

1991 AUG 22 PM 4:39

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DECLARATION OF
RESTRICTIONS AND EASEMENTS
(Newberg, Oregon)

DATED: August 22, 1991

BETWEEN: FRED MEYER, INC.,
a Delaware corporation
PO Box 42121
Portland, Oregon 97242

Fred Meyer

AND: DEAN WERTH and ELMER WERTH,
as to an individual one-third
interest as tenants in common,
and THE WERTH JOINT VENTURE,
consisting
of THE HEXWORTH FAMILY PARTNERSHIP,
and THE PENTWORTH FAMILY PARTNERSHIP,
an Oregon general partnership, as to
a two-third interest
whose address is:
c/o Richard C. Didzun
Commercial Properties Northwest
1618 SW First Ave., Penthouse #14
Portland, Oregon 97201

Werth

Fred Meyer is acquiring certain property in the City of Newberg, Yamhill county, Oregon described on the attached Exhibit 1. The "Fred Meyer Property" consists of the real property described on the attached Exhibit 1, all improvements subsequently developed thereon, and any other land owned and/or operated from time to time as part of such development.

Werth owns and is not selling to Fred Meyer the real property described (or shown) as Tenant Parcels B and D on the attached Exhibit 2. The "pads" consist of the real property described (or shown) as Tenant Parcels B and D on the attached Exhibit 2, and all improvements subsequently developed thereon.

As used in this Agreement, the "Development" consists of the Fred Meyer Property and the Pads.

NOW, THEREFORE, in consideration of the mutual agreements of the parties set forth in this Declaration of Restrictions and Easements (the "Agreement") and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

DWG10276

NORTHWEST TITLE COMPANY

8-23-91

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

- (a) "Owners" shall mean, collectively, the owner of the Fred Meyer Property and the owners of each of the Pads, and their respective successors and assigns; the singular term "Owner" shall mean any one of the owners with respect to the parcel or interest in the Development owned by such person.
- (b) "Permitted Persons" shall mean: each Owner and its respective successors, assigns, mortgagees, employees, representatives, agents, licensees, business visitors, customers and invitees; and the tenants of the respective Owners and the employees, representatives, agents, licensees, business visitors, customers, and other invitees of such tenants. An "Owner's Permitted Persons" and similar terms shall mean the Permitted Persons whose right under this Agreement derive from that particular Owner.
- (c) "Easement Road Area" shall mean the area denoted as the "East Entry Road" and crosshatched on Exhibit 2. The Easement Road Area is to be constructed as a street to City of Newberg, Oregon standards and dedicated as a public street. The Easement Road Area shall be subject to the conditions of paragraph 2 hereof during any period after completion of construction of the street improvements and until it is accepted as a public street by the City of Newberg, Oregon. After the Easement Road Area becomes a public street, the provisions of paragraph 2 hereof shall become void as to such Easement Road Area.
- (d) "Owner's Property" shall mean the real property within the Development owned by such Owner.

2. Easement Road Area; Access Easements. Subject to terms and conditions in this Agreement, Owners shall have a nonexclusive easement over, across and through the Easement Road Area, and all Permitted Persons will have the right to use the Easement Road Area for ingress and egress of such Permitted Persons and their vehicles to and from the Development and the public street adjacent to the Easement Road Area. The parties hereto, as Owners of the Easement Road Area, covenant and agree with each other that the Easement Road Area will be dedicated and conveyed to the City of Newberg as a public street after completion of construction of the street improvements thereon.

8-23-91

1991 AUG 22 PM 4:39

F258P1187

In addition, subject to the terms and conditions in this Agreement, there shall be a nonexclusive reciprocal ingress and egress easement and right of way over the common access, ingress and egress routes between the Pads and the adjoining portion of the Development as such routes exist from time to time; provided, that there shall be at all times at least one such accessway on the northerly boundary and one such accessway on the westerly boundary of Tenant Parcel B (the "Common Access Areas").

3. No Barriers. No fences, walls or barriers to access will be erected on the common boundary lines between a Pad and the Development that would unreasonably interfere with the access between the Pad and the Development or the use of the Common Access Areas for ingress and egress, without the prior consent of the Owner of the affected Pad and of the Development.

4. Rights of Use of Common Access Areas. Each party, its tenants, and the agents, employees, tenants, and the customers and invitees of such parties, shall have the nonexclusive right to use the Common Access Areas for purposes of access to and from the properties owned by the respective parties. With respect to the Common Access Areas located on the property owned or leased by a party to this Agreement, the party will be free to change from time to time the location of accessways (including the Common Access Areas) on its own property, and to engage in other uses of such Common Access Areas that are compatible with their use for ingress and egress, provided that any such actions do not unreasonably interfere with or impair the parties' right of ingress and egress to the respective properties. Customers and patrons of businesses in the Development shall have the right to cross the Common Access Areas when going to and from the Pad and the Development.

5. Parking Limitation. The Owner of the Development is not being given hereby, and the employees, customers and invitees of businesses on the portions of the Development other than the Pads shall not have or be granted hereby, the contractual right to park on the Pads. The Owner of any Pad is not being given hereby, and the employees, customers and invitees of the business on a Pad shall not have or be granted hereby, the contractual right to park outside of the respective Pad. Each Owner shall maintain, within the Owner's Property, sufficient parking facilities to meet the needs of the Owner's own employees, customers and invitees. The foregoing will not be construed to require an Owner to "police" the use of what parking areas are utilized by customers and invitees of the Owner, but all Owners and Permitted Persons shall cooperate in taking any reasonable steps required to avoid any abuse of this

8-23-91

1991 AUG 22 PM 4:39

F258P1188

paragraph 5 or other violation of this Agreement, and shall cooperate with each other in taking any reasonable steps to promote safety, order, utility, and cleanliness of the Development.

6. Development of Pads. The improvements on the Pads will not exceed twenty-five (25) feet in height above grade (which will not be increased without Fred Meyer's reasonable approval). Such height will not in any event exceed the limitations imposed by applicable legal requirements. Fred Meyer will have no obligation to approve any use which is prohibited under paragraph 7 below.

7. General Restriction on Use. During the term of this Agreement, no Pad will at any time 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" theatre, "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, or (iii) any theatre, bowling alley, skating rink, or place of public assembly (such as church or meeting hall).

Both parties acknowledge that this paragraph is an essential part of this Agreement and, further, that the restrictions set forth in this paragraph are fair and reasonable to assure each party of its expected benefits under this Agreement and orderly and beneficial development of the Development and the Pads, but not to control competition.

8. Maintenance of Owner's Property. Each Owner (and its tenants and subtenants) will maintain at all times the Owner's Property (including, without limitation, the general cleanliness, operation, replacement, enhancement and preservation of such Owner's Property) in accordance with a standard of operation as first-class facilities maintained in accordance with recognized industry standards for comparable shopping developments in the geographic area in which the Development is situated; provided, that nothing contained herein shall be construed to require Werth or Fred Meyer to develop their respective property, including specifically the Pads (which may be kept in farm use or other uses desired by Werth). If Fred Meyer develops the Development but the Pads are left undeveloped, Fred Meyer will take reasonable steps to alert its employees, customers and invitees that the Pads are not owned by Fred Meyer and will keep the Pads clean of dumping, refuse, trash or litter relating to or resulting from activities on the Development.

DWG10276

8-23-91

1991 AUG 22 PM 4:39

F258P1189

9. Term. This Agreement shall be perpetual 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.

10. Status of Title. This Agreement is granted subject to all prior easements and encumbrances of record. Each party warrants that it will defend the title and the other party's interest under this Agreement against any mortgage, tax lien or construction lien claim affecting the Development or any Pad which asserts priority over the interest of the other party under this Agreement and which is attributable to the party itself or its tenants.

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

12. Waiver. Failure at any time to require performance of any provision of this Agreement shall not limit a party'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 Agreement.

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

14. Indemnity. Each party shall defend, indemnify and hold the other harmless from any claim, loss, liability or expense (including reasonable attorneys' fees) arising out of or in connection with the party's own negligence or failure to comply with the terms, restrictions and provisions of this Agreement.

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

16. Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of Oregon.

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5

8-23-91

17. **Notices.** Notices given under this Agreement shall be in writing and will be deemed given and effective when delivered in person to the other party of three (3) business days after being deposited in the U.S. Mails, postage prepaid, and sent by registered or certified mail to the other party's address for notices. Each party shall give notice to each other party of its address for notice by written notice to the other party. In the absence of such notice of a party's address for notice purposes, any notice under this Agreement may be given to the address to which property tax statements are delivered by the taxing authority.

18. **Amendments.** Except as otherwise set forth herein, this Agreement may not be modified, amended, or terminated except by the written agreement of both parties. A party may waive one or more of its rights under this Agreement in writing signed by the party, and such writing need not be recorded. Otherwise, no modification or amendment of any provision of this Agreement shall be binding unless signed by both parties and recorded in the real property records of the County in which the Development is located.

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

WERTH:

Dean E. Werth
Dean Werth

Elmer Werth
Elmer Werth

WERTH:

THE HEXWORTH FAMILY
PARTNERSHIP

By: Dean E. Werth
Its General Partner

THE PENTWORTH FAMILY
PARTNERSHIP

By: Elmer M. Werth
Its General Partner

Both of the foregoing
together doing business as
THE WERTH JOINT VENTURE

008003

STATE OF OREGON
COUNTY OF YAMHILL

I hereby certify that this instrument
was received and duly recorded
by me in Yamhill County records.

Instrument # 27 OF 041528
T. Fuller
CHARLES STERN,
COUNTY CLERK

DWG20276

6

8-23-91

1991 AUG 22 PM 4: 39

F258P1191

FRED MEYER:

FRED MEYER, INC.

By: _____

STATE OF OREGON)
County of Yamhill) ss.

The foregoing instrument was acknowledged before me
this 22nd day of August, 1991 by Dean Werth & Elmer Werth

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



Janet L. Winder
Notary Public in and for the
State of Oregon
Residing at: McMinnville, OR
My commission expires: 5/6/93

STATE OF OREGON)
County of Multnomah) ss.

On this _____ day of _____, 19____, personally
appeared before me _____, known to me to
be the _____ of FRED MEYER, INC., a Delaware
corporation, and did say that he executed said instrument on
behalf of the corporation by its authority duly given, and
acknowledged the said instrument to be the voluntary act and
deed of said corporation.

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

Notary Public in and for the
State of Oregon
Residing at: _____
My commission expires: _____

8-23-91

1991 AUG 22 PM 4:39

F258P1192

FRED MEYER:

FRED MEYER, INC.

By: Michael H. Dun
VPI Treasurer

STATE OF OREGON)
County of Multnomah) ss.

The foregoing instrument was acknowledged before me
this 22nd day of August, 1991 by Michael H. Dun.

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



L. & A. Andersen
Notary Public in and for the
State of Oregon Portland
Residing at: Portland
My commission expires: 1-12-93

STATE OF OREGON)
County of Multnomah) ss.

On this 22nd day of August, 1991, personally
appeared before me Michael H. Dun, known to me to
be the Vice President / Treasurer of FRED MEYER, INC., a Delaware
corporation, and did say that he executed said instrument on
behalf of the corporation by its authority duly given, and
acknowledged the said instrument to be the voluntary act and
deed of said corporation.

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



L. & A. Andersen
Notary Public in and for the
State of Oregon Portland
Residing at: Portland
My commission expires: 1-12-93

8-23-91

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F258P1193

EXHIBIT "A"

PARCEL I: A parcel of property in the Sebastian Brutscher Donation Land Claim in Section 16, Township 3 South Range 3 West, Willamette Meridian in Yamhill County, Oregon, described as follows:

Commencing at the Northwest corner of said Brutscher Donation Land Claim;

thence South 00 degrees 43 minutes 22 seconds West, along the West line of said Brutscher Donation Land Claim, 276.55 feet to the Northeast corner of the Everest Donation Land Claim;

thence South 00 degrees 55 minutes 25 minutes West, along said West line, 2749.19 feet;

thence South 89 degrees 04 minutes 35 seconds East, 46.42 feet to the East line of Springbrook Road as conveyed to the state of Oregon by deed recorded in Volume 23, at Page 400 of Yamhill County Records and the true point of beginning.

Thence South 89 degrees 04 minutes 35 seconds East, 181.58 feet;

Thence South 22 degrees 55 minutes 23 seconds East, 346.71 feet;

Thence North 67 degrees 04 minutes 37 seconds East, 1087.74 feet;

Thence North 22 deg 55 min 22 sec West 453.02 feet;

Thence North 01 deg 40 min 12 deg West 26.82 feet;

Thence North 67 deg 04 min 37 sec East 249.29 feet;

Thence North 20 deg 11 min 09 sec West 19.40 feet to a point on a 570.00 foot radius curve to the right;

Thence around said 570.00 foot radius curve to the right a distance of 26.19 feet;

Thence North 17 deg 33 min 13 sec West 228.94 feet to the South right of way line of Highway 99W West;

Thence following said right of way line the following courses:

Thence South 64 deg 12 min 53 sec West 63.50 feet;

Thence South 68 deg 09 min 04 sec West 800.14 feet;

Thence South 64 deg 56 min 43 sec West 307.76 feet;

Thence South 66 deg 43 min 53 sec West 200.00 feet to the East line of said Springbrook Road as described on said State of Oregon deed;

Thence leaving the South line of said Highway 99W, South 03 deg 17 min 47 sec West along said East line 335.41 feet;

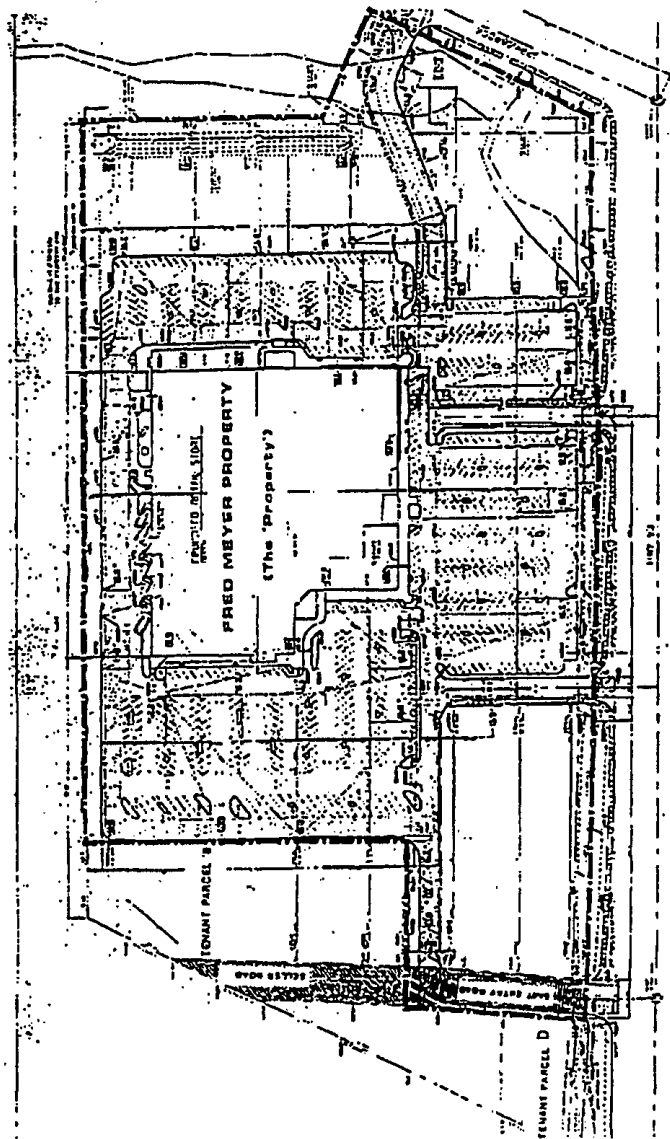
thence South 08 min 13 min 10 sec West along said East line 34.59 feet to the TRUE POINT OF BEGINNING.

8-23-91

8-23-91

1991 AUG 22 PM 4: 39

F 258P1194



PROPERTY UNIT 11
 SITE CORDING 2/10

ANDREWS CONSTRUCTION CO INC
 PROPOSED RETAIL CENTER
 JKS Architects P.C.
 1175
 1175
 1175

EXHIBIT 2