

5167709 AGR

RecFee - \$82.00 Pages: 11 - BOCC
Clark County, WA 04/29/2015 09:16

When Recorded, Return to:

5170404 AGR

RecFee - \$87.00 Pages: 16 - STACEY A SHIELDS
Clark County, WA 05/07/2015 11:04

Randall B. Printz
Landerholm, Memovich, Lansverk
& Whitesides, P.S.
P.O. Box 1086
Vancouver, WA 98666-1086

ABOVE SPACE RESERVED FOR RECORDING INFORMATION

RE-RECORD TO CORRECT PARCEL # AND ATTACH LEGALS
CONCOMITANT REZONE AGREEMENT

Grantors: Thomas F. Meyer and Jean L. Meyer, husband and wife; T&J Meyer, LLC, a Washington Limited Liability Company; Meyer Clan, LLC, a Washington Limited Liability Company; HAG, LLC, a Washington Limited Liability Company; and T&S Family Properties LLC, a Washington Limited Liability Company.

Grantee: Clark County, Washington, a political subdivision of the State of Washington

Assessor's Property Tax Serial Numbers: 185796-000; 185700-000; ~~186672-000~~
185726-000; and 185727-000.

185672-
000

An Agreement and Covenant to Clark County, a Municipal corporation and political subdivision of the State of Washington (hereinafter "County"), from Thomas F. & Jean L. Meyer, T & J Meyer, LLC, Meyer Clan, LLC, HAG, LLC and T&S Family Properties, LLC (hereinafter "Applicant's").

Applicants are owners of certain individual parcels of real property located in Clark County, legally described in Exhibit "A" (the "Properties") which Applicants wish to rezone. Applicants covenant to the County that if the Properties are rezoned from their current Light Industrial (ML) zoning/Light Industrial (ML) comprehensive plan designation and Residential (R-18) zoning/Urban Medium (UM) comprehensive plan designation to general Commercial (GC) zoning/General Commercial (GC) comprehensive plan designation, that the Properties will be used only in accordance with this Covenant and subject to the conditions herein described.

Applicants herein covenant and agree on behalf of themselves and all of their heirs, assigns and successors in interest into whose ownership the Properties might pass, as follows, it being specifically agreed that this is a covenant which touches, concerns, enhances, benefits and runs with the Properties of the Applicants:

1. **Title.** Applicants are the sole and exclusive owners of the Properties situated in Clark County, Washington, legally described in Exhibit "A" attached hereto; and identified by individual parcel in the signature blocks below.

2. **Conditions.** In conjunction with the County's rezone of the Properties as described above, the Properties shall be subject to the following conditions:

- a. Development or re-development of the Properties shall not result in any one retailer occupying more than 100,000 Sq .ft. of building space on the ground floor area of the Properties.
- b. Prior to a building permit being issued for any portion of the Properties, the following mitigation measures must be in place; provided, however, that the terms of this Concomitant Rezone Agreement shall not prevent or limit mitigation measures that may be required by Clark County as part of the development review process:
 - A west bound right turn lane on NE 139th Street at NE 10th Avenue with an overlap phase.
 - Modify the southbound NE 10th Avenue approach to NE 139th Street to provide either: (1) a second southbound left turn lane; or (2) a shared through-left center lane (converted from the existing through only lane) and split phasing with the northbound approach.
 - Modify the southbound NE 23rd Avenue approach to NE 134th Street to provide either: (1) a shared left-right lane (converted from the existing left only lane) with the existing exclusive right turn lane; or (2) an overlap phase for the existing right turn lane.
 - Install a traffic control device at the site access to 10th Avenue, opposite NE 141st Street: either a traffic signal or a roundabout.
 - Modify the northbound NE 10th Avenue between NE 139th Street and the site access to include turn lane(s) for the entire street segment

3. **Remedies.** This Covenant may be enforced by the County in any or all of the following ways at its option:

- a. By the County's refusal to issue any building permits and/or occupancy permits if any of the conditions in Section 2 are violated by the Applicants, or any of their successors in interest, or by the revocation of any such permits for the failure of Applicant, or its successors to observe any of the provisions of this Agreement, but said revocation may only occur after a hearing by the Board of County Commissioners, or the County Land Use Hearings Examiner for which ten (10) days notice by publication in a paper of general circulation has been given to the Applicants and to affected parties by registered mail, return receipt requested and/or certified mail.

- b. By bringing suit in any court of competent jurisdiction for monetary damages to cover the expected cost of the County's performance of any and all obligations covenanted herein and which are to be performed by the County, or its direction, on behalf of any obligor,
 - c. For injunction to cause specific performance of this Agreement, or for other appropriate relief as may be deemed desirable by County;
4. **Binding.** This Covenant shall remain in full force and effect until amended, modified or terminated by the action of Applicants and Clark County in zoning proceedings appropriate for that purpose. The County reserves authority to impose new or different regulations to the extent required by a serious threat to public health and safety.
 5. **Recording.** This Agreement shall be recorded with the Clark County Auditor so as to appear as a covenant within the chain of title for the Properties.
 6. **Severability.** This Agreement is expressly made and entered into under the authority of RCW 36.70B.170. Should any court of competent jurisdictions find any provision of this Agreement to be invalid under RCW 36.70B or otherwise, the remainder of this Agreement shall remain in full force and effect.
 7. **Successors.** This Agreement and all of its provisions, and each of them, shall be binding upon Applicant, and any and all of its heirs, assigns and successors in interest into whose respective ownership the Properties may pass, and any obligation made herein by Applicant shall be enforceable against all of their heirs, assigns and successors of interest into whose ownership real property may pass, and all of them.

- 8. Annexation. Incorporation, Successors and Assigns.** Subject to the terms hereof, the provisions of this Agreement shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns. This Agreement shall be recorded with the real property records of Clark County. This Agreement is binding on the parties hereto, their successors, and assigns, including the city, town, or municipality that assumes jurisdiction through incorporation or annexation of the area covering the Properties by this Agreement. The terms of this Agreement shall be binding on all successors, assigns or future parties in interest, including, but not limited to, and through future annexation or incorporation of area in which the development exists.
- 9. Applicable law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Jurisdiction over and venue of any suit arising out of or related to this Agreement, shall be exclusively in the state and federal courts of Clark County, Washington. In the event of any apparent conflicts between the provisions of the County Code or ordinances and this Agreement, this Agreement shall prevail.
- 10. Entire Agreement.** This Agreement contains the entire Agreement between the parties with respect to this matter. It may not be modified except in a writing signed by the party against whom enforcement of the modification is sought.
- 11. Waiver.** The waiver by a party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by that party. No waiver shall be valid unless in writing and signed by the party against whom enforcement of the waiver is sought.
- 12. Notice.** All correspondence and any notice required in this Agreement shall be delivered to the following parties:

If to County: Clark County Community Planning
Attn: Long Range Planning Director
1300 Franklin St.,
Vancouver, WA 98660

If to Property Owners: Michael A. Jenkins
MAJ Development Corporation
300 West 15th Street
Vancouver, Wa. 98660

With copy to holders of record title to
the properties as identified on the County
GIS system

Whenever possible a copy of the notice will be sent to the parties to be notified by electronic mail on the date the notice is given. Notice may also be given by personal service on the party to be notified; by commercial overnight courier; or by U.S. mail, postage prepaid. In the event that notice is given by personal service or by commercial courier, notice will be deemed to have been given upon the date that notice is actually delivered to the party to be notified. In the case of notice provided by U.S. Mail, notice will be deemed to have been given three days following the deposit of the notice in a United States mailbox.

13. Effective Date. The Effective Date of this Agreement shall be the date of the last signature required for this agreement to be enforceable.

14. Execution. The following representatives of the parties are authorized to, and do hereby, execute on behalf of the party so indicated.

DATED this 21st day of April, 2015

CLARK COUNTY:

By: _____

ATTEST

Rebecca J. Hester
Clerk to the Board

APPROVED AS TO FORM ONLY:

Anthony F. Golik
Clark County Prosecuting Attorney

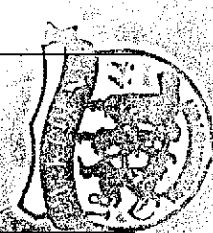
Christine Cook
By Chris Cook
Sr. Deputy Prosecuting Attorney

BOARD OF COUNTY COUNCILORS
FOR CLARK COUNTY, WASHINGTON

By: David Madore
David Madore, Chair

By: _____
Tom Mielke, Councilor

By: _____
Jeanne Stewart, Councilor



APPLICANTS:

Property owner for #185796-000

Thomas F. Meyer

Thomas F Meyer

03/31/2015
Date

Jean Meyer

Jean L. Meyer

03/31/2015
Date

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that Thomas Meyer + Jean Meyer signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as ~~the sole member of~~ individuals, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 31st day of march, 2015.



Brandi M. Welter
NOTARY PUBLIC for the State of
Washington, Residing in the County of
Clark
My Commission Expires: 7.17.17

Property owner for #185700-000
T&J Meyer, LLC

By: Thomas F Meyer

03/31/2015
Date

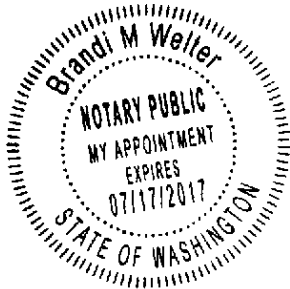
Print name THOMAS F. MEYER

Position MEMBER

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that Thomas Meyer signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the sole member of T & J Meyer, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 31st day of March, 2015.



Brandi M. Weller
NOTARY PUBLIC for the State of
Washington, Residing in the County of
Clark
My Commission Expires: 7-17-17

Property owner for #186672-000
Meyer Clan, LLC 185672-
000

By: Thomas F Meyer

03/31/2015
Date

Print name THOMAS F. MEYER

Position MEMBER

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that Thomas Meyer signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the sole member of Meyer Clan, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 31st day of March, 2015.



Brandi M Welter
NOTARY PUBLIC for the State of
Washington, Residing in the County of
Clark
My Commission Expires: 7.17.17

Property owner for #185726-000
HAG, LLC

By: [Signature]

3/31/2015
Date

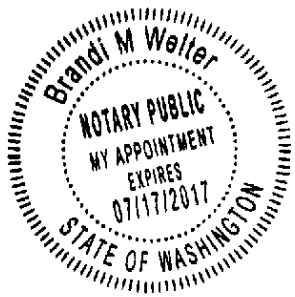
Print name Jan Vis

Position Member

STATE OF WASHINGTON)
County of Clark) ss.
)

I certify that I know or have satisfactory evidence that Jan Vis signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the sole member of HAG, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 31st day of March, 2015.



Brandi M. Walter
NOTARY PUBLIC for the State of
Washington, Residing in the County of
Clark
My Commission Expires: 7-17-17

Property owner for #185727-000
T&S Family Properties, LLC

By: [Signature]

3-27-15
Date

Print name Shelly Sperry / TY DEWITT

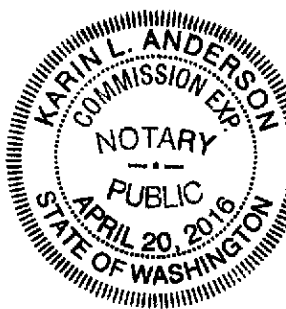
Position Members

STATE OF WASHINGTON)
) ss.

County of Clark)

I certify that I know or have satisfactory evidence that Ty Dewitt & Shelly Spinger signed this instrument, on oath stated that ~~they~~ ^{we} ~~was~~ was authorized to execute this instrument and acknowledged it as the sole member of T & S family prop, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 27 day of March, 2015.



Karin L. Anderson
NOTARY PUBLIC for the State of
Washington, Residing in the County of
Clark
My Commission Expires: April 20, 2016

185726-000

EXHIBIT "A"
SALMON CREEK INTERCHANGE- CRP # 330322
HAG, LLC PARCEL:

A strip of land of variable width lying in the southwest quarter of Section 23, Township 3 North, Range 1 East of the Willamette Meridian in Clark County, Washington, being more particularly described as follows:

All that portion of that parcel described in that Statutory Warranty Deed to Hag, LLC, a Washington limited liability company, recorded December 17, 2002 under Auditor's file # 3558301, records of Clark County, Washington, listed as Serial No. 185726-000, lying westerly of a line 35.00 feet easterly of, when measured at right angles or radial to, the centerline of Northeast 10th Avenue, as described in Exhibit "B", attached, all in Clark County, Washington.

EXHIBIT "B"
NE 10th A VENUE CENTERLINE DESCRIPTION
CRP#330322:

A strip of land of varying width lying in Sections 22, 23, 26, and 27, Township 3 North, Range 1 East of the Willamette Meridian, the centerline of said strip being more particularly described as follows:

Beginning at a point in the center of Northeast 10th Avenue, being designated as Engineer's station 9+99.84, said point bears North 11°37'15" East 1505.66 feet from a brass cap marking the west quarter corner of Section 26, Township 3 North, Range 1 East, Willamette Meridian; thence North 1°35'09" East 490.36 feet to a point of curvature; thence along the arc of a 600.00 foot radius curve left through a central angle of 26°38'35" a distance of 279.01 feet; thence North 25°03'26" West 443.06 feet to a brass cap marking the southeast corner of said Section 22; thence North 1°34'58" East 2637.12 feet to a brass cap marking the east quarter corner of Section 22, Township 3 North, Range 1 East, Willamette Meridian; thence North 1°34'41" East 1330.26 feet to a point on the east line of the northeast quarter of said Section 22, and there terminating, said point bears South 1°34'41" West 1290.26 feet from a brass cap marking the northeast corner of said Section 22, all in Clark County, Washington.

Bearings are based on the east line of the southeast quarter of Section 22, Township 3 North, Range 1 East, WM as being North 1°34'58" East, based on the Washington State Plane Coordinate System, South Zone, NAD83(91) per information provided by WSDOT.

3558301:

Two and one-half (2 1/2) acres, being the North quarter of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 23, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

EXCEPT County Roads.

Legal Description: SECTION: 23 TOWNSHIP: 3 NORTH RANGE: 1 EAST

Assessor's Tax Parcel ID#: 185672-000

BEGINNING at a point that bears South 88°37'15" East 1313.46 feet from the Southwest corner of Section 23, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington, said point being the Southeast corner of the Southwest quarter of the Southwest quarter of said Section 23; thence North 1°36'22" East along the East line of the Southwest quarter of the Southwest quarter of said Section 23 a distance of 30.00 feet; thence North 88°37'15" West 266.73 feet; thence North 1°35'39" East 299.6 feet; thence South 88°37'15" East 357.05 feet to the Westerly right of way line of N.E. 16^h Avenue; thence South 1°15'00" West along said right of way line 103.12 feet; thence continuing Southeasterly along said right of way line South 52°52'18" East 67.90 feet; thence continuing Southerly along said right of way line South 1°15'00" West 186.81 feet to the South line of said Section 23; thence North 88°37'15" West along the South line of said Section 23 a distance of 147.32 feet to the point of beginning.

185796-000

The following described property situated in the Southeast quarter of the Southwest quarter of the Southwest quarter of Section 23, Township 3 North Range I East of the Willamette Meridian, Clark County, Washington, to-wit: Beginning at a point that bears South $88^{\circ}37'15''$ East 656.73 feet and North $1^{\circ}35'39''$ East 30.00 feet from the Southwest corner of Section 23, Township 3 North, Range I East of the Willamette Meridian, Clark County, Washington, said point being on the East line of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 23; thence North $1^{\circ}35'39''$ East along said East line 299.60 feet; thence South $88^{\circ}37'15''$ East 390.00 feet; thence South $1^{\circ}35'39''$ West 299.60 feet to a point that is 30.00 feet North of the South line of said Section 23; thence north $88^{\circ}37'15''$ West 390.00 feet to the point of beginning.

185700-000

That portion of the Southwest quarter of Section 23, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington, described as follows:

BEGINNING at a point 656.33 feet East and 329.6 feet North of the Southwest quarter of said Section; thence North 331.3 feet; thence North 89°47' East, 663.7 feet; thence North 0°45' East, 191.08 feet to the Southwest corner of the tract conveyed to Raymond Meade, et ux, by deed recorded in Volume 586, at Page 065, under Auditor's File No. G 135283; thence South 89°13' East 437.94 feet to the West line of the right-of-way of the New Pacific Highway; thence Southeasterly along the Westerly line of the New Pacific Highway, to a point that bears North 89°49' East from the Point of Beginning; thence South 89°49' West, 1216.6 feet to the Point of Beginning.

EXCEPTING THEREFROM that portion conveyed to Foster Enterprises by Statutory Warranty Deed recorded under Auditor's File No. 9505230228 and described as follows:

That portion of the Southwest quarter of Section 23, Township 3 North, Range 1 East of the Willamette Meridian in Clark County, Washington, described as follows:

BEGINNING at a point 656.33 feet East and 329.6 feet North of the Southwest corner of said Section 23, said point being the Southwest corner of Peter Van Prooyen et al Tract, as described in deed recorded under Auditor's File No. G 522386; thence North along said Van Prooyen West line 331.3 feet; thence North 89°47' East along the North line of said Van Prooyen Tract, 663.7 feet to an interior corner and the True Point of Beginning; thence North along the East line of the Donald Gene Foster and Eldon Ray Foster Tract as described in instrument recorded under Auditor's File No. G 588734 to an intersection with the West line of Primary Highway No. 1; thence Southeasterly along said Westerly line to a point that is North 89°47' East from the True Point of Beginning; thence South 89°47' West to the True Point of Beginning.

EXCEPT any portion lying North of the South line of the tract conveyed to Raymond Meade by Deed recorded in Book 586, Page 065, deed records of said County.

ALSO EXCEPT any portion thereof lying within the right-of-way of Primary State Highway No. 1.

AND EXCEPTING that portion taken in for Highway purposes as recorded in Auditor's File No. G 568793, February 16, 1971 and Superior Court Case 50406, Clark County, Washington.

185727-000

The South 3/4 of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 23, Township 3 North, Range I East of the Willamette Meridian, in Clark County, Washington, EXCEPT Public Roads.

ALSO EXCEPT that portion sold to the State of Washington, Department of Transportation, recorded under Clark County Auditor's File No. 4763611 on May 12, 2011