

**INDUCEMENT AGREEMENT – MEIJER STORES LIMITED PARTNERSHIP**

**THIS AGREEMENT** is entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and among the **VILLAGE OF ORLAND PARK**, Cook and Will Counties, Illinois, a home rule municipal corporation (hereinafter referred to as the “Village”), and **MEIJER STORES LIMITED PARTNERSHIP**, a Michigan limited partnership (hereinafter referred to as “MEIJER”).

**WITNESSETH:**

In consideration of the Preliminary Statements, the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

**1. Preliminary Statements**

Among the matters of mutual inducement which have resulted in this Agreement are the following:

(a) The Village is a home rule municipality pursuant to Article VII, Section 6 (a) of the Constitution of the State of Illinois and is authorized thereby to exercise any power and perform any function pertaining to its government and affairs.

(b) MEIJER is the owner of certain developed real property, legally described in **EXHIBIT "A"** attached hereto and made a part hereof, and comprised of approximately 15.35 acres at 15701 South Harlem Avenue, Orland Park, Illinois (hereinafter referred to as the “Subject Property”). MEIJER, after receipt of the promises and inducements contained herein, plans to construct by remodeling approximately 102,000 square feet of the existing 115,000 square foot retail building a new MEIJER retail / grocery store including a drive-through pharmacy and deli with on-site food preparation on the Subject Property, (hereinafter

collectively referred to as the "Project"). As of the date of this Agreement, the cost of said Project is anticipated to be not less than \$13 million including the property acquisition cost. It is understood and agreed that there has been a specific site plan submitted to and approved by the Village in relation to the Subject Property. In addition, the architecture, building elevations, exterior building materials, building, zoning and sign requirements, and landscaping plans for the entire Subject Property, to the extent not previously submitted and approved, must be submitted to and approved by the Village. It is further understood and agreed that all plans in relation to the Subject Property are subject to the review and approval of the Village Board of Trustees. Notwithstanding the foregoing, the Village agrees that to the extent building permits or final plan approvals have not been given, it will issue such permits and approvals provided that the associated plans are in conformity with the site plan approval that has been provided. The Project to be constructed on the Subject Property shall be constructed substantially in accordance with the plans and specifications approved by the Village (the "Plans").

(c) The Village is desirous of having the Subject Property improved with the new retail / grocery store in order to service the needs of the Village and its residents. The Village hereby finds that (i) the building on the Subject Property has remained underutilized for a period of at least one year; (ii) the Project is expected to create or retain job opportunities within the Village; (iii) the Project will serve to further the development of adjacent areas; (iv) without the economic incentives contemplated herein, the Project would not be possible; (v) MEIJER meets high standards of creditworthiness and financial strength; (vi) the Project will strengthen the commercial sector of the Village; (vii) the Project will enhance the tax base of the Village and (viii) this Agreement is made in the best interest of the Village, thereof, the Village contemplates

certain incentives and continuing economic incentives under the terms and conditions hereinafter set forth to assist in such.

(d) The parties hereto acknowledge, and MEIJER represents and warrants that without the economic incentives contemplated herein, the Project would not be possible.

(e) For purposes of this Agreement, the use of the terms “sales tax” and “sales tax revenue” shall be construed to refer to that net portion of taxes imposed by the State of Illinois for distribution to the Village pursuant to the Retailers’ Occupation Tax Act and the Service Occupation Tax Act (as said acts may be amended or replaced) and which are collected by the State and distributed to the Village, and all revenue derived from such taxes. If the State of Illinois’s statutory mechanism for the levy and collection of sales tax revenues becomes inconsistent with this Agreement, then the Village shall consult with Meijer and make all reasonable efforts within its municipal powers to substitute a mechanism to accomplish the intent of this Agreement.

(f) This Agreement, and the incentives and inducements set forth herein, shall apply to the planned retail / grocery store to be located on the Subject Property, as well as any different retail and grocery (or similar) facilities which may be located on the Subject Property during the term of this Agreement.

**2. Conditions Precedent to the Undertakings on the Part of the Village**

All undertakings on the part of the Village pursuant to this Agreement are subject to satisfaction of the following conditions by MEIJER on or before the date of the Initial Payment provided for in Paragraph 3 below, or as otherwise specifically hereinafter stated:

(a) MEIJER shall have obtained final approval relating to the Project, including, but not limited to, construction of any signs, so that operation of the businesses can commence

within the time set forth in Paragraph 4(a) hereof, it being understood and agreed that subject to the terms of Paragraph 1(b) above, the Village has the discretion established by law to approve all such work and the Village shall not be deemed to have caused a default hereunder or have any liability for its failure to approve such work.

(b) MEIJER shall have obtained any other final approvals necessary from any other governmental unit or agency which has jurisdiction or authority over any portion of the Project.

(c) Prior to the receipt of the Initial Payment, MEIJER shall have certified to the Village that there exists no material default under this Agreement, beyond any applicable cure period set forth herein that substantially affects MEIJER's ability to operate the aforementioned retail / grocery store at or on the Subject Property, and MEIJER has not received any notice of any violation of any Village ordinances, rules and regulations, or of any applicable laws of the State of Illinois or the United States of America, and/or any agency or subdivision thereof, as well as any ordinances and resolutions of the Village pertaining to the Project which by their respective terms are to have been complied with prior to the completion of the Project and for which such violation has not been cured.

(d) MEIJER agrees that except for an assignment as provided in Paragraph 9 hereof, in the event there is a change in the ownership (legal or beneficial) of the Subject Property, or any portion thereof, the Village shall no longer be required to pay all or any portion of the incentive payments provided for in Paragraph 3(b) hereof.

(e) If a land trust shall be the owner of the Subject Property, the sole beneficiaries of the Trust shall have delivered to the land trustee an irrevocable letter of direction indicating that any notice received by the land trustee which adversely impacts the Owner's title to or interest in the Subject Property, including but not limited to any notice of failure to pay real estate taxes,

notice of foreclosure or notice of mechanic's lien(s) on the Subject Property, will be sent to the Village within five (5) business days following receipt thereof. Such letter of direction shall be irrevocable for so long as the Village is required to make payments under Paragraph 3 of this Agreement. The Owner and MEIJER also agree to send to the Village any such notice received by him/her within five (5) days of receipt.

**3. Undertakings on the Part of the Village**

Upon satisfaction by MEIJER of all the terms and conditions set forth in this Agreement, the Village hereby undertakes to make the payments set forth in (b) below:

(a) In addition to the conditions set forth in Paragraph 2 above, MEIJER shall have substantially completed the entire Project and MEIJER shall open a new retail / grocery store including a pharmacy and deli, for business on the Subject Property as provided in 4(a) below.

(b) In the event that all terms and conditions set forth in this Agreement are satisfactorily met by MEIJER, the Village hereby agrees to pay the sums hereinafter provided for, by quarterly installment payments over a maximum of a ten (10) year period (an initial five (5) year period plus an additional five (5) years provided the requirements set out in Paragraph 3(b)(i)(5) are met) as follows, subject however to the following conditions and restrictions:

- (i) Each amount will be due and payable solely from the proceeds of sales tax revenue received by the Village from retail sales at the Subject Property computed as follows:
  - (1) It is acknowledged and understood by and between the parties hereto that the Village receives sales tax revenue monthly, and that the taxes generated by retail sales in any one month are distributed to the Village approximately three (3) months later (e.g. taxes generated by sales in July are generally received in mid to late October).
  - (2) The initial payment year (hereinafter referred to as the "Initial Payment Year") shall be that twelve (12) month period commencing on the first day of the full month that follows the month in which the final occupancy permit is issued for the new MEIJER store (each subsequent 12-month period is hereinafter referred to as "Subsequent Incentive Year").

- (3) For the Initial Payment Year and for each of the following four (4) Subsequent Incentive Years, the Village shall be entitled to fifty-five percent (55%) of all sales tax revenue received from retail sales at the Subject Property, attributable to the Initial Payment Year or the individual Subsequent Incentive Years. For the Initial Payment Year or the individual Subsequent Incentive Years, respectively, MEIJER shall thereafter be entitled to the remaining forty-five percent (45%) of the sales tax revenue received from retail sales at the Subject Property, up to a maximum of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00).
- (4) The Initial Payment shall be made not later than the first day of the fourth month after the end of the Initial Payment Year (or on such later date once the Village has received the appropriate reports from the State to determine the amount of sales tax revenue generated in the Initial Payment Year). Payments, if any, shall then be made quarterly for the following four (4) Subsequent Incentive Years not later than the fourth month after the end of the respective quarter of each Subsequent Incentive Year, or such later date as noted previously. Together with each payment made the Village shall provide its calculation for determining such payment.
- (5) If, at the conclusion of the Village rebate payments generated from the fourth Subsequent Payment Year, MEIJER shall not have received from the Village the maximum rebate of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00), and MEIJER can demonstrate average annual Village sales tax revenue of no less than TWO HUNDRED TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$227,500.00) based on the initial five (5) year term of this Agreement, the term of this Agreement shall be extended for an additional five (5) year term (or such earlier termination date which shall occur when MEIJER shall have received the maximum rebate of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00)). During such extended term of this Agreement, the Village shall continue to make payments to MEIJER as outlined in sub-paragraphs (3) and (4), above.
  - (ii) That MEIJER shall have delivered to the Village no less than thirty (30) days prior to the Initial Payment a certificate dated within fifteen (15) days of receipt by the Village that all representations and warranties contained in Paragraph 5 herein are true and correct and further certifying that (1) the Project has been completed in accordance with the Plans, (2) the store is operating in accordance with all applicable Village codes, ordinances, resolutions and regulations, (3) the store is operating in accordance with all applicable laws, rules, regulations of the State of Illinois, the County of Cook and the United States of America, and any and all agencies or subdivisions thereof.
  - (iii) That the Village has received no notice from MEIJER from any other source that there exists any material default beyond the applicable cure period under any of

the terms, conditions or provisions under any of the loan documents under which MEIJER's financing, if any, for the Project was obtained, that affects MEIJER's ability to operate the aforementioned MEIJER store at or on the Subject Property. MEIJER shall provide the Village with any notices received throughout the term of this Agreement relating to the Subject Property which will have an adverse impact on this Project, specifically including any notices regarding any tax or loan delinquencies. Provided, however, that if the Village receives evidence satisfactory to it that any such default has been cured, except as otherwise provided herein, the payments to MEIJER required hereunder shall resume if all other requirements have been met.

The Village shall provide for payments required under this Paragraph by appropriating therefor in its annual budget ordinance for the fiscal year in which such payment may be due.

The Village acknowledges and agrees that the sales tax information to be provided by Meijer hereunder is proprietary and valuable information and that any disclosure or unauthorized use thereof will cause irreparable harm to Meijer. To the extent permitted by law, the Village agrees to hold in confidence all sales figures and other information provide by Meijer or obtained from records in connection with this Agreement.

Subject to Paragraph 24 and further subject to the cure periods set forth in Paragraph 21 hereof, in the event that the Project is not open to the public as required hereunder on or before December 31, 2010, or on such other later date as may be agreed upon by and between the Village and MEIJER, then MEIJER shall be in default hereunder and the Village as its sole remedy may terminate this agreement and shall have no obligation to make any payments to MEIJER pursuant to this Paragraph. Upon such termination, neither the Village nor MEIJER shall have any further obligations with regard to the Project.

In the event that MEIJER fails to deliver to the Village the foregoing certification within the time periods set forth above, or is in material default of any term or provision of this Agreement, then in such event, the Village shall have no obligation to make any payment to MEIJER until such time as any such failure or violation is corrected to the reasonable

satisfaction of the Village (except where this Agreement provides for forfeiture of any such payments), and all rights of MEIJER to demand any current or future payment from the Village shall be deemed waived until such failure or violation is so corrected, and all other obligations on the part of the Village arising pursuant to this Agreement shall be deemed suspended and without any further force and effect unless and until such failure or violation is so corrected within the applicable cure period. Where this Agreement provides for forfeiture of any such payments, the Village may in that event cancel this Agreement immediately and permanently.

**4. Undertakings on the Part of MEIJER**

(a) Subject to Paragraph 24 and to the right to cure pursuant to Paragraph 21: (i) MEIJER shall not cause or permit the existence of any violation of Village ordinances, including but not limited to the Village's Building Code, Land Development Code, Fire Code, sign regulations, and any and all rules and regulations thereunder, on the Subject Property; (ii) MEIJER shall have substantially completed the entire Project and the new MEIJER store shall be open to the public on or before December 31, 2010, or by such later time as may be agreed by and between the Village and MEIJER; (iii) MEIJER agrees that it will expend at a minimum \$13 Million on the acquisition of the Subject Property and the new MEIJER store building and related improvements to the Subject Property; (iv) MEIJER agrees to construct the Project in full compliance with plans (including but not limited to site plans, landscaping, building elevations and exterior building materials) approved by the Village; and (v) MEIJER agrees to promptly pay or cause to be paid as the same become due, any and all taxes and governmental charges of any kind, including real estate taxes, that may at any time be lawfully finally assessed with respect to the Project and/or the Subject Property.

(b) MEIJER shall comply with all of the requirements set forth in Paragraphs 2 and 3 of this Agreement.

(c) MEIJER shall require the title holder of record (if at any time different from MEIJER) of the Subject Property to give the Village notice regarding any forfeiture on the financing documents by MEIJER for the financing of the Project or its subsequent purchase if an assignment is approved hereunder, and any tax and/or "scavenger" sales of the Subject Property, or any portion thereof.

(d) MEIJER shall prepare and submit such form(s) as may be required from time to time by the Illinois Department of Revenue in order to release all gross revenue and sales tax information to the Village. If an occupant other than MEIJER, or its successor or assign, of the building on the Subject Property provides for the release of gross revenue and sales tax information to the Village, such information shall be utilized in calculating the incentive payment due Meijer pursuant to Paragraph 3(b). Provided, however, if such an occupant fails to provide gross revenue and sales tax information to the Village, the Village shall make incentive payments in accordance with Paragraph 3(b). In the event that the MEIJER sales tax revenue information is not released by the State due to the failure of MEIJER to execute the necessary authorization and/or release, the Village shall not be required to make any of the incentive payments provided for in Paragraph 3(b) hereof, subject to the cure provisions set forth in Paragraph 21 hereof.

**5. Representations and Warranties**

(a) MEIJER represents and warrants that without the economic incentives contemplated herein, the Project would not be possible.

(b) MEIJER hereby represents and warrants that at all times it shall comply with all applicable local zoning and sign ordinances and regulations, all building and fire code regulations and all other applicable Village codes, ordinances, resolutions and/or regulations, with respect to the new retail store on the Subject Property. MEIJER agrees that the Project, including the site plan, landscaping plan, building elevations and exterior building materials, shall be constructed in full compliance with plans approved by the Village.

(c) MEIJER hereby represents and warrants that it shall comply with all applicable laws, rules and regulations of the State of Illinois, the County of Cook and the United States of America, and any and all agencies or subdivisions thereof.

(d) MEIJER represents and warrants that it shall comply in all material respects with all terms, provisions and conditions, and that it shall not default or permit a continuing default under any document or agreement relating to the Project or the financing and development of the Project, including but not limited to this Agreement, and all agreements and documentation executed and delivered in connection with any financing or loans for the Project, a default under which would have a material adverse effect on the sales tax revenue generated thereby to the Village.

(e) MEIJER hereby represents and warrants that it is a Michigan limited partnership in good standing under the laws of the State of Illinois.

(f) MEIJER represents and warrants that with the exception of Enterprise Leasing (current lessee) and possible future lessees or licensees of the retail building, no other entity has interest in the development as herein proposed, except as may be consented to by the Village or otherwise allowed under the provisions of this Agreement.

(g) MEIJER hereby represents and warrants that it has provided the legal description of the Subject Property set forth in this Agreement and that said legal description is accurate and correct to the best of its knowledge.

(h) MEIJER hereby represents and warrants that it shall comply with all applicable Village codes and ordinances concerning unlawful employment practices and consumer protection.

(i) MEIJER hereby represents and warrants that, as of the date of this Agreement, the cost of the Project is anticipated to be not less than \$13 Million.

(j) The Village hereby represents and warrants that it has the power to enter into this Agreement and to carry out its obligations hereunder and has duly authorized the execution, delivery and performance of this Agreement.

(k) The execution, delivery and performance of this Agreement by the Village does not conflict with or result in a violation of the Village's organizational documents or any judgment, order or decree of any court or any contract or agreement to which the Village is a party.

## **6. Defaults**

The following shall, subject to the cure provisions set forth in Paragraph 21 and the provisions of Paragraph 24, constitute additional instances of default by MEIJER:

(a) A representation or warranty made by MEIJER and contained herein that is false, inaccurate or otherwise incorrect, and that is not corrected within thirty (30) days following written notice thereof to the other respective party(ies) from the Village.

(b) MEIJER: (i) becomes insolvent; or (ii) is unable, or admits in writing its inability to pay, its debts as they mature; or (iii) makes a general assignment for the benefit of creditors or

to an agent authorized to liquidate any substantial amount of its or their property; or (iv) is adjudicated a bankrupt; or (v) files a petition in bankruptcy or to effect a plan or other arrangement with creditors; or (vi) files an answer to a creditor's petition (admitting the material allegations thereof) for an adjudication of bankruptcy or to effect a plan or other arrangement with creditors; or (vii) applies to a court for the appointment of a receiver for any asset; or (viii) has a receiver or similar official appointed for any of its assets, or, if such receiver or similar official is appointed without the consent of MEIJER and such appointment shall not be discharged within sixty (60) days after his appointment or MEIJER has not bonded against such receivership or appointment; or (ix) a petition described in (v) is filed against MEIJER and remains pending for a period of sixty (60) consecutive days, unless the same has been bonded, and as a result thereof, MEIJER ceases to operate; or (x) files any lawsuit, claim and/or legal, equitable or administrative action affecting the Village's ability to collect any such sales tax revenue hereunder.

(c) The discontinuation of a Meijer retail / grocery (or similar) facilities on the Subject Property without its replacement by another Meijer retail sales business having comparable square footage as the Project prior to the commencement of the eleventh (11<sup>th</sup>) year following the opening for business of the aforementioned MEIJER store. Provided, however, temporary cessation of operation upon the Subject Property due to fire or other casualty or other causes beyond the reasonable control of MEIJER and a temporary cessation of use for not more than one hundred eighty (180) consecutive days for the purpose of making alterations or for reletting shall not be deemed a discontinuance of operation within the meaning of this Paragraph. If MEIJER violates the provisions of this Subparagraph (c), this Agreement shall be automatically terminated (except for the obligation of MEIJER to reimburse the Village as

hereinafter required) and the Village will have no further obligations hereunder, including but not limited to the obligation to make any payments pursuant to Paragraph 3 above.

Additionally, MEIJER, as agreed liquidated damages and not as a penalty, will be required to promptly reimburse the Village all of the sales tax revenue incentive payments MEIJER previously received from the Village pursuant to this Agreement.

In the event MEIJER fails to comply with any term, provision or condition of this Agreement; and the failure to cure such default within the time and manner provided herein, the Village shall be relieved of any and all of its obligations arising hereunder and such obligations on the part of the Village shall be immediately canceled, become null and void and be without any force or effect, subject to the notice and cure provisions set forth in Paragraph 21 hereof, unless otherwise provided herein. The sole remedy of the Village against MEIJER for MEIJER's default hereunder shall be to terminate this Agreement, effective as of the expiration of the notice and cure period following the date of such default, and, with respect to a default pursuant to Paragraph 6(c) above, MEIJER, shall promptly reimburse the Village all of the sales tax revenue incentive payments MEIJER previously received from the Village pursuant to this Agreement.

Notwithstanding the foregoing, if the event which gives rise to a default hereunder, independently of this Agreement constitutes a violation of any code, ordinance, regulation or rule of the Village, the Village shall have such remedies as may be provided for in such ordinance, regulation or rule, or as permitted at law or in equity.

## **7. Notices**

All notices and requests required pursuant to this Agreement shall be sent via certified mail, return receipt requested, and addressed as follows:

To the Village:

1. Village President  
Village of Orland Park  
14700 S. Ravinia  
Orland Park, Illinois 60462

2. Village Clerk  
Village of Orland Park  
14700 S. Ravinia  
Orland Park, Illinois 60477

With a Copy to:

3. E. Kenneth Friker  
Klein, Thorpe and Jenkins, Ltd.  
15010 S. Ravinia - Suite 10  
Orland Park, Illinois 60462

To MEIJER:

1. Meijer Stores Limited Partnership  
2929 Walker Ave., NW  
Grand Rapids, MI 49544  
Attention – Real Estate Department

With a Copy to:

2. Meijer Stores Limited Partnership  
2929 Walker Ave., NW  
Grand Rapids, MI 49544  
Attention – Tax Department

3. Meijer Stores Limited Partnership  
2929 Walker Ave., NW  
Grand Rapids, MI 49544  
Attention – Legal Department

or to such other persons or such other addresses as the parties may indicate in writing, by providing at least thirty (30) days written notice to the other, either by personal delivery, by overnight delivery or by certified or registered mail, return receipt requested, with proof of delivery thereof. Notice shall be deemed received upon acceptance or rejection, as evidenced by a written delivery receipt in relation thereto.

## **8. Law Governing**

This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

## **9. Assignments**

MEIJER shall not assign this Agreement to any person or entity without the express written approval and consent by the Village. It is understood that the Village will have the absolute right and discretion to refuse to consent to an assignment where the prospective assignee has ever been denied any business license, or has ever had a business license terminated

(unless such termination was requested by the licensee), suspended or revoked, or has ever been convicted of a felony.

Notwithstanding the foregoing, MEIJER shall be permitted to assign its interest in this Agreement to an affiliate or successor-in-interest of the business of MEIJER without obtaining the prior written consent of the Village. For purposes of this Agreement, an "affiliate" shall mean any entity controlling, controlled by or under common control with MEIJER. MEIJER may assign this Agreement to any entity which succeeds to all or substantially all of MEIJER's assets by sale, merger or operation of law, without obtaining the prior written consent of the Village, provided that such successor entity shall assume all of MEIJER's obligations hereunder.

Notwithstanding any such assignment and/or assumption of responsibility, approved and consented to by the Village, MEIJER shall remain liable for all of its agreements, covenants and obligations and the performance thereof pursuant to this Agreement.

**10. Time**

Time is of the essence under this Agreement and all time limits set forth herein are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the party excusing such timely performance.

**11. Binding Effect**

This Agreement shall inure to the benefit of, and shall be binding upon the Village and MEIJER and its approved successors and assigns, subject, however, to the provisions of Paragraphs 9 and 12 hereof.

**12. Limitation of Liability**

No recourse under or upon any obligation, covenant or condition of this Agreement, or for any claim based thereon or otherwise related thereto, shall be had against the Village, or its

officers, officials, agents and/or employees, in any amount or in excess of any specific sum agreed by the Village to be paid to MEIJER hereunder, subject to the terms and conditions set forth herein, and no liability, right or claim at law or in equity shall attach to, or shall be incurred by, the Village, or its officers, officials, agents and/or employees, in excess of such amounts and any and all such rights or claims of MEIJER against the Village, or its officers, officials, agents and/or employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village.

**13. Reimbursement of Legal Fees**

In the event the Village or MEIJER institutes any action, suit or other proceeding to enforce the provisions of this Agreement, the prevailing party (as determined by a judgment in its favor rendered by a court of competent jurisdiction) shall be entitled to payment by the other party of all reasonable attorney fees, costs and expenses incurred in such action.

**14. Continuity of Obligations**

Except as otherwise specifically provided for in this Agreement, the parties shall at all times during the term of this Agreement remain liable to the other for the faithful performance of all obligations imposed under this Agreement until: (a) the natural expiration of this Agreement's maximum ten (10) year period; provided, however, that notwithstanding the expiration of said ten (10) year period, and in the absence of any uncured material, default or other termination of this Agreement, the Village shall be obligated to make the incentive payment required under this Agreement for the final Subsequent Incentive Year as set forth hereunder; (b) until the parties, at their sole option, have otherwise released the other party from any or all of its respective obligations hereunder; or (c) upon a material default by one party

which default remains uncured beyond the applicable cure period and/or which is not subject to any cure period.

**15. No Waiver or Relinquishment of Right to Enforce Agreement**

Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and/or conditions set forth herein, or any of them, upon any other party imposed, shall not constitute or otherwise be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement and/or condition, but the same shall continue in full force and effect.

**16. Village Approval or Direction**

Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the Village unless otherwise expressly provided or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met, unless such requirements are inconsistent with this Agreement.

**17. Section Headings and Subheadings**

All section headings or other headings in this Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered under or relevant to such heading or not.

**18. Authorization to Execute**

The members of MEIJER who have executed this Agreement hereby warrant that they have been lawfully authorized by MEIJER to execute this Agreement on behalf of MEIJER. The Village President and Village Clerk hereby warrant that they have been lawfully authorized by the Village Board to execute this Agreement on behalf of the Village. MEIJER and the Village

shall, upon request, deliver to each other, at the respective time such entities cause their authorized agents to affix their signatures hereto, copies of any and all documents reasonably required to legally evidence the authority to so execute this Agreement on behalf of the respective parties.

**19. Amendment**

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings by and between the parties relative to the subject matter hereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than those expressly set forth herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

**20. Counterparts**

This Agreement may be executed in two or more counterparts, each of which taken together, shall constitute one and the same instrument.

**21. Curing Default**

In the event of any default under or violation of this Agreement, the party not in default or violation shall serve written notice upon the party or parties in default or violation, which notice shall be in writing and shall specify the particular violation or default. The parties reserve the right to cure any violation of this Agreement or default hereunder within thirty (30) days following written notice of such default. If such default is so cured within said thirty (30) day period, all terms and conditions of this Agreement shall remain in full force and effect. If the parties cannot cure a default or violation hereof within said thirty (30) day period, and the defaulting party is diligently pursuing completion and/or cure and tenders proof of such diligence

to the non-defaulting party upon request, the cure period shall be extended for so long as the defaulting party is diligently pursuing curing the default. Notwithstanding anything herein to the contrary, the aforesaid time periods shall be extended pursuant to Section 24, if applicable.

**22. Conflict Between the Text and Exhibits**

In the event of a conflict between the text of this Agreement and any Exhibits attached hereto, the text of the Agreement shall control and govern.

**23. Severability**

If any provision of this Agreement is held invalid by a court of competent jurisdiction, or in the event such a court shall determine that the Village does not have the power to perform any such provision, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve the Village from performance under such invalid provision of this Agreement. Provided, however, in such event the parties hereto shall consult with each other and make all reasonable efforts within the Village's municipal powers to substitute a mechanism to accomplish the intent of such provision.

**24. Force Majeure**

In the event that either party hereto is delayed, hindered or prevented in performing any act required hereunder by reason of any act or occurrence beyond its reasonable control and not the fault of such party, including but not limited to labor disputes, material shortages, governmental restrictions or regulations, civil insurrection, war or other such reason, the party so delayed, hindered or prevented shall, if reasonably practicable hereunder, be excused from performance only for the period of such delay, hindrance and/or prevention and shall immediately tender said performance upon the removal and/or reconciliation of said interference.

**25. Definition of "Village"**

When the term "Village" is used herein, it shall be construed as referring to the Corporate Authorities of the Village unless the context clearly indicates otherwise.

**26. Recording of Agreement**

A memorandum of this Agreement may be recorded by MEIJER with the Recorder of Deeds of Cook County, Illinois, at the expense of MEIJER.

**27. Execution of Agreement**

This Agreement shall be signed last by the Village, and the President (Mayor) of the Village shall affix the date on which he signs this Agreement on page 1 hereof, which date shall be the effective date of this Agreement.

**IN WITNESS WHEREOF**, this Agreement as of the date and year first written above.

VILLAGE OF ORLAND PARK,  
an Illinois municipal corporation

ATTEST:

By: \_\_\_\_\_  
Village President

By: \_\_\_\_\_  
Village Clerk

Date: \_\_\_\_\_, 2010

Date: \_\_\_\_\_, 2010

MEIJER STORES LIMITED PARTNERSHIP  
By: Meijer Group, Inc. Its: General Partner

WITNESS:

By: \_\_\_\_\_  
Its \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2010

Date: \_\_\_\_\_, 2010

## **EXHIBIT "A"**

### **Legal Description of the Subject Property**

LOT 105 (EXCEPTING THAT PART DESCRIBED AS FOLLOWS: LOT 1 OF STERLING RESUBDIVISION, A PART OF THE SOUTHWEST ¼ OF SECTION 18, TOWNSHIP 36 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL BEING IN THE VILLAGE OF ORLAND PARK, COOK COUNTY, ILLINOIS, PER PLAT THEREOF RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS ON JULY 12, 1993 AS DOCUMENT NO. 93530909) OF CATALINA'S COMMERCIAL AND INDUSTRIAL SUBDIVISION OF LOTS 3 AND 6 IN SILVER LAKE GARDENS UNIT NO. 7, A SUBDIVISION OF PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 36 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SUBDIVISION RECORDED MARCH 22, 1976 AS DOCUMENT 23423778, IN COOK COUNTY, ILLINOIS.