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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2003 OCT -9 AM 10:30

MORRIS W. CARTER  
RECORDER

**NONEXCLUSIVE TELEPHONE LINE EASEMENT AGREEMENT**

THIS NONEXCLUSIVE TELEPHONE LINE EASEMENT AGREEMENT is made this 6<sup>th</sup> 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 15<sup>th</sup> 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. Pursuant to a Nonexclusive Telephone Line Easement Agreement between Meijer and Halle Properties, L.L.C. (owner of the outlot located east of and adjacent to the Developer Parcel (the "Outlot")), dated July 15, 2003, Halle intends to construct a telephone line between Merrillville Road and the Outlot (the "Telephone Line"). Such Easement Agreement provides that subject to Developer obtaining all necessary approvals from the applicable governmental authorities and/or utility companies, the owner of the Outlot agrees to cooperate with Developer in entering into a telephone line easement agreement whereby Developer may utilize the telephone line. Which easement agreement shall (i) provide that Developer shall reimburse the owner of the Outlot its proportionate share of the cost to construct and maintain the Telephone Line (ii) address the construction of a telephone line from the Developer Parcel to connect with the Telephone Line and (iii) shall allow the Developer the right to construct the Telephone Line in the event the Developer Parcel is developed before the Outlot.

E. Meijer has agreed to grant Developer a non-exclusive easement over, under and across that portion of the Meijer Parcel legally described on **Exhibit B** attached hereto, and located approximately as shown as **Exhibit C** attached hereto (hereinafter referred to as the "Easement Area"), in order to permit Developer to and use the Telephone Line. The Outlot is shown as "Lot 2-B" on **Exhibit C**.

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

**HOLD FOR MERIDIAN TITLE CORP.**

1581 LK03

2500  
KIM  
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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. Grant of Easement. Subject to Developer obtaining all necessary municipal approvals for the use and operation of the Telephone Line, Meijer hereby grants to Developer (for the benefit of the Developer Parcel), a perpetual, nonexclusive easement across and under the Easement Area, for the sole purpose of permitting the use and operation of the Telephone Line.

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 utility service, including, but not limited to, the right to use the Easement Area for landscaping, construction of driveways, parking lots and the installation of underground utilities.

(b) Relocation of Easement Area. Meijer hereby reserves for itself, and its successors and assigns, the right to relocate the Easement Area, provided there is no interruption of utility service to the Developer Parcel and further provided that all work associated with such relocation shall be completed at Meijer's sole cost. Meijer agrees to coordinate any such relocation with Developer so as to minimize any interference with the operations on the Developer Parcel. In the event of any such relocation, Meijer may unilaterally amend this Easement Agreement to describe the new location of the relocated Telephone Line if necessary.

4. Modifications. Developer (and/or the owner of the Outlot) shall be responsible for the construction of the Telephone Line and any improvements /modifications required by the applicable authorities arising out of the development of the Developer Parcel, subject to Meijer's review and approval of all plans and specifications associated with such work. Any such construction by Developer shall be completed in connection with its development of the Developer Parcel and shall be completed in accordance with the terms of a temporary license agreements entered into by the parties. Such construction (including the preparation of plans) shall be performed at the sole cost and expense of Developer, and Meijer shall not be obligated to pay for any of such work. 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.

5. Maintenance; Manner of Work. Developer agrees to maintain the Telephone Line in conformity with all governmental regulations.

6. 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 6 (Developer's Insurance Requirements) as to carrying insurance and furnishing proof thereof to Meijer shall not relieve Developer of its indemnity obligations under Paragraph 8 (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.

7. 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.

8. 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.

9. 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.

10. 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, 15<sup>th</sup> Floor  
Oakbrook Terrance, 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

11. 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.

12. 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.

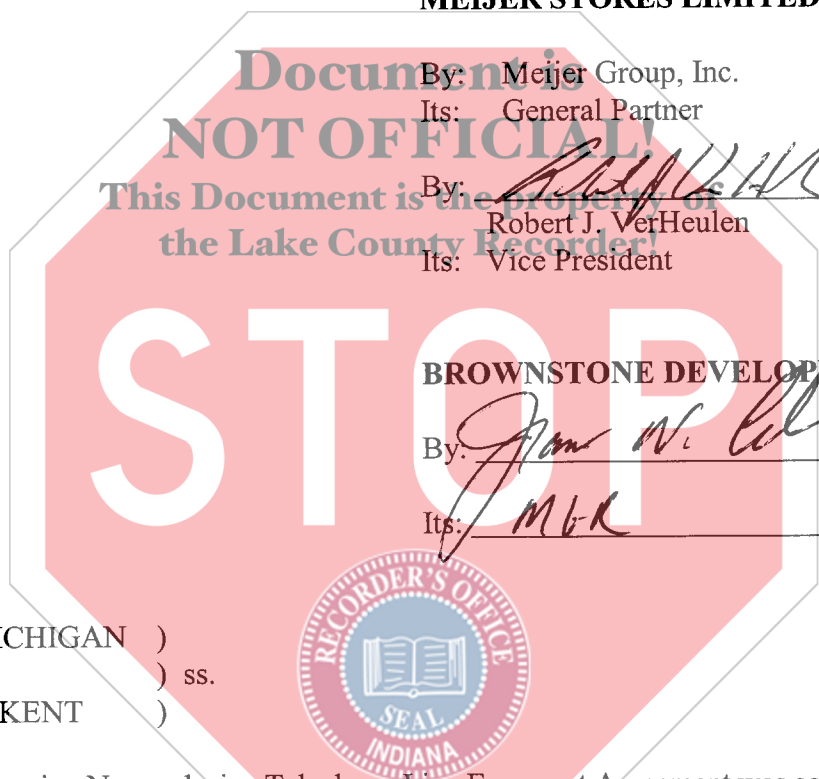
13. Exhibits. All exhibits referred to herein and attached hereto shall be deemed part of this Agreement.

14. Severability. If any term, provision or condition contained in this Easement Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Easement Agreement (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 Easement Agreement shall be valid and enforceable to the fullest extent permitted by law provided that such deletions can be made without materially changing the basic agreement between the parties. If such deletions cannot be made without materially changing the basic agreement between the parties, then the parties agree to amend, or to permit the court to amend, this Easement Agreement to accomplish essentially the same transaction without said illegal, invalid or unenforceable provisions.

15. Counterparts. This Easement Agreement 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 Nonexclusive Telephone Line Easement Agreement as of the day and year first above written.

**MEIJER STORES LIMITED PARTNERSHIP**



By: Meijer Group, Inc.  
Its: General Partner

By: [Signature]  
Its: Robert J. VerHeulen  
Vice President

[Handwritten initials]

**BROWNSTONE DEVELOPMENT 30, LLC**

By: [Signature]  
Its: [Signature]

STATE OF MICHIGAN )  
                                  ) ss.  
COUNTY OF KENT )

The foregoing Nonexclusive Telephone Line Easement Agreement was acknowledged before me this 2<sup>nd</sup> day of October, 2003, by Robert J. VerHeulen, the Vice President of Meijer Group, Inc., the General Partner of Meijer Stores Limited Partnership, a Michigan limited partnership, for and on behalf of said limited partnership.

[Signature]  
Notary Public, Ottawa Co., MI  
My commission expires: 2-17-05

LaRAE B. STEIGENGA  
Notary Public, Ottawa Co., MI  
Acting in Kent Co., MI  
My Commission Expires Feb. 17, 2005

STATE OF ILLINOIS     )  
  ) ss.  
COUNTY OF DuPage     )

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

Lisa Davidson

Notary Public, DuPage 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 TELEPHONE LINE 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 TELEPHONE LINE EASEMENT AGREEMENT**

Legal Description of the Easement Area

A parcel of land located in the South half, of Section 21, Town 35 North, Range 8 West, Town of Merrillville, Lake County, Indiana, being an easement for the construction, operation, maintenance, repair, and/or removal of a telephone line further described as:

Beginning at the Northeast corner of Lot 1 of Meijer Plat, thence along the westerly right of way of Merrillville Road, South 14° 49' 00" West, 10.36 feet; thence Westerly 398.59 feet along the arc of a curve to the right with a radius of 67511.61 feet, a central angle of 00° 20' 18", and a chord which bears South 89° 55' 25" West, 398.59 feet to the east line of Lot 2 of Meijer Plat; thence along said east line, North 00° 00' 00" East, 10.00 feet to the southerly right of way of Highway U.S. 30 (Lincoln Highway); thence Easterly 401.23 feet along said right of way and the arc of a curve to the left with a radius of 67501.61 feet, a central angle of 00° 20' 26", and a chord which bears North 89° 55' 21" East, 401.23 feet to the point of beginning. Containing 0.092 acres, more or less.





**EXHIBIT C  
TO  
NONEXCLUSIVE TELEPHONE LINE EASEMENT AGREEMENT**

Illustration of the Easement Area

**EXHIBIT TO EASEMENT  
FOR TELEPHONE LINE**

☉ US HWY 30

EASEMENT FOR  
TELEPHONE LINE  
0.092 ACRES ±

$\Delta = 00^{\circ}20'26''$   
R = 67501.61'  
L = 401.23'  
LC = 401.23'  
= N89°55'25"E

POINT OF  
BEGINNING

S14°49'00"W  
10.36'

N00°00'00"E  
10.00'

**Document is  
NOT OFFICIAL!**  
This Document is the property of  
the Lake County Recorder!

$\Delta = 00^{\circ}20'18''$   
R = 67511.61'  
L = 398.59'  
LC = 398.59'  
= S89°55'25"W

LOT 2-B

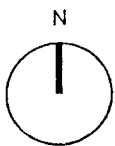
LOT 1

☉ MERRILLVILLE ROAD

**STOP**



MEIJER PARCEL



**EASEMENT FOR  
TELEPHONE LINE**

0 100'  
1" = 100'

MEIJER OUTLOT  
MEIJER STORE NO 165  
MERRILLVILLE, INDIANA  
Project No.: 56540101

JAN. 14, 2003

Sheet 1 of 1

**ProgressiveAE**

1811 4 MILE ROAD NE GRAND RAPIDS MI 49525-2442  
616 361 2664 FAX 616 361 1493  
WWW.PROGRESSIVEAE.COM

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