

**After recordation return to:**

Fred Meyer Stores, Inc.  
Attn: Corporate Law Dept. 04002-23C  
3800 SE 22<sup>nd</sup> Avenue  
Portland, OR 97202

**DECLARATION OF RECIPROCAL  
EASEMENT AGREEMENT**

THIS DECLARATION OF RECIPROCAL EASEMENT AGREEMENT ("**Agreement**") is made this 23<sup>rd</sup> day of September, 2004, by and between METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation ("**MetLife**") and FRED MEYER STORES, INC., an Ohio corporation ("**Fred Meyer**").

**RECITALS**

A. MetLife is the owner of real property in Marion County, Oregon, which is more particularly described on the attached **Exhibit A** ("**MetLife Property**").

B. Fred Meyer is the owner of real property in Marion County, which is more particularly described on the attached **Exhibit B** ("**Fred Meyer Property**")

C. MetLife and Fred Meyer may be referred to herein as a "**Party**" or the "**Parties**," or Grantor or Grantors. The MetLife Property and the Fred Meyer Property may be referred to herein as a "**Property**" or the "**Properties**".

D. The Parties desire to enter into an agreement to create a reciprocal access and parking easement for the mutual benefit of the Parties and their Properties.

Now, therefore, in consideration of the mutual agreements of the Parties set forth in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

**AGREEMENTS**

1. **ACCESS AND PARKING EASEMENT.** Each Party will have a nonexclusive reciprocal ingress and egress easement and right of way to use the shared parking, access, ingress and egress routes serving the Properties ("**Easement Area**") as marked on the drawing attached as **Exhibit C** (the "Easement Area"). The Easement Area is located on a portion of the Fred Meyer Property and on Tract III (as described in **Exhibit A**) of the MetLife Property. The Easement Area is not located on and does not burden Tract I, II, or IV of the MetLife Property (as described in **Exhibit A**). As shown on **Exhibit C**, the Easement Area is divided into "Easement Area A" and "Easement Area B." Notwithstanding the foregoing, no

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employees of business(es) operated on the Fred Meyer Property will park in Easement Area A and no employees of businesses operated on the MetLife Property will park in Easement Area B.

2. **NO BARRIERS.** No fences, walls or barriers to access will be erected on the common boundary lines between the Properties that would unreasonably interfere with the access between the Properties that constitute the Easement Area or the use of the Easement Area for ingress, egress or parking, without all Parties' prior consent.

3. **RIGHTS OF USE OF ACCESSWAYS.** Each Party, its tenants, and the agents, employees, customers and invitees of such Parties, shall have the nonexclusive right to use the Easement Area for purposes of access to and from the Properties owned or operated by the respective Parties and parking thereon. With respect to the accessways located on the Property owned or leased by a Party to this Agreement, the Party will be free to construct, maintain, improve, repair and replace utility lines over, under or across such accessways, to change from time to time the location of accessways (including the Easement Area) on its own Property, and to engage in other uses of such accessways that are compatible with their use for ingress, egress and parking, provided that any such actions do not unreasonably interfere with or impair the Parties' right of use of the Easement Area for ingress, egress and parking for the respective Properties nor reduce the number of parking stalls on such property below the base number prior to making such improvements. The base number of parking stalls on Easement Area A is 37. The base number of parking stalls on Easement Area B is 88. In no event shall any owner of the Fred Meyer Property or Tract III of the Met Life Property reduce the number of parking stalls on Easement Area A or Easement Area B to a number less than the base number described in the preceding sentences.

4. **RELOCATION.** Any Improvement, right-of-way, driveway, and/or related facility located upon a Property may be relocated by the owner of the Property, provided such relocation (i) shall not materially interfere with or diminish ingress or egress between the Properties; (ii) shall not materially reduce or unreasonably impair the usefulness or function of such easement; (iii) shall be performed without cost or expense to the other Property; and (iv) shall not be in violation of any applicable ordinances, laws, regulations, or building codes.

5. **MAINTENANCE AND UPKEEP COMMON ACCESS EASEMENTS.** Fred Meyer (or the owner of the Fred Meyer Property) shall maintain and repair Easement Area B, whether located on the MetLife Property or Fred Meyer Property. MetLife, or its assign, shall maintain and repair Easement Area A. Such maintenance and repair shall include (i) reasonable snow, ice and debris removal; (ii) maintenance of all parking surfaces and driveways providing ingress to and from public roadways and between the Properties in a smooth condition, free of pot holes and obstructions unrelated to the use of the Property, using materials of an equal or greater quality as were originally used when installed; (iii) restriping the accessways and parking lot as may be reasonably necessary to maintain clearly visible traffic lanes and parking areas, including altering the number of parking stalls provided that the number shall not be less than the base number established in Section 3; and (iv) maintenance of any other improvements such as landscaping and sidewalks.

6. **TERM.** This Agreement shall be perpetual (except as provided below) and shall run with the land and shall be binding on and shall inure to the benefit of the Parties hereto, their heirs, successors or assigns. The easement granted to MetLife herein shall benefit each (and separately) of the tracts that comprise the MetLife Property (specifically including Tract II) and shall burden the Fred Meyer Property. The easement granted to Fred Meyer herein shall benefit the Fred Meyer Property and shall burden the MetLife Property (but only to the extent applicable to each of the Tracts that constitute the MetLife Property as described herein).

7. **STATUS OF TITLE.** This Easement is non-exclusive, is made without any warranties of title and is subject to all prior easements and encumbrances of record, and each Grantor reserves the right to grant to others easement rights in the Easement Areas of their respective properties, provided that such future easement rights shall not substantially interfere with the easement rights granted hereunder.

8. **PROTECTION OF RIGHTS OF MORTGAGEES.** No breach of the provisions in this Agreement shall defeat or render invalid the lien of any mortgage(s) or deed(s) of trust now or hereunder executed which affects the Parties' respective interests pursuant to this Agreement; provided, however, that upon any sale under foreclosure of any mortgage(s) or under the provisions of any deed(s) of trust, any purchaser at such sale, and its successors and assigns, shall hold any and all property interest so purchased subject to all of the provisions of this Agreement.

9. **GENERAL PROVISIONS.**

9. 1. **Waiver.** Failure at any time to require performance of any provision of this Agreement shall not limit a Party's right to enforce the provision. Any waiver of any breach of any provision shall not be a waiver of any succeeding breach or a waiver of any provision of this Agreement.

9. 2. **Attorneys' Fees.** In the event suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing Party shall be entitled to recover from the other Party such sum as the court may adjudge reasonable as attorneys' fees at trial, on appeal of such suit or action, and on any petition for review, in addition to all other sums provided by law.

9. 3. **Indemnity.** Each Party shall defend, indemnify and hold the other harmless from any claim, loss, liability or expense (including reasonable attorneys' fees) arising out of or in connection with the Party's own negligence or failure to comply with the terms, restrictions and provisions of this Agreement.

9. 4. **Entire Agreement.** This Agreement supersedes and replaces all written and oral agreements previously made or existing between MetLife and Fred Meyer with respect to the matters set forth above.

9. 5. **Governing Law.** This Agreement will be governed and construed in accordance with the laws of the State of Oregon.

9. 6. **Status Certificate, Information.** Within twenty (20) days after receipt of a written request, a Party shall promptly deliver a written status certificate to the other Party stating (i) whether this Agreement is unmodified and in full force and effect, and (ii) whether (to the best of the Party's knowledge) the other Party is in compliance with its obligations hereunder, and any other matters that may be reasonably requested.

9. 7. **Amendments.** Except as otherwise set forth herein, this Agreement may not be modified, amended, or terminated except by the written agreement of both Parties. A Party may waive one or more of its rights under this Agreement in writing signed by the Party, and such writing need not be recorded. Otherwise, no modification or amendment of any provision of this Agreement shall be binding unless signed by both Parties and recorded in the real property records of the County in which the Development is located.

9. 8. **Effect of Invalidation.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the validity of the remaining provisions of this Agreement shall not be affected thereby.

10. **JOINDER BY FRED MEYER.** The following is made by Fred Meyer with respect to Fred Meyer's interest as a Tenant in the MetLife Property and is given for the benefit of MetLife. Fred Meyer Stores, Inc., an Ohio corporation, is the Tenant (as successor in interest to Fred Meyer Stores, Inc., a Delaware corporation and Fred Meyer, Inc., a Delaware corporation) under that certain Lease Agreement with Landlord's predecessor in interest (Fred Meyer Real Estate Properties Ltd., as original landlord under the restated lease) November 25, 1986, as subsequently amended, the Landlord's interest in which Lease Agreement was assigned to Metropolitan Life Insurance Company, a New York corporation ("**Landlord**"), by that Assignment of Rights and Leases dated November 25, 1986 and recorded December 9, 1986 as Reel 508 page 248 in the Official Records of Marion County, Oregon (as assigned and amended, the "**Lease**"). Fred Meyer hereby consents to and joins in the Agreement and agrees that its right, title and interest as Tenant in and to the MetLife Property shall be subject to this Agreement, and that such easements granted and received in this Agreement shall be for all purposes treated as if they were existing easements affecting the MetLife Property as of the original date of such Lease, with respect to which the undersigned is obligated by the terms of the Lease to comply with, observe and perform its terms and any obligations imposed thereunder on the fee owner. For the benefit of MetLife, Fred Meyer agrees and confirms that MetLife shall have no obligation whatsoever to enforce the maintenance obligations with respect to Easement Area B, as described in Section 5 above, of Fred Meyer (as owner of the Fred Meyer Property) or any successor owner of the Fred Meyer Property.

11. **LIMITATION ON METLIFE LIABILITY AND OBLIGATIONS.** Fred Meyer (as the owner of the Fred Meyer Property and any successor owner) agrees that so long as Fred Meyer, Inc., or any other party that obtains a leasehold interest from Fred Meyer, Inc. (or any predecessor or successor-in-interest to Fred Meyer, Inc., by any means, including merger or operation of law) is a lessee of the MetLife Property, MetLife shall have no liability of any kind whatsoever under this Agreement, including but not limited to (a) the performance of the maintenance obligations with respect to Easement Area A, as described in Section 5 above, and (b) the employee parking restrictions as described in Section 1 above.

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

METLIFE:

By: Joel R. Redmon

Printed Name: Joel R. Redmon

Its: Director

FRED MEYER:

By: Robert Currey-Wilson

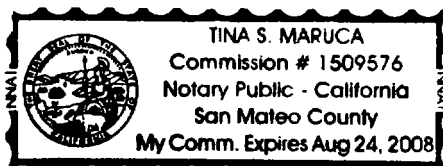
Printed Name: ROBERT CURREY-WILSON

Its: Vice President

State of California )  
 ) ss.  
County of San Mateo )

On September 23, 2004 before me, Tina S. Maruca, a notary public in and for said State, personally appeared Joel R. Redmon, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their 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]

Signature Tina S. Maruca

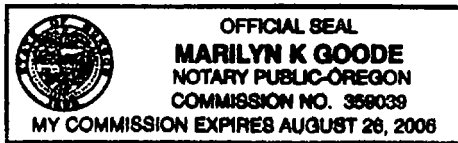
Notary Public for the State of California

My Commission Expires: Aug 24, 2008

Residing at: 400 S. El Camino Real #800  
San Mateo, CA 94402

State of Oregon           )  
  ) ss.  
County of Multnomah

This instrument was acknowledged before me on Sept. 14, 2004 by Robert Currey Wilson  
as Vice President of FRED MEYER STORES, INC.



Marilyn K. Goode  
(Notary Public - State of Oregon)  
My commission expires: Aug 26, 2006

## **EXHIBIT A**

### **MetLife Property (Owned by MetLife)**

#### **TRACT I:**

That tract of land situated in Lots 7, 8, 11, 12 and 14 of Smith's Fruit Farms, Southwest quarter of the Northeast quarter of Section 3, Township 8 South, Range 3 West of the Willamette Meridian, Marion County, Oregon, which is more particularly described as follows:

Beginning at a two-inch iron pipe marking the initial corner of Willa Acres as recorded in Volume 15, Page 39, Marion County Book of Town Plats and running thence from this the true point of beginning; South 89° 45' West 135.04 feet; thence South 0° 15' East 105.00 feet; thence Southwesterly 100 feet, more or less, to a point on the Easterly right of way line of U.S. 99 East, which bears Southeasterly 170.00 feet from the intersection of said Easterly Highway right of way line and the Northerly boundary line of that tract of land conveyed to R.R. and N.A. Ritchie by deed recorded in Volume 279, Page 201; thence Southeasterly along said Easterly highway right of way line 622 feet, more or less, to the Northerly right of way line of Relocated Madrona Avenue, more particularly described in deed to the City of Salem, recorded in Volume 656, Page 83, Deed Records for Marion County, Oregon; thence Easterly along said relocated Northerly right of way line as described in said City of Salem deed to a point on the Southerly extension of the Easterly boundary line of said Ritchie Tract; thence North 0° 37' East 680 feet, more or less, along said Easterly boundary line of said Ritchie tract described in Volume 279, Page 201, to a Five-eighths inch iron rod with an aluminum cap on the Southerly boundary line of the tract of land conveyed to R.R. and N.A. Ritchie by deed recorded in Volume 468, Page 14, Marion County Record of Deeds; thence North 89° 45' East 25.00 feet along said Southerly boundary line of said Ritchie tract described in Volume 468, Page 14, to a five eighths inch iron rod with an aluminum cap marking the Southeasterly corner of same; thence North 0° 25' 30" East 165.00 feet along the Easterly boundary line of said Ritchie tract described in Volume 468, Page 14; thence South 89° 45' West 522.79 feet, more or less, to the Westerly boundary line of that tract of land conveyed to R.R. and N.A. Ritchie by deed recorded in Volume 224, Page 174, Marion County Record of Deeds; said Westerly boundary line being also the Easterly boundary line of Willa Acres; thence South 0° 09' East 165.00 feet along said Easterly subdivision boundary line to the point of beginning.

#### **TRACT IV**

The North 30.00 feet of the South 195.00 feet of Lot Eight (8), Smith Fruit Farms, Marion County, Oregon, and the North 30.00 feet of the South 195.00 feet of the West 190.00 feet of Lot Seven (7), Smith Fruit Farms, Marion County, Oregon.

#### **TRACT III     (parking area located South of Madrona Avenue)**

Beginning at a point on the South line of Lot 14, SMITH'S FRUIT FARMS in Township 8 South, Range 3 West of the Willamette Meridian in Marion County, Oregon, said point being South 89° 38' 13" West 207.34 feet from the Southeast corner of said Lot; thence South 89° 38' 13" West along the South line of said Lot, 178.78 feet; thence North 0° 21' 47" West 23.00 feet; thence South 89° 38' 13" West 15.47 feet; thence North 11° 12' 47" West 272.52 feet to a point on the Southerly right of way line of relocated Madrona Avenue; thence Easterly along said right of way line as follows: Along the arc of a 1175.92 foot radius curve to the left (the chord of which bears North 76° 57' 57" East 125.04 feet), a distance of 125.10 feet to an iron pipe marking a point of tangent and North 73° 55' 05" East 29.64 feet to an iron pipe marking a point of curve, and along the arc of a 1115.92 foot radius curve to the right (the chord of which bears North 74° 43' 54" East 31.69 feet), a distance of 31.69 feet; thence South 11° 16' 10" East, leaving said right of way line, 340.50 feet to the place of beginning.

TRACT II (currently occupied by Burger King and parking – located South of Madrona)  
Beginning at a point on the South line of Lot 14, Smith's Fruit Farms in Township 8 South, Range 3 West of the Willamette Meridian in Marion County, Oregon, said point being South 89°38'13" West 386.12 feet from the Southeast corner of said Lot; thence South 89°38'13" West along the South line of said Lot, 173.00 feet to an iron pipe on the Easterly right of way of U.S. Highway 99E; thence Northerly along said right of way line on the arc of a 5779.58 foot radius curve to the left (the chord of which bears North 25°48'54" West 57.2 feet) a distance of 57.20 feet to the Southwesterly corner of a tract of land conveyed to Robert W. and Dorothy A. Delk by deed recorded in Volume 666, Page 275, Deed Records for Marion County, Oregon; thence North 89°38'15" East along the South line of said tract, 60.00 feet to an iron rod marking the Southeasterly corner thereof; thence North 21°33'23" East along the Easterly line of said Delk Tract, 147.23 feet to an iron rod marking an angle corner in said Easterly line; thence North 0°26'12" East continuing along the Easterly line of Delk tract, 100.16 feet to an iron pipe on the Southerly right of way line of relocated Madrona Avenue; thence Easterly along said Southerly right of way line on the arc of a 1175.92 foot radius curve to the left (the chord of which bears North 80°22'10" East 14.62 feet), a distance of 14.62 feet; thence South 11°12'47" East 272.62 feet; thence North 89°38'13" East 15.47 feet; thence South 0°21'47" East 23.00 feet to the point of beginning.



## **EXHIBIT B**

### **Fred Meyer Property**

Real property in the County of Marion, State of Oregon, described as follows:

#### **PARCEL I:**

Beginning on the East line of Lot 15, SMITH'S FRUIT FARMS in Township 8 South, Range 3 West of the Willamette Meridian in Marion County, Oregon, at a point which is 372.08 feet North from the Southeast corner of said Lot; thence North along the East line of said Lot, 249.64 feet to the Northeast corner of said Lot; thence West 150.00 feet along the North line of said Lot; thence South 10° 12' East 248.95 feet to the North line of a tract of land conveyed by deed recorded in Volume 336, Page 17, of the Marion County Deed Records, at a point which is 115.00 feet North 88° 30' West from the Northeast corner thereof; thence South 88° 30' East 115.00 feet to the place of beginning.

TOGETHER WITH the following described easement for roadway purposes which is appurtenant to the above property. Beginning at a point 150 feet West of the Northeast corner of Lot 15, SMITH'S FRUIT FARMS, Marion County, Oregon; thence South 10° 12' East 15 feet; thence West parallel with the North line of Lot 15 to the East line of the South Commercial Street; thence North along the East line of South Commercial St. to the Northwest corner of said Lot 15; thence East along the North line of Lot 15 to the place of beginning. Said easement to continue in term so long as there is no improved public street adjacent to the abutting on the property herein sold.

#### **PARCEL II:**

Beginning at a found ½" iron pipe marking the Southeast corner of Lot 14, SMITH'S FRUIT FARMS, in Marion County, Oregon; thence South 89° 38' 13" West coincident with a portion of the Southerly boundary line of said Lot 14, 207.34 feet to a 5/8" iron rod; thence North 11° 17' 05" West 340.50 feet to a 5/8" iron rod placed on the Southerly right-of-way line of relocated Madrona Avenue; thence Northeasterly along the said Southerly right-of-way line defined by a 1115.92 foot radius curve concave to the Southeast, (the chord bears North 82° 41' 35" East 278.96 feet) to a 1 ½" iron pipe, marking the intersection of said Southerly right-of-way line with the Easterly boundary line of a aforementioned Lot 14; thence South 00° 25' 48" West coincident with a portion of said Easterly boundary line, 367.96 feet to the point of beginning.

**REEL:2480**

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**May 20, 2005, 11:18 am.**

CONTROL #: 141056

State of Oregon  
County of Marion

I hereby certify that the attached  
instrument was received and duly  
recorded by me in Marion County  
records:

FEE: \$ 66.00

BILL BURGESS  
COUNTY CLERK

THIS IS NOT AN INVOICE.