

WARREN COUNTY, IOWA
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BOOK 2003 PAGE 1901
JUDITH K. LATHROP, RECORDER

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

SPACE ABOVE THIS LINE FOR RECORDER

**FIRST MODIFICATION OF DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR COLONIAL MEADOWS**

AND

**FIRST MODIFICATION OF SUPPLEMENTARY DECLARATION OF COVENANTS
FOR COLONIAL MEADOWS PLAT 2**

AND

**FIRST MODIFICATION OF SUPPLEMENTARY DECLARATION FOR COLONIAL
MEADOWS**

This **FIRST MODIFICATION OF DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR COLONIAL MEADOWS AND FIRST MODIFICATION OF SUPPLEMENTARY DECLARATION OF COVENANTS FOR COLONIAL MEADOWS PLAT 2 AND FIRST MODIFICATION OF SUPPLEMENTARY DECLARATION FOR COLONIAL MEADOWS** ("First Modification") is made this 5th day of February, 2003, by **H-CM, L.L.C.**, an Iowa limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Colonial Meadows, L.C., as the owner of Lots 2, 3 and 4 in Colonial Meadows Plat 1, City of Norwalk, Warren County, which are collectively defined as the Properties in accordance with paragraph (i) of Article I of the Colonial Meadows Declaration, as hereinafter defined, subjected the Properties to that certain Declaration of Covenants, Conditions, and Restrictions for Colonial Meadows dated July 22, 1999 and filed for record in the Office of the Recorder for Warren County, Iowa on July 22, 1999, in Book 1999, at Page 7539 (the "Original Colonial Meadows Declaration"); and

WHEREAS, Colonial Meadows, L.C., as the owner of Lot 1 in Colonial Meadows Plat 2, City of Norwalk, Warren County, Iowa, subjected said property to the Original Colonial Meadows Declaration pursuant to the Supplementary Declaration of Covenants for Colonial Meadows Plat 2 dated August 18, 1999 and filed for record in the Office of the Recorder for

Warren County, Iowa on August 24, 1999, in Book 1999, at page 8745 (the "1999 Supplementary Declaration"); and

WHEREAS, Colonial Meadows, L.C., as the owner of Lots 1, 2, 3 and 4 in Colonial Meadows Plat 5, City of Norwalk, Warren County, Iowa subjected said property to the Original Colonial Meadows Declaration pursuant to the Supplementary Declaration of Covenants for Colonial Meadows dated June 28, 2000 and filed for record in the Office of the Recorder for Warren County, Iowa on June 29, 2000 in Book 2000, at Page 6003 (the "2000 Supplementary Declaration"). The Original Declaration as supplemented by the 1999 Declaration and the 2000 Declaration is hereinafter referred to as the "Declaration;" and

WHEREAS, Declarant is the successor and assignee of Colonial Meadows, L.C., as the Declarant under the Declaration, and as the owner of all of the Properties, as defined in the Declaration, except for Lot 4 in Colonial Meadows Plat 1 (which has been replatted as Meadows Properties Plat 1) and Lot 1 in Colonial Meadows Plat 2; and

WHEREAS, Declarant is the sole Owner with voting rights in the Association in accordance with the provisions of Article II of the Declaration and, pursuant to the provisions of Section 2 of Article IX of the Declaration, Declarant has the right to amend the Declaration.

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

1. Section 1(g) of Article II of the Declaration is amended by adding the following provisions before the period at the end of Section 1(g):

“; to borrow money and own, mortgage, pledge and convey real property and personal property; to provide for the installation, operation and maintenance of entrance features and signage, including, but not limited to, project signage; and, in its discretion, perform services on behalf of Owners of one or more Lots at the expense of such Owners.”

2. Section 2 of Article II of the Declaration is hereby amended by deleting Section 2 in its entirety and inserting the following in lieu thereof:

“Section 2. Membership and Voting Rights. Membership and voting rights in the affairs of the Association shall be as follows:

(a) Each and every person, persons or legal entity who shall own all or a part of any Lot, tract, or parcel of land in the Properties, other than Non-Membership Property, as hereinafter defined (the "Membership Property"), shall automatically be a member of the Association, PROVIDED that any person or entity who holds such an interest merely as security for the performance of any obligation shall not be a member. A person or entity who holds only an interest in Non-Membership Property shall not be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of all or a portion

of any Membership Property. For purposes of this Declaration, the term "Non-Membership Property" shall mean the following:

- a. All property that is dedicated to and accepted by a public authority;
- b. All property that is owned by the Association; and
- c. Lot 1 of the final plat of Colonial Meadows Plat 1, so long as said Lot is owned by the City and is used as the City's Public Safety Facility.

Membership shall be continuous throughout the period that a member continues to own all or a portion of any Membership Property. A membership shall terminate automatically without any Association action whenever such member ceases to own any Membership Property. Termination of membership shall not relieve or release any former member from any liability or obligation incurred by virtue of or in any way connected with ownership of any part of Membership Property, nor shall it impair any rights or remedies which the Association or others may have against such former Owner or member arising out of or in any way connected with such ownership or membership.

(b) Each member of the Association shall be entitled to one (1) vote for each square foot, rounded up to the nearest whole square foot, of Membership Property in which such member owns an interest. When two (2) or more persons or entities hold undivided interests in any part of Membership Property, all such persons and entities shall be members, and the vote for such part of the Membership Property shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to each square foot of the Membership Property, as determined above, in which such members own undivided interests. Notwithstanding the foregoing or any other provision of this Declaration to the contrary, an Owner of Non-Membership Property shall not be a member of the Association as a result of such Owner's ownership of Non-Membership Property, but shall be a member of the Association if such Owner owns Membership Property, and shall only be entitled to votes pursuant to this provision or the other provisions of the Declaration which respect to Membership Property.

(c) Each member of the Association shall abide by and benefit from each provision, covenant, condition, and restriction contained in the Articles of Incorporation and the Bylaws of the Association, and by which each member agrees to be bound, or which is contained in any rule, regulation, or restriction promulgated pursuant to said Articles of Incorporation and Bylaws. The obligations, burdens, and benefits of

membership in the Association touch and concern the land and shall be covenants running with each Owner's land for the benefit of all other Lot or parcels of land within the Properties.

WITH THE EXCEPTION OF THE PROVISIONS OF ARTICLE III, SECTION 4(a), NOTWITHSTANDING THE ABOVE OR ANY OTHER PROVISION OF THIS DECLARATION TO THE CONTRARY, DECLARANT SHALL BE THE ONLY MEMBER WITH VOTING RIGHTS AS TO THE ASSOCIATION UNTIL SUCH TIME AS DECLARANT NO LONGER OWNS ANY LOT OR PARCEL PRIMARILY FOR THE PURPOSE OF SALE OR UNTIL DECLARANT WAIVES THIS RIGHT TO BE THE ASSOCIATION'S SOLE VOTING MEMBER, WHICHEVER FIRST OCCURS. SO LONG AS DECLARANT IS THE SOLE VOTING MEMBER, DECLARANT SHALL HAVE THE RIGHT TO APPOINT OR REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF DIRECTORS AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION. EACH OWNER OF A LOT VESTS IN DECLARANT SUCH AUTHORITY TO BE THE SOLE VOTING MEMBER AND TO APPOINT AND REMOVE DIRECTORS AND OFFICERS OF THE ASSOCIATION AS PROVIDED BY THIS SECTION."

3. Article III of the Declaration is hereby deleted in its entirety and the following inserted in lieu thereof:

"ARTICLE III

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation. Declarant hereby covenants, and each Owner of any Membership Property by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association assessments as provided in this Declaration. The assessments levied by the Association and any other charges against the Owner of Membership Property set forth elsewhere in this Declaration, together with interest, costs and reasonable attorneys' fees shall be a charge on the Membership Property of such Owner and shall be a continuing lien upon such Membership Property against which each such assessment or charge is made senior to all liens except the first mortgage of record, any ad valorem taxes, and any special assessments levied by the City. Such assessment or charge, together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of the Membership Property at the time when the assessment or charge fell due. The personal obligation for delinquent assessment or charge shall not pass to said Owner's successor in title unless expressly assumed by them. Notwithstanding anything in the foregoing to the contrary, the assessments shall not constitute a lien on any Lot or portion of the Properties owned by the

Declarant that does not have a completed building improvements constructed thereon, but the Declarant shall be personally liable to the Association for the assessments on any such Lot or portion of the Properties owned by the Declarant.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of carrying out the general duties and powers of the Association, including, but not limited to, operation, maintenance, repair, reconstruction, restoration, replacement, improvement or alteration of the Common Areas (including the signage, entrance feature and landscaping easement areas) and the median areas within Colonial Parkway, insurance coverage of the Association and its property, any legal or other costs of enforcement of this Declaration, management fees for any person or entity to administer the Association and oversee its operations that are customary in the industry for similarly situated properties, and for such reasonable reserves as the Board of Directors deems necessary. In making such assessments, the amount to be levied shall be equal and limited to the actual cost to the Association of providing those functions and services set forth in this Declaration. The assessments may not be levied to pay for any public improvements to be dedicated to the City of Norwalk, Iowa or to any other governmental body or public utility company (except to the extent that an easement must be granted to a public utility company to the extent necessary to get it to extend service to a Common Area).

Section 3. Rate of Assessment. The total assessments that are levied shall be divided by the total square feet of all of the Membership Property as of the beginning of the period for which the assessment applies (the "Per Square Footage Assessment") and each Owner of Membership Property shall be assessed an amount equal to the number of square feet of Membership Property owned by such Owner as of the beginning of the period for which the assessment applies times the Per Square Footage Assessment.

Section 4. Procedures. All assessments shall be made in the manner and subject to the following procedure:

(a) The Board of Directors of the Association may fix the annual assessment and may modify the annual assessment upward or downward from time to time. The Board of Directors of the Association may also adopt a special assessment to cover any operating deficit. The Board of Directors of the Association shall not undertake those capital improvement(s) that cumulatively, as to all Owners, exceed the sum of Twenty Thousand Dollars (\$20,000.00) per calendar year without the prior approval of two-thirds (2/3rds) of the votes of the Members who are voting in person or by proxy at a meeting duly called for the purpose of approving such capital improvement; provided, however, for so long as the Declarant controls the election of the Board of Directors, any of those capital improvement(s) that cumulatively, as to all Owners, exceed the sum of Twenty Thousand Dollars (\$20,000.00) per calendar year shall be approved by the Declarant and a majority of the votes of the other Members who are not affiliated with the

Declarant (and excluding the Declarant) who are voting in person or by proxy at a meeting duly called for the purpose of approving such capital improvement.

(b) Notice of all assessments may be given by mail addressed to the last known or usual post office address of the holder of legal title of the Membership Property and deposited in the United States mail with postage prepaid, or may be given by posting a brief notice of the assessment upon the Membership Property itself.

(c) Every assessment shall become due and payable within thirty (30) days after notice is given, as hereinabove provided, unless the assessment by its own terms provides for payment in monthly, quarterly or semi-annual installments, in which case each such payment shall be due as stated in such notice. From and after the date when said payment is due, it shall bear interest at lesser of (i) the rate of twelve percent (12%) per annum, or (ii) the maximum rate allowed by law, until paid and such payment and interest shall constitute a lien upon the Membership Property and said lien shall continue in full force and effect until the assessment is fully paid. The Board of Directors may also impose a late charge in such amount as it shall establish from time to time and set forth in any notice of assessment to defray the Association's administrative costs associated with and collecting delinquent assessment payments. At any time after the passage of the resolution levying an assessment and its entry in its minutes, the Board of Directors may, in addition, execute and acknowledge with respect to any Membership Property and cause same to be recorded in the Recorder's Office for Warren County, Iowa, and the Board of Directors may, upon payment, cancel or release any Membership Property from the liability of assessment (as shown by recorded instrument) by executing, acknowledging and recording (at expense of the Owner of the property affected) a release of such assessment with respect to any Membership Property affected, and the Board of Directors shall cause to be noted from time to time in the minutes of their proceedings, the payment made on account of assessments. Notwithstanding any other provision herein, the Association may bring an action at law against the Owner personally obligated to pay such assessment, or foreclose the lien against Owner's Membership Property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment, the cost of preparation, and filing the petition in such action including reasonable attorneys' fees. No Owner of Membership Property may waive or otherwise be relieved of liability for the assessments provided for herein by non-use of the Common Areas or facilities or abandonment of its Membership Property.

Section 5. Subordination of Assessment Liens. If any property subject to a lien created by any provision in this Declaration (an "Assessment Lien") shall be subject to the lien of a first mortgage of record (a "Mortgage Lien"), (i) the foreclosure of any Assessment Lien shall not operate to affect or impair the lien of such Mortgage Lien; and (ii) the foreclosure (judicial or nonjudicial) of the Mortgage Lien, or the acceptance by the mortgagee of a deed in lieu of such foreclosure, shall not operate to affect or impair the Assessment Lien, except that to

the extent the Assessment Lien is in respect of assessments that were due prior to (a) the issuance of a sheriff's deed resulting from a decree of foreclosure, (b) the conclusion of an alternative or a nonjudicial foreclosure proceeding, or (c) the acceptance of the deed in lieu of foreclosure, as the case may be (the "Priority Date"), the Assessment Lien shall be subordinate to the Mortgage Lien (a "Subordinate Assessment"), with the mortgagee or foreclosure purchaser taking title free of any Subordinate Assessment, but subject to Assessment Liens in respect of assessments due on or subsequent to the Priority Date. All Assessment Liens in respect of a Subordinate Assessment that have not been paid shall be deemed to be an expense of the Association, but such characterization shall not derogate the Association's right to collect said sums from the defaulting Owner personally."

4. Article VII, Common Properties, of the Declaration is hereby amended by adding a new Section 7 thereto to read as follows:

"7 Signage, Entrance Landscaping Features and Irrigation Easements.

(a) Declarant hereby grants to the Association, for and on behalf of the Owners of all Lots within the Properties, an easement for the purpose of installing, maintaining, operating, repairing, replacing and removing signage, flags, other entrance features, landscaping and associated irrigation systems in, on, over, and under the following easement areas:

(i) The portion of Lot 3, Colonial Meadows Plat 1, an Official Plat, now included in and forming a part of the City of Norwalk, Warren County, Iowa, that is more particularly described as:

Beginning at the Northeast corner of said Lot 3; thence South 89° 54' 42" West along the North line of said Lot 3, a distance of 86.00 feet to a point; thence South 00° 0f' 18" East, a distance of 56.00 feet to a point; thence North 89° 54' 42" East, a distance of 86.00 feet to a point on the East line of said Lot 3; thence North 00° 05' 23" West along the East line of said Lot 3, a distance of 56.00 feet to the Point of Beginning;

(ii) The portion of Outlot Z, Colonial Meadows Plat 5, an Official Plat, now included in and forming a part of the City of Norwalk, Warren County, Iowa, that is more particularly described as:

Beginning at the Southeast corner of said Outlot Z, that is also the Northeast corner of the Colonial Parkway right-of-way; thence South 89° 54' 42" West along the Northerly right-of-way line of said Colonial Parkway a distance of 86.00 feet to a point; thence North 00° 05' 18" West, a distance of 56.00 feet to a point; thence North 89° 54' 42" East, a distance of 86.00 feet to a point on the East line of said Outlot Z; thence S 00° 05' 23" West along the East line of said Outlot Z to the Point of Beginning; and

(iii) Such additional easement areas as are dedicated to the Association by Declarant for such purposes and described in an amendment to this Declaration.

(b) These easements are subject to the following conditions:

(i) The signs shall be The Legacy identification signs. All such signs shall conform to the ordinances, rules, and regulations of the City. Any electrical service for such signs shall be separately metered or otherwise separately billed by the public utility furnishing such electrical service and charged to the Association. Neither Declarant nor the Association is required to install or maintain signs in any or all of these sign easement areas.

(ii) To the extent the Declarant desires to, the Declarant shall have the right to install signs, entrance features, if any, and landscaping, and the Association may also install any additional entrance features, signs and landscaping it desires and the Association shall maintain, operate and replace all signs, entrance features, landscaping within such signage and landscaping easement areas, including, but not limited to, paying for any electrical or water service for such operation and maintenance.

(iii) Neither Declarant nor the Association shall locate any such signage, entrance features, or landscaping in a manner to obstruct any vision triangles that overlap a portion of any such easement area, if any.

(iv) The Owner of the Lot upon which any such easement is located shall not make any modifications or improvements to any such easement area without the consent of the Association, which consent shall be in the Association's sole discretion.

(v) Any of the easement areas granted in this Section shall terminate (a) by written election of the Declarant, in recordable form, filed in the Office of the Recorder for Warren County, Iowa, provided that Declarant is then the Owner of the Lot on which such easement area lies, but if any sign is then located in such easement area, it shall be removed at the expense of Declarant, or (b) by the vote of the Board of the Association any time on or after January 1, 2016, and the filing of a written memorandum thereof in recordable form in the Office of the Recorder for Warren County, Iowa."

5. Declarant hereby declares that the following described property shall be held, sold and conveyed subject to the Easements, Restrictions, Covenants and Conditions provided in the Declaration, as amended by this Amendment:

(a) The Eastern 52.13 acres of Outlot Z, Colonial Meadows Plat 5, an Official Plat, now included in and forming a part of the City of Norwalk, Warren County, Iowa, with such 52.13 acres measured as the Easterly 1130 feet, more or less, on the North line thereof and the Easterly 1146 feet, more or less, measured

perpendicular to Highway 28 at its intersection with the Northerly right-of-way line of Colonial Parkway, which 52.13 acre area is designated for commercial development on master plan for The Legacy Planned Unit Development adopted by Ordinance No. 01-01 of the City of Norwalk, Iowa, adopted May 17, 2001, as amended by the Amendment to Legacy PUD, Ordinance No. 02-09 of the City of Norwalk, Iowa, adopted July 18, 2002, (the "Master Plan"), as shown on the attached Exhibit A, or so much thereof as is actually developed for commercial lots. Initially, said approved master plan shows that approximately 46.65 acres, more or less, will be developed as commercial lots and the remainder will be developed as road. Initially, it will be assumed that this area is 46.65 acres for purposes of determining the assessments applicable to this area, but this number may increase or decrease as this area is developed. The exact amount of this area that will ultimately be subject to this Declaration will depend on area of commercial lots developed in the final plat or plats of this area, and may be more or less than 46.65 acres.

(b) Outlot X4, The Legacy Plat 4, an Official Plat, now included in and forming a part of the City of Norwalk, Warren County, Iowa, which Outlot X4, The Legacy Plat 4, is designated for commercial development on Master Plan, or so much thereof as is actually developed for commercial lots. Initially, said approved master plan shows that approximately 14.33 acres, more or less, will be developed as commercial lots and the remainder will be developed as road. Initially, it will be assumed that this area is 14.33 acres for purposes of determining the assessments applicable to this area, but this number may increase or decrease as this area is developed. The exact amount of this area that will ultimately be subject to this Declaration will depend on area of commercial lots developed in the final plat or plats of this area, and may be more or less than 14.33 acres.

The submission of these parcels as additional property under the Declaration shall be effective upon the recording of this instrument in the Office of the Recorder for Warren County, Iowa.

6. Based upon the foregoing amendments, the present assessment percentages for the properties subject to this Declaration are shown on the attached Exhibit B.
7. All capitalized terms used in this instrument that are not otherwise defined in this instrument shall have the meanings given to them in Declaration.
8. Except as expressly modified by this Amendment, all of the terms, conditions, covenants, provisions, easements and restrictions of the Declaration continue and remain in full force and effect.

Dated this 5th day of February, 2003.

H-CM, L.L.C.

By: Hubbell Realty Company, Manager

By: *Rick J. Tollakson*
Rick J. Tollakson, President

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

STATE OF IOWA)
)SS.
COUNTY OF DALLAS)

On this 5th day of February, 2003, before me a Notary Public in and for the State of Iowa, personally appeared Rick J. Tollakson and R. Michael Hayes, to me personally known, who being by me duly sworn did state 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 Rick J. Tollakson 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 the State of Iowa

**The Legacy
Planned Unit Development
Commercial Area**

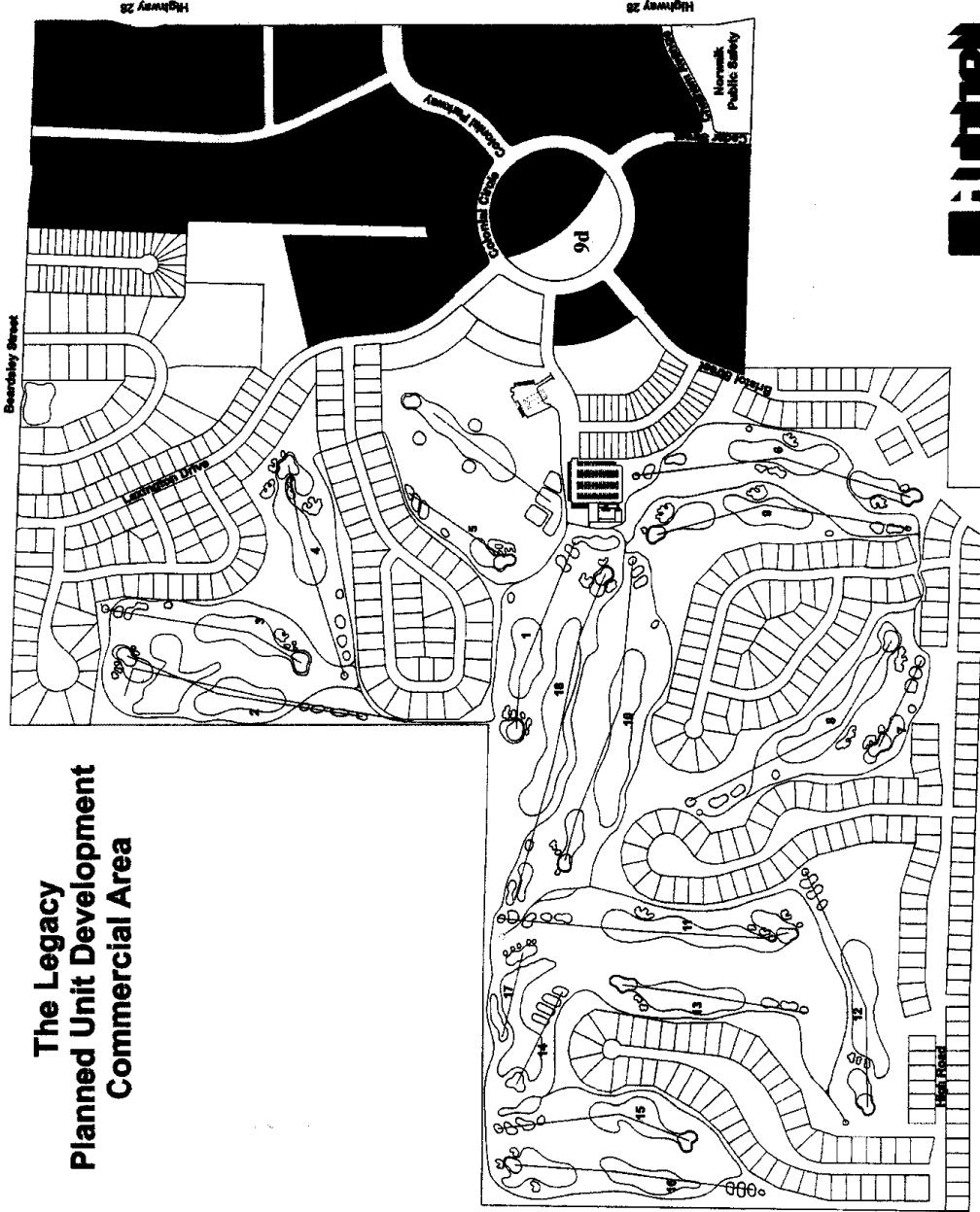


Exhibit "A"

- 1 - Lot 2, Colonial Meadows Plat 1
- 2 - Lot 3, Colonial Meadows Plat 1
- 3 - Lot 4, Colonial Meadows Plat 1
(which has been replatted as Lots 1 and 2, Meadows Properties Plat 1)
- 4 - Lot 1, Colonial Meadows Plat 2
- 5 - Lot 1, Colonial Meadows Plat 5
- 6 - Lot 2, Colonial Meadows Plat 5
- 7 - Lot 3, Colonial Meadows Plat 5
- 8 - Lot 4, Colonial Meadows Plat 5
- 9a - d - Collectively 14.33 acres of Outlot X4, The Legacy Plat 4
- 10a - p - Collectively 46.65 acres of the East 52.14 acres of Outlot Z, Colonial Meadows Plat 5

- * Signage, Entrance Features, Landscaping and Irrigation Easement
- # Potential Future Signage, Entrance Features, Landscaping and Irrigation Easement



EXHIBIT B

**OWNERSHIP ASSESSMENT PERCENTAGES
AS OF JANUARY 2003**

| <u>Plat</u> | <u>Lot</u> | <u>Area in S. F.</u> | <u>Area in Acres</u> | <u>% of Total</u> |
|---------------------------|-------------------|---|----------------------|-------------------|
| Colonial Meadows Plat 1 | 2 | 297,479.57 | 6.829 | 6.63% |
| Colonial Meadows Plat 1 | 3 | 177,577.17 | 4.077 | 3.95% |
| Colonial Meadows Plat 1 | 4 | has been replatted as Meadows Properties Plat 1 | | |
| Meadows Properties Plat 1 | 1 | 54,855 | 1.260 | 1.22% |
| Meadows Properties Plat 1 | 2 | 21,780 | 1.150 | 0.49% |
| Colonial Meadows Plat 2 | 1 | 483,156.99 | 11.092 | 10.76% |
| Colonial Meadows Plat 5 | 1 | 466,874 | 10.716 | 10.40% |
| Colonial Meadows Plat 5 | 2 | 111,024 | 2.549 | 2.47% |
| Colonial Meadows Plat 5 | 3 | 106,096 | 2.436 | 2.36% |
| Colonial Meadows Plat 5 | 4 | 114,987 | 2.640 | 2.56% |
| Colonial Meadows Plat 5 | E. part | Outlot Z 2,032,074 | 46.65 | 45.26% |
| The Legacy Plat 4 | Part of Outlot X4 | <u>624,214.8</u> | <u>14.33</u> | <u>13.90%</u> |
| TOTAL | | 4,490,058.53 | 103.73 | 100.00% |