

This document prepared by:  
Kathleen T. Henn  
On Behalf of the Village of Orland Park  
Klein, Thorpe and Jenkins, Ltd.  
20 North Wacker Drive, Suite 1660  
Chicago, Illinois 60606

For Recorder's Use Only

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**DEVELOPMENT AGREEMENT  
(APPS COMMUNICATION TOWER – 10470 164<sup>TH</sup> PLACE)**

**INTRODUCTION**

1. This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the VILLAGE OF ORLAND PARK, an Illinois municipal corporation (hereinafter referred to as the "Village"), and APPS COMMUNICATIONS, INC., an Illinois corporation, Owner of the Subject Property (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 10 IN APPLE KNOLL INDUSTRIAL PARK UNIT 1, BEING A SUBDIVISION  
OF PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF  
SECTION 20, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD  
PRINCIPAL MERIDIAN, AS RECORDED JANUARY 20, 1982, AS DOCUMENT  
NO. 26117390, IN COOK COUNTY, ILLINOIS

P.I.N. No.: 27-20-401-017-0000

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

3. The Subject Property is located at 10470 164<sup>th</sup> Place and consists of approximately 1.05 acres. The property currently includes a 3,913 square foot building and an existing rooftop cell tower. It is zoned MFG Manufacturing District under the Village of Orland Park Land Development Code (hereinafter referred to as the "Code").

4. Owner plans to construct and operate a wireless communications facility, including a monopole cell tower that is 180' tall with associated ground equipment located in the northeast corner of the site. The monopole tower will have antennas at various heights, not to exceed 180' in height, as shown in the site plans and provide for co-location opportunities for wireless carriers, wireless microwave dishes, 911 antennas Wi-Fi providers and other systems that require elevated antennas. The construction will include a fenced enclosure at the base of the monopole that is 60' by 70' in size, which will contain all associated cell tower ground equipment.

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 as described above, subject to Village codes and ordinances and the terms and conditions as hereinafter set forth in this Agreement.

2. The Owner has petitioned the Village for a special use and plan approval in the MFG Manufacturing District with modifications to increase the height of the proposed monopole tower to 180' and to permit the submission of structural plans after the approval of the special use permit.

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 Owner 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 special use with modifications for the height of the monopole tower and to permit submission of structural plans after approval of the special use permit, and development of the Subject Property pursuant to the terms and conditions of this Agreement; and

(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 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 reasonably necessary directions and issue all reasonably necessary instructions and take all other action necessary to perform their obligations hereunder.

SECTION ONE: Special Use, Modification, 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 granted a special use under the Code to permit the construction and operation of a monopole cell tower with modifications to permit the tower to be 180' tall and to permit the submission of structural plans after approval of the special use ordinance in the MFG Manufacturing District also as shown on the plan referenced below.

B. The Subject Property shall be developed substantially in accordance with the Site Plan titled "Overall Site Plan," prepared by Mid America Towers, project number 2012-0452, dated December 10, 2012, revised February 25, 2013, pages Z-1, Z-2, Z-3, Z-3A, Z-3B and Z-4, subject to the following conditions:

1. Approval is subject to final engineering, including structural review.
2. Approval is subject to all Building Code related items.
3. No additional increases in tower or equipment height, beyond the petitioned 180', will be approved in the future.
4. All new mechanical equipment, including co-located equipment, must be contained in the fenced communications tower enclosure.
5. All future lease areas on the monopole will require additional Village approval.
6. No additional outdoor storage of any type, anywhere on the site, may be added without additional Village approval.
7. Any additional lighting, beyond government safety requirements, must be submitted for approval.
8. The following deadlines must be met:
  - a. Complete and stamped structural engineering plans must be submitted within 90 days of Board approvals.
  - b. Structural engineering plans must be approved within 6 months; otherwise the existing non-conforming tower must be removed.

c. The new tower must be constructed and approved for occupancy within one year of structural engineering approval.

d. The existing, non-conforming rooftop tower must be removed within 30 days of completion of the new communications tower. The temporary occupancy permit on the new communications tower will include this restriction, with the final occupancy permit delayed pending removal.

C. The Subject Property shall be developed substantially in accordance with the conceptual monopole tower Elevation titled "Sabre Tower and Poles," dated November 16, 2012.

D. A Special Use Permit shall be granted for a wireless communications facility, including a monopole communications tower and associated ground equipment, subject to the same conditions set forth above and with the following modifications:

1. The height of the communications tower will be 180' with co-location opportunities, 30' higher than the Code limit of 150' with co-locations; and

2. Engineering approval is postponed until after the Special Use Permit approval.

SECTION TWO: 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, with respect to codes and ordinances subsequently adopted by the Village for the protection of life, health and safety and applicable to similar commercial buildings Village-wide, 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 any required public improvements. Any required public improvements shall be completed within one (1) year from the date hereof and the Owner shall deliver to the Village a cash bond or an irrevocable letter of credit in a form satisfactory to and from a bank or financial institution and in an amount as provided for in the Code. Said Cash Bond or Letter of Credit is to include all costs related to required landscaping. The Village may, in its discretion, permit the amount of said Cash Bond or Letter of Credit 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 THREE: 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 FOUR: 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 FIVE: 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. John C. Mehalek  
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 Owner:

David Apps  
Apps Communications Inc.  
10470 164<sup>th</sup> Place  
Orland Park, Illinois 60467

With a copy to:

I-355 & 143<sup>rd</sup> LLC  
PO Box 6556  
Gainesville, GA 30504  
jay@midamericatowers.com

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

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

A. To Effective Date of Agreement.

The Owner, 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;
- (2) all reasonable attorneys' fees incurred by the Village; and
- (3) miscellaneous Village expenses, such as legal publication costs, recording fees and copying expenses.

B. From and After Effective Date of Agreement.

Except as hereinafter provided, upon demand by Village made by and through its President, Owner from time to time shall promptly reimburse Village for all enumerated reasonable expenses and costs incurred by Village in the administration of this 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 this 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 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 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 and 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 a party hereto institutes legal proceedings against any other party 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 the unsuccessful party all expenses of such legal proceedings incurred by the successful party, including but not limited to the court costs and reasonable attorneys' fees, witnesses' fees, etc., incurred in connection therewith. Either party may, in its sole discretion, appeal any such judgment rendered in favor of the other party.

SECTION EIGHT: Warranties and Representations.

The Owner represents and warrants to the Village as follows:

1. Owner is the legal title holder and the owner of record of the Subject Property as indicated on the first page of this Agreement.
2. Owner proposes to develop the Subject Property in the manner contemplated in this Agreement.

3. Other than Owner and Owner's Lessee, I-355 & 143<sup>rd</sup> LLC, no other entity or person has any interest as of the date hereof 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 said legal description is accurate and correct.

SECTION NINE: Continuity of Obligations.

Notwithstanding any provision of this Agreement to the contrary, including but not limited to the sale or conveyance of all or any part of the Subject Property by Owner, Owner shall at all times during the term of this Agreement remain liable to Village for the faithful performance of all obligations imposed upon it 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 TEN: 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 ELEVEN: 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 TWELVE: Singular and Plural.

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

SECTION THIRTEEN: 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 FOURTEEN: Recording.

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

SECTION FIFTEEN: Authorization to Execute.

The officers of Owner 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 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 SIXTEEN: 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 SEVENTEEN: Public Improvements – Not a Joint Venture or Municipal Project/Contract.

It is understood that Owner has to install certain public improvements under the Village's ordinances, including landscaping (the "Public Improvements"). The Owner is further required to provide to the Village adequate security that the Public Improvements will be satisfactorily completed, with such security being in a form of a cash bond or a letter of credit from an approved bank or financial institution which provides that, if the public improvements are not satisfactorily completed, the Village can draw on the cash bond or letter of credit such amount that is necessary to complete the Public Improvements.

It is understood and acknowledged that the Public Improvements are to be installed by the Owner for the benefit of the future residents/occupants of the Owner's project and are not a "public works" project of the Village and the Village will NOT require the Owner to provide performance and/or payment bonds for the protection of the Owner's contractors, subcontractors or material suppliers. There shall be no implied or express contract between the Village and any contractor(s) hired by the Owner to construct and install the Public Improvements.

It is further acknowledged and understood that the Village is neither a party to nor a joint venturer or partner with the Owner in any contract entered into between the Owner and any

contractor(s) (“Contractor(s)”) it hires to construct and install the Public Improvements. Such contracts are strictly private contracts between the Owner and the Contractor(s) it hires (the “Contracts”). It is further acknowledged that the Village is neither an expressed or implied “third party beneficiary” in any such Contracts, nor can any recourse be had against the Village under any of the terms of the Contracts and/or any bonds required by Owner of the Contractor(s) under such Contracts.

SECTION EIGHTEEN: Counterparts.

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

SECTION NINETEEN: 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: 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 this Agreement shall control and govern.

SECTION TWENTY-ONE: 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-TWO: 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-THREE: 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  
APPS COMMUNICATIONS, INC.,  
an Illinois corporation

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

ATTEST:

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



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 APPS COMMUNICATIONS, INC., an Illinois corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ and \_\_\_\_\_, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

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