

2010-010704

Klamath County, Oregon



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09/09/2010 02:54:04 PM

Fee: \$72.00

After recordation return to:

Fred Meyer Stores, Inc.
Attn: Corporate Law Dept. 04002-23C
3800 SE 22nd Avenue
Portland, OR 97202

1st Courtesy

CONDITIONAL ACCESS EASEMENT

This Conditional Access Easement is made as of September 2, 2010 by FRED MEYER STORES, INC., an Ohio corporation ("**Grantor**") for the benefit of LOWE'S HIW, INC., a Washington corporation ("**Grantee**").

RECITALS

A. Grantor owns certain real property located in the City of Klamath Falls, Klamath County, State of Oregon and legally described on Exhibit A attached hereto ("**Grantor Property**").

B. Grantee owns certain real property which is adjacent to Grantor's Property and is legally described on Exhibit B attached hereto ("**Grantee's Property**").

C. Grantor desires to grant to Grantee an access easement over a portion of Grantor's Property in order to provide Grantee access to Shasta Way subject to the terms and conditions set forth below.

AGREEMENT

1. **GRANT OF EASEMENT.** Subject to the conditions in Section 2 and effective upon the "Effective Date" defined below, Grantor does hereby grant unto Grantee for the benefit of Grantee's Property a perpetual, nonexclusive easement ("**Easement**") for ingress and egress over, along, across, in and through the driveways and sidewalks (if any) presently located on or located in the future on that portion of Grantor's Property legally described on Exhibit C-1 attached hereto and shown on the drawing attached hereto as Exhibit C-2 ("**Easement Area**"). This Easement is granted for the sole purpose of providing Grantee and Grantee's successors and assigns, and their customers and invitees, vehicular and pedestrian access to and from Grantee's Property and Shasta Way.

2. **CONDITIONS TO GRANT OF EASEMENT.** The Easement is subject to Grantee granting a perpetual, nonexclusive easement for ingress and egress over, along, across, in and through a portion, to be determined, of Grantee's Property for the purpose of providing Grantor and Grantor's successors and assigns, and their customers and invitees, vehicular and pedestrian access to and from Grantor's Property and Shasta Way. The "Effective Date" shall be the date that Grantee records in the real property records of Klamath County the access easement described in the prior sentence in a form and with terms and conditions reasonably acceptable to Grantor.

3. **COMPATIBLE USES.** Grantor reserves the right to engage in any use compatible with the full enjoyment of Grantee's rights granted herein, including the right to grant other easements in and to the Easement Area. Without limiting the foregoing, Grantor reserves the right to construct roadways, curbs, sidewalks, landscaping and similar improvements over portions of the Easement Area, and to make reasonable alterations to such improvements from time to time; provided that no such alterations shall, in any material respect, diminish or interfere with the purpose of this Easement, or the access of Grantee or Grantee's customers and invitees to, from or through the Easement Area.

4. **INDEMNIFICATION** Grantee shall defend, indemnify and hold Grantor harmless from and against any and all claims, demands, losses, damages, expenses and liabilities, including personal injury, and for any damage to or loss or destruction of property, (collectively, "claim") suffered by Grantor, its tenants, agents, employees, customers and invitees, arising out of Grantee's, its tenants, agents, employees, customers, and invitees use of the Easement Area for the purposes described herein or its related activities conducted thereon; provided, however, that Grantor shall not be entitled to such indemnification for a claim to the extent caused by the negligence or misconduct of Grantor.

5. **MAINTAINENCE.** Grantor shall, at it expense, maintain and repair the Easement Area so that it is at all times in good condition and repair; provided, however, in the event any repairs or maintenance arise exclusively out of the use of the Easement Area by Grantee or are necessitated by the negligent or otherwise tortuous conduct of Grantee, Grantee shall be solely responsible for payment of the resulting costs and expenses of maintenance and repair. Grantee shall be responsible for the cost and maintenance of any improvements on Grantee's Property needed to connect to the Easement Area.

6. **RELOCATION OF EASEMENT.** Grantor reserves the right from time to time, to relocate the Easement Area so long as such relocated Easement Area provides reasonably equivalent access to and from Grantee's Property and Shasta Way. Such relocation shall be done at the sole expense of Grantor.

7. **MISCELLANEOUS.** This Easement shall run with the land as to all property burdened and benefited by this Easement including any division or partition of such property. The rights, covenants and obligations contained in this Easement shall bind,

burden and benefit the successors and assigns of Grantor and Grantee. The rights granted herein are subject to matters of record affecting the Easement Area. Grantor does not warrant title to the Easement Area and shall not be liable for defects thereto or failure thereof. The laws of the State of Oregon shall govern the interpretation, validity, performance, and enforcement of this Easement.

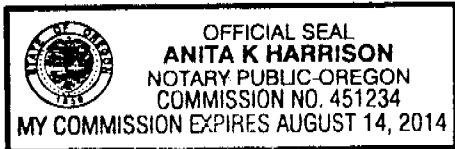
GRANTOR:

FRED MEYER STORES, INC.

By: Bob Currey
Title: Vice President

State of Oregon)
County of Multnomah) ss.

This instrument was acknowledged before me on September 2 2010 by Robert Currey-Wilson
as Vice President of Fred Meyer Stores, Inc.



Anita K Harrison
(Notary Public - State of Oregon)

My commission expires: 8-14-2014

EXHIBIT A

LEGAL DESCRIPTION OF THE GRANTOR PROPERTY

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 1,101.80 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.

(SOURCE OF SITE LEGAL DESCRIPTION: STATUTORY SPECIAL WARRANTY DEED RECORDED IN KLAMATH COUNTY OREGON RECORDING #2007-011764)

Project Name: Fred Meyer
August 25, 2010

BKC
12652:003 doc

EXHIBIT B

LEGAL DESCRIPTION OF GRANTEE'S PROPERTY

PARCEL 1 OF LAND PARTITION 37-08 LOCATED IN SECTION 34, TOWNSHIP 38 SOUTH,
RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, CITY OF KLAMATH FALLS, KLAMATH
COUNTY, OREGON.

EXHIBIT C-1

LEGAL DESCRIPTION OF EASEMENT AREA

ALL THE EXISTING DRIVEWAYS AND PEDESTRIAN WALKWAYS CONTAINED WITHIN THE EAST 56 FEET OF THE SOUTH 213 FEET OF THE FOLLOWING PARCEL:

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Project Name: Fred Meyer
August 25, 2010

BKC/ath/pj
126521.002

2655 SHASTA WAY - KLAMATH FALLS, OR 97603
SHEET 1 OF 2

FUTURE LOWE'S

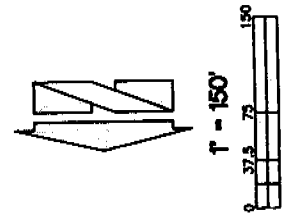
ACCESS EASEMENT
TO LOWE'S

FUTURE LOWE'S

Fred Meyer #165

SHASTA-WAY

WASHBURN AVENUE



BCE JOB# 12652

EXHIBIT C-2

2655 SHASTA WAY - KLAMATH FALLS, OR 97603
SHEET 2 OF 2

File:P:\12000s\12652\exhibit\12652-esmt-exhibit-B.dwg Date/Time:8/25/2010 12:24 PM Scale:1:1 XREF JSTEFANCIK Xref: 212652I-expansion.dwg, 212652s-expansion.dwg

BCE JOB# 12652

