’s Land Development Code (the “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 for a one-story restaurant building with a drive-through and outdoor seating, 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 development approval and amendments to the special use ordinances for Park Hill Center as well as a one-lot subdivision of the Subject Property. Also requested are modifications to the setbacks, landscape buffers, shared parking requirements, lot coverage, parking islands, detention, loading areas and drive-through requirements.

3. The parties hereto have fully complied with all relevant statutes of the State of Illinois and ordinances of the Village including the filing of a petition by Developer requesting subdivision of the Subject Property and approval of amendment of existing special use ordinances, 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 as 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 including adoption of amendments to Special Use ordinances 1314 and 1609 for a restaurant in the BIZ General Business District, subdivision of the Subject Property and the granting of modifications to setbacks, landscape buffers, shared parking requirements, lot coverage, parking islands, detention, loading areas and drive-through requirements;

(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 and the Developer 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 covenants and agrees that it will execute all necessary directions and issue all necessary instructions and take all other action necessary to perform its obligations hereunder.

SECTION ONE: Special Use Permit Amendment, Subdivision, Zoning, Plan Approval and Design Standards.

A. The Village, upon the necessary hearings before the relevant governmental bodies having taken place pursuant to statute and ordinances in such cases made and provided and pursuant to requisite notice having been given, will by proper ordinance grant the above-described Subject Property amendments to Special Use Ordinances 1314 and 1609 with modifications for a restaurant with a drive-through and outdoor seating as referred to in the above RECITALS.

B. The Subject Property shall be developed substantially in accordance with the Site Plan appended hereto and incorporated herein as EXHIBIT A entitled "Culvers Park Hill Plaza Overall Site Plan," prepared by Joseph A. Schudt & Associates, Project No. 08-065, dated September 15, 2008 and last revised on June 4, 2009, Sheet 1. The Subject Property shall also be developed substantially in accordance with the Site Plan appended hereto and incorporated herein as EXHIBIT B, entitled "Culvers Park Hill Plaza Final Site Plan," prepared by Joseph A. Schudt & Associates, Project No. 08-065, dated September 15, 2008 and last revised on June 4, 2009, Sheet 2. The Developer agrees that the Subject Property shall be developed substantially in accordance with said Site Plans (EXHIBITS A and B) as approved 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 Engineer for review and approval, subject to and conditioned upon the following:

- (1) That Developer provide a notarized, shared parking and cross access agreement between Culver's and the Center owners, approved by the Village Attorney, prior to the issuance of Building Permits;
- (2) That Developer submit a landscape plan, meeting all Village Codes, for separate review and approval within 60 days of final engineering approval. This is to focus primarily on the Culver's lot, but should also include additional landscaping between overall center parking lot and 159th Street, and include a minimum of

two trees per new landscape island. In addition, all dead plant material in the center parking lot is to be replaced;

- (3) That final engineering approval be obtained for the development, including but not limited to any needed adjustments to storm water calculations due to parking island changes; and
- (4) That the Developer obtain a sign permit from the Building Department.

C. The Subject Property shall also be developed substantially in accordance with the Elevation Plans entitled, "Culvers Orland Park Exterior Elevations," prepared by Warren Johnson Architects, Inc., dated November 24, 2008 and last revised May 27, 2009, Sheets A-2 and A-2.1, with the following conditions:

- (1) That all mechanical equipment must be screened, either at grade level with landscaping or hidden behind the roof; and
- (2) That no utilities will be located on exterior walls.

D. A Plat of Subdivision of the Subject Property consistent with the site plan attached as Exhibit A, for a one-lot subdivision, shall be recorded in the Office of the Cook County Recorder. Developer shall provide the Village with a final approved Plat of Subdivision, which the Village will record.

SECTION TWO: Contributions.

As a condition of obtaining a building permit, Developer shall pay to the Village the Fair Share Road Exaction Fee - \$1.15 per square foot as provided by Section 5-112(H)(6)(c) of the Code.

The Village shall solely determine how said sum 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 which ties into one for the shopping center of which the Subject Property is a part. The storm water management program for the Subject Property shall be constructed and installed by the Developer, in accordance with final drainage plans 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 issuance of the building permit for each phase, and also all standards of the Metropolitan Water Reclamation District of Greater Chicago in effect at the time of issuance of the building permit, 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 Code and final engineering plans approved by the Village. The 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. Developer agrees that no surface water is to be discharged into the sanitary sewerage collection system and Developer will make adequate provision that this will not occur.

SECTION SIX: Sidewalks and Street Lights

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

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 reasonably 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 hereunder. It shall be the responsibility of Developer to obtain all easements, both on-site and off-site, necessary to serve the Subject Property.

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 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 the required public improvements. Any required public improvements shall be completed within one (1) year from the date hereof and the Developer shall deliver to the Village an irrevocable letter of credit (the form of security the 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 Code. Said Letter of Credit is to include all costs related to required lighting, landscaping, roadway, sidewalk, sewer and water lines and storm water management facilities. The Director of the Village Engineering Department 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 the Developer's option but with locations in public rights of way also subject to Village Engineering Department approval.

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 ten (10) years from the date of execution hereof and any extended time that may be agreed to by amendment.

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, 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 delivered either (i) personally, (ii) by United States Certified mail, postage prepaid, return receipt requested, or (iii) via nationally recognized overnight carrier service 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 S. Ravinia Avenue
Orland Park, Illinois 60462

For the Developer and Owner:

1. Justin Obriecht
15701 Heatherglen Drive
Orland Park, IL 60462
2. Park Hill Plaza, LLC
401 Huehl Road, Suite 1-A
Northbrook, IL 60062

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 Code.

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

A. To Effective Date of Agreement.

The Developer, concurrently with the issuance of a building permit, 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 in accordance with the provisions of the Code; 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 Village made by and through its President, Developer from time to time shall promptly reimburse Village for all enumerated reasonable expenses and costs incurred by 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 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 the Developer at its option from additional documents relevant to determining such costs and expenses as designated from time to time by the Developer.

Notwithstanding the immediately preceding paragraph, Developer shall in no event be required to reimburse Village or pay for any expenses or costs of 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, the 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 affecting the Village, 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 and 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 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.

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

1. The 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. The Developer and Owner propose to develop the Subject Property in the manner contemplated under this Agreement.
3. Other than Owner, Developer and Developer's lender, 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.

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 and Developer shall at all times during the term of this Agreement remain liable to Village for their faithful performance of all obligations imposed upon Owner and Developer by this Agreement until such obligations have been fully performed or until Village, at its sole option, has otherwise released Owner and Developer from any or all of such obligations

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 hereunder 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 the Developer.

SECTION TWENTY-TWO: Authorization to Execute.

Any officers of Owner and/or Developer executing this Agreement warrant that they have been lawfully authorized to execute this Agreement on its behalf. 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 each other, 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 in 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.

VILLAGE OF ORLAND PARK, an
Illinois Municipal Corporation

By: _____
Village President

ATTEST:

By: _____
Village Clerk

OWNER:

PARK HILL PLAZA 2, LLC
An Illinois limited liability company

Attest: _____
By: _____

DEVELOPER:

JUST SHORT, INC.,
an Illinois corporation

Attest: _____
By: _____

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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 _____, 2009.

Notary Public

Commission expires _____

STATE OF ILLINOIS)
) SS.
COUNTY COOK)

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 JUST SHORT, INC., an Illinois corporation, 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 company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2009.

Notary Public

Commission expires _____

STATE OF ILLINOIS)
) SS.
COUNTY COOK)

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 PARK HILL PLAZA 2, LLC an Illinois limited liability company, 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 company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2009.

Notary Public

Commission expires _____