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Skagit County Auditor

8/13/2007 Page 1 of 18 11:23AM

When recorded return to:  
HORIZON BANK  
WHATCOM COMMERCIAL CENTER  
2211 Rimland Drive, Suite 230  
Bellingham, Washington 98226

CHICAGO TITLE COMPANY  
IC42975

Grantor:	<b>BRIAR DEVELOPMENT COMPANY LLP</b>
Grantee 1 (Beneficiary):	<b>HORIZON BANK</b>
Grantee 2 (Trustee):	<b>WESTWARD FINANCIAL SERVICES CORPORATION</b>
Legal Description:	Ptn. Gov. Lot 1, Sec 6, T34N, R4EWM

Additional legal description is on Exhibit A.

Assessor's Property Tax Parcel Number: 340406-0-151-0007; 340406-0-147-0004;  
340406-0-148-0003; 340406-0-143-0016

[SKAGIT]

**DEED OF TRUST, ASSIGNMENT OF PROCEEDS,  
SECURITY AGREEMENT, AND FIXTURE FILING  
To Secure a Loan  
From HORIZON BANK**

**NOTICE TO RECORDER: THIS DOCUMENT CONTAINS A FIXTURE FILING AND SHOULD BE FILED AND INDEXED IN THE REAL ESTATE RECORDS NOT ONLY AS A DEED OF TRUST, BUT ALSO AS A FIXTURE FILING.**

**THIS DEED OF TRUST SECURES SUMS THAT MAY BE BORROWED, REPAYED AND REBORROWED.**

1. **DATE AND PARTIES.** This Deed of Trust, Assignment Of Proceeds, Security Agreement, And Fixture Filing ("Deed of Trust") is made as of August 9, 2007, and the parties and their mailing addresses are the following:

**GRANTOR:**

**BRIAR DEVELOPMENT COMPANY LLP**, a Washington limited liability partnership  
2211 Rimland Drive  
Bellingham, Washington 98226

**TRUSTEE:**

**WESTWARD FINANCIAL SERVICES CORPORATION**  
1500 Cornwall Avenue  
Bellingham, Washington 98225

**GRANTEE:**

**HORIZON BANK**, a Washington banking corporation  
2211 Rimland Drive, Suite 230  
Bellingham, Washington 98226

2. **OBLIGATIONS DEFINED.** The term "Obligations" is defined as and includes the following:
- A. Timely payment and performance of all of Grantor's obligations under a Credit Agreement dated July 28, 2004 (as amended from time to time, the "Credit Agreement") executed between Grantor and Grantee and under a Revolving Note dated July 28, 2004 (as amended from time to time, the "Revolving Note") executed by Grantor in favor of Grantee in the original stated principal amount of \$7,000,000 (as such amount may be increased or decreased from time to time), together with interest thereon at the rate or rates specified therein (the "Contract Rate"), in each case as previously modified by Loan Modification Agreement dated December 15, 2004, by a Change in Terms Agreement dated April 4, 2006, by a Loan Modification Agreement dated July 25, 2006, by a Change in Terms Agreement dated July 16, 2007 by a Loan Modification Agreement dated as of even date herewith and as may be further amended from time to time.
  - B. All obligations of Grantor under the deeds of trust recorded in Skagit County, Washington under recording numbers 199912220057, 199912220058, 200006080063.
  - C. All future advances by Grantee to Grantor (provided this Deed of Trust is specifically referred to in the evidence of indebtedness with regard to such future and additional indebtedness).
  - D. All additional sums advanced, and expenses incurred, by Grantee 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 Grantee pursuant to this Deed of Trust, plus interest at the same rate provided for in the Credit Agreement and/or the Revolving Note.
  - E. Grantor's performance of any terms in this Deed of Trust, 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 Revolving Note or the loan evidenced thereby.

3. **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** all estate, right, title and interest that Grantor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Property"):
- A. The real property located in the County of Skagit State of Washington, as described in **EXHIBIT A** attached hereto and forming a part hereof, together with all existing and future easements and rights affording access to it (the "Real Property"); and
  - B. all buildings, improvements, fixtures and equipment now or hereafter attached to the Real Property, including, but not limited to, all heating, air conditioning, ventilation, plumbing, cooling, electrical and lighting fixtures and equipment; together with
  - C. all landscaping; all exterior and interior improvements thereon and therein; together with
  - D. all easements, issues, rights, appurtenances, rents, royalties, oil and gas rights, privileges, proceeds, 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 Real Property; together with
  - E. All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Grantor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Grantee), which arise from or relate to construction on the Real Property or any sale or leasing thereof or to any business now or later to be conducted on it, or to the Real Property and improvements thereon generally and any builder's or manufacturer's warranties with respect thereto; together with
  - F. All insurance policies pertaining to the Real Property and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Real Property, the improvements thereon or the other property described above into cash or liquidated



claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Real Property, the improvements thereon or the other property described above or any part of them, or breach of warranty in connection with the construction of the improvements on the Real Property, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

- G. All of Grantor's right, title, and interest in and to any and all units, declarant rights, and any other rights relating to the Real Property or to the improvements thereon, whether now existing or subsequently arising, under any laws now existing or subsequently arising relating to condominiums; together with
- H. All Grantor's right, title and interest in and to any Interest Rate Agreement or Interest Rate Product, whether now or hereafter entered into by Grantor with respect to the Loan, including, without limitation, any and all amounts payable to Grantor, any deposit account or accounts with the Grantee in the name of the Grantor for deposit of payments to Grantor in connection with any Interest Rate Product, and any and all funds now or hereafter on deposit therein, and ; together with
- I. All Grantor's rights in (i) all agreements heretofore or hereafter entered into relating to the construction, ownership, operation, management, leasing or use of the Real Property or the improvements thereon, (ii) any and all present and future amendments, modifications, supplements, and addenda to any of the items described in clause (i), (iii) any and all guarantees, warranties and other undertakings (including payment and performance bonds) heretofore or hereafter entered into or delivered with respect to any of the items described in clauses (i) through (ii), (iv) all trade names, trademarks, logos and other materials used to identify or advertise, or otherwise relating to the Real Property or the improvements thereon, and (v) all building permits, governmental permits, licenses, variances, conditional or special use permits, and other authorizations now or hereafter issued in connection with the construction, development, ownership, operation, management, leasing or use of the Real Property or the improvements thereon, to the fullest extent that the same or any interest therein may be legally assigned by Grantor; together with
- J. All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory; together with
- K. All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

The Trustee accepts this trust when this Deed of Trust, duly executed and



acknowledged, is made of public record as provided by law.

The parties acknowledge that some of the Property may be determined under applicable law to be personal property or fixtures. To the extent that any Property may be or be determined to be personal property, Grantor as debtor hereby grants Beneficiary and Trustee as secured parties a security interest in all such Property to secure payment and performance of the Obligations. This Deed of Trust constitutes a security agreement under the Uniform Commercial Code of the State in which the Property is located, covering all such Property.

4. **ASSIGNMENT.** Grantor hereby irrevocably, absolutely, presently and unconditionally assigns to Grantee all rents, royalties, issues, profits, revenue, income, accounts, proceeds and other benefits of the Property, whether now due, past due or to become due, including, without limitation, all proceeds of sale of all or any portion of the Property and security deposits related to such Property. This is an absolute assignment, not an assignment for security only.

Grantee hereby confers upon Grantor a license to collect and retain the foregoing as they become due and payable, so long as no Event of Default, as defined below, shall exist beyond any stated cure period. If an Event of Default has occurred and shall exist beyond any stated cure period, Grantee shall have the right, which it may choose to exercise in its sole discretion, to terminate this license without notice to or demand upon Grantor, and without regard to the adequacy of Grantee's security under this Deed of Trust.

5. **LIENS AND ENCUMBRANCES.** Other than as reflected in the Grantee's policy of title insurance insuring the lien of this Deed of Trust on the Real Property, Grantor warrants the title to the Property and warrants that the Property is free and clear of all liens and encumbrances.
6. **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, and
  - B. is authorized to convey the Property
7. **NON-AGRICULTURAL PROPERTY; COMMERCIAL LOAN.** Grantor represents and warrants that the Property is not used principally for agricultural purposes. The loan secured by this Deed of Trust was not made primarily for personal, family or household purposes.
8. **EVENTS OF DEFAULT.** Grantor shall be in default upon the occurrence of any of the following events, circumstances or conditions (each, and "Event of Default"):
- A. The occurrence of a "Default" under and as defined in the Credit Agreement and the expiration of the cure period applicable thereto as expressly set forth in such agreement (if any); or
  - B. Failure by any party obligated on the Obligations to make any other payment within 10 days of the date when due; or



- C. A default or breach by Grantor, Grantor or any co-signer, endorser, surety, or guarantor under any of the terms of this Deed of Trust, the Revolving Note, the Deeds of Trust (as defined in the Credit Agreement), 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, which default or breach is not otherwise described under this Section 8 and continues after the earliest of (i) expiration of the cure period applicable thereto as expressly set forth in the applicable agreement, if any, or (ii) 30 days following written notice from Grantee; or
- D. The making or furnishing of any verbal or written representation, statement or warranty to Grantee which is or becomes false or incorrect in any material respect by or on behalf of Grantor, Grantor, or any co-signer, endorser, surety or guarantor of the Obligations; or
- E. Failure to obtain or maintain the insurance coverages required by Grantee, or insurance as is customary and proper for the Property (as herein defined); or
- F. The 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, Grantor, or any co-signer, endorser, surety or guarantor of the Obligations; or
- G. Failure to provide proof of payment of any tax, assessment, rent, insurance premium applicable to the collateral for the Obligations before the same become delinquent; or failure to provide proof of payment of any escrow or escrow deficiency applicable to the collateral for the Obligations within ten (10) days of request by Grantee; or
- H. 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".
- I. Any default or event of default (howsoever defined or described) under that certain Environmental Liabilities Agreement as of even date herewith by and among Grantor, Richard R. Hagen and Donald E. Hagen and Grantee, after expiration of any applicable cure periods.
9. **REMEDIES ON DEFAULT.** At the option of Grantee, 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, Grantee and Trustee shall be entitled to all of the rights and remedies provided by law, the Revolving 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 Grantee exercises such option to accelerate, Grantee shall mail Grantor, by certified mail or otherwise, notice of acceleration to the address of Grantor shown on Grantee'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), Grantee may, without further notice or demand on Grantor, invoke any remedies permitted on default. In addition, if there is an Event of Default and Grantee 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 Grantee 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 Grantee all amounts advanced for repairs, taxes, insurance, liens, assessments and prior encumbrances and interest thereon, and the principal and interest on the Revolving Note paying the surplus, if any, to the person or persons legally entitled thereto. The holder of the Revolving Note may purchase the Property. The recitals in any deed or deeds of conveyance shall be taken as prima facie true, Grantee and Trustee are entitled to all rights and remedies provided at law or equity whether or not expressly stated in this Deed of Trust. By choosing any remedy, Grantee and Trustee do not waive their right to an immediate use of any other remedy if the event of default continues or occurs again.

10. **DUE ON SALE OR ENCUMBRANCE.** Grantee may, at Grantee's option, declare the entire balance with all accrued interest on the Obligations to be immediately due and payable upon the creation of, any voluntary lien, encumbrance, transferor sale of the Property; or any portion thereof, by Grantor. Lapse of time or the acceptance of payments by Grantee 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 Grantee's right to accelerate the Revolving Note. If Grantor fails to pay such sums prior to the expiration of such period, Grantee 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.



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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, 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.

11. **APPOINTMENT OF RECEIVER.** If there is a Default, Grantee or the holder of the Revolving 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 Revolving Note.
12. **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, upon request, provide written proof to Grantee of such payment(s).
13. **INSURANCE.** Grantor shall insure and keep insured any improved 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 Grantee and in an amount acceptable to Grantee. Such insurance shall contain the standard "Mortgagee Clause" and where applicable, "Loss Payee Clause", which shall name and endorse Grantee as mortgagee and loss payee. Such insurance shall also contain a provision under which the insurer shall give Grantee at least 30 days notice before the cancellation, termination or material change in coverage.

If an insurer elects to pay fire or other hazard, loss or damage claim rather than to repair, rebuild or replace the Property lost or damaged, Grantee 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 Grantee as Grantor's attorney-in-fact during the continuation of any Event of Default, 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. Grantee shall be entitled to pursue any claim under the insurance if Grantor fails to promptly do so. The Grantee 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 Grantee 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 Grantee to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

14. **WASTE.** Grantor shall not alienate or encumber the Property to the prejudice of Grantee, 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.
15. **CONDITION OF PROPERTY.** As to the Property, Grantor shall:
  - A. Except to the extent that Grantor elects to demolish existing buildings that in Grantor's good faith judgment do not increase the value of the property, 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; and
  - 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 tile Property if used for agricultural purposes.
16. **INSPECTION BY BANK.** Grantee or its agents may make or cause to be made reasonable entries upon the Property and inspect the Property provided that Grantee shall make reasonable efforts to give Grantor prior notice of any such inspection.
17. **PROTECTION OF BANK'S SECURITY.** If Grantor fails to perform any covenant, obligation or agreement contained in the Revolving Note, this Deed of Trust or any loan documents or if any action or proceeding is commenced which materially affects Grantee'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 Grantee, at Grantee's sole option, may make such appearances, disburse such sums, and take such action as is necessary to protect Grantee's interest. Grantor hereby assigns to Grantee 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 Grantee harmless for all liability, costs, expenses, reasonable attorneys' fees and paralegal fees incurred by Grantee in its protection of the Property or its lien. Without Grantee's prior written consent, Grantor will not partition or subdivide the Property.



18. 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 Revolving Note, or any other instrument securing or relating to the Revolving Note, or
- E. prevent the Property from becoming subject to any other lien or encumbrance,

Grantee may pay or procure such things at Grantor's cost and Grantee may make any reasonable expenditure incidental thereto. Grantee 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 Grantee. All costs expended by Grantee 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 Revolving 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.

19. COLLECTION EXPENSES. In the event of default, Grantor agrees to pay all costs of collection incurred by Grantee. 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.

20. 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 reasonable 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.

21. 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 Grantee of the institution of such proceedings, Grantor further agrees to notify Grantee 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 Grantee as a prepayment under the Revolving Note. Grantor also agrees to notify Grantee 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 Grantee, be paid to Grantee. Such awards or compensation are hereby assigned to Grantee, and judgment therefor shall be entered in favor of Grantee.

When paid, such awards shall be used, at Grantee'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 Grantee 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 Grantee deems it necessary to appear or answer in any condemnation action, hearing or proceeding, Grantor shall hold Grantee harmless from and pay all legal expenses, including but not limited to attorneys' fees, paralegal fees, court costs and other expenses.

22. **OTHER PROCEEDINGS**, If any action or proceeding is commenced to which Grantee is made or chooses to become a party by reason of the execution of the Revolving Note, this Deed of Trust, any loan documents, the existence of any Obligations, or in which Grantee deems it necessary to appear or answer in order to protect its interests, Grantor agrees to pay and to hold Grantee harmless for all liabilities, costs and expenses paid or incurred by Grantee in such action or proceedings, including but not limited to attorneys' fees, paralegal fees, court costs and all other damages and expenses.
23. **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:
- A. homestead;
  - B. exemptions as to the Property;
  - C. marshalling of liens and assets; and
  - D. statute of limitations.
24. **OTHER WAIVERS**, No waiver, express or implied, of the performance of any obligation of this Deed of Trust, the Revolving Note or Obligations, shall be deemed to be a waiver of any other or succeeding obligation. No payment or advancement by Grantee 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 Grantee to Grantor in not exercising its option to declare the entire indebtedness to be due and payable upon the happening of anyone 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 Grantee to exercise such option at any time thereafter for any cause and without notice to Grantor.
25. **PARTIAL RELEASE.** Grantee, at Grantee'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 Grantee, 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.
26. **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.
27. **SUCCESSOR TRUSTEE.** Grantee 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 Grantee, 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.

28. **TERM.** This Deed of Trust shall remain in effect until terminated in writing.

29. **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.** Grantee's course of dealing, or Grantee's forbearance from, or delay in, the exercise of any of Grantee'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 Grantee, unless any such waiver is in writing and is signed by Grantee.
- 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 Grantee,
- 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 Grantee and within the time Grantee specifies, to provide any information, and to execute, acknowledge, deliver and record or file such further instruments or documents as may reasonably be required by Grantee to secure the Revolving Note or confirm any lien.
- 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 Grantee 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 Grantee 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 Grantee 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 Grantee hereunder will be effective upon receipt by Grantee at the address indicated below Grantee'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 Grantee 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.
30. **ACKNOWLEDGMENT.** By their signatures below, the undersigned acknowledge they have read and received a copy of this Deed of Trust and that they are authorized to sign this Deed of Trust on behalf of Grantor so as to make this Deed of Trust the lawful, binding and enforceable obligations of Grantor.

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 LLP, a Washington limited liability partnership

By: [Signature]

Name: DALE HENLEY, PRESIDENT & CEO 8/9/07

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 said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as a partner and President & CEO of BRIAR DEVELOPMENT COMPANY LLP, a Washington limited liability partnership, to be the free and voluntary act of such limited liability partnership for the uses and purposes mentioned in the instrument.

Dated this 10th day of August, 2007.

[Signature]  
(Signature of Notary)

Kelly L. Boies  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington, residing at Bellingham, WA

My appointment expires Dec. 8, 2010



200708130133  
Skagit County Auditor

**EXHIBIT A**  
[LEGAL DESCRIPTION]

**PARCEL A:**

The East 100 feet of the following described tract:

That portion of the East Half of the West Half of Government Lot 1, Section 6, Township 34 North, Range 4 East of the Willamette Meridian, lying Southerly of the State Highway and Northerly of a line which is parallel with and 200 feet Southerly of the Southerly line of said State Highway, as conveyed by deed recorded July 27, 1976, under Auditor's File No. 839826, records of Skagit County, Washington;

EXCEPT the East 10 feet thereof;

AND FURTHER EXCEPTING that portion conveyed to the State of Washington for road purposes by deed recorded August 15, 2006, under Auditor's File No. 200608150173, records of Skagit County, Washington.

Situated in Skagit County, Washington

**PARCEL B:**

The West 81.57 feet of the following described tract:

That portion of Government Lot 1, Section 6, Township 34 North, Range 4 East of the Willamette Meridian, described as follows:

Beginning at the intersection of the West line of the Pacific Highway and the South line of the County road along the North line of said Government Lot 1;  
Thence West 470 feet to the true point of beginning;  
Thence West to the West line of the East Half of Government Lot 1;  
Thence South to the South line of the North Half of the North Half of the North Half of Government Lot 1 (said line being the North line of the tract conveyed December 21, 1915, to Anna J. Knutzen by deed recorded in Volume 102 of Deeds, page 21);  
Thence East to a point 470 feet West of the West line of the Pacific Highway;  
Thence North to the true point of beginning;

[Continued on next page.]



ALSO the East 10 feet of that portion of the West Half of Government Lot 1, lying South of the County road, as conveyed by deed recorded July 27, 1976, under Auditor's File No. 839826, records of Skagit County, Washington, and North of a line which is 200 feet South of and parallel with the County road in Section 6, Township 34 North, Range 4 East of the Willamette Meridian;

EXCEPTING that portion conveyed to the State of Washington for road purposes by deed recorded August 15, 2006, under Auditor's File No. 200608150173, records of Skagit County, Washington.

Situated in Skagit County, Washington

PARCEL C:

That portion of Government Lot 1, Section 6, Township 34 North, Range 4 East of the Willamette Meridian, described as follows:

Beginning at the intersection of the West line of the Pacific Highway and the South line of the County road along the North line of Government Lot 1;  
Thence West 470 feet to the true point of beginning;  
Thence West to the West line of the East Half of Government Lot 1;  
Thence South to the South line of the North Half of the North Half of the North Half of Government Lot 1 (same being the North line of a tract conveyed December 21, 1915 to Anna J. Knutzen by deed recorded in Volume 102 of Deeds, page 21);  
Thence East to a point 470 feet West of the West line of the Pacific Highway;  
Thence North to the true point of beginning;

EXCEPT the West 81.57 feet thereof as conveyed to Floyd Packwood, et ux, by deed recorded under Auditor's File No. 467381, records of Skagit County, Washington;

AND FURTHER EXCEPTING that portion conveyed to the State of Washington for road purposes by deed recorded August 15, 2006, under Auditor's File No. 200608150173, records of Skagit County, Washington.

Situated in Skagit County, Washington

[Continued on next page.]



**PARCEL D:**

That portion of Government Lot 1, Section 6, Township 34 North, Range 4 East of the Willamette Meridian, described as follows:

Beginning at the intersection of the South line of the County road along the North line of said subdivision and the West line of the Pacific Highway;

Thence West along said County road 255 feet to the true point of beginning;

Thence continuing West along said road 215 feet;

Thence South to a point 15 feet South of the South line of the North Half of the North Half of the North Half of said Government Lot 1;

Thence East to a point South of the true point of beginning;

Thence North to the true point of beginning;

EXCEPTING that portion conveyed to the State of Washington for road purposes by deed recorded August 15, 2006, under Auditor's File No. 200608150173, records of Skagit County, Washington.

Situated in Skagit County, Washington



200708130133  
Skagit County Auditor

8/13/2007 Page

18 of

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