

**PLANNED UNIT DEVELOPMENT AGREEMENT
PANERA BREAD - LATHRUP VILLAGE, MI
City of Lathrup Village, Oakland County, Michigan**

This Planned Unit Development Agreement (“Agreement”) is made this ____ day of _____ 2022, by and between Golden Gate Plaza, LLC, 27777 Southfield Road, Lathrup Village, MI 48076 (“the Owner”), Panera LLC, 3630 South Geyer Road, Suite 100, St. Louis, MO 63127 (“the Developer”) and the City of Lathrup Village (“the City”), a Michigan municipal corporation, whose address is 27400 Southfield Road, Lathrup Village, MI 48076. The Owner, Developer and City are sometimes referred to in this Agreement as “Parties” and individually as “Party.”

WITNESSETH:

This Agreement is made based on the following underlying facts and circumstances:

- A. The Owner is the owner in fee simple title of 0.91 acres of real property in the Village Center in the City, located on the east side of Southfield Road, south of Sunset Boulevard West, more particularly described in Exhibit A attached to this Agreement. The Developer is the lessee of said real property.
- B. Prior to execution of this Agreement, the Property was zoned VC, Village Center. Upon execution of this Agreement the Property shall only be developed in accordance with this Agreement, pursuant to Section 3.12 of the City’s Zoning Ordinance.
- C. The Developer proposes to develop the Property with a restaurant with a drive-thru component pursuant to a comprehensive development plan known as Panera Bread - Lathrup Village, MI Planned Unit Development (which may hereinafter be referred to as the "PUD" or "Planned Unit Development").
- D. Pursuant to requirements in the Zoning Ordinance, the Developer has submitted to the City, and the City has approved, site and development plans, an Application for Planned Unit Development, and supporting documentation (collectively the "Plans" - Exhibit B).
- E. Subject to execution and recording of this Agreement, Panera Bread Planned Unit Development illustrated and described in this Agreement and in the Exhibits attached hereto, is hereby approved in accordance with the authority granted to and vested in the City pursuant to Michigan Public Act 110 of 2006, as amended (the Michigan Zoning Enabling Act); Michigan Public Act 33 of 2008, as amended (the Michigan Planning Enabling Act); and in accordance with the Zoning Ordinance of the City of Lathrup Village, as amended, except as modified herein and subject to the terms of this Agreement. The approval of the Panera Bread Planned Unit Development does not relieve the Developer from compliance with applicable provisions of the City’s Zoning Ordinance, except as modified herein, nor shall it be deemed to confer any approval other than required by law.
- F. The City, Owner and the Developer now desire to enter into this Agreement which, among other things, shall set forth the mutual and respective covenants, obligations and undertakings of the City and Developer with respect to the Planned Unit Development.

NOW, THEREFORE, in consideration of the foregoing premises, which the City, Owner and the Developer represent to be true and accurate, and which shall become part of the Parties' obligations herein, and the mutual and respective covenants, obligations, and undertakings of the Parties set forth below, the Parties, intending to be legally bound by this Agreement, agree as follows:

1. **Permitted Use of the Property.** The "Planned Unit Development" zoning classification shall permit the Developer to develop the Property, and the Developer agrees to develop the Property, in accordance with the approved Plans and terms of this Agreement for the following uses: The existing, vacant, one-story building is approximately 5,000 square feet with a drive-thru service area that served a former bank. The site is currently accessible from both Southfield Road and Sunset Boulevard. The applicant is proposing to remove the existing building and build a new one-story structure with vehicular drive-thru lanes for the purpose of a restaurant. (See Exhibit B).
2. **History of Review Procedures and Action Taken by the Planning Commission and City Council.** The following is a summary of the actions taken by the Planning Commission and City Council relative to this project:
 - a. Planned Unit Development Conceptual Review. Review by the Planning Commission on April 19, 2022.
 - b. Planned Unit Development Preliminary Review. Review and public hearing by the Planning Commission on May 17, 2022.
 - c. Planned Unit Development Final Review. Approval by the City Council on June 1, 2022.
3. **Plans and Documents Submitted by the Applicant.** The approved Plans for the Planned Unit Development incorporate the material representations of the Developer made in the following plans and documents submitted in pursuit of Planned Unit Development approval to the extent that such representations are not inconsistent with the recitals and terms contained herein:
 - a. Applications for Amendment to the Zoning Ordinance to Create a Planned Unit Development District, dated April 29, 2022, signed by Todd Bundren of the Lawrence Group on behalf of Panera Bread. (Exhibit C).
 - b. Traffic Impact Assessment, prepared by Stonefield, dated June 8, 2022. (Exhibit D).
 - c. Application for Site Plan Review prepared by Jenna Samples of Panera Bread, LLC, Dated June 9, 2022. (Exhibit E).
 - d. Site Development Plan, prepared by Civil & Environmental Consultants, Inc. on April 27, 2022 and submitted by The Lawrence Group June 9, 2022, consisting of the following:
 - i. Site Plan (Exhibit F)
 - ii. Photometric Plan (Exhibit G)
 - iii. Architectural Drawings (Exhibit H)

1. Floor Plans
2. Exterior Elevations
3. Renderings
- iv. Drive-Thru Sound Levels (Exhibit I)
- v. Drive-Thru Sound Pressure (Exhibit J)
- vi. Drive-Thru Hyperview Literature (Exhibit K)
- e. Landscape plans prepared by Evergreen Design Group, dated April 27, 2022 and submitted by The Lawrence Group, June 9, 2022. (Exhibit L)
- f. Sign Plan.
Cut sheets of principal rooftop mechanicals (Exhibit O)

The City enters into this Agreement on the assumption that all plans and supporting documentation submitted to the City are true and accurate. If any plans, documents, or statements that are material to the project are materially untruthful or inaccurate, then such plans, documents or statements shall be deemed a violation of the Zoning Ordinance. The remedies for such a violation shall be such as are provided by law or equity for violation of a zoning ordinance. If there are discrepancies between the supporting documentation and this Agreement, including Exhibits, this Agreement shall apply.

4. Effect of Planned Unit Development Approval.

- a. The Developer and the City acknowledge and agree that approval of the PUD constitutes approval of the Planned Unit Development Plans as the Plans for the general configuration, location and amount of land occupied by permitted uses, and setbacks, subject to final site plan review and approval.
- b. References in this Agreement to activities by the Developer in relation to this Planned Unit Development are intended to include the Developer's transferees, assigns, and any subsequent owner of the Property, unless the context dictates otherwise.
- c. To the extent that development of the Property in accordance with this Agreement and Plan deviates from Zoning Ordinance regulations, this Agreement and the Plan shall control. All improvements constructed in accordance with this Agreement and Plan shall be deemed conforming under the Zoning Ordinance. All references in this Agreement to the Zoning Ordinance shall be deemed to refer to the Zoning Ordinance in effect as of the date of this Agreement. The Project shall not be subject to any additional zoning requirements contained in any amendment or additions to the Zoning Ordinance that conflict with the provisions of this Agreement or the Plan, unless the Plan is materially altered at the request of the Developer and with the approval of the City.

5. **Permits from Review Authorities.** All permits or approvals from review authorities or agencies that have jurisdiction shall be submitted to the City of Lathrup Village prior to the start of construction, including but not necessarily limited to the Road Commission for Oakland County, Oakland County Water Resources Commissioner, the Michigan Department of Environmental Quality, City Engineer, and City of Southfield Fire Inspector. It shall be the responsibility of the Developer to obtain all required permits and approvals.

6. **Landscape and Streetscape Plans.**

- a. The Planned Unit Development shall be developed in accordance with the landscape plans, as prepared by Evergreen Design Group, dated April 27, 2022. Changes in the species and locations of plantings may be approved by the City Planner if consistent with the spirit of the landscape plans and provided that details regarding the proposed changes are submitted prior to installation of any plant material. The City shall not be responsible for unapproved plant material acquired by the Developer.
- b. The Developer shall be responsible for street tree plantings.
 - i. Spacing: Trees must be provided along the Primary Road streetscape, with a typical spacing of fifty (50) feet on center. Due to the physical constraints of the property and availability of green space for tree planting, the applicant/developer shall consult with a registered arborist or licensed landscape architect to select the appropriate street trees and prepare proper installation specifications. This landscape plan shall be submitted to the City for administrative review and approval.
 - ii. Tree wells: Tree wells in sidewalks must be 5 ft. by 5 feet with a 3.5 ft. minimum depth. Perimeter fencing shall not be permitted.
 - iii. Clear vision: Trees shall not be placed closer than thirty feet (30') from intersections, nor be placed in the clear vision triangle.
 - iv. Irrigation: Irrigation systems servicing landscape within the property line must be installed at the time of development.
 - v. Maintenance of public realm: To the extent required by any local ordinance or code, the Owner shall maintain the portion of the street between the lot line and back-of-curb and, if applicable, the portion of the alley between the lot line and the edge of pavement.
 - vi. Plant Selections: Plants should be chosen for specific locations based on size and mass at maturation as well as ease of maintenance.
 - vii. The currently undeveloped portion of the Property, west of the proposed improvements, shall remain landscaped as is.
 - viii. Waste from restaurant customers shall be contained on site utilizing a single-purpose trash receptacle located at the northeast corner of the site and a multi-functional waste receptacle located in the outdoor dining area.

- ix. The plaza shall be concrete with a decorative/stamped treatment. The pedestrian crossing through the parking lot from the northeast plaza to the restaurant building shall be marked and striped accordingly.
- c. Street Lighting.
 - i. Pedestrian-scaled lighting shall provide a minimum of one foot candle of warm light between the building face and the curb.
 - ii. Streetlights are required with any new development or redevelopment and must be of the type identified by The City.
 - iii. Lighting shall be consistent with the approved site plan and compliant with ordinance requirements.
- d. Street Furniture.
 - i. Street furnishings must be placed within the Amenity Zone, which is defined as the five (5) feet between the curb face and the pedestrian zone. The plans do not comply with this standard as there is no build-to zone for any of the adjacent streets proposed for this development.
 - ii. Street furnishings shall be placed at least 2.5 feet from the curb face where on-street parking occurs, and 5 feet where travel lanes adjoin the curb, subject to road commission approval, where required.
 - iii. Planter walls, where proposed, shall be a minimum width of ten inches (10") and two and one-half feet (2.5') in height, and brick to match pavers. Planter walls shall be located at intersections and placed at evenly spaced intervals along the block.
 - iv. Street furnishings must be those identified by the City.
- e. Open Space Standards.
 - i. Location: Public open spaces should be practically located so that the public is aware of their location.
 - ii. Function: All open spaces should be functional and purposeful, yet flexible to provide for a variety of uses.
 - iii. Amenities: Outdoor furniture (benches and tables), art or sculptures, landscaping, change in the type of pavement, semi-enclosure to define the space, drinking fountains, and trash receptacles should be added to defined open spaces. The proposed amenities for the development are benches for seating, a bicycle parking rack, and pedestrian lighting.
 - iv. Awareness: Wayfinding signs should be used to direct the public to the location of open spaces, municipal parks, or trailheads, provided, however, that any such sign area shall not be deducted from the total sign area otherwise allowable for the Planned Unit Development.
 - v. Security: Open spaces shall be well-lit, well-maintained and allow for clear views to create a safe environment.
 - vi. Maintenance. The site is to be continuously maintained free of trash and debris, which shall be collected daily. The site shall be

continuously inspected and maintained free of trash and debris. Dumpsters shall be emptied as often as needed to prevent pests, blowing trash and odor.

- f. The City shall not be required, by special assessment or otherwise, to pay for the upkeep or replacement of landscaping in the Planned Unit Development.
- g. A landscaping bond shall be deposited with the City by the Developer or Developer's general contractor prior to scheduling of a pre-construction meeting to cover the full cost of all landscape plantings and landscape features, including street trees, within the Planned Unit Development as shown on the landscape plans. The amount of the bond shall be based on the City Planner's estimate. The bond shall be released after landscaping has been properly installed, as determined by inspection by the City Planner or his/her designee. If the landscaping is completed in stages, partial release of the bond may be approved after completion of each stage.

7. **Architectural and Site Design Guidelines.** The Planned Unit Development shall be developed in conformance with the following architectural and site design guidelines:

- a. **Zoning Development Requirements.** The required setbacks and other dimensional standards shall be in accordance with the approved Plans for the PUD, including but not limited to the Site Development Plan.
- b. **Building Elements.** The requirements listed in this subsection shall apply to all front-facing and exterior-side facing facades as well as facades that directly face a park or plaza. Walls shall not be blank. Walls shall include windows and architectural features customarily found on the front of a building in a traditional downtown setting such as awnings, edge detailing, cornice work, decorative materials, and decorative lighting. The following additional requirements shall apply:

- i. **Building Composition:** Building facades shall be comprised of two distinct components: a base or ground floor and a top.

- 1. **Base:** The base of a building shall be designed to clearly define where the building begins. It shall enhance the pedestrian experience by providing quality durable materials as well as ample windows that encourage views into a ground floor space. The applicant states and the City approves:

- a. A brick surface has been doubled as compared to the new building prototype, including brick on all four sides. Brick surfaces have been enhanced with alternating vertical and horizontal soldiers, adding interest and texture.

- b. The use of large windows both brings a connection between the exterior and interior along with an abundance of comfortable, natural light for the interior dining experience. These same windows also provide a

warm glow as you approach the café at dusk and throughout the evening hours.

Frontage base types shall be one of the following on Primary Roads (Southfield Road):

- i. Arcade: A façade featuring a series of arches and columns. -N/A
 - ii. Storefront: The front façade build-to line is at or near the edge of the right-of-way (within the build-to-zone). The entrance to the building, which may be recessed, is at the grade of the sidewalk. While the plans indicate a number of pedestrian-focused improvements, the “Storefront” base type along primary roads shall require the front façade build-to line being at or near the edge of the right-of-way (within the build-to-zone). The entrance to the building, which may be recessed, is at the grade of the sidewalk. The proposed facility does not utilize a build-to zone as defined by the ordinance, and therefore only partially complies with this standard.
2. Top: The top of the building will distinguish the building with a cornice or noticeable roof edge. Flat roofs shall be enclosed with parapets. Rooftop mechanical and other equipment shall be positioned and screened to minimize views from adjacent properties and obscure views from the public rights-of-way.

ii. Windows and Doors

1. Generally

- a. Materials: Structural elements to support canopies or signage, along with mullion and frame systems for windows and doors shall be painted, powder-coated or stained (or the equivalent). Glass shall be clear or lightly tinted. Reflective glass is not permitted.
 - b. Shutters: When shutters are used, whether operating or decorative, they shall be equal to the width of one half of the adjacent window opening.
 - c. Facade Openings: All porches, doors, colonnades, and upper floor windows, shall be vertically proportioned.
2. Ground Floor windows and doors
- a. Integral Design: All storefronts shall have doorways, windows, and signage that are integrally designed.
 - b. Transparency: Each storefront shall have transparent or lightly tinted areas, equal to at least 70 percent, but not

more than 90 percent of its portion of the façade, between two (2) and eight (8) feet from the ground. These required window areas shall be either windows that allow views into retail space, dining areas, office work areas, lobbies, pedestrian entrances, merchandise display windows or other windows consistent with encouraging an active pedestrian environment along the storefront.

- c. Entry: At least one functioning doorway shall be provided for every street-facing storefront, with the primary entrance on the street. As applicable for a single ground floor use, one doorway shall be provided for every 75 feet in horizontal building length.

iii. Building Materials

- 1. Facing street, park, or plaza. At least 90% of all exterior building façades facing a street, park, or plaza shall be finished with a combination of two or more of the following: Glass, brick, cut or cast stone, wood, cementitious board (e.g., Hardie Plank), integrally colored concrete units with brick proportions (e.g., half-high “C” brick), and textured stucco.
- 2. Facing other buildings: at least 70% of the exterior facade shall consist of the materials specified in iii.1. above and may also include split-faced, scored, or fluted block. The south side of the building contains the drive through window.
- 3. Variation: There shall be a change in the vertical or horizontal building plane when there is a change in color or material. Street facing facades shall be divided vertically into segments no greater than sixty (60) feet wide.

- iv. **Corner Buildings.** Buildings located at a street corner shall have appropriate architectural features and details that accentuate its prominent corner location through additional building height and /or adding a building peak or tower element at the corner. Other creative techniques may be used, subject to the acceptance of the Planning Commission. Special architectural corner features may be permitted to exceed the maximum building height by up to ten (10) feet if deemed appropriate by the Planning Commission. While substantially setback from the build-to zone, the northeast corner of the building at Southfield Road and Sunset Boulevard is accentuated with a distinguished architectural tower. Prominent windows on the east side and the outdoor seating area on the north further address the intent of corner building standards.

- v. **Canopies and Awnings.** Facades may be supplemented with awnings that do not serve as signage but meet the following:

1. Style & Height: Straight sheds shall be used. Awnings shall be at least 8 feet above sidewalk grade at the lower drip edge.
 2. Encroachment: Awnings may encroach beyond the front or street-side Build-to-Zone and into the street right-of-way or easement but must avoid the canopy area of street trees (based on tree maturity); and be set back a minimum of five (5) feet from the face of the road curb. Awnings shall be positioned immediately above the ground floor window, in scale with the window and overall building facade. The proposed building is not near the build-to-zone, so this standard does not apply.
 3. Colors: Awnings shall be complementary to the building facade.
 4. Materials: Awnings shall be constructed of a durable material such as canvas or other material approved by the Building Official that will not fade or tear easily. Plastic and vinyl awnings are not permitted.
 5. Signage: The vertical drip of an awning may be stenciled with signage a maximum of 8 inches by a horizontal length not to exceed 80 percent of the awning width.
- vi. **Balconies and Overhangs.** Balconies and overhangs may be added to facades with the following conditions:
1. Balconies and overhangs shall not extend more than six feet from the building face.
 2. Materials shall be compatible with the building and be integrally designed.
- vii. **Building Lighting.**
1. Height: For building fronts, exterior lights must be mounted between six and fourteen feet above adjacent grade.
 2. Alley lighting: Fixtures in alleys shall illuminate the alley, be between 9 and 14 feet in height, have a shield to prevent uplighting, and not cause glare onto adjacent lots.
 3. Floodlights or directional lights: Such lighting may be used to illuminate alleys or parking garages, but must be shielded to prevent light spills upward, or into adjacent lots, the street, or area outside of the district. Floodlights shall not be used for uplighting.
 4. Contained illumination: Site lighting shall be of a design and height and shall be located so as to illuminate only the lot. An exterior lighting plan must be submitted and approved with each site plan.
 5. Flashing, traveling, animated or intermittent lighting: Such lighting is not permitted, whether of a permanent or temporary nature.
- viii. **Signs.**

1. One monument sign with the dimensions of 13'1-3/8" long, 3'9" high, and 1'11-5/8" deep. Lighting shall be permitted.
2. No painted signs are permitted.
3. Wall signs with drive-thru and rapid pick-up information are permitted for safety.
4. The illumination of the west elevation and drive-thru signs shall be turned off when the business is not open.
5. The wall signs on the north and east sides of the building elevations may remain illuminated after business hours.
6. No drive-thru sign shall be permitted on the west elevation.

c. Off-street parking.

- i. Number of spaces: Parking for this use is one space per 70 sf of GFA or one space per two employees plus one per two maximum customers plus 10-vehicle stacking spaces per drive-thru lane.
- ii. Location:
 1. Primary Roads: Surface parking lots shall have a minimum setback of 60 feet from the sidewalk and be located behind a building. Structured parking is permitted internally but must be located behind occupied uses on the ground floor.
 2. Other Roads: Surface parking lots are permitted in the rear or side of any lot and in structures and shall be setback a minimum of 5 feet from the sidewalk. Off-street parking is not permitted in front of a building.
- iii. Driveways and Access: Driveway access shall not be permitted off a Primary Road. The existing vehicular access along Southfield Road shall be maintained. Additionally, although Sunset Boulevard is not a primary road, access shall be maintained from this road.
- iv. Screening and Landscaping: Parking lots adjacent to public or private streets shall be screened by a combination of landscaping (e.g., hedge row), brick walls, and ornamental metal fencing, with the design intent of screening an area 2.5 feet high adjacent to parking lots. Unless otherwise specified here, other parking requirements found in Section 5.16.4 also apply.
- v. Shared Parking: see section 5.13.5
- vi. Bicycle Parking: Secure, visible, and accessible parking for bicycles shall be provided. Bicycle racks shall be consistent with other City bike racks.

d. Functional Elements,

Loading docks, truck parking, utility meters, HVAC equipment, trash dumpsters, trash compaction and other service functions shall be incorporated into the overall design of buildings and landscaping.

1. One (1) required 10' x 40' loading space for the proposed 3,000+ square foot building.

2. A dumpster shall be permitted in the location depicted on the Site Development Plan subject to adequate screening as determined by the Planning Commission at the time of final site plan review. The dumpster shall be enclosed with split face masonry block coordinated to match the building. Landscape screening intended to reach a mature height of at least 8 feet in height shall be planted to further obscure the dumpster from view on the public right-of-way.
3. Areas for truck parking, trash collection and/or compaction, loading and other such uses shall be permitted in the location depicted on the Site Development Plan subject to adequate screening as determined by the Planning Commission at the time of final site plan review.

8. **Utilities.**

- a. **Sanitary Sewer System.** Connection to the sanitary sewer system shall require payment of all applicable fees, charges, and assessments.
- b. **Water System.** Connection to the water system shall require payment of all applicable fees, charges, and assessments.

9. **Engineering Plans.** The Developer shall prepare and submit for review and approval detailed engineering plans for improvements. Such plans shall be reviewed by the Lathrup Village City Engineer, the Road Commission for Oakland County, and the Water Resources Commissioner, to ensure that they are substantially consistent with the Site Development Plan, including the Site Plan as finally approved, and other applicable requirements. The Developer shall make diligent and good faith efforts to obtain all approvals and permits on a timely basis, and the City will, in a timely manner, process all reviews and approvals required of it. The Lathrup Village City Engineer shall review the submitted engineering plans to determine whether additional stormwater detention or retention facilities will be required.

The Developer shall require that all contractors working on improvements submit such performance guarantees as required by the City Engineer, and any other governmental agency that has supervisory power over the work performed by such contractors and maintain such contractor insurance for protection from claims under workers' or workmen's compensation acts and other employee benefit acts that are applicable, claims for damages because of bodily injury, including death, and claims for damages to property that may arise out of or result from the contractor's operations under the contract, whether such operations are by the contractor or by a sub-contractor or anyone directly or indirectly employed by any of them. The insurance shall be written for not less than limits of liability specified in the contract documents or required by law, whichever coverage is greater, and may specify that the contractor deliver to the Developer certificates of such insurance prior to the

commencement of their work, showing the Developer and the City as additional insured.

10. Construction Activity- Hours of Operation and Penalties. All construction activities within the Planned Unit Development, including but not limited to operation of any tools, machinery or equipment, shall be prohibited between the hours of 8:00 p.m. and 7:00 a.m. on weekdays and Saturdays, and any time on Sundays and holidays. The following days shall be considered holidays: New Year's Day (January 1); Memorial Day (last Monday in May); Independence Day (July 4); Labor Day (first Monday in September); Thanksgiving Day (fourth Thursday in November); Christmas Eve (December 24); and Christmas Day (December 25). In addition to any other penalty provided in the City's Zoning Ordinance, any violation of this provision shall constitute a civil infraction and the Developer shall be subject to a fine of \$1,000 for each infraction. Each day such violation continues shall be deemed a separate offense.

11. Public Improvement. The Planned Unit Development shall provide a public improvement which could not otherwise be required, as follows:

The Developer shall provide the City with a cash payment of \$7,000 and the Owner shall provide the City with a cash payment of \$5,000, which funds are to be used at the City's discretion for a public improvement or benefit. Such improvement or benefit may include, but is not limited to, installation of a shelter and other improvements to the public bus stop located at the northwest corner of Sunset Boulevard and Southfield Road.

12. Modification to Agreement and/or Plans.

a. Written Easements; ZBA Authority; Minor Modifications.

- i. This Agreement may not be modified, replaced, amended, or terminated, without the prior written consent of the City Council and the Developer or its successors in title to the Property as of the date of the modification, replacement, amendment, or termination.
- ii. The City of Lathrup Village Zoning Board of Appeals shall not have any authority to grant any variances for any of the subject matter contained within this PUD Agreement.
- iii. Amendments to the PUD Site Development Plan. Proposed amendments or changes to the approved PUD Site Development Plan, whether prior to or following the issuance of a certificate of occupancy, shall be submitted to the planning commission. The planning commission shall determine whether the proposed modification is of such minor nature as not to violate the area and density requirements or to affect the overall character of the plan, and in such event may approve or deny the proposed amendment. If the planning commission determines the proposed amendment is material in nature, the amendment shall be reviewed by the planning

commission and city council in accordance with the provisions and procedures of Section 3.12 of the City's Zoning Ordinance related to final approval of the Planned Unit Development.

- b. **Amendments.** The Developer and the City agree to amend this Agreement and the Exhibits attached hereto as may be necessary or required to comply with the requirements of any federal, state or county statute, ordinance, rule, regulation, or requirement relating to the Planned Unit Development, and that any such amendment shall be effective as if originally set forth herein. In addition, the Developer and the City agree to amend this Agreement and the Exhibits attached hereto as may be appropriate, necessary, or required in order to conform to any final surveys and engineering requirements and any final plats or plans that shall have been approved by the City of Lathrup Village from time to time.
13. **Performance Guarantee.** All required performance guarantees shall be submitted prior to scheduling of a pre-construction meeting, to assure timely and proper completion of proposed improvements, including site landscaping and other improvements, in accordance with the City's Zoning Ordinance.
14. **City Not Responsible for Damages.** The Developer agrees that, absent gross negligence or willful misconduct on the part of the City, its employees, agents, representatives or contractors, or by reason of the City's course of conduct resulting in a continuing or material default of its obligations under this Agreement, the City shall not be responsible to the Developer for damages arising out of a claimed breach of this Agreement. In such event, the Developer's sole remedy (except in the event of a material defect) shall be a claim for specific performance in the Oakland County Circuit Court. In the event of any litigation relating to this Agreement, the prevailing party (as determined by the trial Court) will be entitled to reimbursement of reasonable attorney fees and costs.
15. **Approval Runs with the Land.** The approval of the PUD described herein and the Exhibits attached hereto, and the terms, provision, and conditions of this Agreement run with and bind the land, and shall bind and inure to the benefit of the successors and assigns of the parties thereto. In the event the Developer assigns or conveys its interest in all or any part of the Property to the third party, the Developer shall have no further obligations or liability hereunder with regard to the property assigned or conveyed.
16. **Recording of Agreement.** The City Attorney shall record an executed copy of this Agreement with the Oakland County Register of Deeds prior to issuance of any permits to commence construction in accordance with the Plans.

17. **Governing Law.** This Agreement shall be construed under the laws of the State of Michigan.

18. **Violations.** In the event there is a failure to perform any obligation or undertaking required under or in accordance with this Agreement and the attachments thereto, the City shall have the power and authority, but not the obligation, to take any or all of the following actions, in addition to any actions authorized under City ordinances and/or state laws, provided such actions are not in violation of any ordinance or law:

- a. Enter the Property, or cause its agents or contractors to enter the Property, and perform such obligations or take such corrective measures as reasonably found by the City to be appropriate. Except in emergency circumstances, the City shall first serve written notice on Owner (as used herein, "Owner" may be the Developer, successor Developer, a builder, or the end user of a unit) setting forth such deficiencies and a demand that the deficiencies be cured within a stated reasonable time period, and the date, time, and place for a hearing before the City Council, or such other body, or official delegated by the City Council, to allow Owner an opportunity to be heard as to why the City should not proceed with the correction of the deficiency or obligation that has not been undertaken or properly fulfilled. At any such hearing, the time for curing and the hearing itself may be extended and/or continued to a date certain. If the City Council or the other designated body determines that the obligation has not been fulfilled or failure corrected within the time specified in the notice, the City shall then have the power and authority, but not the obligation, to take corrective measures.
- b. Upon proper notice and opportunity to cure, issue a stop work order as to any or all aspects of the Planned Unit Development, deny the issuance of any requested building permit or certificate of occupancy within any part or all of the Planned Unit Development, regardless of whether Owner or Developer is the named applicant for such permit or certificate of occupancy, and suspend further inspections of any or all aspects of the Planned Unit Development.
- c. Initiate legal action for the enforcement of any of the provisions, requirements, or obligations set forth in the PD Documents. In the event the City obtains any relief as a result of such litigation, Owner shall pay all court costs and attorney fees incurred by the City in connection with such suit.

The cost and expense of making and financing such actions by the City, including notices by the City and legal fees incurred by the City, plus an administrative fee in an amount equivalent to twenty-five (25%) percent of the total of all such costs and expenses incurred, shall be paid by Owner within thirty (30) days of a billing to Owner. The payment obligation under this Section shall be secured by a lien against the Property, as the case may be, which lien shall be deemed effective as of the date of the initial written notice of deficiency provided to Owner pursuant to this Section or, in emergency circumstances, the date at which the City incurred its first cost or expense in taking corrective action. Such security shall be realized by placing a billing

that has been unpaid by Owner for more than thirty (30) days on the delinquent tax rolls of the City relative to such portion of the Property, to accumulate interest and penalties, and to be deemed and collected, in the same manner as for collection of delinquent real property taxes. In the discretion of the City, such costs and expenses may be collected by suit initiated against Owner and, in such event, Owner shall pay all court costs and reasonable attorney fees incurred by the City in connection with such suit if the City prevails in collecting funds.

Any failure or delay by the City to enforce any provision contained in this Agreement shall in no event be deemed, construed, or relied on as a waiver or estoppel of the right to eventually do so in the future. Each provision and obligation contained in this Agreement shall be considered to be an independent and separate covenant and agreement and, in the event one or more of the provisions and/or obligations shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, all remaining provisions and/or obligations shall nevertheless remain in full force and effect.

- 19. Entire Agreement: Termination.** This Agreement constitutes the entire agreement between the parties relating to the subject matter herein and may not be modified, replaced or amended, without the prior written consent of the Developer and the City of Lathrup Village.

The City may terminate this Agreement upon thirty (30) days prior written notice to the Developer, if any of the following occur and are not remedied within such thirty (30) day period:

- a. The Developer fails to act in good faith or fails to make the submissions necessary in order to obtain governmental permits and approvals necessary to complete the construction of the Project.
- b. The Developer (i) fails to commence, continue or complete construction of the Project or any phase thereof in a reasonably diligent time period; (ii) commences construction but the same is interrupted for a continuous period of more than one hundred twenty (120) days, subject to force majeure, or (iii) constructs any substantial portion of the Project in a manner which is not in compliance with approved plans and this Agreement.

- 20. Authority.** The signatories to this Agreement represent that they have been duly authorized to execute this Agreement on behalf of the parties hereto.

- 21. Governing Law.** This Agreement shall be governed by the laws of the State of Michigan.

- 22. Remedies Cumulative.** The remedies provided for herein are cumulative. The failure of a party to enforce its rights with respect to any breach hereof will not constitute a waiver by the party of its rights with respect to subsequent breaches.

23. **Notice.** Any notices required by the terms of this Agreement shall be in writing and mailed to the other party via the United States Postal Service addressed to such party at the address set forth at the beginning of this Agreement, or to such other address as one party may provide to the other by notice.

24. **Exercise of Performance.** Each party is excused from performance of any of the requirements of this Agreement when non-performance is the result of acts of God or other conditions, events, or occurrences beyond the control of such party.

25. **Best Efforts.** Each party will exercise its best efforts to perform its obligations hereunder within such times as are set forth herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and date set forth above.

WITNESES

**GOLDEN GATE PLAZA, LLC, a Michigan
Limited Liability Company**

By: _____

Its: _____

**Panera LLC, a Delaware
Limited Liability Company**

By: _____

Its: _____

**CITY OF LATHRUP VILLAGE, a Michigan
Municipal Corporation**

By: _____

MyKale Garret

Its: Mayor

By: _____
Kelda London

Its: Clerk

DRAFT