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✓ WARREN COUNTY, IOWA  
FILED FOR RECORD

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BOOK 2005 PAGE 7474  
JUDITH K. LATHROP, RECORDER

*Theresa F. Miller* DEPUTY

Prepared By, and When Recorded, Return to: R. Michael Hayes, 6900 Westown Parkway, West  
Des Moines, Iowa 50266-2520 (515) 280-2051

SPACE ABOVE THIS LINE FOR RECORDER

*27/pt  
JLT*

**DECLARATION OF RESTRICTIVE COVENANTS**

This Declaration of Restrictive Covenants (the "**Declaration**"), is made this 28<sup>th</sup> day of June 2005, by **H-CM, L.L.C.**, an Iowa limited liability company ("H-CM").

**WHEREAS**, H-CM owns that property that is legally described as follows:

Parcel "C" of Outlot 'Z' of Colonial Meadows Plat 5, an Official Plat now in and forming a part of the City of Norwalk, Warren County, Iowa, as shown on that Plat of Survey, prepared by McClure Engineering Company, dated June 23, 2005 and filed for record in the Office of the Recorder for Warren County, Iowa in Irregular Plat Book ~~2005~~, Page 11 of Norwalk, said Parcel "C" being more particularly described as follows: <sup>19</sup>

Parcel "C" being part of Outlot "Z" of Colonial Meadows Plat 5, an Official Plat, now included in and forming a part of the City of Norwalk, Warren County, Iowa, described as beginning at the Southeast Corner of said Outlot "Z" and the Northerly right-of-way of Colonial Parkway; thence S 89° 54' 42" W along the South line of said Outlot "Z", 129.93 feet; thence Southwesterly on the South line of said Outlot "Z" along a 360.00 foot radius curve to the left, 132.25 feet (Chord bearing S 79° 23' 14" W, 131.51 feet); thence N 25° 55' 03" W, 16.69 feet; thence Northwesterly along a 530.00 foot radius curve to the Left, 173.16 feet (Chord bearing N 35° 16' 38" W, 172.39 feet); thence N 44° 38' 14" W, 138.48 feet; thence Northwesterly along a 470.00 foot radius curve to the Right, 364.71 feet (Chord bearing N 22° 24' 24" W, 355.63 feet); thence Northeasterly along a 25.0 foot radius curve to the right, 39.26 feet (Chord bearing N 44° 48' 30" E, 35.35 feet); thence N 89° 47' 36" E, 573.08 feet to the East line of said Outlot "Z"; thence S 00° 05' 23" E along said East line, 585.79 feet to the Point of Beginning, which Parcel "C" contains 281,427 square feet or 6.46 acres, (the "Property"); and

**WHEREAS**, H-CM entered into that certain Purchase Agreement, dated March 23, 2005, (the "Purchase Agreement") with **METROPOLITAN LAND COMPANY, L. C.**, an

Iowa limited liability company, ("Metropolitan") to sell the Property to Metropolitan upon the terms and conditions set forth in the Purchase Agreement.

**NOW, THEREFORE**, pursuant to, and in fulfillment of Section 4 of the Purchase Agreement, H-CM hereby publishes and declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, easements, restrictions, limitations and obligations, all of which are for the purpose of protecting the value and desirability of the property that is subject to The Legacy PUD (as defined below), and all of which shall run with the land and shall be a burden upon the Property and a benefit to, any and all parties acquiring or owning any right, title or interest in any part of land subject to The Legacy PUD, and their heirs, successors, assigns, grantees, executors, administrators, and devisees.

1. The Property is located on the corner of the main entrance into The Legacy project and that the appearance and quality of the improvements to be constructed upon the Property will have a major influence upon the development and welfare of The Legacy community and the occupants of other property within The Legacy.

2. Metropolitan and its successors and assigns shall not construct any improvements or modifications to the exterior of any improvements on the Property without the prior written approval of H-CM as to the site plan, building elevations, exterior signs, landscaping plans and lighting plans for the improvements, for so long as H-CM shall own any property covered by The Legacy PUD, which consent shall not be unreasonably withheld. No exterior siding metal building shall be permitted. All parking lot and exterior lighting on the Property shall conform to the following requirements:

(a) Metropolitan shall submit two photometric layouts, drawn to scale with the scale and a North arrow shown, with a maximum 10-foot grid, calculated at grade, and with accurate depiction of site elements and specific location, height, make and model of all exterior lighting fixtures (i) one covering the entire site to at least twenty-five feet (25') beyond all property lines to illustrate overall lighting levels and possible trespass light on adjacent properties, and (ii) the second showing the paved areas only, including areas beneath canopies and soffits; together with manufacturer's "cut sheets" and drawings with information on all proposed lighting materials.

(b) The photometric data shall be shown at the maintained levels, and a statement shall be included on the plan of the percentage from initial to maintained levels.

(c) The photometric layout for the paved areas, including areas beneath canopies and soffits, shall include a summary of (i) the average foot candle level, (ii) the maximum foot candle level, (iii) the minimum foot candle level, (iv) the uniformity ratio of the average foot candle level to the minimum foot candle level, which cannot exceed a ratio of 6:1, and (v) the ratio of the maximum foot candle level to the minimum foot candle level, which cannot exceed a ratio of 20:1.

(d) Tilting of light fixtures is prohibited, except for floodlights for architectural emphasis or lighting of ground mounted monument signs, in which event the light output

shall be directed totally to the sign face or feature to be architecturally emphasized so as to prevent up-lighting and glare.

(e) Any luminaire with a lamp rated at more than 1800 shall be fully shielded so that it shall not emit, in its installed position, any direct light above a horizontal plane through the lowest direct light emitting part of the luminaire. For the purposes of these requirements, "direct light" shall mean the light emitted directly from the lamp, off of the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire. Further, any luminaire with a lamp rated at more than 1800 lumens shall not emit in its installed position any more than 5% of its total light output in the zone from 15 degrees below the horizontal to the horizontal plane through the lowest direct light emitting part of the luminaire.

3. The Property may be used for the display, sale, service and repair of any vehicle that is customarily sold, serviced or repaired by an automotive dealership that sells, services and repairs new and used passenger vehicles and Motor Trucks with a Gross Vehicle Weight Rating (as hereinafter defined) of 17,500 pounds or less. Except as expressly provided herein to the contrary, the Property may not, without the prior written approval of H-CM, be used for the display, sale, service or repair of (i) any Motor Trucks, other than Light Delivery Trucks, Panel Delivery Trucks, Pickups, Multipurpose Vehicles, sport utility vehicles, or other Motor Trucks with a Gross Vehicle Weight Rating (as hereinafter defined) of 17,500 pounds or less, (ii) Truck Tractors, (iii) Road Tractors, (iv) Semi-trailers, (v) School Buses, (vi) Commercial Motor Vehicles, or (vii) Motor Homes. Notwithstanding any of the foregoing provisions to the contrary, the Property may be used for the sale of Motor Trucks with a Gross Vehicle Weight Rating (as hereinafter defined) of greater than 17,500 pounds, School Buses or Motor Homes that are specially ordered, provided that such vehicles are only displayed on the Property after receipt of the delivery of the vehicle in fulfillment of the prior order for such vehicle for such time as may be reasonably necessary to accept delivery of such vehicle and to prepare it for delivery to the customer who purchased such vehicle. Furthermore, notwithstanding any of the foregoing provisions to the contrary, if the Property is used for an automotive dealership that is affiliated with one or more automotive manufacturers, then the Property may also be used for service and repair of any vehicle that is customarily sold by the automotive manufacturer with which such dealership is affiliated or any Motor Home that incorporates a chassis, motor or drive train customarily sold by that automotive manufacturer, provided that the service and repair of Motor Vehicles, other than automobiles, Light Delivery Trucks, Panel Delivery Trucks, Pickups, Multipurpose Vehicles, sport utility vehicles, or other Motor Trucks with a Gross Vehicle Weight Rating (as hereinafter defined) of 17,500 pounds or less, shall constitute less than twenty percent (20%) of the service and repair provided at the Property.

Capitalized terms used in this Section 3 that are not defined herein shall have the meaning ascribed to such terms in Section 321.1 of the Code of Iowa (2005). The term "Gross Vehicle Weight Rating" shall mean the total weight of a vehicle, including chassis, body and the manufacturer recommended payload for such vehicle.

4. For the purposes of this Declaration of Restrictive Covenants, "The Legacy PUD" shall mean the Ordinance No. 01-01 of the City of Norwalk, Iowa, as the same has been amended by

Ordinance Nos. 03-09, 03-10 and 04-03 of the City of Norwalk, Iowa, and as the same may be amended from time to time (except to the extent of any amendment that may add any area to the land described below that is subject to The Legacy PUD on the date of this Declaration of Restrictive Covenants, which The Legacy PUD is applicable to the following described property, which property shall also be referred to as "The Legacy"):

"The Northeast Quarter (NE ¼), and the North one-half of the Southeast Quarter (N ½ SE ¼), and the East one-half of the Northwest Quarter (E ½ NW ¼) of Section Twelve (12), Township Seventy-seven North (T77N), Range Twenty-five West (R25W) of the 5<sup>th</sup> P.M. in Linn Township, Warren County, Iowa; and

The East Half (E ½) of the Southeast Quarter (SE ¼) of Section 11, and the Southwest Quarter (SW ¼) of Section 12, and the West Half (W ½) of the Southwest Quarter (SW ¼) of the Southeast Quarter (SE ¼) of Section 12, except the South 210 feet (S 210') thereof, all in Township 77 North, Range 25 West of the 5<sup>th</sup> P. M. in Warren County, Iowa."

5. H-CM agrees that it will, on or before May 31, 2006, at no cost to Metropolitan or its successors or assigns, either construct the portion of the North/South public street adjacent to the Western boundary of the Property or cause the same to be constructed, and shall cause the remainder of the North/South public street connecting between Colonial Parkway and Beardsley Avenue to be constructed by no later than May 31, 2010 (provided that the alignment of said North/South public street, north of its intersection with the East/West public street described below, shall be as determined by H-CM in accordance with the way the remainder of Outlot "Z", Colonial Meadows Plat 5 develops), all in compliance with all applicable laws, rules, regulations and ordinances.

H-CM agrees that it will, on or before May 31, 2006, at no cost to Metropolitan or its successors or assigns, either construct the portion of the East/West public street adjacent to the Northern boundary of the Property connecting between the North/South public street described in the preceding paragraph and Iowa Highway 28 or cause the same to be constructed, all in compliance with all applicable laws, rules, regulations and ordinances.

H-CM further agrees that if sanitary sewer, storm water sewer, gas, electric or water services adequate for use of the Property for an automobile dealership are not located adjacent to the Property on the date the deed from H-CM to Metropolitan is recorded, that H-CM, at its expenses, shall install or cause the same to be installed adjacent to the Property on or before May 31, 2006.


6. Upon completion of the public streets described in Section 5 above, Metropolitan or its successor or assign who then owns the Property agrees that it shall execute an affidavit acknowledging fulfillment of such obligation in a form that can be recorded of record.

7. H-CM agrees that from time to time, at the request of Metropolitan or its successors or assigns, it will execute an affidavit in recordable form acknowledging what plans and related documents it has approved pursuant to the requirements of the first sentence of Section 2.

H-CM, L.L.C.

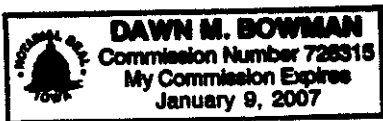
By: Hubbell Realty Company, Manager


By:   
Rick J. Tollakson, President and CEO

By:   
R. Michael Hayes, Secretary

STATE OF IOWA            )  
  )SS.  
COUNTY OF DALLAS    )

On this 28<sup>th</sup> day of June, 2005, before me, the undersigned, 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 say that they are the President and Chief Executive Officer and the Secretary, respectively, of **Hubbell Realty Company**, the Manager 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 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.



  
Notary Public in and for said State