

FIRST AMERICAN TITLE

44280-1

**Amendment and Clarification of Reciprocal Covenants
and Agreements of Record**

9411150041

This Agreement made by and between the following parties this 14
of November, 1994;

The undersigned **Marlo G. Hollander and Betty J. Hollander**, husband and wife, hereinafter referred to as "Hollander" owns that certain property described as Tracts 1, 2, 3 and 4 of that certain Binding Site Plan No. MV - 3 - 94 - BSP filed October 21, 1994 under Auditor's File No. 9410210076, in Vol. 11 of Short Plats, pages 130, 131 and 132.

The undersigned **Skagit County Title Company**, a Washington corporation doing business as "First American Title of Skagit County", hereinafter referred to as "First American" owns that certain tract which is approximately 230 feet (east and west) by 140 feet (north and south) lying East of Tract 4 of said Binding Site Plan and South of the 40 foot road strip connecting said Tracts in the Binding Site Plan to Riverside Dr. shown thereon, which First American tract has the designation of Parcel "B-2" on said Plan.

Recitals:

Whereas, the respective parties have entered to various agreements of record, have purchased said properties subject to other agreements or covenants and restrictions and declared respectively the said properties to be subject to certain conditions and rights in their respective properties and other properties contiguous to them;

Whereas, those agreements and documents affecting the respective properties are listed below:

1. That certain Construction, Operation and Reciprocal Easement Agreement recorded under Auditor's File No 776418
2. That certain Deed recorded May 1, 1973 under Auditor's File No. 784369.

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3. That certain Option & Common Area Agreement recorded October 16, 1985 under Auditor's file No. 8510160030, the common area portion of said document still having an affect on a portion of said Hollander property.
4. That certain Parking, Utility, Access and Sign Easement Declaration recorded under Auditor's File No. 8605010054, which document was amended by subsequent agreement recorded February 28, 1989 (respecting the sign portion) under Auditor's File No. 8902280049.
5. Declaration of Reciprocal Traffic, Parking and Utility Covenant recorded December 13, 1988 under Auditor's File No. 8812130020
6. That certain Deed from Hollander to First American conveying the Westerly 65 feet of First American's property herein referenced and the specific conveyance or release of the protective covenant setforth in the document referenced in paragraph 5 above as to said 65 feet conveyed in said deed and to include reciprocal parking, access and utility easements in that certain parking lot and road contiguous to the North thereof, which lies directly east of that certain building designated as the United Buy and Sell Furniture Warehouse on said Binding Site Plan No. MV - 3 - 94 - BSP. (Said deed was corrected by document recorded August 5, 1994 under Auditor's File No. 9408050054.
7. That certain Grant of Easement to RBB Properties by instrument dated March 11, 1991 under Auditor's File No. 9104290029, which allows ingress and egress rights over a 40 foot strip along the North edge of Tracts 3 and 4 of said Hollander Binding Site Plan or property.
8. Those certain Leases:
- A. Infavor of Fabric Wholesaler, Inc., memorandum of which is dated July 15, 1991 under Auditor's File No. 9108070064
 - B. Infavor of United Buy & Sell Service, WA, Inc., a Washington corporation dated November 30, 1988, unrecorded, which is for 25 years from completion of agreed improvements, with two (2) five (5) year options of extension, which lease is for the retail sale of furniture and related goods

Whereas, Hollander, by initiating the herein referenced Binding Site Plan has determined to further develop the tracts shown thereon and sell portions or tracts to third parties;

Whereas, the respective parties have entered into certain verbal agreements as to the future management of the reciprocal rights and crossover agreements which exist between the respective parties;

NOW THEREFORE, in connection with the benefits derived therefrom, the respective Declarants hereby covenant and declares as follows:

- A. First American shall share in the maintenance and repair of the 40 foot access road contiguous and North of it's property and said portion lying North of the Parking lot lying between it's property and the said United Buy and Sell Building upon a formula hereinafter setforth.
- B. Hollander does hereby convey all right, title and interest to First American in and to that certain sign located on the Northeast corner of their said property and referenced in that certain document recorded under Auditor's File No. 8902280049, subject to the right of said Hollander to convey the right to future tenants or purchasers to use the area of said sign above the portion granted to First American under said document recorded under Auditor's File No. 8902280049.
 - a) In other words, this conveyance shall not eliminate the right of Hollander or their tenants to use said portion of the sign, as Hollander and their successors and assignees may designate or allow, which is presently unused by First American.
 - b) Such right to use shall be subject to the reimbursement of the proportionate share of the costs of said sign, as setforth in said document recorded under Auditor's file No. 8902280049.
 - c) Any failure to reimburse for legitimate costs related to said sign by third parties, shall result in their signage being removed and all such costs related to removal

and any previous costs or obligations owing to that date maybe by legal action be charged and collected pursuant to the laws of the State of Washington, with reasonable attorney's fees due the prevailing party.

- d) Hollander and future assignees shall be obligated to inform First American and it's successors of future users of said sign. which notice will include the owner of the fee and the tenants having a right to use the sign.
- e) it shali be the obligation of the owner or landlord of the property to reimburse First American and collect the charges, which may be the obligation of any of their respective tenants. In otherwords, it is not the obligation or responsibility of First American to collect such sums from the third party tenants.
- f) At present Hollander certifies that the only tenant having a right to use said shopping center pylon sign is United Buy and Sell, which has been granted to right to use a three (3) foot by ten (10) foot space on both sides. Said right shall remain a continuous permissive right for the present or future owner, or it's tenant of Tract 4, unless lost by default of the said benefited party or the provisions referenced in sub-paragraph h) below.
- g) Any judgment rendered for the unpaid or delinquent costs shall represent specific liens on the respective parties property, who is personally or through their tenant obligated to pay such reimbursement
- h) All provisions of said document as to replacement or reconstruction of said sign based on condemnation or indemnification shall continue to apply to present and future user's of said sign.

D. A similar pylon sign exists on Tract 1 of said Binding Site Plan. The ownership of said sign will be transferred, along with any future sale or transfer of the fee ownership of said Tract 1. Such transfer shall be subject to the present permissive right to the existing signage which exists for the benefit of the present tenant of Tract 4 of said Binding Site Plan. The permissive right shall be transferred

to future owners and/or tenants of Tract 4. All continued rights to utilize shall be subject to the agreed proportional payment or reimbursement of costs related to said sign, on a basis similar stated in document recorded under Auditor's file No. 8902280049.

- E. At present the owners of contiguous property to the North and East of the properties owned by Hoilander and North of First American's property are obligated to share in the maintenance of that certain access road known as "Mall Way", which is the 40 foot strip that represents the most northerly 40 feet of Tract 4 and a portion of Tract 3 as shown on said Binding Site Plan No. MV - 3 - 94 - BSP. Said sharers of cost and the terms of their respective obligations are set forth in documents referenced in Paragraph 2 (A.F.# 784369) and Paragraph 7 (A.F.# 9104290029) above listed. The present owners of the benefited properties are shown on said Binding Site Plan as "Pacific NW Properties" and "RBB Partnership". Hereafter, the agreed share of cost for maintenance for said Mall Way shall be a formula that, after deduction of the agreed amounts to be paid by said other benefited tracts, will be based on the prorata dividing of the respective square footage of Tracts 1, 2, 3, and 4 of said Binding Site Plan into the remaining costs owing. However, with respect to the improvements or maintenance affecting the portion of Mall Way that First American has specific rights to use for ingress, egress and utilities for their respective parking lots and buildings; First American shall share on a similarly based formula of the same prorata dividing of the square footage of it's parcel into the said costs, with the other Tracts of said Binding Site Plan. First American's sharing will, of course, be after deduction of the said other benefited properties obligation to pay, as setforth in the documents referenced above.

F. The sharing of maintenance of the respective parking lots shall be on a similar basis between the respective Tracts 1, 2, 3, and 4 of said Binding Site Plan. The cost will be based on a dividing of said cost by the respective square footage of the respective Tracts into said costs.

G. The determination to improve and maintain shall be based upon a committee made up of the respective owners of said Tracts 1 - 4 of the Binding Site Plan, or their designated representative. As to matters affecting the maintenance of Mall Way in which First American Title would share, First American will be entitled to a vote or share in a determination whether to expend monies. There shall be one vote per tract. A simple majority shall prevail. An owner of more than one tract, shall have a vote for each tract. The present and future benefited parties recognize that the requirement to improve and maintain may, also, be mandated by city ordinance respecting landscaping and public safety. In those excepted cases, the respective parcel owners may vote to oppose such imposed requirements, should they seem to the respective benefited parties as being unreasonable, arbitrary, or contrary to the ordinance or statute under which the imposing governmental authority is acting. The cost shall be shared on the basis of any other maintenance cost set forth herein and the documents referenced herein.

H. With respect to maintenance and improvement, this shall mean the present, existing or installed parking, access and utility emplacements, which serve the existing buildings on the subject properties. In the event that any respective owner of a tract or parcel benefited by said improvements shall remodel, develop or expand the facilities upon their respective parcels, the cost to reconstruct or replace shall be the exclusive cost of the party to such undertaking. Upon completion and acceptance by the City of said improvements, the joint maintenance thereof shall again become subject to the provisions set forth herein.

I. In the previous documents cited herein, various references are made to the Indemnification of Loss between the present and future owners of the respective properties benefited from the

reciprocal rights referenced herein. Whereas the Declarants wish to clarify, simplify and amend all such clauses or references to such indemnification by substitution of the following provision or covenant:

The owner of Tract 4 of the Binding Site Plan has the bulk of Mall Way, a 40 foot private roadway, transversing along it's most Northerly line. The respective benefited properties referenced herein use said roadway for ingress, egress and utility purposes. Each of the present and future owners of said Tract 1-4 shall have in force for themselves an insurance policy or endorsement to their existing policy specifically covering any liability or alleged liability that any third party shall charge, claim or demand in connection with any matter connected to said Mall Way and it's extensions. Said insurance shall cover their individual liability in said matter. The present liability amount for said policy or endorsement shall be a minimum of \$1,000,000.00 for each accident or incident and appropriate allocation for each individual involved and/or property damage. The requirement for said liability amount may be adjusted up, but not down, by simple majority vote of the respective owners of said Tracts 1 through 4. Any reduction of coverage shall require the unanimous vote of all owners. The parties shall pay the cost for their individual insurance coverage. Liability claims of third parties arising out of Mall Way shall be the joint liability of the owners of tracts 1 - 4 in equal shares, to the extent such claims are not based upon the fault of a particular owner or the concurrent fault of less than all of the owners. Also, each party shall be responsible for their individual liability which shall arise for matters occurring within the boundaries of their respective properties. Each shall indemnify and hold harmless the other from that which is determined by judicial review or agreed to by arbitration to be exclusively their own obligation or liability, with the exception of matters that may arise out of the use of Mall Way as stated above. A certificate of insurance, in a form satisfactory to the committee, shall be provided by each property owner on an annual basis. Such insurance may not be cancelled without thirty (30) days notice and the certificate shall so provide. A failure to have such insurance by any party required shall entitle any of the other parties, or their designated agent, to obtain such insurance. The cost for reimbursement

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will be chargeable to the defaulting party, plus any reasonable costs incurred to obtain such insurance.

- J. The face of the Binding Site Plan and other documents of record provide for the possibility of certain future and deferred city required improvements. These improvements may be required of Hollander, resulting from his past and future development within said Binding Site Plan. The required improvements most probably will be a requirement of the issuance of any building permit for improvements on Tract 3. In that regard, Hollander, and his successors in interest, specifically indemnifies all future owners of Tract 4 from such liability agreed to by said referenced existing agreements and provision on the said Binding Site Plan. The liability for such city intended improvements, whether on or off site of said Tract 3, shall reside in said Hollander or any future owner of said Tract 3.
- K. The intent of this document is to clarify the respective documents referenced herein and to add procedures to manage the intent of the respective documents referenced. The primary objective is to provide an environment of joint cooperation to maintain the joint facilities, to protect the respective investments of the present and future owners of the respective properties noted herein, and to provide a basis for future enhancements to these stated facilities that may be determined necessary by the respective benefited parties and the properties listed. Any present or future matter determined unaddressed herein or any modification deemed necessary to accomplish the said objective will be accomplished or agreed to by the benefited parties, by utilization of the committee referred to above in Paragraph G.
- L. Any lien originated by the default in payment of any agreed obligation of any owner (or it's tenant) shall be junior or subordinate to the lien of any mortgage or deed of trust, to any bank, insurance company or other lending institution now or hereafter in force, at the time of the same becomes a lien against the respective premises, and to all advances made or hereafter to be made upon the security held by them. However, should that lender be a previous owner in fee and the lien is for the costs expended during the period of their fee ownership, such lien shall be superior to any subsequent purchase money loan and the security thereof, which is given to a direct and bonafide purchaser from them.

- M. The invalidation of any of the provisions contained herein, or those the remaining and unmodified provisions of other documents referenced herein, by judgment or court order, shall in no way affect any other provisions of this Declaration or said other documents and said other provisions shall remain in effect.
- N. This Declaration and the other referenced documents shall be binding upon and shall inure to the benefit of the respective successors and assigns of the Parties and shall be appurtenant to their respective properties herein described or referenced. In other words, these provisions shall be covenants, easements, benefits, agreements, promises, burdens and duties which are to be construed as running or enforceable against their lands and shall be respectively, servient and dominant tenements as they may respectively apply.
- O. Nothing contained in the Declaration shall be deemed to be a gift or dedication of all or any portion of described properties to the general public, for the general public or for any public use or purpose whatsoever. It is the intention and understanding of the Parties that this Declaration is strictly limited to and for the purposes expressed herein. The respective parties shall have the right to prevent or prohibit the use of the respective properties for any purpose detrimental to the operation of a private retail, office or commercial shopping center.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

Skagit County Title Company,
d.b.a. First American Title of
Skagit County:

Gale A. Hickok
Gale A. Hickok, President

The Hollanders:

Marlo G. Hollander
Marlo G. Hollander
Betty J. Hollander
Betty J. Hollander

STATE OF WASHINGTON, }
County of Whatcom } ss.

On this day personally appeared before me MARLO G. HOLLANDER and BETTY J. HOLLANDER
to me known to be the individuals described in and who executed the within and foregoing instrument, and
acknowledged that they signed the same as their free and voluntary act and deed, for the
uses and purposes therein mentioned.

GIVEN under my hand and official seal this 14th day of November, 1994

ACKNOWLEDGMENT - INDIVIDUAL
FIRST AMERICAN TITLE COMPANY
WA - 46

Karen E. Geleyense
Notary Public in and for the State of Washington,
residing at Bellingham
My appointment expires 1-20-95

RECORDED - FILED
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JERRY McINTURFF
SKAGIT COUNTY AUDITOR

STATE OF WASHINGTON, }
County of Skagit } ss.

On this 15th day of November, 1994, before me, the undersigned,
a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared

Gale A. Hickok President and Trudy J. Crain Secretary, respectively, of
Skagit County Title Co. DBA First American Title & Skagit County
the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary
act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that
authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

ACKNOWLEDGMENT - CORPORATION
FIRST AMERICAN TITLE COMPANY
WA - 48

Trudy J. Crain
Notary Public in and for the State of Washington,
residing at Eden

TRUDY J. CRAIN

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