

**FILED**

APR 14 2016

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

WASHINGTON COURT OF APPEALS, DIVISION III  
No. 33982-3-III

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FRIENDS OF NORTH SPOKANE COUNTY PARKS,

Appellant-Plaintiff

v.

SPOKANE COUNTY; FRED MEYER STORES, INC; and  
STAR SAYLOR LLC,

Respondents-Defendants

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OPENING BRIEF OF APPELLANT

---

Stephen K. Eugster, WSBA 2003  
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**TABLE OF CONTENTS**

**I. INTRODUCTION ..... 1**

**II. ASSIGNMENTS OF ERROR ..... 1**

**A. Assignments of Error. .... 1**

**B. Issues Pertaining to Assignments of Error. .... 1**

**III. STATEMENT OF FACTS ..... 2**

**IV. SUMMARY OF ARGUMENT ..... 7**

**V. ARGUMENT ..... 7**

**A. Standard of Review. .... 7**

**B. RCW 36.32.330 Does Not Apply to  
        Spokane County Resolution No. 12-0910. .... 8**

**C. Assuming RCW 36.32.330 Does Apply, it  
        Was Waived under CR 12(g). .... 12**

**VI. CONCLUSION ..... 14**

**APPENDIX**

## TABLE OF AUTHORITIES

### Table of Cases

<i>Blair v. Nw. Tr. Servs., Inc.</i> , No. 32816-3-III, 7-8 (March 17, 2016) .....	7
<i>City of Spokane v. Harris</i> , 25 Wash. App. 345, 348, 606 P.2d 291 (1980) .....	10, 11
<i>Friends of N. Spokane Cnty. Parks v. Spokane Cnty.</i> , 184 Wash. App. 105, 336 P.3d 632 (2014) .....	6
<i>Hook v. Lincoln Cnty. Noxious Weed Control Bd.</i> , 166 Wash. App. 145, 269 P.3d 1056, 1060 (2012) .....	11
<i>Morath v. Gorham</i> , 11 Wash. 577, 40 P. 129 (____) .....	11
<i>Ocosta Consol. School Dist. No. 123 v. Grays Harbor County</i> , 268 P.2d 663, 44 Wash. 2d 525 (1954) .....	11
<i>Puget Sound Alumni of Kappa Sigma, Inc. v. City of Seattle</i> , 70 Wash. 2d 222, 422 P.2d 799 (1967) .....	10
<i>Ronken v. Board of County Com'rs of Snohomish County</i> , 89 Wash. 2d 304, 309-310, 572 P.2d 1 (1977) .....	10
<i>State ex rel. Mason v. Bd. of Commissioners of King County</i> , 146 Wash. 449, 263 P. 735 (____) .....	11
<i>State ex rel. Stephens v. Odell</i> , 61 Wash. 2d 476, 480, 378 P.2d 932 (1963) .....	10
<i>Sterling v. Spokane County</i> , 31 Wash. App. 467 Fn. 3, 642 P.2d 1255 (1982) .....	11
<i>Swartout v. City of Spokane</i> , 21 Wash. App. 665, 674, 586 P.2d 135 (1978), <i>review denied</i> , 91 Wash. 2d 1023, 1979 WL 71642 (1979) ...	10, 11

**Statutes**

RCW 36.32.120 ..... 12

RCW 36.32.120 (6) ..... 12

RCW 36.32.330 ..... 2, 7, 8, 10, 12, 14

**Rules and Regulations**

CR 12 ..... 12

CR 12 (h)(3) ..... 12

CR 12(b)(2)-(5) ..... 13

CR 12(b)(6) ..... 1, 6, 7

CR 12(c) ..... 13, 14

CR 12(g) ..... 7, 14

CR 12(g)(2) ..... 12

CR 12(h)(1) ..... 13

CR 12(h)(2) ..... 7, 12, 13

CR 7(a) ..... 13

CR 7(a) ..... 7

**Other Authorities**

5C CHARLES A. WRIGHT & ARTHUR R. MILLER,  
FEDERAL PRACTICE AND PROCEDURE § 1384 (3d ed. 2014) ..... 12

BLACK'S LAW DICTIONARY 1310 (6th ed. 1990) ..... 9

I. **INTRODUCTION**

This case is a taxpayer action, the purpose of which is to preserve and protect Freddy Park in north Spokane County. Freddy Park was deeded to Spokane County by Wilmington Trust Company. Fifteen years later, Star Saylor, a developer, wants to construct a road through the park for the purposes of its development.

II. **ASSIGNMENTS OF ERROR**

A. **Assignments of Error.**

No. 1 The summary judgment of October 27, 2015, is in error.  
CP 47.

No. 2 The denial of Plaintiff's motion for reconsideration of the order on December 17, 2015 is also in error. CP 67.

No. 3 Conclusions of Law in Error

Paragraph E.

Paragraph F.

B. **Issues Pertaining to Assignments of Error.**

No. 1 Whether a statute of limitations affirmative defense must be asserted in a CR 12(b)(6) failure to state a claim when it is apparent from the Amended and Restated Complaint that the case was not filed within the statute of limitations.

**No. 2** Whether RCW 36.32.330 applies to a "Resolution" of the Board of Spokane County Commissioners "Resolved" that the chairmen of the Board be authorized to execute "that document entitled "Amendment to Restrictions on Use and Development of Property . . . ." which purported to amend "Exhibit B" to a document entitled "Deed with Covenant" . . . "as recorded in the records of the Spokane County Auditor on August 22, 2001 under Recording Number 4624178."<sup>1</sup>

### **III. STATEMENT OF FACTS**

Prior to July 24, 2001, Roundup Company, in connection with the property being developed for a Fred Meyer store near the corner of US Highway 395 and Hastings Rd., approached Spokane County with its desire of donating a 3.99 acre parcel of property to the County to be used only as a "County – owned and operated natural or community Park." Amended Complaint (herein AC) CP 5 at paragraph 11.

Spokane County, by Resolution Number 1-0660, accepted the donation on July 24, 2001. AC, CP 5 at paragraph 12. Spokane County specifically agreed to accept the property for park purposes as originally set forth in the Deed and as originally understood under Resolution 1-0660, adopted July 24, 2001; that is, for "a natural, community or regional park." AC, CP 5,

---

<sup>1</sup> Resolution 12-0910, Board of Commissioners of Spokane County. Appendix A.

paragraph 14.

Freddy Park was created on August 12, 2001 when Wilmington Trust conveyed undeveloped land adjacent to a Fred Meyer Store at the intersection of US Highway 395 and Hastings Road to Spokane County for use as a park and with further restrictions that there be no roads through the park and the county accepted the donation with the restriction. AC, CP 5, paragraph 14. The Spokane County Assessor assigned Parcel Number 36082.91612 to Freddy Park. AC, CP 5, paragraph 15.

The Deed, in Exhibit B, Restrictions on Use, provided:

#### Exhibit B

##### Restrictions on Use and Development of Property

The herein described real property shall be held, conveyed, sold, and improved only as a natural, community, or regional park. This condition and restriction of use shall constitute a covenant and encumbrance which shall run with the land and shall be perpetually binding upon Grantee, its successors-in-interest and assigns, and all parties having or acquiring any right, title, or interest in, or to, any part of the subject property.

There shall be no vehicular ingress or egress from the property to the adjacent property owned by Grantor, Parcels A: and G of BSP-58-97. Vehicular access to the property shall be only from Standard Drive.

A pedestrian walkway to Parcel G maybe allowed subject to Grantor's review and approval of the location; design, and construction of the walkway.

Grantee shall install and maintain a fence within the boundaries

of the property along the adjacent boundaries of Parcels A and G. The design, materials and height of the fence shall be subject to approval by Grantor. [Emphasis added.]

CP 467.

The county specifically accepted the property for park purposes as originally set forth in the Deed and as originally understood under Resolution 1-0660 adopted July 24, 2001. CP 451 and following.

On November 7, 2012, Spokane County adopted Resolution 12-0910, which authorized the County to sign a document entitled "Amendment to Restrictions on Use and Development of Property" pursuant to which Fred Meyer Parties and Spokane County will amend Exhibit B to the documents entitled "Deed with Covenant and Joinder with Warranties and Title to Real Property" as recorded in the records of the Spokane County Auditor on August 22, 2001, under Recording Number 4624178, to provide as follows:

The herein described real property described shall be held, conveyed, sold, and improved as a natural, community, or regional park and for the establishment of a public road as depicted in the attached Exhibit "C". This condition and restriction of uses shall constitute a covenant and encumbrance which shall run with the land and shall be perpetually binding upon the Grantee, its successors- in-interest and assigns and all parties having or acquiring any right title, or interest in, or to, any part of the subject property.

There shall be no vehicular ingress or egress from the property to the adjacent property owned by the Grantor, Parcels A and G of BSP-58-97.

A pedestrian walkway to Parcel G may be allowed subject to Grantor's review and approval of the location, design, and construction of the walkway.

Grantee shall install and maintain a fence within the boundaries of the property along the adjacent boundaries of Parcels A and G. The design, materials and height of the fence shall be subject to approval by Grantor."

CP 470.

Fred Meyer Stores, Inc., was not the grantor under the original Deed, nor was it the grantee of any interest in the Freddy Park property. CP 457.

Spokane County and Fred Meyer Stores, Inc. signed a document entitled "Amendment to Restrictions on Use and Development of Property" dated November 19, 2012.

County records fail to show that any of Fred Meyer Parties were owners of the property in question and thus could not be a grantor. AC 31. The deed was not signed by Wilmington Trust, the grantor of the deed dated August 13, 2001. AC 32. Wilmington Trust, the grantor of the deed dated August 13, 2001 did not reserve any rights to the property and according to County documents, no longer exists. CP 457 and following.

On April 2, 2013, a document entitled Amendment to Restrictions on Use and Development of Property was filed with the Spokane County Auditor under receiving number 6193631. CP 495. The document was signed by Fred Meyer Stores, Inc. *Id.*

Wilmington Trust, the grantor of the deed dated August 13, 2001 did not reserve any rights to the property and according to County documents, no longer exists. AC, CP 9, paragraph 36. Nor is there anything in the deed which indicates that the Fred Meyer Stores had any sort of reserved interest in Freddy Park. AC, CP 9 at paragraph 37. County Records fail to show that on April 2, 2013 any of Fred Meyer Stores showed up as an owner of the property in question at the time the document was filed. Thus, Fred Meyer Stores could not be a grantor of the amended deed. AC, CP 9 at paragraphs 36 - 39. The deed was not signed by Wilmington Trust, the grantor of the deed dated August 13, 2001. AC, CP 9 at paragraph 39. Fred Meyer Stores, Inc. did not have any legal interest in Freddy Park, nor did the Fred Meyer Parties acquire at any later time any legal interest in Freddy Park. AC, CP 10 at paragraph 39.

On September 18, 2013, Star Saylor brought a CR 12(b)(6) failure to state a claim motion to dismiss. CP 174. The motion was granted. The decision was appealed. On October 21, 2014, the Court of Appeals reversed and remanded the case back to the trial court. *Friends of N. Spokane Cnty. Parks v. Spokane Cnty.*, 184 Wash. App. 105, 336 P.3d 632 (2014). The mandate and remand was delivered to the trial court on December 9, 2014.

On August 21, 2015, Star Saylor brought a Summary Judgment Motion

in which it asserted that county Resolution 1-0660 adopted July 24, 2001, was a "decision or order of the board of the board of county commissioners" under RCW 36.32.330 which had to be appealed to the superior court within twenty days of the Resolution. The court granted the motion for summary judgment on October 27, 2015 (CP 47) and denied plaintiff's motion for reconsideration on December 17, 2015 (CP 67). Plaintiff again appealed. CP 74.

#### **IV. SUMMARY OF ARGUMENT**

There are two reasons why the summary judgment order (CP 47) and the motion denying reconsideration (CP 67) are in error. First, RCW 36.32.330 does not apply to Spokane County Resolution 12-0910.

Second, assuming it does apply, it was a basis for Star Saylor's CR 12(b)(6) motion (failure to state a claim). Thus, it could not be raised under CR 12(g) and CR 12(h)(2) in a later Summary Judgment motion. CR 12(h)(2) and CR 7(a) (pleadings allowed). A motion for summary judgment is not one of the pleadings allowed.

#### **V. ARGUMENT**

##### **A. Standard of Review.**

This Court has recently described the standards to be used in review of a summary judgment motion. *Blair v. Nw. Tr. Servs., Inc.*, No. 32816-3-III, 7-

8 (March 17, 2016). Therein, the court said:

This court reviews an order granting summary judgment de novo. Under de novo review, this court engages in the same inquiry as the trial court, viewing the facts and all reasonable inferences in the light most favorable to the nonmoving party. "The object and function of summary judgment procedure is to avoid a useless trial."

Summary judgment is appropriate only if the record demonstrates there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). Judgment as a matter of law for summary judgment purposes is warranted "if reasonable people could reach one conclusion based on the evidence when viewing the facts in the light most favorable to the nonmoving party." "A material fact is one upon which the outcome of the litigation depends in whole or in part." "A trial is not useless, but is absolutely necessary where there is a genuine issue as to any material fact."

The initial burden is on the moving party to show there is no genuine issue of any material fact. CR 56(e). "The burden then shifts to the nonmoving party to set forth specific facts demonstrating a genuine issue for trial." "Mere allegations or conclusory statements of facts unsupported by evidence are not sufficient to establish a genuine issue." This court "may affirm summary judgment on any grounds supported by the record." [Citations omitted.]

**B. RCW 36.32.330 Does Not Apply to Spokane County Resolution No. 12-0910.**

RCW 36.32.330 does not apply to Spokane County Resolution No. 12-0910. RCW 36.32.330 by its terms is limited to an "appeal to the superior

court from any decision or order of the board of county commissioners."  
"Such appeal shall be taken within twenty days after the decision or order,  
and the appellant shall within that time serve notice of appeal on the county  
commissioners" *Id.* (Emphasis Added.)

The county's action regarding the attempted amendment of "Exhibit  
B" of the 2001 Deed by Resolution was not a "decision or order." It was  
merely an attempt, by legislation, to amend an earlier deed.<sup>2</sup>

The action of the county was not a "decision or order." The action was  
a resolution. A resolution is defined in BLACK'S LAW DICTIONARY 1310 (6th ed.  
1990) as follows:

A formal expression of the opinion or will of an official body or a  
public assembly, adopted by vote; as a legislative resolution.  
Such may be either a simple, joint or concurrent resolution.

The term is usually employed to denote the adoption of a  
motion, the subject-matter of which would not properly  
constitute a statute, such as a mere expression of opinion; an  
alteration of the rules; a vote of thanks or of censure, etc. Such  
is not law but merely a form in ' which a legislative body  
expresses an opinion. *Baker v. City of Milwaukee*, 271 Or. 500,  
533 P.2d 772, 775.

---

<sup>2</sup> The resolution is ineffective for at least two primary reasons:  
First, the attempted amendment is not between the original parties to  
the dedication – the county and Wilmington Trust Company. Second,  
there can be no amendment, even between Wilmington Trust Company,  
because all rights to the property including reversions passed to the  
county. Third, there is no evidence establishing whatever interest  
Wilmington Trust Company was transferred to Fred Meyer Stores.

The chief distinction between a "resolution" and a "law" is that the former is used whenever the legislative body passing it wishes merely to express an opinion as to some given matter or thing and is only to have a temporary effect on such particular thing, while by a "law" it is intended to permanently direct and control matters applying to persons or things in general.

The court has found "the resolution of the Board [of county commissioners]" "was not a decision or order of the Board, because it merely indicated a refusal by the Board to perform a limited discretionary function (i. e., establishment of boundaries for the proposed area of incorporation). Hence, the Board's refusal to act is not appealable under the provisions of RCW 36.32.330." *State ex rel. Stephens v. Odell*, 61 Wash. 2d 476, 480, 378 P.2d 932 (1963).

Friends, Appellant, was not a party to any resolution of the County, was not a party to County Resolution No. 12-0910. In RCW 36.32.330, the meaning of "decision or order" assumes that there be "parties to a record of a challenged matter." *Ronken v. Board of County Com'rs of Snohomish County*, 89 Wash. 2d 304, 309-310, 572 P.2d 1 (1977).

Legislation unlawfully adopted and void may be attacked at any time. *City of Spokane v. Harris*, 25 Wash. App. 345, 348, 606 P.2d 291 (1980) (citing *Swartout v. City of Spokane*, 21 Wash. App. 665, 674, 586 P.2d 135 (1978), review denied, 91 Wash. 2d 1023 (1979); *Puget Sound Alumni of Kappa Sigma, Inc. v. City of Seattle*, 70 Wash. 2d 222, 422 P.2d 799 (1967))."

*Hook v. Lincoln Cnty. Noxious Weed Control Bd.*, 166 Wash. App. 145, 269 P.3d 1056, 1060 (2012).

The term "decision or order" pertains to situations where there are contested matters to which there are formal parties. Here, Friends was not a party to any of the proceedings before the county commissioners. See *Sterling v. Spokane County*, 31 Wash. App. 467 Fn. 3, 642 P.2d 1255 (1982) citing *Morath v. Gorham*, 11 Wash. 577, 40 P. 129 (\_\_\_\_); *State ex rel. Mason v. Bd. of Commissioners of King County*, 146 Wash. 449, 263 P. 735 (\_\_\_\_); *Ocosta Consol. School Dist. No. 123 v. Grays Harbor County*, 268 P.2d 663, 44 Wash. 2d 525 (1954).

Further, legislation unlawfully adopted and void may be attacked at any time. *City of Spokane v. Harris*, 25 Wash. App. 345, 348, 606 P.2d 291 (1980).

The challenge to the constitutionality of what would be a legislative act does not require the use of RCW 36.32.330. See *Hook v. Lincoln Cnty. Noxious Weed Control Bd.*, 166 Wash. App. 145, 269 P.3d 1056 (2012).

"[A] void legislative act is of no effect and may be successfully attacked at any time." *Swartout v. City of Spokane*, 21 Wash. App. 665, 674, 586 P.2d 135 (1978), *review denied*, 91 Wash. 2d 1023 (1979). "... legislation passed in violation of the city charter is void and of no effect and may be

successfully attacked at any time." *Id.*

Spokane County Resolution 12-0910 was not a "decision or order." It was only an action by the county to deal with county property under RCW 36.32.120 (6) regarding "the care of the county property." The power to act under RCW 36.32.120 constitutes legislation. Indeed, the statute specifically addresses the legislative authority of counties in Washington.

**C. Assuming RCW 36.32.330 Does Apply, it Was Waived under CR 12(g).**

The filing of successive motions to dismiss is restricted by CR 12: "Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under [CR 12] must not make another motion under [CR 12] raising a defense or objection that was available to the party but omitted from its earlier motion." CR 12(g)(2). "This 'consolidation rule' is intended 'to eliminate unnecessary delay at the pleading stage' by encouraging 'the presentation of an omnibus pre-answer motion in which the defendant advances every available Rule 12 defense' simultaneously rather than 'interposing these defenses and objections in piecemeal fashion.'" 5C CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1384 (3d ed. 2014).

But although Rule 12(g)(2) precludes successive motions under Rule 12, it is expressly subject to Rule 12(h)(2), which allows parties to raise

certain defenses, including the failure to state a claim upon which relief may be granted, in any pleading allowed under Rule 7(a), by a motion for judgment on the pleadings under Rule 12©, or at trial. The special status provided to a defense based on failure to state a claim by Rule 12(h)(2) is significant because under Rule 12(h)(1), a party waives any of the defenses listed in Rule 12(b)(2)-(5) if they are omitted from a prior Rule 12 motion. A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

In light of CR 12(h)(2), Star Saylor's motion for summary judgment was not permitted. Star Saylor can raise the defense in one of the pleadings permitted under CR 7(a):

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross claim, if the answer contains a cross claim; a third party complaint, if a person who was not an original party is summoned under the provisions of rule 14; and a third party answer, if a third party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer.

A motion for summary judgment is not one of the pleadings permitted by CR 7(a).

Nor is the summary judgment motion a "motion for judgment on the pleadings" under CR 12(c). Could a CR 12(c) judgment on the pleadings motion be brought? If it was, it would not be successful because nowhere in the pleading (the complaint or the amended and restated complaint) is RCW 36.32.330 mentioned.

**VI. CONCLUSION**

The trial court's summary judgment decision must be overruled. First, the decision must be overruled because RCW 36.32.330 does not apply to the resolution of the county to attempt an amendment of the Deed of Dedication of the park. Second, Star Saylor's motion for summary judgment as to RCW 36.32.330 is not permitted by CR 12(g).

The trial court should be reversed again and remanded for trial.

April 5, 2016.

Respectfully submitted,

EUGSTER LAW OFFICE PSC

 4/14/16  
/s/ Stephen K. Eugster

Stephen K. Eugster, WSBA 2003  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury that on the date below I re-served the Opening Brief of Appellants (including its Appendix which follows this Certificate) on attorneys of the parties as follows:

Attorneys for County of Spokane and Fred Meyer Stores, Inc:

Ron Arkills  
Spokane County Prosecuting Attorney's Office  
1100 W Mallon Ave  
Spokane, WA 99260-2043

Attorneys for Saylor Investments, LLC:

Laura Black  
Mike Maurer  
Lukins & Annis PS  
1600 Washington Trust Bldg.  
717 W Sprague Ave  
Spokane, WA 99201

Signed at Spokane, Washington on April 14 , 2016.

  
Stephen K. Eugster, WSBA 2003

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4 AUG 23 2015

5 SPOKANE COUNTY  
6 PROSECUTING ATTORNEY  
CIVIL DIVISION

7 SUPERIOR COURT OF WASHINGTON IN AND FOR SPOKANE COUNTY

8 FRIENDS OF NORTH SPOKANE COUNTY  
9 PARKS,

10 Plaintiffs,

11 v.

12 SPOKANE COUNTY; FRED MEYER  
13 PARTIES – FRED MEYER STORES, INC.  
14 AND ROUNDUP CO. dba "FRED MEYER";  
STAR SAYLOR INVESTMENTS, LLC,

15 Defendants.  
16

NO. 13-2-00690-6

DECLARATION OF JACOB R.  
BRENNAN IN SUPPORT OF STAR  
SAYLOR INVESTMENTS, LLC'S  
MOTION FOR SUMMARY JUDGMENT

17 I, Jacob R. Brennan, declare as follows:

18 1. I am an Attorney at Lukins & Annis, P.S., representing Defendant Star Saylor  
19 Investments, LLC, herein. I am over the age of 18 and otherwise competent to make the  
20 following statements, which are made of my own personal knowledge.

21 2. Attached hereto as Exhibit A is a true and correct copy of select pages from  
22 Spokane County Commissioner's Resolution No. 01-0660 dated July 24, 2001, obtained from  
23 the Commissioner's Resolution Directory online at [www.spokanecounty.org/commpub/](http://www.spokanecounty.org/commpub/) (last  
24 accessed 8/19/2015).  
25

DECLARATION OF BRENNAN IN SUPPORT OF STAR  
SAYLOR INVESTMENTS, LLC'S MOTION FOR SUMMARY  
JUDGMENT: 1

LAW OFFICES OF  
LUKINS & ANNIS, PS  
A PROFESSIONAL SERVICE CORPORATION  
717 W Sprague Ave., Suite 1602  
Spokane, WA 99201  
Telephone: (509) 455-9555  
Fax: (509) 747-2323

1           3. Attached hereto as Exhibit B is a true and correct copy of the Deed with  
2 Covenant and Joinder with Warranties of Title to Real Property filed under Spokane County  
3 Auditor's No. 4624178 on August 22, 2001.

4           4. Attached hereto as Exhibit C is a true and correct copy of select pages from  
5 Spokane County Commissioner's Resolution No. 12-0910, obtained from the Commissioner's  
6 Resolution Directory online at [www.spokanecounty.org/commpub/](http://www.spokanecounty.org/commpub/) (last accessed 8/19/2015).

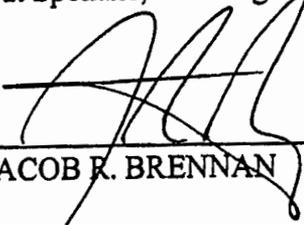
7           5. Attached hereto as Exhibit D is a true and correct copy of the Purchase and Sale  
8 Agreement filed under Spokane County Auditor's No. 6191976 on March 28, 2013, which  
9 attached the Amendment to Restrictions on Use and Development of Property.

10          6. Attached hereto as Exhibit E is a true and correct copy of the Amendment to  
11 Restrictions on Use and Development of Property filed under Spokane County Auditor's No.  
12 6193631 on April 2, 2013.

13          7. Attached hereto as Exhibit F is a true and correct copy of the Freddie Park area  
14 as depicted in the Spokane County 'SCOUT' / Geographic Information System map online at  
15 <http://maps.spokanecounty.org/> (last accessed 8/20/2015).

16  
17           I declare under penalty of perjury under the laws of the State of Washington that the  
18 foregoing is true and correct.

19           Signed this 21<sup>st</sup> day of August, 2015, at Spokane, Washington.

20  
21   
22 \_\_\_\_\_  
23 JACOB R. BRENNAN  
24  
25

DECLARATION OF BRENNAN IN SUPPORT OF STAR  
SAYLOR INVESTMENTS, LLC'S MOTION FOR SUMMARY  
JUDGMENT: 2

CERTIFICATE OF SERVICE

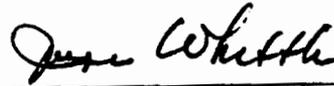
I hereby certify that I caused to be served a true and correct copy of the foregoing document on the 21<sup>st</sup> day of August, 2015, addressed to the following:

Ronald Paul Arkills  
Attorney at Law  
1100 W. Mallon Ave.  
Spokane, WA 99201

VIA FIRST CLASS MAIL   
VIA CERTIFIED MAIL   
VIA HAND DELIVERY   
VIA FACSIMILE   
VIA EMAIL

Stephen K. Eugster  
Attorney at Law  
2418 W. Pacific Ave.  
Spokane, WA 99102

VIA FIRST CLASS MAIL   
VIA CERTIFIED MAIL   
VIA HAND DELIVERY   
VIA FACSIMILE   
VIA EMAIL



Joyce Whittle

DECLARATION OF BRENNAN IN SUPPORT OF STAR  
SAYLOR INVESTMENTS, LLC'S MOTION FOR SUMMARY  
JUDGMENT: 3

LAW OFFICES OF  
LUKINS & ANNIS, PS  
A PROFESSIONAL SERVICE CORPORATION  
717 W Sprague Ave., Suite 1600  
Spokane, WA 99201  
Telephone: (509) 455-9555  
Fax: (509) 747-2323

# EXHIBIT A

**APPENDIX**

- A. Spokane County Resolution Number 1-0660.**

NO. 1 0660

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF ACCEPTING A )  
GIFT OF A PARCEL OF PROPERTY )  
CONSISTING OF APPROXIMATELY ) RESOLUTION  
3.99 ACRES FROM ROUNDUP )  
COMPANY D/B/A AS FRED MEYER )  
STORES, INC. )

WHEREAS, pursuant to the provisions of RCW 36.32.120(6), the Board of County Commissioners of Spokane County has the care of County property and the management of County funds and business; and

WHEREAS, pursuant to the provisions of RCW 36.68.090, the Board of County Commissioners of Spokane County may build, construct, care for, control and operate parks and other recreational facilities; and

WHEREAS, pursuant to the provisions of RCW 36.68.010, counties may establish park and playground systems for public recreational purposes and for such purposes shall have the power to acquire lands by gift, purchase, lease, or bequest; and

WHEREAS, Roundup Company, d/b/a as Fred Meyers Stores, Inc., is desirous of donating a 3.99-acre parcel of property, more particularly described in Attachment "A," attached hereto and incorporated herein by reference, to Spokane County subject to certain conditions, to include:

- (1) Such land shall be used only as a county-owned and operated natural or community park. Such restriction will be perpetual and will be stated in the Bargain and Sale Deed conveying the property to Spokane County;
- (2) There shall be no vehicular access from the park property to the abutting property on which the Fred Meyer Store is located as well as another parcel denominated as Parcel "A," depicted in Attachment "B," attached hereto and incorporated herein by reference, which is being marketed for sale and development;
- (3) A pedestrian access to the Fred Meyer Store will be considered subject to review and approval of the location and design of the access to be prepared by a professional architect. Roundup Company's approval of the pedestrian access must be in writing;
- (4) The County will be required to install a fence along the common boundaries of the park property and the Fred Meyer Store parcel as well as Parcel "A," depicted in Attachment

**1 0660**

"B," attached hereto and incorporated herein by reference. The design, material and height of the fence will be subject to approval by Roundup;

(5) All costs associated with the closing and conveyance of the property, including but not limited to recording fees, property taxes and special assessments (to be prorated as of the recording date), state excise tax, escrow fees and title insurance will be paid by Spokane County;

(6) The property will be delivered to Spokane County on the date the deed is recorded in its present "as is" condition; and

(7) The County will execute necessary documents consistent with this resolution necessary for Roundup Company to obtain a charitable tax deduction for the land in 2001; and

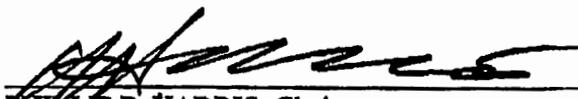
WHEREAS, the Board of County Commissioners is desirous of accepting the donation of the 3.99-acre parcel of land from Roundup Company subject to the terms and conditions set forth in the immediately preceding recital.

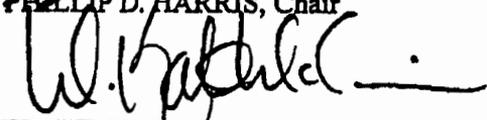
NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of County Commissioners of Spokane County, pursuant to the provisions of RCW 36.68.010, that the Board does hereby accept the donation of the 3.99-acre parcel of land from Roundup Company subject to the terms and conditions set forth within the recital herein above and in conjunction herewith does authorize either the Chairman of the Board of County Commissioners of Spokane County or a majority of the Board to execute at another than an open meeting any and all necessary documents in conjunction with the donation.

PASSED AND ADOPTED this 24th day of July, 2001.

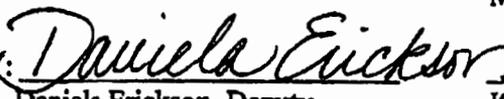
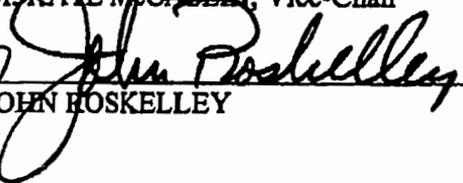


BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE, COUNTY, WASHINGTON

  
\_\_\_\_\_  
PHILLIP D. HARRIS, Chair

  
\_\_\_\_\_  
M. KATE McCASLIN, Vice-Chair

ATTEST:  
VICKY M. DALTON  
CLERK OF THE BOARD

BY:    
\_\_\_\_\_  
Daniela Erickson, Deputy      JOHN ROSKELLEY

H:\Zaagman\resolutions\fred meyer property donation 071701.doc

LEGAL DESCRIPTION

1 0660

ORDER NO. 149462-VC-

COMMENCING ON THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 26 NORTH, RANGE 43 EAST AND ON THE SOUTH RIGHT OF WAY LINE OF HASTINGS ROAD AS PER DEED RECORDED UNDER RECORDING NO. 9506120398;  
 THENCE SOUTH 02°47'39" EAST, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER, 1055.28 FEET;  
 THENCE SOUTH 87°35'03" WEST, ALONG THE NORTH LINE OF THE SOUTH 225.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 8, 240.01 FEET;  
 THENCE NORTH 02°47'39" WEST, 595.79 FEET;  
 THENCE NORTH 87°12'21" EAST, 95.00 FEET;  
 THENCE NORTH 02°47'39" WEST, 284.09 FEET, TO THE BEGINNING OF A CURVE TO THE RIGHT THE RADIUS OF WHICH BEARS NORTH 87°12'21" EAST, A DISTANCE OF 175.00 FEET;  
 THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE 33°52'55", AN ARC DISTANCE OF 103.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT THE RADIUS OF WHICH BEARS NORTH 58°54'44" WEST, A DISTANCE OF 125.00 FEET;  
 THENCE ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 33°24'21", AN ARC DISTANCE OF 72.89 FEET TO A POINT OF TANGENCY;  
 THENCE NORTH 02°19'25" WEST, 4.51 FEET, TO THE SOUTH RIGHT OF WAY LINE OF HASTINGS ROAD;  
 THENCE NORTH 87°40'35" EAST, ALONG SAID SOUTH RIGHT OF WAY LINE, 18.21 FEET TO THE BEGINNING OF A CURVE TO THE LEFT THE RADIUS OF WHICH BEARS NORTH 02°19'25" WEST, A DISTANCE OF 745.00 FEET;  
 THENCE ALONG SAID SOUTH RIGHT OF WAY LINE AND SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 05°50'21", AN ARC DISTANCE OF 75.93 FEET TO THE POINT OF BEGINNING.  
 EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

COMMENCING ON THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 26 NORTH, RANGE 43 EAST OF THE WILLAMETTE MERIDIAN, AND ON THE SOUTH RIGHT OF WAY LINE OF HASTINGS ROAD AS PER DEED RECORDED UNDER RECORDING NO. 9506120398;  
 THENCE SOUTH 02°47'39" EAST, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER 173.84 FEET TO A POINT ON A CURVE TO THE RIGHT THE RADIUS OF WHICH BEARS NORTH 71°58'13" WEST, A DISTANCE OF 692.50 FEET;  
 THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 07°59'12", AN ARC DISTANCE OF 96.53 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT THE RADIUS OF WHICH BEARS NORTH 63°59'01" WEST, A DISTANCE OF 30.00 FEET;  
 THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 106°20'24", AN ARC DISTANCE OF 55.68 FEET TO THE BEGINNING OF A CURVE TO THE LEFT THE RADIUS OF WHICH BEARS SOUTH 42°21'22" WEST, A DISTANCE OF 200.00 FEET;  
 THENCE ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 20°03'18", AN ARC DISTANCE OF 70.01 FEET;  
 THENCE NORTH 02°47'39" WEST, 54.19 FEET, TO THE BEGINNING OF A CURVE TO THE RIGHT THE RADIUS OF WHICH BEARS NORTH 87°12'21" EAST, A DISTANCE OF 175.00 FEET;  
 THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE 33°52'55", AN ARC DISTANCE OF 103.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT THE RADIUS OF WHICH BEARS NORTH 58°54'44" WEST, A DISTANCE OF 125.00 FEET;

ATTACHMENT "A"

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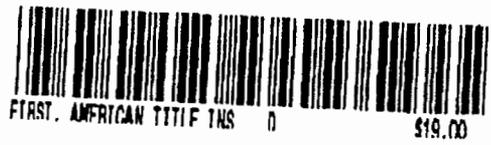
**1 0660**

LEGAL DESCRIPTION CONT.

THENCE ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 33°24'41" AN ARC DISTANCE OF 72.89 FEET TO A POINT OF TANGENCY;  
 THENCE NORTH 02°19'25" WEST, 4.51 FEET, TO THE SOUTH RIGHT OF WAY LINE OF HASTINGS ROAD:  
 THENCE NORTH 87°40'35" EAST, ALONG SAID SOUTH RIGHT OF WAY LINE, 18.21 FEET TO THE BEGINNING OF A CURVE TO THE LEFT THE RADIUS OF WHICH BEARS NORTH 02°19'25" WEST, A DISTANCE OF 745.00 FEET;  
 THENCE ALONG SAID SOUTH RIGHT OF WAY LINE AND SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 05°50'21", AN ARC DISTANCE OF 75.93 FEET TO THE POINT OF BEGINNING. ALL SITUATE IN SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 26 NORTH, RANGE 43 EAST OF THE WILLAMETTE MERIDIAN, IN SPOKANE COUNTY, WASHINGTON.



# EXHIBIT B



4624178  
Page: 1 of 12  
08/22/2001 02:06P  
Spokane Co. WA

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

**Spokane County  
404 N. Havana  
Spokane, Washington 99202-4663**

*149672-VC'*

**DEED WITH COVENANT AND JOINDER  
WITH WARRANTIES OF TITLE TO REAL PROPERTY  
(Parcel B – Wandermere Fred Meyer Development)  
(Spokane County, Washington)**

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

**Grantee:** SPOKANE COUNTY

**Legal Description:**

1. Section 8, Township 26 North, Range 43 East, NW Quarter
2. Additional legal description is on Exhibit A of the document.

Assessor's Property Tax Parcel Account Number: 36082.9161

08/22/2001 CRG

\$2.00 2001A2B36

*(12)*



**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

SPOKANE COUNTY  
1116 W. Broadway  
County Courthouse, 1<sup>st</sup> Floor  
Spokane, WA 99260-0100

**DEED WITH COVENANT**

(Parcel B – Wandermere Fred Meyer Development)  
(Spokane County, Washington)

The Grantor, **WILMINGTON TRUST COMPANY**, a Delaware corporation, not in its individual capacity, but solely as Owner Trustee under the FMS Trust 1997-1 a Delaware business trust, for and consideration of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, in hand paid, bargains, sells and conveys to **SPOKANE COUNTY**, whose address is 1116 W. Broadway, County Courthouse, 1<sup>st</sup> Floor, Spokane, WA 99260-0100, Grantee, the real property described on the attached Exhibit A, TOGETHER WITH all the tenements, hereditaments and appurtenances belonging thereto, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right and title to the property whether in law or in equity, and subject to the Restrictions on Use and Development of Property as stated in Exhibit B, and the encumbrances shown on Exhibit C.

TO HAVE AND TO HOLD all and singular the above mentioned and described real property, together with appurtenances thereof, unto the Grantee, and its heirs, successors and assigns forever.

Grantor hereby covenants to and agrees with Grantee, and its heirs, successors and assigns as follows: the Grantor, and the heirs, successors and assigns of the Grantor, shall be forever estopped from asserting that the Grantor had, at the date of this Deed, an estate or interest in the real property less than the estate or interest which this Deed purports to convey, and that this Deed shall pass any and all after acquired title to the real property. The Grantor, for itself and for its successors and assigns, limits the covenants of this Deed to those herein above expressed and excludes all covenants arising or to arise by statutory or other implication.

In connection with the delivery of this instrument, Roundup Co., a Washington corporation ("**Roundup**") is providing certain title warranties as set forth in the attached Joinder with Warranties of Title to Real Property ("**Title Warranties**"), which Title Warranties are given by Roundup to Grantee, and its successors and assigns, as owner/grantee of the property described in this Deed. Dated the 13<sup>th</sup> day of August, 2001.

08/22/2001 CRG

\*2.00 200112836

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

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

By: *Robert Currey-Wilson*  
Name: Robert Currey-Wilson  
Title: Vice President

ACCEPTED BY GRANTEE: **SPOKANE COUNTY**

Board of County Commissioners of Spokane County, Washington

By: *Phillip D. Harris*  
Name: Phillip D. Harris  
Title: Chairman

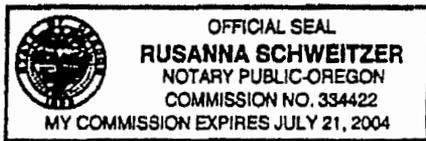


4624178  
Page: 4 of 12  
08/22/2001 02:06P  
Spokane Co WA

STATE OF OREGON )  
 ) ss.  
County of Multnomah )

On this 13th day of August, 2001, 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 me to be the person who signed as Vice President of **FRED MEYER, INC.**, a Delaware corporation, the attorney-in-fact of WILMINGTON TRUST COMPANY, a Delaware corporation, not in its individual capacity, but solely as Owner Trustee under the FMS Trust 1997-1 a Delaware business trust, on behalf of such business trust, and he, being duly sworn, did say that the foregoing instrument was executed by authority of and on behalf of said principal pursuant to a power of attorney given to **FRED MEYER, INC.**, by such principal, and acknowledged the foregoing instrument to be the agents, contractors or employees and deed of said WILMINGTON TRUST COMPANY, as trustee of such trust, as principal.

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



Rusanna Schweitzer  
Notary Public in and for the State of Oregon  
Residing at: Tigard, OR  
My commission expires: July 21, 2004

STATE OF WASHINGTON )  
 ) ss.  
County of Spokane )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of August, 2001, by Phillip D. Harris, the Chairman of the Board of County Commissioners of Spokane County, Washington, on behalf of **SPOKANE COUNTY**.

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



Della Judith Potter  
Notary Public in and for the State of  
Washington  
Residing at: Spokane County, WA  
My commission expires: 09-29-03



**JOINDER WITH WARRANTIES OF TITLE TO REAL PROPERTY  
(Parcel B of Wandermere Fred Meyer Development)  
(Spokane County, Washington)**

**FRED MEYER, INC.**, a Delaware corporation ("FMI"), **FRED MEYER STORES, INC.** (formerly known as **FRED MEYER, INC.**), a Delaware corporation ("FMS"), and **ROUNDUP CO.**, a Washington corporation, doing business in Washington as "Fred Meyer" ("Declarant"), each of whose address is 3800 SE 22<sup>nd</sup> Avenue, Portland, Oregon 97202, for and in consideration of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, in hand paid, covenants and warrants to and with, and hereby agrees with, **SPOKANE COUNTY**, as grantee (the "Grantee"), as to the real property (the "Property") described on Exhibit A of the Deed ("Deed") to which this Joinder with Warranties of Title to Real Property (the "Joinder") is attached, as follows:

1. **ROUNDUP AS PRIME LESSEE.** The parties acknowledge that **ROUNDUP CO.**, a Washington corporation ("Roundup") is hereby deemed to be the Prime Lessee (as defined in the Declaration of Covenants, Conditions, Restrictions and Easements recorded on March 8, 1999 as Recording No. 4339043, Official Records of Spokane County, Washington) of the property described in such Declaration that the grantor under the Deed owns as of the date of the Deed (by virtue of Roundup being the Prime Lessee under a Prime Lease with FMS (as Prime Lessor), and FMS having a Prime Lease with FMI and FMI having a Prime Lease with the grantor set forth in such Deed ("Grantor").

2. **WARRANTIES OF TITLE TO REAL PROPERTY.** Roundup covenants to the Grantee, its heirs, successors and assigns, as follows: (i) that at the time of the making and delivery of the Deed, the Grantor set forth in such Deed was lawfully seized of an indefeasible estate in fee simple, in and to the Property therein described (which estate was held by Grantor as security for the performance of obligations owed under a synthetic lease financing vehicle), and had good right and full power to convey the same; (ii) that such Property was free from encumbrances, done or suffered from the Grantor and/or by Roundup, except for the matters referenced on the attached Exhibit B; and (iii) that Roundup warrants to the Grantee, its heirs and assigns, the quiet enjoyment of such Property against the Grantor, its heirs and assigns, and against Roundup, its heirs and assigns, except for the matters referenced on the attached Exhibit B.

3. **SUCCESSORS AND ASSIGNS.** All provisions of this Joinder will be binding on the parties, and their respective successors and assigns, and will be for the benefit of Grantee, and its heirs, successors and assigns, as owner of the Property as described on Exhibit A attached to the Deed.

Dated the 13th day of August, 2001.



4624178  
Page: 6 of 12  
08/22/2001 02:06P  
Spokane Co. WA

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

FMI:

FRED MEYER, INC.

By: Robert Currey-Wilson

Name: Robert Currey-Wilson

Title: Vice President

FMS:

FRED MEYER STORES, INC.  
(formerly known as Fred Meyer, Inc.)

By: Robert Currey-Wilson

Name: Robert Currey-Wilson

Title: Vice President

DECLARANT:

ROUNDUP CO.

By: Robert Currey-Wilson

Name: Robert Currey-Wilson

Title: Vice President

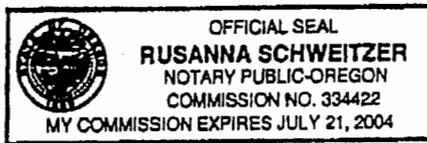


ACKNOWLEDGMENTS

STATE OF OREGON )  
 ) ss.  
County of Multnomah )

The foregoing instrument was acknowledged before me this 13th day of August, 2001, by Robert Currey-Wilson, the Vice President of **FRED MEYER, INC.**, a Delaware corporation, on behalf of the corporation.

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

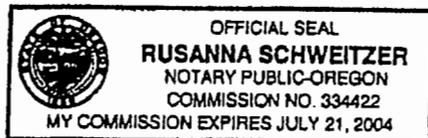


Rusanna Schweitzer  
Notary Public in and for the State of Oregon  
Residing at: Tigard, OR  
My commission expires: July 21, 2004

STATE OF OREGON )  
 ) ss.  
County of Multnomah )

The foregoing instrument was acknowledged before me this 13th day of August, 2001, by Robert Currey-Wilson, the Vice President of **FRED MEYER STORES, INC.**, a Delaware corporation, on behalf of the corporation.

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



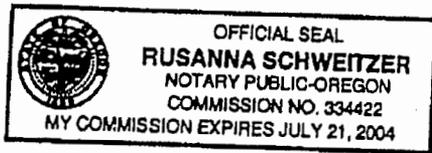
Rusanna Schweitzer  
Notary Public in and for the State of Oregon  
Residing at: Tigard, OR  
My commission expires: July 21, 2004



STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

The foregoing instrument was acknowledged before me this 13th day of August, 2001, by Robert Currey-Wilson, the Vice President of **ROUNDUP CO.**, a Delaware corporation, on behalf of the corporation.

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



Rusanna Schweitzer  
Notary Public in and for the State of Oregon  
Residing at: Tigard, OR  
My commission expires: July 21, 2004

465



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Page: 9 of 12  
08/22/2001 02:06P  
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**EXHIBIT A**

**Legal Description**

COMMENCING ON THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 26 NORTH, RANGE 43 EAST AND ON THE SOUTH RIGHT OF WAY LINE OF HASTINGS ROAD AS PER DEED RECORDED UNDER RECORDING NO. 9506120398;  
 THENCE SOUTH 02°47'39" EAST, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER, 1055.28 FEET;  
 THENCE SOUTH 87°35'03" WEST, ALONG THE NORTH LINE OF THE SOUTH 225.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 8, 240.01 FEET;  
 THENCE NORTH 02°47'39" WEST, 595.79 FEET;  
 THENCE NORTH 87°12'21" EAST, 95.00 FEET;  
 THENCE NORTH 02°47'39" WEST, 284.09 FEET, TO THE BEGINNING OF A CURVE TO THE RIGHT THE RADIUS OF WHICH BEARS NORTH 87°12'21" EAST, A DISTANCE OF 175.00 FEET;  
 THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE 33°52'55", AN ARC DISTANCE OF 103.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT THE RADIUS OF WHICH BEARS NORTH 58°54'44" WEST, A DISTANCE OF 125.00 FEET;  
 THENCE ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 33°24'21", AN ARC DISTANCE OF 72.89 FEET TO A POINT OF TANGENCY;  
 THENCE NORTH 02°19'25" WEST, 4.51 FEET, TO THE SOUTH RIGHT OF WAY LINE OF HASTINGS ROAD;  
 THENCE NORTH 87°40'35" EAST, ALONG SAID SOUTH RIGHT OF WAY LINE, 18.21 FEET TO THE BEGINNING OF A CURVE TO THE LEFT THE RADIUS OF WHICH BEARS NORTH 02°19'25" WEST, A DISTANCE OF 745.00 FEET;  
 THENCE ALONG SAID SOUTH RIGHT OF WAY LINE AND SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 05°50'21", AN ARC DISTANCE OF 75.93 FEET TO THE POINT OF BEGINNING.

**EXCEPT THE FOLLOWING DESCRIBED PROPERTY:**

COMMENCING ON THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 26 NORTH, RANGE 43 EAST OF THE WILLAMETTE MERIDIAN, AND ON THE SOUTH RIGHT OF WAY LINE OF HASTINGS ROAD AS PER DEED RECORDED UNDER RECORDING NO. 9506120398;  
 THENCE SOUTH 02°47'39" EAST, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER 173.84 FEET TO A POINT ON A CURVE TO THE RIGHT THE RADIUS OF WHICH BEARS NORTH 71°58'13" WEST, A DISTANCE OF 692.50 FEET;  
 THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 07°59'12", AN ARC DISTANCE OF 96.53 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT THE RADIUS OF WHICH BEARS NORTH 63°59'01" WEST, A DISTANCE OF 30.00 FEET;  
 THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 106°20'24", AN ARC DISTANCE OF 55.68 FEET TO THE BEGINNING OF A CURVE TO THE LEFT THE RADIUS OF WHICH BEARS SOUTH 42°21'22" WEST, A DISTANCE OF 200.00 FEET;  
 THENCE ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 20°03'18", AN ARC DISTANCE OF 70.01 FEET;  
 THENCE NORTH 02°47'39" WEST, 54.19 FEET, TO THE BEGINNING OF A CURVE TO THE RIGHT THE RADIUS OF WHICH BEARS NORTH 87°12'21" EAST, A DISTANCE OF 175.00 FEET;  
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465

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4624178  
Page: 10 of 12  
06/22/2001 02:06P  
Spokane Co. WA

**EXHIBIT A**

**Legal Description - Continued**

THENCE ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 33°24'41" AN ARC DISTANCE OF 72.89 FEET TO A POINT OF TANGENCY;  
THENCE NORTH 02°19'25" WEST, 4.51 FEET, TO THE SOUTH RIGHT OF WAY LINE OF HASTINGS ROAD;  
THENCE NORTH 87°40'35" EAST, ALONG SAID SOUTH RIGHT OF WAY LINE, 18.21 FEET TO THE BEGINNING OF A CURVE TO THE LEFT THE RADIUS OF WHICH BEARS NORTH 02°19'25" WEST, A DISTANCE OF 745.00 FEET;  
THENCE ALONG SAID SOUTH RIGHT OF WAY LINE AND SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 05°50'21", AN ARC DISTANCE OF 75.93 FEET TO THE POINT OF BEGINNING. ALL SITUATE IN SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 26 NORTH, RANGE 43 EAST OF THE WILLAMETTE MERIDIAN, IN SPOKANE COUNTY, WASHINGTON.

466



4624178  
Page: 11 of 12  
08/22/2001 02:06P  
Spokane Co. WA

**EXHIBIT B**

**Restrictions on Use and Development of Property**

The herein described real property shall be held, conveyed, sold, and improved only as a natural, community, or regional park. This condition and restriction of use shall constitute a covenant and encumbrance which shall run with the land and shall be perpetually binding upon Grantee, its successors-in-interest and assigns, and all parties having or acquiring any right, title, or interest in, or to, any part of the subject property.

There shall be no vehicular ingress or egress from the property to the adjacent property owned by Grantor, Parcels A and G of BSP-58-97. Vehicular access to the property shall be only from Standard Drive.

A pedestrian walkway to Parcel G may be allowed subject to Grantor's review and approval of the location, design, and construction of the walkway.

Grantee shall install and maintain a fence within the boundaries of the property along the adjacent boundaries of Parcels A and G. The design, materials and height of the fence shall be subject to approval by Grantor.



**EXHIBIT C**

**Exceptions from Warranties**

1. General taxes not yet due and payable.  
Tax Account No.: 36082.9161
  
2. Said premises lie within the boundaries of Whitworth Water District No. 2, and are subject to future assessments by said District.
  
3. Easement, including terms and provisions contained therein:  
Recorded: July 12, 1940  
Recording No.: 448348A  
Volume/Page: 489/490  
In Favor Of: The Washington Water Power Company, a Washington corporation, its successors and assigns  
For: An electrical distribution line and appurtenances  
Affects: The Southeast Quarter of the Northwest Quarter
  
4. Easement, including terms and provisions contained therein:  
Recorded: April 25, 1941  
Recording No.: 490806A  
Volume/Page: 491/640  
In Favor Of: The Washington Water Power Company, a Washington corporation, its successors and assigns  
For: An electrical distribution line and appurtenances  
Affects: The Southeast Quarter of the Northwest Quarter
  
5. Easement, including terms and provisions contained therein:  
Recorded: October 22, 1969  
Recording No.: 455020C  
In Favor Of: The Washington Water Power Company, a Washington corporation, its successors and assigns  
For: An electrical distribution line and appurtenances  
Affects: The East Line of the Southeast Quarter of the Northwest Quarter
  
6. Terms and Conditions of Title Notice:  
Recorded: November 14, 1995  
Recording No.: 9511140194
  
7. A Record of Survey recorded under Recording No. 4150943, in Book 78 of Surveys, Page(s) 68, purporting to show the herein described (and other) land.

# EXHIBIT C

NO. 12-0910

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING A )  
DOCUMENT ENTITLED "AMENDMENT TO )  
RESTRICTIONS ON USE AND DEVELOPMENT )  
OF PROPERTY" CONCERNING THAT )  
PROPERTY COMMONLY REFERRED TO AS )  
FREDDY PARK )  
)

**RESOLUTION**

**WHEREAS**, pursuant to the provisions of RCW 36.32.120(6), the Board of County Commissioners of Spokane County, Washington has the care of county property and the management of county funds and business; and

**WHEREAS**, on August 13, 2001, the FRED MEYER PARTIES and WILMINGTON TRUST COMPANY, a Delaware Corporation, not in its individual capacity, but solely as Owner Trustee under the FMS Trust 1997-1, a Delaware business trust which was subsequently canceled on July 25, 2012, conveyed certain real property to Spokane County (hereafter referred to as "Subject Real Property") by documents entitled "DEED WITH COVENANT" and "JOINDER WITH WARRANTIES TO TITLE TO REAL PROPERTY" (hereinafter collectively referred to the "Conveyance Documents") as recorded in the records of the Spokane County Auditor on August 22, 2001 under Recording Number 4624178; and

**WHEREAS**, the Conveyance Documents contained a restrictive covenant denominated as "EXHIBIT 'B'" entitled "Restrictions on Use and Development of Property". The restrictive covenant provided as follows:

"The herein described real property shall be held, conveyed, sold, and improved only as a natural, community, or regional park. This condition and restrict of use shall constitute a covenant and encumbrance which shall run with the land and shall be perpetually binding upon Grantee, its successors-in-interest and assigns, and all parties having or acquiring any right, title or interest in, or to, any pat of the subject property.

There shall be no vehicular ingress or egress from the property to the adjacent property owned by Grantor, Parcels A or G of BSP-58-97. Vehicular access of the property shall be only from Standard Drive.

A pedestrian walkway to Parcel G may be allowed subject to Grantor's review and approval of the location, design, and construction of the walkway.

Grantee shall install and maintain a fence within the boundaries of the property along the adjacent boundaries of Parcels A and G. The design, materials and height of the fence shall be subject to approval by Grantor."

; and

**WHEREAS**, since receiving and accepting the Subject Real Property, Spokane County has maintained the Subject Real Property as a natural, unimproved park commonly known as Freddy Park; and

**WHEREAS**, on October 1, 2007, SPOKANE COUNTY through its Hearing Examiner, signed a document entitled "FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION" wherein it approved File No. PN-1981-06 subject to various conditions including Condition No. 15 which provides as follows:

"15. Prior to the final platting of the 34<sup>th</sup> lot of the preliminary plat, the applicant shall secure and construct a second ingress/egress roadway to serve the proposed development. The proposed second access must be dedicated through the parkland owned by Spokane County north of the site. The dedication of the 38 feet of right-of way to the County, and the construction of a 24-foot wide off-site pavement section from the north boundary of the plat to the termination of the Standard Drive shall also be required within such time frame." (Emphasis added.)

The parkland owned by Spokane County north of the site referenced in Condition No. 15 is the Subject Real Property described in the Conveyance Documents.

In conjunction with imposing Condition No. 15, Spokane County, in consultation with its own traffic engineers, the Washington State Department of Transportation, and local Fire District 9 determined that a road connection between Hastings Road and Regina Road along the Standard Drive alignment would be beneficial to area traffic circulation and relieve pressure on the Regina Road / State Highway intersection; and

**WHEREAS**, the proposed alignment for the Standard Drive between Hastings Road and Regina Road to address Condition No. 15 runs along the westerly boundary of the Subject Real Property; and

**WHEREAS**, a question has arisen whether the existing restrictive covenant language in the above recital would permit the establishment and construction of a public road across the Subject Real Property. To avoid any issues regarding interpretation of the restrictive covenant, the FRED MEYER PARTIES and Spokane County wish to amend the restrictive covenant to allow for the establishment and construction of a public road across the Subject Real Property.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Spokane County, Washington, pursuant to the provisions of RCW 36.32.120(6), that the chairman of the Board of County Commissioners of Spokane County, Washington, on behalf of

the Board and Spokane County, be and is hereby authorized to execute that document entitled "AMENDMENT TO RESTRICTIONS ON USE AND DEVELOPMENT OF PROPERTY" pursuant to which FRED MEYER PARTIES and Spokane County will amend "EXHIBIT 'B'" to documents entitled "DEED WITH COVENANT" and "JOINDER WITH WARRANTIES TO TITLE TO REAL PROPERTY" as recorded in the records of the Spokane County Auditor on August 22, 2001 under Recording Number 4624178 to provide as follows:

"The herein described real property described shall be held, conveyed, sold, and improved as a natural, community, or regional park and for the establishment of a public road as depicted in the attached Exhibit "C". This condition and restriction of uses shall constitute a covenant and encumbrance which shall run with the land and shall be perpetually binding upon the Grantee, its successors-in-interest and assigns and all parties having or acquiring any right title, or interest in, or to, any part of the subject property.

There shall be no vehicular ingress or egress from the property to the adjacent property owned by the Grantor, Parcels A and G of BSP-58-97.

A pedestrian walkway to Parcel G may be allowed subject to Grantor's review and approval of the location, design, and construction of the walkway.

Grantee shall install and maintain a fence within the boundaries of the property along the adjacent boundaries of Parcels A and G. The design, materials and height of the fence shall be subject to approval by Grantor."

PASSED AND ADOPTED this 7th day of November, 2012.

**BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON**



ATTEST:

Todd Mielke  
TODD MIELKE, Chair

Mark Richard  
MARK RICHARD, Vice-Chair

Daniela Erickson absent  
Daniela Erickson  
Clerk of the Board 120910  
Al French  
AL FRENCH, Commissioner

# EXHIBIT D

**Return to:**

Daniela Erickson  
Clerk of the Board  
Commissioners' Office

**PURCHASE AND SALE AGREEMENT**

**Reference number(s) of related documents:**

**Grantor(s):** Fred Meyer Stores, Inc., an Ohio Corporation, successor in interest to (i) Fred Meyer, Inc., a Delaware Corporation, (ii) FRED MEYER STORES, INC. (formerly known as FRED MEYER, INC.), a Delaware Corporation and (iii) ROUNDUP CO., doing business in Washington as "Fred Meyer".

**Grantee(s):** SPOKANE COUNTY, a political subdivision of the State of Washington, 1116 West Broadway, Spokane, WA 99260.

**Legal Description:** Section 8, Township 26 North, Range 43 East, NW Quarter  
Additional legal description is on EXHIBIT A of the document.

**Assessor's Property Tax Parcel Account Number(s):** 36082.9161.

R. E. Excise Tax Exempt  
Date 3-28 2013  
Spokane County Treas  
By CLR

**AMENDMENT TO RESTRICTIONS ON USE AND DEVELOPMENT OF PROPERTY**

This Amendment to Restrictions on Use and Development of Property is made this ~~19th~~ day of November, 2012 by and between Fred Meyer Stores, Inc., an Ohio Corporation, successor in interest to (i) Fred Meyer, Inc., a Delaware Corporation, (ii) FRED MEYER STORES, INC. (formerly known as FRED MEYER, INC.), a Delaware Corporation and (iii) ROUNDUP CO., doing business in Washington as "Fred Meyer", hereinafter collectively referred to as the FRED MEYER PARTIES or Grantors; and SPOKANE COUNTY, a municipal corporation and political subdivision of the State of Washington, hereinafter referred to as Grantee, jointly referred to as the PARTIES.

**RECITALS**

- A. On August 13, 2001, the FRED MEYER PARTIES and WILMINGTON TRUST COMPANY, a Delaware Corporation, not in its individual capacity, but solely as Owner Trustee under the FMS Trust 1997-1, a Delaware business trust, ("Wilmington Trust"), which was subsequently canceled on July 25, 2012, conveyed the real property described in the attached ATTACHMENT "1" (hereafter referred to as Subject Real Property) to SPOKANE COUNTY by documents entitled "DEED WITH COVENANT" and "JOINDER WITH WARRANTIES TO TITLE TO REAL PROPERTY" (hereinafter collectively referred to the Conveyance Documents) as recorded in the records of the Spokane County Auditor on August 22, 2001 under Recording Number 4624178.
- B. The Conveyance Documents contained a restrictive covenant denominated as "EXHIBIT 'B'" entitled "Restrictions on Use and Development of Property". The restrictive covenant provided as follows:

"The herein described real property shall be held, conveyed, sold, and improved only as a natural, community, or regional park. This condition and restrict of use shall constitute a covenant and encumbrance which shall run with the land and shall be perpetually binding upon Grantee, its successors-in-interest and assigns, and all parties having or acquiring any right, title or interest in, or to, any pat of the subject property.

There shall be no vehicular ingress or egress from the property to the adjacent property owned by Grantor, Parcels A or G of BSP-58-97. Vehicular access of the property shall be only from Standard Drive.

A pedestrian walkway to Parcel G may be allowed subject to Grantor's review and approval of the location, design, and construction of the walkway.

Grantee shall install and maintain a fence within the boundaries of the property along the adjacent boundaries of Parcels A and G. The design, materials and height of the fence shall be subject to approval by Grantor."

- C. Since receiving and accepting this grant SPOKANE COUNTY has maintained the Subject Real Property as a natural, unimproved park consistent with the provisions of the restrictive covenant.
- D. On October 1, 2007, SPOKANE COUNTY through its Hearing Examiner signed a document entitled "FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION" wherein it approved File No. PN-1981-06 subject to various conditions including Condition No. 15 which provides as follows:

"15. Prior to the final platting of the 34<sup>th</sup> lot of the preliminary plat, the applicant shall secure and construct a second ingress/egress roadway to serve the proposed development. The proposed second access must be dedicated through the parkland owned by Spokane County north of the site. The dedication of the 38 feet of right-of way to the County, and the construction of a 24-foot wide off-site pavement section from the north boundary of the plat to the termination of the Standard Drive shall also be required within such time frame."

The parkland owned by Spokane County north of the site referenced in Condition No. 15 is the Subject Real Property described in the Conveyance Documents.

In conjunction with imposing Condition No. 15, SPOKANE COUNTY, in consultation with its own traffic engineers, the Washington State Department of Transportation, and local Fire District 9 determined that a road connection between Hastings Road and Regina Road along the Standard Drive alignment would be beneficial to area traffic circulation and relieve pressure on the Regina Road / State Highway intersection.

- E. The proposed alignment for the Standard Drive between Hastings Road and Regina Road to address Condition No. 15 runs along the westerly boundary of the Subject Real Property as depicted in the attached ATTACHMENT "2."
- F. A question has arisen whether the existing restrictive covenant language in Recital B above would permit the establishment and construction of a public road across the Subject Real Property. To avoid any issues regarding interpretation of the restrictive covenant, the FRED MEYER PARTIES and SPOKANE COUNTY wish to amend the restrictive covenant to

Page 3 of 18

allow for the establishment and construction of a public road across the Subject Real Property.

**NOW, THEREFORE**, the undersigned PARTIES, in consideration of mutual benefits, hereby amend, supersede and replace the said restrictive covenant in the attached "Exhibit 'B'" to the Conveyance Documents as recorded in the records of the Spokane County Auditor on August 22, 2001 under Recording Number 4624178 with the following:

"The herein described real property described shall be held, conveyed, sold, and improved as a natural, community, or regional park and for the establishment of a public road as depicted in the attached Exhibit "C". This condition and restriction of uses shall constitute a covenant and encumbrance which shall run with the land and shall be perpetually binding upon the Grantee, its successors-in-interest and assigns and all parties having or acquiring any right title, or interest in, or to, any part of the subject property.

There shall be no vehicular ingress or egress from the property to the adjacent property owned by the Grantor, Parcels A and G of BSP-58-97.

A pedestrian walkway to Parcel G may be allowed subject to Grantor's review and approval of the location, design, and construction of the walkway.

Grantee shall install and maintain a fence within the boundaries of the property along the adjacent boundaries of Parcels A and G. The design, materials and height of the fence shall be subject to approval by Grantor."

**PROVIDED FURTHER**, but for the amendment, supersede and replacement of said restrictive covenant in the attached "Exhibit 'B'" to the Conveyance Documents as recorded in the records of the Spokane County Auditor on August 22, 2001 under Recording Number 4624178 as set forth hereinabove, all other provisions of the Conveyance Documents shall remain unchanged and in full force and effect.

**PROVIDED FURTHER**, in the event a third party initiates litigation to challenge or contest this Amendment to Restrictions on Use and Development of Property document or to challenge or contest the construction and establishment of a public road through the Subject Real Property, Grantee agrees to defend the Grantor and Wilmington Trust in any such litigation and further agrees to indemnify and hold harmless the Grantor and Wilmington Trust from any fees, costs, or judgments in such litigation.

GRANTOR:

Dated: 10/10/12

FRED MEYER STORES, INC.

By: [Signature]

Name:

Title:

JWR

STATE OF Oregon )  
 ) ss.  
County of Multnomah )

On this 10<sup>th</sup> day of October, 2012, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Robert Currey Wilson, to me known to be the individual(s) that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said individual(s), for the uses and purposes therein mentioned, and on oath stated that he/she were authorized to execute said instrument.

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

Kelly M. Stepetic  
NOTARY PUBLIC in and for the State of  
Oregon, residing at Multnomah  
My commission expires: 9/10/2016



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4824178  
Page: 1 of 12  
03/22/2013 02:08P  
Spokane Co. WA

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

Spokane County  
404 N. Havana  
Spokane, Washington 99202-4663

*149672-VC'*

**DEED WITH COVENANT AND JOINDER  
WITH WARRANTIES OF TITLE TO REAL PROPERTY  
(Parcel B - Wandermere Fred Meyer Development)  
(Spokane County, Washington)**

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

Grantee: **SPOKANE COUNTY**

**Legal Description:**

1. Section 8, Township 26 North, Range 43 East, NW Quarter
2. Additional legal description is on Exhibit A of the document.

Assessor's Property Tax Parcel Account Number: 36082.9161

08/22/2001 CRG

\$2.00 200112836

*(12)*



**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

**SPOKANE COUNTY**  
1116 W. Broadway  
County Courthouse, 1<sup>st</sup> Floor  
Spokane, WA 99260-0100

**DEED WITH COVENANT**

(Parcel B - Wandermere Fred Meyer Development)  
(Spokane County, Washington)

The Grantor, **WILMINGTON TRUST COMPANY**, a Delaware corporation, not in its individual capacity, but solely as Owner Trustee under the FMS Trust 1997-1 a Delaware business trust, for and consideration of **TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION**, in hand paid, bargains, sells and conveys to **SPOKANE COUNTY**, whose address is 1116 W. Broadway, County Courthouse, 1<sup>st</sup> Floor, Spokane, WA 99260-0100, Grantee, the real property described on the attached Exhibit A, **TOGETHER WITH** all the tenements, hereditaments and appurtenances belonging thereto, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right and title to the property whether in law or in equity, and subject to the Restrictions on Use and Development of Property as stated in Exhibit B, and the encumbrances shown on Exhibit C.

**TO HAVE AND TO HOLD** all and singular the above mentioned and described real property, together with appurtenances thereof, unto the Grantee, and its heirs, successors and assigns forever.

Grantor hereby covenants to and agrees with Grantee, and its heirs, successors and assigns as follows: the Grantor, and the heirs, successors and assigns of the Grantor, shall be forever estopped from asserting that the Grantor had, at the date of this Deed, an estate or interest in the real property less than the estate or interest which this Deed purports to convey, and that this Deed shall pass any and all after acquired title to the real property. The Grantor, for itself and for its successors and assigns, limits the covenants of this Deed to those herein above expressed and excludes all covenants arising or to arise by statutory or other implication.

In connection with the delivery of this instrument, Roundup Co., a Washington corporation ("Roundup") is providing certain title warranties as set forth in the attached Joinder with Warranties of Title to Real Property ("Title Warranties"), which Title Warranties are given by Roundup to Grantee, and its successors and assigns, as owner/grantee of the property described in this Deed. Dated the 15<sup>th</sup> day of August, 2001.

08/22/2001 CRG

\$2.00 200112836



4624178  
Page: 3 of 12  
03/22/2013 02:09P  
Spokane Co. WA

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

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

By:   
Name: Robert Currey-Wilson  
Title: Vice President

**ACCEPTED BY GRANTEE:** **SPOKANE COUNTY**

Board of County Commissioners of Spokane County, Washington

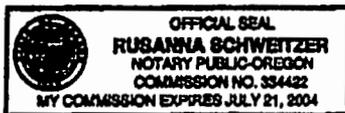
By:   
Name: Phillip D. Harris  
Title: Chairman



STATE OF OREGON )  
 ) ss.  
County of Multnomah )

On this 13th day of August, 2001, 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 me to be the person who signed as Vice President of FRED MEYER, INC., a Delaware corporation, the attorney-in-fact of WILMINGTON TRUST COMPANY, a Delaware corporation, not in its individual capacity, but solely as Owner Trustee under the FMS Trust 1997-1 a Delaware business trust, on behalf of such business trust, and he, being duly sworn, did say that the foregoing instrument was executed by authority of and on behalf of said principal pursuant to a power of attorney given to FRED MEYER, INC., by such principal, and acknowledged the foregoing instrument to be the agents, contractors or employees and deed of said WILMINGTON TRUST COMPANY, as trustee of such trust, as principal.

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



Rusanna Schweitzer  
Notary Public in and for the State of Oregon  
Residing at: Tigard, OR  
My commission expires: July 21, 2004

STATE OF WASHINGTON )  
 ) ss.  
County of Spokane )

The foregoing instrument was acknowledged before me this 21st day of August, 2001, by Phillip D. Harris, the Chairman of the Board of County Commissioners of Spokane County, Washington, on behalf of SPOKANE COUNTY.

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



Della Judith Potter  
Notary Public in and for the State of  
Washington  
Residing at: Spokane County, WA  
My commission expires: 09-24-03



**JOINDER WITH WARRANTIES OF TITLE TO REAL PROPERTY**  
**(Parcel B of Wandermere Fred Meyer Development)**  
**(Spokane County, Washington)**

**FRED MEYER, INC.**, a Delaware corporation ("FMI"), **FRED MEYER STORES, INC.** (formerly known as **FRED MEYER, INC.**), a Delaware corporation ("FMS"), and **ROUNDUP CO.**, a Washington corporation, doing business in Washington as "Fred Meyer" ("Declarant"), each of whose address is 3800 SE 22<sup>nd</sup> Avenue, Portland, Oregon 97202, for and in consideration of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, in hand paid, covenants and warrants to and with, and hereby agrees with, **SPOKANE COUNTY**, as grantee (the "Grantee"), as to the real property (the "Property") described on Exhibit A of the Deed ("Deed") to which this Joinder with Warranties of Title to Real Property (the "Joinder") is attached, as follows:

1. **ROUNDUP AS PRIME LESSEE.** The parties acknowledge that **ROUNDUP CO.**, a Washington corporation ("Roundup") is hereby deemed to be the Prime Lessee (as defined in the Declaration of Covenants, Conditions, Restrictions and Easements recorded on March 8, 1999 as Recording No. 4339043, Official Records of Spokane County, Washington) of the property described in such Declaration that the grantor under the Deed owns as of the date of the Deed (by virtue of Roundup being the Prime Lessee under a Prime Lease with FMS (as Prime Lessor), and FMS having a Prime Lease with FMI and FMI having a Prime Lease with the grantor set forth in such Deed ("Grantor").
2. **WARRANTIES OF TITLE TO REAL PROPERTY.** Roundup covenants to the Grantee, its heirs, successors and assigns, as follows: (i) that at the time of the making and delivery of the Deed, the Grantor set forth in such Deed was lawfully seized of an indefeasible estate in fee simple, in and to the Property therein described (which estate was held by Grantor as security for the performance of obligations owed under a synthetic lease financing vehicle), and had good right and full power to convey the same; (ii) that such Property was free from encumbrances, done or suffered from the Grantor and/or by Roundup, except for the matters referenced on the attached Exhibit B; and (iii) that Roundup warrants to the Grantee, its heirs and assigns, the quiet enjoyment of such Property against the Grantor, its heirs and assigns, and against Roundup, its heirs and assigns, except for the matters referenced on the attached Exhibit B.
3. **SUCCESSORS AND ASSIGNS.** All provisions of this Joinder will be binding on the parties, and their respective successors and assigns, and will be for the benefit of Grantee, and its heirs, successors and assigns, as owner of the Property as described on Exhibit A attached to the Deed.

Dated the 13th day of August, 2001.



4824178  
Page: 6 of 12  
03/22/2013 02:06P  
Saskara Co. IN

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

FMI:

FRED MEYER, INC.

By: Robert Currey-Wilson  
Name: Robert Currey-Wilson  
Title: Vice President

FMS:

FRED MEYER STORES, INC.  
(formerly known as Fred Meyer, Inc.)

By: Robert Currey-Wilson  
Name: Robert Currey-Wilson  
Title: Vice President

DECLARANT:

ROUNDUP CO.

By: Robert Currey-Wilson  
Name: Robert Currey-Wilson  
Title: Vice President



4624178  
Page: 7 of 12  
08/22/2001 02:08P  
Saskara Co. WA

ACKNOWLEDGMENTS

STATE OF OREGON )  
 ) ss.  
County of Multnomah )

The foregoing instrument was acknowledged before me this 13th day of August, 2001, by Robert Currey-Wilson, the Vice President of **FRED MEYER, INC.**, a Delaware corporation, on behalf of the corporation.

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

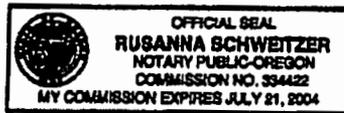


Rusanna Schweitzer  
Notary Public in and for the State of Oregon  
Residing at: Tigard, OR  
My commission expires: July 21, 2004

STATE OF OREGON )  
 ) ss.  
County of Multnomah )

The foregoing instrument was acknowledged before me this 13th day of August, 2001, by Robert Currey-Wilson, the Vice President of **FRED MEYER STORES, INC.**, a Delaware corporation, on behalf of the corporation.

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



Rusanna Schweitzer  
Notary Public in and for the State of Oregon  
Residing at: Tigard, OR  
My commission expires: July 21, 2004

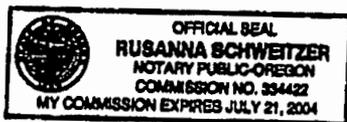


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Page: 8 of 12  
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STATE OF OREGON        )  
                                  ) ss.  
County of Multnomah    )

The foregoing instrument was acknowledged before me this 13th day of August, 2001, by Robert Currey-Wilson, the Vice President of **ROUNDUP CO.**, a Delaware corporation, on behalf of the corporation.

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



*Rusanna Schweitzer*  
Notary Public in and for the State of Oregon  
Residing at: Tigard, OR  
My commission expires: July 21, 2004

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4624178  
Page: 9 of 12  
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**EXHIBIT A**

**Legal Description**

COMMENCING ON THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 26 NORTH, RANGE 43 EAST AND ON THE SOUTH RIGHT OF WAY LINE OF HASTINGS ROAD AS PER DEED RECORDED UNDER RECORDING NO. 9506120398;  
 THENCE SOUTH 02°47'39" EAST, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER, 1055.28 FEET;  
 THENCE SOUTH 87°35'03" WEST, ALONG THE NORTH LINE OF THE SOUTH 225.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 8, 240.01 FEET;  
 THENCE NORTH 02°47'39" WEST, 395.79 FEET;  
 THENCE NORTH 87°12'21" EAST, 95.00 FEET;  
 THENCE NORTH 02°47'39" WEST, 284.09 FEET, TO THE BEGINNING OF A CURVE TO THE RIGHT THE RADIUS OF WHICH BEARS NORTH 87°12'21" EAST, A DISTANCE OF 175.00 FEET;  
 THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE 33°52'55", AN ARC DISTANCE OF 103.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT THE RADIUS OF WHICH BEARS NORTH 58°54'44" WEST, A DISTANCE OF 125.00 FEET;  
 THENCE ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 33°24'21", AN ARC DISTANCE OF 72.89 FEET TO A POINT OF TANGENCY;  
 THENCE NORTH 02°19'25" WEST, 4.51 FEET, TO THE SOUTH RIGHT OF WAY LINE OF HASTINGS ROAD;  
 THENCE NORTH 87°40'35" EAST, ALONG SAID SOUTH RIGHT OF WAY LINE, 18.21 FEET TO THE BEGINNING OF A CURVE TO THE LEFT THE RADIUS OF WHICH BEARS NORTH 02°19'25" WEST, A DISTANCE OF 745.00 FEET;  
 THENCE ALONG SAID SOUTH RIGHT OF WAY LINE AND SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 05°50'21", AN ARC DISTANCE OF 75.93 FEET TO THE POINT OF BEGINNING.

**EXCEPT THE FOLLOWING DESCRIBED PROPERTY:**

COMMENCING ON THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 26 NORTH, RANGE 43 EAST OF THE WILLAMETTE MERIDIAN, AND ON THE SOUTH RIGHT OF WAY LINE OF HASTINGS ROAD AS PER DEED RECORDED UNDER RECORDING NO. 9506120398;  
 THENCE SOUTH 02°47'39" EAST, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER 173.84 FEET TO A POINT ON A CURVE TO THE RIGHT THE RADIUS OF WHICH BEARS NORTH 71°58'13" WEST, A DISTANCE OF 692.50 FEET;  
 THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 07°59'12", AN ARC DISTANCE OF 96.53 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT THE RADIUS OF WHICH BEARS NORTH 63°59'01" WEST, A DISTANCE OF 30.00 FEET;  
 THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 106°20'24", AN ARC DISTANCE OF 55.68 FEET TO THE BEGINNING OF A CURVE TO THE LEFT THE RADIUS OF WHICH BEARS SOUTH 42°21'22" WEST, A DISTANCE OF 200.00 FEET;  
 THENCE ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 20°03'18", AN ARC DISTANCE OF 70.01 FEET;  
 THENCE NORTH 02°47'39" WEST, 54.19 FEET, TO THE BEGINNING OF A CURVE TO THE RIGHT THE RADIUS OF WHICH BEARS NORTH 87°12'21" EAST, A DISTANCE OF 175.00 FEET;  
 THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE 33°52'55", AN ARC DISTANCE OF 103.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT THE RADIUS OF WHICH BEARS NORTH 58°54'44" WEST, A DISTANCE OF 125.00 FEET;

488



4624178  
Page: 10 of 12  
03/22/2001 02:06P  
Spokane Co. WA

**EXHIBIT A**

**Legal Description - Continued**

THENCE ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 33°24'41" AN ARC DISTANCE OF 72.89 FEET TO A POINT OF TANGENCY;  
THENCE NORTH 02°19'25" WEST, 4.51 FEET, TO THE SOUTH RIGHT OF WAY LINE OF HASTINGS ROAD;  
THENCE NORTH 87°40'35" EAST, ALONG SAID SOUTH RIGHT OF WAY LINE, 18.21 FEET TO THE BEGINNING OF A CURVE TO THE LEFT THE RADIUS OF WHICH BEARS NORTH 02°19'25" WEST, A DISTANCE OF 745.00 FEET;  
THENCE ALONG SAID SOUTH RIGHT OF WAY LINE AND SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 05°50'21", AN ARC DISTANCE OF 75.93 FEET TO THE POINT OF BEGINNING. ALL SITUATE IN SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 26 NORTH, RANGE 43 EAST OF THE WILLAMETTE MERIDIAN, IN SPOKANE COUNTY, WASHINGTON.

489



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Page: 11 of 12  
03/22/2001 02:06P  
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**EXHIBIT B**

**Restrictions on Use and Development of Property**

The herein described real property shall be held, conveyed, sold, and improved only as a natural, community, or regional park. This condition and restriction of use shall constitute a covenant and encumbrance which shall run with the land and shall be perpetually binding upon Grantee, its successors-in-interest and assigns, and all parties having or acquiring any right, title, or interest in, or to, any part of the subject property.

There shall be no vehicular ingress or egress from the property to the adjacent property owned by Grantor, Parcels A and G of BSP-58-97. Vehicular access to the property shall be only from Standard Drive.

A pedestrian walkway to Parcel G may be allowed subject to Grantor's review and approval of the location, design, and construction of the walkway.

Grantee shall install and maintain a fence within the boundaries of the property along the adjacent boundaries of Parcels A and G. The design, materials and height of the fence shall be subject to approval by Grantor.



4624178  
 Page: 12 of 12  
 03/22/2001 02:06P  
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### EXHIBIT C

#### Exceptions from Warranties

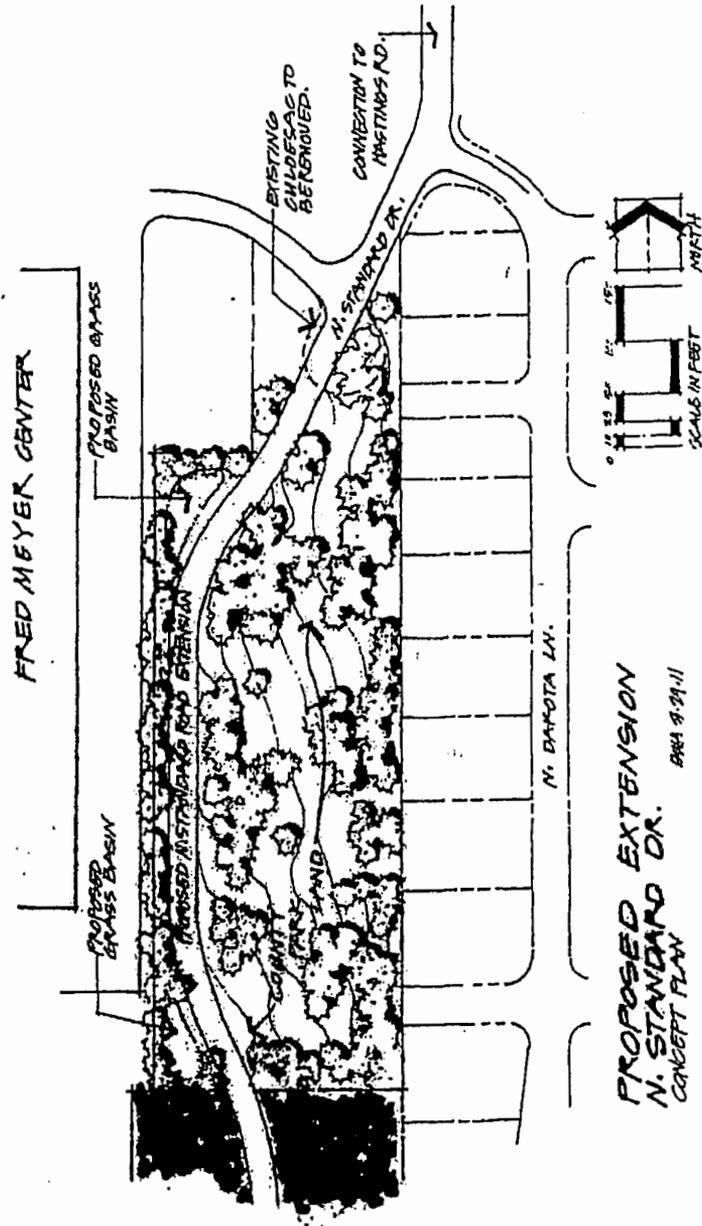
1. General taxes not yet due and payable.  
 Tax Account No.: 36082.9161
  
2. Said premises lie within the boundaries of Whitworth Water District No. 2, and are subject to future assessments by said District.
  
3. Easement, including terms and provisions contained therein:  
 Recorded: July 12, 1940  
 Recording No.: 448348A  
 Volume/Page: 489/490  
 In Favor Of: The Washington Water Power Company, a Washington corporation, its successors and assigns  
 For: An electrical distribution line and appurtenances  
 Affects: The Southeast Quarter of the Northwest Quarter
  
4. Easement, including terms and provisions contained therein:  
 Recorded: April 25, 1941  
 Recording No.: 490806A  
 Volume/Page: 491/640  
 In Favor Of: The Washington Water Power Company, a Washington corporation, its successors and assigns  
 For: An electrical distribution line and appurtenances  
 Affects: The Southeast Quarter of the Northwest Quarter
  
5. Easement, including terms and provisions contained therein:  
 Recorded: October 22, 1969  
 Recording No.: 455020C  
 In Favor Of: The Washington Water Power Company, a Washington corporation, its successors and assigns  
 For: An electrical distribution line and appurtenances  
 Affects: The East Line of the Southeast Quarter of the Northwest Quarter
  
6. Terms and Conditions of Title Notice:  
 Recorded: November 14, 1995  
 Recording No.: 9511140194
  
7. A Record of Survey recorded under Recording No. 4150943, in Book 78 of Surveys, Page(s) 68, purporting to show the herein described (and other) land.



STATE OF WASHINGTON )  
COUNTY OF SPOKANE ) ss  
I, Vicky M. Dalton, Spokane County Auditor, do  
hereby certify that the foregoing document is a  
true and correct copy of the document received  
and recorded by my office.  
Witness my hand and the seal of my office this  
day of \_\_\_\_\_, 20\_\_\_\_  
VICKY M. DALTON, Spokane County Auditor

*[Handwritten signature]*  
Deputy

ATTACHMENT "2"



# EXHIBIT E

Return to:

Daniela Erickson  
Clerk of the Board  
Commissioners' Office

RECORD & RETURN TO PERIOD FOR WHICH RECORDS ARE TO BE MAINTAINED FOR RECORDS AND REPRODUCTION

**AMENDMENT TO RESTRICTIONS ON USE  
AND DEVELOPMENT OF PROPERTY**

*Re-Record to Change Document Title*

Reference number(s) of related documents: *6191976*

**Grantor(s):** Fred Meyer Stores, Inc., an Ohio Corporation, successor in interest to (i) Fred Meyer, Inc., a Delaware Corporation, (ii) FRED MEYER STORES, INC. (formerly known as FRED MEYER, INC.), a Delaware Corporation and (iii) ROUNDUP CO., doing business in Washington as "Fred Meyer".

**Grantee(s):** SPOKANE COUNTY, a political subdivision of the State of Washington, 1116 West Broadway, Spokane, WA 99260.

**Legal Description:** Section 8, Township 26 North, Range 43 East, NW Quarter  
Additional legal description is on EXHIBIT A of the document.

**Assessor's Property Tax Parcel Account Number(s):** 36082.9161.

03/28/2013 10:25:29 AM 6191976  
Recording Fee \$91.00 Page 1 of 20  
Sales Agreement SPOKANE COUNTY COMMISSIONERS  
Spokane County Washington

**Return to:**

Daniela Erickson  
Clerk of the Board  
Commissioners' Office



**PURCHASE AND SALE AGREEMENT**

Reference number(s) of related documents: *2012-0910*

**Grantor(s):** Fred Meyer Stores, Inc., an Ohio Corporation, successor in interest to (i) Fred Meyer, Inc., a Delaware Corporation, (ii) FRED MEYER STORES, INC. (formerly known as FRED MEYER, INC.), a Delaware Corporation and (iii) ROUNDUP CO., doing business in Washington as "Fred Meyer".

**Grantee(s):** SPOKANE COUNTY, a political subdivision of the State of Washington, 1116 West Broadway, Spokane, WA 99260.

**Legal Description:** Section 8, Township 26 North, Range 43 East, NW Quarter  
Additional legal description is on EXHIBIT A of the document.

**Assessor's Property Tax Parcel Account Number(s):** 36082.9161.

R. E. Excise Tax Exempt  
Date *3-28* 2013  
Spokane County Treas.  
By *CLR*

**AMENDMENT TO RESTRICTIONS ON USE AND DEVELOPMENT OF PROPERTY**

This Amendment to Restrictions on Use and Development of Property is made this ~~19th~~ day of November, 2012 by and between Fred Meyer Stores, Inc., an Ohio Corporation, successor in interest to (i) Fred Meyer, Inc., a Delaware Corporation, (ii) FRED MEYER STORES, INC. (formerly known as FRED MEYER, INC.), a Delaware Corporation and (iii) ROUNDUP CO., doing business in Washington as "Fred Meyer", hereinafter collectively referred to as the FRED MEYER PARTIES or Grantors; and SPOKANE COUNTY, a municipal corporation and political subdivision of the State of Washington, hereinafter referred to as Grantee, jointly referred to as the PARTIES.

**RECITALS**

- A. On August 13, 2001, the FRED MEYER PARTIES and WILMINGTON TRUST COMPANY, a Delaware Corporation, not in its individual capacity, but solely as Owner Trustee under the FMS Trust 1997-1, a Delaware business trust, ("Wilmington Trust"), which was subsequently canceled on July 25, 2012, conveyed the real property described in the attached ATTACHMENT "1" (hereafter referred to as Subject Real Property) to SPOKANE COUNTY by documents entitled "DEED WITH COVENANT" and "JOINDER WITH WARRANTIES TO TITLE TO REAL PROPERTY" (hereinafter collectively referred to the Conveyance Documents) as recorded in the records of the Spokane County Auditor on August 22, 2001 under Recording Number 4624178.
- B. The Conveyance Documents contained a restrictive covenant denominated as "EXHIBIT 'B'" entitled "Restrictions on Use and Development of Property". The restrictive covenant provided as follows:

"The herein described real property shall be held, conveyed, sold, and improved only as a natural, community, or regional park. This condition and restrict of use shall constitute a covenant and encumbrance which shall run with the land and shall be perpetually binding upon Grantee, its successors-in-interest and assigns, and all parties having or acquiring any right, title or interest in, or to, any pat of the subject property.

There shall be no vehicular ingress or egress from the property to the adjacent property owned by Grantor, Parcels A or G of BSP-58-97. Vehicular access of the property shall be only from Standard Drive.

A pedestrian walkway to Parcel G may be allowed subject to Grantor's review and approval of the location, design, and construction of the walkway.

Grantee shall install and maintain a fence within the boundaries of the property along the adjacent boundaries of Parcels A and G. The design, materials and height of the fence shall be subject to approval by Grantor."

- C. Since receiving and accepting this grant SPOKANE COUNTY has maintained the Subject Real Property as a natural, unimproved park consistent with the provisions of the restrictive covenant.
- D. On October 1, 2007, SPOKANE COUNTY through its Hearing Examiner signed a document entitled "FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION" wherein it approved File No. PN-1981-06 subject to various conditions including Condition No. 15 which provides as follows:

"15. Prior to the final platting of the 34<sup>th</sup> lot of the preliminary plat, the applicant shall secure and construct a second ingress/egress roadway to serve the proposed development. The proposed second access must be dedicated through the parkland owned by Spokane County north of the site. The dedication of the 38 feet of right-of way to the County, and the construction of a 24-foot wide off-site pavement section from the north boundary of the plat to the termination of the Standard Drive shall also be required within such time frame."

The parkland owned by Spokane County north of the site referenced in Condition No. 15 is the Subject Real Property described in the Conveyance Documents.

In conjunction with imposing Condition No. 15, SPOKANE COUNTY, in consultation with its own traffic engineers, the Washington State Department of Transportation, and local Fire District 9 determined that a road connection between Hastings Road and Regina Road along the Standard Drive alignment would be beneficial to area traffic circulation and relieve pressure on the Regina Road / State Highway intersection.

- E. The proposed alignment for the Standard Drive between Hastings Road and Regina Road to address Condition No. 15 runs along the westerly boundary of the Subject Real Property as depicted in the attached ATTACHMENT "2."
- F. A question has arisen whether the existing restrictive covenant language in Recital B above would permit the establishment and construction of a public road across the Subject Real Property. To avoid any issues regarding interpretation of the restrictive covenant, the FRED MEYER PARTIES and SPOKANE COUNTY wish to amend the restrictive covenant to

Page 2 of 18

allow for the establishment and construction of a public road across the Subject Real Property.

**NOW, THEREFORE**, the undersigned PARTIES, in consideration of mutual benefits, hereby amend, supersede and replace the said restrictive covenant in the attached "Exhibit 'B'" to the Conveyance Documents as recorded in the records of the Spokane County Auditor on August 22, 2001 under Recording Number 4624178 with the following:

"The herein described real property described shall be held, conveyed, sold, and improved as a natural, community, or regional park and for the establishment of a public road as depicted in the attached Exhibit "C". This condition and restriction of uses shall constitute a covenant and encumbrance which shall run with the land and shall be perpetually binding upon the Grantee, its successors-in-interest and assigns and all parties having or acquiring any right title, or interest in, or to, any part of the subject property.

There shall be no vehicular ingress or egress from the property to the adjacent property owned by the Grantor, Parcels A and G of BSP-58-97.

A pedestrian walkway to Parcel G may be allowed subject to Grantor's review and approval of the location, design, and construction of the walkway.

Grantee shall install and maintain a fence within the boundaries of the property along the adjacent boundaries of Parcels A and G. The design, materials and height of the fence shall be subject to approval by Grantor."

**PROVIDED FURTHER**, but for the amendment, supersede and replacement of said restrictive covenant in the attached "Exhibit 'B'" to the Conveyance Documents as recorded in the records of the Spokane County Auditor on August 22, 2001 under Recording Number 4624178 as set forth hereinabove, all other provisions of the Conveyance Documents shall remain unchanged and in full force and effect.

**PROVIDED FURTHER**, in the event a third party initiates litigation to challenge or contest this Amendment to Restrictions on Use and Development of Property document or to challenge or contest the construction and establishment of a public road through the Subject Real Property, Grantee agrees to defend the Grantor and Wilmington Trust in any such litigation and further agrees to indemnify and hold harmless the Grantor and Wilmington Trust from any fees, costs, or judgments in such litigation.

GRANTOR:

Dated: 10/10/12

FRED MEYER STORES, INC.

By: [Signature]

Name:

Title:

SVP

STATE OF Oregon )  
 ) ss.  
County of Multnomah )

On this 10<sup>th</sup> day of October, 2012, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Robert Currey-Wilson, to me known to be the individual(s) that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said individual(s), for the uses and purposes therein mentioned, and on oath stated that he/she were authorized to execute said instrument.

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

Kelly M. Stepetic  
NOTARY PUBLIC in and for the State of  
Oregon, residing at Multnomah  
My commission expires: 9/10/2016



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Page: 1 of 12  
08/22/2001 02:05P  
Spokane Co. WA

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

Spokane County  
404 N. Havans  
Spokane, Washington 99202-4663

*149672-VC1*

**DEED WITH COVENANT AND JOINDER  
WITH WARRANTIES OF TITLE TO REAL PROPERTY  
(Parcel B - Wandermere Fred Meyer Development)  
(Spokane County, Washington)**

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

Grantee: **SPOKANE COUNTY**

**Legal Description:**

1. Section 8, Township 26 North, Range 43 East, NW Quarter
2. Additional legal description is on Exhibit A of the document.

Assessor's Property Tax Parcel Account Number: 36082.9161

08/22/2001 CRC

\$2.00 200112836

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4624178  
Page: 2 of 12  
08/22/2001 02:06P  
Spokane Co. WA

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

SPOKANE COUNTY  
1116 W. Broadway  
County Courthouse, 1<sup>st</sup> Floor  
Spokane, WA 99260-0100

**DEED WITH COVENANT**

(Parcel B - Wandermere Fred Meyer Development)  
(Spokane County, Washington)

The Grantor, WILMINGTON TRUST COMPANY, a Delaware corporation, not in its individual capacity, but solely as Owner Trustee under the FMS Trust 1997-1 a Delaware business trust, for and consideration of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, in hand paid, bargains, sells and conveys to SPOKANE COUNTY, whose address is 1116 W. Broadway, County Courthouse, 1<sup>st</sup> Floor, Spokane, WA 99260-0100, Grantee, the real property described on the attached Exhibit A, TOGETHER WITH all the tenements, hereditaments and appurtenances belonging thereto, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right and title to the property whether in law or in equity, and subject to the Restrictions on Use and Development of Property as stated in Exhibit B, and the encumbrances shown on Exhibit C.

TO HAVE AND TO HOLD all and singular the above mentioned and described real property, together with appurtenances thereof, unto the Grantee, and its heirs, successors and assigns forever.

Grantor hereby covenants to and agrees with Grantee, and its heirs, successors and assigns as follows: the Grantor, and the heirs, successors and assigns of the Grantor, shall be forever estopped from asserting that the Grantor had, at the date of this Deed, an estate or interest in the real property less than the estate or interest which this Deed purports to convey, and that this Deed shall pass any and all after acquired title to the real property. The Grantor, for itself and for its successors and assigns, limits the covenants of this Deed to those herein above expressed and excludes all covenants arising or to arise by statutory or other implication.

In connection with the delivery of this instrument, Roundup Co., a Washington corporation ("Roundup") is providing certain title warranties as set forth in the attached Joinder with Warranties of Title to Real Property ("Title Warranties"), which Title Warranties are given by Roundup to Grantee, and its successors and assigns, as owner/grantee of the property described in this Deed. Dated the 13<sup>th</sup> day of August, 2001.

08/22/2001 CRG

\$2.00 200112836