

This Document Prepared By:
Kathleen T. Henn
On behalf of the Village of Orland Park
Klein, Thorpe and Jenkins, Ltd.
20 N. Wacker Drive - Suite 1660
Chicago, Illinois 60606
(312) 984-6400

For Recorder's Use Only

DEVELOPMENT AGREEMENT
(MIROBALLI PLAZA – 14360 S. LAGRANGE ROAD)

INTRODUCTION

1. This Agreement entered into this ____ day of _____, 2012, by and between the VILLAGE OF ORLAND PARK, an Illinois Municipal Corporation (hereinafter referred to as the "Village") and MSOP Building, LLC, an Illinois limited liability company (hereinafter referred to as "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 12 AND THAT PART OF LOT 15 IN THE SUBDIVISION OF LOTS 1,2,3 AND 4 OF COTTAGE HOME SUBDIVISION OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 9, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THEREFROM PARTS TAKEN FOR WIDENING OF 143RD STREET AND KEAN AVENUE), LYING SOUTH OF THE SOUTH LINE OF LOT 19 IN EAST ORLAND, BEING A SUBDIVISION OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 9, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXTENDED EASTERLY TO THE EAST LINE OF LOT 15 AFORESAID, EXCEPTING THEREFROM THE NORTH 200 FEET OF PART OF SAID LOT 15 LYING SOUTH OF THE SOUTH LINE OF SAID LOT 19 AS EXTENDED TO THE EAST LINE OF SAID LOT 15, IN COOK COUNTY, ILLINOIS.

PIN NO. 27-09-215-029-0000

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

3. The Subject Property is located at 14360 S. LaGrange Road in the Village and consists of approximately .97 acres.

4. The Subject Property is being developed by the Owner for 10,000 square foot retail center in the VCD Village Center District, with variances as hereinafter described, 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, 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 Owner has petitioned the Village for approval of plans for the proposed retail center on the Subject Property under the VCD Village Center Zoning District, with variances 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 including the granting of zoning variations 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 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. Owner covenants and agrees that it will execute all necessary directions and issue all necessary instructions and take all other action necessary to direct and require performance of its obligations hereunder.

SECTION ONE: Plan Approval and Design Standards.

A. The Subject Property shall be developed substantially in accordance with the Preliminary Site Plan appended hereto and incorporated herein as EXHIBIT A entitled “Miroballi Plaza Site Plan,” prepared by Cambridge Companies, dated October 3, 2011, project number BIL1102, sheet number SP1.10, and the preliminary elevation drawings appended hereto and incorporated herein as EXHIBIT B entitled “Miroballi Plaza Elevations,” prepared by Cambridge Companies, dated October 3, 2011, project number BIL1102, sheet number A3.10, subject to the following conditions:

1. That the development use the same lamp post patterns in the parking lot that are present in Orland Crossing, Main Street Triangle and Old Orland Historic District for a unified appearance across the Village Center District and downtown area;
2. That the Owner considers best management practices (BMPs), architectural features and planter boxes to mitigate variance requests;
3. That the Owner submits a landscape plan within 60 days of final engineering for separate review and approval and that includes four (4) inch caliper trees and a minimum of four (4) canopy trees in the west bufferyard;
4. That all rooftop mechanical equipment and utility conduits are appropriately screened from neighboring properties and the rights-of-way;
5. That final engineering and Building Code related items are met;
6. That building permits are obtained prior to construction;
7. That the Owner works with neighboring property owners to the north to establish a cross-access agreement between the properties;
8. That the Owner applies for a subdivision for lot consolidation and submits a Plat of Subdivision to the Village for recording prior to obtaining any building permits; and
9. That the Owner works with Village staff to explore the use of composite wood fence materials for the west bufferyard screening fence.

B. Variances shall be granted to reduce the LaGrange Road setback from 25 feet to 15 feet (40% reduction), to reduce the corner setback of LaGrange Road and 144th Place from 25 feet to 11 feet (56% reduction), to reduce the west bufferyard, Bufferyard C, from 15 feet to 2.5 feet (85% reduction) and to increase the lot coverage from 75% to 83%, subject to the above conditions.

SECTION TWO: 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 Owner, as finally may be required and approved by the Village. Such system shall include all storm water management facilities serving the Subject Property 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, and also all standards of the Metropolitan Water Reclamation District of Greater Chicago ("MWRDGC") in effect at the time of final plat approval, and shall be completed by the Owner at its expense.

SECTION THREE: Water Supply.

Owner 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.

SECTION FOUR: Sanitary Sewers.

Owner 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.

SECTION FIVE: Sidewalks and Street Lights

The Owner shall construct and install any sidewalks and street lights as shown in EXHIBIT A (and as modified in accordance herewith) in accordance with the Code and final engineering plans approved by the Village. Sidewalks along the La Grange Road frontage south of the driveway entrance and along the 144th Place frontage shall be installed upon completion of the La Grange Road widening project at the intersection of 144th Place and La Grange Road. The sidewalks shall connect to the northwest corner of the intersection to provide for connectivity and intersection crossings to opposite corners. The sidewalks south of the driveway along La Grange Road and along the 144th Place frontage shall be located on the private property side of the lot line and shall have a public access easement.

The Owner shall provide access to the site. Owner shall be responsible for keeping all adjacent streets free from construction debris and for repair of damages to the streets caused by Owner's construction traffic. All deliveries of construction supplies or materials shall be restricted to certain streets or temporary haul roads designated by the Village.

Also, Owner shall be required to keep all public streets located on the Subject Property as well as adjoining streets free from mud and debris generated by construction activity on the Subject Property. Such streets must be cleaned at least once a week, and more often if required by Village in its sole judgment. For each day that the streets are not cleaned as required hereunder during construction, Owner shall be subject to a fine as provided in the Code. If any

such fine is not promptly paid, the Village shall have the right to stop any and all further construction until paid.

SECTION SIX: 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 and/or maintenance of sewer, water, street, or other utilities, including cable television, or for other improvements which 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 the Owner to obtain all easements, both on site and off site, necessary to serve the Subject Property.

The Owner agrees at the time of approval of the Development Agreement to grant a cross-access easement at the drive-aisle connection/stub located at the northwest corner of the subject site that connects to the neighboring properties.

The Owner agrees at the time of approval of the Development Agreement to grant a public access easement for all the sidewalks located on private property along the La Grange Road and 144th Place frontages.

SECTION SEVEN: 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. All required public improvements shall be completed within one (1) year from the date hereof and the Owner shall deliver to the Village an irrevocable letter of credit (or such other form of security acceptable to the Village) 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 (or such other form of security acceptable to the Village) to include all costs related to required lighting, landscaping, sidewalk, sewer and water lines and storm water management facilities. The Village may, in its discretion, permit the amount of said letter of credit (or such other form of security acceptable to the Village) to be reduced, from time to time, as major public improvements are completed. The Village may also require an increase, from time to time, if the estimated cost of completing the public improvements increases more than 3% per annum.

SECTION EIGHT: Utilities.

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

SECTION NINE: Impact Requirements.

Owner 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. Owner 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 TEN: 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, dedication of rights-of-way to the Village and the developmental standards established herein shall constitute covenants which shall run with the land.

SECTION ELEVEN: 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
Village of Orland Park
14700 South Ravinia Avenue
Orland Park, Illinois 60462
2. David P. Maher
Village Clerk
Village of Orland Park
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 Owner:

MSOP Building, LLC
Attn: Daniel Miroballi, Manager
9620 W. 143rd Street
Orland Park, IL 60462

With a copy to:

David Sosin
Attorney at Law
Sosin & Arnold, Ltd.
9501 W. 144th Place, Suite 205
Orland Park, IL 60462-2563

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

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

A. To Effective Date of Agreement.

The Owner 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 the Village made by and through its President, Owner 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 Owner upon its request, by a sworn statement of the Village; and such costs and expenses may be further confirmed by the Owner at its option from additional documents relevant to determining such costs and expenses as designated from time to time by the Owner.

Notwithstanding the immediately preceding paragraph, Owner 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, the 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) Owner 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 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 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 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 Owner 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. Owner may, in its sole discretion, appeal any such judgment rendered in favor of the Village against Owner.

SECTION FOURTEEN: Warranties and Representations.

The Owner represents and warrants to the Village as follows:

1. MSOP Building, L.L.C. is the legal titleholder and the owner of record of the Subject Property.

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

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

4. Owner 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. Owner further represents and warrants that to the best of its knowledge, during the ownership or control of the Subject Property by Owner, 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 nor has Owner taken any action to violate any state, local, federal, municipal or other law, statute, regulation, code, ordinance, decree or other such laws pertaining to environmental conditions. Owner and the Village acknowledge that the Owner is in the process of seeking an Environmental No Further Remediation Letter from the Illinois Environmental Protection Agency.

6. Owner 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 reasonable 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 material misrepresentation by Owner of the foregoing representations and warranties, whether discovered before or after the conveyance of any of the Subject Property to the Village.

SECTION FIFTEEN: 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 its faithful performance of all obligations imposed upon Owner by this Agreement until such obligations have been fully performed or until Village, at its sole option, has otherwise released it from any or all of such obligations.

SECTION SIXTEEN: 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 SEVENTEEN: 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 EIGHTEEN: Singular and Plural.

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

SECTION NINETEEN: 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: Recording.

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

SECTION TWENTY-ONE: Authorization to Execute.

The person or persons executing this Agreement on Owner's behalf, warrant that they have been lawfully authorized to execute this Agreement on Owner's 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 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-TWO: 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-THREE: 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-FOUR: 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-FIVE: 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-SIX: 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-SEVEN: 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-EIGHT: 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:

MSOP BUILDING, LLC, an Illinois limited
liability company

By: _____

ATTEST:

BY: _____
Title

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 _____, 2012.

Commission expires _____

Notary Public

[illegible]

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the _____ of MSOP BUILDING, L.L.C., and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2012.

Notary Public

Commission expires _____