

REAL ESTATE OPTION CONTRACT

THIS REAL ESTATE OPTION CONTRACT is made as of this 9th day of January, 201~~6~~⁷, (the "Execution Date"), by **CFT NV DEVELOPMENTS, LLC**, a Nevada limited liability company, whose address is 1683 Walnut Grove Avenue, Rosemead, California 91770-3711 (the "Buyer"), and **MEIJER STORES LIMITED PARTNERSHIP**, a Michigan limited partnership, whose address is 2929 Walker Avenue N.W., Grand Rapids, Michigan 49544 (the "Seller"). Buyer and Seller are sometimes referred to together in this Contract as the "Parties."

1. **Grant of Option.** Seller grants to Buyer an option (the "Option") to purchase the real property containing approximately 0.946 acres (being a portion of Lot 2 of Certified Survey Map No. 11263, recorded December 23, 2014 as Document No. 4116220, Waukesha County Records) located on the south side of E. Sunset Drive in the City of Waukesha, Waukesha County, Wisconsin (the "Property"), approximately outlined on **Exhibit A** on the terms and conditions stated in this Contract.

2. **Option Period; Fee; Extension.** The Option is granted for the period of time between the Execution Date and 11:59 p.m. on June 1, 2017 (the "Initial Option Period"). Buyer shall pay an option fee of Ten Thousand Dollars (\$10,000) for this option period (the "Initial Option Fee").

Provided Buyer has previously submitted, or concurrently submits, the preliminary plans and specifications required pursuant to the terms and conditions of Section 34 hereof, by written notice and payment of an option fee of Two Thousand Five Hundred Dollars (\$2,500) delivered to Seller before the expiration of the Initial Option Period (the "First Extension Fee"), Buyer may extend the option term until 11:59 p.m. on July 1, 2017 (the "First Extension Term"). Buyer's written notice to extend the Option pursuant to this paragraph shall not be effective unless such notice is accompanied by the preliminary plans and specifications required pursuant to Section 34 hereof.

By written notice and payment of an option fee of Two Thousand Five Dollars (\$2,500) delivered to Seller before the expiration of the First Extension Term (the "Second Extension Fee"), Buyer may extend the option term for an additional thirty (30) day term expiring 11:59 p.m. on August 1, 2017 (the "Second Extension Term").

Together the Initial Option Period, the First Extension Term and Second Extension Term, are referred to herein as the "Option Period." Together the Initial Option Fee, First Extension Fee and Second Extension Fee are referred to herein as the "Option Fee."

3. **Exercise of Option.** Provided Buyer has obtained Seller's approval of the plans and specifications required pursuant to Section 34 hereof, any time during the Option Period, Buyer may exercise the Option by giving written notice to Seller of its election to exercise the Option. Buyer's written notice to exercise the Option pursuant to this paragraph shall not be effective unless such notice is accompanied by (i) Seller's written approval which shall not be unreasonably withheld, conditioned, or delayed, and (ii) the Seller-approved plans and specifications required pursuant to Section 34 hereof. If the Option is exercised, subject to the terms and conditions of this Contract, Seller shall sell the Property to Buyer on the terms set forth herein.

4. **Disposition of Option Fee.** The Option Fee shall be held by Seller until Closing or the termination of this Contract. Seller may retain the Option Fee whether or not the Option is exercised except as otherwise provided herein. If the Option is exercised and the transaction closed, the Option Fee shall be applied as a



credit to Buyer against the purchase price. The Option Fee shall be returned to Buyer only if, and under the specific circumstances as may be expressly provided for in this Contract.

5. Purchase Price; Payment. The purchase price for the Property is Seven Hundred Twenty-Four Thousand and 00/100 Dollars (\$724,000.00). The purchase price, as adjusted by the credits and proration described below, shall be payable in full at the Closing by wire transfer of immediately available funds.

6. Title; Survey. Upon receipt of the purchase price, Seller shall convey marketable record title to the Property by Special Warranty Deed (the "Deed"). Buyer shall accept such title subject to the "Permitted Exceptions" (as defined below in this Section 6).

Promptly after the Execution Date, Seller shall (using the description of Lot 3 of Certified Survey Map No. 11263), at its sole cost and expense, order a commitment for a standard form ALTA owner's title insurance policy, without standard exceptions (provided, however, the obligation to provide a title insurance policy without standard exceptions shall not create an obligation for Seller to provide a Survey (defined below) in the event Buyer fails to obtain an adequate survey during the Option Period), dated after the Execution Date, in the amount of the Purchase Price (the "Commitment"), with such endorsements as Buyer may request (the "Endorsements"), issued by Fidelity National Title Insurance Company, 1050 Wilshire Drive, Suite 310, Troy, MI 48084, Attention: Elaine Moloney (the "Title Company"). Buyer shall have twenty-eight (28) days from receipt of the Commitment (including legible copies of all items referenced therein) or Survey as defined below, whichever is last received, to notify Seller of any objections (the "Title Objections") to the state of the title as revealed in the Commitment. If Seller does not own the Property or for any reason fails or is unable to cure or obtain insurance over the Title Objections to Buyer's satisfaction within twenty (20) days after receipt of Buyer's notice of the Title Objections (the "Title Cure Period"), Seller shall not be considered to be in default under this Contract, and Buyer may elect to close on the purchase of the Property subject to such Title Objection(s) by giving written notice to Seller of its election within ten (10) days after expiration of the Title Cure Period. Buyer's failure to give written notice to Seller of its election within said ten (10) day period shall be deemed to be Buyer's election to terminate this Contract. If Buyer so terminates this Contract, Seller shall promptly return the Option Fee to Buyer and neither party shall have any further obligation under this Contract except any indemnity obligation herein. Any encumbrance on Seller's title which can be discharged by paying money shall not be considered a title defect provided it is removed by Seller at the Closing out of the sale proceeds.

Within thirty (30) days of the Execution Date, Buyer shall, at its expense, obtain an ALTA/NSPS survey of the Property, prepared by a licensed surveyor in the State of Wisconsin showing the location of all improvements on the Property and any encroachments from or onto adjoining properties, building lines, parking, easements, driveways, roads or highways and otherwise meeting the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys (Effective February 23, 2016) (the "Survey"). Buyer shall provide Seller a copy of the Survey upon receipt thereof (including a copy to Aaron Morrissey, Legal Department, 2929 Walker, Avenue N.W., Grand Rapids, Michigan 49544). Buyer acknowledges that the boundary and legal description of the Property as prepared by the surveyor are subject to the reasonable review and approval of Seller. The Survey shall be certified to Seller, Buyer, Buyer's lender, if any, and the Title Company. Buyer shall have twenty eight (28) days from receipt of both the Survey and Commitment to notify Seller of any defects in title revealed by the Survey (the "Survey Objections"). If Seller for any reason fails or is unable to cure or obtain title insurance over the Survey Objections to Buyer's satisfaction within twenty (20) days after receipt of Buyer's notice of Survey Objections (the "Survey Cure Period"), Seller shall not be considered to be in default under this Contract, and Buyer may elect to close on the purchase of the Property subject to such Survey Objection(s) by giving written notice to Seller of its election within ten (10) days after expiration of the Survey Cure Period. Buyer's failure to give written notice to Seller of its election



within said ten (10) day period shall be deemed to be Buyer's election to terminate this Contract. If Buyer so terminates this Contract, Seller shall promptly return the Option Fee to Buyer and neither party shall have any further obligation under this Contract except any indemnity obligation herein.

The "Permitted Exceptions" is defined as and shall include: the Declaration (as defined in Section 7), current taxes and assessments not yet due and payable; those matters set forth in the partial list of Permitted Exceptions attached hereto as **Exhibit C**, if any; an easement reserved for any Improvements (as defined in Section 33 below); any matter disclosed in the Commitment or Survey and not objected to by Buyer within the time limits set forth above; and any Title Objection or Survey Objection not cured by Seller and deemed Permitted Exceptions as provided in the subparagraphs above. None of the Permitted Exceptions shall be deemed to render Seller's title unmarketable. In addition to the Permitted Exceptions, the Deed shall contain an exception for all easements and restrictions of record not specifically recited, if any, it being the intention of the Parties that Buyer look only to the Title Company for its remedy for any recorded easements or restrictions not being disclosed by the Commitment or resultant title policy.

7. **Closing.** Closing (the "Closing") shall take place on a mutually agreed day and time at the office of the Title Company (or other location mutually agreed upon by the Parties) within fifteen (15) days after Buyer exercises the Option subject to the satisfaction of all contingencies and conditions precedent set forth in this Contract. Unless otherwise mutually agreed by the Parties, this transaction shall be closed in escrow by the Title Company under instructions prepared by Seller and reasonably acceptable to Buyer to conform to this Contract. The cost of the escrow shall be shared equally by the Parties. Notwithstanding the foregoing, in the event Seller elects to exchange fee title in the Property for other property pursuant to Section 1031 of the Internal Revenue Code as provided below herein, Seller shall be solely responsible for any additional escrow closing fees associated with such 1031 exchange.

At the Closing, Seller shall (i) pay the title insurance premium due for the owner's policy in the amount of the sale price (excluding costs of the Endorsements), (ii) the cost to obtain any required special assessment letters, (iii) pay any state and county transfer tax, (iv) pay the fees for recording the Declaration, and (iv) deliver the Deed and an affidavit of non-foreign status in compliance with applicable law. Buyer shall (i) deliver the purchase price (as adjusted for credits and prorations) to the Title Company for disbursement at the direction of Seller, (ii) pay the fees for recording the Deed and Buyer's mortgage, if any, and (iii) pay the costs of the Endorsements. The recording fees for the easement(s) shall be paid by the owner of the benefited parcel for that particular easement, or, if the easement is reciprocal, the recording costs shall be divided equally. Both Parties shall execute a closing statement reconciling the purchase price with the various adjustments.

Buyer acknowledges that Seller is negotiating for the sale of a parcel located east of and adjacent to the Property (the "East Outlot") to a third party as potential buyer. The combined Property and East Outlot comprise Lots 2 and 3 of Certified Survey Map No. 11263. The sale of both the Property and the East Outlot will require the completion of a new certified survey map ("CSM"), replatting or a subdivision or other similar approval by either the City of Waukesha, Waukesha County or any other governmental entity in order to create the Property and the West Outlot. Buyer shall be responsible for and shall use reasonable efforts to seek any necessary CSM, replatting, subdivision or other approvals in order to create both the Property and the East Outlot as separate and unique parcels able to be conveyed— within ten (10) days of expiration of the Title Cure Period, subject to Seller's and the buyer of the East Outlot's review and approval of any required applications/correspondence associated with such CSM/replat/subdivision. Seller's and Buyer's obligation to consummate the transaction contemplated by this Contract is subject to completion of the CSM/replat/subdivision/approval and the terms and conditions of the CSM/replat/subdivision/approval being satisfactory to Seller in its sole discretion. Seller agrees to reasonably cooperate (at no additional cost



to Seller) with Buyer's obtaining such governmental approvals, including executing any documents reasonably necessary for Buyer to obtain such governmental approvals. Buyer shall promptly deliver to seller all correspondence, notifications, applications and similar documentation between Buyer and governmental entities concerning Buyer's efforts to replat, subdivide or secure similar governmental approval for the Property.

The Parties acknowledge that to the extent the applicable governmental authorities require site plan approval and/or variance for Seller's remaining property (including, but not limited to, any parking or green space requirements), Buyer shall be responsible for obtaining such approval, subject to Seller's prior review and approval of any submittals made associated with seeking such approval. Seller agrees to cooperate with Buyer in obtaining such approvals. Seller's obligations to consummate the transaction contemplated herein is subject to Buyer (i) obtaining such site plan approvals and the terms and conditions of such approvals being satisfactory to Seller and (ii) demonstrating to Seller that after the sale of the Property, Seller's remaining property will be in compliance with municipal green space, landscaping and parking requirements, Buyer shall be responsible for the entire cost of obtaining and complying with such approvals, subject to Seller's review and approval of such plans, specifications and applications.

At or before the Closing, Buyer and Seller shall execute the Declaration of Restrictions (the "Declaration") attached to this Contract as **Exhibit B**. The Declaration shall be recorded immediately after the Deed.

8. Taxes. The real estate taxes shall be apportioned between the Parties at the closing in the following manner:

(a) Seller shall pay all ad valorem real estate taxes ("Taxes") levied with respect to the Property which become a lien and are due and payable prior to the date of the Closing. The Taxes for the year in which the Closing takes place are to be prorated from January 1 to the date of Closing. If the amount of such Taxes is not then ascertainable, credit and prorating shall be on the basis of the amount of the most recently ascertainable Taxes.

(b) The Property may be part of a larger parent Parcel and not separately assessed. If so, in computing the proration referred to above, the portion of the taxes assessed against the larger parcel which are allocated to the Property shall be equal the product of (i) that portion of the assessment attributable to the value of the larger parcel (excluding buildings and improvements), multiplied by (ii) a fraction the numerator of which is the amount of land contained in the Property and the denominator is the amount of land contained in the larger parcel. Upon completion of this transaction, Buyer shall apply for a separate assessment of the Property. If the Property is not separately assessed for any subsequent bill, Seller shall pay the entire bill and Buyer shall promptly reimburse Seller for its percentage share computed as set forth in this subparagraph.

(c) Seller shall pay in full all special assessment installments becoming due and payable prior to the Closing. All other assessments, levies, installments and charges ("Assessments") shall be Buyer's responsibility, and shall be deemed to be excepted from any warranty of title given by Seller. Any Assessment becoming payable solely on account of Buyer's actions or this transaction, including without limitation utility connection charges, shall be paid in full by Buyer.

9. Possession. Possession of the Property shall be deemed to have passed to Buyer at Closing.

10. Real Estate Broker. Each party shall be responsible for paying any broker(s) it engaged and shall indemnify the other party against and hold it harmless from any claim, damage, liability or expense, such as



commission claims and attorney fees, arising out of any assertion of its having dealt with any broker. The foregoing indemnity shall survive the cancellation and/or termination of this Contract and shall survive Closing. Notwithstanding the foregoing, if and when this transaction closes, Seller will pay to CBRE, Attn: John Kardelis, 777 E. Wisconsin Ave., Suite 3150, Milwaukee, Wisconsin 53202, a brokerage commission of five percent (5%) of the purchase price.

11. Right of Inspection. The Parties entered into that certain License Agreement dated May 25, 2016 (the "Early Access Agreement") to facilitate Buyer's early access to the Property for purposes investigating various matters set forth therein. Pursuant to Section 8 of the Early Access Agreement, as of the Effective Date, the Early Access Agreement has terminated and shall be of no further force or effect. It shall be Buyer's option to investigate (or cause to be investigated) to Buyer's satisfaction, and at Buyer's expense, the state and condition of the Property and any other matters pertaining to it of interest to Buyer, including, but not limited to, its zoning classification, topographic characteristics, tax classification, environmental condition, the availability of utilities, the contents of applicable restrictive covenants and building codes, its suitability for Buyer's intended use, the availability of all governmental authorizations and approvals necessary for the construction of Buyer's improvements and the operation of Buyer's business on the Property, and whether satisfactory financing can be arranged. During the Option Period, Buyer and any other person Buyer may reasonably designate may upon reasonable prior notice enter the Property to make such topographic surveys, geotechnical borings, tests or studies as Buyer may reasonably deem appropriate, provided that any environmental assessment activities shall be performed in accordance with Section 12. All such activity shall be (i) conducted in a manner that will cause no damage to the Property, and (ii) performed solely at the expense of Buyer. To the extent Seller provides or has provided any plans, specifications or other information with respect to the Property, Buyer acknowledges that such information (a) is provided to assist Buyer in its examination of the Property; and (b) is provided without representation or warranty by Seller with respect to its accuracy, content or completeness. In order to assist Buyer in the development of plans during the Option Period, Seller has included the Outlot Review Procedure attached hereto as Exhibit D. Buyer acknowledges that the Outlot Review Procedure is intended to assist Buyer in the preparation of plans and specifications, and is not intended to address all matters associated with site development.

Buyer acknowledges that as of the date of Closing it will have inspected, analyzed, reviewed and evaluated the Property, that it and its representatives will have conducted such investigation of the Property as deemed necessary by Buyer and that it will be thoroughly aware of the condition of the Property. Buyer is purchasing the Property in its "as is" condition based solely upon its own inspection, evaluation, review and analysis, and Buyer assumes the entire risk associated with such inspection, evaluation, review and analysis being incomplete or inaccurate. The terms of this paragraph shall survive Closing.

12. Environmental Matters. As part of the investigation allowed pursuant to Section 11, Buyer may perform a Phase I environmental site assessment ("Phase I ESA") done to the standards of ASTM E1527-13 and E1528-14, at its expense and using an environmental consulting firm mutually acceptable to the Parties. The Phase I ESA shall not include any soil borings or groundwater monitoring wells or any other invasive sampling, except for samples of building materials or equipment to determine asbestos or PCB content. Upon request, Buyer shall promptly provide Seller with a full copy of the Phase I ESA.

(a) If desired, Buyer shall obtain the Phase I ESA within sixty (60) days of the Execution Date. If Buyer is not satisfied with the Phase I ESA for any reason then Buyer may terminate this Contract upon written notice to Seller given within ten (10) days of receipt of the Phase I ESA, and Seller shall return the Initial Option Fee. Any termination notice shall be accompanied by a copy of the Phase I ESA.



(b) If Buyer desires to perform a Phase II environmental site assessment or other further sampling and testing of the Property ("Phase II ESA"), Buyer shall provide to Seller a written work plan that describes the proposed scope and content of the proposed work. Buyer may proceed in accordance with such work plan only upon receipt of Seller's written consent and approval which shall not be unreasonably withheld, conditioned, or delayed. If (i) the Parties cannot agree on the performance of such work, or (ii) Buyer is not satisfied with the Phase II ESA for any reason, then upon either occurrence, this Contract shall terminate upon written notice from Buyer to Seller. If this Contract is terminated before the expiration of the Initial Option Period, Seller shall return to Buyer the Initial Option Fee.

13. Indemnity. Buyer shall defend, indemnify and save harmless Seller, its direct and indirect parent, subsidiaries and affiliated companies and entities, their respective agents, employees, officers, directors and shareholders, against liability or claim thereof whether for injury to persons, including death, or damage to property arising out of or occasioned in whole or in part by any act or omission of Buyer, its licensees or contractors, their respective agents or employees, on or about the Property. The foregoing indemnity shall survive the cancellation and/or termination of this Contract and shall survive Closing for a period of twelve months immediately following said cancellation, termination, or Closing.

14. Condemnation. In the event that prior to Closing, any portion of the Property shall be taken by governmental action through condemnation, then, at the option of Buyer, this Contract may be terminated, and if terminated, the Option Fee shall be returned to Buyer. Alternatively, Buyer may elect to proceed with the purchase, in which event Buyer shall be entitled to all condemnation proceeds applicable to the Property and shall have the right to assert and/or settle the same.

15. Reliance. Neither Seller nor any person authorized by Seller has made any statement on which Buyer may rely about the Property that is not set forth in this Contract.

16. Confidentiality. All knowledge, information, or data that is obtained by, or disclosed to, Buyer under this Contract shall be held in strictest confidence by Buyer and shall not be disclosed to any third party unless and until the Closing occurs or Buyer is required to disclose such knowledge, information, or data by law ; provided, however, Buyer may disclose to its third-party consultants (e.g., architects; engineers; etc.) any such knowledge, information, or data in connection with conducting its due diligence on the Property pursuant to this Contract.

17. Performance. Time is of the essence of this Contract. Subject to this Section 17, in the event of default by Buyer, Seller may as its sole remedy terminate this Contract and retain the Option Fee as liquidated damages. Notwithstanding the foregoing, Seller shall not be precluded from exercising its rights and pursuing any claims against Buyer under Paragraphs 10, 13, and 16 above. Subject to this Section 17, in the event of default by Seller, Buyer's sole remedy shall be either (i) terminating the Contract, in which event Seller shall return to Buyer the Option Fee; or (ii) seeking specific performance of this Contract.

18. Successors and Assigns. This Contract shall bind Buyer and Seller and anyone succeeding to their interests in this Contract. Nevertheless, Buyer shall not assign this Contract without Seller's prior written permission. Notwithstanding the foregoing, Buyer may assign its interest in this Contract to an affiliated entity of Buyer without Seller's prior written permission, provided (i) Buyer gives Seller notice of such assignment at least fifteen days prior to Closing and (ii) Buyer is not released from liability hereunder.

19. Amendment. This Contract represents the Parties' entire agreement. It supersedes all prior statements, negotiations and agreements, whether written or oral. This Contract may not be amended, altered, or modified except by a written instrument executed by the party to be bound.



20. **Notices.** During the term of this Contract, or until written notice of a change in address is delivered to the other Party, notices shall be sent in writing and delivered personally or sent by certified mail or by overnight express mail by a nationally recognized carrier (such as Federal Express, UPS, DHL, or Airborne) to the following addresses:

To Seller:	Meijer Stores Limited Partnership 2929 Walker Avenue, N.W. Grand Rapids, Michigan 49544 Attn: Real Estate Dept. – Kurt Adams
Seller (copy to):	Meijer Stores Limited Partnership 2929 Walker Avenue, N.W. Grand Rapids, Michigan 49544 Attn: Legal Department
To Buyer:	CFT NV Developments, LLC 1683 Walnut Grove Avenue Rosemead, California 91770-3711 Attn: David Luo, Director
Buyer (copy to)	Panda Restaurant Group, Inc. 1683 Walnut Grove Avenue Rosemead, CA 91770-3711 Attn: Real Estate Legal Department

Any such notices shall be deemed to have been given on the day after the date on which the notice was delivered to the overnight courier for delivery (with all delivery fees paid, if the party sending the notice does not have an established account with the courier permitting delayed billing), or two days after the date the notice was deposited for mailing in a United States Post Office or mail receptacle with proper postage affixed if the notice was sent by certified mail.

21. **Choice of Law.** This Contract shall be governed by and construed in accordance with the laws of the state where the Property is located that are applied to contracts made and to be performed in that state.
22. **Third Parties.** There are no third-party beneficiaries to this Contract.
23. **Recording.** Neither this Contract nor any evidence of it shall be recorded.
24. **Pronouns.** All pronouns used in this Contract shall be effective to identify the persons referred to, regardless of their gender and whether they are singular or plural.
25. **Severability.** The invalidity or unenforceability of any provision of this Contract shall, at the option of Seller, invalidate the entire Contract, upon which Seller shall promptly return the Option Fee. Otherwise, the remainder of this Contract shall remain in full force and effect.
26. **Attorney's Fees.** If litigation arises out of or in connection with this Contract, the prevailing party shall be entitled to recover its reasonable attorney's fees and court costs.
27. **Seller's 1031 Exchange.** Seller may exchange the fee title in the Property for other property of like kind and qualifying use within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and the Regulations promulgated thereunder. In order to facilitate the transaction, Seller may



retain the services of a Qualified Intermediary within the meaning of Treas. Reg. 1.1031(k)-1(g)(4). This Qualified Intermediary will provide services to Seller in connection with Seller's Section 1031 transaction. Seller expressly reserves the right to assign its rights under this Contract to a Qualified Intermediary on or before the date of Closing and in that situation, Buyer shall pay or cause to be paid to such Qualified Intermediary the net proceeds of the sale. However, this assignment in no way relieves Seller of any obligations or duties under this Contract including the obligation to convey the Property by warranty deed. Seller shall bear any and all additional cost or expense as a result of its 1031 exchange.

28. Buyer's 1031 Exchange. Buyer may consummate the purchase of the Property as part of a so-called like kind exchange (the "Buyer's Exchange") pursuant to §1031 of the Internal Revenue Code of 1986, as amended (the "Code"); provided that: (i) the Closing shall not be delayed or affected by reason of the Buyer's Exchange nor shall the consummation or accomplishment of the Buyer's Exchange be a condition precedent or condition subsequent to Buyer's obligations under this Contract; (ii) Buyer shall effect the Buyer's Exchange through a qualified intermediary and Seller shall not be required to acquire or hold title to any real property for purposes of consummating the Buyer's Exchange; (iii) Seller shall execute such documents as may be reasonably required to accomplish the Buyer's Exchange provided that such documents do not increase or create liability on the part of Seller, and (iv) Buyer shall pay any additional costs that would not otherwise have been incurred by Seller had Buyer not consummated the Buyer's Exchange. Seller shall not by this Contract or acquiescence to the Buyer's Exchange (1) have its rights under this Contract affected or diminished in any manner, or (2) be responsible for compliance with or be deemed to have warranted to Buyer that the Buyer's Exchange in fact complies with §1031 of the Code.

29. Nonexclusive Ingress and Egress Access Easement to Buyer. In the event the transaction contemplated herein closes, at Closing, Seller shall grant Buyer perpetual, nonexclusive ingress and egress rights over and across the driveway off of E. Sunset Drive on Seller's property located immediately south of the Property (the "Access Easement"). The Access Easement is approximately cross-hatched on **Exhibit A** attached hereto. The specific location of the curb cut onto the Access Easement from the Property shall be subject to Seller's review and approval (see Declaration, Paragraph 2). Buyer agrees that it shall pay for any and all improvements to the existing pavement (including adjacent road right-of-ways) which may be required by Seller or the applicable governmental authorities as part of the approval of the development of the Property. The easement shall be drafted by Seller and shall contain terms and conditions which must be agreed upon by the Parties during the Option Period. Buyer also agrees to provide easement exhibits (legal description and depiction) to Seller for review and approval during the Option Period. The Access Easement shall provide that the owner of the Property shall annually pay to Seller the sum of Three Thousand Dollars (\$3,000) for Seller's maintenance and repair of that portion of the Access Easement that Seller has previously constructed (the "Maintenance Fee"). The Access Easement shall provide that the Maintenance Fee shall be increased by fifteen percent (15%) every five (5) years. Buyer shall be responsible for maintaining any green space and sidewalk located between the southern boundary of the Property and the ring drive on Seller's remaining property.

30. E. Sunset Drive Monument Sign Easement. In the event the transaction contemplated herein closes, at Closing, Buyer shall grant Seller, as owner of Lot 1 of CSM 11263 a perpetual, non-exclusive sign easement (the "Sign Easement"), over a portion of the Property to provide for the operation, maintenance and replacement of the existing monument sign and related electrical service (the "Development Sign"). The Sign Easement shall also grant (i) Buyer (as owner of the Property) the right to install and maintain a sign panel in the second position on the Development Sign and (ii) the owner of the East Outlot the right to install and maintain a sign panel in the lowest position on the Development Sign. The easement shall be drafted by Seller and shall contain terms and conditions which must be agreed upon by the Parties and the buyer of the East Outlot during the Option Period. The Sign Easement shall



provide that Seller shall be responsible, for the operation, maintenance, repair and replacement of the Development Sign structure, lighting and electrical service. The Buyer and the owner of the East Outlot shall be responsible for maintaining their respective sign panels on Development Sign in good order, appearance and repair. The Sign Easement shall provide that both the owner of the Property and the owner of the East Outlot shall each annually pay to Seller Seven Hundred Dollars (\$700.00) for Seller's maintenance and repair of the Development Sign (the "Sign Maintenance Fee"). The Sign Easement shall provide that the Sign Maintenance Fee shall be increased by fifteen percent (15%) every five (5) years.

31. Reciprocal Utility Easement Agreement. Prior to the earlier of the Closing on the Property or closing on the sale of the East Outlot, Buyer and Seller (or the owner of the East Outlot, if not Seller) shall enter into a reciprocal utility easement agreement at Closing for the mutual, reciprocal benefit and burden of the Property and the East Outlot in order to facilitate the installation of utilities. The reciprocal utility easement agreement shall be drafted by Seller and shall contain terms and conditions which must be agreed upon by the Parties and the buyer of the East Outlot during the Option Period.

32. Property Development. If any utility services are not available for Buyer's proposed development from existing lines along E. Sunset Drive, and any such utility lines serving the adjacent development belonging to Seller (whether on the Property or Seller's remaining property) can accommodate Buyer's requirements without alteration and can be connected to without significant intrusion onto the parking lot or access drives serving Seller's adjacent development, then Seller shall, subject to the approval of the applicable governmental authority / utility provider, grant to Buyer an easement for such utility at Closing. Provided, however, this Section shall not be construed as a representation by Seller that all necessary utility lines currently exist in the right-of-way of E. Sunset Drive near the Property. Further provided, Buyer acknowledges that the connection to a private water or sanitary line (whether it is located on the Property or on Seller's remaining property) shall be contingent upon such shared line being made public by Buyer and the connection to an electric or gas service line (whether it is located on the Property or on Seller's remaining property) shall be contingent upon both the utility company confirming that the line is a utility main and has sufficient capacity. Any such connection, shall be contingent upon utility service of such line not be interrupted during the connection. If a utility connection on Seller's adjacent property is permitted by Seller, Buyer shall be responsible for reimbursing Seller all surveying, engineering and legal costs associated with evaluating Buyer's request and granting the easement for the utility connection, if all or a portion of such work is done "in house" the rate shall be One Hundred Fifty Dollars (\$150) per hour for legal costs and One Hundred Dollars (\$100) per hour for engineering costs.

Seller agrees to allow Buyer to investigate the feasibility of having the storm water from the Property drain into Seller's existing storm water drainage system. Buyer shall be permitted to drain storm water from the Property into the existing storm water drainage system on Seller's remaining property provided that the rate of flow of such storm water drainage does not exceed the rate of flow from the Property that currently drains into such storm water system (if any) and provided that there is no sheet drainage onto Seller's remaining property and further provided that Buyer obtains all necessary approvals from the applicable governmental authority for such drainage. Seller shall allow for a greater rate of drainage into the existing storm water drainage system if Buyer demonstrates to Seller's satisfaction that the existing storm water drainage system has sufficient capacity for such additional drainage and such drainage does not negatively impact storm water drainage on Seller's property or any parcel that utilizes the storm water drainage system. Such additional discharge shall also be subject to Buyer obtaining all necessary approvals from the applicable governmental authority and any necessary third parties. At Closing, Seller shall grant Buyer the right to allow for such approved storm water drainage. As provided above, Buyer agrees to reimburse Seller its engineering and legal costs associated with evaluating Buyer's request and granting such drainage rights. The storm water discharge agreement shall provide that the owner of the Property shall annually pay Seller a



maintenance fee of One Thousand Dollars (\$1,000.00) for Seller's maintenance and repair of the storm water pipes and related facilities on Seller's remaining Property, which maintenance fee shall be increased by fifteen percent (15%) every five (5) years, and Buyer further agrees to reimburse Seller five percent (5%) of all documented costs associated with any modifications or upgrades to the storm water system required by the applicable governmental authority. Provided, however, Buyer shall be responsible for (i) any modifications or upgrades required as part of the development of the Property, subject to Seller's review and approval of plans and submittals associated with such work; (ii) the cost to provide storm calculation data to the applicable governmental authority for the existing storm water system and Property (to the extent required in order to obtain the approval of the applicable governmental authority to drain into the storm water system); and (iii) the costs of any improvements on the Property necessary to allow storm water from the Property to drain into the existing storm water system.

33. Reservation of Easement for Existing Improvements. Buyer hereby acknowledges that certain utility lines/drainage/improvements (together, the "Improvements") may be currently located on, onto and/or under the surface of the Property or within ten (10) feet of the boundary of the Property. If the transaction contemplated herein closes, the Deed shall provide that Buyer shall take title to the Property subject to an easement reserved by Seller for all such Improvements, which easement shall provide that no building or structure may be built over such Improvements. If Buyer desires to relocate any of the Improvements affecting or encumbering the Property, any such relocation shall be completed at Buyer's sole cost and expense, without interruption to Seller's utility service or drainage and only upon Seller's (and Seller's engineers) prior written approval of the plans and specifications for all aspects of such relocation, which shall not be unreasonably withheld, conditioned or delayed. Buyer further acknowledges that title to the Property shall be subject to any existing drainage from adjacent parcels and roadways currently draining onto and/or across the Property.

34. Preliminary Submittal of Plans to Seller. During the Initial Option Period, Buyer shall provide Seller (i) a site layout plan of the proposed development on the Property consisting of all elements of the "Preliminary Submittal" required pursuant to the Outlot Review Procedure attached hereto as **Exhibit D** [including property lines, building, parking spaces, drives, curb cuts, loading/unloading areas, and dumpster enclosure location], (ii) an exterior building elevation plan, and (iii) a plan showing the elevation and location of any proposed freestanding sign. Such plans shall be reviewed in accordance with and subject to the terms of the "Prior Approval of Plans and Specifications" section of the Declaration. Buyer may not exercise the Option pursuant to Section 3 and Seller shall not be obligated to close the transaction contemplated herein until such preliminary plans and specifications are submitted by Buyer and approved by Seller. Subject to the terms of the "Prior Approval of Plans and Specifications" section of the Declaration, Buyer agrees that the initial development of the Property (and all additional plans contemplated herein) shall be materially consistent with such plans and specifications. The terms of this Section 34 shall survive Closing.

35. SDN List. Buyer certifies that its name is CFT NV Developments, LLC, a Nevada limited liability company, and Buyer is not, and the entities or individuals that constitute Buyer are not, (i) in violation of any laws relating to terrorism or money laundering, or (ii) among the individuals or entities identified on any list compiled pursuant to Executive Order 13224 for the purpose of identifying suspected terrorists or on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control. In the event such certification is, or prior to Closing becomes, incorrect, Seller may terminate this Contract.

36. Execution. The submission of this Contract for examination does not constitute an offer to sell and this Contract shall become effective only upon execution and delivery hereof by the Parties hereto. This Contract may be signed by facsimile or other means of electronic communication and in one or more



counterparts, all of which taken together shall constitute one and the same document.

37. **Nonexclusive Parking Easement to Buyer.** In the event the transaction contemplated herein closes, at Closing, Seller shall grant Buyer perpetual, nonexclusive parking, ingress and egress rights on, over and across a total of twenty-one (21) parking spaces on Seller's property located south of the Property (the "Parking Easement"). The Parking Easement is approximately depicted on **Exhibit A-1** attached hereto. The easement shall be drafted by Seller and shall contain terms and conditions which must be agreed upon by the Parties during the Option Period. Buyer also agrees to provide easement exhibits (legal description and depiction) to Seller for review and approval during the Option Period. The Parking Easement shall provide that the owner of the Property shall annually pay to Seller the sum of Two Thousand Dollars (\$2,000.00) for Seller's maintenance and repair of the Parking Easement. The easement shall provide that the Maintenance Fee shall be increased by fifteen percent (15%) every five years).

END of Option Contract containing 37 paragraphs, plus Exhibits A, B, C and D.

BUYER:

CFT NV DEVELOPMENTS, LLC

By: 

(Mecky Wong)

Its: Manager

SELLER:

**MEIJER STORES
LIMITED PARTNERSHIP**

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

By: 

(MICHAEL E. KINOSHITA)

Its: VICE PRESIDENT

APPROVED AS TO FORM

BY 



EXHIBIT A
TO
OPTION CONTRACT

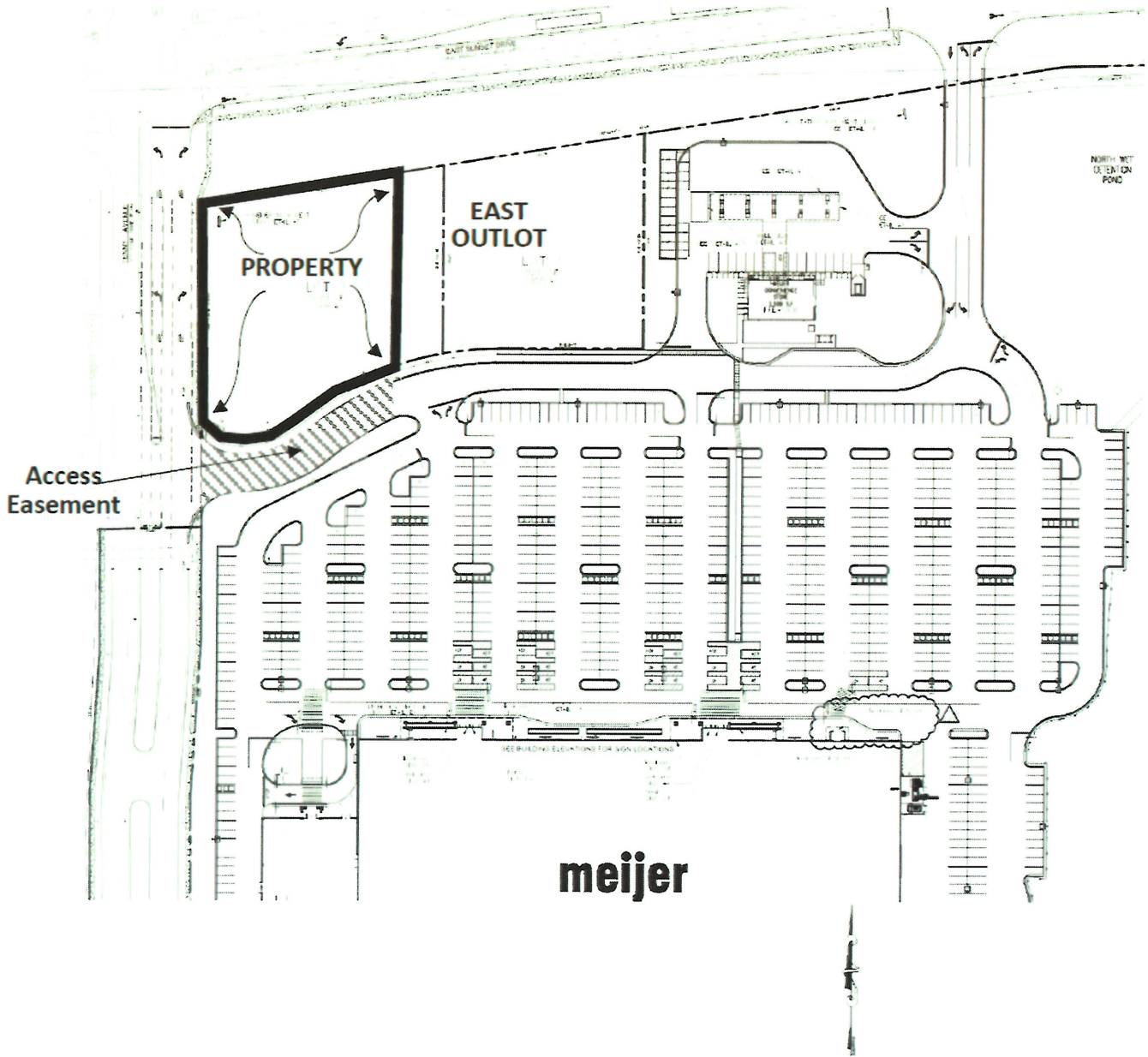
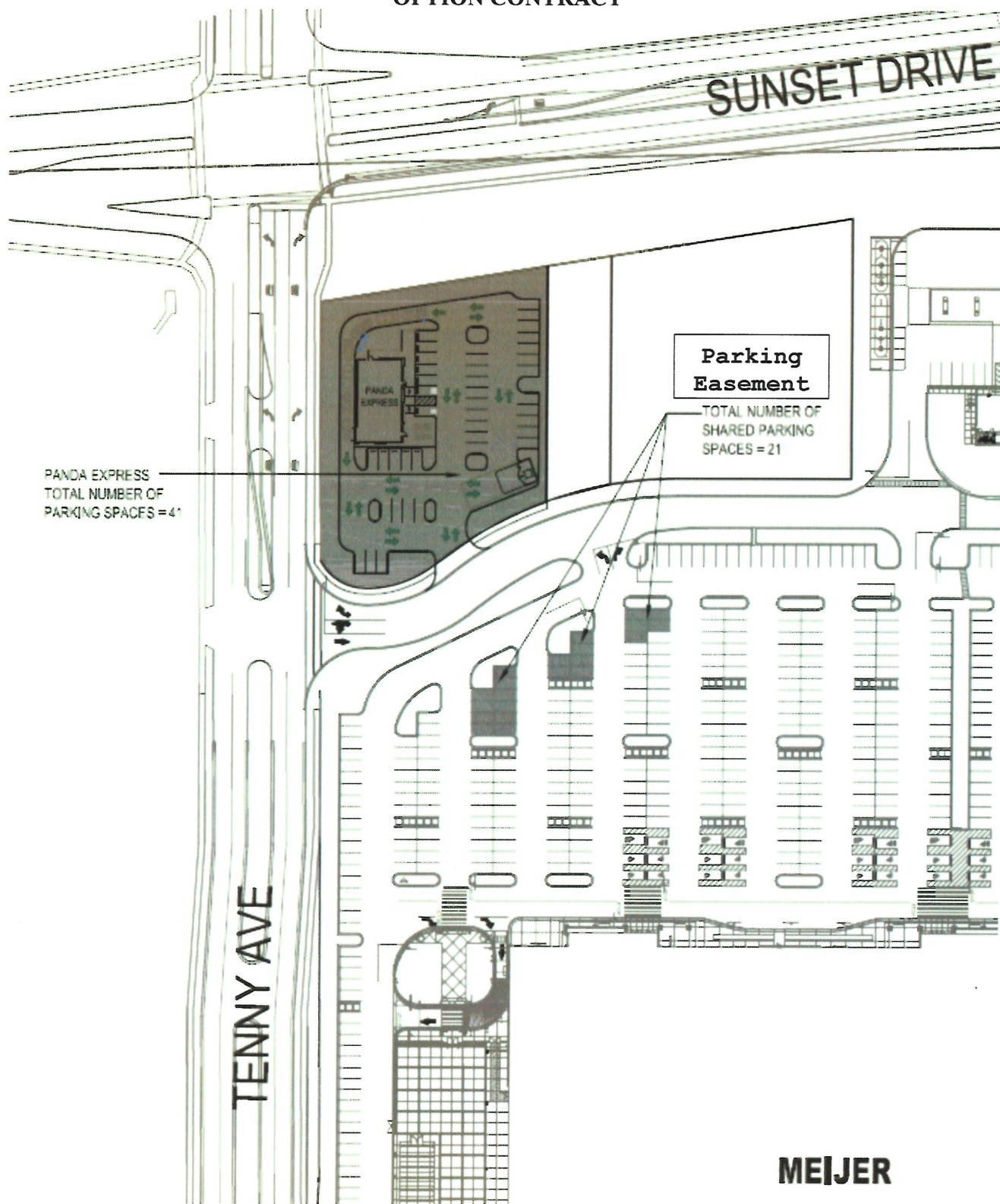


EXHIBIT A-1
TO
OPTION CONTRACT



**EXHIBIT B
TO
OPTION CONTRACT**

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (the "Declaration") is made and entered into as of the ____ day of _____, 201__, by and between **MEIJER STORES LIMITED PARTNERSHIP**, a Michigan limited partnership, whose address is 2929 Walker Avenue, N.W., Grand Rapids, Michigan 49544, hereinafter referred to as "Meijer," and **CFT NV DEVELOPMENTS, LLC**, a Nevada limited liability company, whose address is 1683 Walnut Grove Avenue, Rosemead, California 91770-3711, hereinafter referred to as "Developer." Meijer and Developer when referred to together are sometimes hereinafter referred to as the "Parties."

RECITALS

A. Pursuant to a certain Real Estate Option Contract executed by and between the Parties (with Meijer as Seller and Developer as Buyer), Developer is or is about to become the fee simple owner of a certain parcel of land located in the City of Waukesha, Waukesha County, Wisconsin. Said parcel of land is located on E. Sunset Drive, and is hereinafter referred to as the "Developer Parcel." The Developer Parcel contains approximately 0.85 acres of land and is legally described on the attached **Exhibit A**.

B. Meijer or an affiliated entity is the fee simple owner of a certain parcel of land located in the City of Waukesha, Waukesha County, Wisconsin, which parcel of land is hereinafter referred to as the "Meijer Parcel." The Meijer Parcel contains approximately 29.4145 acres of land and is located south and east of the intersection of Tenny Avenue and E. Sunset Drive in City of Waukesha. The Meijer Parcel is legally described on the attached **Exhibit B**.

C. The Meijer Parcel and the Developer Parcel adjoin one another: the Developer Parcel is bordered on its eastern and southern boundary lines by the Meijer Parcel.

D. The Meijer Parcel is improved with a combination food and general merchandise store. Developer intends to develop the Developer Parcel with a restaurant.

E. Pursuant to the terms of said Option Contract, the Parties desire to impose on the Developer Parcel certain covenants and restrictions, hereinafter set forth, for the benefit of Meijer and any future owner(s) of the Meijer Parcel.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other valuable consideration, the receipt and sufficiency which is hereby acknowledged, the Parties agree as follows:

1. Prohibited Commercial Activities. The Developer Parcel may be used for any lawful purpose except for the following prohibited uses: drug store of any kind; prescription pharmacy; a store selling liquor or spirits in package form and/or selling beer, wine, and ale for off premises consumption; grocery store, including so-called specialty food, ethnic food and health food stores; supermarket; supercenter; combination food and general merchandise store; any discount retail store, including so-called dollar stores; department store; warehouse club; wholesale club; gas station and/or convenience store; bakery shop or donut shop;



coffee shop; tire store; oil change facility; car wash; used car lot; bar; tattoo parlor; so called "head shop;" a business selling medical marijuana; any establishment selling or exhibiting drug-related paraphernalia; pawn shop; check-cashing, short-term loan, payday loan or other similar business, tavern or an amusement or recreation establishment, including without limitation a pool hall, bowling alley, massage parlor, game center, gambling establishment, establishment with electronic gaming machines, theater, play house, night club, movie theater, a store that sells or rents videotapes, DVDs, video games or other comparable items that have a rating above NC-17 (or other comparable classification), adult book store, or establishment featuring a male or female revue or any other similar or related uses; any combination of, or parking to support, any or all of the foregoing prohibited uses. In addition, no merchandise, equipment or services, including but not limited to vending machines, promotional devices and similar items, shall be displayed, offered for sale or lease, or stored outside the building located on the Developer Parcel, except only trash or garbage containers which shall be screened so that they are not readily visible from the Meijer Parcel (which garbage or trash containers shall be subject to Meijer's review and approval contemplated in Section 2 herein).

2. Prior Approval of Plans and Specifications. No improvements on or to the Developer Parcel shall be made, or once made thereafter significantly altered, remodeled or relocated, until plans and specifications for any improvement (the "Plans and Specifications") have been submitted to Meijer and approved by Meijer in writing, a preconstruction meeting is held with or waived by a representative of Meijer Real Estate and a CAD file of the final site layout plan is provided to Meijer Real Estate. Meijer's approval is required to ensure that all improvements of or to the Developer Parcel are structurally, aesthetically and operationally compatible with the use, operation and improvements which may exist from time to time on the Meijer Parcel. Meijer's approval of such Plans and Specifications shall not be unreasonably delayed or withheld.

Developer acknowledges that Meijer shall not be liable in damages or otherwise for any reason, including any mistake in judgment, negligence or nonfeasance, arising out of or in connection with the approval or disapproval or failure to approve or disapprove any proposal submitted pursuant to this Declaration. No approval shall be considered an approval of the plans, drawings and/or specifications from an engineering perspective or a determination that they meet building, environmental or engineering design standards, are in compliance with applicable covenants or governmental requirements, or that any improvements contemplated therein have been built in accordance with such plans, drawings and/or specifications. Unless (a) Developer specifically notes that the Plans and Specifications submitted to Meijer deviate from the Development Standards in Paragraph 4 below and specifically notes the nature of such deviation, (b) Developer, with reference to this Paragraph 2, requests that Meijer allow for such specific deviation from the Development Standards and (c) Meijer, in its sole discretion, approves the nature and scope of such deviation from the Development Standards in writing, any aspect of the Plans and Specifications that deviates from the Development Standards shall be considered unapproved, even if such Plans and Specifications have been approved by Meijer.

3. No Zoning Variances. Developer and its successors and assigns shall not seek governmental approval for any use of the Developer Parcel which requires the grant of any type of zoning variance or special use permit from Waukesha County, or any commission or subdivision thereof, or from any other governmental entity, without the express written consent of Meijer.

4. Development Standards. The development standards ("Development Standards") are defined as:

(a) Building Restrictions. Only a single building or structure shall be permitted on the Developer Parcel. No building or structure on the Developer Parcel shall be more than two thousand seven



hundred (2,700) square feet in area nor more than (1) story (20 feet) in height not including parapets, architectural features, rooftop equipment or required screening (provided the height and appearance of such architectural features, rooftop equipment or required screening shall be subject to the review and approval of Meijer as contemplated herein). Subject to Meijer's review and approval, a satellite dish, small communications antenna or other similar equipment may be placed on the rooftop of the building on the Developer Parcel provided such equipment is fully screened; however, a telecommunications tower, free standing antenna or other similar structure are prohibited on the Developer Parcel. The building or structure on the Developer Parcel shall only be operated as a single use business.

- (b) Intentionally Deleted.
- (c) Location of Existing Utilities and Easements on the Developer Parcel. Existing underground utility lines (including any of Meijer's private lines, which include, but are not limited to, lighting, irrigation, electric and telecommunication lines) must be field located and the actual location shown on the Plans and Specifications. Developer acknowledges that any plans, specifications or other information which Meijer provides are provided without representation or warranty by Meijer with respect to its accuracy, content or completeness. If the electric or communication service to the Meijer Store or the communication lines between the Meijer Store and the Gas Station/Convenience Store or the electric service to the Gas Station/Convenience Store is/are damaged, it will shut down the Meijer Store and/or the Gas Station/Convenience Store. Developer acknowledges that if any such line is damaged it will be responsible for not only the repair of the line(s) but also for any losses incurred by Meijer arising out of such damage. All existing and proposed easements shall be indicated and labeled on the Plans and Specifications.
- (d) Drives & Curb Cuts. Proposed drive locations and geometrics shall minimize disruption to operations on the Meijer Parcel and shall minimize traffic hazards and potential points of conflict. Any curb cut from the Developer Parcel onto the Meijer Parcel must be at least 50 feet from the intersection of the Meijer entrance drive and the Meijer perimeter drive; at least 100 feet from the intersection of the Meijer entrance drive and the public street; and at least 25 feet from the outlot boundary. Any curb cut must not exceed 25 feet in width. The curb radii of any curb cut from the Developer Parcel onto the Meijer Parcel must be at least 20 feet. A stop sign and stop bar shall be included at the intersection of all proposed curb cuts with drive(s) on the Meijer Parcel. Curb cuts to any drive on the Meijer Parcel shall be constructed by leaving any existing concrete gutter pan in place and saw cutting/grinding the existing curb 1 inch above the flow line to create a gutter pan section.
- (e) Signs. Developer's signage on the Developer Parcel shall be limited to one (1) monument sign, which shall not (i) be of a greater size or dimensions than any existing freestanding or monument sign on the Meijer Parcel (and which shall not in any event exceed seven (7) feet from the ground in height or eight (8) feet in width, regardless of the size of any existing sign on the Meijer Parcel); (ii) be closer to a public right-of-way than any existing freestanding or monument sign on the Meijer Parcel; (iii) obstruct the visibility of any existing freestanding or monument sign on the Meijer Parcel from an approaching right-of-way; or (iv) create an unsafe situation for vehicular or pedestrian traffic on the Meijer Parcel or a public right-of-way. Developer shall not install the following types of signs on the Developer Parcel: Signs with painted surface, flashing or audible signs, signs advertising a business other than the single-use business located on the Developer Parcel, cloth signs, paper signs, cardboard signs, or moveable signs.



- (f) Grading and Drainage. Grading of the Developer Parcel must not sheet flow runoff onto the Meijer Parcel. If the Meijer Parcel presently drains to the Developer Parcel, the storm system on the Developer Parcel must allow for and accommodate such existing runoff. Runoff shall be collected within the Developer Parcel and into the proposed storm system for conveyance and disposal. If, as of the date of this Declaration, the Developer Parcel discharges storm water into the storm water system on the Meijer Parcel, subject to Meijer granting Developer storm water discharge rights in a separate agreement and subject to the terms of such agreement, the Developer Parcel may continue to discharge storm water into the storm water system on the Meijer Parcel at the rate of flow as of the date of Developer acquires the Developer Parcel.
- (g) Landscaping. The landscaping on the Developer Parcel must not create an unsafe situation for vehicular or pedestrian traffic on the Meijer Parcel; must not obstruct the visibility of any Meijer sign; must screen dumpster enclosures, ground level units, loading/unloading areas, walk-in coolers, etc. and provide an aesthetic pleasing view of the proposed development from the Meijer Store, parking lot, and entrance drives.
- (h) Dumpster Enclosures. Dumpster enclosures must match the quality of the approved building on the Developer Parcel. A dumpster enclosure gate must be opaque and may not be constructed with chain link fence fabric and/or slats. A dumpster enclosure must be accessed from drives on the Developer Parcel and must not create an unsafe situation for vehicular or pedestrian traffic on the Meijer Parcel.
- (i) Site Electrical, Lighting and Illumination. Lighting on the Developer Parcel must match the light levels and uniformity on the Meijer Parcel, minimize light trespass onto the Meijer Parcel and minimize glare. Fixtures on the Developer Parcel must be full cutoff fixtures. The center of any relocated light pole base (or light pole that Meijer elects not to have removed) shall be at least five (5) feet off back of curb.
- (j) Utilities on the Meijer Parcel. The Developer Parcel may not make a connection to any existing utility or improvement on the Meijer Parcel or run utility lines over the Meijer Parcel unless Meijer, in its sole discretion, consents to Developer tapping into such utility/improvement and Meijer and Developer enter into an agreement granting such right to tap into the existing utility or improvement.
- (k) Existing Utilities on the Developer Parcel. Developer may not connect to any Meijer private water or sanitary line or any Meijer electric or gas service line that crosses the Developer Parcel.
- (l) Relocation of Existing Utilities on the Meijer Parcel. If Developer desires to relocate any of the existing utilities, improvements, or drainage on or affecting the Developer Parcel, any such relocation shall be completed without interruption to Meijer's utility service or drainage and only upon receipt of Meijer's prior written consent.
- (m) Elevations. Buildings must be constructed of quality materials that are suited for a highly successful and reputable business and that will not reflect negatively onto the development on the Meijer Parcel. Walk-in coolers, ice machines, and similar improvements shall blend with the building exterior and be covered with compatible materials.

5. Parking. Except as may be provided for within a separate parking easement between the



Parties, Developer and its successors and assigns shall provide a sufficient number of parking spaces on the Developer Parcel to meet all applicable governmental parking regulations and Developer's tenants and invitees shall park on the Developer Parcel and shall not park in the parking lot located on the Meijer Parcel. Meijer may take all appropriate action in order to prevent parking on the Meijer Parcel by tenants, invitees, or employees of Developer, including without limitation, ticketing and towing unauthorized vehicles, if and as permitted by law. Nothing contained in this Declaration shall be construed to grant Developer the right to use the Meijer Parcel in order to meet any parking, setback, sidewalk, bulk or other zoning or building requirements applicable to the Developer Parcel. Meijer's invitees, employees and lessees shall park on the Meijer Parcel and shall not park on the Developer Parcel. Developer may take all appropriate action in order to prevent parking on the Developer Parcel by tenants, invitees or employees of Meijer, including without limitation, ticketing and towing unauthorized vehicles, if and as permitted by law.

6. Maintenance. Developer shall maintain the Developer Parcel, including all landscaping and improvement thereon, in a slightly, safe condition and in a good state of repair, including, but not limited to complying with requirements of Section 4(g) (Landscaping), at a standard that is at least comparable to the standard of maintenance for other first class outlot developments in the metropolitan area in which the Developer Parcel is located. During the completion of any construction work on or about the Developer Parcel, Developer shall keep existing pavement on the Meijer Parcel "broom clean" and free of soil or aggregate that might be brought off-site from the Developer Parcel onto the Meijer Parcel. In the event Developer fails to fulfill such maintenance obligation after twenty (20) days prior written notice from Meijer, Meijer shall have the right, but not the obligation, to enter upon the Developer Parcel to cure such default at Developer's expense. If Meijer exercises its self-help right pursuant to this paragraph, Developer agrees to reimburse Meijer all documented costs reasonably incurred by Meijer in curing such default, plus an administrative fee equal to ten percent (10%) of such costs, within twenty (20) days after receipt of an invoice from Meijer. In addition for any reimbursement obligation not paid by Developer to Meijer in the timeframe provided above, (a) Developer shall be responsible for interest on such amount computed at the rate of the smaller of (i) twelve (12%) percent per annum and (ii) the highest interest rate allowed by law and (b) Meijer shall have the right to record a lien on the Developer parcel for the amount of the unpaid costs and the administrative fee, together with accrued interest at the rate set out above.

In the event any of the improvements on the Developer Parcel are damaged by fire or other casualty (whether insured or not), Developer shall, subject to governmental regulations and/or insurance adjustment delays, immediately remove the debris resulting from such event and provide a slightly barrier, and within a reasonable time thereafter shall either (i) repair or restore the damaged improvement to a complete unit, such repair or restoration to be performed in accordance with all provisions of this Declaration, (ii) erect another improvement in such location, such construction to be performed in accordance with all provisions of this Declaration, or (iii) demolish the damaged portion and/or the balance of such improvement and restore the cleared area to a landscaped condition.

7. Term. This Declaration shall continue for a term of twenty (20) years from the date hereof, or so long as a combination food and general merchandise type retail establishment is in operation on some or all of the Meijer Parcel, whichever shall be longer. Temporary cessation of operation upon the Meijer Parcel due to fire or other casualty, acts of God, labor disputes or other causes beyond the reasonable control of the owner of the Meijer Parcel and a temporary cessation of use for not more than three hundred sixty-five (365) consecutive days for the purpose of making alterations or for reletting shall not be deemed a cessation of operation within the meaning of this Section.

8. Covenants Running With Land. The restrictions hereby imposed and the agreements herein contained shall be restrictions and covenants running with the land and shall inure to the benefit of the Meijer



Parcel. The restrictions and covenants herein shall be binding upon the Parties and their respective heirs, successors and assigns, including, but without limitation, all subsequent owners of all or any part of the Developer Parcel or the Meijer Parcel and all those claiming by through or under them. Notwithstanding the foregoing, in the event Meijer sells a portion of the Meijer Parcel for outlot development, while continuing to operate the combination food and general merchandise type retail establishment on the remaining portion of the Meijer Parcel, such outlot parcel shall automatically be excluded from the definition of the Meijer Parcel upon the sale of the outlot.

9. Legal and Equitable Relief. Developer and Meijer and their successors and assigns shall have the right to prosecute any proceedings at law or in equity against the respective successors and assigns, or any other person or entity violating, attempting to violate or defaulting upon any of the provisions contained in this Declaration, in order to prevent any violation, attempted violation or default upon the provisions of this Declaration and to recover damages for any such violation or default. The remedies available under this Paragraph shall include, by way of illustration but not limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for specific performance of this Declaration.

10. Litigation Expense. If litigation arises out of or in connection with this Declaration, the party prevailing to judgment shall be entitled to recover its reasonable attorney fees and court costs.

11. Waiver of Default. No waiver of any default by Developer or Meijer under this Declaration shall be implied from any omission by Developer or Meijer to take any action with respect to any such default if such default continues or is repeated. In addition, no express waiver of any default shall affect any other default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant contained in this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Declaration. The consent or approval by Meijer to or of any act or request by Developer requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar acts or requests. All rights and remedies under this Declaration are cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which Developer or Meijer might otherwise have by virtue of a default under this Declaration, and the exercise of one such right or remedy by a Party shall not impair its standing to exercise any other right or remedy.

12. Method of Amendment. The provisions of this Declaration may be modified or amended, in whole or in part, only with the consent of the Parties, as the respective fee simple owners of the Developer Parcel and the Meijer Parcel, by declaration in writing, executed and acknowledged by the Parties, duly recorded in Waukesha County, Wisconsin.

13. No Third Party Beneficiary. The provisions of this Declaration are for the exclusive benefit of the fee simple owner(s) of the Developer Parcel and the Meijer Parcel, its successors and assigns, and not for the benefit of any third person or entity. In addition, this Declaration shall not be deemed to have conferred any rights, express or implied, upon any third person or entity.

14. Notices. Any notice or communication which either party desires, or is required, to give the other shall be in writing and shall be delivered in person or sent by certified mail, return receipt requested or by overnight express mail by a nationally recognized carrier, to the address shown for that party on the first page of this Declaration or to any subsequent address which may be provided to either party in writing. All notices or communications to Meijer shall be directed to the attention of its Real Estate Department. Notices



shall be deemed given three (3) days after mailing if sent by certified mail, postage prepaid, or upon receipt if delivered personally or by overnight express mail.

15. Captions. The captions of the paragraphs of this Declaration are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction.

16. Governing Law. This Declaration shall be construed in accordance with the laws of the State of Wisconsin and any applicable federal laws and regulations.

17. Severability. If any term, provision or condition contained in this Declaration shall, to any extent, be invalid or unenforceable, the remainder of this Declaration (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision or condition of this Declaration shall be valid and enforceable to the fullest extent provided by law.

18. Perpetuities. If and to the extent that any of the covenants herein would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision concerned shall continue and endure only until the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of Frederik G.H. Meijer living at the date of this Declaration.

19. Exhibits. All exhibits referred to herein and attached hereto shall be deemed part of this Declaration.

20. Counterparts. This Declaration may be executed by the Parties on any number of separate counterparts and all such counterparts so executed constitute one agreement binding on the Parties, notwithstanding that all Parties are not signatories to the same counterpart.

IN WITNESS WHEREOF, the Parties have executed this Declaration of Restrictions as of the day and year above first written.

**MEIJER STORES LIMITED
PARTNERSHIP**

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

By: (EXHIBIT – DO NOT SIGN)
(_____)
Its: _____

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

The foregoing instrument was acknowledged before me this ___ day of _____, 201___, by _____, the _____ of Meijer Group, Inc., the General Partner of Meijer Stores Limited Partnership, a Michigan limited partnership, on behalf of said limited partnership.



Notary Public, State of Michigan, County of _____.
My commission expires: _____.
Acting in the County of Kent.



**EXHIBIT C
TO
OPTION CONTRACT**

PARTIAL LIST OF PERMITTED EXCEPTIONS

1. Easement and Operation Agreement between Meijer Stores Limited Partnership and Carol O. Smart as Trustee of the Robert F. Smart and Carol O. Smart Revocable Trust of 2010, dated May 18, 2010, dated December 17, 2014, recorded December 23, 2014 as Instrument No. 4116493, Waukesha County Records.
2. Certified Survey Map No. 11263 approved on August 19, 2014, and recorded December 23, 2014 as Document No. 4116220, Waukesha County Records.
3. Commercial Planned Unit Development Agreement by and between Meijer Stores Limited Partnership and the City of Waukesha dated December 23, 2014 and recorded January 2, 2015, as Instrument No. 4117441, Waukesha County Records. Together with a First Amendment to Commercial Planned Unit Development Agreement by and between Meijer Stores Limited Partnership and the City of Waukesha dated July 21, 2015.



**EXHIBIT D
TO
OPTION CONTRACT**

OUTLOT REVIEW PROCEDURE

(I) Requirements Prior To Commencement Of Construction. No improvements on or to the Developer Parcel shall be made, or once made thereafter significantly altered, remodeled or relocated, until plans and specifications for any improvement (the "Plans and Specifications") have been submitted to Meijer and approved by Meijer in writing, a preconstruction meeting is held with Developer, Developer's contractor and a representative of Meijer Real Estate and a CAD file of the final site layout is delivered to Meijer.

(II) Deviations from Development Standards. Unless (a) Developer specifically notes that the Plans and Specifications submitted to Meijer deviate from the Development Standards (as defined below) and specifically notes the nature of such deviation, (b) Developer, with reference to the Declaration of Restrictions, requests that Meijer allow for such specific deviation from the Development Standards and (c) Meijer, in its sole discretion, approves the nature and scope of such deviation from the Development Standards in writing, any aspect of the Plans and Specifications that deviates from the Development Standards shall be considered unapproved, even if such Plans and Specifications have been approved by Meijer.

(III) Meijer's Remaining Property. Developer is responsible for demonstrating to Meijer that after the sale of the Developer Parcel, the Meijer Parcel will be in compliance with municipal green space and parking requirements. Any submittal must be provided to Meijer for review and approval before it is submitted to the applicable governmental authority.

(IV) Plan Submittals

A. Preliminary Submittal

A preliminary submittal of the proposed development is required. The submittal will consist of a preliminary site layout, exterior building elevations, and any proposed freestanding signs. The site layout will include the approximate property lines, building, parking spaces, drives, loading/unloading area, dumpster enclosure location, and freestanding sign location. Meijer will review the preliminary submittal and provide comments.

B. Final Submittal

A complete submittal is considered one hard copy and an electronic copy that include existing topography, site layout plan (including actual property lines), grading plan, utility plan, landscaping plan, lighting and illumination plan, building exterior elevations, dumpster enclosure elevations, sign elevations and appropriate details as necessary. Several plans may be combined on one sheet. Building drawings, other than building exterior elevations, are not necessary. A transmittal letter containing an itemized listing of the revisions and additions to the drawings shall accompany re-submittals. Submittals shall be submitted to the Meijer Real Estate Property Manager. Partial submittals will not be reviewed. The final submittal must address all Development Standards. A CAD file of the final site layout shall be delivered to Meijer for use in updating the overall development plan.

(V) Development Standards

(a) Building Restrictions. Only a single building or structure shall be permitted on the Developer



Parcel. No building or structure on the Developer Parcel shall be more than two thousand seven hundred (2,700) square feet in area nor more than (1) story (20 feet) in height not including parapets, architectural features, rooftop equipment or required screening (provided the height and appearance of such architectural features, rooftop equipment or required screening shall be subject to the review and approval of Meijer as contemplated herein). Subject to Meijer's review and approval, a satellite dish, small communications antenna or other similar equipment may be placed on the rooftop of the building on the Developer Parcel provided such equipment is fully screened; however, a telecommunications tower, free standing antenna or other similar structure are prohibited on the Developer Parcel. The building or structure on the Developer Parcel shall only be operated as a single use business.

(b) Intentionally Deleted

(c) Location of Existing Utilities and Easements on the Developer Parcel. Existing underground utility lines (including any of Meijer's private lines, which include but are not limited to lighting, irrigation, electric and telecommunication lines) must be field located and the actual location shown on the Plans and Specifications. Developer acknowledges that any plans, specifications or other information which Meijer provides are provided without representation or warranty by Meijer with respect to its accuracy, content or completeness. If the electric or communication service to the Meijer Store or the communication lines between the Meijer Store and the Gas Station/Convenience Store or the electric service to the Gas Station/Convenience Store is/are damaged, it will shut down the Meijer Store and/or the Gas Station/Convenience Store. Developer acknowledges that if any such line is damaged it will be responsible for not only the repair of the line(s) but also for any losses incurred by Meijer arising out of such damage. All existing and proposed easements shall be indicated and labeled on the Plans and Specifications.

(d) Drives & Curb Cuts. Proposed drive locations and geometrics shall minimize disruption to operations on the Meijer Parcel and shall minimize traffic hazards and potential points of conflict. Any curb cut from the Developer Parcel onto the Meijer Parcel must be at least 50 feet from the intersection of the Meijer entrance drive and the Meijer perimeter drive; at least 100 feet from the intersection of the Meijer entrance drive and the public street; and at least 25 feet from the outlot boundary. Any curb cut must not exceed 25 feet in width. The curb radii of any curb cut from the Developer Parcel onto the Meijer Parcel must be at least 20 feet. A stop sign and stop bar shall be included at the intersection of all proposed curb cuts with drive(s) on the Meijer Parcel. Curb cuts to any drive on the Meijer Parcel shall be constructed by leaving any existing concrete gutter pan in place and saw cutting/grinding the existing curb 1 inch above the flow line to create a gutter pan section.

(e) Signs. Developer's signage on the Developer Parcel shall be limited to one (1) monument sign, which shall not (i) be of a greater size or dimensions than any existing freestanding or monument sign on the Meijer Parcel (and which shall not in any event exceed seven (7) feet from the ground in height or eight (8) feet in width, regardless of the size of any existing sign on the Meijer Parcel); (ii) be closer to a public right-of-way than any existing freestanding or monument sign on the Meijer Parcel; (iii) obstruct the visibility of any existing freestanding or monument sign on the Meijer Parcel from an approaching right-of-way; or (iv) create an unsafe situation for vehicular or pedestrian traffic on the Meijer Parcel or a public right-of-way. Developer shall not install the following types of signs on the Developer Parcel: Signs with painted surface, flashing or audible signs, signs advertising a business other than the single-use business located on the Developer Parcel, cloth signs, paper signs, cardboard signs, or moveable signs.



- (f) Grading and Drainage. Grading of the Developer Parcel must not sheet flow runoff onto the Meijer Parcel. If the Meijer Parcel presently drains to the Developer Parcel, the storm system on the Developer Parcel must allow for and accommodate such existing runoff. Runoff shall be collected within the Developer Parcel and into the proposed storm system for conveyance and disposal. If, as of the date of this Declaration, the Developer Parcel discharges storm water into the storm water system on the Meijer Parcel, subject to Meijer granting Developer storm water discharge rights in a separate agreement and subject to the terms of such agreement, the Developer Parcel may continue to discharge storm water into the storm water system on the Meijer Parcel at the rate of flow as of the date of Developer acquires the Developer Parcel.
- (g) Landscaping. The landscaping on the Developer Parcel must not create an unsafe situation for vehicular or pedestrian traffic on the Meijer Parcel; must not obstruct the visibility of any Meijer sign; must screen dumpster enclosures, ground level units, loading/unloading areas, walk-in coolers, etc. and provide an aesthetic pleasing view of the proposed development from the Meijer Store, parking lot, and entrance drives.
- (h) Dumpster Enclosures. Dumpster enclosures must match the quality of the approved building on the Developer Parcel. A dumpster enclosure gate must be opaque and may not be constructed with chain link fence fabric and/or slats. A dumpster enclosure must be accessed from drives on the Developer Parcel and must not create an unsafe situation for vehicular or pedestrian traffic on the Meijer Parcel.
- (i) Site Electrical, Lighting and Illumination. Lighting on the Developer Parcel must match the light levels and uniformity on the Meijer Parcel, minimize light trespass onto the Meijer Parcel and minimize glare. Fixtures on the Developer Parcel must be full cutoff fixtures. The center of any relocated light pole base (or light pole that Meijer elects not to have removed) shall be at least five (5) feet off the back of curb.
- (j) Utilities on the Meijer Parcel. The Developer Parcel may not make a connection to any existing utility or improvement on the Meijer Parcel or run utility lines over the Meijer Parcel unless Meijer, in its sole discretion, consents to such construction/connection and Meijer and Developer enter into an agreement granting such right to tap into the existing utility or improvement or to run such utility line across the Meijer Parcel.
- (k) Existing Utilities on the Developer Parcel. Developer may not connect to any Meijer private water or sanitary line or any Meijer electric or gas service line that crosses the Developer Parcel.
- (l) Relocation of Existing Utilities on the Developer Parcel. If Developer desires to relocate any of the existing utilities, improvements or drainage on or affecting the Developer Parcel, such relocation may only be done upon receipt of Meijer's prior written consent. In addition, any such relocation must be completed without interruption to Meijer's utility service or drainage.
- (m) Elevations. Buildings must be constructed of quality materials that are suited for a highly successful and reputable business and that will not reflect negatively onto the development on the Meijer Parcel. Walk-in coolers, ice machines, and similar improvements shall blend with the building exterior and be covered with compatible materials.

(VI) Additional Plan Criteria



- (n) Cleaning. During the completion of any construction work on or about the Developer Parcel, Developer shall keep existing pavement on the Meijer Parcel "broom clean" and free of soil or aggregate that might be brought off-site from the Developer Parcel onto the Meijer Parcel
- (o) Meijer Pavement. During Construction, any existing pavement on the Meijer Parcel removed shall be sawcut, full depth, and restored to match the existing pavement cross section.
- (p) Traffic and Parking. The Developer Parcel shall be self contained. Required parking spaces shall be located on the Developer Parcel. The Meijer Parcel will not be used for the loading/unloading of delivery vehicles or for the backing up/turning around of delivery vehicles.
- (q) Additional Storm Water Discharge. If, as of the date of this Declaration, the storm system on the Meijer Parcel is designed and constructed to receive additional storm water from the Developer Parcel and all governmental approvals are received to receive such storm water from the Developer Parcel, subject to Meijer granting Developer storm water discharge rights in a separate agreement and subject to the terms of such agreement (including the obligation to obtain any necessary additional governmental approvals and the condition that such storm water discharge not negatively impact the Meijer Parcel or any other parcel that discharges or has a right to discharge in the storm system), the Developer Parcel may discharge storm water into the storm water system on the Meijer Parcel at such rate of for the Developer Parcel.

