

Received
Planning Division
04/13/2021

WHEN RECORDED RETURN TO:

Steel River LP
900 SW Fifth Avenue, Suite 2600
Portland, Oregon 97204-1268
Attention: David W. Green

STATE OF OREGON
County of Washington
I, Jerry Peterson, Director of Assessment and Taxation, County Clerk for Washington County, certify that the within and foregoing was received and recorded in the office of said county.



Doc : 99011282.2
Rect: 224976 .101.00
01/29/1999 11:53:45am

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AMENDMENT #1 TO DECLARATION OF COVENANTS, CONDITIONS
RESTRICTIONS AND EASEMENTS
(Beaverton, Oregon)

by

METROPOLITAN LIFE INSURANCE COMPANY

and

FRED MEYER STORES, INC.

Recorded By
First American Title Insurance Company of Oregon
No. 831172

Concerning properties located at or immediately adjacent to
Beaverton Town Square and Beaverton Fred Meyer Retail Development
in
Beaverton, Oregon

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PDXIA-159241.7 4990-2360

January 14, 1999

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AMENDMENT #1 TO DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
(Beaverton, Oregon)

This AMENDMENT #1 TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (the "Amendment") is made this 25th day of January, 1999, by METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation ("MetLife"), and FRED MEYER STORES, INC., a Delaware corporation (formerly known as Fred Meyer, Inc.) ("Fred Meyer").

MetLife is the fee owner of certain real property described on the attached Exhibit 1. The property includes various parcels created or to be created from the real property.

The real property presently owned by MetLife includes, *inter alia*, the following: (i) the property commonly known as the Beaverton Fred Meyer retail development (the "Fred Meyer Store Parcel"), and (ii) the property developed as the Beaverton Town Square (the "Town Square"). The legal descriptions of such Fred Meyer Store Parcel and Town Square are contained in the Declaration referenced below, to which reference is hereby made.

As used in this Amendment, the term "Parcel" means the following: (i) the Burger King Property (as defined in the Declaration referenced below) after it has been modified in accordance with a Redevelopment and Access Site Plan approved by MetLife and Fred Meyer; (ii) the Town Square; and (iii) the Fred Meyer Store Parcel (and the BeavHills Parcel) to be created therefrom, as described below). As used below, the "Development" means all of the Parcels, collectively.

Subject to Fred Meyer's satisfying certain conditions, Fred Meyer is creating a new Parcel from a portion of the parking area on the Fred Meyer Store Parcel located near SW Beaverton Hilldale Highway and near to the Beaverton Town Square (the "BeavHills Parcel"), which Fred Meyer intends to acquire from MetLife, the legal description of which is attached as Exhibit 2.

MetLife and Fred Meyer have entered into a Declaration of Covenants, Conditions, Restrictions and Easements on the Development, recorded on December 23, 1998 as Instrument Fee No. 98144252, Official Records of Washington County, Oregon (the "Declaration"), which is incorporated herein by this reference. The parties are entering into this Amendment in order to document their agreement on certain understandings concerning the Development and Declaration and to amend the Declaration in certain respects.

NOW, THEREFORE, FOR VALUE RECEIVED, each of the parties, for itself and all heirs, successors and assigns of such party, agrees to amend the Declaration as follows:

1. **Definitions.** All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Declaration.

2. **Parking, Re-Striping and Related Issues.**

2.1 **Parking and Restriping.** The parties calculate that there are approximately 490 parking spaces presently located on the Town Square. MetLife has approved a conceptual restriping

plan (shown on Exhibit 2, attached hereto and incorporated herein by this reference) to re-stripe the parking spaces on the Town Square in order to bring the Town Square into compliance with the City of Beaverton code regarding parking provided on such Parcel. Fred Meyer covenants and agrees to cause this plan to be submitted to the City of Beaverton for approval, and upon such approval to cause the Town Square to be restriped in substantial accordance with such plan (subject to such changes in such plan as may be required by the City of Beaverton, which will not require further approval from MetLife so long as the changes are required by the City of Beaverton and do not result in there being less parking spaces on the Town Square than are required by the City of Beaverton code).

2.2 Certain Declaration Requirements for Parking on Town Square and any Parcel Created from the Town Square. Any references in the Declaration for the need for the Owner of the Town Square to maintain 603 parking spaces, or to avoid reducing the number of parking spaces below 603 parking spaces, or to avoid reducing the number of parking spaces on the Town Square below the number presently existing, are hereby replaced with the following requirement: "the Owner of the Town Square shall maintain on such Parcel sufficient parking spaces to meet the needs of the employees, customers and invitees of Owner and its tenants, and to satisfy requirements of applicable parking codes and regulations (without regard to or inclusion of the nonexclusive Common Area parking rights under the Declaration)." Subsection 15.26.1(f) of the Declaration is hereby deleted and replaced with the following: "(f) the number of parking spaces on the Town Square is not reduced below the minimum number needed to satisfy requirements of any applicable parking codes and regulations (without regard to or inclusion of the nonexclusive Common Area parking rights under the Declaration)."

2.3 Temporary Easement and Restriction on BeavHills Parcel until Re-striping is Completed. Until the re-striping is completed in substantial accordance with the plan attached as Exhibit 2 (subject to any changes made in accordance with paragraph 2.1), there shall be no commencement of construction of any new building improvements on the BeavHills Parcel. The Owner of the Town Square and its Permitted Persons, shall have a temporary easement and a right of use, for parking purposes, of the BeavHills Parcel until the re-striping of the Town Square is so completed. Such parking easement and rights of use will include, without limitation, the access to and from and use of the BeavHills Parcel for parking purposes by the customers, employees and business invitees of the Owner of the Town Square, and its tenants, in connection with the operation of business at the Town Square. At such time as the re-striping is completed in accordance with this Amendment, then the temporary easement and right of use of the BeavHills Parcel will automatically cease and terminate.

2.4 Performance of Re-striping. This Amendment is being recorded in connection with a platting of the property referenced in this Amendment and in anticipation of, and before, the recordation of a conveyance of fee title to the Town Square and BeavHills Parcel by MetLife to Fred Meyer and Fred Meyer, in turn, intends to convey the fee title to Anita M. McGill, the holder of the lessee's interest in the existing ground lease on the Town Square (or other person acceptable to Fred Meyer, in the event Anita M. McGill fails for any reason to acquire such Parcels). Alternately, Fred Meyer, Anita M. McGill and MetLife may agree that MetLife will convey such fee title to the Town Square and BeavHills Parcel directly to Anita M. McGill. Fred Meyer covenants to MetLife that Fred Meyer will obtain the covenant and agreement by Anita M. McGill or any other purchaser from Fred Meyer of the fee title of the Town Square to re-stripe the Town Square in accordance with this Amendment.

3. **Correction of Description used in 1986 Conveyancing as Attached to Declaration.** The legal description of the property conveyed to MetLife as used in the conveyance of the Parcels to MetLife in 1986 is as set forth on Exhibit 4 to this Amendment, which corrects and replaces an incomplete legal description of such property as contained in Exhibit 1 of the recorded Declaration. Notwithstanding such description on Exhibit 4, the current legal description of the property owned by MetLife after recordation of the Partition Plat No. 1998-162, is as set forth on the attached Exhibit 1.

4. **Descriptions of Town Square in 1986 Conveyance and Presently.** The legal description as used in the conveyance of Parcels to MetLife in 1986 (attached as Exhibit 1 of the Declaration) included or may have included some land area previously dedicated to the City of Beaverton, and which the parties again dedicated to the City of Beaverton in 1994. Notwithstanding such description on Exhibit 1 of the Declaration, the current legal description of the Town Square, after recordation of the Partition Plat No. 1998-162, is as follows:

Parcel 2 of the Partition Plat No. 1998-162 dated May 15, 1998 and recorded December 22, 1998 as Instrument No. 98144246, Official Records of Washington County, Oregon, which Partition Plat is a replat of a portion of Lots 72 and 73, STEEL'S ADDITION TO BEAVERTON, and lands located in the William Lockerman Donation Land Claim No. 45, within the Northwest quarter Section 15, Township 1 South, Range 1 West, of the Willamette Meridian, in the City of Beaverton, Washington County, Oregon.

5. **Dating of Declaration (Page 1).** Page one of the Declaration contains a blank space for the date on which the Declaration was made. The parties hereby amend page one of the Declaration to state that the Declaration is hereby dated and made as of the date of its recordation, which was December 22, 1998.

6. **Additional Town Square Provisions.** With respect to the Town Square (only), the following supplements and amends certain provisions of the Declaration: (a) the restriction in Section 4.1, second paragraph, subsection (f) will not restrict sales of antique, collector or good quality reconditioned retail merchandise in the Town Square; (b) in Section 15.26.1 (line 11), the reference to Section 15.26.4 is amended to refer to Section 15.26.7; (iii) the provisions of Section 15.26 of the Declaration shall be for the benefit of and binding upon the Town Square effective as of the date that fee title to the Town Square may be conveyed to Anita M. McGill, and will be binding on all successors and assigns thereafter (notwithstanding the termination, by merger or otherwise, of the existing Ground Lease of the Town Square); and (d) Section 15.26.7 of the Declaration does not require any change to, or approval of Declarant as to, the existing location of improvements on the Town Square.

7. **Common Access Maintenance (Section 12).** The term "Dollar Maintenance Fee" in Section 12 of the Declaration (and as used in any other section of the Declaration) is modified to be a "Drive Lane Maintenance Fee." The initial amount of such Drive Lane Maintenance Fee is FIVE (5) CENTS (\$.05) per square foot in an Owner's Parcel. However, such Drive Lane Maintenance Fee will not apply to the Town Square.

8. **Notices (Section 15.09).** The facsimile number for Declarant in Section 15.09 is modified to: (650) 349-4615. The copy of any notice to Fred Meyer, Inc. in Section 15.09 shall be sent to the address shown with a copy to the Attention of: Senior Vice President, Corporate Development Group.

9. Building Envelope for Parcel 3 (Exhibit 2). Exhibit 2 of the Declaration did not show the Building Envelope for Parcel 3. Such Building Envelope shall be the "Maximum Building Envelope shown on the attached Exhibit 5.

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

METLIFE:

METROPOLITAN LIFE INSURANCE COMPANY,
a New York corporation

By: Edward J. Kaye 1/15/99
Its: Assistant Vice President

STATE OF CALIFORNIA

ss.

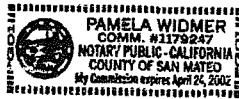
County of San Mateo

On this 20th day of January, 1999, before me, Pamela Widmer [Notary's name], a Notary Public of said state, personally appeared Edward J. Kaye personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

[SEAL]

Pamela Widmer
Notary Public for California



FRED MEYER:

FRED MEYER STORES, INC., a Delaware corporation

By: Scott L. Wipfel
Name/Title: Scott L. Wipfel, Sr. V.P.

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me this 25th day of November 1999 by Scott Wipfel, the Vice President of FRED MEYER STORES, INC., a Delaware corporation, on behalf of the corporation.

Marilyn K. Goode
Notary Public for Oregon
My commission expires: August 26, 2002

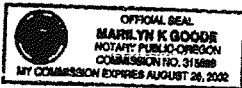


EXHIBIT 1

Legal Description of Parcels that are Fee Owned by MetLife

See attached.

EXHIBIT I

Real Property Description

The land referred to herein is situated in the County of Washington, State of Oregon, and is more particularly described as follows:

Parcels 1, 2 and 3 of the Partition Plat No. 1998-162 dated May 15, 1998 and recorded on December 22, 1998 as Instrument No. 98144246, Official Records of Washington County, Oregon, which Partition Plat is a replat of a portion of Lots 72 and 73, STEEL'S ADDITION TO BEAVERTON, and lands located in the William Lockerman Donation Land Claim No. 45, within the Northwest quarter of Section 15, Township 1 South, Range 1 West, of the Willamette Meridian, in the City of Beaverton, Washington County, Oregon.

EXHIBIT 2

Legal Description of BeavHills Parcel

The land referred to herein is situated in the County of Washington, State of Oregon, and is more particularly described as follows:

Parcel 3 of the Partition Plat No. 1998-162 dated May 15, 1998 and recorded on December 22, 1998 as Instrument No. 98144246, Official Records of Washington County, Oregon, which Partition Plat is a replat of a portion of Lots 72 and 73, STEEL'S ADDITION TO BEAVERTON, and lands located in the William Lockerman Donation Land Claim No. 45, within the Northwest quarter of Section 15, Township 1 South, Range 1 West, of the Willamette Meridian, in the City of Beaverton, Washington County, Oregon.

EXHIBIT A

Re-Striping Plan for the Town Square

KJD Architecture, P.C.

Project No. 98050

Plot Date: January 22, 1999

Site Drawing Sheet 1, as previously mutually approved by the parties.

**Beaverton, OR - Legal Description
PDX14-153224.7 49500-2380**

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EXHIBIT 4

Complete Legal Description of Parcels as used in the conveyance to MetLife in 1986

See attached.

Beaverton, OR - Legal Description
PDX1A-153224.7 4900-2360

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The land referred to is described as

PARCEL I:

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

Commencing at a 5/8 inch iron rod set at the Southwest corner of the William Lockerman Donation Land Claim as shown in County Survey No. 6984; thence along the centerline of S.W. Lombard Avenue, North $0^{\circ} 40' 08''$ West, 203.64 feet; thence South $81^{\circ} 39' 05''$ East, 221.40 feet to the intersection of the Northerly right-of-way (40.00 feet from centerline) of S.W. Beaverton Hilldale Highway and the Easterly line of that certain tract of land described in Deed to Beatrice A. Hoaglin as Parcel III, recorded in Book 722, page 362 on February 14, 1969, Washington County Deed Records, said point being the point of beginning of the tract herein to be described; thence along the Easterly line of said Hoaglin Tract, North $8^{\circ} 20' 55''$ East, 190.12 feet to an iron pipe at the Northeasterly corner

thereof; thence along the Northerly line of said Hoaglin Tract the following bearings and distances:

North 81° 30' 52" West, 59.99 feet, North 7° 36' 05" East, 1.26 feet, South 89° 14' 36" West, 120.46 feet to the East line of S.W. Lombard Avenue (30.00 feet from centerline); thence along said East line, North 0° 40' 08" West, 149.10 feet to the South line of that certain tract of land described in Deed to Kelley Realty, Inc., recorded in Book 617, page 475 on May 14, 1959, Washington County Deed Records; thence along the South line of said Kelley Realty Tract, North 89° 14' 55" East, 116.10 feet to the Southeast corner thereof; thence along the Easterly line of said Kelley Realty Tract, North 2° 12' 31" West, 25.07 feet to an angle point; thence continuing along said Easterly line, North 11° 11' 10" West, 45.05 feet to the Southwesterly corner of that certain tract of land described in Deed to James Douglas Cameron, recorded in Book 1074, page 364, on March 19, 1976, Washington County Deed Records; thence along the Southerly line of said Cameron Tract, North 57° 36' 15" East, 74.99 feet to the Southeastly corner thereof; thence along Easterly line of said Cameron Tract, North 24° 47' 49" West, 88.79 feet to a set 5/8 inch iron rod; thence North 57° 33' 45" East, a distance of 182.01 feet to a point of curvature; thence continuing along said Southerly line on the arc of a 148.61 foot radius curve to the right, through a central angle of 31° 11' 25" an arc distance of 80.90 feet (the chord bears North 73° 09' 28" East, 79.90 feet) to a point of tangency; thence continuing along said Southerly line, North 88° 45' 10" East, 138.15 feet to a point of curvature; thence continuing along said Southerly line on the arc of a 235.00 foot radius curve to the left, through a central angle of 82° 16' 33", an arc distance of 337.46 feet to the Southerly line of S.W. Canyon Road; thence along said Southerly line, North 64° 40' 33" East, 93.88 feet to the Northwest corner of that certain tract of land described in Deed to Fred Meyer Properties, Inc., recorded under Film No. 80003624 on January 31, 1980, Washington County, Deed Records; thence along the West line of said Fred Meyer Tract, South 1° 01' 56" East, 1001.76 feet to the Northerly line of the S.W. Beaverton-Hillsdale Highway; thence along said Northerly line on the arc of a 1722.95 foot radius curve to the right, through a central angle of 2° 59' 30" an arc distance of 89.96 feet (the chord bears North 85° 15' 32" West, 89.95 feet) to a point opposite Engineers Centerline Station L3 138+05.71 P.C.S.; thence continuing along said Northerly line on the arc of a spiral whose chord bears North 82° 21' 09" West, 128.52 feet to a point opposite Engineers Centerline Station L3 139+35.71 P.T.; thence continuing along said Northerly line, North 81° 39' 05" West, 424.11 feet to the point of beginning.

PARCEL II:

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

Beginning at a 5/8 inch iron rod with an aluminum cap, said iron rod being North 84.82 feet and East 892.65 feet from the Southwest corner of the William Lockerman D.L.C. No. 45, said iron rod also being the point of change from spiral to a 1,722.95 foot radius circular curve to the right on the North right of way line at Engineer's centerline Station 136+74.12 on the Beaverton-Hillsdale Highway; thence continuing easterly along the arc of said circular curve 38.51 feet (chord equals 38.51 feet and chord bearing equals North 87° 53' 28" West); thence North 1° 08' 22" West, 1002.39 feet to the South right of way line of S.W. Canyon Road; thence North 64° 40' 33" East, 46.17 feet; thence North 70° 40' 16" East, 224.49 feet to a point marking the point of a cusp of a 50.00 foot radius curve, said point being the most Northerly Northwest corner of that tract of land described in CF 1927, Washington County Deed Records and County Survey No. 13710, Washington County Survey Records; thence Southwesterly along the arc of said curve to a found 5/8 inch iron rod at the point of tangency, the long chord bears South 13° 29' 53" West, 52.01 feet; thence South 17° 54' 39" East, 78.14 feet to a found 5/8 inch iron rod marking the most Southerly Southwest corner of said tract of land; thence North 89° 05' 15" East, 154.13 feet to a found 5/8 inch iron rod marking the Southeast corner of said tract of land; thence North 0° 51' 31" West coincident with the Easterly boundary of said tract of land, 67.945 feet to a found 5/8 inch iron rod; thence North 89° 04' 22" East, 324.84 feet to a found 5/8 inch iron rod on the West line of a 50 foot ingress and egress easement to Shell Oil, and others recorded in Book 929, and page 561 of Washington County Deed Records; thence North 0° 52' 36" West, 220.43 feet to a found 5/8 inch iron rod on the Southerly right of way line of Canyon Road; thence continuing along said right of way, North 70° 40' 16" East, 55.55 feet to a 5/8 inch iron rod marking the Northeast corner of that tract of land described in Book 929, page 561, Washington County Deed Records; thence along the boundaries of said tract as follows:

South 00° 56' 44" East, 286.96 feet to a 5/8 inch iron rod, North 89° 06' 24" East, 142.00 feet to a found 5/8 inch iron rod and North 00° 56' 44" West, 309.51 feet to a found 5/8 inch iron rod with aluminum cap; thence South 53° 41' 06" East, 39.39 feet to a found 5/8 inch iron rod with aluminum cap marking an angle point on the Westerly right of way line of the Beaverton-Tigard Highway at Engineer's centerline Station 174+10; thence coincident with said Westerly right of way as follows:

South 04° 46' 45" East, 286.86 feet to a found 5/8 inch iron rod with aluminum cap marking the point of curve of a 2,231.63 foot radius curve right at Engineer's centerline Station 177+00,

Southwesterly along the arc of said curve right, 584.8 feet to a 5/8 inch iron rod with aluminum cap marking the point of tangency of Engineer's centerline Station 183+00 (the long chord bears South 07° 00' 58" West, 582.51 feet); South 14° 55' 04" West, 224.42 feet to a found 5/8 inch iron rod with aluminum cap at Engineer's centerline Station 185+30.21; South 20° 17' 08" West, 60.81 feet to a found 5/8 inch iron rod with aluminum cap denoted as marking the point of curve of a 459.26 foot radius curve left at Engineer's centerline Station 185+91.04 P.C., and Southwesterly along the arc of said curve left (the chord bears South 12° 40' 42" West, 121.85 feet) to a found 5/8 inch iron rod with aluminum cap at Engineer's centerline Station 187+00, said monument marks the point of intersection of the Westerly right of way line of the Beaverton-Tigard Highway and the Northerly right of way line of the Beaverton-Hillsdale Highway; thence along the Northerly right of way line of the Beaverton-Hillsdale Highway as follows:

South 83° 21' 50" West, 187.50 feet to a found 5/8 inch iron rod with aluminum cap on the West line of Lot 72, STEEL'S ADDITION TO BEAVERTON, 50.00 feet Northerly from the centerline of the Beaverton-Hillsdale Highway; South 89° 43' 38" West parallel with said centerline, 45.49 feet to a found 5/8 inch iron rod with aluminum cap at Engineer's centerline Station, 131+50; South 86° 55' 51" West along said Northerly right of way line, 200.25 feet to a point at right angles from and 48.00 feet Northerly of said highway centerline at Engineer's centerline Station 133+50; South 89° 47' 36" West parallel with said highway centerline, 194.12 feet to a point of spiral curve right at Engineer's centerline Station 135+44.12, said spiral curve defined at highway centerline as 130.00 feet in length of arc, an "A" value of 2.5 and a central angle of 2° 06' 42" along the arc of said spiral curve right (the long chord bears North 89° 30' 24" West, 128.52 feet) to a found 5/8 inch iron rod with aluminum cap marking the point of beginning.

PARCEL III:

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

Beginning at an iron pipe at the intersection of the West line of said Lot 72 of the said STEEL'S ADDITION and the Southerly boundary of the 80 foot wide new Canyon Road Highway and running thence South 0° 52' East along the West line of said Lot 72, a distance of 138.83 feet to an iron pipe; thence North 89° 08' East, 135.0 feet to an iron pipe; thence North 0° 52' West, 183.87 feet to an iron pipe on the South boundary of the said Canyon Road Highway; thence along said highway boundary South 70° 42' West, 142.31 feet to the place of beginning, all situated in the County of Washington, State of Oregon.

EXHIBIT 5

Building Envelope for Parcel 3

See attached.

Deerwain, OH - Legal Description
PDX1A-133224.7 4990-2360

