

9179244
 09/22/2004 04:18 PM \$30.00
 Book - 9040 Pg - 2289-2297
 GARY W. OTT
 RECORDER, SALT LAKE COUNTY, UTAH
 FIRST AMERICAN TITLE
 DEPUTY - WI 9 P.
 BJ: SBM

Supplemental Agreement [Mortgagee Notice and Cure]

This SUPPLEMENTAL AGREEMENT (this "Supplemental Agreement" or "Agreement"), made this ____ day of _____, 2004, between Fred Meyer Stores, Inc., an Ohio corporation, successor by merger to Fred Meyer Stores, Inc., a Delaware corporation (whose name before September 9, 1997 was Fred Meyer, Inc., a Delaware corporation), or affiliate ("Declarant"), and Sundaw Company, L.C., a Utah limited liability company ("Buyer"), recites and provides as follows:

Declarant is the Declarant under that certain Declaration of Covenants, Conditions, Restrictions and Easements, dated as of _____, and recorded in the real estate records of Salt Lake County, Utah on April 4, 1995 as document/fee/reference number 6053818 in Book 7127 at Page 1680-1708 (the "Declaration"). Terms not otherwise defined herein have the meanings ascribed thereto in the Declaration. Buyer previously purchased and now owns one of the Parcels, described in Exhibit A, attached ("Buyer's Parcel"). Buyer's predecessor in interest desired to obtain modification of certain provisions of the Declaration as applied to Buyer and Buyer's Parcel, and as described below.

Declarant and Buyer's predecessor executed and recorded a certain Memorandum of Supplemental Agreement, dated September 8, 1995 and recorded September 13, 1995 in the real estate records of Salt Lake County, Utah at entry number 6164546 in Book 7226 at Page 2088 (the "Memorandum"). The Memorandum was intended to memorialize this Supplemental Agreement, which apparently was never executed. The parties to this Supplemental Agreement now wish to execute and record it to confirm its existence and validity and hereby agree that this is the Supplemental Agreement that was contemplated by the Memorandum. The property retained by Declarant is described on Exhibit B ("Declarant's Property"). Both Buyer's Parcel and Declarant's Property are to be benefited and burdened by this Supplemental Agreement.

The parties therefore agree as follows:

1. Modification of Declaration – Mortgagee Notice and Cure Right. With respect to the option rights of Declarant provided in Section 4.2 of the Declaration, as applicable to the Buyer's Parcel, Declarant agrees as follows:

Buyer may, at any time, give to Declarant a notice (hereinafter referred to as a "Mortgage Notice") containing the name and address of a bona fide institutional lender (hereinafter referred to as a "Mortgage Lender") to which the Buyer's Parcel has been or will be mortgaged, encumbered, pledged or assigned as security. Upon written request from Buyer or the Mortgage Lender identified in a Mortgage Notice, Declarant will acknowledge, in writing, the receipt of a Mortgage Notice which is has received.

Whenever Declarant shall give any notice to Buyer pursuant to Section 4.2 of the Declaration (or the option provisions incorporated therein), Declarant shall also give to Mortgage Lender a duplicate copy of such notice. The address of the Mortgage Lender shall be the address specified on the Mortgage Notice unless changed by subsequent written notice given by the Mortgage Lender to Declarant. No notice under Section 4.2 of the Declaration

shall be effective unless it is given to the Mortgage Lender. If at any time a Mortgage Lender shall give to Declarant a written notice that it has released its lien on the estate created hereby, such lender shall cease to be a Mortgage Lender for purposes hereof and no further notices need to be given to it, but a new Mortgage Lender may be created by giving of a new Mortgage Notice. There shall not be more than a Mortgage Lender at any given time with respect to the Buyer's Parcel.

If Declarant gives a Notice of Exercise under **Section 4.2** of the Declaration, Declarant shall thereupon give notice to that effect to the Mortgage Lender. Within 30 days of receipt of a Notice of Exercise, a Mortgage Lender may give notice to Declarant that Mortgage Lender intends to acquire the Buyer's Parcel by foreclosure or otherwise (a "**Foreclosure Notice**"). The giving of a Foreclosure Notice shall temporarily stay Declarant's exercise of the Option and shall toll all time periods under **Section 4.2** and the option provisions incorporated therein, for a period not to exceed 270 days, and only so long as Mortgage Lender is (1) diligently and continuously pursuing acquisition of the Buyer's Parcel, and (2) thereafter diligently and continuously seeking to operate or obtain tenants or buyers to resume or commence operation of business from sixty percent (60%) or more of the gross building area on the Buyer's Parcel. If the Mortgage Lender succeeds in so causing business operations to commence or resume on the Buyer's Parcel, the Notice of Exercise shall be deemed rescinded.

2. Modification of Declaration – Terms of Option. With respect to Buyer's Parcel, **Section 4.2(e)** of the Declaration is hereby deleted and replaced with the following:

“(e) Terms of Option.

“(1) General. If Declarant exercises an option granted under this Section 4.2, then, on the date specified in the Notice of Exercise, the Owner of the applicable Non-Anchor Parcel will sell and convey the Parcel to Declarant pursuant to the terms and provisions as set forth in the attached **Exhibit 3** (which is by this reference incorporated herein).

“(2) Fair Market Value. The purchase price for the Parcel will be the “fair market value” of the Parcel, determined in the following manner. The Notice of Exercise shall include Declarant's estimated fair market value of the Parcel. If the Owner objects to such value, the Owner will notify Declarant in writing no later than twenty days after delivery of the Notice of Exercise; failure to object timely shall be deemed acceptance of the Declarant's determination. If the Owner timely objects and the parties cannot agree on the value within forty days after the Notice of Exercise, the matter shall be submitted for resolution in accordance with paragraph (3) below.

“(3) Disputes. If Owner objects and Declarant and Owner are unable to agree on the fair market value of the Parcel within the time limits specified in paragraph (2) above, the matter shall be submitted for determination by independent real estate appraisers in accordance with this paragraph (3). The parties shall each select a certified MAI commercial real property appraiser who is familiar with the relevant market. Such selection shall be made in writing by notice to the other party not less than 60 days after

the Notice of Exercise. Such appraisers shall each make a determination of the fair market value within thirty (30) days of selection. Unless Declarant and Owner agree to a compromise based on such determinations within 10 days after they are made, the two appraisers shall select a third such appraiser. Selection of such third appraiser shall be made within 100 days after the Notice to Exercise. The third appraiser shall then, within 10 days of selection, determine which of the two fair market values proposed by the original appraisers is the actual fair market value, and the determination of such third appraiser shall bind the parties. Each party shall bear the fees of the appraiser selected by it, and if a third appraiser is required, the fees of such third appraiser shall be shared equally. If a party fails to timely select an appraiser, such party shall have waived its right to participate in the dispute resolution process, and the determination of the appraiser selected by the other party, made in good faith, shall be binding on the parties. The dates set forth in **Exhibit 3** regarding closing the option sale will be extended by the number of days that are required to resolve the dispute under this paragraph."

3. General Provisions. This Agreement, together with the Declaration and the documents evidencing the purchase and sale of Buyer's Parcel (the "**Purchase Documents**"), constitutes the entire agreement of the parties relating to the subject matter hereof. There are no promises, terms, conditions, obligations, or warranties other than those contained in this Agreement or in the Declaration or Purchase Documents. This Agreement supersedes all prior communications, representations, or agreements, verbal or written, among the parties relating to the subject matter hereof. This Agreement may not be amended except in writing executed by the parties. The terms of this Agreement are hereby incorporated into the Declaration, but solely as it affects Buyer's Parcel. The terms of this Agreement shall not be deemed to modify or affect the Declaration as it affects any other Parcel. The terms and conditions of the Declaration remain in full force and effect as respects Buyer's Parcel, except as expressly modified hereby. This Agreement is a continuing agreement and shall bind and inure to the benefit of, and be enforceable by, the parties hereto and their respective successors, heirs, and assigns. Buyer may, at Buyer's expense, record a memorandum of this Agreement in the form attached hereto, in which case the parties will endorse this Agreement with the recording information. Declarant agrees to execute and acknowledge such memorandum at or following closing of the purchase of Buyer's Parcel.

EXECUTED as of the date and year first written above.

DECLARANT:

FRED MEYER STORES, INC.

By: Robert Currey-Wilson

Title: Robert Currey-Wilson, V.P.

Date Executed: 9/16/04

BUYER:

SUNDAW COMPANY, L.C.

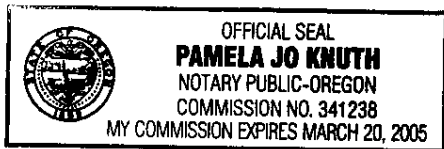
By: Hal C Perkins

Title: Manager

Date Executed: 9-16-04

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

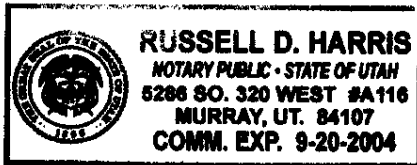
On this 14 day of September, 2004, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared ROBERT CURREY-WILSON, to me known to be the person who signed as VICE PRESIDENT of FRED MEYER STORES, INC. that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned.



Pamela Jo Knuth
NOTARY PUBLIC for Oregon
residing at Gresham, OR
My Appointment Expires: 3/20/05

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

On this 16 day of September, 2004, before me, the undersigned, a Notary Public in and for the State of Utah, duly commissioned and sworn, personally appeared Waldo Perkins, to me known to be the person who signed as Manager of SUNDAW COMPANY, L.C., a Utah limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned.



[Signature]
NOTARY PUBLIC for _____
residing at _____
My Appointment Expires: _____

EXHIBIT A

Buyer's Parcel

See real property legally described in Exhibit A to that Memorandum of Supplemental Agreement dated September 8, 1995 and recorded September 13, 1995 in the real estate records of Salt Lake County, Utah as entry number 6164546 in Book 7226 at Page 2088 of Official Records.

EXHIBIT B

Declarant's Property

See real property legally described in Exhibit B to that Memorandum of Supplemental Agreement dated September 8, 1995 and recorded September 13, 1995 in the real estate records of Salt Lake County, Utah as entry number 6164546 in Book 7226 at Page 2088 of Official Records.

EXHIBIT A

DESCRIPTION

Beginning at a point on the South line of 3500 South Street, said point being South 89°56'54" West along the section line 672.25 feet and South 00°03'06" East 40.00 feet from the Northeast corner of Section 31, Township 1 South, Range 1 West, Salt Lake Base and Meridian and running thence South 00°03'06" East 215.00 feet; thence South 89°56'54" West 170.00 feet; thence North 00°03'06" West 215.00 feet to the South line of said 3500 South Street; thence North 89°56'54" East along said South line 170.00 feet to the point of beginning.

TOGETHER WITH the appurtenant undivided interest in the "Common Areas" and "Access Easements", as defined and described in the Declaration of Covenants, Conditions, Restrictions and Easements, dated March 28, 1995 and recorded April 4, 1995 as Entry No. 6053818 in Book 7127 at page 1680 of Official Records.

15-31-226-017-000

AMZ 2/6/2020

Exhibit B
DESCRIPTION

PARCEL 1:

BEGINNING at a point on the South right of way line of 3500 South Street, said point being South 89°56'54" West along the section line 515.00 feet and South 0°01'50" East 40.00 feet from the Northeast corner of Section 31, Township 1 South, Range 1 West, Salt Lake Base and Meridian and running thence South 0°01'50" East 295.00 feet; thence North 89°56'54" East 475.00 feet to the West right of way line of 4000 West Street; thence South 0°01'50" East along said West line 94.00 feet; thence South 89°56'54" West 290.00 feet; thence South 0°01'50" East 132.00 feet; thence South 89°56'54" West 40.00 feet; thence South 0°01'50" East 233.60 feet; thence North 89°56'54" East 330.00 feet to the West right of way line of 4000 West Street; thence South 0°01'50" East along said West line 195.39 feet to the Northeast corner of the Woodcove No. 1 Subdivision; thence South 89°58'10" West along the North lines of the Woodcove No. 1 & No. 2 Subdivisions, 878.85 feet; thence North 0°01'50" West 200.75 feet; thence South 89°58'10" West 93.63 feet; thence North 0°00'06" East and along the West side of a brick building 258.20 feet; thence South 89°56'54" West 24.68 feet; thence North 0°01'50" West 312.68 feet; thence North 89°56'54" East 13.65 feet; thence North 0°02'11" West 178.00 feet to the South right of way line of 3500 South State Street; thence North 89°56'54" East along said South line 508.35 feet to the point of BEGINNING.

ALONG WITH:

15-31-226-017-0000

15-31-226-013-0000

PARCEL 2:

BEGINNING at a point on the South right of way line of 3500 South Street, said point being South 89°56'54" West along the Section Line 1170.00 feet and South 0°01'50" East 40.00 feet from the Northeast Corner of Section 31, Township 1 South, Range 1 West, Salt Lake Base and Meridian and running thence North 89°56'54" East along said South line 32.65 feet; thence South 0°02'11" East 178.00 feet; thence North 89°56'54" East 100.35 feet; thence South 0°01'50" East 312.68 feet; thence North 89°56'54" East 24.68 feet; thence South 0°00'06" West and along the West side of a brick building 258.20 feet; thence South 89°58'10" West 307.52 feet to the East right of way line (as constructed) of 4200 West Street; thence North 0°01'50" West along said West line 570.76 feet; thence North 89°56'54" East 150.00 feet; thence North 0°01'50" East 178.00 feet to the point of BEGINNING.

15-31-226-015-0000

BK 7226062091

Exhibit B

ALONG WITH:

PARCEL NO. 31

BEGINNING at a point on the East right of way line (as constructed) of 4000 West Street, said point being South 89°56'54" West along the Section Line 1320.00 feet and South 0°01'50" East 788.76 feet from the Northeast Corner of Section 31, Township 1 South, Range 1 West, Salt Lake Base and Meridian and running thence North 89°58'10" East 401.15 feet; thence South 0°01'50" East 200.75 feet to the North line of the Woodcove No. 2 Subdivision; thence South 89°58'10" West 401.15 feet; thence North 0°01'50" West and along a portion of the said East line of 4000 West Street 200.75 feet to the point of **BEGINNING**.

EXCEPTING:

Beginning at a point on the South line of 3500 South Street, said point being South 89°56'54" West along the section line 672.25 feet and South 00°03'06" West 40.00 feet from the Northeast corner of Section 31, Township 1 South, Range 1 West, Salt Lake Base and Meridian and running thence South 00°03'06" East 215.00 feet; thence South 89°56'54" West 170.00 feet; thence North 00°03'06" West 215.00 feet to the South line of said 3500 South Street; thence North 89°56'54" East along said South line 170.00 feet to the point of beginning.

TOGETHER WITH the appurtenant undivided interest in the "Common Areas" and "Access Easements", as defined and described in the Declaration of Covenants, Conditions, Restrictions and Easements, dated March 28, 1995 and recorded April 4, 1995 as Entry No. 6033618 in Book 7127 at page 1680 of Official Records.

FROM PAGE 10 TO 11

BK 7225 PGS 2092