

## **DEVELOPMENT AGREEMENT**

### **AN AGREEMENT RELATING TO THE APPROVAL OF A MAJOR DEVELOPMENT, THE MAKING OF REQUIRED IMPROVEMENTS, AND PROVIDING FUNDS, THEREFORE, FOR OUR LADY OF LEBANON CHURCH, LOMBARD, IL**

**This Agreement**, made and entered into this 19th day of August, 2004 by and between the Maronite Catholic Bishop of the United States of America (hereinafter referred to as the "Developer" or the "Owner"), and the VILLAGE OF LOMBARD, a municipal corporation, located in DuPage County, Illinois, (hereinafter referred to as the "Village").

#### **WITNESSETH:**

**Whereas**, the Developer is developing a 2.36 acre tract of real estate situated within the corporate limits of the Village, legally described in Exhibit 1 attached hereto and made a part hereof (hereinafter referred to as the "Subject Property"); and,

**Whereas**, the Developer has prepared final plans as referenced in this document which have been approved by the Plan Commission and the Corporate Authorities of the Village and which, upon receipt by the Village of an Irrevocable Letter of Credit for an amount specified as security for proposed public improvements, and for such other purpose or purposes herein mentioned if any, and upon execution of this Development Agreement, shall be recorded; and,

**Whereas**, plans and specifications for the making of the required improvements within the boundaries of the Subject Property, as prepared by as prepared by N. Batistich, Architects, dated June 28, 2004 have been approved by the Corporate Authorities of the Village, and plans for parkway landscape improvements, public utility improvements, street lighting and storm drainage facilities for the Subject Property, will be submitted for the approval of the Corporate Authorities of the Village and copies thereof have been filed in the office of the Village Clerk of the said Village, which copies by reference thereto are hereby incorporated as a part hereof; and,

**Whereas**, the Developer has entered into contracts or will enter into contracts for the public improvements required to be made within said development of the Subject Property pursuant to Lombard Village Code; and,

**Whereas**, the Developer has also submitted to the Corporate Authorities of the Village certain plans for the development of the Subject Property, which plans are more particularly enumerated as follows and have been submitted to the Plan Commission of Village:

1. Site Plan Submittal (includes concept elevational drawings, floor plans, and site plan): prepared by N. Batistich, Architects, hand-dated June 28, 2004.
2. Landscape Plan, prepared by Donohue & Associates, Ltd., dated June 24, 2004.
3. Lighting Plan, prepared by Bensen Electrical Contracting, Inc., dated June 22, 2004.

The documents listed in this paragraph are attached as Exhibit 2 and made a part hereof, hereinafter referred to as the "Development Plans").

**Now, therefore,** for and in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

**Section 1:** Commencement of construction of the public improvements detailed in the Development Plans may begin only after the Developer has delivered one or more Irrevocable Letters of Credit in a form satisfactory to the Village and issued by a bank or financial institution approved by the Village in an amount equal to 115% of the Developer's Engineer's estimate of cost of construction as approved by the Village's engineer or 115% of actual construction cost for the following improvements ("Public Improvements" as defined per Section 154.703 et. seq. of the Village Code) pertaining to the development as shown on the Development Plans and as further required by the Village as conditions of approval for the proposed development, as detailed in Section 10:

- (a) stormwater detention and related facilities to be constructed on the Subject Property;
- (b) public sidewalks, street lights and parkway trees and sod along the west side of the Grace Street right of way abutting the Subject Property;
- (c) underground utilities (including water distribution system, sanitary sewer system, and storm sewers) with appurtenances; storm water control systems (including retention or detention ponds, drainage ways and related facilities); and all related grading improvements; and
- (d) parking lot pavement, curb and gutter, signage, pavement parking and lighting.

**Section 2:** The Developer agrees to cause the Public Improvements enumerated in Section 1 above to be made and constructed with due dispatch and diligence. The Developer will, when required to bring about progress in the Public Improvement work with due dispatch, take aggressive steps to enforce each contract connected with the construction of said Public Improvements, to the end that said Public Improvements will be duly and satisfactorily

completed within the time or times herein mentioned. The Developer agrees that all work in the construction of said Public Improvements shall be done in a good, substantial and professional manner, that all manufactured materials used therein shall be new and of good quality, that same shall at all times be subject to inspection by the Village, shall all be satisfactory to the Village and shall be subject to the Village's approval. The Developer will, at its sole cost and expense, furnish all necessary engineering services for said Public Improvements.

**Section 3:** The Public Improvements subject to the Letter of Credit and included within the Development Plans shall be completed within twenty-four (24) months following the recording of this Agreement unless otherwise extended by amendment to this Agreement, consented to by the Corporate Authorities of the Village, with said consent not to be unreasonable withheld. All Letters of Credit, assurances, guarantees, acceptances, and related matters shall comply with the Lombard Village Code. In the event that the Village shall be forced to complete the Public Improvements, the Owner/Developer hereby grants a temporary easement to the Village to facilitate the necessary construction activity. The construction of Public Improvements by the Developer and issuance of approvals by the Village for the development shall comply with the following schedule:

(a) Sediment and Erosion Control

Sediment and Erosion control measures shall be implemented as per Chapter 154 of the Lombard Village Code prior to the issuance of building permits or authorization to proceed with mass grading or other improvements to the Subject Property. Said measures shall be maintained during the entire construction process and shall be inspected and repaired as necessary after each significant rainfall. Failure to do so may result in the issuance of a stop work order for any outstanding Public Improvements or building permits.

(b) Tree preservation measures

All necessary tree preservation measures including tagging of trees to be preserved and fencing around the tree drip lines, shall be implemented prior to issuance of building permits, authorization to proceed with mass grading, or any other improvements to the Subject Property.

(c) Authorization to proceed with Public Improvements

Upon approval of the final engineering plans, receipt of all required fees, approval of the Letter of Credit, recording of this Agreement, and completion of items "a" and "b" above, authorization to begin Public Improvements will be given by the Village.

(d) Construction of Storm Water Control System

The storm water management system for that portion of the Subject Property upon which construction activities have begun is to be operational prior to any paving or building construction. An operational storm water management system means that the volume of the storm water detention is adequate for the flow being directed to it and the restrictor outlet is in place and that the system has been reviewed and approved by the Director of Community Development.

(e) Issuance of Building Permits

(1) Foundation-Only Permits

Foundation-only permits may be issued upon completion of adequate construction access to the corresponding building sites and the completion of underground utility work across the street frontage of the subject building site.

(2) Building Permits

Building construction may commence only upon provision of adequate emergency access to the building site (gravel sub base) and an operational fire hydrant within 300 feet of the subject building site.

(f). Acceptance of Public Improvements

- (1) Final Record Drawings (as built), including final grading and all utilities, shall be submitted for the review and approval of the Director of Community Development prior to acceptance of the Public Improvements.
- (2) Engineer's Certification. The Design Engineer is to certify that the detention pond was constructed in accordance with Chapter 151 of the Lombard Village Code, and that the project was constructed substantially to plan.
- (3) All deficiencies described in the final punch list shall be satisfactorily completed and approved by the Directors of Public Works and Community Development.
- (4) A maintenance guarantee in the form of a Letter of Credit shall be submitted and approved. Said guarantee and Letter of Credit shall comply with Chapter 154 of the Lombard Village Code.
- (5) The Public Improvements to be dedicated to the Village shall be accepted by the Corporate Authorities of the Village. Upon acceptance by the Corporate Authorities of the Village, the installation guarantee (Letter of Credit) shall be returned to the Developer.

- (6) The maintenance guarantee Letter of Credit, upon inspection and determination that no deficiencies exist, shall be returned at the time of its expiration.

**Section 4:** Construction Damage to Public Improvements:

Care shall be taken to avoid damage to existing public infrastructure, including, but not limited to, utilities and curbs, during construction. Any public infrastructure damaged during construction shall be repaired to the satisfaction of the Village and in compliance with this Agreement and all relevant Village codes and ordinances.

**Section 5:** Dedication of Public Improvements:

Upon approval and acceptance of the aforesaid Public Improvements by the Village, the Public Improvements located within the Grace Street right of way shall become the property of the Village and subject to its control, and if deemed necessary or desirable by the Corporate Authorities of the Village, a formal dedication or conveyance to the Village shall be made by the Owner and Developer.

**Section 6:** Letter of Credit:

It is expressly understood that this Agreement is conditioned upon and subject to the delivery to the Village of the document provided for in Section 1 above from the financial institution approved by the Village, and subject to the Corporate Authorities of the Village approving same and placing same on file.

**Section 7:** Notices:

All notices or demands to be given hereunder shall be in writing, and served by either personal service or the mailing of such notice or demand by Certified or Registered Mail, return receipt requested. Said notices shall be provided as follows:

to the Owner / Developer at: \_\_\_\_\_  
\_\_\_\_\_

with a copy to: John Pieper, Attorney  
1761 S. Naperville Road, Suite 201

Wheaton, IL 60187

If to the Village: Village Manager  
Village of Lombard  
255 East Wilson Avenue  
Lombard, IL 60148

with copies to: Director of Community Development  
Village of Lombard  
255 East Wilson Avenue  
Lombard, IL 60148

Klein, Thorpe & Jenkins, Ltd.  
20 North Wacker Drive, Suite 1660  
Chicago, Illinois 60606  
Attention: Thomas P. Bayer

or to such other place for any of them as it may in writing designate. Service of any such notice shall be deemed given on the date of personal service or three (3) days from the date of mailing.

**Section 8:** Site Access

Developer (and its contractors) shall keep all streets which provide access to the Subject Property reasonably clean from all mud, gravel and other debris, at all times during and after construction hours.

**Section 9:** Watermain Extension

Section 154.404 (A)(3) of the Village Subdivision and Development Ordinance requires the extension of the public water distribution system requirements for adjacent properties. In lieu of requiring an extension of the watermain to a point parallel with the northern property line of the Subject Property, the Developer shall be required to undertake the following improvements:

1. Concurrent with the issuance of building permits for the Subject Property, the Developer shall be required to extend the public water main within the Grace Street right of way to a point perpendicular to the service line into the proposed principal building as depicted in Exhibit 3 (hereinafter referred to as the "Termination Point").
2. Upon annexation of the property immediately north of the Subject Property (legally described in Exhibit 4, hereinafter referred to as the "Maxwell Parcel")

into the Corporate Limits of the Village and upon the installation of a public watermain from the Termination Point to a point parallel with the northern property line of the Subject Property, the Developer/Owner shall be responsible for the reimbursement of all construction costs associated with the installation of said watermain.

Once the actual final costs of construction are known for the watermain improvements, the Developer/Owner shall fully reimburse the entity constructing the watermain extension improvements. The final cost for the aforesaid watermain improvements eligible for reimbursement shall be reviewed and approved by the Village.

Upon approval of the reimbursement costs by the Village, and upon acceptance of the watermain improvements by the Village, the Village shall provide the Developer/Owner with a statement denoting the approved construction costs of the watermain improvements. The Developer/Owner agrees to reimburse the entity constructing the watermain extension improvements, to be payable by the VILLAGE to the DEVELOPER solely and exclusively from collections from the owners of the Subject Property.

It is further understood and agreed to that under no circumstances will the General Fund of the Village be in any way obligated for said amount to be reimbursed to entity constructing the watermain extension improvements, nor shall the Village be liable for its failure or neglect to collect said costs from the Developer/Owner. The Village is only obligated to pay from those funds the Village actually collects from the Developer/Owner. However, the Developer/Owner recognize and allow the right of Village to shut-off water service to any structures on the Subject Property for failure to provide reimbursement for the watermain improvements within sixty (60) days from the date the request for reimbursement is sent by the Village to the Developer/Owner.

The foregoing reimbursement requirement shall be waived in the event the Developer/Owner acquires title to the Maxwell Parcel.

**Section 10:** Easement for Public Sidewalk

The Developer agrees to provide a cross-access easement for a public sidewalk for any portion of public walkway constructed on the Subject Property (said easement area is depicted in Exhibit 5 attached hereto and made a part hereof); or

**Section 11:** Additional Conditions

The Developer shall incorporate the following recommendations of the Plan Commission as part of the development of the Subject Property:

1. The petitioner shall develop the site essentially in accordance with site plan prepared by Nicholas Batistich Architects, hand-dated June 28, 2004 and made a part of this request.
2. That the conditional use shall be for the construction and operation of a religious institution on the subject property. Should the petitioner or any subsequent property owners seek to operate uses such as, but not limited to, day care facility, pre-school activities, elementary school activities, a conditional use amendment will be required.
3. That the petitioner shall apply for and receive a building permit for the proposed improvements. Said plans associated with the permit application shall also address the comments noted in the Inter-departmental Group Report.
4. That the site shall be constructed and operated in conformance with the Lombard Village Codes.
5. That the relief granted as part of this petition shall be subject to the petitioner executing a development agreement with the Village.
6. That the petitioner shall submit to the Village a final landscape plan to the Village for the transitional yard on the subject property. The plan shall reflect any additional plant materials required as part of the DuPage County wetland approval process and shall include any additional transitional landscape plantings as required by the Director of Community Development.
7. That the petitioner's final landscape plan shall also provide additional landscape plant materials along the south property line, with said planting subject to review and approval by the Director of Community Development.

**Section 12:** Acceptance:

Public Improvements located within the public right of way will be accepted by the Corporate Authorities of the Village after certification by the Village Engineer and Director of Community Development that said Public Improvements are in compliance with previously approved plans, specifications, and relevant codes and ordinances with said certification to not be unreasonable withheld or delayed. All required fees and procedures shall be provided prior to such acceptance. The Owner/Developer shall hold the Village free and harmless and indemnify the Village, its agents, officers and, employees from any and all claims, damages, judgments, costs and settlements including, but not limited to attorneys' fees that may arise from construction, use, repair, or maintenance of said Public Improvements before they are accepted by the Village.



**Section 13:** Binding Effect and Term and Covenants Running with the Land:

This Agreement has been executed on behalf of the Village pursuant to action adopted by the Corporate Authorities of said Village at a meeting of said Corporate Authorities duly held on August 19, 2004.

This Agreement has been executed by the Owner and the Developer and shall be binding on the heirs and assigns of the Developer and of the Owner, but shall not be binding on a unit owner subsequent to the issuance of an occupancy permit for that unit.

This Agreement shall automatically expire upon the expiration of the maintenance guarantee Letter of Credit required at the time of acceptance of the Public Improvements as set forth in Section 3(f)(4) above.

**Section 14:** Defaults and Remedies

In the event of any non-monetary default and/or breach of this Agreement or any terms or conditions by either party hereto or bound by this Agreement, such party shall upon written notice proceed promptly to cure or remedy such default or breach within said sixty (60) days after receipt of such notice; provided, however, that in the event such default is incapable of being cured within sixty (60) day period and the defaulting party commences to cure within said sixty (60) day period and proceeds to cure with due diligence, such party shall not be deemed to be in default under this Agreement. In case such action is not taken or not diligently pursued or the default or breach shall not be cured or remedied within the above time or in the event of a monetary default (time being of the essence with respect to the payment of any sums required hereunder), the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach including but not limited to proceedings to compel specific performance by the party in default or breach of its obligations, but not specific performance of any obligations to construct any buildings or other improvements. The rights of the parties to this Agreement, whether provided by law or this Agreement, shall be cumulative and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it of any one or more of such remedies in relation to the same default or breach by the other party. No waiver made by either party with respect to any specific default by the other party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting party under this Agreement or with respect to the particular default except to the extent specifically waived in writing. Notwithstanding anything contained herein to the contrary, all monetary damages resulting from a breach of this Agreement shall be limited to the non-defaulting party's actual out of pocket costs and expenses resulting from such breach along with all costs and expenses, including reasonable attorneys' fees, incurred by the non-defaulting party in enforcing this Agreement. In the event of any litigation between the parties hereto resulting from a breach of this Agreement, the prevailing party in such litigation, as

determined by final judgment, shall be entitled to an award of its attorneys' fees and costs incurred in such litigation.

**Section 15:** Defaults and Remedies:

In the event of any non-monetary default and/or breach of this Agreement or any terms or conditions by either party hereto or bound by this Agreement, such party shall upon written notice proceed promptly to cure or remedy such default or breach within said sixty (60) days after receipt of such notice; provided, however, that in the event such default is incapable of being cured within sixty (60) day period and the defaulting party commences to cure within said sixty (60) day period and proceeds to cure with due diligence, such party shall not be deemed to be in default under this Agreement. In case such action is not taken or not diligently pursued or the default or breach shall not be cured or remedied within the above time or in the event of a monetary default (time being of the essence with respect to the payment of any sums required hereunder), the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach including but not limited to proceedings to compel specific performance by the party in default or breach of its obligations, but not specific performance of any obligations to construct any buildings or other improvements. The rights of the parties to this Agreement, whether provided by law or this Agreement, shall be cumulative and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it of any one or more of such remedies in relation to the same default or breach by the other party. No waiver made by either party with respect to any specific default by the other party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting party under this Agreement or with respect to the particular default except to the extent specifically waived in writing. Notwithstanding anything contained herein to the contrary, all monetary damages resulting from a breach of this Agreement shall be limited to the non-defaulting party's actual out of pocket costs and expenses resulting from such breach along with all costs and expenses, including reasonable attorneys' fees, incurred by the non-defaulting party in enforcing this Agreement. In the event of any litigation between the parties hereto resulting from a breach of this Agreement, the prevailing party in such litigation, as determined by final judgment, shall be entitled to an award of its attorneys' fees and costs incurred in such litigation.

**In witness whereof**, the parties hereto have caused these presents to be duly executed on their behalf respectively and have caused their respective Corporate Seals to be affixed hereto, all as of the day and year first above written.

Owner and Developer;

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

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

Village of Lombard:

By: \_\_\_\_\_ (Village President)

Attest: \_\_\_\_\_ (Deputy Village Clerk)

**EXHIBIT 1**

**LEGAL DESCRIPTION FOR  
950 NORTH GRACE STREET, LOMBARD, ILLINOIS  
(THE SUBJECT PROPERTY)**

LOT 3 IN THE TERRACE LAKES RESUBDIVISION, BEING A RESUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 31, 2003 AS DOCUMENT R03-485321, IN DU PAGE COUNTY, ILLINOIS.

Parcel Number: 03-32-301-041

**EXHIBIT 2**

**DEVELOPMENT PLANS FOR SUBJECT PROPERTY**

**EXHIBIT 3**

**WATERMAIN EXTENSION EXHIBIT**

**EXHIBIT 4**

**LEGAL DESCRIPTION OF THE MAXWELL PARCEL**

Parcel Number: 03-32-301-025

**EXHIBIT 5**

**PROPOSED EASEMENT FOR PUBLIC SIDEWALK**