

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is made and entered into by and among Haggen, Inc. ("Haggen"), Briar Development Company ("Briar"), and the City of Ferndale ("City"), collectively referred to as the "Parties."

RECITALS

A. In 2011, the City initiated certain amendments to the City of Ferndale Comprehensive Plan, including adoption of the Main Street Corridor Master Plan ("Master Plan"). Among other transportation planning strategies, the Master Plan proposed the preferential use of roundabouts to alleviate traffic congestion at intersections along the Main Street and Slater Road corridors.

B. Haggen owns and operates a grocery store ("Haggen Food and Pharmacy") within the geographic area subject to the Master Plan. Haggen Food and Pharmacy is located at 1815 Main Street (the "Haggen Site"). The Haggen Site is leased by Haggen and owned by Briar, and is legally described in Exhibit A.

C. Haggen has raised concerns regarding the potential site-specific adverse traffic impacts to Haggen Food and Pharmacy that may be caused by the location, configuration, and design of roundabouts in the vicinity of the Haggen Site (the "Haggen Site-Specific Impacts").

D. On July 14, 2011, pursuant to the State Environmental Policy Act ("SEPA"), Ch. 43.21C RCW, the City issued a Draft Environmental Impact Statement ("DEIS") regarding the environmental impacts of the City's adoption of the Master Plan. Haggen timely submitted written comments regarding the DEIS.

E. Because the DEIS considered potential adverse transportation impacts at the planning level and not at the project level, the DEIS was not intended to address project-level transportation impacts such as the Haggen Site-Specific Impacts. However, Haggen and Briar have desired confirmation from the City that the Haggen Site-Specific Impacts will be subject to future SEPA review, notwithstanding the City's use of a SEPA Planned Action for the Master Plan.

F. On December 12, 2011, the City issued a Final Planned Action Environmental Impact Statement ("FEIS") for the Master Plan. On December 19, 2011, the City Council adopted Ordinance No. 1693, amending the Comprehensive Plan and adopting the Master Plan (the "December 2011 Amendments"). Haggen testified at an open record hearing regarding the December 2011 Amendments prior to the Council's adoption of Ordinance No. 1693.

G. On December 22, 2011, Haggen and Briar filed an appeal of the FEIS to the City Hearing Examiner ("FEIS Appeal"). On February 17, 2012, Haggen and Briar filed a petition for review with the Growth Management Hearings Board ("GMHB") challenging the December 2011 Amendments, now GMHB Case No. 12-2-0006c ("2011 Amendment Appeal").

H. On March 5, 2012, the City Council adopted Ordinance No., 1707, which re-adopted the 2011 Comprehensive Plan Amendment Docket, complying with the City Council direction on December 19, 2011.

I. On March 19, 2012, the City Council adopted Ordinance No. 1710, which established a SEPA Planned Action for the Master Plan (the "Planned Action Ordinance"). Haggen and Briar submitted written comments regarding the Planned Action Ordinance. On May 18, 2012, Haggen and Briar filed a petition for review with the GMHB challenging the Planned Action Ordinance ("PAO Appeal").

J. The Parties acknowledge that the construction of roundabouts in the vicinity of the Haggen Site may require the City to obtain right-of-way or other property interests from Briar. The Parties further acknowledge that, at the time roundabouts are proposed for construction, SEPA will require the City to review the Haggen Site-Specific Impacts. However, the Parties desire to clarify how the City will communicate with Haggen and Briar regarding future design and review processes related to roundabouts proposed in the vicinity of the Haggen Site.

K. The Parties would like to settle the FEIS Appeal, the 2011 Amendment Appeal, and the PAO Appeal to resolve the existing dispute and avoid protracted litigation.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the Parties agree as follows with the intent that each be legally bound:

1. Clarification Regarding Future SEPA Review

Because the specific location and design of State and City road projects, including roundabouts, were not considered in the EIS and are therefore not part of the SEPA Planned Action defined in the Planned Action Ordinance, the Parties agree that the Planned Action Ordinance should be interpreted as follows:

Because the EIS considered potential adverse transportation impacts at the planning level and not at the project level, the EIS was not intended to address project-level transportation impacts such as the potential site-specific adverse impacts that may be caused by the location, configuration, and/or design of roundabouts. Accordingly, such potential site-specific adverse impacts (i) were not contemplated by the Planned Action; (ii) have not had their environmental impacts evaluated in the Planned Action EIS; (iii) are not considered part of any of the "Planned Actions" described in the Planned Action Ordinance; and (iv) shall remain subject to further review pursuant to SEPA.

2. Dismissal of Appeals

Within seven (7) business days after mutual execution of this Agreement, Haggen and Briar will file a voluntary withdrawal with the GMHB pursuant to WAC 242-03-720(1)(a)

requesting dismissal of the 2011 Amendment Appeal and the PAO Appeal. Haggen and Briar will also request dismissal of the FEIS Appeal.

3. No Future Appeals

Neither Haggen nor Briar will further appeal, challenge, contest, or oppose the Planned Action Ordinance.

4. Future Review of Roundabouts

4.1 Definitions

4.1.1 *Vicinity of the Haggen Site.* “In the Vicinity of the Haggen Site” shall mean within 200 feet of any external boundary of the Haggen Site.

4.1.2 *Early Notice.* “Early Notice” shall mean notice in writing that the City is considering the construction of roundabouts in the Vicinity of the Haggen Site and intends to prepare a SEPA checklist regarding such roundabouts.

4.1.3 *Participation.* “Participation” shall mean that (i) Haggen and Briar will receive copies of initial and subsequent designs for any roundabouts proposed in the Vicinity of the Haggen Site (electronic copies will suffice); (ii) the Parties’ respective transportation consultants may communicate early in the design process for such roundabouts; and (iii) the City will solicit and consider feedback from Haggen and Briar regarding such roundabouts. “Participation” shall not be interpreted to give Haggen or Briar any decision-making or veto authority in the final design for roundabouts.

4.2 Roundabout Design Process

4.2.1 The City will provide Early Notice to Haggen and Briar regarding any roundabouts proposed in the Vicinity of the Haggen Site. Early Notice will be provided no later than 90 days before the City’s issuance of any SEPA notice regarding such roundabouts.

4.2.2 The City agrees to Participation by representatives from Haggen and Briar throughout the design process for any roundabouts proposed in the Vicinity of the Haggen Site. If Haggen and Briar choose to utilize outside consultants during such Participation, the cost shall be borne solely by Haggen and Briar.

4.2.3 The City’s roundabout design process will be guided by the following goal: The City will strive for a roundabout physical configuration that does not further restrict direct access to the Haggen Site for both ingress and egress as measured by equal or reduced delay and travel time with the improved or “after” condition when compared to traffic conditions existing at the time of the Early Notice (the “Access Goal”). “Direct access” does not include access across adjacent parcels under separate ownership from Haggen and Briar. The Parties recognize that the Access Goal is not a requirement or standard.

4.2.4 As a result of Early Notice and Participation, the Parties may mutually determine that it is appropriate to expand the scope of review for roundabouts in the Vicinity of the Haggen Site beyond what would normally be required by SEPA. In such circumstances, the Parties may choose to enter into an agreement addressing the additional cost of such expanded scope of review. A determination by the parties to expand the scope of review for roundabouts outside the SEPA process shall not be interpreted to give Haggen and Briar any decision-making or veto authority on the final design for roundabouts.

4.3 Mitigation of Adverse Impacts

4.3.1 The City will conduct environmental review pursuant to SEPA to evaluate the Haggen Site-Specific Impacts.

4.3.2 The City's evaluation of the Haggen Site-Specific Impacts and consideration of potential mitigation measures for the Haggen Site-Specific Impacts: (i) will be guided by the Access Goal; (ii) will give consideration to work that the City's transportation consultant, Transpo, has already completed showing current Level of Service ("LOS") at the intersection of Main and La Bounty and showing future conditions without any traffic improvements, with traffic light improvements, and with roundabout improvements.

5. Limited Scope

The terms of this Agreement relate solely to roundabouts within the Vicinity of the Haggen Site, and shall not be interpreted as relating to transportation facilities other than roundabouts.

6. Preventive Discussions

The Parties will promptly give each other notice of problems or concerns arising in connection with the Early Notice or Participation process described herein. Haggen and Briar agree to allow the City ten (10) business days to respond to any such notice before filing an action regarding the Haggen Site-Specific Impacts with any administrative tribunal or in superior court.

7. General Provisions

7.1.1 Notice. Any notice or other communication of any sort required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given (i) on the date of personal delivery; (ii) three days after being mailed by certified mail to the following addresses; or (iii) with respect to Section 4.1.3 above, on the date of electronic transmittal to the e-mail addresses below.

*To the City
of Ferndale:* Gary Jensen, Mayor
Greg Young, City Manager
P.O. Box 963
2095 Main Street

Ferndale, WA 98248
GaryJensen@cityofferndale.org
GregYoung@cityofferndale.org

And to: Richard J. Langabeer
Langabeer & Tull, P.S.
P.O. Box 1678
709 Dupont Street
Bellingham, WA 98227
info@langabeertull.com

To Hagen: Glen Foresman
Hagen, Inc.
P.O. Box 9704
Bellingham, WA 98227
glenf@hagen.com

And to: Joel Gordon
Van Ness Feldman GordonDerr
2025 1st Avenue, Suite 500
Seattle WA 98121
jgordon@gordonderr.com

To Briar: Gary Hall
Briar Development Company
P.O. Box 29060
Bellingham, WA 98228-1060
garyh@briardevelopment.com

And to: Joel Gordon
Van Ness Feldman GordonDerr
2025 1st Avenue, Suite 500
Seattle WA 98121
jgordon@gordonderr.com

7.1.2 Entire Agreement. The Agreement represents the entire agreement of the Parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein. Any amendment must be in writing.

7.1.3 Binding Effect. The Agreement shall be binding upon the respective successors and assigns of the Parties hereto, and shall inure to the benefit of and be enforceable by the Parties hereto and their respective successors and assigns.

7.1.4 Authority. Each Party represents and warrants that it is authorized to and has entered into this Agreement, and each undersigned signatory to this Agreement represents and warrants that it is authorized to and has entered into this Agreement on behalf of each respective Party.

7.1.5 Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

7.1.6 Enforcement. The Agreement may be enforced by filing an action in Whatcom County Superior Court. The Parties agree that damages are not an adequate remedy for any breach of this Agreement, and that a Party alleging breach may seek specific performance and/or injunctive relief. The substantially prevailing Party in such an action shall be entitled to recover its reasonable costs and attorney's fees, including those reasonable costs and attorney's fees incurred in any appeal from the judgment of a lower court.

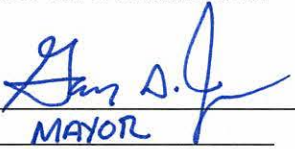
7.1.7 Counterparts. The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all Parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

7.1.8 Effective Date. The Agreement shall take effect on the last date signed below.

7.1.9 Exhibits. All exhibits attached to this Agreement are incorporated herein and made a part hereof by this reference. The following exhibits are attached to this Agreement:

Exhibit A: Legal Description for the Haggen Site

CITY OF FERNDALE


By MAYOR
Its _____
Dated MAY 24TH, 2012

HAGGEN, INC.

By _____
Its _____

BRIAR DEVELOPMENT COMPANY

By _____
Its _____

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Exhibit A: Legal Description for the Hagen Site

CITY OF FERNDALE

By _____
Its _____
Dated _____

HAGGEN, INC.


By RON STEVENS
Its CFO

BRIAR DEVELOPMENT COMPANY

By _____
Its _____

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Exhibit A: Legal Description for the Haggen Site

CITY OF FERNDALE

By _____
Its _____
Dated _____

HAGGEN, INC.

By _____
Its _____

BRIAR DEVELOPMENT COMPANY

By Gary W. Hall
By Gary W. Hall
Its President

Approved as to form:

FERNDALE CITY ATTORNEY

Ramon Chatter, Langabeer & Hill,
PS., WSBA No. 37158
Dated June 4, 2012

EXHIBIT A

Legal Description of the Haggen Site

(PER CHICAGO TITLE CO. SUBDIVISION GUARANTEE NO. 320550, WITH AN EFFECTIVE DATE OF JANUARY 7TH, 2010)

PARCEL A:
THE NORTH 743.22 FEET OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29,
TOWNSHIP 39 NORTH, RANGE 2 EAST, W.M., AS MEASURED ALONG THE EAST LINE OF SAID SUBDIVISION;

EXCEPT THE WESTERLY 715.21 FEET OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER.

ALSO EXCEPT THE NORTHERLY 30.00 FEET FOR RIGHT-OF-WAY PURPOSES.

ALSO EXCEPT THAT PORTION COUNTY CONVEYED TO THE STATE OF WASHINGTON FOR HIGHWAY PURPOSES
BY DEED RECORDED UNDER WHATCOM AUDITOR'S FILE NO. 1025283.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL B:
THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE SOUTHWEST QUARTER
OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 2 EAST, W.M., DESCRIBED AS
FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER;
THENCE SOUTH 00°44'27" WEST ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID NORTHEAST
QUARTER A DISTANCE OF 30.00 FEET TO THE SOUTHERLY MARGIN OF LABOUNTY DRIVE; THENCE ALONG SAID
SOUTHERLY MARGIN NORTH 88°36'05" WEST PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST QUARTER
OF THE NORTHEAST QUARTER, A DISTANCE OF 171.04 FEET TO THE TRUE POINT OF BEGINNING AND THE
BEGINNING OF A CURVE TO THE RIGHT, THE CENTRAL ANGLE POINT OF WHICH BEARS NORTH 01°23'55" EAST
A RADIAL DISTANCE OF 136.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF
56°53'36", AN ARC DISTANCE OF 135.04 FEET TO A POINT OF TANGENCY; THENCE NORTH 31°42'29" WEST A
DISTANCE OF 19.11 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, THE CENTRAL ANGLE
POINT OF WHICH BEARS SOUTH 58°17'31" WEST A RADIAL DISTANCE OF 60.00 FEET; THENCE ALONG SAID
CURVE TO THE LEFT THROUGHOUT A CENTRAL ANGLE OF 35°04'06" AN ARC DISTANCE OF 36.72 FEET TO
THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, THE CENTRAL ANGLE POINT OF WHICH BEARS
NORTH 27°19'53" WEST A RADIAL DISTANCE OF 1060.00 FEET; LAST SAID CURVE FURTHER DESCRIBED AS
BEING CONCENTRIC WITH AND 60.00 FEET SOUTHEASTERLY OF THE CENTERLINE OF MAIN STREET, AS SHOWN
ON WASHINGTON DEPARTMENT OF TRANSPORTATION SHEET 3 OF 4, SMITH ROAD TO FERNDALE, DATED
MARCH 8, 1966; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°48'10" AN
ARC DISTANCE OF 310.86 FEET TO THE INTERSECTION WITH A LINE PARALLEL WITH AND 715.21 FEET, AS
MEASURED AT RIGHT ANGLES TO, THE WEST LINE OF SAID SOUTHWEST QUARTER; THENCE SOUTH 00°29'40"
WEST ALONG LAST SAID PARALLEL LINE A DISTANCE OF 15.28 FEET TO THE BEGINNING OF A NON-TANGENT
CURVE TO THE LEFT, THE CENTRAL ANGLE POINT OF WHICH BEARS NORTH 10°22'22" WEST A RADIAL
DISTANCE OF 1075.00 FEET, SAID CURVE FURTHER DESCRIBED AS BEING CONCENTRIC WITH AND 75 FEET
SOUTHEASTERLY OF THE SAID CENTERLINE OF MAIN STREET; THENCE NORTHEASTERLY, ALONG SAID CURVE
THROUGH A CENTRAL ANGLE OF 04°51'55" AN ARC DISTANCE OF 91.28 FEET; THENCE SOUTH 88°36'05"
EAST PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, A
DISTANCE OF 353.96 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT LOT 2, HAGGEN SHORT PLAT 2, AS RECORDED UNDER RECORDING NO. 2110601959, IN
WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.