# MEIJER BUCKEYE PLAT

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Louisville Box

14183

WITH SEC. 1777.02 MICROFICHE NO. 95
01019E11, FILED 5-3-1995
SUE RIOUX, RECORDER, BY

# DECLARATION OF RESTRICTIONS

FEB 1 5 2002

**THIS DECLARATION OF RESTRICTIONS** (the "Declaration") is made and entered into as of the 18th day of January, 2002, by and between **MEIJER STORES LIMITED PARTNERSHIP**, a Michigan limited partnership, 2929 Walker Avenue, N.W., Grand Rapids, Michigan 49544, hereinafter referred to as "Meijer", and **CURTIS JAMES INVESTMENTS**, an Ohio general partnership, whose address is 741 Centre View Boulevard, Crestview Hills, Kentucky 41017, hereinafter referred to as "Developer". Meijer and Developer when referred to together are sometimes hereinafter referred to as the "Parties".

## RECITALS

A. Pursuant to a certain Real Estate Sale Contract executed by and between the Parties (with Meijer as Seller and Developer as Buyer), Developer is or is about to become the fee simple owner of a certain parcel of land located in the Township of Sylvania, Lucas County, Ohio. Said parcel of land is located north and east of the intersection of King Road and Central Avenue, in Sylvania Township and is hereinafter referred to as the "Developer Parcel". The Developer Parcel contains 2.081 acres of land and is legally described on the attached **Exhibit A**.

B. Meijer is the fee simple owner of a certain parcel of land located in the Township of Sylvania, Lucas County, Ohio, which parcel of land is hereinafter referred to as the "Meijer Parcel". The Meijer Parcel contains approximately forty (40) acres of land and is located north and east of the intersection of King Road and Central Avenue in Sylvania Township. The Meijer Parcel is legally described on the attached **Exhibit B**.

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

D. The Meijer Parcel is improved with a combination food and general merchandise store. Developer intends to develop the Developer Parcel with an Applebee's Restaurant.

E. Pursuant to the terms of said Real Estate Sale Contract, the Parties desire to impose on the Developer Parcel certain covenants and restrictions, hereinafter set forth, for the benefit of Meijer and any future owner(s) of the Meijer Parcel.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and other valuable consideration, the receipt and sufficiency which is hereby acknowledged, the Parties agree as follows:

1. Prohibited Commercial Activities. The Developer Parcel may be used for any lawful purpose except for the following prohibited uses: drug store of any kind; prescription pharmacy; sale of liquor in package form, including without limitation beer, wine and ale; grocery store; supermarket; supercenter; combination food and general merchandise store; any discount retail facility exceeding 30,000 square feet under one roof; department store; warehouse club; wholesale club; gas station; bakery shop or donut shop; fast restaurant with drive through window(s); used car lot; bar; tavern or an amusement or recreation establishment, including without limitation a pool hall, bowling alley, massage parlor, game center, theater, play house, night club, movie theater, adult book store, or establishment featuring a male or female revue; any combination of, or parking to support, any or all of the foregoing prohibited uses. Notwithstanding the foregoing, the sale of beer, wine and alcohol shall be a permitted use, provided that the sale of beer, wine and alcohol is an incidental use to a full service, sit-down restaurant.

2. Prior Approval of Plans and Specifications. No improvements on or to the Developer Parcel shall be made, or once made thereafter significantly altered, remodeled or relocated, until plans and specifications for any improvement have been submitted to Meijer and approved by Meijer in writing. Meijer's approval is required to ensure that all improvements of or to the Developer Parcel are structurally, aesthetically and operationally compatible with the use,



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operation and improvements which may exist from time to time on the Meijer Parcel Meijer's approval of such plans and specifications shall not be unreasonably delayed or withheld.

3. No Zoning Variances. Developer and its successors and assigns shall not seek governmental approval for any use of the Developer Parcel which requires the grant of any type of zoning variance or special use permit from Lucas County, or any commission or subdivision thereof, or from any city or township located therein or from any other governmental entity, without the express written consent of Meijer. The foregoing restriction is especially intended to prohibit any variance or special use permit which might reduce the parking and set back requirements applicable to the Developer Parcel

4. Height. No building or structure on the Developer Parcel shall be more than one (1) story (22 feet) in height.

5. Parking. Developer and its successors and assigns shall provide a sufficient number of parking spaces on the Developer Parcel to meet all applicable governmental parking regulations Developer's tenants and invitees shall park on the Developer Parcel and shall not park in the parking lot located on the Meijer Parcel. Meijer may take all appropriate action in order to prevent parking on the Meijer Parcel by tenants, invitees or employees of Developer, including without limitation, ticketing and towing unauthorized vehicles, if and as permitted by law. Nothing contained in this Declaration shall be construed to grant Developer the right to use the Meijer Parcel in order to meet any parking, setback, sidewalk, bulk or other zoning or building requirements applicable to the Developer Parcel. Meijer's invitees, employees and lessees shall park on the Meijer Parcel and shall not park on the Developer Parcel

6. Term. This Declaration shall continue for a term of twenty (20) years from the date hereof, or so long as a combination food and general merchandise type retail establishment is in operation on some or all of the Meijer Parcel, whichever shall be longer Temporary cessation of operation upon the Meijer Parcel due to fire or other casualty, acts of God, labor disputes or other causes beyond the reasonable control of the owner of the Meijer Parcel an[illegible] [illegible]emporary cessation of use for not more than three hundred sixty-five (365) consecutive [illegible] for the purpose of making alterations or for reletting shall not be deemed a cessation of [illegible] within the meaning of this Paragraph.

7. Covenants Running With Land. The restrictions hereby imposed an[illegible] [illegible]ements herein contained shall be restrictions and covenants running with the land and shall inure to the benefit of the Meijer Parcel. The restrictions and covenants herein shall be binding upon the Parties and their respective heirs, successors and assigns, including, but without limitation, all subsequent owners of all or any part of the Developer Parcel or the Meijer Parcel and all those claiming by through or under them.

8. Legal and Equitable Relief. Meijer and its successors and assigns shall have the right to prosecute any proceedings at law or in equity against Developer and its successors and assigns, or any other person or entity violating, attempting to violate or defaulting upon any of the provisions contained in this Declaration, in order to prevent any violation, attempted violation or default upon the provisions of this Declaration and to recover damages for any such violation or default. The remedies available under this Paragraph shall include, by way of illustration but not limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for specific performance of this Declaration.

9. Litigation Expense. If litigation arises out of or in connection with this Declaration, the party prevailing to judgment shall be entitled to recover its reasonable attorney fees

10. Waiver of Default. No waiver of any default by Meijer to this Declaration shall be implied from any omission by Meijer to take any action with respect to any such default if such default continues or is repeated. In addition, no express waiver of any default shall affect any other default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant contained in this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Declaration. The consent or approval by Meijer to or of

any act or request by Developer requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar acts or requests. Meijer's rights and remedies under this Declaration are cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which Meijer might otherwise have by virtue of a default under this Declaration, and the exercise of one such right or remedy by Meijer shall not impair its standing to exercise any other right or remedy.

11. Method of Amendment. The provisions of this Declaration may be modified or amended, in whole or in part, only with the consent of the Parties, as the respective fee simple owners of the Developer Parcel and the Meijer Parcel, by declaration in writing, executed and acknowledged by the Parties, duly recorded in Lucas County, Ohio.

12. No Third Party Beneficiary. The provisions of this Declaration are for the exclusive benefit of the fee simple owner(s) of the Meijer Parcel, its successors and assigns, and not for the benefit of any third person or entity. In addition, this Declaration shall not be deemed to have conferred any rights, express or implied, upon any third person or entity.

13. Notices. Any notice or communication which either party desires, or is required, to give the other shall be in writing and shall be delivered in person or sent by certified mail, return receipt requested, to the address shown for that party on the first page of this Declaration or to any subsequent address which may be provided to either party in writing. All notices or communications to Meijer shall be directed to the attention of its Real Estate Department Notices shall be deemed given three (3) days after mailing.

14. Captions. The captions of the paragraphs of this Declaration are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction.

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

16. Severability. If any term, provision or condition contained in this Declaration shall, to any extent, be invalid or unenforceable, the remainder of this Declaration (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision or condition of this Declaration shall be valid and enforceable to the fullest extent provided by law.

17. Perpetuities. If and to the extent that any of the covenants herein would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision concerned shall continue and endure only until the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of Frederik G.H. Meijer, Senior Chairman of Meijer, Inc , living at the date of this Declaration.

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

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

IN THE PRESENCE OF:

Starrla K. Mayes
( Starrla K. Mayes )

Dana M. Grojean
( Dana M. Grojean )

**MEIJER STORES LIMITED PARTNERSHIP,**
***a Michigan Limited Partnership***

By: **Meijer Group, Inc.**
Its. **General Partner**

By. _____
Robert J VerHeulen
Its: Vice President

IN THE PRESENCE OF:

Jessica L. Hehman
( Jessica L. Hehman )

Rebecca T. Burris
( Rebecca T. Burris )

**CURTIS JAMES INVESTMENTS**

By: George W. Werden
George W. Werden

Its: Vice President

STATE OF MICHIGAN )
) ss.
COUNTY OF KENT )

The foregoing instrument was acknowledged before me this 11th day of January, 2002, by Robert J. VerHeulen, the Vice President of Meijer Group, Inc., the General Partner of Meijer Stores Limited Partnership, a Michigan limited partnership, on behalf of said limited partnership.

LaRae B. Steigenga

Notary Public, ____ County, Michigan
*My commission expires:* _____

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

STATE OF Kentucky )
) ss.
COUNTY OF Kenton )

The foregoing instrument was acknowledged before me this 14 day of January, 2002, by Gene N. Weiler, the Vice President of Curtis James Investments, an Ohio general partnership, on behalf of said partnership.

Patricia S. Wilson

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

PATRICIA S. WILSON
Notary Public, State at Large, Kentucky
My Commission Expires Sept. 25, 2004

NOTARY PUBLIC STATE AT LARGE

DRAFTED BY AND
WHEN RECORDED RETURN TO:
Glen M. VanderKooi, Atty.
2929 Walker Avenue, N.W.
Grand Rapids, MI 49544
(616) 791-5055
Y:\le\VANDERKG\Store 117\CurtisJames\Declaration 117 doc



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**EXHIBIT A**
**TO**
**DECLARATION OF RESTRICTIONS**

Developer Parcel Legal Description

THAT PART OF LOT ONE (1) IN MEIJER BUCKEYE PLAT, A SUBDIVISION IN SYLVANIA TOWNSHIP, LUCAS COUNTY, OHIO AS PER LUCAS COUNTY PLAT VOLUME 141, PAGE 83: MORE PARTICULARLY DESCRIBED AS:

PART OF THE SOUTHWEST 1/4 OF SECTION 21, TOWN 9 SOUTH, RANGE 6 EAST, SYLVANIA TOWNSHIP, LUCAS COUNTY, OHIO DESCRIBED AS BEGINNING AT A POINT ON THE NORTH 70 FEET RIGHT-OF-WAY LINE OF CENTRAL AVENUE (US-20) AS PLATTED WHICH IS S82°12'10"E ALONG THE SOUTH LINE OF SAID SOUTHWEST 1/4 SECTION 21, 978.41 FEET, AND N04°51'18"E, 70.09 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 21; THENCE FROM SAID POINT OF BEGINNING N04°51'18"E, 210.20 FEET; THENCE S85°26'57"E, 390.29 FEET; THENCE S35°16'43"E, 36.44 FEET; THENCE S04°41'54"W, 179.54 FEET; THENCE N85°18'06"W, 36.31 FEET; THENCE S04°41'54"W, 24.20 FEET TO SAID NORTH RIGHT-OF-WAY LINE OF CENTRAL AVENUE (US-20) ; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE N82°12'10"W, 378.52 FEET TO THE POINT OF BEGINNING; CONTAINING 2.081 GROSS ACRES.

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**EXHIBIT B**
**TO**
**DECLARATION OF RESTRICTIONS**

Meijer Parcel Legal Description

THAT PART OF LOT ONE (1) IN MEIJER BUCKEYE PLAT, A SUBDIVISION IN SYLVANIA TOWNSHIP, LUCAS COUNTY, OHIO AS PER LUCAS COUNTY PLAT VOLUME 141, PAGE 83: MORE PARTICULARLY DESCRIBED AS:

PART OF THE SOUTHWEST 1/4 OF SECTION 21, T9S-R6E, SYLVANIA TOWNSHIP, LUCAS COUNTY, OHIO DESCRIBED AS BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SOUTHWEST 1/4 OF SECTION 21 WHICH IS S82°12'10"E, 678.41 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 21; THENCE FROM SAID POINT OF BEGINNING CONTINUING S82°12'10"E, ALONG SAID SOUTH LINE OF SOUTHWEST 1/4, 166.41 FEET; THENCE N39°16'39"W, 102.78 FEET; THENCE N04°33'03"E, 243.82 FEET; THENCE N85°27'02"E, 75.47 FEET; THENCE S82°12'10"E, 132.00 FEET; THENCE S04°51'18"W, 49.71; THENCE S85°26'57"E, 390.29 FEET; THENCE S35°16'43"E, 36.44 FEET; THENCE S04°41'54"W, 179.54 FEET; THENCE N85°18'06"W, 36.31 FEET; THENCE S04°41'54"W, 94.30 TO SAID SOUTH LINE OF SOUTHWEST 1/4; THENCE ALONG SAID SOUTH LINE, S82°12'10"E, 628.03 FEET; THENCE N04°33'03"E, 1284.52 FEET; THENCE N87°19'47"W, 439.97 FEET; THENCE N04°33'03"E, 445.00 FEET; THENCE N87°19'47"W, 856.81 FEET TO THE WEST LINE OF THE EAST 1/2 OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SAID SECTION 21; THENCE ALONG SAID WEST LINE S04°51'18"W, 110.00 FEET; THENCE N85°52'11"W, 633.31 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF KING ROAD; THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE S07°14'04"W, 129.53 FEET TO THE SOUTH LINE OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 21; THENCE ALONG SAID SOUTH LINE S85°52'11"E, 638 69 FEET TO SAID WEST LINE OF THE EAST 1/2 OF THE WEST 1/2 OF THE SOUTHWEST 1/4; THENCE ALONG SAID WEST LINE OF S04°51'18"W, 1373.64 FEET TO THE POINT OF BEGINNING: SAID PARCEL CONTAINS 43.113 GROSS ACRES AND 41.883 NET ACRES (EXCLUDING CENTRAL AVENUE RIGHT-OF-WAY).

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RECEIVED & RECORDED

FEB 15 2002 4/18

SUE RIOUX
RECORDER, LUCAS COUNTY, OHIO



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