

Document Prepared By:

Rinda Y. Allison
Klein, Thorpe and Jenkins, Ltd.
20 N. Wacker Dr., Suite 1660
Chicago, IL 60606



Doc#: 0829416056 Fee: \$68.00
Eugene "Gene" Moore
Cook County Recorder of Deeds
Date: 10/20/2008 03:01 PM Pg: 1 of 17

**DEVELOPMENT AGREEMENT
(HERITAGE TOWN CENTRE, COSTCO OUTLOT)**

INTRODUCTION.

1. This Agreement entered into this September 9, 2008, by and between the VILLAGE OF ORLAND PARK, an Illinois Municipal Corporation (hereinafter referred to as the "Village") and OLD SECOND BANCORP, INC., an Illinois corporation, Developer and Owner of the Subject Property (hereinafter referred to as "Developer").

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

LOT 2 IN COSTCO-ORLAND PARK, IL SUBDIVISION, A SUBDIVISION OF THAT PART OF THE NORTHWEST QUARTER AND PART OF THE NORTHEAST QUARTER AND PART OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 26, 2005 AS DOCUMENT NUMBER 0529903097, AND THE CERTIFICATE OF CORRECTION RELATING THERETO RECORDED DECEMBER 13, 2005 AS DOCUMENT NUMBER 0534718010, IN COOK COUNTY, ILLINOIS.

P.I.N.: 27-21-200-008-0000

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

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3. The Subject Property is generally located at the southeast corner of 159th Street and Ravinia Avenue in the Village of Orland Park and consists of 2.85 acres.

4. The development plan for the Subject Property includes constructing 17,425 square feet of commercial space in three (3) buildings with detention and surface parking. A special use permit for a planned development with three (3) buildings on a single lot with two (2) drive-thru lanes included (one for the Bank and one for a fast food restaurant), has been requested for the Subject Property. The requested Special Use for Planned Development includes a modification to reduce the setback and parking requirements.

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. Developer has petitioned the Village for development approval to permit the requested development.

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 an application by Developer to enable development as herein provided. The Village caused the issuance of proper notice and the conduct of all hearings by all necessary governmental entities to effectuate the granting of the Special Use Permit for a Planned Development and the permitting of development as herein provided.

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 the classification of a portion of the Subject Property pursuant to the terms and conditions of this Agreement and the granting of modifications to setback and parking 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 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 an 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 direct, cause and require Developer to perform its obligations hereunder.

SECTION 1: Plan Approval and Design Standards.

A. The Village, the necessary hearings before the relevant governmental bodies having taken place pursuant to statute and ordinances in such cases made and provided and requisite notice having been given, will by proper ordinance permit development pursuant to the approved plan as described below.

B. The Subject Property shall be developed substantially in accordance with the site plan appended hereto and incorporated herein as EXHIBIT A entitled "Proposed New Bank Facility for Heritage Bank, prepared by The Shalvis Group, job number 2007-055, dated 10/17/2007, most recent revision 01/29/2008, sheets A-1.0, Ask-1.1 and Ask 1.2. The Developer agrees that the Subject Property shall be developed substantially in accordance with said plans as shown on said site plan (EXHIBIT A) 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, and subject to the following conditions:

1. That the fast food and commercial buildings come back for building elevation review and approval.
2. That Developer submit a landscape plan per Village Code, within sixty (60) days of final engineering approval for separate review and Village Board approval.
3. That all final engineering related items are met.

SECTION 2: Storm Water Detention and Storm Sewers.

Storm Water run off emanating from the Subject Property is incorporated into the stormwater facility constructed for the Costco project. Storm water shall be retained in accordance with the storm water management system for the Costco project as finally approved by the Village. The design criteria, construction and maintenance of the detention area and any storm sewers shall be in accordance with all standards of the Village in force on the date of final approval, and also all standards of the Metropolitan Water Reclamation District of Greater

Chicago in effect at the time of final approval. Necessary sewer facilities and any additional detention area shall be completed and maintained by the Developer at its expense.

SECTION 3: Contributions.

Upon, and as a condition to, the issuance of a retail building permit, Developer shall pay the Fair Share Road Exaction Fee as established in the Village's Land Development Code, Section 5-112 (K)(6), \$1.15 per square foot (a total of \$20,038.75 for the 17,425 square feet of commercial space approved for the Subject Property). The Village shall solely determine how said sums so paid shall be allocated and disbursed.

SECTION 4: 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.

SECTION 5: 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. The Village agrees to permit connection of the aforementioned sanitary sewers to the sanitary sewer facilities of the Village after all permitting agencies have issued permits, including the Metropolitan Water Reclamation District of Greater Chicago, and upon payment of the required fees, and to furnish sewer service on the same basis as said services are furnished to other parts of 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 6: 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 Land Development Code of the Village and final engineering plans approved by the Village. Developer shall restore any disturbed portions of Ravinia Avenue to like-new condition following construction of this project. Developer shall construct and maintain the private parking and driving lanes to adequately support the project during its construction.

SECTION 7: Easements.

The Owner 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.

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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 the Owner and Developer to obtain all easements, both on site and off site, necessary to serve the Subject Property.

SECTION 8: 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 each respective permit for development of the Subject Property, except that the detention setback for the east side and the southeast corner of the detention may be as shown on EXHIBIT A.

No occupancy permit shall be issued for any building prior to the completion and approval for use by the Village of the required public improvements. All required public improvements shall be completed within one (1) year from the date hereof, and the Developer shall deliver to Village an irrevocable letter of credit (the security Developer has elected to provide), in a form satisfactory to, and from a bank or other financial institution approved by, the Village in an amount as provided for in the Land Development Code of the Village, said letter of credit to include all required lighting, sidewalks, landscaping, streets and street lights, landscaping and sewer and water lines and required storm water management facilities.

SECTION 9: 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 approval.

SECTION 10: 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.

The terms and conditions of this Agreement relative to the 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 11: 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:

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For the Village:

1. Daniel J. McLaughlin
Village President
14700 South Ravinia Avenue
Orland Park, Illinois 60462
2. Mr. 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, Suite 10
Orland Park, Illinois 60462

For the Developer and Owner:

1. Old Second Bancorp, Inc.
20201 South LaGrange Road
Frankfort, Illinois 60411
Attn: Patrick Roe
2. David Sosin, Esq.
11800 South 75th Avenue
Palos Heights, IL 60463

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

SECTION 12: Signs.

The location of any signs 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 13: Reimbursement for Legal and Other Fees and Expenses.A. To Effective Date of Agreement.

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The Developer 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) the costs incurred by the Village for engineering services;
- (2) all 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 provided in the paragraph immediately following this paragraph, 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, and the negotiation and preparation of letters of credit and escrow agreements to be entered into as security for the completion of land improvements.

Such costs and expenses incurred by Village in the administration of the Agreement shall be evidenced to 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 the Developer and/or the Village, 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, without the specific 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

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Developer shall reimburse the Village from time to time on written demand from the President of the 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 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.

SECTION 14: Warranties and Representations.

Developer represents and warrants to the Village as follows:

1. That ownership of the Subject Property is as set out on the first page of this Agreement.
 2. That the Developer proposes to develop the Subject Property in the manner contemplated under this Agreement.
 3. That other than the Developer as indicated, no other entity or person has any ownership interest in the Subject Property or its development as herein proposed.
 4. That Developer has provided the legal descriptions of the Subject Property set forth in this Agreement and the attached Exhibits and that said legal descriptions are accurate and correct.
 5. That with respect to any real estate herein which will become property of the Village, Developer warrants and represents, to the best of its knowledge, that during the period of their ownership or control over said Subject Property it has 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 Developer or any other party whatsoever. Developer similarly represents and warrants that to the best of its knowledge, there was no underground storage (or other) tank and no presence, disposal, release or threatened release of hazardous substances or hazardous waste on, from or under the property prior to Developer's acquisition of ownership or control of the property.
- Developer 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 document 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

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property. Developer shall and does hereby 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 Developer of the foregoing representations and warranties, whether discovered before or after the conveyance of the Subject Property to the Village.

SECTION 15: 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 Developer, Developer shall at all times during the term of this Agreement remain liable to Village for the faithful performance of all obligations imposed upon them by this Agreement until such obligations have been fully performed or until Village, at its sole option, has otherwise released Developer from any or all of such obligations.

SECTION 16: 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 17: 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 18: Singular and Plural.

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

SECTION 19: 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 20: Recording.

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

SECTION 21: Authorization to Execute.

Developer and its officers executing this Agreement warrant that they have been lawfully authorized to execute this Agreement on behalf of said Developer. 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. The Village and the Developer shall, upon request, deliver to each other 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 22: 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 23: Counterparts.

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

SECTION 24: 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.

SECTION 25: 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 26: 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.

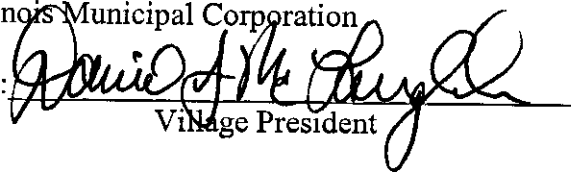
SECTION 27: Definition of Village.

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 28: Execution of Agreement.

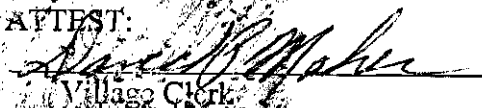
This Agreement shall be signed last by the Village and the President of the Village shall affix the date on which he signs this Agreement on page 1 hereof which date shall be the effective date of this Agreement.

VILLAGE OF ORLAND PARK, an
Illinois Municipal Corporation

By: 

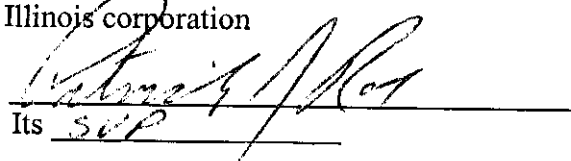
Village President

ATTEST:


Village Clerk

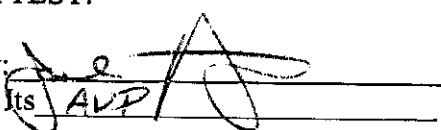
OWNER and
DEVELOPER:

OLD SECOND BANCORP, INC.
An Illinois corporation

By: 

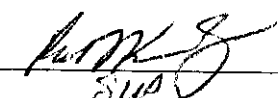
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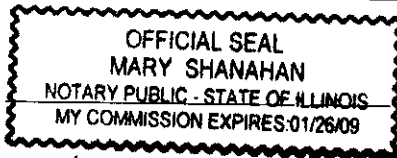
ACKNOWLEDGMENTS

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 9th day of September, 2008.

My commission expires



Mary Shanahan
 Notary Public

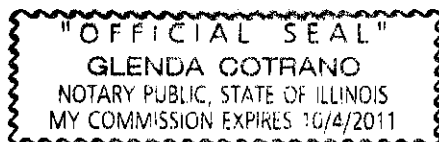
STATE OF ILLINOIS)
) SS
 COUNTY OF Cook)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named Patrick J. Ryan, Robert J. Kennedy and Glenda Cotrano, who are the Secretary and Assistant Sec. of OLD SECOND BANCORP, INC., an Illinois corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such appeared before me this day in person and acknowledged that they are said Secretary and Assistant Sec., and that this instrument is the free and voluntary act of said OLD SECOND BANCORP, INC. and that they signed and delivered the said instrument as their own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this 27th day of August, 2008.

My commission expires: October 4, 2011.

Glenda Cotrano
 Notary Public



OVERSIZE

EXHIBIT FORWARD TO PLAT COUNTER FOR SCANNING

Doc#: 0829416056 Fee: \$68.00
Eugene "Gene" Moore
Cook County Recorder of Deeds
Date: 10/20/2008 03:01 PM Pg: 1 of 17

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