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DECLARATION OF COVENANTS, CONDITIONS
RESTRICTIONS AND EASEMENTS

by

FIRST SECURITY BANK OF UTAH, N.A.,
not individually but solely as Trustee under the FM Trust 1995-2
whose address is:
c/o Fred Meyer, Inc., P.O. Box 42121, Portland, Oregon 97242-0121

Concerning property located in
Orem, Utah

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DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
(Orem, Utah)

This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (the "Declaration") is made this 28th day of Aug. 1997 by FIRST SECURITY BANK OF UTAH, N.A., not individually but solely as Trustee under the FM Trust 1995-2 ("Declarant").

Declarant is the fee owner of certain real property described on the attached Exhibit 1. The property has been or is in the process of being divided into two or more parcels, generally as shown on the site plan or parcel map attached as Exhibit 2 (each of which is a "Parcel").

Declarant leases the "Anchor Parcel," as defined herein, to Fred Meyer, Inc., a Delaware corporation ("Fred Meyer"). Pursuant to a limited power of attorney, recorded in the official records of Utah County, Utah, at book 3885, page 670 and until such time as such power is terminated, Fred Meyer has full authority to act on behalf of Declarant for purposes of this Declaration.

Declarant and Fred Meyer desire to have the Parcels used in an integrated and coordinated manner. As used below, the "Development" consists of the Parcels, and any additional land owned and/or from time to time operated as part of the retail development on such Parcels (subject to the limitations stated below concerning the necessity for amending this Declaration to add any land area).

NOW, THEREFORE, in order to assure the orderly and beneficial development of the Parcels, Declarant does hereby declare that all Parcels in the Development shall be held, sold and conveyed subject to the provisions of this Declaration, which shall run with the land and shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the Development or any part thereof, and all heirs, successors and assigns of such parties, on the following terms:

1. Definitions. The following terms shall have the meanings set forth below:

"Anchor Parcel": Parcel #1 as shown on Exhibit 2. In the event that Parcel #1 is hereafter divided, Declarant shall determine which of the subdivided parcels is the Anchor Parcel (provided, Declarant reserves the right to determine that each or all of the subdivided portions of the Anchor Parcel constitutes an Anchor Parcel for purposes of the use restrictions set forth in this Declaration).

"Building Area": All those areas on each Parcel on which buildings or other commercial structures are constructed in accordance with this Declaration, together with any drive-through lanes, outdoor play or eating areas, and outdoor sales areas shown on any site plan approved by Declarant.

"Building Envelope": The area on each Non-Anchor Parcel that Declarant has approved for use as Building Area. A Parcel's Building Envelope may be larger than the Building Area that is or will be permitted on such Parcel under the provisions of this Declaration or under applicable land use regulations; the purpose of the Building Envelopes is to generally identify the portions of the Non-Anchor Parcels that may contain Building Area.

"Common Area": All those areas on each Parcel which are not Building Area. Canopies which extend over the Common Area, together with any columns or posts supporting the same, shall be deemed to be a part of the building to which they are attached and not a part of the Common Area.

"Declarant": The undersigned FIRST SECURITY BANK OF UTAH, N.A., not individually but solely as Trustee under the FM Trust 1995-2, and its successors and assigns as fee owner of the Anchor Parcel.

"Easement Areas": Collectively, the Common Area and the Utility Easement Area.

"Fred Meyer": Fred Meyer, Inc., a Delaware corporation, and its successors and assigns as lessee under a Prime Lease with respect to the Anchor Parcel. At such time as Fred Meyer's leasehold interest in the Anchor Parcel is terminated or is merged with the fee ownership of the Anchor Parcel, all references to Fred Meyer herein shall instead refer to Declarant.

"Major Anchor Store": A retail store containing at least 75,000 square feet of gross building area.

"Non-Anchor Parcel": The Parcels in the Development other than the Anchor Parcel.

"Owners": Collectively, the owners of each of the Parcels. The singular term "Owner" shall mean any one of the Owners.

"Permitted Persons": Each Owner and its respective successors, and assigns; 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. An "Owner's Permitted Persons" and similar terms shall mean the Permitted Persons whose rights under this Declaration derive from that particular Owner.

"Prime Lease": If an Owner of a Parcel sells the Parcel to an unaffiliated third party and thereafter enters into a net lease for the Parcel with such third party or its lessee or sublessee, the net lease pursuant to which the former Owner continues to lease and occupy the Parcel. The **"Prime Lessee"** includes the successors and assigns of the lessee under the Prime Lease but does not include the sublessees, licensees or concessionaires of said Prime Lessee.

"Sign Area": The area on each Non-Anchor Parcel on which the Owner may be entitled to construct a sign in accordance with this Declaration (or, if applicable, the area on the Anchor Parcel reserved for a sign benefitting a specified Non-Anchor Parcel). Initially approved Sign Areas are shown on Exhibit 2.

"Utility Easement Area": All areas of the Development on, over, under or through which any Utility Line (as defined in Section 8.1 below, and including new Utility Lines installed in accordance with such Section) is located which serves the Owner's Parcel exclusively or in common with the other Owner's Parcel.

2. Building and Common Area Development.

2.1 Site Plan and Architectural Review. Fred Meyer, on behalf of Declarant, will have the right of prior review and approval of: (1) the site plan and the architectural plans for improvements within each Parcel (excluding interior tenant improvements and fixturing and interior alterations), including any changes to elevations within the Parcel and the elevations of the finished floors of any buildings, the size and location of the Building Area within the Building Envelope, the number of parking

spaces provided, and the design of the Common Area to be located on each Parcel; (2) the existence (and if permitted by Fred Meyer, on behalf of Declarant, the design and layout) of any drive-up or drive-through facilities; (3) any additions or material modifications to the exterior of any improvements on any Parcel; (4) any changes to the Common Areas or to the size or location of the Building Area or Building Envelope on any Parcel; and (5) the location, design, and size of any signs installed on any Parcel. All approvals by Fred Meyer, on behalf of Declarant, must be in writing. Review of architectural and signage matters will include architectural design, style, exterior color, quality of materials and construction, and compatibility (in Fred Meyer's judgment reasonably exercised) of the improvement or change compared to the other portions of the Development.

2.2 Common Area. All portions of a Parcel that are not used as Building Area shall, at the time that a building is developed on the applicable Parcel, be developed as improved Common Area by the Owner thereof, at the Owner's sole cost and expense, in accordance with the site plan approved by Fred Meyer, on behalf of Declarant. Development of such Common Area shall be substantially completed no later than the day the first occupant of a building on such Parcel opens for business.

2.3 Type and Design of Building.

(a) General Standard. Each building in the Development 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.

(b) Safety. Every building in the Development 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 other building in the Development.

(c) Structural Integrity. No building shall be built in such a manner as to adversely affect the structural integrity of any other building in the Development.

(d) Height. No portion of any building on a Non-Anchor Parcel shall exceed one (1) story or twenty-three (23) feet in height above grade, except as otherwise approved in writing by Fred Meyer, on behalf of Declarant. Such height will not in any event exceed the limitations imposed by applicable legal requirements.

2.4 Construction Requirements.

(a) Staging and Performance of Work. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or Common Area improvements located in the Development shall be performed and completed in a good and workmanlike manner, as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Development, or any part thereof, to or from any public right-of-way, (ii) customer vehicular parking in that portion of the improved Common Area located in front of any building constructed in the Development, or (iii) the receiving of merchandise by any business in the Development, including, without limitation, access to service facilities. Staging for the construction, replacement, alteration or expansion of any building, sign or Common Area improvements located in the Development including, without limitation, the location of any temporary buildings, or construction sheds,

the storage of building materials, and the parking of construction vehicles and equipment, shall be limited to that portion of the Development approved in writing by Fred Meyer, on behalf of Declarant. If a retail store is then open on the Anchor Parcel, all such staging shall be at least 500 feet from the public entrance(s) to such retail store unless Fred Meyer, on behalf of Declarant, agrees otherwise in its sole discretion. Unless otherwise agreed by Fred Meyer, no construction shall occur during the months of November or December. At Fred Meyer's option the staging area(s) and/or construction area(s) shall be fenced at the expense of the person contracting for the performance of such work ("Contracting Party"). Unless otherwise specifically stated herein, Contracting Party shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all buildings, signs and Common Area improvements damaged or destroyed in the performance of such work.

(b) **Handling of Lien Claims.** The Contracting Party shall not permit any liens to stand against any Parcel for any work done or materials furnished in connection with the performance of the work described in subparagraph (a) above; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall, within thirty (30) days after receipt of written notice from the Owner or Prime Lessee of any Parcel encumbered by any such lien or claim of lien, cause any such outstanding lien or claim of lien to be released of record or bonded over in accordance with applicable law. If the Contracting Party fails to do so within such 30-day period, then the Owner or Prime Lessee of the Parcel shall have the right, at the Contracting Party's expense, to cause such lien to be bonded over.

(c) **Incidental Temporary Encroachments.** Declarant recognizes that incidental encroachments upon the Common Area may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of buildings, signs and Common Area improvements located in the Development, all of which are permitted hereunder so long as all activities requiring the use of such facilities are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the improved Common Area or with the normal operation of any business in the Development.

2.5 Casualty and Condemnation. In the event all or any portion of any building in the Development is (i) damaged or destroyed by fire or other casualty, or (ii) taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, the Owner of such building shall promptly restore or cause to be restored the remaining portion of such building or, in lieu thereof, shall remove or cause to be removed the damaged portion of such building together with all rubble and debris related thereto. All Building Areas on which buildings are not reconstructed following a casualty or condemnation shall be graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the Development or any portion thereof, shall be covered by a one-inch asphalt dust cap and shall be kept weed free and clean at the Owner's sole cost and expense until buildings are reconstructed thereon.

2.6 Signage.

(a) Unless otherwise approved by Fred Meyer, on behalf of Declarant: (1) pylon signs shall not be allowed on Non-Anchor Parcels; and (2) monument signs on Non-Anchor Parcels shall not exceed the size described in Exhibit 4, and shall only be located in approved Sign Areas.

(b) Subject to the terms and conditions of this Declaration, Declarant reserves an exclusive easement in favor of the Owner of the Anchor Parcel to operate, maintain, replace, repair, remove, enlarge, reconstruct and relocate a pylon sign in the location on the Non-Anchor Parcel described in Exhibit 5. The pylon sign shall be for the exclusive use of the Owner or Prime Lessee of the Anchor Parcel and no Owner of any Non-Anchor Parcel shall have any signage rights on such pylon sign unless the Owner or Prime Lessee of the Anchor Parcel agrees in writing.

2.7 Building Code Setback. Fred Meyer, as agent of Declarant, initially proposes to construct on the Anchor Parcel a "prototype Fred Meyer building" which is classified as an "unlimited area" building under certain building codes. (By way of explanation, but not limitation, an "unlimited area" building is designated II-N or V-N under the Uniform Building Code.) All buildings constructed in the Development shall comply with the following requirements (unless Fred Meyer, on behalf of Declarant, specifically agrees otherwise in advance and in writing):

(a) No building shall be constructed within sixty feet (60') of the Building Envelope on a Parcel unless such building, hereinafter referred to as the "adjacent building", is located immediately adjacent to the common boundary line and is attached to the building, if any, on the adjacent Parcel;

(b) If an "adjacent building" exists, then no building shall be located within sixty feet (60') of the "adjacent building" unless such building is attached to the "adjacent building"; the "adjacent building" and all other buildings on the Parcel that are attached to the "adjacent building" and to each other are hereinafter referred to as the "building group";

(c) Any building that is not part of the "building group" shall be located at least sixty feet (60') distance from the "building group"; and

(d) The "adjacent building" or the "building group", as the case may be, shall comply with the building code requirements applicable to an "unlimited area" building, including without limitation the installation and maintenance of an approved sprinkler system for fire protection.

In addition to the requirements set forth above, no building shall initially be placed or constructed on any Parcel in a manner which will, based on then existing governmental regulations, either preclude the construction on the Anchor Parcel of an "unlimited area" building, or cause an existing "unlimited area" building thereon to no longer be in conformance with the applicable building code requirements, it being understood and agreed, however, that subsequent changes in governmental regulations shall not obligate a Owner to modify or alter its existing building. If required by any governmental authority, each Owner agrees to join in a recordable declaration which confirms the existence of a sixty foot (60') clear area around the applicable Building Envelopes (or actual building areas within the Building Envelopes).

2.8 Temporary License. Each Owner of a Parcel ("Licensor Owner") grants to the Owner of an adjacent Parcel in the Development ("Licensee Owner"), and the contractors, materialmen and laborers of the Licensee Owner, a temporary license ("License") for access and passage over and across the Common Area of the Licensor Owner's Parcel as shall be reasonably necessary for the Licensee Owner to construct and/or maintain improvements upon the Licensee Owner's Parcel; provided, however, that such License shall be in effect only during periods when actual construction and/or maintenance is being performed and, provided further, that the use of such License shall not unreasonably interfere with the use and operation of the Common Area on the Licensor Owner's Parcel by others. Prior to exercising

the rights of the License herein granted, the Licensee Owner shall first deliver to the Licensor Owner a written statement describing the need to exercise rights under the License, and, in addition, shall deliver to the Licensor Owner a certificate of insurance evidencing that its contractor has obtained and has in force general public liability insurance with such coverage and limits as shall be reasonably acceptable to the Licensor Owner, and statutory workmen's compensation coverage. A Licensee Owner availing itself of the License shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the area and restore the affected portion of the Common Area to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

2.9 Boundary Line Construction Matters.

(a) In order to accommodate any building improvements that may inadvertently be constructed beyond a Parcel's boundary line, each Owner grants to each Owner owning and adjacent Parcel an easement in, to, over, under and across that portion of the grantor's Parcel adjacent to such common boundary line for the maintenance and replacement of such building improvements to a maximum lateral distance of six inches (6").

(b) In the event an Owner constructing improvements on its Parcel ("Constructing Owner") determines that it is necessary to place underground piers, footings and/or foundations ("Subsurface Construction Elements") across the boundary line of its Parcel, the Constructing Owner shall advise the Owner owning the adjacent Parcel (the "Adjacent Owner") of its construction requirement and shall provide plans and specifications relating thereto, including proposed construction techniques for the Subsurface Construction Elements. The Adjacent Owner hereby grants and conveys to the Constructing Owner for the benefit of its Parcel an easement, not to exceed a maximum lateral distance of five feet (5'), in, to, under and across that portion of the Adjacent Owner's Parcel not theretofore occupied by any then existing structure, for the installation, maintenance and replacement of such Subsurface Construction Elements; provided, however, that the Constructing Owner shall have no right to use such easement if the Adjacent Owner is able to provide the Constructing Owner a reasonable alternative construction method for the placement of the Subsurface Construction Elements entirely on the Constructing Owner's Parcel. The Adjacent Owner reserves the right to require the Constructing Owner to modify the design specifications for the Subsurface Construction Elements in order to permit the Adjacent Owner the opportunity to utilize the same in connection with the construction of its building immediately adjacent to the common boundary line. If a common Subsurface Construction Element is used by the Parties, each shall assume and pay its reasonable share of the cost and expense of the design and construction thereof. In the event any building utilizing a common Subsurface Construction Element is destroyed and not replaced or is removed, the common Subsurface Construction Element shall remain in place for the benefit of the other building utilizing the same.

(c) The foregoing easement grants shall not diminish or waive any right of an Owner to recover damages resulting from the constructing Owner's failure to construct its building within its Parcel line in the case of (a) above, or within the easement area limits in the case of (b) above. The easements in each instance shall:

(1) continue in effect for the term of this Declaration and thereafter for so long as the building utilizing the easement area exists (including a reasonable period to permit reconstruction or replacement of such building if the same shall be destroyed, damaged or demolished); and

(2) include the reasonable right of access necessary to exercise and enjoy such grant upon the terms and with the limitations described in [Section 2.8] above.

(d) Nothing herein shall be deemed to create or establish a "common" or "Owner" wall to be shared by buildings constructed along the common boundary lines between the Parcels.

3. Access Easements; Parking.

3.1 Access Easements in Common Area. Subject to the terms and conditions in this Declaration, the Owners shall have a nonexclusive easement over, and the Permitted Persons shall have the right to use, the paved portions or paved accessways and the improved pedestrian walkways within the Common Area for these purposes: (i) ingress and egress of Permitted Persons and their vehicles to and from any portion of the Development and public streets adjacent to the Development; and (ii) movement of pedestrian and vehicular traffic of Permitted Persons from any part of the Development to any other part of the Development. The Common Areas may be used for directional signs, sidewalks, walkways, landscaping, perimeter walls and fences, parking lot lighting, utilities and service facilities, all consistent with such easements. The Common Areas may also be used for parking, subject to the provisions of Section 3.2 of this Declaration.

3.2 Parking. 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 the City of Orem, Utah codes (without regard to or inclusion of the nonexclusive Common Area parking rights under this Declaration). Except with the prior written consent of Fred Meyer, on behalf of Declarant: (1) no Owner of a Non-Anchor Parcel shall reduce the number of parking spaces on such Owner's Parcel from the number approved by Fred Meyer, on behalf of Declarant, in review of the Owner's site plan; (2) each Owner of a Non-Anchor Parcel shall in any event maintain on such Parcel at least 5.0 parking spaces for each 1,000 square feet of Building Area on its Parcel (provided, for any restaurant, tavern, or similar use, an Owner shall maintain at least 12.0 parking spaces of for each 1,000 square feet of Building Area devoted to such use); and (3) no owner shall apply for a variance from the requirements of any applicable codes so as to reduce the number of spaces required on such Owner's Parcel. Employees of an Owner and of its tenants as to the Owner's Parcel shall not have, as a result of this Declaration, the contractual right to park in portions of the Development other than the Owner's Parcel (except as may be mutually agreed and as set forth in a written agreement between the fee owner of the Parcel and the user). The Owners shall cooperate with each other in taking any reasonable steps required to avoid any abuse of this provision or other violation of this Declaration.

3.3 Rules. Fred Meyer, on behalf of Declarant, may adopt, make and enforce reasonable rules and regulations consistent with this Declaration for the purpose of regulating the use of the Common Area (including without limitation use of parking areas by employees and others), regulating vehicular traffic direction along roadways, and promoting the safety, order, and cleanliness of the Development. Each Owner will cause its tenants and their respective customers, employees, independent contractors and invitees to comply with such reasonable rules and regulations.

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

4. Failure to Operate Non-Anchor Parcel.

4.1 Application. If a Major Anchor Store is now or hereafter constructed on the Anchor Parcel, then the provisions of this Section 4 will apply to the Non-Anchor Parcels for the period commencing on the date hereof (or, if later, the date of completion of the Major Anchor Store), and ending on the date twenty (20) years from the date of this Declaration.

4.2 Notice of Election to Discontinue Business. In the event operation of business from 40 percent or more of the gross building area of the Improvements on a Non-Anchor Parcel is not commenced for a continuous period of at least 12 months from final completion of such Improvements, or is to be discontinued for a continuous period of at least 12 months, for any reason other than (i) strikes, lockouts or other labor difficulties, acts of God, the requirements of any local, state or federal law, rule or regulation, fire or other casualty, condemnation, war, riot, insurrection or any other reason beyond a party's reasonable control ("force majeure" events), or (ii) temporary closure due to the restoration, reconstruction, expansion, alteration, modification or remodeling of any improvements located on the Parcel (provided, that Owner is pursuing such work with reasonable diligence, subject to "force majeure" delays), then the Owner shall, at least 30 days prior to discontinuing such operations, but not more than six months prior to discontinuing such operations, provide written notice to Fred Meyer that Owner intends to discontinue operations of business from 40 percent or more of the gross building area of the Improvements on the Parcel (the "Notice of Election"). The Notice of Election will include the anticipated date on which Owner intends to discontinue operation of business.

4.3 Option to Purchase; Notice of Exercise. If an Owner delivers a Notice of Election under this Section, Fred Meyer has the option to purchase the applicable Parcel, exercisable by written notice to Owner, such notice to be delivered to Owner within 180 days after Fred Meyer's receipt of the Notice of Election (the "Notice of Exercise"). The exercise of the option pursuant to such Notice of Exercise will not be effective until the later of (i) the date that Owner (or its tenants) actually discontinues operation of business from 40 percent or more of the gross building area of the Improvements on the Parcel or (ii) the expiration of at least 30 days from and after the delivery of the Notice of Exercise to Owner. The Notice of Exercise shall specify the date on which Fred Meyer proposes to close the purchase of the Parcel.

4.4 Discontinuance of Business Without Notice; Option. If the operation of business from 40 percent or more of the gross building area of the Improvements on a Non-Anchor Parcel is not commenced for a continuous period of at least 12 months from final completion of such Improvements, or is discontinued for a continuous period of more than 12 months, for reasons other than those specified in clauses (i) or (ii) of [Section 4.2,] but the Owner has not delivered a Notice of Election, Fred Meyer shall have an option to purchase the Non-Anchor Parcel, exercisable by delivering a Notice of Exercise to the Owner of the applicable Parcel at any time following the expiration of such twelve-month period of reduced operations.

4.5 Terms of Option.

(a) General. If Fred Meyer exercises an option granted under this [Section 4], then, on the date specified in the Notice of Exercise, the Owner of the applicable Non-Anchor Parcel will sell and convey the Parcel to Fred Meyer pursuant to the terms and provisions as set forth in the attached Exhibit 3 (which is by this reference incorporated herein).

(b) **Fair Market Value.** The purchase price for the Parcel will be the "fair market value" of the Parcel (including all improvements then existing thereon), determined in the following manner. The Notice of Exercise shall include Fred Meyer's estimated fair market value of the Parcel. If the Owner objects to such value, the Owner will notify Fred Meyer in writing no later than twenty days after delivery of the Notice of Exercise; failure to object timely shall be deemed acceptance of the Fred Meyer's determination, provided that the Notice of Exercise contains language reminding the Owner that if the Owner fails to object within twenty days of delivery of the Notice of Exercise to the value estimated by Fred Meyer, such estimated value will be deemed accepted by the Owner. If the Owner timely objects and the parties cannot agree on the value within forty days after the Notice of Exercise, the matter shall be submitted for resolution in accordance with paragraph (c) below.

(c) **Disputes.** If the Owner objects and Fred Meyer and the Owner are unable to agree on the fair market value of the Parcel within the time limits specified in paragraph (b) above, the matter shall be submitted for determination by independent real estate appraisers in accordance with this paragraph (c). The parties shall each select a certified MAI commercial real property appraiser who is familiar with the relevant market. Such selection shall be made in writing by notice to the other party not less than 60 days after the Notice of Exercise. Such appraisers shall each make a determination of the fair market value within thirty (30) days of selection. Unless Fred Meyer and the Owner agree to a compromise based on such determinations within 10 days after they are made, the two appraisers shall select a third such appraiser. Selection of such third appraiser shall be made within 100 days after the Notice of Exercise. The third appraiser shall then, within 10 days of selection, determine which of the two fair market values proposed by the original appraisers is the actual fair market value, and the determination of such third appraiser shall bind the parties. Each party shall bear the fees of the appraiser selected by it, and if a third appraiser is required, the fees of such third appraiser shall be shared equally. If a party fails to timely select an appraiser, such party shall have waived its right to participate in the dispute resolution process, and the determination of the appraiser selected by the other party, made in good faith, shall be binding on the parties. The dates set forth in Exhibit 3 regarding closing the option sale will be extended by the number of days that are required to resolve the dispute under this paragraph.

5. Restriction on Use.

5.1 **Restrictions on Certain Parcels.** No Parcel other than the Anchor Parcel will be leased, subleased, operated or otherwise used for: (i) any jewelry store; (ii) any supermarket (which for purposes of this Declaration 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; (v) any convenience store (except that a convenience store being operated in conjunction with a gasoline product service station approved in writing by Fred Meyer, on behalf of Declarant, and which contains not more than 1,750 square feet of gross floor area for product display, or such greater area as Fred Meyer, on behalf of Declarant, may approve from time to time, will not be a prohibited use); or (vi) the sale of any pharmaceutical products requiring the services of a registered pharmacist.

5.2 **General Restrictions on Use.** The Parcels 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 use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any building

in the Development, or which is a public or private nuisance, or which, in Fred Meyer's judgment, is likely to generate public protests or controversy interfering with the operation of the Development as a retail center; (iv) any distilling, refining, smelting, agricultural, animal raising or boarding (other than consumer pet shops), or mining operation; (v) any short or long-term residential use; (vi) any primary use as a warehousing, assembling, manufacturing, waste processing or other industrial operation; (vii) any motor vehicle, truck, trailer, recreational vehicle or boat sales, leasing or display; or (viii) any place for public assembly (such as a church, mortuary or meeting hall).

5.3 Approval of Proposed Use. Fred Meyer, on behalf of Declarant, shall have the right to prior approval of any proposed use or change in use of any Parcel or portion thereof. Such approval must be in writing. Fred Meyer, on behalf of Declarant, may impose conditions on its approval to any proposed use or change in use (including, but not limited to, restrictions related to protection of the environment). Fred Meyer shall exercise its approval right reasonably. It shall be deemed reasonable for Fred Meyer to disapprove any use prohibited under [Sections 5.1 or 5.2], or any use other than retail sales or retail services consistent with the Development's status as a first-class retail shopping development. "Retail services" means restaurants, financial institutions, real estate and stock brokerage offices, travel or insurance agencies, medical and dental offices, and similar uses providing services directly to the public, but "retail services" specifically excludes nonprofit organization offices, government offices, office uses that do not involve direct service to consumers, office uses in excess of 5,000 square feet, and other uses not customarily associated with or contained in first-class retail developments. Without limiting the generality of the foregoing, and by way of example, it shall be reasonable for Fred Meyer to disapprove: (i) flea markets, fire, bankruptcy or liquidations sales, or sales of "second-hand" or "surplus" merchandise; (ii) laundry or dry cleaning plants or laundromats; (iii) training or educational facilities (other than on-site employee training by an occupant incidental to the conduct of its business); (iv) movie theaters, bowling alleys, skating rinks, game parlors, pool or billiard halls, dance halls, video arcades or other entertainment facilities; and (v) automotive or other vehicle service, car wash, gasoline sales, or tire or battery sales or service facilities.

5.4 Alcohol Sales. Except as otherwise specifically approved in writing by Fred Meyer in Fred Meyer's sole discretion, no Parcel shall be used for any bar, tavern, restaurant or other business operation whose annual gross revenues from the sale of alcoholic beverages for on-site and off-site consumption (collectively) exceed twenty-five percent (25%) of the gross revenues of such business in any calendar year. Any Owner of a Parcel on a business is located in which the gross revenues from the sale of alcoholic beverages exceeds twenty percent (20%) of gross revenues will provide to Fred Meyer an annual written certification as to the percentage of the gross revenues from such business that derive from the sale of alcoholic beverages during the prior calendar year, will respond to reasonable requests for further information by Fred Meyer to verify compliance with the restriction on use in this paragraph, and shall take such steps as are necessary to ensure such compliance.

6. Acceptance of Restrictions. Any lease or occupancy agreement subsequently entered into with respect to a Parcel 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 Declaration). In acquiring a Parcel, an Owner shall automatically be deemed to acknowledge that the restrictions set forth in this Declaration are an essential part of the particular transaction covering Owner's Parcel and, further, that the restrictions set forth in this Declaration 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, but not to control competition (recognizing that the relevant competitive market consists not of the Development but of the commercial retail market in Orem/Provo, Utah).

7. Maintenance of Parcels.

7.1 Generally; Common Area Maintenance. Each Owner shall maintain or cause to be maintained at all times the Owner's Parcel (including, without limitation, the general cleanliness, operation, replacement, enhancement and preservation of such Parcel) in accordance with a standard of operation as first-class facilities maintained in accordance with recognized industry standards for leading retail developments in the geographic area in which the Development is situated. The obligation of each Owner to maintain the its respective Parcel shall include the Common Areas located on the Owner's Parcel, including, but not limited to: (a) maintaining, repairing and resurfacing, when necessary, all paved surfaces 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, and restriping, when necessary, such paved surfaces; (b) removing all snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition; (c) maintaining, repairing and replacing, when necessary, all traffic directional signs, markers and lines; (d) operating, maintaining, repairing and replacing, when necessary, such artificial lighting facilities as shall be reasonably required; and (e) maintaining all landscaped areas (including, without limitation, those on the perimeter of the Parcel), and maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines, and replacing shrubs and other landscaping as necessary.

7.2 Maintenance Prior to Development. This Section 7 will not be construed as requiring Owner to develop the Parcel. Prior to such development, Owner will maintain the Parcel free of rubbish and debris and in a sightly condition. If a Non-Anchor Parcel remains undeveloped for more than 12 months after substantial completion of a Major Anchor Store on the Anchor Parcel, such undeveloped Parcel will be covered: (i) by grass sod (with adequate irrigation) or (ii) by a one-inch asphalt dust cap. The cost of all such sodding and paving shall be borne at the sole expense of the Owner upon whose Parcel it is located. All such sodding and paving shall be kept weed free and clean at the Owner's sole expense until such time as buildings are constructed thereon. An undeveloped Parcel will not be surrounded by a fence, and Owner will obtain Fred Meyer's reasonable approval of the size and quality of sign(s) on a Parcel advertising the availability of the Parcel for sale, lease or development.

7.3 Maintenance of Exterior. Each Owner shall maintain (or cause to be maintained) the exterior of any building located on such Owner's Parcel in a quality and condition comparable to that of first class retail developments of comparable size and nature located in the same geographic area as the Development. All service facilities shall be attractively screened from view from the parking areas.

7.4 Parking Lot Lighting. Each Owner shall operate or cause to be operated the parking lot lights in the Common Areas on its parcel at full intensity at least until 11:00 p.m. each evening (or such other hour as the Fred Meyer may designate). Each Owner shall maintain the parking lot lights at 25% intensity (or such other reasonable security level as may be designated by the Fred Meyer) during all other hours of darkness.

8. Utility Easements.

8.1 Grant of Utility Easements. Subject to the terms and conditions in this Declaration, each Owner shall have a nonexclusive easement and right to operate, maintain, replace, repair, remove, improve, enlarge, reconstruct and, subject to the conditions of this Declaration, relocate any and all utility lines serving such Owner's Parcel currently existing over, under or across the Utility Easement Area on each other Owner's Parcel. Subject to the restrictions in this Declaration, each Owner shall have

the nonexclusive right to install, operate, maintain, improve, repair, replace, relocate, remove and reconstruct Utility Lines over, under or across the Utility Easement Area, provided that any such actions do not unreasonably interfere with or impair (i) the rights of Permitted Persons to use the Common Area for the purposes set forth herein, or (ii) the operation by Permitted Persons of businesses at the Development. The "Utility Lines" mean any power line, water line, sewer line, gas line, communication line or other utility line, service or facility serving the Owner's Parcel exclusively or in common with the other Owner's Parcel affected thereby.

8.2 Terms of Utility Easements. Subject to the provisions of this [Section 8.2,] the Owners shall have the right to install new Utility Lines through the Common Area. All Utility Lines shall be underground unless required to be above ground by applicable law or the utility providing such service. The location of new or relocated Utility Lines and the foregoing work shall be subject to the prior written consent of the Owner over, under, or across whose property the Utility Lines are proposed to be located. Such consent shall not be unreasonably withheld or delayed. The Owner whose consent is sought may condition its consent on the Utility Lines not being located where the Owner intends to construct a building or other facility whose utility, use, construction or installation may be unreasonably interfered with by the presence of such Utility Lines unless the Owner proposing to locate such Utility Lines agrees to relocate the same to another location on the Utility Easement Area at its expense in the event such building or facility is actually constructed or such use is proposed to be commenced. Subject to the preceding sentence, if such Owner subsequently constructs a building over a Utility Line previously installed with that Owner's consent, such Owner shall relocate the line at its expense and in such a manner as to keep to an absolute minimum the disruption in utility services. When a Utility Line is installed on another Owner's Parcel the Owner who installs the line shall give the other Owner a legal description of the location of the Utility Line and a legal description of the easement area for such Utility Line. At its own cost and expense, each Owner (a) shall maintain and repair the Utility Lines installed by such Owner (or the Owner's predecessors in title); and (b) shall repair any damage to landscaping, pavement, buildings and all other improvements on the Development resulting from any work in connection with such Utility Lines or from the operation of such Utility Lines.

8.3 Storm Drainage. Each Owner shall have the perpetual right and easement to discharge surface storm drainage and/or runoff from the Owner's Parcel over, upon and across the Common Areas of the other Parcels in the Development, upon the following terms and conditions:

(a) The Common Area grades and the surface water drainage/retention system for the Development and each Parcel shall be initially constructed in strict conformance with the plans and details approved by Fred Meyer; and

(b) No Owner shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Parcel if such alteration would materially increase the flow of surface water onto an adjacent Parcel either in the aggregate or by directing the flow of surface water to a limited area.

9. Alteration of Common Areas, Building Areas and Building Envelopes.

9.1 In General.

(a) **Modification by Declarant.** Fred Meyer, on behalf of Declarant, shall have the right at any time and from time to time to alter, rearrange, reduce, or relocate, at Fred Meyer's cost, the Common Areas and the Common Area improvements, or to modify the Building Envelopes, Sign

Areas or Building Areas on any Parcel; provided, however, that no such action shall, without the consent of all materially affected Owner(s), materially diminish the easements and rights granted, or materially adversely affect the purposes stated, under Sections 3 or 8 of this Declaration. Fred Meyer shall not modify any buildings or related improvements constructed by an Owner in any material respect, modify the Building Envelope or the previously approved Building Area or Sign Area on an Owner's Parcel in any material respect, or reduce the parking spaces provided on an Owner's Parcel (unless equivalent replacement parking is provided), without the consent of that Owner.

(b) Modification by Owner. With respect to the portion of the Common Area lying within an Owner's Parcel, that Owner shall have the right to alter, rearrange, reduce or relocate, at such Owner's cost, that portion of the Common Area and Common Area improvements, so long as (i) doing so does not materially diminish the rights granted or materially adversely affect the purposes stated under Sections 3 and 8, and (ii) the Owner obtains Fred Meyer's prior written approval of such change, **which approval will not be unreasonably withheld.**

9.2 Required by Governmental Authority. If any governmental authority requires any change in the Common Area, the Owners of the portions of the Common Area affected shall make every reasonable effort to minimize the negative impact of such changes on the rights and purposes set forth in Sections 3 and 8. In particular, if any governmental authority, by condemnation or otherwise, eliminates or reduces any access between public streets and the Development, the Owner of the affected property shall make every reasonable effort to obtain alternative access on such Owner's property.

9.3 Relocated Common Area. All of the rights and obligations set forth herein shall be fully applicable to any altered, rearranged or relocated Common Area, which shall then be deemed to be the Common Area.

10. Hazardous Materials. Each Owner shall maintain its property and conform its activities and the activities of its Permitted Persons on that Owner's property in compliance with all applicable requirements under applicable Environmental Laws (as defined below) with respect to the clean-up or remediation of Hazardous Substances (as defined below), the protection of the environment, the control of hazardous wastes, and the use, generation, transport, storage, removal and treatment of Hazardous Substances, and in a manner that reasonably minimizes the risk of liability, or damage to human health or the environment, from the release of Hazardous Substances. Any Owner or occupant who shall violate (or whose tenant, licensee, or subtenant shall violate) this restriction regarding Hazardous Substances shall be liable to all other Owners for all damages resulting to such Owners from such violation and shall promptly undertake and complete all required cleanup and remediation.

As used in this Declaration, the term "Hazardous Substances" shall mean any materials which because of their quantity, concentration or physical, chemical or infectious characteristics may cause or pose a present or potential hazard to human health or the environment when improperly handled, treated, stored, transported, disposed of or otherwise managed under applicable laws and regulations presently in effect. The term shall include, but is not limited to, all hazardous substances, hazardous materials and hazardous wastes listed by the U.S. Environmental Protection Agency and the state in which the Development is located under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), the Federal Water Pollution Control Act (FWPCA), the Emergency Planning and Community Right-to-Know Act (EPCRA) and any and all other federal and state statutes applicable to the protection of human health or the environment (the "Environmental Laws").

11. Condemnation. This Section 11 shall apply in the case of a condemnation, or a sale in lieu of condemnation, or an inverse condemnation having the same effect, concerning a portion or all of the Development. The award or purchase price paid for the taking shall be paid to the Owner of the property so taken. The other Owners who may have an easement, or may have other property interest or rights under this Declaration, in the land so taken do hereby (or by accepting the property covered by this Declaration shall be deemed to) release or waive those interests and rights with respect to such award or purchase price. Such other Owners shall, however, have the right to seek an award or compensation for the loss of their easement right and other interests and rights, but only to the extent such award or compensation paid or allocated for such loss does not reduce the amount paid to the Owner of the property taken. If any access road to the Development is taken, the Owner of the property on which the access road was located shall use such Owner's best efforts to provide promptly a substitute access road to the Development on such Owner's Parcel.

12. Insurance. Throughout the term of this Declaration, each Owner (or, with respect to the Anchor Parcel, the Owner or its Prime Lessee) shall maintain, with respect to the Easement Areas and Common Area within that Owner's Parcel a policy or policies of public liability insurance with a combined single limit of liability of not less than (a) \$2,000,000 for bodily or personal injury or death and for property damage arising out of any one occurrence, nor less than (b) the amount of insurance normally maintained by owners of similar properties, as reasonably determined by Fred Meyer and communicated in writing to the other Owners. The Owners will provide to Fred Meyer from time to time, as Fred Meyer may require, certificates of insurance showing that such policies of insurance: (i) name all other Owners as additional insureds; (ii) are issued for periods of not less than one year; and (iii) are issued by insurance companies qualified to do business in the State in which the Development is situated and (except as otherwise approved in writing by Fred Meyer) having a general policyholder's rating of not less than A and a financial rating of not less than Class X as rated in the most current available "Best's" Insurance Reports. The insurance required of an Owner may be carried under a plan of self insurance, provided that such owner has and maintains a net worth of the higher of (1) \$25,000,000 or (2) twelve times the required minimum single limit of insurance coverage required under this Section. If any Owner or any Owner's Permitted Person places any underground storage tank under the Owner's Parcel, the Owner, upon written request from any other Owner, shall provide proof that the Owner or Permitted Person has complied with all laws, regulations and ordinances concerning such tanks, including proof of insurance and other financial responsibility that is so required.

13. Common Access Maintenance. Fred Meyer, on behalf of Declarant, shall maintain and repair the major driving lane and access ways on the Major Anchor Parcel as part of Fred Meyer's obligation to maintain the Common Areas on such Parcel. As maintenance of the driving lane and access ways will be of benefit to all Owners, each Owner agrees to pay to Fred Meyer an annual driving lane maintenance fee in the amount of ten cents (\$0.10) per square foot in such Owner's Parcel. Such fee shall be due and payable at Owner's notice address on January 31 of each calendar year. Such fee shall be adjusted every five years in proportion to the increase, if any, in the consumer price index ("CPI") from the later of the date hereof or the most recent adjustment. For the purposes hereof, "CPI" shall mean the Consumer Price Index, U.S. City Average, for all urban consumers (1982-84 = 100), for All Items, as published monthly by the Bureau of Labor Statistics, U.S.D.L., or, in the event that such index is no longer available, such successor or other index as is most equivalent thereto as the Fred Meyer may select by written notice to all Owners.

14.1 Defaults. A person shall be deemed to be default of this Declaration upon the expiration of thirty (30) days (ten [10] days in the case of failure to pay money) from receipt of written notice from any Declarant, Owner or Prime Lessee specifying the particulars in which such person has failed to perform such person's obligations under this Declaration unless such person has, prior to the expiration of the cure period, cured the matters specified in the notice of default. However, such person shall not be deemed to be in default if such failure (except a failure to pay money) cannot reasonably be cured within the thirty-day cure period, and such person is using good faith, diligent efforts to cure the matters specified in the notice of default.

14.2 Injunctive Relief. In the event of a violation or threatened violation by any person of the restrictions contained in this Declaration, Declarant or any or all of the Owners or Prime Lessees shall, in addition to any other remedy available at law or in equity, have the right to enjoin such violation or threatened violation in a court of competent jurisdiction, it being acknowledged that monetary damages will be an insufficient remedy for such a violation.

14.3 Declarant's Right of Self-Help.

(a) Whenever an Owner is in default under [Section 14.1,] and without limiting any other rights that Fred Meyer or any other Owner may have in the event of such a default, at law or in equity, Fred Meyer shall have the right (but not the obligation) to perform the obligation of the Owner giving rise to such default, provided that Fred Meyer first gives the defaulting Owner at least ten (10) days notice of Fred Meyer's intention to perform the obligation, and provided that the Owner has not cured the default prior to expiration of such ten-day period. Fred Meyer shall be entitled to reimbursement from the defaulting Owner for reasonable costs incurred in performing or contracting for performance of such obligations (plus, as to any default consisting of a failure to maintain Common Areas on an Owner's Parcel, an administrative fee of twenty percent (20%) of such costs). Reimbursement owing but not promptly made shall bear interest at the lesser of (1) the highest rate permitted by law or (2) the "prime" or "reference" rate of interest as publicly announced from time to time by U.S. National Bank of Oregon or its successor (or if such designated bank's prime or reference rate of interest is no longer publicly available, then the prime or reference rate of interest of such other regional or national bank as Fred Meyer may select by written notice to all Owners), plus 4 percent per annum, from the date of billing until reimbursement is made.

(b) Fred Meyer shall have a lien on the Parcel of an Owner that fails to reimburse the Fred Meyer as required by paragraph 14.3(a); provided, however, if a bona fide dispute exists as to the existence of such default or the amount due, and all undisputed amounts are paid, there shall be no right to place a lien on such Owner's Parcel until such dispute is settled by final court decree or mutual agreement. Such lien shall only be effective when filed for record by the Fred Meyer as a claim of lien against the defaulting Owner in the office of the recorder of the county in which the Development is located, signed and acknowledged, which shall contain at least: (1) an itemized statement of all amounts due and payable pursuant thereto; (2) a description sufficient for identification of that portion of the real property of the defaulting Owner which is the subject of that lien; (3) the name of the Owner or reputed Owner of the property which is the subject of the lien; and (4) the name and address of the Fred Meyer. The lien, when so established against the real property described in the lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the lien. The lien shall be for the use and benefit of the Fred Meyer and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

14.4 Effect of Default or Non-Use. No Owner or any other person shall be entitled to cancel, rescind, or otherwise terminate this Declaration on account of any default hereunder, but this shall not limit any Owner's rights and remedies granted hereunder on account of such default. Abandonment or non-use (after receipt of a certificate of occupancy) of easement rights hereunder or of the property by an Owner will not reduce or affect an Owner's obligation to pay its share of costs for required access way maintenance under Section 13 of this Declaration, or to perform or comply with the terms of this Declaration.

15. Term. This Declaration 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 Declaration, in which case they shall cause to be recorded an instrument acknowledging such termination.

16. General Provisions.

16.1 Status of Title; Property Taxes. This Declaration is granted subject to all prior easements and encumbrances of record. Each Owner warrants that it will defend the title and the other Owners' interests under this Declaration against any mortgage, tax lien or construction or other lien claim: (i) which affects the Development or Parcel, (ii) which asserts priority over the interest of the other Owner(s) in enforcing this Declaration or which affects any other Owner(s) rights under this Declaration, and (iii) which is attributable to the party itself or its tenants, agents, contractors or subcontractors. This Declaration will not be subordinated or rendered inferior to any future financing by any Owner. Each Owner shall pay before delinquent all property taxes and assessments assessed on such Owner's Parcel and the improvements constructed thereon.

16.2 Protection of Rights of Mortgagees. No breach of the provisions in this Declaration 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 Declaration; 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 Declaration.

16.3 Waiver. No provision of this Declaration shall be deemed to have been waived unless such waiver is in writing signed by the waiving party. Failure at any time to require performance of any provision of this Declaration shall not limit an Owner's right to enforce the provision. Any waiver of any breach of any provision shall not be a waiver of any succeeding breach or a waiver of any provision of this Declaration.

16.4 Attorneys' Fees. In the event suit or action is instituted to interpret or enforce the terms of this Declaration, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as costs of litigation (including discovery costs), and as attorneys' fees in preparation for and at trial, on appeal of such suit or action and on any petition for review, in addition to all other sums provided by law.

16.5 Indemnity. Each Owner shall defend, indemnify and hold the other Owners harmless from any claim, loss, liability or expense (including discovery costs and other litigation costs, and reasonable attorneys' fees) that: (a) arises out of or in connection with the failure to perform or comply with the terms, restrictions and provisions of this Declaration by the Owner; or (b) arises out of or in connection with the intentional acts or gross negligence of the Owner or the employees, representatives,

agents and independent contractors of the Owner, or any occurrence on or in the indemnifying Owner's Building Area; or (c) arises or results from the performance of any construction activities performed or authorized by such indemnifying Owner; provided that the obligation to defend, indemnify and hold harmless for matters described in clauses (b) and (c) shall in the event of concurrent negligence or misconduct exclude claims to the extent that they are caused by the negligence or intentional misconduct of the indemnified person, or its agents, contractors or employees (while acting in such capacity).

16.6 Entire Agreement. This Declaration supersedes and replaces all written and oral agreements previously made or existing with respect to the matters set forth above.

16.7 Governing Law. This Declaration will be governed and construed in accordance with the laws of the State in which the Development is situated.

16.8 Status Certificate, Information. Within 20 days after receipt of a written request, an Owner or Prime Lessee shall promptly deliver a written status certificate to the Owner or Prime Lessee requesting the same, stating (i) the current status of any work being performed or costs previously incurred which may be subject to reimbursement under the Declaration, (ii) whether this Declaration is unmodified and in full force and effect, and (iii) whether (to the best of the party's knowledge) the other Owner(s) or Prime Lessee(s) are in compliance with their respective obligations hereunder, and any other matters that may be reasonably requested. Any request for reimbursement of costs for which reimbursement is provided herein must be made within six months after the end of the calendar year in which the costs are incurred and will be accompanied with such information on the work performed and costs incurred as an Owner or Prime Lessee may reasonably require to verify the request. The party requesting reimbursement will promptly respond to requests for additional information about such work and costs.

16.9 Notices. Notices given under this Declaration shall be in writing and delivered by certified or registered U.S. mail, postage paid with return receipt requested; by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid; by facsimile or other telecommunication device capable of transmitting or creating a written record; or personally. Each Owner shall give notice to each other Owner of its address for notice by written notice to the other Owners. Unless Declarant designates another address for notice by notice given pursuant to this Section, notices to Declarant should be sent to the following address:

c/o Fred Meyer, Inc.
P.O. Box 42121
Portland, Oregon 97242-0121
(Street Address: 3800 S.E. 22nd Avenue, Portland, Oregon 97202)
Attn: Senior Vice President, Corporate Facilities
Facsimile No.: (503) 797-3539

In the absence of such notice of an Owner's address for notice purposes, any notice under this Declaration may be given to the address to which property tax statements are delivered by the taxing authority. For the purposes of this Declaration, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to this Section as shown on the return receipt or by the records of the courier, (ii) the date of actual receipt of the notice or other document by the office of the person or entity specified pursuant to this Section, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of

the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

16.10 Amendments. Except as otherwise set forth herein, this Declaration may not be modified, amended or terminated nor will additional land be added to the Development except by the written agreement of all Owners. An Owner may waive one or more of its rights under this Declaration in writing signed by the party, and such writing need not be recorded. Otherwise, no modification or amendment of any provision of this Declaration shall be binding unless signed by all Owners and recorded in the real property records of the County in which the property is situated.

16.11 Effect of Declaration. Nothing in this Declaration, express or implied, shall confer upon any person, other than the Owners, any right or remedies under or by reason of this Declaration. 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 Declaration 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. Each right granted pursuant to this Declaration is expressly for the benefit of the property described on the attached Exhibits.

16.12 Successors and Assigns. Every obligation under this Declaration shall run with the land and shall be binding upon all Owners and upon the heirs, personal representatives, successors and assigns of each of the foregoing, as owners of the Parcels and any subdivision thereof. Any reference to Declarant or other Owner shall apply only so long as the party owns property within the Development, and thereafter such reference shall be intended to apply to such party's successor or assign. Any transferee of any Owner's Parcel shall automatically be deemed, by acceptance of title to such property, to have assumed all of the obligations set forth in this Declaration relating to such property. The Owner shall, when such transfer is consummated, be relieved of all liability that arises thereafter under this Declaration, but such Owner shall not thereby be relieved of liability that arose before such time and which remains unsatisfied. An Owner has the right to assign to any tenant(s) of the Owner its rights and obligations under this Declaration throughout the term of the lease(s) to such tenant(s) or for a shorter time as the Owner may agree, but this shall not release the Owner from its obligations or liabilities under this Declaration.

16.13 Effect of Invalidation. If any provision of this Declaration 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 Declaration 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 Declaration a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

16.14 Not a Public 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 Declaration shall be strictly limited to and for the purposes herein expressed.

16.15 No Partnership; Disclaimer. No provision of this Declaration or previous (or subsequent) conduct or activities of Declarant, Fred Meyer, and/or present or subsequent Owner(s) will be construed: (i) as making Declarant, Fred Meyer and/or present or subsequent Owner(s) a partner, joint venturer, agent or principal of or with each other, (ii) as creating any express or implied obligation for

Declarant or Fred Meyer to construct a retail building or other improvements on its Parcel(s) or to develop or operate the Development as a Fred Meyer retail development or otherwise, or (iii) as making Declarant and/or present or subsequent Owner(s) responsible for payment or reimbursement of any costs incurred by each other, whether or not such development occurs (except as may be expressly set forth herein or as expressly set forth in the purchase and sale agreement, development agreement or other written agreements executed by the parties).

16.16 Exercise of Approval Rights; Limitation of Claims. Declarant and Fred Meyer shall exercise their approval rights under this Declaration in good faith based on their business judgment and actual knowledge, and any exercise of such rights in good faith shall be binding. By acceptance of its deed to a Parcel, each Owner expressly agrees that neither Declarant nor Fred Meyer will not be liable in damages for any denial or withholding by Declarant or Fred Meyer of consent or approval under this Declaration, and that the sole remedy of the party requesting such consent or approval shall be specific performance or other injunctive relief.

16.17 Status of Sale-Leaseback Purchasers; Status of Trustee Bank. Notwithstanding anything to the contrary contained in this Declaration, it is expressly agreed that in the event an Owner sells its Parcel to an unaffiliated third party and thereafter enters into a Prime Lease for such Parcel with such third party or its lessee or sublessee (hereinafter referred to collectively as the "Prime Lessor"), so long as the Owner is in possession of the property as a Prime Lessee, the parties hereto shall look solely to the Prime Lessee for (and the Prime Lessee shall be liable therefor) the performance of any obligations either the Prime Lessee or the Prime Lessor shall have under this Declaration, and the Prime Lessor shall not be liable for any breach, non-compliance or failure to perform any obligation hereunder by the Prime Lessee or with respect to its Parcel.

In addition, the Owners acknowledge that FIRST SECURITY BANK OF UTAH, N.A., not individually but solely as Trustee under the FM Trust 1995-2, in its capacity as Declarant hereunder, has the status of a Prime Lessor within the meaning of this Section, as such shall not be liable for any breach, non-compliance or failure to perform any obligation hereunder by Fred Meyer.

16.18 Third Party Beneficiary Rights. This Declaration 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 not an Owner of a Parcel, unless otherwise expressly provided herein.

16.19 Force Majeure. The period of time provided in this Declaration for the performance of any act shall be extended for a period or periods of time equal to any period or periods of delay caused by strikes, lockouts, fire or other casualty, the elements or acts of God, refusal or failure of governmental authorities to grant necessary permits and approvals for the act (the parties agreeing to use reasonable diligence to procure the same), or other causes, other than financial, beyond their reasonable control.

16.20 Interpretation. The section headings and table of contents in this Declaration are for ease of reference only and shall not be deemed to define or limit the scope or content of any of the terms, covenants, conditions, or agreements in this Declaration. In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed as of the day and year first written above.

EXHIBIT 1

Legal Description of Parcels of Declarant

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, recorded November 20, 1996 as Ent. 94188, Map #6850.

EXHIBIT 2

Site Plan/Drawing

SUMMARY

OVERALL SITE

TOTAL SITE AREA
 BUILDING AREA
 SCHEDULING RATIO
 PARKING PROVISION
 CONVENIENCE PARKING
 STALLS

(±) 1626 AC ± 708,286 SF

188,312 SF

276/1

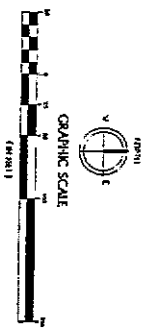
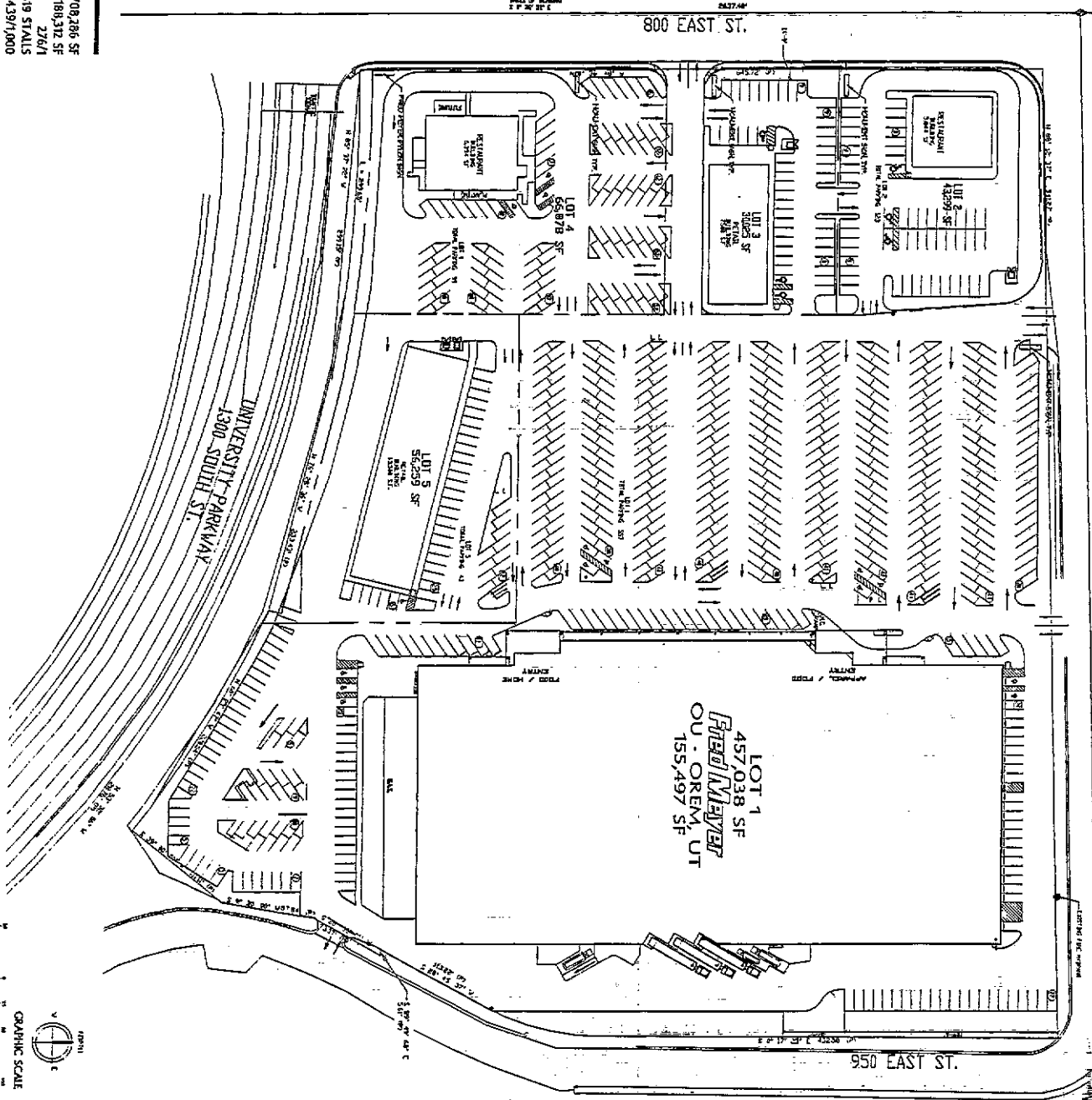
819 STALLS

4397/000

432 STALLS

SITE PLAN

NO IMPROVEMENTS TO EXISTING UTILITIES OR STRUCTURES ARE TO BE MADE OR CONSIDERED IN THIS SITE PLAN.



<p>DATE OF REVISION</p> <p>NO. OF SHEETS</p> <p>TOTAL SHEETS</p> <p>DATE</p> <p>BY</p> <p>FOR</p>	<p>REVISIONS</p>	<p>OU - OREM, UT</p>		<p>DATE OF REVISION</p> <p>NO. OF SHEETS</p> <p>TOTAL SHEETS</p> <p>DATE</p> <p>BY</p> <p>FOR</p>	<p>Fred Meyer</p> <p>3800 SE 22nd Avenue Portland, Oregon 97202 Telephone: (503) 432-8844 Fax: (503) 797-3339</p>
		<p>DESIGNED BY</p> <p>VCBO</p> <p>DATE</p> <p>CPM</p>	<p>PROJECT NO.</p> <p>XX-XXXX</p> <p>DATE</p> <p>35 APR 97</p> <p>PROJECT</p> <p>SITE</p> <p>SHEET NO.</p> <p>1</p>		

EXHIBIT 3**Repurchase Option Terms**

This Exhibit contains terms relating to the rights of the Declarant under Section 4 of that certain Declaration of Covenants, Conditions, Restrictions and Easements ("Declaration") to which it is attached, pertaining to certain Parcels described in the Declaration.

1. DEFINITIONS. As used in this Exhibit, the "Owner" is the Owner of a Non-Anchor Parcel under the Declaration, the "Optionee" is the Fred Meyer as defined in such Declaration, and the "Option Property" is the Owner's Parcel. Capitalized terms not otherwise defined herein will have the meaning stated in the Declaration.

2. INCORPORATION OF TERMS. The provisions of Section 4 of the Declaration are incorporated herein, pursuant to which Optionee has the right and option ("Option") to repurchase the Non-Anchor Parcels on the occurrence of certain conditions as described therein.

3. STATUS OF THE OPTION PROPERTY AND TITLE.

3.1 Access to the Option Property. During the option period, defined below, Owner shall permit Optionee or its authorized or designated representatives or agents to enter upon the Option Property at reasonable times upon reasonable advance notice (as to the date, time and purpose for the entry) for the purpose of examining the Property.

3.2 Conduct Until Closing. Until the closing date after any exercise of the Option, Owner will maintain the Option Property and shall pay all liens or property taxes and assessments imposed on the Option Property.

3.3 Outstanding Agreements. Following exercise of the Option, Owner will not enter into any leases, occupancy agreements or other agreements affecting the operation or use of the Option Property which will be binding on Optionee after the closing of purchase if the option is exercised, except as may be reasonably approved in writing by Optionee during the option period.

3.4 Title Report. As soon as practicable after exercise (if any) of the Option, the parties will cause to be furnished to Optionee a preliminary title report (with full copies of any exceptions) from a title company selected by Optionee ("Title Company") showing its willingness to issue title insurance on the Option Property.

3.5 Rescission of Agreement. If the title report described in Section 3.4 shows any exceptions other than those existing when Owner acquired the Property from Optionee, or as subsequently approved by Optionee, Owner is responsible for obtaining a release or discharge of such matters (other than easements not materially interfering with the operation of the Option Property). If Owner is unable or fails to eliminate any disapproved exception, Optionee may elect, at its option, to rescind this Option by notice to the other party; provided, if the disapproved exception is a financial encumbrance, Optionee shall also have the option to sue for specific performance of the obligation to remove the disapproved exception. In such event, all obligations of the parties under this Option shall thereafter cease, unless Optionee notifies Owner within 10 days after such rescission that Optionee elects to waive its prior disapproval of the exception. In addition, Owner shall have the right to rescind its exercise of the Option at any time from the date of exercise through closing.

4. CLOSING PROCEDURE.

ENT 67916 BK 4366 PG 180

4.1 Date of Closing. This transaction shall be closed on a date selected by Optionee and reasonably acceptable to Owner, within 30 days after exercise of the Option (the "Closing Date").

4.2 Prorations. At closing, property taxes and other expenses associated with operation of the Option Property ("Expenses") shall be prorated and adjusted between the parties as of the Closing Date.

4.3 Manner and Place of Closing. This transaction shall be closed in escrow by an officer of the Title Company at its main office in Portland, Oregon, or as otherwise mutually agreed by the parties. Closing shall take place in the manner specified in this Option.

4.4 Closing. On the Closing Date, this transaction will be closed as follows:

(a) The prorations described in Section 4.2 will be made and the parties shall be charged and credited accordingly.

(b) Owner will convey the Option Property to Optionee by statutory special warranty deed, subject to no liens or encumbrances, other than those permitted under Section 3.5. Owner will execute a "non-foreign person" FIRPTA affidavit, in form reasonably acceptable to Optionee.

(c) Optionee shall pay to Owner in cash the total purchase price for the Option Property, adjusted for the charges and credits set forth above.

(d) The Title Company shall have delivered a commitment letter committing to issue the policy described in Section 3.5, upon recordation of the closing documents.

(e) Owner shall be charged the amount required to obtain release of liens (if any). Optionee shall be charged the recording fees for the deed. Owner shall be charged the premium for the owner's title insurance policy and the State and County excise and documentary stamp taxes. The escrow fee shall be divided equally between the parties.

4.5 Title Insurance. As soon as practicable after the Closing Date, Owner shall furnish Optionee with an owner's standard coverage policy of title insurance in the amount of the total purchase price for the Option Property, subject only to the standard printed exceptions of the Title Company, and exceptions for the matters under Section 3.4.

4.6 Possession. Owner will deliver vacant possession of the Option Property to Optionee on the Closing Date.

5. TERMINATION. This Option shall expire on the date twenty (20) years from the date of the Declaration, if the Option has not been previously exercised. In the event Owner should fail to close this transaction (other than as a result of Optionee's failure to exercise the Option or perform Optionee's obligations under this Option), Optionee shall be entitled to a refund upon demand of any moneys deposited with Title Company in connection with the Option, and Optionee shall be entitled to all remedies allowed at law and equity for breach of contract, including the right to enforce specific performance of this Option.

6. FAILURE TO EXERCISE OPTION. In the event Optionee does not exercise the Option with the option period specified below, Optionee shall, upon Owner's request, execute such documents as Owner may provide and reasonably require to evidence the expiration or termination of this Option.

7. GENERAL PROVISIONS.

7.1 Binding Effect. This Option shall be binding upon and inure to the benefit of the parties, their successors and assigns.

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

7.3 Prior Agreements. This document is the entire, final and complete agreement of the parties with respect to Optionee's option to purchase the Option Property and supersedes and replaces all written and oral agreements previously made or existing between the parties or their representatives with respect to this Option.

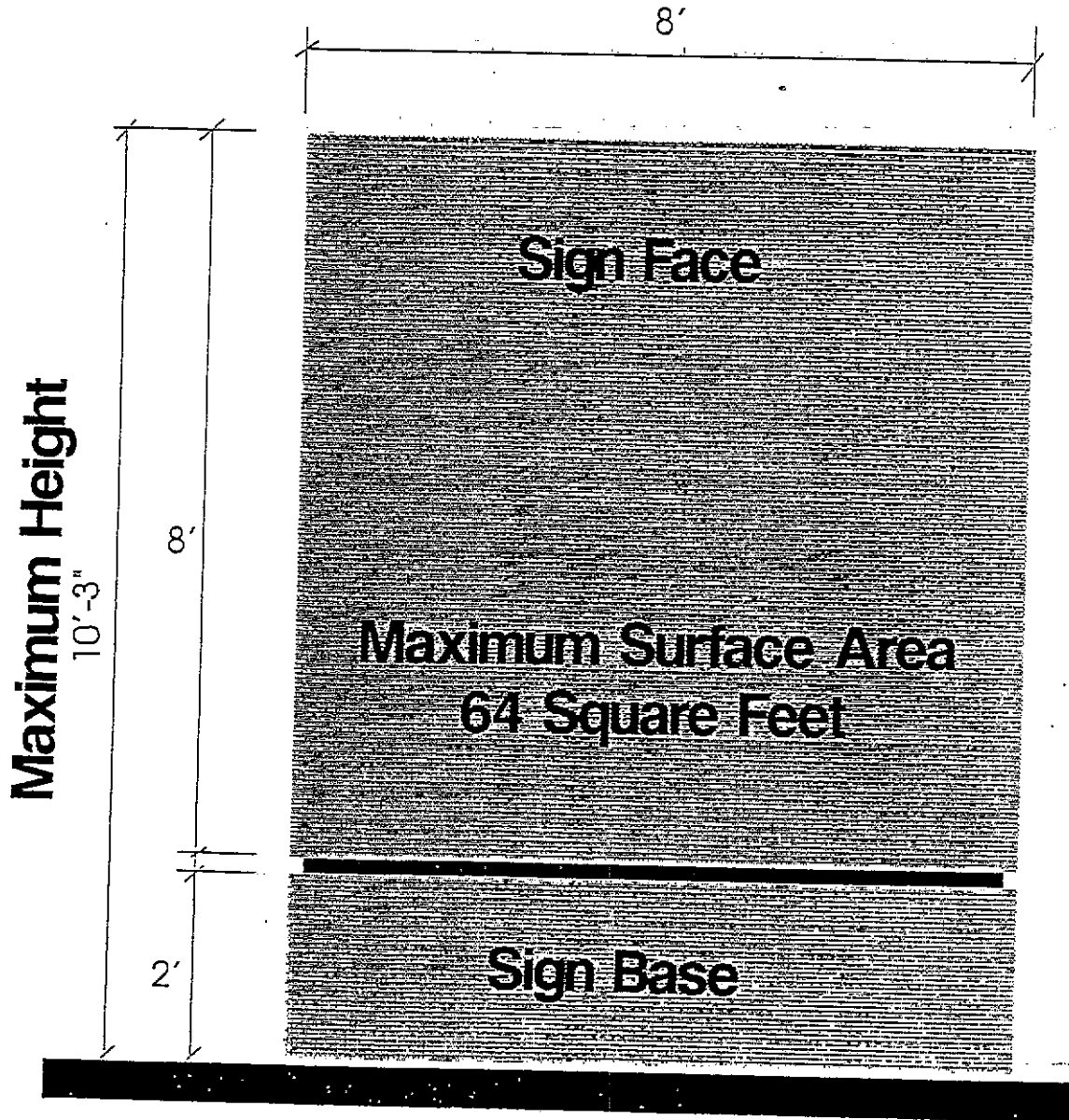
7.4 Other General Provisions. The terms of this Option include the following General Provisions contained in the Declaration: Sections 16.3, 16.4, 16.7, 16.12, 16.15, 16.16 and 16.18.

8. OPTION PERIOD. The Option may be exercised by Optionee at the times and upon occurrence of the conditions specified in Section 4 of the Declaration. The Option shall in any event expire on the date twenty (20) years after the date of the Declaration. The "option period" means the period of time commencing on the date when the conditions specified in the Declaration giving Optionee the right to exercise the Option occur, and ending upon the expiration of Optionee's right to exercise the Option as stated in the Declaration (or, if the option is exercised, on the closing date).

EXHIBIT 4

Sign Criteria
Fred Meyer, Inc.
Outparcel Sign Specifications

Maximum allowable size for monument signs located within Fred Meyer store developments.



Scale 1/2" = 1'

"Sign Easement in favor of Anchor Parcel"

The West 15 feet of the South 25 feet of Lot 4, 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.

