

2007-011765

Klamath County, Oregon



00026003200700117650060064

06/29/2007 12:09:10 PM

Fee: \$51.00

After recording, return to:  
Fred Meyer Stores, Inc.  
Attn: Corporate Law Dept. M/S 23-C  
3800 SE 22<sup>nd</sup> Avenue  
Portland, OR 97202

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

1ST 1036546  
**THIS AGREEMENT**, made and entered into this 27 th day of June 2007, between LXP II, L.P., a Delaware limited partnership, as assignor ("**Assignor**"), having an address at 7 Bulfinch Place, Suite 500, Boston, MA 02114 and FRED MEYER STORES, INC., an Ohio corporation, successor in interest to Fred Meyer, Inc., as assignee ("**Assignee**"), having an address at 3800 SE 22<sup>nd</sup> Avenue, Portland, OR 97202.

**WITNESSETH:**

**WHEREAS**, Assignor has heretofore entered into that certain Supplement to Reciprocal Easement Agreement and Declaration, dated as of January 22, 1997 ("**Supplement to REA**"), and recorded on January 31, 1997, in Volume M97, Page 3079, Official Records of Klamath County, Oregon, which supplements and amends that certain Reciprocal Easement Agreement between Taco Bell Corp. and Assignee, dated as of February 24, 1993 ("**REA**"), and recorded on March 15, 1993, in Volume M93 at Page 5282, Official Records of Klamath County, Oregon, which affects that certain property (the "**Premises**") as described and set forth in the legal description attached hereto as Exhibit A, which Premises is the subject of a certain letter agreement of purchase and sale dated as of April 3, 2007, as amended June 18, 2007 (the "**Purchase and Sale Agreement**"), by and between Assignor, as seller, and Assignee, as purchaser; and

**WHEREAS**, Assignor desires to assign to Assignee all of the Assignor's right and interest in and to the Supplement to REA ("**Assignor's Rights**"); and Assignee desires to accept the assignment by Assignor of all of Assignor's Rights, Assignee being willing to perform all duties and responsibilities of the Assignor under the Supplement to REA as hereinafter set forth;

**NOW, THEREFORE**, in consideration of the mutual acts, obligations and covenants of the parties, one to the other, and other good and valuable consideration, the receipt whereof is hereby acknowledged by the parties, one to the other, it is mutually understood and agreed as follows:

1. **Assignment.** Assignor hereby assigns, sets over and transfers Assignor's Rights to Assignee, its successors and assigns.

2. **Acceptance of Assignment.** Assignee hereby accepts the within assignment by Assignor of Assignor's Rights and Assignee hereby covenants to assume and perform all duties and responsibilities of the Assignor under the Supplement to REA.

3. **Release and Indemnification.** Assignee hereby releases Assignor from any and liability arising herefrom and from the Supplement to REA, and shall indemnify and hold Assignor harmless from, and against any and all costs, losses, liabilities, and expenses, including reasonable attorney's fees, court costs and costs of collection, arising out of any breach by Assignee under the Supplement to REA respecting the Assignor's duty to perform its obligations thereunder, commencing from the date hereof.

4. **Survival.** This agreement and any indemnifications hereunder shall survive closing of that certain purchase and sale transaction contemplated by the Purchase and Sale Agreement.

5. **Binding Effect.** This agreement shall be binding upon the parties hereto, their successors and assigns.

6. **Modification.** This Agreement may not be modified, revoked or amended other than in writing.

7. **Governing Law.** This Agreement shall be governed by and in accordance with the laws of the State of Oregon.

**IN WITNESS WHEREOF,** the parties hereto have duly executed this Agreement as of the date first above written.

**Assignor:**

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

By: LXP II, Inc., General Partner

By: 

Name: John S. Cramer

Title: Authorized Representative

**Assignee:**

FRED MEYER STORES, Inc.,  
an Ohio corporation

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

Name: Nona M. Soltero

Title: Vice President & Assistant Secretary

## ACKNOWLEDGEMENT

State of Massachusetts ss.:  
County of Suffolk )

On the 27 day of June in the year 2007 before me, Amy Grucan  
personally appeared John Cramer personally known to me or  
proved to me on the basis of satisfactory evidence to be the individual whose name is  
subscribed to the within instrument and acknowledged to me that he/she executed the same in  
his/her capacity, that by his/her signature on the instrument, the individual, or the person upon  
behalf of which the individual acted, executed the instrument, and that such individual made  
such appearance before the undersigned.

Amy E. Grucan  
Notary Public

My Commission Expires: 9-29-11

State of Oregon ) ss.:  
County of Multnomah )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2007 before me, \_\_\_\_\_,  
personally appeared Nona M. Soltero personally known to me or proved to me on the basis of  
satisfactory evidence to be the individual whose name is subscribed to the within instrument  
and acknowledged to me that she executed the same in her capacity, that by her signature on  
the instrument, the individual, or the person upon behalf of which the individual acted,  
executed the instrument, and that such individual made such appearance before the  
undersigned.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

3. **Release and Indemnification.** Assignee hereby releases Assignor from any and liability arising herefrom and from the Supplement to REA, and shall indemnify and hold Assignor harmless from, and against any and all costs, losses, liabilities, and expenses, including reasonable attorney's fees, court costs and costs of collection, arising out of any breach by Assignee under the Supplement to REA respecting the Assignor's duty to perform its obligations thereunder, commencing from the date hereof.

4. **Survival.** This agreement and any indemnifications hereunder shall survive closing of that certain purchase and sale transaction contemplated by the Purchase and Sale Agreement.

5. **Binding Effect.** This agreement shall be binding upon the parties hereto, their successors and assigns.

6. **Modification.** This Agreement may not be modified, revoked or amended other than in writing.

7. **Governing Law.** This Agreement shall be governed by and in accordance with the laws of the State of Oregon.

**IN WITNESS WHEREOF,** the parties hereto have duly executed this Agreement as of the date first above written.

**Assignor:**

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

By: LXP II, Inc., General Partner

By: \_\_\_\_\_  
Name:  
Title:

**Assignee:**

FRED MEYER STORES, Inc.,  
an Ohio corporation

By: Nona M. Soltero  
Name: Nona M. Soltero  
Title: Vice President & Assistant Secretary

**ACKNOWLEDGEMENT**

State of \_\_\_\_\_ ) ss.:  
County of \_\_\_\_\_ )

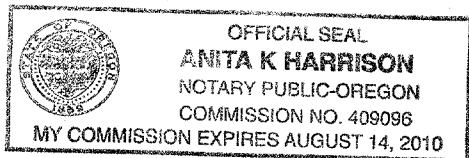
On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2007 before me, \_\_\_\_\_ personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

State of Oregon ) ss.:  
County of Multnomah )

On the 27<sup>th</sup> day of June in the year 2007 before me, Anita K Harrison, personally appeared Nona (M. Soltero personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned.



Anita K Harrison  
Notary Public

My Commission Expires: August 14, 2010

## **EXHIBIT A**

Real property in the County of Klamath, State of Oregon, described as follows:

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.

Tax Parcel Numbers: R65958 and P21103 and P88922