

This Instrument Drafted By:
Hoff Barry, P.A. (SBL)
100 Prairie Center Drive, Suite 200
Eden Prairie, MN 55344

**PLANNED UNIT DEVELOPMENT AGREEMENT
DUNKIRK SQUARE POPEYES**

THIS PLANNED UNIT DEVELOPMENT AGREEMENT DUNKIRK SQUARE POPEYES (hereinafter referred to as “**Agreement**”) is entered into this ____ day of ____, 2023 (hereinafter referred to as the “**Effective Date**”), by and between _____, a _____ (hereinafter referred to as “**Developer**”), and the CITY OF MAPLE GROVE, a Minnesota municipal corporation (hereinafter referred to as “**City**” Developer and City sometimes individually referred to as “**Party**” and collectively “**Parties**”).

RECITALS:

WHEREAS, Developer is the fee owner and intends to develop a parcel or parcels of land lying within the City and legally described on attached Exhibit 1 (hereinafter referred to as the “**Property**”); and

WHEREAS, on October 16, 2023, the City Council passed Resolution No. 23-148 (hereinafter referred to as the “**City Resolution**”) conditionally approving the PUD (hereinafter referred to as “**PUD**”) – Concept Stage Plan amendment, PUD - Development Stage Plan, and final plat for the purpose of developing the Property with a 2,500 square foot restaurant with a drive thru (hereinafter referred to as the “**Proposed Use**”). The conditional approval consist of the following: (i) the plans for the Property drafted by Kimley Horn, dated July 12, 2023 (hereinafter referred to as the “**Plans**”), which Plans Title Sheet (Sheet No. C0.0) is attached as Exhibit B to the City Resolution; (ii) the Plans include the Popeyes prototype exterior elevations, dated October 27, 2021; (iii) the Plans include the exterior elevations, drafted by Reprise Architects, Inc.; and (iv) the final plat of Dunkirk Square Fifth Addition, drafted by Egan, Field & Nowak, Inc. (hereinafter referred to as the “**Final Plat**”); and

WHEREAS, this Agreement is entered into for the purpose of setting forth and memorializing the understandings and agreements of the Parties concerning the use of the Property as a PUD and in accordance with the City Resolution, the Plans, and City Code, and putting subsequent owners of the Property on notice of the limitations and obligations of the Parties concerning the Property.

NOW, THEREFORE, it is hereby and herein mutually agreed, in consideration of promises and considerations of City and Developer herein set forth, as follows:

- 1. **INCORPORATION; PLANS.** The above Recitals, the City Resolution, the Plans, the Final Plat, and all exhibits attached to this Agreement are a material part of this

Agreement and are incorporated herein. The Plans may be amended after the Effective Date by request of the Developer and as approved in writing by the City Engineer and/or the City Director of Community and Economic Development, including, but not limited to final building plans. Any such approved amendments to the Plans shall be incorporated into and be part of this Agreement.

2. **ZONING.** The zoning of the Property is B-PUD, Business Planned Unit Development. The zoning governing the Property shall be the City Code provisions of the B, Business zoning district, except as expressly provided for and limited by the City Resolution, the Plans, and this Agreement.
3. **DEVELOPMENT; MAINTENANCE.** Development of, construction on and maintenance of the Property shall be done in accordance with and shall comply, at all times, with the Plans, the City Resolution, this Agreement and all applicable sections of the City Code and other governmental rules and regulations.
4. **PLANNED UNIT DEVELOPMENT REQUIREMENTS.** Unless otherwise expressly provided for in this Agreement or the City Resolution, the Developer shall comply with, to the satisfaction of the City, all of the requirements set forth in the City Resolution, to the satisfaction of the City, prior to the issuance of any permits for the development of the Property.
5. **IRRIGATION.** An irrigation reduced pressure zone (hereinafter referred to as “RPZ”) is required for any irrigation systems and must be installed by the Developer and/or eventual lot owner and tested in accordance with the Minnesota Department of Health Guidelines for Designing Backflow Prevention Assembly Installations (hereinafter referred to as “**Guidelines**”). The initial test results and certification shall be submitted to the City of Maple Grove Public Works Department. Subsequently, the RPZ must be tested, per the Guidelines, at least annually by a certified tester with the results reported to the City of Maple Grove Building Department and the RPZ must be rebuilt as needed in accordance with the Guidelines. Test/rebuilt reports shall be mailed or faxed to the City of Maple Grove Building Department at (763) 494-6424. The irrigation system shall be designed, and the Plans shall be modified accordingly, prior to the issuance of any permits for the development of the Property, to accommodate a 1-inch water meter and a maximum flow of 50 gallons per minute.
6. **DEVELOPER TO PAY ALL COSTS.** Developer shall pay, within thirty (30) days of demand, all reasonable expenses that the City incurs in direct relation to the development of the Property and this Agreement. Said expenses shall include, but are not limited to, staff, engineering, legal and other consulting fees reasonably incurred in relation to this Agreement.
7. **VIOLATION OF AGREEMENT.** In the event the Developer, or their respective successors or assigns, violates any of their respective covenants or agreements herein contained, and such violation is not corrected, or commenced to be corrected

by the Developer, (which correction shall be diligently and promptly pursued and completed), within thirty (30) days after written notice specifying such violation, and unless a different cure period applies pursuant to another section of this Agreement, the City is hereby granted the right and privilege to declare a default in any or all of the terms of this Agreement and pursue any remedies at law or equity against the defaulting Party.

8. **CERTIFICATE OF OCCUPANCY.** No Certificate of Occupancy shall be issued for any building constructed on any lot within the Property until the Developer has complied with all the terms of this Agreement and the City Resolution. If Developer is in default under this Agreement, City may, among other remedies set forth in this Agreement, withhold future Certificates of Occupancy issued for the Property.

9. **NOTIFICATION INFORMATION.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (hereinafter each referred to as a “Notice”) shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); or (b) when received or rejected by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) when received or rejected by the addressee if sent by United States Postal Service via certified or registered mail (receipt requested); provided, that a Notice may be sent by e-mail or telephone where expressly permitted by this Agreement. A Notice must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a Notice given in accordance with this Section):

IF TO CITY:

IF TO DEVELOPER:

City of Maple Grove
Attn: City Clerk
12800 Arbor Lakes Parkway
Maple Grove, Minnesota 55369
Email: Adietl@maplegrovern.gov
Telephone: (763) 494-6000

Email: _____
Telephone: _____

With Copy to:

With Copy to:

Hoff Barry, P.A.
Attn: City Attorney
100 Prairie Center Drive, Ste. 200
Eden Prairie, MN 55344
Email: slandsman@hoffbarry.com
Telephone: (952) 746-2700

Email: _____
Telephone: _____

10. **PROOF OF TITLE/CITY ATTORNEY REQUIREMENTS.** The Developer

shall provide a platting title commitment as required by Minn. Stat. §505.03. The above-mentioned evidence of title shall be subject to the review and approval of the City Attorney to determine the entities must execute the Final Plat and other documents to be recorded against the Property. Further, Developer shall provide the City with evidence, which sufficiency shall be determined by the City, that all documents required to be recorded pursuant to the City Resolution, this Agreement, and by the City Attorney are recorded and all conditions for release of the Final Plat have been met prior to the City processing or approving any building permits or other permits applicable to the development of the Property.

11. MISCELLANEOUS.

- a. Attorney's Fees. If any action is brought to enforce the terms of this Agreement and the City prevails, Developer will pay the City's costs and reasonable attorneys' fees to be fixed by the Court.
- b. Entire Agreement. This Agreement and any other documents incorporated herein by reference constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties hereto, their respective successors and assigns and the benefits and burdens shall run with the Property. Developer shall record this Agreement against the title to the Property along with the recording of the Final Plat. Developer warrants and guarantees that this Agreement shall have priority on the property records over any other lien or encumbrance. Developer shall provide the City with evidence, which sufficiency shall be determined by the City, that this Agreement is recorded and all conditions herein have been satisfied prior to the City processing or approving any building permits or other permits applicable to the development of the Property.
- c. Governing Law. It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Minnesota. Any legal suit, action, or proceeding arising out of this Agreement shall be instituted in state court located in Hennepin County, Minnesota, and each Party irrevocably submits to the exclusive jurisdiction of such court in any such suit, action, or proceeding. The Parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.
- d. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and assigns and nothing herein,

express, or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

- e. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
- f. Time is of the Essence. Time is of the essence in the performance of the terms and obligations of this Agreement.
- g. Modification. Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if evidenced in writing signed by each Party or an authorized representative of each Party.
- h. Warrant of Authority. Developer warrants and guarantees that it has the authority to enter into this Agreement and to make it a covenant on the Property binding all current and future owners.
- i. Compliance with City Code §36-64(b)(5). Pursuant to City Code §36-64(b)(5), the Developer shall make application for and receive (on the condition that the Developer complies with the requirements of the City Resolution, this Agreement and City Code) a building permit and construction activities on the Property shall commence, pursuant to the Plans, this Agreement, the City Resolution and City Code on or before October 16, 2025. In such event of failure of the Applicant to meet the above time frame, this Agreement, the Plans, and the City Resolution and the approvals thereunder for the development of the Property shall become null and void with no further action required by the Parties.
- j. Non-Waiver. The action or inaction of the City shall not constitute a waiver or amendment of the provisions of this Agreement. The waiver by or the failure of the City to enforce any particular section, portion, or requirement of this Agreement at any particular time shall not in any way constitute a waiver of any other section, provision, requirement, time element, or the right to enforce such provision at a subsequent time. To be binding, any amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.
- k. Cumulative Rights. Each right, power, or remedy herein conferred upon the City is cumulative and in addition to every other right, power, or remedy, express or implied, now or hereinafter arising, available to the City, at law or in equity, or under any other agreement, and each and every right, power, and remedy herein set forth or otherwise so existing may be

exercised from time to time as often and in such order as may be deemed expedient by the City and will not be a waiver of the right to exercise at any time thereafter any other right, power, or remedy.

The remainder of this page intentionally left blank; signature pages follow

IN WITNESS WHEREOF, the Parties herein have executed this Agreement as of the Effective Date.

CITY OF MAPLE GROVE,
A Minnesota municipal corporation

BY: _____
Mayor

AND: _____
City Clerk

STATE OF MINNESOTA)
COUNTY OF HENNEPIN)ss.
CITY OF MAPLE GROVE)

On this ____ day of _____, 2023, before me personally appeared Mark Steffenson and Amy Dietl to me known to be the persons described in the foregoing instrument and who did say they are, respectively, the Mayor and City Clerk of the CITY OF MAPLE GROVE, Minnesota, a municipal corporation, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and that said instrument was signed and sealed on behalf of said municipal corporation by authority of its City Council, and said Mark Steffenson and Amy Dietl acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

_____,
a _____

By: _____

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

This instrument was acknowledged before me on this ____ day of _____, 2023,
by _____, the _____ of
_____, a _____, on behalf of said
_____.

Notary Public

EXHIBIT 1

[insert legal description]