

K-40569  
SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT, made as of the 22 day of June, 1988 by and among CITIBANK, N.A., a New York banking corporation having an address at 399 Park Avenue, New York, New York 10043 ("Citibank"); PRINCIPAL MUTUAL LIFE INSURANCE COMPANY, an Iowa corporation having an office at 711 High Street, Des Moines, Iowa 50309 ("Principal"); and LEPERCO CORPORATE INCOME FUND II L.P., a Delaware limited partnership having an office at 345 Park Avenue, New York, New York 10154 ("Borrower");

W I T N E S S E T H

WHEREAS, Citibank is the Assignee under that Assignment of Landlord's Interest in Lease dated as of March 10, 1988 and recorded in the Office of the County Clerk, Klamath County, on March 11, 1988 in Volume M88 of Deeds, Page 3428 ("Citibank's Assignment"), wherein Borrower assigned to Citibank all of its right and interest as landlord in and to the Rents and Profits (as defined in Citibank's Assignment) payable under that certain Lease dated March 10, 1988 between Borrower, as Landlord, and Fred Meyer, Inc. ("Lessee"), as Tenant (the "Lease") covering the real property located in Klamath Falls, Oregon and described in Exhibit "A" attached hereto (the "Property"); and

Recording requested by and  
when recorded return to:  
Csaplar & Bok  
655 Montgomery Street, Suite 1000  
San Francisco, California 94111  
Attention: Chester C. Seabury, Esq

88 JUN 22 PM 12 07

WHEREAS, Principal is, on even date herewith, making a first secured loan (the "First Secured Loan") to Borrower in the principal amount of \$5,700,000.00, which First Secured Loan is secured by, inter alia, a Deed of Trust, Security Agreement and Fixture Filing of even date herewith, executed and delivered by Borrower to Principal creating a first lien on the Property (the "Deed of Trust") and an Assignment of Lease of even date herewith, executed and delivered by Borrower to Principal, pursuant to which, among other things, Borrower assigns to Principal all of Borrower's right, title and interest in and to the Lease, including without limitation, the Rents and Profits ("Principal's Assignment"); and

WHEREAS, the proceeds of the First Secured Loan, after payment of certain expenses, will be used to make a partial payment against the principal amount of the indebtedness owed to Citibank and secured by Citibank's Assignment ("Citibank's Loan"); and

WHEREAS, Principal is not willing to make the First Secured Loan unless Citibank subordinates Citibank's Assignment, its rights thereunder and any other security interest in the Rents and Profits (including, without limitation, any interest in the Rents and Profits to the extent they constitute deposits in the Third Account as described in Paragraph 4 of the Paying Agreement as amended by Letter Agreement dated of even date herewith), which Citibank may now or hereafter acquire (collectively the "Citibank Security") so long as Principal's

Assignment shall be effective, to the Deed of Trust, Principal's Assignment and the other security instruments now or in the future given by Borrower to Principal as security for the First Secured Loan (collectively, the "Loan Documents");

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Citibank hereby consents to the execution and delivery by Borrower of, and Citibank hereby subordinates all of its right, title and interest under Citibank's Assignment and the other Citibank Security to, the Deed of Trust, Principal's Assignment and the other Loan Documents.

2. Citibank hereby consents to the subordination of the Lease to the Loan Documents pursuant to the Subordination, Non-disturbance and Attornment Agreement between Fred Meyer Inc. and Principal dated as of May 17, 1988.

3. Citibank, Principal and Borrower hereby agree that, for so long as Borrower's license to collect the Rents and Profits, as granted in Principal's Assignment, remains in effect, all Rents and Profits shall be paid to Citibank as provided in, and shall be disbursed by Citibank in accordance with the terms of, that certain Paying Agreement of even date herewith between Citibank and Borrower (the "Paying Agreement"). If an Event of Default (as defined in the Loan Documents or the Lease) shall occur, and Principal revokes such license and notifies Lessee to henceforth pay all Rents and

Profits to Principal, then Lessee shall thereafter pay all Rents and Profits to Principal. If Principal does collect the Rents and Profits pursuant to Principal's Assignment, it shall first apply such funds to any amounts due and payable under the Loan Documents and the excess, if any, after setting aside any prepaid rents and sufficient funds to cover the costs of managing and operating the premises leased to Lessee (the "Excess Funds"), shall be remitted to Citibank at the address stated above to the Lepercq Corporate Income Fund II L.P. Cash Collateral Account # 30059724. Notwithstanding the foregoing, Principal shall only be obligated to remit to Citibank the Excess Funds provided that Citibank's Assignment is still in effect and further provided that in the event Principal receives written notice challenging payment of the Excess Funds to Citibank, Principal may deposit such Excess Funds with a court of appropriate jurisdiction pending the resolution of such challenge.

4. Notwithstanding the provisions of Paragraph 4 of Citibank's Assignment, or the letter of instructions dated March 10, 1988 from Borrower to Lessee (the "March 10 Letter"), this Subordination Agreement shall constitute a direction to and full authority of Lessee to pay all Rents and Profits in accordance with the instructions set forth in the March 10 Letter until notified otherwise in writing by Principal, at which time Lessee shall thereafter pay all such Rents and Profits in accordance with Principal's written instructions. Principal agrees that it



shall not revoke Borrower's license to collect the Rents and Profits or give any notice to Lessee changing the March 10 Letter instructions unless an Event of Default has occurred under the Loan Documents or the Lease.

5. Citibank agrees that if Borrower shall default in its obligations under the Citibank Loan, Citibank shall not exercise any of its rights under Paragraph 7(d)(ii)-(v) of Citibank's Assignment without the prior written consent of Principal, which consent shall not be unreasonably withheld.

6. Borrower agrees that it will not consent to an amendment or modification of any provisions or terms contained in the Loan Documents relating to terms of repayment or rates of interest, without Citibank's prior written consent, which consent shall not be unreasonably withheld or delayed.

7. Nothing contained herein shall be deemed to subordinate or otherwise diminish or affect in any manner any other security interest granted by Borrower to Citibank as security for its Citibank Loan, including, without limitation, the Guaranty dated November 3, 1987 as amended by Amendment No. 1 to Guaranty dated March 10, 1988 executed by Lepercq Capital Partners in favor of Citibank and Citibank's security interest in the proceeds of the sale of partnership units in Borrower.

8. Principal agrees to use its best efforts to send Citibank copies of all notices of an Event of Default under the

Loan Documents as and when sent to Borrower provided, however, that Principal shall incur no liability for failure to provide Citibank with such notices.

9. This Subordination Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Subordination Agreement as of the 22<sup>nd</sup> day of June, 1988.

LEPERCO CORPORATE INCOME  
FUND II L.P., a Delaware  
Limited Partnership

By: Secured Property Associates  
II, L.P., General Partner

By: Lepercq Lease  
Associates II,  
L.P., General Partner

By: James F. Doherty  
James F. Doherty, General Partner

CITIBANK, N.A.

By: Michael Maurerstein

MICHAEL MAURERSTEIN  
Vice President  
Citibank, N.A.

PRINCIPAL MUTUAL LIFE INSURANCE  
COMPANY

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

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

Loan Documents as and when sent to Borrower provided, however, that Principal shall incur no liability for failure to provide Citibank with such notices.

9. This Subordination Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Subordination Agreement as of the 22 day of June, 1988.

LEPERCQ CORPORATE INCOME  
FUND II L.P., a Delaware  
Limited Partnership

By: Secured Property Associates  
II, L.P., General Partner

By: Lepercq Lease  
Associates II,  
L.P., General Partner

By: \_\_\_\_\_  
General Partner

CITIBANK, N.A.

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

PRINCIPAL MUTUAL LIFE INSURANCE  
COMPANY

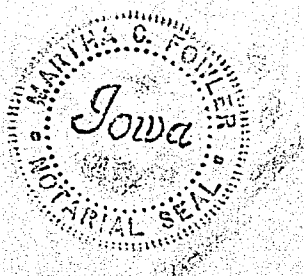
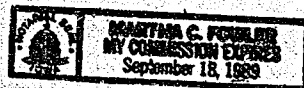
By:  \_\_\_\_\_  
DAVID P. ELLINGSON, Counsel

By:  \_\_\_\_\_  
JOHN D. CLEAVENGER, Assistant Counsel

STATE OF IOWA )  
                   )ss.  
 COUNTY OF POLK )

On this 20th day of June, 1988 before me, a Notary Public in and for said County, personally appeared David Ellingson and John D. Ellingson to me known to be the persons who executed the within instrument as the Council and Assistant Council respectively, of PRINCIPAL MUTUAL LIFE INSURANCE COMPANY, and they being duly sworn did state that the seal affixed to the said instrument is the seal of said corporation and that said instrument was signed and sealed on behalf of the said corporation by authority of its board of directors, and the aforesaid officers each acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by of and each of them voluntarily executed.

Martha C. Fowler  
 Notary Public in and for said  
 County and State





STATE OF NEW YORK )  
 : ss.:  
 COUNTY OF ~~NEW YORK~~ )  
           WASSAR

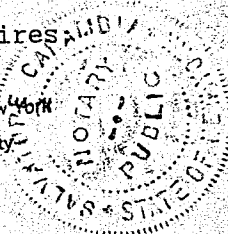
I HEREBY CERTIFY, that on this 20 day of June, 1988, before me, the undersigned authority, personally appeared Michael Managata to me known to be the person described in and who executed the foregoing instrument as Vice President of Citibank, N.A., a national banking association organized under the laws of the United States of America, and who duly acknowledged the execution of such instrument as such officer aforesaid, for and on behalf of and as the act and deed of said corporation, for the uses and purposes therein expressed.

WITNESS my hand and official seal and the date aforesaid.

Salvatore Carambia  
 NOTARY PUBLIC

My Commission Expires

SALVATORE CARAMBIA  
 NOTARY PUBLIC, State of New York  
 No. 01-CA4640427  
 Qualified in Nassau County  
 Term Expires 7-31-89



STATE OF NEW YORK     )  
                                   : ss.:  
 COUNTY OF NEW YORK    )

The foregoing instrument was acknowledged before me this 26 day of June, 1988, by James F. Doanhauser, as General Partner of Lepercq Lease Associates II L.P., a Delaware limited partnership, the General Partner of Secured Property Associates II L.P., a Delaware limited partnership, the General Partner of Lepercq Corporate Income Fund II L.P., a Delaware limited partnership, and he acknowledged executing the foregoing instrument freely and voluntarily and under the authority vested in him on behalf of Lepercq Lease Associates II L.P., which is the General Partner of Secured Property Associates II L.P., which is the General Partner of Lepercq Corporate Income Fund II L.P., as and for its act and deed for the uses and purposes therein expressed.

Elliot L. Murwitz  
 NOTARY PUBLIC

My Commission Expires:

ELLIOT L. MURWITZ  
 NOTARY PUBLIC, State of New York  
 No. 41-4801830  
 Qualified in Queens County  
 Commission Expires July 6, 1989

**Fred Meyer, Inc.**P.O. Box 42121 3800 S.E. 22nd Avenue  
Portland, OR 97242  
(503) 232-8844 TLX 360415

---

**LEASE AGREEMENT**

---

**LANDLORD:** LEPERCQ CORPORATE INCOME FUND II L.P.  
**TENANT:** FRED MEYER, INC.

Covering property developed  
as a Shopping Center in  
Klamath Falls, Oregon

---

**SUMMARY OF LEASE TERMS**

---

1. **Leased Property.** Approximately 14.04 acres of land in Klamath Falls, Oregon to be developed as a shopping center.
2. **Lease Term.** 20 years, commencing with the "Commencement Date" specified in the Lease, subject to three renewal options of 10 years each.
3. **Fixed Rent.** The Fixed Rent is \$84,114.58 per month, payable on the first day of each month, during the original lease term.
4. **Insurance, Maintenance.** Tenant will insure and maintain the Property in good condition and repair during the lease term.
5. **Services, Taxes.** Tenant will pay for all services and utilities serving the Property and all property taxes and assessments on the Property.

INDEX  
for  
LEASE AGREEMENT

	<u>Page</u>
SECTION 1. <u>Leased Premises; Term; Possession</u>	1
1.1 Lease to Tenant	1
1.2 Lease Term	1
1.3 Renewal Options	2
1.4 Lease Terms During Renewal Terms	2
SECTION 2. <u>Rental</u>	2
2.1 Fixed Rent During Original Term	2
2.2 Fixed Rent During Renewal Terms	4
2.3 Time of Payment	4
2.4 Partial or Delinquent Payments	4
2.5 No Offsets	4
2.6 Additional Rent	5
2.7 Manner of Payment	5
SECTION 3. <u>Net Lease</u>	5
SECTION 4. <u>Utilities and Taxes</u>	5
4.1 Utility Charges	5
4.2 Impositions	6
4.3 Substitute Impositions	6
4.4 Payment in Installments	7
4.5 Right to Contest	7
4.6 Personal Property Taxes	7
SECTION 5. <u>Insurance and Damage</u>	7
5.1 Liability Insurance	7
5.2 Casualty Insurance on Building	7
5.3 Rent Insurance	7
5.4 Insurance on Personal Property	7
5.5 Waiver of Subrogation	7
5.6 Restoration of Damage	8
5.7 Performance of Major Repairs	8
5.8 Performance of Repairs Generally	10
5.9 Form of Insurance	10
5.10 Compliance with Insurance Requirements	10
5.11 Additional Insurance Coverages	10
5.12 Excess Insurance Proceeds	11
SECTION 6. <u>Use of Property</u>	11
6.1 Use	11
6.2 No Nuisance	11
6.3 Compliance with Laws	11
6.4 Avoidance of Hazards; Vermin	11
6.5 Notices by Tenant	11
SECTION 7. <u>Maintenance and Alterations</u>	11
7.1 Repairs and Maintenance	12
7.2 Alterations	12
7.3 Acceptance of Property in Present Condition	12
SECTION 8. <u>Signs</u>	12



	<u>Page</u>
SECTION 9. <u>Liens, Indemnification and Liability</u>	12
9.1 Liens	12
9.2 Disclaimer of Landlord's Responsibilities	13
9.3 Landlord's Liability	13
9.4 Indemnification of Landlord	13
9.5 Defense of Action	13
9.6 Indemnification of Tenant	13
SECTION 10. <u>Condemnation</u>	13
10.1 Substantial Taking	13
10.2 Partial Taking	14
10.3 Transfer in Lieu of Condemnation	14
SECTION 11. <u>Assignment and Subleasing</u>	14
11.1 Assignment	14
11.2 Subleases	14
11.3 Terms Relating to Consent	15
SECTION 12. <u>Default</u>	15
12.1 Payment Default	15
12.2 Default in Other Covenants	15
12.3 Insolvency Default	15
12.4 Late Charge	15
SECTION 13. <u>Remedies on Default</u>	16
13.1 Retake Possession	16
13.2 Damages for Default	16
13.3 Continuation of Lease	16
13.4 Cure of Tenant's Default	17
SECTION 14. <u>Surrender at Expiration</u>	17
14.1 Condition of Property	17
14.2 Removal by Tenant	17
14.3 Holdover	17
SECTION 15. <u>Warranty of Quiet Enjoyment</u>	17
SECTION 16. <u>General Provisions</u>	17
16.1 Time of Essence	17
16.2 Nonwaiver	17
16.3 Succession	18
16.4 Inspection	18
16.5 Attornment	18
16.6 Subordination to Mortgages	18
16.7 Estoppel Certificates	18
16.8 Proration of Rent	18
16.9 Notices	18
16.10 Attorneys' Fees	19
16.11 Relationship of Parties	19
16.12 Authorization of Lease	19
16.13 Consent	19
16.14 Brokers	19
16.15 Section Headings	19
16.16 Joinder in Instruments	19
16.17 Applicable Law	20
16.18 Prior Agreements	20
16.19 Validity of Provisions	20
16.20 Joint and Several Liability	20
16.21 Modifications	20
16.22 Recording	20

	<u>Page</u>
16.23 Merger, Consolidation or Sale of Assets	20
16.24 Master Lease Status	20
16.25 Fixed Rent Determination	20
16.26 First Opportunity to Purchase	21
SECTION 17. Limitation of Liability of Partnership	21
SECTION 18. Responsibility of Landlord upon Sale	22
SECTION 19. Hazardous Substances	22
SECTION 20. Leasehold Financing	22
SECTION 21. Tenant's Option to Purchase	23
21.1 Grant of Option	23
21.2 Determination Date	23
21.3 Fair Market Value	23
21.4 Notice of Exercise	23
21.5 Determination of Purchase Price	23
21.6 Continuation of Lease	23
21.7 Closing of Purchase	24
21.8 Purchase by Designee	24
<u>SIGNATURES</u>	

ATTACHED EXHIBITS

- EXHIBIT A - Legal Description  
 EXHIBIT B - Basic Amount  
 EXHIBIT C - Existing Leases

LEASE

(Klamath Falls, Oregon)

DATED: March 10, 1988BETWEEN: LEPERCQ CORPORATE INCOME FUND II L.P.  
c/o Lepercq Capital Partners  
345 Park Avenue  
New York, New York 10154

LANDLORD

AND: FRED MEYER, INC.  
a Delaware corporation  
PO Box 42121  
Portland, Oregon 97242

TENANT

Tenant wishes to lease from Landlord the following property (the "Property") located in the State of Oregon:

Certain land and building (the "Building") owned by Landlord located as described on the attached Exhibit A, and other improvements constructed thereon described below; consisting of approximately 14.04 acres of land area.

NOW, THEREFORE, for value received, the parties agree as follows:

1. Leased Premises; Term; Possession.

1.1 Lease to Tenant. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Property and all land and site improvements, landscaping, the Building and other improvements, subject to and within the benefits of the terms and conditions of this Lease, and subject to any and all existing encumbrances and conditions, recorded and unrecorded, and all zoning matters, building laws, regulations and codes, and such matters as may be disclosed by an accurate survey or inspection.

1.2 Lease Term. The term (the "Term") of this Lease shall be approximately twenty (20) years, commencing on the date hereof (the "Commencement Date") and expiring on the twentieth (20th) anniversary of the last day of the calendar month in which the Commencement Date occurs (the "Expiration Date"), both dates inclusive, unless extended or sooner terminated as herein after provided or pursuant to law.

1.3 Renewal Options. Tenant shall have the option (the "Renewal Option") to extend the term of this Lease for three (3) additional periods of ten (10) years (the "Renewal Terms"), which Renewal Terms shall (i) commence on the date immediately succeeding the Expiration Date and end on the tenth (10th) anniversary of the Expiration Date (the "First Renewal Term"), (ii) commence on the date immediately succeeding the tenth (10th) anniversary of the Expiration Date and end on the twentieth (20th) anniversary of the Expiration Date (the "Second Renewal Term"), and (iii) commence on the day immediately succeeding the twentieth (20th) anniversary of the Expiration Date and end on the thirtieth (30th) anniversary of the Expiration Date (the "Third Renewal Term"), provided that (a) this Lease shall not have been previously terminated, (b) Tenant shall occupy at least fifty percent (50%) of the Property for the conduct of its business, and (c) no event of default hereunder shall have occurred and be continuing (x) on the date Tenant gives Landlord written notice (the "Renewal Notice") of Tenant's

election to exercise the Renewal Option, or (y) on the Expiration Date. The Renewal Option may be exercised with respect to the entire Property only and shall be exercisable by Tenant delivering the Renewal Notice to Landlord at least eighteen (18) months prior to the Expiration Date of the original Term, the First Renewal Term or the Second Renewal Term, as the case may be; provided, however, that notwithstanding the time period for exercise specified above, Tenant's option(s) to extend will not expire until ten (10) days after receipt by Tenant of written notice from Landlord of nonexercise by Tenant by such deadline date and Tenant's failure to exercise its option within such ten (10) day period. Time is of the essence with respect to the giving of the applicable Renewal Notice. Upon the giving of the Renewal Notice with respect to the Third Renewal Term, Tenant shall have no further right or option to extend or renew the Term.

1.4 Lease Terms During Renewal Terms. If Tenant exercises the Renewal Option, the applicable Renewal Term shall be upon the same terms, covenants and conditions as those contained in this Lease, except that the Fixed Rent shall be deemed to mean the Fixed Rent as determined pursuant to paragraph 2.2.

## 2. Rental.

2.1 Fixed Rent During Original Term. During the original lease term, Tenant will pay a monthly base rent (the "Fixed Rent") equal to one-twelfth (1/12th) of \$1,009,375.

2.2 Fixed Rent During Renewal Terms. The Fixed Rent for the Renewal Terms shall be determined as follows:

(A) The Fixed Rent for the Property for each of the Renewal Terms shall be an amount equal to the fair market rental value of the Property (the "Fair Market Rent") as of the first day of the First Renewal Term, the Second Renewal Term or the Third Renewal Term, as the case may be. The Fair Market Rent shall be determined assuming that Landlord has had a reasonable time to locate a tenant, and that neither Landlord nor the prospective tenant is under any compulsion to rent.

(B) For purposes of determining the Fair Market Rent, the following procedure shall apply:

(1) The Fair Market Rent shall be determined by Landlord on the basis that the Property is to be used for commercial retailing use and assuming that the Property is free and clear of all leases and tenancies (including this Lease).

(2) Landlord shall give Tenant written notice (the "Rent Notice") not later than twenty (20) days after receipt of the applicable Renewal Notice, which Rent Notice shall set forth Landlord's determination of the Fair Market Rent ("Landlord's Determination") with respect to the applicable Renewal Term.

(3) Tenant shall give Landlord written notice ("Tenant's Notice"), within twenty (20) days after Tenant's receipt of the applicable Rent Notice, of whether Tenant accepts or disputes Landlord's Determination. If Tenant in Tenant's Notice accepts Landlord's Determination or if Tenant fails or refuses to give Tenant's Notice as aforesaid, Tenant shall be deemed to have accepted Landlord's Determination for the applicable Renewal Term in accordance with the terms of this paragraph. If Tenant in Tenant's Notice disputes Landlord's Determination, then Tenant's Notice shall contain Tenant's determination of the Fair Market Rent ("Tenant's Determination") as well as the name of an independent real estate appraiser



("Tenant's Consultant") to act as Tenant's representative if Landlord does not accept Tenant's Determination.

(4) Landlord shall give Tenant written notice ("Landlord's Notice"), within twenty (20) days after Landlord's receipt of Tenant's Determination, of whether Landlord accepts or disputes Tenant's Determination. If Landlord in Landlord's Notice disputes Tenant's Determination, Landlord shall appoint an independent real estate appraiser ("Landlord's Consultant") to act as Landlord's representative. Not later than ten (10) business days after Tenant's receipt of Landlord's Notice, Tenant's Consultant and Landlord's Consultant shall meet (in person or by telephone) to mutually agree upon the determination of the Fair Market Rent, and their determination shall be final and binding upon the parties. If Landlord's Consultant and Tenant's Consultant shall be unable to reach such determination within thirty (30) days after Tenant's receipt of Landlord's Notice, both of the Consultants shall jointly select a third independent real estate appraiser ("Third Consultant") whose fee shall be borne equally by Landlord and Tenant. In the event that Landlord's Consultant and Tenant's Consultant shall be unable to jointly agree on the designation of the Third Consultant within five (5) days after they are requested to do so by either party, then the parties agree to allow the American Arbitration Association or any successor organization to designate the Third Consultant having the qualifications stated below in accordance with the rules, regulations and/or procedures then obtaining of the American Arbitration Association or any successor organization.

(5) The Third Consultant shall conduct such examinations of the Property and investigations as he may deem appropriate and shall, within thirty (30) days after the date of designation of the Third Consultant, choose either Landlord's or Tenant's Determination, and such choice by the Third Consultant shall be conclusive and binding upon Landlord and Tenant. Each party shall pay its own counsel fees and expenses, if any, in connection with any arbitration under this paragraph 2.2, including the expenses and fees of any Consultant selected by it in accordance with the provisions hereof. Any Consultant appointed pursuant to this paragraph 2.2 shall be an independent real estate appraiser with at least ten (10) years' experience in leasing and valuation of properties in the State of Oregon which are similar in character to the Property, a member of the American Institute of Appraisers of the National Association of Real Estate Boards and a member of the Society of Real Estate Appraisers. The Consultants shall not have the power to add to, modify or change any of the provisions of this Lease. The Consultants shall notify Landlord and Tenant of the determination of the Fair Market Rent.

(C) After a determination has been made of the Fair Market Rent for the applicable Renewal Term, Tenant shall have the right to elect either to (a) withdraw its Renewal Notice in a written notice delivered to Landlord within twenty (20) days of the determination of the Fair Market Rent, in which event, notwithstanding any provision in this paragraph to the contrary, Tenant shall pay all of the fees and costs involved in the arbitration, including, but not limited to, Landlord's reasonable attorneys' fees and disbursements, the fees of the American Arbitration Association, Landlord's Consultant, Tenant's Consultant and the Third Consultant, or (b) confirm the Renewal Notice in a written notice delivered to Landlord within twenty (20) days of the determination of the Fair Market Rent, and promptly thereafter, the parties shall execute and deliver to each other an instrument setting forth the Fair Market Rent as hereinabove determined. Any failure by Tenant to deliver a notice under either subparagraph (a) or subparagraph (b) within

such 20-day period will conclusively be deemed an election to confirm the Renewal Notice under subparagraph (b).

(D) If the final determination of the Fair Market Rent shall not be made on or before the first day of the applicable Renewal Term in accordance with the provisions of this paragraph, pending such final determination Tenant shall continue to pay, as the Fixed Rent for such Renewal Term, an amount equal to Landlord's Determination (but not in any event exceeding 125 percent of the Fixed Rent previously in effect). If, based upon the final determination hereunder of the Fair Market Rent, the payments made by Tenant on account of the Fixed Rent for such portion of the applicable Renewal Term were (i) less than the Fair Market Rent payable for the applicable Renewal Term, Tenant shall pay to Landlord the amount of such deficiency within five (5) days after demand therefor or (ii) greater than the Fair Market Rent payable for the applicable Renewal Term, Landlord, at its option, shall either refund to Tenant or credit towards the next payment of Fixed Rent, the amount of such excess.

2.3 Time of Payment. The Fixed Rent shall be payable in equal monthly installments in advance on the first day of each and every month during the Term, without previous demand therefor and without offset or deduction of any kind whatsoever, except as herein specifically set forth. Notwithstanding the foregoing, Tenant shall pay the first month's installment of Fixed Rent upon the execution of this Lease, and if the Commencement Date occurs on other than the first day of a calendar month, Tenant shall also pay to Landlord on the execution of this Lease a sum equal to Two Thousand Seven Hundred Sixty Five and 41/100 Dollars (\$2,765.41), multiplied by the number of calendar days in the period from the Commencement Date to the last day of the month in which the Commencement Date shall occur, both inclusive. Such payment shall constitute payment of the Fixed Rent for the period from the Commencement Date through and including the last day of the next succeeding calendar month.

2.4 Partial or Delinquent Payments. Payment by Tenant or receipt by Landlord of any amount less than the full monthly rental or other charges due from Tenant, or any endorsement or statement on any check or letter accompanying any check or rent payment, shall not in any event be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rental or pursue any other remedy provided in this Lease. Any payments required under this Lease which are not paid on or before the date for payment in this Lease (subject to any permitted grace period or notice requirement) shall be considered delinquent.

2.5 No Offsets. All rent shall be received by Landlord without offsets or deductions of any kind, except as expressly provided in this Lease.

2.6 Additional Rent. Tenant shall also pay to Landlord and discharge as additional rent (the "Additional Rent") all other amounts, liabilities and obligations of whatsoever nature relating to the Property which Tenant is required to pay pursuant to this Lease (other than Fixed Rent), and all interest and penalties that may accrue thereon in the event of Tenant's failure to pay such amounts when due, and all damages, costs and expenses which Landlord may reasonably incur by reason of any default of Tenant or failure on Tenant's part to comply with the terms of this Lease, all of which Tenant hereby agrees to pay upon demand or as is otherwise provided herein. Upon any failure on the part of Tenant to pay any of the Additional Rent, Landlord shall have all legal, equitable and contractual rights,

powers and remedies provided either in this Lease or by statute or otherwise.

**2.7 Manner of Payment.** All Fixed Rent and Additional Rent payable hereunder (collectively, "Rent") shall be made payable to Landlord and sent to Landlord's address as above set forth, or to such other person or persons or at such other place as may be designated by notice from Landlord to Tenant, from time to time, and shall be made in United States currency which shall be legal tender for all debts, public and private.

### **3. Net Lease.**

This Lease shall be deemed and construed to be a "net lease" and Tenant shall pay to Landlord, absolutely net throughout the Term, the Rent, free of any charges, assessments, impositions or deductions of any kind and without abatement, deduction or set-off whatsoever and under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall Landlord be expected or required to make any payment of any kind whatsoever or be under any other obligation or liability hereunder, except as herein otherwise expressly set forth. Except as herein otherwise expressly set forth, Tenant shall pay, in accordance with the terms of this Lease, all costs, expenses and charges of every kind and nature relating to the Property, except debt service on any indebtedness of Landlord, which may arise or become due or payable during or after (but attributable to a period falling within) the Term. Except as otherwise specifically provided in this Lease, Tenant's obligation to pay Rent hereunder shall not terminate prior to the date definitely fixed for the expiration of the Term, notwithstanding the exercise by Landlord of any or all of its rights under Section 13 hereof or otherwise, and that the obligations of Tenant hereunder shall not be affected by reason of: any damage to or destruction of the Building or any part thereof, any taking of the Property or any part thereof or interest therein by condemnation or otherwise, any prohibition, limitation, restriction or prevention of Tenant's use, occupancy or enjoyment of the Property or any part thereof, or any interference with such use, occupancy or enjoyment by any person or for any reason, any matter affecting title to the Property, any eviction by paramount title or otherwise, any default by Landlord hereunder, the impossibility, impracticability or illegality of performance by Landlord, Tenant or both, any action of any governmental authority, Tenant's acquisition of ownership of all or part of the Property (unless this Lease shall be terminated by a writing signed by all persons, including any mortgagee, having an interest in the Property), any breach of warranty or misrepresentation, or any other cause whether similar or dissimilar to the foregoing and whether or not Tenant shall have notice or knowledge thereof and whether or not such cause shall now be foreseeable.

### **4. Utilities and Taxes.**

**4.1 Utility Charges.** Tenant is responsible for all utility charges during the Term, and it agrees to pay, prior to delinquency, all charges for electricity, gas, water, sewage and/or all other public and private services charges used in the Property during the Term.

**4.2 Impositions.** From and after the Commencement Date and throughout the Term, Tenant shall pay and discharge not later than the day before the date upon which any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all taxes, assessments, water rents, sewer rents and charges, duties, impositions, license and permit fees, charges for public utilities of any kind, payments and other charges of

every kind and nature whatsoever, ordinary or extraordinary, foreseen or unforeseen, general or special, in said categories, together with any interest or penalties imposed upon the late payment thereof, which, pursuant to past, present or future law, during or prior to the Term, shall have been or shall be levied, charged, assessed, imposed upon or grow or become due and payable out of or have become a lien on the Property or any part thereof, any improvements or personal property in or on the Property (excluding, however, corporate excise and income taxes and other taxes based on Landlord's income or which constitute a "franchise" on Landlord's income, capital stock tax or similar tax of Landlord, and any transfer taxes imposed on account of any subsequent transfer of Landlord's interest in the Property). All of the foregoing are hereinafter referred to as "Impositions." Tenant, upon request from Landlord, shall submit to Landlord the proper and sufficient receipts or other evidence of payment and discharge of the same. If any Impositions are not paid when due under this Lease, Landlord shall have the right but shall not be obligated to pay the same, after notice to Tenant as set forth in paragraph 13.4, provided Tenant does not contest the same as herein provided. If Landlord shall make such payment, Landlord shall thereupon be entitled to repayment by Tenant on demand as Additional Rent hereunder, as set forth in paragraph 13.4.

**4.3 Substitute Impositions.** If at any time during the lease term the method of taxation presently prevailing is altered to cause the whole or any part of the Impositions on the Property to be levied, assessed or imposed, in whole or in part, as a capital levy or otherwise, or on the rents received therefrom, or if any new governmental tax, assessment, levy, imposition or charge is measured by or based, in whole or in part, upon the Property and is imposed upon Landlord, then such substitute governmental charges, or part thereof so measured or based, shall be obligations of Tenant under this Lease to the extent that both (a) any of the foregoing shall be in lieu of and in substitution for ordinary real property taxes or assessments levied as mentioned in the preceding paragraph, and (b) such obligations would be payable if the Property and the buildings and improvements thereon were the only property of Landlord subject to such obligations.

**4.4 Payment of Installments.** To the extent permitted by law, Tenant shall have the right to apply for the bonding or conversion of any Impositions to make the same payable in installments over a period of years, and upon such conversion, Tenant shall pay and discharge said installments as they shall become due and payable during the Term. Except for any Impositions which are bonded and payable in installments (as described in this paragraph), Tenant shall pay in full such Impositions prior to the expiration or sooner termination of the Term, whether or not such Impositions are then due and payable to the taxing authority. To the extent any Impositions are imposed by a local improvement district or other governmental authority for improvements which are not requested by Tenant (except as may otherwise be specifically agreed to by Landlord in writing) and which benefit the Property or the area in which the Property is situated, such Impositions may be bonded to the extent permitted by law, and such Impositions relating to a fiscal period of the taxing authority, a part of which is included in a period of time after the expiration of the Term, shall (whether or not such Impositions shall be assessed, levied, confirmed, imposed or become payable, during the Term) be adjusted between Landlord and Tenant as of the date of the expiration of the Term, so that Landlord shall be responsible for that portion of such Impositions which relate to that part of such fiscal period included in the period of time after the expiration of the Term, and Tenant shall pay the remainder thereof.



**4.5 Right to Contest.** Tenant shall have the right to protest and contest any impositions imposed against the Property or any part thereof or any lien or claim of lien pursuant to paragraph 9.1, provided (i) the same is done at Tenant's sole cost and expense, (ii) such contest shall not subject Landlord or the holder of any mortgage or deed of trust (the "Mortgage") encumbering all or any part of the Property (the "Mortgage") to the risk of any criminal or civil liability, (iii) Landlord's and the Mortgagee's respective interests in the Property are not jeopardized thereby and Landlord and the Mortgagee are held harmless from any loss thereon, (iv) Tenant shall provide such security as may be reasonably required by Landlord to ensure payment of such contested impositions prior to the expiration or earlier termination of the Term. Landlord agrees to execute and deliver to Tenant any and all documents reasonably required for such purpose and to cooperate with Tenant in every respect in such contest, but without any cost or expense to Landlord in excess of \$100.

**4.6 Personal Property Taxes.** Tenant shall pay, when due and before delinquency, all personal property taxes assessed against its leasehold improvements, equipment, furniture, fixtures, inventory and any of its other personal property on the Property.

## **5. Insurance and Damage.**

**5.1 Liability Insurance.** Tenant shall continuously maintain at its expense comprehensive general liability insurance with a combined single limit initially of Five Million Dollars (\$5,000,000), or such greater amount approved by the parties as may from time to time customarily be furnished by tenants under comparable leases or as the Mortgagee may reasonably require. Landlord will be named as an additional insured, and the liability insurance will otherwise comply with paragraph 5.9 below.

**5.2 Casualty Insurance on Building.** Tenant shall continuously maintain at its expense insurance against fire, windstorm, lightning, riot, civil commotion, malicious mischief, vandalism and those perils included from time to time in the standard extended coverage endorsement, on the Building and all improvements on the Property, in an amount not less than the full replacement cost.

**5.3 Rent Insurance.** Tenant shall continuously maintain at its expense rent insurance for the benefit of Landlord in an amount not less than the Fixed Rent payable hereunder for a period of six (6) months.

**5.4 Insurance on Personal Property.** Tenant will be responsible for continuously maintaining at its expense insurance covering its own leasehold improvements, merchandise, trade fixtures and other personal property on the Property. Such insurance shall be in amount adequate to cover the cost of replacement of the property required to be insured, subject to reasonable deductibles and self-insurance arrangements.

**5.5 Waiver of Subrogation.** Neither party shall be liable to the other for any loss or damage caused by water damage, sprinkler leakage, or any of the risks covered by a standard fire insurance policy with extended coverage endorsements, and there shall be no subrogated claim by one party's insurance carrier against the other party arising out of any such loss.

**5.6 Restoration of Damage.** In the event of any casualty to the Property, Tenant shall repair, restore, or replace the damaged or destroyed Property or construct additional

improvements to the Property of at least equal value to those existing prior to the damage. The minimum base rent shall not be abated. If the Property (or any part) is damaged or destroyed by fire, flood or other casualty and the estimated cost of repair, replacement and restoration exceeds \$500,000 ("Substantial Casualty"), the proceeds of insurance will be handled in accordance with this paragraph 5.6 (excluding, however, proceeds payable on or account of the inventory, equipment, fixtures or other property of Tenant or its subtenants), and otherwise, will be paid directly to Tenant for the repair, replacement and restoration of the Property. In the event of Substantial Casualty, all insurance proceeds relating to the Building and improvements shall be paid to Landlord and promptly disbursed to Tenant as restoration progresses, in a manner similar to that in which the proceeds of a construction loan are customarily disbursed. If the insurance proceeds are not sufficient to pay the full estimated cost of restoration, Tenant will provide a suitable bond or other assurance reasonably satisfactory to Landlord that Tenant can pay the cost of the work. If fire or other casualty during the last five years of the lease term or during any renewal term causes damage to the Building in an amount exceeding fifty percent (50%) of its full construction-replacement cost, Tenant may elect to terminate this Lease by giving written notice of such termination to Landlord within 60 days following the date of damage, in which case any insurance proceeds (plus any deductible or self-insured amount) shall be paid to Landlord.

**5.7 Performance of Major Repairs.** Prior to making any repair, restoration or replacement after a fire or other casualty or any alterations to the Building or restorations after a casualty or following a taking by condemnation (collectively, a "Repair"), Tenant shall (1) with respect to Repairs whose estimated cost is in excess of One Million Dollars (\$1,000,000) (hereinafter, a "Major Repair") as determined by an architect engaged by Tenant and reasonably acceptable to Landlord or as otherwise reasonably determined by the parties, (x) submit to Landlord for its reasonable approval detailed plans and specifications (including layout, architectural, mechanical and structural drawings) for each proposed Major Repair prepared by Tenant and (y) deliver to Landlord such security or assurances as are reasonably required by Landlord to assure completion of the Major Repair and payment of the costs thereof, including Landlord's reasonable approval of the proposed construction budget or estimated costs of construction and Tenant's assurance that Tenant can and will pay all costs of construction and will discharge all construction liens which may be asserted on account of the work, (2) at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-governmental authorities, and (3) furnish to Landlord certificates as to policies of workers' compensation (covering all persons to be employed by Tenant, Tenant's contractors and subcontractors in connection with such Major Repair), comprehensive public liability (including property damage coverage) and builder's risk insurance in such form, with such companies, for such periods and in such amounts as Landlord may reasonably require, naming Landlord and any Mortgagee as additional insureds. Upon completion of such Major Repair, Tenant, at Tenant's expense, shall obtain certificates of final approval of such Major Repair required by any governmental or quasi-governmental authority and shall furnish Landlord with copies thereof, together with the "as-built" plans and specifications for such Major Repair.

**5.8 Performance of Repairs Generally.**

(A) All Repairs shall be made at Tenant's sole cost and expense in cash or its equivalent, so that the Property and the assets of, or funds appropriate to, Landlord shall at

all times be free of liens for labor and materials supplied or claimed to have been supplied to the Property. All Repairs shall be made in and performed in a good and workmanlike manner and in compliance with applicable building codes and other legal requirements such that the Building will be restored to the equivalent of its prior condition. All materials and equipment to be incorporated in the Property as a result of any Repairs or a part thereof shall be new and first quality and no such materials or equipment shall be subject to any lien, encumbrance, chattel mortgage or title retention or security agreement.

(B) Tenant, at its expense, shall obtain all permits, approvals and certificates as required by any governmental or quasi-governmental authorities, and furnish to Landlord certificates as to policies of workers' compensation (covering all persons to be employed by Tenant, Tenant's contractors and subcontractors in connection with a Major Repair), and comprehensive public liability (including property damage coverage) and builder's risk insurance on any Repair in such form, with such companies, for such periods and in such amounts as Landlord may reasonably require, naming Landlord and any Mortgagee as additional insureds. Upon completion of such Repair, Tenant, at Tenant's expense, shall obtain certificates of final approval of such Repair required by any governmental or quasi-governmental authority and shall furnish Landlord with copies thereof. Tenant shall furnish Landlord with "as-built" plans and specifications for any Major Repair, and Tenant will furnish Landlord with "as-built" plans and specifications for minor Repairs to the extent plans and specifications are prepared covering the work being performed.

(C) Any Repair shall be subject to inspection at any reasonable time and from time to time by Landlord and its agents, or their duly authorized representatives, and if the Repair is not being performed in accordance with the provisions of this Lease or any of materials or workmanship are not first-class or are unsound or improper, Tenant shall correct any such failure and shall replace any unsound or improper materials or workmanship.

(D) Except as provided in paragraph 14.2 or otherwise specifically approved by Landlord in writing, all fixtures (except Tenant's trade fixtures and personal property), structures and other improvements installed in or upon the Property at any time during the Term shall become the property of Landlord upon the expiration or earlier termination of this Lease and shall remain upon and be surrendered with the Property unless Landlord, by notice to Tenant no later than sixty (60) days prior to the Expiration Date, elects to have the same removed or demolished by Tenant, in which event, the same shall be removed from the Property by Tenant prior to the Expiration Date, at Tenant's expense, and Tenant shall repair any damage caused by such removal. All property permitted or required to be removed by Tenant at the end of the Term remaining on the Property after Tenant's vacating the Property shall be deemed abandoned and may, at the election of Landlord, either be retained as Landlord's property or may be removed from the Property by Landlord at Tenant's expense, in which event Landlord's expenses in removing such abandoned property and repairing any damage occasioned by such removal will be the responsibility of Tenant and be reimbursed by Tenant upon demand. The provisions of this paragraph shall survive the expiration or earlier termination of the Term.

(E) If Tenant shall fail or neglect to make a Repair with reasonable diligence, or having so commenced a Repair, shall fail to complete the same with reasonable diligence, or if prior to the completion of a Repair, this Lease

shall expire or be terminated for any reason, Landlord shall have the right, but not the obligation, to complete such Repair at Tenant's cost and expense after notice to Tenant as set forth in paragraph 13.4, and the cost thereof shall be payable on demand as Additional Rent, together with interest thereon at the rate specified in paragraph 13.4.

(F) The provisions of this paragraph 5.8 shall be applicable to any restoration of the Property after casualty pursuant to paragraph 5.6 and repair pursuant to paragraph 5.7 and after condemnation pursuant to Section 10 hereof and any Structural Alteration made pursuant to paragraph 7.2 hereof.

**5.9 Form of Insurance.** All policies shall be in a form and with companies reasonably acceptable to Landlord and may be part of blanket coverage relating to various properties operated by Tenant. Subject to Landlord's written consent, which will not be unreasonably withheld, Tenant may partially self-insure to an extent which is reasonable in relation to its financial worth. Tenant will deliver to Landlord certificates of such insurance coverage prior to or concurrent with Tenant's obtaining possession of the Property and thereafter, as to policy renewals, Tenant will deliver to Landlord certificates of coverage or other confirmation of arrangements for coverage within fifteen (15) days prior to the expiration of the term of each such policy. Each certificate and policy of insurance shall evidence insurance coverage as required by this Lease, shall name Landlord and any Mortgagee as loss payees, as their respective interest may appear, and shall contain an endorsement or provision requiring not less than fifteen (15) days written notice to Landlord prior to any change or cancellation. Tenant's current coverages, deductibles and self-insurance arrangements are approved as set forth in documents delivered to Landlord in connection with this Lease.

**5.10 Compliance with Insurance Requirements.** Tenant shall not violate, or permit to be violated, any of the conditions of any of the said policies of insurance, and Tenant shall perform and satisfy the requirements of the companies writing such policies.

**5.11 Additional Insurance Coverages.** Tenant shall not carry separate or additional insurance concurrent in form and contributing in the event of any loss or damage to the Property with any insurance required to be obtained by Tenant under this Lease, unless such separate or additional insurance shall comply with and conform to all of the provisions and conditions of this Section 5 (including the requirement to name Landlord and the Mortgagee as additional insureds). Tenant shall promptly give notice to Landlord of such separate or additional insurance.

**5.12 Excess Insurance Proceeds.** After restoration and repair of the Property by Tenant pursuant to sections 5.6, 5.7 and 5.8 if any excess insurance proceeds remain they shall belong to the Landlord. If and only if Landlord and Tenant expressly agree in writing that improvements of at least equal value are not to be reconstructed after a casualty, in modification of Tenant's general responsibility concerning reconstruction under paragraph 5.6, and if after completion of such restoration by Tenant insurance proceeds in excess of \$5,000 remain unspent and are retained by Landlord and if the damaged Building and Property are not reconstructed to the condition and fair market value existing immediately prior to the casualty, each installment of Fixed Rent falling due on or after the final payment to Tenant for such restoration work shall be reduced by an amount determined by multiplying such installment of Fixed Rent by a fraction, the numerator of which is the amount so retained by Landlord and the denominator of which is an amount

equal to the original purchase price for the Property as set forth on Exhibit B hereto (the "Basic Amount").

## 6. Use of Property.

6.1 Use. Tenant shall use the Property for retail sales and related uses, and shall not permit the Property to be used for any other purpose without the prior written consent of Landlord. Consent to changes in use will not be unreasonably withheld; provided, however, that such change in use will not adversely affect the value of the Property.

6.2 No Nuisance. Tenant shall not conduct or permit any activities on or about the Property that create a nuisance.

6.3 Compliance with Laws. In connection with its use, Tenant shall comply at its expense with all applicable laws, regulations and requirements of any public authority, including those regarding maintenance, operation and use of the Property. Tenant shall procure, at its sole cost and expense, all necessary certificates of occupancy, permits, licenses and consents from any and all appropriate governmental authorities.

6.4 Avoidance of Hazards; Vermin. In addition to the requirements of paragraph 7.1, Tenant will not allow the Property at any time to fall into such a state of disrepair or disorder as to cause cancellation of required insurance coverage, and will reasonably keep the Property free from vermin.

6.5 Notices by Tenant. Tenant will promptly notify Landlord in writing as to any casualty damage or destruction to the Building or Property if the estimated cost of Repair exceeds \$50,000 or any condemnation or threat of condemnation by a condemning authority with respect to the Property (or any portion thereof) or any violation of law with respect to the Property (or any portion thereof).

## 7. Maintenance and Alterations.

7.1 Repairs and Maintenance. Tenant shall reasonably keep the Property at all times in a neat, clean, safe and sanitary condition, keep the glass of all windows and doors clean and presentable, and shall keep and maintain the Property in a good state of repair and perform Tenant's duties specified in this paragraph and this Lease in a commercially reasonable manner. Without limiting the foregoing, Tenant shall maintain and repair the exterior roofs and walls and all other structural parts of the Building, maintain the outside doors and their closure apparatus and mechanisms, replace all cracked or broken glass in the Building, keep the heating, air conditioning and ventilation systems in good operating condition and repair and perform regular inspections of such equipment, keep the electrical system and all pipes and drains clean and in a good state of repair and shall protect the sprinkler system and all pipes and drains so that they will not freeze or become clogged. Tenant shall also maintain, operate and repair the utility systems within the Property, including the cost of connection to the utility distribution systems. Tenant shall remove all snow and ice from the roof of the Building and from the sidewalks adjoining the Building. Tenant shall keep the parking and driveway areas in good repair, free of dirt, rubbish, snow and ice, adequately drained and adequately lighted and regulated. All costs and expenses of such maintenance, including without limitation, gardening and landscaping, repairs of parking and driveway areas, line painting, lighting, lamp replacement, sanitary control, removal of snow, trash, rubbish, garbage and other refuse, traffic and other regulations and the costs of personnel to implement such services will be paid by Tenant.



**7.2 Alterations.** Tenant may install signs, machinery and personal property and make such alterations and improvements to the Building which do not impair the structural components or the mechanical or electrical systems of the Building, as Tenant may deem advisable, so long as the value of the Building is not diminished. All alterations and improvements shall be made in a good and workmanlike manner and in compliance with applicable laws and ordinances and in accordance with the provisions of this Lease, including, without limitation, paragraphs 5.6 through 5.8. Except for renovations and remodeling in the ordinary course of Tenant's business that do not decrease the value of the Property or impair the structural components or the mechanical or electrical systems of the Building, Tenant shall not make any changes, alterations, replacements, installations, additions, or improvements with respect to the existing Building (as of the date of this Lease) on the Property that may adversely affect the value of the Property or impair the structural components or the mechanical or electrical systems of the Building (a "Major Structural Alteration"), without Landlord's prior written consent in each instance, which will not be unreasonably withheld. All Major Structural Alterations shall be made in accordance with the provisions of this Lease, including, but not limited to paragraphs 5.6 through 5.8.

**7.3. Acceptance of Property in Present Condition.** Tenant acknowledges that Tenant is in possession of the Property, Tenant has examined the Property, is familiar with the physical condition thereof and is leasing the same in "as is" condition. Landlord has not made and does not make any representations or warranties as to the physical condition, expenses, operation and maintenance, zoning, status of title, the use that may be made of the Property or any other matter or thing affecting or related to the Property. Tenant assumes all risks resulting from any defects (patent or latent) in the Property or from any failure of the same to comply with any governmental law or regulation applicable to the Property or the uses or purposes for which the same may be occupied.

#### **8. Signs.**

Tenant may erect appropriate signs on the Property. All signs shall be in conformance with all applicable governmental requirements in effect. Upon removal of the signs at the termination of this Lease (other than any pylon sign constructed by Landlord, which will remain part of the Property), Tenant shall restore that portion of the sign location to its condition prior to installation of the signs. Tenant acknowledges that it has full responsibility for the maintenance of such signs and agrees to keep them in good condition and repair.

#### **9. Liens, Indemnification and Liability.**

**9.1 Liens.** Tenant shall pay for work done on or for services rendered or material furnished to the Property, and shall keep the Property free from any liens other than liens created by Landlord, except that Tenant may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, so long as Landlord's interest in the Property is not jeopardized and Landlord is held harmless from any loss thereon. If any such liens shall be filed against the Property, Tenant, at its sole cost and expense, shall cause the same to be discharged by payment, bonding or otherwise, as provided by law, subject to the provisions of paragraph 4.5 and Tenant's right to contest the same by appropriate action. If Tenant fails to pay any such claim or to discharge any such lien, Landlord may do so and collect the amount so paid on demand. Amounts paid by Landlord shall bear interest and be repaid by Tenant as provided in paragraph 13.4.

**9.2 Disclaimer of Landlord's Responsibilities.** Except as otherwise expressly provided in this Lease, Landlord shall not under any circumstances be liable to pay for any work, labor or services rendered or materials furnished to or for the account of Tenant upon or in connection with the Property, and no mechanic's or other lien for such work, labor or services or material furnished shall, under any circumstances, attach to or affect the reversionary interest of Landlord in and to the Property or any alterations, repairs, or improvements to be erected or made thereon. Nothing contained in this Lease shall be deemed or construed in any way as constituting the request or consent of Landlord, either express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Property or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials on behalf of Landlord that would give rise to the filing of any lien against the Property.

**9.3 Landlord's Liability.** Landlord shall have no liability to Tenant for acts of other tenants or users of adjacent property or acts of any third party, or for any defect in the Property, or for any interruption or failure in the supply of utilities or services to the Property.

**9.4 Indemnification of Landlord.** Tenant shall indemnify and hold harmless Landlord, any partners of Landlord, any partners of any partners of Landlord and any officers, stockholders, directors or employees of any of the foregoing, from any loss, liability or claim of liability (including reasonable attorneys' fees and litigation expenses) arising out of or related to any violation of law or action or inaction of Tenant, and its agents, independent contractors, employees, customers, suppliers or invitees, any condition of the Building and Property, or any goods sold from the Building or Property (including product liability and other claims).

**9.5 Defense of Action.** In case any action or proceeding be brought against any of the indemnitees described in paragraph 9.4 (the "Indemnitees") by reason of any such claim or liability described therein, Tenant upon notice from the Indemnatee covenants to protect and defend at Tenant's sole expense such action or proceeding by counsel reasonably satisfactory to Indemnatee, and Indemnatee agrees to cooperate in such defense.

**9.6 Indemnification of Tenant.** Landlord shall indemnify and hold Tenant harmless from any loss, liability or claim of liability (including reasonable attorneys' fees and litigation expenses) arising out of or related to any negligent action of Landlord and its agents, independent contractors, employees, or invitees pursuant to this Lease.

## **10. Condemnation.**

**10.1 Substantial Taking.** If the entire Building is condemned, or if such a substantial portion of the Building, common areas or access or adjacent roadway is taken which renders the leased Building and Property unsuitable for Tenant's business operations, then this Lease shall terminate upon the later to occur of both of the following events: (i) thirty (30) days after written notice by Tenant to Landlord that a substantial taking has occurred as described in this paragraph 10.1; and (ii) the date upon which Tenant notifies Landlord that possession is taken by the condemning authority. The entire amount of the net condemnation proceeds shall be paid to Landlord. The foregoing shall not be deemed to limit Tenant's right to make separate claim for moving and relocation expenses and

the interruption of Tenant's business and for the value of any machinery, fixtures, improvements, furnishings, equipment and other personal property of Tenant taken in such proceeding; provided, however, that such separate claim will not reduce the amount of the award or payment to which Landlord may be entitled pursuant to this Lease. In no event, however, shall Tenant have any claim in respect of the award or payment for the value of the unexpired Term of this Lease.

**10.2 Partial Taking.** In the event of a partial taking by condemnation of the Building, Property, common areas, means of access or roadway as described above, and paragraph 10.1 does not apply, the condemnation proceeds shall be paid to Landlord and shall be made available to Tenant, in a manner similar to that in which the proceeds of a construction loan are customarily disbursed, to make necessary repairs and alterations to the Building, Property and common areas (as appropriate) so as to permit Tenant to continue its operations, which repairs and alterations shall be made in accordance with the provisions of this Lease, including, without limitation, paragraphs 5.6 through 5.8 hereof. All of Tenant's obligations shall remain in effect; however, the minimum base rent shall be abated during the period of restoration to the extent the Building and Property is not reasonably usable for Tenant's use. Any net condemnation proceeds from the taking which are not used to repair, alter and restore the Building and Property shall belong to Landlord. After restoration, the Fixed Rent shall be reduced for the remainder of the current lease term by the same percentage change as the difference in the fair rental value of the Building and Property immediately preceding, compared to immediately following, the taking by condemnation. If the parties cannot agree upon the adjustment to Fixed Rent under this paragraph after good faith negotiation, the adjusted Fixed Rent will be determined in the same manner as provided in paragraph 2.2(B).

**10.3 Transfer in Lieu of Condemnation.** Sale of property to a purchaser with the power of eminent domain in the face of a threat or the probability of the exercise of the power shall be treated as a taking by condemnation.

# **11. Assignment and Subleasing.**

**11.1 Assignment.** Tenant may not (directly or indirectly) assign this Lease voluntarily or by operation of law without the prior written consent of Landlord, except as otherwise provided below. Consent shall not, however, be required in the case of assignments occurring because of a merger, dissolution, acquisition, or sale of all the assets of Tenant. In the case of any assignment, Tenant shall remain liable for the full performance of all of the covenants of Tenant under this Lease, except as otherwise specifically agreed to in writing by Landlord. Where Landlord's consent is required under this Section 11, Landlord's consent will not be unreasonably withheld or delayed.

**11.2 Subleases.** Tenant may sublease all or any portion of the Property without the consent of Landlord, provided the sublease is subordinate to this Lease and any Mortgage and the sublessee does not require a nondisturbance agreement with Landlord or the Mortgagee. To the extent Landlord's consent is required, the sublease shall be submitted to Landlord for review and approval, and Landlord's failure to notify Tenant in writing as to a disapproval of such sublease within twenty (20) days after Landlord's receipt of the sublease shall be conclusively deemed an approval. All subleases shall expressly be made subject to the provisions of this Lease and any Mortgage. No subletting shall affect or reduce any obligation of Tenant or any rights or powers of Landlord. All obligations imposed on

Tenant under this Lease shall, irrespective of any subletting, continue in full effect as obligations of Tenant as a principal and not as a guarantor or surety of the performance thereof by any sublessee.

**11.3 Terms Relating to Consent.** Any attempted assignment or sublease which violates the consent requirements under paragraph 11.1 or 11.2 shall be null and void and, at the option of Landlord, will constitute a default under this Lease, if Landlord was entitled to withhold its consent, subject to the requirements of this Lease. Landlord will not take action to terminate this Lease because of an unapproved transfer or take other action against Tenant without first giving Tenant a written statement specifying the particular reasons why the proposed transfer and transferee were not reasonably acceptable to Landlord and any steps required to be taken by Tenant (if applicable) to obtain Landlord's consent, and at least sixty (60) days for Tenant to comply with such requirements or take other appropriate action with respect to Landlord's refusal to grant consent. The giving of consent in one instance shall not preclude the need for Tenant to obtain Landlord's consent to further transfers under paragraphs 11.1 and 11.2. If Landlord approves a proposed transfer, Tenant or the prospective transferee will be responsible for preparing the assignment or sublease documentation and will reimburse Landlord for its reasonable costs, including attorneys' fees and disbursements, in reviewing and approving the transfer and related documentation. No changes in the rent or economic terms of this Lease will be required of Tenant as a condition to Landlord's consent.

## **12. Default.**

The following shall be events of default:

**12.1 Payment Default.** Failure of Tenant to make any rent or other payment under this Lease within ten (10) days after receipt of written notice of nonpayment.

**12.2 Default in Other Covenants.** Failure of Tenant to comply with any other term or condition or fulfill any other obligation of this Lease within twenty (20) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be remedied fully within the twenty (20) day period, this requirement shall be satisfied if Tenant begins correction of the default within the twenty (20) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

**12.3 Insolvency Default.** Any insolvency event occurs, including, without limitation, the events set forth below, and is not cured by Tenant within forty-five (45) days. Tenant shall immediately notify Landlord, in writing, of any event of insolvency. An event of insolvency shall include, without limitation, the making by Tenant of any general assignment or arrangement for the benefit of creditors, or the filing by or against Tenant of a petition to have Tenant adjudged bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy or the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located on the Property or of Tenant's interest in this Lease; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located on the Property or of Tenant's interest in this Lease.

**12.4 Late Charge.** If Tenant shall fail to pay any installment of Fixed Rent when due or any Additional Rent within five (5) days after receipt of written notice of nonpayment, Tenant shall pay to Landlord, in addition to such installment of

Fixed Rent or such Additional Rent, as the case may be, as a late charge and as Additional Rent, a sum equal to the product of the amount unpaid and interest at the publicly announced prime (or reference) rate from time to time of Bankers Trust Company plus two percent (2%) per annum (or the maximum amount permitted by law, if lesser) computed from the date such payment was due to and including the date of payment.

### 13. Remedies on Default.

Upon default, Landlord may at any time thereafter in exercise of its sole discretion, with or without notice or demand, exercise any one or more of the remedies set forth in this section or any other remedy now or hereafter available under applicable law or contained in this Lease. In no event shall such election of remedy of default prejudice or mitigate any other rights of action or claim against Tenant as permitted by law. All remedies contained in this section are cumulative and not exclusive. No election of remedies shall be created or presumed by Landlord's exercising any given remedy at any given time. Such remedies include, without limitation, the following:

**13.1 Retake Possession.** Landlord may re-enter and retake possession of the Building and Property, using such force for that purpose as may be necessary and in accordance with applicable law, or using summary proceedings if it has not been vacated. Landlord may use the Building and Property for Landlord's own purposes or relet it upon any reasonable terms in Landlord's discretion without prejudice to any other remedies that Landlord may have by reason of Tenant's default.

**13.2 Damages for Default.** Whether or not Landlord retakes possession or relets the Building and Property, Landlord may declare all Rent for the remainder of the Term immediately due and payable (as provided below) and recover all reasonable damages caused by the default (including, but not limited to, unpaid rent, and other costs and expenses to be borne by Tenant under this Lease, and attorneys' fees relating to the default and costs of reletting). In addition to all unpaid rental and other charges required by this Lease and the reasonable cost of necessary physical changes to re-let the Property, Landlord shall be entitled to recover from Tenant all damages and expenses reasonably incurred by Landlord by reason of Tenant's default, including, but not limited to, the cost of recovering possession of the Property, expenses of re-leasing, including necessary alteration or repair of the Property required in connection with the re-leasing of the entire Property for commercial retailing use by another tenant, attorneys' fees and disbursements, and that portion of any leasing commission paid by Landlord and applicable to the unexpired term of this Lease. Tenant shall immediately pay such sums to Landlord upon demand, together with interest at the rate specified in paragraph 12.4, from the date of any expenditure until fully paid. Landlord may sue periodically to recover damages as they accrue during the remainder of the lease term without barring a later action for further damages. If Landlord declares all Rent for the remainder of the Term due and payable, Landlord shall be entitled to, and may at any time bring an action for, accrued damages plus damages for the remaining lease term equal to the difference between the rent specified in this Lease and the rental value of the Building and Property for the remainder of the term, discounted to the time of judgment at the rate of nine percent (9%) per annum.

**13.3 Continuation of Lease.** Landlord may, at Landlord's option, elect not to terminate this Lease, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the leased Property. In such event, Landlord shall be entitled to enforce all of Landlord's rights and



remedies under this Lease, including the right to recover the rent and any other charges as may become due under this Lease.

**13.4 Cure of Tenant's Default.** Without prejudice to any other remedy for default, Landlord may perform any obligation or make any payment reasonably required to cure a default by Tenant, after ten (10) days' notice to Tenant of Landlord's intent to pursue this remedy if the default is not cured within such time period; provided, however, that ten (10) days' notice will not be required in cases of emergency where action is required to protect lives or property of Tenant, subtenants or others on the Property or Landlord's interest in the Property and Tenant is not proceeding to take appropriate remedial action (but Landlord in any event will attempt to notify Tenant, by telephone or in writing, as to the emergency and what actions Landlord is taking or proposes to take). The reasonable costs of performance, including attorneys' fees and all disbursements, shall immediately be repaid by Tenant upon demand, together with interest from the date of expenditure until fully paid at the rate specified in paragraph 12.4.

**14. Surrender at Expiration.**

**14.1 Condition of Property.** Upon expiration of the lease term or earlier termination on account of default or other reason pursuant to this Lease, Tenant shall surrender the leased Building and Property, subject to and expecting depreciation and reasonable wear and tear and (to the extent provided in paragraph 5.6) fire or other casualty. Tenant will allow Landlord's representative to inspect the Property during reasonable business hours at least seven (7) days prior to the expiration or termination of this Lease to verify the condition of the Property, and Tenant will notify Landlord of a convenient time for such inspection. Tenant will promptly correct any deficiency for which Tenant is responsible under the terms of this Lease, at Tenant's sole expense, and if Tenant fails to do so, Landlord may take the necessary action and collect its reasonable costs of performance as additional rent pursuant to paragraph 13.4.

**14.2 Removal by Tenant.** Upon expiration or other termination of this Lease, Tenant shall remove all of Tenant's equipment, machinery, signs, fixtures, furnishings and personal property, and shall promptly restore all damage caused thereby.

**14.3 Holdover.** If Tenant does not vacate the leased premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this Lease (except that the term will be month to month and the Fixed Rent will be 125% of the amount of Fixed Rent then being paid by Tenant).

**15. Warranty of Quiet Enjoyment.**

So long as Tenant complies with all terms of this Lease, Tenant shall be entitled to peaceable and undisturbed possession of the Building and Property free from any interference by Landlord or those claiming through Landlord.

**16. General Provisions.**

**16.1 Time of Essence.** Time is of the essence of Tenant's performance under this Lease.

**16.2 Nonwaiver.** Waiver of performance of any provision shall not be a waiver of nor prejudice the party's right otherwise to require performance of the same provision or any other provision.

16.3 Succession. This Lease shall bind and inure to the benefit of the parties, their respective heirs, successors and assigns.

16.4 Inspection. Landlord or its authorized representatives may enter any portion of the Property at any reasonable time to determine Tenant's compliance with this Lease or to show the Property to any prospective tenants or purchasers.

16.5 Attornment. In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or trust deed made by Landlord covering the Building and Property, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease.

16.6 Subordination to Mortgages. This Lease, at Landlord's option, shall be subordinate to the lien of any trust deed or mortgage subsequently placed upon the Property, and to any and all advances made on the security thereof, or of any existing trust deed or mortgage, and to all renewals, modifications, increases, consolidations, replacements and extensions thereof; provided, however, that this provision shall apply only if the lender who receives the benefit of the subordination enters into a written agreement stating that Tenant's right to quiet possession shall not be disturbed so long as Tenant pays the rent and observes and performs all of the provisions of this Lease. Upon Landlord's request, Tenant will execute an attornment or subordination agreement consistent with this Lease in connection with any financing or sale by Landlord. As a condition to Tenant's obligations to execute documents in connection with any such financing or sale, Landlord shall reimburse Tenant for its reasonable costs and expenses, including reasonable attorneys' fees, in reviewing the subordination, nondisturbance and recognition agreement, attornment agreement (if any), or other documents (excluding estoppel certificates) required by Landlord from Tenant.

16.7 Estoppel Certificates. Within ten (10) days after receipt of a written request, either party, without charge, shall deliver a written statement to the other stating the date to which the rent and other charges have been paid, whether this Lease is unmodified and in full force and effect, whether the other party is in compliance with this Lease and any other matters that may reasonably be requested.

16.8 Proration of Rent. If this Lease ends other than at the end of a calendar month, the rent (including impositions) shall be prorated as of such date. Upon termination other than for default, prepaid rent shall be refunded, if applicable.

16.9 Notices. All notices, demands or requests made pursuant to, under or by virtue of this Lease must be in writing and mailed to the party to which the notice, demand or request is being made by certified or registered mail, return receipt requested, or by overnight courier delivery, as follows:

To Tenant:

Fred Meyer, Inc.  
3800 SE 22nd Avenue  
PO Box 42121  
Portland, Oregon 97242  
Attention: Treasurer

with copy to:

Stoel Rives Boley Jones & Grey  
900 SW Fifth Avenue, Suite 2300  
Portland, Oregon 97204  
Attn: David W. Green, Esq.  
or Henry H. Hewitt, Esq.

To Landlord:

Lepercq Corporate Income Fund II L.P.  
c/o Lepercq Capital Partners  
345 Park Avenue  
New York, New York 10154  
Attn: Mr. Edward C. Whiting

with copy to:

Weil, Gotshal & Manges  
767 Fifth Avenue  
New York, New York 10019  
Attn: Alan A. Lascher, Esq.

Any notice given in accordance with the provisions of this section shall be deemed given with actually delivered or when proper delivery is refused by the addressee.

**16.10 Attorneys' Fees.** In the event suit, action or arbitration is instituted to interpret or enforce the terms of this Lease, the prevailing party shall be entitled to recover from the other party such sum as the court or arbitrator may adjudge reasonable as attorneys' fees at trial, hearing or on appeal of such suit or action, in addition to all other sums provided by law. References to arbitration in this paragraph shall not, however, constitute an agreement to arbitrate disputes under this Lease.

**16.11 Relationship of Parties.** The relationship of the parties to this Lease is Landlord and Tenant. Landlord is not a partner or joint venturer with Tenant in any respect or for any purpose in the conduct of Tenant's business or otherwise.

**16.12 Authorization of Lease.** Each party covenants and warrants to the other that the person(s) executing this Lease on behalf of the party is duly authorized to execute and bind the party under this Lease.

**16.13 Consent.** Whenever either party's consent or approval is required under this Lease, such consent or approval will not be unreasonably withheld or delayed. Any consent granted by a party under this Lease shall not constitute a waiver of the requirement for consent in subsequent cases. No changes in the rent or economic terms of this Lease will be required of Tenant as a condition to Landlord's consent.

**16.14 Brokers.** Each party will defend, indemnify and hold harmless from any claim, loss or liability made or imposed by any other party claiming a commission or fee in connection with this transaction and arising out of its own conduct.

**16.15 Section Headings.** The headings to the sections and paragraphs of this Lease are included only for the convenience of the parties and shall not have the effect of enlarging, diminishing or affecting the interpretation of its terms.

**16.16 Joinder in Instruments.** Upon reasonable request from time to time, Landlord shall join with Tenant in any conveyance, dedication, grant of easement or license or

other instrument as shall be reasonably necessary or convenient to provide public utility service to the Property. Landlord shall not be required to incur any cost or expense by virtue of the provision of this paragraph.

**16.17 Applicable Law.** The Property is located in the State of Oregon. The parties agree that the law of that state shall be applicable for all purposes, including construing and determining the validity of this Lease, determining the rights and remedies of Landlord in the event of default by Tenant and other matters.

**16.18 Prior Agreements.** This Lease (including attached exhibits) is the entire, final and complete agreement of the parties with respect to the matters set forth in this Lease, and supersedes and replaces all written and oral agreements previously made or existing by and between the parties or their representatives with respect to such matters.

**16.19 Validity of Provisions.** If any of the provisions contained in this Lease shall be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions contained in this Lease shall not be affected.

**16.20 Joint and Several Liability.** In the event Tenant subsequently consists of more than one person, firm or corporation, then all such persons, firms or corporations shall be jointly and severally liable as Tenant under this Lease.

**16.21 Modifications.** This Lease may not be modified except by endorsement, in writing, attached to this Lease, dated and signed by the parties. Neither party shall be bound by any oral statement of any agent or employee modifying this Lease.

**16.22 Recording.** This Lease shall not be recorded, but the parties shall execute a memorandum of this Lease in recordable form which may be recorded.

**16.23 Merger, Consolidation or Sale of Assets.** In the event of a merger, consolidation, acquisition, sale or other disposition involving Tenant or all or substantially all the assets of Tenant to one or more other entities, the surviving entity or transferee of assets, as the case may be, shall (i) be formed and existing under the laws of a state, district or commonwealth of the United States of America and (ii) deliver to Landlord an acknowledged instrument in recordable form assuming all obligations, covenants and responsibilities of Tenant under this Lease and under any instrument executed by Tenant relating to the Property of this Lease.

**16.24 Master Lease Status.** Notwithstanding Landlord's purchase of the Property, Tenant shall retain, and this Lease shall constitute a master lease with respect to, the existing leases affecting the Property or any portion thereof described on the attached Exhibit C (the "Existing Leases") for as long as this Lease is in effect, and Tenant shall be entitled to exercise and retain all right, title and interest in and to the Existing Leases, including (without limitation) all rights under the Existing Leases to collect rent and other charges payable by the lessees, and Tenant shall be obligated to perform all the landlord's obligations under the Existing Leases.

**16.25 Fixed Rent Determination.** The Fixed Rent amount specified in this Lease is agreed to be the fair market rental value of the leased Property pursuant to this Lease during the original lease term. In the event Tenant elects to close its store on the leased Property, Tenant will continue to be responsible for paying the rent and performing its other obligations under this Lease.

**16.26 First Opportunity to Purchase.** Landlord grants Tenant the first opportunity to purchase the Property during the Term. If Landlord decides to sell, exchange or otherwise transfer the Property (or any portion) during the lease term, other than sales or transfers to a related party or affiliated company, Landlord will give written notice to Tenant of the general terms on which Landlord intends to sell the Property, including a copy of any written offer received from third parties. Such notice shall state the purchase price and the terms for the Property and will not include other property of Landlord or consideration other than cash payments, mortgage assumptions, promissory notes and other non-unique consideration. Tenant shall have 30 days after receipt of the notice in which to elect to acquire Landlord's interest in the Property on the terms contained in the notice. If the third party offer includes an exchange of properties, Tenant shall, at Landlord's request, cooperate in effecting the acquisition of the exchange property from its owner and Tenant shall exchange such property with Landlord for the Property, which transactions will be closed consecutively on the same date in escrow, with any additional costs incurred in transfer or conveyance taxes, closing costs, sales commissions, etc., as a result of such an exchange paid by Landlord. Election shall be by written notice to Landlord. If Tenant does not elect to acquire the Property or if Tenant shall fail to timely make such election, Landlord may sell, exchange or otherwise transfer Landlord's interest in the Property at a purchase price and otherwise on terms not materially more favorable to the purchaser than the terms stated in the original notice to Tenant (which shall not vary by more than ten percent (10%) than as stated in the original notice), provided the transaction is closed within nine (9) months after the date of Landlord's original notice or after the expiration of the Term. If the transaction is not closed within such nine (9) month period or after the expiration of the Term, or Landlord desires to transfer its interest in the Property at a lower purchase price or on terms more favorable to the purchaser than offered to Tenant or otherwise permitted hereby during the term, Landlord shall not transfer its interest in the Property without first again granting to Tenant the opportunity to purchase as provided above. Only 15 days' written notice of a specific sales transaction (including a copy of any written offer) will be required in the event Landlord is required to reoffer the Property to Tenant because of a proposed sale on terms more favorable to the purchaser. Transfers of interest in the Property between partners or the principals of Landlord, members of their respective families or affiliated companies of Landlord may be made without compliance with this paragraph, it being understood that the provisions of this paragraph shall survive any such transfers until the expiration or sooner termination of this Lease. Upon the expiration or sooner termination of this Lease, Tenant's first opportunity to purchase shall cease and terminate. Any sale or other conveyance by Landlord to third parties during the term of this Lease will remain and be subject to the terms of this paragraph 16.26, and Tenant's failure to exercise its first opportunity to purchase with respect to one transaction will not waive or affect Tenant's first opportunity to purchase with respect to subsequent transactions during the term of this Lease.

**17. Limitation of Liability of Partnership.**

Tenant shall look only to Landlord's interest in the Property (and any condemnation, insurance or other proceeds thereof) for satisfaction of Tenant's remedies for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default by Landlord under this Lease or any claim for indemnification pursuant to paragraph 9.6, and no other property or other assets



of Landlord or any partner of Landlord or any partner of any partner of Landlord, or any officer, director, stockholder or employee of any of the foregoing shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease, the relationship of landlord and tenant hereunder or Tenant's use and occupancy of the Property.

18. Responsibility of Landlord upon Sale.

The term "Landlord" as used herein shall mean only the owner or the mortgagee in possession for the time being of the Property, so that in the event of any sale, transfer or conveyance of the Property Landlord shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder, and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the purchaser, transferee or grantee at any such sale, transfer or conveyance that such purchaser, transferee or grantee has assumed and agreed to carry out any and all agreements, covenants and obligations of Landlord hereunder.

19. Hazardous Substances.

During the Term, Tenant shall (a) maintain the Property, at its sole cost and expense, free of contamination from any substance or material presently identified to be toxic or hazardous (collectively, "Hazardous Material") according to any applicable federal, state or local statute, rule or regulation, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended by Superfund Amendments and Reauthorization Act (collectively, the "Law"), including, without limitation, any asbestos, PCB, radioactive substance, methane, volatile hydrocarbons, industrial solvents or any other material or substance which has in the past or could presently or at any time in the future cause or constitute a health, safety or other environmental hazard to any person or property; (b) not suffer or permit any discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids, liquid or gaseous products or other Hazardous Material at, upon, under or within the Property or onto any contiguous real estate; (c) not be involved in operations at or near the Property which could foreseeably lead to the imposition of liability on Tenant or any other owner of the Property of liability or the creation of a lien on the Property under the Law or under any similar applicable laws or regulations; (d) not engage in any activity that could foreseeably lead to the imposition of liability on Tenant or Landlord or any other owner of the Property, or the creation of a lien on the Property, under the Law or any similar applicable laws or regulations; (e) not use the Property (i) for industrial purposes, (ii) as a waste disposal site, or (iii) as a processing plant for Hazardous Material. As used above, "PCB" shall mean any oil or other substance containing polychlorinated biphenyl (as defined in 40 CFR § 761.3) at concentrations of 50 parts per million or greater.

20. Leasehold Financing.

Notwithstanding anything to the contrary contained in this Lease, Tenant shall have the right subject to the terms of this paragraph to mortgage, pledge or otherwise encumber Tenant's leasehold estate under this Lease in connection with (i) a complete or partial recapitalization of Tenant, or (ii) construction of new improvements, alterations or renovations in accordance with the requirements of this Lease (the "Leasehold Financing"). Any such Leasehold Financing shall be upon terms and conditions in all respects reasonably acceptable to Land-

lord, and all documents evidencing and/or securing such Leasehold Financing shall be submitted to Landlord for its reasonable review and approval prior to the execution of same by Tenant. All such Leasehold Financing shall expressly provide that the same, and the lien of all security instruments executed in connection therewith, shall be and at all times remain subject and subordinate to (i) this Lease and Landlord's rights and remedies as set forth herein and (ii) all present and future indebtedness of Landlord secured in whole or in part by the Property; provided, however, Landlord shall upon request of Tenant enter into (and use its best efforts to cause any Mortgagee to enter into) an agreement with the party providing such Leasehold Financing to provide for such reasonable notice and opportunity to cure defaults of Tenant hereunder and such other matters as are reasonably required and commonly included in leasehold mortgage protection agreements. Tenant shall reimburse Landlord for its reasonable costs, including reasonable attorneys' fees, in reviewing and approving the proposed Leasehold Financing and related documentation and estoppel certificate. No change in the Rent or other economic terms of this Lease shall be required of Tenant as a condition to Landlord's consent thereto.

## 21. Tenant's Option to Purchase.

21.1 Grant of Option. Provided that at the time of the exercise by Tenant of its option there is no event of default hereunder, Landlord hereby grants to Tenant an option to purchase the Property at its Fair Market Value (as determined below) on the applicable Determination Date (defined below).

21.2 Determination Date. The "Determination Date" shall mean (i) the expiration date of the original term of this Lease, and (ii) if this Lease is renewed, the expiration date of the term of this Lease as so renewed.

21.3 Fair Market Value. "Fair Market Value" shall be determined as set forth below and shall mean the price a willing buyer would pay to a willing seller for the Property unencumbered by any mortgage interest or deed of trust, in an arm's-length transaction. The Fair Market Value shall be determined on the basis of the highest and best use of the Property assuming that the Property is free and clear of all leases and tenancies (including this Lease).

21.4 Notice of Exercise. The option granted hereby shall be exercised by Tenant's giving Landlord written notice of Tenant's exercise of such option no later than one (1) year prior to the applicable Determination Date.

21.5 Determination of Purchase Price. The initial determination of Fair Market Value shall be made by Landlord. Landlord shall give notice to Tenant of the proposed Fair Market Value at least nine (9) months prior to the Determination Date. If the parties fail to agree upon the Fair Market Value proposed by Landlord within thirty (30) days after such notice has been given, then Landlord and Tenant each shall give notice to the other setting forth the name and address of an arbitrator designated by the party giving such notice, which arbitrator will be an independent appraiser having the same qualifications as a Consultant pursuant to paragraph 2.2(B). If either party shall fail to give notice of such designation within a further period of ten (10) days, then the arbitrator chosen shall make the determination alone. If two arbitrators shall have been designated, such two arbitrators shall, prior to the Determination Date, make their determinations of Fair Market Value in writing and give notice thereof to each other and to the parties. Such two arbitrators shall have ten (10) days after the receipt of notice of each other's determinations to confer with each other and to attempt to reach agreement as to the determination of

**Fair Market Value.** If such two arbitrators shall concur as to the determination of Fair Market Value, such concurrence shall be final and binding upon the parties. If such two arbitrators shall fail to concur, then such two arbitrators shall immediately designate a third arbitrator having the above qualifications. If the two arbitrators shall fail to agree upon the designation of such third arbitrator within five (5) days, then either party may apply to the American Arbitration Association, or any successor organization thereto having jurisdiction, for the designation of such arbitrator. The third arbitrator shall conduct such investigations as he may deem appropriate and shall, within thirty (30) days after the date of his designation make his determination as to the Fair Market Value. If such determination of the third arbitrator shall be between the Fair Market Value determinations of the other two arbitrators, then the determination of the third arbitrator shall govern. If the determination of the third arbitrator shall be lower than the lowest determination of the other two arbitrators, then the lower determination of the other two arbitrators shall govern. If the determination of the third arbitrator is higher than the determination of the higher of the other two arbitrators, then the determination of the higher of the other two arbitrators shall govern. Each party shall pay its own counsel fees and expenses, if any, in connection with any arbitration under this paragraph, including the expenses and fees of any arbitrator selected by it, and the parties shall share equally all other expenses and fees of any such arbitration. The determination rendered in accordance with the provisions of this paragraph shall be final and binding in fixing the Fair Market Value of the Property.

**21.6 Continuation of Lease.** If for any reason the Fair Market Value shall not have been determined prior to the Determination Date, then until the Fair Market Value shall have been finally determined, this Lease shall continue in full force and effect until closing of the sale to Tenant, and Tenant shall continue to pay Fixed Rent and all Additional Rent until title to the Property is transferred.

**21.7 Closing of Purchase.** The closing shall take place on the Determination Date or within 30 days after the Fair Market Value is determined, whichever is later, at the offices of First American Title Insurance Company in Portland, Oregon. Tenant, as purchaser, shall take title to the Property subject to any and all liens, easements, covenants, encumbrances and agreements whether or not of record, except that Landlord, as seller, shall be obligated to satisfy all mortgages, deeds of trust, security assignment of rents or other encumbrances encumbering the Property which were given by Landlord. Landlord shall tender a statutory special warranty deed to Tenant conveying the Property to Tenant. Landlord, as seller, shall pay all excise taxes and transfer fees in connection with such sale, and Tenant, as purchaser, shall bear all costs of closing, including title insurance, customarily borne by purchasers.

**21.8 Purchase by Designee.** If Tenant purchases the Property pursuant to this Lease, Tenant may designate a third party to which title to the Property shall be conveyed, in accordance with the terms and conditions of this Lease, provided

that no such designation shall relieve Tenant of any obligations imposed on Tenant under this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

LANDLORD:

LEPERCO CORPORATE INCOME  
FUND II L.P., a Delaware limited  
partnership, general partner

By SECURED PROPERTY ASSOCIATES II L.P.,  
a Delaware limited partnership,  
general partner

By LEPERCO LEASE ASSOCIATES II L.P.,  
a Delaware limited partnership,  
general partner

By P.J.K.  
Peter J. Kinnunen, general partner

TENANT:

FRED MEYER, INC., a  
Delaware corporation

By Frederick C. Meyer, V.P. & Sec.

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

A parcel of land located in the southwest one-quarter of Section 34, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Commencing at a brass cap marking the southwest corner of Section 34 and running North  $00^{\circ} 28' 30''$  West 168.83 feet; thence North  $89^{\circ} 31' 30''$  East 55.00 feet to a point on the easterly right-of-way line of Washburn Way and the Point of Beginning; running thence along said right-of-way line, North  $00^{\circ} 28' 30''$  West 944.12 feet; thence leaving said right-of-way, North  $89^{\circ} 31' 53''$  East 588.13 feet; thence South  $00^{\circ} 28' 07''$  East 1101.80 feet to the northerly right-of-way line of Shasta Way; thence along said right-of-way South  $89^{\circ} 52' 25''$  West 77.96 feet; thence North  $87^{\circ} 15' 50''$  West 300.37 feet; thence South  $89^{\circ} 52' 25''$  West 7.13 feet; thence leaving said right-of-way, North  $00^{\circ} 28' 07''$  West 159.15 feet; thence South  $89^{\circ} 31' 53''$  West 172.03 feet; thence 38.10 feet along a 35.00 foot radius curve left, the long chord of which bears South  $58^{\circ} 20' 54''$  West 36.24 feet to the Point of Beginning.



EXHIBIT B

## BASIC AMOUNT

The "Basic Amount" pursuant to Section 5.5 of the Lease is \$9,500,000.

EXHIBIT CEXISTING LEASES

There are currently four agreements in place at the above mentioned location.

1. Basin Street Transfer Station:

DATE: January 6, 1988  
Month to month with a 30 day cancellation notice.

TERM:

2. Norland Insurance:

DATE: April 28, 1987  
TERM: 5 years, 2-5 year options  
BEGINNING: August 1, 1987  
ENDING: July 31, 1997

3. Third Dimension Cuts:

DATE: May 11, 1987  
TERM: 7 years  
BEGINNING: August 7, 1987  
ENDING: August 31, 1995

4. Willamette Savings:

DATE: Amendment to Lease, dated June 1, 1981  
TERM: 2.9 years, 7-5 year options (conditioned upon Fred Meyer Inc. lease continuing)  
BEGINNING: August 1, 1987  
ENDING: December 31, 1990

STATE OF OREGON,  
County of Klamath ss.

Filed for record at request of:

Klamath County Title

on this 22 day of June A.D., 1988  
at 12:07 o'clock P M. and duly recorded  
in Vol. M 88 of Mtgs Page 9655

Evelyn Biehn County Clerk

By [Signature]

~~Deputy.~~

Fee, 213.00

210.00  
3.00