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DEPUTY

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Washington County, MN

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Cindy Kosmann  
County Recorder

By: Cindy Kosmann

DECLARATION FOR  
COMMON INTEREST COMMUNITY NUMBER 296

Planned Community

AUDUBON

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## PREAMBLE

## DECLARATION

This Declaration is made in the County of Washington, State of Minnesota, on this 21st day of MARCH, 2006, by Audubon Investments, LLC, a Minnesota limited liability company (the "Declarant"), pursuant to the provisions of Minnesota Statutes Chapter 515B, known as the Minnesota Common Interest Ownership Act (the "Act"), for the purpose of creating Audubon, a planned community.

WHEREAS, Declarant is the owner of certain real property located in Washington County, Minnesota, legally described in Exhibit A attached hereto and Declarant desires to submit said real property and all improvements thereon (collectively the "Property") to the Act, and,

WHEREAS, Declarant desires to establish on the Property, a plan for a permanent residential community to be owned, occupied and operated for the use, health, safety and welfare of its resident Owners and Occupants, and for the purpose of preserving the open space, the value, the structural quality, and the original architectural and aesthetic character, of the Property, and

WHEREAS, the Property is not subject to an ordinance referred to in Section 515B-106 of the Act, governing conversions to common interest ownership, and is not subject to a master association as defined in the Act.

THEREFORE, Declarant makes the Declaration and submits the Property to the Act as a planned community under the name Audubon initially consisting of the Units referred to in Article II, declaring that this Declaration shall constitute covenants to run with the Property, and that the Property shall be owned, used, occupied and conveyed subject to the covenants, restrictions, easements, charges and liens set forth herein, all of which shall be binding upon all Persons owning or acquiring any right, title or interest therein, and their heirs, personal representatives, successors and assigns.

**PROTECTIVE COVENANTS  
(Audubon)**

**WITNESSETH:**

**WHEREAS,** Declarant desires to provide for the preservation and enhancement of the natural and built values and amenities and opportunities within the Property, in order to contribute to the personal and general health, safety and welfare of the property owners and residents therein and in the community and to provide for the maintenance of the private open spaces, and to this end, desires to subject the real property described in Article II, Section 1 hereof (together with such further property as may be added pursuant to Article II, Section 2 hereof) to the covenants, conditions, standards, restrictions, reservations, easements, charges, assessments 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 covenants and restrictions contained in the Declaration and collecting and disbursing the assessments and charges created by this Declaration; and

**WHEREAS,** Declarant has incorporated, under the laws of the State of Minnesota, as a nonprofit corporation, Audubon Homeowners Association, Inc. for the purpose of exercising these functions;

**NOW, THEREFORE,** Declarant declares that the real property described in Article II, Section 1 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 shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

Section 1. Definitions. The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

- 1.1 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association as they may exist from time to time.
- 1.2 "Assessment" shall mean and refer to those charges made by the Association from time to time, against each Lot within the Property for the purposes, and subject to the terms, set forth herein "Assessments" include Annual Assessments, Special Assessments and Individual Lot Maintenance

Assessments.

- 1.3 "Association" shall mean and refer to Audubon Homeowners Association, Inc., a Minnesota non-profit corporation, and its successors and assigns.
- 1.4 "Board" or "Board of Directors" shall mean and refer to the board of directors of the Association, which is the governing body of the Association.
- 1.5 "By-Laws" shall mean and refer to the by-laws of the Association as they may exist from time to time.
- 1.6 "Common Expenses" shall mean and refer to all expenses lawfully made or incurred by or on behalf of the Association in connection with the performance of any obligation or function of the Association hereunder or under the Articles of Incorporation or the By-laws or under the Conservation Easement.
- 1.7 "Common Area" shall mean and refer to property, if any, owned in fee or easements in favor of the Association, for the common use and enjoyment of the Members. Common Area includes, but is not limited to, Protected Property, Entrance Monument Easement Areas on certain individual Lots, as more particularly defined in instruments reserving such easements over such Lots.
- 1.8 "Conservation Easement" shall mean and refer to the Conservation Easement dated 4-11-06, 2006 and recorded as Doc. No. 3578578 in favor of the Minnesota Land Trust, which governs the Protected Property.
- 1.10 "Conservation Easement Holder" shall mean the Minnesota Land Trust or any subsequent holder of the rights affecting the Protected Property pursuant to the Conservation Easement.
- 1.11 "County" shall mean and refer to Washington County, Minnesota.
- 1.12 "Declarant" shall mean and refer to Audubon Investments, LLC, a Minnesota limited liability company, and its successors and assigns, if such successor or assign shall acquire more than one undeveloped Lot from the Declarant for the purpose of development of Audubon as a whole, as opposed to construction for sale of Dwellings on particular Lots. Notwithstanding the foregoing, no individual or entity acquiring a Lot from the Declarant shall become the Declarant solely by such acquisition, but only by a specific assignment and assumption of the rights and obligations of the Declarant hereunder, which assignment and assumption shall not be effective; unless the instrument of conveyance expressly sets forth the same.
- 1.13 "Declaration" shall mean and refer to this instrument, and all exhibits hereto, as the same may be amended from time to time, and filed for record in the office of the County Recorder or Registrar of Titles (whichever is

appropriate) and any Supplementary Declaration executed in accordance with the provisions of Article II hereof.

- 1.14 "Design Quality Committee" or "D.C." shall mean and refer to that permanent committee of the Association, created for the purpose of establishing and enforcing criteria for the construction of Improvements within the Property.
- 1.15 "Dwelling" shall mean and refer to any dwelling on a Lot intended for use as a single-family dwelling.
- 1.16 "Entrance Monument Easement Area" shall mean and refer to that portion of a Lot more particularly defined in an instrument reserving an Entrance Monument Easement Area.
- 1.17 "Initial Property" shall mean and refer to that real property legally described in Exhibit "A", attached hereto and made a part hereof.
- 1.18 "Lot" shall mean and refer to any separately platted tract of land located within the Property which is intended for use as, or used as, a site for a Dwelling.
- 1.19 "Audubon" shall mean and refer to the property at any time subject to this Declaration.
- 1.20 "Member" shall mean and refer to each Owner entitled to membership in the Association pursuant to the provisions of Article III.
- 1.21 "Mortgage" shall mean and refer to a deed of trust, mortgage, contract for deed, or other security instrument granting, creating or conveying a lien upon, a security interest in, or a security title to any portion of the Property, or any interest therein.
- 1.22 "Mortgagee" shall mean and refer to any entity or person named as mortgagee in any mortgage deed granting a Mortgage on a Lot.
- 1.23 "Owner" shall mean and refer to 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.
- 1.24 "Protected Property" means the parts of the Property identified on the plat as protected open space areas or areas which are subject to the Conservation Easement.

**ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION**

Section 1.     Initial Property. The Initial Property described on Exhibit A shall be subject to this Declaration.

**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. During the maximum period of Declarant Control described in Minn. Stat. §515B.3-103(c), 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 A Owners shall be entitled to one vote for each Lot owned by that Owner.

Class B       The Class B Member shall be the Declarant. The Class B Member shall be entitled to five (5) votes for each Lot owned by it.

                          After the expiration of the maximum period of Declarant control described in Minn. Stat. §515B.3-103(c) Class B Member shall be entitled to one vote for each Lot owned by it.

Section 3.     Suspension of Voting Rights of Class A Members. The right of any Class A 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.     Maintenance of Landscaping, Protected Property, Entrance and Other Improvements. The Association shall (i) maintain, repair, and replace landscaping on Common Areas, including landscaping on Entrance Monument Easement Areas; (ii) maintain, repair and replace entrance monuments on any Entrance Monument Easement Areas, in the manner initially constructed by Declarant or as altered or reconstructed by authority of the Board of Directors; (iii) carry out any other maintenance required under any agreement with the Town of Baytown; (iv) landscaping or other repair, maintenance or replacement as required by any applicable governmental authority with respect to stormwater drainage, ponding, catchment or similar areas (v.) maintain,



operate and repair the wastewater treatment system/drainfield in Audubon and (vi.) undertake, complete and comply with all of the Owner's obligations and maintain the Protected Property as set forth in the Conservation Easement covering the Protected Property for Outlots A, D, E, H and I, Audubon. A copy of the Conservation Easement is attached hereto as Exhibit B for reference. The obligations set forth in this section may not be amended or repealed by the Association except with the written consent of the Town of Baytown. The Conservation Easement is perpetual in duration and may be amended, in rare circumstances, only as provided therein.

Section 2. Collection of Garbage. Should the local governmental unit not provide garbage collection services to the Owners, the Association shall be empowered to contract with private vendors on behalf of all Owners for the collection of garbage in Audubon.

Section 3. Enforcement of Covenants and Restrictions; Design Quality Control. The Association shall be responsible for the enforcement of the covenants and restrictions contained in this Declaration including, without limitation, the Design Quality controls imposed by this Declaration.

Section 4. Taxes and Insurance. To the extent the Common Area shall be separately taxed, the Association shall pay all property taxes and governmental special assessments with respect to the Common Area and shall procure and pay for insurance, pursuant to Article XII hereof.

Section 5. Rights of the Town of Baytown. Notwithstanding any other term, covenant or condition herein contained and subject to the terms and restrictions of the Conservation Easement:

- (a) If, in the opinion of the Town Board of the Town of Baytown ("Town") expressed in a resolution, the Association shall have failed to provide adequate control of surface water drainage, or adequate care of any Common Area or the wastewater treatment system and drainfield; then, and in any such event, duly authorized agents of the Town may enter upon the Common Area to perform such maintenance, or repair, or control, as the Town shall have deemed necessary to preserve the health, safety and welfare of the residents of Audubon or of the Town;
- (b) If the Town performs any maintenance or repair pursuant to this Declaration or constructs any public improvements pursuant to any applicable law, then the Town may assess the cost of said maintenance or repair or public improvement directly against the benefitted Lots, or the Town may assess any Common Area for the cost of said maintenance or repairs or public improvement. If the Town assesses any Common Area for the cost of said maintenance or repair or public improvement, then the Association or the Owners of Lots shall levy a special assessment against the benefitted Lots to defray the total amount of the Town assessment. Such special assessment need not have the consent of any Owner; and
- (c) The cost of any work performed by the Town pursuant to this Declaration shall be assessed pursuant to the above provisions.
- (d) The obligations set forth in this section may not be amended or repealed by

the Association except with the written consent of the Town of Baytown.

## **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, shall be deemed to covenant and agree to pay to the Association (i) Annual Assessments; (ii) Individual Lot Maintenance Assessments; and (iii) Special Assessments. Such Assessments shall be determined, levied and collected by the Association from time to time as herein provided. Such Assessments, together with the charges for late payments and costs of collection thereof, including, without limitation, reasonable attorney's fees, shall be a charge on each Lot against which they are assessed and a continuing lien thereon in favor of the Association. They also shall be the personal obligation of each person who was the Owner of such Lot at the time when the Assessment fell due. The apportionment and responsibility for Assessments shall be as more particularly set forth below.

Section 2. Basis of Assessments. Individual Lot Maintenance Assessments shall be levied against the particular Lot or Lots against which the same are payable, in an amount and upon such terms as shall be established by the Board of Directors as elsewhere provided herein. Annual and Special Assessments shall be levied on each Lot subject thereto on the basis of the number of Lots in each class of membership as follows:

- (a) Lots which create Class A membership and Lots which create Class B membership improved with a completed residence as to which occupancy is legally available ("Improved Class A Lot" or "Improved Class B Lot") shall be assessed evenly, on the basis of one (1) expense share per Lot;
- (b) Class A Lots which are not Improved Class A Lots shall be subject to assessment at a rate equal to fifty percent (50%) of the assessment of an Improved Class A Lot or an Improved Class B Lot; and
- (c) Class B Lots which are not improved with a completed residence as to which occupancy is legally available shall, so long as they remain in Class B membership, be assessed at twenty five percent (25%) of the assessment of an Improved Class A Lot or Improved Class B Lot.

Any Individual Lot Maintenance Assessment levied against a particular Lot shall be payable in full by such Lot pursuant to the provisions of this Declaration.

Section 3. 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 this Declaration and the Conservation Easement, together with the incidental costs of operating the Association. To support the administration of the Conservation Easement and the preservation of the Protected Property, the annual assessments against each Lot shall include a fee of \$35.00 to be aggregated and paid annually by the Association to the Minnesota Land Trust or other subsequent

Conservation Easement Holder. The Association shall include with the delivery of the annual payment, a current list of the Lot Owners and their mailing addresses. The amount of the annual Minnesota Land Trust maintenance assessment (initially \$35.00 per lot) shall be adjusted up or down annually based on changes in the Consumer Price Index for Minneapolis - St. Paul area for all urban consumers. The base year shall be 2006 and adjustment in the annual assessment shall be determined as of July 1<sup>st</sup> of each year and shall be effective for the annual Minnesota Land Trust maintenance fee for the following calendar year.

Section 4. Levy of Annual Assessments. Except as provided in Section 2 above, the Annual Assessments shall be fixed at a uniform rate for all Lots. The Annual Assessments shall be due and payable on January 1 of each year; upon the sale of a Lot by Declarant, the Assessment payable with respect to such calendar year by the purchaser shall be immediately due and payable, but shall be pro-rated based on the number of days elapsed in that calendar year, with an addition of thirty (30) days to the number of days so elapsed, such that the purchaser or transferee shall receive a "grace" period equal to such thirty (30) day period. The Annual Assessments in each year shall be levied by the Association, based on a proposed budget. The Annual Assessment may be increased without vote of the membership, by not more than ten percent (10%) over the Annual Assessments payable during the previous calendar year, provided that the costs of garbage removal service, if any, and insurance shall always be in addition to any such increases. In order to increase the Annual Assessment more than the maximum amount established in this section, a vote of sixty-seven percent (67%) of the combined votes which class of membership cast by the Members present, in person, by mail, 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 not later than December 1 of the year prior to the year in which the Assessment is due. Failure to provide such notice, however, shall not render any Assessment invalid.

Section 5. Individual Lot Maintenance Assessments. In the event that any Owner violates any covenant or fails to perform any term, covenant or conditions 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 may levy an assessment to pay the cost thereof against such Owner's Lot.

Section 6. Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that each such assessment shall have the assent of Members holding two-thirds (2/3) of the combined votes in each class of voting membership who are voting in person or by proxy at a meeting duly called for this purpose.

Section 7. Effect of Nonpayment of Assessment; Remedies of Association. The Annual Assessments, Special 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 be delinquent and shall, together with interest at a rate of eight percent (8%) per annum, any cost of collection and any attorney's fees, be a continuing lien on the Lot and shall also be the personal obligation of the Owner

of the Lot at the time the Assessment is made. The lien may be enforced and foreclosed by action in the same manner in which mortgages may be foreclosed in Minnesota. Each Owner, by acceptance of a deed for any Lot, shall be deemed to give full and complete power of sale to the Association and to consent to a foreclosure of the lien by advertisement. The Association may also bring an action at law against the Owner personally obligated to pay the Assessment.

Section 8. 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 9. Exempt Property. The following property subject to this Declaration shall be exempted from the Assessments, charges and liens created herein:

- (a) All properties to the extent of any easement or other interest therein dedicated to and accepted by the local public authority and devoted to public use;
- (b) All properties exempted from taxation by the laws of the State of Minnesota upon the terms and to the extent of such legal exemption; and
- (c) All Common Area, if any, owned in fee by the Association.

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

## **ARTICLE VI SITE DESIGN AND ARCHITECTURAL QUALITY**

Section 1. Design Quality Committee. In order to preserve the high quality of the Dwellings, Lots, Protected Property and Common Area in Audubon, a Design Quality Committee (sometimes referred to herein as the "D.C.") is hereby created by the Declarant. The purpose of the D.C. shall be to create and help maintain architectural and site design quality, appropriate diversity, design compatibility and property values. There shall be three (3) members of the D.C. So long as the Declarant owns any undeveloped Lot in the Property (or in any Additional Property as to which Declarant retains a right of annexation hereunder) or until such earlier date as the Association is empowered by Minn. Stat. §515B.3-103(c) to

appoint member(s) of the D.C., Declarant shall appoint all members of the D.C. Thereafter, the members shall be appointed by the Board of Directors of the Association.

A majority of the Committee may designate a representative to act for it. In the event of a death or resignation of any member of the Committee, the remaining members shall designate a successor. The members of the Committee, shall be entitled to any compensation for services performed pursuant to this covenant, and may be reimbursed for out-of-pocket expenses if and to the extent authorized by the Board of Directors.

Section 2. Original Construction. A site plan, landscaping plan and plans and specifications for the construction of a Dwelling on any Lot shall be submitted to the D.C. for its written approval, in accordance with the procedures set forth in Section 4, below, before any construction activity is begun. Plans are to be supplied/prepared by experienced design professional(s).

Section 3. Review of Modifications. After the completion of an original Dwelling on a Lot, the construction or modification of any building or structure, including fences and mailboxes or the retaining walls or monuments constructed by the Declarant, shall require prior written approval by the D.C. of the plans and specifications for the construction, in accordance with the standards set forth in Section 4, below. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of the Owner's Dwelling.

Section 4. Standards of Review. The D.C. may promulgate detailed standards and procedures to guide its areas of responsibility, judgment and practice.

Section 5. Procedure. The following procedures shall govern the review of plans and specifications by the D.C.:

- (a) The Design Quality Committee shall set forth in writing the basic standards it will follow in determining whether or not to approve proposed plans and specifications for construction of a single-family Dwelling in Audubon. The basic standards shall include but not be limited to : the quality of workmanship, design and harmony of the external design with existing structures, topography, finish grade elevation, and overall conformity with the type and quality of construction in Audubon and the Conservation Easement.

Construction plans submitted must specifically define and include the size of the building, complete building floor plans, all elevations, the nature and kind of materials, topographic grading plans showing final finish grades of all improvements on Lot and location of the Dwelling on the property. Any additional features proposed, such as: accessory structures, pool, gazebos, retaining walls, etc., shall be included on the plans submitted to the D.C. No permission or approval shall be required to restore or rebuild in accordance with originally approved

plans and specifications. A detailed planting plan is required showing the minimum Landscape Plan, and other anticipated installations.

Up to three steps of review are required: Provide a concept elevation, floor plan and site plan showing the rough idea of the home style, and position. Upon a D.C. approval, the final construction plan preparation can proceed and, with the Minimum Landscape Plan, be submitted for D.C. review to verify consistency with approved concept. Color and material selections must be provided for approval (if such samples were not delivered earlier. The building inspector shall not release a building permit and construction shall not proceed unless inspector has received D.C. approval of final home, site and landscape plans.

- (b) If any Owner commences construction prior to the approval of the plans and specifications by the D.C. hereunder, the Declarant or the Association may resort to any and all remedies available to them, at law or in equity, including abatement and fines described herein and within the Guidelines.

Section 6. Approval Timing, Appeals. If the D.C. fails to approve or disapprove plans and specifications within thirty (30) days after the submission of the same to it, approval will be deemed to have been granted. In the event of disapproval by the D.C., the requesting Owner may give written notice that the Owner wishes to appeal the D.C. decision and request a hearing by the Association's Board of Directors. Such notice must be furnished to the D.C. 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. Provided, however, that the decision of the D.C. with respect to any original construction of a Dwelling whose plans and specifications have been either prepared by or approved by the Declarant shall not be appealable to the Board of Directors.

Section 7. Removal and Abatement. The Declarant or the Association shall have the right to order an Owner to remove or alter any structure on any Lot erected in violation of the terms of this Declaration, and to employ appropriate judicial proceedings to compel the alteration or demolition of any non-conforming construction or other violation. Any cost incurred shall be levied as an Individual Lot Maintenance Assessment as provided in Article V. In the event the Association or the Declarant requests injunctive or similar equitable relief, it shall not be required to post any bond.

Section 8. Variances. Reasonable variances to the published regulations of the D.C. may be granted by the D.C. 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. No variance shall apply other than to the specific Lot and the specific D.C. action on the particular issue, and shall have no effect as precedent in any other D.C. proceeding.

## ARTICLE VII LOT USES, STANDARDS AND RESTRICTIONS

Section 1. Use. No Lot shall be used except for residential purposes; no Dwelling shall be erected, altered, placed or permitted to remain on any Lot other than one single family Dwelling, not to exceed two (2) stories plus attic/dormer space in height, plus basement and an attached garage of at least two (2) cars and on-site parking spaces to accommodate at least two (2) cars. The first garages to be erected on any site shall be attached garages and no attached garage for more than three (3) cars shall be permitted without the express written approval of the Design Quality Committee. Any and all initial construction, or alteration to the exterior of any structure within Audubon shall first be approved by the Design Quality Committee prior to any construction or alteration, as provided in Article VI.

Section 2. Minimum Square Footage and Set-back Provisions. The Design Quality Committee shall have the right to specify a reasonable minimum square footage for any Dwelling and to increase minimum setbacks from those otherwise specified under local ordinance to help overall sightlines, streetscape and rear lot appearances.

Section 3. Vegetative Cutting. No clear cutting of any trees will be allowed on any lot except to clear for a house, accessory buildings or driveway construction. This restriction applies only to trees in excess of 4 inches in diameter as measured at breast height above the ground. Diseased trees of any size may be removed. All other selective cutting must be approved, in writing, by the Architectural Control Committee. On wooded lots, preservation of existing trees and vegetation, to help screen forward-positioned garages will assist in selective approval of such garage positions.

Section 4. Driveway Entrance Location. Each lot has one or more D.C. - preferred drive location(s), designated on the Recommended Driveway/Garage Location Plan. Owners must show this location on their submitted site plans. Except at the garage apron area, driveways are to be not more than sixteen (16) feet wide and with up to a four (4) foot radius at the back of curb, totally twenty four (24) feet wide at back of curb/edge of street.

Section 5. Garage Location. Each lot has one or more D.C. - preferred garage location(s), designated on the Recommended Driveway/Garage Location Plan. The criteria for garage location is to obscure the garage and permit the home to have a visually dominant position as viewed from most frequently traveled perimeter streets and /or most predominant direction of approach. Other criteria to be considered are preservation of existing trees, sun orientation, streetscape variety, home style/site plan style, drive way design, and grading impact. Homes with garages at the front of the home and /or with garage doors facing toward the street are not recommended. In certain lot locations, courtyard garage door entrance locations will be considered. Garages may have living space above, and, in all cases, garage roof massing must integrate with the primary structure.

Section 6. Styles of Home Design. Preferred styles are:

Prairie	Colonial	French Country	Tudor
Bungalow	Georgian	Shingle	Victorian
Craftsman	Stick	Italianate	Mediterranean
Usonian	Foursquare		

Home design, (including siting, massing, roof design, window positioning, trim, detailing, decks, balconies, terraces, walls and fencing, material selection and colors) is to have and be unified by a selected, dominant style of design as listed above, or well proportioned, tasteful blend of compatible components of at most 2 of the above styles.

Roof shapes and configurations, made either complex, poorly proportioned and/or "busy", ( often caused by the process of home floor plan design without coincident roof design consideration and interaction) are to be avoided.

No earth homes, log homes, dome homes, foam homes, or other uncommon styles of home design will be allowed, unless specifically approved by D.C. at the concept level, and subsequent preliminary and final plan stages. Severe, stark design styles such as cubist, international styles or commercial styles are not permitted.

Section 7. "Four Sided" Home Design & Detailing. The above selected design style shall be carried thru consistently on all sides of a home. Material uses, trim detailing and post/column detailing used on the front of a home must be applied similarly to the other elevations. Where doors are provided to decks, the deck must be built at the time of home construction.

Section 8. Reserved for future use.

Section 9. Fences and Boundary Walls. No wall or fence shall be constructed on any Lot until the height, type, design, and location have been approved in writing by the Design Quality Committee, in accordance with Article VI hereof. Fencing for dog runs must be incorporated with the Dwelling materials, and may not extend toward the front yard beyond the rear wall of the Dwelling closest to the rear property line, and must be built of wood or identical siding materials as the home and be comparable with the original home design. Decorative fences/walls constructed in front yard areas must be 42 inches in height or less and be built of wood, wrought iron or materials identical to or complementary with the exterior of the home itself or else identical to the exterior of the homes. Chain link fencing shall be permitted only if inside of and concealed by fencing compatible with the home's design and materials. Under no circumstances shall a boundary wall or fence be permitted with a height of more than six (6) feet. The height or elevation of any wall or fence shall be measured from the existing elevations on the property at or along the applicable point or lines. Any question as to such heights shall be completely determined by the Design Quality 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 provisions of Article VI hereof.

Section 10. Accessory Structures & Detached Vehicle Storage Structures. No vehicle storage building or structure detached from the Dwelling shall be permitted, except structures that conform architecturally, using the same building materials and style as the



Dwelling and with the approval of the Design Quality Committee. Storage of firewood, refuse, rubbish, and cuttings, will be contained within the garage or screened to prevent view from street or side and rear yard of adjacent properties. One accessory building, not to exceed 2,000 square feet in area and one gazebo may be built. The accessory building may be in addition to an attached garage. An unattached garage will be considered as one of the allowed accessory building. No accessory building shall be constructed on a lot before the construction of the house on the lot is commenced. The construction of any home or accessory building shall be completely finished on the exterior within six (6) months from and after the date construction commences. The accessory building shall be constructed of the same exterior materials and style of the main structure. The gazebo must be constructed as an integral part of the landscaping and shall blend with the home style and the environment. The exterior colors of the main structure and the accessory building shall be identical or interrelated.

Section 11. Colors: Only colors approved by the Design Quality Control Committee will be allowed on exterior surfaces. The Design Quality Control Committee can apply any standard they wish to approve or disapprove colors. Colors may not be changed without the approval of the Design Quality Control Committee.

Section 12. Streetscape planting. The Declarant has created a planting plan for the streetscape area that includes the right of way area between road edge and property line, and it has been determined by Declarant and D.C. that such planting plan is significant to the present and future aesthetic and financial value of Audubon as a whole, and for its individual lot owners. If any owner or the owner's agents cause damage to the plantings in the area between the street surface and their property line such damage shall be promptly repaired by the owner and if such repairs are not made after notice from the association the cost of repair may be assessed against the owner's lot and repairs may be made by the association.

Section 13. Minimum Homesite Landscape Plan. At or before final home plan submittal to D.C., each Owner shall submit a landscape plan prepared by a qualified and experienced landscape design professional or Landscape Architect, to the Design Quality Committee for approval, (hereinafter, "Minimum Landscape Plan") which will conform to the D.C.'s planting guidelines, and specify existing and proposed grading contours, the areas to be planted, sodded, seeded, mulched, and/or retained as natural areas. Installation of approved Minimum Landscape Plan shall be completed prior to Dwelling occupancy, (except that with respect to Dwellings completed from November to March of each year, the Owner shall have until the following June to carry out such Minimum Landscape Plan). Owner shall maintain this planting and any in the R.O.W. abutting their lot, in good faith, including watering, pruning, fertilizing & upkeep.

The owner will provide, with the above Minimum Landscape Plan, a written quote for the installation by an experienced and reputable landscape contractor. The Declarant may require use of one of a pre-designated group of Landscape Contractors.

Should an Owner fail to carry out the Minimum Landscape Plan, and the escrow amount prove inadequate to accomplish the Minimum Landscape Plan, the Association reserves the right to carry out such Minimum Landscape Plan on such Lot. The amount of any such expenditure, together with a penalty not to exceed \$2500.00.00 shall be the personal, joint and several obligations of the Owner or Owners and shall be a lien against the Lot which may be enforced as an Individual Lot Maintenance Assessment under Article V

hereof. Lot purchaser commits owners to these covenants, D.C. guidelines and judgment, and allows access by the Association and its designated vendors during normal construction business hours to the lot for this purpose.

Section 14. Mailboxes. Each Owner shall maintain a mailbox of the design and type initially required by the Declarant, and/or as on file with the Association, or in absence of these, approved by the D.C. as submitted by the owner. The mailbox shall be on the public right-of-way, and may be grouped as designated by a D.C. plan. Each Owner shall have a separate Mailbox. Structures shall be obtained from a supplier designated by the D.C./Association or be constructed by a prior approved contractor/vendor, in strict conformance with the Association's plans, details, and specifications thereof. The Association reserves the right to install or repair an Owner's mailbox and to levy an Individual Lot Maintenance Assessment against a Lot, pursuant to the provisions of Article V hereof, should an Owner fail to properly install or maintain the same.

Section 15. Subdivision. No Lot shall be subdivided or split by any means whatsoever into any greater number of residential Lots, nor into any residential lots of smaller size without the express written consent of the Design Quality Committee and appropriate government units except that if the Owner of a full Lot desires to construct a Dwelling using an area larger than the area of any one single Lot as originally platted, then the adjoining Lot may be divided and part thereof added to any one of more adjoining single Lots solely for the purpose or result of increasing the area on which a single-family Dwelling will be erected. No Dwelling shall be erected on a Lot which contains a lesser area than any original Lot as platted.

Section 16. Governmental Standards. All uses of the Lots shall, at a minimum, comply with zoning and other applicable ordinances and regulation of appropriate government units. Such regulations shall be considered as requirements in addition to any requirements of the Association or the D.C.

Section 17. Pets and Animals. No birds, animals or insects shall be kept on any Lot except dogs, cats and other common house pets provided that they are not kept, bred or maintained for commercial purposes. Cats must be restrained within a confined area when outside the home or garage. Dogs must be kept under voice control or on a leash or restrained within a confined area by fence or electronic means when outside the home or garage. "Invisible Fence," or equal pet containment systems are encouraged, provided they are kept in working order, with proper pet training, and accomplish goals of this paragraph. No more than three household pets that use the home site's exterior grounds, over the age of 4 months may be kept at any one time. The Design Quality Committee shall have authority to determine compliance with these and other provisions herein.

Section 18. Home Occupation. Home occupations may be permitted within the home that does not create a nuisance or excessive vehicular traffic within the neighborhood.

Section 19. Nuisances. No clothes line or drying yards or pet control lines shall be permitted unless concealed by hedges or screening acceptable by the Design Quality Committee. No unsightly growths shall be permitted to grow or remain upon the premises. No refuse pile or unsightly objects shall be allowed on any Lot. In the event that an Owner

of any Lot shall fail or refuse to keep it free from weeds, refuse or other unsightly objects, then the Declarant or the Association may (but shall not be required to) enter upon such Lot and remove the same at the expense of the Owner. No Lot shall be used in whole or in part for storage of rubbish, nor for the storage of any property or thing which will cause such Lot to appear unclean or untidy; nor shall any substance, thing or material be kept on any Lot which emits any foul or obnoxious odor, or which causes any noise which may disturb the peace, quiet, comfort, or serenity of the occupants of any adjacent property. Dirt bikes and similar off-road motorcycle operation is prohibited. The outside storage of an unlicensed or inoperable motor vehicle upon a Lot shall be considered a nuisance. No boat, trailer or camper shall be parked outside for more than 48 hours on any Lot or on any street or roadway within Audubon, unless completely screened from view from adjacent roads and lots, which screening has been previously approved by D.C.

Section 20. 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 that any failure by the non-Owner occupant to comply with the terms of such documents shall be default under the lease. Other than the foregoing, there shall be no restrictions on leasing of a Dwelling.

Section 21. 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 22. 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 Dwelling, either temporarily or permanently.

Section 23. Driveways. Driveways must be constructed of concrete, bituminous or other hard surfaces material. And installation shall be subject to approval of the Design Quality Committee. Driveways must be installed within one year of the date of a Certificate of Occupancy issued for any Dwelling constructed upon a Lot.

Section 24. 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 D.C.

Section 25. Exterior Ornaments. Exterior ornaments including but not limited to precast concrete, plastic or wood figurines, wishing wells and windmills shall be prohibited unless approved by the D.C. prior to installation or construction.

Section 26. Antennas. Except with the prior written approval of the D.C., no satellite dishes in excess of 24 inches in diameter, nor any exterior television or radio antenna of any sort shall be placed, allowed or maintained on any portion of a Lot, or the improvements or structures thereon. All antennas or antenna portions that can be reasonably screened, shall be screened from adjacent road and lot view with wall and/or roof elements that are architecturally consistent with the structure.

Section 27. Completion of Construction of Improvements. All construction work shall, upon approval of plans by the D.C. be carried on with dispatch; all improvements shall be constructed in conformity with the then existing building codes of Baytown, Minnesota; and all building plans shall be prepared by or under the supervision of a registered architect, builder or qualified & experienced design professional. If any structure is begun after approval of the plans as provided in Article VI and is not completed within one year after the commencement of said construction, and in the judgment of the Design Quality Committee, is offensive or unsightly in appearance, the Association may take such steps as may be necessary to make the Property harmonious with other properties, including completion of the exterior of the structure, screening or covering the structure or any combination thereof, or similar operations. The amount of any such expenditure shall be the personal, joint and several obligation of the Owner or Owners and shall be a lien against the lot which may be enforced as an Individual Lot Maintenance Assessment under Article V hereof.

Section 28. Repair to Curbing. It shall be the responsibility of the Owner to repair or replace any curbing damaged during construction of the Dwelling or during site improvements made to Owner's Lot.

Section 29. Signage. No sign shall be placed on any Lot within the Property without the express written consent of the Design Quality Committee, except that one professionally prepared "for sale" sign of typical size and proportion not greater than 5 square feet may placed on a Lot by an Owner without D.C. approval. The Declarant, so long as it owns any Lot in the Property, shall be exempt from such signage restrictions.

Subject to the terms of the Conservation Easement, subdivision identification entrance monuments may be installed by Declarant. Entrance and advertising signs may be installed by Declarant and maintained until Declarant no longer owns any Lot.

During the construction and sales period of Audubon, the Declarant may place such directional and advertising signs as it deems necessary or desirable for the sale of Lots subject to the terms of the Conservation Easement.

## **ARTICLE VIII LOT MAINTENANCE**

Section 1. 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 or her Dwelling, exterior yard area and 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 but without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance or repair of roofs; gutters, downspouts and overhangs, the maintenance and repair of exterior windows and doors, necessary painting, staining and repair of patio structures. In maintaining exterior 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 Dwelling. 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 shall require approval by the Design Quality Committee, in accordance with Article VI.

#### **ARTICLE IX RESERVED RIGHTS OF DECLARANT IN THE COMMON AREA**

Declarant, for so long as it owns any Lot in the Property or retains the right to subject Additional Property to the scheme of this Declaration, may exercise the following rights in the Common Area, but not including the Protected Property unless consented to by the Conservation Easement Holder, without the consent of any other Owner or other third party:

- (a) To create or grant easements over and across the Common Area which Declarant deems necessary to complete any residential development or any portion of Audubon;
- (b) At Declarant's expense, to construct improvements over, across and upon the Common Area;
- (c) To store construction materials and equipment on the Common Area incident to the initial construction of any improvements in Audubon; and
- (d) To maintain signage advertising Audubon.

These rights of the Declarant regarding the Common Area are subject to and limited by the terms of the Conservation Easement with regard to the Protected Property.

#### **ARTICLE X PROPERTY RIGHTS IN THE COMMON AREA**

Section 1. Easements. Subject to the provisions of Section 2 hereof, and any other rights of the Declarant and the Association under this Declaration, there shall exist the following easements in favor of each Owner and appurtenant to such Owner's Lot across and upon that part of the Common Area not including the Protected Property:

- (a) A non-exclusive easement to construct, install, repair and replace sanitary and storm sewer, water, gas, electric, telephone, cable television and other utility lines servicing such Lot in the location the same shall be initially constructed or installed incident to the initial construction of the Dwelling on the Lot or such other location as may be approved by the Board of Directors of the Association;
- (b) A non-exclusive easement for the use and enjoyment of those portions of the Common Area developed for open-space or recreational purposes subject to the

restrictions and protections of the Conservation Easement.

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

- (a) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area, and in aid thereof to mortgage said Common Area, provided, however, that the rights of such mortgagee in the Common Area shall be subordinate to the rights of the Members hereunder;
- (b) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure;
- (c) The right of the Association, as provided in its Articles and By-Laws, to suspend the voting and enjoyment rights of any Member for any period during which any Assessment remains unpaid, as provided in the Association's By-Laws;
- (d) The right of the Declarant to make use of such portions of the Common Area as may be necessary and incidental to the construction and sale of any initial improvements upon the Property and such other rights as are contained in Article IX hereof including, without vote or consent of the Members, to grant easements to public agencies or utilities incident to the original development of Audubon;
- (e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of each class of membership has been recorded agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advanced of any action taken. Nothing herein contained shall be construed as a dedication of any part of the Common Area to the public or to public use.

Section 3. Delegation of Rights. Any Owner may delegate the Owners right and easement of enjoyment in and to the Common Area to the members of the Owner's family, guests or to tenants who reside on the Lot.

## **ARTICLE XI INSURANCE**

Section 1. Liability Insurance; Fidelity Bonds. The Board of Directors of the Association, or its duly authorized agent, shall obtain a broad form of public liability insurance covering all of the Common Area insuring the Association, with such limits of liability as the Association shall determine to be necessary. Such insurance policy shall contain a "severability of interest" clause which shall preclude the insurer from denying the claim of an Owner because of the negligence of the Association or other Owner. The insurance policy should name the Minnesota Land Trust or subsequent Conservation Easement Holder as an additional insured.

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

Section 3. Replacement or Repair of Common Area. In the event of damage to or destruction of any part of the Common Area, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs or repair or replacement of the property damaged or destroyed, the Association may make a reconstruction Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Assessments made against such Owners. Any reconstruction assessment hereunder shall be adopted in accordance with the procedures set forth in Article V of the Declaration with respect to Annual Assessment and Special Assessments, as therein provided, and the lien thereof shall be subordinate to the lien of any Mortgage, in the same manner and to the same extent as the subordination of Annual Assessments and Special Assessments, as provided in Article V, of this Declaration.

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

## **ARTICLE XII GENERAL PROVISIONS**

Section 1. Association Easement and Access for Conservation Easement Holder. The Association shall have a nonexclusive easement to enter upon any Lot in order to perform any obligations or duties of the Association hereunder, or to exercise any right or remedy of the Association hereunder. The Conservation Easement Holder shall have access

over any Lot as reasonably necessary to fulfill its obligation to monitor the Protected Property.

Section 2. Enforcement. In the event any Owner fails to comply with the provisions of this Declaration, or the By-Laws or Articles of Incorporation of the Association or with decisions of the Association or the Design Quality Committee 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 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. In the event the Association fails to perform its obligations under the Conservation Easement, pertaining to the Protected Property, the Conservation Easement Holder may exercise any one or more of the remedies available to it under the Conservation Easement.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

Section 4. 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 Protected Property and additional rules and regulations concerning the appearance of each Lot and utilization of ponding areas. Without limiting the generality of the foregoing, the Association may adopt rules and regulations governing or restricting the use of chemical fertilizers, herbicides or pesticides.

Section 5. Rights of Declarant. Until the last Lot is sold and conveyed to an Owner other than a Declarant, subject to the restrictions and prohibitions of the Conservation Easement, the following activities by Declarant or with the written consent of Declarant will not be deemed violations of the covenants and restrictions of 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 initial construction of Dwellings on Lots or the Common Area;
- (c) The display on Lots or Common Area of signs advertising the Property, or new Dwellings, and the maintenance of temporary fencing, walkways, landscaping and berming in the vicinity of model and sales units.

Section 6. Duration of Covenants and Easements. The covenants, restrictions, and easements of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, or their respective legal representatives, heirs, successors and assigns. The easements set



forth herein shall be perpetual. The covenants, restrictions, conditions and reservations imposed and created by this Declaration shall be perpetual, and considered exempt from the thirty (30) year durational limit set forth in Section 500.20, subd.2a of Minnesota Statutes, pursuant to Minn. Stats. Section 500.20 subd.2a(5). The covenants and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Owners and thereafter by an instrument signed by not less than sixty-seven percent (67%) of the Owners. Any amendment must be properly recorded.

Section 7. Conflict Among Documents. In the event of a conflict between the Conservation Easement, the Declaration and the By-Laws or Rules and Regulations, the Conservation Easement shall control.

Section 8. Certain property not part of Association or subject to Conservation Easement. Any other provision of this agreement notwithstanding, Lot 1, Block 7 and Outlot C of Audubon shall not be part of the Association and shall not be subject to any assessments levied by the Association. Outlot C shall be subject to a Conservation Easement for that Outlot only.

Section 9. Trail system available for public use. The trail system within the Protected Property shall be available for pedestrian public use subject to reasonable rules, which may be adopted by the Association, governing noise, nuisance or offensive or abusive conduct. The Association shall provide reasonable access to the trail system for the public and shall maintain the trail system. This provision shall not be amended without the consent of Washington County and the Town of Baytown.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has  
executed this Declaration of Protective Covenants this 21st day of  
MARCH, 2006

AUDUBON INVESTMENTS, LLC,  
a Minnesota limited liability company

By: \_\_\_\_\_  
its member

STATE OF MINNESOTA                    )  
  ) ss.  
COUNTY OF WASHINGTON

The foregoing instrument was acknowledged before me this 21st day of  
MARCH, 2006 by Michael J. Lynskey, Jr., member of Audubon Investments,  
LLC, a Minnesota limited liability company, on behalf of the company.



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

This instrument was drafted by:

Audubon Investments, LLC  
118 S. Main St.  
Stillwater, Mn. 55082  
651-439-1412

## CONSENT AND JOINDER BY MORTGAGEE

The undersigned, being the holder of a Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Rents (hereinafter the "Mortgage") dated November 16, 2005, and filed for record on November 16, 2005, as Document Number 3551956, files of the Washington County Recorder, herewith consents to and joins in the foregoing Declaration for Common Interest Community No. 296, for the purpose of subjecting all of its interest under the Mortgage to the terms thereof, provided, that by this Consent and Joinder, the undersigned shall not become liable for any of the obligations of the Declarant thereunder.

IN WITNESS WHEREOF, Premier Bank has caused this consent and joinder to be executed this 21 day of March, 2006.

## PREMIER BANK

By

Its

By

Its

STATE OF MINNESOTA

)

SS.

COUNTY OF

Ramsey

)

The foregoing instrument was acknowledged before me this 21 day of

March, 2006 by Andrew Nath and \_\_\_\_\_  
the Executive V.P. and \_\_\_\_\_ of Premier Bank on behalf of  
said bank.

**Notary Public**

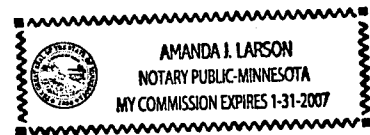


EXHIBIT A  
INITIAL PROPERTY

Lots 1 and 2, Block 1

Lots 1 and 2, Block 2

Lots 1 through 24, Block 3

Lots 1 and 2, Block 4

Lots 1, 2 and 3, Block 5,

Lots 1 through 5, Block 6, and

Outlots A, B, D, E, F, G, H, I, J and K

All in Audubon, Washington County, Minnesota

ENTERED IN TRANSFER RECORD  
WASHINGTON COUNTY, MINNESOTA  
April 11, 2006  
MOLLY F. O'ROURKE, AUDITOR-TREASURER  
BY Linda M. Dyer  
DEPUTY

46.00

CODE  
ART

11-11-11

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