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STATE OF INDIANA
LAKE COUNTY
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MORRIS W. CARTER
RECORDER

NONEXCLUSIVE DRIVEWAY ACCESS EASEMENT AGREEMENT

THIS NONEXCLUSIVE DRIVEWAY ACCESS EASEMENT AGREEMENT is made this 6th day of October, 2003, by and between **MEIJER STORES LIMITED PARTNERSHIP**, a Michigan limited partnership, 2929 Walker Avenue, N.W., Grand Rapids, Michigan 49544, Attention: Real Estate Department, , hereinafter referred to as "Meijer", and **BROWNSTONE DEVELOPMENT 30, LLC**, an Indiana limited liability company whose address is 18 W. 140 Butterfield Road, One Lincoln Centre 15th Floor, Oakbrook Terrace, Illinois 60181, hereinafter referred to as "Developer". Meijer and Developer are together hereinafter referred to as the "Parties".

RECITALS

A. Meijer is the fee simple owner of a parcel of land located south and west of the intersection of Merrillville Road and Lincoln Highway (U.S. 30) in the Town of Merrillville, Lake County, Indiana, containing approximately twenty-five (25) acres, hereinafter referred to as the "Meijer Parcel".

B. Concurrently with this grant of Easement, Developer is purchasing from Meijer a 1.239 acre parcel of land, hereinafter referred to as the "Developer Parcel". The Developer Parcel is legally described on **Exhibit A** attached hereto.

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

D. Meijer has previously constructed a driveway located immediately west and south of the Developer Parcel to allow for the ingress and egress of persons and vehicles to the Meijer Parcel from the Lincoln Highway (U.S. 30).

E. Meijer has agreed to grant Developer a perpetual, nonexclusive access easement over and across the portion of the access drive which is legally described on **Exhibit B** and approximately shown on **Exhibit C**, attached hereto, between Lincoln Highway (U.S.30) and the Developer Parcel as well as the curb cuts between the access drive and the Developer Parcel as contemplated in Paragraph 4(a) below, (together hereinafter referred to as the "Easement Area") in order to permit the ingress and egress of persons and vehicles, between the Developer Parcel and Lincoln Highway (U.S. 30). Meijer has also agreed to allow Developer to construct up to two curb cuts onto the Easement Area as contemplated herein.

F. The prior deed reference for the property that is encumbered by this easement is: Document No. 2000-076582 of the Lake County, Indiana Recorder's Office.

NOW, THEREFORE, in consideration of the foregoing Recitals, the execution of this Easement Agreement by the Parties hereto, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, it is agreed as follows:

1. Ingress and Egress Easement. Meijer hereby grants to Developer (for the benefit of the Developer Parcel) a perpetual, non-exclusive easement over and across the Easement

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Area, which is legally described on **Exhibit B**, and located as shown on **Exhibit C** attached hereto, for the sole purpose of permitting the ingress and egress of persons and vehicles between the Developer Parcel and Lincoln Highway (U.S. 30).

2. Encumbrances. The easement herein granted to Developer is made subject to all covenants, conditions, restrictions, encumbrances, and easements of record. Developer acknowledges that Meijer may grant other easements and encumbrances over and across the Easement Area that do not interfere with Developer's use of the Easement Area in accordance with this Easement Agreement.

3. Reservation of Rights.

(a) Meijer's Reservation. Meijer hereby reserves for itself, its successors and assigns, the right to use the Easement Area for any purpose which is not inconsistent with Developer's use of the Easement Area for ingress and egress, including, but not limited to, the right to use the Easement Area for the installation of underground utility lines. Developer specifically acknowledges that Meijer uses and intends to use the Easement Area for a main entry drive servicing a commercial development on the Meijer Parcel including additional future outlots on the Meijer Parcel, and Developer agrees that such use does not and will not constitute an overburdening of the easement or interference with Developer's use of the Easement Area irrespective of the amount of traffic generated by such businesses.

(b) Temporary Interruption. Meijer hereby reserves the right to close off the Easement Area for such reasonable period or periods of time as may be required in connection with: (i) any necessary repairs to the pavement of the Easement Area; (ii) installation or maintenance of utility lines across and under the Easement Area. Meijer shall coordinate the closing with Developer so that there is no unreasonable interference with the operation of the improvements on the Developer Parcel.

(c) Reconfiguration of Easement Area. Meijer hereby reserves for itself, and its successors and assigns, the right to relocate/reconfigure the Easement Area between Lincoln Highway (U.S. 30) and the curb cuts to the Developer Parcel, so long as a commercially reasonable convenient avenue of access is provided between Lincoln Highway (U.S. 30) and the Developer Parcel. Meijer agrees to coordinate any such relocation/reconfiguration with Developer so as to minimize any interference with the operations on the Developer Parcel. In the event of any such relocation or reconfiguration, Meijer may unilaterally amend this Easement Agreement to describe the new location and dimensions of any such revised Easement Area if necessary.

4. Construction.

(a) Construction. Developer may, at its expense, construct up to two curb cuts and related improvements onto the Easement Area, in a location approved by Meijer. Developer shall also be responsible for the construction of any improvements to the Easement Area and public right of way(s) required by the applicable governmental authorities arising out of the development of the Developer Parcel, subject to Meijer's right to review all plans and specifications therefor as provided herein. The foregoing construction shall be performed by Developer in connection with its development of the Developer Parcel.

(b) Review of Plans. Developer shall not begin construction of, or subsequently modify the construction plans until such time as Meijer is provided with, and approves in writing, all such engineering drawings, plans, specifications and other information as Meijer may reasonably require. Meijer shall not unreasonably delay or withhold its approval of such plans, drawings and specifications.

(c) Workmanship and Protection of Existing Utility Lines. Developer agrees that all construction work shall be performed in a good and workmanlike manner, with first-class materials and in accordance with the plans and specifications referenced herein and all applicable laws, rules, ordinances and regulations. In addition, Developer shall not complete any construction work or in any way interfere with traffic flow on the Meijer Parcel between November 15 and December 31 without the prior written consent of Meijer. Developer shall not block the traffic flow within the Easement Area during the construction work. Developer shall pay all costs, expenses,

liabilities and liens arising out of or in any way connected with such construction. Developer agrees that any existing utility lines located within the Easement Area shall be field located and protected and there shall be no interruption whatsoever of the utility services provided by the existing utility lines as a result of any construction activities by Developer and its contractors or subcontractors.

(d) Construction Liens. In the event any construction liens are filed against the Meijer Parcel, or any part thereof, in connection with any work performed by or on behalf of Developer pursuant to this Easement Agreement, Developer shall either pay or cause to be paid the same and have said liens discharged of record, promptly, or shall take such action as may be required to reasonably and legally object to such lien, or to have the lien removed from the property, and in all events shall have such lien discharged prior to the foreclosure of such lien. In the event Developer fails to comply with the terms of this Paragraph 4(d), Meijer shall have the right to pay-off said construction liens, whereupon Developer shall, within ten (10) days of the receipt of written demand therefor, reimburse Meijer for the entire cost of paying said liens, together with interest on such amount computed at the rate of eight (8%) percent per annum, calculated monthly, from the date of any such expenditure by Meijer to the date of payment.

(e) Cleanup. During the completion of the construction work and during the development of the Developer Parcel, Developer shall be responsible for regularly cleaning the Easement Area and Meijer Parcel of dirt and debris caused by Developer's construction activities. Upon completion of the construction work, Developer shall restore all areas disturbed during construction to their condition prior to construction.

5. Maintenance; Manner of Work. With the exception of Developers obligations under Paragraphs 4(a) and 4(e) above, Meijer shall maintain the access drive within the Easement Area in good order, appearance and repair (including patching, restriping and removing of snow and ice as part of the maintenance of the drives on the Meijer Parcel). Developer agrees to maintain the curb cuts to the Developer Parcel within the Easement Area, in good order, appearance and repair.

6. Payment of Annual Maintenance Fee by Fee Owner of Developer Parcel. In exchange for Meijer's agreement to maintain the Easement Area as provided herein, Developer agrees to pay Meijer a maintenance fee (the "Maintenance Fee"), by January 15 of each year to cover costs for the calendar year in which the Maintenance Fee is paid. The obligation to pay the Maintenance Fee shall be a covenant that runs with the Developer Parcel. The first Maintenance Fee shall be paid on January 15, 2004, and the fee shall be Two Thousand Dollars (\$2,000.00). The Maintenance Fee shall be increased by four percent (4%) every year. Payment shall be made to the order of Meijer Stores Limited Partnership and mailed to: Meijer Stores Limited Partnership, Attention: Real Estate Department, 2929 Walker Avenue, N.W., Grand Rapids, Michigan 49544. Failure to provide payment to Meijer within ten (10) days after receipt of written notice from Meijer of Developer's failure to pay shall be deemed a material breach of this Easement Agreement.

7. Developer's Insurance Requirements. At all times during the term of this Easement Agreement, Developer shall purchase and maintain (i) Commercial General Liability including premises/operations, products/completed operations, blanket contractual liability, fire and explosion liability, explosion/collapse and underground hazard coverage, broad form property damage, independent contractors and personal/advertising injury coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence; such policy shall include contractual liability and completed operations coverage; such policy shall be an occurrence policy and not a claims-made policy. Meijer, Meijer, Inc., Meijer Distribution, Inc., Meijer Stores Limited Partnership and their parent, subsidiary and affiliated companies must be named as an additional insured on ISO form CG2026 or a comparable additional insured endorsement acceptable to Meijer, at no cost to Meijer. The additional insured endorsement shall extend coverage to the contractual liability and completed operations coverage. (ii) Automobile Liability including contractual liability coverage for all owned, hired and non-owned vehicles. (iii) Workers' Compensation coverage for its employees or contractors with statutory limits; such policy shall include an Alternate Employer endorsement and Employers' Liability coverage with limits of Five Hundred Thousand Dollars (\$500,000.00). Evidence of all insurance required shall be promptly sent to the Risk Management Department, P.O. Box 3280, Grand Rapids, Michigan 49501-3280. Insurance policies shall afford primary coverage and contain a provision that the coverages afforded shall not be modified or canceled until at least ten (10) days prior written notice has been given to the Meijer Risk Management Department. All

required insurance policies shall be underwritten by an insurance carrier with an A.M. Best rating of an A- or better. Compliance by Developer with the requirements in this Paragraph 7 (Developer's Insurance Requirements) as to carrying insurance and furnishing proof thereof to Meijer shall not relieve Developer of its indemnity obligations under Paragraph 9 (Indemnification). Indemnity obligations in this Easement Agreement shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured. Failure to comply with all insurance requirements shall be deemed a material breach of this Easement Agreement. However, failure to provide evidence of existing insurance shall constitute a material breach only if Developer fails to provide such evidence within ten (10) days after written notice from Meijer that Developer has failed to provide the evidence of existing insurance.

8. Insurance Requirements for Developer's Contractors and Subcontractors.

Prior to commencing any work within the Easement Area, Developer shall cause its contractor(s) and subcontractor(s) to procure and keep in effect, during the course of their work in, on or about the Meijer's Parcel and the Easement Area, the following insurance coverages:

(a) Commercial General Liability including premises/operations, products/completed operations, blanket contractual liability, fire and explosion liability, explosion/collapse and underground hazard coverage, broad form property damage, independent contractors and personal/advertising injury coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence; such policy shall be an occurrence policy and not a claims-made policy. Meijer, Inc., Meijer Distribution, Inc., Meijer Stores Limited Partnership and their parent, subsidiary and affiliated companies must be named as an additional insured on ISO form CG2026, or comparable additional insured endorsement acceptable to Meijer, at no cost to Meijer.

(b) Automobile Liability including contractual liability coverage for all owned, hired and non-owned vehicles with a combined single limit not less than One Million Dollars single limit.

(c) Workers' Compensation coverage for its employees or contractors with statutory limits; such policy shall include an Alternate Employer endorsement and Employers' Liability coverage with limits of Five Hundred Thousand Dollars (\$500,000.00).

Evidence of all insurance required shall be promptly sent to the Risk Management Department, P.O. Box 3280, Grand Rapids, MI 49501-3280. Insurance policies shall afford primary coverage and contain a provision that coverages afforded shall not be modified or canceled until at least ten (10) days prior written notice has been given to the Meijer Risk Management Department; All required insurance policies shall be underwritten by an insurance carrier with an A.M. Best rating of an A- or better.

Notwithstanding anything to the contrary in the foregoing, Meijer shall not be responsible for verifying compliance by any contractor and/or subcontractor with the foregoing insurance requirements. Rather, it shall be Developer's sole responsibility to monitor compliance by any of its contractors and/or subcontractors with the foregoing insurance requirements. However, failure to provide evidence of existing insurance shall constitute a material breach only if Developer fails to provide such evidence within ten (10) days after written notice from Meijer that Developer has failed to provide the evidence of existing insurance.

9. Indemnification. Developer agrees to defend, indemnify and save harmless

Meijer, Meijer Inc., Meijer Distribution, Inc., Meijer Stores Limited Partnership, their parent, subsidiary and affiliated entities and their respective officers, directors, shareholders, partners, agents and employees (hereafter collectively "Related Parties"), from and against any and all liability or claim thereof (including but not limited to reasonable actual attorney fees and costs) whether for injury to persons, including death, or damage to property, which may be imposed upon, incurred by or asserted against Meijer or its Related Parties: (i) allegedly or actually arising in connection with or as a direct or indirect result of any activity by Developer, its employees, agents, contractors, subcontractors, lessees, invitees, or licensees in, on, or about the Easement Area, including use of the Easement Area; (ii) arising out of any default by Developer under this Easement Agreement; or (iii) arising out of any negligent act or omission to act by Developer, its agents, employees, contractors or subcontractors. The foregoing indemnity from Developer shall include claims alleging

or involving joint or comparative negligence, but shall not extend to liability directly resulting only from the sole negligence of Meijer or its Related Parties.

10. Covenants Running with the Land. The easement herein granted and the agreements herein contained shall be easements and covenants running with the land and shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and assigns.

11. Notices. Notices permitted or required hereunder shall be in writing and shall be delivered or sent by certified mail or overnight delivery by a reputable national carrier to the addresses provided below, (except however, insurance certificates are to be mailed as provided in Paragraphs 7 and 8 above) provided that any party may change such address by written notice to the other party:

If to Developer Brownstone Development 30, LLC
18 W. 140 Butterfield Road
One Lincoln Centre, 15th Floor
Oakbrook Terrace, Illinois 60181
Attention: James W. Calvo

If to Meijer Meijer
Real Estate Department
2929 Walker NW
Grand Rapids, Michigan 49544

with a copy to: Meijer
Legal Department – Real Estate
2929 Walker NW
Grand Rapids, Michigan 49544

12. Governing Laws. This Easement Agreement shall be construed in accordance with the laws of the State of Indiana and any applicable federal laws and regulations.

13. Waiver of Default. No waiver of any default by any party to this Easement Agreement shall be implied from any omission by any other party to take any action in respect of such default. No express waiver of any default shall affect any 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 Easement Agreement 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 Easement Agreement. The rights and remedies given to any party to this Easement Agreement shall be deemed to be 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 any such party might otherwise have by virtue of a default under this Easement Agreement, and the exercise of one such right or remedy by any such party shall not impair such party's standing to exercise any other right or remedy.

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

STATE OF ILLINOIS)
) ss.
COUNTY OF DePage)

The foregoing Nonexclusive Driveway Access Easement Agreement was acknowledged before me this 6th day of October, 2003, by James W. Celvo, the MBA of Brownstone Development 30, LLC, an Indiana limited liability company, for and on behalf of said company.

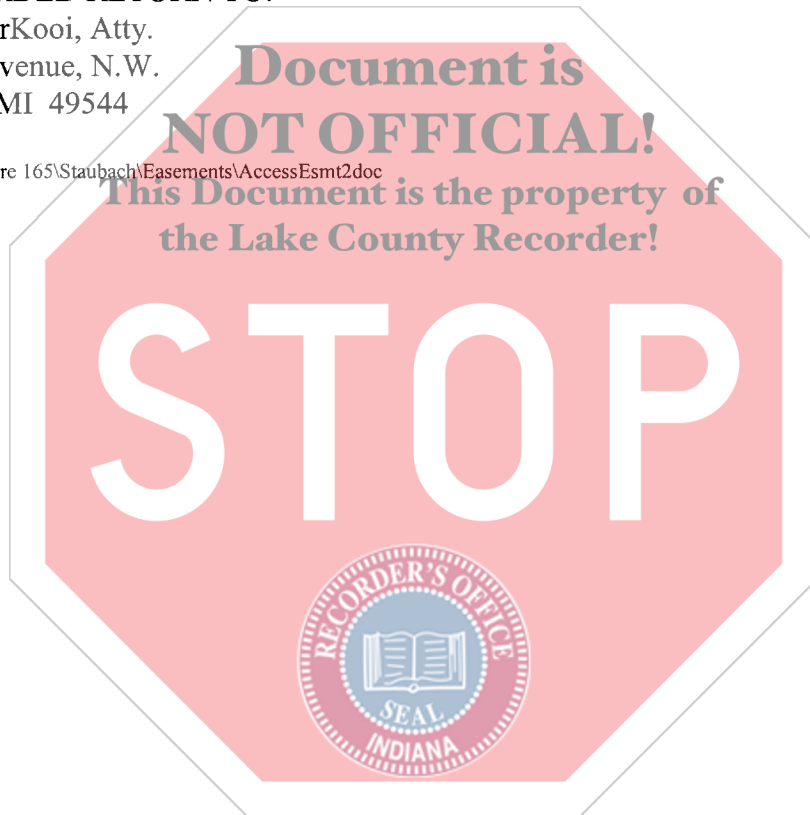
Lisa Davidson
Notary Public, DePage Co., IL
My commission expires: _____



DRAFTED BY AND
WHEN RECORDED RETURN TO:

Glen M. VanderKooi, Atty.
2929 Walker Avenue, N.W.
Grand Rapids, MI 49544
(616) 791-5055

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**EXHIBIT A
TO
NONEXCLUSIVE DRIVEWAY ACCESS EASEMENT AGREEMENT**

Legal Description of Developer Parcel

Lot 2-A, Resubdivision of Lot 2 of Meijer Plat, recorded as Document No. 2003 052450 in Plat Book 093, Page 70 in the Office of the Recorder of Lake County, Indiana.

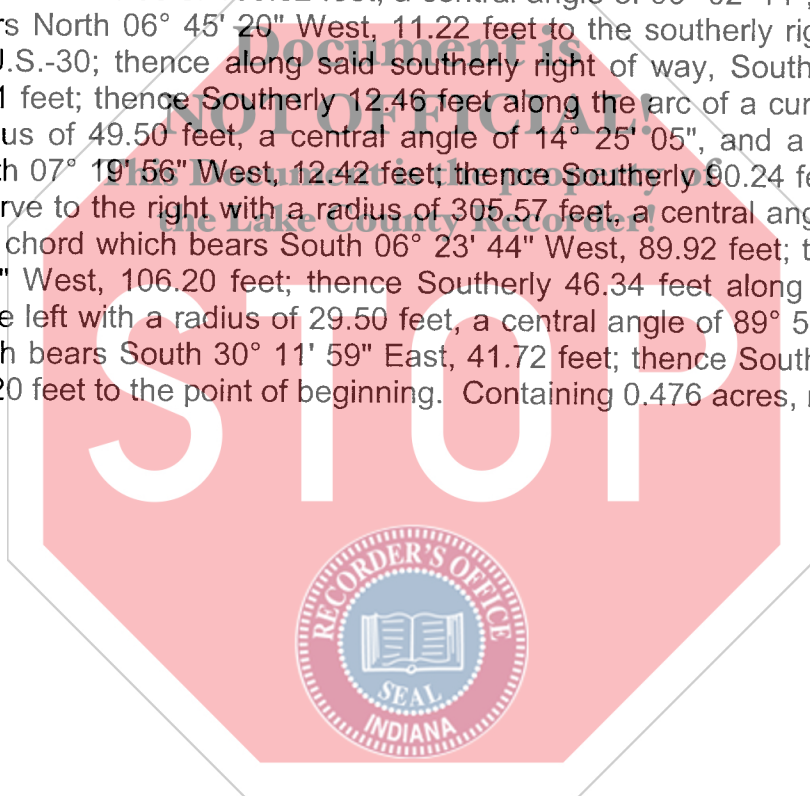


**EXHIBIT B
TO
NONEXCLUSIVE DRIVEWAY ACCESS EASEMENT AGREEMENT**

Legal Description of the Easement Area

A parcel of land located in the South 1/2, of Section 21, Town 35 North, Range 8 West, Town of Merrillville, Lake County, Michigan, being an easement for ingress and egress further described as:

Commencing at the Southeast Corner of Lot 2A of the Replat of Meijer Plat thence South 14° 48' 00" West, 14.50 feet, to the point of beginning; thence South 14° 48' 00" West, 31.00 feet; thence North 75° 12' 00" West, 294.71 feet; thence North 14° 48' 28" East, 68.86 feet; thence Northerly 150.63 feet along the arc of a curve to the left with a radius of 588.01 feet, a central angle of 14° 40' 38", and a chord which bears North 07° 28' 10" East, 150.22 feet; thence North 00° 06' 41" East, 25.50 feet; thence Northerly 11.22 feet along the arc of a curve to the left with a radius of 106.52 feet, a central angle of 06° 02' 14", and a chord which bears North 06° 45' 20" West, 11.22 feet to the southerly right of way of Highway U.S.-30; thence along said southerly right of way, South 89° 42' 56" East, 59.91 feet; thence Southerly 12.46 feet along the arc of a curve to the left with a radius of 49.50 feet, a central angle of 14° 25' 05", and a chord which bears South 07° 19' 56" West, 12.42 feet; thence Southerly 90.24 feet along the arc of a curve to the right with a radius of 305.57 feet, a central angle of 16° 55' 16", and a chord which bears South 06° 23' 44" West, 89.92 feet; thence South 14° 48' 02" West, 106.20 feet; thence Southerly 46.34 feet along the arc of a curve to the left with a radius of 29.50 feet, a central angle of 89° 59' 58", and a chord which bears South 30° 11' 59" East, 41.72 feet; thence South 75° 12' 00" East, 222.20 feet to the point of beginning. Containing 0.476 acres, more or less.



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**EXHIBIT C
TO
NONEXCLUSIVE DRIVEWAY ACCESS EASEMENT AGREEMENT**

Depiction of the Easement Area

