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WHEN RECORDED, RETURN TO:

FRED MEYER STORES, INC.  
P.O. Box 42121  
Portland, Oregon 97242  
Attn.: Rusanna Schweitzer 04002 33R

ENT 60522:2000 PG 1 of 10  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2000 Aug 02 4:14 pm FEE 32.00 BY JW  
RECORDED FOR FIRST AMERICAN TITLE CO

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS**  
(Orem, Utah Fred Meyer Development)

This AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (this "Agreement") is made August 2, 2000 by Wilmington Trust Company, a Delaware corporation, not individually but solely as Owner Trustee under the FMS Trust 1997-1, a Delaware business trust (the "Owner Trustee"), by Fred Meyer Stores, Inc., a Delaware corporation ("FMS"), by GMRI, Inc., a Florida corporation ("GMRI"), and by Mountain America Credit Union, a Utah Corporation ("Mountain").

**RECITALS**

A. A Declaration of Covenants, Conditions, Restrictions and Easements was recorded on September 3, 1997 in the real property records of Utah County, Utah as ENT 67916, Book 4366 at Page 154 (the "Declaration"). The Declaration concerns the real property legally described as Lots 1, 2, 3, 4 and 5, Plat "B," FRED MEYER SUBDIVISION, Phase II, Orem, Utah, according to the official plat thereof, on file in the office of the Utah County Recorder, Utah, and recorded November 20, 1996 as ENT 94188, Map #6850, (the "Development").

B. The Owner Trustee is the fee owner of Lots 1 and 5 of the Development. Lot 1 shall be referred to as the "Anchor Parcel". Lot 5 shall be referred to as "Lot 5." The Owner Trustee leases the Anchor Parcel and Lot 5 to Fred Meyer, Inc., a Delaware corporation ("FMI"), which in turn subleases the Anchor Parcel and Lot 5 to FMS.

C. Mountain is the fee owner of Lot 2 of the Development. Lot 2 shall be referred to as "Lot 2."

D. FMS is the fee owner of Lot 3 of the Development. Lot 3 shall be referred to as "Lot 3."

E. GMRI is the fee owner of Lot 4 of the Development. Lot 4 shall be referred to as the "GMRI Parcel".

F. In accordance with Section 16.10 of the Declaration, the parties to this Agreement desire to amend the Declaration pursuant to the terms of this Agreement.

## AGREEMENT

In consideration of the mutual agreements of the parties set forth in this Agreement and other good and valuable consideration, the parties agree as follows:

1. **Definitions.** All capitalized terms not defined in this Agreement shall have the meanings set forth in the Declaration.

A. **"Sit Down Restaurant"** shall mean a restaurant where waiters or waitresses take orders from and serve food to seated customers, or where food is available in a buffet style. A Fast Food Restaurant, defined below, is not a Sit Down Restaurant.

B. **"Fast Food Restaurant"** shall mean a quick service restaurant where customers place orders while standing at a counter area, and receive food in the same area (for dine-in or dine-out), or where customers use a drive-through window. Examples of Fast Food Restaurants include McDonald's, Taco Bell, Subway, and the like.

2. **Parking.** FMS will not decrease the net number of parking spaces in the area marked on the site plan attached as Exhibit A without obtaining the consent of GMRI. This provision is for the benefit of the GMRI Parcel only.

3. **Use Restriction as to Lot 2.** Any Sit Down Restaurant constructed on Lot 2 is limited to a maximum building area of 5,500 square feet. However, Lot 2 may be used as a Fast Food Restaurant. This use restriction is for the benefit of the GMRI Parcel only.

4. **Use and Restriction and Parking Space Minimum as to Lot 3.** Lot 3 may not be used as a Sit Down Restaurant, tavern, bowling alley, movie theatre, health club/spa, nighttime dance club or video game arcade/entertainment center. However, Lot 3 may be used as a Fast Food Restaurant. The number of parking spaces on Lot 3 may not be less than a number calculated from the following ratio: 4 spaces per 1,000 square feet of building area on Lot 3. These restrictions are for the benefit of the GMRI Parcel only.

5. **Use Restriction as to Lot 5.** Lot 5 may not be used as a Sit Down Restaurant (but may be used as a Fast Food Restaurant, deli or sandwich shop, take out pizza shop, bagel shop or the like), a tavern, bowling alley, movie theatre, health club/spa, nighttime dance club, video game arcade/entertainment center or gasoline service station. This use restriction is for the benefit of the GMRI Parcel only.

6. **Use Restriction as to the Anchor Parcel.** In the event that the Owner Trustee transfers fee interest in, or leases the Anchor Parcel to a person(s) or entity other than one owned or controlled by FMI, FMS or a related entity, (or to a non-related entity in conjunction with a sale-leaseback financing mechanism) the following uses will be prohibited in the southern half of the existing building on the Anchor Parcel: nighttime dance club, tavern, video arcade, movie theater, bowling alley or health club/spa. The southern half of the Anchor Parcel is defined in Exhibit A. This use restriction is for the benefit of the GMRI Parcel only.

7. **Affirmation and Incorporation of Declaration.** Subject to the amendments stated in this Agreement, the parties to this Agreement ratify and reaffirm all provisions of the Declaration. The Declaration (as amended by this Agreement) is in full force and effect, and nothing contained in this Agreement shall be construed as modifying such Declaration, except as specifically provided in this Agreement. Except as amended by this Agreement, the provisions of the Declaration are by this reference incorporated into this Agreement.

8. **Dominant and Servient Estates.** Each right granted pursuant to the provisions of this Agreement are expressly for the benefit of the GMRI Parcel. The GMRI Parcel shall be the dominant estate and the properties burdened by the respective obligations of this Agreement shall be the Servient Estates, as appropriate.

9. **Binding Effect.** The obligations under this Agreement shall run with the appropriate servient estate(s), and all successors and assigns of the servient estate(s). The benefits under this Agreement shall run to the GMRI Parcel, and all successors and assigns of the GMRI Parcel.

10. **Amendments.** The rights and duties in paragraphs 2 and 6 of this Agreement may only be amended by the written agreement of GMRI and FMS (as operator of the Anchor Parcel) or their successors or assigns, as owners (or in the case of FMS, as operator) of the GMRI Parcel and the Anchor Parcel.

The use restrictions with regard to Lot 2 (as set forth in paragraph 3, above) may only be amended by the written agreement of GMRI, FMS (as operator of the Anchor Parcel), and Mountain, or their successors or assigns, as owners (or in the case of FMS, as operator) of the respective parcels.

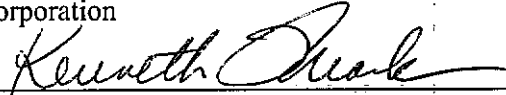
The rights and duties with regard to Lot 3 (as set forth in paragraph 4, above) may only be amended by the written agreement of GMRI, FMS (as the current owner of Lot 3) and FMS (as operator of the Anchor Parcel) or their successors or assigns, as owners (or in the case of FMS, as operator of the Anchor Parcel) of the respective parcels.


The rights and duties with regard to Lot 5 (as set forth in paragraph 5, above) may only be amended by the written agreement of GMRI, FMS (as operator of Lot 5) and FMS (as operator of the Anchor Parcel), or their successors or assigns, as owners (or in the case of FMS, as operator) of the respective parcels.

11. **Termination.** All rights and duties under this Agreement shall automatically and immediately terminate if the GMRI Parcel ceases to operate as a Sit Down Restaurant for a period of 365 consecutive days, subject to "Force Majeure" delays, as defined in the Purchase and Sale Agreement.

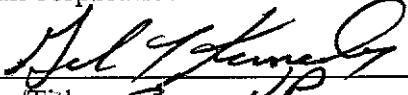
12. **Third Party Beneficiary Rights.** This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create any third party beneficiary rights in any person other than GMRI as owner of the GMRI Parcel and FMS as operator of the Anchor Parcel. The owners of Lots 2, 3 and 5 shall not have any right to enforce the restrictive covenants contained in this Agreement against an owner of Lot 2, 3 or 5.

EXECUTED effective as of the date and year of the Agreement as set forth above.

**FMS** **FRED MEYER STORES, INC.,**  
a Delaware corporation  
By:   
Name/Title: Kenneth Thrasher, Senior V.P.  
and Assistant Secretary

**Owner Trustee** **WILMINGTON TRUST COMPANY,**  
a Delaware corporation, not in its individual capacity, but  
solely as Owner Trustee under the FMS trust 1997-1, a  
Delaware business trust  
By: **FRED MEYER, INC.,** a Delaware corporation,  
its attorney-in-fact  
By:   
Name/Title: Kenneth Thrasher, Senior V.P.  
and Assistant Secretary

**GMRI** **GMRI, INC.,**  
a Florida corporation  
By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

**Mountain** **MOUNTAIN AMERICA CREDIT UNION,**  
a Utah corporation  
By:   
Name/Title: Sean V.P.

Acknowledgments on next page

12. **Third Party Beneficiary Rights.** This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create any third party beneficiary rights in any person other than GMRI as owner of the GMRI Parcel and FMS as operator of the Anchor Parcel. The owners of Lots 2, 3 and 5 shall not have any right to enforce the restrictive covenants contained in this Agreement against an owner of Lot 2, 3 or 5.

EXECUTED effective as of the date and year of the Agreement as set forth above.

**FMS**

**FRED MEYER STORES, INC.,**  
a Delaware corporation

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

**Owner Trustee**

**WILMINGTON TRUST COMPANY,**  
a Delaware corporation, not in its individual capacity, but solely as Owner Trustee under the FMS trust 1997-1, a Delaware business trust

By: **FRED MEYER, INC.,** a Delaware corporation,  
its attorney-in-fact

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

**GMRI**

**GMRI, INC.,**  
a Florida corporation

By:  \_\_\_\_\_  
Name/Title: Laurie B. Burns, Vice President

**Mountain**

**MOUNTAIN AMERICA CREDIT UNION,**  
a Utah corporation

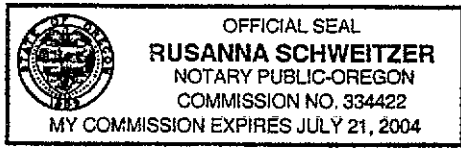
By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

**Acknowledgments on next page**

STATE OF OREGON )  
 ) ss.  
COUNTY OF MULTNOMAH )

On this 1st day of August, 2000, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared Kenneth Thrasher, to me known to be the person who signed as Sr. V.P. & Asst. Sec. of Fred Meyer Stores, Inc., the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; and on oath stated that he or she was duly elected, qualified and acting as said officer of the corporation and was authorized to execute said instrument on behalf of the corporation, that the seal affixed, if any, is the corporate seal of the corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.



Rusanna Schweitzer  
NOTARY PUBLIC in and for the State of Oregon,  
residing at Tigard  
My Appointment Expires: July 21, 2004

STATE OF OREGON )  
 ) ss.  
COUNTY OF MULTNOMAH )

On this 1st day of August, 2000, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared Kenneth Thrasher, to me known to be the person who signed as Sr. V.P. & Asst. Sec. of Fred Meyer, Inc., a Delaware corporation, on behalf of such corporation, as **attorney-in-fact** for and on behalf of **Wilmington Trust Company**, a Delaware corporation, not in its individual capacity but solely as Owner Trustee under the **FMS Trust 1997-1, a Delaware business trust**, on behalf of such business trust, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, as attorney in fact for and on behalf of such corporation and business trust; and on oath stated that he or she was duly elected, qualified and acting as said officer of the corporation and was authorized to execute said instrument on behalf of the corporation, that the seal affixed, if any, is the corporate seal of the corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.



Rusanna Schweitzer  
NOTARY PUBLIC in and for the State of Oregon,  
residing at Tigard  
My Appointment Expires: July 21, 2004

STATE OF FLORIDA )

) ss.

COUNTY OF ORANGE )

On this 31st day of July, 2000, before me, the undersigned, a Notary Public in and for the State of Florida, duly commissioned and sworn, personally appeared Laurie B. Burns, to me known to be the person who signed as Vice President of **GMRI, Inc.**, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; and on oath stated that he or she was duly elected, qualified and acting as said officer of the corporation and was authorized to execute said instrument on behalf of the corporation, that the seal affixed, if any, is the corporate seal of the corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.



Janet R. Phifer  
Commission # CC 945908  
Expires June 18, 2004  
Bonded Thru  
Atlantic Bonding Co., Inc.

Janet R. Phifer  
NOTARY PUBLIC in and for the State of Florida  
residing at GMRI, Inc.  
My Appointment Expires: 6-18-04

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2000, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of **Mountain America Credit Union**, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; and on oath stated that he or she was duly elected, qualified and acting as said officer of the corporation and was authorized to execute said instrument on behalf of the corporation, that the seal affixed, if any, is the corporate seal of the corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of \_\_\_\_\_  
residing at \_\_\_\_\_  
My Appointment Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2000, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of **GMRI, Inc.**, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; and on oath stated that he or she was duly elected, qualified and acting as said officer of the corporation and was authorized to execute said instrument on behalf of the corporation, that the seal affixed, if any, is the corporate seal of the corporation.

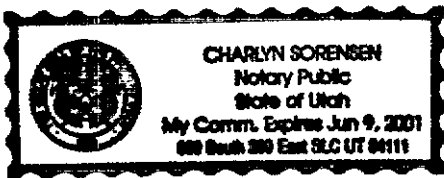
IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of \_\_\_\_\_  
residing at \_\_\_\_\_  
My Appointment Expires: \_\_\_\_\_

STATE OF Utah )  
 ) ss.  
COUNTY OF Salt Lake )

On this 31<sup>st</sup> day of July, 2000, before me, the undersigned, a Notary Public in and for the State of Utah, duly commissioned and sworn, personally appeared Gordon L. Kennedy, to me known to be the person who signed as Executive Vice President/COO of **Mountain America Credit Union**, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; and on oath stated that he or she was duly elected, qualified and acting as said officer of the corporation and was authorized to execute said instrument on behalf of the corporation, that the seal affixed, if any, is the corporate seal of the corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

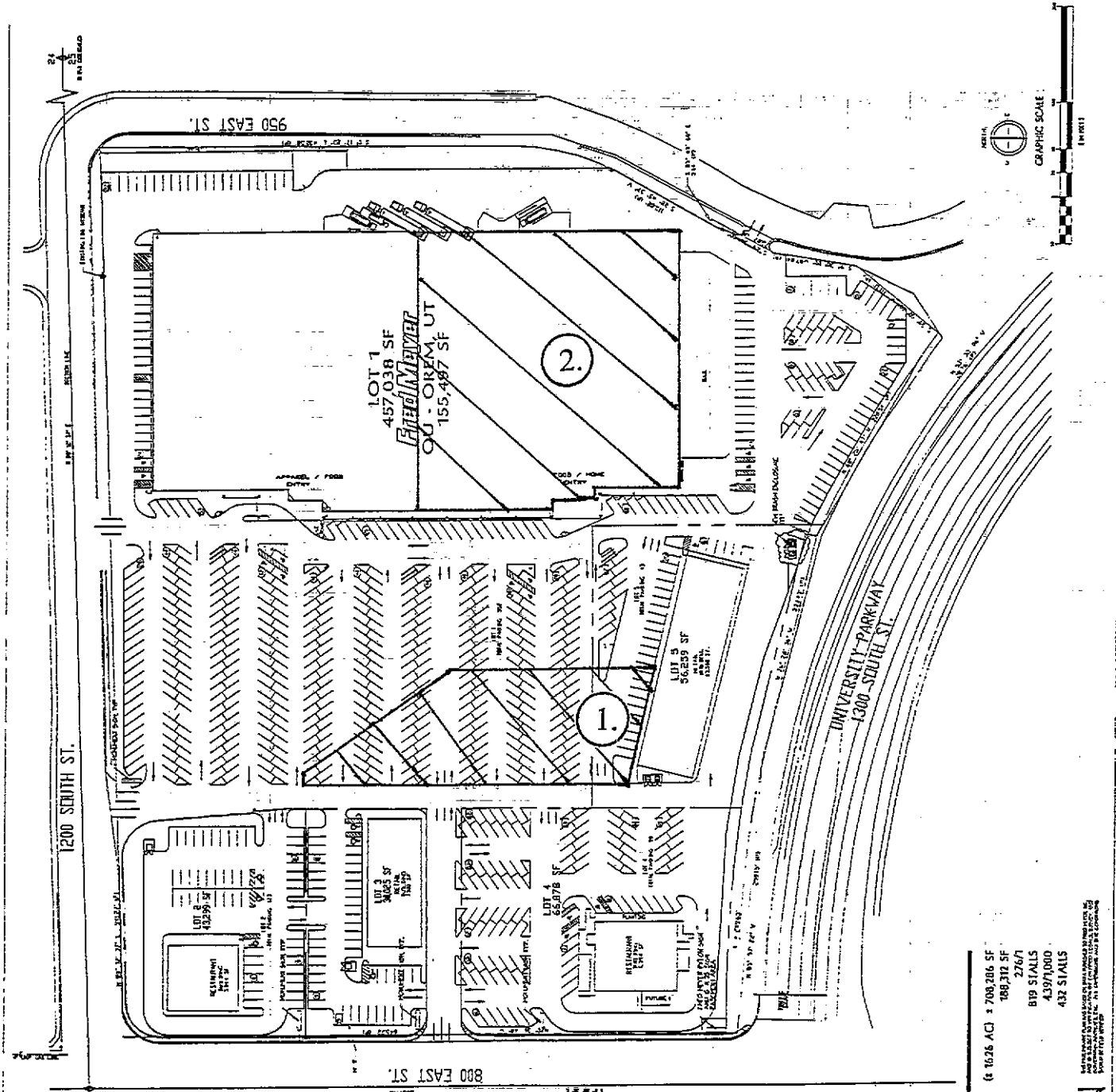


Charlyn Sorensen  
NOTARY PUBLIC in and for the State of Utah  
residing at Salt Lake County  
My Appointment Expires: June 9, 2001



**EXHIBIT A**

[Reference: Paragraphs 2 and 6 of Amendment to Declaration]



1. **Parking.** FMS will not decrease the net number of parking spaces in this area without consent of GMRI.
2. **Use Restriction as to the Anchor Parcel.** Southern half of the existing building on the Anchor Parcel shall be prohibited from use as: movie theater, bowling alley, or health club/spa.

**SUMMARY**

TOTAL SITE AREA	(± 1626 AC)	± 708,286 SF
IMPERVIOUS AREA		186,312 SF
SOILBORNG RATIO		276/1
PARKING PROVIDED		819 STALLS
PARKING RATIO		4.397/1,000
CONVENIENCE PARKING		432 STALLS

**SITE PLAN**

**EXHIBIT B**

Legal Description of Development

Lots 1, 2, 3, 4, and 5, Plat "B", FRED MEYER SUBDIVISION, Phase II, Orem, Utah, according to the official plat thereof, on file in the office of the Utah County Recorder.