

RESOLUTION 2020-055

PASSED: JUNE 8, 2020

AUTHORIZING A LICENSE AGREEMENT WITH MEIJER, INC. FOR THE USE OF STORE PREMISES (541 PURI PARKWAY, SYCAMORE) FOR THE PROVISION OF PUBLIC TRANSIT SERVICE.

WHEREAS, the provision of public transportation service is essential to the people of Illinois; and

WHEREAS, the license agreement with Meijer will allow the City's public transit system to utilize a portion of the drives and a public shelter at the Meijer store located in Sycamore, Illinois.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

SECTION 1: The City Council of the City of DeKalb hereby authorizes the City Manager to execute a License Agreement between Meijer, Inc. and the City of DeKalb.

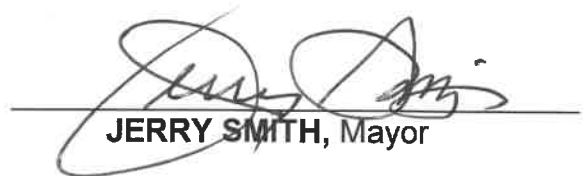
SECTION 2: That the City Clerk or the Executive Assistant of the City of DeKalb, Illinois shall be authorized and directed to attest the Mayor's signature and shall be effective thereupon.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 8th day of June 2020 and approved by me as Mayor on the same day. Passed by an 8-0 roll call vote. Aye: Morris, Finucane, Smith, Perkins, McAdams, Verbic, Faivre, Mayor Smith. Nay: None.

ATTEST:



RUTH A. SCOTT, Executive Assistant



JERRY SMITH, Mayor





REAL ESTATE DEPARTMENT

Matt Levitt

Phone: (616) 791-3909

Matt.Levitt@meijer.com

March 30, 2020

City of DeKalb
1216 Market St.
DeKalb, IL 60115
Attention: Marcus Cox
Email: marcus.cox@cityofdekalb.com

Re: Meijer Store 313 –Sycamore, IL (the “Store”), regarding use of Store premises for the provision of public transit service

Dear Mr. Cox:

The City of DeKalb has requested a license from Meijer, Inc., for itself and its affiliated entities (“Meijer”), to utilize a portion of the drives and a public transit shelter at the Store, for public transit access and a public transit stop. This letter states the terms and conditions upon which the license (the “License”) is granted to Licensee. Please acknowledge acceptance of these terms by signing below and returning to Meijer for signature.

1) Licensed Area and Use. Meijer grants Licensee a nonexclusive license for the purpose of (i) using a portion of the Store parking lot for a public transit access and a public transit stop (the “Transit Stop” and the “Drives”), approximately depicted on **Exhibit A** (together the “Licensed Area”); and (ii) operating Licensee’s public transit vehicles in the Drives. The rights granted herein are subject to all covenants, conditions, restrictions, encumbrances and easement of record and all applicable zoning ordinances and other governmental regulations (together the “Restrictions”). The Licensed Area is provided in an “as is” condition with all faults. Licensee assumes all risks with use of the Licensed Area.

2) License Term and Operation. This License is granted for one dollar and other valuable consideration. Licensee may use the Licensed Area from May 1, 2020 to December 31, 2021 (“License Term”). The License Term shall automatically be extended for one-year periods. Notwithstanding the foregoing, either party may terminate this License at any time by no less than 30 days’ prior written notice thereof to the other party. Licensee agrees that its public transit vehicles will only stop at the Transit Stop for purposes of allowing passengers to board and exit the public transit vehicle (public transit vehicles shall layover at the Transit Stop for a maximum of 10 minutes per stop).

3) Work:

a) Once approved pursuant to the foregoing, no Transit Stop Improvements (including any advertising signage) shall be significantly altered, remodeled or relocated, until approved by Meijer in accordance with the prior paragraph.

b) In the event Licensee fails to comply with its obligations with respect to the Transit Stop Improvements, Meijer may, but shall not be obligated to, cure such failure and Licensee shall reimburse Meijer its documented costs within twenty (20) days of Meijer’s request.

4) Miscellaneous. To the extent applicable, Licensee shall pay all personal property, special assessment, income, sales, and all other taxes levied on Licensee’s business or personal property.

Licensee's use of the Licensed Area shall in no way negatively affect the Meijer development or use and operation of the Store and/or parking area. This License is contingent upon Licensee and its employees and agents complying with applicable law and Licensee's use of the Licensed Area shall not cause the Store to be in violation of applicable law (including, without limitation, compliance with applicable parking and green space requirements). In the event any actual or alleged violation of law by Licensee, Meijer shall have the right to terminate this License on 48 hours' written notice. Licensee shall keep all improvements and equipment in the Licensed Area, if any, in a neat, clean and attractive condition and good appearance and repair during the entire term of this License.

5) Maintenance, Security; Damage to Pavement.

a) Meijer shall provide illumination and snow removal from the Drives as part of its ordinary maintenance of the Store parcel; provided, however if Meijer fails to complete such maintenance, Licensee's sole remedy shall be completion of such maintenance at Licensee's sole cost and expense. Any Store security is solely for the Store and its customers and employees and not Licensee, the Transit Stop Improvements, or its users. Licensee shall not allege or assert Meijer is liable for any losses suffered by Licensee, or its invitees, in connection with the use of the Licensed Area.

b) Except for ordinary wear and tear, Licensee shall repair any damage to Meijer's property caused by Licensee's use of the Licensed Area to its condition prior to such damage.

6) Meijer Name. Licensee may utilize the "Meijer" name or logo strictly in connection with the geographical designation of the location of the Transit Stop or the route of Licensee's transit services. All other proposed use of the name "Meijer" or Meijer's "M" logo in any manner shall be subject to Meijer's prior written permission (which permission may be withheld in Meijer's sole discretion).

7) Indemnity/Insurance. Licensee, and anyone claiming by, through or under Licensee by subrogation or otherwise, hereby releases and discharges Meijer and its affiliated companies and individuals from all liability (i) related in any way to the condition of the Licensed Area, including the presence of latent defects, if any, and (ii) resulting from the use of the Licensed Area by Licensee or anyone claiming under Licensee.

a) To the fullest extent permitted by law, Licensee shall defend, indemnify and hold harmless Meijer, its direct and indirect parent, subsidiaries and related entities and their officers, directors, shareholders, employees and agents (hereafter collectively "Related Parties") from and against any and all liability, loss, claims, costs, fees and expenses (including attorney and witness fees and expenses), arising out of or related to (i) Licensee's breach of this License; or (ii) the use of the Licensed Area by Licensee or by any agent, employee, or contractor of Licensee. The foregoing indemnity by Licensee shall include claims alleging or involving joint or comparative negligence, but not resulting only from the sole negligence of Meijer or its Related Parties. To the fullest extent permitted by law, Licensee waives any and all immunity and/or damage limitation provisions available under any workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts to the extent such acts would otherwise limit the indemnification by Licensee pursuant to this paragraph. This Paragraph 7 shall survive the termination of this License.

b) Subject to Licensee's right to self-insure as set forth in subparagraph "e" of **Exhibit B**, at least 7 days prior to use of any License Area, Licensee shall furnish to Meijer a certificate of insurance evidencing insurance coverages reasonably satisfactory to Meijer and naming the Related Parties as additional insureds. Use of the Licensed Area shall be covered by one or more insurance policies meeting the requirements set forth on **Exhibit B**.

8) Subordination. This License shall not cloud or encumber Meijer's interest in the Store parcel and Licensee's rights are and shall always be subordinate to the lien of any trust, deed, mortgage, or other encumbrance now or hereafter placed upon the Licensed Area or any underlying lease now or hereafter created and to all advances made or hereafter to be made upon the security thereof, and Licensee shall execute such further instruments evidencing the subordination of this License to the lien or liens of any such trust, deed, mortgage, or other encumbrance, or to any such underlying lease, as shall be requested by Meijer.

9) Assignment. This License shall not be sublet, sublicensed, assigned, transferred, relinquished or conveyed by Licensee without the prior written consent of Meijer, which consent may be withheld in Meijer's sole discretion. In case of any assignment permitted hereunder, Licensee, as well as assignee, shall be liable for the full performance of all terms and conditions of this License. Meijer's consent to any assignment of this License or transfer of any interest in the Licensed Area shall not be deemed a consent to any further assignment of this License or transfer of any interest in the Licensed Area.

10) Legal Expense & Remedies. If litigation arises out of or in connection with this Contract, the prevailing party shall recover its reasonable attorney's fees and court costs. All rights and remedies provided for herein or otherwise existing at law or in equity are cumulative, and the exercise of one or more rights or remedies by either party shall not preclude or waive its right to the exercise of any or all of the others. Meijer's failure to insist upon a strict performance of any covenant of this License shall not be a waiver of such covenant.

11) Applicable Law. This License shall be interpreted pursuant to the laws of the state in which the Store is located.

12) Counterparts. This License may be signed by facsimile or other means of electronic communication and in one or more counterparts, all of which taken together shall constitute one and the same document.

Sincerely,
MEIJER



Matt Levitt
Real Estate Manager

ACCEPTED AND ACKNOWLEDGED BY:

LICENSEE:

CITY OF DEKALB, ILLINOIS

By:  _____

Its: City Manager

cc: Legal Department

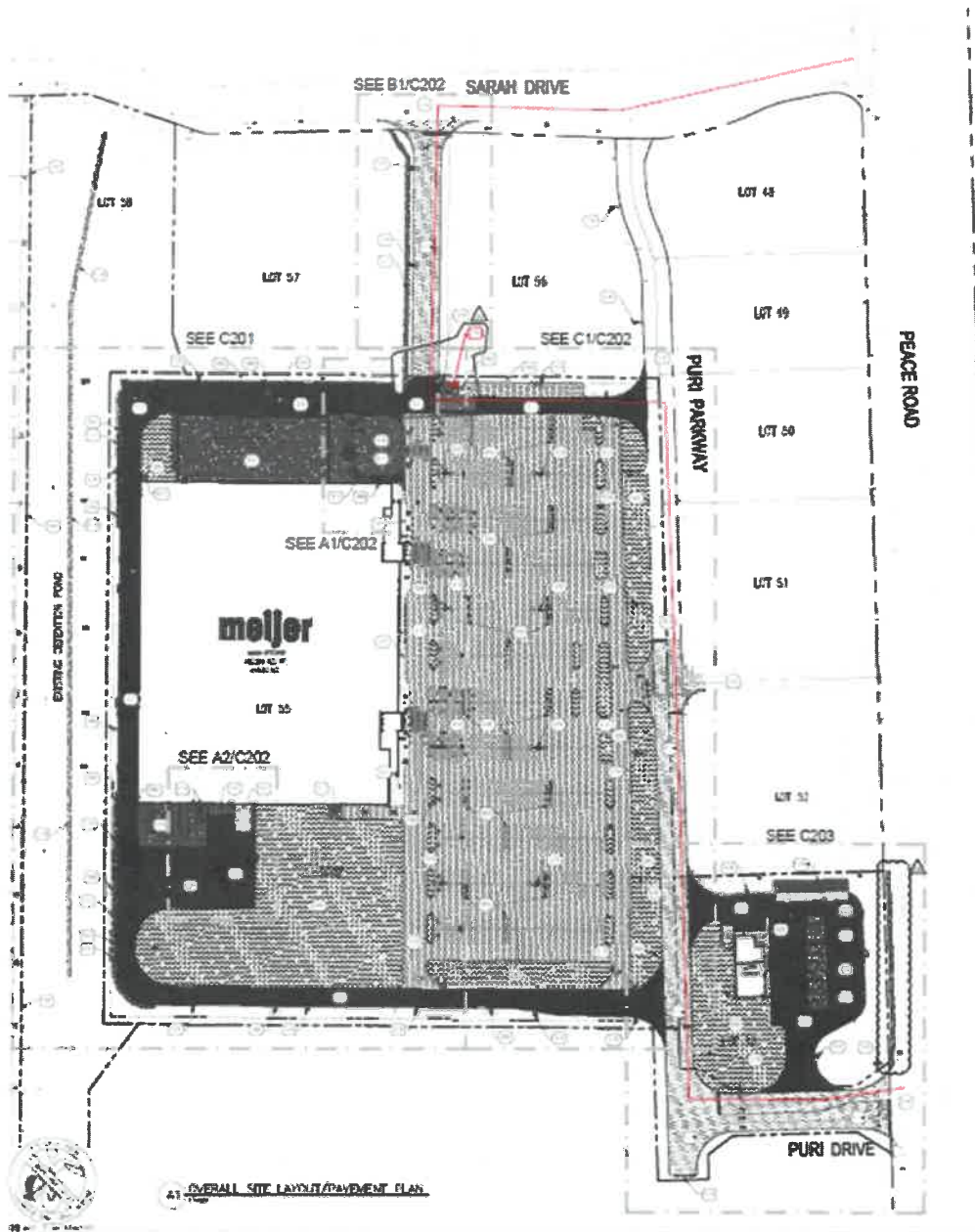
MEIJER:

MEIJER, INC. by itself and its affiliates

By:  _____

Its: Dir. of Prop. Mgmt.

EXHIBIT A



41 OVERALL SITE LAYOUT/PAVEMENT PLAN

EXHIBIT B

a. Workers' Compensation, coverage for its employees or contractors, with statutory limits; such policy shall include an Alternate Employer Endorsement. Employer's Liability with limits not less than Five Hundred Thousand Dollars (\$500,000).

b. Commercial General Liability Insurance, which includes premises/operations, products/completed operations, contractual liability, independent contractors, broad-form property damage, and personal/advertising injury coverages, with limits of not less than Three Million Dollars (\$3,000,000) per occurrence. Such policy shall be an "occurrence" policy, not a "claims-made" policy. Meijer shall be named as additional insured. The additional insured endorsement shall extend coverage to the contractual liability and completed operations coverage.

c. Commercial Comprehensive Automobile Liability coverage, which includes contractual liability coverage and coverage for all owned, hired and non-owned vehicles.

d. Certificates of Insurance evidencing all required insurance acceptable to Meijer. All required insurance shall afford primary coverage and Licensee shall notify Meijer's Risk Management Department at least ten (10) days before any coverages are modified, cancelled or allowed to expire. All required insurance shall be underwritten by an insurance carrier with an AM Best rating of not less than A-. Indemnity obligations in this License shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim, or (ii) refusal to defend any named insured.

e. If Licensee elects to self-insure all or a part of the insurance required on this Exhibit B, then the first sentence of Paragraph 7(b) hereof shall not apply to Licensee so long as Licensee maintains a net worth in excess of One Hundred Million Dollars (\$100,000,000).