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Register of Deeds, Douglas County NE
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**DECLARATION OF
EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS
FOR A PART OF LEGACY, A SUBDIVISION
IN DOUGLAS COUNTY, NEBRASKA**

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration"), is made and entered into as of the 20th day of April, 2005, by LEGACY DEVELOPMENT, L.L.C., an Iowa limited liability company ("Declarant") and its successors and assigns, LEGACY UPSTREAM, LLC, an Iowa limited liability company, and THE SHOPS OF LEGACY, LLC, a Nebraska liability company (collectively, the "Parties", or in the singular, a "Party").

WITNESSETH:

WHEREAS, the Parties are the owners of property located in Douglas County, Nebraska, which is legally described as Lots 4 through 6, inclusive, Legacy, Lots 1 and 2 Legacy Replat 5, and Lots 1 and 2 Legacy Replat 10, each a subdivision, as surveyed, platted, replatted, administratively split and recorded in Douglas County, Nebraska, and depicted on Exhibit A (the "Site Plan") as the Legacy Development ("Development")

WHEREAS, the Parties desire to establish for their own benefit and for the mutual benefit of all future Owners (as defined below) of the Parcels, or any part thereof, certain easements and rights in, under, over and upon the Parcels and certain mutually beneficial restrictions and obligations with respect to the use, operation and maintenance thereof consistent with a quality, first class integrated mixed use development.

NOW, THEREFORE, the Parties hereby declare that all of the property within the Development shall be held, sold, leased and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in such Properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof. Further, in consideration of the premises, the promises and covenants of the Parties hereto, the mutual benefits and advantages accruing to them, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

KOLEY JESSEN P.C.,
A Limited Liability Organization
One Pacific Place, Suite 800
1125 South 103 Street
Omaha, NE 68124

MJB

Reb 29

MI-22268
MI-22275 Rep 5
MI-22281 Rep 10
misc REC 103.50 FB
20/7 BNP _____ C/O _____ COMP 2
DEL _____ SCAN _____ FV _____

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ARTICLE I DEFINITIONS

Section 1.1 "Association" means the Legacy Owners Association, a Nebraska not-for-profit corporation and shall mean and include its board of directors, officers and other authorized agents.

Section 1.2 "Building(s)" means the building(s) which has (have) been, will be or may be constructed on a Parcel, but such term does not include Common Area Improvements (as that term is hereinafter defined).

Section 1.3 "Common Areas" shall mean the real property within each Parcel which is for the common use and mutual enjoyment of the Owners, in keeping with the spirit and intent of this Declaration which shall mean only the non-publicly dedicated ring road extending east from 171st Street/Oak Drive and then south to Oak Drive as depicted on the Site Plan (the "Ring Road") and medians in the Ring Road if any, and the "Common Utility Facilities" defined in Section 1.5 below. Canopies which extend over the Common Areas, together with any columns or posts supporting the same, all sidewalks and any parking areas in the Ring Road, shall be deemed to be a part of the Building or Parcel to which they are adjacent or attached and not a part of the Common Areas.

Section 1.4 "Common Area Improvements" means all improvements which will be or may be constructed on the Common Areas under the terms of this Declaration, and all other improvements which would be part of the "Common Areas" under the above definition, and all improvements constructed from time to time in replacement of the same or in such redesign of the same as may be agreed to by the Parties.

Section 1.5 "Common Utility Facilities" means utility systems and facilities from time to time situated within the Common Areas, for use or service in common by the Owners or for the service of the Common Areas, such as the following: storm drainage, lighting, storm water retention and facilities and sanitary sewer systems, manholes, underground electric power cables and systems, and all other utility systems and facilities for such common use or service, including, without limitation, those installed under the provisions of this Declaration and as replacements thereto. The underground storm water detention system, located under the area shown on the plat of Legacy recorded in Book 2180 at Page 570 in Douglas County as a Permanent Storm Water Detention and Ponding Easement in Lot 7 Legacy, shall also be a Common Utility Facility.

Section 1.6 "Development Agreement" means the certain Mixed Use District Development Agreement for Legacy Lots 1 through 10 inclusive, dated March 25, 2003, between the City of Omaha and Declarant, and any and all subsequent amendments thereto, copies of which are available from the City of Omaha. The Development Agreement includes, without limitation, use, specific improvements and other requirements for the Development, and may be amended from time to time.

Section 1.7 "Improvements" means Building(s) paving, and related constructed improvements, and the Common Area Improvements on a Parcel.

Section 1.8 "Owner" shall mean and refer to the record owner of a fee simple title, whether one or more persons or entities, to any Parcel, as hereinafter defined, but excluding those having such interest merely as security for the performance of any obligation.

Section 1.9 "Parcel" or "Property" shall mean and refer to each of Lots 4, 5, and 6, inclusive, Legacy, each of Lots 1 and 2 Legacy Replat 5 and each of Lots 1 and 2 Legacy Replat 10, each a subdivision as surveyed, platted, replatted, administratively split and recorded in Douglas County, Nebraska, and each lot or Parcel hereafter created in subsequent replats, administrative splits or by other subdivisions of such Parcel(s) from time to time.

Section 1.10 "Party" means Declarant (until such time Declarant is no longer an Owner), all Owners of one or more Parcel(s) at the time of filing this Declaration, or any successor person(s) acquiring any interest of a Party in or to any portion of such Party's Parcel.

Section 1.11 "Permittee" shall mean all Owners, their Tenants or licensees of the Properties, and each of their respective officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, and invitees.

Section 1.12 "Subdivision Agreement" means that certain Subdivision Agreement dated February 14, 2001, by and among the Declarant and Sanitary Improvement District No. 459 of Douglas County, Nebraska and the City of Omaha, a municipal corporation in the State of Nebraska pertaining to Legacy Lots 1 through 10 inclusive, and any and all subsequent amendments thereto.

Section 1.13 "Tenant" shall mean and refer to the designated tenant or lessee under a lease agreement for parts of the Properties or improvements constructed on the Properties, and including any sublessees or subtenants of a Tenant.

ARTICLE II EASEMENTS

Section 2.1 Definitions and Documentation. For the purposes of this Article, the following will apply:

- (a) A Party granting an easement is called the "Grantor", it being intended that the grant shall thereby bind and include not only such Party but also its successors and assigns.
- (b) A Party to whom the easement is granted is called the "Grantee", it being intended that the grant shall benefit and include not only such Party but its successors, assigns; although not for the direct benefit of Tenants and Permittees, the Grantee may permit from time to time its Tenants and Permittees to use such easements; provided, however, that no such permission nor the division of the dominant estate shall permit or result in a use of the easement in excess of the use contemplated at the date of the creation of such easement.
- (c) The word "in" with respect to an easement granted "in" a particular Parcel means, as the context may require, "in", "to", "on", "over", "through", "upon", "across", and "under", or any one or more of the foregoing.
- (d) All easements granted herein are non-exclusive and are irrevocable and perpetual, except as otherwise provided in this Declaration.
- (e) All easements herein shall be easements appurtenant and not easements in gross.

(f) In the event a Party transfers or conveys a portion of its Parcel in accordance with the terms of this Declaration, those easements granted under this Article II which benefit, bind, and burden the remainder of the Parcel not transferred or conveyed shall benefit, bind, and burden the portion of the Parcel so transferred or conveyed, and those easements granted under this Article II which benefit, bind, and burden the portion so transferred or conveyed shall benefit, bind, and burden the remainder of the Parcel of which it was a part.

(g) All easements granted hereunder shall exist by virtue of this Declaration, without the necessity of confirmation by any other document. Likewise, upon the termination of any easement (in whole or in part) or its release in respect of all or any part of any Parcel, in accordance with the terms hereof, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the request of a Party, the other Parties will sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement, if the form and substance of the document is approved by the other Parties. No grant of an easement pursuant to this Article II shall impose any greater obligation on any Party to construct or maintain its Building except as expressly provided in this Declaration.

Section 2.2 Easements for Use of Common Areas. The Owners hereby create and grant to all Owners of the Development (each being a Grantee), non-exclusive easements in the Common Areas:

- (a) ingress to and egress from the Parcels;
- (b) the passage of vehicles;
- (c) the passage and accommodation of pedestrians;
- (d) construction and use of, and access to Common Utility Facilities (and their own respective private utilities) in the Common Areas;
- (e) reasonable access and use by Permittees; and
- (f) the doing of such other things as are authorized or required to be done on the Common Areas under this Declaration; provided, however, that such easements are limited to such portions of the Common Areas as are now or hereafter from time to time set aside, maintained and authorized for such use under this Declaration, including only those portions of the Common Areas shown on Exhibit A.
- (g) Enjoyment of the easements granted by this Section shall commence on the date the Common Area Improvements on the Common Areas are substantially completed.
- (h) The easements provided for in this Section 2.2 are subject to the rights to use the Common Areas for other purposes provided for in this Declaration; provided, however, that no changes shall be made in the Common Areas or in the location or design of Common Area Improvements, except as otherwise herein provided.

Section 2.3 Intentionally Deleted.

Section 2.4 Intentionally Deleted.

Section 2.5 Easements to Public Utilities. Any grant or other conveyance of an easement permitted hereunder to a public utility by Grantor on its Parcel shall, without necessity of further recital in the conveyance instrument, be deemed to include the following conditions, covenants and restrictions to which such public utility and its successors shall be bound unless stated otherwise in such instrument.

- (a) The easement is exclusive as to each utility;
- (b) All facilities installed pursuant to the easement shall be underground, except for manhole and manhole covers which shall be flush with adjacent grade, and except as otherwise shown on plans approved by Grantor;
- (c) Grantor retains the right to use the surface areas as Grantor sees fit;
- (d) Grantor reserves the right to require Grantee to relocate its facilities (and vacate the easement) to another location on Grantor's Parcel, subject to the conveyance of a similar easement, all at Grantor's cost and expense;
- (e) Grantee shall not, in its use or installation, unreasonably interfere with other installations and easements in the area;
- (f) Grantee shall make adequate provisions for the safety and convenience of all persons using the area;
- (g) Grantee, following Installation or other work, shall replace and restore the areas and improvements to the condition in which they were immediately prior to performance of such installation and work;
- (h) Grantee shall defend, indemnify and hold harmless Grantor against all loss, liability, and costs (including reasonable attorneys' fees) which may result to Grantor from the negligent act or omission of, its agents, employees and contractors; and
- (i) Other than the easement granted herein, Grantee shall not permit any claim, lien or encumbrance to attach against Grantor's Parcel or any interest therein.

Section 2.6 No Barrier Agreement. Barriers, fences, grade changes or other obstructions shall not impede or interfere in any way with the free flow of vehicular and pedestrian traffic in the Common Areas, or in any manner unreasonably restrict or interfere with the use and enjoyment by any of the Parties of the rights and easements created by this Article II. The preceding sentence shall not prohibit the reasonable designation and relocation of traffic and pedestrian lanes. In addition, each Owner may temporarily close or block traffic on its Parcel if necessary for the time for the purpose of protecting ownership rights and preventing creation of easements to the public and unrelated third parties (provided, however; that prior to closing off any portion of the Common Areas, as herein provided, such Owner shall give fifteen (15) days written notice to each other Owner of its intention to do so and shall attempt to coordinate such closing with each other Owner, so that no unreasonable interference in the

passage of pedestrians or vehicles shall occur), and may temporarily fence off portions of its Parcel as reasonably required for the purpose of repair, construction and reconstruction; provided, however, that if any portion of the Common Areas are so closed off, the Owner so closing it shall provide that all vehicle access remains open to all the affected Parcels via Common Areas, public streets, driveway across such Owner's parking area, or otherwise.

ARTICLE III RESTRICTIONS

Section 3.1 Land Use and Building Type. All development must conform to the Development Agreement and the Subdivision Agreement, and to all applicable zoning regulations of any municipal body or agency with jurisdiction over the Parcels. Every Parcel shall be used only for businesses customarily located in office and mixed use centers in the regional area, including, but not limited to, financial institutions, service shops, offices, retail stores selling retail merchandise normally carried in other quality mixed use centers, and bars and restaurants, but subject to the restrictions set forth herein.

Section 3.2 Completion of Improvements. Weather permitting, all paving and landscaping will be finished upon completion of the Building, but in no event shall it be installed later than one hundred twenty (120) days after the Building is occupied, weather permitting. Total construction time from pouring footings to the completion of the Building ready for occupancy shall not exceed eighteen (18) months, weather, other force majeure items, and causes beyond Owner's reasonable control permitting, and excepting large or complex buildings which, although diligently constructed, would reasonably require longer than eighteen (18) months to complete.

Section 3.3 Nuisances. No Parcel shall be used for anything other than purposes which may be permitted by applicable zoning regulations, the Development Agreement and/or the Subdivision Agreement, and no Parcel may be used for any purpose which would violate Section 3.1 or which would constitute a nuisance.

Section 3.4 Use Restrictions.

(a) During the term of this Declaration no portion of the Properties may be used for any of the following purposes without a vote of consent of no less than eighty percent (80%) of the Owners through the Association, which consent shall not be unreasonably withheld:

- (1) A stand-alone bowling alley.
- (2) A service station or truck stop, except for gasoline pumps in conjunction with a convenience or other store.
- (3) A flea market (sidewalk sales and art fairs are permitted).
- (4) A stand-along skating rink.
- (5) A car wash.
- (6) An auto-body repair shop.

(7) An outdoor volleyball or basketball court or other sports activity area associated with or connected to any bar or establishment that serves alcohol.

(b) During the term of this Declaration, no portion of the Properties may ever be used for any of the following uses whatsoever:

(1) An adult type bookstore or other establishment selling or exhibiting pornographic materials or live nudity.

(2) A massage parlor (which does not include tanning parlors, health spas or clubs or beauty salons that offer massages as an incidental part of the tanning parlors, health and fitness and beauty services.

(3) A mortuary.

(4) A mobile home or trailer court, labor camp, junkyard or stockyard or feed yard.

(5) A land fill, garbage dump or for the dumping, disposing, incineration or reduction of garbage, a scrap yard or towing impounding lot.

ARTICLE IV CONSTRUCTION

Section 4.1 Architectural Design and Site Plan Review. Commencing upon the full execution of this Declaration, before commencing any work on Improvements on any Parcel, the Owner of such Parcel shall first submit site plans, grading plans, landscaping plans, sign plans and building elevations plans, together with applicable specifications, to the Declarant for its written approval, which approval will not be unreasonably withheld or delayed. The Declarant shall have the right to establish reasonable, standard procedures for submission and review of plans to be applied uniformly to all reviews. Declarant shall be authorized to reasonably employ architects, engineers, and other consultants to assist it in performing the review functions herein. The approval by Declarant or the Association of any plans and specifications submitted for approval in accordance with this Declaration shall not constitute any representation or warranty as to the adequacy, sufficiency, performance, compliance with laws and regulations. The Declarant shall be guided by this Declaration, the Development Agreement, and such reasonable rules, regulations, restrictions, architectural standards and design guidelines as are described in Sections 3.4, 4.2 and 5.1 herein.

Section 4.2 Buildings.

(a) Design and Construction. The Buildings within the Development shall be in compliance with the Development Agreement and the Subdivision Agreement. The Building shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible and so that building wall footings shall not encroach from one Parcel onto another Parcel. All exterior elevations that are visible from other Owner's Parcel shall be fully-finished aesthetically or screened sufficiently so that there are no "back sides" facing any other Owner's Parcel finishes similar in style, design and construction as the Roja building on Lot 2 of Legacy Replat 4 with appropriate berming and landscaping (is one example of acceptable elevations). The design and

construction shall be of high quality. No Building shall be an industrial-type metal building or have a corrugated metal exterior (although a Building may have a standing metal seam roof or canopy features, or have stainless steel design or aluminum store front or other high quality design features) and no rooftop signs shall be permitted on any Building constructed in the Development unless approved in advance by Declarant. Buildings bordering 168th Street and/or West Center Road shall not exceed twenty-eight (28) feet in height from lowest exterior paved grade to top of building, including parapets and architectural features except for existing buildings taller than 28 feet which are grandfathered from this restriction.

(b) Fire Protection. Any Building constructed in the Development shall be constructed and operated in such a manner which will preserve the sprinklered rate on the other Buildings in the Development.

(c) Screening. All refuse dumpsters, compactors, satellite dishes, large antennas, generators, large chillers and other large HVAC equipment shall be screened from view, using materials and design complimentary to, or matching, the building(s) served by such items.

(d) Satisfactory Style and Materials. By way of example of architectural style and construction materials that will be approved by Declarant, the improvements constructed on Lots 1 and 2, Legacy Replat 5 are of an architectural style and are constructed of materials that are consistent with the intended scheme of development for the Properties and any Owner that submits plans as required by Section 4.1 that are consistent with such architectural style and construction materials and are consistent with the Development Agreement and Subdivision Agreement will receive prompt approval of such plans. There will be no fee charged for review and approval of plans for construction of improvements.

Section 4.3 Architectural Review Committee. Declarant shall, no later than two (2) years following the full execution of this Declaration, assign all of its rights under this entire Article IV to the Association and the Association, may, in its discretion appoint a committee of the Board of Directors of the Association as an architectural review committee to perform the functions of the Declarant under this Article IV. The assignment of the Declarant rights under this Article IV shall be in writing signed by Declarant, but need not be recorded with the Register of Deeds to be effective. (If such assignment of the Declarant rights is not signed by Declarant, for any reason whatsoever, such assignment shall be effective without further procedure upon the end of the second year following execution of this Declaration.)

ARTICLE V DEVELOPMENT MAINTENANCE AND TAXES

Section 5.1 Development.

(a) "Parking Area" Ratio. Each Party hereto agrees that at all times there shall be independently maintained on each Parcel parking areas sufficient to accommodate the parking requirements of the buildings on each respective Parcel, including no fewer than four (4) paved full size automobile parking spaces for each one thousand (1,000) square feet of floor area contained within the Buildings on such Parcel, or the number of parking spaces required by applicable law, the Development Agreement, and/or the Subdivision Agreement, whichever is greater; provided, however,

that no less than ten (10) paved full size automobile parking spaces for each 1,000 square feet of floor area contained within the Buildings on a Parcel, or the number of parking spaces required by applicable law, whichever is greater, shall be required and independently maintained for space devoted to bars and restaurants serving alcohol that are in excess of 3,000 square feet.

(b) Subdivision. Subject to the provisions of this Declaration, the Parties reserve the right to subdivide, convey, lease or assign their respective Parcels or any portion thereof through any means including, but not limited to, subdivision, lease, ground lease, condominium declaration or air-lot condominium declaration.

Section 5.2 Maintenance. Each Party hereto shall maintain the Buildings parking areas, paving, sidewalks, landscaping, signs and other improvements on its Parcel in good order and condition and state of repair in accordance with the standards of good Development operation. The Association shall maintain the Common Areas and Common Utility Facilities in good order and state of repair in accordance with the standards of a first class mixed-use center operation, including (but not limited to) sweeping and removal of trash, litter and refuse, maintenance, repair and replacement of paving and Common Utility Facilities (pipes, etc.) as necessary, plowing of snow from the Common Areas, and maintenance and repair of common signs, if any (which are common to all Owners in the Development). Each of the Parties covenants that it, in addition to other requirements of this Section, will keep the inside and outside of all glass in the doors and windows of its Buildings reasonably clean; will maintain its Buildings at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; will not permit accumulation of garbage, trash rubbish and other refuse, and will remove same at its own expense, and will keep such refuse in proper containers or compactors screened from view in places designated therefore until called for to be removed. The Parties confirm their intention that the maintenance and repair of the Development should be of such a character that the Development's appearance will be that of a unified mixed use center and, accordingly, the Parties agree to cooperate with each other in good faith with respect to said maintenance and repair and to the extent reasonably possible coordinate such repair and maintenance.

ARTICLE VI

INSURANCE/INDEMNIFICATION/CASUALTY

Section 6.1 Insurance.

(a) The Owner of each Parcel shall procure and maintain in full force and effect throughout the term of this Declaration commercial general liability insurance and property damage insurance against claims for personal injury, death, or property damage occurring upon in or about its Parcel with combined single limit coverage of not less than Two Million Dollars (\$2,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. The Owner of each Parcel shall provide the Association with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the Party which may cover other property in addition to the property covered by this Declaration. Such insurance shall provide that the same may not be canceled without at least thirty (30) days prior notice to the Association.

(b) Notwithstanding anything to the contrary contained in this Section 6.2, so long as the net worth of a Party shall exceed One Hundred Million Dollars

(\$100,000,000.00), as evidenced by three years' audited financial statements, and so long as such Party or any affiliate thereof is owner or lessee of its Parcel, such Party shall have the right to satisfy its obligations under this Article VI by self-insuring and retaining the financial risk for any claim and shall provide an affidavit and certificate detailing same to Association's reasonable satisfaction upon written request.

ARTICLE VII EMINENT DOMAIN

Section 7.1 Owner's Right to Award. Nothing herein shall be construed to give any Party any interest in any award or payment made to the other Parties in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Party's Parcel or giving the public or any government any rights in said Parcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on the Development, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the Owner thereof, and no claim thereon shall be made by the Owners of any other portion of the Common Areas.

Section 7.2 Collateral Claims. All other Owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and Improvements taken from another Owner.

Section 7.3 Tenant's Claim. Nothing in this Article VII shall prevent a Tenant from making a claim against an Owner pursuant to the provisions of any lease between such Tenant and such Owner for all or a portion of any such award or payment.

Section 7.4 Restoration of Common Areas. The Owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective Parcel as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

ARTICLE VIII

OWNER'S ASSOCIATION

Section 8.1 The Association. The Legacy Owners Association is hereby created, which shall administer, insure, operate, manage, control, maintain, repair, rebuild and restore all of the Common Areas and Common Utility Facilities for the mutual benefit of all Owners, so that the Common Areas stay clean, safe, in good repair and operating order, and consistent with the overall quality of the Development. The Association shall have the authority to provide services affecting portions of the Common Areas consistent with the overall character and use of the Development, provided that such services are for the mutual benefit of all of the Owners and are not provided by the Declarant or any individual Owner, or to grant licenses or concessions for the provision of such services, and to charge reasonable fees for such services, licenses or concessions. Any amounts received by the Association from fees, licenses, concessions and other sources shall be held and used by the Association for the benefit of the Owners pursuant to such rules, resolutions or regulations as the Association may adopt.

Section 8.2 By the Declarant. Declarant shall be solely responsible, at its expense, for the initial construction and installation of the Common Area Improvements and Common Utility Facilities on certain portions of the Development which may include, but are not necessarily limited to, the Ring Road and lighting poles. Except to the extent that Declarant is responsible for its own Improvements for any Parcels it owns, after the initial construction and installation, except for warranty claims for defective construction of the Common Area Improvements and Common Utility Facilities, Declarant shall have no continuing liability or obligation for any repair, maintenance, operating, insuring, replacement or restoration of any of the foregoing Common Area Improvements, all of which shall be the continuing obligation and liability of the Association in accordance with the provisions of this Declaration.

Section 8.3 Membership and Voting. Each Owner shall be a Member of this Association. Membership shall be appurtenant to ownership of any Lot, and may not be separated from ownership of each Lot. Each Member, whether one or more persons and entities, shall have a number of votes equal to the ratio such Owner's Lot or Lots represents in relation to the land area of the Development, which is initially described on Exhibit "B" attached hereto and incorporated herein by this reference (i.e., the Owner of 5% of the land area of the Development shall be entitled to 5 votes), on each matter properly coming before the Members of the Association.

Section 8.4 Purposes and Responsibilities. The Association shall have all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

- (a) The acquisition, development, maintenance (including, but not limited to, snow plowing on the Ring Road), repair, replacement, operation and administration of Common Areas, and the enforcement of the rules and regulations relating to the Common Areas and the Development.
- (b) The landscaping, mowing, watering, repair and replacement of parks, if any, and other public property and Common Area Improvements on parks or public property, if any, all within the Common Areas.
- (c) The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.
- (d) The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment and purchase of insurance, if necessary, covering any Common Areas against property damage and casualty, and purchase of liability insurance coverages for the Association, the directors or officers of the Association, if any, and the Board Members.
- (e) The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.
- (f) The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

(g) The deposit, investment and reinvestment of Association funds in interest-bearing bank accounts (if possible), money market funds or accounts, certificates of deposit or similar investments in which principle is not diminished.

(h) The employment of professionals and consultants to advise and assist the officers and directors of the Association in the performance of their duties and responsibilities for the Association.

(i) General administration and management of the Association, execution of such documents, and doing and performance of such acts as may be necessary or appropriate to accomplish such administration, management, or purposes of the Association.

(j) The rights and obligations of architectural and site plan review of the Association described in all of Article IV of this Declaration.

Section 8.5 Common Fees and Expenses. Each Parcel shall be subject to an assessment for, and each Owner shall be obligated to pay its share of all expenses incurred by the Association in administrating, operating, managing, maintaining, repairing, rebuilding, replacing, restoring and insuring the Common Areas and Common Utility Facilities as provided herein ("Common Areas Charge"). Each Owner's share of Common Areas Charges shall be as designated on Exhibit "B" attached hereto and incorporated herein by this reference and shall be reasonably estimated in advance by the Association, at the annual meeting of the Association, and such estimate shall be paid in equal monthly installments on or before the first day of each calendar month. Each Owner shall pay to the Association, on demand the amount, if any, equal to the amount by which the Owner's share of the actual expenses in any particular month exceeds the Owner's share of the estimated expenses. Any excess amounts paid during a calendar year shall be credited towards the amounts payable in the following year. Each Owner's share shall be equivalent to its respective voting share described in Section 8.3. The books and records of the Association shall be open to any Owner to review and/or audit at any reasonable time, and Owners shall have any overages returned if errors, discrepancies or other miscalculations are found. Each year, or upon request from time to time, the Association shall provide a written statement of the receipt and disbursements and current account balances of the Association and each owner to any Owner(s) who request such statement.

Section 8.6 Liens. The Common Areas Charge shall be the obligation of each Owner at the time when the Common Areas Charge first becomes due and payable. The Common Areas Charge, together with interest at the rate of 1.5% per month thereon, costs and reasonable attorneys' fees, if not paid within thirty (30) days from receipt of invoice, shall also be a charge and continuing lien upon the Lot against which the Common Areas Charge is charged. The obligation for delinquent Common Areas Charges shall not pass to the successor in title to the Owner at the time the Common Areas Charge become delinquent unless such Common Areas Charge are expressly assumed by the successors, but all successors shall take title subject to the lien for such Common Areas Charge, and shall be bound to inquire of the Association as to the amount of any unpaid Common Areas Charge.

Section 8.7 Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of Common Areas Charge which is not paid when due (within thirty (30) days of receipt of invoice from the Association) shall be delinquent. Delinquent Common Areas Charges shall bear interest from the due date at the rate of 1.5% per month. The Association

may bring an action at law against any Owner obligated to pay the same, or foreclose the lien against the Parcel(s), and pursue any other legal or equitable remedy. The Association shall be entitled to recover as part of the action, and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Areas or abandonment of its Parcel. The mortgagee of any Parcel shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

Section 8.8 Subordination of the Lien to Mortgagee. The lien of Common Areas Charge provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for an improvements or purchase money loan. Sale or transfer of any Parcel shall not affect or terminate the Common Areas Charge lien.

ARTICLE IX MISCELLANEOUS

Section 9.1 Rights and Obligations of Lenders. If by virtue of any right or obligation set forth herein, a lien shall be placed upon the Parcel of any Party hereto, such lien shall expressly be subordinate and inferior to the lien of any first lien holder now or hereafter placed on such Parcel. Any holder of a first lien on any Parcel, and any assignee or successor in interest of such first lien holder, shall be subject to the terms and conditions of this Declaration.

Section 9.2 Breach.

(a) Remedies. If any Party shall fail to perform any covenant or condition contained in this Declaration, the aggrieved Party(ies) shall give the defaulting Party at least thirty (30) days written notice of such alleged default. If such default shall not have been cured within said period of thirty (30) days after the service of notice of default (or if such default be not reasonably susceptible of being cured within said period of thirty (30) days, and said defaulting Party shall not have in good faith commenced curing such default within said thirty (30) day period and shall not thereafter prosecute curing such default with diligence and continuity to completion) the aggrieved Party(ies) may Institute legal proceedings for full and adequate relief from the consequences of said default or threatened default.

(b) Right of Entry. The defaulting Party hereby grants to the aggrieved Party(ies) a temporary right of entry and easement across and under any and all necessary parts of the defaulting owners Parcel (excluding the right to enter in or upon any Buildings on such Parcel) for all purposes reasonably necessary to enable the aggrieved Party(ies) (acting directly or through agents, contractors or subcontractors) to perform any of the terms, provisions, covenants or conditions of this Declaration which the defaulting Owner shall have failed to perform, after notice and time to cure, as aforesaid, but only such notice and time to cure as shall be reasonable or practicable under the circumstances need be given in the event of any emergency. Any amounts so expended may be withheld from amounts otherwise payable to the defaulting owner or collection may be sought otherwise and in any event the Defaulting owner shall pay such amount with interest at the rate of four percent (4%) per annum over the then existing

prime rate of interest announced from time to time by Citibank, N. A. or its successors (but in no event exceeding the maximum rate per annum permitted by law).

Section 9.3 Non-Merger. This Declaration shall not be subject to the doctrine of merger.

Section 9.4 Duration. Unless otherwise canceled or terminated, this Declaration and all of the easements, covenants, restrictions, rights and obligations hereof shall automatically terminate and be of no further force and effect after fifty (50) years from the date hereof or such earlier date as may be required in order that this Declaration shall be invalidated or be subject to invalidation by reason of a limitation imposed by law on the duration thereof. Notwithstanding the foregoing, after said fifty (50) year period, this Declaration shall be automatically extended for successive terms of ten (10) years each unless, on or before the expiration of the initial term or any subsequent term of ten (10) years, eighty percent (80%) of the then Parcel Owners shall duly execute and file in the office of the Register of Deeds of the County in which the Development is located, a declaration wherein said Owners shall agree that said covenants, restrictions, rights and privileges shall be amended, modified or terminated in whole or in part. Except as otherwise provided herein, any amendment or modification to this Declaration shall require the written consent of no less than eighty percent (80%) of the member votes of Parcel Owner(s) in compliance with the voting rights of the Owners of the Association. Upon such consent and upon recording of a document memorializing such action, said covenants, restrictions, rights and privileges may be so amended, modified or terminated as the Parties so agree.

Section 9.5 Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

Section 9.6 Entire Agreement. This Declaration constitutes the entire agreement between the Parties hereto as to the matters set forth in this Declaration. This Declaration supercedes any and all other agreements between the Parties, including but not limited to any agreements for mutual vehicular parking rights. The Parties do not rely upon any statement, promise or representation not herein expressed, and this Declaration once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

Section 9.7 Estoppel Certificates. Each Party shall upon not less than thirty (30) days from receipt of written notice from any other Party execute and deliver to such other Party a certificate stating that (a) either this Declaration is unmodified and in full force and effect or is modified (and stating the modification); and (b) whether or not to the best of its knowledge the other Party or Parties are in default in any respect under this declaration and if in default, specifying such default.

Section 9.8 Notice. Any notice required or permitted to be given under this Declaration shall be in writing and shall be made by personal delivery or deposit in the United States Mail as Certified Mail, Return Receipt Requested, postage prepaid, or deposit with a recognized national overnight courier and addressed to the party being notified at the address given below (or such other address which any party may designate for itself from time to time hereafter by written notice to the other parties):

Declarant: Legacy Development, L.L.C.
16820 Frances Street
Suite 102
Omaha, Nebraska 68130
Attention: Mr. Jeff Johnson

any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of hand or overnight courier delivery or upon deposit in the United States mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request or other communication.

Section 9.9 Assignment. The rights and obligations of any party hereunder may be assigned in whole or in part to any person acquiring the entire interest of such Party in its Parcel or to one or more ground lessees or lessees which rights and obligations shall be expressly assumed by such ground lessee or lessees for the term of the ground lease or lease between such Party and such ground lessee or lessee.

Section 9.10 Exhibits. Each reference herein to an exhibit refers to the applicable exhibit that is attached to this Declaration. All such exhibits constitute a part of this Declaration and by this reference are expressly made a part hereof.

Section 9.11 Limitation of Liability. Any person acquiring fee or leasehold title to any of the Properties or any portion thereof, shall be bound by this Declaration only as to the Parcel or portion of the Parcel acquired by such person. In addition, such person shall be bound by this Declaration only during the period such person is the fee or leasehold owner of such Parcel or portion of the Parcel; and, upon conveyance or transfer of the fee or leasehold interest shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrue prior to such conveyance or transfer. Although persons may be released under this Section, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said tracts running with the land.

Section 9.12 Term and Enforcement. The easements, restrictions and obligations created and imposed herein shall be effective upon the date hereof, shall run with the land, and shall inure to the benefit of and be binding upon the parties, their heirs, executors, administrators, successors, successors in title, assigns and any ground lessee under a ground lease. Said easements, restrictions and obligations shall be unaffected by any change in the ownership of any property covered by this Declaration or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein.

Section 9.13 Severability. In the event any provision or portion of this Declaration is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

Section 9.14 Counterparts. This Declaration may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Declaration as of the day and year first written above.

LEGACY DEVELOPMENT, L.L.C., an Iowa limited liability company

By: 
Name: Jeff Johnson
Its: Managing Member

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Jeff Johnson, personally known to me to be the Managing Member of Legacy Development, L.L.C., an Iowa limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Managing Member, appeared before me this day in person and acknowledged that he signed, sealed and delivered the foregoing instrument as such Managing Member, and as his free and voluntary act of said limited liability company for the uses and purposes therein set forth; and on his respective oath stated that he was duly authorized to execute said instrument.

Given under my hand and Notarial Seal this 21 day of February, 2005.


Notary Public
My commission Expires: 

LEGACY UPSTREAM, L.L.C., an Iowa limited liability company

By: [Signature]

Name: Jeff Johnson

Its: Manager

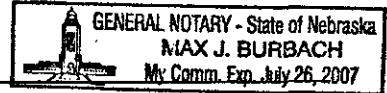
STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Jeff Johnson, personally known to me to be the Manager of Legacy Upstream, L.L.C. and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the foregoing instrument and as his free and voluntary act of said limited liability company for the uses and purposes therein set forth; and on his respective oath stated that he was duly authorized to execute said instrument.

Given under my hand and Notarial Seal this 21 day of February, 2005.

[Signature]
Notary Public

My commission Expires:



THE SHOPS OF LEGACY, L.L.C., a Nebraska limited liability company

By: Terrance A. Hogan

Name: Terrance A. Hogan

Its: Member

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Terrance A. Hogan, personally known to me to be the Member of The Shops at Legacy, L.L.C. and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the foregoing instrument and as his free and voluntary act of said limited liability company for the uses and purposes therein set forth; and on his respective oath stated that he was duly authorized to execute said instrument.

Given under my hand and Notarial Seal this 20th day of April, 2005.

Nancy S. Wynkoop
Notary Public

My commission Expires:

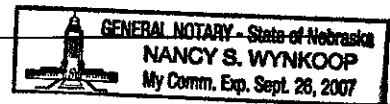
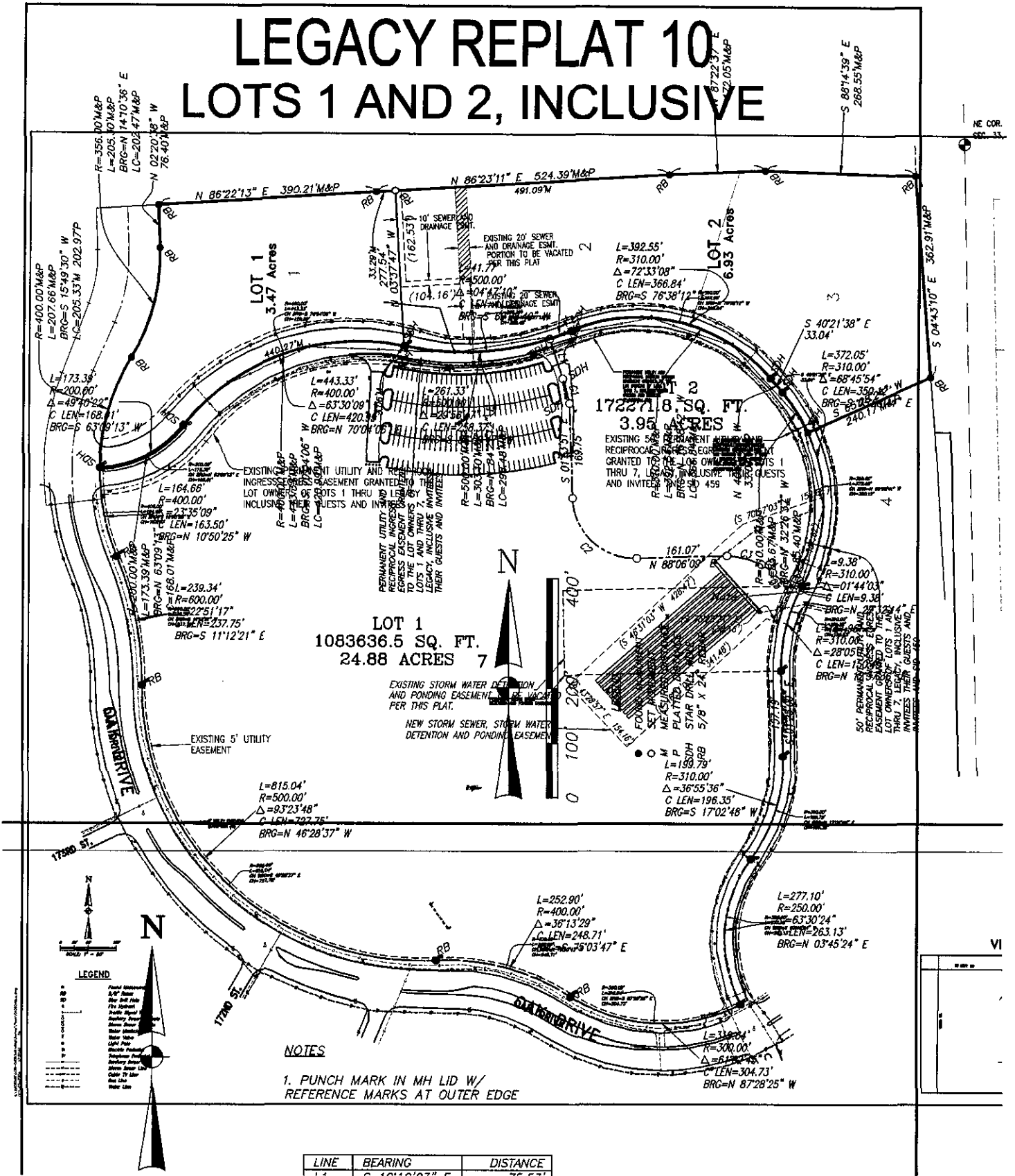


EXHIBIT "A" SITE PLAN

NOV-10-2004 07:42:34 CWM

LEGACY REPLAT 10 LOTS 1 AND 2, INCLUSIVE



LOT 1
1083636.5 SQ. FT.
24.88 ACRES

LOT 2
1722718.3 SQ. FT.
3.95 ACRES

NOTES

- PUNCH MARK IN MH LID W/
REFERENCE MARKS AT OUTER EDGE

LINE	BEARING	DISTANCE
14	N 04°43'10" E	362.91 M&P
15	S 04°43'10" W	362.91 M&P
16	N 86°22'13" E	390.21 M&P
17	N 86°23'11" E	524.39 M&P

VI

EXHIBIT B

OWNER'S PROPORTIONATE SHARE

Legacy Acreage %'s		
<u>Lot #</u>	<u>Acreage</u>	<u>%</u>
Lot 1, Replat 5	3.47	7.59
Lot 2, Replat 5	6.93	15.15
Lot 4	1.78	3.85
Lot 5	2.31	5.05
Lot 6	2.44	5.34
Lot 2, Replat 10	3.95	8.64
<u>Lot 1, Replat 10</u>	<u>24.88</u>	<u>54.38</u>
Total	45.76	100