

**2015-001788****Klamath County, Oregon****02/27/2015 11:19:25 AM****Fee: \$67.00**

RECORDING REQUESTED BY  
AND WHEN RECORDED  
RETURN TO  
Fred Meyer Stores, Inc.  
Attention: TEG 4002/33R  
P.O. Box 42121  
Portland, OR 97242

SUPPLEMENT #3 TO RECIPROCAL  
EASEMENT AND RESTRICTION AGREEMENT  
(Klamath Falls, Oregon)

DATE: Jan. 13, 2015

PARTIES: OREGON BEVERAGE RECYCLING COOPERATIVE, "Adjacent Owner"  
an Oregon cooperative corporation  
3900 NW Yeon  
Portland, Oregon 97210  
Attn: John Andersen

AND: FRED MEYER STORES, INC., "Fred Meyer"  
an Ohio corporation  
P.O. Box 42121  
Portland, Oregon 97242-0121  
Attention: Group Vice President, Real Estate & Store Development

RECITALS:

Adjacent Owner is the owner of the real property described on Exhibit A hereto ("Adjacent Owner's Property"). Fred Meyer, successor in interest to LXPII, L.P., a Delaware limited partnership, is the owner of the real property described on Exhibit B hereto ("Fred Meyer's Property"). Fred Meyer previously entered into a Reciprocal Easement Agreement and Declaration dated February 24, 1993, which was recorded on March 15, 1993 in Volume M93 at page 5282, Official Records of Klamath County, Oregon ("REA"). A Supplement to Reciprocal Easement Agreement and Declaration dated January 22, 1997, amending and supplementing said REA, was entered into by Fred Meyer, LXPII, L.P. (the ground lessor of the Fred Meyer's Property), and the purchaser/owner of an adjoining parcel that had been developed by Taco Bell Corp. or its affiliates (the "TBLD Outparcel"), and was recorded on January 31, 1997 in Volume M97 at page 3079, Official Records ("Supplement"). A Supplement #2 to Reciprocal Easement Agreement and Declaration dated \_\_\_\_\_, 2000, amending and supplementing said REA, was entered into by Fred Meyer, LXPII, L.P., and Adjacent Owner's predecessor in title, Edwin N. Lippert, a Trustee of THE LIPPERT FAMILY REVOCABLE LIVING TRUST, and was recorded on October 2, 2000 in Volume M00 at page 36065, Official Records ("Supplement #2"). The parties to this agreement intend to reaffirm and further supplement the terms of the REA, Supplement and Supplement #2, with respect to the easements, rights and restrictions pertaining to Adjacent Owner's Property and Fred Meyer's Property (without affecting the TBLD Outparcel). Such easements shall be appurtenant to and shall benefit all of the property described in Exhibits A and B. Adjacent Owner and Fred Meyer, and their respective successors and assigns, are sometimes referred to herein as "Owners" for purposes of this

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Agreement, and Adjacent Owner's Property and Fred Meyer's Property are sometimes referred to herein as the "Parcels."

The parties therefore agree as follows.

1. AMENDMENT. Section 2 of Supplement #2 is hereby replaced in its entirety by the following:

"2. RESTRICTIONS ON USE OF PROPERTY. In consideration of the grant of easements herein, Adjacent Owner agrees to restrict the use of the Adjacent Owner's Property as set forth below. Any lease or occupancy agreement subsequently entered into with respect to Adjacent Owner's Property will require that the tenant's use (and any changes to the original use by the tenant) must comply with applicable laws and recorded easements and restrictions affecting the property (including this Agreement). In acquiring the Adjacent Owner's Property, the Adjacent Owner, and its successors and assigns, shall automatically be deemed to acknowledge that the restrictions set forth in this Agreement are an essential part of the particular transaction covering the Adjacent Owner's Property and, further, that the restrictions set forth in this Agreement are fair and reasonable to assure all Owners of Parcels of their expected benefits and the orderly and beneficial development of the Development and the Parcels.

a. General. The Adjacent Owner's Property shall not in any event be leased, subleased, operated or otherwise used for: (i) the display, distribution or sale of any "adult" books, "adult" films, "adult" periodicals or "adult" entertainment; (ii) the establishment or maintenance of a massage parlor, gambling operation, "adult" theater, "adult" bookstore, "sex" shop, "peep show" or bawdy house or brothel, or any use in violation of applicable zoning and other governmental laws and regulations; (iii) any distilling, refining, smelting, agricultural, animal raising or boarding (other than consumer pet shops), or mining operation; (iv) any primary use as a warehousing, assembling, manufacturing, waste processing or other industrial operation except as set forth in Section 2c(2) below; or (v) any motor vehicle, truck, trailer, recreational vehicle or boat sales, leasing, storage or display.

b. Additional Restrictions. Adjacent Owner's Property shall in no event be leased, subleased, operated or otherwise used for: (i) any jewelry store; (ii) any supermarket (which for purposes of this Agreement means any store, department or area within a store, containing at least 5,000 square feet of gross floor area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption); (iii) any bakery or delicatessen; (iv) the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption; or (v) the sale to the general public of any pharmaceutical products requiring the services of a registered pharmacist.

c. For purposes of this Agreement: (1) the term delicatessen shall not include a "sandwich shop" (which, for purposes of this Agreement, shall mean a store used primarily for the sale of sandwiches prepared at the store, such as a Subway store, a Blimpie store, a Quizno's store and the like) or a "take n' bake pizza shop" (which, for purposes of this Agreement, shall mean a store used primarily for the sale of pizzas for off-premises baking, such as a Papa Murphy's store, a Figaro's store, and the like); and (2) Adjacent Owner shall be permitted to build, own and operate a redemption center included in an order of the Oregon Liquor Control Commission ("OLCC") approving a redemption center under ORS 459A.735, to be used for the recycling and processing of empty beverage containers and related materials, including cans and bottles (both glass and plastic)("Beverage Containers"), as defined in Section 459A.700(2) of the Oregon Bottle Bill (ORS 459A.700-459A.740), as it may be amended (the "Bottle Bill")."

2. DEVELOPMENT OF ADJACENT OWNER'S PROPERTY. Fred Meyer has reviewed Adjacent Owner's development plan for a redemption center on Adjacent Owner's Property as described

in Section 1 of this Supplement #3 and hereby approves such development plans. Further Fred Meyer waives and releases all rights of review and approval set forth in Section 3 of Supplement #2 as they relate to a redemption center on the Adjacent Owner's Property. Any change in the redemption center improvements or exterior signs on the Adjacent Owner's Property shall require the approval of Fred Meyer as set forth in Section 3 of Supplement #2, which consent shall not be unreasonably withheld, conditioned or delayed.

3. MISCELLANEOUS. This Supplement #3 may be executed in one or more counterparts, all of which shall be considered one and the same amendment and shall be effective when one or more counterparts have been signed and delivered by all parties hereto. This Supplement #3 amends the REA, Supplement and Supplement #2 to the extent set forth herein. To the extent not amended herein or elsewhere by the appropriate parties, the REA, Supplement and Supplement #2 shall remain in full force and effect.

ADJACENT OWNER:

OREGON BEVERAGE  
RECYCLING COOPERATIVE

By: [Signature]  
Name: John Andersen, President

FRED MEYER:

FRED MEYER STORES, INC.  
an Ohio corporation

By: [Signature]  
Name: Robert Currey-Watson  
Title: V. P.

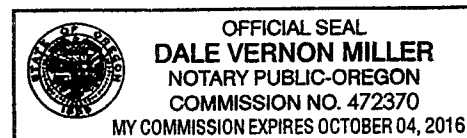
STATE OF OREGON

County of Multnomah

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This instrument was acknowledged before me this 22nd day of January, 2015 by John Andersen, President of OREGON BEVERAGE RECYCLING COOPERATIVE, an Oregon cooperative corporation, on behalf of the corporation.

[Signature]  
Notary Public for Oregon



STATE OF OREGON

County of Multnomah

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This instrument was acknowledged before me this 13<sup>th</sup> day of January, 2015 by Robert Currey-Wilson as the V.P. of FRED MEYER STORES, INC., an Ohio corporation, on behalf of the corporation.



Kelly M Stepetic  
Notary Public for Oregon

## EXHIBIT A

### Legal Description of Adjacent Owner's Property

A Parcel of land located in the Southwest one-quarter of Section 34, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Commencing at a brass cap marking the Southwest corner of Section 34 and running North 00°28'30" West 168.83 feet; thence North 89°31'30" East 55.00 feet to a point on the easterly right-of-way line of Washburn Way; thence North 00°28'30" West 1194.44 feet to the point of intersection of the easterly right-of-way line of Washburn Way and the southerly right-of-way line of Eberlein Avenue and the Point of Beginning; thence running along the southerly right-of-way line of Eberlein Avenue, North 89°16'27" East 588.17 feet; thence, leaving said right-of-way, South 00°28'07" East 252.96 feet; thence South 89°31'53" West 588.13 feet to the easterly right-of-way line of Washburn Way; thence along said right-of-way line, North 00°28'30" West 250.32 feet to the Point of Beginning.

## EXHIBIT B

### Legal Description of Fred Meyer's Property

A Parcel of land located in the Southwest one-quarter of Section 34, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Commencing at a brass cap marking the Southwest corner of Section 34 and running North  $00^{\circ}28'30''$  West 168.83 feet; thence North  $89^{\circ}31'30''$  East 55.00 feet to a point on the easterly right-of-way line of Washburn Way and the Point of Beginning; running thence, along said right-of-way line, North  $00^{\circ}28'30''$  West 944.12 feet; thence leaving said right-of-way, North  $89^{\circ}31'53''$  East 588.13 feet; thence South  $00^{\circ}28'07''$  East 1101.80 feet to the northerly right-of-way line of Shasta Way; thence along said right-of-way South  $89^{\circ}52'25''$  West 77.96 feet; thence North  $87^{\circ}15'50''$  West 300.37 feet; thence South  $89^{\circ}52'25''$  West 7.13 feet; thence leaving said right-of-way, North  $00^{\circ}28'7''$  West 159.15 feet; thence South  $89^{\circ}31'53''$  West 172.03 feet; thence 38.10 feet along a 35.00 foot radius curve left, the long chord of which bears South  $58^{\circ}20'54''$  West 36.24 feet to the Point of Beginning.