

UNRECORDED

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KATHY HILL
SKAGIT COUNTY RECORDER

'99 MAR 31 P3:53

After Recording Mail To: **9903310198**

KEYBANK NATIONAL ASSOCIATION
Real Estate Division
Mailcode WA-31-10-5285
700 Fifth Avenue, 52nd Floor
Seattle, WA 98104-5099
Attn: Shelly Schwab

Loan No. 0000169352

ISLAND TITLE CO. SB-14106 ✓
**SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT
AND ESTOPPEL CERTIFICATE**

Coversheet Recording Information:

GRANTOR: HAGGEN, INC., a Washington corporation
(Subordinator)

GRANTEE: KEYBANK NATIONAL ASSOCIATION, a national
(Lender) banking association

LEGAL Ptn. NW, Sec 21, T34N, R4E, W.M.
DESCRIPTION The complete legal description is on Exhibit A.

ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBERS:
340421-2-001-0006, 340421-2-006-0001

RECORDING NO. OF RELATED DOCUMENTS:
KeyBank Deed of Trust: 9903310197

THIS AGREEMENT AND CERTIFICATE is made this 29th day of March, 1999, between KEYBANK NATIONAL ASSOCIATION, a national banking association, ("Lender") and HAGGEN, INC., a Washington corporation ("Tenant").

Recital

A. BRIAR DEVELOPMENT COMPANY, a Washington general partnership, ("Landlord") is the owner of real property. ("Property") located in Skagit County, Washington, and legally described on Exhibit A.

9903310198

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B. Tenant is a tenant of a portion of the Property ("*Premises*") under a lease with Landlord dated March 17, 1999 (the "*Lease*").

C. Lender has agreed to make a loan ("*Loan*") to Landlord, secured by a Deed of Trust, Assignment of Rents and Leases and Security Agreement ("*Deed of Trust*") encumbering the Property. The Deed of Trust constitutes a present assignment to Lender of all right, title, and interest of Landlord under the Lease. The Deed of Trust is recorded on 3/31/99, 1999, under Skagit County Auditor's File No. 9903310197.

D. Lender's agreement to make the Loan is conditioned on Tenant's subordination of the Lease to the Deed of Trust, and Tenant's agreement to attorn to Lender if Lender obtains possession of the Property by foreclosure or deed in lieu of foreclosure. Tenant is willing to do so in consideration of the benefits to Tenant from the Loan and Lease and Lender's agreement not to disturb Tenant's possession of the Premises under the Lease.

NOW, THEREFORE, Lender and Tenant agree as provided below.

1. **Subordination.** Tenant hereby subordinates the Lease and all of its rights thereunder to the Deed of Trust and all of Lender's rights thereunder, including any and all renewals, modifications and extensions thereof. Without limiting the generality of the foregoing, such subordination shall include all rights of Tenant in connection with any insurance or condemnation proceeds with respect to the Premises or Property.
2. **Nondisturbance.** Lender agrees that Tenant's possession of the Premises shall not be disturbed by Lender during the term of the Lease, and Lender shall not join Tenant in any action or proceeding for the purpose of terminating the Lease, except upon the occurrence of a default by Tenant under the Lease and the continuance of such default beyond any cure period given to Tenant under the Lease.
3. **Attornment.** If Lender obtains possession of the Property by foreclosure or deed in lieu of foreclosure, Tenant shall attorn to Lender and recognize Lender as the landlord under the Lease for the unexpired term of the Lease. Such attornment shall be effective without Lender being (a) subject to any offsets or defenses, or otherwise liable, for any prior act or omission of Landlord, (b) bound by any material amendment, modification, or waiver of any of the provisions of the Lease, or by any separate agreement between Landlord and Tenant relating to the Premises or Property, unless any such action was taken with the prior written consent of Lender which shall not be unreasonably withheld or delayed, (c) liable for the return of any security or other deposit unless the deposit has been paid to Lender, (d) bound by any payment of rent or other monthly payment under the Lease made by Tenant more than one month in advance of the due date, or (e) bound by any option, right of first refusal, or similar right of Tenant to lease

any portion of the Property (other than the Premises) or to purchase all or any portion of the Property. Lender's obligations as landlord under the Lease after obtaining possession of the Property by foreclosure or deed in lieu of foreclosure shall terminate upon Lender's subsequent transfer of its interest in the Property except to the extent accrued prior to such transfer.

4. **Termination of Lease.** Notwithstanding any other provision of this Agreement, in the event Lender obtains ownership of the Property by foreclosure or deed in lieu of foreclosure and the Lease requires the landlord to construct any improvements on the Premises or Property, the Lease shall terminate unless (a) Lender delivers written notice to Tenant expressly assuming such obligation within ten (10) days after the foreclosure sale or acceptance of the deed in lieu of foreclosure, or (b) Tenant waives such obligation by delivery of written notice to Lender within ten (10) days after receiving notice of the foreclosure or deed in lieu of foreclosure.
5. **Covenants of Tenant.** Tenant covenants and agrees with Lender as follows:
- (a) Tenant shall pay to Lender all rent and other payments otherwise payable to Landlord under the Lease upon written demand from Lender. The consent and approval of Landlord to this Agreement shall constitute an express authorization for Tenant to make such payments to Lender and a release and discharge of all liability of Tenant to Landlord for any such payments made to Lender.
 - (b) Tenant shall enter into no material amendment or modification of any of the provisions of the Lease without Lender's prior written consent.
 - (c) Tenant shall not subordinate its rights under the Lease to any other mortgage, deed of trust, or other security instrument without the prior written consent of Lender.
 - (d) In the event the Lease is rejected or deemed rejected in any bankruptcy proceeding with respect to Landlord, Tenant shall not exercise its option to treat the Lease as terminated under 11 U.S.C. § 365(h), as amended.
 - (e) Tenant shall not accept any waiver or release of Tenant's obligations under the Lease by Landlord, or any termination of the Lease by Landlord, without Lender's prior written consent.
 - (f) Tenant shall promptly deliver written notice to Lender of any default by Landlord under the Lease. Lender shall have the right to cure such default within thirty (30) days after the receipt of such notice. Tenant further agrees not to invoke any of its remedies under the Lease until the thirty (30) days have elapsed, or during any period that Lender is proceeding to

cure the default with due diligence, or is attempting to obtain the right to enter the Premises and cure the default.

6. **Effect of Assignment.** Notwithstanding that Landlord has made a present assignment of all of its rights under the Lease to Lender, Lender shall not be liable for any of the obligations of Landlord to Tenant under the Lease until Landlord has obtained possession of the Property by foreclosure or deed in lieu of foreclosure, and then only to the extent provided in paragraph 3 above.
7. **Estoppel Certifications.** Tenant hereby certifies to Lender as provided below.
- (a) The Lease constitutes the entire agreement between Landlord and Tenant relating to the Premises and the Property.
 - (b) The Lease is in full force and effect, and has not been amended, modified, or assigned by Tenant.
 - (c) No payments to become due under the Lease have been paid more than one month in advance of the due date.
 - (d) Tenant has no present claim, offset or defense under the Lease, and Tenant has no knowledge of any uncured default by Landlord under the Lease.
 - (e) Tenant has no knowledge of any prior sale, transfer, assignment, hypothecation or pledge of Landlord's interest under the Lease or of the rents due under the Lease.
 - (f) Except as otherwise provided in the Lease, Tenant has made no agreements with Landlord concerning free rent, partial rent, rebate of rental payments, setoff, or any other type of rental concession.
8. **Costs and Attorneys' Fees.** In the event of any claim or dispute arising out of this Agreement, the party that substantially prevails shall be awarded, in addition to all other relief, all reasonable attorneys' fees and other costs and expenses incurred in connection with such claim or dispute; including without limitation those fees, costs, and expenses incurred before or after suit, and in any arbitration, and any appeal, any proceedings under any present or future bankruptcy act or state receivership, and any post-judgment proceedings.
9. **Notices.** All notices to be given under this Agreement shall be in writing and personally delivered or mailed, postage prepaid, certified or registered mail, return receipt requested, to Lender at the address indicated on the first page of this Agreement, and to Tenant at its address indicated below. All mailed notices shall be deemed given three days after the postmark. Either party may change its address by notice to the other.

10. **Miscellaneous.** This Agreement may not be modified except in writing and executed by the parties hereto or their successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. As used herein, "Landlord" shall include Landlord's predecessors and successors in interest under the Lease, and "Lender" shall include any purchaser of the Property at any foreclosure sale. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, such provision shall be considered severed from the rest of this Agreement and the remaining provisions shall continue in full force and effect as if such provision had not been included. This Agreement shall be governed by the laws of the State of Washington.

DATED as first above written.

HAGGEN INC., a Washington corporation

By *Dale C. Henley* 3/22/99
Its PRESIDENT / CEO

Address: 2211 RIMLAND
BELLINGHAM, WA

CONSENTED AND AGREED TO:

"LANDLORD"

BRIAR DEVELOPMENT COMPANY, a
Washington general partnership

By *Dale C. Henley* 3/22/99
Dale C. Henley, President and Chief
Executive Officer of the partnership,
as agent for the general partners

UNRECORDED INSTRUMENT

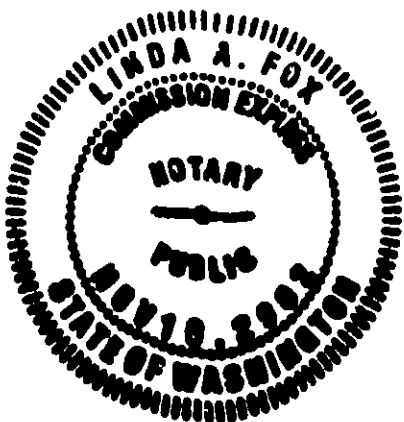
STATE OF WASHINGTON)

County of Whatcom)

ss.

I certify that I know or have satisfactory evidence that DALE HENLEY is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the PRES & CEO of HAGGEN, INC & BRIAR DEVELOPMENT to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 29 day of MARCH, 1999.



Linda A. Fox

Notary Public in and for the State of Washington

LINDA A FOX

Name (printed or typed)

residing at Blaine, WA

My appointment expires: NOV 10/2002

**EXHIBIT A
TO
SUBORDINATION, NONDISTURBANCE AND
ATTORNEY AGREEMENT AND ESTOPPEL CERTIFICATE**

LEGAL DESCRIPTION

The Property is located in Skagit County, Washington, and is legally described as follows:

PARCEL A

The East Half of the Southwest Quarter of the Northwest Quarter of Section 21, Township 34 North, Range 4 East of the Willamette Meridian, Skagit County, Washington.

PARCEL B

The West Half of the Southeast Quarter of the Northwest Quarter of Section 21, Township 34 North, Range 4 East of the Willamette Meridian, Skagit County, Washington.

EXCEPT those portions described as follows:

Commencing at the Southeast corner of said West Half;
thence North 00°44'43" East along the East line of said West Half a distance of 426.00 feet, more or less, to the point of beginning at the Southwest corner of Lot 5, PLAT OF TOTEM RIDGE II, as recorded in Volume 10 of Plats, page 38, records of Skagit County, Washington;
thence North 88°31'42" West along the Westerly extension of the South line of said Lot 5 a distance of 8.97 feet;
thence North 50°35'28" West a distance of 52.55 feet, more or less, to the intersection of the West line of the East 50.00 feet of said West Half;
thence North 00°44'43" East along said West line a distance of 826.97 feet, more or less, to the intersection with the South line of the North 50.00 feet of said West Half;
thence North 88°30'28" West along said South line a distance of 128.60 feet, more or less, to the intersection of the southerly extension of the West line of Lot 21, PLAT OF THE UPLANDS, as recorded in Volume 10 of Plats, page 43, records of Skagit County, Washington;
thence North 00°46'02" East along said Southerly extension a distance of 50.00 feet to the North line of said West Half;

thence South 88°30'28" East along said North line a distance of 178.00 feet, more or less, to the Northeast corner of said West Half; thence South 00°44'43" West along the East line of said West Half a distance of 909.66 feet, more or less, to the point of beginning;

ALSO EXCEPTING the following described parcel beginning at the Southeast corner of Lot 23 of said PLAT OF THE UPLANDS; thence North 88°30'28" West along the North line of said West Half a distance of 378.68 feet, more or less, to the Northwest corner of said West Half;

Thence South 00°41'31" West along the West line of said West Half a distance of 25.00 feet to the intersection with the South line of the North 25.00 feet of said West Half; thence South 88°30'28" East a distance of 185.29 feet, more or less, to the intersection of the Southerly extension of the West Line of Lot 24, PLAT OF THE UPLANDS; thence South 00°46'02" West along last said Southerly extension a distance of 25.00 feet to the intersection with the South line of the North 50.00 feet of said West Half; thence South 88°30'28" East along last said South line a distance of 193.00 feet, more or less, to the intersection with the Southerly extension of the East line of said Lot 23; thence North 00°46'02" East along last said Southerly extension a distance of 50.00 feet to the point of beginning.

All situated in Skagit County, Washington.