

J.P. "RICK" CARNEY
 DUPAGE COUNTY RECORDER
 FEB. 11, 2000 10:29 AM
 OTHER 07-21-200-015
014 PAGES R2000-021013

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (the "Declaration") is made and entered into as of the 28 day of January, 2000, by and between **MEIJER, INC.**, a Michigan corporation, 2929 Walker Avenue, N.W., Grand Rapids, Michigan 49544, hereinafter referred to as "Meijer", and **PORTILLO'S RESTAURANTS, INC.**, an Illinois corporation, 1415 West 22nd Street, Suite 1250, Oak Brook, Illinois 60523-2032, 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 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 south and west of the intersection of State Route 59 and Liberty Street in the City of Aurora and is hereinafter referred to as the "Developer Parcel". The Developer Parcel contains approximately 2.0 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 thirty (30) acres of land and is located south and west of the intersection of State Route 59 and Liberty Street in the City of Aurora. 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 southern, western, and northern boundary lines by the Meijer Parcel.

D. Meijer intends to develop the Meijer Parcel with a combination food and general merchandise store.

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CHARGE C.T.I.C. DuPAGE

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.

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.** Developer agrees that the initial development of the Developer Parcel will be a Luigi's Restaurant. After the initial development, 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; a restaurant with drive-through window; 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. Notwithstanding the foregoing, the sale of beer, wine and alcohol shall be a permitted use, provided that the sale of beer, wine and alcohol is an incidental use to a full service, sit-down restaurant.

2. **Prior Approval of Plans and Specifications.** No exterior 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, including but not limited to building elevations, landscaping, and utility connections, 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 (26 feet) in height. Developer's building may include a tower having a height not exceeding thirty (30) feet above grade level, provided that the design and orientation of such tower shall be subject to Meijer's written approval.

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 and invitees shall park on the Developer Parcel and shall not park in the parking lot located on the Meijer Parcel, except in the Nonexclusive Parking Easement Area containing thirty (30) parking spaces, which is legally described on **Exhibit C** and approximately located on **Exhibit D** attached hereto, as specifically permitted in the Nonexclusive Parking Easement granted by Meijer to Developer. The Nonexclusive Parking Easement Agreement permits Developer and its customers and invitees to park only on that portion of Meijer's parking lot shown on **Exhibit D** attached hereto. All of the terms and conditions permitting Developer to use a portion of the Meijer parking lot are contained in the Nonexclusive Parking Easement. 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. **Temporary Development Restrictions/Requirements on the Developer Parcel.** Developer shall not perform any exterior development work, including but not limited to building, grading or construction work of any nature and landscaping work on the Developer Parcel between July 21, 2000 and September 15, 2000 without the prior written consent of Meijer. The nature and scope of prohibited, permitted and required construction activities on the Developer Parcel prior to September 15, 2000 are set out in a separate Letter Agreement between the Parties dated January 26, 2000. Developer further agrees that the opening of its restaurant will not occur prior to September 15, 2000 without the prior written consent of Meijer.

7. **Use Restriction on Portion of Meijer Property.** Meijer has agreed that the portion of the property owned by Meijer legally described in **Exhibit E** attached hereto (the "Outlots") shall not be used for a restaurant with an "Italian Based Menu". A restaurant shall be deemed to have an Italian Based Menu if its combined sales of pasta and pizza constitute more than forty percent (40%) of its gross revenue. This use restriction on the Outlots shall be applicable for the shorter of (i) a term of twenty (20) years from the date hereof, or (ii) so long as such an Italian restaurant is in operation on the Property.

8. **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.

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

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

18. **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.

19. **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 Senior Chairman of Meijer, Inc, living at the date of this Declaration.

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

(the remainder of this page is intentionally blank.)

21. **Counterparts.** This Declaration may be signed in one or more counterparts, all of which taken together shall constitute one and the same document.

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, INC.

(_____)

(_____)

By: _____
(_____)

Its: _____

IN THE PRESENCE OF:

PORTILLO'S RESTAURANTS, INC.

Rebecca D McLaren
(REBECCA D McLaren)

Laure Peite
(LAURE PEITE)

By: Dino J Portillo

Its: President

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

The foregoing instrument was acknowledged before me this ___ day of January, 2000, by _____, the _____ of Meijer, Inc., a Michigan corporation, on behalf of said corporation.

Notary Public, Kent County, Michigan
My commission expires: _____

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STATE OF ILLINOIS)
) ss.
COUNTY OF DeKalb)

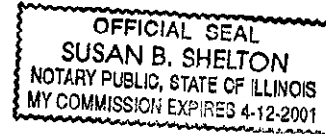
The foregoing instrument was acknowledged before me this 26 day of January, 2000, by J. Portillo the PRESIDENT of Portillo's Restaurants, Inc., an Illinois corporation, on behalf of said corporation.

Susan B. Shelton

Notary Public, _____ County, 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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Declaration of Restrictions
Meijer, Inc. / Portillo's Restaurant Systems, Inc.

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EXHIBIT A

LOTS 8 AND 9 IN MEIJER SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF SECTION 21 AND THE SOUTHEAST 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 DU PAGE COUNTY, ILLINOIS

PERMANENT INDEX NUMBER 07-21-200-015 - UNDERLYING

PROPERTY ADDRESS - VACANT LAND, ROUTE 59, AURORA, IL

LETC12

EXHIBIT **B**

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LOT ~~8-11-12-3~~ IN MEIJER SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF SECTION 21 AND THE SOUTHEAST 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 DU PAGE COUNTY, ILLINOIS

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EXHIBIT C
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Situate in Section 21, Township 38 North, Range 9 East of the Third Principal Meridian, City of Aurora, County of Dupage, State of Illinois, and being a parking easement over Lot 2 of Meijer Subdivision as recorded in Document Number R200-14626 (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 the southeast corner of Lot 7 of said Meijer Subdivision;

thence along the east line of said Lot 7 and its northward extension, North zero degrees twenty minutes fifty-nine seconds East (N00°20'59"E) for three hundred forty-two and 52/100 feet (342.52') to the southeast corner of Lot 8 of said Subdivision;

thence along the south and west lines of said Lot 8 for the following six (6) courses:

1. on a non-tangent curve to the right with a radius of one hundred ninety and 50/100 feet (190.50') for an arc distance of ninety-two and 05/100 feet (92.05'), [chord bearing South seventy-six degrees thirty minutes twenty-six seconds West (S76°30'26"W) for ninety-one and 15/100 feet (91.15'), delta angle of said curve being twenty-seven degrees forty-one minutes five seconds (27°41'05")] to a point of tangency;
2. North eighty-nine degrees thirty-nine minutes one second West (N89°39'01"W) for thirty-four and 91/100 feet (34.91') to a point of curvature;
3. on a curve to the right with a radius of two hundred twenty and 00/100 feet (220.00') for an arc distance of fifty-three and 51/100 feet (53.51'), [chord bearing North eighty-two degrees forty minutes fifty-six seconds West (N82°40'56"W) for fifty-three and 38/100 feet (53.38'), delta angle of said curve being thirteen degrees fifty-six minutes ten seconds (13°56'10")] to a point of tangency;
4. North seventy-five degrees forty-two minutes fifty-one seconds West (N75°42'51"W) for forty-six and 71/100 feet (46.71') to a point of curvature;
5. on a curve to the right with a radius of twenty-five and 50/100 feet (25.50') for an arc distance of thirty-three and 85/100 feet (33.85'), [chord bearing North thirty-seven degrees forty minutes fifty-six seconds West (N37°40'56"W) for thirty-one and 42/100 feet (31.42'), delta angle of said curve being seventy-six degrees three minutes fifty seconds (76°03'50")] to a point of tangency;
6. North zero degrees twenty minutes fifty-nine seconds East (N00°20'59"E) for fifty-eight and 41/100 feet (58.41');

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**EXHIBIT C
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thence departing the west line of said Lot 8 and over said Lot 2, North eighty-nine degrees thirty-nine minutes one second West (N89°39'01"W) for fifty and 50/100 feet (50.50') to the **TRUE POINT OF BEGINNING** of the herein described easement;

thence continuing over said Lot 2 for the following four (4) courses:

1. North eighty-nine degrees thirty-nine minutes one second West (N89°39'01"W) for seventy-five and 50/100 feet (75.50');
2. North zero degrees twenty minutes fifty-nine seconds East (N00°20'59"E) for one hundred fifty and 50/100 feet (150.50');
3. South eighty-nine degrees thirty-nine minutes one second East (S89°39'01"E) for seventy-five and 50/100 feet (75.50');
4. South zero degrees twenty minutes fifty-nine seconds West (S00°20'59"W) for one hundred fifty and 50/100 feet (150.50') to the **TRUE POINT OF BEGINNING**.

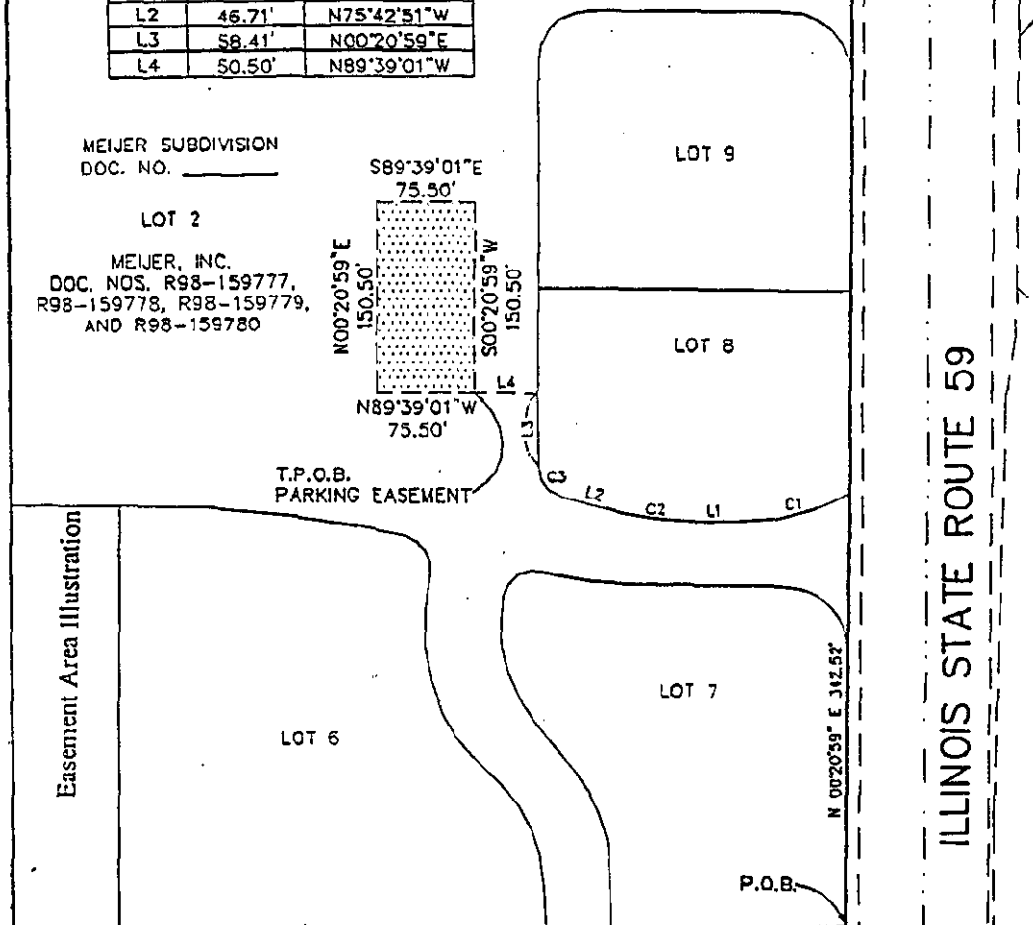
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**EXHIBIT D
TO
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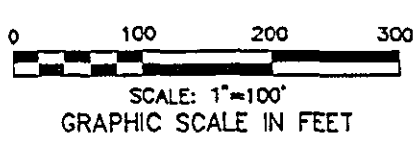
CURVE TABLE					
CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C1	190.50'	92.05'	91.15'	S76°30'26"W	27°41'05"
C2	220.00'	53.51'	53.38'	N82°40'56"W	13°56'10"
C3	25.50'	33.85'	31.42'	N37°40'55"W	76°03'50"

LINE TABLE		
LINE	LENGTH	BEARING
L1	34.91'	N89°39'01"W
L2	46.71'	N75°42'51"W
L3	58.41'	N00°20'59"E
L4	50.50'	N89°39'01"W



SECTION 21
SECTION 22


ILLINOIS STATE ROUTE 59



YORKSHIRE PLAZA
DOCUMENT NO. P85-109544
LOT 1

A:\meijer\aurora\outlets\17381park2.dwg



EXHIBIT OF PARKING EASEMENT AREA OVER LOT 2 FOR MEIJER, INC. CITY OF AURORA, DUPAGE COUNTY ILLINOIS	
 <p>WOOLPERT LLP</p>	409 E. MONUMENT AVE. DAYTON, OHIO 45402 937.461.9660 FAX: 937.461.0743
	DES. BY <u> </u> CONTRACT DRT. BY <u>LJH</u> NO. <u>57381</u> CRC. BY <u> </u> DATE <u>1/13/00</u>
SHEET <u>1</u> OF <u>1</u>	

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EXHIBIT *E*

3, 4, 5, 6, 7, 10, 11 and 12

LOTS ~~8 AND 9~~ IN MEIJER SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF SECTION 21 AND THE SOUTHEAST 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 DU PAGE COUNTY, ILLINOIS

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