

REPEALED MARCH 4, 2009
BY RESOLUTION No. 2166 ACA.

RESOLUTION NO. 2164

A RESOLUTION OF THE CITY OF WILSONVILLE, OREGON APPROVING AN INFRASTRUCTURE FINANCING AND CONSTRUCTION AGREEMENT BETWEEN FRED MEYER STORES, INC., AN OHIO CORPORATION AND THE CITY OF WILSONVILLE PROVIDING FOR CAPITAL INFRASTRUCTURE IMPROVEMENTS, CREDITS AGAINST SYSTEM DEVELOPMENT CHARGES, A FREEZE OF STREETS SYSTEM DEVELOPMENT CHARGES BECAUSE OF EARLY PAYMENT, A REDUCTION IN SYSTEM DEVELOPMENT CHARGES BECAUSE OF PRIOR DEMANDS ON THE SYSTEM, A PROPOSED SCHEDULE FOR COMPLETION OF THE CAPITAL INFRASTRUCTURE AND PURCHASE OF EXCESS PROPERTY IN THE PROCESS OF BEING PURCHASED BY THE CITY OF WILSONVILLE FROM THE OREGON DEPARTMENT OF TRANSPORTATION.

WHEREAS, Fred Meyer Stores, Inc., an Ohio Corporation (Fred Meyer Stores, Inc.) has Stage 2 final approval for the property at the southeast corner of the intersection of Boones Ferry Road and Wilsonville Road known as the Fred Meyer project; and

WHEREAS, this approval has conditions requiring capital infrastructure improvements to Boones Ferry Road and Bailey Street and improvements on Wilsonville Road which are necessary to serve the Fred Meyer project; and

WHEREAS, the improvements on Boones Ferry Road require significant work on the storm water, the water and the sanitary sewer collection systems such that the overall pro rata share of the project will require that approximately 62% of the cost be born by the City and 38% of the cost born by Fred Meyer Stores, Inc.; and

WHEREAS, the project on Wilsonville Road for the improvement of the intersection of Boones Ferry Road and Wilsonville Road will provide benefits of approximately 65.5% for traffic which is not generated by the Fred Meyer project and benefits of approximately 34.5% for traffic which is generated by the Fred Meyer project; and

WHEREAS, with this significant expenditure of City funds and the substantial work on the City utility systems as well as the detailed coordination that is required with the Oregon Transportation for the Wilsonville Road improvements, the City will design and manage the

construction of the Wilsonville Road improvements and the Boones Ferry Road improvements with partial reimbursement from Fred Meyer Stores, Inc., and

WHEREAS, since the capital infrastructure improvements on Bailey are primarily beneficial to the Fred Meyer project, Fred Meyer Stores, Inc., will manage the design and construction of the Bailey Street improvements with system development charge credits (SDCs) for the water and street improvements which provide capacity in excess of the Fred Meyer project requirements; and

WHEREAS, the City desires to complete the Wilsonville Road improvements and the Bailey improvements in a fiscally responsible manner, but with as small an impact on the City budget as possible; and

WHEREAS, the agreement includes a schedule for payment to the City by Fred Meyer for the improvements which benefit the Fred Meyer project; and

WHEREAS, Fred Meyer Stores, Inc. has agreed to pay 50% of their street SDCs prior to June 30, 2009 and in return for the early payment of half the street improvements, the City will "freeze" the street SDCs at the rate in effect prior to June 30, 2009; therefore, benefiting the impacts upon the City's budget in a fiscally responsible manner; and

WHEREAS, the City staff and members of the Fred Meyer Stores, Inc. project team have negotiated an Infrastructure Financing and Construction Agreement covering the purchase of excess property, the necessary dedication of lands for infrastructure improvements, the kind of public infrastructure necessary to be constructed to meet the development permit conditions and city regulations, the management and scheduling coordination for construction of the infrastructure improvements, and the respective payment of and for those improvements by and between Fred Meyer Stores, Inc. and the City. A copy of the proposed Infrastructure Financing and Construction Agreement is marked Exhibit A attached hereto and incorporated by reference as fully set forth herein; and

WHEREAS, pursuant to Ordinance No. 658, the Transportation System Plan was amended to establish Bailey Street adjacent to the Fred Meyer as a minor commercial/ industrial collector and therefore it is eligible for street SDC credits for extra capacity and inclusion in the current Capital Improvements as well as the waterline improvements in Bailey Street; and

WHEREAS, WC 11.040(8) Exemptions, allows an exemption from the system development charges for an alteration, addition, replacement or change in use that does not increase the use of capital improvements; and

WHEREAS, there was prior use of the street and the water systems because of a service station, a bank and two single-family homes which had previously existed on the property presently known as the Fred Meyer property; and

WHEREAS, to the extent that there was prior use of the Fred Meyer project by the pre-existing facilities, the equivalent use by the Fred Meyer project does not increase the use of the City's infrastructure and is accounted for as exempt in the Infrastructure Financing and Construction Agreement; and

WHEREAS, the prior use exemption is for 209 trips at \$983,972, which is greater than \$15,000 and is subject to City Council approval; and

WHEREAS, in the design and construction of the Wilsonville Road/I-5 Interchange improvements in the mid 1990's ODOT acquired property which was in excess of the requirements for the Phase 1 Wilsonville Road/I-5 Interchange improvements and additional improvements which are being scheduled at this time to commence in the summer of 2010; and

WHEREAS, Fred Meyer Stores, Inc. desires to acquire this excess property for development as part of the overall Fred Meyer project; and

WHEREAS, the excess ODOT property cannot reasonably be developed unless it is developed as part of the Fred Meyer project and it is in the public interest to do so; and

WHEREAS, the City has the right to purchase the excess property and ODOT has committed to apply any such purchase funds to the additional improvements to the Wilsonville Road/I-5 Interchange; and

WHEREAS, in an abundance of caution the City has required an environmental inspection and report for the excess property which is scheduled to be completed in mid March, 2009, and upon the conclusion of no adverse environmental findings or a remediation without cost to the City, the City desires to purchase this property and transfer it to Fred Meyer Stores, Inc. for full payment of the City costs for the excess property and for the use of the Wilsonville Road/I-5 Interchange improvements; and

WHEREAS, completion of planned work will provide capacity for the Fred Meyer project; and

WHEREAS, Fred Meyer Stores, Inc. desires to ensure that this capacity would be available when needed; and

WHEREAS, while the Infrastructure Financing and Construction Agreement provides for partial advance payment for street SDC's to assist with City cash flow, it also provides that these funds will convert to a payment of Fred Meyer Stores, Inc's proportion share of street infrastructure improvements with full payment occurring in accordance with the payment schedule if Fred Meyer Stores, Inc. does not proceed with the project to completion to ensure that street capacity over Boones Ferry Road and through its intersection with Wilsonville Road and through the Wilsonville Road/I-5 Interchange is available to the site; and further, that should the site be developed other than for the Fred Meyer project, then full SDCs without credit for Fred Meyer Stores, Inc's early advance payment shall be paid by the successor developer; and

WHEREAS, Fred Meyer Stores, Inc. requires a clear cost for the infrastructure improvements prior to project approval, a project "CAP" for the construction of City managed infrastructure and the City desires that any such CAP be sufficiently high enough to account for a fair sharing of any unforeseen contingencies; and

WHEREAS, the parties have established an initial CAP for the currently anticipated costs for Fred Meyer Stores, Inc. for the Wilsonville Road and the Boones Ferry Road improvements with an additional 40% contingency for unknowns; and

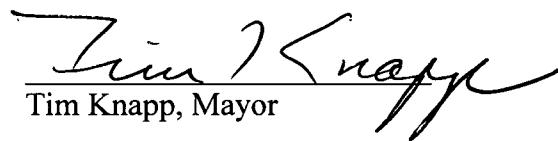
WHEREAS, this proposed CAP would be further reduced to anticipated City project costs plus 20% for contingency at the time of project award; and

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Council adopts the above recitals as findings and incorporates them by reference as fully set forth herein.
2. The City Council approves and authorizes the Mayor to sign on behalf of the City of Wilsonville the Infrastructure Financing and Construction Agreement between Fred Meyer Stores, Inc. and the City of Wilsonville. A copy of the Infrastructure Financing and Construction Agreement is marked as Exhibit A, attached hereto and incorporated by reference as is fully set forth herein.

3. The City Council authorizes the addition of the reconstruction and widening Bailey Street 2008/09 Street Capital Improvements Plan with payment of the City's estimated share of the project of \$60,000.00 as a credit against street system development charges. The City Council further authorizes the addition of the waterline improvements in Bailey Street to the 2008/09 Water Capital Improvements Plan with payment of the City's estimated share of the project of \$35,269.00 as a credit against water SDCs. Payments are subject to adjustment based on actual costs to be determined by the community development director.
4. The City Council approves an exemption from street SDC's for 209 trips at a value of \$983,972 for prior demands on the system.
5. The validity of any section, cause or provision of this resolution shall not affect the validity of any other part or section of this resolution which can be in effect without such invalid part(s).
6. Appropriation of funds may require a supplemental budget amending the approved FY2008/09 Capital Projects budget and the finance director shall prepare same for Council approval in accordance herewith.
7. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 18th day of February 2009 and filed with the Wilsonville City recorder this date.


Tim Knapp, Mayor

ATTEST:


Starla J. Schur, CMC, Deputy City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Councilor Kirk	Excused
Councilor Hurst	Yes
Councilor Ripple	Excused
Councilor Núñez	Yes

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement"), dated as of this 18th day of February, 2009, is made by and between FRED MEYER STORES, INC., an Ohio corporation ("Applicant"), and the CITY OF WILSONVILLE, an Oregon municipal corporation (the "City"). Applicant and the City may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

A. Applicant is the owner in fee simple of real property generally located at the southeast corner of SW Boones Ferry Road and SW Wilsonville Road (the "Property"). The Property, which is located in the City limits and is zoned Planned Development Commercial, is more particularly identified and depicted in Exhibit A, attached hereto and incorporated herein by reference.

B. On November 14, 2003, Applicant submitted to the City a consolidated land use application requesting approval of a proposed mixed retail and residential development on the Property ("2003 Application"). The City's processing of the 2003 Application was delayed while the Parties negotiated its completeness and while the City analyzed strategies to improve levels of service for transportation facilities in the vicinity of the Property.

C. On or about August 30, 2005, prior to any significant processing of the 2003 Application, the Parties entered a combined facilitated mediation and tolling agreement, which suspended review of the 2003 Application to allow the Parties to pursue resolution of transportation issues in the vicinity of the Property, including traffic impacts, corridor design, and street system capacities. The City has not issued a final decision with respect to the 2003 Application.

D. On June 1, 2007, the City adopted Resolution No. 2049, which interpreted the City's Comprehensive Plan concurrency implementing measures to allow the City to approve applications for Stage II Final Plans for properties within the immediate area of the I-5/Wilsonville Road interchange ("Interchange"), subject to the condition that building permits would not be issued for these properties until the City and the Oregon Department of Transportation ("ODOT") entered an intergovernmental agreement to plan for the redesign of the Interchange.

E. On June 3, 2008, in satisfaction of the condition set forth in Resolution No. 2049, the City and ODOT entered that certain Cooperative Improvement Agreement ("IGA") to establish terms and conditions for Phase 2 of the design and construction of proposed improvements to the Interchange ("Interchange

Improvements"). Upon completion of these improvements, the City and ODOT projected in the IGA that 1,703 net additional trips would be made available at the Interchange. The City has interpreted the IGA to satisfy the condition precedent to issuing building permits in the Interchange area that was set forth in Resolution No. 2049.

F. On June 5, 2008, the Applicant submitted a new consolidated land use application requesting approval of a Planned Development Stage I Preliminary Plan modification of the Square 76 Master Plan, Planned Development Stage II Final Plan, Site and Design Review (architecture and landscaping), Tentative Subdivision, Type C Tree Removal permit, and five (5) waivers (to reduce minimum parking requirements, to increase maximum sign area, to increase maximum building height, to increase the size of the maximum exterior sales area, and to reduce the minimum size of the residential open space tract (collectively, the "Application").

G. On January 5, 2009, in City Case Nos. DB 08-0023-0026, 0028 and 0029, the City Council of the City approved the Application (with the exception of the Master Sign Plan and waiver to maximum sign area, which were previously deferred by the Design Review Board, and the waiver to maximum exterior sales area, which was deemed not needed), subject to conditions of approval, to allow development of the Property with a mixed-use center, anchored by a 145,581-square foot retail building and including 59,126 additional square feet of complementary commercial uses (retail, restaurant, and/or office) in seven (7) proposed buildings, up to fifty-five (55) multi-family residential dwelling units, and related parking (collectively, the "Project"). On January 7, 2009, the City issued a written decision to approve the Project, subject to conditions of approval (the "Approval").

H. The Approval includes various conditions requiring the completion of certain offsite infrastructure transportation improvements in conjunction with the Project, as further described below ("Public Transportation Improvements"). Condition PFB50 of the Approval further requires the Parties to enter a development agreement specifying their respective commitments for constructing and paying for the Public Transportation Improvements. The Parties have drafted and entered this Agreement to satisfy Condition PFB50 of the Approval and to establish a cooperative process for completing the financing, engineering, design, construction, and installation of the Public Transportation and other public Improvements.

I. The City agrees to complete, or cause the completion of, the design, engineering, and construction of a portion of the Public Transportation Improvements as further detailed in this Agreement (the "City Projects"). In consideration therefor, Applicant agrees to pay the Project's proportionate share of the City Projects to the City in an amount necessary to mitigate the impacts to the City's transportation

infrastructure caused by completion of the Project in accordance with the terms and conditions of this Agreement (the "Applicant's Share").

J. In some cases, Applicant agrees to make additional payments of System Development Charges ("SDC's") to the City for construction in an amount that is not roughly proportional to and exceeds the Project's impacts on the City's transportation system, in accordance with the terms and conditions of this Agreement.

K. Applicant agrees to complete, or cause the completion of, the design, engineering, and construction of a portion of the Public Transportation Improvements as further detailed in this Agreement (the "Bailey Street Improvements," defined hereinafter). In consideration therefor, the City agrees to grant credits against SDC's otherwise payable by Applicant (the "Credits") in accordance with the terms and conditions of this Agreement for one hundred percent (100%) of the total cost of the following: (a) Design, engineering, and construction of the Bailey Street Improvements for that portion of new pavement width that exceeds twenty-four (24) feet, which is estimated to be approximately four (4) feet between the western terminus of the Bailey Street Improvements and the eastern edge of the eastern driveway between SW Bailey Street and the Property ("Eastern Driveway"), and approximately twenty-six (26) feet between the Eastern Driveway and the eastern terminus of the Bailey Street Improvements; (b) Acquisition and installation of the additional materials to produce increased sub-surface thickness necessary for Minor Collector street standards for the Bailey Street Improvements on the existing half street, which is approximately 22 feet in width; and (c) Design, engineering, construction, and installation of the Bailey Water Line (defined hereinafter).

L. Applicant and the City acknowledge that each will benefit from the eventual development of the Property and the improvements to be constructed by or at the direction of Applicant. One additional purpose of this Agreement is to establish additional obligations of Applicant and the City with respect to other actions which must be taken to fully implement this Agreement and the eventual development of the Property pursuant to the Approval.

M. The Parties desire in this Agreement to set forth the respective obligations of the Parties with respect to the infrastructure improvements, SDC charges, Credits, reimbursements, and other matters. In the event of any inconsistency between the conditions of the Approval and the terms and provisions of this Agreement, the terms and provisions of the conditions of approval shall control.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I. GENERAL PROVISIONS

Section 1.01. Recitals

The foregoing recitals are true and correct and are incorporated into and made a part of this Agreement as if fully set forth herein.

Section 1.02. Exhibits

All exhibits referenced in this Agreement are incorporated into and made a part of this Agreement as if fully set forth herein.

ARTICLE II. PUBLIC TRANSPORTATION IMPROVEMENTS

Section 2.01. Identification

The "Public Transportation Improvements" are generally depicted in Exhibit B and include only the following, with the specific improvements identified in Section 2.01(B)-(E) collectively known as the "City Projects":

(A) SW Bailey Street. Frontage improvements to SW Bailey Street ("Bailey Street Improvements") along the southern boundary of the Property from the east side of the intersection with SW Boones Ferry Road, east to the eastern terminus of SW Bailey Street west of Interstate 5, to modified City Minor Collector street standards with a fifty (50)-foot curb-to-curb width including an eastbound travel lane, westbound travel lane and center median/turn lane, with on-street parking on the south side of the street, in the location and consistent with the cross-section set forth in Exhibit B and as more specifically detailed in Section 2.02 of this Agreement. The Bailey Street Improvements shall also include, under SW Bailey Street, an approximate 30-inch storm drainage lines and an eight (8)-inch water main (the "Bailey Water Main"). The design and construction of the Bailey Street Improvements shall hold the existing curb line on the south side of the street. The design and construction of the Bailey Street Improvements shall include an increased sub-surface thickness consistent with minor collector standards.

(B) SW Boones Ferry Road. Frontage improvements to SW Boones Ferry Road ("BF Road Improvements") from south of the intersection with SW Bailey Street, north to the intersection with SW Wilsonville Road, to modified City Major Collector street

standards with a five (5)-lane, eighty (80)-foot curb-to-curb width at the intersection with SW Wilsonville Road and a subsequent taper to two (2) lanes south of Bailey Street, as depicted in Exhibit B and as more specifically detailed in Section 2.03 of this Agreement. The five (5)-lane cross section will accommodate two (2) southbound receiving lanes for double left turn lanes on westbound SW Wilsonville Road, a raised six (6)-foot to nineteen (19)-foot varying width median island commencing as a pedestrian refuge and extending to the north side of the intersection with SW Bailey Street (with a break at the southern access driveway to the Property), separate northbound left, through, and right turn lanes. The BF Road Improvements shall also include the replacement and upsizing of approximately 1,200 feet of a fourteen (14)-inch water utility line with an eighteen (18)-inch water utility line under SW Boones Ferry Road in the location and consistent with the cross-section depicted and described in Exhibit B and the upsizing of approximately 780 feet of a thirty (30)-inch sanitary sewer line under SW Boones Ferry Road in the location and consistent with the cross section depicted and described in Exhibit B. The design and construction of the BF Road Improvements shall hold the existing curb line on the west side of the street. Bike lanes, curb, gutter, and storm drainage shall be provided in the right-of-way along the entire Property frontage, unless the public interest requires otherwise.

(C) SW Wilsonville Road. An approximately 27- to 30-foot widening of SW Wilsonville Road ("Wilsonville Road Improvements") along the northern boundary of the Property from the east side of the intersection of SW Boones Ferry Road and SW Wilsonville Road east to the western boundary of the Interchange Improvements under ODOT's jurisdiction, in the location and consistent with the cross-section depicted and described in Exhibit B and as more specifically detailed in Section 2.04 of this Agreement, to:

- (1) Provide improvements along the Property's frontage to the ultimate southern curb line to accommodate the City's planned improvements to SW Wilsonville Road in conjunction with the improvements to the Interchange;
- (2) Within these frontage improvements, restripe the right-of-way to provide a second left turn lane for westbound traffic moving to southbound SW Boones Ferry Road, with such re-striping to provide capacity for the Project consistent with the Wilsonville Road Improvements to be completed by ODOT in conjunction with the Interchange improvements; and
- (3) Include curb, gutter, bike lanes and a twelve (12)-foot wide sidewalk along the Property's frontage.

(D) Intersection of SW Boones Ferry Road/SW Wilsonville Road. Improvements ("Intersection Improvements"), including signal, signage, and striping modifications

necessary to provide double left turn lanes from westbound SW Wilsonville Road to the southbound SW Boones Ferry Road approach, enhanced pedestrian crossings on the south leg of the Intersection (including raised median island with pedestrian refuge and countdown pedestrian signal heads) and necessary tapers west of the intersection extending approximately to the railroad tracks, as depicted in Exhibit and as more specifically detailed in Section 2.05 of this Agreement.

(E) Intersection of SW Boones Ferry Road/Southern Boones Ferry Road Driveway to Property. Improvements, including signal, signage, and striping, at the intersection of SW Boones Ferry Road and the southern driveway to the Property ("Entrance Signal"), as depicted in Exhibit B and as more specifically detailed in Section 2.06 of this Agreement.

Section 2.02. SW Bailey Street

(A) Existing Conditions. The Parties agree that on the effective date of this Agreement, SW Bailey Street is classified as a Residential Street with a 28-32-foot curb-to-curb width and a two (2)-lane cross-section, as generally depicted in Figure 4.14 of the City's Transportation System Plan ("TSP"). As built, SW Bailey Street is approximately 22 feet in width with no curb on the north side.

(B) Applicant Commitments. Applicant agrees to take the following actions with respect to the Bailey Street Improvements:

(1) Subsequent to the City's performance of its obligations set forth in Section 2.02(C)(1) and (2) of this Agreement but prior to issuance of the final occupancy permit for any structure included in the Project, Applicant shall, at Applicant's sole cost and expense, design and substantially construct, or cause the design and substantial construction of the Bailey Street Improvements.

(2) Upon substantial completion of the Bailey Street Improvements, Applicant shall grant and convey to the City that portion of the Property that was necessary to complete the Bailey Street Improvements in accordance with the terms and conditions of this Agreement, as generally depicted in Exhibit B (the "Bailey Dedication") and shall dedicate the Bailey Street Improvements to the public.

(C) City Commitments. The City agrees to take the following actions with respect to the Bailey Street Improvements:

(1) As soon as reasonably practicable and in any event, prior to Applicant's construction of any portion of the Bailey Street, the City shall initiate, at the City's sole cost and expense, an amendment to the City's TSP, to upgrade the functional classification of SW Bailey Street to "Minor Collector."

(2) As soon as reasonably practicable and in any event prior to June 1, 2009, the City shall acquire, at the City's sole cost and expense, the additional right-of-way necessary for SW Bailey Street (except that portion located on the Property).

(3) Pursuant to the City's standard timeline and procedures, the City shall accept the Applicant's dedication of the Bailey Dedication and the Bailey Street Improvements following final inspection approval, and thereafter, the City shall assume maintenance obligations for same.

(4) Notwithstanding the provisions of Section 2.02(B)(1) of this Agreement, pursuant to WC 11.040(9), the City hereby grants Credits to Applicant against Transportation SDC's in the amount of one hundred percent (100%) of the total cost of the following: (a) Labor, materials, and equipment associated with the design, engineering, and construction of the Bailey Street Improvements for that portion of new pavement width that exceeds twenty-four (24) feet, which is estimated to be approximately four (4) feet between the western terminus of the Bailey Street Improvements and the Eastern Driveway, and approximately twenty-six (26) feet between the Eastern Driveway and the eastern terminus of the Bailey Street Improvements; and (b) Acquisition and installation of the additional materials to produce increased sub-surface thickness necessary for minor collector standards on the existing half street (collectively, the "Eligible Costs"). In the event the Eligible Costs exceed the Credits actually paid by the City to Applicant for the Bailey Street Improvements, the Parties agree that the difference shall be known as the "Credit Gap." In the event a Credit Gap occurs, the City shall pay to Applicant the Street SDC's collected from the owner of the property generally located southeast of the Property at the end of SW Bailey Street (the "Latecomer Parcel") when the Latecomer Parcel develops or redevelops, until the Credit Gap is paid in full.

(5) Notwithstanding the provisions of Section 2.02(B)(1) of this Agreement, pursuant to WC 11.040(9), the City hereby grants Credits to Applicant against Water SDC's in the amount of one hundred percent (100%) of the total cost of design, engineering, construction, and installation of the Bailey Water Line.

Section 2.03. SW Boones Ferry Road

(A) Existing Conditions. The Parties agree that on the effective date of this Agreement, SW Boones Ferry Road is classified as a Major Collector Street with a three-lane cross-section, as generally depicted in Figure 4.19 of the TSP, as modified by Spot Improvement S-33.

(B) City Commitments. The City agrees to take the following actions with respect to the BF Road Improvements:

(1) On or before June 1, 2009, the City shall acquire, at the City's sole cost and expense, the additional right-of-way necessary for the Boones Ferry Road Improvements (except that portion located on the Property).

(2) The City shall submit a written request to Applicant that, within sixty (60) days thereafter, Applicant grant and convey to the City that portion of the Property necessary to serve as additional right-of-way for the BF Road Improvements, as generally depicted in Exhibit B ("BF Dedication"), and upon such grant and conveyance pursuant to Section 2.03(C)(2) of this Agreement, the City shall accept same.

(3) In accordance with the requirements of Section 2.08 of this Agreement, including the phasing plan set forth in Exhibit C ("Phasing Plan"), the City shall design and substantially construct, or cause the design and substantial construction of, the BF Road Improvements. Upon completion of the BF Road Improvements, the City shall assume maintenance obligations for same.

(C) Applicant Commitments. Applicant agrees to take the following actions with respect to the BF Road Improvements:

(1) Applicant shall require that the bank located on the west side of the Property (the "Bank") cease all operations and vacate the Property no later than June 1, 2009. Upon such vacation and prior to June 30, 2009, Applicant shall, at Applicant's sole cost and expense, demolish all improvements, including structures, paved parking and circulation areas, and landscaping associated with the Bank and clear the Property of any debris associated with same.

(2) Prior to commencement of the BF Road Improvements, and within sixty (60) days after the City's written request for same, Applicant shall grant and convey the BF Road Dedication to the City.

(3) Applicant shall pay to the City the Applicant's Share in the amount of thirty eight percent (38%) of the Public Transportation Improvement and other public improvement costs associated with the BF Road Improvements in accordance with Exhibit E and the payment schedule set forth in Section 3.01 of this Agreement; provided, however, the Parties agree that in the event the utility components of the BF Road Improvements vary from estimated costs by more than two percent (2%) in either direction, the Parties shall renegotiate Applicant's Share of the Public Transportation and other public improvement costs associated with the BF Road Improvements. The Applicant's Share has

been calculated net of the value of the BF Road Dedication by Applicant to the City and includes Applicant's proportionate share of the following elements: (A) BF Road Improvements, including without limitation, "dry" utilities; (B) "Stub-ins" to connect to water, sewer and storm water systems; (C) Entrance Signal (defined hereinafter); and (D) Overflow Drain Line (defined hereinafter).

(4) In accordance with the requirements of Section 2.08 of this Agreement, including the Phasing Plan, Applicant shall, in coordination with the City's performance of the City commitments set forth in Section 2.03(B) of this Agreement, design and substantially construct, or cause the design and substantial construction of, the sidewalk and landscaping improvements on the Property on the east side of SW Boones Ferry Road.

Section 2.04. SW Wilsonville Road

(A) Existing Conditions. The Parties agree that on the effective date of this Agreement SW Wilsonville Road is classified as a Major Arterial Street, as generally depicted in Figure 4.22 of the TSP, as modified by Spot Improvements S-32 and S-33. The City has programmed improvements to SW Wilsonville Road in the CIP as Project #4142.

(B) City Commitments. The City agrees to take the following actions with respect to the Wilsonville Road Improvements:

(1) The City shall acquire, at the City's sole cost and expense, the additional right-of-way necessary for the Wilsonville Road Improvements (except that portion located on the Property).

(2) The City shall submit a written request to Applicant that, within sixty (60) days thereafter, Applicant grant and convey to the City that portion of the Property necessary to serve as additional right-of-way for the Wilsonville Road Improvements, as generally depicted in Exhibi B ("Wilsonville Road Dedication"), and upon such grant and conveyance pursuant to Section 2.04(C)(1) of this Agreement, the City shall accept same.

(3) In accordance with the requirements of Section 2.08 of this Agreement, including the Phasing Plan, the City shall, at its sole cost and expense, design and substantially construct, or cause the design and substantial construction of, the Wilsonville Road Improvements. ODOT's assumption of some or all of the components defined as the Wilsonville Road Improvements in this Agreement, due to a shift in the match line between the Wilsonville Road Improvements and the Interchange Improvements or some other agreement between the City

and ODOT, shall not relieve the City of the City's obligation to cause the completion of the design and substantial construction of the Wilsonville Road Improvements in accordance with the requirements of Section 2.08 of this Agreement, including the Phasing Plan. Upon completion of the Wilsonville Road Improvements, the City, or, if applicable, ODOT shall assume maintenance obligations for same.

(C) Applicant Commitments. Applicant agrees to take the following actions with respect to the Wilsonville Road Improvements:

(1) Prior to commencement of the Wilsonville Road Improvements, and within sixty (60) days after the City's written request for same, Applicant shall grant and convey the Wilsonville Road Dedication to the City.

(2) In accordance with the requirements of Section 2.08 of this Agreement, including the Phasing Plan, Applicant shall, in coordination with the City's performance of the City commitments set forth in Section 2.03(B) of this Agreement, design and substantially construct, or cause the design and substantial construction of, the bicycle/pedestrian path and landscaping improvements in the right of way south of the curb on the south side of SW Wilsonville Road.

Section 2.05. SW Wilsonville Road/SW Boones Ferry Road Intersection

(A) City Commitments. The City agrees to take the following actions with respect to the Intersection Improvements:

(1) The City shall submit a written request to Applicant that, within sixty (60) days thereafter, Applicant grant and convey to the City that portion of the Property necessary to serve as additional right-of-way for the Intersection Improvements, as generally depicted in Exhibit B ("Intersection Dedication"), and upon such grant and conveyance pursuant to Section 2.04(B)(1) of this Agreement, the City shall accept same.

(2) In accordance with the requirements of Section 2.08 of this Agreement, including the Phasing Plan, the City shall design and substantially construct, or cause the design and construction of, the Intersection Improvements. The City agrees to the extent possible, to design and place traffic signal poles and equipment at a location that will be compatible with the Interchange Improvements. The Intersection Improvements are intended to cure existing capacity deficiencies, to mitigate Project traffic impacts at the Intersection, to eliminate left turn queue spill-back into the Interchange, and to add additional capacity to the Intersection. ODOT's assumption of some or all of the

components defined as the Intersection Improvements in this Agreement, due to a shift in the match line between the Wilsonville Road Improvements and the Interchange Improvements or some other agreement between the City and ODOT, shall not relieve the City of the City's obligation to cause the completion of the design and substantial construction of the Intersection Improvements in accordance with the requirements of Section 2.08 of this Agreement, including the Phasing Plan. Upon completion of the Intersection Improvements, the City shall assume maintenance obligations for same.

(B) Applicant Commitments. Applicant agrees to take the following actions with respect to the Intersection Improvements:

(1) Prior to commencement of the Intersection Improvements, and within sixty (60) days after the City's written request for same, Applicant shall grant and convey the Intersection Dedication to the City.

(2) In accordance with the requirements of Section 2.08 of this Agreement including the Phasing Plan, Applicant shall, in coordination with the City's performance of the City Commitments set forth in Section 2.03 B of this agreement, design and substantially construct the bicycle/pedestrian and landscaping improvements on the right of way at the southeast corner of the Intersection Improvements.

(3) Applicant shall pay to the City the Applicant's Share in the amount of thirty four and half (34.5%) of the portion of the Public Transportation Improvement Costs associated with the Intersection Improvements in accordance with Exhibit H and the payment schedule set forth in Section 3.01 of this Agreement. The Applicant's Share has been calculated net of the value of the Intersection Dedication by Applicant to the City.

Section 2.06. Entrance Signal

(A) Existing Conditions. The Parties agree that the conditions of approval for the Project require installation of a traffic signal south of SW Wilsonville Road at the intersection of SW Boones Ferry Road and the southern vehicular access to the Property and related crosswalk and striping improvements ("Entrance Signal").

(B) City Commitments. The City agrees to take the following actions with respect to the Entrance Signal:

(1) In accordance with the requirements of Section 2.08 of this Agreement, including the Phasing Plan, the City shall design, construct, and install, or cause the design, construction, and installation of, the Entrance Signal in accordance with the plans depicted and described in Exhibit B.

(C) Applicant Commitments. Applicant agrees to take the following actions with respect to the Entrance Signal:

(1) Applicant shall pay to the City the Applicant's Share in the amount of thirty-three percent (33%) of the portion of the Public Transportation Improvement Costs associated with the Entrance Signal in accordance with Exhibit H and the payment schedule set forth in Section 3.01 of this Agreement. The cost of the signal and the cost sharing for the signal are included in the overall Boones Ferry Road construction estimate.

Section 2.07. Construction Management.

(A) Intent. The Parties believe it is in their mutual best interest to work cooperatively toward the completion of the Public Transportation Improvements; provided, however, such cooperation is not intended to interfere with the City's regulatory authority.

(B) Plans. In accordance with the requirements of Section 2.08 of this Agreement, including the Phasing Plan, the City shall prepare, or cause the preparation of, design and engineering plans for the City Projects (the "Plans"). The City shall require that the Plans drafter to conduct periodic design review meetings at least monthly beginning in February 2009. The intent of these meetings will be to review the thirty percent (30%) (*note: the 30% review was completed in January 2009*), sixty percent (60%), and ninety percent (90%) plan preparation, prior to the City bidding this work. Within two (2) business days following these design review meetings, the applicant will submit comments in writing if necessary, after which, within five (5) business days, the City shall either: (a) accept same and revise the Plans, if the City determines, in good faith, that Applicant's comments are timely submitted, reasonable, consistent with applicable provisions of the Wilsonville Code (the "WC") and conditions of the Approval, and are otherwise allowed by Oregon law; or (b) Reject same, but such rejection may only occur after a meeting among the Parties to attempt to resolve the disputed aspect(s) of the Plans. The City shall provide timely advance notice to Applicant of all design team meetings relating to the City Projects.

(C) Selection of Contractor. Pursuant to ORS Chapter 279C and in accordance with the requirements of Section 2.08 of this Agreement, including the Phasing Plan, the City shall obtain competitive bids for the completion of the City Projects pursuant to the following process:

(1) Prequalification. The City intends to prequalify parties who satisfy certain minimum criteria to participate in the bid process for the City Projects. To the extent allowed by law, at least five (5) business days prior to the City's formal

release of the request for such prequalifications (the "Prequalification Request"). The City will share its draft prequalification requirements with the Applicant. Within five (5) business days after receipt of same from the City, Applicant shall review and provide the City with written comments on the Prequalification Request. If the City determines, in good faith, that Applicant's comments are timely submitted, reasonable, and consistent with applicable provisions of the WC and conditions of the approval, and are otherwise allowed by Oregon law, the City may revise the Prequalification Request prior to formal release of same to the public. Applicant shall have the right to be present at the opening of any responses to the Prequalification Request and at any meeting where the City considers or identifies parties who satisfy the Prequalification Request.

(2) Bidding and Contract. To the extent allowed by law, at least ten (10) business days prior to the City's formal release of the request for such bids (the "Bid Request") and if available, contemporaneous with providing 90% complete drawings for the Plans, the City shall provide Applicant with a draft of the Bid Request and the contract the City intends to enter with the selected bidder for completion of the design, engineering, and/or construction of the City Projects (the "Contract"). Within five (5) business days after receipt of same from the City, Applicant shall review and provide the City with written comments on the Bid Request and the Contract. If the City determines, in good faith, that Applicant's comments are timely submitted, reasonable, consistent with applicable provisions of the WC and conditions of the Approval, and are otherwise allowed by Oregon law, the City may revise the Bid Request and Contract accordingly prior to formal release of same to the public. Notwithstanding this requirement, the Contract shall, at a minimum, incorporate the City's commitments under Section 2.08 of this Agreement, the payment limitations and schedule set forth in Section 3.01 of this Agreement, and provide a tiered procedure for administration of change orders consistent with this Agreement. Applicant shall have the right to be present at the opening of any bids that are submitted in response to the Bid Request as well and at any meeting where the City considers or selects a contractor(s) (the "Contractor") to perform the City Projects.

(E) Change Orders. The City shall have the right to authorize any Minor Change Order for any reason, including, without limitation, conditions not foreseeable upon execution of this Agreement or design error, without notice to or consent of Applicant, where the term "Minor Change Order" shall mean a change order that does not materially modify the Project or the City Projects and the cost of which does not exceed the aggregate of more than the 20% construction contingency set aside following award of the initial construction contract. The City shall notify Applicant

prior to approving any change order other than a Minor Change Order ("Major Change Order"); however, the City shall not be required to obtain Applicant's consent to same. The cost of Minor Change Orders and Major Change Orders shall be shared proportionally per the cost allocation percentage used for the initial construction award; provided, however, Applicant's total liability for the City Projects shall in no event exceed the Applicant Contribution defined in Section 3.01(B).

(F) Coordination. The Parties shall each designate a project manager. Respective project managers shall hold design coordination meetings at least monthly and upon continuing through completion of the Public Transportation Improvements in order to discuss and attempt to cooperatively resolve design, scheduling, coordination, and cost issues associated with the Public Transportation Improvements. Notwithstanding these standing meetings, if at any time during the performance of this Agreement, the City becomes aware of actual or potential problems, faults, defects, delays, or cost adjustments in the City's scope of work, the City's project manager shall provide prompt written notice thereof to Applicant's project manager.

(G) Reciprocity. The Parties agree that the construction management provisions of Section 2.07(B) – (F) shall also apply to the Bailey Street Improvements; however, in that case, since Applicant is taking the lead with respect to design, engineering, construction, and contracting, Applicant shall assume the City's commitments set forth in Sections 2.07(B) – (F), while the City shall assume Applicant's commitments set forth in such sections.

Section 2.08. Timing

(A) City's Construction Period

(1) The City shall complete all of the City's pre-construction and construction activities described in this Article II to provide beneficial occupancy within the public right-of-way between the effective date of this Agreement and November 1, 2010 ("Completion Date") and pursuant to the construction phasing plan set forth in Exhibit C ("Phasing Plan"). Limited weather dependent landscaping may be deferred until Spring 2011. The City shall use commercially reasonable efforts to comply with the benchmarks and timelines set forth in the Phasing Plan.

(2) The period between June 1, 2009 and the Completion Date shall be known as the City's Construction Period. During the City's Construction Period, the City's construction activities shall be performed at times and in a manner that will minimize obstruction or interference with access to and from the Property or obstruct or interfere with Applicant's construction, development, and use of the Property in accordance with the Approval. Notwithstanding this

restriction, the City Projects may be access-controlled by flaggers or temporarily closed for time periods not to exceed one (1) hour per day between the hours of 9:00 a.m. and 5:00 p.m. throughout the City's Construction Period, or such longer periods upon prior notice to Applicant. Applicant's construction activities relating to the Project and the Bailey Street Improvements shall be performed at all times in a manner that will minimize obstruction or interference with the City's performance of its commitments under this Section 2.08.

(3) The City agrees to substantially complete construction activities and remove all construction equipment and materials from and around the Property by the Completion Date to allow use of the City Projects and access between the Property and the City Projects through all access driveways by such date. For purposes of this section, "substantially complete" shall mean the substantial completion of the following City Projects such that they are open and operational to through traffic during Applicant's regular business hours of 7:00 a.m. to 11:00 p.m.: (1) Three-lane section of northbound SW Boones Ferry Road, including curbing; and (2) Entrance Signal. The City's agreement to substantially complete the City Projects by the Completion Date is a material inducement for Applicant to enter this Agreement as it will facilitate Applicant's timely completion of the Project for the scheduled opening of its retail store on the Property.

(4) The Parties agree and acknowledge that the City's commitments set forth in this Section 2.08(A) are for the benefit of Applicant, who may, at Applicant's option and in Applicant's sole discretion, waive, in whole or in part, the City's performance of these commitments. Such waiver shall only be effective if it is in writing and executed by Applicant, and such waiver may be revoked at any time in Applicant's sole discretion.

(B) Applicant Construction Period. Applicant shall use commercially reasonable efforts to complete all of Applicant's pre-construction and construction activities for the Bailey Street Improvements and the Project to provide beneficial occupancy within the public right-of-way pursuant to the benchmarks and timelines set forth in the Phasing Plan.

(C) Liquidated Damages. The City shall include required completion dates and penalties for late completion in the Contract to ensure that the timelines established in the Phasing Plan are met. In the event the Contractor pays liquidated damages to the City for late completion of the obligations under the Contract, the City shall apply such liquidated damages to the City's Project Costs, which may, if applicable, result in cost savings for Applicant below the Applicant Contribution in accordance with Section 3.01.

Section 2.09. Utility Relocation

In the event the completion of any of the Public Transportation Improvements described in this Article II necessitate relocation of the facilities of a private utility, costs for such relocation, except for installation of necessary conduits/vaults, shall be borne by the affected utility in accordance with the provisions of WC 3.340(8). For purposes of this Section 2.09, "relocation" shall include any ancillary undergrounding activities. The City shall timely request that the affected utility complete all relocations pursuant to a schedule that imposes no delay on completion of the Public Transportation Improvements or the Project; however, the Parties agree that the City cannot guarantee how or when the utilities respond to a relocation request.

ARTICLE III. FINANCING OF PUBLIC IMPROVEMENTS

Section 3.01. Capped Costs

(A) Public Transportation Improvement Costs and Other Improvement Costs. The Parties agree that the approved types of and estimated amounts of the total hard and soft costs of labor and materials associated with all aspects of the design, engineering, permitting, construction, and installation of the Public Transportation Improvements ("Public Transportation Improvement Costs") and other utility costs of the total contract price as of the effective date of this Agreement are as set forth in Exhibit E. The Public Transportation Improvement Costs include an inflation adjustment of 4% per annum for 17 months. In addition the cap includes City Construction Management and finance costs. The portion of the Public Transportation Improvement Costs and other improvement costs associated with the City Projects shall be known as the "City Project Costs."

(B) Applicant Contribution. Applicant shall pay to the City a portion of the City Project Costs (the "Applicant Contribution") in the form of cash payments equal to the lesser of the sum of the design construction management costs, the City's administrative costs, and the Contract Price (plus a twenty percent (20%) contingency) if not already included; or \$2,834,100.00. As further detailed in Exhibit E, the Applicant Contribution is the total amount of the Applicant's Share for each of the City Projects. Applicant shall pay the Applicant Contribution to the City in two (2) installments on the following dates (the "Payment Dates"): (1) October 31, 2009 (the "First Payment Date"), for actual City Project Costs incurred by the City through September 30, 2009; and (2) The date when the City completes the final inspection of and accepts the City Projects (the "Second Payment Date"), which is estimated to be October 31, 2010, for actual City Project Costs incurred by the City between October 1, 2009, and the project completion. At least ten (10) business days prior to each Payment Date, the City shall provide Applicant with an invoice, receipts, or other credible evidence of actual City Project Costs incurred by the City and the subject of a

reimbursement request. Notwithstanding these requirements, Applicant may, in Applicant's sole discretion, withhold payment for any portion of the City Project Costs until the City and/or the Contractor provide satisfactory evidence to Applicant that the City has actually incurred the expense and the Contractor has substantially completed the work and/or acquired the equipment or materials that is/are the subject of the reimbursement request. Moreover, Applicant's liability shall be limited to the Applicant Contribution even if the invoices, receipts, or other credible evidence submitted by the City to Applicant request reimbursement for a greater amount.

(C) Limits to Applicant's Payment. In addition to payment of Street SDC's as provided in Section 3.02 of this Agreement, in no event shall Applicant be obligated to pay to the City more than the Applicant Contribution in full satisfaction of Applicant's financial obligations for the City Projects. Any additional City Project Costs incurred by the City and/or its Contractor above the Applicant Contribution, including without limitation, any cost overruns, shall be borne by the City and/or the Contractor without benefit of reimbursement by Applicant.

(D) Use of Applicant Contribution. The City agrees to utilize the Applicant Contribution (excluding shared savings) only to fund completion of the City Projects described in Article II of this Agreement.

(E) Final Accounting. Within ninety (90) days after the completion of the City Projects, the City shall provide to Applicant a full accounting and reconciliation of the Applicant Contribution and the City Project Costs. Within ninety (90) days thereafter, Applicant shall provide to the City a review and confirmation, except as otherwise be noted, of the City's final accounting.

(F) Application of Savings. In the event the actual City Project Costs are less than the estimated expenses for the City Projects set forth in Exhibit E, any savings shall be shared between the Parties in the same respective proportions that the Parties paid the City Project Costs. The sharing of savings shall occur immediately upon completion of the City Projects, subject to the final accounting described in Section 3.01(E) of this Agreement.

Section 3.02. SDC's

(A) Calculation. The City shall charge, and the Applicant shall pay, Street SDC's for the Project on a per-trip basis, based upon the methodologies in the traffic study for the Project prepared by DKS Associates dated August 19, 2008, that the Project will generate 703 net new trips (after deducting 209 trips for existing and prior uses of the Property). The Parties agree that these trips shall be apportioned among the buildings in the Project pursuant to the schedule set forth in Exhibit F.

(B) Prepayment; Applicable Rates. Applicant shall prepay a portion of the Project's Street SDC's to the City in the amount of \$1,624,260 [1/2 of total Street SDC's] no later than June 30, 2009 (the "Prepayment"). Applicant's payment of the Prepayment shall allow the Project to develop under the Street SDC rate schedule in effect on the date Applicant makes the Prepayment. Upon the City's receipt of the Prepayment, Applicant shall be vested for the applicable trips through the Wilsonville Road Interchange area.

(C) Balance of Street SDC's. Applicant shall pay the balance of the Street SDC's associated with the Project over time, with a portion of such balance due prior to obtaining each building permit for the Project. The Street SDC's due prior to a particular building permit shall be based upon the number of trips associated with the building(s) subject to the permit according to the schedule set forth in Exhibit F. For purposes of calculating the balance of the Street SDC's for the Project, the entire Prepayment shall be first applied to the Street SDC's otherwise apportioned to Building A of the Project.

Section 3.03. Credits

Pursuant to WC 11.040(9), Applicant shall receive Credits from the City for Applicant's payment for any portion of the Public Transportation Improvements identified as a growth-related project in the CIP and/or for improvements in excess of those required to serve the development of the Project. The amount of Credits for the eligible improvements shall be based upon the actual amounts paid by Applicant to the City toward construction of the CIP-listed improvements and/or overcapacity portion of such improvements. The estimated total Credits, and the Public Transportation Improvements with which they are associated, are set forth in Exhibit D and E..

ARTICLE IV. OTHER PUBLIC IMPROVEMENTS

Section 4.01. Water Utility System

(A) Applicant Commitments. Applicant agrees to take the following actions with respect to the water utility system:

(1) Prior to issuance of the final occupancy permit for any structure located in the Project, Applicant shall, at Applicant's sole cost and expense, design, construct, and install, or cause the design, construction, and installation of, improvements to the City's potable water system to provide capacity to serve the Project, as depicted in Exhibit B ("Water Utility Improvements").

(2) Upon substantial completion of the Water Utility Improvements, Applicant shall dedicate a public easement to the City for that portion of the Water Utility

Improvements located on, in, or under the Property serving parcels, lots, or properties with different owners ("Water Utility Easement").

(B) City Commitments. The City agrees to take the following actions with respect to the water utility system:

(1) The City shall design and construct the connections to the City water system in Boones Ferry Road and extend the connections to the vicinity of the edge of right of way for connection by the Applicant. The cost of this connection will be included in overall costs for Boones Ferry Road per Exhibit B.

(2) Pursuant to the City's standard timeline and procedures, the City shall accept Applicant's dedication of the Water Utility Easement and the Water Utility Improvements following final inspection approval and thereafter assume maintenance obligations for same.

Section 4.02. Storm Drainage System

(A) Applicant Commitments. Applicant agrees to take the following actions with respect to the storm drainage system:

(1) In accordance with Condition PFB54 of the Approval, within thirty (30) days after the Approval becomes final and all applicable appeal periods have expired, or if an appeal has been filed, the appeal has been resolved favorably to Applicant, Applicant shall submit to the City's Engineering staff the following items: (a) finished floor elevations for the Project; (b) the stormwater analysis report for the Project (the "Drainage Analysis"); and (c) design plans depicting the storm drainage improvements associated with the Property (the "Storm Drainage Improvements").

(2) Prior to issuance of the final occupancy permit for any structure located in the Project, Applicant shall, at Applicant's sole cost and expense, design and substantially construct, or cause the design and substantial construction of, the on-site Storm Drainage Improvements prior to the BF Road Improvements,

(3) Upon substantial completion of the Storm Drainage Improvements, Applicant shall dedicate a public easement to the City for that portion of the Storm Drainage Improvements serving two or more parcels, lots, or properties and located on, in, or under the Property ("Drainage Easement").

(B) City Commitments. The City agrees to take the following actions with respect to the storm drainage system:

(1) The City will design and construct improvements to Boones Ferry Road adjacent to the project and design and construct a storm sewer line from Bailey to the Willamette River. In addition if needed the City will design and construct the connections from the storm water system in Boones Ferry to the vicinity of the edge of right of way and to a storm water line in Bailey if needed. The costs for storm water flow from the Project are included in the Boones Ferry Road costs per Exhibit E. If the drainage analysis, subsequent approvals and construction plans include substantial on project detention the Fred Meyer percent of the storm water system will be reduced based on the prorate reduction in flows.

(2) Pursuant to the City's standard timeline and procedures, accept Applicant's dedication of the Drainage Easement and the Storm Drainage Improvements following final inspection approval and thereafter assume maintenance obligations for same.

(3) Notwithstanding the requirements of Section 4.02(A) of this Agreement, in the event the City determines that a portion of the Storm Drainage Improvements or the Overflow Drain Line constitute "qualified public improvements" as that term is defined in WC 11.040(1)(d). Accordingly, pursuant to WC 11.040(9), the City will grant Credits to Applicant against Stormwater SDC's for the additional capacity beyond Applicant's requirements for design, engineering, and construction of the Storm Drainage Improvements and the Overflow Drain Line.

Section 4.03. Sanitary Sewer System

(A) Applicant Commitments. Applicant agrees to take the following actions with respect to the sanitary sewer system:

(1) Prior to issuance of the final occupancy permit for any structure located in the Project, Applicant shall, at Applicant's sole cost and expense, design, construct, and install, or cause the design, construction, and installation of, improvements to the City's sanitary sewer system to provide capacity to serve the Project, as depicted in Exhibit E ("Sanitary Sewer Improvements").

(2) Upon substantial completion of the Sanitary Sewer Improvements, Applicant shall dedicate a public easement to the City for that portion of the Sanitary Sewer Improvements serving two or more parcels, lots, or properties and located on, in, or under the Property ("Sanitary Sewer Easement").

(B) City Commitments. The City agrees to take the following actions with respect to the sanitary sewer system:

(1) The City shall design and construct the connections to the City sewer system and extend the connections to the vicinity of the edge of right of way. The cost of the connections will be included in overall costs for Boones Ferry Road per Exhibit E.

(2) Pursuant to the City's standard timeline and procedures, accept Applicant's dedication of the Sanitary Sewer Easement and the Sanitary Sewer Improvements following final inspection approval and thereafter assume maintenance obligations for same.

ARTICLE V. ADDITIONAL OBLIGATIONS

Section 5.01. Acquisition of ODOT Property

(A) ODOT Property. ODOT currently owns certain real property generally located south of SW Wilsonville Road and west of the Interchange, as more particularly described and depicted in Exhibit G, attached hereto and incorporated herein by reference (the "ODOT Property").

(B) City Commitments. The City agrees to take all of the following actions with respect to the ODOT Property:

(1) The City shall request that ODOT declare the ODOT Property not required for the Wilsonville Road Project as "surplus property" and thereafter take all reasonable steps to acquire the ODOT Property from ODOT at the lowest possible cost and within six (6) months after the effective date of this Agreement.

(2) Prior to acquisition of the ODOT Property, the City shall determine which portions of the ODOT Property are needed for right-of-way associated with the Wilsonville Road Improvements and/or Interchange improvements ("Necessary ROW"). However, the area of the ODOT Property, net of the Necessary ROW shall be at least that depicted in Exhibits A and G.

(3) Prior to acquisition of the ODOT Property, the City shall complete, or cause the completion of, a Phase I environmental review report (the "Environmental Report") and if necessary a Limited Phase II report for the ODOT Property and provide a copy of same to Applicant.

(4) In the event Applicant provides written notice to the City of Applicant's decision to purchase the ODOT Property pursuant to Section 5.01(C)(1), the City shall convey the ODOT Property, less the Necessary ROW, to Applicant free and clear of all liens and encumbrances, except those existing at the time of acquisition by the City from ODOT, at a purchase price equal to that paid by

the City to ODOT, less any amount paid by the City for the Necessary ROW, plus the City's reasonable out-of-pocket costs directly associated with the purchase of the ODOT Property (the "Purchase Price") in a closing (the "Closing") that occurs immediately after the closing of the purchase and sale of the ODOT Property by ODOT.

(5) The City shall not alter its agreement with ODOT set forth in the IGA that the funds received by ODOT for the ODOT Property must be applied to completion of the Interchange improvements.

(C) Applicant Commitments. Applicant agrees to take all of the following actions with respect to the ODOT Property:

(1) Within 21 days after receipt of the Environmental Report and if necessary the Limited Phase II Report, Applicant shall review same, decide, in Applicant's sole discretion, whether Applicant intends to purchase the ODOT Property, and advise the City in writing of this decision. If Applicant decides not to purchase the ODOT Property, Applicant shall be discharged from performing any other commitments of this subsection (C).

(2) Applicant shall, on the day of the Closing, deposit the Purchase Price with an escrow agent approved by the Parties, together with written instructions to release the Purchase Price to the City upon satisfaction of all conditions precedent to the Closing, including the City's acquisition of the ODOT Property.

(3) Applicant shall accept the City's conveyance of the ODOT Property, less the Necessary ROW.

(4) Applicant shall incorporate the ODOT Property, less the Necessary ROW, into the Project.

Section 5.02. Vesting of Trips

The completion of the Interchange improvements pursuant to the IGA is projected to generate capacity for 1,703 net additional trips at the Interchange. At build-out, the Project is projected to generate 474 primary PM peak hour trips and 589 net additional trips at the Interchange. By its issuance of the Stage II Approval, the City has deemed the Property vested for 474 primary PM peak hour trips and 589 net additional trips at the Interchange subject to normal expiration of land use approval. Payment of street SDCs also vests the prepaid trips per WC 4.140(.10). Accordingly, Applicant may proceed to develop and obtain Certificates of Occupancy for the Project, subject to the conditions of the Approval and the terms and conditions of this Agreement; however, ODOT's further progress on, or completion of, the Interchange

Improvements is expressly not a condition precedent to obtaining Certificates of Occupancy for the Project.

ARTICLE VI. GENERAL OBLIGATIONS

Section 6.01. Plans and Construction

Except as otherwise provided in this Agreement, the Parties shall prepare plans and construct the Project and the Public Transportation Improvements in accordance with all applicable requirements of law. The City shall be responsible for reviewing and approving all plans for the Project and the Public Transportation Improvements described in this Agreement, inspecting the construction of same, and issuing Certificates of Occupancy for structures in the Project.

Section 6.02. Public Work Provisions

To the extent that all or any portion of the infrastructure improvements contemplated hereunder are considered "public works" under ORS Chapter 279C that are not otherwise exempt, the City and Applicant, respectively, shall comply with applicable provisions of the prevailing wage law set forth in ORS Chapter 279C.

Section 6.03. Street SDC's

The Street SDC's for the development of the Project are set forth in this Agreement per Exhibit D. In the event of a conflict between this Agreement and the City's regulations related to Street SDC's, the provisions of this Agreement shall control, it being understood by the Parties that one purpose of this Agreement is to set forth the applicable Street SDC's associated with the full development of the Project.

Section 6.04. Continuing Effect of Agreement

In the case of any change in regional policy or federal or state law or other change in circumstance which renders compliance with this Agreement impossible or unlawful, the Parties will attempt to give effect to the remainder of this Agreement, but only if such effect does not prejudice the substantial rights of either Party under this Agreement. If the substantial rights of either Party are prejudiced by giving effect to the remainder of this Agreement, then the Parties shall negotiate in good faith to revise this Agreement to give effect to its original intent. If, because of a change in policy, law or circumstance, this Agreement fails in its essential purpose then the Parties shall be placed into their original position to the extent practical.

Section 6.05. Good Faith and Reasonableness

The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of a Party being given "sole discretion" or being allowed to make a decision in its "sole judgment."

Section 6.06. Condition of City Obligations

All City obligations pursuant to this Agreement which require the expenditure of funds are contingent upon future appropriations by the City as part of the local budget process. Nothing in this Agreement implies an obligation on the City to appropriate any such monies. The City agrees and acknowledges that issuing building permits for the construction of the buildings in the Project is not an obligation that would require the expenditure of funds and, therefore, is not contingent upon future appropriations by the City.

Section 6.07. Irrespective of Section 6.06 Condition of Applicant Obligation

Applicant has the obligation to meet the project conditions of approval including meeting service standards prior to approval of occupancy. If City funds are not available this agreement will be modified to provide for alternate funding mechanisms and if needed a system to repay applicant for improvements which are in excess of Fred Meyer requirements.

Section 6.08. Applicant Obligations in Event of Appeal

In the event the Approval is appealed, and such appeal of the Approval (the "Appeal") is not resolved favorably prior to a Payment Date, Applicant may withhold payment of the portion of the Applicant Contribution otherwise payable on that Payment Date until the Appeal has been resolved favorably to Applicant, as determined by Applicant in Applicant's sole discretion, and the other prerequisites to payment have been satisfied in accordance with Section 3.01(B) of this Agreement. Accordingly, the City's decision to move forward with completion of the City obligations under this Agreement notwithstanding the Appeal shall be at the City's own risk. Nothing in this section shall be construed to prevent Applicant from waiving the benefit of this section and agreeing to pay part or all of the Applicant Contribution to the City pursuant to a reasonable schedule negotiated by the Parties after the filing of the Appeal.

ARTICLE VII. MISCELLANEOUS PROVISIONS

Section 7.01. Further Assurances

Each Party shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder in good faith, to carry out the intent of the Parties.

Section 7.02. Nature of Agreement

The City hereby confirms that it has approved and executed this Agreement pursuant to its governing charter and not pursuant to ORS 94.504 *et seq.*, and does further confirm that this Agreement does not constitute or concern the adoption, amendment, or application of the Statewide Planning Goals, a comprehensive plan provision, or a land use regulation, the City and Applicant acknowledging and agreeing that any and all land use approvals required for the Project are to be obtained (or have been obtained) in due course on another date in accordance with all applicable laws and regulations.

Section 7.03. Modification or Amendment

No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by the Parties.

Section 7.04. Relationship

Nothing herein shall be construed to create an agency relationship or a partnership or joint venture between the Parties.

Section 7.05. Burden and Benefit; Assignment

The covenants and agreements contained herein shall be binding upon and inure to the benefit of the Parties and their successors and assigns. Applicant covenants and agrees that it shall notify any successor in interest or any tenant on the Property of Applicant's obligations under this Agreement. Neither Party shall assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, the City specifically acknowledges that Applicant intends to convey outparcels on the Property to Gramor Development, Inc. ("Gramor"), who intends to develop such outparcels consistent with the approved Application. The City hereby approves Applicant's partial assignment of the rights and responsibilities under this Agreement to Gramor.

Section 7.06. No Continuing Waiver

The waiver of either Party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

Section 7.07. Applicable Law

This Agreement shall be interpreted under the laws of the State of Oregon.

Section 7.08. Legal Fees

If either Party commences legal proceedings, including arbitration or mediation, for any relief against the other Party arising out of or related to this Agreement, or the breach thereof, the losing party shall pay the prevailing party's legal costs and expenses, including, but not limited to, arbitration costs, reasonable attorneys' fees and expert witness fees as determined by the court or the arbitrator, at the trial level or on any appeal.

Section 7.09. Time of Essence

Time is expressly declared to be of the essence in this Agreement.

Section 7.10. Notices

All notices, demands, consents, approvals and other communications which are required or desired to be given by either Party to the other hereunder shall be in writing and shall be faxed, hand delivered, or sent by overnight courier or United States mail at its address set forth below, or at such other address as such Party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered, three (3) days after mailing by United States Mail, or upon receipt if sent by fax or courier.

To City: City of Wilsonville
 Attn: Michael Bowers
 Community Development Director
 29799 SW Town Center Loop East
 Wilsonville OR 97070

With a copy to: City of Wilsonville
 Attn: Michael E. Kohlhoff
 City Attorney
 29799 SW Town Center Loop East
 Wilsonville OR 97070

To Applicant: Fred Meyer, Inc.
Attn: Don Forrest
Site Acquisition Manager
3800 SE 22nd Ave
Portland OR 97202

With a copy to: Fred Meyer, Inc.
Attn: Ian Ford
Corporate Counsel
3800 SE 22nd Ave
Portland OR 97202

With a copy to: Perkins Coie LLP
Attn: Mark D. Whitlow
1120 NW Couch St
Tenth Floor
Portland OR 97209

Section 7.11. Rights Cumulative

All rights, remedies, powers and privileges conferred under this Agreement on the Parties shall be cumulative of and in addition to, but not restrictive or in lieu of, those conferred by law.

Section 7.12. Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

Section 7.13. No Third Party Beneficiaries

None of the duties and obligations of any Party under this Agreement shall in any way or in any manner be deemed to create any rights in any person or entity other than the Parties hereto.

Section 7.14. Dispute Resolution

(A) Mediation. All disputes arising out of this Agreement shall first be submitted to mediation. Either Party desiring mediation shall provide the other Party with a written notice (the "Request to Mediate") which shall set forth the nature of the dispute. The Parties shall in good faith cooperate in the selection of a mediator and may adopt any procedural format that seems appropriate for the particular dispute. In the event a written settlement agreement is not executed by the Parties, in the Parties'

sole discretion, within twenty (20) days after the date of the Request to Mediate or such longer time frame as may be agreed upon in writing by the Parties, then either Party may make demand for arbitration pursuant to the following paragraph.

(B) Arbitration. Any dispute arising under this Agreement, which is not resolved through mediation, may be submitted by either Party to arbitration conducted in Portland, Oregon, before a single arbitrator selected by mutual agreement of the Parties. The arbitrator shall have substantial experience in commercial real estate and construction disputes. If the parties are unable to mutually select an arbitrator within twenty (20) days, then each Party shall select an arbitrator and the two arbitrators shall select a single arbitrator. The arbitration may either be binding or non-binding, and if it is binding, it shall be governed by the provisions of the Oregon Uniform Arbitration Act (ORS 36.600 to 36.740).

Section 7.15. Termination [STILL SUBJECT TO NEGOTIATION]

(A) By the City. The City shall have no right to unilaterally terminate this Agreement.

(B) By Applicant. Applicant may unilaterally declare this Agreement null and void at any time if, for whatever reason (including, without limitation, the unfavorable resolution of an Appeal), Applicant cannot develop the Property consistent with the Approval, by providing written notice of same to the City. Upon such declaration, neither Party shall have any further obligation under this Agreement, except that the City shall grant Credits to Applicant, if applicable, for any work completed prior to the date of termination, and Applicant shall pay any remaining balance of the Applicant Contribution to the City on the Payment Dates or such other dates as the Parties have negotiated in accordance with Section 6.08. Notwithstanding the requirements of this subsection (B), in the event Applicant terminates this Agreement prior to obtaining any building permits for the Project, the City shall construe the Prepayment as a partial payment of the Applicant Contribution such that the Applicant Contribution shall be reduced by the amount of the Prepayment. If such calculation results in a refund to Applicant (due to Applicant's prior payment of all or a portion of the Applicant Contribution to the City), the City shall pay same within fifteen (15) days after Applicant's declaration of termination. Applicant's termination of the Agreement in accordance with this subsection shall not affect the status of any trips that have vested in accordance with this Agreement.

IN WITNESS WHEREOF, the Parties have set their hands as of the day and year first written above.

FRED MEYER STORES, INC.,

An Ohio corporation

By: _____

Its: _____

Date: _____

CITY OF WILSONVILLE

An Oregon Municipal Corporation

By: Tim Knapp

Tim Knapp

Its: Mayor

Date: 2-25-09