

**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS**

TORRE PINES

THIS DECLARATION, made this _____ day of _____, 1996, by Royal Oaks Realty, Inc., a Minnesota corporation, as owner and developer.

W I T N E S S E T H :

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 Association's open spaces and to this end desires to subject the real property described in Article II, 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 Association 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, has incorporated, under the laws of the State of Minnesota, as a nonprofit corporation, Torre Pines Association, for the purpose of exercising these functions;

NOW, THEREFORE, Declarant declares that the real property described in Article II, 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 Torre Pines Association, a Minnesota non-profit corporation, its successors and assigns.

(b) Declarant: Royal Oaks Realty, Inc., a Minnesota Corporation, 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) Torre Pines: the property subject to this Declaration, and any additions subject to this Declaration.

(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 Torre Pines.

(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.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Existing Property. The real estate subject to this Declaration is located in Washington County, Minnesota and is described on the attached Exhibit A, all of which property shall hereinafter be referred to as "Existing Property" EXCEPT: Lot 15, Block 1, is not bound by this agreement until the lot is subdivided or a building permit is requested.

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 (1) December 31, 1996, or (2) when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership.

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.

Section 2. Collection and Garbage. Should the City of Lake Elmo not provide garbage collection services to the Owners, the Association shall be empowered to contract with private vendors for the collection of garbage in Torre Pines. Billing for such services will be directly to the Owners from the vendors.

Section 3. 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.

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 (1/4) of the annual rate of assessment. The annual assessment shall be due and payable each May 1, beginning on May 1, 1997. The annual assessment due May 1, 1997, shall be Three Hundred Dollars (\$300.00). 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 Lake Elmo, 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. 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 line 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 6. 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 7. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein; 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.

Notwithstanding any provisions 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 so long as the Class B. Membership exists. 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 front yard 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 his or her residence or to paint the interior of his or her residence any color desired.

Section 5. Procedure. If the ACC fails to approve or disapprove plans and specifications within fourteen (14) 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 nonconforming 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 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, 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 1200 square feet 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 Lake Elmo.

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 Lake Elmo. The Standards herein contained shall be considered as requirements in addition to said zoning and other applicable ordinances and regulations.

Section 4. Plans. All plans must be approved by the Architectural Control Committee. No plan shall be submitted to the City prior to the approval of the ACC.

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 household pets, provided that they are not kept, bred or maintained for any commercial purposes.

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 Developer as long as it has Class "B" votes as hereinbefore defined or by the Architectural Control Committee thereafter. The Developer or the Committee, whichever has authority at the time in question, in its discretion, upon consideration of the circumstances in each case, and in 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 Developer or by the Architectural Control Committee, whichever then has authority, to be compatible with the residential neighborhood.

Section 8. Nuisances. 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 anywhere thereon. Firewood shall be stored only to the rear of the residence and shall be concealed by screening acceptable to the Committee. In the event that any 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 Developer or the Committee 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 Torre Pines without the express written approval of the Architectural Control Committee, which approval may be withheld without stated reason.

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 a 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 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 ACC. No detached metal storage buildings shall be permitted and other detached storage buildings must be approved by the ACC as conforming in design, building materials 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 ACC. 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. Antennas. Except with the prior written approval and authorization of the Committee, 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 18. 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 Lake Elmo, Minnesota; and all building plans shall be prepared by or under the supervision of a registered architect, a builder or 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 judgement of the Developer or the ACC, 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 of Washington County, 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 of Washington County prior to the recordation of the Deed conveying the Lot in question to said purchaser.

ARTICLE VIII OWNER'S DUTIES

Section 1. Minimum Landscape Plan. Owners shall be charged with the responsibility for the installation and maintenance of minimum landscaping which has been approved by the Architectural Control Committee. The landscape plan to be submitted and approved by the ACC no less than 30 days prior to the Certificate of Occupancy. Such plantings and other landscape work must be completed within one year after the issuance of a building permit for construction of a Living Unit. It shall be the responsibility of the Owner to maintain such plantings and landscaping. Should an Owner fail to plant and install or maintain such landscaping, the Association reserves the right to complete such work 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 Article VII.

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. 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 their 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 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 ACC.

ARTICLE IX GENERAL PROVISIONS

Section 1. Association Easement. The Association shall have a right of access 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 Protective Covenants, Restrictions and Easements. The protective 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 protective 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 the 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 judgement or court order shall in no ways affect any other provisions by judgement or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 5. 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 6. Rights of Declarant. Until the last Lot is sold and conveyed to an Owner other than 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 models and sales units.

ARTICLE X 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 shall control, and in the event of a conflict between the provisions of this article and the provisions of such Declaration, Articles or By-Laws, the provisions of this article shall control.

**EXHIBIT A
TO TORRE PINES
DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS**

Lots 1 through 15, inclusive, Block 1;

Lots 1 through 6, inclusive, Block 2;

all in Torre Pines, according to the plat thereof on file
and of record in the office of the County Recorder in
and for Washington County, Minnesota.