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Attn:

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County of Washington) SS
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DECLARATION OF COVENANTS, CONDITIONS
RESTRICTIONS AND EASEMENTS

by

Metropolitan Life Insurance Company
whose address is:
101 Lincoln Centre Drive, Sixth Floor
Foster City, CA 94404-1121

Concerning property located
Beaverton Town Square and Beaverton Fred Meyer Retail Development
in
Beaverton, Oregon

ONE PARTY - FM WITH PADS (Form E-1)
February 4, 1997
MOI-54376.7 53900-2046

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**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS**
(Beaverton, Oregon)

This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (the "Declaration") is made this _____ day of _____, 1998, by METROPOLITAN LIFE INSURANCE COMPANY ("MetLife" or "Declarant").

MetLife 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, as shown on the parcel map attached as Exhibit 2 (each of which is a "Parcel"). MetLife desires to have such Parcels developed and used in an integrated and coordinated manner. As used below, the "Development" consists of the Parcels, and any additional land annexed to the Development pursuant to the terms of this Declaration.

The Development presently includes (i) the property commonly known as the Beaverton Fred Meyer retail development, which is the portion of the Development other than the Burger King Property and the Town Square (as defined below), (ii) an adjoining pad initially developed prior to 1986, which was previously leased and is presently used as a "Burger King" restaurant (the "Burger King Property"), the legal description of which is described in the attached Exhibit 3, and (iii) the adjoining real property initially developed prior to 1986, commonly known as Beaverton Town Square, the legal description of which is as set forth in the attached Exhibit 4 (the "Town Square"); provided, that as to the Burger King Property and the Town Square, this Declaration shall be effective to the extent provided in Section 15.24 below.

As used herein, the following terms will have the following meanings: (i) "Ground Lessee" means the holder of the interest of the lessee under a pre-existing ground lease of the Town Square, dated February 25, 1981 ("Ground Lease"), and "Ground Lease Interest" means the sublessees and others with an interest in the Town Square arising by, through or under the Ground Lessee and whose consent, approval or joinder is needed to bind and subject the Town Square to the terms, conditions and restrictions of this Declaration; (ii) "Lease Financing Instruments" means the instruments in favor of the lender(s) that provided financing on the Ground Lessee's improvements on the Town Square, or who subsequently hold a lien thereon or on the lesseehold estate under the Ground Lease.

NOW, THEREFORE, in order to assure the orderly and beneficial development of the Parcels, MetLife 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:

- I. **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 as shown on Exhibit 2 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 MetLife and its successors and assigns as fee owner or lessee under a Prime Lease with respect to one or more of the Parcels. At such time as Declarant no longer owns or no longer is the lessee under a Prime Lease with respect to at least one Parcel, all references in this Declaration to Declarant and all rights of approval or consent held by Declarant shall refer, instead, to (and be exercisable solely by) the fee owner or lessee under a Prime Lease with respect to the Anchor Parcel.

"Easement Areas": Collectively, the Common Area and the Utility Easement Area, and, if applicable, any Sign Easement Area.

"Fred Meyer": Collectively, Fred Meyer Stores, Inc., a Delaware corporation (whose name prior to September 9, 1997 was Fred Meyer, Inc.), and its business successors and assigns.

"Fred Meyer Lease": That certain lease dated October 22, 1986, as amended, by and between MetLife's predecessor in interest (Fred Meyer Real Estate Properties, Ltd.), as lessor, and Fred Meyer, Inc. (whose name is now Fred Meyer Stores, Inc.), or its wholly owned corporate subsidiaries, as lessee, relating to the Anchor Parcel, as such lease may now or hereinafter be modified, extended or amended.

"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, the net lease pursuant to which the former Owner continues to lease and occupy the Parcel. The "Prime Lease" includes, without limitation, the Fred Meyer Lease. 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) or, if applicable, the area on the Non-Anchor Parcel benefitting the Anchor Parcel. Initially Sign Areas are shown on Exhibit 2 and signs for the benefit of the Anchor Parcel in place on the date of this Declaration are approved.

"Sign Easement Area": The Sign Area that benefits a particular Non-Anchor Parcel, but that is located on the Anchor Parcel, and, if applicable, that benefits the Anchor Parcel, but that is located on a Non-Anchor Parcel, as shown on Exhibit 2 as it may be modified in accordance with this Declaration.

"Utility Easement Area": All areas of the Development on, over, under or through which any Utility Line (as defined in Section 7.1 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.** Subject to the limitations stated in Section 15.26, 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 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 on any Parcel; and (5) the location, design, and size of any exterior or building signs placed or installed on any Parcel. All approvals by Declarant must be in writing. Declarant's review of architectural and signage matters will include architectural design, style, exterior color, quality of materials and construction, and compatibility (in Declarant's judgment reasonably exercised) of the improvement or change compared to the other portions of the Development.

Any right of approval by Declarant with respect to the development of the Parcels shall be solely for purposes of Declarant's satisfying itself in good faith that such proposed development is compatible with the development of the Development, and shall not be deemed to be a representation, warranty or other assurance that the matter for which review and approval is sought is true, correct, adequate, properly designed from an engineering, architectural or other standpoint, in compliance with law, acceptable to any governmental authority, or suitable for any other purpose, and Declarant assumes no liability to the Owners or to any third person or entity arising out of reliance by the Owners or such third person or entity on such approval, including, without limitation, for any defect in any improvements constructed or installed on the basis of any plans or specifications approved by Declarant.

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 the Declarant in accordance with Section 2.1. 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 constructed on the Non-Anchor Parcels 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 Declarant's reasonable judgment, be architecturally and aesthetically compatible and harmonious with all other buildings in the Development.

(b) **Safety.** Each building constructed on the Non-Anchor Parcels 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, and no building constructed on the Non-Anchor Parcels shall be built in such a manner as to adversely affect the safety of any other building in the Development.

(c) **Structural Integrity.** Each building constructed on the Non-Anchor Parcels shall be built in such a manner as to not 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 Declarant. Such heights will not in any event exceed the limitations imposed by applicable legal requirements.

2.4 Construction Requirements.

(e) **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, workmanlike and expeditious manner, and so 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 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 Declarant agrees otherwise in its sole discretion. Unless otherwise agreed by Declarant, no construction shall occur during the months of November or December. At Declarant'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 fifteen (15) 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 15-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; Sign Easement. Subject to the limitations stated in Section 15.26, the following will apply to the Non-anchor Parcels, unless otherwise approved by 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 3, and shall only be located in approved Sign Areas. [If the site plan attached as Exhibit 2 (as it may subsequently be modified in accordance with this Declaration) provides a Sign Area located on a Parcel for the benefit of the Owner of another Parcel, then and to that extent, the Owner of the other Parcel (the "Sign Owner") shall have, and the Owner of the burdened Parcel grants for the benefit of the Owner of the other Parcel, a nonexclusive easement over the designated Sign Area for the purposes of construction, operation, maintenance and replacement of the Sign Owner's sign, in accordance with the terms of this Declaration, together with the right of ingress and egress to and from the applicable Sign Area. Declarant reserves the right to relocate the Sign Easement Areas, at Declarant's sole cost and expense (including, without limitation, the cost of reconstruction of any sign(s) in the relocated Sign Easement Area), provided that the relocated Sign Easement Area provides substantially equivalent exposure and benefit to the Owner that is benefited by the relocated Sign Easement Area.]

2.7 Building Code Setback. Fred Meyer has constructed on the Anchor Parcel a "prototype Fred Meyer building" which Fred Meyer indicates 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 Declarant specifically agrees otherwise in advance and in writing):

(a) No building shall be constructed within sixty feet (60') of the perimeter of the Building Envelope on the Anchor Parcel or any existing Building on the Anchor 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 Anchor 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') distant 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.

(e) The primary customer entrances for the building on each of the Non-Anchor Parcels shall be positioned so that the parking areas on the Non-Anchor Parcels are the most convenient to such entrances and not to the parking areas on the Anchor Parcel.

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 between the buildings.

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 and expeditiously complete such work, 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.

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; (ii) movement of pedestrian and vehicular traffic of Permitted Persons from any part of the Development to any other part of the Development; and (iii) loading and unloading in a manner that does not unreasonably interfere with the operation and use of the burdened Parcel. The Common Areas may be used for sidewalks, walkways, landscaping, perimeter walls and fences, parking lot lighting, utilities and service facilities, all consistent with such easements. Subject to obtaining Declarant's prior written approval, the Common Area may also be used for directional signs, provided Declarant shall have the right at any time to relocate or remove such directional signs. 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 any applicable parking codes and regulations (without regard to or inclusion of the nonexclusive Common Area parking rights under this Declaration). No Owner of a Non-Anchor Parcel shall reduce the number of parking spaces on such Owner's Parcel from the number approved by Declarant in review of the Owner's site plan, and no Non-Anchor Parcel 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. Except as otherwise specifically provided herein, 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. Except as otherwise specifically provided herein with respect to the Town Square, the Declarant from time to time may adopt, make, amend, revoke 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 the Declarant.

4. Restriction on Use.

4.1 **Restrictions on Certain Parcels.** No Parcel other than the Anchor Parcel will be leased, subleased, operated or otherwise used except (i) for retail sales or retail services (as defined in Section 4.3 below) and (ii) in accordance with all other requirements and restrictions contained herein, including (without limitation) Section 15.25.

Unless otherwise approved in writing by Declarant, in Declarant's sole discretion, "retail sales" and "retail services" excludes: (i) flea markets, fire, bankruptcy or liquidation 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); and (iv) except as otherwise permitted with respect to the Town Square as set forth in Section 15.25(b) below, movie theaters, bowling alleys, skating rinks, game parlors, pool or billiard halls, dance halls, video arcades or other entertainment.

4.2 **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 Declarant'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 that involves the storage, sales, leasing or display of any such motor vehicle, truck, trailer, recreational vehicle, or boat outside of the enclosed improvements; or (viii) any place for public assembly (such as a church, mortuary or meeting hall).

4.3 **Retail Sales and Services.** For purposes of Sections 4.1 and other provisions of this Declaration, the terms "retail sales" or "retail services" include all retail uses and services establishments as are consistent with the Development's status as a first-class retail shopping development, including, without limitation, retail stores, retail, mercantile and service businesses, branches of banks and other financial institutions, small loan offices, 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" and "retail sales" specifically excludes nonprofit organization offices, government offices, office uses that do not involve direct service to consumers, any office uses in excess of 10,000 square feet, and other uses not customarily associated with or contained in first-class retail developments.

4.4 **Alcohol Sales.** Except as otherwise specifically approved in writing by Declarant in Declarant's sole discretion, or permitted with respect to the Town Center pursuant to the

provisions of Section 15.25(b) below, no Parcel other than the Anchor 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. Except for the Owner of the Town Center and the Anchor Parcel, any Owner of a Parcel on which 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 Declarant 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 Declarant to verify compliance with the restriction on use in this paragraph, and shall take such steps as are necessary to ensure such compliance.

4.5 Environmental Provisions for Gasoline Service Stations. The provisions of this Section 4.5 govern the rights and obligations of a Non-Anchor Parcel Owner with respect to the installation, maintenance and operation of any UST System defined below:

(a) **Definitions.** Unless the context otherwise specifies or requires, the terms defined in this Section 4.5 shall have the meanings set forth below:

"Environmental Laws": The Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Federal Water Pollution Control Act, the Emergency Planning and Community Right-to-Know Act, and any and all other federal, state and local laws, statutes, rules, and regulations applicable to the protection of human health or the environment in existence on the date of this Declaration, or hereinafter enacted.

"Hazardous Substance": Is defined in Section 9 below.

"UST Laws": All Environmental Laws applicable to the installation, licensing, ownership, or operation of UST systems in, on or under the Pad, as in existence on the date of this Supplement or hereafter enacted. The UST Laws include, but are not limited to, subtitle I of the Resource Conservation Recovery Act (42 USC § 6901 et seq.) and any regulations promulgated thereunder.

"UST System": Any oil sump or underground storage tank system for storage of gasoline, petroleum or its fractions, for retail sale, including all ancillary facilities and equipment such as pipes, pumps and vents.

(b) **Regulation of UST System Operations on the Non-Anchor Parcels.**

(i) **Consent to Installation of UST System and Gasoline Sales Compliance with Laws.** Non-Anchor Parcel Owner may install, maintain and operate a UST System on the Non-Anchor Parcel, and may engage in the retail sale of gasoline, provided that the installation, maintenance and operation of the UST System is in full compliance with all UST Laws (including, but not limited to, the performance standards for new UST Systems as set forth in 40 CFR § 280.20).

Non-Anchor Parcel Owner shall also install Stage II vapor recovery systems on all gasoline dispensers located on the Non-Anchor Parcel. Installation of the UST System shall be performed by a person or entity that is fully licensed and bonded under applicable UST Laws.

(ii) Records and Reports. Non-Anchor Parcel Owner shall maintain all records required by UST Laws with respect to any UST Systems on the Non-Anchor Parcel. Non-Anchor Parcel Owner shall promptly provide Declarant with copies of any and all reports, certifications or documents required to be submitted to any governmental agency in connection with the installation, operation or maintenance of any UST Systems on the Non-Anchor Parcel.

(iii) Proof of Financial Responsibility. Prior to the installation or operation of any UST System on the Non-Anchor Parcel, and at all times that any UST Systems exist on the Non-Anchor Parcel, Non-Anchor Parcel Owner shall maintain and provide Declarant proof of Non-Anchor Parcel Owner's "financial responsibility" as provided in this Section 4.5. It is the purpose of this Section 4.5 to provide Declarant with reasonable assurances that Non-Anchor Parcel Owner will have the financial ability to remediate any contamination caused by the Non-Anchor Parcel Owner's UST System and/or Non-Anchor Parcel Owner's gasoline sales operations on the Non-Anchor Parcel. Non-Anchor Parcel Owner may satisfy this obligation by compliance with the financial responsibility provisions of 40 CFR §§ 280.70 - 280.74 (the "Financial Responsibility Regulations"). Non-Anchor Parcel Owner shall, however, be obligated to maintain and demonstrate financial responsibility notwithstanding any waiver, repeal, modification, or invalidity of the Financial Responsibility Regulations, and regardless of whether the Financial Responsibility Regulations apply to the Non-Anchor Parcel Owner's operations on the Non-Anchor Parcel. If the Financial Responsibility Regulations are waived, repealed, modified, or invalidated, or if they do not apply to the Non-Anchor Parcel Owner's operations on the Non-Anchor Parcel, Non-Anchor Parcel Owner shall provide financial assurances for the benefit of Declarant that afford the same level of assurance of Non-Anchor Parcel Owner's financial responsibility as is contemplated by the Financial Responsibility Regulations, as determined by Declarant in Declarant's reasonable judgment. Non-Anchor Parcel Owner shall provide evidence of compliance with the foregoing requirements on a periodic basis as requested by Declarant. If Non-Anchor Parcel Owner fails to procure or maintain the required assurances of financial responsibility at all times that a UST System exists on the Non-Anchor Parcel, Declarant may, after notice to Non-Anchor Parcel Owner, purchase liability insurance (providing coverage for the release of hazardous substances) with respect to Non-Anchor Parcel Owner's UST Systems and operations (in an amount selected by Declarant in Declarant's judgment) on Non-Anchor Parcel Owner's behalf. Declarant shall be entitled to reimbursement from Non-Anchor Parcel Owner for any premiums or expenses paid by Declarant in connection with such insurance. Declarant shall be under no obligation to purchase such insurance, however.

(iv) Access. Declarant may, at any time with reasonable notice to Non-Anchor Parcel Owner, inspect the Non-Anchor Parcel Owner's installation, maintenance and operation of any UST System on the Non-Anchor Parcel. Non-Anchor Parcel Owner shall provide Declarant reasonable access to the Non-Anchor Parcel and to all records relating to the management of any UST System(s) on the Non-Anchor Parcel. Declarant shall not be obligated to conduct such inspections, and no such inspection by Declarant shall be deemed the basis of any claim of waiver of

compliance with any provision of this Supplement or shall create any obligation or duty to Non-Anchor Parcel Owner or any third party.

(v) Notice of Release. Non-Anchor Parcel Owner shall immediately notify Declarant upon becoming aware of any of the following: (a) any spill, leak, disposal or other release of any Hazardous Substance on, under or adjacent to the Non-Anchor Parcel or any suspicion or threat of same; (b) any notice or communication from a government agency or any other person relating to any release or suspected release of Hazardous Substances on, under or adjacent to the Non-Anchor Parcel; or (c) any violation of any applicable Environmental Law with respect to the Non-Anchor Parcel or Non-Anchor Parcel Owner's activities on or in connection with the Non-Anchor Parcel.

(vi) Response Actions to Release. In the event of a spill, leak, disposal or other release or threat of such release of any Hazardous Substance on, under, to or from the Non-Anchor Parcel, or the reasonable suspicion or threat of same, Non-Anchor Parcel Owner shall (a) immediately undertake all investigatory, remedial, removal, and other response action necessary or appropriate to ensure that any contamination by the Hazardous Substances is eliminated, and (b) provide Declarant with copies of all correspondence with any governmental agency regarding the release, suspicion or threat of release, and in the case of a response action, a detailed report documenting all such response action, and a certification that any contamination has been eliminated (and if requested by Declarant, a "no further action" or similar letter or certification from an applicable governmental authority). All such work shall be performed, and all reports and certifications shall be made by, qualified and reputable environmental consultants or engineers reasonably acceptable to Declarant.

(vii) Response Action to Noncompliance. In the event of any violation of any applicable Environmental Law with respect to the Non-Anchor Parcel or Non-Anchor Parcel Owner's activities on or in connection with the Non-Anchor Parcel, Non-Anchor Parcel Owner shall undertake immediately all actions necessary to return to compliance and shall provide Declarant with a detailed report documenting the actions taken by Non-Anchor Parcel Owner to return to compliance.

(viii) Closure. If Non-Anchor Parcel Owner ceases operation of any UST System installed on the Non-Anchor Parcel, Non-Anchor Parcel Owner shall at its sole cost and expense: (a) cause the UST System to be decommissioned and the tanks removed, in accordance with all applicable UST Laws; (b) provide to Declarant a report documenting the decommissioning, together with a certification from the consultant or contractor performing the work that the system has been properly and legally decommissioned, and that any and all contamination has been eliminated; and (c) if requested by Declarant, obtain a "no further action" or similar closure letter or certification from the applicable governmental authority, which letter shall not be conditioned on use restrictions or other institutional controls. All decommissioning work shall be performed by qualified and reputable environmental consultants or engineers reasonably acceptable to Declarant.

(ix) Automotive Service Restrictions. The following additional restrictions apply to any automotive service performed by Non-Anchor Parcel Owner on the Non-Anchor Parcel: (1) no automobiles shall be parked outside building(s) constructed on the Non-Anchor Parcel overnight; (2) no automotive service shall be performed outside any building; (3) no supplies or parts shall be stored outside any building; and (4) no automobile sales shall be permitted.

(c) Indemnity. Non-Anchor Parcel Owner shall indemnify, defend and hold harmless Declarant (including both Fred Meyer and MetLife) and their respective officers, directors, employees, tenants, invitees, successors and assigns (collectively the "Indemnitees") from and against any and all claims, liabilities, demands, fines, losses, costs and expenses (including attorneys' fees at trial, on appeal and in connection with any petition for review) (collectively, "Claims") arising out of, in connection with or in any way relating to (a) the breach of any covenant of Non-Anchor Parcel Owner contained in this Section 4.5; or (b) the use, treatment, storage, generation, manufacture, transport, release, spill, disposal or any other presence or alleged presence of Hazardous Substances on or under the Non-Anchor Parcel. "Claims" shall include without limitation (a) the cost of any Hazardous Substances investigation, removal, remedial or other response action required by any Environmental Law, required by judicial order or by order or agreement with any governmental authority, (b) claims for injury or death of any person, including an Indemnitee, and (c) claims for damage to the property of an Indemnitee or any other person, including claims for diminution in value or loss of use.

5. 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 the city of Beaverton and westside of the Portland, Oregon metropolitan area.

6. Maintenance of Parcels.

6.1 Generally; Common Area Maintenance. Each Non-Anchor Parcel Owner shall maintain or cause to be maintained at all times that Non-Anchor Parcel 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 Non-Anchor Parcel Owner to maintain its respective Parcel shall include the Common Areas located on its 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.

6.2 Maintenance Prior to Development. This Section 6 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 Declarant'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.

6.3 Maintenance of Exterior. Each Non-Anchor Parcel Owner shall maintain (or cause to be maintained) the exterior of any building located on such Non-Anchor 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.

6.4 Parking Lot Lighting. Each Non-Anchor Parcel 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 Declarant may reasonably designate and that are consistent with the hours in which the parking lot lights in the Common Areas on the Anchor Parcel are operated). Each Non-Anchor Parcel Owner shall maintain the parking lot lights at 25% intensity (or such other reasonable security level as may be designated by the Declarant) during all other hours of darkness.

7. Utility Easements.

7.1 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.

7.2 Terms of Utility Easements. Subject to the provisions of this Section 7.2, 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 minimize 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.

7.3 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 Declarant; 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 increase the flow of surface water more than a de minimis amount onto an adjacent Parcel either in the aggregate or by directing the flow of surface water to a limited area.

8. Alteration of Common Areas and Building Areas.

8.1 In General.

(a) **Modification by Declarant.** Subject to the provisions of Section 15.26 and other provisions of this Declaration, Declarant shall have the right at any time and from time to time to alter, rearrange, reduce, or relocate, at Declarant's cost, the Common Areas and the Common Area improvements, or to modify the Building Areas on any Parcel; provided, however, that no such action shall, without the consent of all materially affected Owner(s) as determined by Declarant in its good faith discretion, materially diminish, as determined by Declarant in its good faith discretion, the easements and rights granted, or materially adversely affect the purposes stated, under Sections 3 or 7 of this Declaration. Declarant shall not modify any buildings or related improvements constructed by an Owner in any material respect, modify the previously approved Building Area on an Owner's Parcel in any material respect, or reduce the parking spaces provided on an Owner's Parcel, 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 7, and (ii) the Owner obtains Declarant's prior written approval of such change.

8.2 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 7. 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 reasonable efforts to obtain alternative access on such Owner's property.

8.3 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.

9. Hazardous Materials. Each Non-Anchor Parcel Owner shall maintain its property and conform its activities and the activities of its Permitted Persons on that Non-Anchor Parcel 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 Non-Anchor Parcel Owner or occupant who shall violate (or whose tenant, licensee, or subtenant shall violate) this restriction regarding Hazardous Substances shall be

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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, gasoline, petroleum and all petroleum hydrocarbons, 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").

10. **Condemnation.** This Section 10 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.

11. **Insurance.** Throughout the term of this Declaration, each Non-Anchor Parcel Owner shall maintain, with respect to the Easement Areas and Common Area within that Non-Anchor Parcel Owner's Parcel a policy or policies of public liability insurance with a combined single limit of liability of not less than (a) \$5,000,000 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 Declarant and communicated in writing to the other Owners. The Non-Anchor Parcel Owners will provide to Declarant from time to time, as Declarant may require, certificates of insurance showing that such policies of insurance: (i) name Declarant (including MetLife and also Fred Meyer during the Fred Meyer Lease term) and 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 Declarant) 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 a Non-Anchor Parcel 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 Non-Anchor Parcel Owner or any Non-Anchor Parcel Owner's Permitted Person places any underground storage tank under the Non-Anchor Parcel Owner's Parcel, the Non-Anchor Parcel Owner, upon written request from any other Owner, shall provide proof that the Non-Anchor Parcel 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.

12. **Common Access Maintenance.** The Declarant shall maintain and repair the major driving lane and access ways on the Anchor Parcel as determined from time to time by Declarant in its reasonable discretion as part of Declarant'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 Declarant an annual driving lane maintenance fee in the amount of _____ [dollars][cents] (\$ _____) [amount to be determined by Fred Meyer] per square foot in such Owner's Parcel (the "Dollar Maintenance Fee"). Such fee shall be due and payable at Declarant'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.C. 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 Declarant may select by written notice to all Owners. In the event that an entity other than Fred Meyer is performing the maintenance described in this Section 12, Declarant shall have the option, exercisable by delivering written notice to the other Owners, within 180 days after Fred Meyer ceases performing such maintenance, to either (i) continue charging the Dollar Maintenance Fee or (ii) electing to charge the Owner's a prorata share of the actual maintenance costs incurred by Declarant calculated by multiplying a fraction the numerator of which shall be the square footage of the land of which the Owner's Parcel consists and the denominator of which shall be the square footage of the land of all of the Parcels in the Development that are then occupied by tenants in operation at such Parcels, by the amount of Declarant's actual maintenance costs plus a fifteen percent (15%) administrative fee. If Declarant fails to make such election within such 180 day period, the Dollar Maintenance Fee shall continue in full force and effect.

13. Defaults.

13.1 **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. With respect to performance required of Fred Meyer where MetLife's consent is required (pursuant to Section 15.18(b)), any notice of default shall not be given to Fred Meyer or Declarant any earlier than the date upon which MetLife's consent is given or deemed given. 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.

13.2 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.

13.3 Declarant's Right of Self-Help.

(a) Whenever an Owner is in default under Section 13.1, and without limiting any other rights that Declarant or any other Owner may have in the event of such a default, at law or in equity, Declarant shall have the right (but not the obligation) to perform the obligation of the Owner giving rise to such default, provided that Declarant first gives the defaulting Owner at least ten (10) days notice of Declarant's intention to perform the obligation, and provided that the Owner has not cured the default prior to expiration of such ten-day period. Declarant 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 Declarant may select by written notice to all Owners), plus 4 percent per annum, from the date of billing until reimbursement is made.

(b) Declarant shall have a lien on the Parcel of an Owner that fails to reimburse the Declarant as required by paragraph 13.3(a). Such lien shall only be effective when filed for record by the Declarant 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) if required by law, 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 Declarant. 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 Declarant and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

13.4 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 12 of this Declaration, or to perform or comply with the terms of this Declaration.

14. **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.

15. **General Provisions.**

15.1 **Status of Title; Property Taxes.** This Declaration is granted subject to all prior easements and encumbrances of record. Each Non-Anchor Parcel 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.

15.2 **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.

15.3 **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.

15.4 **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.

15.5 **Indemnity.** Each Non-Anchor Parcel 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 occurrences 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).

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

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

15.8 Status Certificate, Information. Within 20 days after receipt of a written request, a Non-Anchor Parcel 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 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.

15.9 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; or by facsimile or other telecommunication device capable of transmitting or creating a written record. 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:

Metropolitan Life Insurance Company
101 Lincoln Centre Drive, Sixth Floor
Foster City, CA 94404-1121
Attn: Vice President
Facsimile No.: (415) 349-4615

with a copy to:

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

with a copy to:

Fred Meyer, Inc.
P.O. Box 42121
Portland, Oregon 97242-0121
(Street Address: 3800 S.E. 22nd Avenue, Portland, Oregon 97202)
Attn: Corporate Legal Department
Facsimile No.: (503) 797-5623

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, or (B) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

15.10 Amendments. Except as otherwise set forth herein, this Declaration may not be modified, amended or terminated except by the written agreement of all Owners (except that Declarant's rights may be and will be transferable as described in the definition of "Declarant"). 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. Notwithstanding the foregoing, Declarant may add additional land to the Development without the consent of any other Owner's provided the addition of such additional land does not (i) increase an Owner's obligations under this Declaration or (ii) materially and adversely affect an Owner's ingress, egress or parking rights under this Declaration.

15.11 Releases. Declarant reserves the right, by written and recorded supplement to this Declaration, to release one or more Non-Anchor Parcels from the terms of this Declaration in connection with a sale by Declarant of a portion of the Development; provided, however, that no such release shall materially interfere with or prevent access from any Non-Anchor Parcel to adjacent public streets pursuant to the easement rights provided in this Declaration. A portion of the Development so released shall not have the benefit of the easements provided in this Declaration, and shall not be burdened by the restrictions or covenants contained in this Declaration.

15.12 Effect of Declaration. Except as expressly set forth herein, 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. Except as expressly set forth herein, 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 tenant 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.

15.13 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 (unless the context clearly requires otherwise, and except as otherwise provided in the definition of "Declarant" with respect to transfer of Declarant's rights), 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.

15.14 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, so long as the material benefits intended to be conferred by the invalid or unenforceable provisions are afforded by the substitute provision.

15.15 **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.

15.16 **No Partnership; Disclaimer.** No provision of this Declaration or previous (or subsequent) conduct or activities of Declarant and/or present or subsequent Owner(s) will be construed: (i) as making Declarant 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 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). Whether and how Declarant may develop the Development and its Parcel(s) are at Declarant's discretion. No person will have any claim against (or right to recover any damages or costs from) Declarant in the event Declarant does not develop the Development or its Parcel(s).

15.17 **Exercise of Approval Rights; Limitation of Claims.** Declarant shall exercise its approval rights under this Declaration in good faith based on Declarant's 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 Declarant will not be liable in damages for any denial or withholding by Declarant 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.

15.18 **Prime Lessor; License to Rights of Declarant.**

(a) **Prime Lessor.** 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 all of such Parcel with such third party (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. Fred Meyer shall be considered a Prime Lessee. Other than the Fred Meyer Lease, a Prime Lessor shall not be exculpated from liability for any breach, non compliance or failure to perform any obligation hereunder by the Prime Lessee (where such Prime Lessor would otherwise have liability as an Owner) until the Prime Lessor gives written notice to the other Parcel Owners that Prime Lessor has entered into the Prime Lease, with the date and parties to the Prime Lease.

(b) **License Rights of Declarant.** MetLife, as Declarant, hereby grants to Fred Meyer a license to exercise the rights of Declarant hereunder and to collect and retain all fees hereunder, expressly pursuant to the terms of this Declaration, and the Owners of the Non-Anchor Parcels may rely on Fred Meyer's exercise of such rights, all pursuant to the terms of this Section 15.18(b):

(i) With respect to the rights of Declarant set forth in Sections 2.1, 2.2, 2.3(a), 4.5, 7.2 and 8 of this Declaration requiring the action of Declarant, Fred Meyer shall be entitled to take such actions without the necessity of obtaining MetLife's consent, provided that Fred Meyer gives MetLife written notice of such action promptly following Fred Meyer's exercise of such action.

(ii) With respect to the rights of Declarant set forth in Sections 1, 2.3(d), 2.6, 2.7, 4.3, 4.4, 15.3, 15.10, 15.11, 15.25 and 15.26.7 of this Declaration requiring the action of Declarant, Fred Meyer shall forward to MetLife copies of all materials concerning the matters for which action is proposed to be taken, along with Fred Meyer's proposed action. If MetLife has not consented or objected to Fred Meyer's proposed action within fifteen (15) business days after the date MetLife has received all materials necessary to evaluate and render a decision (or a time period specified by MetLife in excess of fifteen (15) business days if MetLife reasonably believes more time is required to reach an informed decision due to the complexity of the matter, and MetLife requests such additional time during the initial fifteen (15) business day period), then MetLife shall be deemed to have objected to Fred Meyer's proposed action. If MetLife does not respond to Fred Meyer's request within such fifteen (15) day period, then Fred Meyer shall give MetLife a second notice of the requested action. If MetLife does not respond to the second notice within five (5) business days after delivery of such notice, then MetLife shall be deemed to have consented to Fred Meyer's proposed action, notwithstanding MetLife's prior deemed objection.

(iii) With respect to all other rights of Declarant set forth in this Declaration requiring the action of Declarant, Fred Meyer shall be entitled to take such actions without the necessity of obtaining MetLife's consent provided that such actions taken by Fred Meyer, and actions taken by the Owners and their Permitted Persons pursuant to consent granted by Fred Meyer shall cease and terminate upon the expiration or revocation of the license granted to Fred Meyer hereunder.

Notwithstanding the foregoing, if any provision of this Declaration does not require the action of Declarant, including, without limitation, any determination, judgment, consent, agreement or approval, Fred Meyer shall not be required to notify or obtain MetLife's consent or approval in connection therewith. The rights granted to Fred Meyer hereunder shall be in the nature of a revocable license. If MetLife disapproves any matter pursuant to the terms of this Section 15.18(b), MetLife shall specify in reasonable detail the reasons for such disapproval. Only Fred Meyer and its wholly owned subsidiaries and affiliates shall be entitled to the rights granted under the license set forth in this Section. Upon written notice from MetLife to an Owner of a Non-Anchor Parcel, such Owner shall no longer be entitled to rely upon the exercise by Fred Meyer of the matters described in such notice. Fred Meyer shall in no event be considered an agent of MetLife in

exercising the rights under this Declaration. Fred Meyer shall defend, indemnify and hold MetLife harmless from any claim, loss, liability or expense (including discovery costs and other litigation costs, and reasonable attorneys' fees) that arises out of or in connection with Fred Meyer's exercise of the rights granted Declarant under this Declaration. This indemnity shall survive the termination of the license described hereunder, the termination of the Fred Meyer Lease, and the termination of this Declaration. Fred Meyer's "exercise" of Declarant's rights, shall include Fred Meyer's lack of action, where such gives rise to a claim or liability, as well as Fred Meyer's acts. In no event shall Fred Meyer have any right to modify or amend this Declaration. Nothing in this section shall be in derogation of any of Fred Meyer's obligations as tenant to MetLife as landlord under the Fred Meyer Lease.

15.19 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.

15.20 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.

15.21 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.

15.22 Declarant's Limitation of Liability. Each Owner agrees, on its behalf, and on behalf of its Permitted Persons, that any liability or obligation arising under or in connection with this Declaration shall only be enforced against Declarant's equity interest in the Development up to a maximum of Five Million Dollars (\$5,000,000) and in no event against any other assets of the Declarant, or Declarant's officers or directors or partners, and that any liability of Declarant with respect to this Development shall be so limited and such Owners and such Owners' Permitted Persons shall not be entitled to any judgment in excess of such amount.

15.23 Subordination of Fred Meyer Lease. Fred Meyer and MetLife hereby subordinate the Fred Meyer Lease to the terms and conditions of this Declaration; provided, however that during the term of the Fred Meyer Lease, no action by Declarant under this Declaration, including, without limitation, any determination, judgment, consent, agreement or approval shall be required with respect to the Anchor Parcel.

15.24 Relation of Declaration to Pre-existing Leases and Interests.

(a) As referenced herein, this Declaration will not be binding on, accrue for the benefit of or otherwise affect (i) the lessee or other parties having interests in the Burger King Property arising by, through or under the existing lease of the Burger King Property (the "~~Burger King Interests~~"), or (ii) the Ground Leases or other Ground Lease Interests in the Town Square or the Lessee Financing Instruments thereon, subject to the terms and conditions set forth below.

(b) Notwithstanding the foregoing, as between Declarant, on the one hand and Fred Meyer, and/or Fred Meyer's successors and assigns, from and after the date of any purchase by Fred Meyer of the Town Square, or of the Burger King Property, and/or any Parcels created from or including the Town Square and/or the Burger King Property, on the other hand, this Declaration will be binding on Declarant's and Fred Meyer's respective interests in the Development, and is being approved and executed by FMI (as well as Declarant) to confirm acceptance of the same and to bind the interest of Fred Meyer and succeeding interests.

(c) In the event and at such time as the lease of the Burger King Property or the Ground Lease of the Town Square expires or terminates, this Declaration will be fully binding on the Burger King Property and the Town Square (as applicable).

(d) If prior to such date the requisite parties effect a subordination or joinder to this Declaration (pursuant to an instrument of record approved in writing by Declarant) of the lease of the Burger King Property or of the Ground Lease and Lessee Financing Instruments, then this Declaration will be binding on and accrue for the benefit of the lessee of the Burger King Property and other Burger King Interests and for the benefit of the Ground Lessee and all parties holding interests in the Town Square by, through or under the Ground Lease and under the Lessee Financing Instruments (as applicable), subject to the terms of Section 15.25 below.

15.25 Additional Use Restrictions Applicable to the Burger King Property and the Town Square. In the event that the Burger King Property and/or the Town Square is subjected to the terms of this Declaration, then subject to any restriction applicable under Sections 4.1 through 4.4, the following will apply to the Burger King Property and/or the Town Square, as applicable:

(a) **Burger King Property** - The Burger King Property will only be used as a restaurant facility, and for no other purpose without the prior written approval of Declarant.

(b) **Town Square** - During the term of the Town Square Ground Lease on the Anchor Parcel, the Town Square will only be used for the conduct of a specialty store shopping center complex, which may include, for purposes hereof, (i) a motion picture theater, (ii) restaurant, lounge, tavern and fast food outlets, (iii) realty, stock brokerage and general office space (provided, that the space used at any time by subtenants or others for realty, stock brokerage and general office space shall not at any time exceed 10,000 square feet), and/or (iv) bank and savings and loan associations, and specialty retail stores, and for no other purpose without the prior written consent of Declarant.

15.26 Town Square. In the event that the Town Square is subjected to the terms of this Declaration, then this Declaration shall be modified with respect to the Town Square only, and any Parcels created therefrom as follows:

15.26.1 Parking and Access Rights Generally. As set forth in Sections 3.1 and 3.2 of this Declaration, the Owner of the Town Square and its Permitted Persons will have rights of access and for use of parking as set forth therein. The Owner of the Town Square, and of any Parcels created therefrom, shall take such reasonable steps as may be necessary to prevent any unauthorized use of the parking area, access roads and driveways within the Development by other parties. In addition, the Owner of the Town Square shall have the rights with respect to Utility Lines and storm drainage as provided in Section 7. The Owner of the Town Square, and of any Parcel created therefrom, shall not be prevented from changing the arrangement of the improvements situated on the Town Square, or any Parcel created therefrom, nor will Declarant's approval of site plans and architectural plans be required under Section 2.1 (other than as specified in Section 15.26.4 below), provided that: (i) the number of parking spaces on the Town Square is not thereby reduced from 603 spaces, and (ii) the requirements and limitations in Sections 2.3(a), (b), (c), 2.4 and 2.7 are satisfied with respect to the improvements, except that with respect to Section 2.3(a), the phrase "in Declarant's reasonable judgment" is deleted. Section 2.3(d) shall not apply to the Town Square, except that no structure on the Town Square shall exceed the height limitation imposed by applicable legal requirements.

15.26.2 Reciprocal Rights for Parking between Anchor Parcel and Town Square Generally. The Owner of the Town Square and its Permitted Persons, and the Owner of the Anchor Parcel, and its Permitted Persons, shall have the right to use, on a nonexclusive, reciprocal basis with each other, the parking areas existing from time to time within the Town Square and Anchor Parcel, subject to the duty to comply with the other provisions of this Declaration.

15.26.3 Common Area Alterations. Notwithstanding Section 8.1(a), Declarant shall not have the right to alter, rearrange, reduce or relocate the Common Areas in the Town Square or Common Area Improvements in the Town Square, or to modify the Building Area in the Town Square, without the written consent of the Owner of the Town Square. Section 8.1(b) shall not apply to the Town Square. Instead, with respect to that portion of the Common Area lying within the Town Square, the Owner of the Town Square shall have the right to alter, rearrange, reduce or relocate at such Owner's cost, that portion of the Common Areas and Common Area Improvements so long as doing so does not (i) reduce the number of parking spaces on the Town Square, or (ii) materially diminish the rights or materially affect the purposes stated in Sections 3.1 and 7.

15.26.4 Rules and Regulations. The Owner of the Town Square may make and enforce reasonable rules and regulations consistent with this Declaration for the purpose of regulating the use of the accessways and parking areas on the Town Square, and enforcement of the provisions of this Declaration, and promoting safety, order, utility, and

cleanliness of the Town Square. The Owner of the Town Square will use reasonable efforts to require its Permitted Persons to comply with such reasonable rules and regulations. Notwithstanding Section 3.3, Declarant shall not have the right to adopt rules and regulations for Common Areas within the Town Square.

15.26.5 Business Signs. As of the date of this Declaration, all existing signs within the Town Square that have been approved by Declarant under the Ground Lease (to the extent approval is required), and all other signs for which approval is not required are deemed approved by Declarant. The Owner of the Town Square, and of any Parcel created therefrom, may replace any existing sign with another sign with the same dimensions and of the same character. In addition, additional signage may be erected from time to time thereon, provided such signage meets all applicable governmental requirements and does not reduce the signage rights of the Anchor Parcel or other Parcels within the Development.

15.26.5 Existing Improvements. As of the date of this Declaration, all improvements on the Town Square that have either (i) been approved by Declarant under the Ground Lease (to the extent such approval is required) or (ii) have not been approved if no approval is required are deemed approved by Declarant.

15.26.6 Relation to 1994 REA. This Declaration will not affect the Reciprocal Access and Parking Agreement previously executed in 1994 (the "1994 REA") by the Ground Lessee of the Town Square, by Fred Meyer as lessee of the Anchor Parcel and master lessee of the entire Development (under the Fred Meyer Lease), Metropolitan and the holders of the secured financing on the Town Square and on the Fred Meyer retail facility on the Anchor Parcel, unless and until the Owners of the respective parcels, and those holding interests therein, execute a joinder or subordination to this Declaration, as referenced in Section 15.24. Fred Meyer and Metropolitan will reasonably co-operate, in connection with any such joinder or subordination, in making reasonable clarifications and reasonable changes to this Declaration as may be reasonably required by the parties joining or subordinating to this Declaration, in light of the nature of the current development of the Town Square and rights granted to existing tenants at the Town Square, as well as the remainder of the Development developed by Fred Meyer, provided, that under no circumstance will Declarant or Fred Meyer be required to approve any clarification or change that would diminish in any way the rights of Declarant or Fred Meyer under the 1994 REA. At such time as the parties obtain full execution of a joinder or subordination (satisfactory to Declarant and Fred Meyer) of interests in the Town Square, the 1994 REA will be deemed terminated and superseded by this Declaration.

15.26.7 Construction of Buildings and Certain Improvements on the Town Square. Notwithstanding Section 15.26.1 above, Declarant's right of prior approval under Section 2.1 will apply to improvements within the Town Square after the date of recordation of this Declaration (excluding interior tenant improvements and fixturing and interior alterations) if: (i) the improvement is located within 30 feet or less of the nearest point of the boundary line of the Anchor Parcel; or (ii) the Town Square after the improvement is completed would have a parking ratio of less than 3 parking spaces for each 1,000 square feet of gross building area;

or (M) the planned improvement is for the construction of a movie theater located within 60 feet of the nearest point of the boundary line of the Anchor Parcel; (provided, that (c) the improvements are not a reconstruction of improvements in connection with restoration of casualty, major remodeling or other events in which the improvements are reconstructed substantially as existing on the date of recordation of this Declaration or as subsequently ~~approved~~ approved in writing by Declarant in which case Declarant's approval shall not be required; and (b) the improvement (including any alteration of an existing improvement) is not a Minor Improvement (as defined below). A "Minor Improvement" on the Town Square is any alteration or addition that is not structural in nature (including, without limitation, interior tenant improvements, which may be made without Declarant's consent) that does not increase the square footage of the structure in the Town Center, or which (singularly or in the aggregate in any calendar year) involve less than a capital expenditure of \$2,000,000 (which threshold figure will be adjusted from time to time after the date of recordation of this Declaration by changes in the CPI as provided in Section 12). Changes to the Common Areas within the Town Center may be made without Declarant's consent provided that the restrictions in Sections 15.26.1 and 15.26.3 are satisfied.

This Section 15.26.7 will be binding on Fred Meyer and Fred Meyer's interest in the Town Square from and after the date of recordation of this Declaration. Any transferee of Fred Meyer's interest in the Town Square will be bound by this Section 15.26.7 and other provisions of this Declaration.

15.26.8 Additional Covenants. Fred Meyer has entered into certain additional covenants with Declarant as set forth in Section 29 of an Agreement Concerning Miscellaneous Parcels, dated February 4, 1997 (the "Pad Agreement"), concerning certain obligations of Fred Meyer with respect to matters for which Fred Meyer has rights of consent and approval under the Ground Lease, which is incorporated herein by this reference, as though fully set forth herein, which Fred Meyer covenants and agrees to perform. The purpose of this Section 15.26.8 is to give record notice of such Pad Agreement.

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

DECLARANT:

METROPOLITAN LIFE INSURANCE
COMPANY,
a New York corporation

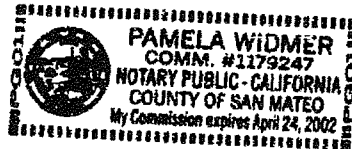
By: *[Signature]*
Its: Assistant General Counsel

STATE OF CALIFORNIA
COUNTY OF SAN MATEO

On September 16, 1998 before me, Pamela Widmer,
personally appeared Alan Robis, personally known to
me (~~or proved to me on the basis of satisfactory evidence~~) to be
the person whose name is subscribed to the within instrument and
acknowledged to me that he/she executed the same in his/her
authorized capacity, and that by his/her signature on the
instrument the person, or the entity upon behalf of which the
person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Pamela Widmer (Seal)



The undersigned Fred Meyer executed this Declaration for purposes of consenting to Section 15.23.

FRED MEYER:

FRED MEYER STORES, INC., a
Delaware corporation

By: Scott L. Wippel
Its: As Vice President

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me this 28th day of August, 1998 by Scott L. Wippel, the As Vice President of FRED MEYER STORES, INC., a Delaware corporation, on behalf of the corporation.

Rusanna Schweitzer
Notary Public for Oregon
My commission expires: July 21, 2000

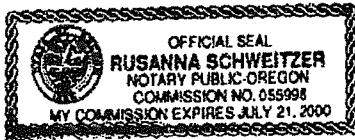


EXHIBIT 1

Legal Description of Parcels of Declarant

See attached (for the legal description as used in the conveyance of the Parcels to MetLife in 1986).

EXHIBIT

BT-Beaverton

PARCEL I:

A tract of land situated in the Northwest quarter of Section 15, Township 1 South, Range 1 West of the Willamette Meridian, in the County of Washington, State of Oregon, more particularly described as follows:

Commencing at a 5/8 inch iron rod set at the Southwest corner of the William Lockerman Donation Land Claim as shown in County Survey No. 6984; thence along the centerline of S.W. Lombard Avenue, North 0° 40' 08" West, 203.64 feet; thence South 81° 39' 05" East, 221.40 feet to the intersection of the Northerly right-of-way (40.00 feet from centerline) of S.W. Beaverton Hillsdale Highway and the Easterly line of that certain tract of land described in Deed to Beatrice A. Hoaglin as Parcel III, recorded in Book 733, page 269 on February 14, 1969, Washington County Deed Records, said point being the point of beginning of the tract herein to be described; thence along the Easterly line of said Hoaglin Tract, North 8° 20' 55" East, 190.12 feet to an iron pipe at the Northeasterly corner thereof; thence along the Northerly line of said Hoaglin Tract the following bearings and distances:

North 81° 30' 52" West, 99.99 feet, North 7° 36' 05" East, 1.26 feet, South 89° 14' 36" West, 120.46 feet to the East line of S.W. Lombard Avenue (30.00 feet from centerline); thence along said East line, North 0° 40' 08" West, 149.10 feet to the South line of that certain tract of land described in Deed to Kelley Realty, Inc., recorded in Book 417, page 475 on May 14, 1959, Washington County Deed Records; thence along the South line of said Kelley Realty Tract, North 89° 14' 55" East, 116.10 feet to the Southeast corner thereof; thence along the Easterly line of said Kelley Realty Tract, North 2° 13' 31" West, 25.07 feet to an angle point; thence continuing along said Easterly line, North 11° 11' 10" West, 45.05 feet to the Southwesterly corner of that certain tract of land described in Deed to James Douglas Cameron, recorded in Book 1074, page 364, on March 19, 1976, Washington County Deed Records; thence along the Southerly line of said Cameron Tract, North 57° 36' 15" East, 74.99 feet to the Southeasterly corner thereof; thence along Easterly line of said Cameron Tract, North 24° 47' 49" West, 88.79 feet to a set 5/8 inch iron rod; thence North 57° 33' 45" East, a distance of 182.01 feet to a point of curvature; thence continuing

along said Southerly line on the arc of a 148.61 foot radius curve to the right, through a central angle of 31° 11' 25" an arc distance of 80.90 feet (the chord bears North 73° 09' 28" East, 79.80 feet) to a point of tangency; thence continuing along said Southerly line, North 83° 45' 10" East, 136.15 feet to a point of curvature; thence continuing along said Southerly line on the arc of a 235.00 foot radius curve to the left, through a central angle of 82° 16' 33", an arc distance of 337.46 feet to the Southerly line of S.W. Canyon Road; thence along said Southerly line, North 64° 40' 33" East, 93.88 feet to the Northwest corner of that certain tract of land described in Deed to Fred Meyer Properties, Inc., recorded under File No. 80003624 on January 31, 1980, Washington County, Deed Records; thence along the West line of said Fred Meyer Tract, South 1° 01' 56" East, 1001.76 feet to the Northerly line of the S.W. Beaverton-Hillsdale Highway; thence along said Northerly line on the arc of a 1722.95 foot radius curve to the right, through a central angle of 2° 59' 30" an arc distance of 99.95 feet (the chord bears North 85° 15' 32" West, 89.95 feet) to a point opposite Engineers Centerline Station L3 138+05.71 P.C.S.; thence continuing along said Northerly line on the arc of a spiral whose chord bears North 82° 21' 09" West, 128.52 feet to a point opposite Engineers Centerline Station L3 139+35.71 P.T.; thence continuing along said Northerly line, North 81° 39' 05" West, 426.11 feet to the point of beginning.

PARCEL II:

A tract of land situated in Section 15, Township 1 South, Range 1 West, Willamette Meridian, Washington County, Oregon. Said tract of land being described as follows:

Beginning at a 5/8 inch iron rod with an aluminum cap, said iron rod being North 84.82 feet and East 892.66 feet from the Southwest corner of the William Lockerman D.L.C. No. 45, said iron rod also being the point of change from spiral to a 1,722.95 foot radius circular curve to the right on the North right of way line at Engineer's centerline Station 136+74.12 on the Beaverton-Hillsdale Highway; thence continuing Westerly along the arc of said circular curve 38.51 feet (chord equals 38.51 feet and chord bearing equals North 87° 53' 28" West); thence North 1° 08' 22" West, 1002.39 feet to the South right of way line of S.W. Canyon Road; thence North 64° 40' 33" East, 46.17 feet; thence North 70° 40' 16" East, 224.49 feet to a point marking the point of a cusp of a 50.00 foot radius curve, said point being the most Northerly Northwest corner of that tract of land described in CP 1927, Washington County Deed Records and County Survey No. 13710, Washington County Survey Records; thence westerly along the arc of said curve to a found 5/8 inch iron

Exhibit 2
Site Plan/Drawing- Page 1 of 2

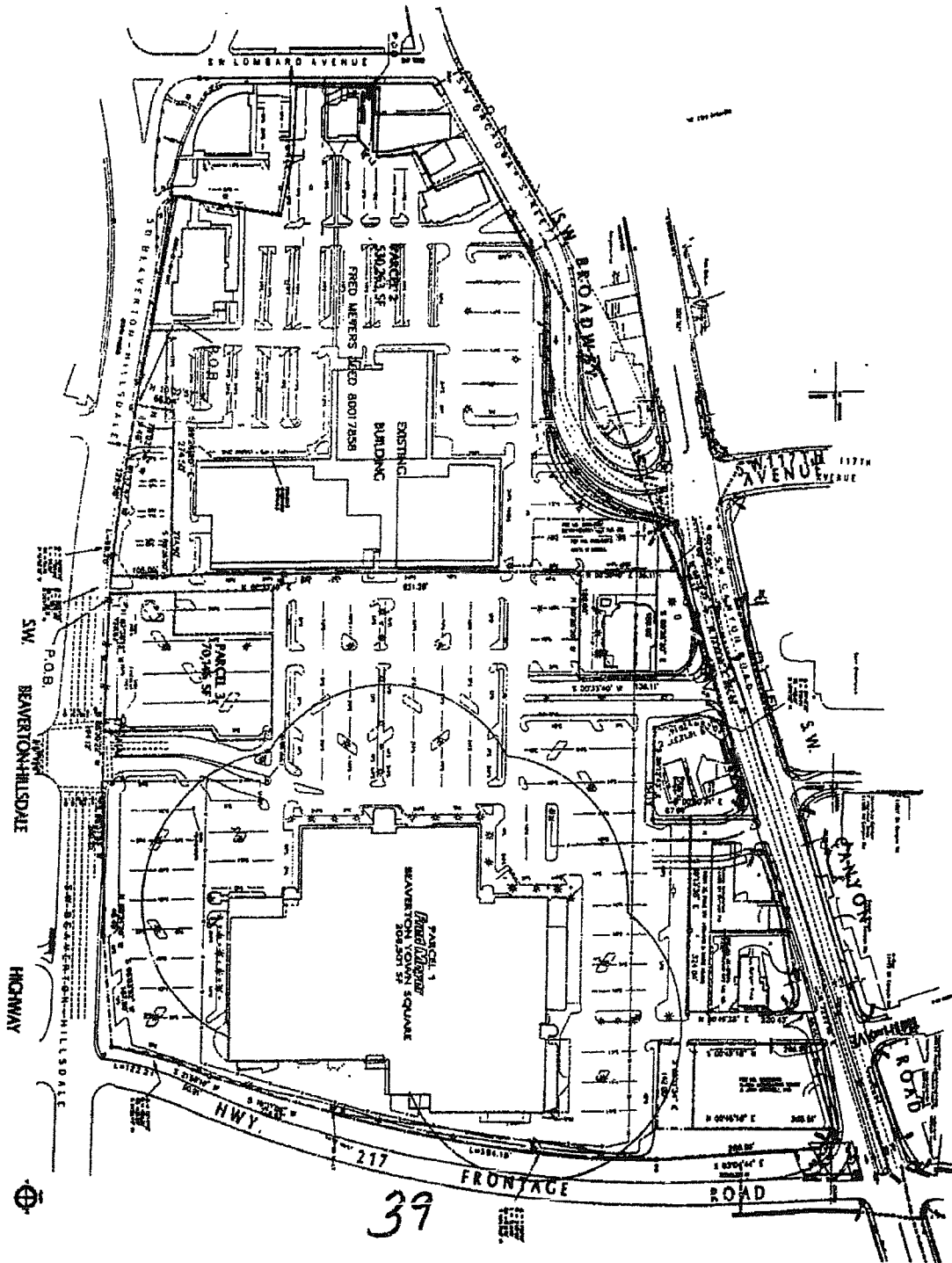


Exhibit 2
Site Plan/Drawing- Page 2 of 2

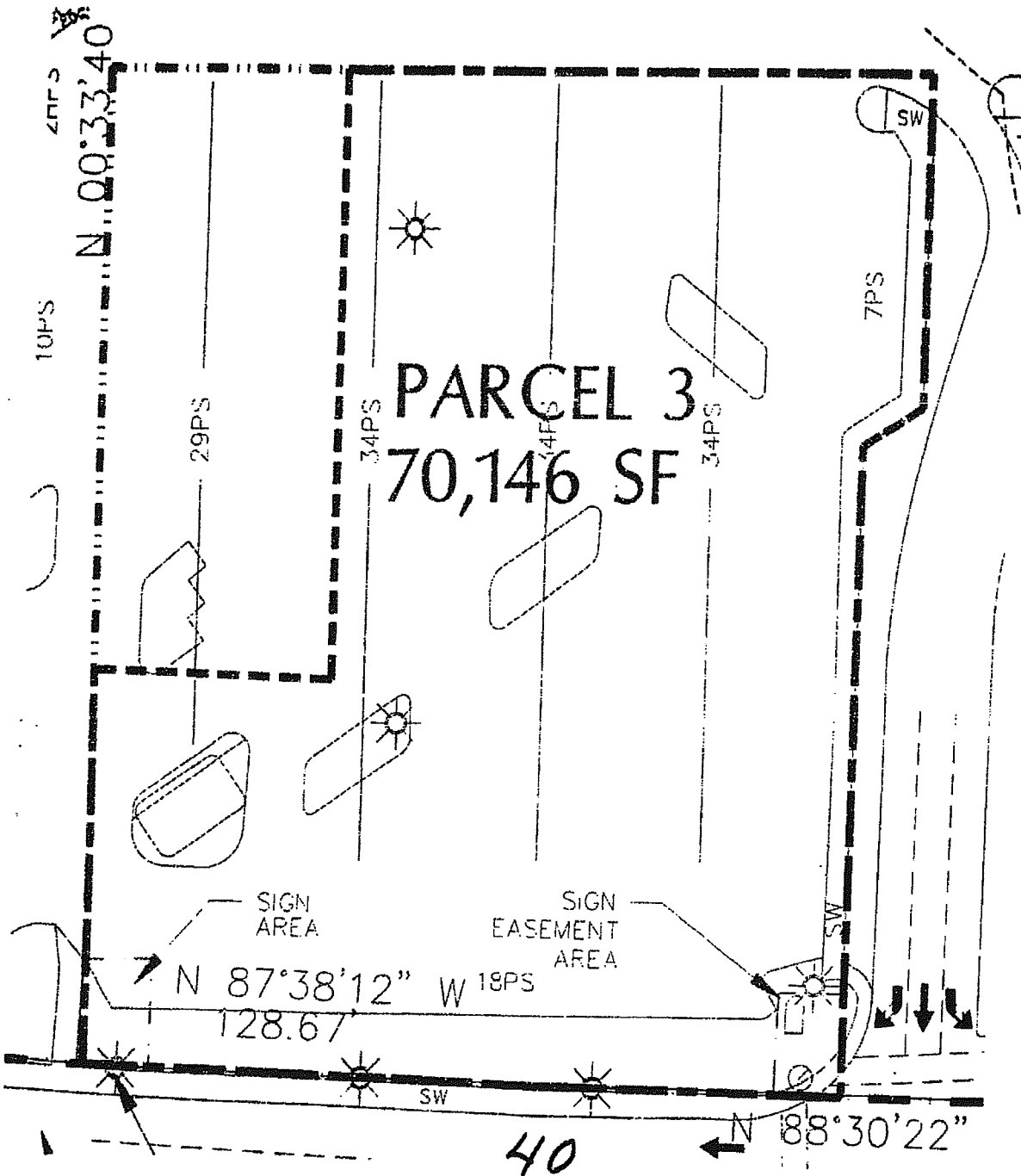


EXHIBIT 1

Legal Description of Burger King Property

Being a part of Lot 72 of STEEL'S ADDITION TO BEAVERTON as shown on the duly recorded plat thereof on file in the office of the Recorder of Conveyances for Washington County, Oregon, and being more particularly described as follows:

Beginning at an iron pipe at the intersection of the West line of said Lot 72 of the said STEEL'S ADDITION and the Southerly boundary of the 80 foot wide new Canyon Road Highway and running thence South 0°52' East along the West line of said Lot 72, a distance of 138.83 feet to an iron pipe; thence North 89°08' East 135.0 feet to an iron pipe; thence North 0°52' West 183.97 feet to an iron pipe on the South boundary of the said Canyon Road Highway; thence along said highway boundary South 70°42' West 142.31 feet to the place of beginning, all situated in the County of Washington, State of Oregon.

EXHIBIT 4

Legal Description of Town Square Property

The legal description of the Town Square is as described in the following instrument(s):

Unrecorded lease, including the terms and provisions thereof,
Dated : October 23, 1986
Lessor : Fred Meyer Real Estate Properties, Ltd.,
an Oregon limited partnership
Lessee : Fred Meyer, Inc.

Disclosed by : Memorandum of Restated and Amended Lease
Recorded : December 9, 1986
Recorder's Fee No.: 86057262

The lessor's interest in the above lease was assigned by
Assignment of Master Lease including the terms and provisions
thereof,
Dated : November 25, 1986
Recorded : December 9, 1986
Recorder's Fee No.: 86057265
From : Fred Meyer Real Estate Properties, Ltd.,
an Oregon limited partnership
To : Metropolitan Life Insurance Company, a New
York corporation

Memorandum of First Amendment to Lease Agreement,
Dated : November 25, 1986
Recorded : December 9, 1986
Recorder's Fee No.: 86057266

Such legal description is as follows: See attached.

EXHIBIT
D-750024

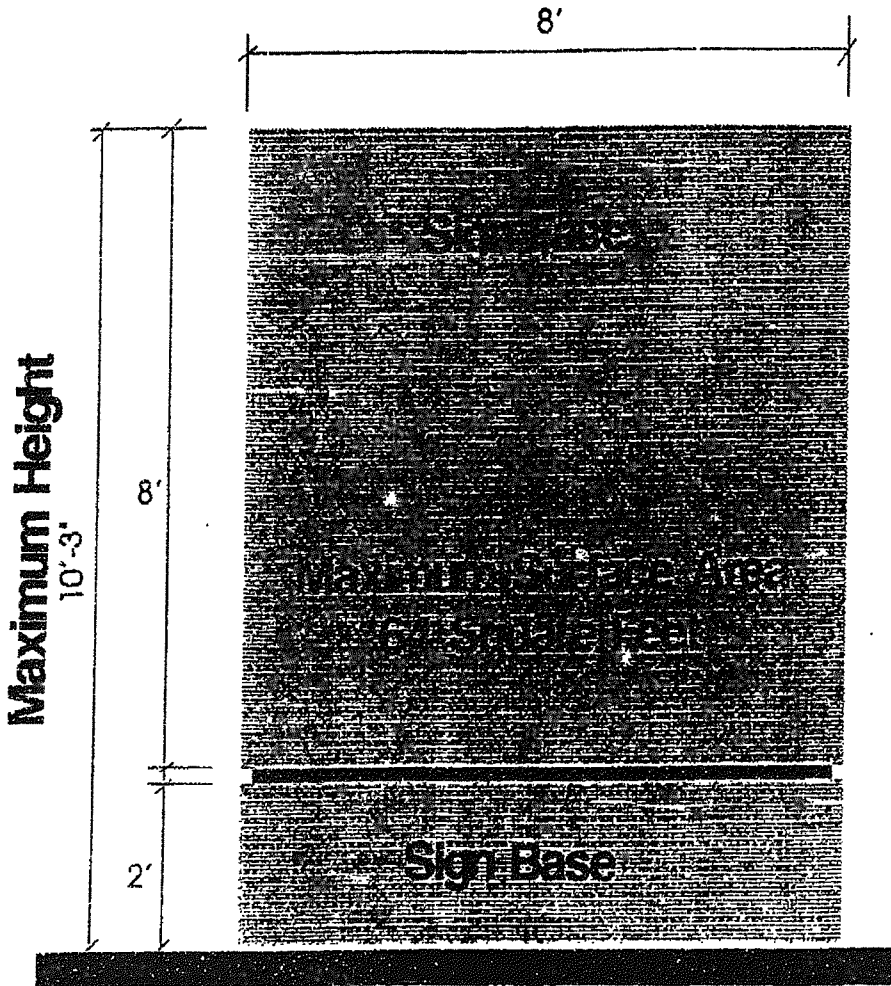
Beginning at a 5/8 inch iron rod marking the point of intersection of the Northerly right of way line of the Beaverton-Hillsdale Highway and the Easterly boundary line of that tract of land described in Book 733, Page 269, Washington County Deed Records, said point of intersection bears Northerly along the Westerly line of Wm. Lockerman Donation Land Claim No. 45, a distance of 194.79 feet and South 81°39'05" East parallel with the Beaverton-Hillsdale Highway 220.20 feet and North 08°18'20" East 10.00 feet from the Southwest corner of the Wm. Lockerman Donation Land Claim No. 45 in Township 1 South, Range 1 West of the Willamette Meridian, in the City of Beaverton, County of Washington and State of Oregon; thence North 08°20'55" East coincident with the Easterly boundary line of said tract of land 190.12 feet to a found 3/4 inch iron pipe; thence coincident with the Northerly boundary line of said tract of land as follows:

North 81°30'52" West 99.99 feet to a found 5/8 inch iron rod; thence North 07°36'05" East 1.26 feet to a found 3/4 inch iron pipe; thence South 89°14'36" West 120.46 feet to a point on the Easterly right of way line of S.W. Lombard Avenue; thence North 00°40'08" West 149.10 feet along the Easterly line of said right of way to a found brass tack; thence North 89°14'55" East 116.10 feet to a found 5/8 inch iron rod; thence North 02°12'31" West 25.07 feet; thence North 11°11'10" West 45.05 feet; thence North 57°36'15" East 74.99 feet to a found 5/8 inch iron rod; thence North 24°47'49" West 88.79 feet; thence North 57°33'45" East 182.01 feet; thence 80.90 feet along the arc of a 148.61 foot radius curve to the right said curve having a chord bearing of North 73°09'27" East and a chord distance of 79.90 feet; thence North 88°40'53" East 136.15 feet to a point of tangency; thence 48.60 feet along the arc of 235.00 foot radius curve to the left through a central angle of 11°50'54" (the long chord of which bears North 82°49'43" East 48.51 feet) to a point of compound curvature and the intersection of the Southerly line of that tract of land conveyed to the public in Deed No. 79030206; thence 181.49 feet along the arc of a 232.50 foot radius curve to the left through a central angle of 44°43'32" (the long chord of which bears North 53°01'37" 176.92 feet) to a point of compound curvature; thence 98.43 feet along the arc of a 240.50 foot radius curve to the left through a central angle of 23°26'56" (the long chord of which bears North 18°56'07" East 97.74 feet) to the beginning point of that tract of land conveyed to the public and described in Deed No. 79030206 as being on the Southerly right of way of Canyon Road; thence North 63°55'31" East 8.00 feet, more or less, to the most Northerly Northwest corner of that tract of land conveyed to Fred Meyer Real Estate Properties, Ltd., as described in Statutory Bargain and Sale Deed No. 81041397; thence North 64°40'33" East 93.88 feet to the most Northwesterly corner of a parcel of land deeded to Fred Meyer, Inc., recorded January 3, 1980, Recorder's Fee No. 80003624 of Washington County Deed Records; thence South 01°01'56" East 35.00 feet along the West line of said parcel of land; thence North 88°58'04" East 180.00 feet; thence South 01°01'56" East 136.11 feet; thence South 88°58'04" West 180.00 feet to the said West line of Fred Meyer, Inc., parcel; thence South 01°01'56" East 725.65 feet; thence South 88°57'29" West 274.50 feet; thence South 08°11'52" West 66.04 feet to the North right of way line of the Beaverton-Hillsdale Highway; thence North 81°39'05" West coincident with said right of way line 354.63 feet to the point of beginning.

Exhibit 5
Sign Criteria

Outparcel Sign Specifications

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



Scale 1/2" = 1'