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OFFICE OF THE COUNTY RECORDER
WRIGHT COUNTY, MINNESOTA

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07-28-2006 at 04:20

Check #: 41125074 Fee: **\$46.00**

Payment Code 02

Addl. Fee

Larry A. Unger, County Recorder

RETURN TO:
Old Republic Title
400 2nd Avenue South
Minneapolis, MN 55401

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

7. DR 1039658C
16/1/11

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made as of the 21 day of June, 2006 by Appello Group, LLC, a Minnesota limited liability company (the "Declarant").

WITNESSETH

WHEREAS, Declarant is the fee owner of a certain contiguous real property located in Wright County, Minnesota legally described in Exhibit A attached hereto (the "Burdened Property"); and

WHEREAS, Declarant has determined to sell to Ryan Companies, a Minnesota corporation ("Ryan") certain real property located adjacent to the Burdened Property legally described in Exhibit B attached hereto (the "Benefited Property"); and

WHEREAS, as a material inducement to Ryan's acquisition of the Benefited Property, Declarant has agreed to impose upon and subject the Burdened Property to certain covenants, conditions and restrictions for the benefit of the Benefited Property.

NOW THEREFORE, the Declarant hereby declares, imposes upon and makes the Burdened Property subject to the following covenants, conditions and restrictions:

1. Recitals. The recitals set forth above are hereby incorporated into this Declaration as more fully set forth herein.

2. Definitions. The following terms shall have the meanings hereinafter set forth:

2.1 Benefited Owner. The fee owner(s) from time to time of all or any portion of the Benefited Property.

2.2 Burdened Owner. The fee owner(s) from time to time of all or any portion of the Burdened Property.

3. Imposition of Covenants, Conditions and Restrictions. Declarant hereby declares, imposes upon and makes the Burdened Property subject to all of the following covenants, conditions and restrictions:

3.1 Sight Line Corridor. No earthwork, buildings, or other vertical improvements of any kind whatsoever, shall be constructed, placed or located within the area identified on the Site Plan attached as Exhibit C hereto as the "Sight Line Corridor" that exceed twenty-two (22) feet as measured from the finished floor elevation of any building to be constructed within any

portion of the Sight Line Corridor. Provided, such finished floor elevation shall in no event be more than five feet (5') higher than the existing grade as of the date of this Declaration. Regardless of any provision to the contrary contained in this Section 3.1, utility poles and powerlines may be located within the Sight Line Corridor, if the same are constructed as close as reasonably possible to the property line of the Burdened Property and State Highway No. 101. For purposes of this Declaration, a "building" shall mean any permanently enclosed structure placed, constructed or located on the Burdened Property and shall include any building appurtenances such as parapets architectural features, canopies, signage, supports, and other outward extensions of such structure, but shall specifically exclude rooftop heating ventilation and air conditioning units and screening therefor and rooftop satellite dishes.

3.2 Parking Restrictions. There shall be maintained on that portion of the Burdened Property identified as Outlot A, Outlot B, Outlot H, and Outlot I on the Site Plan, sufficient ground level, standard automobile size, parking spaces in order to comply with the following minimum requirements:

- (a) Four and seven tenths (4.7) parking spaces for each one thousand (1,000) square feet of building floor area, plus the additional drive-up and restaurant parking requirements set forth below;
- (b) if a business use contains a drive-up unit (such as remote banking teller or food ordering/dispensing facility), then there shall also be created space for stacking not less than five (5) automobiles for each drive-up unit;
- (c) for each single restaurant which has less than five thousand (5,000) square feet of floor area, then five (5) additional parking spaces for each one thousand (1,000) square feet of floor area devoted to such use;
- (d) for each single restaurant which has at least five thousand (5,000) square feet of floor area, but less than seven thousand (7,000) square feet of floor area, then ten (10) additional parking spaces for each one thousand (1,000) square feet of floor area devoted to such use; and
- (e) for each single restaurant which has seven thousand (7,000) square feet of floor area or more, then fifteen (15) additional parking spaces for each one thousand (1,000) square feet of floor area devoted to such use.

The balance of the Burdened Property shall comply in all respects and at all times with all governmental provisions regarding minimum parking requirements.

3.3 Use Restrictions. Except as specifically provided in this Section 3.3, in no event shall the Burdened Property be used for any of the following purposes:

- 3.3.1 Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any building on the Burdened Property;

3.3.2 Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation; provided the foregoing prohibition shall not apply to that portion of the Burdened Property identified as the "Flag Parcel" on the Site Plan;

3.3.3 Any "second hand" store or "surplus" store, or pawn shop. Notwithstanding the foregoing, the following stores shall not be prohibited by this restriction: "Game Stop," "Once Upon a Child," "Second Wind Exercise," "Play It Again Sports" and "Second Swing" (golf store), and any similar first-class franchise store;

3.3.4 Any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this provision shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction, or maintenance;

3.3.5 Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors or garbage dumpsters located near the rear of any building;

3.3.6 Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;

3.3.7 Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Burdened Property is located;

3.3.8 Except for the Flag Parcel, any automobile, truck, trailer or recreational vehicles sales, leasing, display or body shop repair operation;

3.3.9 Except for that portion of the Burdened Property identified as the "South Parcel" and "Flag Parcel" on the Site Plan, any bowling alley or indoor skating rink; provided such uses shall be permitted if (i) there is maintained a minimum of ten (10) standard automobile size parking spaces for each 1,000 square feet of building floor area devoted to such uses and (ii) such parking spaces are located upon the same parcel as the respective uses;

3.3.10 Except for the South Parcel and Flag Parcel, any movie theater or live performance theater; provided such uses shall be permitted if (i) there is maintained a minimum of ten (10) standard automobile size parking spaces for each 1,000 square feet of building floor area devoted to such uses and (ii) such parking spaces are located upon the same parcel as the respective uses;

3.3.11 Any veterinary hospital or animal raising or boarding facility; provided, however, this prohibition shall not be applicable to pet shops and veterinary services

provided in connection therewith. Notwithstanding the forgoing exception, any veterinary or boarding services provided in connection with the operation of a pet shop shall only be incidental to such operation; the boarding of pets as a separate customer service shall be prohibited; all kennels, runs and pens shall be located inside the building; and the incidental veterinary and boarding facilities shall collectively occupy no more than fifteen percent (15%) of the floor area of the pet shop. The Burdened Owner shall use reasonable efforts not to permit its customers to allow their pets to urinate or defecate in the common areas of either the Benefited Property or Burdened Property and will promptly act, at its sole cost and expense, to prevent the accumulation of any pet stains, pet odors or pet droppings within that portion of the common area located within one hundred fifty (150) feet from any entrance to such a facility.

3.3.12 Any mortuary or funeral home;

3.3.13 Any establishment selling or exhibiting pornographic materials or which sells drug-related paraphernalia, or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff, or any massage parlors or similar establishments.

3.3.14 Any bar, tavern, restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds thirty-five percent (35%) of the gross revenues of such business. Provided, that the percentage shall be forty percent (40%) for that part of the Burdened Property included in the South Parcel and Flag Parcel;

3.3.15 Any health spa, day spa, fitness center or workout facility; provided such uses shall be permitted if (i) there is maintained a minimum of ten (10) standard automobile size parking spaces for each 1,000 square feet of building floor area devoted to such uses and (ii) such parking spaces are located upon the same parcel as the respective uses;

3.3.16 Any flea market, amusement or video arcade, pool or billiard hall or dance hall. No car wash shall be located on the Burdened Property except (i) if the same is located on the Flag Parcel; or (ii) if the car wash is part of a gas/convenience store and is located on Outlot C of the Burdened Property;

3.3.17 Any training or educational facility, including, but not limited to, by way of example, Huntington Learning Center and further including, but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business on the Burdened Property.

3.3.18 Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video

poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the occupant of the Burdened Property; or

3.3.19 Any supermarket or grocery store, or any department within a store which sells food, groceries, fruit, produce, dairy products, vegetables, bakery products, meats or delicatessen products. Notwithstanding the foregoing, the sale of such grocery items, such as coffee, bagels and muffins, shall be permitted by a convenience store, gas station, or other similar "quick-stop" convenience business located upon the Burdened Property (collectively, a "Convenience Store"), provided the display and sales area devoted to such use within each Convenience Store shall not exceed 5,000 square feet of floor area. The foregoing restriction shall terminate if the occupant of Lot 2, Block 1 of the Benefited Property ceases to sell food, groceries, fruit, produce, dairy products, vegetables, bakery products, meats and/or delicatessen products from all or any portion of the building(s) located on said property for a continuous period of at least five (5) years. Any interruption in such food operations due to initial development, remodeling, expansions, or causes beyond the reasonable control of the occupant of said property (e.g. casualty, condemnation, labor disputes, etc.) shall not be considered a cessation of operations for the purposes of calculating such five year period.

3.3.20 Any drug store, pharmacy or other business selling or offering for sale any pharmaceutical products requiring the services of a licensed pharmacist. Provided, the operation of a pharmacy which is located within a medical office building or medical clinic shall not be prohibited.

4. Duration. The covenants, restrictions and conditions created herein (collectively, the "restrictions") shall run with and bind the Burdened Property and shall inure to the benefit of the Benefited Property and be enforceable by any Benefited Owner, their respective legal representatives, heirs, successors and assigns; provided that the foregoing shall terminate and be of no further force and effect thirty (30) years from the date hereof unless, at such time, the Benefited Property is being used for retail purposes (or is not being so used due to construction, casualty, repair, or remodeling) in which event the restrictions shall continue to remain in full force and effect for successive five (5) year periods until such time as such use requirement is no longer satisfied.

5. Enforcement.

5.1 Remedies. A Benefited Owner shall have the right to enforce any or all of the covenants, restrictions and conditions set forth herein against the Burdened Property and/or the Burdened Owner(s) by any proceeding at law or in equity. In addition to all other remedies available at law or in equity, a Benefited Owner may apply for and obtain from a court of competent jurisdiction equitable relief in the way of a temporary restraining order, temporary and

permanent injunction and/or a decree of specific performance prohibiting such activities in violation of the provisions hereof and/or enforcing the terms of this Declaration.

5.2 Costs of Enforcement. In any action or proceeding brought hereunder, the prevailing party in the action or proceeding shall be entitled to collect all of its costs of the action, including reasonable attorneys' fees, from the non-prevailing party.

5.3 Waiver of Right to Trial by Jury. Each party to an action or proceeding brought hereunder waives, to the fullest extent permitted by law, the right to trial by jury in any such action, proceeding or counterclaim, whether in contract, tort or otherwise.

5.4 No Waiver. The failure of a Benefited Owner to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

6. Severability. Invalidation of any of the provisions herein by judgment or court order shall not affect any of the remaining provisions of this Declaration, which shall remain in full force and effect until the date of expiration hereof.

7. Reformation. If any provision contained in this Declaration is or would be deemed invalid under or would otherwise violate applicable law, such provision shall be automatically reformed as necessary to comply with applicable law and such reformed provision shall be enforceable to the fullest extent permitted by applicable law.

8. No Merger. Neither this Declaration nor the other rights created herein shall terminate or merge by reason of common ownership of the Burdened Property and the Benefited Property, or any portion of thereof.

9. Amendment and Termination. This Declaration may be amended or terminated only by written agreement signed by (i) the fee owner of Lot 2, Block 1 of the Benefited Property and (ii) the Declarant, so long as Declarant is the fee owner of any of the Burdened Property.

10. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. This Agreement shall not be construed strictly for or against either the Benefited Owner(s) or Burdened Owner(s). This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed as of the day and year first above written.

"Declarant"

APPELLO GROUP, LLC,
a Minnesota limited liability company

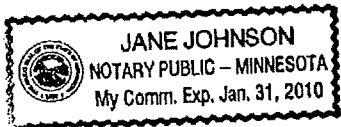
By: David A. Taus

Name DAVID A. TAUS

Its: CHIEF MANAGER

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 22nd day of June, 2006, by David A. Taus, the Chief Manager of Appello Group, LLC, a Minnesota limited liability company, on behalf of said company.



Jane Johnson
Notary Public

This Instrument was Prepared By:

Barna, Guzy & Steffen, Ltd.
400 Northtown Financial Plaza
200 Coon Rapids Boulevard
Minneapolis, Minnesota 55433
(763) 780-8500 (MFH)
320166v10

EXHIBIT A
LEGAL DESCRIPTION OF BURDENED PROPERTY

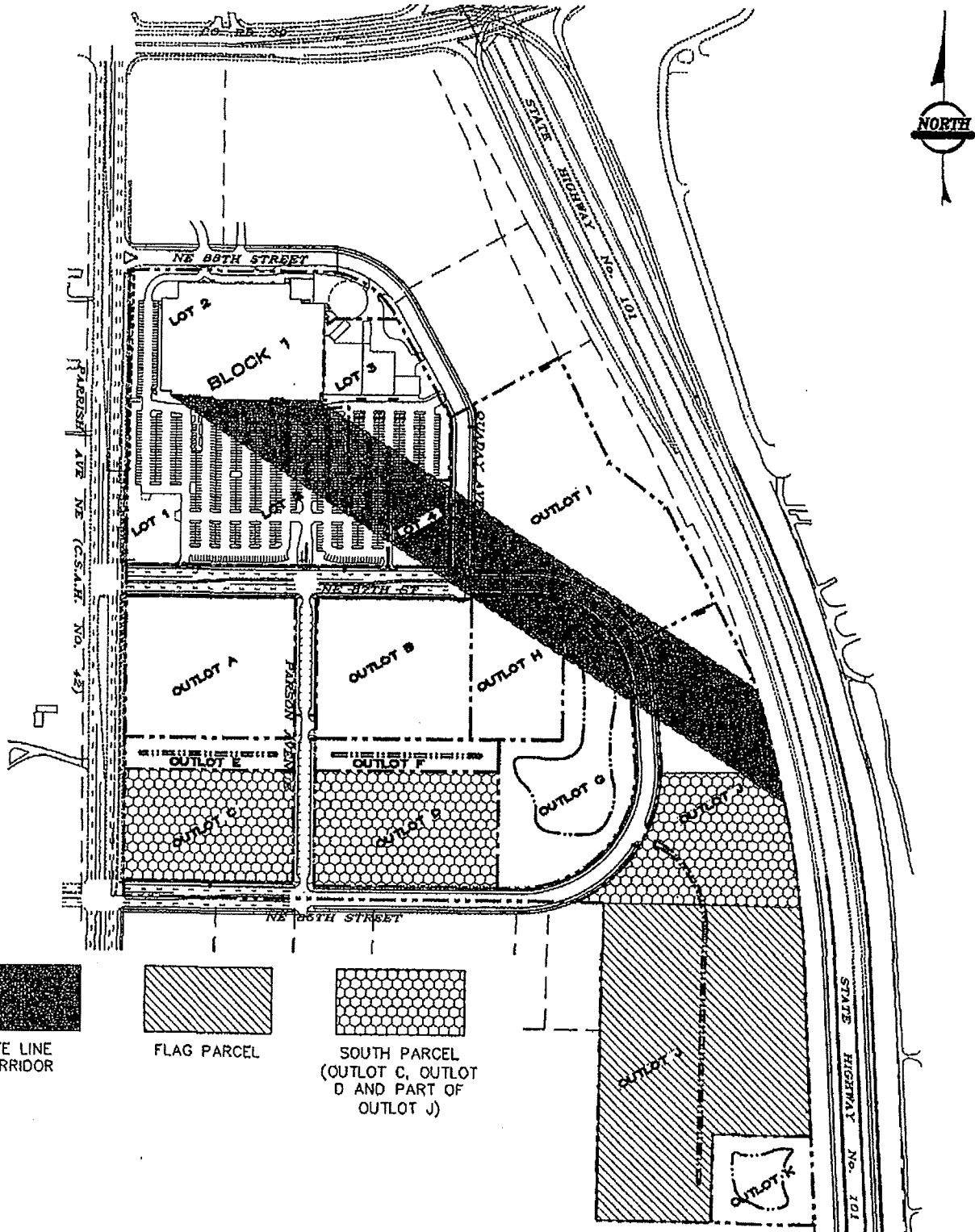
Outlots A, B, C, D, H, I and J, inclusive, Great River Centre of Otsego, Wright County, Minnesota.

EXHIBIT B
LEGAL DESCRIPTION OF BENEFITED PROPERTY


Lots 1, 2, 3 and 4, Block 1, Great River Centre of Otsego, Wright County, Minnesota.

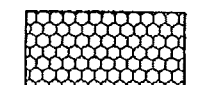
**EXHIBIT C
SITE LINE**

(attached)




SITE LINE
CORRIDOR


FLAG PARCEL


SOUTH PARCEL
(OUTLOT C, OUTLOT
D AND PART OF
OUTLOT J)



0110 Blue Circle Drive • Suite 100 • Minnetonka, MN 55343

Delvick, MN
Hann Lake, MN
Hibbing, MN
Minnetonka, MN
Phone: 952 933 0972
Fax: 952 933 1153
www.rlk.com

Great River Centre

Exhibit C: Site Line Exhibit

Otsego, MN
Date: 5/16/06

**CONSENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

The undersigned, **21st Century Bank**, a Minnesota corporation, is the holder of the following mortgages:

1.) Combination Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents executed by Appello Group, LLC and others in favor of American Bank of St. Paul, dated December 20, 2005, filed December 23, 2005 as Document No. 991895, in the original amount of \$8,300,000.00, which mortgage has been assigned to the undersigned by assignment dated April 5, 2006, filed April 27, 2006, as Document No. 1007374.

2.) Combination Mortgage, Assignment of Rents, Security Agreement and Fixture Financing Statement executed by Appello Group, LLC, a Minnesota limited liability company in favor of 21st Century Bank, a Minnesota corporation, dated April 3, 2006, filed April 4, 2006, as Document No. 1004473, in the original amount of \$500,000.00; and

3.) Combination Mortgage, Assignment of Rents, Security Agreement and Fixture Financing Statement executed by Appello Group, LLC, a Minnesota limited liability company in favor of 21st Century Bank, a Minnesota corporation, dated April 3, 2006, filed April 4, 2006, as Document No. 1004474, in the original amount of \$5,500,000.00;

The undersigned hereby consents to the execution and filing of the Declaration of Covenants, Conditions and Restrictions (the "Declaration") to which this Consent is attached and subordinates its interest as mortgagee in the "Burdened Property" (as defined therein) to the Declaration.

IN WITNESS WHEREOF, the undersigned has executed this Consent to Sign Easement Agreement as of the day and year set forth below.

Dated: June 26, 2006

21st CENTURY BANK

By: [Signature]
Name: Jonathan F. Dolphin
Title: Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF Hennepin

The foregoing instrument was acknowledged before me this 26th day of June, 2006, by Jonathan F. Dolphin, the Vice President of 21st CENTURY BANK, a Minnesota corporation, on behalf of the corporation.



[Signature]
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
LARKIN, HOFFMAN, DALY & LINDGREN, LTD.
1500 WELLS FARGO PLAZA
7900 XERXES AVENUE SOUTH
BLOOMINGTON, MINNESOTA 55431
(952) 835-3800

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