

DECLARATION OF DEVELOPMENT STANDARDS, COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
HIDDEN CREEK TOWNHOMES

WHEREAS, Klingelhutz Development Company, a Minnesota corporation, 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, legally described on Exhibit A attached hereto and made a part hereof (the "Property"); and

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

WHEREAS, all parties desire to impose certain development standards, covenants, conditions and restrictions on the Property;

NOW, THEREFORE, Klingelhutz Development Company and The Jonathan Association (hereinafter collectively referred to as the Declarants) do hereby declare that the Property 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 Property and be binding on all parties having any right, title or interest in the Property 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. "Developer" shall mean and refer to Klingelhutz Development Company.

Section 1.03. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to a Lot subject to the Declaration, but shall not mean or refer to the mortgagee of any 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 Lot is being sold to a contract vendee who is entitled to possession of the Lot, the contract vendee and not the vendor shall be considered the "Owner" of the Lot upon the furnishing of a copy of the executed Contract for Deed to the Association.

Section 1.04. "Property" shall mean and refer to that certain real property and improvements described on Exhibit A attached hereto and made a part hereof.

Section 1.05. "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 1.06. "Lot" shall mean and refer to any platted lot shown upon any recorded subdivision map of the Property.

Section 1.07. "Declaration" shall mean and refer to this Declaration and other declarations that at any time or from time to time may affect all or any part of the Property as the same may be amended from time to time as therein and herein provided.

Section 1.08. "Members" shall mean and refer to those persons entitled to membership in the Association as provided in the Declarations.

Section 1.09. "Standards" or "Criteria for Standards" is defined to include the following goals, limitations, 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 Property;
- (d) to encourage the erection of attractive buildings appropriately located to foster a harmonious appearance and function;
- (e) to ensure compatibility with existing structures;
- (f) to ensure appropriateness of any structure, exterior design, construction materials, size of improvement, or color scheme thereof;
- (g) set backs and off-street parking as specified in this Declaration;
- (h) all terms and use restrictions contained herein; and
- (i) Minimum Building Standards set forth in Section 4.03 of this Declaration.

Section 1.10. "Declarants" shall mean Klingelhutz Development Company and The Jonathan Association (collectively) or their assigns.

Other terms shall have the meanings attributed to them herein.

ARTICLE II.

PERMITTED USES

Section 2.01. Residential Purpose. No Lot shall be used except for residential purposes. No building shall be commenced, erected, altered, placed or permitted to remain on any Lot subject hereto other than one single family dwelling not to exceed two stories in height. Each Lot shall have a garage for at least one car. Each Lot shall have on site parking spaces including garages to accommodate at least two cars for each Lot.

Section 2.02. Division of Lot. No Lot shall be subdivided or split by any means whatsoever into any greater number of Lots, nor into any Lot or Lots of smaller size without the express written consent of the Association.

Section 2.03. Enjoyment of Property. Any Owner may delegate, in accordance with the Bylaws of the Association his right of enjoyment to the Common Properties to the members of his family, or his tenants.

Section 2.04. 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 2.05. 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, covenants, conditions and restrictions herein contained shall be considered as requirements in addition to said regulations.

Section 2.06. Signage. No sign shall be placed on the Property, except political campaign signs, or one normal rental or "for sale" sign.

Section 2.07. 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 2.08. 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 2.09. Exterior Antenna. No exterior tower, antenna or satellite dish of any kind shall be constructed, maintained, or permitted to remain on the Property except that exterior satellite dishes shall be allowed if in compliance with the Association satellite policy.

Section 2.10. 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 2.11. Utility Meters. All utility meters, located on the exterior of a building, shall be concealed from view from off the Lot or architecturally treated to blend with a building.

Section 2.12. 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 2.13. 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 2.14. Parking. Unless modified by a majority vote of the Board of Directors of the Association the following outside storage and parking restrictions apply upon the Property:

- (a) The storage or parking of "Winter Season" vehicles is only allowed upon the driveway or parking space of each Lot and is only allowed from November 1 through March 31.
- (b) The storage or parking of "Summer Season" vehicles is only allowed upon the driveway or parking space of each Lot and is only allowed from April 1 through November 1.
- (c) The storage or parking of "All Season" vehicles is only allowed upon the driveway or parking space of each Lot and 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 any Lot or appurtenant street for a period longer than three (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 seventy-two (72) consecutive hours shall be presumed to be an abandoned vehicle.

Section 2.15. Home Industry. No profession or home industry shall be conducted in or on any Lot without the specific written approval of the Association, which, 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 Association to be compatible with a high quality residential neighborhood.

ARTICLE III.

REQUIRED YARDS AND LOT 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, Animal Enclosures and Storage Structures. No fence, animal enclosure, or storage structure shall be erected without prior written approval of the Association. Such approval or the refusal to grant approval shall be based upon the written policy of the Association in existence at the time of the written application for such approval.

Section 3.03. Maintenance.

- (a) Maintenance of the Lot. The Lot and improvements thereon shall be maintained in a state of good order and repair by the Owner thereof. In the event any Owner of a Lot, entitled and required to belong to the Association, shall fail to maintain the Lot and improvements, the Board of Directors of the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Lot to repair, maintain, and restore the Lot 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 Lot is subject.
- (b) Maintenance of the Common Properties. The Association shall provide for all maintenance and repair of the Common Properties.

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 any Lot 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 Lot, 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. Developer shall submit the proposed paint colors to the Association's Architectural Review Committee for written approval from the Association's Architectural Review Committee for exterior paint colors. All townhouse, garage or other improvements must receive said Association's approval prior to being painted. All future changes in paint color must also receive prior Association approval.

Once the initial Certificate of Occupancy is issued by the City of Chaska, Minnesota for the original dwelling unit, no future building or improvements shall be commenced, erected, placed or substantially altered on the exterior nor any substantial landscape work done on any Lot until the building or other alteration plans, specifications, including elevations and architect's rendering, a plat showing the location of the approval on the particular Lot,

including general landscape plans; are 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 owner 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 sixty (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 completed within one (1) year from initiation. Upon completion thereof, the property shall be promptly landscaped.

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

Section 4.03. Minimum Building Standards.

- (a) Structures erected or placed on any Lot must be in harmony with the residence in respect to workmanship, materials and external design.
- (b) The entire Property shall be sodded by the Developer within sixty (60) days of occupancy, or in the event of inclement weather, as soon thereafter as reasonably possible.

Section 4.04. Prohibition of Manufactured Homes. "Manufactured homes" as defined in Minnesota Statutes 327.31 are prohibited on the Property.

ARTICLE V.

MEMBERSHIP AND VARIOUS RIGHTS IN THE ASSOCIATION

Section 5.01. Each Owner shall be a Member of the Association and shall be entitled to one 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 vote be cast with respect to each Lot. The Association shall also have as members other landowners, in the Jonathan Development. For the purpose hereof, an owner of a single townhouse unit or

condominium unit shall be considered to be a single family residential Lot Owner. Provided, however, that on any vote taken on Association business the total multiple dwelling unit votes shall not exceed forty-nine percent (49%) of the total votes voted and if necessary each multiple dwelling 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 forty-nine percent (49%) policy set forth above.

Section 5.02. If all or any portion of a Lot 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

Section 6.01. If any structure or improvement is begun after approval of the plans therefor as provided in this Declaration 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 Lot harmonious with other Lots 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 Lot involved, as the case may

be, and shall be a lien on the property and enforceable as an assessment under Article VIII.

ARTICLE VII.

COMMON PROPERTIES

Section 7.01. 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 Lot 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 the Owner's Lot remain unpaid and for a period not to exceed sixty (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 two-thirds (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.

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 8.01. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot (except the Developer), by acceptance of any deed, contract for deed or other document conveying an ownership interest therein shall be deemed to covenant and agree, whether or not it shall be expressed in his or her deed, or contract for deed, to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on each Lot against which they are assessed and shall be a continuing lien thereon in favor of the Association. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot 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.

Notwithstanding anything contained herein to the contrary, the Developer shall not have any liability to the Association or to any

other party for any annual assessments or charges and/or special assessments for capital improvements, it being specifically understood that the annual and special assessments shall not be imposed against any Lot until a single family dwelling has been constructed thereon, a certificate of occupancy issued therefor, and such Lot and dwelling have been sold and conveyed by the Developer to an Owner.

Section 8.02. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners residents of the Property and for the improvement and maintenance of the Common Properties.

Section 8.03. Maximum Annual Assessments. The maximum annual assessment for 1995 shall be \$144.60 per Lot.

- (a) The maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.
- (b) The maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 8.04. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any 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 special assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 8.05. Notice and Quorum for any Action Authorized under Sections 8.03 and 8.04. 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 thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8.06. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Members and may be collected on a monthly, quarterly, semi-annually or on a annual basis as shall be determined by the Board of Directors of the Association.

Section 8.07. Date of Commencement of Annual Assessments; Due Dates. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot on or before December 15 of each year. 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 Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8.08. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be delinquent and shall, together with interest from the due date at the rate of eight percent (8%) per annum and costs of collection become a continuing lien on the Lot. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. Such assessment, together with interest thereon at eight percent (8%) per annum, plus all costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the assessment was due. 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 Lot.

Section 8.09. Subordination of the Lien to First Mortgage.
The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage held by a First Mortgagee (but not any other mortgage or non-governmental lien) now or hereafter placed upon a Lot subject to assessments; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the date of expiration of the period of redemption following a first mortgage foreclosure sale, or the date of any sale or transfer in lieu of foreclosure. Upon the expiration of the period of redemption from a first mortgage foreclosure sale the interest of the holder of the Sheriff's Certificate shall be prior and superior to the lien of any assessments then against the Lot. Any foreclosure sale or transfer shall not release the Owner from personal liability for any assessment previously due, nor release the Lot from the lien of any subsequent assessments.

ARTICLE IX.

ENFORCEMENT

Section 9.01. All Articles of this Declaration 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 the Standards; (ii) a money judgment for damages by reason of a breach of the 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 foreclosure of the lien. A lien for assessments may be foreclosed against a Lot under the laws of this state as if it were a lien under a mortgage containing a power of sale. The Association, or its authorized representative, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any Lot so acquired. The Owner, by the acceptance of any conveyance of any interest in the Lot grants to the Association full authority, including without limitation a power of sale, to accomplish such foreclosure, acquisition and sale, together with the power and right to exercise any other remedy available under the laws of this state governing such foreclosures. The Association shall, in addition, have the right to pursue any other remedy at law or in equity against an Owner who fails to pay any assessment or charge against his Lot. In any action brought by the Association against an Owner in violation of the covenants, including, but not limited to the recovery of delinquent assessments, the Association shall further be entitled to recover all costs of the action, including without

limitation interest on the delinquent amount at the rate of eight percent (8%) per annum and reasonable attorneys' fees.

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 right to do so as to any subsequent violation.

Section 9.03. Invalidation of any of the provisions of these covenants or any of the 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 eight percent (8%) per annum on any monetary amount awarded from the date such amount shall be determined to have been payable.

In any situation where the Association has incurred costs and expenses, including attorneys' fees, to collect unpaid assessments or to correct any other default or violation by an Owner of this Declaration, the Owner who has caused, or suffered, the Association to incur such costs and expenses shall be responsible therefor and such costs and expenses shall become a lien against such Owner's Lot, which lien shall be enforceable as an assessment under Article VIII.

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

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

Section 9.07. In addition to any other remedies and sanctions, express or implied, administrative or legal including those remedies and sanctions already provided for in this Declaration, the Association shall have the right but not the obligation to enter any Lot and remedy any condition which the Owner has caused or allowed to exist in violation of any of the provisions of this Declaration, and assess the cost thereof which may include reasonable attorneys' fees and disbursements against the violating Owner and impose a lien upon said Owner's Lot, which lien shall be enforceable as an assessment under Article VIII. Any entry upon a

Lot by the Association pursuant to this Declaration shall not be deemed a trespass.

Section 9.08. Wherever actions or powers are granted to the Association in this Declaration such actions or powers are enforceable by a majority vote of the Board of Directors of the Association including delegation of actions or powers to the Architectural Review Committee, other subcommittees or the executive directors of the Association.

IN WITNESS WHEREOF, Klingelhutz Development Company acknowledges and agrees to this Declaration this 19th day of JUNE, 1995.

KLINGELHUTZ DEVELOPMENT COMPANY

By *John Klingelhutz*
Its *President*

STATE OF MINNESOTA)
) ss
COUNTY OF CARVER)

The foregoing instrument was acknowledged before me, a Notary Public, on this 19th day of JUNE, 1995 by JOHN KLINGELHUTZ, the PRESIDENT of Klingelhutz Development Company, a Minnesota corporation on behalf of the corporation.

Nina K. Frantsen
Notary Public



EXHIBIT A

All Lots and Outlots in Hidden Creek Townhomes, Carver
County, Minnesota.