



MISC 2006147307

*Misc*  
FEE 74.00 FB See attached exhibit  
BKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP MB  
DEL \_\_\_\_\_ SCAN \_\_\_\_\_ FV \_\_\_\_\_



DEC 28 2006 14:21 P 14

~~PREPARED BY AND AFTER RECORDING  
RETURN TO:~~

Larry M. Wertheim, Esq.  
Kennedy & Graven, Chartered  
470 U.S. Bank Place  
200 South Sixth Street  
Minneapolis, MN 55402

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
12/28/2006 14:21:53.85



2006147307

**SECOND AMENDMENT TO DECLARATION <sup>9</sup>  
OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR A PART OF LEGACY, A SUBDIVISION  
IN DOUGLAS COUNTY, NEBRASKA**

This Second Amendment is made to the Declaration of Easements, Covenants, Conditions and Restrictions for a part of Legacy, a Subdivision to Douglas County, Nebraska, dated April 20, 2005, recorded April 26, 2005, as Document No. 2005047001, Miscellaneous Records, as amended by First Amendment Declaration of Easements, Covenants, Conditions and Restrictions for a part of Legacy, a Subdivision to Douglas County, Nebraska, dated September 1, 2005, recorded September 9, 2005, as Instrument No. 2005112708, Miscellaneous Records (collectively, the "Declaration"), by Legacy Development, L.L.C., an Iowa limited liability company ("Declarant"), Legacy Upstream, LLC, an Iowa limited liability company, and The Shops of Legacy, L.L.C., a Nebraska limited liability company (collectively the "Parties," or in the singular, a "Party").

**Preliminary Statement**

The Declaration was made by Declarant in connection with the development of the real estate legally described as follows:

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 and recorded in Douglas County, Nebraska.\*

*M1-22268*  
*M1-22275*

275348v8 LMW FC100-143  
LMW-275348v4  
FC100-143

\*now known as Exhibit E

323046.2

NCS- 204712 -MPLS(AC)  
Return to:  
First American Title Insurance Company  
1900 Midwest Plaza West  
801 Nicollet Mall  
Minneapolis, Minnesota 55402

*39039*  
*39528*

Such lots are herein referred to collectively as the "Parcels" and individually as each "Parcel."

The Parties have considered amending various provisions of the Declaration. Section 9.4 of the Declaration allows the Parties to amend the Declaration by written consent of no less than eighty percent (80%) of the member votes of Parcels Owners. The Parties, constituting more than eighty percent (80%) of the member votes of the Parcel Owners have investigated the impact which the proposed amendment to the Declaration would have on the Parcels and have determined that the amendment would further the maintenance of the character and integrity of Legacy, and would further the benefits and protection afforded to the Parcels by the Declaration.

NOW, THEREFORE, pursuant to the authority granted to Declarant in Section 9.4 of the Declaration, the Parties hereby agree as follows:

1. Common Areas. The Declaration is hereby amended by deleting the first sentence of Section 1.3 in its entirety and inserting in lieu thereof the following:

"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 following areas: (a) the non-publicly dedicated permanent utility and reciprocal ingress, egress easements extending east from Wright Street/Oak Drive and then south to Oak Drive as depicted on the Site Plan and dedicated on the plat of Legacy, recorded in Book 2180 at Page 570 in Douglas County (the "Ring Road"), (b) the easements for the "Internal Drives" as defined in Section 1.14 and described in Section 1.14(i) and (ii) hereof, and (c) the easement for the "Platted Detention Pond" as defined in Section 1.5 below.

2. Common Utility Facilities. The last sentence of Section 1.5 of the Declaration is hereby deleted and the following sentence is inserted in lieu thereof:

The underground storm water detention system, located under the area shown on the plat of Legacy Replat 10, filed February 1, 2005 as Instrument No. 2005011602, Records, Douglas County, Nebraska, as a Permanent Storm Water Detention and Ponding Easement in Lots 1 and 2, Legacy Replat 10 ("Platted Detention Pond"), shall also be a Common Utility Facility.

3. Internal Drives. A new Section 1.14 is hereby added to the Declaration as follows:

Section 1.14. "Internal Drives" shall mean the roads and Common Utility Facilities to be constructed (i) within the easements for ingress, egress and utilities granted on the plat of Legacy Replat 12 and depicted on Exhibit "A" to the Second Amendment and incorporated herein by reference, and (ii) within easements for

ingress, egress and utilities located approximately as depicted on Exhibit "B" attached to the Second Amendment and incorporated hereby by reference, as the same may be granted (and which Declarant shall grant) from time to time pursuant to one or more plats.

4. Limitation on Easement on Platted Detention Pond. A new Section 2.7 is hereby added to the Declaration as follows:

2.7 Limitation on Easement on Platted Detention Pond. Notwithstanding Section 2.2 hereof or any other provision in this Declaration to the contrary:

(a) Owners' rights in that portion of the Common Areas consisting of the Platted Detention Pond shall be limited to use for storm water drainage and detention, and Owners shall have no right of passage or accommodation of vehicles or pedestrians on, or of construction or access to, the Platted Detention Pond which lies outside of the 50-foot utility and access easement areas granted pursuant to the plat of Legacy and the plat of Legacy Replat 12; provided, however, that the Association is hereby granted a non-exclusive easement on, over and under the Platted Detention Pond for purposes of installation, management, repair and removal of the Common Utility Facilities located thereon ("**Association Easement**"); and

(b) All Common Utility Facilities shall be located underground;

(c) The Owners of the burdened Parcels shall retain the right to use the surface of the Platted Detention Pond easement area for improved parking, driveways, landscaping, irrigation and lighting and appurtenances related thereto ("**Permitted Improvements**"); and

(d) The Association shall repair any damage to the Permitted Improvements occasioned by exercise of the Association's rights under the Association Easement.

(e) Nothing contained in this Declaration shall be deemed a grant of any easement in the Platted Detention Pond to any public authority.

5. Use of LTF Property. A new Section 3.5 is hereby added to the Declaration as follows:

Section 3.5. Use of LTF Property. Notwithstanding any contrary provision contained herein, the portion of the Development legally described on Exhibit "C" attached to this Second Amendment and incorporated herein by reference (hereinafter referred to as the "LTF Property") may be used as a health and fitness club with outdoor recreation uses, which may include outdoor pool, water slides, outdoor hot tub, outdoor café, outdoor volleyball courts, outdoor basketball, and outdoor child's play area, and also may include child care, a hair salon/day spa, café, sale of health and fitness-related merchandise, and other related uses, all of which may be used 24 hours a day, seven days a week.

6. Common Fees and Expenses. Exhibit B attached to the Purchase Agreement is hereby replaced by Exhibit "D" attached to this Second Amendment, and Section 8.5 of the Declaration is deleted in its entirety and the following inserted in lieu thereof:

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"). Subject to the provisions of this Section 8.5 and of Section 8.5.1 below, each Owner's share of Common Areas Charges shall be equivalent to its respective voting share described in Section 8.3, and as designated on Exhibit "D" attached to the Second Amendment and incorporated herein by this reference. Such amount 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. Notwithstanding anything herein to the contrary, in the event that amounts contributed by the Owners toward payment of Common Areas Charges, in accordance with the percentages set forth on Exhibit "B" and in Section 8.5.1 below, are insufficient to fully pay all of the Common Areas Charges, then the remaining amount shall be paid prorata by the Owners (excluding the Owners of Lot 2, Replat 12; Lot 2, Replat 10; and Lot 2, Replat 5) based on the percentage of land owned by such Owners compared to the total land in the Development (excluding the land owned by the Owners of Lot 2, Replat 12; Lot 2, Replat 10; and Lot 2, Replat 5). 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.

7. Common Areas Charges for LTF Property. A new Section 8.5.1 is hereby added to the Declaration:

Section 8.5.1 Common Areas Charges for LTF Property. Notwithstanding any contrary provision in this Declaration, the annual Common Areas Charges applicable to the LTF Property (a) shall be the lesser of (i) the Common Areas Charge calculated in accordance with Section 8.5 hereof, and (ii) LTF Charge Cap (as hereinafter defined), and (b) shall not commence until issuance of a certificate of occupancy for the LTF Property (the "COO Date"). The "LTF Charge Cap" shall be equal to Three Thousand and no/100 Dollars (\$3,000.00) (payable in equal monthly installments of \$250.00) as increased, as of each anniversary of the COO Date, to the product obtained by multiplying \$3,000.00 by a fraction, the numerator of which is the Consumer Price Index for the month preceding the applicable anniversary date, and the denominator of which is the Consumer Price Index for the month preceding the COO Date. The "Consumer Price Index" means "Consumer Price Index--U.S. City Average For All Items For All Urban Consumers (1982-84=100)" published monthly by the Bureau of Labor Statistics, United States Department of Labor, or, if discontinued, the successor or comparable statistic.

8. Purposes and Responsibilities. Section 8.4(a) of the Declaration shall be amended by inserting "and Internal Drives" following "Ring Road".


9. Definitions. Terms utilized in this Second Amendment with an initial capitalized letter and which are not otherwise defined herein shall have the meaning ascribed to them by the Declaration.

10. No Other Changes. Except as amended and modified herein, the Declaration shall remain in full force and effect according to its terms.

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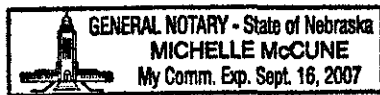
WHEREFORE, the parties hereto, representing not less than eighty percent (80%) of the Owners, have executed this Second Amendment on the date stated above.

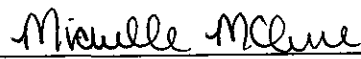
Legacy Development, L.L.C., an Iowa limited liability company

By:   
Jeff W. Johnson, Managing Manager

STATE OF NEBRASKA }  
COUNTY OF DOUGLAS } ss.:

The foregoing instrument was acknowledged before me this 22 day of March, 2006, by Jeff W. Johnson, the Manager of Legacy Development, L.L.C., a limited liability company under the laws of Iowa, by and on behalf of said company.

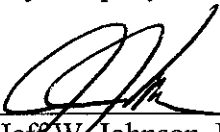


  
Notary Public

My commission expires:

[seal]


Legacy Upstream, L.L.C., an Iowa limited liability company

By:   
Jeff W. Johnson, Managing Member

STATE OF NEBRASKA }  
COUNTY OF DOUGLAS } ss.:

The foregoing instrument was acknowledged before me this 22 day of March, 2006, by Jeff W. Johnson, the Managing Member of Legacy Upstream, L.L.C., a limited liability company under the laws of Iowa, by and on behalf of said company.



  
Notary Public

My commission expires:

[seal]

The Shops of Legacy, L.L.C., a Nebraska limited liability company

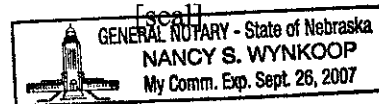
By: Terrance A. Hogan  
Terrance A. Hogan  
Its: Member

STATE OF NEBRASKA }  
COUNTY OF DOUGLAS } ss.:

The foregoing instrument was acknowledged before me this 16th day of March, 2006, by Terrance A. Hogan, the Member of The Shops of Legacy, L.L.C., a limited liability company under the laws of Nebraska, by and on behalf of said company.

Nancy S. Wynkoop  
Notary Public

My commission expires:





LTF Real Estate Company, Inc., a Minnesota corporation

By: Mark Zaebst

Name: Mark Zaebst

Its: EVP of Real Estate

STATE OF MINNESOTA

COUNTY OF HENNEPIN

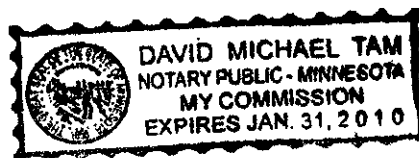
} ss.:

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of JUNE, 2006, by MARK ZAEBST, the EVP OF REAL ESTATE DEV. of LTF Real Estate Company, Inc., a corporation under the laws of Minnesota on behalf of said company.

David Michael Tam  
Notary Public

My commission expires: 1/31/10

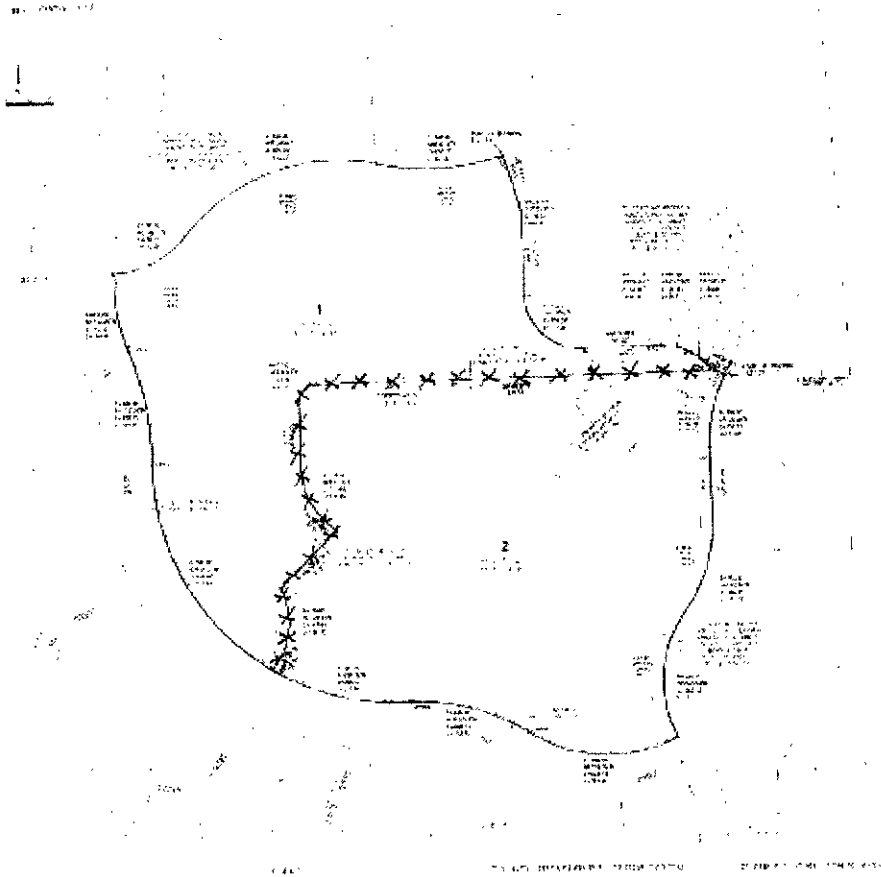
[seal]



**EXHIBIT A  
to Second Amendment**

**DEPICTION OF INTERNAL DRIVES DEDICATED  
PURSUANT TO LEGACY REPLAT 12**

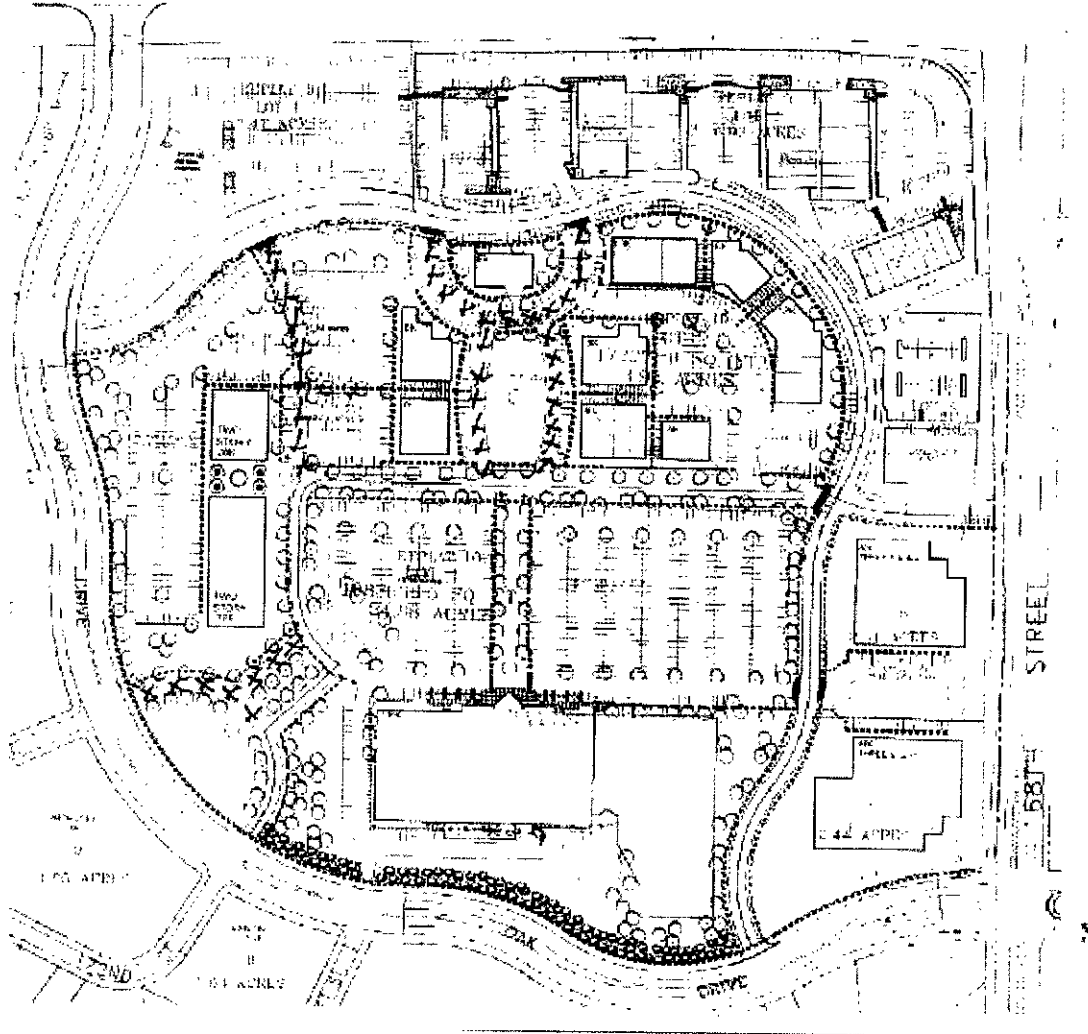
[Location of Internal Drives highlighted and marked with "X"]



**EXHIBIT B**  
**to Second Amendment**

**APPROXIMATE LOCATIONS OF INTERNAL DRIVES  
TO BE PLATTED FROM TIME TO TIME**

[Approximate location of Internal Drives highlighted and marked with "X"]



**EXHIBIT C  
to Second Amendment**

**LEGAL DESCRIPTION OF LTF PROPERTY**

**Legal Description**

The land referred to is situated in the State of Nebraska, County of Douglas and is described as follows:

Lot 2, Legacy Replat 12, a subdivision in Douglas County, Nebraska.

**EXHIBIT D  
to Second Amendment**

**OWNER'S PROPORTIONATE SHARE  
[Replaces Exhibit B attached to Purchase Agreement]**

<b>Legacy Acreage %'s</b>		
<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
Lot 1, Replat 12	11.52	25.18
<u>Lot 2, Replat 12</u>	<u>13.36</u>	<u>29.20</u>
<b>Total</b>	<b>45.76</b>	<b>100</b>

EXHIBIT E

MI-22268

MI-22275

MI-22281  
MI-22286  
Lots 4, 5, and 6, Legacy, Lots 1 and 2, Legacy Replat 5,  
Lots 2, Legacy Replat 10, and Lots 1 and 2, Legacy Replat 12,  
each as surveyed, platted and recorded in Douglas County, Nebraska.