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**RECORDING REQUESTED BY  
AND WHEN RECORDED  
RETURN TO:**

Fred Meyer Stores, Inc.  
Attention: RLS 04002/33R  
P.O. Box 42121  
Portland, OR 97242

*K55816*

**SUPPLEMENT #2 TO RECIPROCAL  
EASEMENT AND RESTRICTION AGREEMENT**  
(Klamath Falls, Oregon)

DATE: \_\_\_\_\_, 2000

**PARTIES:** EDWIN N. LIPPERT AND BONNIE IRENE LIPPERT  
Trustee of the Lippert Family Revocable Living Trust,  
dated 8/2/92  
P.O. Box 590  
Grants Pass, Oregon 97528  
Attn: Edwin N. Lippert

**"Adjacent Owner"**

**AND:** FRED MEYER STORES, INC.  
(formerly known, and whose name appears of record  
as FRED MEYER, INC.),  
a Delaware corporation  
P.O. Box 42121  
Portland, Oregon 97242-0121  
Attention: Group Vice President, Real Estate & Store Development

**"Fred Meyer"****RECITALS:**

Adjacent Owner is the owner of the real property described on Exhibit A hereto ("**Adjacent Owner's Property**"). Fred Meyer holds a leasehold estate in the real property described on Exhibit B hereto ("**Fred Meyer's Property**"). Fred Meyer previously entered into a Reciprocal Easement Agreement and Declaration dated February 24, 1993, which was recorded on March 15, 1993 in Volume M93 at page 5282, Official Records of Klamath County, Oregon ("**REA**"). A Supplement to Reciprocal Easement Agreement and Declaration dated January 22, 1997, amending and supplementing said REA, was entered into by Fred Meyer, the ground lessor of the Fred Meyer's Property, and the purchaser/owner of an adjoining parcel that had been developed by Taco Bell Corp. or its affiliates (the "**TBLD Outparcel**"), and was recorded on January 31, 1997 in Volume M97 at page 3079, Official Records ("**Supplement**"). The parties to this agreement intend to reaffirm and further supplement the terms of the REA and Supplement, with respect to the easements, rights and restrictions pertaining to Adjacent Owner's Property and Fred Meyer's Property (without affecting the

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TBLD Outparcel). Such easements shall be appurtenant to and shall benefit all of the property described in Exhibits A and B. Adjacent Owner and Fred Meyer, and their respective successors and assigns, are sometimes referred to as "**Owners**" for purposes of this Agreement, and Adjacent Owner's Property and Fred Meyer's Property are sometimes referred to herein as the "**Parcels**."

The parties therefore agree as follows.

## 1. GRANT OF EASEMENTS.

a. The Owners hereby grant and convey to each other permanent mutual reciprocal rights-of-way on, over, across, and along the portions of the Parcels that are developed and maintained as private access ways from time to time (collectively, the "**Easement Area**"). Fred Meyer hereby specifically grants to Adjacent Owner such easement rights respecting the Fred Meyer Property, and Adjacent Owner reciprocally grants to Fred Meyer such easement rights respecting Adjacent Owner's Property.

b. The Easement Area shall be used for vehicular and pedestrian ingress and egress purposes by the Owners and their "**Permitted Persons**." An Owner's "**Permitted Persons**" means the employees, representatives, agents, licensees, business visitors, customers, and invitees of the Owner; and the tenants of the Owner and employees, representatives, agents, licensees, business visitors, customers, and invitees of such tenants. Use of the Easement Area shall be on a regular, continuous, nonexclusive, nonpriority basis, benefitting the Owners and their Permitted Persons.

c. No Owner shall have the right to park, load or unload any vehicle on any other Parcel other than under emergency conditions. Each Owner shall maintain on such Owner's Parcel sufficient parking spaces to meet the needs of the employees, customers and invitees of Owner and its tenants, and to satisfy requirements of applicable codes. This Agreement creates no express or implied parking easements.

d. No Owner's rights hereunder shall lapse in the event of that Owner's failure to use the easement and right-of-way on a continuous basis.

e. Each Owner expressly reserves the right to modify the access ways on such Owner's Parcel from time to time, provided that such modification does not obstruct access from an adjoining Owner's Parcel.

f. No fences, walls or barriers to access will be erected on the common boundary lines between the Parcels that would unreasonably interfere with the access between the Parcels or the use of the Easement Area for ingress and egress, without both parties' prior consent.

g. With respect to the access ways located on the property owned or leased by a party to this Agreement, the party will be free to construct, maintain, improve, repair and reconstruct utility lines over, under or across such access ways, to change from time to time the location of access ways (including the Easement Area) on its own property, and to engage in other uses of such access ways that are compatible with their use for ingress and egress, provided that any such actions do not unreasonably interfere with or impair the parties' right of use of the Easement Area for ingress and egress to the respective properties.

2. **RESTRICTIONS ON USE OF PROPERTY.** In consideration of the grant of easements herein, Adjacent Owner agrees to restrict the use of the Adjacent Owner's Property as set forth below. Any lease or occupancy agreement subsequently entered into with respect to Adjacent Owner's Property will

require that the tenant's use (and any changes to the original use by the tenant) must comply with applicable laws and recorded easements and restrictions affecting the property (including this Agreement). In acquiring the Adjacent Owner's Property, the Adjacent Owner, and its successors and assigns, shall automatically be deemed to acknowledge that the restrictions set forth in this Agreement are an essential part of the particular transaction covering the Adjacent Owner's Property and, further, that the restrictions set forth in this Agreement are fair and reasonable to assure all Owners of Parcels of their expected benefits and the orderly and beneficial development of the Development and the Parcels.

**a. General.** The Adjacent Owner's Property shall not in any event be leased, subleased, operated or otherwise used for: (i) the display, distribution or sale of any "adult" books, "adult" films, "adult" periodicals or "adult" entertainment; (ii) the establishment or maintenance of a massage parlor, gambling operation, "adult" theater, "adult" bookstore, "sex" shop, "peep show" or bawdy house or brothel, or any use in violation of applicable zoning and other governmental laws and regulations; (iii) any distilling, refining, smelting, agricultural, animal raising or boarding (other than consumer pet shops), or mining operation; (iv) any primary use as a warehousing, assembling, manufacturing, waste processing or other industrial operation; or (v) any motor vehicle, truck, trailer, recreational vehicle or boat sales, leasing, storage or display.

**b. Additional Restrictions.** Adjacent Owner's Property shall in no event be leased, subleased, operated or otherwise used for: (i) any jewelry store; (ii) any supermarket (which for purposes of this Agreement means any store, department or area within a store, containing at least 5,000 square feet of gross floor area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption); (iii) any bakery or delicatessen; (iv) the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption; or (v) the sale to the general public of any pharmaceutical products requiring the services of a registered pharmacist.

For purposes of this Agreement, the term delicatessen shall not include a "sandwich shop" (which, for purposes of this Agreement, shall mean a store used primarily for the sale of sandwiches prepared at the store, such as a Subway store, a Blimpie store, a Quizno's store and the like) or a "take n' bake pizza shop" (which, for purposes of this Agreement, shall mean a store used primarily for the sale of pizzas for off-premises baking, such as a Papa Murphy's store, a Figaro's store, and the like).

### **3. DEVELOPMENT OF ADJACENT OWNER'S PROPERTY.**

**a. Site Plan and Architectural Review.** Fred Meyer will have the right of prior review and approval of: (i) the site plan for improvements within the Adjacent Owner's Property (excluding interior tenant improvements and fixturing and interior alterations), including any changes to elevations within the Adjacent Owner's Property and the elevations of the finished floors of any buildings to be located on the Adjacent Owner's Property, and the number of parking spaces provided; (ii) the existence (and if permitted by Fred Meyer, the design and layout) of any drive-up or drive-through facilities; (iii) any additions or material modifications to the site plan or the exterior of any improvements on the Adjacent Owner's Property; and (iv) the location, size and configuration of exterior signs. All approvals by Fred Meyer must be in writing.

#### **b. Type and Design of Building.**

**i. General Standard.** Each building on the Adjacent Owner's Property shall be of first quality construction and architecturally designed so that its exterior elevations and appearance (including, without limitation, signs and color) will, in Fred Meyer's reasonable judgment, be architecturally and aesthetically compatible and harmonious with all other buildings in the Development.

ii. **Height.** No portion of any building on the Adjacent Owner's Property shall exceed one (1) story or twenty-three (23) feet in height above grade, except as otherwise approved in writing by Fred Meyer. Such height will not in any event exceed the limitations imposed by applicable legal requirements.

iii. **Safety.** Every building shall be constructed to meet or exceed the requirements of all applicable codes, laws, statutes or ordinances relating to building, zoning, fire, health or safety as adopted by any governmental authority having jurisdiction. No building shall be built in such a manner as to adversely affect the safety of any building on property adjacent to the Adjacent Owner's Property.

4. **MAINTENANCE.** Each Owner shall maintain or cause to be maintained at all times the access ways on the Owner's Parcel. The obligation of each Owner to maintain shall include but not be limited to maintaining, repairing and resurfacing, when necessary, all paved portions of the Easement Area in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability; removing all snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the portion of the Easement Area on such Owner's Parcel in a clean and orderly condition.

## 5. MISCELLANEOUS.

a. **Attorney Fees.** In the event of any litigation arising under this agreement, the prevailing party shall recover from the losing party the prevailing party's reasonable attorney fees at trial or on appeal as adjudged by the trial or appellate court.

b. **Decision Making.** Whenever the consent or approval of any Owner is required, such consent or approval shall be exercised only in the following manner. The Owners (if consisting of more than one [1] person) of a Parcel shall agree among themselves and designate in writing to the Owners and of the other Parcel a single person who is entitled to cast the vote for that Parcel. If the Owners of any such Parcel cannot agree who shall be entitled to cast the single vote of that Parcel, or if the Owners fail to designate the single person who is entitled to cast the vote for that Parcel within thirty (30) days after receipt of request for same from any Owner, then the Owner that owns the largest portion of that Parcel shall be entitled to vote, and the exercise of such right in good faith shall be binding on all other Owners of that Parcel.

c. **Taking.** In the event that the Easement Area or any part thereof is taken by power of eminent domain, or is conveyed under threat of condemnation and such taking will render the private roadway unusable for normal, regular, two-way vehicular ingress and egress, this agreement shall terminate. If such taking does not render the Easement Area so unusable, the obligations of the parties shall be abated to the extent of such taking, but this agreement shall otherwise continue in full force and effect. Proceeds from any such condemnation shall belong exclusively to the fee title owner of the property so taken.

d. **Burden and Benefit.** The easement granted hereunder shall run with the land as to all property burdened and benefitted by such easement, including any division or partition of such property. The rights, covenants and obligations contained in this agreement shall bind, burden and benefit each party's successors and assigns, lessees, mortgagees (or beneficiaries under a deed of trust) as to Adjacent Owner's Property or Fred Meyer's Property, or any portion thereof, as the case may be.

e. **Perpetual.** This Agreement shall be perpetual (except as provided below) and shall run with the land and shall be binding on and shall inure to the benefit of the parties hereto, their heirs,

successors or assigns. By unanimous consent, all Owners may agree to terminate this Agreement, in which case they shall cause to be recorded an instrument acknowledging such termination.

**f. Title.** This Agreement is granted subject to all prior easements and encumbrances of record. This Agreement will not be subordinated or rendered inferior to any future financing by any Owner.

**g. Mortgagee Protection.** No breach of the provisions in this Agreement shall defeat or render invalid the lien of any mortgage(s) or deed(s) of trust now or hereunder executed which affects an Owner's interests pursuant to this Agreement; provided, however, that upon any sale under foreclosure of any mortgage(s) or under the provisions of any deed(s) of trust, any purchaser at such sale, and its successors and assigns, shall hold any and all property interest so purchased subject to all of the provisions of this Agreement.

**h. Third Parties.** Nothing in this Agreement, express or implied, shall confer upon any person, other than the Owners, any right or remedies under or by reason of this Agreement. The rights and remedies of tenants and other persons are limited to those contained in the lease agreements or other agreements the Owners may have with such tenants or other persons and to those rights and remedies otherwise explicitly conferred by such Owners on such persons. Nothing in this Agreement shall prevent any Owner from imposing on such Owner's own tenants or other persons being granted rights of use, either expressly or by implication, by the Owner, such rules, regulations and restrictions as the Owner may determine to be necessary or appropriate.

**i. Invalidity.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision shall be ineffective to the extent of such invalidity or unenforceability, but the validity of the remaining provisions of this Agreement shall not be affected thereby. Furthermore, in lieu of each such invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

**j. No Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Development to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

**k. Disclaimer.** No provision of this Agreement or previous (or subsequent) conduct or activities of Fred Meyer and/or present or subsequent Owner(s) will be construed: (i) as making Fred Meyer and/or present or subsequent Owner(s) a partner, joint venturer, agent or principal of or with each other, or (ii) as creating any express or implied obligation for Fred Meyer to construct a retail building or other improvements on its Parcel(s) or to develop or operate any Parcel as a retail development or otherwise. Whether and how an Owner may develop its Parcel(s) are at the Owner's discretion. No person will have any claim against (or right to recover any damages or costs from) any Owner in the event Fred Meyer does not develop or operate its Parcel(s).

**l. Entire Agreement, Amendment.** This Agreement sets forth the entire agreement of the parties with respect to the subject matter hereof. This Agreement may only be amended in writing signed by all Owners, and any such amendment must be recorded in the real estate records of Klamath County, Oregon in order to be effective.

m. **Rights of and Successors to Fred Meyer.** As used in this Agreement, the term "Fred Meyer" shall mean the undersigned entity, and its successors and assigns as holder of a leasehold estate in or owner of Fred Meyer's Property. In the event such entity, and its successors and assigns, no longer is the owner or holder of a leasehold estate in any portion of Fred Meyer's Property, then the term "Fred Meyer" will apply to and mean the fee owner of Fred Meyer's Property.

ADJACENT OWNER:

EDWIN N. LIPPERT

By: Edwin N. Lippert

Name: Edwin N. Lippert

Title: Trustee

FRED MEYER:

FRED MEYER STORES, INC.,  
(formerly known as, and whose name  
appears of record as, **Fred Meyer, Inc.**),  
a Delaware corporation

By: Robert Currey-Wilson

Name: Robert Currey-Wilson

Title: Group Vice President

STATE OF OREGON

County of Josephine

SS

This instrument was acknowledged before me this 29<sup>th</sup> day of September, 2000 by Edwin N. Lippert as Trustee of THE LIPPERT FAMILY REVOCABLE LIVING TRUST, on behalf of the trust.

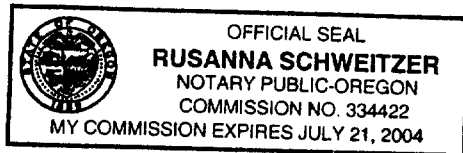
Linda C. Deba  
Notary Public for Oregon



STATE OF OREGON

County of Multnomah SS

This instrument was acknowledged before me this 11th day of September, 2000 by Robert Currey-Wilson as the Group Vice President of FRED MEYER STORES, INC. (formerly known as Fred Meyer, Inc.), a Delaware corporation, on behalf of the corporation.



Rusanna Schweitzer  
Notary Public for Oregon

**CONSENT AND AGREEMENT**

(By Fee Owner and Lessor)

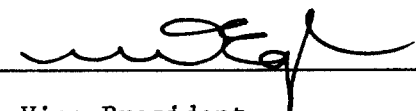
The undersigned holds the fee owner's interest, and the lessor's interest under the lease referenced below, with respect to the real property identified on the attached Exhibit B, situated in Klamath County, Oregon, under a certain lease and related documentation ("**Lease**") between the undersigned as landlord/lessor and FRED MEYER STORES, INC. (whose name was formerly FRED MEYER, INC.), a Delaware corporation, as tenant/lessee, including the Lease Agreement evidenced by the memorandum dated as of March 10, 1988, recorded on March 11, 1988 in Volume M88 at page 3424, recorded in the Official Records of Klamath County, Oregon.

The undersigned hereby consents to the execution of the foregoing Supplement #2 to Reciprocal Easement and Restriction Agreement ("**Declaration**"), for the purposes stated therein, and agrees that expiration or any termination of the Lease will not terminate the easements and other provisions of such Declaration as to the property described therein and in the Lease.

IN WITNESS WHEREOF, the undersigned has executed this Consent and Agreement on this 6th day of September, 2000.

LXP II, L.P.,  
a Delaware limited partnership

By: LXP II, Inc., a Delaware corporation  
Its: General Partner

By:   
Its: Vice President

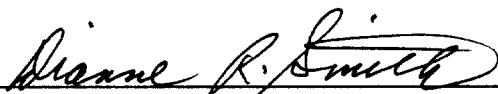
STATE OF NEW YORK

County of NEW YORK

ss

The foregoing instrument was acknowledged before me this 6th day of September, 2000 by T. Wilson Eglin, the Vice President of LXP II, Inc., a Delaware corporation, as general partner of and on behalf of LXP II, L.P., a Delaware limited partnership.

WITNESS my hand and official seal.

  
Notary Public for the State of New York  
My commission expires: \_\_\_\_\_

**DIANNE R. SMITH**  
Notary Public, State of New York  
No. 41-4934239  
Qualified in Queens County  
Certificate Filed in New York County  
Commission Expires June 20, 2003



**EXHIBIT A****Legal Description of Adjacent Owner's Property**

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°28'30" West 168.83 feet; thence North 89°31'30" East 55.00 feet to a point on the easterly right-of-way line of Washburn Way; thence North 00°28'30" West 1194.44 feet to the point of intersection of the easterly right-of-way line of Washburn Way and the southerly right-of-way line of Eberlein Avenue and the Point of Beginning; thence running along the southerly right-of-way line of Eberlein Avenue, North 89°16'27" East 588.17 feet; thence, leaving said right-of-way, South 00°28'07" East 252.96 feet; thence South 89°31'53" West 588.13 feet to the easterly right-of-way line of Washburn Way; thence along said right-of-way line, North 00°28'30" West 250.32 feet to the Point of Beginning.

**EXHIBIT B****Legal Description of Fred Meyer's Property**

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°28'30" West 168.83 feet; thence North 89°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°28'30" West 944.12 feet; thence leaving said right-of-way, North 89°31'53" East 588.13 feet; thence South 00°28'07" East 1101.80 feet to the northerly right-of-way line of Shasta Way; thence along said right-of-way South 89°52'25" West 77.96 feet; thence North 87°15'50" West 300.37 feet; thence South 89°52'25" West 7.13 feet; thence leaving said right-of-way, North 00°28'07" West 159.15 feet; thence South 89°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°20'54" West 36.24 feet to the Point of Beginning.

State of Oregon, County of Klamath  
Recorded 10/02/00, at 2:22 p.m.  
In Vol. M00 Page 36065  
**Linda Smith,**  
County Clerk Fee \$ 66<sup>00</sup>