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WARREN COUNTY, IOWA
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BOOK 2005 PAGE
JUDITH K. LATHROP, RECORDER

DEPUTY

Prepared by, and when recorded, return to: R. Michael Hayes, Hubbell Realty Company,
6900 Westown Parkway, West Des Moines, Iowa 50266-2520 (515) 280-2051

SPACE ABOVE THIS LINE FOR RECORDER

**FOURTH MODIFICATION OF
DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS
APPLICABLE TO
THE LEGACY
NORWALK, WARREN COUNTY, IOWA**

THIS FOURTH MODIFICATION OF DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS APPLICABLE TO THE LEGACY, NORWALK, WARREN COUNTY, IOWA is made this 30th day of August, 2005, by H-CM, L. L. C., an Iowa limited liability company, ("Declarant").

WHEREAS, Declarant, as the Owner of The Legacy, as defined in Section 10.2(n) thereof, subjected The Legacy to that certain Declaration of Covenants, Conditions, Easements and Restrictions Applicable to The Legacy, Norwalk, Warren County, Iowa, dated September 17, 2001 and filed for record in the Office of the Recorder for Warren County, Iowa on September 18, 2001 in Book 2001 at Page 9480, as modified by that certain First Modification of Declaration of Covenants, Conditions, Easements and Restrictions Applicable to The Legacy, Norwalk, Warren County, Iowa, dated November 13, 2001 and filed for record in the Office of the Recorder for Warren County, Iowa on November 29, 2001 in Book 2001 at Page 12532, as amended by that Second Modification of Declaration of Covenants, Conditions, Easements and Restrictions Applicable to The Legacy, Norwalk, Warren County, Iowa, dated July 25, 2002 and filed for record in the Office of the Recorder for Warren County, Iowa on July 31, 2002, in Book 2002 at Page 8785 as modified by that Third Modification of Declaration of Covenants, Conditions, Easements and Restrictions Applicable to The Legacy, dated April 25, 2003 and filed for record in the Office of the Recorder for Warren County, Iowa on April 28, 2003 in Book 2003 at Page 5801 (collectively the "Declaration"); and

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WHEREAS, Subsection 3.04(a)(ii) of the Declaration provided that Declarant could dedicate additional landscaping easement areas by a written amendment to the Declaration; and

WHEREAS, in connection with its development of The Legacy Plats 9 and 10, Declarant desires to dedicate certain additional landscaping easement areas within the meaning of Section 3.04 of the Declaration.

NOW, THEREFORE, Declarant hereby amends the Declaration to dedicate the following additional Landscaping Easement areas with the meaning of, and upon the terms and conditions set forth in, said Sections 3.04 and 2.04 of the Declaration:

1. A forty (40) foot strip of land to be used for landscaping easement in the Northern forty (40) feet of Lots 1 and 28, all in the Official Plat of The Legacy Plat 9, now in and forming a part of the City of Norwalk, Warren County, Iowa; and
2. A forty (40) foot strip of land to be used for landscaping easement in the Northern forty (40) feet of Lots 1, 3, 4 and 28, all in the Official Plat of The Legacy Plat 10, now in and forming a part of the City of Norwalk, Warren County, Iowa.

All subject to those concurrent public utility easements granted to the electric company or companies, the gas company or companies, the telephone company or companies, the data transmission company or companies, and the cable television company or companies providing underground electrical, natural gas, telephone, data transmission or cable television services to The Legacy Plat 9 and to the concurrent storm sewer easement, all as more particularly shown on the Final Plat of The Legacy Plat 9.

Except as expressly modified by this Fourth Modification of the Declaration, all of the terms, conditions, easements, restrictions and provisions of the Declaration continue and remain in full force and effect.

Dated this 30th day of August, 2005.

H-CM, L. L. C.

BY: Hubbell Realty Company, Manager

By: 

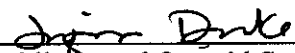
Steven L. Niebuhr, Senior Vice President

By: 

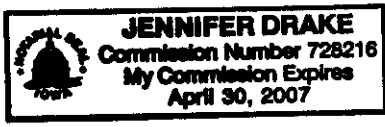
R. Michael Hayes, Secretary

STATE OF IOWA)
) SS.
COUNTY OF DALLAS)

On this 30th day of August, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Steven L. Niebuhr and R. Michael Hayes, to me personally known, who, being by me duly sworn, did say that they are the Senior Vice President and Secretary, respectively, of **Hubbell Realty Company**, the managing member of **H-CM, L.L.C.**, an Iowa limited liability company; that no seal has been procured by said corporation or said limited liability company; that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors and on behalf of said limited liability company by authority of its Operating Agreement and members; and that the said Steven L. Niebuhr and R. Michael Hayes, as such officers, acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said corporation and said limited liability company, by each entity and by them voluntarily executed.



Notary Public in and for said State




MORTGAGEE'S CONSENT AND PARTIAL SUBORDINATION OF MORTGAGE

That **FIRST AMERICAN BANK**, ("First American Bank"), the present owner of the Mortgagee's interest in that certain Mortgage, Security Agreement and Assignment of Rents, granted by H-CM, L. L. C., as Mortgagor, to First American Bank, as Mortgagee, dated August 2, 2005 and filed for record in the Office of the Recorder for Warren County, Iowa on August 11, 2005 in Book 2005 at Page 8738, (the "Mortgage"), which Mortgage creates a lien on, among other property, the property described as The Legacy Plats 9 and 10, Official Plats, now included in and forming a part of the City of Norwalk, Warren County, Iowa (the "Mortgaged Property"), now included in and forming a part of the City of Norwalk, Warren County, Iowa, hereby consents to the within and foregoing Fourth Modification of Declaration of Covenants, Conditions, Easements and Restrictions Applicable to The Legacy, Norwalk, Warren County, Iowa, and agrees that the lien of the Mortgage shall be subject, subordinate and inferior to said landscaping easements.

Dated this 31st day of August, 2005.

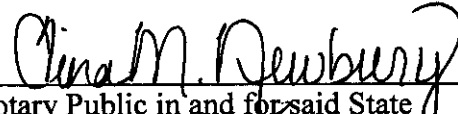
FIRST AMERICAN BANK, Mortgagee

By 
Dean L. Peyton, Executive Vice President

STATE OF IOWA)
) SS.
COUNTY OF POLK)

On this 31st day of August, 2005, before me, a Notary Public in and for the State of Iowa, personally appeared Dean L. Peyton, to me personally known, who being by me duly sworn did state that he is the Executive Vice President of **First American Bank**; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and the said Dean L. Peyton, as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.




Notary Public in and for said State