



J.P. "RICK" CARNEY

DUPAGE COUNTY RECORDER

JAN. 18, 2001

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R2001-009866

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DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (the "Declaration") is made and entered into as of the 5th day of January, 2001, by and between **MEIJER STORES LIMITED PARTNERSHIP**, a Michigan limited partnership, 2929 Walker Avenue, N.W., Grand Rapids, Michigan 49544, hereinafter referred to as "Meijer", and **REAL ESTATE AMERICA, LLC**, an Illinois limited liability company, 825 N. Case Avenue, Westmont, Illinois 60559, hereinafter referred to as "Developer". Meijer and Developer when referred to together are sometimes hereinafter referred to as the "Parties".

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RECITALS

A. Pursuant to a certain Real Estate Sale 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 Aurora, DuPage County, Illinois. Said parcel of land is located in the City of Aurora and is hereinafter referred to as the "Developer Parcel". The Developer Parcel contains approximately 8.918 acres of land and is legally described on the attached **Exhibit A**.

B. Meijer is the fee simple owner of a certain parcel of land located in the City of Aurora, DuPage County, Illinois, which parcel of land is hereinafter referred to as the "Meijer Parcel". The Meijer Parcel contains approximately 106.294 acres of land in the City of Aurora, Illinois, conveyed by Instrument No. R2001-009866, DuPage County Records. The Meijer Parcel is legally described on the attached **Exhibit B**.

C. The Developer Parcel and the Meijer Parcel (the "Parcels") adjoin one another: the Developer Parcel is bordered on its northern boundary lines by the Meijer Parcel.

D. The Meijer Parcel is improved with a combination food and general merchandise store.

E. Pursuant to the terms of said Real Estate Sale 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.

CHARGE C.T.I.C. DuPA

Pin# 07-21-200-048

P.A. Vacant land Route 59

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Aurora, IL

- 046

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- 045

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; sale of liquor in package form, including without limitation beer, wine and ale; grocery store; supermarket; supercenter; combination food and general merchandise store; any discount retail facility exceeding 30,000 square feet under one roof; department store; warehouse club; wholesale club; gas station; used car lot; bar; tavern or an amusement or recreation establishment, including without limitation a pool hall, bowling alley, massage parlor, game center, theater, play house, night club, movie theater, adult book store, or establishment featuring a male or female revue; any combination of, or parking to support, any or all of the foregoing prohibited uses.

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 have been submitted to Meijer and approved by Meijer in writing. 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.

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 DuPage County, or any commission or subdivision thereof, or from any city or township located therein or from any other governmental entity, without the express written consent of Meijer. The foregoing restriction is especially intended to prohibit any variance or special use permit which might reduce the parking and set back requirements applicable to the Developer Parcel.

4. Height. No building or structure on the Developer Parcel shall be more than one (1) story (20 feet) in height; architectural features may exceed such height limit if approved by Meijer in writing on a case by case basis.

5. Parking. 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. Developer's tenants, invitees and employees 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.

6. 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 Paragraph.

7. 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.

8. Legal and Equitable Relief. Meijer and its successors and assigns shall have the right to prosecute any proceedings at law or in equity against Developer and its 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. Notwithstanding anything in this Declaration to the contrary, nothing herein shall be deemed to create a reversion, possibility of reverter, or right of entry in the event of breach of the covenants herein or the termination or lapse of this Declaration.

9. 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.

10. Waiver of Default. No waiver of any default by Meijer to this Declaration shall be implied from any omission by 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. Meijer's 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 Meijer might otherwise have by virtue of a default under this Declaration, and the

exercise of one such right or remedy by Meijer shall not impair its standing to exercise any other right or remedy.

11. 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 DuPage County, Illinois.

12. No Third Party Beneficiary. The provisions of this Declaration are for the exclusive benefit of the fee simple owner(s) of 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.

13. 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, 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.

14. 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.

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

16. 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.

17. 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 Frederick G. H. Meijer, of Grand Rapids, Michigan, living at the date of this Declaration.

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

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

IN THE PRESENCE OF:

MEIJER STORES LIMITED
PARTNERSHIP

By: Meijer Group, Inc.
General Partner

Cynthia A. Laird
(Cynthia A. Laird)
Barbara J. Strayer
(Barbara J. Strayer)

By: Daniel Shaheen
Daniel Shaheen
Vice President - Real Estate

LOCAL SMP
BUS. _____

IN THE PRESENCE OF:

REAL ESTATE AMERICA, LLC

HEO FAY
(HEO FAY)
Donald L. Shriver
(DONALD L. SHRIVER)

By: [Signature]
Its: [Signature]

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

The foregoing instrument was acknowledged before me this 2nd day of January, 2001, by Daniel Shaheen, the Vice President - Real Estate of Meijer Group, Inc., a Michigan corporation, for and as the act of the General Partner of Meijer Stores Limited Partnership, a Michigan limited partnership, on behalf of said partnership.

Barbara J. Strayer
Notary Public, Kent County, Michigan
My commission expires: 4-16-04

Barbara J. Strayer
Notary Public, Ottawa Co., MI
Acting in Kent Co., MI
My Commission Expires April 16, 2004

STATE OF ILLINOIS)
) ss.
COUNTY OF DUPAGE)

The foregoing instrument was acknowledged before me this 5th day of January, 2001, by RAUDAL OLSON, the MANAGER of Real Estate America, LLC, an Illinois limited liability company, on behalf of said limited liability company.



Notary Public, _____ County, Illinois
My commission expires: _____



DRAFTED BY AND
WHEN RECORDED RETURN TO:
Stephen M. Price, Atty.
2929 Walker Avenue, N.W.
Grand Rapids, MI 49544
(616) 791-5059

EXHIBIT A

LEGAL DESCRIPTION OF DEVELOPER PARCEL

Lots 3, 4, 5, 6 and 7 in Meijer Subdivision, being a subdivision of part of the Northeast $\frac{1}{4}$ of Section 21 and the Southeast $\frac{1}{4}$ of Section 16, Township 38 North, Range 9, East of the Third Principal Meridian, according to the plat thereof recorded January 28, 2000 as Document R2000-14525, in DuPage County, Illinois.

EXHIBIT B
LEGAL DESCRIPTION OF MEIJER PARCEL

Situate in Sections 16 and 21, Township 38 North, Range 9 East, Township of Naperville, County of DuPage, State of Illinois, and being all of a tract of land conveyed to Mary L. Brummel Trust recorded as Document No. R96-058055 and all of a tract of land conveyed to Mary L. Brummel Trust recorded as Document No. R96-058054 and the Joseph W. Brummel Family Trust recorded as Document Nos. R96-058052 and R96-058053 (all references to deeds, microfiche, plats, surveys, etc. refer to the records of the DuPage County Recorders Office, unless noted otherwise) and being more particularly described as follows:

Commencing for reference at a one and one half inch (1 ½") iron rod (found) at the Southeast corner of said Section 16, said point also being the northeast corner of said Section 21;

thence along north line of said Section 21 and south line of said Section 16, South eighty-eight degrees fifty-one minutes thirty-eight seconds West (S88°51'38"W) for one and 25/100 feet (1.25') to the **TRUE POINT OF BEGINNING** in the centerline of State Route 59;

thence departing the said Section line and along the centerline of Illinois State Route 59, South no degrees twenty minutes fifty-nine seconds West (S00°20'59"W) for one thousand three hundred twenty-nine and 43/100 feet (1329.43');

thence departing said centerline and in part along the north line of Yorkshire Plaza recorded as Document No. R85-109544, South eighty-eight degrees fifty minutes eleven seconds West (S88°50'11"W) for one thousand one hundred thirty-one and 54/100 feet (1131.54');

thence along the north line of said Yorkshire Plaza and said lines' westward extension, said extension being the north line of a tract of land conveyed to the Pleitgen Trust recorded as Document No. 93-162110, South eighty-six degrees four minutes twelve seconds West (S86°04'12"W) for one thousand seven hundred eighty-three and 35/100 feet (1783.35') to a southeast corner of Meridian Business Campus Phase 1 recorded as Document No. R84-15486;

thence along the lines of said Meridian Business Campus Phase 1 for the following two (2) courses:

- 1) North no degrees nine minutes two seconds West (N00°09'02"W) for one thousand four hundred eighty and 00/100 feet (1480.00');
- 2) North eighty-two degrees twenty minutes forty-five seconds East (N82°20'45"E) for two thousand nine hundred fifty-one and 10/100 feet (2951.10') to a point in the centerline of said Illinois State Route 59;

thence along said centerline, South no degrees twenty minutes twelve seconds West (S00°20'12"W) for three hundred ninety-eight and 46/100 feet (398.46'); to the **TRUE POINT OF BEGINNING**, containing one hundred six and 294/1000 (106.294) acres, more or less.