

WARREN COUNTY, IOWA
FILED FOR RECORD

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BOOK 2002 PAGE 8785
JUDITH K. LATHROP, RECORDER

DEPUTY

Prepared by, and when recorded, return to: R. Michael Hayes, Hubbell Realty Company,
904 Walnut St., Suite 900, Des Moines, Iowa 50309-3574 (515) 280-2051

SPACE ABOVE THIS LINE FOR RECORDER

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

And

**SUBSTITUTION OF THE LEGACY DECLARATION FOR THE AMENDED
AND SUBSTITUTED DECLARATION OF COVENANTS FOR COLONIAL
MEADOWS PLAT 3**

And

**SUBSTITUTION OF LEGACY DECLARATION FOR THE DECLARATION OF
COVENANTS FOR COLONIAL MEADOWS PLAT 4**

**THIS SECOND MODIFICATION OF DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS AND RESTRICTIONS APPLICABLE TO THE
LEGACY, NORWALK, WARREN COUNTY, IOWA and SUBSTITUTION OF
THE LEGACY DECLARATION FOR THE AMENDED AND SUBSTITUTED
DECLARATION OF COVENANTS FOR COLONIAL MEADOWS PLAT 3 and
SUBSTITUTION OF LEGACY DECLARATION FOR THE DECLARATION OF
COVENANTS FOR COLONIAL MEADOWS PLAT 4 is made this 25 day of July,
2002, 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) of the Legacy Declaration as hereinafter defined, 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 amended 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, (collectively the "Legacy Declaration"); and

WHEREAS, Subsection 6.12 of the Legacy Declaration provides that Declarant can amend the Legacy Declaration by a written amendment so long as it owns any Lot as defined in Subsection 1.02(j) of the Legacy Declaration; and

WHEREAS, Declarant owns (a) Lots 1 through 25, Lots 27 and 28, and Lots 31 through 61, The Legacy Plat 3, (b) Lots 1, 2, 3, 5, 7, 8, 10, 11, 12, 15, 18 and 19, Colonial Meadows Plat 3, (c) Lot 2, Colonial Meadows Plat 4, (d) Lot 1 and Outlot Z, Colonial Meadows Plat 5, (e) Outlot T, The Legacy Plat 1, which has been replatted as Outlots S2 and T2, The Legacy Plat 2 Amended, (f) the portion of Outlot X, The Legacy Plat 1, that is currently platted as Outlot X4, The Legacy Plat 4, (g) the portion of Outlot Y, The Legacy Plat 1, that is currently platted as Outlot Y2, The Legacy Plat 2 Amended, and (h) Outlots U and Z, The Legacy Plat 1; all Official Plats, now included in and forming a part of the City of Norwalk, Warren County, Iowa ; and

WHEREAS, Lots 1, 2, 3, 5, 7, 8, 10, 11, 12, 15, 18 and 19, Colonial Meadows Plat 3, and Lot 2, Colonial Meadows Plat 4, are smaller lots than the lots that are being developed in The Legacy Plat 2 Amended and The Legacy Plat 3; it is not possible to build as large a house on these single family lots; these single family lots were previously subject, respectively, to the Amended and Substituted Declaration of Covenants for Colonial Meadows Plat 3, dated November 22, 2000 and filed for record in the Office of the Recorder for Warren County, Iowa on November 27, 2000 in Book 2000 at Page 10923, (the "Colonial Meadows Plat 3 Declaration"), and to the Declaration of Covenants for Colonial Meadows Plat 4, dated October 6, 2002 and filed for record in the Office of the Recorder for Warren County, Iowa on October 9, 2000 in Book 2000 at Page 9335, (the "Colonial Meadows Plat 4 Declaration"); and it is desirable to conform the minimum size of single family home that can be built upon these lots to the minimum size of single family house permitted by the Colonial Meadows Plat 3 Declaration and the Colonial Meadows Plat 4 Declaration; and

WHEREAS, Declarant is the successor and assignee of Colonial Meadows, L. C., the Declarant of the Colonial Meadows Plat 3 Declaration, as Declarant under said Colonial Meadows Plat 3 Declaration and as the owner of said undeveloped Lots 1, 2, 3, 5, 7, 8, 10, 11, 12, 15, 18 and 19, Colonial Meadows Plat 3, that are held for resale purposes, and Section 16.01 provides that "[t]his Declaration of Covenants may be amended by an instrument signed (i) by the Declarant as long as the Declarant owns a Lot primarily for resale purposes, or (ii) by not less seventy-five percent of the Lot owners if Declarant does not own a Lot."; and

WHEREAS, Declarant is the successor and assignee of Colonial Meadows, L. C., the Declarant of the Colonial Meadows Plat 4 Declaration, as Declarant under said Colonial Meadows Plat 4 Declaration and as the owner of said undeveloped Lot 2, Colonial Meadows Plat 4, that is held for resale purposes, and Section 16.01 provides that "[t]his Declaration of Covenants may be amended by an instrument signed (i) by the Declarant as long as the Declarant owns a Lot primarily for resale purposes, or (ii) by not less seventy-five percent of the Lot owners if Declarant does not own a Lot."

NOW, THEREFORE, Declarant hereby amends the Legacy Declaration and the Colonial Meadows Plat 3 Declaration and Colonial Meadows Plat 4 Declaration as follows:

PART I

Amendments to the Legacy Declaration

1. Subsection 2.02(f) of the Legacy Declaration is hereby deleted in its entirety and a new Subsection 2.02(f) is substituted in lieu therefore to read as follows:

“(f) Minimum Single-Family House Sizes. (i) All single-family homes located on any of the Lots in Colonial Meadows Plat 3, and on any of the Lots in Colonial Meadows Plat 4, shall contain a minimum square footage of living space exclusive of attached garages, breezeways, porches, and finished basement areas as follows:

- (A) one-story dwellings must have a minimum of 1,450 square feet of finished area directly under the roof;
- (B) one and one-half story dwellings must have a finished ground floor area of at least 1,100 square feet, and a combined total ground floor area and second floor area of at least 1,500 square feet;
- (C) two-story dwellings must have a finished ground floor area of at least 830 square feet, and a combined total ground area and second floor area of at least 1,600 square feet; and
- (D) split entry and split-level dwellings are not permitted.

(ii) All other single-family homes located on Lots in the Legacy shall contain a minimum square footage of living space exclusive of attached garages, breezeways, porches, and finished basement areas as follows:

- (A) All one-story dwellings must have a minimum of 1,600 square feet of finished area directly under the roof.
- (B) All one and one-half story dwellings must have a minimum total finished floor area of 1,800 square feet.
- (C) All two-story dwellings must have a minimum total finished floor area of 2,000 square feet.
- (D) All split-level, raised ranch, or split foyer dwellings must have a minimum of 1,600 square feet of finished area directly under the roof.”

2. The last sentence of Subsection 2.02(i) of the Legacy Declaration, (which reads: "All wood steps to front entry porches shall have enclosed risers."), is hereby deleted in its entirety and a new last sentence to Subsection 2.02(i) is substituted in lieu therefore to read as follows: "No wood steps to front entry porches are permitted."

3. The last sentence of Section 2.06 of the Legacy Declaration is hereby amended to read as follows: "No freestanding flagpole is permitted on any Lot other than a model home or sales and display office." Section 2.06 of the Legacy Declaration is hereby further amended by adding an additional sentence thereto to read: No solar collector or panel of any nature shall be permitted on any Lot or any building constructed on a Lot."

4. Section 2.10 of the Legacy Declaration is hereby deleted in its entirety and new Section 2.10 is substituted in lieu therefore to read as follows:

2.10 Motor Vehicles, Boats, Recreational Vehicles, Trucks and Tents. No inoperable vehicle, and no camper (including fold down camper), motor home, boat, tractor, trailer, three-quarter ton or larger truck, bus, snowmobile, all-terrain vehicle, shall be parked or maintained on any Lot (except inside a garage) or on the public street adjacent to any Lot for a period of longer than three (3) consecutive days or for longer than a total of thirty (30) days in any calendar year. No tent or other temporary structure or enclosure shall be maintained on any Lot for longer than a total of thirty (30) days in any calendar year."

5. Section 6.01 of the Legacy Declaration is hereby deleted in its entirety and a new Section 6.01 to the Legacy Declaration is substituted in lieu therefore to read:

6.01 Specific Enforcement of Restrictions. The Owner of any Lot or a portion thereof that is subject to the terms and conditions of this Declaration shall have the right to enforce this Declaration and each and every covenant, condition, easement, provision, restriction and term of this Declaration. In the event of the breach of any such covenant, condition, easement, provisions, restriction or term contained in this Declaration, each such Owner shall have the right to bring an action in any court of competent jurisdiction to enforce this Declaration and enjoin its violation, mandate compliance with the covenants, conditions, easements, provisions, restrictions and terms of this Declaration, or to recover damages for any breach of this Declaration, or for any other remedy or combination of remedies available at law or in equity.

In addition, Declarant for so long as Declarant owns any undeveloped Lot that is held for resale and that is subject to this Declaration and/or the Board, each in its sole discretion, shall have the right, but not the obligation, to enforce this Declaration and each and every covenant, condition, easement, provision, restriction and term of this Declaration and in the event of the breach of any such covenant, condition, easement, provisions, restriction or term contained in this Declaration, and shall have the right to bring an action in any court of competent jurisdiction to enforce this Declaration and enjoin its violation, mandate compliance with the covenants, conditions, easements,

provisions, restrictions and terms of this Declaration, or to recover damages for any breach of this Declaration, or for any other remedy or combination of remedies available at law or in equity.

All Owners of Lots that are subject to this Declaration covenant and agree, by acceptance of a deed to such Lot, whether or not it shall be so expressed in such deed, that monetary damages may not provide adequate compensation for the breach of the restrictions and covenants contained in this Declaration and that this Declaration may be specifically enforced by the Owners of other Lots subject to this Declaration or by the Declarant for so long as Declarant owns any undeveloped Lot that is held for resale and that is subject to this Declaration or by the Board. All remedies provided for in this Declaration or which are otherwise available at law or in equity shall be cumulative. Neither Declarant, the Board nor any Owner of a Lot which is subject to the terms of this Declaration shall have any liability to any person or entity for any failure to enforce any provision of this Declaration.”

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

PART II

Substitution of the Legacy Declaration for the Colonial Meadows Plat 3 Declaration and for the Colonial Meadows Plat 4 Declaration

1. Except as provided in Section 2 of this Part II and Section 2 of Part III, effective from and after the date of recording of this instrument, the Colonial Meadows Plat 3 Declaration and the Colonial Meadows Plat 4 Declaration shall have no further force and effect and the Legacy Declaration, as amended by this instrument, is substituted in lieu therefore, and all Lots in Colonial Meadows Plat 3 and Colonial Meadows Plat 4 shall be considered to be Lots or Units, as applicable, for all purposes under and to be subject to the Legacy Declaration.

2. Notwithstanding anything in the Legacy Declaration to the contrary, the Owners of Lots 4, 6, 9, 13, 14, 16, 17, 20, 21, 22, 23, 24, 25 and 26 of said Colonial Meadows Plat 3 and the Owners of Lots 1, 3, and 5 of said Colonial Meadows Plat 4 shall not be Members of The Legacy Owners Association nor entitled to the rights and privileges of Members of said Association nor subject to the burdens and obligations of Members of such Association unless and until the Owners of any such Lot elects to become a Member of the Association upon and subject to all of the terms and conditions applicable to Members of the Association under the Legacy Declaration and the Articles of Incorporation and Bylaws of the Association, as amended from time to time, and agrees irrevocably to subject such Lot to assessments for the Association. Such election shall be made in the manner and shall be subject to the approvals as set forth in Subsection 4.01(b) of the Legacy Declaration.

PART III

General Provisions

1. All capitalized terms used in this instrument that are not otherwise defined in this instrument shall have the meanings given to them in Legacy Declaration.
2. If, prior to the recording of this instrument, there exists or is under construction, on any Lot within Colonial Meadows Plat 3, Colonial Meadows Plat 4, or The Legacy, any Improvement that was in conformance with the Colonial Meadows Plat 3 Declaration, the Colonial Meadows Plat 4 Declaration, or, the Legacy Declaration, as applicable, but is not in conformance with the Legacy Declaration as amended by this instrument and as the same may hereafter be amended, (a "Non-Conforming Improvement"), such Non-Conforming Improvement may continue in existence subject to the following provisions. The Non-Conforming Improvement may not be enlarged or relocated and must, at all times, be in compliance with the provisions of the Colonial Meadows Plat 3 Declaration, Colonial Meadows Plat 4 Declaration, or the Legacy Declaration, as applicable, that was in effect at the time such Improvement was originally constructed. If a Non-Conforming Improvement is in need of repair, such Non-Conforming Improvement may be repaired without such Non-Conforming Improvement being brought into compliance with this the Legacy Declaration, as amended by this instrument and as the same may hereafter be amended; provided, however, all such repairs shall be made in a manner so that the Non-Conforming Improvement would be in compliance with the provisions of the Colonial Meadows Plat 3 Declaration, the Colonial Meadows Plat 4 Declaration, or the Legacy Declaration, as applicable, as the same existed at the time such Improvement was originally constructed. Notwithstanding the foregoing, in the event a Non-Conforming Improvement is damaged, in any manner, by any cause, to the extent of more than fifty percent (50%) of its replacement cost at the time of destruction, or if more than fifty percent (50%) of the Non-Conforming Improvement is replaced, for any reason, such Non-Conforming Improvement shall be repaired or replaced, in its entirety, in a manner so that such Non-Conforming Improvement is in compliance with the Legacy Declaration as amended by this instrument and as the same may hereafter be amended to the time of such damage or replacement, and if under such circumstances such Non-Conforming Improvement cannot be repaired or replaced in a manner so that such Non-Conforming Improvement is in compliance with the Legacy Declaration as amended by this instrument and as the same may hereafter be amended to the time of such damage or replacement, such Non-Conforming Improvement shall be removed from the Lot. Once a Non-Conforming Improvement has been changed to conform with the terms of the Legacy Declaration, as amended from time to time, it shall thereafter conform, at all times, with the terms of this Declaration, as amended from time to time.

[The Signatures appear on the next page.]

Dated this 25 day of July, 2002.

H-CM, L. L. C.

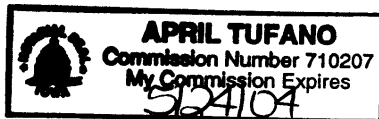
By: Hubbell Realty Company, Manager

By: *James W. Hubbell III*
James W. Hubbell III, President

By: *R. Michael Hayes*
R. Michael Hayes, Secretary

STATE OF IOWA)
)SS.
COUNTY OF POLK)

On this 25 day of July, 2002, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared James W. Hubbell III and R. Michael Hayes, to me personally known, who, being by me duly sworn, did say that they are the President and Secretary, respectively, of **Hubbell Realty Company**, the Manager of **H-CM, L. L. C.**, an Iowa limited liability company; that the foregoing instrument was signed on behalf of said corporate manager 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 James W. Hubbell III and R. Michael Hayes, as such officers, acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said corporate manager and said limited liability company, by each entity and by them voluntarily executed.



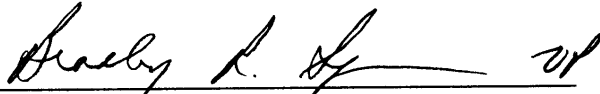
April Tufano
Notary Public in and for said State

MORTGAGEE'S CONSENT

That **LIBERTY BANK, FSB** , ("Liberty 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 Liberty Bank, as Mortgagee, dated September 20, 2001 and filed for record in the Office of the Recorder for Warren County, Iowa on September 20, 2001 in Book 2001 at Page 9621, (the "Mortgage"), which Mortgage creates a lien on, among other property, the property described as Outlot W2, The Legacy Plat 2 Amended, an Official Plat, now included in and forming a part of the City of Norwalk, Warren County, Iowa (formerly described as Outlot W, The Legacy Plat 2, an Official Plat, now included in and forming a part of the City of Norwalk, Warren County, Iowa), (the "Mortgaged Property"), which Outlot W2, The Legacy Plat 2 Amended, has been re-platted as **The Legacy Plat 3**, an Official Plat, now included in and forming a part of the City of Norwalk, Warren County, Iowa, hereby consents to the within and foregoing Second Modification of Declaration of Covenants, Conditions, Easements and Restrictions Applicable to The Legacy, Norwalk, Warren County, Iowa.

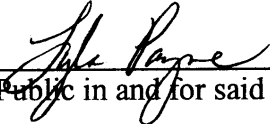
Dated this 26th day of July, 2002.

LIBERTY BANK, FSB, Mortgagee

By: 
Bradley R. Sporrer, Vice President

STATE OF IOWA)
)SS.
COUNTY OF POLK)

On this 26th day of July, 2002, before me, a Notary Public in and for the State of Iowa, personally appeared Bradley R. Sporrer, to me personally known, who being by me duly sworn did state that he is the Vice President of **Liberty Bank, FSB**; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and the said Bradley R. Sporrer, 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

