

Wateredge

DECLARATION OF DEVELOPMENT STANDARDS, COVENANTS,
CONDITIONS AND RESTRICTIONS

WHEREAS, James F. Johnson General Contracting, Inc. is the fee owner of the land lying and being in the area known as "Jonathan" in the County of Carver and State of Minnesota, described as follows, to wit:

Tracts M and O, Registered Land Survey No. 58,
files of Registrar of Titles, Carver County Minnesota.

WHEREAS, Morse Avenue Holding Company is the first mortgagee of said land; and

WHEREAS, Construction Mortgage Investors Co. is the second mortgagee of said land; and

WHEREAS, The Jonathan Association is a non-profit homeowner association within Jonathan; and

WHEREAS, James F. Johnson General Contracting, Inc., Morse Avenue Holding Company, Construction Mortgage Investors Co., and The Jonathan Association, desire to impose certain development standards, covenants, conditions and restrictions on the real estate described herein;

NOW, THEREFORE, James F. Johnson General Contracting, Inc., Morse Avenue Holding Company, Construction Mortgage Investors Co., and The Jonathan Association do hereby declare that the properties described herein shall be held, sold and conveyed subject to the following easements, development standards, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I.

DEFINITIONS

Section 1.01. "Association" shall mean and refer to The Jonathan Association, its successors and assigns.

Section 1.02. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to the Property subject to the Declaration, but shall not mean or refer to the mortgagee of any such lot unless and until such mortgagee has acquired title pursuant to foreclosure of said mortgage and the period within which the fee owner may redeem from such foreclosure has terminated. Where any such lot is being sold to a contract vendee who is entitled to possession of the lot, the contract vendee shall be considered the "Owner" of the lot upon furnishing a copy of the executed Contract for Deed to the Association.

Section 1.03. "Property" shall mean and refer to that certain real property and improvements described in the first "Whereas" paragraph of page 1 of this Declaration.

Section 1.04. "Common Properties" shall mean all real property (including the improvements thereto) owned or to be owned by the Association for the common use and enjoyment of the Owners.

Section 1.05. "Living Unit" shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence of a single family.

Section 1.06. "Declaration" shall mean and refer to this Declaration and other declarations that at any time or from time to time may effect all

or any part of the Properties as the same may be amended from time to time as therein and herein provided.

Section 1.07. "Members" shall mean and refer to those persons entitled to membership in the Association as provided in the Declarations.

Section 1.08. "Standards" or "Criteria for Standards" is defined to include the following goals, guidelines and criteria:

- (a) to protect the Owners against improper use of surrounding property as will depreciate the value of their property;
- (b) to guard against the erection of structures built of improper or unsuitable materials;
- (c) to insure adequate and reasonable development of the Properties;
- (d) to encourage the erection of attractive buildings appropriately located to foster a harmonious appearance and function;
- (e) to provide adequate set backs, and off-street parking;
- (f) to comply with all terms and use restrictions contained herein;
- (g) to ensure compatibility with existing structures; and
- (h) to ensure appropriateness of any structure, exterior design, construction materials, size of improvement, or color scheme thereof.

Other terms shall have the meanings attributed to them herein.

ARTICLE II.

PERMITTED USES

Section 2.01. Residential Purpose. The Property shall not be used except for residential purposes; no buildings shall be commenced, erected, altered, placed or permitted to remain on the Property subject hereto other than buildings not to exceed three stories in height. Each Living Unit shall have on site parking spaces, including garages, if any, to accommodate at least 2.3 cars for each such unit.

Section 2.02. Enjoyment of Property. Any Owner may delegate, in accordance with the By-Laws of the Association his right of enjoyment to the Common Properties to the members of his family, or his tenants.

Section 2.03. Offensive Activities. No noxious or offensive activities shall be conducted on the Property, nor shall anything be done thereon which may be or become an annoyance or nuisance to other Owners or to the Association.

Section 2.04. Compliance. All uses shall comply with the zoning and other applicable regulations as set forth by the City of Chaska or other governmental agencies. Said regulations shall govern if inconsistent herewith to the extent actually inconsistent. If not inconsistent herewith, the standards herein contained shall be considered as requirements in addition to said regulations.

Section 2.05. Signage. No sign shall be placed on the Property, except that one normal and customary rental sign or "for sale" sign may be placed on the property or approved signs identifying the Property.

Section 2.06. Animals. No birds, animals or insects shall be kept on the Property except dogs, cats and other common household pets, provided that they are not kept, bred or maintained for any commercial purpose.

Section 2.07. Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, or other building shall be used on the Property at any time as a residence, either temporarily or permanently.

Section 2.08. Exterior Antenna. No exterior tower, antenna or satellite dish of any kind shall be constructed, maintained, or permitted to remain on the Property.

Section 2.09. Objectionable Trees. No objectionable trees or shrubbery, such as cottonwood and box elder trees, shall be planted or permitted to remain on the Property.

Section 2.10. Utility Meters. All utility meters, located on the exterior of a building, shall be concealed from view from off the site or architecturally treated to blend with a building.

Section 2.11. Receptacles. No trash or debris shall be left on any portion of the Property except in approved containers. No trash receptacles, or incinerators, or garbage cans shall be located outside of a building unless completely screened from view.

Section 2.12. Utilities. All buildings shall be served by underground utility distribution facilities. Poles, wires, or other above ground utility service distribution facilities may be temporarily installed during the construction or repair of the underground utility cables and facilities.

Section 2.13. Parking. Unless modified by written policy of the Association the following storage and parking restrictions apply upon the Property:

- (a) The storage or parking of "Winter Season" vehicles upon the Property is allowed from November 1 through March 31.
- (b) The storage or parking of "Summer Season" vehicles upon the Property is allowed from April 1 through November 1.
- (c) The storage or parking of "All Season" vehicles upon the Property is allowed all year.

For purposes of this section, the following definitions apply:

- (a) "Winter Season" vehicles are defined as snowmobiles and any trailer upon which they are stored or transported.
- (b) "Summer Season" vehicles are defined as all boats (motorized or non-motorized including sailboats, pontoon boats and houseboats), canoes, rafts, surfboards, windsurfers, jet skis, go carts, campers,

trailer homes, and any trailers upon which the above are stored or transported.

(c) "All Season" vehicles are defined as vans.

In addition, no abandoned vehicles shall be parked on the Property or appurtenant street for a period longer than 3 consecutive days. For purpose of this restriction, an automobile, van, motorcycle or other motor vehicle which is parked in the same location without use for more than 72 consecutive hours shall be presumed to be an abandoned vehicle.

ARTICLE III.

REQUIRED YARDS AND SITE MAINTENANCE

Section 3.01. Outside Storage. Outside storage of any items shall not be allowed unless screened from view by enclosures so as to effectively screen such storage from view. The design of such screened enclosure must have prior written approval by the Association.

Section 3.02. Fences. No fences shall be erected without prior written approval of the Association conforming with the written fence policy of the Association in existence at the time of the application.

Section 3.03. Maintenance. The Property shall be maintained in a state of good order and repair. In the event any owner of the Property, entitled and required to belong to the Association, shall fail to maintain the Property, the Board of Directors of the Association, after approval by 2/3 vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said premises and to repair, maintain, and restore the premises and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such premises is subject.

ARTICLE IV.

PLAN APPROVAL

Section 4.01. No building or improvement shall be commenced, erected, placed or substantially altered on the exterior (except for normal repainting) nor any substantial landscape work done on the Property until the building or other alteration plans, specifications, including elevations and architect's rendering, a plat showing the location of such improvement on the particular property, including general landscape plans; have been submitted to and approved in writing by the Association, as to fulfilling the purposes and Criteria for Standards herein contained. Provided, however, that the Association shall not be liable to anyone in damages who has submitted plans for approval or to any landowner by reason of mistake in judgment, negligence, or nonfeasance of itself, its agents or employees, arising out of or in connection with the approval or disapproval of any such plans. Likewise anyone so submitting plans to the Association, for approval, by submitting such plans, and any person when he becomes an Owner agrees that he or it will not bring any action or suit to recover for any such damages against the Association. The Association shall not unreasonably withhold approval of any plans submitted pursuant hereto; provided, however, that failure to meet (i) the Criteria for Standards, (ii) the standards contained herein, (iii) standards as to plans required to be submitted, (iv) standards as to compatibility with existing structures, and (v) standards of appropriateness of any structure, exterior design, construction materials, size of improvements, or color scheme thereof, shall be grounds for the Association's reasonable disapproval of any such plans. Failure of the Association to send written notice of disapproval of any plans

within 60 days after submission of said plans to it shall be deemed to be approval thereof. All construction work shall, upon approval of plans by the Association, be carried on with dispatch and upon completion thereof, the property shall be promptly landscaped.

Section 4.02. All improvements shall be constructed in conformity with the then existing building codes and other applicable codes, ordinances and regulations of the City of Chaska.

ARTICLE V.

MEMBERSHIP AND VARIOUS RIGHTS IN THE ASSOCIATION

Section 5.01. Each Owner of the Property shall be a member of the Association and shall be entitled to one vote for each Living Unit in each multiple dwelling it owns subject to the 49% limitation hereafter set forth. When more than one person holds an interest in any multiple dwelling property, all such persons shall be members. The vote for such multiple dwelling property shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to each Living Unit. Said Association shall also have as members other landowners, in the Jonathan Development. All single family residential Site Owners in the Jonathan Development who are members of such Association shall have one vote for each site owned. For the purpose hereof, an owner of a single townhouse unit or condominium unit shall be considered to be a single family residential Site Owner. Provided, however, that on any vote taken on Association business the total multiple dwelling unit votes shall not exceed 49% of the total votes voted and if necessary each multiple dwelling living unit vote shall be appropriately weighed so that the total thereof does not exceed this maximum. On all votes

taken in the Association, multiple dwelling votes shall be taken and counted separately to effectuate the 49% policy set forth above.

Section 5.02. If any of the Property is used as rental property, the Owner must include language in any lease or rental agreement requiring the tenants and occupants to be bound by this Declaration.

ARTICLE VI.

COMPLETION OF CONSTRUCTION OF IMPROVEMENTS

If any structure or improvement is begun after approval of the plans therefor as provided in Article IV hereof and is not completed in accordance with the approved plans within one (1) year after the commencement of said construction the Association, at its sole option, may take such steps as may be necessary in its sole discretion to improve the appearance so as to make the property harmonious with other properties and the amount of any expenditure made in so doing shall be the personal, joint and several obligation of the Owner or Owners of the property involved, as the case may be, and shall be a lien on the property and enforceable as set forth in Article VIII.

ARTICLE VII.

COMMON PROPERTIES

Every Owner shall have a right and easement of enjoyment in and to the Common Properties which shall be appurtenant to and shall pass with the title to every property subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Properties.
- (b) The right of the Association to suspend the voting rights and right to use the recreational facilities by an Owner for any period during which any assessments on its property remain unpaid and for a period not to exceed 60 days for any infraction of its published rules

and regulations. The Association is hereby given the right to establish uniform rules and regulations for the Common Properties.

- (c) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless assented to by 2/3 of the members who are voting in person or by proxy at a meeting or meetings duly called for this purpose. Notice of such meeting or meetings shall be given and the required quorum shall be determined in the same manner as provided in Section 8.05. The rights of the Association contained in this paragraph (c) shall be in addition to and shall in no way limit the rights granted to the Association in this Article VII.
- (d) The Association shall have the right to lease portions of the Common Properties to commercial recreational developers for the purpose of providing recreational facilities or services or both to members provided that the net income from any said lease shall be applied to developing and maintaining the Common Properties in the Jonathan Development.

ARTICLE VIII.

MAINTENANCE EXPENDITURES AND ASSESSMENTS

Section 8.01. The Association, for all of the properties subject hereto, hereby covenants and each Owner of any part thereof by acceptance of a deed therefor, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay to the Association: (i) Annual Assessments, (ii) Special Assessments for capital improvements, and (iii) assessments incurred for completion of construction of improvements as set forth in Article VI, all such assessments to be established and collected as hereinafter provided. Any assessments authorized herein together with interest, costs and reasonable attorneys' fees, shall be a lien against the property assessed from the date payable and may be enforced by action at law in the same manner as a mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any

property subject hereto pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payment which become due prior to such sale or transfer. No sale or transfer shall relieve such property from liability for any assessments thereafter becoming due or from the lien thereof.

Each assessment together with interest, costs and reasonable attorneys' fees, shall be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Such personal obligations may be enforced by a judgment against the property Owner in question.

Section 8.02. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the members of the Association and for the maintenance and development (including, but not limited to, costs of appropriate insurance and real estate taxes) of the Common Properties.

Section 8.03.

- (a) The maximum Annual Assessment for the year 1986 shall be \$103.95 per Living Unit.
- (b) For each year thereafter, the maximum Annual Assessment may be increased each year not more than 5% of the assessment for the previous year without a vote of the membership.
- (c) From and after January 1, 1986, the maximum Annual Assessment may be increased above 5% by a vote of 2/3 of each of the members who are voting in person or by proxy at a meeting called for this purpose.
- (d) The Board of Directors may fix the Annual Assessment at an amount not in excess of the maximums set forth in this Section 8.03.

Section 8.04. 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 a capital improvement upon the Common Properties, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of 2/3 of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 8.05. Written notice of any meeting called for the purpose of taking any action authorized under Section 8.03 or 8.04 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast 60% of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting or meetings may be called subject to the same notice requirement, and the required quorum at each subsequent meeting shall be 1/2 of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 8.06. Both Annual Assessments and Special Assessments shall be assessed on a uniform basis for all Living Units and may be collected on the monthly, quarterly, semi-annually or annually basis as shall be determined by the Board of Directors of the Association. The Assessments shall be considered to have been made on a uniform basis if based on the assessor's value of each Living Unit including improvements thereon or on a per Living Unit basis with each site presumed to be benefited equally.

Section 8.07. The Board of Directors shall fix the amount of the Annual Assessment against each site at least 30 days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified property have been paid.

Section 8.08. Any assessment not paid within 30 days after the due date shall bear interest from the due date at the rate of 8% per annum. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Properties or abandonment of his property.

ARTICLE IX.

ENFORCEMENT

Section 9.01. The Standards set forth herein shall be enforceable by the Association, or any Owner, their successors and assigns, for the maximum period allowed by law and shall be enforceable by the Association, or any Owner, their successors and assigns, by (i) injunctive relief, prohibitive or mandatory, to prevent the breach of or to enforce the performance or observance of these standards, or by (ii) a money judgment for damages by reason of a breach of those standards, (iii) both (i) and (ii), or (iv) a suit to foreclose any lien authorized herein. The assessments provided for herein shall be enforceable by the Association by a money judgment against the Owner or Owners responsible therefor or by a suit to foreclose the lien as authorized herein.

Section 9.02. The failure of the Association and any Owner, their successors or assigns, to enforce any provisions of the standards contained herein upon the violation thereof shall in no event be deemed to be a waiver of the rights to do so as to any subsequent violation.

Section 9.03. Invalidation of any of the provisions of these covenants and standards, whether by court order or otherwise, shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 9.04. Any party to a proceeding who succeeds in enforcing a standard or lien or enjoining the violation of a standard against an Owner may be awarded a reasonable attorneys' fee against such Owner and shall be entitled to interest at the rate of 8% per annum on any monetary amount awarded from the date such amounts shall be determined to have been payable.

Section 9.05. No violation of any of these standards shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any property subject hereto; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagees' or foreclosure sale shall be bound by and subject to these standards as fully as any other Owner of any property subject hereto.

Section 9.06. The Association hereafter may grant variances from the strict application of the provisions of the standards set forth whereby reason of extraordinary and exceptional conditions of any property or circumstances the strict application of any standard would result in peculiar and practical difficulties or exceptional or undue hardship upon the Owner of any property, provided any such variance shall meet the Criteria for Standards provided for herein.

James F. Johnson General Contracting, Inc., fee owner of the Properties, hereby agrees that all right, title and interest which it owns in the Properties shall hereafter be subject to and subordinate to the foregoing standards, covenants, conditions and restrictions.

JAMES F. JOHNSON GENERAL CONTRACTING, INC.

By: [Signature]
Its PRESIDENT

STATE OF MINNESOTA)
COUNTY OF Hennepin } SS

The foregoing instrument was acknowledged before me this 23 day of January, 1986, by James F. Johnson, the President of James F. Johnson General Contracting, Inc.



[Signature]
Notary Public

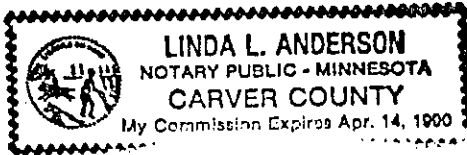
Morse Avenue Holding Company, first mortgagee of the Properties, hereby agrees that all right, title and interest which it owns in the Properties shall hereafter be subject to and subordinate to the foregoing standards, covenants, conditions and restrictions.

MORSE AVENUE HOLDING COMPANY

By: [Signature]
Its Secretary

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) SS

The foregoing instrument was acknowledged before me this 26th day of December, 1985, by James E. Hurd, the Secretary of Morse Avenue Holding Company.



Linda L. Anderson
Notary Public

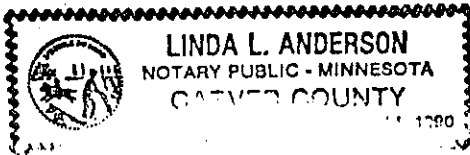
Construction Mortgage Investors Co., second mortgagee of the Properties, hereby agrees that all right, title and interest which it owns in the Properties shall hereafter be subject to and subordinate to the foregoing standards, covenants, conditions and restrictions.

CONSTRUCTION MORTGAGE INVESTORS CO.

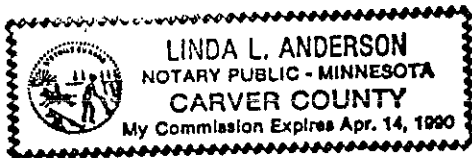
By: Walter M. Chambers
Its Vice President

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) SS

The foregoing instrument was acknowledged before me this 26th day of December, 1985, by Walter M. Chambers, the Vice President of Construction Mortgage Investors Co.



Linda L. Anderson
Notary Public



The foregoing Agreement is hereby approved and accepted by The Jonathan Association.

Dated: 28 JAN 86

By: [Signature]
Its President

STATE OF MINNESOTA)
COUNTY OF Carver) ss

The foregoing instrument was acknowledged before me this 28th day of January, 1986, by Lee Wilwerding, the President of The Jonathan Association.



[Signature]
Notary Public

This Instrument Drafted By:

Thomsen, Nybeck, Johnson,
Bouquet & Van Valkenburg, P.A.
7250 France Avenue South, Suite 102
Edina, Minnesota 55435
Telephone: (612) 835-7000

COPY

Certificate Number 15930

BOOK 48 PAGE 114

STATE OF MINNESOTA, }
County of CARVER } ss

OFFICE OF THE REGISTRAR OF TITLES

This is to certify that this document was filed in this

office on the 2 day of February

A.D. 19 86 at 9 o'clock A M.

REGISTRAR OF TITLES

BY _____