


When recorded return to:
HORIZON BANK
211 E. Holly
P.O. Box 608
Bellingham, Washington 98226

Grantor:
BRIAR DEVELOPMENT COMPANY

Grantee:
HORIZON BANK

Legal Description:
Lot 3, Mount Vernon Short Plat No. MV-5-98; Ptn. NW, Sec.21, T34N, R4E W.M.
* Additional legal description is on page _____ of document.

Assessor's Property Tax Parcel or Account Number:
340421-2-001-0100


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(Space above this line for recording purposes)

ISLAND TITLE CO.
SB-15544 ✓

DEED OF TRUST
To Secure a Loan
From HORIZON BANK

1. DATE AND PARTIES. The date of this Deed of Trust (Deed of Trust) is December 20, 1999, and the parties and their mailing addresses are the following:

GRANTOR:
BRIAR DEVELOPMENT COMPANY
a Washington general partnership
2211 Rimland Drive
Bellingham, Washington 98226
Tax I.D. # 91-0961933

TRUSTEE:
ISLAND TITLE COMPANY
839 S. Burlington Blvd.
Burlington, Washington 98233

BANK:
HORIZON BANK
a WASHINGTON banking corporation
211 E. Holly
P.O. Box 608
Bellingham, Washington 98226
Tax I.D. # 91-0141935

2. MAXIMUM OBLIGATION LIMIT. The total principal amount of the Obligations secured by this Deed of Trust at any one time shall not exceed \$290,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Deed of Trust. Also, this limitation does not apply to advances made

under the terms of this Deed of Trust to protect Bank's security and to perform any of the covenants contained in this Deed of Trust.

3. OBLIGATIONS DEFINED. The term "Obligations" is defined as and includes the following:

- A. A promissory note, No. 1460013002, (Note) dated July 29, 1999, with a maturity date of August 1, 2001, and executed by BRIAR DEVELOPMENT COMPANY (Borrower) payable to the order of Bank, which evidences a loan (Loan) to Borrower in the amount of \$5,000,000.00, plus interest, and all extensions, renewals, modifications or substitutions thereof.
- B. All future advances by Bank to Borrower (provided this Deed of Trust is specifically referred to in the evidence of indebtedness with regard to such future and additional indebtedness).
- C. All additional sums advanced, and expenses incurred, by Bank for the purpose of insuring, preserving or otherwise protecting the Property (as herein defined) and its value, and any other sums advanced, and expenses incurred by Bank pursuant to this Deed of Trust, plus interest at the same rate provided for in the Note computed on a simple interest method.
- D. Borrower's performance of the terms in the Note or Loan, Grantor's performance of any terms in this Deed of Trust, and Borrower's and Grantor's performance of any terms in any other deed of trust, any trust deed, any trust indenture, any mortgage, any deed to secure debt, any security agreement, any assignment, any construction loan agreement, any loan agreement, any assignment of beneficial interest, any guaranty agreement or any other agreement which secures, guaranties or otherwise relates to the Note or Loan.

However, this Deed of Trust will not secure another debt:

- A. if Bank fails to make any disclosure of the existence of this Deed of Trust required by law for such other debt.

4. NOTE. Borrower has executed a promissory note dated July 29, 1999, (Note) in the principal amount of \$5,000,000.00 and payable to the order of Bank with interest from the date of disbursement, on the unpaid principal balance at an annual rate equal to 1 percentage point above Bank's Prime Rate, as adjusted and announced from time to time until the Note matures or the obligation is accelerated. The Prime Rate, plus 1 percentage point, may also be referred to hereafter as the "Contract Rate".

Horizon Banks' Prime rate is defined as: An average of the base rates on corporate loans posted by at least 75% of the nations 30 largest banks as published daily in the Wall Street Journal. The Contract Rate is the sum of Bank's Prime Rate (8.5%) plus 1 percentage point. The effective Contract Rate today is 9.5%. Bank's Prime Rate today is not necessarily the lowest rate at which Bank lends its funds. The Prime Rate is only an index rate from which interest rates actually charged to customers may be measured. The use of the Prime Rate is for convenience only and does not constitute a commitment by Bank to lend money at a preferred rate of interest. The Prime Rate is a benchmark for pricing certain types of loans. Depending on the circumstances, such as the amount and term of the loan, the creditworthiness of the borrower or any guarantor, the presence and nature of collateral and other relationships between a borrower and Bank, loans may be priced at, above or below the Prime Rate.

All adjustments to the Contract Rate will be made on each day that the Prime Rate changes. Any increase to the Prime Rate may be carried over to a subsequent adjustment date without resulting in a waiver or forfeiture of such adjustment, provided an adjustment to the Contract Rate is made within one year from the date of such increase. Any change in the Contract Rate will take the form of different payment amounts. After maturity or acceleration, the unpaid balance shall bear interest at the rate specified in the Note until paid. If or when no principal amount is outstanding, any excess interest shall be refunded to Borrower according to the actuarial method. Interest shall be computed on the basis of the actual calendar year and the actual number of days elapsed.

Accrued Interest is due and payable in 19 monthly payments on the 1st day of each month, beginning January 10, 2000, or the day following if the payment day is a holiday or is a non-business day for Bank. Unless paid prior to maturity, the last scheduled payment plus all unpaid principal, accrued interest, costs and expenses are due and payable on August 1, 2001, which is the date of maturity. If the Contract Rate changes, any remaining payments may be a different amount. All amounts shall be paid in legal U.S. currency. Any payment made with a check will constitute payment only when collected.

5. CONVEYANCE. To secure the Obligations according to their specific terms and the obligations in this Deed of Trust, Grantor grants, bargains, sells and conveys to Trustee in trust with power of sale the following described property (Property), situated in SKAGIT County, WASHINGTON, to-wit:

Lot 3 Mount Vernon Short Plat No.MV-5-98, approved August 30,1999, and recorded August 31,1999, under Auditor's File NO. 199908310020, records of Skagit County, Washington; being a portion of the Northwest Quarter of Section 21, Township 34 North, Range 4 East of the Willamette Meridian. Situate in Skagit County, Washington.

such property not constituting the homestead of Borrower, together with all buildings, improvements, fixtures and equipment now or hereafter attached to the Property, including, but not limited to, all heating, air conditioning, ventilation, plumbing, cooling, electrical and lighting fixtures and equipment; all landscaping; all exterior and interior improvements; all easements, issues, rights, appurtenances, rents, royalties, oil and gas rights, privileges, proceeds,



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profits, other minerals, water, water rights, and water stock, crops, grass and timber at any time growing upon said land, including replacements and additions thereto, all of which shall be deemed to be and remain a part of the Property. The Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made of public record as provided by law.

6. LIENS AND ENCUMBRANCES. Grantor warrants the title to the Property and warrants that the Property is free and clear of all liens and encumbrances whatsoever, *except as described in Exhibit A attached hereto.*
7. WARRANTY OF TITLE. Grantor agrees to forever warrant and defend the title to the Property and represents and warrants that Grantor:
- A. owns the Property in fee simple,
 - B. is authorized to convey the Property, and
 - C. will defend Grantor's title against all claims, *except as described in Exhibit A attached hereto.*
8. NON-AGRICULTURAL PROPERTY. Grantor represents and warrants that the Property is not used principally for agricultural purposes.
9. EVENTS OF DEFAULT. Grantor shall be in default upon the occurrence of any of the following events, circumstances or conditions (Events of Default):
- A. Failure by any party obligated on the Obligations to make payment when due; or
 - B. A default or breach by Borrower, Grantor or any co-signer, endorser, surety, or guarantor under any of the terms of this Deed of Trust, the Note, any construction loan agreement or other loan agreement, any security agreement, mortgage, deed to secure debt, deed of trust, trust deed, or any other document or instrument evidencing, guarantying, securing or otherwise relating to the Obligations; or *after 30 days written notice*
 - C. The making or furnishing of any verbal or written representation, statement or warranty to Bank which is or becomes false or incorrect in any material respect by or on behalf of Grantor, Borrower, or any co-signer, endorser, surety or guarantor of the Obligations; or
 - D. Failure to obtain or maintain the insurance coverages required by Bank, or insurance as is customary and proper for the Property (as herein defined); or
 - E. The death, dissolution or insolvency of, the appointment of a receiver by or on behalf of, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Grantor, Borrower, or any co-signer, endorser, surety or guarantor of the Obligations; or
 - F. ~~A good faith belief by Bank at any time that Bank is insecure with respect to Borrower, or any co-signer, endorser, surety or guarantor, that the prospect of any payment is impaired or that the Property (as herein defined) is impaired; or~~
 - G. Failure to pay or provide proof of payment of any tax, assessment, rent, insurance premium, escrow or escrow deficiency on or before its due date; or *after 30 days written notice and applicable only to taxes on Bank's collateral*
 - H. A material adverse change in Grantor's business, including ownership, management, and financial conditions, which in Bank's opinion, impairs the Property or repayment of the Obligations; or
 - I. ~~A transfer of a substantial part of Grantor's money or property; or~~
 - J. If all or any part of the Property or any interest therein is sold, leased or transferred by Grantor except as permitted in the paragraph below entitled "DUE ON SALE OR ENCUMBRANCE".
10. REMEDIES ON DEFAULT. At the option of Bank, all or any part of the principal and accrued interest on the Obligations shall become immediately due and payable without notice or demand, upon the occurrence of an Event of Default or at any time thereafter. In addition, upon the occurrence of any Event of Default, Bank and Trustee shall be entitled to all of the rights and remedies provided by law, the Note, this Deed of Trust, and any related loan documents, including without limitation, the power to sell the Property, and/or the power to foreclose on the Property as a mortgage. If Bank exercises such option to accelerate, Bank shall mail Grantor, by certified mail or otherwise, notice of acceleration to the address of Grantor shown on Bank's records as may be required by law. If Grantor fails to pay all sums that are due and payable within the time period provided by law or as provided in the notice (if any), Bank may, without further notice or demand on Grantor, invoke any remedies permitted on Default. In addition, if there is a Default and Bank files with Trustee a notice of election and demand for sale of the Property, Trustee shall advertise and sell the Property (to convey title as a whole or in separate parcels as Bank may deem best) free and clear of all right, title and interest of Grantor at public auction of the Property or at such place as Trustee designates in the notice for the best price the Property will bring in cash. Trustee shall give notice of sale in accordance with and as prescribed by applicable WASHINGTON law. Public advertisement of such notice shall take the form of publication in a legal newspaper in the county, or counties, where the Property is located once between the thirty-second and twenty-eighth day prior to the sale, and once between the eleventh and seventh day prior to the sale, except where the applicable state law requires or permits notice in another form(s) or in another manner. Upon sale of the Property and to the extent not prohibited by law, Trustee shall make and deliver to the purchaser or purchasers a deed or deeds to the Property sold to convey title, and after first paying and retaining all fees, charges and costs, shall pay to Bank all amounts advanced for repairs, taxes, insurance, liens, assessments and prior encumbrances and interest thereon, and the principal and interest on the Note paying the surplus, if any, to the person or persons legally entitled thereto. The holder of the Note may purchase the Property. The recitals in any deed or deeds of conveyance shall be taken as prima facie true. Bank and Trustee are entitled to all



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rights and remedies provided at law or equity whether or not expressly stated in this Deed of Trust. By choosing any remedy, Bank and Trustee do not waive their right to an immediate use of any other remedy if the event of default continues or occurs again.

11. **DUE ON SALE OR ENCUMBRANCE.** Bank may, at Bank's option, declare the entire balance with all accrued interest on the Obligations to be immediately due and payable upon the ~~contract for, or~~ creation of, any lien, encumbrance, transfer or sale of the Property, or any portion thereof, by Grantor. Lapse of time or the acceptance of payments by Bank after such creation of any lien, encumbrance, transfer, sale or contract for any of the foregoing shall not be deemed a waiver or estoppel of Bank's right to accelerate the Note. If Grantor fails to pay such sums prior to the expiration of such period, Bank may, without further notice or demand on Grantor, invoke any remedies permitted on Default. This covenant shall run with the Property and shall remain in effect until the Obligations and this Deed of Trust are fully paid.

In the preceding paragraph, the phrase "transfer or sale" includes the conveyance of any right, title or interest in the Property, whether voluntary or involuntary, by outright sale, deed, installment contract sale, land contract, contract for deed, leasehold interest with a term greater than three years, lease-option contract or any other method of conveyance of Property interests; the term "interest" includes, whether legal or equitable, any right, title, interest, lien, claim, encumbrance or proprietary right, choate or inchoate.

12. **APPOINTMENT OF RECEIVER.** If there is a Default, Bank or the holder of the Note shall at once become entitled to appointment of a receiver for the Property and the rents, issues and profits from the Property, and shall be entitled thereto as a matter of right without regard to the solvency or insolvency of Grantor or the then owner of the Property and without regard to the value of the Property or the adequacy of any security for the Obligations. Such receiver may be appointed by a court of competent jurisdiction upon ex parte application, and without notice (notice being expressly waived) and all rents, issues and profits, income and revenue from the Property shall be applied by the receiver, subject to the court's order, to the payment of the Obligations under this Deed of Trust and the Note.

13. **PROPERTY OBLIGATIONS.** Grantor shall promptly pay all taxes, assessments, levies, water rents, other rents, insurance premiums, and all amounts due on any encumbrances, if any, as they become due. Grantor shall provide written proof to Bank of such payment(s).

14. **INSURANCE.** Grantor shall insure and keep insured the Property against loss by fire, and other hazard, casualty and loss, with extended coverage including but not limited to the replacement value of all improvements, with an insurance company acceptable to Bank and in an amount acceptable to Bank. Such insurance shall contain the standard "Mortgagee Clause" and where applicable, "Loss Payee Clause", which shall name and endorse Bank as mortgagee and loss payee. Such insurance shall also contain a provision under which the insurer shall give Bank at least 30 days notice before the cancellation, termination or material change in coverage.

If an insurer elects to pay a fire or other hazard loss or damage claim rather than to repair, rebuild or replace the Property lost or damaged, Bank shall have the option to apply such insurance proceeds upon the Obligations secured by this Deed of Trust whether or not then due or to have said Property repaired or rebuilt. Grantor hereby appoints Bank as Grantor's attorney-in-fact, coupled with an interest to collect, settle, and compromise any matters with insurer. Grantor shall deliver, or cause to be delivered, evidence of such coverage and copies of all notices and renewals relating thereto. Bank shall be entitled to pursue any claim under the insurance if Grantor fails to promptly do so. The Bank shall be entitled to endorse the Grantor's name on any insurance check or draft. Grantor shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates. Notwithstanding anything to the contrary, if the Property is acquired by Bank under the terms of this Deed of Trust, all right, title and interest of Grantor in and to any insurance policies (including proceeds thereof resulting from damage to the Property prior to the sale or acquisition) shall pass to Bank to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

15. **WASTE.** Grantor shall not alienate or encumber the Property to the prejudice of Bank, or commit, permit or suffer any waste, impairment or deterioration of the Property, and regardless of natural depreciation, shall keep the Property and all its improvements at all times in good condition and repair. Grantor shall comply with and not violate any and all laws and regulations regarding the use, ownership and occupancy of the Property. Grantor shall perform and abide by all obligations and restrictions under any declarations, covenants and other documents governing the use, ownership and occupancy of the Property.

16. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.**

A. As used in this paragraph:

- (1) "Environmental Law" means, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA", 42 U.S.C. 9601 et seq.), all federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a Hazardous Substance (as defined herein).
- (2) "Hazardous Substance" means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or the environment. The term includes, without



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limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.

B. Grantor represents, warrants and agrees that:

- (1) Except as previously disclosed and acknowledged in writing to Bank, no Hazardous Substance has been, is or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- (2) Except as previously disclosed and acknowledged in writing to Bank, Grantor has not and shall not cause, contribute to or permit the release of any Hazardous Substance on the Property.
- (3) Grantor shall immediately notify Bank if: (a) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (b) there is a violation of any Environmental Law concerning the Property. In such an event, Grantor shall take all necessary remedial action in accordance with any Environmental Law.
- (4) Except as previously disclosed and acknowledged in writing to Bank, Grantor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (a) any Hazardous Substance located on, under or about the Property or (b) any violation by Grantor or any tenant of any Environmental Law. Grantor shall immediately notify Bank in writing as soon as Grantor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Bank has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- (5) Except as previously disclosed and acknowledged in writing to Bank, Grantor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- (6) Except as previously disclosed and acknowledged in writing to Bank, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well shall be added unless Bank first agrees in writing.
- (7) Grantor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- (8) Grantor will permit, or cause any tenant to permit, Bank or Bank's agent to enter and inspect the Property and review all records at any reasonable time to determine: (a) the existence, location and nature of any Hazardous Substance on, under or about the Property; (b) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; (c) whether or not Grantor and any tenant are in compliance with any applicable Environmental Law.
- (9) Upon Bank's request, Grantor agrees, at Grantor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Bank. The choice of the environmental engineer who will perform such audit is subject to the approval of Bank.
- (10) Bank has the right, but not the obligation, to perform any of Grantor's obligations under this paragraph at Grantor's expense.
- (11) As a consequence of any breach of any representation, warranty or promise made in this paragraph, (a) Grantor will indemnify and hold Bank and Bank's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and reasonable attorneys' fees, which Bank and Bank's successors or assigns may sustain; and (b) at Bank's discretion, Bank may release this Deed of Trust and in return Grantor will provide Bank with collateral of at least equal value to the Property secured by this Deed of Trust without prejudice to any of Bank's rights under this Deed of Trust.
- (12) Notwithstanding any of the language contained in this Deed of Trust to the contrary, the terms of this paragraph shall survive any foreclosure or satisfaction of any deed of trust, mortgage or any obligation regardless of any passage of title to Bank or any disposition by Bank of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

17. CONDITION OF PROPERTY. As to the Property, Grantor shall:

- A. keep all buildings occupied and keep all buildings, structures and improvements in good repair.
- B. refrain from the commission or allowance of any acts of waste or impairment of the value of the Property or improvements thereon.
- C. not cut or remove, or permit to be cut or removed, any wood or timber from the Property, which cutting or removal would adversely affect the value of the Property.
- D. prevent the spread of noxious or damaging weeds, preserve and prevent the erosion of the soil and continuously practice approved methods of farming on the Property if used for agricultural purposes.

18. INSPECTION BY BANK. Bank or its agents may make or cause to be made reasonable entries upon the Property and inspect the Property provided that Bank shall make reasonable efforts to give Grantor prior notice of any such inspection.

19. PROTECTION OF BANK'S SECURITY. If Grantor fails to perform any covenant, obligation or agreement contained in



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the Note, this Deed of Trust or any loan documents or if any action or proceeding is commenced which materially affects Bank's interest in the Property, including, but not limited to, foreclosure, eminent domain, insolvency, housing or Environmental Law or law enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Bank, at Bank's sole option, may make such appearances, disburse such sums, and take such action as is necessary to protect Bank's interest. Grantor hereby assigns to Bank any right Grantor may have by reason of any prior encumbrance on the Property or by law or otherwise to cure any default under said prior encumbrance. Grantor agrees to indemnify and hold Bank harmless for all liability, costs, expenses, attorneys' fees and paralegal fees incurred by Bank in its protection of the Property or its lien. Without Bank's prior written consent, Grantor will not partition or subdivide the Property.

20. EXPENSES OF BANK. If Grantor fails to:

- A. procure the required insurance for the Property,
- B. keep the Property in good repair or prevent waste of the Property,
- C. promptly pay all of the obligations relating to the Property,
- D. perform any other obligation of this Deed of Trust, the Note, or any other instrument securing or relating to the Note, or
- E. prevent the Property from becoming subject to any other lien or encumbrance,

Bank may pay or procure such things at Grantor's cost and Bank may make any reasonable expenditure incidental thereto. Bank shall have the right to file and defend suits at the expense of Grantor and in Grantor's name for the recovery of damages or to uphold the lien of this encumbrance and preserve the rights of Bank. All costs expended by Bank in accordance with this section, including reasonable attorneys' and paralegal fees, shall be repaid by Grantor upon demand, and such sums, with interest thereon at the rates provided in the Note shall be added to the indebtedness secured by this Deed of Trust, and shall become a part of the Obligations as defined above, and shall be paid out of the proceeds of the sale of the Property, if not otherwise paid by Grantor.

21. COLLECTION EXPENSES. In the event of default, Grantor agrees to pay all costs of collection incurred by Bank. Such costs shall include, but are not limited to, filing fees, costs of publication, deposition fees, stenographer fees, plus costs of collecting, enforcing and protecting the Property and Obligations. Any such collection costs shall be added to the principal amount of the Obligations, shall accrue interest at the same rate as the Obligations and shall be secured by this Deed of Trust.

22. ATTORNEYS' FEES. Should either party institute suit to enforce any provision of this Deed of Trust, or any other obligations contemplated herein, the prevailing party shall be entitled to recover its costs and expenses in connection with such suit or any appeal thereof, including without limitation, the prevailing party's attorneys' fees. Such suits or appeals shall include, but not be limited to, actions in federal, state or bankruptcy courts and in any administrative proceeding. Whenever provision is made in this document for the payment of attorneys' fees, such fees shall be payable whether the legal services are rendered by a salaried employee of the party or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action.

23. CONDEMNATION. In the event all or any part of the Property (including, but not limited to any easement therein) is sought to be taken by private taking or by virtue of the law of eminent domain, Grantor will promptly give written notice to Bank of the institution of such proceedings. Grantor further agrees to notify Bank of any attempt to purchase or appropriate the Property or any easement therein, by any public authority or by any other person or corporation claiming or having the right of eminent domain or appropriation. Grantor further agrees and directs that all condemnation proceeds or purchase money which may be agreed upon or which may be found to be due shall be paid to Bank as a prepayment under the Note. Grantor also agrees to notify Bank of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part thereof. All awards payable for the taking of title to, or possession of, or damage to all or any portion of the Property by reason of any private taking, condemnation, eminent domain, change of grade, or other proceeding shall, at the option of Bank, be paid to Bank. Such awards or compensation are hereby assigned to Bank, and judgment therefor shall be entered in favor of Bank.

When paid, such awards shall be used, at Bank's option, toward the payment of the Obligations or payment of taxes, assessments, repairs or other items provided for in this Deed of Trust, whether due or not, all in such order and manner as Bank may determine. Any amount not so used shall be applied to the Obligations. Such application or release shall not cure or waive any default. In the event Bank deems it necessary to appear or answer in any condemnation action, hearing or proceeding, Grantor shall hold Bank harmless from and pay all legal expenses, including but not limited to attorneys' fees, paralegal fees, court costs and other expenses.

24. OTHER PROCEEDINGS. If any action or proceeding is commenced to which Bank is made or chooses to become a party by reason of the execution of the Note, this Deed of Trust, any loan documents, the existence of any Obligations, or in which Bank deems it necessary to appear or answer in order to protect its interests, Grantor agrees to pay and to hold Bank harmless for all liabilities, costs and expenses paid or incurred by Bank in such action or proceedings, including but not limited to attorneys' fees, paralegal fees, court costs and all other damages and expenses.

25. WAIVER BY GRANTOR. To the extent not specifically prohibited by law, Grantor hereby waives and releases any and all rights and remedies Grantor may now have or acquire in the future relating to:



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- A. homestead;
- B. exemptions as to the Property;
- C. marshalling of liens and assets; and
- ~~D. statutes of limitations.~~

26. **OTHER WAIVERS.** No waiver, express or implied, of the performance of any obligation of this Deed of Trust, the Note or Obligations, shall be deemed to be a waiver of any other or succeeding obligation. No payment or advancement by Bank on behalf of Grantor shall be deemed a waiver of the breach occurring, or of the right to elect to foreclose this Deed of Trust; and, the indulgence of Bank to Grantor in not exercising its option to declare the entire indebtedness to be due and payable upon the happening of any one of the events or conditions herein described, shall not, even though such indulgence be repeated and extended, be construed as a waiver of the right of Bank to exercise such option at any time thereafter for any cause and without notice to Grantor.
27. **PARTIAL RELEASE.** Bank, at Bank's discretion, may release any part of the Property from the lien of this Deed of Trust and such release shall in no way affect the lien of this Deed of Trust on the remaining portion of the Property or any of the rights or remedies herein provided. Trustee shall, only upon proper written authorization of Bank, perform all acts necessary to execute such release. It is agreed that Grantor will pay the expenses of obtaining and recording all releases, if any, from this Deed of Trust.
28. **DUTIES AND OBLIGATIONS OF TRUSTEE.** The duties and obligations of Trustee are as follows:
- A. The duties and obligations of Trustee shall be determined solely by the express provisions of this Deed of Trust and applicable law, and Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be imposed upon Trustee;
 - B. No provision of this Deed of Trust shall require Trustee to expend or risk Trustee's own funds, or otherwise incur any financial obligation in the performance of any of the duties hereunder, or in the exercise of any of the rights or powers, if Trustee shall have grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to Trustee;
 - C. Trustee may consult with counsel of Trustee's own choosing and the advice of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered hereunder in good faith and reliance thereon;
 - D. Trustee shall not be liable for any action taken in good faith and reasonably believed to be authorized or within the discretion or rights or powers conferred by this Deed of Trust; and
 - E. Trustee shall not be responsible for the payment of any unpaid taxes on the Property due and owing at the time of the sale of all or any part of the Property as herein provided.
29. **SUCCESSOR TRUSTEE.** Bank may from time to time substitute a successor or successors to any trustee named herein or acting hereunder to execute this Deed of Trust. Upon such appointment and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument given by Bank, containing reference to this Deed of Trust and its place of record, which when recorded in the office of the county or counties in which the Property is situated shall be conclusive proof of proper appointment of the successor trustee. The foregoing power of substitution and the procedure therefor shall be used in substitution of the power and procedure provided for by law, unless and to the extent otherwise provided by applicable law.
30. **TERM.** This Deed of Trust shall remain in effect until terminated in writing.
31. **ADDITIONAL TERMS.** This Deed of Trust is being issued in conjunction with an advance being made under the company's \$5,000,000. line of credit which is evidenced by a note dated 7/29/99 for a two year period to mature 8/1/01. This line was granted at a rate of Prime +1% and calls for interest only monthly, beginning on the first day of the month following the first advance on the line. (January 1, 2000). All terms and conditions agreed upon on this loan in July 1999 remain complete and in force covering this \$290,000 advance.
32. **GENERAL PROVISIONS.**
- A. **TIME IS OF THE ESSENCE.** Time is of the essence in Grantor's performance of all duties and obligations imposed by this Deed of Trust.
 - B. **NO WAIVER BY BANK.** Bank's course of dealing, or Bank's forbearance from, or delay in, the exercise of any of Bank's rights, remedies, privileges or right to insist upon Grantor's strict performance of any provisions contained in this Deed of Trust, or other loan documents, shall not be construed as a waiver by Bank, unless any such waiver is in writing and is signed by Bank.
 - C. **AMENDMENT.** The provisions contained in this Deed of Trust may not be amended, except through a written amendment which is signed by Grantor and Bank.
 - D. **INTEGRATION CLAUSE.** This written Deed of Trust and all documents executed concurrently herewith, represent the entire understanding between the parties as to the Obligations and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.
 - E. **FURTHER ASSURANCES.** Grantor agrees, upon request of Bank and within the time Bank specifies, to provide any information, and to execute, acknowledge, deliver and record or file such further instruments or documents as may be required by Bank to secure the Note or confirm any lien.

Deed of Trust
BRIAR DEVELOPMENT 07/29/99

(c)1984, Bankers Systems, Inc. St. Cloud, MN WA-17-050698-2.90-6
** READ FRONT AND BACK OF EACH PAGE

Initials *PH*



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- F. **GOVERNING LAW.** This Deed of Trust shall be governed by the laws of the State of WASHINGTON, provided that such laws are not otherwise preempted by federal laws and regulations.
- G. **FORUM AND VENUE.** In the event of litigation pertaining to this Deed of Trust, the exclusive forum, venue and place of jurisdiction shall be in the State of WASHINGTON, unless otherwise designated in writing by Bank or otherwise required by law.
- H. **SUCCESSORS.** This Deed of Trust shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the parties; provided however, that Grantor may not assign, transfer or delegate any of the rights or obligations under this Deed of Trust.
- I. **NUMBER AND GENDER.** Whenever used, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.
- J. **DEFINITIONS.** The terms used in this Deed of Trust, if not defined herein, shall have their meanings as defined in the other documents executed contemporaneously, or in conjunction, with this Deed of Trust.
- K. **PARAGRAPH HEADINGS.** The headings at the beginning of any paragraph, or any subparagraph, in this Deed of Trust are for convenience only and shall not be dispositive in interpreting or construing this Deed of Trust.
- L. **IF HELD UNENFORCEABLE.** If any provision of this Deed of Trust shall be held unenforceable or void, then such provision to the extent not otherwise limited by law shall be severable from the remaining provisions and shall in no way affect the enforceability of the remaining provisions nor the validity of this Deed of Trust.
- M. **CHANGE IN APPLICATION.** Grantor will notify Bank in writing prior to any change in Grantor's name, address, or other application information.
- N. **NOTICE.** All notices under this Deed of Trust must be in writing. Any notice given by Bank to Grantor hereunder will be effective upon personal delivery or 24 hours after mailing by both first class United States mail and either registered or certified mail, return receipt requested, postage prepaid, addressed to Grantor at the address indicated below Grantor's name on page one of this Deed of Trust. Any notice given by Grantor to Bank hereunder will be effective upon receipt by Bank at the address indicated below Bank's name on page one of this Deed of Trust. Such addresses may be changed by written notice to the other party.
- O. **GRANTOR DEFINED.** The term "Grantor" includes each and every person signing this Deed of Trust as a Grantor and any co-signers.
- P. **SEPARATE AND DISTINCT.** Each privilege, option or remedy provided in this Deed of Trust is distinct from every other privilege, option or remedy contained herein or afforded by law or equity, and may be exercised, to the extent not prohibited by law, independently, concurrently, cumulatively, and successively by Bank or by any other owner or holder of the Obligations.
- Q. **FILING AS FINANCING STATEMENT.** Grantor agrees and acknowledges that this Deed of Trust also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the WASHINGTON Uniform Commercial Code. A carbon, photographic or other reproduction of this Deed of Trust is sufficient as a financing statement.

33. **ACKNOWLEDGMENT.** By their signatures below, the undersigned acknowledge they have read and received a copy of this Deed of Trust.

ORAL AGREEMENTS OR COMMITMENTS TO LEND MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW. SUCH MATTERS MUST BE REDUCED TO WRITING.

GRANTOR:

BRIAR DEVELOPMENT COMPANY
a Washington general partnership

By:

DALE HENLEY
DALE HENLEY, PRESIDENT & CEO
General Partner

TEZ



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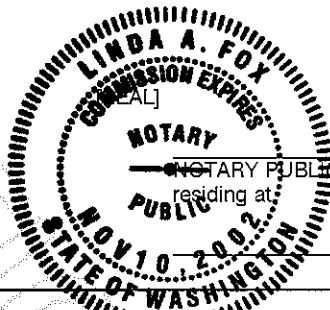
STATE OF WASHINGTON

SS:
COUNTY OF WHATCOM

I certify that I know or have satisfactory evidence that DALE HENLEY, PRESIDENT & CEO signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the general partner of BRIAR DEVELOPMENT COMPANY, a Washington general partnership, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: DEC. 21/1999

My appointment expires:
Nov 10/2002



Linda A. Fox

NOTARY PUBLIC in and for the state of Washington,

residing at:

Blaine, WA

REQUEST FOR RECONVEYANCE

(Not to be completed until paid in full)

TO TRUSTEE:

The undersigned is the holder of the note or notes secured by this Deed of Trust. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel this Deed of Trust, which is delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Date: _____

(Authorized Bank Signature)

THIS IS THE LAST PAGE OF A 9 PAGE DOCUMENT. EXHIBITS AND/OR ADDENDA MAY FOLLOW.



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EXHIBIT "A"

SCHEDULE B

Order No.: SB-15544

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

GENERAL EXCEPTIONS:

- A. Rights or claims of parties in possession not shown by the public records.
- B. Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey.
- C. Easements, or claims of easements, not shown by the public records.
- D. Any lien, or right to a lien, for contributions to employee benefit funds, or for state workers' compensation, or for services, labor, or material heretofore or hereafter furnished, all as imposed by law, and not shown by the public records.
- E. Taxes or special assessments which are not shown as existing liens by the public records.
- F. Any service, installation, connection, maintenance, or construction charges or sewer, water, electricity, or garbage collection and disposal.
- G. Reservations and exceptions in United States Patents or in Acts authorizing the issuance thereof. Indian tribal codes or regulations, Indian treaty or aboriginal rights, including easements or equitable servitudes.
- H. Water rights, claims or title to water.
- I. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records, or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

SPECIAL EXCEPTIONS:

- 1. THRU 30. SEE SCHEDULE B-001 WHICH IS ATTACHED HERETO.
- 31. General Exceptions A, B, C, and D will be shown in the extended coverage policy to be issued unless cleared to the satisfaction of the Company. This commitment will be supplemented when we have more information. If you have any questions, please contact your Title Officer.
- 32. Financing Statement (U.C.C. Fixture Filing), including the terms and conditions thereof;
Recorded: July 6, 1999
Auditor's No.: 9907060069, records of Skagit County, WA
U.C.C. No.: 2
Debtor: Haggen, Inc., d/b/a Haggen Food & Pharmacy
Secured Party: Supervalu, Inc.
Affects: Said premises and other property
- 33. Local improvement assessments, if any, levied by the City of Mount Vernon.

- END OF SPECIAL EXCEPTIONS -

continued.



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SCHEDULE B (continued)

Order No.: SB-15544

The following matters will not be listed as Special Exceptions in Schedule B of the policy. There will be no coverage for loss arising by reason of the matters listed below because these matters are either excepted or excluded from coverage or are not matters covered under the insuring provisions of the policy.

NOTE 1: General taxes for 1999 have been paid.
AMOUNT: NOT AVAILABLE
Account No.: 340421-2-001-0100
Property No.: P115979
Located in: City of Mount Vernon

NOTE 2: According to the Skagit County Assessor's office, the address of the herein described premises is:

405 North 25th Street
Mount Vernon, WA 98273

NOTE 3: The following is an abbreviated legal description for this commitment and should not be used as a complete legal description on the forthcoming documents:

Lot 3, MOUNT VERNON SP#MV-5-98, Ptn. NW, Sec. 21, T34N, R4E W.M.

- END OF SCHEDULE B -

JBN/klw



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