

This document prepared by:
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20 North Wacker Drive, Suite 1660
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For Recorder's Use On

**DEVELOPMENT AGREEMENT
(FIFTH/THIRD BANK - ORLAND SQUARE MALL)**

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"), and FIFTH/THIRD BANK, a Michigan banking corporation, Developer of the Subject Property, and JMD REAL ESTATE, LLC, an Illinois limited liability company, Owner of the Subject Property legally described below (hereinafter referred to as "Developer" and "Owner").

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 "G-1" IN ORLAND SQUARE PLANNED DEVELOPMENT UNIT NUMBER "G-1",
BEING A SUBDIVISION OF PART OF THE WEST HALF OF THE SOUTHWEST
QUARTER OF SECTION 10, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD
PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED
SEPTEMBER 23, 1977 AS DOCUMENT NUMBER 24116592, IN COOK COUNTY,
ILLINOIS

P.I.N. No.: 27-10-300-016-0000

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

3. The Subject Property is generally located at the northeast corner of 149th Street and LaGrange Road and consists of approximately 1.4 acres. It is an outlot of the Orland Square Shopping Mall. It presently contains a restaurant, which will be razed so the banking facility may be constructed on the land. The Subject Property is zoned COR Mixed Use Core District under the Village of Orland Park Land Development Code (hereinafter referred to as the "Code").

4. Developer plans to construct a 4,447 square foot financial institution with four drive-thru lanes (three full service lanes and one ATM lane) on the Subject Property, pursuant to the Code, with a minor special use for the drive-thru lanes.

5. The Subject Property is an outlot of the Orland Square Mall. The change proposed will require an amendment to the Special Use for Planned Development for Orland Square.

6. 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 as described above, subject to Village codes and ordinances and the terms and conditions as hereinafter set forth in this Agreement. The Subject Property is an outlot of the Orland Square Mall and is subject to the terms and conditions of the Special Use for Planned Development for Orland Square.

2. The Developer has petitioned the Village for an amendment to the Special Use for Planned Development, a minor special use for the drive thru windows and additional parking and plan approval in the COR Mixed Use Core District 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 including the filing of petitions by Developer 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 such actions as herein provided, including all hearings as are necessary 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 including the granting of a minor special use and development of the Subject Property pursuant to the terms and conditions 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 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 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. Owner 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: Minor Special Use, 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 cause the above-described Subject Property to be the subject of an amendment to the Special Use for Planned Development for the Orland Square Mall and to be granted a minor special use under the Code to permit four drive-up windows as shown on the plan approved below.

B. The Subject Property shall be developed substantially in accordance with the Site Plan appended hereto and incorporated herein as EXHIBIT A entitled "Preliminary Site Plan – Fifth Third Bank Orland Park" prepared by TAP The Architects Partnership, dated with a revision date of 12/11/07. The Developer agrees that the Subject Property shall be developed substantially in accordance with said Preliminary 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, subject to and conditioned upon the following:

1. That Developer work with Village staff to include native vegetated bio-swales where feasible on final Grading and Landscape plans;
2. That a Landscape Plan, meeting all Village Codes, be submitted for separate review and approval within sixty (60) days of final engineering approval;
3. That detailed sign plans be submitted for approval and sign permits; and
4. That all final engineering related items are met.

C. The Subject Property shall also be developed substantially in accordance with the Elevations Plan titled, "Fifth Third Bank Orland Park," by TAP The Architect's Partnership and dated with a revision date of 12/11/07, subject to the same conditions as listed in the Site Plan approval above.

SECTION TWO: Contributions.

No Fair Share Road Exaction Fee shall be charged to Developer because the building that Developer will build is smaller than the building that was previously located on the site.

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 plan approval, and also all standards of the Metropolitan Water Reclamation District of Greater Chicago in effect at the time of final plan approval, and shall be completed by the Developer at its expense. All storm water detention/retention facilities shall be maintained by the Developer.

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 sized, 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 Code and final engineering plans approved by the Village. Said sewers shall be sized as required by the Village. All required fees are due before a building permit is issued.

SECTION SIX: Sidewalks.

All sidewalks shown on the final plan (EXHIBIT A) shall be constructed by Developer to the applicable Village standards.

SECTION SEVEN: Easements.

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 which may serve not only the Subject Property, but other properties 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 Owner and 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, 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 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 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 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 the Developer's option.

SECTION TEN: Impact Requirements.

Developer and Owner agree 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 and Owner further agree 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.

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 S. Ravinia Avenue
Orland Park, Illinois 60462

For the Developer:

1. Fifth Third Bank, c/o LauraTitschler
1701 Golf Road #MDGRL8E
Rolling Meadows, Illinois 60008
2. Gregory Dose
Goldstine, Skrodzki, Russian, Nemec and Hoff, Ltd.
835 McClintock Drive
Burr Ridge, Illinois 60527

For the Owner

1. JMD Real Estate, LLC
34 Cliffside Circle
Willow Springs, Illinois 60480
Attn: Mark Damas

or such other addresses as 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, as set forth in the Code, 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.

The Developer, concurrently with the issuance of the 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) the 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 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 or Owner 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 and Developer or Owner 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 and/or Owner 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 and/or Owner 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 and/or Owner 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 and/or Owner may, in its sole discretion, appeal any such judgment rendered in favor of the Village against Developer and/or Owner.

SECTION FIFTEEN: Warranties and Representations.

The Developer and Owner 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 proposes to develop the Subject Property in the manner contemplated under this Agreement.
3. Other than Owner and Developer, 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 said legal description is 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 or Developer's ownership or control of the Subject Property.

Owner and Developer similarly further represent and warrant that to the best of their knowledge, the Subject 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 or control of the property by Owner and/or 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. Owner and Developer shall and do 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 of 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 and 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 them 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 either 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.

The officers of Owner and Developer executing this Agreement warrant that they have been lawfully authorized to execute this Agreement on their 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.

[SIGNATURE PAGE FOLLOWS]

VILLAGE OF ORLAND PARK, an
Illinois Municipal Corporation

By: _____
Village President

ATTEST:

By: _____
Village Clerk

DEVELOPER
FIFTH THIRD BANK,
a Michigan banking corporation

By: _____
Its: _____

ATTEST:

By: _____
Its: _____

OWNER
JMD REAL ESTATE, LLC,
an Illinois limited 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.

My commission expires _____

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 _____ and _____, personally known to me to be _____ and _____ of FIFTH THIRD BANK, a Michigan banking corporation, and the same persons whose names are subscribed to the foregoing instrument as said _____ and _____ of FIFTH THIRD BANK, 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.

My commission expires _____

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 _____, and _____ personally known to me to be the _____ and _____ of JMD REAL ESTATE, L.L.C., 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 _____, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts 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.

My commission expires _____

Notary Public

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