



MISC 2006147092



DEC 28 2006 12:33 P 7

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 2 BKP _____ C/O _____ COMP MB
 DEL _____ SCAN _____ FV _____

Return to:

~~First American Title Insurance Company~~
 1900 Midwest Plaza West
 801 Nicollet Mall
 Minneapolis, Minnesota 55402

NCS- 204712 -MPLS(AC)

Received - DIANE L. BATTIATO
 Register of Deeds, Douglas County, NE
 12/28/2006 12:33:27.28



2006147092

DEED OF EASEMENT⁽²⁾
 (Lot 1, Legacy Replat 5)

This DEED OF EASEMENT (this "Easement") is made this 29 day of June, 2006, by LEGACY UPSTREAM, L.L.C., an Iowa Limited Liability Company, ("Grantor"), to LTF REAL ESTATE COMPANY, INC., a Minnesota corporation ("Grantee").

WITNESSETH:

WHEREAS, Grantee is the fee simple owner of Lot 2, Replat 12, Legacy, a subdivision in Douglas County, together with all improvements located thereon and therein (collectively "Grantee's Property"); and

WHEREAS, Grantor is the fee simple owner of Lot 1, Replat 5, Legacy, a Subdivision in Douglas County, Nebraska, together with all improvements located thereon and therein (collectively "Grantor's Property"); and

WHEREAS, Grantee acquired Grantee's Property by deed on even date herewith from Grantor; and

WHEREAS, as an inducement to Grantee to purchase Grantee's Property, Grantor agreed to convey certain easements to Grantee subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

ARTICLE I. EASEMENT

Section 1.1 Signage Monument Easement. Grantor hereby grants, bargains, sells, and conveys to Grantee and its employees, officers, agents, contractors, lessees, and their successors and assigns (collectively, the "Grantee Parties"), a non-exclusive, perpetual easement for the benefit of Grantee and the Grantee Parties over, across and through that portions of the Grantor's

39639
39528

Property legally described on Exhibit A attached hereto and incorporated herein (the “Easement Area”) for the purpose of constructing, accessing, maintaining, repairing and replacing a signage monument and landscaping and electrical utilities incidental thereto.

TO HAVE AND TO HOLD the aforesaid easement subject to the terms and provisions contained herein and all the privileges and appurtenances thereunto belonging to the Grantee Parties.

Section 1.2 Damage to Grantor’s Property. Grantee shall promptly repair all damage to and restore any portion of the Easement Area or any other portion of Grantor’s Property that is damaged by the exercise of the easement rights granted above, with Grantor’s Property to be restored as closely as reasonably possible to the condition that existed prior to Grantee’s performing any work in the Easement Area.

Section 1.3 Indemnification; Release of Liability. Grantee agrees to indemnify Grantor from any loss, cost or expense arising from the use of the Easement Area by Grantee or the Grantee Parties.

Section 1.4 Maintenance. Grantee, at no expense to Grantor, shall maintain the Easement Area and improvements thereon in good condition and repair.

Section 1.5. Easement Appurtenant. The easement granted hereunder shall be appurtenant to Grantee’s Property.

ARTICLE II. MISCELLANEOUS

Section 2.1 Rights Cumulative. All rights, powers and privileges conferred hereunder shall be cumulative and in addition to or not to the exclusion of those provided by law or equity.

Section 2.2 Applicable Law. This Agreement shall be governed and construed in accordance with the laws of the State of Nebraska without regard to principles of conflict of laws.

Section 2.3 Severability. If any term, covenant, or condition of this Easement or the application thereof to any person or circumstance shall, to any extent, be illegal, invalid, or unenforceable, the remainder of this Easement or the application of such term, covenant or condition to any person or circumstance other than that as to which it shall be invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this Easement shall be valid and enforceable to the full extent permitted by law.

Section 2.4 Definitions. All definitions contained in the above recitals are hereby incorporated in this Easement as though set forth at length herein.

Section 2.5 Headings. The titles of the various subdivisions of this Easement are for convenience only and shall not be considered in construing this Easement.

Section 2.6 Running with the Land; Binding Effect. The easement, rights and obligations set forth herein shall run with the title to Grantee's Property and Grantor's Property, and all the terms, conditions and provisions herein shall inure to the benefit of and be binding upon Grantor and Grantee and their heirs, executors, administrators, successors and assigns, and upon any person or persons coming into ownership or possession of any interest in either property by operation of law or otherwise. No failure of a Grantee or Grantor to exercise any power given to such party hereunder, or to insist upon strict compliance by any other party to its obligations hereunder, and no custom or practice of the parties in variance with the terms hereof shall constitute a waiver of a party's right to demand full compliance with the terms hereof.

Section 2.7 Public Dedication. Nothing contained in this Easement shall be construed or deemed to constitute a dedication, express or implied, of any portion of the properties referenced herein to or for any public use or purposes whatsoever.

Section 2.8 No Other Rights. Grantee hereby agrees that, except as herein provided, Grantee has no other rights in and to the Grantor's Property.

Section 2.9 Amendments. The terms of this Easement may be extended, abrogated, modified, rescinded, or amended in whole or in part only by a written agreement signed by Grantor and Grantee.

IN WITNESS WHEREOF, the parties hereto have caused this Easement to be duly executed as of the day and year first above written.

GRANTOR:

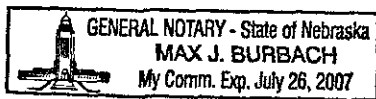
LEGACY UPSTREAM, L.L.C., an Iowa limited liability company




By: Jeff W. Johnson
Its: Manager

STATE OF _____ }
COUNTY OF _____ } ss.:

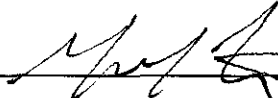
The foregoing instrument was acknowledged before me this 29 day of June, 2006, by Jeff W. Johnson, the Manager of Legacy Upstream, L.L.C., an Iowa limited liability company by and on behalf of said company.




Notary Public

GRANTEE:

LTF REAL ESTATE COMPANY, INC.,
a Minnesota corporation

By: 
Name: Mark Zaerst
Title: EVP of Real Estate

STATE OF MINNESOTA }
COUNTY OF HENNEPIN } ss.:

The foregoing instrument was acknowledged before me this 29TH day of JUNE 2006, by MARK ZAERST the EVP of REAL ESTATE & DEV. of LTF Real Estate Company, Inc., a corporation under the laws of Minnesota by and on behalf of said corporation.



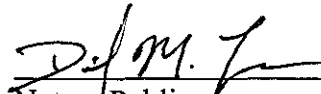

Notary Public

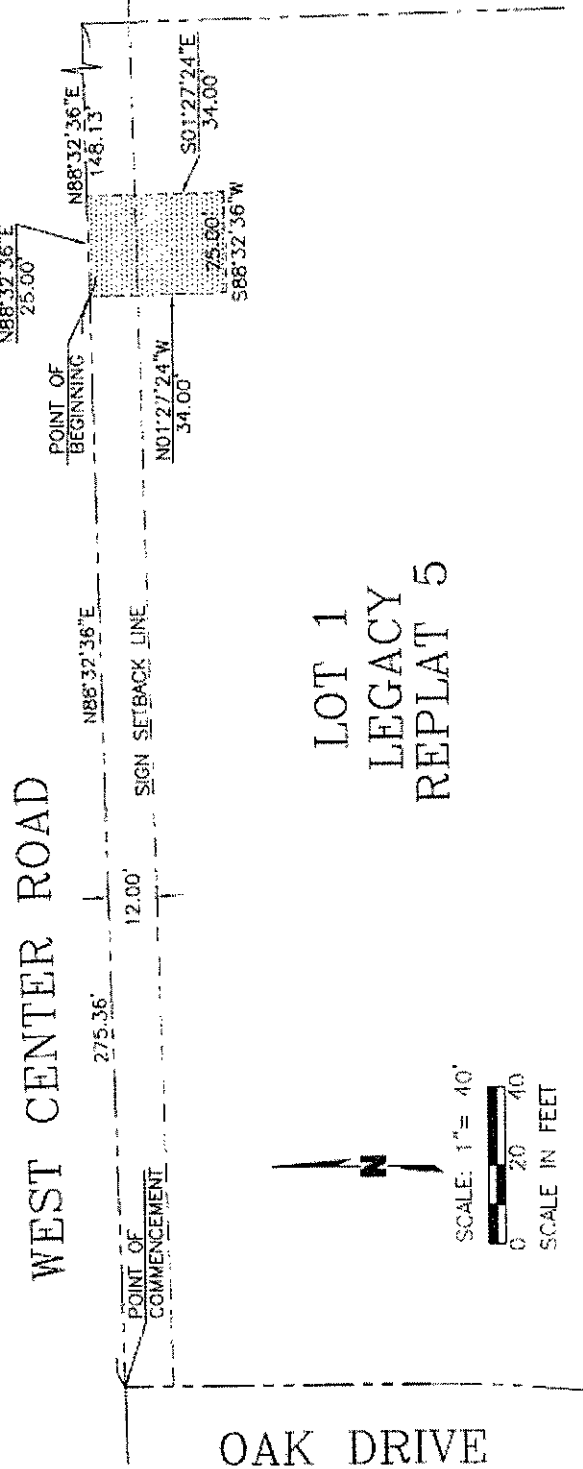
EXHIBIT A

SIGN EASEMENT LEGAL DESCRIPTION

A TRACT OF LAND BEING IN LOT 1, REPLAT 5 OF LEGACY, A PLATTED AND RECORDED SUBDMISION IN DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF SAID LOT 1, REPLAT 5; THENCE N88°32'36"E ALONG THE NORTH LINE OF SAID LOT 1, REPLAT 5, SAID LINE ALSO BEING THE SOUTHERLY RIGHT OF WAY LINE OF WEST CENTER ROAD, 275.36 FEET TO THE POINT OF BEGINNING; THENCE N88°32'36"E, 25.00 FEET; THENCE S01°27'24"E, 34.00 FEET; THENCE S88°32'36"W, 25.00 FEET; THENCE N01°27'24"W, 34.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.02 ACRES (850 SQUARE FEET), MORE OR LESS.

Drawing on following page



CONSENT AND JOINDER OF MORTGAGEE

The undersigned, trustee and beneficiary of a Deed of Trust on the property subject to the foregoing instrument, hereby consents to and joins in such instrument so as to subject the undersigned's interest to the terms thereof.

Great Western Bank

By B.D.
Its BRIAN DIEDRICHSEN Vice President