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Skagit County Auditor

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DECLARATION OF COVENANTS AND RESTRICTIONS

STARBIRD HEIGHTS SUBDIVISION

THIS DECLARATION OF COVENANTS AND RESTRICTIONS FOR THE SUBDIVISION OF STARBIRD HEIGHTS SUBDIVISION ("Declaration") is made by STARBIRD PROPERTIES, L.L.C., a Washington Limited Liability Company, by COLONEL F. BETZ, JAMES N. SCOTT, THOMAS L. ALLEN and NORTHWEST FOOT CLINIC, INC., P.S.P., a Washington professional service corporation (the said BETZ, SCOTT, ALLEN and NORTHWEST FOOT CLINIC, INC., P.S.P., being members of STARBIRD PROPERTIES, L.L.C.) hereinafter referred to as "Declarant" as of the 2nd day of April, 2001.

RECITALS

Declarant is the owner of certain real property (the "Property") in Skagit County, Washington, legally described on Exhibit 1 hereto, and Declarant wishes to subject said Property to this Declaration.

WITNESSETH:

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said Property and for the preservation, protection and maintenance of open spaces and other common facilities described herein; and, to this end, desires to subject the Property to the covenants, restrictions, easements, charges and liens as hereinafter set forth, each and all of which is and are for the benefit of said Property and each Owner thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in said Property to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments hereinafter created; and

WHEREAS, Declarant has incorporated under the laws of the State of Washington as a nonprofit corporation named the STARBIRD HEIGHTS HOMEOWNERS ASSOCIATION, for the purpose of exercising the aforesaid functions;

NOW, THEREFORE, Declarant declares that the existing Property is subject to all restrictions and easements of said Subdivision; shall be held, transferred, sold, conveyed, leased, used and occupied subject to the covenants, conditions, restrictions, easements, assessments, and liens hereinafter set forth which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the Property and which shall be binding on all parties having any right, title, or interest in the Property or any portion thereof, and their respective heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE 1 DEFINITIONS

1.1 Words Defined. For the purpose of this Declaration and any amendments hereto, the following terms shall have the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

1.1.1 "Association" shall mean STARBIRD HEIGHTS HOMEOWNERS ASSOCIATION, its successors and assigns.

1.1.2 "Board" shall mean the Board of Directors of the Association. Where appropriate, references to the Board may include references to the Architectural Control Committee that may be established by the Board.

1.1.3 "Common Area" and "Common Area Improvements" shall mean all real and personal property now or hereafter owned or used by the Association for the common use and enjoyment of the Owners. The Common Areas may include but not necessarily be limited to roads, drainage facilities, street lighting, planted landscape features, signage, mail box standard, and any other area or asset owned or used by the Association and designated as a Common Area or Common Asset by Declarant.

1.1.4 "Construction" and "Constructed" shall mean any construction, reconstruction, erection or alteration of an Improvement, except wholly interior alterations to a then existing structure.

1.1.5 "Lot" shall mean any one of the lots numbered 1 through 4 together with any subsequent lots created by Declarant, together with the Structures and Improvements thereon.

1.1.6 "Member" shall mean and refer to all those owners who are members of the Association as provided herein as well as in the Articles of Incorporation and Bylaws of the Association.

1.1.7 "Owner" shall mean the record owner, whether one or more persons, of fee simple title to a Lot within the Property but including the vendee under a Real Estate Contract wherein a Lot or Lots is being purchased.

1.1.8 "Person" shall mean an individual, corporation, partnership, association, trustee, or other legal entity.

1.1.9 "Subdivision" shall mean the recorded Short Card Map No. PL-01-0151 referred to as Starbird Heights Subdivision and any amendments, corrections, addenda thereto subsequently recorded.



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1.1.10 "Setback Building Line" shall mean any of the various setback requirements designated on the face of the final map of Starbird Heights Subdivision, beyond which no structures, filling, grading, or other obstructions or placements are permitted, except as those expressly set forth herein.

1.1.11 "Structure" shall mean any residence, accessory building, other building, fence, wall, patio, swimming pool, deck, or the like constructed on a Lot.

1.1.12 "Wetlands Mitigation Plan" shall mean that certain Plan proposed July 26, 1999 by BEK Engineering and accepted by Skagit County, including any modification thereof required by Skagit County as evidenced by Skagit County's final Plat approval and acceptance of the Subdivision of Starbird Heights Subdivision.

1.1.13 "Wetlands/Wetlands Buffers/Sensitive Areas/Native Growth Areas" shall mean those areas so designated on the face of the final map of Starbird Heights Subdivision, which areas are now or may become subject to certain restrictions on use or entry as provided herein or on the face of the plat, or by subsequent ordinance or legislation, or by any governmental bodies having jurisdiction over such areas. See Protected Critical Area easement (PCA) referenced on the subdivision map.

ARTICLE 2 COMMON AREAS AND EASEMENTS

2.1 Common Areas/Assets. "Common Areas/Assets" may be shown on the face of the map of Starbird Heights Subdivision and may be dedicated to either the Property Owners, to the Homeowners Association, or to a combination thereof. The Common Areas/Assets will include the wetlands, drainage facilities, buffer areas, specific landscaping areas, the entrance sign(s), mail box standards, and similar facilities, if any. The Common Areas/Assets may include rights retained in conjunction with the dedication or conveyance of properties to Skagit County, if any, reserving unto the Homeowners Association rights and authorities to improve or maintain in cooperation with Skagit County the properties conveyed to Skagit County. The Association shall be responsible for maintaining drainage facilities within the Subdivision which are outside of the roads rights-of-way, as well as the roads, on an as-needed basis.

2.2 Association to Maintain Common Areas/Assets. The Homeowners Association shall have the right and obligation to maintain the Common Areas/Assets unless said right/obligation to maintain has been given over to Skagit County. The Association shall be responsible for maintaining drainage facilities within the Subdivision which are outside of the road rights-of-way, on an as-needed basis.

2.3 Easements for Utilities and Drainage. Declarant does hereby establish, create and reserve for the benefit of itself, the Association, all owners and designated providers, easements as set forth on the face of the map of Starbird Heights Subdivision; said easements being the "Utilities and Drainage Easement" and the road easement. No Lot Owner shall allow or permit any Structure or landscaping to be located, installed or grow upon the area subject to said easements which might in any way damage or interfere with the installation and operation of the



utilities and related systems, and the roads. Each person utilizing any Utilities and Drainage Easement areas located on another's Lot shall promptly restore such area to a condition as close to its original condition as reasonably practical after making such use. Each Owner shall maintain the area of his Lot subject to the Utilities and Drainage Easement and so as not to interfere with wells and septic systems of adjoining owners.

2.4 **Maintenance of Entry.** The landscaped entry, if any, shall be maintained by the Association, including sign(s) and landscaping; unless said obligation is taken over by Skagit County.

ARTICLE 3 LAND USE AND BUILDING TYPE

3.1 **Permitted Structures.** All Lots, except designated Common Areas, shall be used solely for residential purposes and no residence or adjoining Structure may be placed on any designated wetlands, buffered areas, sensitive areas, native growth protection areas or other areas as they now or in the future may be restricted by any governmental regulation. No Construction shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single family dwelling, not exceeding two stories in height, together with a private garage for not more than three (3) standard size passenger automobiles. Notwithstanding the foregoing, an additional detached building may be Constructed as set forth below. Tri-level dwellings shall be allowed, provided they otherwise comply with the additional covenants and restrictions provided for herein. There shall be no mobile homes, park model homes or modular homes allowed or constructed on any Lot within the Subdivision; structures built on any lot shall only be stick frame, masonry, brick-type homes and shall be site-built homes only, absent written consent from the Architectural Control Committee.

No Lot shall have more than one (1) detached building placed thereon. A detached building shall be allowed, provided said building meets all setback requirements of these protective covenants and the Skagit County Building Codes, has a concrete floor, is constructed of equal or better exterior materials as is the family dwelling on the same Lot, and is used for personal and not commercial use. The side walls of any detached building shall not exceed a height of 12 feet, and the total number of square feet of floor space in such building shall not exceed 2,400 square feet.

3.2 **Uniformity of Use and Appearance.** One of the purposes of this Declaration is to assure within the Property: (i) a uniformity of use and quality of workmanship, materials, design, maintenance and location of Structures with respect to topography and finish grade elevation and (ii) that there will be no undue repetition of external designs. It is in the best interests of each Owner that such uniformity of use be maintained as hereinafter provided. No building (except for Accessory Structures) shall be erected, altered, placed or permitted to remain on any Lot other than single family dwelling units and a detached building as defined above. Notwithstanding anything herein set forth, the Construction of any Structure shall comply with the more restrictive of either (i) the terms and conditions of this Declaration or (ii) the laws, codes, ordinances and regulations of any governmental entity having jurisdiction.



3.3 Architectural Control. No residence, building, driveway, pool, pond, fence, mail box or newspaper delivery box shall be erected, placed or altered on any Lot until the Construction plans and specifications as well as plans showing location of the Structure have been first approved by the Architectural Control Committee as to the quality of workmanship and materials, harmony of external design with existing Structures, and as to location with respect to topography and finish grade elevation. No fence shall exceed a height of 6 feet and no fence shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback line with the exception that a "stepdown" fence no higher than 3 feet may be erected from the setback to the street. It is the intent of this Declaration that there be no metal fences, cyclone fences or electrified fences without good cause shown and approval by the Architectural Control Committee.

3.4 Submission of Plans. At least twenty (20) days before commencing Construction of any Structure on any Lot, the Owner shall submit to the Board two (2) complete sets of detailed building, construction, surface water runoff control and landscaping plans and specifications and a site plan showing the location of all proposed Structures and Site Improvements (the plans, specifications and site plans are individually and collectively referred to herein as the "Plans"). The Plans shall be submitted in a form satisfactory to the Board, which may withhold its approval by reason of its reasonable dissatisfaction with the location of the Structure or Improvements on the Lot, color scheme, finish, architecture, height, impact on view from another Lot or Lots, appropriateness of the proposed Structure or Improvements, materials used therein, or because of its reasonable dissatisfaction with any other matter, which, in the reasonable judgment of the Board would render the proposed Structure or Improvements inharmonious with the general Plan of development of the Property or other Structures nearby. The Board's approval or disapproval of Plans shall be in writing and approval shall be evidenced by written endorsement on such Plans, one (1) copy of which shall be delivered to Owner of the Lot upon which the Structure is to be constructed; said approval or disapproval to be delivered to Owner within 30 days of receipt of satisfactory plans by Board from Owner.

3.5 Construction. No Structure or Improvements shall be constructed or caused to be constructed on any Lot unless the Plans for the Structure or Improvements, including landscaping, have been approved in writing by the Board. The Board's review and approval or disapproval of Plans on the basis of cost, aesthetic design, harmony with previously approved Structures on or about other Lots in the Subdivision, and location, shall be absolute and enforceable in any court of competent jurisdiction. The Board's approval of any Plans, however, shall not constitute any warranty or representation whatsoever by the Board or any of its Members that such Plans were examined or approved for engineering or structural integrity or sufficiency or compliance with applicable government laws, codes, ordinances and regulations; and each Owner hereby releases the Board and all of its Members from any and all claims or possible claims made against the Board or any of them, their heirs successors or assigns, of any nature whatsoever, based upon engineering or structural integrity or sufficiency or compliance with applicable governmental laws, codes, ordinances and regulations. Notwithstanding the foregoing, the Board shall have the power to grant a variance to an Owner, who, at the time the Owner submits his plans for approval, also submits a request for variance. The granting of the request for variance shall be in writing and shall also be entered in the minutes of the Board.



3.6 Minimum Dwelling Standards. No single family dwelling shall be permitted on any Lot unless it meets the following permitted standards:

A. Ground floor area of the main structure exclusive of open porches, decks and garages shall contain not less than 2,000 square feet; with the exception that the ground floor area of a dwelling with two stories shall have not less than 1,500 square feet.

B. In the case of a tri-level dwelling, the floor area of the upper two levels shall not be less than 1,800 square feet, with the floor level of the main floor being not less than 1,250 feet.

C. For the purposes of this provision, a home with a daylight basement and only one floor above the daylight basement shall be considered a dwelling of only one story, shall require a minimum floor area of 2,000 square feet, exclusive of the floor area in the daylight basement.

D. All single-family dwellings shall have a minimum of a two-car enclosed garage; carports shall not be permitted without the appropriate variance.

E. No trees larger in size than 6 inches diameter measured 5 feet above natural ground level may be cut, cleared, uprooted, burned or severely pruned without prior written approval of the Architectural Control Committee.

F. No Lot shall be further subdivided, except Lot 4, without prior approval of the Starbird Homeowners Association.

G. Landscaping fronting the road in front of each of the Lots shall not exceed 6 feet in height, without the written authorization of the Architectural Control Committee.

ARTICLE 4 BUSINESS AND COMMERCIAL USE OF PROPERTY PROHIBITED

4.1 Business Use. No business of any kind shall be conducted on any Lot with the exception of (i) the business of Declarant in developing and selling all of the Lots; (ii) a builder may use a dwelling or dwellings it owns as sales offices and models for sales of other Lots and/or homes; and (iii) such home occupation for which a permit may be issued by the appropriate local government, provided the number of outside employees does not exceed two (2) and that the business is conducted Monday through Friday during normal business hours. Shipment of materials shall be handled by normal or express mails and shall be limited to documents and paperwork. No shipment of any product, equipment, materials or inventory to or from any Structure for business purposes shall be permitted.

4.2 Garbage/Waste Disposal. No Lots shall be used as a dump for trash or rubbish of any kind. All garbage, trash or other waste shall be kept in appropriate sanitary containers for proper disposal. Yard rakings such as rocks, lawn and shrubbery clippings, dirt and other materials resulting from landscaping work shall not be dumped onto or allowed to remain on the roads or ditches, nor shall they be placed in any Buffer Area, wetlands or native growth



protection area. The removal and disposal of all such materials shall be the sole responsibility of the individual Lot Owner.

4.3 Vehicle Parking/Storage. No Owner or contract purchaser of any Lot shall permit any vehicle owned by him or any member of his family or guest of his which is in extreme state of disrepair, to be abandoned or to remain parked on any Lot, or any road or other portion of the Property, including any Common Area for a period in excess of 48 hours. A vehicle shall be deemed to be in extreme state of disrepair when, in the opinion of the Architectural Control Committee, its presence reasonably offends the sensibilities of the residents of the neighborhood.

4.4 Maintenance of Buildings and Lots. Each Owner shall, at the Owner's sole expense, keep the interior and the exterior of the Structure on the Owner's Lot, as well as the Lot, in a clean and sanitary condition, free of rodents and pests, and in good order, condition and repair, and shall do all redecorating, painting, landscaping, and maintenance at any time necessary to maintain the appearance and condition of the Structure and the Lot. Reasonable landscaping shall be maintained within the curtilage of an Owner's Lot and the balance of the Lot shall be maintained in neat and orderly condition to the Lot boundaries. Following home construction, Owners shall be required to landscape and maintain yards in reasonable fashion, in particular and of major concern is the yard area abutting the street up to the home. In the event an Owner fails to adequately maintain this area, the Board shall give reasonable notice to the offending Owner, in writing; if the violation has not been corrected within thirty (30) days of receipt of notice, the Board shall have the authority but not the responsibility to make the necessary correction and submit billings for the cost to the Owner.

The wetland areas adjacent to each Lot, if any, are known as a Protected Critical Area (PCA), and said PCA shall be maintained by the Owner of said Lot of which it is a part. Skagit County definition of the word "maintained" is that the PCA shall be left in its natural state and not altered by human activity without the prior written approval of Skagit County.

4.5 Completion of Construction. Any dwelling or structure erected or placed on any Lot in the Subdivision shall be completed as to external appearance, including finished painting, within eight (8) months from the date of commencement of Construction; however, with good cause shown, the Board may extend this term. All yards and landscaping must be completed with three (3) months from the date of completion of the Structure, however, with good cause shown, the Board may extend this term. All Lots shall be maintained in a neat and orderly condition during Construction.

4.6 Residential Use of Temporary Structures Prohibited. No trailer, mobile home, basement, tent, shack, garage, barn, outbuildings or any Structure of a temporary character erected or placed on any Lot, shall be used as a place of residence, temporarily or permanently.

4.7 Building Location. Buildings shall be as allowed by applicable zoning ordinances for the County of Skagit and as approved by the architectural committee. For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of a building; provided, however, that this shall not be construed to permit any portion of a building on a Lot to



encroach upon another Lot or upon the areas reserved for utility easements, or upon Common Areas, wetlands or native growth protection areas.

4.8 Driveways. All driveways shall be hard-surfaced, preferably with cement or blacktop, to the existing Subdivision roadway. Notwithstanding the foregoing, driveways may also be of compacted crushed rock.

4.9 Roofs. All homes and detached buildings constructed on Lots in the Subdivision are to have roofs of cedar shakes, cedar shingles, tile, composition shingles or similar material. Roofs on all buildings shall have a pitch of not less than 5/12.

4.10 Drainage. Each Structure located within this Subdivision shall have a closed drainage system whereby the water running off from the roofs and driveways of each Structure/Lot shall be routed into the Subdivision's storm drainage system. In no event shall the runoff from the roofs or driveways of said Structures be allowed to run on top of the ground within the Subdivision. Any drainage structures or drainage swales located within the Property as noted on the face of the Subdivision shall not be altered, filled, or changed in any way without written approval of the Skagit County Public Works Department and the Board of Directors of STARBIRD HEIGHTS HOMEOWNERS ASSOCIATION. No fill, or landscaping (the mature height of which will exceed 6 feet) shall be allowed on any Lot without review and approval by the Architectural Control Committee. Wetlands and native growth protection areas, as shown on the face of the Subdivision, shall not be filled except as necessary to place a building pad and driveway on the subject Lot, provided County and other required agencies and regulations, if any, are met, and appropriate governmental approval, in writing, is secured.

4.11 Animals. Except as otherwise provided herein, no animal, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot except that cats, dogs, birds or other household pets may be kept, provided that said household animals shall be restricted to the Owners' premises and provided further that there shall be a limit of two (2) such pets per household, provided further that unweaned puppies or kittens may be kept until they are weaned and sold or otherwise disposed of. All animal enclosures must be kept in a clean, neat and odor-free condition at all times. The Board may at any time require the removal of any pet which it finds is disturbing other Owners or tenants unreasonably, in the Board's determination, and may exercise this authority for specific pets even though other pets are permitted to remain. Dogs must be on a leash when away from Owners' premises.

Notwithstanding the foregoing, the Starbird Heights Homeowners Association may elect to construct or allow construction of a barn and/or other related Improvements on a portion of the Property, including the Common Areas of the Property, if any, for the purpose of raising and housing horses. Further, the Homeowners Association may elect to allow Owners to construct such facilities on one or more Lots, provided that any such Structures or Improvements must first be approved by Architectural Control Committee, and shall be limited to the accommodation of not more than two (2) horses. If, and in the event the Homeowners Association elects to allow horses, no more than two (2) of such animals shall be allowed to be housed or pastured on any Lot.



4.12 **Signs.** No signs shall be erected or maintained on any residential Lot in the tract, except that not more than one (1) approved "FOR SALE" or "FOR RENT" sign placed by the Owner or builder or by a licensed real estate broker not exceeding 600 square inches, may be displayed on any Lot. Declarant's/ Developer's marketing signs shall be exempt from this provision.

4.13 **Underground Utilities.** All utility lines located outside a dwelling unit shall be in conduits attached to the Structure or underground.

4.14 **Damage.** Any damage to streets, Subdivision improvements (including drainage infra structure), entry structure (if any), fences, landscaping, mail boxes, lights and lighting standards by Owners, their children, contractors, agents, visitors, friends, relatives, or service personnel shall be repaired by Owner, at Owner's expense, within twelve (12) days from the occurrence of such damage.

4.15 **Compliance With the Laws.** Notwithstanding anything to the contrary set forth herein, each Owner and the Association shall comply with the more restrictive of either (i) the terms and conditions of this Declaration, or (ii) the laws, codes, ordinances and regulations of any governmental entity having jurisdiction.

ARTICLE 5 MANAGEMENT BY DECLARANT

Until a date seven (7) years from the date of recording this Declaration, or the date on which Declarant elects to permanently relinquish all of its authority under this section by written notice to all Owners, whichever date occurs first, the Property shall be managed and the Association organized by the Declarant, and/or Declarant's appointees. This requirement and covenant is made in order to assure that the Property will be adequately administered in the initial phases of development, and to assure an orderly transition to Association operation.

ARTICLE 6 AMENDMENTS

The covenants and restrictions of this Declaration may be amended pursuant to the terms of amendment as set forth in the Association Bylaws. Amendments shall take effect when they have been recorded with the Auditor of Skagit County.

ARTICLE 7 FURTHER DEVELOPMENT

Declarant specifically retains the right, but not the obligation, to further develop the Property, including but not limited to the development of additional Lots, provided the total of all Lots in the Starbird Heights Subdivision shall not exceed seven (7). If and on the event Declarant develops additional Lots on the Property, such Lots shall be subject to these Covenants and Restrictions, and the Owners of such Lots, including the Declarant, shall be



members of the Homeowners Association as set forth herein from the time such additional Lots are approved and accepted by Skagit County.

ARTICLE 8 TERM OF COVENANTS/LEGAL EFFECT

The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Owners, their respective legal representatives, heirs, successors and assigns for a period of forty-five (45) years from the date this Declaration is recorded, after which time the covenants, conditions and restrictions shall be automatically extended for successive periods of five (5) years unless an instrument signed by a majority of the then Owners has been recorded agreeing to terminate or modify the covenants, conditions and restrictions.

ARTICLE 9 BOARD; AUTHORITY OF THE BOARD

Upon the date when Declarant elects to permanently relinquish all of its authority under this Declaration by written notice to all Owners, as set forth in Article 5 hereof, the Board shall be the Declarant or the Declarant's managing agent as provided herein. From and after the date the Declarant relinquishes all of its authority under this Declaration, the Board shall consist of not less than three individuals who are Lot Owners, to be elected by Lot Owners for such terms as the Lot Owners deem appropriate. The Board (or Declarant, or Declarant's managing agent as provided herein), for the benefit of the Subdivision and the Owners, shall enforce the provisions of this Declaration and of the Bylaws, shall have the duties, powers, authority and responsibility set forth under this Declaration and the Bylaws; and shall acquire and pay for out of the common expense fund hereinafter provided for all goods and services requisite to the proper functioning of the Subdivision and Association, including but not limited to the following:

9.1 Policies of insurance or bonds providing coverage for fire and other hazards, liability for personal injury and property damage, and for the fidelity of Association officers and other employees, if any.

9.2 Services of persons or firms as required to properly manage the affairs of the Association to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine are necessary.

9.3 Legal and accounting services necessary or proper to the operation of the Association's affairs or the enforcement of this Declaration.

9.4 Painting, maintenance, repair and all landscaping and gardening work for the common areas/assets (if any).

9.5 Maintenance, repair and replacement of the entrance sign and related landscaping, if any.



9.6 Maintenance, repair and replacement of the easement road/roads, drainage, servicing the Lots within the Subdivision, if any.

9.7 The Board and its agents or employees may enter any Lot when necessary in connection with the maintenance, landscaping or construction for which the Board is responsible or in the event of emergency. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaid by the Board out of the common expense fund if the entry was due to any emergency or for the purpose of maintenance or repairs. If the repairs or maintenance were necessitated by or for the Lot entered or its Owner, or requested by its Owner, the cost thereof shall be specifically charged to such Lot.

9.8 The Board shall have the right to make minor changes and/or waive various use restrictions as recommended by the Board, provided that these changes or waivers shall not detract from the intent of this Declaration.

9.9 The Board is empowered to adopt, amend, and revoke on behalf of the Association detailed architectural control requirements and considerations for use by Owners, home builders, architects and the Board in interpreting and enforcing the restrictions contained in this Declaration. Copies of such requirements and considerations shall be made available to Owners, home builders, architects and other interested parties upon request. When adopted, such architectural control requirements and considerations shall be enforceable as part of this Declaration as though fully set forth herein.

9.10 **Authority to Create Architectural Control Committee.** The Board shall have the power to create an Architectural Control Committee as a committee of the Association and shall be empowered to delegate to the Architectural Control Committee the authority granted to the Board herein.

9.11 **Enforcement of Declaration, Etc.** The Board shall have the power to enforce the provisions of this Declaration, and the rules and regulations of the Association for the benefit of the Association. Skagit County shall also have the power to enforce the provisions of this Declaration. The failure of any Owner to comply with the provisions of this Declaration, where the rules and regulations of the Association, including the Bylaws of the Association, will give rise to a cause of action in the Association (acting through the Board and/or the County of Skagit) for recovery of damages, injunctive relief, or both. If a legal action is brought to interpret or enforce compliance with the provisions of this Declaration, the Bylaws of the Association, or the rules and regulations of the Association, the prevailing party shall be entitled to judgment against the other party for its reasonable expenses, court costs and attorney's fees in the amount awarded by the Court, Ruling Tribunal, Arbitrator or the like.

ARTICLE 10 COVENANT AND MAINTENANCE ASSESSMENTS

10.1 **Creation of Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned by him within the Property, hereby covenants and each Owner of any Lot by acceptance of a deed or document of purchase therefor, whether or not it shall be so expressed in



any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person or entity who was the owner of such Lot at the time when the assessment fell due. The purpose of these assessments, if any, shall be for the services/maintenance/improvements set forth in paragraphs 9.1 through 9.6 above.

10.2 Annual Assessment. Beginning with 2001, the annual assessment shall be \$50.00 per vacant Lot and \$100.00 per Lot containing a residential unit. From and after January 1, 2002, the annual assessment may be increased or decreased on an annual basis by a majority vote of the Members (notwithstanding this provision, assessments shall be set by the Declarant for the time period as set forth in Article 5 above). The Board may, without consent of the Members, after consideration of current costs and future needs of the Association, reduce the actual assessment for any year to a lesser amount. Written notice of any assessment shall be sent to every Owner subject thereto.

If any assessment is not paid on the date when due then such assessment shall become delinquent and shall, together with such interest thereon and costs of collection thereof as are reasonable, shall thereupon become a continuing lien on the Lot which shall bind such Lot in the hands of the then Owner, his heirs, devisees, successors, personal representatives and assigns. Any assessment not paid within thirty (30) days after the delinquency date shall bear interest at the maximum legal rate allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same which will foreclose the lien against the Lot, and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with costs of the action. No Owner may avoid or escape liability for assessments provided for herein by abandoning his or her Lot.

ARTICLE 11 WATER WELLS

Domestic water is not provided by the Declarant for individual Lots in the Subdivision of Starbird Heights Subdivision, nor is any portion of the Property served by a public water utility or system at the time of this Declaration. Each Lot Owner shall be responsible for providing domestic water in accordance with County and State regulations and in compliance with these Declarations.

No more than one (1) water well may be in use per Lot, except that the Starbird Heights Homeowners Association may elect to install one or more "water wells" to service Common Areas or individual Lots.



Each water well shall have reserved for its protection a well protection zone of not less than a 100-foot radius in accordance with Skagit County ordinances. Such protection zone, if not contained entirely on the Lot served by the water well, shall be established and protected by appropriate easements. Water well protection zones are set forth on the face of the map of Starbird Heights Subdivision, one (1) for each Lot; and no construction, cutting, grading, filling, dumping, storage of chemicals, fuels, waste, or potential leachates, or any other activity which may harm or diminish the quality or quantity of a well may be conducted or allowed within any such well protection zone. Notwithstanding the above, in each case where two (2) or more well protection zones overlap or intersect, one (1) water well may be drilled or dug in each zone provided adequate and appropriate precautions are taken to protect any existing water wells. Water well protection zones as set forth on the face of the map of Starbird Heights Subdivision may not be modified, moved, or eliminated without the prior written approval of the Owner of the Lot for which the protection zone was established and Skagit County and/or the State of Washington, if required at the time.

ARTICLE 12 ROAD MAINTENANCE

Each Owner of each Lot in the Subdivision of Starbird Heights Subdivision, and each of their subsequent assigns or successors in interest, shall proportionately share in the cost and expense of repairing and maintaining in good condition the road rights-of-way over, under, across, through and within the Subdivision of Starbird Heights Subdivision.

The proportionate share of each Property Owner shall be established by dividing the current number of legal Lots as approved by Skagit County within the Property into the cost of maintenance and repair.

Any amounts assessed to any Owner pursuant to this Declaration shall be paid by the Owner within thirty (30) days of Owner's receipt of an invoice for same, supported by appropriate bids, receipts, and/or other pertinent information substantiating the costs so assessed. An assessment may include a reasonable amount for a reserve for future anticipated costs.

Any amounts not paid when due shall bear interest at the maximum legal rate permitted by law from the date due until the date paid. The Homeowners Association shall determine annually, or more frequently as may be necessary, by affirmative (simple majority vote) the extent of the repairs and maintenance required and the extent of repairs and maintenance to be accomplished. It is understood and agreed by each Owner that the repair and maintenance of the road or roads within the Property is a substantial benefit to all Owners and to the Property, and the Property of any Owner failing to pay his proportionate share as provided for herein shall be subject to a lien in the amount of such unpaid proportionate share, which lien may be foreclosed in the manner provided by law relative to the foreclosure of mechanics' liens. Notwithstanding the foregoing, this provision for an assessment for road maintenance and repair shall be set by the Declarant for the time period as set forth in Article 5 above, unless the Declarant, in writing, specifies otherwise.

**ARTICLE 13
LIMITATION OF LIABILITY**

So long as a Board member, or Association member, or Declarant has acted in good faith, without willful or intentional misconduct, upon the basis of such information as is then possessed by such Person, then no such Person shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of such Person; provided, that this Article shall not apply where the consequences of such act, omission, error, or negligence are covered by any insurance actually obtained by the Board.

**ARTICLE 14
INDEMNIFICATION**

Each Board member, and Declarant shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not he holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by insurance and except in such cases wherein such Board Member or Declarant is adjudged guilty of willful misfeasance in the performance of his or her duties; provided, that in the event of a settlement, the indemnification shall apply only when the Board approved such settlement and reimbursement as being for the best interests of the Association.

**ARTICLE 15
SEVERABILITY**

The provisions of this Declaration shall be independent and severable, and the unenforceability of any one provision shall not affect the enforceability of any other provision, if the remainder affects the common plan.

**ARTICLE 16
EFFECTIVE DATE**

This Declaration shall be effective upon recording.

**ARTICLE 17
ASSIGNMENT BY DECLARANT**

Declarant reserves the right to assign, transfer, sell, lease or rent all or any portion of the Property and reserves the right to assign all or any of its rights, duties and obligations created under this Declaration.



**ARTICLE 18
MISCELLANEOUS**


All notes and information shown on the face of the Short Card No. PL-01-0151,
"Subdivision" if any, are hereby incorporated by reference as though fully set forth herein.

DATED this 22nd day of APRIL, 2001.


STARBIRD PROPERTIES, L.L.C., a
Washington Limited Liability Company

By 
COLONEL R. BETZ

By 
JAMES N. SCOTT

By 
THOMAS L. ALLEN

NORTHWEST FOOT CLINIC, INC.,
P.S.P., Washington Professional Service
Corporation

By 
THOMAS CROWTHER



200105100119
Skagit County Auditor

EXHIBIT 1

Skagit County Short Card No. PL-01-0151, approved May 10, 2001 and recorded May 10, 2001, under Skagit County Auditor's File No. 200105100117 records of Skagit County, Washington, being in a portion of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 29, Township 33 North, Range 4 East, W.M.

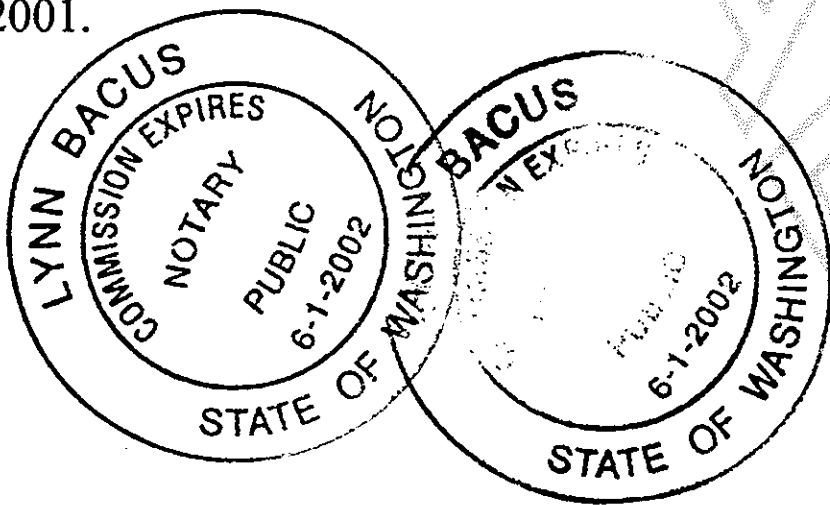
SUBJECT TO and TOGETHER WITH easements, reservations, restrictions, covenants, liens, leases, court causes, and other instruments of record.

Situate in the County of Skagit, Washington.

STATE OF WASHINGTON)
 : SS
COUNTY OF SKAGIT)

On this day personally appeared before me, COLONEL F.BETZ, to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 2nd day of April, 2001.



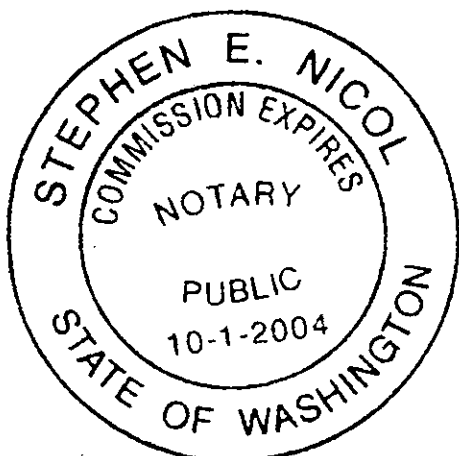
Lynn Bacus

Notary Public in and for the State of Washington, residing at Sedro Woolley
My commission expires: 6-1-02

STATE OF WASHINGTON)
 : SS
COUNTY OF SKAGIT)

On this day personally appeared before me, JAMES N. SCOTT, to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 3rd day of April, 2001.



James N. Scott

Notary Public in and for the State of Washington, residing at Mt. Vernon
My commission expires: 10-1-2004

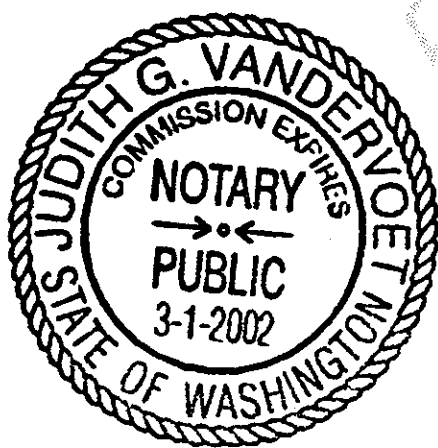


200105100119
, Skagit County Auditor

STATE OF WASHINGTON)
: SS
COUNTY OF SKAGIT)

On this day personally appeared before me, THOMAS L. ALLEN, to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 3rd day of April, 2001.

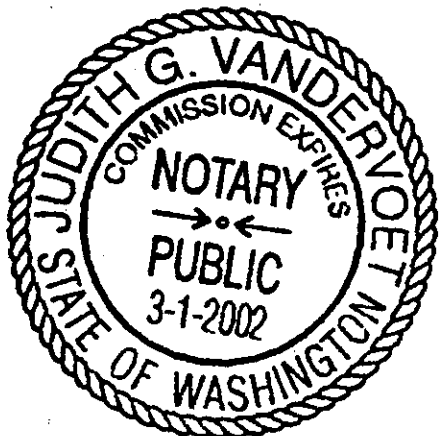


Judith G. Vandervoet
Notary Public in and for the State of
Washington, residing at Interon
My commission expires: 3-1-02

STATE OF WASHINGTON)
: SS
COUNTY OF SKAGIT)

On this 3rd day of April, 2001^{JUV}, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared THOMAS CROWTHER, to me known to be the President of NORTHWEST FOOT CLINIC, INC., P.S.P. a Washington corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.



Judith G. Vandervoet
Notary Public in and for the State of
Washington, residing at Mr. Vernon
My commission expires: 3-1-02



200105100119
, Skagit County Auditor