

DECLARATION OF COVENANTS, CONDITIONS, RESERVATIONS AND  
RESTRICTIONS

OF THE PLAT OF PACIFIC HEIGHTS PHASE II

This Declaration is made with reference to the following facts and conditions:

**A. RECITALS:**

1. The undersigned Declarants, Rishalee Inc., William Robert Steeves and Loran Britton, are the owners in fee simple of the following described real property located in Whatcom County, Washington;

Lots 1 through 14, Block 1, Lots 1 through 8, Block 2, Lots 1 through 6, Block 3, the plat of "Pacific Heights Phase II", Recorded in Volume 19 of Plats, at page 52/53/54 under Whatcom County Auditor's file number 951016129 records of Whatcom County, Washington.

Situate in the County of Whatcom, State of Washington.

(hereinafter referred to as the "Subdivision")

2. And the undersigned declarant, Silver Birch U.S.A. Development Corporation, a Washington corporation, has certain rights and obligations relative to the Subdivision pursuant to a joint venture agreement by and between itself and Rishalee, Inc.,;

3. Declarants desire to provide the means to enforce rights, reservations, easements, liens and charges provided in this Declaration, to provide for necessary maintenance and enhancement of the Subdivision and to provide for the formation of a community association in the form of a non-profit corporation, which includes as its members those persons who purchase any lot within the Subdivision.

**B. DECLARATION:**

The Declarants hereby certify and declare that the following covenants, conditions, reservations and restrictions shall endure and be binding upon the respective owners of each lot or parcel within the Subdivision, and the Declarants further declare that all of the property within the Subdivision described herein is held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, reservations and restrictions for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivisions and every part thereof. All of the following covenants, conditions, reservations and

restrictions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the Subdivision or any part thereof.

## **1. LAND CLASSIFICATION AND DEFINITION**

The following words and classifications of land shall have the following meanings under this Declaration:

**1.1 Lot.** Any parcel of real property within the boundaries of the Subdivision identified by Arabic numerals and designated for the location and construction of a single-family residence.

**1.2 Tract or Parcel.** Any parcel of real property within the boundaries of the Subdivision not consisting of a lot nor of real property dedicated to Whatcom County.

**1.3 Person.** Any individual, firm, corporation, partnership, association, unincorporated association or other legal entity.

**1.4 Declarants.** Declarants, Silver Birch U.S.A. Development Corporation, a Washington corporation, Rishalee Inc., a Washington Corporation, William Robert Steeves and Loran Britton.

**1.5 Common Property.** The only Common Property located within the Subdivision is the detention area designated as Tract D on the face of the Plat of Pacific Heights Phase II.

**1.6 Improvements.** Improvements shall mean and include, without limitation, any buildings, out-buildings, private roads, driveways, parking areas, fencing, retaining walls, swimming pools, screening, walls, ornamentation, signs, stairs, decks, hedges, wind breaks, plantings, planted trees, shrubs, poles, lighting, hot tubs and any other structure or landscaping.

**1.7 Board.** The Board of Directors or other governing body designated for the Association.

**1.8 Association.** The community association of all lot owners, as more fully described in paragraph 6 hereof, which is being created concurrent with the execution hereof in the form of a Washington nonprofit corporation.

**1.9 Wetland Parcels.** Parcels A, B and C are all wetland parcels. These tracts can not be built upon because filling the wetlands located on these tracts would currently violate rules and regulations of the Army Corp of Engineers.

## 2. RESERVATIONS

2.1 Reservation of Easements. Easements for drainage, sewers, water pipes and utilities, facilities and services (including, but not limited to, water supply, electricity, gas, telephone and television) are hereby reserved over, under, upon, in and through all roadways and walkways, and over, under, upon, in and through those certain portions of lots or parcels as shown on the final plat maps of the Subdivision in which are and/or shall be installed, laid, constructed, repaired, renewed, operated, maintained and inspected underground pipes, sewers, conduits, cables, wires and any and all necessary facilities and equipment for the purpose of serving the Subdivision, together with the right to enter upon said easement areas, lots, parcels, roads and walkways for or pertaining to the aforesaid. This reservation of easements is for the benefit of the Declarants and their successors in interest, as well as for the benefit of the City of Ferndale, Puget Sound Power & Light Company, Cascade Natural Gas Company, GTE, Nationwide Cablevision, and any other purveyors of such services as herein before described, as well as any of their successors in interest.

2.2 Transfer of Common Property. The Declarants do hereby, Quit Claim and convey Tract D to the Association.

2.3 Sales Office. Any person owning more than ten (10) lots in the subdivision may maintain a sales office within the subdivision; provided, such sales office shall not be maintained for a period of more than 24 months from the date of the recording of this Declaration.

## 3. GENERAL USE RESTRICTIONS AND REQUIREMENTS

3.1 Permanent Residential Purposes. All lots within the Subdivision shall be used exclusively for residential purposes and home occupations approved by the City of Ferndale.

3.2 Recreational Vehicles. All boats, utility trailers, trucks of more than one-ton rating, campers, recreational vehicles, travel trailers, motor homes and similar items or vehicles maintained or kept upon any lot within the Subdivision shall at all times be enclosed within a garage or otherwise neatly stored behind the front wall line of the residence and reasonably screened from view from the street running in front of said lot, nor shall any such items or vehicles be parked on any street within the Subdivision overnight; provided, that out-of-county resident guests of an owner may, with such owner's permission, park a recreational vehicle or travel trailer on an owner's lot for up to a maximum of eight weeks within any calendar year without being in violation of this subparagraph.

3.3 Explosives. No firearms or explosives shall be discharged within the boundaries of the Subdivision.

3.4 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes.

3.5 Signs. No signs or billboards shall be placed on any lot, except that one identification sign bearing the owner's name and address may be placed upon the owner's lot, and owners may place "for rent" and "for sale" signs on their respective lots. Owners may display signs of a political nature, promoting a candidate or a political proposition during periods of political campaigns.

3.6 Garbage / Refuse. No owner shall deposit or permit the accumulation of any trash, ashes, garbage or other refuse or debris on or about such owner's lot or any other property within the Subdivision, except in appropriate covered trash receptacles. Each owner shall keep such owner's lot neat and orderly in appearance and shall not cause or permit any noxious or odorous conditions to exist, nor maintain any tangible objects which are unsightly in appearance to exist, on any lot or parcel within the Subdivision.

3.7 Vehicles. All automobiles and all other permitted vehicles, if kept or parked on any lot or otherwise within the Subdivision, shall be in good order and in working condition. Partially wrecked vehicles, discarded vehicles, unlicensed vehicles or vehicles which are in a state of disrepair shall not be kept on any lot nor shall they be maintained within the Subdivision, unless enclosed in a garage or otherwise completely screened from view from outside the lot.

3.8 Antennas. No television or radio antenna of any kind which extends more than ten feet above the roof line of the residence, nor any satellite or "dish" antenna, shall be permitted on any lot, unless the same be substantially screened from view from outside the lot.

3.9 Wire / Chain Link Fences. All wire and/or chain link fences are prohibited.

3.10 Surface Water Run-off. No lot shall be improved in such a way as to cause excess surface water run-off that may damage or inconvenience other lots or contiguous properties and the owners thereof.

3.11 Damaged Improvements. No improvement which has been partially or totally destroyed by fire, earthquake or any other



cause shall be allowed to remain in a state of disrepair for a period in excess of four months from the date of such partial or total destruction. Corrective construction or reconstruction shall be required to commence within such four month period and shall be completed in accordance with the provisions of Paragraph 4.1 hereof; provided, however, that said four month period shall be extended for a reasonable period thereafter in the event that corrective construction or reconstruction has not commenced as a result of factors beyond the control of the subject owner and in the event that the subject owner has exercised and does thereafter continue to exercise due diligence in an effort to eliminate such factors causing such delay in commencement.

#### **4. CONSTRUCTION**

**4.1 Time for Completion.** Construction of all improvements shall be prosecuted diligently from the date of commencement of work until the exterior is completed and painted or finished and all sanitation and health requirements have been fulfilled. Furthermore, the maximum time limit for the completion of construction of an improvement shall be twelve months from the date construction commences, which is defined as the date building materials are first delivered to the lot for such purpose. Construction shall not be deemed to be completed until the improvement is finished, the lot has been cleaned of construction debris and the lot has been landscaped.

**4.2 Height Restrictions.** The height of structural improvements erected on lots shall be restricted as follows or pursuant to the terms of any applicable ordinance of the City of Ferndale in effect at the time of application for a building permit therefor, whichever is more stringent: No structural improvement shall exceed thirty-five (35) feet in height measured by the vertical distance from the average finished grade of the lot on which the structural improvement is constructed to the average height of the highest gable of a pitch or hip roof.

#### **5. WETLANDS**

Wetland Lots shall be subject to the following rules and restrictions:

**5.1 Sale and Ownership.** The Wetland Lots may be sold by the Declarants as individual lots. No structure shall be constructed on the Wetland Lots until the owner has received approval from the Army Corp of Engineers and the City of Ferndale. Once the Army Corp of Engineers and the city of Ferndale determines that the Wetland Lots or any of them are buildable, then such lot shall be deemed to be a lot for the purpose of this Declaration, and shall be subject to all

restrictions and duties, including the duties to pay assessments.

Until such time as the Wetland Lots receive approval to construct improvements thereon, such tracts shall not be subject to assessments by the Association. The owners of Wetland Lots shall keep them free of debris and shall keep them mowed to the extent permitted by local and federal law. The owners of all of the lots and tracts in the subdivision grant to the owners of each of the Wetland Lots the limited power of attorney to file amendments to the Pacific Heights Phase II Plat for the purpose of causing Wetland Lots to be redesignated as buildable lots.

## **6. COMMUNITY ASSOCIATION**

A community association, herein referred to as "**Association**", has been formed for the purposes provided herein.

**6.1 Purpose.** The purpose of the Association shall be the regulation, use, care, construction, operation, repair, maintenance and preservation of the Common Property; the regulation, maintenance and repair of facilities thereon; enforcement of these Covenants and Restrictions; and payment of taxes, if imposed, on Common Property and improvements.

**6.2 Creation and Transfer of Control.** The Association shall be organized at the instance of the Declarants and each lot owner shall be a member of the Association. The Declarants shall designate and appoint the Board of Directors of the Association until such time as the Declarants have sold eighty percent (80%) of the lots in the Subdivision. When eighty percent (80%) of such lots owned by the Declarants have been sold, and by the Declarants the control of the Association shall be turned over to the members, and the members shall elect from their number the Board of Directors of the Association as determined by the Articles of Incorporation and Bylaws of the Association. Irrespective of the foregoing, the Declarants at their sole and exclusive option may elect at any time prior to sale of eighty percent (80%) of the lots within the Subdivision to transfer control of the Association to its members. Such election shall be made by filing a Declaration of Transfer with the Auditor of Whatcom County. The community association shall comply with Chapter 283, Laws of the State of Washington 1995, notwithstanding any provision of this Declaration to the contrary.

## **6.3 Assessments and Liens.**

**(a) Authority.** The Association shall be empowered to establish and to collect dues and assessments upon lots in the Subdivision for the common benefit of such lots.

(b) Purposes. Dues shall be collected for the purposes set forth in Section 6.1 above.

(c) Personal Obligation and Lien Foreclosure. Dues and assessments shall constitute a personal obligation of any owner of record of a lot on the due date thereof and shall also constitute a lien on the lot assessed. Such lien may be enforced by the Association in the same form and manner of procedure as foreclosure of real property mortgages under the laws of the State of Washington.

(d) Amounts Included. Each owner and each party hereinafter owning or claiming an equity interest in a lot agrees that in the event of such foreclosure action involving such lot, the owner or owners thereof or other party asserting an equity interest therein will pay the Association's expenses of title examination and insurance, the cost of attorney's fees incurred by the Association and court costs, as well as all other costs reasonably and necessarily incurred in such foreclosure action. In any such action, delinquent assessments shall bear interest at the rate of 12% per annum from the date the same became due until the date of the entry of the judgment of foreclosure thereon.

(e) Other Liens and Foreclosure Actions. The method and manner provided for foreclosure of liens set forth in this paragraph shall pertain to all liens referred to in this Declaration. First mortgage liens placed upon any of said lots for the purpose of constructing improvements thereon or other bona fide liens provided for by the laws of the State of Washington shall be, from the date of recordation of such liens, superior to any and all charges, assessments and liens thereafter asserted pursuant to this Declaration.

a. Establishment and Assessment of Charges. For the purpose of providing funds for uses specified herein the Board of the Association shall for each year, commencing with calendar year 1995, fix and charge a yearly assessment against assessable lots. Each lot shall be assessed an equal amount.

b. Annual Statement. As soon as shall be practical in each calendar year, the Association shall send a written statement to each owner setting forth the dollar amount of the assessment for such lot for such calendar year. The Association may, in its sole discretion, provide for payment of such assessments on a periodic basis during such calendar year, with or without a service charge.

c. Penalty on Delinquent Assessments. If an owner shall fail to pay any installment of an annual

assessment within thirty (30) days from the date the same is due, then the entire annual assessment for such lot shall be delinquent and shall become immediately due and payable, shall bear interest at the rate of 12% per annum thereafter until paid and shall also bear a penalty in such amount as shall be determined by the Board of the Association.

- d. **Delinquency For More Than Ninety (90) Days.** If the owner of any assessable lot shall be delinquent in the payment of the annual assessment, or any installment thereof, for more than ninety (90) days following the date the same is due, then the Association shall have the right to commence legal action seeking a personal judgment against such owner and, in addition thereto, shall have the right to foreclose its lien upon such lot. The total amount due from such owner shall be such sums as provided in paragraphs 6.5 and 6.4(d), plus any penalty imposed under paragraph 6.7 hereof.
- e. **Rules and Procedures for Billing and Collecting Assessments.** The Board of the Association shall have the power and authority to adopt rules and procedures respecting the billing and collecting of annual assessments, which shall be binding upon all lot owners.
- f. **Increase in Assessments.** The amount of the annual assessment against each lot shall be initially determined and may thereafter be increased or decreased for any one year period, or any such greater period, as may be determined by the affirmative vote of at least fifty-one (51%) percent of the voting members of the Association, represented in person or by proxy, at a meeting, annual or special, called for such purpose; provided, however, that any lot owner who is delinquent in the payment of assessments shall not be entitled to vote thereon.
- g. **Application of Assessment.** The Association shall apply all funds received by it pursuant to this Declaration in the following order:

(a) Administrative costs and expenses incurred by the Association in the exercise of its powers, authority and duties described in its Articles of Incorporation and By-Laws;



(b) The payment of taxes and insurance premiums on the Common Properties and the payment of utility charges therefor, including, if not otherwise paid by Whatcom County, the charge for electricity supplied for street lighting within the Subdivision.

(c) The service, repair, maintenance and/or replacement of any and all improvements to the Common Property.

h. **Authority to Maintain Surplus.** The Association shall not be obligated to spend in any particular time period all of the sums collected or received by it during such time period or any other time period. The Association may carry forward, as surplus, any balances remaining. The Association shall not be obligated to apply any such surplus to the reduction of the amount of the annual assessment in any future year.

## **7. PROTECTION OF MORTGAGE OR DEED OF TRUST HOLDER**

No violation or breach of any covenant, condition, reservation or restriction contained in this Declaration, or in any supplement hereto, and no action to enforce the same, shall defeat, render invalid or impair the lien of any mortgage or deed of trust taken in good faith and for value against any title or interest in any lot which is the subject of an action arising from such violation or breach. A purchaser of any such lot at a trustee's sale, Sheriff's sale or Tax Foreclosure sale shall take title to such lot free and clear of any violations or breaches which have occurred on such lot, or by the previous owner thereof, prior to such foreclosure, but such purchaser shall nevertheless take subject to this Declaration and to any supplements hereto.

## **8. ENFORCEMENT**

The Association, the Declarants and any owner shall have the right to enforce, by any proceedings at law or in equity, all covenants, conditions, restrictions, reservations, liens and charges now or hereafter imposed by this Declaration. The failure of the Association, of the Declarants or of any owner to enforce any rights hereunder shall not be deemed to constitute a waiver of the right to do so thereafter. The prevailing party in any litigation involving the enforcement of any provision of this Declaration shall be entitled to judgment for the reasonable attorney's fees and costs incurred in such litigation by such prevailing party.

## **9. GRANTEE'S ACCEPTANCE**

The grantee of any lot subject to this Declaration shall, by the acceptance of a deed conveying title thereto or by the execution of any contract for the purchase thereof, whether from Declarant or any subsequent owner of such lot, accept such deed or contract upon, and subject to, each and every provision of this Declaration and the provisions contained herein, including the jurisdiction, rights and powers of Declarants, and by such acceptance shall, for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with Declarants and to and with the grantees and subsequent owners of each of the lots within the Subdivision, to keep, observe, comply with and perform all obligations set forth herein.

Each such grantee also agrees, by such acceptance, to assume, as against Declarants, its successors or assigns, all of the risks and hazards of ownership and occupancy attendant to such lot, including, but not limited to, its proximity to the Common Property, public paths, streams or other water courses.

#### **10. AMENDMENT TO DECLARATION**

Each and every provision of this Declaration shall run with and bind the land and shall inure to the benefit of, and be enforced by, the Association, the Declarants, the owners of any lots subject hereto, their respective legal representatives, heirs, successors and assigns, for a period of ten (10) years from the date that this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument terminating or amending this Declaration is signed by not less than seventy-five (75%) percent of the owners of all lots within the Subdivision, which instrument shall then be filed of record with the Whatcom County Auditor. During the first ten (10) year term hereof, this covenant may be amended by an instrument signed by not less than seventy-five (75%) percent of the owners of all lots within the Subdivision. Any such amendment shall take effect upon being recorded with the Whatcom County Auditor.

#### **11. SEVERABILITY**

In the event that any provision hereof is deemed by proper judicial decree to be invalid, then the remaining portion of this Declaration shall in no way be affected.

#### **12. PARAGRAPH HEADINGS**

The paragraph headings in this Declaration are for convenience only and shall not be considered in construing this Declaration.

13. NO WAIVER

The failure of any party entitled to enforce any provision hereof to take steps to enforce such provision shall not, in any fashion, operate or be deemed to be a waiver of any such provision or of any other provision hereof.

**DATED** this 10 day of August, 1995.

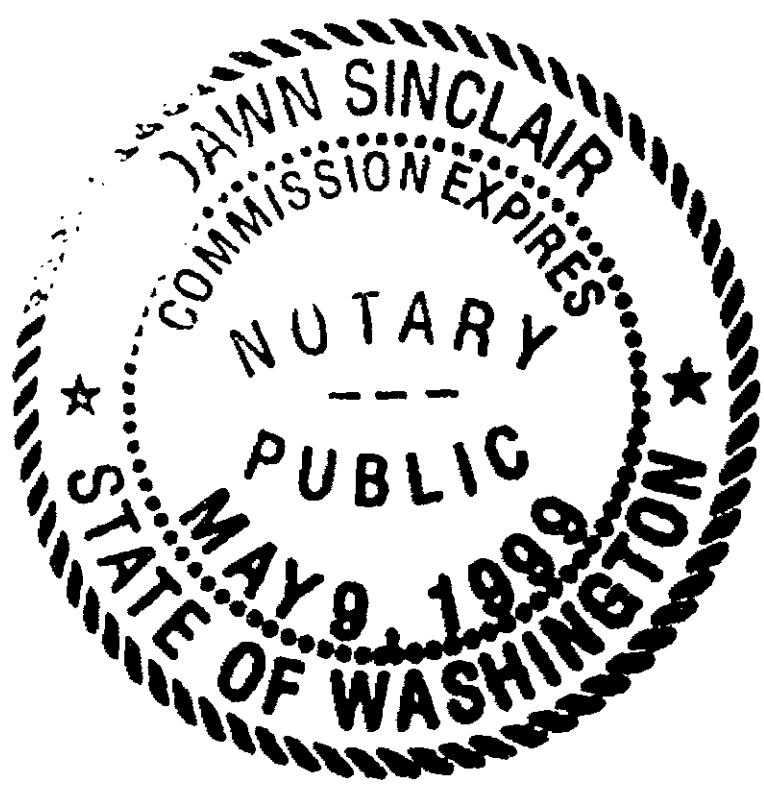
**RISHALEE, INC.,**  
**a Washington corporation**

By Steeves, President

STATE OF WASHINGTON)  
COUNTY OF WHATCOM) ss.

On this 10 day of AUGUST, 1995, before me personally appeared Sharon Steeves, to me known to be the President of the corporation that executed the within and foregoing 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 was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Dawn Sinclair  
Notary Public in and for the State of  
Washington, residing at Bellingham.

My Commission Expires May 9, 1999

Silver Birch U.S.A. Development Corp.,  
a Washington corporation

By [Signature], President

STATE OF WASHINGTON)  
COUNTY OF WHATCOM) ss.


On this 10 day of AUGUST, 1995,  
before me personally appeared Gary White, to me known to  
be the President of the corporation that executed the within and  
foregoing 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 was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set  
my hand and official seal the day and year first above written.

A circular notary seal for Dawn Sinclair. The outer ring contains the text "DAWN SINCLAIR" at the top and "STATE OF WASHINGTON" at the bottom, separated by two stars. Inside this ring, the text "COMMISSION EXPIRES" is at the top and "MAY 9, 1999" is at the bottom. The center of the seal features the words "NOTARY" and "PUBLIC" separated by three horizontal dashes.

Donna Simola  
Notary Public in and for the State of  
Washington, residing at Bellingham.

My Commission Expires May 9, 1999.

  
William Robert Steeves

STATE OF WASHINGTON)  
COUNTY OF WHATCOM) ss.

On this 10 day of AUGUST, 1995,  
before me personally appeared WILLIAM ROBERT STEEVES, to me known  
to be the individual that executed the within and foregoing  
instrument to be his free and voluntary act and deed of said  
individual for the uses and purposes therein mentioned, and on  
oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set  
my hand and official seal the day and year first above written.

A circular notary seal for Dawn Sinclair, a Notary Public in the State of Washington. The seal features a rope-like outer border. Inside, the text "DAWN SINCLAIR" is at the top, "COMMISSION EXPIRES" is in the upper middle, "NOTARY" is in the center, "PUBLIC" is below it, and "MAY 9, 1999" is at the bottom. The words "STATE OF WASHINGTON" are written along the bottom inner edge. Two stars are positioned on the left and right sides of the seal.

David Sinclair  
Notary Public in and for the State of  
Washington, residing at Bellingham.  
My Commission Expires May 9, 1999.

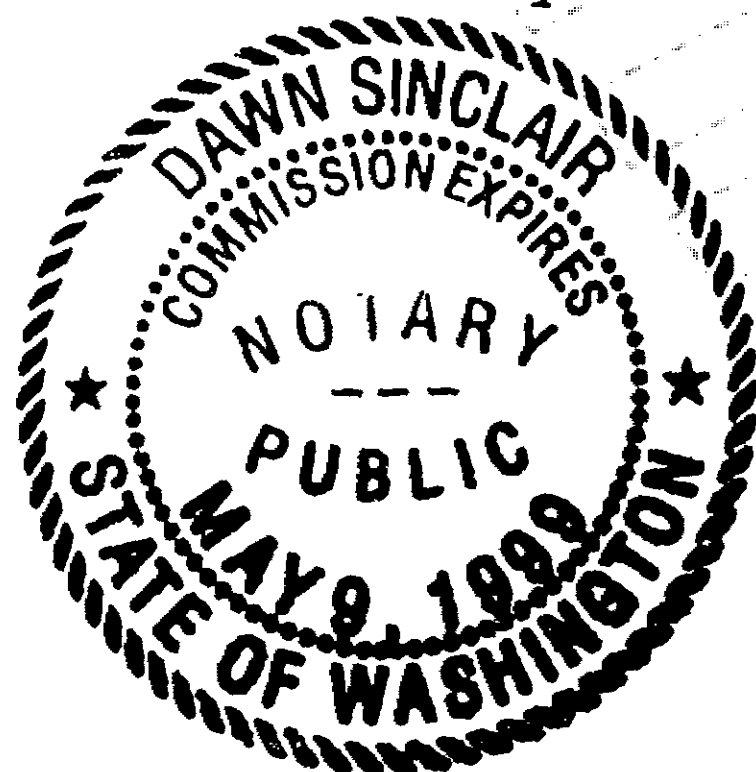


*[Handwritten signature]*

STATE OF WASHINGTON)  
 ) ss.  
COUNTY OF WHATCOM)

On this 10 day of AUGUST, 1995, before me personally appeared LORAN BRITTON, to me known to be the individual that executed the within and foregoing instrument to be his free and voluntary act and deed of said individual for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Deen Sinclair  
Notary Public in and for the State of  
Washington, residing at Bellingham

My Commission Expires May 9, 1999

PACIFCHTS, COV

WHATCOM COUNTY  
BELLINGHAM, WA  
10/17/95 1:21 PM  
REQUEST OF: AYERS PRO  
Shirley Forslof, AUDITOR  
BY: RAO, DEPUTY  
\$19.00 D/RC

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