

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS, AND
MAINTENANCE AGREEMENT FOR PRIVATE ROAD**

THIS DECLARATION, made on this 10th day of February, 1995, by Mark of Excellence Homes, Inc., a Minnesota Corporation (hereinafter referred to as "Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of certain land (hereinafter referred to as the "Property") in the City of Anoka, County of Anoka, State of Minnesota (hereinafter referred to as "City"), which land is legally described as follows:

Lots 1 through 27, inclusive, Block 1; and
Lots 1 through 6, inclusive, Block 2, Weston Woods on the River 2nd Addition, Anoka County, Minnesota.

NOW, THEREFORE, the Declarant hereby declares that said Property shall be held, sold and conveyed, subject to the following easements, covenants, conditions, agreements and restrictions, which are for the purpose of providing ingress and egress to the Property and which shall run with the Property and which shall be binding on all parties having any right, title or interest in the Property so described, or any part thereof, their heirs, successors and assigns, and which shall inure to the benefit of each owner thereof.

**ARTICLE I.
DEFINITIONS**

1.1 **Definitions.** The following words, when used in this Declaration, shall have the following meanings:

- (a) **"Association"** shall mean and refer to Weston Woods on the River Association, a non-profit corporation organized and existing under the laws of the State of Minnesota, and its successors and assigns.
- (b) **"Common Area"** shall mean and refer to all real property and improvements thereto owned by the Association for the common use and enjoyment of the Owners. At the present time, the Common Area is Lot 27, Block 1, and Lot 6, Block 2, Weston Woods on the River 2nd Addition, Anoka County, Minnesota.
- (c) **"Declarant"** shall mean and refer to Mark of Excellence Homes, Inc., a Minnesota corporation, its successors and assigns.

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- (d) **"Declaration"** shall mean the Declaration of Covenants, Conditions and Restrictions, dated December 13, 1993, applicable to the Property.
- (e) **"Developer"** shall mean and refer to the Declarant.
- (f) **"Living Unit"** shall mean and refer to 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 or to be located upon one Lot.
- (g) **"Lot"** shall mean and refer to any tract or parcel of land designated as a Lot shown upon any recorded plat or subdivision map of the Property, with the exception of any tracts or parcels designated as outlots.
- (h) **"Member"** shall mean and refer to every person or entity who is a record Owner of a fee or undivided fee simple interest in any Lot which is subject by covenants of record to assessment by the Association (excluding contract sellers and including in place thereof their contract purchasers).
- (i) **"Mortgage"** shall mean and refer to any Mortgage or other security instrument by which a Lot, or any part thereof, or any structure thereon, is encumbered.
- (j) **"Mortgagee"** shall mean any person or entity named as the Mortgagee under any Mortgage, or any successors or assigns to the interest of such person or entity under a Mortgage.
- (k) **"Owner"** shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot (excluding, however, contract sellers and including in place thereof their contract purchasers).
- (l) **"Permit"** shall mean any Conditional Use Permit approved by the City Council of the City of Anoka authorizing and imposing restrictions and requirements for the development of the Property as a planned community development, as the same may be amended or modified by the City of Anoka.
- (m) **"Private Driveway"** shall mean and refer to access driveways from the Road Easement to individual Living Units located upon Lots.
- (n) **"Private Road"** shall mean the grade, base, surface, ditches, curbs and other elements and appurtenances

which create a driving surface upon the Road Easement which is suitable for vehicular traffic.

- (o) **"Property"** shall mean and refer to all the real property subject to the Declaration.
- (p) **"Road Easement"** shall mean the right-of-way serving all individual lots for the purpose of ingress and egress from the Private Common Driveway to the public streets.

ARTICLE II. PROPERTY RIGHTS

2.1 **Owner's Roadway Easement Rights.** The Declarant and each Owner, their successors, heirs and assigns, shall have an easement for ingress and egress to public roadways over the Road Easement as established and laid out on Lot 27, Block 1, and Lot 6, Block 2, Weston Woods on the River 2nd Addition. This easement shall be appurtenant to and shall pass with the title to each respective Lot.

2.2 **Private Driveway Easements.** Each of the Lots shall have for their use a Private Driveway over and across all hard-surfaced areas designed for driveway purposes between their Living Unit and the Road Easement. These Private Driveways are graphically depicted on Exhibit "A".

2.3 **Use of Private Driveway Easements.** The Private Driveway easement shall be used by the Owner of any Lot benefited with such easement, its tenants, invitees or licensees, only in compliance with the terms and conditions of the Declaration.

2.4 **Declarant's Right to Extend Roadway Easement.** The Declarant shall have the right to extend the Road Easement and shall have the right to grant to Owners of any properties brought within the provisions of the Declaration of Covenants, Conditions and Restrictions, dated December 13, 1993, the right to use the Roadway Easement created by this Declaration of Covenants, Conditions and Restrictions, and Maintenance Agreement for Private Road in common with the Owners of Lots specified in this Declaration.

ARTICLE III. CONSTRUCTION, RECONSTRUCTION, MAINTENANCE AND REPAIR

3.1 **Construction.** The Declarant agrees to construct the grade, base, surface, curbs and other elements and their appurtenances which initially create the driveway surfaces for the Private Driveways.

3.2 **Repair.** The Association assumes all responsibility to maintain and repair, as Common Area, Private Driveways and all roadways, driving and parking surfaces, as may be initially and

subsequently constructed and maintained upon the Common Area and upon any Lot for the purposes set forth herein and for the purposes set forth in the Declaration.

3.3 Payment of Costs.

- (a) The Declarant hereby assumes and agrees to pay the cost of initial construction of the roadways, drives and parking areas as specified herein.
- (b) The Declarant shall assign, and the Association shall assume, the obligation and pay the costs of maintenance and repair in accordance with the terms of Article IV of the Declaration. All rights and obligations enforceable as provided therein and otherwise provided in the Declaration shall be applicable to this maintenance obligation.

ARTICLE IV. RIGHTS OF THE CITY

4.1 Right of Repair. In the event that the Declarant fails to construct or the Association fails to maintain and repair the Private Driveways in accordance with the standards provided herein, it is agreed that the City may, at its discretion and option, undertake and construct, reconstruct, maintain and repair the Private Road and Private Driveways, and that any such action taken by the City will not result in the establishment of a public roadway. The Declarant further covenants and agrees that the costs incurred by the City under this section shall be repaid in accordance with Article XIV of the Declaration.

4.2 Conveyance of Easements. The Declarant hereby conveys to the City an easement for ingress and egress, construction, reconstruction, maintenance and repair over all road easements to perform police calls, fire calls, rescue and other emergency calls, inspections, animal control, street maintenance and repair, street construction and reconstruction, snow removal, provisions for adequate surface drainage, sanitary sewer, storm sewer, water mains and other utilities, weed control, Dutch Elm disease control, installation of cable television or other public services deemed necessary by the City Council. The cost of any such work performed pursuant to this section may be assessed against the Property in accordance with Article XIV of the Declaration. The City does not undertake to perform any of the work outlined in this section, but reserves to itself the option to so perform.

4.3 Priority of Easements. The roadway and driveway easements as granted herein are specifically subject to a right and easement for underground general utility purposes, including but not limited to sewer, water and electrical purposes, including the right to build, construct, reconstruct, rebuild, repair, maintain and operate underground sewer, water and electrical mains and any surface connections to such underground mains, along with the right to enter upon and open the ground for such purposes, providing that

all such openings shall be filled and the surface restored to its former condition. All such utility easements shall jointly run in favor of and inure to the benefit of the Owners of the Lots, the Association and any and all public authorities or utility companies maintaining or operating any utility facilities upon such easement area. All easements defined in this Declaration are subject to the easement for storm water drainage as provided in Article V of the Declaration.

4.4 Priorities.

- (a) Utility easements described hereinabove are, and shall continue to be, superior to the Private Road Easement and Private Driveway Easements described herein; provided, however, in the event that it shall be necessary to install, repair or maintain any utility facility crossing any driveway or maneuvering easement or roadway, such repairs and maintenance shall be undertaken so as to cause, to the extent practicable, minimum interference with the use of such easements, and any and all damage to the roadway or driveway surfaces shall be repaired and such surfaces fully restored.
- (b) The Association shall establish such designated parking areas from time to time as it deems appropriate. Further, the Association may establish and designate individual exclusive parking spaces on, but not in interference with, the Private Driveway easements.

ARTICLE V. MISCELLANEOUS PROVISIONS

The easements described herein shall be perpetual in duration and shall be appurtenant to the Lots which are served and benefited by such easements.

ARTICLE VI. CONSTRUCTION

In the event of any ambiguity in the scope of any easement or obligations of any person affected thereby, all of such easement shall be interpreted and constructed in a manner consistent with and in accordance with the general purposes of the planned development as set forth in the Declaration of Covenants, Conditions and Restrictions, as supplemented, applicable to the Property. In the event of a conflict or apparent conflict between the terms and conditions hereof and the Declaration, the Declaration shall control. Further, the terms and conditions of the Declaration are hereby incorporated by reference, including all rights and obligations as specified therein.

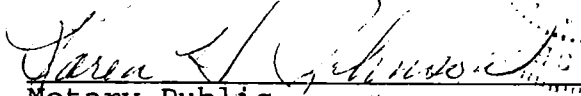
MARK OF EXCELLENCE HOMES, INC.

Dated: Feb 10, 1995.

By: 
Mark R. Smith, President

STATE OF MINNESOTA)
 ANOKA) ss.
COUNTY OF ~~HENNEPIN~~)

The foregoing instrument was acknowledged before me this 10th day of Feb., 1995, by Mark R. Smith, President of Mark of Excellence Homes, Inc., a Minnesota corporation, on behalf of the corporation.


Notary Public
Com. Ex Date. 7-31-2000

THIS INSTRUMENT DRAFTED BY:

JENSEN & SWANSON, P.A.
8525 Edinbrook Crossing
Brooklyn Park, MN 55443

EXHIBIT "A"
to
**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS, AND
MAINTENANCE AGREEMENT FOR PRIVATE ROAD**

Attached hereto and incorporated herein is a plan designating certain parking areas prepared by Hy-Land Surveying, P.A. showing the Lots, proposed Living Units, Private Roads and Private Driveways. This site plan is attached to graphically depict the proposed locations and designation of roadways, driveways and parking areas. The incorporation of this exhibit shall not in any regard be construed as a limitation on the Declarant's or Association's rights to locate, relocate or modify the placement of roadways, driveways and parking areas prior or subsequent to the conveyance of individual Lots.

HY-LAND SURVEYING

LAND SURVEYORS

7845 Brooklyn Blvd. Brooklyn Park, Minnesota 55445

560-1984

INVOICE NO. _____

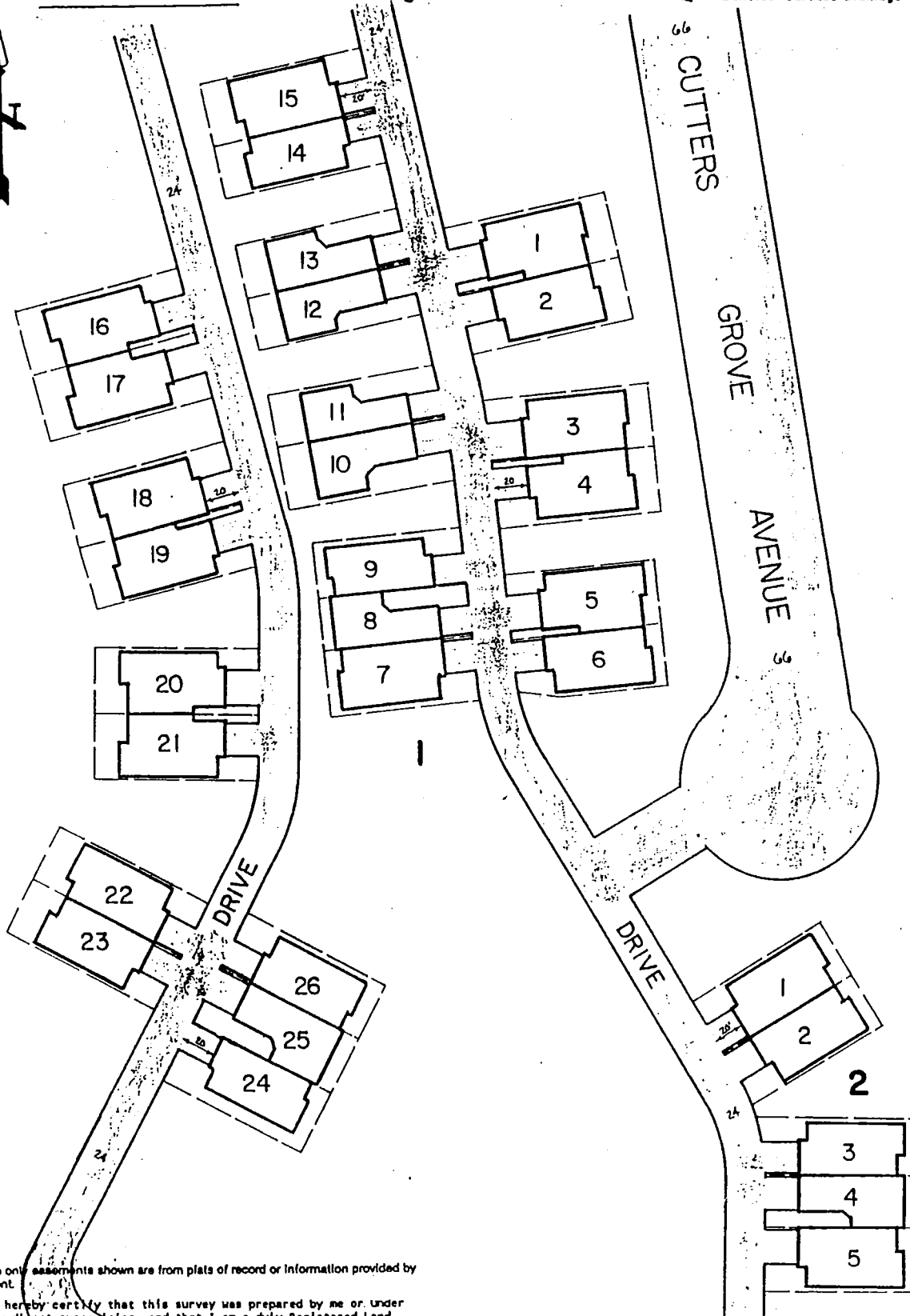
F. B. NO. _____

SCALE 1" = _____

- Proposed Top of Block
- Proposed Garage Floor
- Proposed Lowest Floor
- Type of Building -

- Denotes Iron Monument
- Denotes Wood Hub Set For Excavation Only
- x000.0 Denotes Existing Elevation
- Denotes Proposed Elevation
- ↖ Denotes Surface Drainage

Surveyors Certificate



The only easements shown are from plats of record or information provided by client.

I hereby certify that this survey was prepared by me or under my direct supervision, and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

Surveyed by us this _____ day of _____ 19____

DRIVE Signed

Milton F. Hyland, Minn. Reg. No. 20262