

DOCUMENT NUMBER

DOCUMENT TITLE

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**COMMERICAL PLANNED UNIT  
DEVELOPMENT AGREEMENT**

**MEIJER – SUNSET DRIVE**

| THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014 by and between Meijer Stores Limited Partnership, a Michigan limited partnership, having its principal place of business at 2929 Walker Avenue N.W., Grand Rapids, Michigan 49544, hereinafter referred to as the DEVELOPER, and the CITY OF WAUKESHA, a municipal corporation, located in the County of Waukesha, State of Wisconsin, hereinafter referred to as the CITY.

NAME AND RETURN ADDRESS:

City of Waukesha  
Dept. of Community Development  
201 Delafield Street, Room 200  
Waukesha, WI 53188

TAX PARCEL NUMBER:

**WITNESSETH**

WHEREAS, DEVELOPER has submitted development plans for the development of the parcels of land described on Exhibit A attached hereto, being part of Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 14, Town 6 North, Range 19 East in the City of Waukesha as more particularly described as Lots 1, 2 and 3 of Certified Survey Map ("CSM") No. \_\_\_\_\_ (this note to be deleted once document is finalized: Certified Survey Maps to be attached as Exhibit A) (the "Land"), and has requested Commercial Planned Unit Development Overlay zoning, and the CITY has approved the plans, attached as Exhibit B, and rezoned the Land B-5 Community Business, Planned Unit Development (PUD), in order to permit its development pursuant to said plans and to permit development that will over time be enhanced by coordinated area site planning, diversified location of structures, and mixing compatible uses; and

WHEREAS, the conditions herein granted will continue in force and effect and shall be deemed to be covenants running with the Land and which bind the DEVELOPER herein, and all their assigns, successors, and any other persons, partnerships, or corporations that may at any time be actual or beneficial or have any interest in any portion of the Land; and

WHEREAS, the parties hereto agree that all provisions of the B-5 Community Business Zoning, as defined in Section 22.37 of the Waukesha Municipal Code, and all other ordinances, rules, regulations, covenants, and restrictions properly enacted by the CITY now in force and effect or hereafter to be enacted shall apply in all respects to the Land, excepting as modified in and by this Agreement or the Commercial Planned Unit Development overlay zoning ordinance;

NOW, THEREFORE, in consideration of the covenants herein contained, the DEVELOPER covenants and agrees:

- 1. The DEVELOPER acknowledges the CITY's preferred uses for the site include:
  - a. Bakeries.

- b. Banks, credit unions, and other financial institutions with the exception of payday lenders; including drive-in facilities.
  - c. Barber shops.
  - d. Beauty shops.
  - e. Book or stationary stores.
  - f. Business offices.
  - g. Camera and photographic supply stores.
  - h. Clinics.
  - i. Clothing stores.
  - j. Computer and computer supply stores.
  - k. Confectioneries and ice cream stores.
  - l. Delicatessens.
  - m. Department stores.
  - n. Drug stores.
  - o. Electronic equipment sales, equipment and repair.
  - p. Fish markets.
  - q. Florists.
  - r. Fruit stores.
  - s. Furniture stores.
  - t. Furriers and fur apparel.
  - u. Garden centers.
  - v. Gift stores.
  - w. Hardware stores.
  - x. Hobby and craft shops.
  - y. Insurance sales offices.
  - z. Interior decorators.
  - aa. Jewelry stores.
  - bb. Martial arts studios.
  - cc. Meat markets.
  - dd. Music stores.
  - ee. Office supplies and business machine stores.
  - ff. Optical stores.
  - gg. Paint, glass, and wallpaper stores.
  - hh. Pet and pet supply stores.
  - ii. Photography and art studios.
  - jj. Physical fitness centers.
  - kk. Printing, including photocopying.
  - ll. Professional offices.
  - mm. Real estate sales offices.
  - nn. Restaurants
  - oo. Shoe stores and leather goods stores.
  - pp. Sporting goods stores.
  - qq. Tailor or dressmaking shop.
  - rr. Theaters.
  - ss. Vegetable stores.
2. The Land consists of approximately 31 acres, and the proposed development thereon is anticipated to include a grocery and general merchandise facility (with an attached outdoor garden center, in-store pharmacy with drive-thru, and interior leasable space to certain businesses providing goods or services) (the "Meijer Store"), a gas station/convenience store, and two (2) other lots (CSM Lots 2 and 3) reserved for future development in accordance with this PUD and the Waukesha Municipal Code, related site improvements, parking and greenspace, as depicted on the general development plan attached hereto as Exhibit B and is subject to the final approved plans.
3. The DEVELOPER has furnished to the CITY a complete, accurate, and sufficiently detailed set of civil engineering plans and specifications, building plans and specifications, and architectural elevations for the Meijer Store and gas station; the general development plan showing locations of proposed roads, drives, sidewalks, buildings, parking lots, lighting, screening, landscaping, open areas, and utilities; a conceptual master sign plan and monument sign plans, and the DEVELOPER agrees that the proposed development shall be in substantial compliance with the foregoing plans and specifications and any substantial deviation therefrom must accordingly be approved in writing by the proper officials of the CITY, consistent with Section 21 below. Neither this Section 3 nor any other provision of this Agreement, however, shall be construed to require the construction of any building upon the Land.
4. Specific building and architectural plans for the stores other than the Meijer Store and gas station have not been submitted, but they shall be developed generally consistent with the approved site plan, subject to review and approval by the Plan Commission consistent with Section 20 below. Buildings are required to meet Plan Commission's established design standards attached as Exhibit C. Buildings will be constructed using principally decorative masonry as the exterior material/treatment. Parking lot and site lighting fixtures shall be substantially consistent with approved lighting plan for internal circulation drives and Meijer Store.

5. (a) The DEVELOPER shall establish, align, and grade, subject to the approval of the CITY, the drives on the Land, including traffic, bike, and pedestrian improvements to the Land as required by the Plan Commission to accommodate the development, and construct, grade, and improve the same all at the DEVELOPER'S expense, in accordance with the plans and specifications and consistent with the codes, specifications, and regulations of the CITY, with no curbs or bends of less than adequate degree so as to accommodate the use thereof by the fire fighting apparatus of the CITY. The following shall be installed prior to the date of occupancy of the Meijer Store:

- i. Bus shelter and internal sidewalk system as shown on the approved site plan;
- ii. All public sidewalks; and
- iii. All internal crosswalk markings as shown on the approved site plan.

The following shall be installed within one (1) year of the date of occupancy of the Meijer Store:

- i. A permanent public art installation approved by the City of Waukesha Public Art Committee and Plan Commission.

(b) The DEVELOPER shall maintain and service roads and drives on the Land in accordance with the standards of the CITY. In the event said roads and drives are not so maintained and serviced, following notice by the CITY and failure by the DEVELOPER to cure such failure in a commercially reasonable period of time, then the CITY shall have the authority to provide such services and maintenance, and charge the cost thereof against the Land as a special assessment.

6. The DEVELOPER agrees to install at DEVELOPER'S expense water mains within and adjacent to their development in locations approximately depicted on the plans referenced in Section 3 in addition to the water service lateral lines to serve the development in accordance with Waukesha Water Utility rules and regulations and comply with Waukesha Water Utility Developers Agreement. The DEVELOPER agrees to furnish a complete set of plans and specifications to the Waukesha Water utility for approval and provide such additional information as required by the Utility relative to construction and grades of street and/or easements, and grades and locations of sewer facilities, and telephone, electric, and gas installations. DEVELOPER shall pay for water services furnished to the buildings on the Land, subject to present and future water rates.

7. The CITY shall have the right to the extent permitted by the governing statutes, ordinance, administrative regulations, and this Agreement to inspect and, if required and necessary, approve all construction of public improvements not heretofore specifically referred to, including all sewer facilities, water mains, and sidewalks. The CITY shall also have the right, to the extent permitted by the governing statutes, ordinances, administrative regulations, and this Agreement, to go upon any part of the Land at reasonable times for the purpose of making inspections of the afore-described facilities provided, however, that the CITY'S officials shall not interfere with the use and enjoyment of the Land by the owners, operators, and guests thereof.

8. The DEVELOPER shall design the public rights-of-way abutting the Land, including traffic, bike, and pedestrian improvements as well as the traffic signals, signs, street lights, and landscaping associated therewith (the "Road Improvements") consistent with the general development plan attached hereto as Exhibit B and subject to final construction plans and specifications submitted to the CITY and approved by the CITY. The DEVELOPER shall design said Road Improvements consistent with the codes, specifications, and regulations of the CITY. Approval of said final plans shall not be unreasonably withheld and shall be granted by the CITY upon standards and with conditions in accordance with similar projects

undertaken by the CITY. The DEVELOPER shall construct the Road Improvements at the DEVELOPER'S expense, and in accordance with the plans approved by the CITY, within one (1) year of the date of occupancy of the Meijer Store. DEVELOPER shall after construction of the Road Improvements are completed, warrant the Road Improvements against defects due to faulty materials or workmanship, provided that such defects appear within a period of two (2) years the date of completion of construction.

9. The DEVELOPER shall prepare, grant, execute, and deliver to the CITY, in recordable form and otherwise in a form and substance reasonably acceptable to the parties, the easements over and above all of the water mains and public facilities on site for the purpose of inspecting, maintaining, and servicing any of the previously described facilities. The easements shall be of sufficient dimensions and approved by the proper CITY officials. The easements shall prohibit the construction of any building or structure of any nature or fences upon any of the areas described in the easements and shall prohibit trees or shrubs more than four (4) feet in height. The DEVELOPER shall, upon notice from the CITY, remove or have removed any buildings, improvements, fences, trees, or shrubbery from any of the areas described in the easements that are prohibited as here in provided.
10. DEVELOPER shall construct and maintain private lighting facilities and install landscaping as indicated on the approved plans and specifications. The City's Planning Staff shall inspect the Land upon completion and may require additional landscaping where necessary to contribute to safety or to improve the appearance of plain, unsightly views of structures. Completion of the following shall be completed within one (1) year of the date of occupancy of the Meijer Store.
  - i. Landscaping on the Meijer store and gas station site as shown on the approved landscape plan;
  - ii. Landscaping along all shared drives and entrances of the Meijer store and gas station site as shown on the approved landscape plan;
  - iii. All undeveloped lots must be seeded and maintained per city ordinances; and
  - iv. Lighting along internal circulation drives as shown on approved lighting plan.

As part of any development of the undeveloped outlots (CSM Lots 2 and 3), the outlet owner shall complete landscaping along all shared drives and entrances adjacent to the outlet site in accordance with Section 22.18 of the Waukesha Municipal Code within one (1) year of the date of occupancy of the outlet development.

Completion of landscaping on each store building pad site shall be completed within one (1) year of the date of occupancy of the store thereon. The DEVELOPER shall tender a performance bond for the landscaping and transformer location on the relevant store building pad site before issuance of a building permit for such store.

In the event that the general site landscaping listed in Section 10.i-iv. above is not completed within one (1) year of the date of occupancy of the Meijer Store, or landscaping on individual lots covered by this PUD are not completed within one (1) year of the date of their occupancy, subject to delays beyond DEVELOPER'S control, the CITY may, at its election, utilize the proceeds of the performance bond to complete landscaping as set forth in the general site landscaping plan. If a transformer is installed in a location other than shown on the approved plans for each building pad the CITY may utilize the proceeds of the performance bond to move the transformer to the approved location or mitigate its visibility.

11. All trash, refuse, and debris are to be kept within an enclosed area of each store or a formal trash enclosure approved by the Plan Commission until collection. All maintenance and collection expenses are to be the responsibility of the DEVELOPER and all owners, lessees, operators, and occupants of the development as well as their respective successors and

assigns. The CITY will offer to provide collection of recyclables according to the City's policies and procedures provided that an agreement between the CITY and the owner or operator of the store being serviced is properly executed by each party. The CITY has the right to discontinue the collection of recyclables.

12. Title to the entire Land shall be subject to an operation and easement agreement among the owners of the Land governing the use, operation, maintenance, repair, design, and construction of the entire development and creating easements as may be necessary for parking, access, utilities, signage, and similar rights. DEVELOPER shall provide the CITY with a copy of such agreement and all amendments thereto prior to the recording of any such documents.
13. The parties acknowledge that CITY'S impact fee ordinances, now in force and effect or hereafter to be amended or adopted, shall apply in all respects to all the lots covered by this PUD agreement. Fees are due at the time building permits are issued.
14. The DEVELOPER agrees that construction of any buildings and improvements shall be in conformity with the Building Code of the CITY and the Codes of the State of Wisconsin, in such cases as applicable.
15. The CITY agrees and acknowledges that the costs, fees, contributions, and assessments due to the City in connection with development of the Land as contemplated herein are set forth in applicable City ordinances and that there are no outstanding assessments on the Land.
16. The DEVELOPER hereby specifically declares and agrees that the restrictions and covenants described in this Agreement shall run with the land and inure to the benefit of the CITY and be binding upon the DEVELOPER and all owners, lessees, operators, and occupants of the development as well as their respective successors and assigns. The CITY may enforce the same, in the event of violation, as permitted under the zoning codes of the CITY as the same now exist, or as they may hereinafter be amended or adopted, subject to the conditions and limitations herein contained. Notwithstanding the foregoing, in no way shall the CITY be deemed a third party beneficiary of the operation and easement agreement among the owners of the Land described above. This Agreement shall be subject and subordinate to the lien of any first mortgage lien holder now or hereafter placed upon the Land. It is understood that DEVELOPER may transfer the Land or any part thereof, and that whenever such a transfer occurs, the transferor shall have no further liability for breach or covenant occurring thereafter, provided any such transferee agrees to assume the obligations of DEVELOPER with the respect to the portion of the Land so transferred.
17. Invalidity of any one of the foregoing restrictions and covenants by judgment or court order shall in no way affect any of the other restrictions and covenants, each of which shall be construed and deemed severable and all of which not so invalidated shall remain in full force and effect.
18. To the extent that either party to this Agreement is granted discretion in the performance of that party's duties or obligations under this Agreement, such discretionary acts shall be undertaken in a reasonable manner and in good faith, taking into account the entire Agreement and the intention of the parties.
19. The CITY will record this Agreement with the Register of Deeds following its execution by the CITY and the DEVELOPER. The cost of recording the document will be paid by the DEVELOPER.
20. The following departures from B-5 Community Business standards are hereby specifically approved for the development of the Land:

- (a) Drive-thrus for banks, restaurants, drug stores, and similar retail uses shall be permitted uses.
- (b) Outdoor patio seating shall be permitted at all restaurants.
- (c) Pet services such as boarding and veterinary services shall be permitted but only as ancillary accessory uses to a primary pet supply store use.

(d) SETBACKS

- i. Lots need not have any frontage on public streets, provided that adequate alternative access, including private driveway easements, is provided.
  - ii. All side lot lines other than those listed above with specific setback requirements along entry drives shall be ignored to allow paving and parking over lot lines, light spillover, and general crossover for parking, access, utilities, signage, drainage, and other integrated operational characteristics. The Plan Commission shall permit cross access and cross parking —throughout all parking lots at the development. The Plan Commission may require cross access and parking between CSM Lots 2 and 3 and parking lots if it feels that it promotes a reduction in the amount of parking needed to serve the Land or promotes orderly and efficient traffic movement through the Land. If cross parking is required by the Plan Commission, businesses and/or property owners may sign up to 1 space per 450 square feet of floor area limiting use of the parking spaces to customers of said business during that business's normal hours of operation. If a business or property owner chooses to sign parking spaces restricting access, as explained above, enforcement of those parking restrictions shall be the sole responsibility of the property owner or tenant.
  - iii. All lot lines other than the exterior lot lines of the Land shall be ignored in calculating green spaces, landscape islands, and parking areas and in identifying buffers, and screening.
  - iv. Buildings on CSM Lots 2 and 3 may be setback a minimum of 25 feet from the property line adjacent to the Tenny Avenue and/or Sunset Drive rights-of-way. A minor amount of the required parking for the outlot developments should be adjacent to Sunset Dr. The majority of the parking should be adjacent to the internal roadway.
  - v. A setback buffer of a minimum of 15 feet from the public rights-of-way or adjacent property lines of the Land shall be provided with the exception of maintenance paths and retaining walls for which a minimum of 5 feet shall be provided consistent with the approved site plan.
- (e) Parking may be reduced (or never developed) so long as an average parking ratio for CSM Lot 1 is maintained of at least 3.5 spaces per 1,000 square feet of Meijer Store and fuel center/convenience store building area consistent with the approved site plan, for any restaurants developed on CSM Lots 1 and/or 2, 1 space per 3 restaurant seats at maximum capacity (not including outdoor restaurant patio seating). All parking requirements in 22.53 of the zoning code except for those specifically addressed in this agreement will be in effect.
- (f) A master sign plan and monument sign plans as approved by the Plan Commission and the Sign Review Board (only with respect to deviations from City Code Chapter 27, the Sign Appeals Board) will accommodate coordinated development-wide sign designs.
- (g) The widths of access drives to the public rights-of-way shall be permitted to exceed 35 feet at the curb and 30 feet at the sidewalk consistent with the approved site plan and the Road Improvements.

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(h) Retaining wall heights shall be permitted to exceed ~~six-ten (610)~~ feet consistent with the approved site plan.

21. Modest changes, deletions, or additions of no greater than 20 feet or 5% for any single dimension or area or changes in amounts of approved building materials and/or colors may be approved by City staff. More significant changes, not altering the character of the site and including but not limited to architectural elevations for any buildings shown on Exhibit B and consistent with approved plans, may be approved by the Plan Commission in the same manner that the Plan Commission approves plans and specifications under Zoning Code Sections 22.15 and 22.37(g). Substantial alterations in building pads from those depicted on Exhibit B or architectural schemes entire inconsistent with approved plans must be approved by the Common Council following a public hearing and consistent with Zoning Code Section 22.52(6).
22. The CITY agrees to look solely to the interest of the DEVELOPER in the Land for the recovery of any judgment from DEVELOPER; it being agreed that neither DEVELOPER nor its respective partners, directors, officers, members, managers, or shareholders shall be personally liable for such judgment.
23. The CITY agrees that it will from time to time, upon request by DEVELOPER, execute and deliver to DEVELOPER and to any parties designated by DEVELOPER within ten (10) days following demand therefore, an estoppel certificate certifying (1) that this Agreement is unmodified and in full force and effect (or if there had been modifications that the same is in full force and effect as so modified), (2) that there are no defaults hereunder (or specifying any claimed defaults), and (3) such other matters as may be reasonably requested by DEVELOPER.
24. The CITY and DEVELOPER each agree to do, execute, acknowledge, and deliver any and all other reasonable documents and instruments and to take all such further reasonable action as shall be necessary or required in order to fully carry out this Agreement and to fully consummate and effect the transactions contemplated hereby.
25. All conditions to the B-5 Community Business PUD / Planned Unit Development Overlay Ordinance recommended by the Plan Commission at their May 8, 2013 meeting and adopted by the Council at their October 15, 2013 meeting as set forth on the attached Exhibit C are hereby incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have attached their signatures and seals at the date above written.

MEIJER STORES LIMITED PARTNERSHIP, A Michigan  
Limited Partnership (DEVELOPER)

By: Meijer Group, Inc.,  
Its: General Partner

By \_\_\_\_\_  
Michael L. Kinstle

Its Vice President-Real Estate \_\_\_\_\_

STATE OF MICHIGAN       )  
                                      )  
COUNTY OF KENT        )       SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 2014 before me, a notary public, in and for said County, personally appeared Michael L. Kinstle, the Vice President Real Estate for Meijer Group, Inc., the General Partner of Meijer Stores Limited Partnership of Grand Rapids, Michigan, to me known to be the person described in and who executed the within instrument and acknowledged the same to be the free act and deed of Michael L. Kinstle on behalf of DEVELOPER.

\_\_\_\_\_  
Notary Public, State of Michigan  
My Commission: \_\_\_\_\_

(SIGNATURES CONTINUED ON FOLLOWING PAGE)

CITY OF WAUKESHA, A Municipal Corporation (CITY)

\_\_\_\_\_  
Shawn N. Reilly, Mayor

\_\_\_\_\_  
Gina Kozlik, Deputy City Clerk

STATE OF WISCONSIN     )  
                                      ) SS  
COUNTY OF WAUKESHA    )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, Shawn N. Reilly, Mayor, and Gina Kozlik, Deputy City Clerk of the City of Waukesha as the persons who executed this instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, County of Waukesha

My Commission: \_\_\_\_\_

This instrument was drafted by Julie Gay.

## EXHIBIT A

## EXHIBIT B

## **EXHIBIT C**

### **Plan Commission Standards as established at the time of the signing of this agreement.**

#### **CURBING**

All paved areas must be curbed.

#### **TRASH ENCLOSURES**

Trash and recycling areas shall be fully enclosed by a masonry wall of a material compatible with the building, seven (7) feet tall, with gates consisting of cedar boards on a metal frame.

#### **GRADING**

Parking areas should not be steeper than 5% or flatter than 1%.  
Green areas should be no steeper than 3:1.

#### **RETAINING WALLS**

Must be made of decorative masonry.  
No wall may be higher than five (5) feet.  
Terraced walls must be separated by at least five (5) feet.

#### **LIGHTING**

Must be decorative fixtures on maximum twenty (20) foot poles on four (4) foot bases.  
Must be high-pressure sodium or LED with a correlated color temperature of 4000k or less.

#### **ROOF-TOP MECHANICALS**

Must be screened with a material compatible with the material of the building.  
Screening must be as high as the unit being screened.  
Screening and the roof-top units must be shown on the final building elevation drawings.

#### **ARCHITECTURAL DESIGN**

##### **COMPATIBILITY**

The architectural design of each building must be compatible with the design of other buildings in the area.

##### **WRAP-AROUND ARCHITECTURE**

All sides of the building shall be designed with details that complement the front façade. Side and back facades that are visible from the street or to the public shall receive equal design attention.

##### **WALL MATERIALS**

Durable exterior materials shall be used. Materials such as masonry, stone, stucco, and wood are encouraged. Except for M-1 and M-2 districts, metal is not allowed as the primary building material, though it may be used for accents.

Where masonry is used for exterior finish, decorative patterns must be incorporated. Examples of these decorative patterns include multicolored masonry units such as brick, stone, or cast stone, in layered or geometric patterns, or split-faced concrete block to simulate a rusticated stone-type construction. Plain concrete block is not acceptable.

The use of false brick or other “faux” sidings is discouraged. The lower portion of each wall shall be brick, stone, or masonry to minimize damage to the building.

Painting of brick and stone is discouraged.

Wood siding must be bevel, shingle siding, or channel siding.

Buildings must incorporate changes in relief on at least twenty (20) percent of their primary façade and at least ten (10) percent of each remaining façade. Relief changes include cornices, bases, fenestration, fluted masonry, or other treatments.

#### WALL PLANES

Single, large building masses shall be avoided. A minimum of twenty (20) percent of each façade shall employ actual façade protrusions or recesses such as fascias, balconies, canopies, arcades, building setbacks of 3 feet or more or other multidimensional design features to break up large wall surfaces.

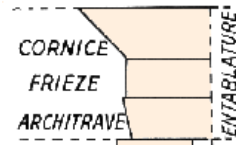
#### WINDOWS

Window and door placement should be used to avoid large blank walls on elevations visible from the street or to the public. Every façade that faces a public street must contain at least twenty (20) percent of the wall area in display windows, windows, or doorways. This standard is lowered to ten (10) percent for all other walls that are visible to the public.

#### ROOF LINES

Roofs and the tops of building walls shall be designed to sufficiently break planes and horizontal lines, reflect sunlight, and add interest to the structures they are a part of and to minimize buildings from appearing as big, flat boxes.

Decorative devices, such as molding, entablature, and friezes, are expected at the roofline. Where such ornamentation is present in the form of a linear molding or board, the band must be at least eight inches wide.



A minimum of twenty (20) percent of all of the combined linear roof eave or parapet lines of the structure shall employ differences in height. For buildings over fifty thousand (50,000) square feet, such differences must be generally four (4) feet or more as measured eave to eave or parapet to parapet, and shall be in proportion to the scale of the building.

