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Skagit County Auditor

**When Recorded Mail Document to:**

Banner Bank  
Attention: Facilities Department  
P.O. Box 907  
Walla Walla, Washington 99362

REVIEWED BY  
SKAGIT COUNTY TREASURER  
DEPUTY Josie Bear  
DATE 6-9-21

**Document Title:** Declaration of Drive Aisle and Utilities Easement and Maintenance Agreement

**Grantor/Grantee:** Banner Bank, a Washington banking corporation, as successor-in-interest to Skagit State Bank by merger

**Abbreviated Legal Description:** Lots 1-17, W. 12 ft. of Lot 18, Block 97, Vol 3, Pg 17 of Amended Plat of Burlington

See Exhibit A for full legal description.

**Assessor's Parcel Numbers:** P71951; P71952; P71953; P71950; P71949; P71957; P71948; P71943; P71944; P71946; P71947

**Tax Account Numbers:** 4076-097-018-0007; 4076-097-005-0002; 4076-097-007-0001; 4076-097-010-0005; 4076-097-010-0104; 4076-097-012-0003; 4076-097-013-0002; 4076-097-014-0001; 4076-097-018-0007; 4076-097-004-0011; 4076-097-003-0004; 4076-097-002-0005

**DECLARATION OF DRIVE AISLE AND UTILITIES EASEMENT  
AND MAINTENANCE AGREEMENT**

This Declaration of Drive Aisle and Utilities Easement and Maintenance Agreement (this "Agreement") is prepared by and submitted for recording in the real property records of Skagit County into as of Skagit, 2021 by Banner Bank, a Washington banking corporation, as successor-in-interest to Skagit State Bank by merger ("Banner Bank").

**RECITALS**

Banner Bank owns the parcels comprising the properties legally described on the attached hereto Exhibit A and depicted on the attached hereto Exhibit B, Site Plan (collectively, the "Properties" and each, a "Parcel"). Banner Bank desires to sell one or more Parcels and ensure that, subsequent to such sale(s), the parking lot, utility lines, and drive aisles within and around the Properties continue to be maintained at a high standard, in a clean and neat manner, with owners and occupants of the Properties having access through all drive aisles as necessary and appropriate for the use of such Properties, and for access to utilities as needed for the use and enjoyment of the Properties.

**DECLARATION**

NOW, THEREFORE, Banner Bank, as declarant, declares that the Properties shall be and are subject to the terms of this Declaration. Banner Bank agrees and covenants that the Properties and improvements now existing or hereafter constructed thereon will be held, sold, conveyed subject to, and burdened by the following easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties for the benefit of all of the owners thereof (each an "Owner" and collectively, the "Owners") and their heirs, successors, grantees and assigns all on the terms and conditions set forth below.

**1. Grant of Easements.**

(a) Drive Aisles. The Owners shall have a perpetual non-exclusive easement for pedestrian and vehicular access, ingress, and egress over, across and through (i) the areas shown on the attached Site Plan and identified as an "Easement", and (ii) the portions of the Parcels currently used as driveways and drive aisles for access to E. Victoria Avenue, N. Walnut Street, and N. Spruce Street ("Drive Aisles"), excluding the drive aisle between E. Fairhaven Street and the public alley, currently used as a drive through and access for Banner Bank customers only. The Easements and Drive Aisles shall continue to be used to access the Properties as needed for the routine use and enjoyment of the Properties by the Owners, and their tenants, licensees, invitees, contractors, agents, successors and assigns. Nothing herein contained shall preclude or restrict the undersigned or any subsequent Owner from relocating, improving, replacing or repairing their respective Parcel so long as such pedestrian and/or vehicular passage is not substantially impaired or unduly interrupted.

(b) **Utilities.** To the extent reasonably necessary for the use, development, maintenance, repair and improvement of the Properties, each of the Owners shall have a perpetual non-exclusive easement to access, connect to, and use in common with the other Owners the Utility Lines over, across and through the Easements and Drive Aisles as such areas are located on each other Parcel. "Utility Lines" shall mean all pipelines, wires, tanks or other facilities for the transmission, distribution, or retention of electricity, water, natural gas, sewage, surface water runoff, telephone and television signals, or any other surface or product now or hereafter commonly considered to be in the nature of a "utility."

(c) **Parking Stalls.** No Owner shall be permitted to reduce the number of parking stalls located on its Parcel without the prior written consent of the other Owners, not to be unreasonably withheld, conditioned or delayed; provided, however, each Owner may make changes to the parking lot on its Parcel to comply with applicable law and codes unless such changes would result in interfering with the Owners' use of the Easements and/or Drive Aisles.

**2. Use of the Drive Aisles.** The Drive Aisles shall be used exclusively for pedestrian and vehicular access. Notwithstanding the foregoing to the contrary, the fee Owner of each Parcel may construct utility lines or pipes in the portion of the Easement and/or Drive Aisle located on such Owner's Parcel; provided that, in constructing, repairing or maintaining such lines or pipes, such Owner shall (a) be fully responsible for the cost of any repairs needed to the Easement or Drive Aisle arising therefrom, (b) diligently perform such repairs, (c) diligently restore the Easement or Drive Aisle to the condition existing prior to the repair, and (d) diligently act to minimize the interference with the use of the Drive Aisle as described in this Section 2.

**3. Maintenance.** Each Owner shall maintain the Easement and Drive Aisle, parking lots, sidewalks, and utility lines located on or under their respective Parcel in lawful, neat, clean and attractive condition and good repair at all times including, emptying trash containers regularly and prior to any overfilling, picking up debris, dumping and other unsightly trash, snow removal, signage pertaining to parking restrictions (see Section 4 below), surfacing, and other maintenance and repairs to the surface of the Easements and Drive Aisles; provided that, no Owner shall be liable for any act, omission, event, condition, order, state of repair or other circumstance affecting the Easement or Drive Aisle (individually and collectively a "Condition") unless and until (a) the owner of another Parcel has delivered written notice to the Owner of the Parcel of such Condition, and (b) the Owner of the Parcel of such Condition has been given a reasonable opportunity to cure the Condition, which in no event shall be less than ten (10) business days. Each Owner shall pay the costs to maintain, repair and make replacements as needed to the portion of the Easement and Drive Aisle located on the Owner's Parcel.

**4. Parking Lot Signage.** Each Owner may install signage on their Parcel indicating parking is for such Owner's (or its tenant's, licensee's, and/or customer's) use only; provided however, such signage may not adversely affect the reputation of another Owner, negatively name the other Owner, nor adversely impact by use of the name or trademark of any other Owner. As an example, no Owner may install "No Banner Bank parking permitted" signage. Nothing in this Agreement grants a right of any Owner to parking on any other Owner's Parcel. Signs indicating

that improperly parked vehicles will be towed and signs indicating that parking on the Parcel are for a limited use are acceptable (example: "Parking for Banner Bank customers only").

5. **Failure to Maintain.** In the event any Owner fails to perform any obligation required under this Agreement including, after reasonable written notice to the Owner, the other Owners have the right, following notice and opportunity to cure as described in Section 3 above, to enter upon the Parcel to perform the required obligation, including paving work and pothole repairs, utility line work, and towing vehicles blocking access to Drive Aisles. The defaulting Owner shall reimburse any Owner performing the work the defaulting Owner failed to perform, plus an administrative fee equal to 10% of the out of pocket costs incurred by the other Owner(s) to bring the Parcel into compliance with this Agreement.

6. **Insurance.** The Owners shall each maintain a commercial general liability policy with respect to that portion of the Easement and Drive Aisle owned by such party in fee, with minimum limits of coverage of \$2,000,000 per occurrence and in the aggregate; and such policy shall (a) name the other Owners as additional insureds, (b) be primary and any insurance carried by the other Owners shall be excess and noncontributing with such primary insurance, and (c) be maintained with an insurance company licensed to do business in Washington state and having a Best Rating of not less than A: Class VIII. On the request of any Owner, each Owner shall deliver to the requesting Owner an insurance certificate evidencing the insurance described in this Section.

7. **Notices.** Any notice, request, submission or written communication required or permitted to be delivered under this Agreement (including notice of changed address) shall be (a) in writing; (b) transmitted by personal delivery, express or courier service, or United States Postal Service in the manner described below; (c) deemed to be delivered on the earlier of (1) the date received, or (2) five business days after having been deposited in the United States Postal Service, postage prepaid, and (d) addressed to a party at the address designated below. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as provided in this paragraph shall be deemed to be receipt of the notice, demand or request sent. Written notices to Banner Bank shall be sent to the address set forth below or such other address as may be provided in the future from time to time to the other Owners for such purpose. Following the sale or other transfer of a Parcel, the notices shall be sent to the same address as the real property tax invoices for that Parcel until or unless the new Owner provides written notice to the other Owners of a different notice address.

To Banner Bank:

Banner Bank  
Attention: Facilities Department  
P.O. Box 907  
Walla Walla, Washington 99362

## 8. General Provisions.

**8.1 Controlling Law.** The interpretation and performance of this Agreement shall be governed by the laws of the State of Washington.

**8.2 Severability.** If any clause or provision of this Agreement is determined to be illegal, invalid, or unenforceable under present or future laws, the remainder of this Agreement shall not be affected by such determination, and in lieu of each clause or provision that is determined to be illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

**8.3 Entire Agreement.** This Agreement reflects the entire agreement of the parties with respect to the matters described in this Agreement, and this Agreement supersedes all prior discussions, negotiations, understandings, or agreements relating to the matters described herein. No alteration or variation of this Agreement shall be valid or binding unless contained in an amendment signed by each of the Owners of the Properties.

**8.4 Successors.** The covenants, terms, conditions, and restrictions of this Agreement (a) shall be binding upon, and inure to the benefit of, each party during its ownership of its respective Parcel and each party's successor(s), heirs, and assigns during such successor's ownership of the respective Parcel and (b) shall operate as easements binding the Properties and shall run with the Properties in perpetuity. Each Owner, including the parties hereto (the "responsible owner"), shall be liable to the Owner of the other Parcels for all obligations accrued during the responsible Owner's ownership of its Parcel. When an Owner sells its interest in a Parcel, it shall automatically be released from any and all obligations arising thereafter under this Agreement.

**8.5 Captions.** The captions in this Agreement have been inserted solely for convenience of reference and are not a part of this Agreement and shall have no effect upon construction or interpretation.

**8.6 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall constitute one and the same instrument.

**8.7 Exhibits.** The Exhibits are hereby incorporated herein by this reference.

**8.8 Attorneys' Fees and Expenses of Litigation.** If either party shall bring suit to recover damages under this Agreement or to otherwise enforce or interpret this Agreement and a judgment is entered, the substantially prevailing party shall be entitled to a reasonable sum as attorneys' fees, and all costs and expenses in connection with such suit, which sum shall be included in any such judgment or decree. Such attorneys' fees and expenses shall include those incurred before, during and after trial, including those related to any appeal.

**8.9 Interpretation.** This Agreement shall be construed by a fair and reasonable interpretation of the words used in it without regard to which party drafted or caused to be drafted the provision or provisions. Whenever this Agreement utilizes the term “including” or words of similar effect, the listing given shall be interpreted as illustrative and not all inclusive.

**8.10 Mortgagees, Purchasers of Liened Parcels.** Where the mortgagee of a mortgage of record or other purchaser of a Parcel obtains possession of a Parcel as a result of foreclosure of a mortgage, or by deed or assignment in lieu of foreclosure, such possessor, his or her successors and assigns, shall not be liable for the payment obligations described above in Section 5 which became due prior to such possession. Such payment obligations shall continue to be collectible from the prior Owner of the Parcel, its successors or heirs, regardless of any transfer or conveyance of such prior Owner’s Parcel.

**8.11 Reservation Of Rights.** Each Owner reserves for itself and its successors, heirs, and assigns the right to use any Easement and Drive Aisle located on its Parcel for any purposes consistent with the rights granted herein, including the construction of planters, sidewalks and roadways that do not interfere with other Owners’ exercise of their rights granted or reserved herein. No buildings, fences, garages, concrete patios, carports or other substantial improvements, however, shall be constructed on or in any Easement or Drive Aisle without the consent of all Owners benefiting therefrom unless the same shall not block, impede nor adversely affect the other Owners from use of the Drive Aisles as contemplated herein. Nothing herein contained shall preclude or restrict the undersigned or any subsequent Owner from improving, replacing or repairing their respective Parcel and the Utility Lines under or thereon so long as the rights granted to the other Owners herein are not substantially impaired or unduly interrupted. No Owner may erect any fence or place any obstruction on the common boundary between their respective Parcel or within the Easement or Drive Aisles which would prevent the other Owners from accessing the Drive Aisle on such Parcel other than such obstructions as now exist. For clarity, the Easements depicted on the Site Plan contain Drive Aisles and are subject to the terms hereof for purposes of restricting use and development of the Drive Aisles.

**8.12 Indemnification.** Each Owner shall fully and completely indemnify and hold any other Owner fully and completely harmless from any and all claims, costs, liabilities and damages arising out of the indemnifying Owner’s breach of the terms of this Agreement (including reasonable attorneys’ fees incurred).

**8.13 Approval Rights.** Unless otherwise specifically herein provided, whenever approval of the Owners is required, such approval by any Owner shall not be unreasonably conditioned, withheld or delayed. Unless provision is made for a specific time period, approval shall be given or withheld within thirty (30) days of the receipt of the request for approval. If the disapproval is not given within the required time period, the requested party shall be deemed to have given its approval. If a party shall disapprove, the reasons therefor shall be stated. Except

with respect to an approval given by lapse of time, all approvals and disapprovals shall be in writing.

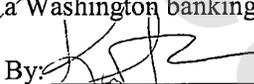
**8.14 Estoppel Certificate.** Each Owner shall, upon written request (which shall not be more frequent than three (3) times during any calendar year) of another Owner, issue to a prospective mortgagee or successors of such other Owner or to such other Owner, within fifteen (15) days following such request, an estoppel certificate stating to the best of the issuer's knowledge as of such date: (a) whether the Owner to whom the request has been directed knows of any default by the requesting Owner under this Agreement, and if there are known defaults, specifying the nature thereof; (b) whether this Agreement has been assigned, modified or amended in any way by the requested Owner (and if it has, then stating the nature thereof); and (c) whether this Agreement is in full force and effect. Such statement shall act as a waiver of any claim by the Owner furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. Failure by an Owner to so execute and return such certificate within the specified period shall be deemed an admission on such Owner's part that the Owner requesting the certificate is current and not in default in the performance of the requesting Owner's obligations under this Agreement.

**8.15 Taxes.** All taxes and assessments by public authorities relating to the fee ownership of a Parcel shall be paid by the fee Owner of said Parcel, including the Drive Aisle located thereon.

**8.16 No Dedication.** Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the real property referred to herein to the general public nor for any public use or purpose whatsoever, it being the intention of the parties hereto that this Agreement shall be for the exclusive benefit of the parties and their respective heirs, successors, assigns, permittees and invitees, and nothing in this Agreement, express or implied, confers upon any person other than the foregoing, any rights or remedies whatsoever.

**8.17 No Waiver.** The waiver by a party of a breach of any provision of this Agreement by another 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.

BANNER BANK,  
a Washington banking corporation

By:   
Name: Sharon Brenner  
Its: VP - Corp Real Estate

{notary acknowledgement follows on next page}



EXHIBIT A

## LEGAL DESCRIPTION

Lots 1-17 and the West 12 feet of Lot 18, Block 97, of the Amended Plat of Burlington, according to the plat recorded in Volume 3 of Plats at Page 17, being in a portion of the Southwest Quarter of Section 32, Township 35 North, Range 4 East, WM. Situate in the County of Skagit, State of Washington.

Exhibit A-1

