

WARREN COUNTY, IOWA
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JUDITH K. LATHROP, RECORDER

Robert Lucas DEPUTY
Des Moines, Iowa 50309 (515) 283-3100

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When Recorded
Return to:
Gregory B. Wilcox
700 Walnut, Suite 1600
Des Moines, Iowa 50309

Prepared By: Gregory B. Wilcox, 700 Walnut, Suite 1600, Des Moines, Iowa 50309 (515) 283-3100

DECLARATION OF
GOLF COURSE EASEMENTS AND RESTRICTIONS
AND
DEVELOPMENT EASEMENTS AND RESTRICTIONS

STATE OF IOWA)
)SS. **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF POLK)

THIS DECLARATION OF GOLF COURSE EASEMENTS AND RESTRICTION AND DEVELOPMENT EASEMENTS AND RESTRICTIONS (this "Declaration"), is made this 27th day of June, 2001, by **H-CM, L.L.C.**, an Iowa limited liability company, whose address is 904 Walnut Street, Suite 900, Des Moines, IA 50309-3574, on behalf of itself and its successors and assigns forever ("H-CM").

RECITALS

WHEREAS, H-CM is the owner of certain land located in the City of Norwalk, Warren County, Iowa, which land is legally described in Exhibit A attached hereto (the "Real Estate"), on which H-CM intends to develop a mixed-use golf course, residential and commercial development; and

WHEREAS, H-CM intends to develop, or have another developer develop, a golf course, a golf clubhouse and related facilities (collectively the "Golf Course") on the real estate described in Exhibit B attached hereto (the "Golf Course Property"); and

WHEREAS, H-CM intends to develop a mixed-use residential and commercial development (the "Development") upon the real estate described in Exhibit C attached hereto (the "Development Property"); and

WHEREAS, H-CM desires to provide for creation of certain easements, covenants and restrictions, on the Development Property and Development, in order to ensure the orderly development and operation of the Golf Course; and

WHEREAS, H-CM desires to provide for creation of certain easements, covenants, and restrictions on the Golf Course and the Golf Course Property, in order to ensure the orderly development and operation of the Development.

NOW THEREFORE, H-CM, by the execution and recording of this Declaration, hereby declares that the Real Estate shall be held, occupied, sold and conveyed subject to the easements, covenants and restrictions set forth in this Declaration.

**ARTICLE I
EASEMENTS AND RESTRICTIONS FOR THE BENEFIT OF
THE GOLF COURSE PROPERTY**

1.1. **Golf Course Play Easement.** There is hereby granted to the owner of the Golf Course Property, along with its servants, independent contractors, agents, members, guests, and invitees (collectively, the “Golf Course Users”), a nonexclusive easement over and across the following described portions of the Development Property for the following purposes:

(a) Retrieval of golf balls, including the right to enter on the Development Property and any platted lot thereon (“Lot”) thereon, for that purpose, provided the right to retrieve golf balls shall only extend to non-enclosed portions of the Development Property or Lots, and the person retrieving the golf balls shall do so in a reasonable manner and the owner of the Golf Course Property will repair any damage caused by entry onto the Development Property or Lot to retrieve the golf ball; provided, that no play of such golf balls shall be allowed from outside of the Golf Course Property boundary;

(b) Flight of golf balls over, across, and upon the Development Property; provided, that no play of such golf balls shall be allowed from outside of the Golf Course Property boundary;

(c) Doing of every act necessary and incident to the playing of golf and other recreational activities on the Golf Course Property, including, but not limited to, the operation of lighting facilities for operation of driving range, and golf practice facilities during hours of darkness (but in no circumstances later than 10:00 p.m.), and the creation of usual and common noise levels associated with such recreational activities. All exterior lighting for the driving range and golf practice facilities shall be directed downwards and away from adjacent residential housing so as to avoid adverse impact on such residential housing and shall be in compliance with all applicable governmental requirements and all criteria established by H-CM or its successors (including any homeowners’ association that may be organized by owners of residential Lots, a “Homeowners Association”);

(d) Creation of noise related to the normal maintenance and operation of the Golf Course, including, but not limited to, the operation of mowing and spraying equipment. Such noises may occur between the hours of 5:00 a.m. and 10:00 p.m.; and

(e) An easement for the occasional overspray of herbicides, fungicides, pesticides, fertilizers, and water over the Development Property located adjacent to the Golf Course Property. Such easement shall extend for twenty feet (20’) onto the Development Property along the mutual property line between the Development Property and the Golf

Course Property. All such overspraying shall be accomplished in a safe and reasonable manner and the owner of the Golf Course Property shall repair any damage caused by such overspraying on the Development Property.

1.2. **Damage by Errant Golf Balls.** H-CM, for itself and each and every subsequent owner of portions of the Development Property, hereby acknowledges and agrees that the existence of a golf course on the Golf Course Property is beneficial and highly desirable; however, each such owner acknowledges and agrees that portions of the Development Property located adjacent to the Golf Course Property shall be subject to the risk of damage or injury due to errant golf balls. H-CM, for itself and each subsequent owner of portions of the Development Property, their successors and assigns, hereby assumes the risk of damage and injury on the Development Property or Lot and hereby releases the owner of the Golf Course Property, its successors and assigns, from any and all liability for damage or injury caused by errant golf balls in, or on the Development Property, arising from, directly or indirectly, golf balls flying, landing, hitting, or resting in or around the Development Property. The above releases shall not be construed to extend to the release of the golfer who actually hits the errant golf ball.

1.3. **Fencing and Building Restrictions.** No owner of land within the Development Property shall construct a fence or enclosure located along or next to the boundary lines between the Golf Course Property and the Development Property, except in compliance with the fence criterion established by H-CM or its successors and as modified, from time to time, by H-CM or its successors.

1.4. **Signage.** An easement is hereby granted for the construction, repair, maintenance, and replacement of directional and informational signage within the Development Property along the roads, streets and rights-of-way located therein, for the purpose of directing Golf Course Users to the Golf Course Property. Such signage shall be constructed of materials and of a size and type of signage utilized for similar purposes within the Development. However, the owner of the Golf Course Property shall exercise its best efforts to locate all signage within the Golf Course Property or, if allowed by the City of Norwalk, within the public rights-of-way granted unto the City of Norwalk.

1.5. **Golf Cart and Maintenance Vehicle Easement.** A nonexclusive easement is hereby granted to Golf Course Users to operate golf carts, pull-carts, machinery, equipment, and maintenance vehicles used in connection with the construction and operation of the Golf Course Property over and across the Development Property as agreed to, in writing, from time to time, by H-CM and the owner of the Golf Course Property until the development of both the Development and the Golf Course are completed, or until such time as each such easement areas are developed as a public street and dedicated to the City of Norwalk, Iowa. The foregoing easement shall terminate with respect to every Lot once it has been platted by H-CM. The owner of the Golf Course recognizes and agrees that the right to use the normal cart path through these easement areas may be disrupted by the owner of the Development Property during the construction of the public streets and public utilities in such easement areas, provided that after the Golf Course is open for play, the

owner of the Development Property agrees that it shall construct such public streets and public utilities in a manner so as not disrupt the entire use of any such easement area; provided, however, it shall have no liability for any disruption to such usage caused by the electric, gas, telephone, cable television, fiber optic utility companies or any other public utility company in the installation, maintenance or repair of its utilities .

1.6. **Utility Easements.** A nonexclusive easement is hereby granted to the owner of the Golf Course Property, its successors and assigns, for the purpose of constructing, maintaining, repairing and replacing private irrigation and drinking water lines over, through, under, and across portions of the Development Property as agreed to, in writing, from time to time, by H-CM and the owner of the Golf Course Property until the development of both the Development and the Golf Course are completed. The owner of the Golf Course shall be liable to repair any damage to the streets, roads, utilities, landscaping, and other improvements in such areas that it disturbs or damages in the course of maintenance, operation and use of such irrigation lines and easement areas.

The owner of the Development Property hereby grants the owner of the Golf Course Property, its successors and assigns, the right to such surface water drainage over and across the Development Property as shall naturally occur if the Golf Course Property and Development Property are graded and developed substantially in accordance with a grading plan approved, by H-CM, in writing.

The owner of the Development Property hereby agrees that it shall grant the governmental body or public utility company furnishing any sanitary sewer, storm sewer, electricity, natural gas, telephone, cable television, fiber optics or other utility service such nonexclusive easements over, through, across and under the Development Property as such entity may reasonably require for the purpose of constructing, maintaining, repairing and replacing sanitary sewers, storm sewers, and water, electrical, natural gas, telephone, cable television, fiber optics and other utility service lines and facilities serving the Golf Course Property, provided that such utility easements shall only be centered on lot lines between Lots or adjacent to the rear lot line (except that if the rear lot line abuts the Golf Course Property such easements shall be on the Golf Course Property) or adjacent to a lot line abutting a public street, such easement shall be no greater in width than is usual and customary for such easements in Norwalk, Iowa, and shall be in conformance generally with such easements in Warren County, Iowa. The owner of the Development Property shall execute individual easements for each such utility service line actually constructed.

1.7. **Ingress/Egress Easement.** In the event that the Development Property is developed or hereafter converted into a private development without public streets and rights-of-way, a nonexclusive easement is hereby granted for ingress and egress over, across, and through all streets, roads and rights-of-way, and through any security gates facilities now or hereafter existing on the Development Property, to and from the Golf Course Property by Golf Course Users. The Golf Course Users shall have the right to proceed through any security gate or similar security device without interference or restriction and in no event shall the Golf Course users or the owner of the Golf Course

Property be required to pay any fee or charge for ingress or egress over and across the Development Property or such security gate.

**ARTICLE II
EASEMENTS AND RESTRICTIONS BENEFITING
THE DEVELOPMENT PROPERTY**

2.1. **Utility Easements.** The owner of the Golf Course Property, on behalf of itself and its successors and assigns, acknowledges and agrees that in order to provide for orderly construction and development of the Development Property for its intended uses that it shall grant utility easements over, through, under and across certain portions of the Golf Course Property (a) for the sanitary sewers, storm sewers and water mains, (b) for a sewer lift pump station, including a building, fencing, wet well, pumps and associated equipment and (c) for such natural gas, electricity, telephone, cable television, fiber optics, water, additional sanitary or storm sewers as may be reasonable or necessary for development of the Development Property, (collectively, the easements described in (a), (b) and (c) above shall be referred to as “Utility Easements”), subject to the following terms and conditions:

(a) All Utility Easements, with the exception of the sewer lift pump station, shall be located underground and shall be buried to a depth so as to not interfere with the operation of the Golf Course;

(b) The owner of the Development Property shall construct the portions of the sanitary sewers and storm sewers which cross the Golf Course, although such portions may not be connected to fully functioning systems, prior to or coordinated with the initial construction of the Golf Course, and upon completion of such construction, or thereafter as part of the dedication of the storm sewer or sanitary sewer of which such portion is a part to the City of Norwalk, Iowa, shall grant an easement therefor to the City of Norwalk, Iowa in the standard form of storm and sanitary sewer easements in the City of Norwalk, Iowa. Until such easement is granted to and accepted by the City of Norwalk, Iowa, the owner of the Development Property shall have the right to enter onto the Golf Course Property for the purpose of operating, maintaining, repairing and replacing all such storm and sanitary sewer facilities, provided that it shall repair any damage caused to the Golf Course by such entry;

(c) The owner of the Development Property shall submit any other proposed Utility Easement (the “Proposed Easements”) to the owner of the Golf Course Property for its approval, together with a survey or plat showing the location and size of the Proposed Easement, which survey shall indicate the location of all improvements, including, but not limited to, tees, greens, cart paths, trees, and water irrigation facilities (provided that the owner of the Golf Course Property shall furnish Seller with an as built survey of the same) located, or to be located within fifty feet (50’) of the Proposed Easement. The owner of the Golf Course Property

shall have the right to object and to require the owner of the Development Property to relocate the Proposed Easement only in the event that the Proposed Easement materially interferes with the play on, or operation of, the Golf Course as constructed or reconstructed. If the owner of the Golf Course Property does not object within fifteen (15) days after notification of the Proposed Easement, accompanied by the required survey or plat information, the owner of the Golf Course Property shall be deemed to have consented to the Proposed Easement. Upon the expiration of such fifteen (15) day period, unless the owner of the Golf Course has objected for the reasons described above, the owner of the Development Property shall execute and deliver to the governmental body or utility provider a Utility Easement substantially in the standard form of utility easement used by such governmental body or utility company. If the owner of the Development Property needs to complete construction of utility lines and facilities before their dedication, the owner of the Golf Course Property also shall grant the owner of the Development Property a temporary construction period easement for construction of such utility lines and facilities;

(d) The owner of the Development Property shall give the owner of the Golf Course Property at least fifteen (15) days advanced written notice of the intended construction within a Utility Easement. Upon receipt of such written notice, the owner of the Golf Course Property: (i) shall promptly provide the owner of the Development Property notice of any planned tournament or other special event on the Golf Course scheduled during the anticipated time of construction and (ii) shall have the right to request the delay in such construction for a reasonable period of time, not to exceed thirty (30) days, in the event such activities shall affect a planned tournament or other special event on the Golf Course;

(e) All construction within Utility Easements shall be done in a manner to minimize the interruption or play on the Golf Course, and, once begun, construction activities shall be continued to completion with all due diligence;

(f) The owner of the Golf Course Property shall not be liable for the costs of construction of public utilities within any such Utility Easements. The owner of the Development Property shall indemnify and hold the owner of the Golf Course Property harmless from any and all costs, expenses and liability arising from and in any way connected with the construction, operation and maintenance of the Utility Easements by the owner of the Development Property. The owner of the Development Property shall not, however, have any liability relating to the construction, maintenance or operation of the Utility Easements from and after the date that the Utility Easements are dedicated to the City of Norwalk or the utility providers. The owner of the Development Property acknowledges and agrees that certain risks of loss of life, personal injury, and property loss or damage may be caused by operation of the Golf Course during the construction of any Utility Easement. The owner of the Development Property agrees that the owner of the Golf Course Property, and its successors and assigns, and their officers, directors,

employees and agents shall have no liability for any such loss of life, personal injury, and property loss or damage arising from the play of golf on the Golf Course during such construction;

(g) The owner of the Development Property shall assure that all persons involved in construction within the Utility Easements are insured by workers' compensation and that no materialmen's or mechanic's liens are placed or filed on any portion of the Golf Course Property as a result of the construction of such Utility Easements; and

(h) Upon completion of construction within the Utility Easement, the surface of the Utility Easement shall be repaired, restored and replaced to the condition that existed immediately prior to such construction. Such restoration shall include, without limitation, sod, ground cover, plantings, cart paths, sidewalks and other improvements disturbed by the construction within the Utility Easement.

- 2.2. **Surface Water and Detention Facilities Easements.** The owner of the Golf Course Property hereby grants the owner of the Development Property, its successors and assigns, the right to such surface water drainage over and across the Golf Course Property as shall naturally occur if the Golf Course Property and Development Property are graded and developed substantially in accordance with the grading plan approved by H-CM.

The owner of the Golf Course Property hereby grants the owner of the Development Property, its successors and assigns, the right to construct storm water detention facilities, (the "Detention Facilities"), as may be necessary for construction and development of the Development Property within the rough and other undeveloped areas of the Golf Course Property upon the following terms and conditions:

(a) The owner of the Development Property shall submit any proposed storm water detention facility (the "Proposed Detention Facility") to the owner of the Golf Course Property for its approval, together with a survey or plat showing the location and size of the Proposed Detention Facility, which survey shall indicate the location of all improvements, including, but not limited to, tees, greens, cart paths, trees, and water irrigation facilities (provided that the owner of the Golf Course Property shall furnish the owner of the Development Property with an as built survey of the same) located, or to be located within fifty feet (50') of the Proposed Detention Facility. The owner of the Golf Course Property shall have the right to object and to require the owner of the Development Property to relocate the Proposed Detention Facility only in the event the Proposed Detention Facility materially interferes with the play on, or operation of, the Golf Course as constructed or to be constructed. If the owner of the Golf Course Property does not object within fifteen (15) days after notification of the Proposed Detention Facility, accompanied by the required survey or plat information, it shall be deemed to have consented to the Proposed Detention Facility (the "Detention Facility"). Unless the owner of the Golf Course has objected for the reasons and within the time period described above, the owner of

the Golf Course Property shall promptly execute and deliver to the owner of the Development Property an easement for the Detention Facility;

(b) The owner of the Development Property shall give the owner of the Golf Course Property at least fifteen (15) days advanced written notice of the intended construction of a Detention Facility. Upon receipt of such written notice, the owner of the Golf Course Property: (i) shall promptly provide the owner of the Development Property notice of any planned tournament or other special event on the Golf Course scheduled during the anticipated time of construction and (ii) shall have the right to request the delay in such construction for a reasonable period of time, not to exceed thirty (30) days, in the event such activities shall affect a planned tournament or other special event on the Golf Course;

(c) All construction of Detention Facilities shall be done in a manner to minimize the interruption or play on the Golf Course, and, once begun, construction activities shall be continued to completion with all due diligence;

(d) The owner of the Golf Course Property shall not be liable for the costs of construction of any such Detention Facilities and the owner of the Development Property shall indemnify and hold the owner of the Golf Course Property harmless from any and all costs, expenses and liability arising from and in any way connected with the construction, or to the extent set forth in this section as the owner of the Development Property's responsibility, the operation and maintenance, of the Detention Facilities. In addition, the owner of the Development Property acknowledges and agrees that certain risks of loss of life, personal injury, and property loss or damage may be caused by operation of the Golf Course during the construction of any Detention Facility. The owner of the Development Property agrees that the owner of the Golf Course Property, and its successors and assigns, and their officers, directors, employees and agents shall have no liability for any such loss of life, personal injury, and property loss or damage arising from the play of golf on the Golf Course during such construction;

(e) The owner of the Development Property shall insure that all persons constructing the Detention Facilities are insured by workers' compensation and that no materialmen's or mechanic's liens are placed or filed on any portion of the Golf Course Property as a result of the construction of such Detention Facilities; and

(f) Upon completion of construction of the Detention Facility, the surface of the Detention Facility shall be seeded or sodded and any adjacent areas of the Golf Course damaged during such construction shall be repaired, restored and replaced to the condition that existed immediately prior to such construction. Such restoration shall include, without limitation, sod, ground cover, plantings, cart paths, sidewalks and other improvements disturbed by the construction of the Detention Facility. After completion of the Detention Facility, the owner of the Golf Course shall mow and maintain the Detention Facility, provided, however, until all portions of the

Development Property that drain into the Detention Facility have been developed (seeding, sod or installation of other landscaping), the owner of the Development Property shall remain liable to remove any silt that accumulates in the Detention Facility, to replace any Detention Facility ground cover damaged by such silting and to otherwise repair major damage (costing more than \$500 in repairs in any instance) to the Detention Facility.

2.3. **Golf Course Property Use Restriction.** The owner of the Golf Course Property covenants and agrees that use of the Golf Course Property shall be restricted to golf course, country club and similar recreational uses, including, but not limited to, tennis, swimming, driving range, restaurant, private parties and meeting uses. This restriction as to the use of the Golf Course Property shall be deemed a covenant running with the land and shall be binding upon subsequent owners of the Golf Course Property, or any portion thereof.

ARTICLE 3 MISCELLANEOUS

3.1. **Assignment.** This Agreement shall inure to the benefit of and be binding upon the owners of the Golf Course Property and the Development Property, their successors or assigns. Any subsequent owner of the Development Property, or any portion hereof, or the Golf Course Property shall be subject to the provisions of this Agreement. Following the sale of the Development Property, or any part thereof, the subsequent owner will assume all obligations and inure to all rights of the owner of the Development Property (with respect to such portion) and the seller of such portion of the Development Property shall have no further rights or obligations as to that portion sold; provided, however, the seller of such portion of the Development Property shall remain obligated for those obligations of the seller which arose prior to the date of the sale. Following the sale of the Golf Course Property, or any part thereof, the subsequent owner will assume all obligations and inure to all rights of the owner of the Golf Course Property (with respect to such portion) and the seller of the Golf Course Property shall have no further rights or obligations as to that portion sold; provided, however, the seller of such portion of the Golf Course Property shall remain obligated for those obligations of the seller which arose prior to the date of the sale.

3.2. **Notices.** Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and (i) personally delivered, or (ii) sent by certified mail, return receipt requested, postage prepaid, addressed to the last known official address for such owner, or to such other address as such owner may substitute by written notice to the other. All notices forwarded by mail shall be deemed to be received on the date that is three (3) business days following date of deposit in the U.S. mail. Provided, however, the return receipt indicating the date upon which all notices were received shall be prima facie evidence that such notices were received on the date on the return receipt.

3.3. **Duration and Enforceability.** The easements and restrictions set forth in Article I of this Agreement shall constitute covenants running with the land as long as Golf Course is

in operation, burdening the Development Property, and benefiting the Golf Course Property, and shall be binding upon the owner of the Development Property, its successors and assigns, including, but not limited to, any property or Lot owners and all persons or parties claiming through, by, or under the owner of the Development Property, for the benefit of the owner of the Golf Course Property, its successors and assigns.

The easements and restrictions set forth in Article II of this Agreement shall constitute covenants running with the land in perpetuity, burdening the Golf Course Property, and benefiting the Development Property, or any part thereof, and shall be binding upon the owner of the Golf Course Property, its successors and assigns, for the benefit of the owner of the Development Property, and its successors and assigns, including all Lot owners and all persons or parties claiming through, by, or under H-CM.

3.4. **Persons Entitled to Enforce Restrictions.** The owner of the Golf Course Property and the owner of the Development Property, or their successors and assigns, including the Homeowners Association, if one is created for the Development, and otherwise including any Lot owner in the Development, shall have the right to enforce any of the easements and restrictions set forth in this Declaration. The right of enforcement for the owner of the Golf Course Property or the owner of the Development Property shall include the right to bring an action for damages, as well as an action to enjoin any violation of, or seek specific performance, of any of the rights, obligations, easements or restrictions created by this Declaration; provided, however the right for any homeowner or Homeowners Association to enforce any of the easements or restrictions set forth in this Declaration shall be limited to a suit for an injunction or specific performance.

3.5. **Violations Constitute a Nuisance.** Any violation of the fencing restrictions or the Golf Course use restrictions or the restrictions on lighting set forth herein or which are otherwise established pursuant to the terms of this Agreement are hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any party entitled to enforce the provisions of this Agreement.

3.6. **Remedies Cumulative.** Each remedy provided under this Agreement is cumulative and not exclusive.

3.7. **Costs and Attorney's Fees.** In any action or proceeding under this Agreement, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees.

3.8. **Governing Law.** This Agreement shall be construed and governed under the laws of the State of Iowa.

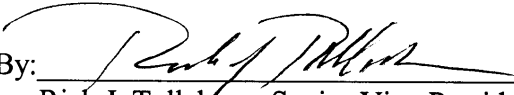
3.9. **Severability.** Each of the provisions of this Agreement shall be deemed independent and severable, and the invalidity or unenforceability or partial validity or partial enforceability of the provisions or portion thereof shall not affect the validity or enforceability of any other provision.

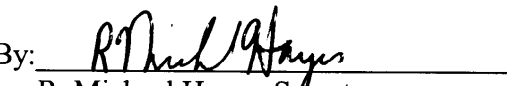
3.10. **Captions for Convenience.** The titles, headings, and captions used in this Agreement are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Agreement.

3.11 **Notice to Property Owners Within the Development.** NO OWNER OF PROPERTY OR A LOT WITHIN THE DEVELOPMENT SHALL HAVE ANY RIGHTS IN OR TO THE GOLF COURSE OR OTHER AMENITIES LOCATED ON THE GOLF COURSE PROPERTY, OR ANY RECREATIONAL ACTIVITIES OCCURRING THEREON, INCLUDING, BUT NOT LIMITED TO, RIGHTS OF MEMBERSHIP IN OR TO THE GOLF COURSE, OR RIGHT OF ACCESS TO OR ACROSS THE GOLF COURSE PROPERTY, UNLESS SUCH RIGHT OR RIGHTS HAVE BEEN GRANTED OR CONVEYED IN WRITING BY THE OWNER OF THE GOLF COURSE PROPERTY OR ITS SUCCESSORS AND ASSIGNS. RIGHTS TO USE THE RECREATIONAL FACILITIES LOCATED ON THE GOLF COURSE PROPERTY SHALL BE ON SUCH TERMS AND CONDITIONS AS MAY BE PROMULGATED FROM TIME TO TIME BY THE OWNER OF THE GOLF COURSE. ADDITIONALLY, THE OWNER OF THE GOLF COURSE PROPERTY, ITS SUCCESSORS AND ASSIGNS, HAVE THE RIGHT, WITHOUT NOTICE OR WARNING, TO PLANT, REMOVE OR TRIM TREES OR BUSHES ON THE GOLF COURSE PROPERTY AS ITS DEEMS ADVISABLE, IN ITS SOLE AND ABSOLUTE DISCRETION

IN WITNESS WHEREOF, H-CM has caused this Declaration to be executed, as of the day and year first above written.

H-CM, L.L.C.
By HUBBELL REALTY COMPANY, Manager

By: 
Rick J. Tollakson, Senior Vice-President

By: 
R. Michael Hayes, Secretary

STATE OF IOWA)
)SS.
COUNTY OF POLK)

On this 27th day of June, 2001, 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 Senior Vice-President and Secretary, respectively, of Hubbell Realty Company which is the manager of H-CM, L.L.C.; that said instrument was signed on behalf of said Hubbell Realty Company, as Manager of H-CM, L.L.C.; and that said Rick J. Tollakson and R. Michael Hayes acknowledged the execution of said instrument to be the voluntary act and deed of said Hubbell Realty Company and H-CM, L.L.C., by them voluntarily executed.



Nicole Christensen
Notary Public in and for said State

- Exhibit A - Real Estate Description
- Exhibit B - Golf Course Property
- Exhibit C - Development Property

CONSENT AND SUBORDINATION

The undersigned, The Wittern Partnership, the Mortgagee under that certain Mortgage by and between The Wittern Partnership and Hubbell Properties II, L.C., an Iowa limited liability company, for and on behalf of Hubbell Properties II, L.C. (Series D), a series of said limited liability company, dated June 27, 2001 and recorded in the office of the recorder of Warren County, Iowa on June 27, 2001, in Book 2001, Page 6163 (the "Mortgage") hereby consents to the terms of the foregoing Declaration of Golf Course Easements and Restrictions and Development Easements and Restrictions (the "Declaration") and the recording of the Declaration in the office of the recorder of Warren County, Iowa and hereby agrees that the Mortgage shall be subordinate and subject to the Declaration.

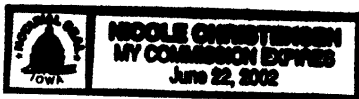
Dated June 27th 2001, 2001.

THE WITTERN PARTNERSHIP

By Misty Herr

STATE OF IOWA)
)SS.
COUNTY OF POLK)

On this 27th day of June, 2001, before me, a Notary Public, in and for the State of Iowa, personally appeared Misty Herr, to me personally known, who being by me duly sworn did state that the person is one of the partners of The Wittern Partnership, an Iowa general partnership; that said instrument was signed on behalf of the partnership by the authority of the partners; and that the partner acknowledged the execution of said instrument to be the voluntary act and deed of the partnership, by the partnership and by the partner voluntarily executed.



Nicole Christensen
Notary Public in and for said State

EXHIBIT A
TO
DECLARATION OF GOLF COURSE EASEMENTS AND RESTRICTIONS
AND DEVELOPMENT EASEMENTS AND RESTRICTIONS

The following described lots in The Legacy Plat 1, an Official Plat now included in and forming a part of the City of Norwalk, Warren County, Iowa:

- | | |
|-------------|------------|
| • Lot 1 | • Outlot V |
| • Lot 2 | • Outlot W |
| • Lot 3 | • Outlot X |
| • Outlot T | • Outlot Y |
| • Out lot U | • Outlot Z |

The following described lots in the Official Plats of Colonial Meadows, now included in and forming a part of the City of Norwalk, Warren County, Iowa:

- | | |
|-----------------|-------------------|
| • Plat 1 Lot 3 | • Plat 3 Lot 18 |
| • Plat 1 Lot 2 | • Plat 3 Lot 19 |
| • Plat 3 Lot 1 | • Plat 4 Lot 2 |
| • Plat 3 Lot 2 | • Plat 4 Lot 4 |
| • Plat 3 Lot 3 | • Plat 5 Lot 1 |
| • Plat 3 Lot 5 | • Plat 5 Lot 2 |
| • Plat 3 Lot 7 | • Plat 5 Lot 3 |
| • Plat 3 Lot 8 | • Plat 5 Lot 4 |
| • Plat 3 Lot 10 | • Plat 5 Outlot Z |
| • Plat 3 Lot 11 | |
| • Plat 3 Lot 12 | |
| • Plat 3 Lot 15 | |

**EXHIBIT B
TO
DECLARATION OF GOLF COURSE EASEMENTS AND
RESTRICTIONS AND DEVELOPMENT EASEMENTS AND RESTRICTIONS**

The following described real estate located in Warren County, Iowa:

Lots 1, 2 and 3 in The Legacy Plat 1, an Official Plat, now included
in and forming a part of the City of Norwalk, Iowa.

EXHIBIT C
TO
DECLARATION OF GOLF COURSE EASEMENTS AND RESTRICTIONS
AND DEVELOPMENT EASEMENTS AND RESTRICTIONS

The following described lots in The Legacy Plat 1, an Official Plat, now included in and forming a part of the City of Norwalk, Warren County, Iowa:

- Outlot T
- Outlot U
- Outlot V
- Outlot W
- Outlot X
- Outlot Y
- Outlot Z

The following described lots in the Official Plats of Colonial Meadows, now included in and forming a part of the City of Norwalk, Warren County, Iowa:

- Plat 1 Lot 3
- Plat 1 Lot 2
- Plat 3 Lot 1
- Plat 3 Lot 2
- Plat 3 Lot 3
- Plat 3 Lot 5
- Plat 3 Lot 7
- Plat 3 Lot 8
- Plat 3 Lot 10
- Plat 3 Lot 11
- Plat 3 Lot 12
- Plat 3 Lot 15
- Plat 3 Lot 18
- Plat 3 Lot 19
- Plat 4 Lot 2
- Plat 4 Lot 4
- Plat 5 Lot 1
- Plat 5 Lot 2
- Plat 5 Lot 3
- Plat 5 Lot 4
- Plat 5 Outlot Z