

2391471

**OFFICE OF THE COUNTY RECORDER**  
**DAKOTA COUNTY, MINNESOTA**  
 CERTIFIED THAT THE WITHIN INSTRUMENT  
 WAS RECORDED IN THIS OFFICE ON AND AT

2005 DEC 23 AM 9:15

JOEL T. BECKMAN, COUNTY RECORDER

BY: DE DeputyFEE 35.50 SURCHARGE 10.50CASH ☐ CHECK ☐ ESCROW ☒WELL ☐ CHARGE ☐

CHARGE TO:

O/R \_\_\_\_\_

**COMMERCIAL**  
**PARTNERS**

*Return to*  
 Commercial Partners Title, LLC  
 200 South Sixth Street  
 Suite 1300  
 Minneapolis, MN 55402  
 25314 SKUCH 10f1

[Space Above this Line for Recording Office Use Only]

**RECEIVED****DECLARATION OF****DATE RECEIVED 12-22-05 PROTECTIVE COVENANTS AND EASEMENTS**

**DAKOTA COUNTY**  
**TREASURER-AUDITOR LE**

**FOR**  
**VERMILLION RIVER CROSSINGS,**  
**DAKOTA COUNTY, MINNESOTA**

**DAKOTA COUNTY**  
**TREASURER-AUDITOR**

THIS DECLARATION, is made as of this 2<sup>nd</sup> day of November, 2005, by  
 VERMILLION RIVER CROSSING, LLC, a Minnesota limited liability company ("Declarant").

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain land in the City of Farmington (the "City"),  
 County of Dakota, State of Minnesota, legally described on the attached Exhibit A (the "Property"); and

WHEREAS, Declarant intends to develop the Property as a commercial development and wishes  
 to subject the Property to a plan for, and establish the Property as, a non-residential planned community to be  
 known as Vermillion River Crossings.

NOW, THEREFORE, in order to provide for the necessary administration, preservation and  
 enhancement of the Property, Declarant hereby declares that the Property is and shall be transferred, held,  
 sold, conveyed, occupied and developed only subject to the following covenants, conditions, restrictions  
 and easements 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**

The following words when used in the this Declaration shall have the following meanings (unless the  
 context indicates otherwise):

1.1 "Common Expenses" shall mean and include all expenditures made or liabilities incurred  
 by or on behalf of the Declarant and incident to its expenditures relating to maintenance, repair and  
 replacement of the Common Improvements, and premiums for insuring the Common Property deemed  
 necessary or advisable by the Declarant, and any other items specifically identified as Common Expenses in  
 this Declaration.

1.2 "Common Improvements" shall mean Improvements existing from time to time within the  
 Common Property, including without limitation a paved streets and a storm water drainage system.

1.3 **"Common Property"** shall mean Outlots B and E, Vermillion River Crossings, which are owned by the Declarant.

1.4 **"Improvements"** means the physical improvements, constructed from time to time on a Lot or the Common Property, including without limitation all buildings, enclosures, paving, curbing, fencing, walks, lighting, antennae and satellite dishes.

1.5 **"Lot"** shall mean any lot or outlot of Vermillion River Crossings, as shown on the Plat as may be subsequently amended or subdivided, except for Outlots B, E, G, H, J and I; any Lot designated by lot number and block number being the Lot having that lot number and block number assigned to it in the Plat.

1.6 **"Occupant"** shall mean any person or persons, other than an Owner, in possession of a Lot or a portion thereof.

1.7 **"Owner"** shall mean a Person who owns a Lot or a portion thereof.

1.8 **"Person"** shall mean a natural individual, corporation, limited liability company, partnership, trustee, or other legal entity capable of holding title to real property.

1.9 **"Plat"** shall mean the plat of Vermillion River Crossings on file and of record in the office of the County Recorder in and for Dakota County, Minnesota, as amended from time to time.

1.10 **"Ponds"** shall mean the storm water retention ponds, and related landscaping and facilities existing or to be constructed on Outlot H.

1.11 **"Property"** shall mean the land legally described on attached Exhibit A, including all structures and improvements located thereon.

1.12 **"Roadway Easements"** shall mean those portions of the Common Property, Outlot G, and Outlot J which are designated and improved for use, from time to time, for drives, lanes, and otherwise for passage of vehicles, but not for parking of vehicles.

1.13 **"Stormwater Drainage Easement"** shall mean those portions of the Common Property, Outlot G, and Outlot J which are designated and improved for use, from time to time, for storm water runoff and drainage.

1.14 **"Zoning Authority"** shall mean the appropriate administrator or agency with authority to administer the zoning laws of the City, Dakota County, Minnesota or where such administrator or agency lacks the capacity to take the action or fails to take such action, the governmental official or body, administrative or judicial, in which authority is vested under applicable law to hear appeals from or review of such action or inaction or has the capacity to administer such zoning ordinance, and such term shall apply to the legal successors in interest to such administrator, agency or bodies.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

The Property is located in the City of Farmington, County of Dakota, and State of Minnesota, is more particularly described as set forth on attached Exhibit A, and shall be developed, held, transferred, sold, conveyed and occupied only subject to this Declaration.

### ARTICLE III

#### APPURTENANCES TO LOTS

3.1 Lots. The Lots are as shown on the Plat as amended from time to time.

3.2 Stormwater Drainage Easement. The Owners and Occupants, from time to time, and their respective employees, agents, customers and invitees, shall have the right to use and enjoy the Stormwater Drainage Easement for the construction, maintenance, repair, replacement and use of a drainage system for the drainage of storm water and surface runoff from their respective lots to the Ponds.

3.3 Use and Enjoyment of Roadway Easements. The Owners and Occupants, from time to time, of each Lot, and their respective employees, agents, customers and invitees, shall have the right to use and enjoy the Roadway Easements for ingress and egress purposes, all subject to any restrictions set forth in this Declaration.

3.4 Recorded Covenants, Conditions, Restrictions and Easements. The Property is subject to and together with such other covenants, conditions, restrictions and easements as may be recorded against it, including any easements shown on the Plat, and this Declaration is in addition to and not in replacement of any such other covenants, conditions, restrictions and easements.

3.5 Easements and Rights are Appurtenant. All easements and similar rights now or hereafter burdening or benefiting a Lot or any other part of the Property shall be appurtenant thereto, and shall be permanent, subject only to termination in accordance with applicable law. Any recorded easement benefiting or burdening the Property shall be construed in a manner consistent with, and not in conflict with, the rights and easements created by this Declaration.

3.6. Impairment Prohibited. No Person shall materially restrict or impair any easement benefiting or burdening the Property subject to this Declaration.

### ARTICLE IV

#### BUILDING AND USE RESTRICTIONS

4.1 Landscaping. In conjunction with the construction of the initial Improvements on each Lot, each Owner shall construct, plant or install on that portion of its Lot not occupied by buildings, parking areas, streets, curbs, sidewalks or other Improvements, sod, trees, bushes, light standards and lighting, watering systems, and other site improvements in conformance with all applicable ordinances and government regulations and the Development Contract.

4.2 Signs. All signs located on and identifying the use of any Lot shall comply with all applicable ordinances and government regulations and the Development Contract.

4.3 Maintenance of Lots. Each Lot Owner shall be responsible for the maintenance of its Lot and shall keep the exterior of its building painted (if applicable) and in a sightly condition. All parking areas and driveways shall be paved with asphalt or concrete and maintained in good condition and repair. Each Lot Owner shall be responsible for maintaining that portion of any circulation easements located on its Lot in good condition and repair, free of potholes and reasonably free of snow, ice and debris. Without limiting the generality of the foregoing, each Lot Owner shall maintain the landscaping on its Lot in the

locations and in at least the quality and quantity originally approved by the Zoning Authority or as otherwise required by this Declaration.

4.4 Vehicular Circulation Between Lots. The Owners of Lots 1 and 2, Block 3, Vermillion River Crossings, shall improve and operate their respective Lots so as to allow vehicular access between such Lots. Accordingly, each of the above Lot Owners shall construct vehicular access drives on its Lot, not less than fifteen (15) feet in width, which connect to the boundaries between such Lot and the other of such Lots and with the other vehicular drives and lanes located on its Lot, and such vehicular access drives shall connect with the boundaries between such Lot and the other of such Lots at the same location as any similar vehicular access drives theretofore constructed on the other of such Lots. Neither Lot Owner shall change the grade or elevation of its Lot at or near the boundary with the other of such Lots from the grade and elevations to which Declarant initially grades the Property, in any manner which may impair vehicular access between such Owner's Lot and the other of such Lots.

## ARTICLE V

### MAINTENANCE OF COMMON IMPROVEMENTS

5.1 Construction and Maintenance. The Declarant shall construct all Common Improvements and various public improvements benefiting the Property in accordance with the approval of the Plat of Vermillion River Crossings by the City, including without limitation the Ponds and all landscaping, fencing, utilities and other improvements within the Stormwater Drainage Easement, the public and private streets within Vermillion River Crossings, and various public utilities as required by the City. After the initial construction of the Common Improvements, all maintenance, repair, replacement, management and operation of the Common Improvements shall be the responsibility of the Declarant, its successors and assigns.

5.2 Assessments. Common Expenses for the maintenance, repair, replacement, management and operation of the Common Improvements shall be assessed and collected from the Owners in accordance with Article VII.

## ARTICLE VI

### USE RESTRICTIONS

6.1. Financial Institutions. No portion of the Property other than Lot 1, Block 1, shall be utilized as an operation accepting deposits and offering loans, credit extensions, and other related financial products and services (a "Financial Institution"), other than ATM machines and so called "in-store banks" commonly located within grocery or department stores. Notwithstanding the forgoing, this restriction shall not prohibit the use of any portion of the Property for financial planning services, insurance agencies, tax services, or brokerage and investment services. This restriction shall terminate if said Lot 1, Block 1 is no longer utilized for a credit union or other banking/credit union operation, except by reason of casualty, act of God or other cause beyond the reasonable control of the then owner of the Property, for any period of twelve (12) consecutive months after the date a Financial Institution opens for business on said Lot 1, Block 1.

6.2. Fast Food Restaurants. No portion of the Property other than Lot 1, Block 2, shall be utilized as a fast food restaurant operating under any of the following listed trade names or any successor trade names: Hardees, Burger King, Wendy's, Culver's or Arby's. This restriction shall remain in effect for a period of five (5) years from the date Declarant conveys fee title to said Lot 1, Block 2, to

McDonald's USA, LLC, a Delaware limited liability company, or its successors or assigns. Notwithstanding the foregoing, this restriction shall terminate in the event McDonald's USA, LLC, its successors or assigns, defaults beyond any applicable period of grace under any lease of Lot 1, Block 2, entered into with Declarant prior to the date Declarant conveys title to said property to McDonald's USA, LLC, its successors or assigns. Notwithstanding the foregoing, this restriction shall terminate prior to the expiration of the above five (5) year period in the event said Lot 1, Block 2 is no longer utilized for the operation of a McDonald's fast food restaurant, except by reason of casualty, act of God or other cause beyond the reasonable control of McDonald's USA, LLC, or its successors or assigns.

## ARTICLE VII

### ASSESSMENTS FOR COMMON EXPENSES

7.1 General. Assessments for Common Expenses shall be determined and assessed against the Lots by the Declarant, in its discretion, subject to the limitations set forth in Sections 7.2 and 7.3. Assessments for Common Expenses shall include annual assessments and may include special assessments. Assessments shall be allocated among the Lots according to the gross square footage of each Lot as a percentage of the aggregate square footage of all the Lots, subject to the following qualifications:

(a) Reasonable attorneys fees and other costs incurred by the Declarant in connection with the collection of assessments against an Owner or Occupant or their employees, agents, contractors or invitees, may be assessed against the Owner's Lot.

(b) Fees, charges, late charges, fines and interest may be assessed in a reasonable manner for late payments and violation of provisions of this Declaration.

(c) If any damage to the Common Improvements or another Lot is caused by the act or omission of any Owner or Occupant, or their employees, contractors or invitees, the Declarant may assess the costs of repairing the damage exclusively against the Owner's Lot to the extent not covered by insurance.

(d) If any installment of an annual assessment or any other assessment payable in installments becomes more than thirty (30) days past due, then the Declarant may, upon ten (10) days written notice to the Owner, declare the entire amount of the assessment immediately due and payable in full.

7.2 Annual Assessments. Annual assessments shall be established and levied by the Declarant subject only to the limitations set forth in this Section and Section 7.3. Each annual assessment shall cover all of the anticipated Common Expenses of the Declarant for that year. Annual assessments may, but need not, provide for contributions to a reserve fund to cover anticipated Common Expenses that are expected to arise in the future, including replacement of Common Improvements.

7.3 Special Assessments. In addition to annual assessments, and subject to the limitations set forth hereafter, the Declarant, may levy in any year, a special assessment against all Lots for the purpose of defraying in whole or in part (i) the cost of any unforeseen or unbudgeted Common Expense, (ii) general or specific reserves for maintenance, repair or replacement, and (iii) the maintenance, repair or replacement of any Common Improvements. Notwithstanding the foregoing, any special assessment shall be subject to approval by Owners owning not less than two-thirds (2/3) of the aggregate square footage of the Lots.

7.4 Working Capital Fund. The Declarant may establish a working capital fund to finance anticipated expenditures or to purchase additional equipment or services.

7.5 Liability of Owners for Assessments. The personal obligation of an Owner to pay assessments shall commence at the later of (i) the recording of this Declaration, or (ii) the time at which the

Owner acquires title to the Lot. The Owner at the time an assessment is payable with respect to the Lot shall be personally liable for the share of the Common Expenses assessed against such Lot. Such liability shall be joint and several where there are multiple Owners of the Lot, except in the event of division of a Lot into multiple parcels in accordance with applicable government regulations, in which case such liability shall be several only. The liability is absolute and unconditional. No Owner is exempt from liability for payment of its share of Common Expenses by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Lot, by the waiver of any other rights, or by reason of any claim against the Declarant or its officers, directors or agents. The Declarant may invoke the charges, sanctions and remedies under applicable law for the purpose of enforcing its rights hereunder.

7.6 Assessment Lien. The Declarant has a lien on a Lot or portion thereof for any assessment levied against that Lot or portion thereof. If an assessment is payable in installments, the full amount of the assessment is a lien. Fees, charges, late charges, fines and interest charges imposed by the Declarant permitted hereunder are liens, and are enforceable as assessments, under this Article. Recording of this Declaration constitutes record notice and perfection of any lien under this Article, with priority as of the date of recording or filing of this Declaration, and no further recordation of any notice of or claim for the lien is required.

7.7 Foreclosure of Lien; Remedies. The lien in favor of the Declarant for assessments may be foreclosed against a Lot or portion thereof in accordance with the laws of the State of Minnesota applicable to a foreclosure against real property (i) by action in accordance with Minnesota Statutes ch. 581, or (ii) by advertisement with power of sale in accordance with Minnesota Statutes ch. 580. The Declarant, 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 or portion thereof so acquired. The Owner and any other Person claiming an interest in the Lot or portion thereof, by the acceptance or assertion of any interest in the Lot, grants to the Declarant a power of sale and full authority to foreclose the lien created by this Declaration by advertisement. The Declarant shall, in addition, have the right to pursue any other remedy at law or in equity against any Owner who fails to pay any assessment or charge against the Lot or portion thereof.

7.8 Lien Priority; Foreclosure. A lien under this Article is prior to all other liens and encumbrances on a Lot or portion thereof except (i) liens and encumbrances recorded before the date of recording or filing of this Declaration, and (ii) liens for real estate taxes and other governmental assessments or charges against the Lot or portion thereof.

7.9 Voluntary Conveyances; Statement of Assessments. In a voluntary conveyance of a Lot or portion thereof, the buyer shall not be personally liable for any unpaid assessments and other charges made by the Declarant against the seller or the seller's Lot or portion thereof prior to the time of conveyance to the buyer, unless expressly assumed by the buyer. The lien of such assessments shall, however, remain against the Lot or portion thereof until satisfied. Any seller or buyer shall be entitled to a statement, in recordable form, from the Declarant setting forth the amount of the unpaid assessments against the Lot or portion thereof, including all assessments payable in the Declarant's current fiscal year, which statement shall be binding on the Declarant, seller and buyer.

7.10 Mortgagee's Option to Cure Defaults. Prior to commencement of foreclosure of any lien for assessments, as described in Section 7.7 hereof, the Declarant shall deliver a written notice of the amount of all delinquent assessments to the holder of any mortgage of record with respect to the Lot or portion thereof for which the assessments are due. Such notice, which shall be in at least a 20-point type font and shall state that the failure to pay may result in foreclosure of the Declarant's lien, shall be sent to the notice address(es) set forth in the mortgage or such other address(es) of which the Declarant has received notice from the mortgagee in the manner set forth in the mortgage. The Declarant notice of default shall be deemed received as provided in the mortgage. The mortgagee shall have thirty (30) days from receipt of the notice to pay the delinquent assessments, together with all interest and other sums

permitted hereunder. If payment in full has not been received within said thirty (30) days, the Declarant may proceed with any and all remedies provided for herein, including foreclosure of its lien.

## ARTICLE VIII

### GENERAL PROVISIONS

8.1 Enforcement. Declarant and the Owners or Occupants, or any one or more of them, shall have the right to enforce by any proceeding, at law or in equity, all covenants, conditions and restrictions now or hereafter imposed by the provisions of this Declaration. Failure by Declarant or the Owners or Occupants to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

8.3 Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by Declarant and/or any Owner of a Lot or portion thereof subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time the covenants and restrictions shall be automatically renewed for successive periods of ten (10) years each unless a majority of the Owners and first mortgagees of the Lots or portions thereof vote to terminate this Declaration.

8.4 Amendment. This Declaration may be amended by an instrument signed by the Declarant (if the Declarant is at the time the Owner of any Lot or portion thereof) and the Owners and first mortgagees of Lots or portions thereof comprising at least seventy-five percent (75%) of the aggregate area of the Lots (excluding any Lots or Outlots owned by the City of Farmington from time to time). Each amendment must be recorded to be effective. No change which materially and adversely affects any Lot or portion thereof to an extent greater than affecting all other Lots and portions thereof shall be made without the consent of the Owners and first mortgagees of such Lot or portion thereof. Notwithstanding the foregoing, the Declarant may amend this Declaration from time to time, by recorded amendment to the Declaration executed by Declarant and the mortgagees of any affected Lots only, to grant or create additional easements against any Lots then owned by Declarant at the time of such amendment. Notwithstanding anything in this Declaration to the contrary, Declarant has an absolute right to unilaterally amend this Declaration for the purpose of converting Outlots into Lots.

8.5 Non-Residential Planned Community. The Property is limited to non-residential use and the Minnesota Common Interest Ownership Act, Minnesota Statutes ch. 515B, does not apply to the Property or this Declaration.

8.6 Transfer of Declarant Rights and Responsibilities. Declarant shall have the right to transfer its rights and responsibilities under Articles V and VII of this Declaration to any transferee of Declarant's interest in the Common Property. Furthermore, Declarant shall have the right to transfer its other rights and responsibilities under this Declaration (including, but not limited to, its rights under Sections 8.1 and 8.4) to any transferee of Declarant's interest as Owner of any Lot or portion thereof. Such transfers shall be deemed effective upon recording or registration of a separate assignment and assumption of Declarant's rights and responsibilities under this Declaration, executed by Declarant and the transferee of such rights and responsibilities and reciting the conveyance by Declarant of the Common Property, a Lot or portion thereof to such transferee, and upon such transfer and assumption Declarant shall have no further rights, responsibilities, obligations or liability under this Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto caused these presents to be executed as of the day and year first above written.

VERMILLION RIVER CROSSING, LLC

By Robert A. Pitner  
Its: Chief Manager

STATE OF MINNESOTA     )  
                                  ) ss.  
COUNTY OF Dakota     )

The foregoing instrument was acknowledged before me this 2 day of November 2005, by Robert A. Pitner, the Chief Manager of VERMILLION RIVER CROSSING, LLC, a Minnesota limited liability company, on behalf of the partnership.

Alicia B Hopkins  
Notary Public

This instrument was drafted by:

Fredrikson & Byron, P.A. (JJS)  
200 South Sixth Street  
Suite 4000  
Minneapolis, Minnesota 55402

#3125218\10

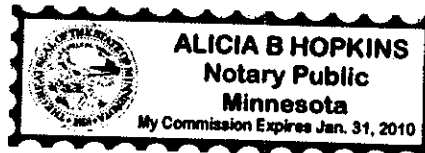




EXHIBIT A

Legal Description of the Property

Lot 1, Block 1; Lot 1, Block 2, Lots 1 and 2, Block 3; Lot 1, Block 4; and Outlots A through J, Vermillion River Crossings, according to the plat thereof on file or of record in the office of the Registrar of Titles in and for Dakota County, Minnesota.