

**The  
WOODS  
at Elm Creek**

**Homeowners  
Association**

**Articles, By-laws  
&  
Declaration of Covenants**

THE WOODS AT ELM CREEK  
HOMEOWNERS ASSOCIATION

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OFFICE OF THE REGISTRAR  
OF TITLES  
HENNEPIN COUNTY, MINNESOTA  
CERTIFIED FILED ON

MAR 22 1994

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BY *R. Dan Carlson* REGISTRAR  
OF TITLES  
DEPUTY

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

THE WOODS AT ELM CREEK

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STATE OF MINNESOTA, COUNTY OF HENNEPIN  
Certified to be a true and correct copy of the  
original on file and of record in my office

JUL 21 1994

R Dan Carlson, Registrar of Titles

By *[Signature]* Deputy

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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

THE WOODS AT ELM CREEK

THIS DECLARATION, made this 6th day of January, 1994 by Robert Engstrom Companies ("Declarant"), and joined in by Construction Mortgage Investors Company, a Minnesota Corporation, and Cowles Media Company, a Minnesota Corporation, as holders of the encumbrance recited in the consent and joinders attached hereto.

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Article II of this Declaration; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in the community and for the maintenance of the private open spaces and to this end desires to subject the real property described in Article II, Section 1 hereof (together with such further property as may be added pursuant to Article II, Section 2 hereof) to the easements, restrictions, covenants, conditions, charges and liens set forth in this Declaration, each and all of which is and are for the benefit of the property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in the community to create an agency to which should be delegated and assigned the power of maintaining the open spaces, administering and enforcing the covenants and restrictions contained in this Declaration and collecting and disbursing the assessments and charges created by this Declaration; and

WHEREAS, Declarant has incorporated, under the laws of the State of Minnesota, as a non-profit corporation, The Woods at Elm Creek Homeowners Association for the purpose of exercising these functions;

NOW, THEREFORE, Declarant declares that the real property described in Article II, Section 1 hereof (and such additions thereto as may be made pursuant to Article II, Section 2 hereof) is, and shall be, held, transferred, sold, conveyed and occupied subject to the following covenants, conditions,



restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions"), which covenants and restrictions shall run with the real property and be binding on all parties having any right, title or interest in the hereinafter described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof:

## ARTICLE I DEFINITIONS

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) Association: The Woods at Elm Creek Homeowners Association, a Minnesota non-profit corporation, its successors and assigns.
- (b) Declarant: Robert Engstrom Companies, its successors and assigns, if such successor or assign shall acquire more than one Lot from the Declarant for the purpose of development. Notwithstanding the foregoing, no individual or entity acquiring a Lot from the Declarant shall become the Declarant solely by such acquisition, but only as a result of a specific assignment of Declarant rights, which assignment shall not be effective unless incorporated in the instrument of conveyance.
- (c) Mortgagee: any entity or person named as mortgagee in any mortgage deed granting a lien ("Mortgage") on any Lot.
- (d) The Woods at Elm Creek or the Property: the property subject to this Declaration, and any additions subject to this Declaration or any Supplementary Declaration, pursuant to Article II.
- (e) Living Unit: a residential housing unit consisting of a group of rooms and hallways and attached garage which are designed and intended for use as living quarters for one family and located on a Lot.
- (f) Lot: any Lot contained on a recorded plat of The Woods at Elm Creek, including any Lot resulting from the platting of any additional property and made subject to this Declaration pursuant to Article II.
- (g) Member: each Owner entitled to membership in the Association pursuant to the provisions of Article III.
- (h) Owner: the record Owner or contract vendee of the fee simple title to any Lot, but excluding contract vendors, mortgagees or any others having such interest merely as security for the performance of an obligation.

(i) Developer: a person or entity designated by the Declarant to supervise and manage the initial development of The Woods at Elm Creek.

(j) Common Property: Currently no Common Property exists.

(k) Natural Planting Areas: an area of at least 225 square feet at or adjacent to the front lot line of each Lot and an area of ten feet (10') in depth along the rear property line of each Lot except those Lots that have an equivalent amount of existing trees, shrubs or natural vegetation. For lots that adjoin a designated wetland, the 10' natural planting area shall be a low maintenance filter strip of natural grasses, vegetation and ground cover mulches.

(l) Limited Common Areas: Those areas of the public right-of-way and individual lots that have landscaping that is designed to benefit the owner and the Association-See Exhibit B.

## ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real estate subject to this Declaration is located in Hennepin County, Minnesota and is described on the attached Exhibit A, all of which property shall hereinafter be referred to as "Existing Property."

Section 2. Additional Property. Additional real property, hereinafter referred to as "Additional Property", may become subject to the covenants and restrictions of this Declaration by filing for record in the Office of the Hennepin County Recorder or of the Registrar of Titles, whichever is appropriate, one or more Supplementary Declarations of Covenants, Conditions and Restrictions, hereinafter collectively referred to as "Supplementary Declaration", which shall extend the scheme of the covenants and restrictions of this Declaration to the Additional Property. The Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or desirable to reflect the different character, if any, of the Additional Property, but in no event shall any such Supplementary Declaration revoke, modify, or add to the covenants and restrictions established by this Declaration with respect to any property which has been previously subjected to the Declaration. Such Supplementary Declaration may be made by the Declarant, its successors or assigns, and without the consent of the members of the Association, for the purpose of subjecting the real property located in the City of Champlin, County of Hennepin, State of Minnesota, to the covenants and restrictions of this Declaration, provided, however, that such Supplementary Declaration is filed for record by the Declarant in the appropriate office within six (6) years from the date of this

Declaration. Alternatively, such Supplementary Declaration may be made by any property owner who desires to add his or her property to the scheme of this Declaration and to subject it to the jurisdiction of the Association upon approval in writing of the Association pursuant to provisions for voting contained in its Bylaws.

Section 3. Other Annexed Property. Other property may be annexed as provided above upon the prior approval of two-thirds (2/3) of the Members of the Association.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Each Owner of a Lot is a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners of one or more Lots, except Declarant. When more than one person or entity shares ownership of a Lot, the vote shall be exercised as they determine among themselves.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned by it.

The Class B membership shall cease and be converted to Class A membership on the earlier of (i) December 31, 1999 or (ii) when the Declarant conveys fee title to the last of the Lots in The Woods at Elm Creek which the Declarant currently owns.

Section 3. Suspension of Voting Rights. The right of any Member to vote shall be suspended during any period in which such Member shall be delinquent in the payment of any assessment levied by the Association. Such rights may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days for any infraction of any rules or regulations published by the Association.

## ARTICLE IV DUTIES OF ASSOCIATION

Section 1. Landscaping Public Areas. The Declarant shall initially install landscaping and the Association shall thereafter maintain such landscaping on public areas consisting of street islands, entrance monuments, boulevards, if any, and portions of public right-of-way along those portions of The Woods at Elm Creek lying contiguous to Elm Creek Parkway.

Section 2. Landscaping Limited Common Areas. The Association shall have the option, at its discretion, of maintaining and installing landscaping in these areas in the event that they are not maintained adequately, in the Associations discretion, by each Lot owner.

Section 3. Collection of Garbage. Should the City of Champlin not provide garbage collection services to the Owners, the Association shall be empowered to contract with private vendors for the collection of garbage in The Woods at Elm Creek.

Section 4. Enforcement of Covenants and Restrictions; Architectural Control. The Association shall be responsible for the enforcement of the covenants and restrictions contained in this Declaration, and of the architectural controls imposed by Article VI.

Section 5. Common Property. The Association, subject to the rights of the owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Property, if any, and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in good, clean, attractive and sanitary condition, order and repair.

## ARTICLE V ASSESSMENTS

Section 1. Creation of Assessments. The Declarant, for each Lot owned by it hereby covenants, and each Owner of any Lot, by acceptance of a deed for a Lot, whether or not it shall be so expressed in the deed or any conveyance, is deemed to agree to pay to the Association: (a) annual assessments, and (b) any Individual Lot Maintenance Assessments levied against the Owner's Lot pursuant to the provisions of this Declaration.

Section 2. Purpose of Annual Assessments. The annual assessments shall be levied for the purpose of paying the costs associated with the duties of the Association as set forth in Article IV hereof, together with the incidental costs of operating the Association.

Section 3. Levy of Annual Assessments. The annual assessment must be fixed at a uniform rate for each Lot; provided, however, that until a building permit is issued, a Lot shall be assessed at an amount equal to one-fourth (1/4th) of the annual rate of assessment. The annual assessment shall be due and payable each May 1, beginning on May 1, 1994. The annual assessment due May 1, 1994 shall not exceed \$120.00 plus the actual cost of garbage removal service. For the following years, the annual assessment shall be levied by the Association, based upon a proposed budget. The annual assessment may be increased, without a vote of Membership, by the greater of (a) \$10.00 per Lot; or (b) the percentage increase, if any, over the twelve-month period preceding the year for which such annual assessment is levied, in the Consumer Price Index, all items, published by the United States Department of Commerce, Bureau of Labor Statistics, for the region including Champlin, Minnesota; provided that the costs of garbage removal service shall always be in addition to such increases. In order to increase the annual assessment more than the maximum amount established in this Section, a vote of 67% of the votes of each class of membership cast by the members present, in person or by proxy at a meeting of the Association called for that purpose shall be necessary. The Board of Directors of the Association shall fix the amount of the annual assessment in an amount not in excess of the maximum. The annual assessment for each year shall be fixed, and written notice provided to each Owner at least thirty (30) days prior to May 1 of the year in which the assessment is due. Failure to provide such notice, however, shall not render the assessment invalid.

Section 4. Individual Lot Maintenance Assessments. In the event that any Owner violates any covenant or fails to perform any condition contained in this Declaration, the Association may perform the act, remove the defect or correct the violation upon thirty (30) days written notice to the Owner, and, as appropriate, pursuant to the procedures contained in Article VI. If the Association so acts on behalf of an Owner, the Association may levy an assessment (hereinafter, "Individual Lot Maintenance Assessment") against the Lot for the cost of the performance or correction.

Section 5. Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement upon the Common Property, including fixtures and personal property related thereto, provided that each such assessment shall have the assent of Members holding two-thirds (2/3) of the votes in each class of voting membership who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Effect of Nonpayment of Assessment; Remedies of Association. The annual assessments and Individual Lot Maintenance Assessments shall be fixed as provided in this Declaration. If any such assessment is not paid when due, it shall become delinquent and shall, together with interest at a rate of eight percent 8% per annum, any cost of collection and any attorney's fees, become a continuing lien on the Lot and shall also be the personal obligation of the Owner of the Lot at the time the assessment is made. The lien may be enforced and foreclosed by action in the same manner in which mortgages may be foreclosed in Minnesota. Each Owner, by acceptance of a deed for any Lot, shall be deemed to give full and complete power of sale to the Association and to consent to a foreclosure of the lien by advertisement. The Association may elect to bring an action at law against the Owner personally obligated to pay the assessment.

Section 7. Subordination of Lien to First Mortgages. The lien of assessments provided for herein shall be subordinate to the lien of any first Mortgage, and the sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to the foreclosure of a First Mortgage, or pursuant to any other proceeding or arrangement in lieu of such foreclosure, shall extinguish the lien of such assessments as to installments which became due prior to the effective date of such sale, transfer or acquisition by the Mortgagee to the end that no assessment liability shall accrue to an acquiring Mortgagee except with respect to installments of assessments becoming due after possession has passed to such acquiring Mortgagee, whether such possession has passed at the termination of any period of redemption or otherwise. In the event of the extinguishment of such assessment lien as aforesaid, the entire amount of such unpaid assessment shall be reallocated and assessed against, and payable by the Owners of all other Lots exclusive of such mortgaged Lot. No such sale, transfer or acquisition of possession shall relieve an Owner or a Lot from liability for any assessments thereafter becoming due or from the lien thereof, or shall relieve the person personally obligated to pay the assessments which were levied prior to the transfer of such property from the personal obligation to pay the same.

Section 8. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- (a) All properties to the extent of any easement or other interest therein dedicated to and accepted by the local public authority and devoted to public use;
- (b) All properties exempted from taxation by the laws of the State of Minnesota upon the terms and to the extent of such legal exemption; and

(c) All Common Property.

Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

## ARTICLE VI ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. There shall be established an Architectural Control Committee (ACC) consisting of three persons. The members of the ACC shall be appointed by Declarant until the Declarant no longer owns any lots or until December 31, 1999, whichever is sooner. For purposes of this section, "Lots" shall include any property annexed by Declarant pursuant to Article II. After the termination of Declarant's right to appoint the ACC members, members shall be appointed and serve at the pleasure of the Board of Directors of the Association.

Section 2. Original Construction. A site plan, landscaping plan and plans and specifications for the construction of a Living Unit on any Lot shall be submitted to the ACC for its written approval before any construction activity is begun.

Section 3. Review of Modifications. After the completion of an original Living Unit on a Lot, the construction or modification of any building or structure, including fences and mailboxes or the retaining walls or monuments constructed by the Declarant, shall require prior written approval by the ACC of the plans and specifications for the construction, in accordance with the standards set forth in Section 4 hereof.

Section 4. Standard of Review. The ACC may promulgate detailed standards and procedures governing its areas of responsibility and practice. In addition, the following shall apply: the plans and specifications shall be reviewed as to quality of workmanship, design and harmony of external design with existing structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of the owners' residence or to paint the interior of the owners' residence any color desired.

Section 5. Procedure. If the ACC fails to approve or disapprove plans and specifications within thirty (30) days after the submission of the same to it, approval will be deemed to have been granted. In the event of disapproval by the ACC, the requesting Owner may give written notice that the Owner wishes to appeal the ACC decision and request a hearing by the Association's Board of Directors. Such notice must be furnished to the ACC within ten (10) days of its decision. The hearing shall be at a special meeting of the Board of Directors to be held within thirty (30) days of the receipt of the Owner's notice of appeal.

Section 6. Removal and Abatement. The ACC or the Association shall have the right to order an Owner to remove or alter any structure on any Lot erected in violation of the terms of this Declaration, and to employ appropriate judicial proceedings to compel the alteration or demolition of any non conforming construction or other violation. Any cost incurred by the ACC shall be levied as an Individual Lot Maintenance Assessment as provided in Article V.

Section 7. Variances. Reasonable variances to the covenants, conditions and restrictions may be granted by the ACC after review, in order to overcome practical difficulties or to prevent unnecessary hardship. A variance may only be granted if it is not detrimental to other property and shall not defeat the purpose of this Declaration.

#### ARTICLE VII RESERVED RIGHTS OF DECLARANT IN THE COMMON PROPERTY

Declarant shall, so long as a Class B Membership exists, have the following rights in the Common Property:

- (a) To create or grant easements over and across the Common Property which Declarant deems necessary to complete any residential development on any portion of The Woods at Elm Creek;
- (b) At Declarant's expense, to construct improvements over, across and upon the Common Property.



**ARTICLE VIII**  
**PROPERTY RIGHTS IN THE COMMON PROPERTIES**

Section 1. Easements. Subject to the provisions of Section 2 hereof, there shall exist the following easements in favor of each Owner and appurtenant to such Owners' Lots or Outlots across and upon the Common Property:

- (a) Non-exclusive easements to construct, install, repair and replace sanitary and storm sewer, water, gas, electric, telephone, cable television and other utility lines serving such Lot or Outlot in the location the same shall be initially constructed or installed by the Declarant, or such other location as may be approved by the Board of Directors of the Association;
- (b) A non-exclusive easement for the use and enjoyment of the Common Property developed for open-space or recreational purposes.
- (c) A non-exclusive easement over the Limited Common Property adjoining Elm Creek Parkway for landscape purposes.
- (d) A non-exclusive easement for pathway purposes over the northwesterly ten feet of Lot 32 and the southeasterly ten feet of Lot 33, Block One. Said easement shall also be dedicated to the public.

Section 2. Extent of Members' Easements. The rights and easements created hereby and the title of the Association to the Common Property shall be ...subject to the following, and as further provided herein:

- (a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Property, and in aid thereof to mortgage said Common Property; however, the rights of such mortgagee in the Common Property shall be subordinate to the rights of the Members hereunder;
- (b) The right of the Association to take such steps as are reasonably necessary to protect the Common Property against foreclosure;
- (c) The right of the Association, as provided in its Articles and Bylaws, to suspend the voting and enjoyment rights of any Member for any period during which any assessment remains unpaid, as provided in the Association's Bylaws;
- (d) The right of the Declarant to make use of such portions of the Common Property as may be necessary and incidental to the construction of any initial improvements upon the Property and such other rights as are contained in Article IV hereof;

(e) The rights of the Association to dedicate or transfer all or any part of the Common Property to any public agency, authority or utility such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof shall be effective unless an instrument signed by Members entitled to cast two thirds (2/3) of the votes of each class of membership has been recorded agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken. The consent requirements of Articles XII, Section 3, if applicable, must also be satisfied to effect a valid dedication.

Nothing herein contained shall be construed as a dedication of any part of the Common Property to the public or to public use.

Section 3. Title to Common Property. Declarant shall convey legal title to the Common Property, if any, to the Association prior to December 31, 1999.

Section 4. Taxes and Special Assessments on Common Property. Taxes and special assessments that would normally be levied against the Common Property shall be divided and levied in equal amounts against the Lots or Outlots or as the governmental taxing authorities shall determine, which levies shall be a lien against such individual Lots and Outlots.

Section 5. Delegation of Rights. Any Owner may delegate the Owners right and easement of enjoyment in and to the Common Property to the members of the Owners family, guests or to tenants who reside on the Lot.

## ARTICLE IX INSURANCE

Section 1. Liability Insurance; Fidelity Bonds. The Board of Directors of the Association, or its duly authorized agent, shall obtain a broad form of public liability insurance covering all of the Common Property insuring the Association, with such limits of liability as the Association shall determine to be necessary. Such insurance policy shall contain a "severability of interest" clause which shall preclude the insurer from denying the claim of an owner because of the negligence of the Association or other Owner. Any policy or bond contained hereunder shall provide that it may not be canceled or substantially modified (including cancellation for nonpayment

of premium) without at least thirty (30) days' prior written notice to First Mortgagees.

Section 2. Casualty Insurance on Insurable Common Property. The Association shall keep all insurable improvements and fixtures on the Common Property insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Property shall be written in the name of, and the proceeds thereof shall be payable to, the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses included in the annual assessments.

Section 3. Replacement or Repairs of Common Property. In the event of damage to or destruction of any part of the Common Property, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs or repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other assessments made against such Owners. Mortgagees shall receive notice from the Association in the event of any damage or destruction to the Common Property in excess of \$10,000. Any reconstruction assessed hereunder shall be adopted in accordance with the procedures set forth in Article V of this Declaration with respect to annual assessments and special assessments, as therein provided, and the lien of any reconstruction assessment levied hereunder shall be subordinate to the lien of any Mortgage, in the same manner and to the same extent as the subordination of annual assessments and special assessments, as provided in Article V, of this Declaration.

Section 4. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the Common Property which may have been damaged or destroyed.

## ARTICLE X PROHIBITED USES

Section 1. Use. No Lot shall be used except for residential purposes; no Living Unit shall be erected, altered, placed or permitted to remain on any Lot other than one single family dwelling, not to exceed two (2) stories in height, and an attached garage for at least two(2) cars and on-site parking spaces to accommodate at least two (2) cars. No garages shall be erected on any site except attached garages and no attached garage for more than three (3) cars shall be permitted without the express written approval of the Architectural Control Committee.

Section 2. Subdivision. No Lot shall be subdivided or split by any means whatsoever into any greater number of residential Lots, nor into any residential plots of smaller size without the express written consent of the City of Champlin.

Section 3. Standards. All uses of the Lots shall, as a minimum, comply with the zoning and other applicable ordinances and regulations of the City of Champlin. The standards herein contained shall be considered as requirements in addition to said zoning and other applicable ordinances and regulations.

Section 4. Minimum Square Footage and Set Back Provisions. The Architectural Control Committee shall have the right to establish minimum square footage requirements and to restrict set backs.

Section 5. Signage. No sign shall be placed on any Lot or within the Property without the express written consent of the Architectural Control Committee, except that one "for sale" sign may be placed on a Lot by an Owner or the Developer without Committee approval.

Section 6. No Pets and Animals. No birds, animals or insects shall be kept on any Lot except dogs, cats and other common house pets provided that they are not kept, bred or maintained for any commercial purposes. Cats, dogs and other common household pets, if any, must be kept on a leash or contained within a confined area or within the individual Lot when outside the home or garage.

Section 7. Home Occupation. No profession or home industry shall be conducted in any Living Unit or on any Lot without the specific written approval of the Declarant as long as it has Class "B" votes as herein before defined or by the Architectural Control Committee thereafter. The Declarant or the Committee, whichever has authority at the time in question, in its discretion, upon consideration of the circumstances in each case, and particularly the effect on surrounding property, may permit a Lot to be used in whole or in part for the conduct of a profession or home industry. No such profession or home industry shall be permitted,

however, unless it is considered by the Declarant or by the Architectural Control Committee, whichever then has authority, to be compatible with the residential neighborhood.

Section 8. Nuisances. No clothes line or drying yards or pet control lines shall be permitted unless concealed by hedges or screening acceptable to the Committee. No weeds, or other unsightly growths shall be permitted to grow or remain upon the premises. No refuse pile or unsightly objects shall be allowed to be placed or suffered to remain any where thereon. In the event that an Owner of any Lot shall fail or refuse to keep such premises free from weeds, or refuse piles or other unsightly growths or objects, then the Declarant or the Association may enter upon such lands and remove the same at the expense of the Owner and such entry shall not be deemed as trespass and in the event of such a removal, a lien shall arise and be created in favor of the Association and against such Lot for the full amount chargeable to such Lot and such amount shall be due and payable within thirty days after the Owner is billed therefor. No Lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort, or serenity of the occupants of surrounding property. The outside storage of an unlicensed motor vehicle upon the premises shall also be considered a nuisance.

Section 9. Storage. Outside storage of any items, including but without limiting the generality of the foregoing, sporting equipment, toys, outdoor cooking equipment, yard and garden tools and equipment and trash and garbage containers shall not be allowed unless effectively screened from view outside the Lot. The design of any screening enclosures must be approved by the Committee. Household trash and garbage shall be regularly collected and may be kept outside only if in tightly covered containers. No boats, inoperable automobiles, snow mobiles, trailers, camping vehicles, tractors/trailers, or trucks in excess of 9,000 pounds gross weight shall at any time be stored or parked on any Lot, outside of a garage or on public streets within The Woods at Elm Creek without the express written approval of the Architectural Control Committee, which approval may be withheld without stated reason. None of the foregoing or vehicles of any kind may be permanently parked on the public streets or on a Lot unless stored within an approved structure.

Section 10. Leasing. Any lease between an Owner and a non-Owner occupant shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, and shall provide

that any failure by the Non-Owner occupant to comply with the terms of such documents shall be default under the lease. Other than the foregoing, there shall be no restrictions on the use of a Living Unit by a non-Owner occupant.

Section 11. Fences, Walls and Hedges. Boundary walls and fences are inconsistent with the intended plan of development for the Property. No wall or fence shall be constructed or hedge planted on any Lot until the height, type, design, and location have been approved in writing by the Committee. Under no circumstances shall a boundary wall, fence or hedge be permitted with a height of more than six (6) feet. The height or elevation of any wall, fence or hedge shall be measured from the existing elevations on the property at or along the applicable point or lines. Any question as to such heights may be completely determined by the Committee. The height limitations as set forth in this paragraph shall not be applicable to tennis court enclosures, provided such enclosures have been approved by the Committee. A refusal by the Committee to allow or permit a fence, wall or hedge (including tennis court enclosures and swimming pool fences) on any particular Lot or in any particular location shall not be construed to be an abuse of discretion.

Section 12. Storage Tanks. No permanent storage tanks of any kind shall be erected, placed or permitted on any Lot unless buried or effectively screened from view outside the Lot.

Section 13. Temporary Structures. No structure of temporary character, trailer, basement, tent, shack, garage, barn or other building shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 14. Auxiliary Structures. No detached dog kennels, runs or enclosures shall be permitted unless design and location of same shall be approved by the Architectural Control Committee. No detached storage buildings shall be permitted except those approved by the Architectural Control Committee as conforming in design and appearance to the dwelling, and which are located in the proximity of the dwelling or garage.

Section 15. Driveways. Driveways must be constructed of concrete, bituminous or other hard surface material. Material and installation shall be subject to approval of the Architectural Control Committee. Driveways must be installed within one year of the date a Certificate of Occupancy is issued for any dwelling constructed upon a Lot.

Section 16. Exterior Lighting. All exterior lighting fixtures and standards shall be shown on submitted plans and shall comply with the overall

lighting plan of the Declarant. All forms of exterior lighting shall be subject to approval of the Committee.

Section 17. Exterior Ornaments. Exterior ornaments including but not limited to precast concrete, plastic or wood figurines, wishing wells and windmills shall be prohibited unless approved by the Committee prior to installation or construction.

Section 18. Antennas. Except with the prior written approval and authorization of the Committee, no satellite dishes exceeding 24" in diameter, no exterior television or radio antenna of any sort shall be placed, allowed or maintained upon any portion of a Lot or the improvements or structures located thereon.

Section 19. Completion of Construction of Improvements. All construction work shall, upon approval of plans by the Committee, be carried on with dispatch; all improvements shall be constructed in conformity with the then existing building codes of the City of Champlin, Minnesota; and all building plans shall be prepared by or under the supervision of a registered architect, a builder or a qualified design professional. If any structure is begun after approval of the plans as provided in Article VI and is not completed within one year after the commencement of said construction, and in the judgment of the Developer or the Architectural Control Committee, it is offensive or unsightly in appearance, the Developer or the Committee, may take such steps as may be necessary to make the Property harmonious with other properties, such steps including completion of the exterior of the structure, screening or covering the structure or any combination thereof, or similar operations. The amount of any expenditure made in so doing shall be the personal, joint and several obligation of the Owner or Owners and shall be a lien on the Lot and may be foreclosed in the same manner as provided in Article V. The lien herein shall not be valid as against a subsequent bona fide purchaser of the Lot in question unless a statement setting forth the claim had been filed for record in the office of the County Recorder and/or Registrar of Titles of Hennepin County, whichever is appropriate, or unless a suit and appropriate Lis Pendens to foreclose the lien shall have been filed of record in the office of the County Recorder and/or Registrar of Titles of Hennepin County prior to the recordation of the Deed conveying the Lot in question to said purchaser.

## ARTICLE XI OWNER'S DUTIES

Section 1. Minimum landscape plan. Owners shall be charged with the maintenance or enhancement of natural plantings within an area ten

(10) feet in depth along their rear property lines, and a minimum of 225 square feet of natural plantings adjoining the front lot line. Owners shall plant a designated boulevard tree and at least two deciduous, coniferous, or ornamental trees of 1.5 caliper inches or larger in their front yard. In addition, all lots must be sodded within 30 days after substantial completion of the living unit, except those living units completed from November to March of each year shall have until the following June to complete the sodding. Should an Owner fail to respect these duties, the Association reserves the right to sod or plant area and levy an Individual Lot Maintenance Assessment against such Lot for the costs incurred by the Association therein pursuant to the provisions of Section 4, Article V hereof. All Lots shall be subject to easements over and across such premises to permit the Association to carry out the work described in Sections 1 and 2 of this Article X.

Section 2. Mailboxes. Each Owner shall maintain a mailbox of the design and type initially installed by the Declarant or as on file with the Association. The mailboxes shall be on the public right-of-way, and may be located in groups of two (2) or more. The Association reserves the right to levy an Individual Lot Maintenance Assessment against a Lot, pursuant to the provisions of Section 4, Article V hereof, should an Owner fail to maintain the mailbox.

Section 3. Maintenance and Repair. In order to preserve the uniform and high-standard appearance of the Property, each Owner undertakes responsibility for maintenance and repair of the exterior of his Living Unit, private yard area and private driveway on the Lot. Such responsibility for maintaining the Lot and improvements thereon shall include, but not be limited to the following: the maintenance and repair of exterior surfaces of all buildings on the Lot, including without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance or repair of roofs, gutters, downspouts and overhangs, the maintenance and repair of exterior windows and doors, necessary painting, staining and repair of patio structures; in maintaining Private Yard Areas and private driveways an Owner shall be required to mow, trim, water or otherwise care for grass, trees or other plants located on a Lot and shall be required to remove snow from the private driveways, parking areas and walkways to the Living Unit. Maintenance, painting and construction shall be in the original colors and materials, or according to approved color boards on file with the Association. Other colors and materials may be approved by the Architectural Control Committee.



## ARTICLE XII GENERAL PROVISIONS

Section 1. Association Easement. The Association shall have an easement to enter upon any Lot in order to perform any obligations or duties of the Association hereunder, or to exercise any right or remedy of the Association hereunder.

Section 2. Duration of Declaration of Covenants, Restrictions and Easements. The covenants, restrictions, and easements of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, or their respective legal representatives, heirs, successors and assigns. The easements set forth herein shall be perpetual. The covenants and restrictions herein set forth shall have a term of twenty (20) years from the date this Declaration is recorded, after which time, said covenants and restrictions shall be automatically renewed for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Owners and thereafter by an instrument signed by not less than sixty-seven percent (67%) of the Owners. Any amendment must be properly recorded.

Section 3. Enforcement. In the event any Owner fails to comply with the provisions of this Declaration, or the Bylaws or Articles of Incorporation of the Association or with decisions of the Association which are made pursuant thereto, such failure will give rise to a cause of action on the part of the Association, or any aggrieved Owner for the recovery of damages or for injunctive relief, or both. Owners shall have a similar right of action against the Association. Enforcement of these covenants and restrictions may be by any proceeding at law in equity.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Section 5. FHA/VA Approval. In the event FHA/VA Subdivision Approval has been obtained for any of the Property, as long as there are Class B members, the following actions shall require the prior approval of the Federal Housing Administration or the Veteran's Administration:

- (a) annexation of additional properties;

(c) conveyance and/or dedication of any Common Area.

Section 6. Rules and Regulations. The Board of Directors of the Association may, from time to time, adopt such rules and regulations as the Board, in its sole discretion, deems appropriate or necessary, including, without limiting the generality of the foregoing, additional rules and regulations concerning the use of parking areas, maintenance of the Common Areas and additional rules and regulations concerning the appearance of each Lot and utilization of ponding areas.

Section 7. Rights of Declarant. Until the last Lot is sold and conveyed to an Owner other than a Declarant, the following activities by Declarant or with the written consent of Declarant will not be deemed violations of restrictions contained in this Declaration:

- (a) the use of a Lot or Lots for model and sales office purposes;
- (b) the storage of a construction trailer, equipment, materials and earth during the construction of new Living Units;
- (c) the display of signs advertising the Property, or new Living Units and the maintenance of temporary fencing, walkways, landscaping and berming in the vicinity of model and sales units.

### ARTICLE XIII RIGHTS OF MORTGAGEES

Section 1. Mortgagee's Rights. Notwithstanding any other provisions of this Declaration, the Articles of Incorporation or the By-Laws of the Association, the provisions of this Article XI shall control, and in the event of a conflict between the provision of this article and the provisions of such Declaration, Articles or By-Laws, the provisions of this article shall control.

Section 2. Notice of Default. Any Mortgagee holding a first Mortgage on a Lot, and who shall have previously filed a written request with the Association, shall be entitled to written notification of any default by the mortgagor or Owner of such Lot or his, or their, heirs, successors or assigns in the payment of any assessments or the performance of any other duties or obligations herein set forth which shall have remained in default for a period of thirty (30) days or more. The neglect or failure of the Association to tender such notice to the Mortgagee shall toll the running of any time

limits applicable to the procedure for the collection of such assessment or remedies available to the Association on account of such default.

Section 3. Consent Required. Without the prior written approval of sixty-six and two-thirds percent (66-2/3%) of the holders of mortgage liens against all Lots, the Association shall not be entitled to:

- (a) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer any Property which the Association shall have acquired for the benefit of the Owners;
- (b) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;
- (c) by act or omission, change, waive or abandon the scheme of exterior and architectural controls, as hereinabove set forth.

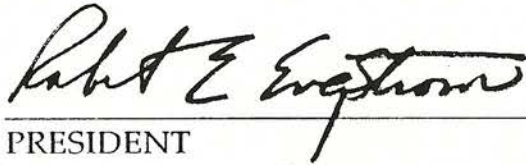
#### ARTICLE XIV ADDITIONAL RIGHTS OF DECLARANT

Notwithstanding the reference to the authority of the Association to levy assessments for the enforcement of covenants and restrictions hereinabove or for maintenance, capital improvements, or any other remedies of the Association, Declarant declares that in addition to the real property described in Article II, Section 1. hereof (and such additions thereto as may be made pursuant to Article II, Section 2, hereof), which may coincident herewith or subsequent hereof be conveyed to the Association as common property, that additional properties not dedicated for such common area but rather dedicated in fee or as public easement to the municipality having jurisdiction over the premises comprising the entire subdivision of which the lots and the common area properties described hereon are a part, have nonetheless been or will be dedicated for the benefit of the individual lot owners and association. Individual lots may be contiguous to such dedicated lands, and such dedicated lands (or to be dedicated lands) may contain streets, sidewalks, curbs, municipally mandated plantings, public walkways, drainage easements, and other municipally mandated improvements. Declarant as owner is obligated pursuant to a certain "Developer's Agreement" with the City of Champlin to provide repairs for any damages to such improvements on such dedicated (or to be dedicated) properties during the period of construction and for a defined term thereafter. Declarant reserves the right to assess any

individual lot owner for monies expended by Declarant to repair damage to such improvements by such lot owner, their agents, assigns, vendors, contractors and subcontractors. Such assessment shall constitute a lien in the same manner as such is described in Section 4 of Article V herein.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration of Covenants, Conditions and Restrictions this 6th day of January, 1994.

ROBERT ENGSTROM COMPANIES

  
\_\_\_\_\_  
PRESIDENT

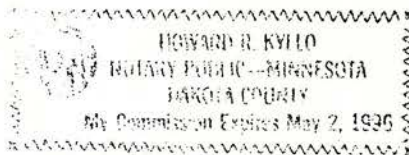
STATE OF MINNESOTA     )  
  )ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this 6th day of January, 1994, by Robert Engstrom Companies.

  
\_\_\_\_\_  
Notary Public

This instrument was drafted by:

Robert Engstrom Companies  
4801 W. 81st Street Suite 101  
Minneapolis, MN 55437  
(612) 893-1001



\*\*\*\*\*

CONSENT AND JOINDER BY MORTGAGEE

Construction Mortgage Investors Company, a Minnesota Corporation, the holder of mortgages on the property described in Exhibit "A" of this Declaration, hereby joins and consents to the recording of the attached Declaration.

IN WITNESS WHEREOF, Construction Mortgage Investors Company, has caused this consent and joinder to be executed this 28 day of December, 1993.

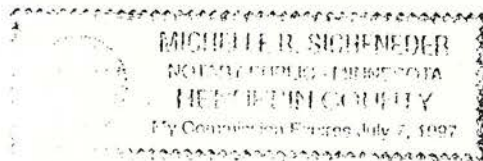
CONSTRUCTION MORTGAGE INVESTORS COMPANY

By: [Signature]  
Its Vice-President

STATE OF MINNESOTA )  
  )ss.  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ~~July~~ 28th day of ~~July~~ December, 1993, by Ron Altar, the Vice President of Construction Mortgage Investors Company, a Minnesota Corporation, on behalf of the Corporation.

[Signature]  
Notary Public



CONSENT AND JOINDER BY MORTGAGEE

Cowles Media Company, a Minnesota Corporation, the holder of mortgages on the property described in Exhibit "A" of this Declaration, and Declarant under the Master Declaration as hereinafter defined, hereby joins and consents to the recording of the attached Declaration, provided that this Declaration and all liens that may be created thereunder shall be subordinate to Mortgagee's interests in the existing property, Additional Property, or Other Annexed Property including, without limitation, all security interests held by Mortgagee and the Master Declaration dated December 31, 1987 recorded January 26, 1988 as document number 1904430 in the office of the Registrar of Titles for Hennepin County, Minnesota and filed February 3, 1988 as document number 5374675 in the office of the County Recorder for Hennepin County, Minnesota.

IN WITNESS WHEREOF, Cowles Media Company, has caused this consent and joinder to be executed this 26th day of January, 1994.

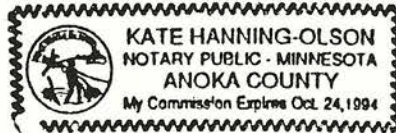
COWLES MEDIA COMPANY

By: *Georgina Y. Stephens*  
Its: Treasurer

STATE OF MINNESOTA)  
  ) ss.  
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 26th day of January, 1994, by Georgina Y. Stephens, the Treasurer of Cowles Media Company, a Minnesota Corporation, on behalf of the Corporation.

*Kate Hanning-Olson*  
Notary Public



Consent and Joinder

R.C. Johnson Construction, Inc., a Minnesota Corporation, fee title owner of Lots 11, 28 and 31, Block 1, The Woods at Elm Creek hereby joins and consents to the recording of the attached Declaration.

IN WITNESS WHEREOF, R.C. JOHNSON CONSTRUCTION, INC.,  
has caused this consent and joinder to be executed this 14TH day of  
January, 1994.

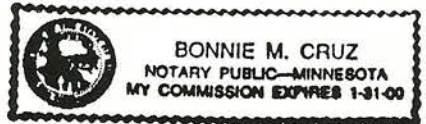
R.C. Johnson Construction, Inc.

By: *Julie Pritchard*  
Its: VICE PRESIDENT

STATE OF MINNESOTA   )  
   )ss.  
COUNTY OF HENNEPIN   )

The foregoing instrument was acknowledged before me this  
14TH day of January, 1994, by JULIE PRITCHARD  
the VICE PRESIDENT of R.C. Johnson Construction, Inc., a  
Minnesota Corporation, on behalf of the Corporation.

*Bonnie M. Cruz*  
Notary Public



Consent and Joinder

Richard J. Elsen Construction, <sup>Inc.</sup> a Minnesota Corporation, fee title owner of Lots 11, 28 and 31, Block 1, The Woods at Elm Creek hereby joins and consents to the recording of the attached Declaration.

IN WITNESS WHEREOF, RICHARD J. ELSEN CONSTRUCTION, Inc. has caused this consent and joinder to be executed this 21 day of January, 1994.

Richard J. Elsen Construction, Inc.

By: [Signature]  
Its: pres

STATE OF MINNESOTA )  
 )ss.  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this 21 day of January, 1994, by RICHARD J. ELSEN, Inc. the PRESIDENT of Richard J. Elsen Construction, a Minnesota Corporation, on behalf of the Corporation.

[Signature]  
Notary Public



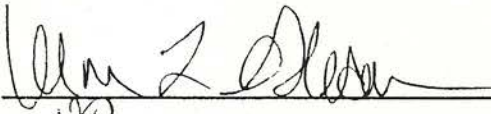


Consent and Joinder

Chartwell Construction, Inc., a Minnesota Corporation, fee title owner of Lot 29, Block 1, The Woods at Elm Creek hereby joins and consents to the recording of the attached Declaration.

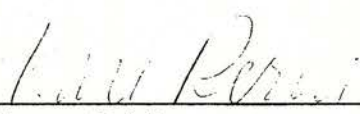
IN WITNESS WHEREOF, Chartwell Construction, Inc., has caused this consent and joinder to be executed this 25<sup>th</sup> day of January, 1994.

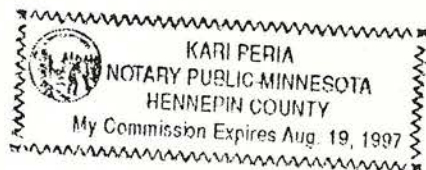
Chartwell Construction, Inc.

By:   
Its: vp.

STATE OF MINNESOTA )  
 )ss.  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this 25 day of January, 1994, by William Z. Casom, the Vice President of Chartwell Construction, Inc., a Minnesota Corporation, on behalf of the Corporation.

  
Notary Public



Consent and Joinder

Richard J. Elsen Construction, Inc., a Minnesota Corporation, fee title owner of Lots 11, 28 and 31, Block 1, The Woods at Elm Creek hereby joins and consents to the recording of the attached Declaration.

IN WITNESS WHEREOF, Richard J. Elsen has caused this consent and joinder to be executed this 16 day of March, 1994.

Richard J. Elsen Construction Inc.

By: [Signature]

Its: [Signature]

STATE OF MINNESOTA )  
 )ss.  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this 16 day of March, 1994, by RICHARD J. ELSEN the President of Richard J. Elsen Construction, Inc., a Minnesota Corporation, on behalf of the Corporation.

[Signature]  
Notary Public



## **EXHIBIT A**

Existing Property:

Lots 1 through 49, inclusive, Block 1;

Lots 1 through 7, inclusive, Block 2;

all in The Woods at Elm Creek, according to the recorded plat thereof on file and of record in the office of the County Recorder, Hennepin County, Minnesota.

## **EXHIBIT B**

Limited Common Areas:

1. That portion of Lots 1, 7, 8, 9, 10, 15, 16, 17, 18, 36, 37, 38, 39, 42, 43, 44 and 45, Block 1 and Lots 1, 2 and 3, Block 2 which lie within fifteen (15) feet of the Easterly Right-of-Way Line of Elm Creek Parkway.
2. The Southerly twenty-two (22) feet of Lots 39, 40 and 41, Block 1.
3. All islands of trees, shrubs and landscaping that are located in the public right-of-way shall be maintained by the Association.

**BYLAWS OF  
THE WOODS AT ELM CREEK  
HOMEOWNERS ASSOCIATION**

**ARTICLE I**

NAME AND LOCATION

The name of the corporation is The Woods at Elm Creek Homeowners Association, hereinafter referred to as the "Association". The principal office of the corporation shall be located at 4801 West 81st Street, Suite 101, Minneapolis, Minnesota 55437 but meetings of members and directors may be held at such places within the State of Minnesota, County of Hennepin, as may be designated by the Board of Directors.

**ARTICLE II**

DEFINITIONS

Terms used herein shall have the meanings ascribed to them in the Declaration of Covenants, Conditions and Restrictions of The Woods at Elm Creek recorded \_\_\_\_\_ in the office of the Recorder of Hennepin County, Minnesota as Document No. \_\_\_\_\_. ("Declaration"). The terms of the Declaration are incorporated herein by reference.

**ARTICLE III**

MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on such date and at such place as shall be designated by the Board of Directors in a notice of annual meeting to be furnished to the Members in the manner required by law.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to vote twenty-five percent (25%) of all of the votes of the Class A membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least five (5) and no more than thirty (30) days before such meeting to each member and member's mortgagee, if any, entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, ten percent (10%) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or represented.

Section 5. Proxies. At all meetings for members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his or her Lot.

#### ARTICLE IV

##### BOARD OF DIRECTORS: SELECTION; TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of five (5) directors, who need not be members of the Association.

Section 2. Term of Office. At the first annual meeting, the members shall elect one-third (1/3) (rounded to the nearest whole number) of the directors for a term of one (1) year, one-third (1/3) of the directors for a term of two (2) years and the balance for a term of three (3) years; and at each

annual meeting thereafter the members shall fill any vacancies on the Board of Directors for a term of three (3) years.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his or her successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of said predecessor.

Section 4. Compensation. No director shall receive compensation for any service rendered to the Association. However, any director may be reimbursed for actual expenses incurred in the performance of duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## ARTICLE V

### NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairperson, who shall be a member of the Board of Directors, and two (2) or more members of the Association who need not be members of the Board of Directors. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise

under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## ARTICLE VI

### MEETING OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at least quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should a meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two (2) directors, after not less than three (3) days, notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE VII

### THE BOARD OF DIRECTORS: POWERS, DUTIES AND RESTRICTIONS

Section 1. Powers. The Board of Directors shall have power:

(a) To adopt and publish rules and regulations governing the use of the Lots and the personal conduct of the members and their guests thereon, and to establish penalties for the infractions thereof; notice of any proposed rule or regulation or amendment thereto, shall be furnished to the members, and shall be deemed adopted ninety (90) days after such notice unless the Members, at a special meeting called for the purpose, vote to amend or repeal such proposed rule or regulation;

(b) To suspend the voting rights of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice

and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(c) To exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation or the Declaration;

(d) To declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) To employ a manager, an independent contractor or such other employees as it deems necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors:

(a) To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;

(b) To supervise all officers, agents and employees of this Association, and see that their duties are properly performed;

(c) To as more fully provided in the Declaration:

(i) Fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(ii) Send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(iii) Foreclose the lien of any assessment against any property subject thereto if such assessment is not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same.

(d) To issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance



of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) To procure and maintain adequate liability and hazard insurance, consistent with provisions set forth in the Declaration;

(f) To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate and in accordance with the Declaration; and

(g) To cause the Lots to be maintained in accordance with the Declaration.

## ARTICLE VIII

### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, a treasurer and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified

therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

PRESIDENT

The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds, contracts and other written instruments and shall co-sign all checks and promissory notes.

VICE-PRESIDENT

The Vice-President shall act in the place and stead of the President in the event of his or her absence, inability or refusal to act and shall exercise and discharge such other duties as may be required by the Board.

SECRETARY

The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses and shall perform such duties as required by the Board.

TREASURER

The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; sign all checks and promissory notes of the Association; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meetings, and deliver a copy of each to

the members and to any First Mortgagees who shall request the same, pursuant to Article XI of the Declaration.

## ARTICLE IX

### COMMITTEES

Section 1. The Association shall appoint the following standing committees:

The Nominating Committee  
The Maintenance Committee  
The Architectural Control Committee

Unless otherwise provided herein, each committee shall consist of a Chairperson and one (1) or more members and shall include a member of the Board of Directors for board contact. The committees shall be appointed by the Board of Directors prior to each annual meeting to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Board of Directors may appoint such other committees as it deems desirable.

Section 2. The Nominating Committee shall have the duties and functions described in Article V of these Bylaws and such other functions as the Board, in its discretion, determines.

Section 3. The Maintenance Committee shall advise the Board of Directors on all matters pertaining to the maintenance, repair or improvement of the Lots and shall perform such other functions as the Board, in its discretion, determines.

Section 4. The Architectural Control Committee shall have the duties and functions described in Article VI of the Declaration. It shall watch for any proposals, programs or activities which may adversely affect the residential value of The Woods at Elm Creek and shall advise the Board of Directors regarding Association action on such matters. The Board has final authority in matters of architectural control.

Section 5. With the exception of the Architectural Control Committee as to those functions that are governed by Article VI of the Declaration and with the exception of the Nominating Committee, each committee shall have the power to appoint a subcommittee from among its

membership and may delegate to any such subcommittee any of its powers, duties and functions.

Section 6. It shall be the duty of each committee to receive complaints from members on any matter involving Association functions, duties and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, director or officer of the Association as is further concerned with the matter presented.

## ARTICLE X

### BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member or First Mortgagee. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

## ARTICLE XI

### ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and Individual Lot Maintenance Assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent if the assessment is not paid within thirty (30) days after the due date, the assessments shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay same or foreclose the lien against the property, in the manner provided in the Declaration. No Owner may waive or otherwise avoid liability for the assessments provided for herein and by the Declaration by nonuse of the Common Properties or abandonment of such Owner's Lot.

## ARTICLE XII

### NO CORPORATE SEAL

There shall be no corporate seal.

## ARTICLE XIII

### AMENDMENTS

Section 1. These Bylaws may be amended at a regular or special meeting of the members by a vote of a majority of a quorum of members present in person or by proxy. The procedure to amend the Bylaws shall be: (a) the Board of Directors may propose the amendment to the Bylaws by resolution setting forth the proposed amendment and directing that it be submitted for adoption at a meeting of the members; or (b) any five (5) members may set forth the proposed amendment by petition by them subscribed, which petition shall be filed with the secretary of the Association. Notice of the meeting of the members, stating the purpose, including the proposed amendment, shall be given to each member entitled to vote on the proposed amendment, and to each officer and director regardless of his voting rights. If notice required by this clause has been given, the proposed amendment may be adopted at any meeting of members by a majority of a quorum of members present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control, and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

## ARTICLE XIV

### DISSOLUTION

The Association may be dissolved by a vote of the members entitled to cast two-thirds (2/3) of the votes of each class of membership. Written notice of a proposal to dissolve, setting forth the reasons therefor and the disposition to be made of the assets (which shall be consonant with Article XI of the Declaration and Article XV hereof) shall be mailed to every member at least ninety (90) days in advance of any action taken.

ARTICLE XV

DISPOSITION OF ASSETS UPON DISSOLUTION

Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created.

In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes. No such disposition of Association properties shall be effective to divest or diminish any right or title of any member vested in him or her under the Declaration unless made in accordance with the provisions of such Declaration.

ARTICLE XVI

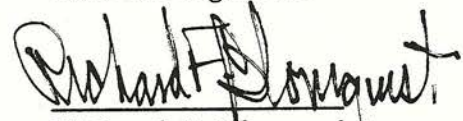
MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being all of the directors of The Woods at Elm Creek Homeowners Association, have hereunto set our hands this 6th day of January, 1994.

  
Robert E. Engstrom

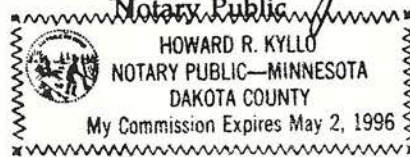
  
Paul T. Engstrom

  
Richard F. Blomquist

STATE OF MINNESOTA )  
 )ss.  
COUNTY OF HENNEPIN )

On this 6th day of January, 1994, personally appeared before me Robert E. Engstrom, to me known to be the person named in and who executed the foregoing Bylaws, and acknowledged this to be his free act and deed for the uses and purposes therein expressed.

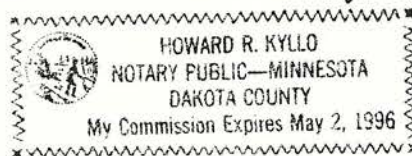
*Howard R. Kylo*  
Notary Public



STATE OF MINNESOTA )  
 )ss.  
COUNTY OF HENNEPIN )

On this 6th day of January, 1994, personally appeared before me Paul T. Engstrom, to me known to be the person named in and who executed the foregoing Bylaws, and acknowledged this to be his free act and deed for the uses and purposes therein expressed.

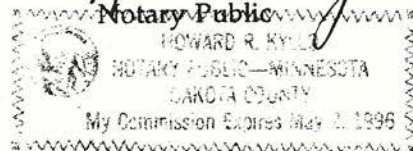
*Howard R. Kylo*  
Notary Public



STATE OF MINNESOTA )  
 )ss.  
COUNTY OF HENNEPIN )

On this 6th day of January, 1994, personally appeared before me Richard F. Blomquist, to me known to be the person named in and who executed the foregoing Bylaws, and acknowledged this to be his free act and deed for the uses and purposes therein expressed.

*Howard R. Kylo*  
Notary Public



**CERTIFICATION**

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of The Woods at Elm Creek Homeowners Association, a Minnesota nonprofit corporation, and

THAT the foregoing Bylaws constitute the original Bylaws of said The Woods at Elm Creek Homeowners Association, as duly adopted at a meeting of the Board of Directors thereof, held on the 6<sup>th</sup> day of January, 1994.

  
Paul T. Engstrom



ARTICLES OF INCORPORATION  
OF  
THE WOODS AT ELM CREEK  
HOMEOWNERS ASSOCIATION

In compliance with the requirements of Minnesota Statutes, Chapter 317, the undersigned, who is a resident of the State of Minnesota and is of full age, has this day voluntarily associated for the purpose of forming a corporation not for profit and does certify:

ARTICLE I

NAME

The name of the corporation is The Woods at Elm Creek Homeowners Association, hereinafter called the "Association."

ARTICLE II

REGISTERED OFFICE

The registered office of the Association is located at 4801 West 81st Street, Suite 101, Minneapolis, Minnesota 55437.

ARTICLE III

NO PECUNIARY GAIN TO MEMBERS

This Association shall not afford a pecuniary gain, incidentally or otherwise, to its members.

## ARTICLE IV

### PURPOSE AND POWERS OF THE ASSOCIATION

The specific purposes for which the Association is formed are to provide for the maintenance, preservation and architectural control of the Lots within that certain tract of property located in the City of Champlin, County of Hennepin and State of Minnesota legally described on Exhibit "A" hereto and such additions thereto as may hereinafter be brought within the jurisdiction of this Association as provided in a Declaration of Covenants, Conditions and Restrictions filed or to be filed in the office of the County Recorder and/or Registrar of Titles of Hennepin County, Minnesota ("Declaration"), and to promote the health, safety and welfare of the residents within the above-described property; and in fulfillment of this purpose to do the following:

(a) To exercise all of the powers and privileges and to perform all the duties and obligations of the Association as set forth in the Declaration as the same may be amended from time to time as therein provided, the Declaration being incorporated herein as if set forth at length;

(b) To fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration and to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate and maintain, real or personal property in connection with the affairs of the Association;

(d) To participate in mergers, consolidations or contracts with other non-profit corporations organized for the same purposes, provided that such additional consent required by the Declaration is obtained; and

(e) To have and exercise any and all powers, rights and which a corporation organized under the Non-profit Corporation Act of the State of Minnesota by law may now or hereafter have or exercise consonant with the Declaration and these Articles.

## ARTICLE V

### MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to assessment by the Association shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation unless and until such mortgagee has acquired title pursuant to foreclosure of said mortgage or proceedings or deed in lieu of foreclosure, and the period in which the fee owner may redeem from such foreclosure has terminated. Where any such Lot is being sold by the fee owner to a contract vendee who is entitled to possession of the Lot, the contract vendee shall be considered the owner of the Lot if (i) the rights of the contract vendor hereunder are delegated to the vendee under such contract for deed; and (ii) the vendee shall furnish proof of such delegation to the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

## ARTICLE VI

### VOTING RIGHTS

The Association shall have two classes of voting membership:

Class A. Class A members shall be all those owners or vendees referred to in Article V herein, with the exception of Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they, among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The sole Class B member shall be Declarant and shall be entitled to three (3) votes for each Lot owned by it. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever first occurs:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) December 31, 1999.

Members shall have no rights of cumulative voting. Members may vote by voice, ballot, mail or other reasonable means.

## ARTICLE VII

### BOARD OF DIRECTORS

The affairs of this Association shall be managed by a Board of Directors of three (3) directors, who need not be members of the Association. The names and addresses of the persons who are to act in the capacity of directors until the selection of their successors as provided in the Bylaws are:

<u>NAME</u>	<u>ADDRESS</u>	<u>Initial Term</u>
Robert E. Engstrom	4801 West 81st Street, Suite 101 Minneapolis, Minnesota 55437	3 years
Paul T. Engstrom	4801 West 81st Street, Suite 101 Minneapolis, Minnesota 55437	2 years
Richard F. Blomquist	4801 West 81st Street, Suite 101 Minneapolis, Minnesota 55437	1 year

At the expiration of the initial terms of the Board of Directors, members shall fill vacancies on the Board of Directors for a term of three (3) years.

At the first annual meeting, the members of the Association shall elect one-third (1/3) (rounded to the nearest whole number) of the directors for a term of one (1) year, one-third (1/3) of the directors for a term of two (2) years and the balance for a term of three (3) years; and at each annual meeting thereafter the members shall fill any vacancies on the Board of Directors for a term of three (3) years.

**ARTICLE VIII**  
**INCORPORATOR**

The name and address of the incorporator of the Association is as follows:

<u>NAME</u>	<u>ADDRESS</u>
Robert E. Engstrom	4801 W. 81st Street, Suite 101 Minneapolis, Minnesota 55437

**ARTICLE IX**

**PERSONAL LIABILITY OF MEMBERS**

The members of this Association shall not be liable for Association obligations except as provided for and authorized under the Declaration.

**ARTICLE X**

**CAPITAL STOCK**

This Association shall have no capital stock.

**ARTICLE XI**

**DISSOLUTION**

The Association may be dissolved by a vote of the members entitled to cast two-thirds (2/3) of the votes of each class of membership provided that such additional consent required by the Declaration is obtained. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes. No such disposition of Association properties shall

be effective to divest or diminish any right or title of any member vested in him or her under the Declaration unless made in accordance with the provisions of such Declaration.

## ARTICLE XII

### DURATION

The corporation shall exist perpetually.

## ARTICLE XIII

### AMENDMENTS

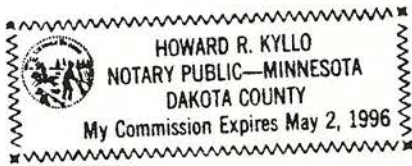
These Articles may be amended at a regular or special meeting of the members by a vote of seventy-five percent (75%) of each class of members present in person or by proxy, provided that such additional consent as required by the Declaration is obtained.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Minnesota, the undersigned, constituting the incorporator of this Association, has executed these Articles of Incorporation this

  
Robert E. Engstrom

STATE OF MINNESOTA )  
  ) ss.  
COUNTY OF HENNEPIN )

On this 6<sup>th</sup> day of January, 1994, personally appeared before me Robert E. Engstrom, to me known to be the person named in and who executed the foregoing Articles of Incorporation, and acknowledged this to be his free act and deed for the uses and purposes therein expressed.



  
Notary Public

State of Minnesota

3116

## SECRETARY OF STATE

### CERTIFICATE OF INCORPORATION

I, Joan Anderson Grove, Secretary of State of Minnesota, do certify that: Articles of Incorporation, duly signed and acknowledged under oath, have been filed on this date in the Office of the Secretary of State, for the incorporation of the following corporation, under and in accordance with the provisions of the chapter of Minnesota Statutes listed below.

This corporation is now legally organized under the laws of Minnesota.

Corporate Name: THE WOODS AT ELM CREEK HOMEOWNERS ASSOCIATION, INC.

Corporate Charter Number: 7X-391

Chapter Formed Under: 302A

This certificate has been issued on 08/12/1993.



*Joan Anderson Grove*  
Secretary of State.



**THE  
END**

