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KATHY HILL
SKAGIT COUNTY AUDITOR

97, OCT 27 P3 25

Return Address
Roundup Co.
PO Box 42121
Portland, OR 97223
Attn: RLS MO/CFD

9710270137

RECORDED _____ FILED _____
REQUEST OF _____

Please print legibly or type information.

Document title(s) (Or transactions contained therein): 1. Supplemental Agreement 2. 3. 4.	FIRST AMERICAN TITLE CO. 52248-1
Grantor(s) (Last name first, then first name and initials): 1. Roundup Co. 2. 3. 4. 5. <input type="checkbox"/> Additional Names on Page _____ of Document.	
Grantee(s) (Last name first, then first name and initials): 1. No Apples I - Burlington, L.L.C. 2. 3. 4. <input type="checkbox"/> Additional Names on Page _____ of Document.	
Legal Description (Abbreviated: i.e., lot, block, plat; or section, township, range): Section 5, Township 34, Range 4; Portion SW 1/4 - NW 1/4 Legal Description is on Page <u>7</u> of Document.	
Reference Number(s) (Of documents assigned or released): None <input type="checkbox"/> Additional Reference Numbers on Page _____ of Document.	
Assessor's Property Tax Parcel/Account Number R104516	
The Auditor/Recorder will rely on the information provided on this cover sheet. The staff will not read the document to verify the accuracy of completeness of the indexing information provided herein.	

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RECORDING REQUESTED
BY AND WHEN RECORDED
RETURN TO:

ROUNDUP CO.
P.O. Box 42121
Portland, Oregon 97242
Attn: RLS MO/CFD

Supplemental Agreement

Dated: October 27, 1997

Between: **ROUNDUP CO.**
P.O. Box 42121
Portland, Oregon 97242-0121

DECLARANT

AND: **NO APPLES I - BURLINGTON, L.L.C.**
whose address is: 2333 Carillon Point
Kirkland, Washington 98033-7353
Attn: Mr. Brent C. Nicholson

PURCHASER

Declarant is the Declarant under that certain Declaration of Covenants, Conditions, Restrictions and Easements, dated as of July 22, 1993, and recorded in the real estate records of Skagit County, Washington on September 9, 1993 as document number 9309100062, as amended by Amendment No. 1 to Declaration of Covenants, Conditions, Restrictions and Easements, dated as of January 5, 1995, and recorded in the real estate records of Skagit County, Washington on October 16, 1996 as document number 9610160077 (as amended, the "Declaration"). Terms not otherwise defined herein have the meanings ascribed thereto in the Declaration. Purchaser desires to purchase one of the Parcels, known as Lot 3, Fred Meyer Retail Store Binding Site Plan, as described on Exhibit A ("Purchaser's Parcel"). As a condition to such purchase, Purchaser desires to obtain Declarant's agreement regarding certain provisions of the Declaration as applied to Purchaser and Purchaser's Parcel. Declarant agrees as described below.

The parties therefore agree as follows:

1. Modification of Declaration - Mortgagee Notice and Cure Right

With respect to the option rights of Declarant provided in Section 4.2 of the Declaration, as applicable to the Purchaser's Parcel, Declarant agrees as follows:

Purchaser may, at any time, give to Declarant a notice (hereinafter referred to as a "Mortgage Notice") containing the name and address of a bona fide institutional lender (hereinafter referred to as a "Mortgage Lender") to which the Purchaser's Parcel has been or will be mortgaged, encumbered, pledged or assigned as security. Upon written request from Purchaser or the Mortgage Lender identified in a Mortgage Notice, Declarant will acknowledge, in writing, the receipt of a Mortgage Notice which it has received.

Whenever Declarant shall give any notice to Purchaser pursuant to Section 4.2 of the Declaration (or the option provisions incorporated therein), Declarant shall also give to Mortgage Lender a duplicate copy of such notice. The address of the Mortgage Lender shall be the address specified on the Mortgage Notice unless changed by subsequent written notice given by the Mortgage Lender to Declarant. No notice under Section 4.2 of the Declaration shall be effective as to the Mortgage Lender unless it is given to the Mortgage Lender. If at any time a Mortgage Lender shall give to Declarant a written notice that it has released its lien on the estate created hereby or has in fact released its lien, such lender shall cease to be a Mortgage Lender for purposes hereof and no further notices need be given to it, but a new Mortgage Lender may be created by giving of a new Mortgage Notice. There shall not be more than two Mortgage Lenders at any given time with respect to the Purchaser's Parcel. The combined loans shall not exceed 75% of the appraised fair market value. Purchaser shall provide Declarant copies of any appraisals obtained by the Mortgage Lender at the time the Mortgage Notice is provided.

If Declarant gives a Notice of Exercise under Section 4.2 of the Declaration, Declarant shall thereupon give notice to that effect to the Mortgage Lender. Within 30 days of receipt of a Notice of Exercise, a Mortgage Lender may give notice to Declarant that Mortgage Lender intends to acquire the Purchaser's Parcel by foreclosure or otherwise (a "Foreclosure Notice"). The giving of a Foreclosure Notice shall temporarily stay Declarant's exercise of the Option and shall toll all time periods under Section 4.2 and the option provisions incorporated therein, for a period not to exceed 270 days, and only so long as Mortgage Lender is (1) diligently and continuously pursuing acquisition of the Purchaser's Parcel, and (2) thereafter diligently and continuously seeking to operate or obtain tenants or buyers to resume or commence operation of business from 60 percent or more of the gross building area on the Purchaser's Parcel. If the Mortgage Lender succeeds in so causing business operations to commence or resume on the Purchaser's Parcel, the Notice of Exercise shall be deemed rescinded.

2. Modification of Declaration - "Go-Dark" Provisions

2.1 With respect to the option rights of Declarant provided in Section 4.2 (b) of the Declaration, as applicable to the Purchaser's Parcel, Declarant agrees as follows:

(b) Notice of Election to Discontinue Business. In the event operation of business from 40 percent or more of the gross building area of the Improvements on Purchaser's Parcel is to be discontinued for a continuous period of at least 18 months, for any reason other than (i) strikes, lockouts or other labor difficulties, acts of God, the requirement of any local, state, or federal law, rule or regulation, fire or other casualty, condemnation, war, riot, insurrection or any other reason beyond a party's reasonable control ("force majeure" events), or (ii) temporary closure due to the restoration,

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reconstruction, expansion, alteration, modification or remodeling of any improvements located on the Parcel (provided, that the Owner of Purchaser's Parcel is pursuing such work with reasonable diligence, subject to "force majeure" delays), then the Owner of Purchaser's Parcel shall, at least 30 days prior to discontinuing such operations, but not more than six months prior to discontinuing such operations, provide written notice to Declarant that the Owner of Purchaser's Parcel intends to discontinue operations of business from 40 percent or more of the gross building area of the Improvements on the Parcel (the 'Notice of Election'). The Notice of Election will include the anticipated date on which the Owner of Purchaser's Parcel intends to discontinue operation of business.

2.2 With respect to the option rights of Declarant provided in Section 4.2 (d) of the Declaration, as applicable to the Purchaser's Parcel, Declarant agrees as follows:

(d) Discontinuance of Business Without Notice: Option. If the operation of business from 40 percent or more of the gross building area of the Improvements on Purchaser's Parcel is discontinued for a continuous period of more than eighteen months for reasons other than those specified in clauses (i) or (ii) of Section 4.2 (b), but the Owner of Purchaser's Parcel has not delivered a Notice of Election, Declarant shall have an option to purchase Purchaser's Parcel, exercisable by delivering a Notice of Exercise to the Owner of Purchaser's Parcel at any time following the expiration of such eighteen-month period of reduced operations.

3. **Modification of Declaration - Terms of Option.** With respect to the option rights of Declarant provided in Section 4.2(e) of the Declaration, as applicable to the Purchaser's Parcel, Declarant agrees as follows:

(e) **Terms of Option.**

(1) **General.** If Declarant exercises an option granted under this Section 4.2, then, on the date specified in the Notice of Exercise, the Owner of Purchaser's Parcel will sell and convey the Purchaser's Parcel to Declarant pursuant to the terms and provisions as set forth in Exhibit 3 attached to the Declaration.

(2) **Fair Market Value.** The purchase price for the Purchaser's Parcel will be the "fair market value" of Purchaser's Parcel, determined in the following manner. The Notice of Exercise shall include Declarant's estimated fair market value of Purchaser's Parcel. If the Owner of Purchaser's Parcel objects to such value, the Owner of Purchaser's Parcel will notify Declarant in writing no later than twenty days after delivery of the Notice of Exercise; failure to object timely shall be deemed acceptance of the Declarant's determination. If the Owner of Purchaser's Parcel timely objects and the parties cannot agree on the value within forty days after the Notice of Exercise, the matter shall be submitted for resolution in accordance with paragraph (3) below.

(3) **Disputes.** If the Owner of Purchaser's Parcel objects and Declarant and the Owner of Purchaser's Parcel are unable to agree on the fair market value of the Purchaser's Parcel within the time limits specified in paragraph (2) above, the matter shall be submitted for determination by independent real estate appraisers in accordance with this paragraph (3). The

parties shall each select a certified MAI commercial real property appraiser who is familiar with the relevant market. Such selection shall be made in writing by notice to the other party not less than 60 days after the Notice of Exercise. Such appraisers shall each make a determination of the fair market value within thirty (30) days of selection. Unless Declarant and the Owner of Purchaser's Parcel agree to a compromise based on such determinations within 10 days after they are made, the two appraisers shall select a third such appraiser. Selection of such third appraiser shall be made within 100 days after the Notice of Exercise. The third appraiser shall then, within 10 days of selection, determine which of the two fair market values proposed by the original appraisers is the actual fair market value, and the determination of such third appraiser shall bind the parties. Each party shall bear the fees of the appraiser selected by it, and if a third appraiser is required, the fees of such third appraiser shall be shared equally. If a party fails to timely select an appraiser, such party shall have waived its right to participate in the dispute resolution process, and the determination of the appraiser selected by the other party, made in good faith, shall be binding on the parties. The dates set forth in Exhibit 3 regarding closing the option sale will be extended by the number of days that are required to resolve the dispute under this paragraph.

4. **General Provisions.** This Agreement, together with the Declaration and the documents evidencing the purchase and sale of Purchaser's Parcel (the "Purchase Documents"), constitutes the entire agreement of the parties relating to the subject matter hereof. There are no promises, terms, conditions, obligations, or warranties other than those contained in this Agreement or in the Declaration or Purchase Documents. This Agreement supersedes all prior communications, representations, or agreements, verbal or written, among the parties relating to the subject matter hereof. This Agreement may not be amended except in writing executed by the parties. The terms of this Agreement solely affect Purchaser's Parcel. The terms of this Agreement shall not be deemed to modify or affect the Declaration. The terms and conditions of the Declaration remain in full force and effect as respects Purchaser's Parcel. This Agreement is a continuing agreement and shall bind and inure to the benefit of, and be enforceable by, the parties hereto and their respective successors, heirs, and assigns. Purchaser may, at Purchaser's expense, record a memorandum of this Agreement in the form attached hereto, in which case the parties will endorse this Agreement with the recording information. Declarant agrees to execute and acknowledge such memorandum at or following closing of the purchase of Purchaser's Parcel.

EXECUTED as of the date and year first written above.

DECLARANT:

ROUNDUP CO.

By: Scott L. Hays
Title: Vice President
Date Executed: October 16, 1997

PURCHASER:

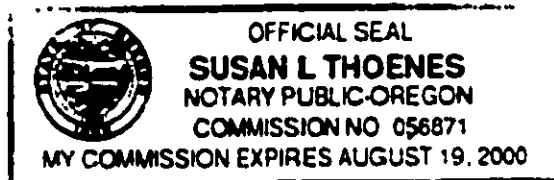
NO APPLES I - BURLINGTON, L.L.C.

By: A. J. Hays
Title: Member
Date Executed: 10/17/97
President of Nicholson Inv.

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

On this 16 day of October, 1997, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared SCOTT L. WIPPEL to me known to be the person who signed as Vice President of ROUNDUP CO., the Washington corporation that executed the within and foregoing instrument, and acknowledged 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 he or she was duly elected, qualified and acting as said officer of the corporation and was authorized to execute said instrument on behalf of the corporation, that the seal affixed, if any, is the corporate seal of the corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.



Susan L. Thoenes
NOTARY PUBLIC in and for the State of Oregon,
residing at Insulation, OR.
My Appointment Expires: 8-19-2000.

STATE OF Washington)
) ss.
COUNTY OF King)

On this 17 day of October, 1997, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Brent C. Nicholson to me known to be the person who signed as President of Nicholson Inc. the member that executed the within and foregoing instrument, and acknowledged 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 he or she was duly elected, qualified and acting as said officer of the corporation and was authorized to execute said instrument on behalf of the corporation, that the seal affixed, if any, is the corporate seal of the corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.



Norma Texhaud
NOTARY PUBLIC in and for the State of WA
residing at Issaquah.
My Appointment Expires: 7-17-99.

Exhibit A - Description of Purchaser's Parcel

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

Lot 3, Fred Meyer Retail Store Binding Site Plan, approved December 29, 1993, and recorded January 10, 1994, under Auditor's File No. 9401100038, in Volume 11 of Short Plats, Pages 41-48, inclusive, being a portion of the Southwest 1/4 of the Northwest 1/4 of Section 5, Township 34 North, Range 4 East, W.M.

TOGETHER WITH those certain rights including, but not limited to, ingress, egress, utilities and parking as set forth in the Declaration of Covenants, Conditions, Restrictions and Easements recorded September 10, 1993, under Auditor's File No. 9309100062, records of Skagit County, Washington.