## AMENDED AND RESTATED SEWER DEVELOPMENT AGREEMENT

**THIS AMENDED AND RESTATED SEWER DEVELOPMENT AGREEMENT** (“Agreement”) is entered into as of this\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_, 2016 (the Effective Date “) by and between **MEIJER STORES LIMITED PARTNERSHIP,** A Michigan Limited Partnership (hereinafter referred to as “Meijer”), and the **TOWN OF MCCORDSVILLE, INDIANA**, an Indiana municipal Corporation, by and through its Town Council (hereinafter referred to as “the Town”).

## WITNESSETH

**WHEREAS**, Meijer and the Town wish to enter into an agreement regarding the development of sanitary sewers on Meijer’s property, more particularly described in Exhibit “A” attached hereto and incorporated by reference herein (hereinafter “Real Estate”), which facilities shall collect and transport wastewater and effluent to the Town’s Wastewater Treatment Plant (herein referred to as “Plant”); and

**WHEREAS,** the Town wishes to acquire and Meijer wishes to dedicate appropriate easements for municipal purposes (the “Utility Easements”) to allow the Town to service the Real Estate with sanitary sewer service.

**WHEREAS**, the Town and Meijer entered into that certain Sewer Development Agreement dated October 1, 2007 (the “Prior Agreement”) and the parties now desire to amend and restate the Prior Agreement in its entirety on the terms and conditions set forth herein.

**NOW, THEREFORE,** the parties agree as follows:

## Amendment and Restatement of Prior Agreement.

## This Agreement shall amend and restate the Prior Agreement in its entirety upon the terms and conditions set forth in this Agreement. Upon the mutual execution and delivery of this Agreement, the Prior Agreement shall have no further force or effect, this Agreement shall supersede and replace the Prior Agreement in its entirety and neither party shall have any obligation or right, title or interest under the Prior Agreement.

## Compliance with Local Rules

Meijer agrees in all respects to comply with the Town’s Master Sewer Plan, Sewer Rate Ordinance, Sewer Use Ordinance, and the McCordsville Zoning Code adopted January 11, 2011 and any and all amendments or supplements thereto, and the McCordsville Storm Water Management Ordinance, and any and all relevant Town Ordinances and state statutes unless otherwise agreed to herein or as otherwise approved by the Town.

## Wastewater Facilities and Easements

Meijer shall design and prepare cost estimates for the construction and installation of facilities sufficient to collect all wastewater and effluent generated on or within the commercial development located on the Real Estate consisting of the Meijer store structure and gas station (the “Development”) in addition to any force mains, gravity interceptor lines or other facilities necessary to transport said wastewater and effluent to the Town’s regional collection system at a point designated by the Town’s engineer and all necessary infrastructure to provide adequate connection to said system by the owners of the Outlots (as defined in Section 4). All of the aforementioned infrastructure shall be collectively referred to as “the Facilities.” The Facilities shall be utilized to deliver wastewater, liquid waste, sewage, and other effluent from the Real Estate and from other properties within the Austin Trace Drainage Basinto the Plant by way of the Town’s regional collection system. The Town shall be responsible for obtaining all easements or rights-of-way necessary to install the Facilities set forth above, except for the portion of the Facilities located on the Real Estate, and to connect said Facilities to the Plant. The costs of said easements or rights-of-way shall be reimbursed to the Town by Meijer; provided, however, that the Town shall secure Meijer’s prior written consent in advance of paying or agreeing to the payment of any costs for which the Town shall seek reimbursement from Meijer. In the event Meijer does not provide such written consent, the parties shall resolve such dispute in accordance with the provisions of Section 9 of this Agreement. In addition, Meijer agrees to grant, at no cost to the Town, all necessary easements or rights-of-way upon the Real Estate in locations mutually approved by the parties, contained within the secondary plat for the Real Estate, as determined by the Town’s engineer that are necessary to provide for extension of the Town’s regional wastewater collection system to the Outlots and/or sewage collection basins.

## Sewer Availability

In exchange for the Town’s allocation of sufficient treatment to serve the Real Estate in the estimated amount of 17 EDU’s for the Development and 30.25 additional EDU’s for the projected uses of the 4 Outlots located within the Real Estate (the “Outlots”), Meijer shall pay to the Town the sum of Forty-Nine Thousand Three Hundred Dollars ($49,300.00) constituting Two Thousand Nine Hundred Dollars ($2,900.00) per EDU for the 17 EDU’s allocated to the store structure and gas station and Forty-Five Thousand Three Hundred Seventy-Five Dollars ($45,375.00) constituting One Thousand Five Hundred Dollars ($1,500.00) per EDU representing the developer’s portion for the 30.25 additional EDU’s for the projected Outlot usage and subject to possible reimbursement as set forth in this Agreement. The payments and allocation shall be made before recording of the secondary plat for the first phase of the Development.

If Meijer, or any legal successor thereto or any owner or occupant of an Outlot shall require sewer service in excess of the EDU’s set forth above, additional EDU’s may be purchased by Meijer, their legal successor in interest, or any owner or occupant of an Outlot at the then-prevailing fee as established by Ordinance of the Town with the further provision that the Town may not be required to provide said additional sewer service capacity sooner than one year from the date the aforementioned fee is paid. Once the Development and all Outlots, have been fully constructed and commenced operations, if the capacity required to serve the Development and all Outlots is less than 65 EDUs, the Town shall reimburse Meijer the portion of the fees previously paid for said excess capacity at the price per EDU paid by Meijer pursuant to this Section 4 within 90 days of a written request by Meijer for reimbursement. If any entity other than Meijer applies for, receives, and pays the entire costs for a sewer permit for any Outlot, the Town shall reimburse to Meijer the upfront portion of the availability fee associated with each EDU required for such a permit within 90 days of said permit being issued. If Meijer is the applicant for any sewer permit for any Outlot, Meijer shall receive a credit of One Thousand, Five Hundred Dollars ($1,500.00) towards the entire costs required to obtain such a permit.

## Building Permits

* 1. **Main structure and gas station**

Should Meijer or one of its subsidiaries request the sewer permit for the Development, the requesting entity shall not be required to pay to obtain said permit.

## Outlots

Upon any entity requesting a sewer permit for any Outlot, the applicant shall pay the then-current EDU charge authorized by Ordinance of the Town times the EDU total for the Outlot as determined by the Town Engineer to obtain such permit, One Thousand Five Hundred Dollars ($1,500.00) of which shall be remitted to Meijer on a quarterly basis. All other remaining amounts paid by such permit applicant to be retained by the Town.

## Engineering Review

The design, construction, and specification of material and equipment to be used in all of the Facilities shall be subject to approval and construction observation by the Town’s designated and qualified agent and/or consulting engineer whose decision shall be final as to any question arising regarding the same. Meijer shall contract directly with the Town’s consulting engineer to review the plans for the design of said Facilities whose approval of the design, location within the dedicated easements as designated on the secondary plat for the Real Estate, and specification for all materials and equipment shall be required prior to the commencement of construction and which will be in substantial compliance as to location as set forth on **Exhibit “A”** attached hereto and incorporated by reference herein. The decision of the Town’s consulting engineer shall be final as to any question arising regarding the design, construction, or specification of material and equipment to be used in the construction of said Facilities. The cost for review of the design, construction, and specification of material and equipment to be used in the construction of the Facilities shall be in accordance with the schedule of charges for such review and construction observation fees as posted on the McCordsville website (www.mccordsville.org) at the time of each submitted section. Meijer shall be responsible for any such design review and/or construction observation fees or any other cost in connection with such inspection and approvals.

## Dedication

Upon the completion of construction and installation of the Facilities, Meijer shall dedicate all of said Facilities and all easements and rights-of-way within the Real Estate necessary to service and maintain said Facilities, without restriction, to the Town.

## Bonds

Prior to dedication of the Facilities and transferring rights-of-way and easements rights required to service and maintain said Facilities pursuant to Section 7, Meijer shall place on file with the Clerk-Treasurer of the Town a maintenance bond and/or other documents pursuant to the McCordsville Subdivision Control Ordinance (the “Maintenance Bond”) to be held by the Town for a period of three (3) years following the dedication of the Facilities to the Town as contemplated by this Agreement. Upon acceptance of the dedication of the said Facilities and the completion of all requirements herein by Meijer, the Town agrees to commence immediately to maintain and operate the Facilities, subject to the invocation of the provisions of the Maintenance Bond.

## Arbitration

The parties agree that should a disagreement regarding the terms and provisions of this Agreement arise and the parties are unable by negotiation to resolve said dispute, the parties shall submit the dispute to binding arbitration with each party to select an arbitrator of their choice and the two (2) selected arbitrators to select a third arbitrator with the cost of arbitrator to be paid equally by the parties. Each party shall bear its own costs, attorney fees and other expenses. Such arbitration shall be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules, except as varied herein, and judgment on the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. The Parties agree that no arbitrator has the authority to: (i) award relief in excess of what this agreement provides; (ii) award punitive damages (except as required by statute) or any other damages not measured by the prevailing party’s actual damages; or (iii) order consolidation or class arbitration. The award of the arbitrator(s) shall be accompanied by a reasoned opinion. The locale of the arbitration shall be Marion County, Indiana.

## Assignment

If Meijer, at any time, after the execution of this Agreement shall assign its rights, duties and obligations herein, Meijer shall notify the Town in writing ten (10) days prior to such assignment, the name, address, phone number and contact person of the assignee. To the extent Meijer is contractually bound to maintain the confidentiality of such assignment, the Town shall similarly maintain the confidentiality of such assignment until such transaction is completed.

## Binding

The terms of this Agreement shall be binding on and shall insure to the benefit of each party’s heirs, executors, personal representatives, successors, assigns, parent companies, subsidiaries, lessees or other authorized person or entity acting on either party’s behalf.

## Breach

Subject to the terms of Section 9 above, in the event of any breach of this Agreement by any party hereto, the non- breaching party shall be entitled to pursue all remedies available to it at law or in equity including enforcing this Agreement by specific performance.

## Notices

Any notices, requests, demands, consents or other communications required or permitted under this Agreement shall be in writing and shall be deemed delivered on the second day after such notice is deposited with a nationally-recognized overnight courier, or in a receptacle of the United States mail, registered or certified, first class postage prepaid, return receipt requested, address as follows:

# To Meijer: Meijer Stores Limited Partnership

Meijer-Bldg 985/4

2929 Walker Avenue, N.W.

Grand Rapids, Michigan 49544

To Town: Town of McCordsville

6280 West 800 North

McCordsville, IN 46055

## Execution

Meijer represents and warrants that the person executing this Agreement on behalf of Meijer holds all authority to enter into this Agreement and to bind Meijer to the terms thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the effective date.

MEIJER STORES LIMITED PARTNERSHIP TOWN OF MCCORDSVILLE

By: Meijer Group, Inc. Its: General Partner

By: Michael L. Kinstle Larry J. Longman

Its: Vice President-Real Estate Town Council President