



CITY OF URBANA, ILLINOIS
DEPARTMENT OF PUBLIC WORKS

ADMINISTRATION

M E M O R A N D U M

TO: Bruce K. Walden, Chief Administrative Officer

FROM: William R. Gray, P. E., Public Works Director

DATE: January 4, 2007

RE: *Meijer Reimbursement Agreement*

INTRODUCTION

Meijer's Stores Limited Partnership (otherwise known as *Meijer*) plans to open a new store at the northeast corner of Windsor Road and Philo Road in the spring of 2008. The impact of the Meijer's store opening to the adjacent streets includes the widening of Windsor Road to four lanes, additional turn lanes, and new traffic signals at Boulder Drive and Windsor Road, Windsor Road and Philo Road, and Scovill Street and Philo Road. The Windsor Road related improvements was originally scheduled for the 2009 construction season. However, Meijer did not want construction activity occurring adjacent to the store site impacting sales, once the store opens. To accommodate this request, the City of Urbana and Meijer are proceeding with the engineering design and construction of the aforementioned improvements in 2007.

Per the previous agreement with Meijer (*attached*), the City is responsible for the Windsor Road and Philo Road related improvements, and Meijer is reimbursing the City a portion of those costs per the agreement. Because the City has accounted for funding these Windsor Road improvements in FY 09 and FY 10, the funds to pay for these improvements in 2007 are not available. As a result, Meijer has agreed to the attached reimbursement agreement, which allows the City to reimburse Meijer for the subject improvements beginning July 1, 2008; a second payment after July 1, 2009; and a third and final payment after July 1, 2010. The City's and Meijer's staff has reviewed the attached reimbursement agreement and recommend its approval.

FISCAL IMPACTS

The Capital Improvement Plan (*CIP*) will reflect payment to Meijer's in FY 09, FY 10, and FY 11, in equal increments. The estimated cost of the improvements is **\$1,399,649**.

RECOMMENDATION

It is recommended that "An Ordinance Authorizing the Mayor to Execute an Agreement Regarding Public Improvements and Reimbursement for Such Improvements Agreement Between the City of Urbana, IL, and Meijer Stores Limited Partnership" be approved.

WRG:kf

Attachments: Ordinance
Reimbursement Agreement
Annexation Agreement

ORDINANCE NO. 2007-01-004

**AN ORDINANCE AUTHORIZING THE MAYOR
TO EXECUTE AN AGREEMENT REGARDING PUBLIC IMPROVEMENTS
AND REIMBURSEMENT FOR SUCH IMPROVEMENTS AGREEMENT BETWEEN
THE CITY OF URBANA, IL, AND MEIJER STORES LIMITED PARTNERSHIP**

WHEREAS, the City of Urbana, Illinois (hereinafter referred to as “City”) and Meijer Stores Limited Partnership (hereinafter referred to as Meijer) have negotiated an agreement regarding reimbursement to be made by the City and Meijer for public improvements to be constructed;

WHEREAS, Meijer proposes to develop a site for a retail and grocery super center, together with other related infrastructure, facilities, and improvements for a Meijer Store;

WHEREAS, in order for Meijer to open a Meijer Store on the selected site, certain improvements to the intersection of those public streets known as Philo Road and Windsor Road, inclusive of portions of the roadways extending beyond these roads, need to be undertaken and completed in order for the project to proceed;

WHEREAS, Meijer is willing to undertake and complete these improvements subject to reimbursement from the City pursuant to the Public Improvement and Reimbursement Agreement negotiated and mutually agreed between the parties;

WHEREAS, it is in the interest of the people of Urbana and the long term future of the City to see the Meijer project come to fruition,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. The City Council hereby approves the Public Improvement and Reimbursement Agreement by and between the City and Meijer Stores Limited Partnership, together with all attached Exhibits.

Section 2. That the Mayor is hereby authorized to execute and the City Clerk to attest the Agreement.

Section 3. This ordinance takes effect immediately upon passage and approval by the Mayor.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of the Council.

PASSED by the City Council this ____ day of _____, 2007.

AYES:

NAYS:

PRESENT:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this ____ day of _____, 2007.

Laurel Prussing, Mayor

**PUBLIC IMPROVEMENT AND
REIMBURSEMENT AGREEMENT**

by and between the

CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

and

MEIJER STORES LIMITED PARTNERSHIP

DATED AS OF DECEMBER 1, 2006

Document Prepared By:

**Kenneth N. Beth
Evans, Froehlich, Beth & Chamley
44 Main Street, Third Floor
P.O. Box 737
Champaign, IL 61820**

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE I	DEFINITIONS	2
Section 1.1.	Definitions	2
Section 1.2.	Construction.....	2
ARTICLE II	REPRESENTATIONS AND WARRANTIES	2
Section 2.1.	Representations and Warranties of the City	2
	(a) Organization and Standing	2
	(b) Power and Authority.....	2
	(c) Authorization and Enforceability	2
	(d) No Violation	2
	(e) Governmental Consents and Approvals	3
	(f) No Proceedings or Judgments	3
Section 2.2.	Representations and Warranties of Meijer	3
	(a) Organization	3
	(b) Power and Authority.....	3
	(c) Authorization and Enforceability	3
	(d) No Violation	3
	(e) Consents.....	3
	(f) No Proceedings or Judgments	3
Section 2.3.	Disclaimer of Warranties.....	3
ARTICLE III	COVENANTS AND AGREEMENTS REGARDING PUBLIC IMPROVEMENTS	4
Section 3.1.	Agreement to Construct the Public Improvements.....	4
Section 3.2.	Obligation for Right-of-Way or Easement Dedication.....	4
Section 3.3.	Plan Approval Process.....	4
	(a) Construction Plans	4
	(b) Changes in Construction Plans	4
Section 3.4.	Construction Contract.....	4
Section 3.5.	Dollar Amount of Bid.....	5
Section 3.6.	Approval of Contractor.....	5
Section 3.7.	Certificate of Completion	5
Section 3.8.	Reimbursement to Meijer for Public Improvement Costs	6
Section 3.9.	Direct Obligation and Debt.....	6
Section 3.10.	Continuing Driveway Obligation	6

ARTICLE IV	DEFAULTS AND REMEDIES	7
Section 4.1.	Defaults - Rights to Cure	7
Section 4.2.	Remedies.....	7
Section 4.3.	Costs, Expenses and Fees	7
ARTICLE V	MISCELLANEOUS PROVISIONS	7
Section 5.1.	Entire Contract and Amendments.....	7
Section 5.2.	Third Parties.....	8
Section 5.3.	Counterparts.....	8
Section 5.4.	Special and Limited Obligation.....	8
Section 5.5.	Time and Force Majeure.....	8
Section 5.6.	Waiver.....	8
Section 5.7.	Cooperation and Further Assurances.....	8
Section 5.8.	Notices and Communications	8
Section 5.9.	Successors in Interest.....	9
Section 5.10.	No Joint Venture, Agency, or Partnership Created	9
Section 5.11.	Illinois Law; Venue	9
Section 5.12.	No Personal Liability of Officials.....	9
Section 5.13.	Conditions Precedent	9

LIST OF EXHIBITS

EXHIBIT A	Legal Description of Project Site
EXHIBIT B	Public Improvement Plan
EXHIBIT C	Estimated Public Improvement Costs

**PUBLIC IMPROVEMENT AND
REIMBURSEMENT AGREEMENT**

THIS PUBLIC IMPROVEMENT AND REIMBURSEMENT AGREEMENT (including any exhibits and attachments hereto, collectively, this **“Agreement”**) is made and entered into as of December 1, 2006, but actually executed by each of the parties on the dates set forth beneath the signatures of their respectively duly authorized officers below, by and between the **City of Urbana, Champaign County, Illinois**, an Illinois municipal corporation (the **“City”**), and **Meijer Stores Limited Partnership**, a Michigan limited partnership (the **“Meijer”**).

RECITALS

WHEREAS, Meijer is the owner of record of that certain real estate consisting of the parcel or parcels more particularly described on Exhibit A attached hereto and made a part hereof (the **“Project Site”**); and

WHEREAS, Meijer proposes to develop and subdivide the Project Site and to construct and install (or cause to be done) a retail and grocery supercenter, together with other related infrastructure, facilities and improvements (collectively, the **“Meijer Store”**) upon the Project Site; and

WHEREAS, in order for Meijer to open the Meijer Store to the public, certain improvements to the intersection of those public streets known as Philo Road and Windsor Road, including that portion of the Philo Road roadway extending north of such intersection to Scovill Street and that portion of the Windsor Road roadway extending east of such intersection to Boulder Drive (collectively, the **“Public Improvements”**) need to be undertaken and completed; and

WHEREAS, the Public Improvements are further detailed and depicted on a site plan showing the approximate dimensions and location of such Public Improvements, a copy of which is attached hereto and made a part hereof as Exhibit B (the **“Public Improvement Plan”**); and

WHEREAS, in connection with the construction and installation of the Public Improvements in accordance with the Public Improvement Plan (the **“Public Improvement Project”**), the parties have made a current best estimate of the total costs expected to be incurred to complete the Public Improvement Project, a copy of which is attached hereto as Exhibit C (the **“Estimated Project Costs”**); and

WHEREAS, Meijer is willing to undertake the Public Improvement Project and the City is willing to reimburse Meijer for all necessary and reasonable costs incurred by Meijer in connection therewith in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Meijer hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1. Definitions. For purposes of this Agreement and unless the context clearly requires otherwise, the capitalized words, terms and phrases used in this Agreement shall have the meaning provided in the above Recitals and from place to place herein.

Section 1.2. Construction. This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- (a) definitions include both singular and plural.
- (b) pronouns include both singular and plural and cover all genders; and
- (c) headings of sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- (d) all exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. In order to induce Meijer to enter into this Agreement, the City hereby makes certain representations and warranties to Meijer:

(a) **Organization and Standing.** The City is a home rule municipality duly organized, validly existing and in good standing under the Constitution and laws of the State of Illinois.

(b) **Power and Authority.** The City has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.

(c) **Authorization and Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the City's City Council. This Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except to the extent that such enforceability may be limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

(d) **No Violation.** Neither the execution nor the delivery of this Agreement or the performance of the City's agreements, obligations and undertakings hereunder will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of any agreement, rule, regulation, statute, ordinance, judgment, decree, or other law by which the City may be bound.

(e) **Governmental Consents and Approvals.** No consent or approval by any governmental authority is required in connection with the execution and delivery by the City of this Agreement or the performance by the City of its obligations hereunder.

(f) **No Proceedings or Judgments.** There is no claim, action or proceeding now pending, or to the best of its knowledge, threatened, before any court, administrative or regulatory body, or governmental agency (1) to which the City is a party and (2) which will, or could, prevent the City's performance of its obligations under this Agreement.

Section 2.2. Representations and Warranties of Meijer. In order to induce the City to enter into this Agreement, Meijer makes the following representations and warranties to the City:

(a) **Organization.** Meijer is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Michigan, and is duly qualified to transact business in the State of Illinois.

(b) **Power and Authority.** Meijer is the sole owner of the Project Site and has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.

(c) **Authorization and Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of Meijer's General Partner. This Agreement is a legal, valid and binding agreement, obligation and undertaking of Meijer, enforceable against Meijer in accordance with its terms, except to the extent that such enforceability may be limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

(d) **No Violation.** Neither the execution nor the delivery or performance of this Agreement will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, or (with or without the giving of notice or the passage of time or both) entitle any party to terminate or declare a default under any contract, agreement, lease, license or instrument or any rule, regulation, statute, ordinance, judicial decision, judgment, decree or other law to which Meijer is a party or by which Meijer or any of its assets may be bound.

(e) **Consents.** No consent or approval by any governmental authority or other person is required in connection with the execution and delivery by Meijer of this Agreement or the performance thereof by Meijer.

(f) **No Proceedings or Judgments.** There is no claim, action or proceeding now pending, or to the best of its knowledge, threatened, before any court, administrative or regulatory body, or governmental agency (1) to which Meijer is a party and (2) which will, or could, prevent Meijer's performance of its obligations under this Agreement.

Section 2.3. Disclaimer of Warranties. The City and Meijer acknowledge that neither has made any agreements or warranties to the other except as set forth in this Agreement.

ARTICLE III
COVENANTS AND AGREEMENTS REGARDING PUBLIC IMPROVEMENTS

Section 3.1. Agreement to Construct the Public Improvements. Meijer covenants and agrees to commence and complete the Public Improvement Project substantially in accordance with the Public Improvement Plan and in the manner and with the effect set forth in this Article III of this Agreement.

Section 3.2. Obligation for Right-of-Way or Easement Dedication. If and to the extent that any part of the Project Site is required for any additional right-of-way or easements in connection with the Public Improvement Project, Meijer shall dedicate or grant any such right-of-way or easements to the City without cost of the City.

Section 3.3. Plan Approval Process. The plans and specifications for the Public Improvement Project (the “**Construction Plans**”) shall be approved by the City Engineer in accordance with this Section 3.3 below:

(a) **Construction Plans.** Meijer shall submit to the City Engineer the Construction Plans for the Public Improvement Project. The City Engineer shall, within fifteen (15) days from receipt of such Construction Plans, either approve or disapprove the Construction Plans after reviewing such Construction Plans for compliance with all applicable laws, codes, ordinances, rules or regulations and this Agreement. If the City Engineer disapproves any part of the Construction Plans, Meijer shall submit revised Construction Plans within a reasonable time of the date of any such rejection. Upon resubmission, the City Engineer shall review and approve or disapprove such revised Construction Plans within ten (10) days of submittal. This process shall repeat until such revised Construction Plans are finally approved by the City Engineer. The City Engineer shall not unreasonably delay or withhold approval of the Construction Plans.

(b) **Changes in Construction Plans.** Prior to completion of the Public Improvement Project as certified by the City Engineer pursuant to Section 3.7 of this Agreement below, if Meijer desires to make any substantial change in the Construction Plans which significantly affects the appearance, function or structural integrity of any part of the Public Improvements as specified and detailed in such Construction Plans, Meijer shall submit any such proposed change to the City Engineer for approval. The City Engineer shall within ten (10) days of receipt of such proposed change either approve or disapprove such proposed change to the Construction Plans. If the City Engineer disapproves of such proposed change, Meijer may submit a revised proposed change to the Construction Plans within a reasonable time of the date of such rejection. This process shall repeat until such revised proposed change to the Construction Plans is approved by the City Engineer. The City Engineer will not unreasonably delay or withhold approval of any such proposed change to the Construction Plans.

Section 3.4. Construction Contract. Any contract to be entered into by and between Meijer and any contractor or contractors for the Public Improvement Project shall minimally include provisions requiring any such contractor or contractors to comply with each of the following:

- (i) to comply with all applicable federal, Illinois and City laws, ordinances, codes, rules, regulations and orders of any such governmental bodies, agencies and authorities and any courts having jurisdiction;
- (ii) to procure and maintain any licenses, certificates and permits required for the Public Improvement Project;
- (iii) to furnish a performance bond and a labor and material payment bond, or a combination performance and payment bond, in an amount not less than 100% of the amount payable by Meijer under the applicable contract;
- (iv) to indemnify, save, hold harmless and defend the City, its officers, employees and agents, from and against all suits, claims, demands, actions, liabilities, judgements, costs and attorney's fees arising out of or resulting from the negligent acts or omissions of any such contractor or contractors in constructing and installing the Public Improvements or the performance by any such contractor or contractors of their obligations under any such contract;
- (v) to carry and maintain comprehensive general liability insurance in an amount not less than \$3,000,000 with an insurer having a rating of "A" or better and to name the City as an additional insured party for any and all activities associated with the Public Improvement Project;
- (vi) in addition to any tests, inspections and approvals as may otherwise be required of any such contractor or contractors under an applicable contract, to permit the City Engineer, at the City's sole cost and expense, to conduct such additional tests and inspections of the Public Improvements during the course of the construction and installation thereof as the City, in its sole discretion, deems necessary or advisable; and
- (vii) to substantially complete the Public Improvements within a period not greater than twelve (12) months from and after the date that any such contract is awarded by Meijer.

Section 3.5. Dollar Amount of Bid. Meijer and the City mutually covenant and agree that any contract for the Public Improvement Project shall be awarded by Meijer to the lowest responsible and responsive bidder. Prior to awarding any such contract, Meijer shall consult with the City Engineer concerning the lowest responsive and responsible dollar amount of the bid and whether the scope of the Public Improvement Project should be revised or changed. Any such lowest responsible and responsive bid received by Meijer for the Public Improvement Project shall not exceed the Estimated Project Cost by more than twenty percent (20%) without the express written consent of the City Engineer.

Section 3.6. Approval of Contractor. Meijer shall furnish to the City Engineer a written notice of each proposed contractor or contractors for the Public Improvement Project prior to awarding any contract to any such contractor or contractors. The City Engineer shall promptly reply to Meijer in writing stating whether the City, after due investigation, has any objection to any such proposed contractor or contractors. Meijer shall not award a contract to any contractor or contractors against whom the City Engineer may have reasonable objection.

Section 3.7. Certificate of Completion. Promptly after substantial completion of the Public Improvement Project, and upon the written request of Meijer, the City Engineer, following the proper testing, inspection and approval, shall execute and deliver to Meijer a certificate of

completion. Such instrument of certification by the City Engineer shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction with respect to the obligations of Meijer to complete the Public Improvement Project in accordance with this Agreement and the acceptance by the City of the Public Improvements. If the City refuses or fails to provide any certification in accordance with this Section 3.7 with respect to the Public Improvements, the City Engineer shall, within fourteen (14) days after written request by Meijer, provide Meijer with a written statement indicating in adequate detail in which respects Meijer has failed to complete the Public Improvement Project in accordance with this Agreement or is otherwise in default and what measures or steps shall be necessary, in the opinion of the City Engineer, for Meijer to take or perform in order to obtain such certification. Such certification as provided herein shall not be unreasonably withheld or delayed by the City Engineer and shall be deemed approved if the City Engineer fails to conform to the provisions of this Section 3.7.

Section 3.8. Reimbursement to Meijer for Public Improvement Costs. In consideration of Meijer completing the Public Improvement Project, and as a material inducement to Meijer's development of a Meijer Store on the Project Site, the City agrees to reimburse Meijer an amount equal to the total testing, design, engineering, constructing engineering and construction and installation costs of the Public Improvements, including the costs of relocating any existing utilities needed for the construction and installation of the Public Improvements (collectively, the "**Actual Public Improvement Costs**"), as certified and itemized in writing by Meijer to the City. Such certification and itemization by Meijer to the City shall be accompanied by all applicable invoices or other documentation in connection with the Actual Public Improvement Costs. The City's obligation to reimburse Meijer for such Actual Public Improvement Costs (the "**Reimbursement Obligation**") shall be payable by the City to Meijer in three (3) consecutive equal annual installments, commencing July 1, 2008 (provided the City is then in receipt of the written certification and itemization by Meijer of the Actual Public Improvement Costs) and annually thereafter on July 1, 2009 and July 1, 2010.

Section 3.9. Direct Obligation and Debt. The Reimbursement Obligation shall be a direct limited tax obligation and debt of the City and the payment when due of any installment of the Reimbursement Obligation shall be payable from general funds on hand or to be in hand (but specifically excluding the City's allotment of any Motor Fuel Tax funds from the Illinois Department of Transportation) without any requirement for a prior appropriation therefore.

Section 3.10. Continuing Driveway Obligation. Meijer and the City mutually acknowledge that the southerly driveway entrance to the Project Site from Philo Road as shown on the Public Improvement Plan (the "**Philo Road Driveway**") will initially have full access to and from Philo Road (i.e., left and right turns are permitted into and out of the Philo Road Driveway). It is therefore covenanted and agreed by and between Meijer and the City that if: (i) traffic volumes increase on Philo Road to the extent that long delays occur in exiting the Philo Road Driveway (i.e., on average motor vehicles in the peak hour wait in excess of thirty (30) seconds each to exit the Philo Road Driveway); or (ii) the intersection of Philo Road and Windsor Road becomes unsafe (i.e., three (3) or more accidents in any twelve (12)-month period contributed to by motor vehicles using a left turn movement to exit the Philo Road Driveway have occurred or five (5) or more accidents in any twelve (12)-month period exclusive of motor vehicle movement or direction have occurred); then, upon the determination of the City Engineer, Meijer, at its sole cost and expense, shall design, construct and install (or cause to be done) such raised concrete median, striping and

signage to prohibit left turn movements upon exiting the Philo Road Driveway as may be approved by the City Engineer.

ARTICLE IV
DEFAULTS AND REMEDIES

Section 4.1. Defaults - Rights to Cure. Failure or delay by either party to timely perform any material term or provision of this Agreement shall constitute a default under this Agreement. The party who so fails or delays shall, upon receipt of written notice of the existence of such default, immediately commence to cure, correct or remedy such default and thereafter proceed with diligence to cure such default. The party claiming such default shall give written notice of the alleged default to the party alleged to be in default specifying the default complained of. Except as required to protect against immediate, irreparable harm, the party asserting a default may not institute proceedings against the other party until thirty (30) days after having given such notice. If such default is cured within such thirty (30) day period, the default shall not be deemed to constitute a breach of this Agreement. If the default is one which cannot reasonably be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of such default, so long as there is diligent proceeding to cure such default. If such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. However, a default not cured as provided above shall constitute a breach of this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

Section 4.2. Remedies. In the event of a breach of this Agreement, the nondefaulting party may enforce this Agreement in an applicable court of competent jurisdiction by an appropriate action at law or equity to secure the performance of the covenants and agreements herein contained or to recover any damages sustained by such nondefaulting party; provided, however, that under no circumstances shall either party be liable for any compensatory or punitive damages under any of the provisions, terms and conditions of this Agreement.

Section 4.3. Costs, Expenses and Fees. If either party defaults in the performance of its obligations hereunder, each of the parties agree that the defaulting party shall pay the non-defaulting party's costs, expenses and fees of enforcing the defaulting party's obligations under this Agreement, including but not limited to reasonable fees of accountants, attorneys, engineers and other professionals regardless of whether any such fees are incurred for the purposes of negotiations, litigation, appeals or other services.

ARTICLE V
MISCELLANEOUS PROVISIONS

Section 5.1. Entire Contract and Amendments. This Agreement (together with Exhibits A, B and C attached hereto) is the entire agreement between the City and Meijer relating to the subject matter hereof. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, and may not be modified or amended except by a written instrument executed by both of the parties.

Section 5.2. Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the City and Meijer and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the City or Meijer, nor shall any provision give any third parties any rights of subrogation or action over or against either the City or Meijer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

Section 5.3. Counterparts. Any number of counterparts of this Agreement may be executed and delivered and each shall be considered an original and together they shall constitute one agreement.

Section 5.4. Special and Limited Obligation. This Agreement shall constitute a special and limited obligation of the City according to the terms hereof.

Section 5.5. Time and Force Majeure. Neither the City nor Meijer shall be deemed in default with respect to any performance obligations under this Agreement on their respective parts to be performed if any such failure to timely perform is due in whole or in part to the following (which also constitute “unavoidable delays”): any strike, lock-out or other labor disturbance (whether legal or illegal, with respect to which the City, Meijer and others shall have no obligations hereunder to settle other than in their sole discretion and business judgment), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, acts of terrorism, war, fuel shortages, accidents, casualties, acts of God or third parties or for any other reasons not within the City’s or Meijer’s control.

Section 5.6. Waiver. Either party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

Section 5.7. Cooperation and Further Assurances. The City and Meijer covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City and Meijer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

Section 5.8. Notices and Communications. All notices, demands, requests or other communications under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (a) deposited in the United States mail and sent by registered or certified mail, postage prepaid, return receipt requested, (b) personally delivered, (c) sent by a nationally recognized overnight courier, delivery charge prepaid or (d) transmitted by telephone facsimile, telephonically confirmed as actually received, in each case, to Meijer and City at their

respective addresses (or at such other address as each may designate by notice to the other), as follows:

- (i) In the case of Meijer, to:
Meijer Stores Limited Partnership
2929 Walker NW
Grand Rapids, MI 49544
Attn: Greg Heath
Tel: (616) 791-5055 / Fax: (616) 735-8887

- (ii) In the case of the City, to:
City of Urbana, Illinois
400 South Vine Street
Urbana, IL 61801
Attn: Chief Administrative Officer
Tel: (217) 384-2455 / Fax: (217) 384-2363

Whenever any party hereto is required to deliver notices, certificates, opinions, statements or other information hereunder, such party shall do so in such number of copies as shall be reasonably specified.

Section 5.9. Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respectively authorized successors and assigns; provided, however, that Meijer may not assign its rights under this Agreement to any party not owned or controlled by Meijer prior to the completion of the Public Improvements without the express written consent of the City.

Section 5.10. No Joint Venture, Agency, or Partnership Created. Nothing in this Agreement nor any actions of either of the City or Meijer shall be construed by either of the City, Meijer or any third party to create the relationship of a partnership, agency, or joint venture between or among the City and Meijer.

Section 5.11. Illinois Law; Venue. This Agreement shall be construed and interpreted under the laws of the State of Illinois. If any action or proceeding is commenced by any party to enforce any of the provisions of this Agreement, the venue for any such action or proceeding shall be in Champaign County, Illinois.

Section 5.12. No Personal Liability of Officials. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, officer, agent, employee or attorney of either the City or Meijer, in his or her individual capacity, and neither the members of the City Council nor any official of the City nor any official of Meijer or its General Partner shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution, delivery and performance of this Agreement.

Section 5.13. Conditions Precedent. The agreements, obligations and undertakings of the parties as set forth in this Agreement are expressly contingent upon Meijer having commenced (or caused to be commenced) the construction and installation of the Public Improvements on or before

July 1, 2007. If Meijer shall fail to demonstrate to the City that it has fulfilled its obligations under this Section 5.13, neither party shall have any further obligations under this Agreement and this Agreement shall thereupon automatically terminate and be of no force and effect.

IN WITNESS WHEREOF, the City and Meijer have caused this Agreement to be executed by their duly authorized officers or manager(s) as of the date set forth below.

**CITY OF URBANA, CHAMPAIGN COUNTY,
ILLINOIS**

By: _____
Mayor

ATTEST:

City Clerk

Date: _____

MEIJER STORES LIMITED PARTNERSHIP

By: Meijer Group, Inc., Its General Partner

By: _____

Its _____

ATTEST:

Its _____

Date: _____

[Exhibits A, B and C follow this page and are an integral part of this Agreement in the context of use.]

EXHIBIT A

Legal Description of Project Site

Situated in the Southeast Quarter of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian, City of Urbana, County of Champaign, State of Illinois, and being part of that tract of land conveyed by deed to Clinton C. Atkins as recorded in Document No. 95R04882 and all that tract of land conveyed by deed to said Clinton C. Atkins as recorded in Document No. 95R04883 (all references to deeds, microfiche, plats, surveys, etc. refer to the records of the Champaign County Recorders Office, unless noted otherwise), and being more particularly bounded and described as follows:

Commencing for reference at an aluminum cap stamped "ILS 1470", reportedly over a stone, at the southwest corner of said Southeast Quarter, and being in the right-of-way of Philo Road and Windsor Road;

thence along the west line of said Southeast Quarter and in the right-of-way of said Philo Road, North no degrees sixteen minutes thirty-two seconds West (N00°16'32"W) for six hundred fifteen and no/100 feet (615.00) to a railroad spike (set) at the northwest corner of a tract of land dedicated to the City of Urbana for public roadway as recorded in Book 1822, Page 472 and being the **TRUE POINT OF BEGINNING** of the herein described tract of land;

thence departing said City of Urbana land and continuing along said west line and in said right-of-way, North no degrees sixteen minutes thirty-two seconds West (N00°16'32"W) for six hundred sixty and 77/100 feet (660.77) to a railroad spike (set);

thence departing said west line and over said Atkins land on a new division line, South eighty-nine degrees forty-seven minutes ten seconds East (S89°47'10"E) for one thousand one hundred fifty and 92/100 feet (1150.92') to a 5/8 inch iron pin (set) in the west line of a sanitary sewer easement conveyed by deed to the Urbana and Champaign Sanitary District as recorded in Book 824, page 580;

thence continuing over said Atkins land, on a new division line and along the west line of said casement, South no degrees twenty minutes thirty-five seconds East (S00°20'35"B) for one thousand two hundred seventy-four and 89/100 feet (1274.891 to a railroad spike (set) in the south line of said Section 21 and being in the right-of-way of Windsor Road;

thence along said south line and in said right-of-way, North eighty-nine degrees forty-nine minutes fifty-one seconds West (N89°49'51 "W) for six hundred fifty-seven and 41/100 feet (657.41 ') to a railroad spike (set) at the southeast corner of said City of Urbana land;

thence departing said south Section line and along the easterly and northerly lines of said City of Urbana land for the following five (5) described courses:

1) North no degrees ten minutes nine seconds East (N00°10'09"E) for sixty and 00/100 feet (60.00') to a 5/8 inch iron pin (set);

- 2) North eighty-nine degrees forty-nine minutes fifty-one seconds West (N89°49'51 "W) for four hundred five and 47/ 100 feet (405.47') to a 5/8 inch iron pin (set);
- 3) North forty-four degrees forty-nine minutes fifty seconds West (N44°49'50"W) for seventy-one and 27/100 feet (71.27') to a 5/8 inch iron pin (set);
- 4) North no degrees sixteen minutes thirty-two seconds West (N00° 16'32"W) for five hundred four and 92/100 feet (504.92') to a 5/8 inch iron pin (set);
- 5) South eighty-nine degrees forty-three minutes twenty-eight seconds West (S89°43'28"W) for forty and 00/100 feet (40.00') to the **TRUE POINT OF BEGINNING**, containing thirty-two and 496/1000 (32.496) acres, more or less.

EXCEPTING THEREFROM a 0.831-acre parcel, a 0.032-acre parcel, and a 0.687-acre parcel deeded by Meijer Realty Company to the City of Urbana, pursuant to Dedication of Right of Way for Public Road Purposes dated May 29, 1997, recorded March 6, 1998, as Document #98R06000 of Champaign County, Illinois Records, and further described as follows:

Part of the South 1/2 of the Southeast 1/4 of Section 21, Town 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, more particularly described as follows:

TRACT A:

Commencing at the Southwest corner of the Southeast 1/4 of Section 21, Town 19 North, Range 9 East of the Third Principal Meridian, said corner lying at Station 62+95.55 on the centerline of Windsor Road; thence South 89°49'51" East along the South line of the Southeast 1/4 of said Section 21 and said centerline, 495.00 feet to a point at Station 67+90.55 on said centerline, said point also being the True Point of Beginning, thence North 00°10'09" East along the existing North right-of-way line of Windsor Road, recorded in Book 1822 at Page 472 in the Office of the Recorder of Champaign County, Illinois, 60.00 feet to a point lying 60.00 feet normal distance North of Station 67+90.55 on said centerline; thence South 89°49'S 1" East, 224.45 feet to a point lying 60.00 feet normal distance North of Station 70+15.00 on said centerline; thence South 78°31'15" East, 50.99 feet to a point lying 50.00 feet normal distance North of Station 70+65.00 on said centerline; thence South 89°49'51" East, 185.00 feet to a point lying 50.00 feet normal distance North of Station 72+50.00 on said centerline; thence North 84°27'31" East, 50.25 feet to a point lying 55.00 feet normal distance North of Station 73+00.00 on said centerline; thence South 89°49'51" East, 147.47 feet to the Southwest corner of Lot 101 of Eastgate Subdivision No. 1, City of Urbana, Champaign County, Illinois recorded in Book CC of Plats at Page 181 as Document No. 96R15730 in the Office of the Recorder of Champaign County, Illinois, said corner lying 55.00 feet normal distance North of Station 74+47.47 on said centerline; thence South 00°10'09" West, along the West line of said Eastgate Subdivision No. 1, 55.00 feet to a point at Station 74+47.47 on said centerline; thence North 89°49'51" West, along said centerline and aforesaid South line of the Southeast 1/4 of Section 21, 656.92 feet to the Point of Beginning, Tract A containing 36,203 square feet (0.831 acres), more or less, of which 19,718 square feet (0.453 acres), more or less, lies within existing right-of-way by use, and

TRACT B:

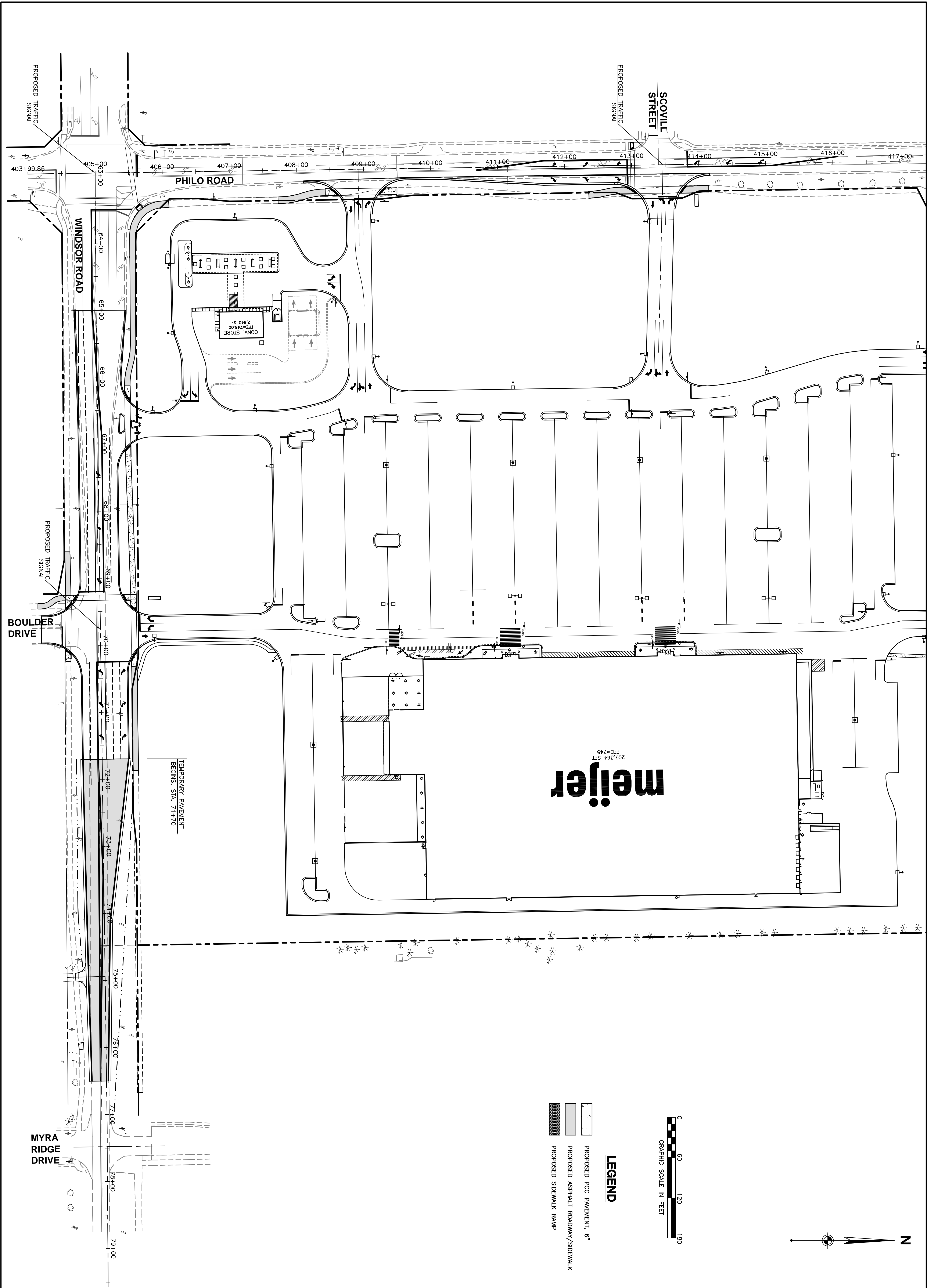
Commencing at the Southwest corner of the Southeast 1/4 of Section 21, Town 19 North, Range 9 East of the Third Principal Meridian, said corner lying at Station 405+00.00 on the centerline of Philo Road; thence North 00°16'32" West, along the West line of the Southeast 1/4 of said Section 21 and said centerline, 150.00 feet to a point at Station 406+50.00 on said centerline; thence North 89°43'28" East, 40.00 feet to a point on the existing East right-of-way line of Philo Road, recorded in Book 1822 at Page 472 in the Office of the Recorder of Champaign County, Illinois, said point lying 40.00 feet normal distance East of Station 406+50.00 on said centerline, said point also being the True Point of Beginning; thence North 00°16'32" West, along said existing East right-of-way line, 325.00 feet to a point lying 40.00 feet normal distance East of Station 409+75.00 on said centerline; thence South 05°59'10" East, 50.25 feet to a point lying 45.00 feet normal distance East of Station 409+25.00 on said centerline; thence South 00°16'32" East, 225.00 feet to a point lying 45.00 feet normal distance East of Station 407+00.00 on said centerline; thence South 05°26'06" West, 50.25 feet to the Point of Beginning, Tract B containing 1,375 square feet (0.032 acres), more or less, and

TRACT C:

Commencing at the Southwest corner of the Southeast 1/4 of Section 21, Town 19 North, Range 9 East of the Third Principal Meridian, said corner lying at Station 405+00.00 on the centerline of Philo Road; thence North 00°16'32" West, along the West line of the Southeast 1/4 of said Section 21 and said centerline, 615.00 feet to a point at Station 411+15.00 on said centerline, said point also being the True Point of Beginning; thence continuing North 00°16'32" West, along the West line of the Southeast 1/4 of said Section 21 and said centerline, 660.78 feet to a point at Station 417+75.78 on said centerline; thence South 89°47'10" East, along the existing South right-of-way line of Amber Lane, and South line of Eastgate Subdivision No. 1, City of Urbana, Champaign County, Illinois recorded in Book CC of Plats at Page 181 as Document No. 96R15730 in the Office of the Recorder of Champaign County, Illinois, 139.74 feet to a point lying 139.74 feet normal distance East of Station 417+74.58 on said centerline; thence South 63°17'29" West, 111.38 feet to a point lying 40.00 feet normal distance East of Station 417+25.00 on said centerline; thence South 00°16'32" East, 325.00 feet to a point lying 40.00 feet normal distance East of Station 414+00.00 on said centerline; thence South 22°04'37" East, 26.93 feet to a point lying 50.00 feet normal distance East of Station 413+75.00 on said centerline; thence South 00°16'32" E, 75.00 feet to a point lying 50.00 feet normal distance East of Station 413+00.00 on said centerline; thence South 21°31'33" West, 26.93 feet to a point lying 40.00 feet normal distance East of Station 412+75.00 on said centerline; thence South 00°16'32" East, 160.00 feet to a point lying 40.00 feet normal distance East of Station 411+15.00 on said centerline; thence South 89°43'28" West, along the existing East right-of-way line of Philo Road, recorded in Book 1822 at Page 472 in the Office of the Recorder of Champaign County, Illinois, 40.00 feet to the Point of Beginning, Tract C containing 29,940 square feet (0.687 acres), more or less, of which 17,838 square feet (0.409 acres), more or less, lies within existing right-of-way by use.

EXHIBIT B

Public Improvement Plan



EX B

SHEET NO.

MEIJER #247
SITE IMPROVEMENT PLANS
 WINDSOR ROAD AND PHILO ROAD
 URBANA, ILLINOIS 61802

EXHIBIT B

WOOLPERT, INC.
 1815 South Meyers Road
 Suite 120
 Oakbrook Terrace, IL 60181
 630.424.9080
 FAX: 630.495.3731

PROJECT No: 65588
DATE: 1/02/07
DES: BJJ
DR: BJJ
CKD: VDK

No.	DATE	REVISION

SEAL

EXHIBIT C

Estimated Project Costs

**EXHIBIT C
PRELIMINARY CONSTRUCTION ESTIMATE**



Proposed Site:	Meijer #247 (URB)-Roadway Improvements	Run Date :	01/03/2007
Estimate By:	BJJ	Job Number:	65588.13

ROADWAY IMPROVEMENTS

<u>Off-Site:</u>	Code		<u>This Project</u>
	02601	Misc Utilities Off-Site	\$110,965
	02660	Water	\$330
	02720	Storm	\$90,066
	02730	Sanitary	\$1,948
	02848	Traffic Controls	\$300,000
	02850	Road Improvements	\$582,565
		Design Fees	\$80,500
 Total Off-Site Improvements			 \$1,166,374
20% Contingency*			\$233,275

TOTAL SITE DEVELOPMENT COST **\$1,399,649**

*Local Cost Adjustment

Note: The quantities and prices shown are to represent a conceptual estimate to help identify the magnitude of construction cost. Since quantities are not based on detailed design and prices are not based on contractors' bids, actual construction cost may vary. Prices are based on present day cost and do not reflect future inflation or seasonal adjustments.



2311

0607

City of Urbana
400 South Vine Street
Post Office Box 219
Urbana, Illinois 61801-0219
(217) 384-2362
FAX (217) 384-2363

CLERK'S CERTIFICATE

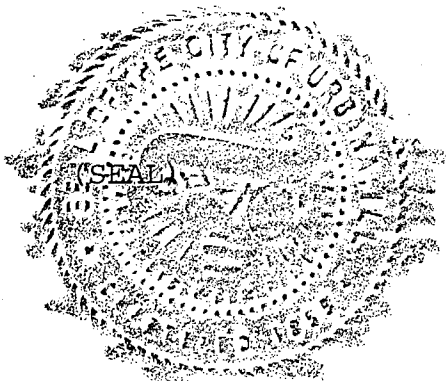
STATE OF ILLINOIS)
) SS
COUNTY OF CHAMPAIGN)

I, PHYLLIS D. CLARK, City Clerk of the City of Urbana, Illinois, and keeper of the records, files and seal of said City, do hereby certify that the foregoing is a true and exact copy of an ordinance entitled, "AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN ANNEXATION AGREEMENT (MEIJER-DOUGLAS-ATKINS)"

approved by the City Council of the City of Urbana, Illinois, on the 3rd day of January, A.D., 1995, as it appears in the records and files in my office remaining.

Given under my hand and seal of said City of Urbana, Illinois, this 15th day of June, A.D., 1995.

Phyllis D. Clark
Phyllis D. Clark, City Clerk



ORDINANCE NO. 9495-65

AN ORDINANCE APPROVING AND AUTHORIZING
THE EXECUTION OF AN ANNEXATION AGREEMENT
 (Meijer-Douglas-Atkins)

WHEREAS, an Annexation Agreement among the City of Urbana, Illinois, Clinton C. Atkins, the Meijer Realty Company, Edwin I. Douglas, and Edwin I. Douglas as trustee for the Robert Douglas Trust has been submitted for the Urbana City Council's consideration, a copy of which is attached, and designated as Plan Case #1554-A-94; and

WHEREAS, said agreement governs tracts totaling approximately 108 acres generally located at the northeast intersection of Windsor and Philo Roads, and said tracts are legally described as follows:

THE SOUTH ½ OF THE SOUTH EAST 1/4 OF SECTION 21, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, CHAMPAIGN COUNTY, ILLINOIS, EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

COMMENCING AT THE SOUTH WEST CORNER OF SAID SOUTH EAST QUARTER; THENCE NORTH 0 DEGREES 48 MINUTES 58 SECONDS WEST, ALONG THE WEST LINE OF SAID SOUTH EAST 1/4, A DISTANCE OF 615.00 FEET; THENCE NORTH 89 DEGREES 11 MINUTES 02 SECONDS EAST, A DISTANCE OF 40.00 FEET; THENCE SOUTH 0 DEGREES 48 MINUTES 58 SECONDS EAST, ALONG A LINE PARALLEL TO AND 40.00 FEET EASTERLY OF THE WEST LINE OF SAID SOUTH EAST 1/4, A DISTANCE OF 504.92 FEET; THENCE SOUTH 45 DEGREES 22 MINUTES 03 SECONDS EAST, A DISTANCE OF 71.27 FEET; THENCE NORTH 89 DEGREES 37 MINUTES 57 SECONDS EAST, ALONG A LINE PARALLEL TO AND 60.00 FEET NORTHERLY OF THE SOUTH LINE OF SAID SOUTH EAST 1/4 A DISTANCE OF 405.47 FEET; THENCE SOUTH 0 DEGREES 22 MINUTES 03 SECONDS EAST, A DISTANCE OF 60.00 FEET TO THE SOUTH LINE OF SAID SOUTH EAST 1/4; THENCE SOUTH 89 DEGREES 37 MINUTES 57 SECONDS WEST, ALONG THE SOUTH LINE OF SAID SOUTH EAST 1/4, A DISTANCE OF 495.00 FEET TO THE POINT OF BEGINNING.

AND:

THE SOUTH ½ OF THE NORTH ½ OF THE SOUTH EAST 1/4 OF SECTION 21, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN IN

CHAMPAIGN COUNTY, ILLINOIS EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT A POINT 1335.45 FEET NORTH OF THE SOUTH WEST CORNER OF THE SOUTH EAST 1/4 OF SECTION 21, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID POINT BEING ON THE WEST LINE OF THE SOUTH EAST 1/4 OF SAID SECTION 21; THENCE EAST 430.30 FEET; THENCE NORTH AND PARALLEL WITH SAID WEST QUARTER SECTION LINE, 655.80 FEET; THENCE WEST, 430.30 FEET TO THE WEST LINE OF SAID SOUTH EAST QUARTER SECTION; THENCE SOUTH ON THE WEST LINE OF THE SOUTH EAST QUARTER SECTION OF SAID SECTION 21, 655.80 FEET TO THE POINT OF BEGINNING, SAID Tract BEING A PART OF THE SOUTH EAST 1/4 OF SECTION 21, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, SITUATED IN CHAMPAIGN COUNTY, ILLINOIS.

WHEREAS, said Annexation Agreement was presented to the Urbana Plan Commission as Plan Case 1554-A-94; and

WHEREAS, the Urbana Plan Commission reviewed the proposed Annexation Agreement on December 8, 1994 and December 15, 1994; and voted to forward Plan Case 1554-A-94 to the Urbana City Council with a recommendation for approval of the Annexation Agreement; and

WHEREAS, the proposed Annexation Agreement is in conformance with the goals and objectives of the City of Urbana's Official Comprehensive Plan; and

WHEREAS, after due and proper publication, the Urbana City Council held a public hearing on December 19, 1994 to consider said Annexation Agreement.

WHEREAS, the Urbana City Council, having duly considered all matters pertaining thereto, finds and determines that the proposed Annexation Agreement will not negatively impact the City of Urbana and would be in the best interests of the City of Urbana and its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That the Annexation Agreement among the City of Urbana, Illinois Clinton C. Atkins, Edwin I. Douglas, Edwin I. Douglas as trustee of the Robert Douglas Trust, and Meijer Realty Company, a copy of which is attached and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver, and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Annexation Agreement, for and on behalf of the City of Urbana, Illinois.

2311

2311

0610

Section 3. The City Clerk is directed to record a certified copy of this Ordinance and the Annexation Agreement herein approved, as amended, with the Recorder of Deeds of Champaign County, Illinois.

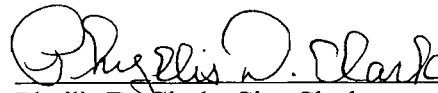
This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called of two-thirds of the members of the Corporate Authorities of the City of Urbana, Illinois, then holding office, at a regular meeting of said Council.

PASSED by the City Council on this 3rd day of January, 1995.

AYES: Hayes, Patt, Pollock, Ryan, Taylor, Whelan,
and Mayor Satterthwaite

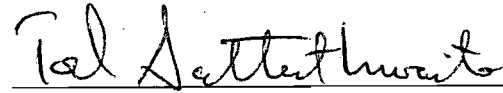
NAYS:

ABSTAINED:



Phyllis D. Clark, City Clerk

APPROVED by the Mayor this 12th day of January, 1994.



Tod Satterthwaite, Mayor

(MEIJERAN.ord)

2311 0611

**Annexation Agreement
Meijer-Douglas-Atkins**

1/4/95

MEIJr12.WPD

Return this document to:

City Clerk's Office
City of Urbana
400 S. Vine Street, P.O. Box 219
Urbana, IL 61801-0219

ANNEXATION AGREEMENT
Meijer-Douglas-Atkins

THIS Annexation Agreement ("Agreement"), made and entered into by and among the City of Urbana, Illinois, (herein after sometimes referred to collectively as the "Corporate Authorities" or the "City"); and Edwin I. Douglas and Marsha K. Douglas, and Edwin I. Douglas, Leann Topol, and Frederick Douglas, as trustees of the Robert Douglas Trust, as owners, hereinafter referred to as the "Owners"; Meijer Realty Company as developer/optionee, and Clinton C. Atkins as developer/optionee of the property, and hereinafter jointly referred to as the "Optionees" or referenced by their individual or corporate names. The effective date of this Agreement shall be as provided in Article III, Section 7.

WITNESSETH:

WHEREAS, this Agreement is made pursuant to and in accordance with the provisions of Section 11-15.1-1 et seq., of the Illinois Municipal Code (65 ILCS 5/11-15.1-1); and

WHEREAS, the Owners are the owners of record of a certain 108.75 acre parcel of real estate located at the northeast corner of Philo Road and Windsor Road and having permanent index numbers 30-21-21-400-12, 30-21-21-400-013, 93-21-21-400-005, the legal description of which real estate is set forth in Exhibit A attached hereto and referenced herein as "the Parcel. "

WHEREAS, the attached map, labeled Exhibit B, is a true and accurate representation of the Parcel to be annexed to the City under the provisions of this Agreement.

WHEREAS, Clinton C. Atkins possesses an option to purchase said Parcel from the Owners for development; and

WHEREAS, Meijer Realty Company possesses an option to purchase a portion of the Parcel from Clinton C. Atkins for development, such portion hereinafter referred to as Tract 1, the legal description of which real estate is set forth in Exhibit C; and

WHEREAS, Clinton C. Atkins will retain ownership of part of the Parcel remaining after the sale of Tract 1 to Meijer Realty Company. Said remaining portion is hereinafter referred to as Tract 2 and Tract 3, the legal descriptions of which real estate is set forth in Exhibit D.

WHEREAS, Clinton C. Atkins possesses options to purchase, in the aggregate, hundreds of acres of land proximate to the Parcel for development; and

WHEREAS, said Owners find that in order to best utilize the Parcel, it is desirous to annex the Parcel to the City as provided for in this Agreement; and

WHEREAS, the Parcel is currently zoned a combination of R-1 Single Family Residence and R-2 Single Family Residence in Champaign County and would directly convert to City R-1 Single Family Residential and R-2 Single Family Residential upon annexation under the terms and provisions of the Urbana Zoning Ordinance; and

WHEREAS, the Corporate Authorities find annexing said Parcel as a combination of B-3 General Business and R-4 Medium Density Multiple Family Residential and rezoning that portion currently within the City limits from R-1 Single Family Residential to B-3 General Business reflects the goals, objectives and policies set forth in the 1982 Urbana Comprehensive Plan, as amended from time to time; and

WHEREAS, such annexation will insure that the City will receive real estate taxes and other revenues and will enable the City to continue to enhance its tax base.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

ARTICLE I. REPRESENTATIONS AND OBLIGATIONS OF THE OWNERS AND OPTIONEES

The Owners and Optionees agree to the following provisions:

Section 1. Parties' Interest and Annexation: The Owners represent that they are the sole record owners of the Parcel. Clinton C. Atkins represents that he possesses an option to purchase said Parcel from the Owners. An affidavit affirming said option is attached hereto as Exhibit I. Meijer Realty Company represents that they possess an option to purchase Tract 1 from Clinton C. Atkins for the purpose of commercial development. An affidavit affirming said option is attached hereto as Exhibit J. The Optionees shall, within thirty (30) days of the transfer of the title of the Parcel or portions thereof, as contemplated herein, cause the Parcel, or portions thereof, to be annexed to the City by filing a legally sufficient annexation petition with all required signatures thereon, all in accordance with Illinois Statutes. Until annexation of the Parcel occurs, Owners shall require that any persons intending to reside thereon, whether as tenants or owners, shall, prior to residing thereon, irrevocably agree in writing to sign, join in, and consent to any petition for annexation of the Parcel. The Owners shall file such written agreement with the City Clerk within thirty (30) days of the signing of such. (The City shall furnish to Owners the appropriate form to satisfy this obligation.)

Optionees further agree that the substance of this Section of this Agreement shall be included in any sales contract for the sale of any portion of the Parcel. If the Parcel is to be platted for a subdivision prior to annexation, the Owners agree that the substance of these provisions regarding annexation shall be included in the subdivision covenants and such will constitute a covenant running with the land. The Owners agree for themselves, their successors or assigns,

and all other persons intended herein to be obligated to consent to annexation, to cooperate in signing or joining in any petition for annexation for the Parcel and that mandamus would be an appropriate remedy in the event of refusal to do so, and, if the City has to resort to Court proceedings to enforce this obligation, the City shall be entitled to recover reasonable attorney's fees. Owners agree that nothing in this section shall preclude the voluntary annexation of the Parcel or any portion thereof earlier than would otherwise be required.

Section 2. City Zoning: The Owners and Optionees acknowledge that upon annexation, that portion of Tract 1 outside the Urbana City limits will be rezoned from County R-1 Single Family Residence and R-2 Single Family Residence and City R-1 Single Family Residential to City B-3 General Business and that portion of Tract 2 outside the Urbana City limits will be rezoned from County R-1 Single Family Residence and City R-1 Single Family Residential to City B-3 General Business and Tract 3 will be converted from County R-1 Single Family Residence to City R-4 Medium Density Multiple Family Residential. Owners and Optionees agree that the City will submit a rezoning petition for that portion of Tract 1 and Tract 2 in the City requesting its rezoning from R-1 Single Family Residential to B-3 General Business. Owners and Optionees further agree that said zoning will be in effect for the term of this Agreement and in compliance with the Urbana Zoning Ordinance, as it may be amended from time to time. Furthermore, the Owners and Optionees agree to abide by all applicable development regulations existing at the time of annexation unless otherwise specifically stated within this Agreement. Clinton C. Atkins further agrees that residential units on Tract 3 will not exceed two stories in height within one hundred and fifty (150) feet of the north boundary line of the Parcel.

Section 3. Amendments: The Owners and Optionees shall take no action or omit to take action during the term of this Agreement which action or omission, as applied to the Parcel, would be a breach of this Agreement, without first procuring a written amendment to this Agreement duly executed by the Owners, Optionees and the City. Said action includes petitioning for a county rezoning of said Parcel without a written amendment to this Agreement.

Section 4. Construction According to Codes: The Owners and Optionees agree to cause all new development, construction, or additions on the Parcel to be in conformance with all City building, electrical, fire, and plumbing codes, orders or regulations in effect at the time of annexation. The Owners and Optionees agree to submit all building construction plans to the City for review and Meijer Realty Company further agrees to pay building permit fees up to twenty-five thousand dollars (\$25,000) on Tract 1 for permits issued before December 31, 1997. Clinton C. Atkins will pay full amount of all other building fees required thereafter or at anytime on Tract 2 and Tract 3.

Section 5. Site Development: The Owner and Optionees further agree to the following specific terms set forth in Subsection 5.1, below:

Section 5.1. Site Plan: Clinton C. Atkins agrees to submit a site plan for Tract 2 and Tract 3 for City approval prior to any application for building permits on Tract 2 or Tract 3.

Meijer Realty Company agrees that any development of Tract 1 will be substantial conformance with the attached site plan referenced in Exhibit E. Said site plan approval further requires that:

Section 5.1.1. Landscaping Plan: In order to satisfy the requirements of the Urbana Zoning Ordinance, Meijer Realty Company agrees to develop landscaping for Tract 1 in substantial conformance with the Landscaping Plan illustrated in Exhibit L.

Section 5.1.2. Storm Water Detention: In order to satisfy the requirements of Chapter 21 of the Urbana City Code of Ordinances entitled "City of Urbana Subdivision and Land Development Code", Clinton C. Atkins will provide storm water detention on Tract 2 or Tract 3 or adjacent lands to the east of the Parcel under Clinton C. Atkins control, to accommodate storm water runoff from the proposed development of the Parcel, including storm water runoff from Tract 1. Said storm water management will be presented as an engineered plan to the City Engineer and Meijer Realty Company for approval and, subject to the City Engineer's approval may be provided by means of a temporary basin until such time as Tract 2, Tract 3 or adjoining property is developed by Clinton C. Atkins. Optionees agree that off-site storm water detention shall be constructed, operational and approved by the City Engineer prior to the opening of any business on said Tract 1. Said temporary basin will detain water for the five (5) year through the fifty (50) year rain events and will release water at the five year through the one hundred (100) year agricultural or predevelopment rates. The temporary basin shall be replaced with a permanent basin or storm water management system within five (5) years of its approval by the City Engineer. All storm water runoff resulting from the temporary or permanent systems on the Parcel will be outletted to the drainage swale located at the southeast corner of the Parcel or to a storm water management system to adjacent lands to the east of the Parcel.

Section 5.1.3. Berm: Meijer Realty Company agrees to install a landscaped berm on Tract 1 to act as a buffer between the commercial development illustrated on the attached site plan and anticipated adjoining residential development on its eastern border and the existing church development on its northern border.

Section 5.1.4 Parking: Meijer Realty Company agrees that any future expansion of the Meijer store parking lot as illustrated on the attached site plan requires Plan Commission and City Council approval as an amendment to the site plan prior to the construction of any parking expansion.

Section 5.2. Participation in Public Improvements:

Section 5.2.1. Right-of-Way Dedication: The Owners and Optionees agree to dedicate to the City, and the City will accept, without cost to the City, a fifty (50) foot width of frontage as measured from the center of the Windsor Road right-of-way for the length of Tract 1 and Tract 2 for use as public right-of-way and to dedicate to the City, and the City will accept,

without cost to the City, a forty (40) foot width of frontage as measured from the center of Philo Road right-of-way for the length of Tract 1 for use as use as public right-of-way.

Section 5.2.2. Sidewalk Construction Contribution: Meijer Realty Company agrees to contribute 50% of the cost not to exceed twenty-five thousand dollars (\$25,000) to the City toward the construction of sidewalks along the east side of Philo Road from Mumford Drive to Windsor Road and the north side of Windsor Road from Philo Road to Myra Ridge Drive. Said funds will be due and payable to the City within thirty (30) days after the City Engineer's written request to Meijer Realty Company for payment, which request will not be given until after such sidewalks are completed.

Section 5.2.3. Traffic Signal: Should the City Engineer determine that a traffic signal at either Philo Road or Windsor Road and the entrance into the Parcel is warranted per the Illinois Manual of Uniform Traffic Control Devices, Meijer Realty Company agrees to contribute fifty percent (50%) of the cost, not to exceed fifty thousand dollars (\$50,000) after completion of construction to the City toward the installation of a traffic signal at the intersection of Philo Road and the principle entrance onto said Parcel from Philo Road or Windsor Road. Said funds will be due and payable to the City within thirty (30) days of the City Engineer's written request to Meijer Realty Company for payment, which request will not be made until the signal is installed and operational.

Section 5.2.4. Substantial Construction Prior to Capital Improvements: Meijer Realty Company agrees that the City will not commence construction of any improvements outlined in Article II, Section 6 until Meijer Realty Company has obtained a building permit for a new, approximately 200,000 square foot commercial building. The parties agree that said improvements will be completed prior to or at the time of the Meijer store opening.

Section 5.2.5. Construction of East/West Collector Street: Clinton C. Atkins, agrees to construct an east/west collector street and appurtenances with a thirty-one (31) foot wide pavement within a sixty (60) foot right-of-way on the north side of the Parcel as illustrated in Exhibit F in full compliance with Chapter 21 of the Urbana Code of Ordinances entitled "The City of Urbana Subdivision and Land Development Code." The City Engineer will review and approve all project costs and selected successful bidder prior to the commencement of any street construction. All statements for construction costs shall be approved by the City Engineer as he determines they comply with the original bid documents and construction plans. The City will accept said street as a public street once it has been certified as having been constructed in conformance with the City's Subdivision and Land Development Code. Upon the recording of the last of final plats totaling at least one-third (1/3) the land area of Tract 3 with the Champaign County Recorder's Office, the City will reimburse Clinton C. Atkins the full cost of said construction in two payments the first of which is to be paid within three (3) months of the said recording and the second not later than nine (9) months from said recording. In addition,

Clinton C. Atkins agrees to post a maintenance bond for said street prior to the City's acceptance in accordance with the City's Subdivision and Land Development Code.

Section 5.3. Title to Property: Optionees agree to complete all transfer of title to Tract 1 as contemplated herein by December 31, 1995. In the event that the Optionees do not acquire said Tract, the provisions of this agreement shall be come null and void at the discretion of Clinton C. Atkins. If Clinton C. Atkins chooses to proceed without participation by Meijer as additional Optionee, all obligations of Meijer under this Agreement are void *ab initio*.

Section 5.4. Subdivision of Parcel: The Owners and Optionees agree that, subject to Section 5.3 above, the Parcel will be properly subdivided by each optionee as to its respective parcel in accordance with Chapter 21 of the Urbana Code of Ordinances including any exceptions or waivers granted herein or granted upon approval of future subdivision requests.

Section 5.5 Traffic Signal at Myra Ridge Drive and Windsor Road. Clinton C. Atkins agrees to pay 50% of the cost of a traffic signal at Myra Ridge Drive and Windsor Road, not to exceed twenty-five thousand dollars (\$25,000) if the City Engineer determines that said signal is warranted. In addition, Clinton C. Atkins agrees to dedicate right-of-way necessary for the installation of said signal and lane improvements along Windsor Road or Myra Ridge Drive extended, at no cost to the City. Further, if the City Engineer determines the proposed traffic projections from either the Meijer store and/or further development of Tracts 2 and 3 warrant the installation of said traffic signal, the parties agree that said traffic signal installation shall occur coincidental with the widening of Windsor Road or the extension of Myra Ridge Drive north of Windsor Road.

ARTICLE II. REPRESENTATIONS AND OBLIGATIONS OF THE CORPORATE AUTHORITIES

In addition to the obligation set forth in Article I. Section 5.2.5, the Corporate Authorities agree to the following provisions:

Section 1. Annexation: The Corporate Authorities agree to annex said Parcel subject to the terms and conditions outlined in this Agreement, when properly and effectively requested to do so, by submission of a legally sufficient petition from the Owners, by enacting such ordinances as may be necessary and sufficient to legally and validly annex said Parcel to the City.

Section 2. Zoning: The Corporate Authorities agree that Tract 1 and Tract 2 will be zoned City B-3, General Business, and Tract 3 will be zoned R-4, Medium Density Multiple Family Residential, as defined in the City of Urbana Ordinance as such exists at the time of annexation. The Corporate Authorities agree to submit a rezoning petition requesting the rezoning of those portions of Tract 1 and Tract 2 within the Urbana City limits from R-1 Single Family Residential to B-3 General Business. The Corporate Authorities agree that all applicable development

regulations existing at the time of annexation will apply to said Parcel, unless otherwise provided for in this Agreement.

Section 3. Waiver Findings: The Corporate Authorities find that the waivers of the City of Urbana's Subdivision and Land Development Code agreed to in Article II Section 4 herein are supported by the following findings:

- a. Due to existing conditions, there are site specific difficulties in complying with these regulations, such as the large commercial development's location on Philo Road and Windsor Road warrant allowing direct access onto Philo and Windsor Roads. In addition, the lot on which Northern Illinois Water Company will construct a water storage facility and which normally requires public access will be best located away from public right-of-way; and
- b. The granting of the following waivers will not cause significant adverse effects on the public health, safety and welfare because traffic safety improvements will be installed as warranted; and
- c. Sufficient evidence is shown to both the Plan Commission and the City Council that the waivers will benefit the public health, safety and welfare and the alternatives described herein better serve the public's interest because proper turn lanes and traffic control management will increase the commercial sites' public accessibility; and
- d. The proposed waivers support and foster implementation of the goals, objectives and policies represented in the Urbana Official Comprehensive Plan, 1982, as amended because it allows efficient development of a commercially designated property; and
- e. The proposed waivers are the minimum deviation from the requirements that will alleviate the difficulties; and
- f. The plight of the applicant is due to peculiar circumstances not of the applicant's own making because the commercial property is located at the intersection of two major arterials and commercial development area is limited by the Comprehensive Plan, making construction of a frontage road impractical.

Section 4. Subdivision Waiver: The Corporate Authorities agree to grant the following waivers upon the development and/or subdivision of said Parcel as represented in Exhibit E:

- a) Waiver of Section 21-36 to the extent that this section prohibits lots from having direct access onto arterial streets.
- b) Waiver of Section 21-37 to the extent that this section requires all lots have public access in conformance with the City's Zoning Ordinance. Said waiver will allow the

creation of a lot for Northern Illinois Water Company which is served by a private access easement.

c) Waiver of Table A to the extent that this table requires a 66 foot right-of-way and a 34 foot wide pavement for the east/west collector and said installation can be completed in a timely manner.

Section 5. Liquor Licenses: Upon Tract 1's annexation to the City, the City agrees to make available two Class C Liquor Licenses for package sales within Tract 1 to a qualified applicant representing Meijer Realty Company.

Section 6. Street Improvements and Capital Improvements:

Section 6.1. Windsor Road and Philo Road Improvements: The City agrees to cause the widening of Windsor Road to a three-lane cross section plus auxiliary lanes and tapers as the City Engineer determines necessary, between Philo Road and Myra Ridge Drive at an estimated cost of four hundred and fifty thousand dollars (\$450,000); to widen Philo Road to a three-lane cross section plus auxiliary lanes and tapers as the City Engineer determines necessary, from Colorado Avenue to Windsor Road at an estimated cost of four hundred thousand dollars (\$400,000) as such improvements are illustrated on Exhibit G. The Parties agree that said construction will not commence until after Meijer Realty Company receives a building permit for an approximately 200,000 square foot commercial building on Tract 1 as depicted on Exhibit E.

Section 6.2. Traffic Signal: The City agrees to cause the installation of a traffic signal at the intersection of Philo and Windsor Roads at an estimated cost of sixty thousand dollars (\$60,000). In addition, the City agrees to contribute thirty-seven thousand five hundred dollars (\$37,500) toward the installation of a warranted traffic signal on Philo Road and the commercial development's primary entrance. Meijer Realty Company will contribute fifty percent (50%) of the cost of the installation of this signal, not to exceed fifty thousand dollars (\$50,000) in accordance with Article I. Section 5.2.3.

Section 6.3. Street Lighting: The City agrees to cause the installation of street lighting contemporaneously with the construction of street improvements along Philo Road and Windsor Road described in Article II. Section 5.1 above at an estimated cost of one hundred thousand dollars (\$100,000).

Section 6.4. Sidewalks: The City agrees to cause the installation of sidewalks along Philo Road and Windsor Road, contemporaneously with the street improvements described in Article II. Section 6.1 above. Meijer Realty Company will contribute twenty-five thousand dollars (\$25,000.00) toward the cost of said sidewalk improvements in accordance with Article I. Section 5.2.3, which said improvements are estimated to cost one hundred twenty-five thousand dollars (\$125,000.00).

Section 7. Site Plan Approval: The City hereby approves the site plan attached for Tract 1 subject to the terms and conditions outlined herein and as illustrated on Exhibit E. The parties further agree that the City's Community Development Director/City Planner may approve an alternate site plan in which Meijer Realty Company's commercial building faces to the south rather than the west. In all other respects, Meijer Realty Company agrees that any development of Tract 1 will be in substantial conformance to the site plan illustrated in Exhibit E.

The City further acknowledges that Clinton C. Atkins will submit a site plan for Tract 2 and Tract 3 for City approval prior to any application for building permits on Tract 2 and Tract 3.

Section 7.1. Signs: The City agrees that Meijer Realty Company may construct and maintain signs as described and illustrated in Exhibit H.

Section 8. Sales Tax Allocation: The Corporate Authorities agree that the development of Tract 1 for commercial purposes as presented by Meijer Realty Company will serve the needs of the City and its residents and the project, when completed, will increase employment opportunities in the City, stimulate commercial growth, and further stabilize the tax base of the City. In recognition of this public benefit, the Corporate Authorities agree to pay to Meijer Realty Company an amount equal to thirty-three and one-third percent (33 1/3%) of the one percent (1%) Municipal Retailer and Service Occupation Tax collected pursuant to the Retailer's Occupation Tax Act (35 ILCS 120/1) in the manner provided for in this paragraph. The City will pay to Meijer Realty Company after first reimbursing itself as provided below, thirty-three and one-third percent (33 1/3%) of the one percent (1%) statutory Municipal Retailer and Service Occupation Tax actually received by the City from the Meijer Realty Company development on Tract 1 until Meijer Realty Company has received the total sum of Two Million Dollars (\$2,000,000.00) under the provisions of this section. Payment shall be made by the City on a quarterly basis. No payment of sales tax, however, shall be made to Meijer Realty Company until after the City has reimbursed itself for one hundred percent (100%) of the City's actual costs (but not to exceed one hundred and ten percent (110%) of the estimated costs as stated herein) for the improvements referred to in Article II, Section 6. It is understood and agreed by all parties that the home rule Municipal Retailer and Service Occupation Tax imposed by the City of Urbana as a home rule unit as provided for in 65 ILCS 5/8-11-1, which is currently one percent (1%), is not to be considered as part of the required reimbursement to the City as set forth above, nor shall it be subject to the thirty-three and one-third percent (33 1/3%) allocation to Meijer Realty Company as set forth above.

Section 9. Water Facility: The Corporate Authorities agree that a Northern Illinois Water Company water storage facility may be located on the Parcel other than on Tract 1, its site to be determined and approved by the City's Chief Administrative Officer, Clinton C. Atkins and the City Planner/Director of Community Development Services. The parties agree that said site may be served by a private access easement rather than public right-of-way, said easement may not be necessarily located on the Parcel. The City and Clinton C. Atkins agree, however, that said facility will be a maximum of thirty-two feet high and be located at south of the proposed

east/west collector street. The parties further agree that said facility will be properly screened with live landscaping.

Section 10. Open Space: The Corporate Authorities agree that the surface area of storm water detention basins may be credited toward open space requirements of the Urbana Zoning Ordinance.

Section 11. Collector Street: The Corporate Authorities acknowledge that the site plan and proposed collector street, although varying from the proposed street classification map of the City of Urbana Comprehensive Plan, satisfies the Plan's intent by providing an east/west collector street in the area designated.

Section 12. Sanitary Sewer Relocation. The Corporate Authorities agree that, depending on final construction plans, to support the relocation of a Urbana & Champaign Sanitary District sanitary sewer located in the southeast portion of the Parcel.

Section 13. Drainage Control Structures: The Corporate Authorities agree to pay any extraordinary costs of control structures for pass through flows from the dominant land but said cost not to exceed five thousand dollars (\$5,000). Said control structures will be approved by the City Engineer and shall be located solely on the Parcel.

Section 14. Drainage Outlets - Hold Harmless. To the extent permitted by law and until water draining from the basin(s) to be constructed pursuant to Section 5.1.2 above is provided a water transportation system approved by the City Engineer of the City of Urbana, which transportation system carries the said water to a point where it empties into any one or more of the following:

- (1) Drainage ditch of St. Joseph Township No. 3 Drainage District;
- (2) The Windsor Road roadside ditch (north side);
- (3) The High Cross Road (Route 130) roadside ditch (west side),

the City shall defend and hold harmless Clinton C. Atkins (hereinafter simply "Atkins") against any and all claims relating to increasing or decreasing the rate or volume of water from the Parcel onto servient lands not owned by Atkins which may be brought against Atkins because of his participation in the design or construction of the storm water detention facility as defined in Section 5.1.2.

As soon as practicable after Atkins gains knowledge of any claim against him of the nature described above, he shall notify the City in writing of such claim, and the City shall then undertake the legal defense of the claim and keep Atkins advised of the status of such.

To the extent that the City becomes obligated to pay any sums to others by reason of such claims, whether such payment be made pursuant to judgment of a court of competent jurisdiction or settlement agreement, the City shall be subrogated to all rights and claims which Atkins may have against engineers, architects, contractors or others employed or acting any way on behalf of Atkins in connection with design or construction of the drainage outlet. Atkins agrees not to do anything which may cause the waiver of any such rights and claims to the City and to cooperate with the City in the prosecution of such claims, if necessary.

Atkins shall cause any engineer and contractor working on the drainage outlet to maintain during construction thereof, a minimum of one million dollars (\$1,000,000.00) in general liability insurance and worker's compensation insurance in the statutory amount and employer's liability insurance in an amount of at least five hundred thousand dollars (\$500,000.00). Atkins also agrees to require any architect or engineer working on the drainage outlet to maintain one million dollars (\$1,000,000.00) of professional liability insurance during such engineer's or architect's work on the drainage outlet and for a period of five (5) years after its completion. Atkins shall require that the City, its officers and employees be named as additional insured for any general liability policy required by this Section.

Section 15. Street Extensions: The Parties agree that Clinton C. Atkins will extend Myra Ridge Drive northward through the Parcel in compliance with the City of Urbana's Subdivision and Land Development Code. In addition, the Corporate Authorities will not require the extension of Susan Stone Drive northward through the Parcel.

ARTICLE III: GENERAL PROVISIONS

Section 1. Term of this Agreement: This Agreement shall be binding upon the parties hereto, and their respective successors and assigns, for a full term of twenty (20) years commencing as of the effective date of this Agreement as provided by the Illinois State Statutes, unless other provisions of this Agreement specifically apply a different term. To the extent permitted thereby, it is agreed that, in the event the annexation of the subject Parcel under the terms and conditions of this Agreement is challenged in any court proceeding, the period of time during which such litigation is pending shall not be included in calculating said twenty-year term.

If this Agreement imposes any obligation, restraint, or burden (hereinafter called collectively "obligation") on the Owners, their successors or assigns, which obligation extends beyond the termination date of this Agreement, such obligation may be released by the Urbana City Council enacting an Ordinance releasing such obligation by a majority vote of all Alderpersons then holding office and the recording of such Ordinance in the Champaign County Recorder's Office, Champaign County, Illinois.

Section 2. Covenant Running with the Land: The terms of this Agreement constitute a covenant running with the land for the life of this Agreement unless specific terms are expressly made binding beyond the life of this Agreement. Furthermore, the terms herein are hereby expressly made binding upon all heirs, grantees, lessees, executors, assigns and successors in interest of the Owners as to all or any part of the Parcel, and are further expressly made binding upon said City and the duly elected or appointed successors in office of its Corporate Authorities.

Section 3. Binding Agreement Upon Parties: The Corporate Authorities, Optionees and Owners agree that the parties will take no action or omit to take action during the term of this Agreement which act or omission as applied to the Parcel would be a breach of this Agreement without first procuring a written amendment to this Agreement duly executed by the Optionees, the Owners and the City.

Section 4. Enforcement: The Owners, the Optionees and Corporate Authorities agree and hereby stipulate that no party to this Agreement may, by civil action, mandamus, action for writ of injunction or other proceeding, enforce and compel performance of this Agreement or declare this Agreement null and void, except as outlined in Section 5.3, in addition to other remedies available. Upon breach by the Owners or Optionees, the City may refuse the issuance of any permits or other approvals or authorizations relating to development of the Parcel.

Section 5. Severability: If any provision of this Agreement is rendered invalid for any reason, such invalidation shall not render invalid other provisions of this Agreement which can be given effect even without the invalid provision.

Section 6. Notices: All notices, demands, requests, consents, approvals or other communications or instruments required or otherwise given under this Agreement shall be in writing and shall be executed by the party or an officer, agent or attorney of the party, and shall be deemed to have been effective as of the date of actual delivery or as of the third (3rd) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows (unless another address is provided in writing):

Edwin I. Douglas, Owner
2604 S. Philo Road
Urbana, Illinois 61801

Robert Douglas Trust
2604 S. Philo Road
Urbana, Illinois 61801

Meijer Realty Company
Attention: Vice President, Real Estate
2929 Walker Avenue N.W.

Grand Rapids, Michigan 49504

Clinton C. Atkins
The Atkins Group
2001 Kankakee Drive
Champaign, Illinois 61821

City of Urbana
Attention: Chief Administrative Officer
400 S. Vine Street
Urbana, Illinois 61801

Section 7. Effective Date: The Corporate Authorities, Optionees and Owners intend that this Agreement shall be recorded in the Office of the Champaign County Recorder with any expenses for said recording to be paid by the Corporate Authorities. The effective date of this Agreement shall be the date it is recorded; or if not recorded for any reason, the effective date shall be the date the Mayor signs the Agreement on behalf of the City.

Section 8. Exculpatory Clause: Notwithstanding any other provisions of this Annexation Agreement, the Owners shall have no obligation to take any action under this Agreement if Clinton C. Atkins shall fail to exercise the option given by the Owners and shall fail to take title to the Parcel. If Clinton C. Atkins shall exercise the option with the Owners for the Parcel, and Clinton C. Atkins shall assume all obligations placed upon the Owners under this Agreement and the Owners shall therefore have no further obligation under this Agreement.

2311

2311

0625

IN WITNESS WHEREOF, the Corporate Authorities, the Optionees and Owners have hereunto set their hands and seals, and have caused this instrument to be signed by their duly authorized officials and the corporate seal affixed hereto, all on the day and year written below.

Corporate Authorities

City of Urbana:

Tod Satterthwaite

Tod Satterthwaite, Mayor

Date: 1/12/95

Attest:

Phyllis D. Clark

Phyllis D. Clark

City Clerk

Date: 1-12-95

Owner:

Edwin I. Douglas

Edwin I. Douglas

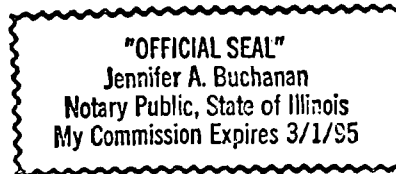
Date: 1-2-95

Attest:

Jennifer A. Buchanan

Notary Public

Date: 1-2-95



Marsha K. Douglas

Marsha K. Douglas

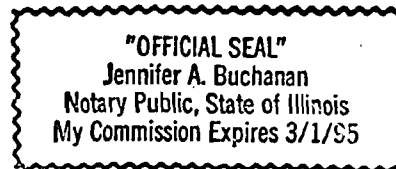
Date: 1-2-95

Attest:

Jennifer A. Buchanan

Notary Public

Date: 1-2-95



2311

2311

0626

Owner: Robert Douglas Trust

By: Edwin I. Douglas
Edwin I. Douglas, Its Trustee

Attest:

Jennifer A. Buchanan
Notary Public
Date: 1-2-95

"OFFICIAL SEAL"
Jennifer A. Buchanan
Notary Public, State of Illinois
My Commission Expires 3/1/95

By: Leann Topol
Leann Topol, Its Trustee

Jennifer A. Buchanan
Attest: 1-2-95

"OFFICIAL SEAL"
Jennifer A. Buchanan
Notary Public, State of Illinois
My Commission Expires 3/1/95

Crystal J. Tanney
Notary Public
Date: 12/30/94

"OFFICIAL SEAL"
CRYSTAL J. TANNEY
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXPIRES 7-12-95

By: Fredrick R. Douglas
Fredrick R. Douglas, Its Trustee

Attest:

Notary Public
Date: _____

Optionee: Meijer Realty Company

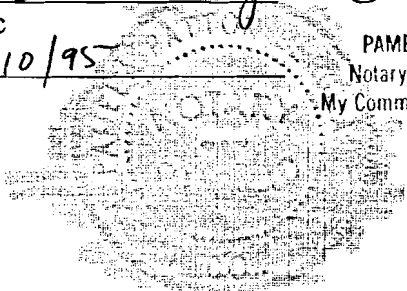
John S. Stephenson
Its: Vice President

LEGAL SMP
BUS. [Signature]

Attest:

Pamela Patton Bergman
Notary Public
Date: 1/10/95

PAMELA PATTON BERGMAN
Notary Public, Kent County, MI
My Commission Expires Aug. 3, 1998



2311

0627

Optionee:

Clinton C. Atkins

Clinton C. Atkins

Date: 1-25-95

Attest:

Betsy A. McLemore

Notary Public

Date: 1-25-95

