

After recording, return to:

Joel M. Gordon
Buck & Gordon LLP
Attorneys At Law
902 Waterfront Place
1011 Western Avenue
Seattle, Washington 98104-1097
(206) 382-9540
(206) 626-0675



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Skagit County Auditor

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Document Title(s) (or transactions contained therein)

1. REPURCHASE OPTION

ISLAND TITLE CO. C22126

Grantor(s) (Last name, first, then first name and initials)

1. BURLINGTON DOUGHNUT SITE LLC

Additional names on page _____ of document.

Grantee(s) (Last name first, then first name and initials)

1. BRIAR DEVELOPMENT COMPANY

Additional names on page _____ of document.

Legal Description (abbreviated: i.e., lot, block plat or section, township, range, qtr./qtr.)

GVMT. LOT 1, SEC. 6, T. 34 N., R. 4 E., W.M.

Additional legal is on page _____ of document.

Reference Number(s) of Documents assigned or released:

Additional numbers on page _____ of document.

Assessor's Property Tax Parcel/Account Number

P23700 (3404006-1-077-0000); P117184 (340406-1-077-0200); P117185 (340406-1-077-0300)

Property Tax Parcel ID is not yet assigned

Additional parcel numbers on page _____ of document.

REPURCHASE OPTION

This Repurchase Option Agreement (the "Repurchase Option" or "Agreement") is made and entered into this 16th day of July, 2002, by and between Burlington Doughnut Site LLC a Washington Limited Liability Company ("Optionor") and Briar Development Company, a Washington general partnership ("Optionee").

Recitals

- A. Optionor has purchased from Optionee that certain real property located in the City of Burlington, Skagit County, Washington legally described on Exhibit A (the "Property") for the development and operation of a Krispy Kreme doughnut store.
- B. Optionee is the owner of a tract of land (the "Shopping Center Tract") which is contiguous to the Property and which tract is legally described on Exhibit B. Optionee has planned the development of a integrated retail shopping complex on the Shopping Center Tract and the Property which will also include the construction and operation of a supermarket on the "Supermarket Parcel," which is that portion of the Shopping Center Tract legally described on Exhibit C.
- C. Optionee has a strong continuing interest in the Property as it is located at the main entrance to the Shopping Center Tract and the promise of the development and operation of a Krispy Kreme doughnut store on the Property was a material inducement to Optionee's sale of the Property to Optionor. Accordingly, the parties agreed to make provisions as set forth in this Repurchase Option for the reacquisition of the Property by Optionee under the circumstances and on the terms and conditions set forth herein.

Agreements

NOW, THEREFORE, in consideration of the covenants and consideration set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Purchase Option.

1.1 Grant of Option. In the event that any of the Conditions Precedent set forth in Section 1.2 below occurs, then Optionee, or its assignee, shall have the right to elect to purchase the Property and all improvements and appurtenances thereon from the then owner of the Property on the terms and conditions set forth herein (the "Option").



1.2 Conditions Precedent. The occurrence of any of the following events shall give rise to the Option:

a) Failure to Open. A Krispy Kreme doughnut store has not been constructed and opened to the public for business on the Property within one (1) year of the date of recording of this Agreement;

b) Going Dark. A Krispy Kreme doughnut store opens to the public for business on the Property and following said opening there is a "Cessation of Operations" of the Krispy Kreme store. "Cessation of Operations" shall mean that the store is not open to the public for business for a period of 90 days or more, except for periods during which the store is closed for remodeling or on account of damage, destruction or condemnation;

c) Change of Use. A Krispy Kreme doughnut store opens to the public for business on the Property and following said opening Optionor proposes a "change of use" on the Property. "Change of Use" shall mean either no longer operating the business on the Property under the "Krispy Kreme" name (or such different name as the "Krispy Kreme" outlets in the State of Washington may later adopt so long as substantially all of the outlets change to the same name) or operating a facility on the Property whose primary business is other than the sale of doughnuts and associated beverages including, without limitation, coffee and espresso drinks.

1.3 Option Period. The period within which the Option may be exercised by written notice (a "Purchase Notice") to Optionor shall be one hundred (100) days (the "Option Period") from the occurrence of the first of any of the Conditions Precedent set forth above. In the event Optionor proposes either a Cessation of Operations or a Change of Use, it shall give written notice to Optionee thereof and the Option Period shall commence from Optionee's receipt of said notice or such later date as is set forth in the notice.

1.4 Purchase Price.

a) Amount. The purchase price, to be paid in cash at closing of the Option, shall be the Fair Market Value determined in accordance with the provisions below.

b) Fair Market Value Determination. "Fair Market Value" shall mean the price at which the Property could be sold by one who desires, but is not required, to sell and is sought by one who desires, but is not required to buy, after due consideration of all the elements reasonably affecting value, including without limitation similar conditions and restrictions. Optionee shall submit to Optionor within thirty (30) days of the commencement of the Option Period a written opinion of Fair Market Value, as defined herein, prepared by an



MAI appraiser with at least ten (10) years experience in the retail/commercial market in the Western Washington area. In the event Optionee fails to submit said appraiser's opinion within said time period, the Option shall terminate. Optionor may accept the opinion of Optionee's appraiser or it may within thirty (30) days of receipt of the opinion of Optionee's appraiser obtain the opinion of another appraiser who meets the qualification standards set forth above. If the two appraisers are unable to agree on Fair Market Value within ten (10) days after the submittal of the opinion of Optionor's appraiser, they shall select a similarly qualified third appraiser (the "Neutral Appraiser"). Within twenty (20) days after selection of the Neutral Appraiser, the Neutral Appraiser shall submit an opinion of Fair Market Value. To determine Fair Market Value the three appraisals shall be added together and the resulting sum divided by three, however, if an appraisal is more than 25 percent lower or higher than the middle appraisal, that appraisal shall be disregarded. If only one appraisal is disregarded, the remaining two appraisals shall be added together and their total divided by two; the resulting quotient shall be the Fair Market Value. If both the lowest and highest appraisals are disregarded because each varies more than 25 percent from the middle appraisal, then the middle appraisal shall be deemed the Fair Market Value. Each party shall be responsible for the costs and fees of the appraiser selected by that party and Optionor and Optionee shall share equally the costs and fees of the Neutral Appraiser. In the event Optionor does not accept the opinion of Optionee's appraiser but then fails to timely submit its own appraiser opinion, the Option Period shall automatically be extended by the period of time of the delay in the submittal of the opinion of Optionor's appraiser beyond the time period specified under the terms of this paragraph.

1.5 Closing. The closing of the purchase under the Option shall be consummated through an escrow established at a mutually acceptable title insurance company within thirty (30) days of receipt of the Purchase Notice. Optionor and Optionee shall, on demand, deposit in escrow all instruments and monies necessary to complete the sale in accordance with this Section 1.5. Title shall be conveyed to Optionee by statutory warranty deed subject only to those easements, covenants and conditions of record as of the date of this Repurchase Option or such other encumbrances approved in writing by the Optionee including all easements and use agreements placed on the Property in connection with the Shopping Center, and assessments and the effects of any condemnation action or other governmental or other action outside Optionor's reasonable control. Title shall be free and clear of any leases or other rental agreements and it shall be Optionor's sole responsibility to remove any tenants located on the Property. Non-delinquent real property taxes shall be prorated as of the date the deed is recorded. Optionor shall bear the cost an ALTA Owner's Standard Policy of Title Insurance, which shall be delivered to Optionee at closing, and any excise taxes due in connection with the sale. Optionor and Optionee shall each bear fifty percent of all other closing costs including but not limited to escrow and recording fees.

1.6 Termination. The Option shall terminate on the earlier of: (i) the expiration of option period described in Section 1.3 above without Optionee's delivery of a Purchase Notice to Optionor, (ii) Optionee's failure to timely submit an appraiser's opinion of

Fair Market Value as provided in Section 1.4(b), (iii) Optionee's failure to close its purchase within the time period set forth in Section 1.5 above, except if caused by default of Optionor, or (iv) the tenth (10th) anniversary of this Agreement. Provided, however, in the event (i) Optionor delivers a prospective notice of an expected Cessation of Operations or Change of Use, (ii) Optionee does not timely deliver a Purchase Notice to Optionor with respect to such prospective notice, (iii) the Cessation of Operations or Change of Use does not in fact occur within twelve (12) months after the delivery of the prospective notice, and (iv) the Option is not then otherwise terminated, then (v) the Option shall not be terminated due to Optionee's failure to deliver a Purchase Notice to Optionor with respect to such prospective notice and Optionor shall reimburse within thirty (30) days of demand Optionee's appraisal costs, if any, incurred in response to Optionor's prospective notice.

2. Assignment. Optionee may assign, and its assignees may further assign, without the consent of Optionor, all of Optionee's option rights hereunder (the "Repurchase Rights") to any of the following, provided that only one party shall hold the Repurchase Rights at any point in time: (i) Haggen, Inc. or the successor operator of the supermarket on the Supermarket Parcel; (ii) any successor owner of the Supermarket Parcel; or (iii) any successor owner of all or part of the Shopping Center Tract. No other assignment of the Repurchase Rights shall be permitted without Optionor's prior written consent, not to be unreasonably withheld or delayed. Optionee shall provide Optionor with written notice of its assignment of the Repurchase Rights.

3. Runs with the Land. This Agreement shall run with the land of the Property and subject to the provisions governing assignment provided in Section 3 above, shall be to the benefit of and binding upon the respective successors, heirs, assigns, tenants, administrators, executors, and marital communities, if any, of the parties hereto.

4. Notices. All notices required or permitted to be given hereunder shall be in writing and shall be deemed given when personally delivered, sent by facsimile transmission, or when delivered by private courier service (such as Federal Express), or three (3) days after being deposited in the United States mail in registered or certified form, postage prepaid, return receipt requested, addressed as follows:

If to Optionor: Arthur L. Wahl
Burlington Doughnut Site LLC
P.O. Box 4679
Seattle, WA 98104



with copy to: Camille Taylor Ralston
Montgomery Purdue Blankinship & Austin PLLC
58th Floor, Bank of America Tower
701 Fifth Avenue
Seattle, WA 98104
Fax No. (206) 625-9534

If to Optionee : Dale C. Henley
Briar Development Company
P.O. Box 489
Bellingham, WA 98227

with copy to: Joel M. Gordon, Esq.
BUCK & GORDON LLP
Suite 902, Waterfront Place
1011 Western Avenue
Seattle, WA 98104

Each Party shall have the right from time to time and at any time, upon at least ten (10) days' prior written notice thereof in accordance with the provisions hereof, to change its respective address and to specify any other address within the United States of America; provided, however, notwithstanding anything herein contained to the contrary, in order for the notice of address change to be effective it must actually be delivered. Refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

5. Remedies. In case of default by a party in any of its obligations contained herein, the non-defaulting party shall be entitled to bring an action for damages, specific performance, or any other remedy afforded at law or in equity. The prevailing party in any such action shall be entitled to recover its reasonable costs and attorneys' fees, including those incurred in any appeal.

6. Recording. This Agreement shall be recorded in the real property records of Skagit County, Washington.

7. Miscellaneous. Time is of the essence of this Agreement and every provision hereof. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof, and there or no other express or implied agreements, oral or written, between the parties. Invalidation of any of the provisions contained in this Agreement or the application thereof to any person shall in no way effect, impair or invalidate any of the other provisions hereof. This Agreement shall be construed in accordance with and under the laws of the State of Washington. The persons executing this Agreement on behalf of the respective parties hereby represent and warrant that they are authorized to enter into this Agreement on



the terms and conditions herein stated. This Agreement may be amended only in writing signed by both of the parties. This Agreement may be executed in counterparts, each of which shall be deemed an original as if signed by both parties.

OPTIONOR:

BURLINGTON DOUGHNUT SITE LLC,
a Washington Limited Liability Company

By ~~Arthur L. Wahl~~ Arthur L. Wahl & Associates
Its Arthur L. Wahl - Manager
Arthur L. Wahl, President
Date _____

Repurchase Option
SKAGIT COUNTY WASHINGTON
Real Estate Excise Tax
PAID

JUL 16 2002

Amount Paid \$
Skagit County Treasurer
By: *MEM* Deputy

OPTIONEE:

BRIAR DEVELOPMENT COMPANY,
a Washington general partnership,

By *Dee Dee Valley*
Its President / CEO
Date _____

DL
7/16/02

EXHIBITS:

- Exhibit A Legal Description of Krispy Kreme
- Exhibit B Legal Description of Shopping Center Tract
- Exhibit C Legal Description of Supermarket Parcel



STATE OF WASHINGTON)
) ss.
COUNTY OF King)

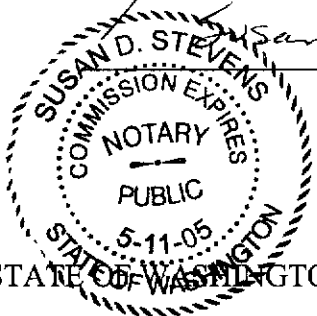
I certify that I know or have satisfactory evidence that Arthur L Wake signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it in (his/her) capacity as President * of BURLINGTON DOUGHNUT SITE LLC, a Washington Limited Liability Company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 12 day of July, 2002.

* of Wake, Inc
Associates,
Incorporated,
Manager

[Signature]

(Signature)



Susan D Stevens

(Print Name)
Notary Public, in and for the State
of Washington, residing at Seattle
My Commission Expires 5-11-05

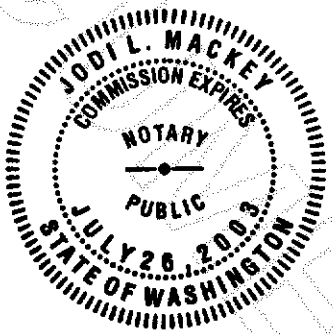
STATE OF WASHINGTON)
) ss.
COUNTY OF Whatcom)

I certify that I know or have satisfactory evidence that Dale C. Henley signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it in (his/her) capacity as President & CEO 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 this 10th day of July, 2002.

[Signature]

(Signature)



Jodi L. Mackey

(Print Name)
Notary Public, in and for the State
of Washington, residing at Bellingham
My Commission Expires July 26, 2003



**EXHIBIT A
OF
REPURCHASE OPTION**

"Krispy Kreme Tract"

LOT 3 OF CITY OF BURLINGTON BINDING SITE PLAN ENTITLED HAGGEN
CENTER BINDING SITE PLAN NO. 1, RECORDED ON JULY 10, 2002, UNDER
AUDITORS FILE NO. 200207100176, RECORDS OF SKAGIT COUNTY,
WASHINGTON; BEING A PORTION OF GOVERNMENT LOT 1, IN SECTION 6,
TOWNSHIP 34 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN.

**EXHIBIT B
OF
REPURCHASE OPTION**

"Shopping Center Tract"

LOT B OF CITY OF BURLINGTON BOUNDARY LINE ADJUSTMENT NO. BLA 6-00, RECORDED UNDER AUDITORS FILE NO. 200007280054, RECORDS OF SKAGIT COUNTY, WASHINGTON; BEING A PORTION OF GOVERNMENT LOT 1, IN SECTION 6, TOWNSHIP 34 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN.

AND

LOT 1 OF CITY OF BURLINGTON BINDING SITE PLAN ENTITLED HAGGEN CENTER BINDING SITE PLAN NO. 1, RECORDED ON JULY 10, 2002, UNDER AUDITORS FILE NO. 200207100176, RECORDS OF SKAGIT COUNTY, WASHINGTON; BEING A PORTION OF GOVERNMENT LOT 1, IN SECTION 6, TOWNSHIP 34 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN.

AND

LOT 2 OF CITY OF BURLINGTON BINDING SITE PLAN ENTITLED HAGGEN CENTER BINDING SITE PLAN NO. 1, RECORDED ON JULY 10, 2002, UNDER AUDITORS FILE NO. 200207100176, RECORDS OF SKAGIT COUNTY, WASHINGTON; BEING A PORTION OF GOVERNMENT LOT 1, IN SECTION 6, TOWNSHIP 34 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN.

**EXHIBIT C
OF
REPURCHASE OPTION**

"Supermarket Parcel"

LOT 1 OF CITY OF BURLINGTON BINDING SITE PLAN ENTITLED HAGGEN
CENTER BINDING SITE PLAN NO. 1, RECORDED ON JULY 10, 2002, UNDER
AUDITORS FILE NO. 200207100176, RECORDS OF SKAGIT COUNTY,
WASHINGTON; BEING A PORTION OF GOVERNMENT LOT 1, IN SECTION 6,
TOWNSHIP 34 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN.



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