

## 6.4 Environmental Covenant



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Document

WHEN RECORDED RETURN TO  
Fred Meyer Stores, Inc.  
PO Box 42121  
Portland, OR 97242  
Attn VP Acquisition and Development



**Declaration of Restrictive Covenant**  
(Shoreline Parcel - Fred Meyer/Birmingham Steel Property)

**GRANTOR:**

1. **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:**

1. **State of Washington Department of Ecology**

**LEGAL DESCRIPTION:**

1. **Abbreviated Legal Description: Parcel B of City of Seattle Short Subdivision No. 9205813; Portion of Blocks 1 and 2, Ballard Tidelands, and of Block 1, Seattle Tidelands, and of vacated streets adjoining, situated in King County, Washington**
2. **Additional Legal Description is set forth in the body of the document.**

**Assessor's Property Tax Parcel Account Number: a part of 198220-2070-07**

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1997-10-14 09:00 AM KING COUNTY RECORDS 007 PG 14.00

RESTRICTIVE COVENANT

SHORELINE PARCEL - FRED MEYER/BIRMINGHAM STEEL PROPERTY

This Declaration of Restrictive Covenant is made pursuant to RCW 70 105D 030(1)(f) and (g) and WAC 173-340-440 by **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)**, its successors and assigns (hereafter, "Owner"), in favor of the **State of Washington Department of Ecology**, its successors and assigns (hereafter "Ecology") An independent remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Restrictive Covenant. The Remedial Action conducted at the property is described in the following documents:

- 1 Draft Phase I Environmental Audit, Proposed Shoreline Parcel Purchase, Birmingham Steel Property, NW 42nd St at Burns Ave NW, Seattle, Washington Prepared by Environmental Associates, Inc for J G Ferguson Agency August 11, 1998
- 2 Limited Substance Sampling and Testing Proposed Shoreline Parcel Purchase Birmingham Steel Property, Seattle, Washington Prepared by Environmental Associates, Inc for J G Ferguson Agency August 12, 1998
- 3 Proposal Contaminated Soil Removal/Limited Confirmation Testing, Shoreline Parcel 9th Avenue Northwest at Northwest 42nd Street, Seattle, Washington Prepared by Environmental Associates, Inc For J.G Ferguson Agency September 14, 1998
- 4 Proposal Supplemental Subsurface Sampling and Testing Proposed Shoreline Acquisition, Birmingham Steel Site-Ballard, 9th Avenue Northwest at Northwest 42nd

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Street, Seattle, Washington Prepared by Environmental Associates, Inc for J G  
Ferguson Agency, September 23, 1998

5. Supplemental Subsurface Sampling and Testing Proposed Shoreline Parcel Purchase,  
Birmingham Steel Property, Northwest 42nd Street at Burns Avenue Northwest  
Seattle, Washington Prepared by Environmental Associates, Inc. for J G Ferguson  
Agency, December 2, 1998

These documents are on file at Ecology's Northwest Regional Office (NWRO)

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations of diesel - and oil-range petroleum hydrocarbons and chromium which exceed the Model Toxics Control Act Method A Industrial cleanup level for soils established under WAC 173-340-745

The undersigned, 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), is the fee owner of real property (hereafter "Property") in the County of King Stat of Washington, that is subject to this Restrictive Covenant. The Property is legally described as follows

**That portion of Blocks 1 and 2, Ballard Tidelands and of Block 1, Seattle Tidelands and of vacated streets adjoining, as described as follows:**

**Beginning at the Southeast Corner of Lot 2, Block 1, Seattle Tidelands:**

**Thence North 88°54'14" West, 223.42 feet to the Southwest corner of said Lot 2;**

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Thence North 42°20'45" West, 540.17 feet; Thence North 29°52'39" East, 41.87 feet;  
Thence North 32°06'43" West 68.19 feet; Thence North 01°13'47" East, 209.75 feet;  
Thence South 88°45'48" East, 29.20 feet; Thence South 45°18'18" East, 322.57 feet;  
Thence North 69°22'41" East, 160.42 feet; Thence South 20°41'22" East, 132.38 feet;  
Thence North 88°43'49" West, 12.98 feet to the East line of Block 1, Ballard  
Tidelands; Thence South 20°40'09" East, 441.12 feet to the point of beginning  
**SITUATED IN KING COUNTY WASHINGTON.**

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), makes the following declaration as to limitations, restrictions and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner")

Section 1

1 The Property shall be used only for traditional industrial uses, as described in RCW 70 105D 020(23) and defined in and allowed under the City of Seattle's zoning regulations codified in Chapter 23 50 of the Seattle Municipal Code as of the date of this Restrictive Covenant.

2 No groundwater may be taken for domestic or any other uses from the Property

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3 A portion of the soil inside the warehouse and adjacent to the southern side of the building, on the Property, contains TPH (Total Petroleum Products) in the form of diesel and heavy soils, and chromium. The owner shall not alter, modify or remove the existing structures in any manner that may result in the release or exposure to the environment of that contaminated soil or create a new exposure pathway without prior written approval from Ecology.

Section 2 Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited

Section 3 Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology

Section 4. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action

Section 5 The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the uses of the Property

Section 6 The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve

any inconsistent use only after public notice and comment

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action, to take samples, to inspect remedial actions conducted at the Property, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the  
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Property or be of any further force or effect However, such an instrument may recorded only  
if Ecology, after public notice and opportunity for comment, concurs

OWNER **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 pursuant to a recorded Limited Power of Attorney**

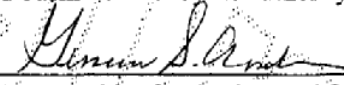
By   
Name: James C Aalberg  
Title: Vice President and Treasurer

**ACKNOWLEDGMENT**

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STATE OF OREGON )  
 ) ss.  
County of Multnomah )

On this 15<sup>th</sup> day of January, 1999, before me, the undersigned Notary Public of the  
State of Oregon, duly commissioned and sworn, personally appeared JAMES C AALBERG  
to me personally known to me (or proved to me on the basis of satisfactory evidence) to be the  
person who executed the written instrument as the VICE PRESIDENT AND TREASURER  
of **FRED MEYER, INC., a Delaware corporation, of and on behalf of such corporation, as  
attorney-in-fact for and on behalf of WILMINGTON TRUST COMPANY, a Delaware  
corporation, on behalf of such corporation, not in its individual capacity, but solely as Owner  
Trustee under the FMS Trust 1997-1, Delaware business trust, on behalf of such business  
trust, and did acknowledge to me that such corporation executed the same as attorney-in-fact  
for and on behalf of such corporation and business trust by its authority duly given**

  
Notary Public for the State of Oregon  
Residing at Portland Oregon

(C:\DATA\WP\PADS\UNFERGUSON\COVENANT.WPD)

