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*[Handwritten initials]*

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE TOWNHOMES OF MEADOW POINT

INST. NO. 048968  
POLK COUNTY, IOWA  
FILED FOR RECORD 15500  
APR - 4 1986 A.M.  
AT 8:18 P.M.  
KATIE CHRISTINE HOLSCHUH, Recorder  
B. *[Signature]* Deputy

THIS DECLARATION, made on the date hereinafter set forth by Milo L. DePhillips and Mary DePhillips, husband and wife, of Polk County, Iowa, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the Contract Purchaser of certain property in West Des Moines, Polk County, Iowa, which is more particularly described as:

Lots 1 through 74, both inclusive, and Outlot X  
in THE TOWNHOMES OF MEADOW POINT, an Official  
Plat, West Des Moines, Iowa;

and,

WHEREAS, Central Life Assurance Company (hereinafter referred to as "Central") of Des Moines, Polk County, Iowa is the titleholder, contract vendor and mortgagee of the above-described real property and executes this Declaration for the purpose of consenting to the imposition upon the property of all of the Covenants, Conditions and Restrictions provided for herein and for the purpose of subjecting its ownership interests and mortgage lien(s) to all of the provisions of this Declaration.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any rights, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. Central hereby consents to this

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Declaration and subordinates its ownership interest and mortgage liens to all of the provisions of this Declaration.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Townhomes of Meadow Point Association, its successors and assigns, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa 1985 as amended.

Section 2. "Owner" shall mean refer to the record owner, whether on or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers and vendees (deemed Co-owners), but excluding those having such interest merely as security for the performance of an obligation, and excluding those having a lien upon the property by provision or operation of law.

Section 3. "Properties" shall mean and refer to that certain real property described above, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association is described as:

Outlot X in The Townhomes of Meadow Point, an Official Plat,  
West Des Moines, Polk County, Iowa

Declarant will convey to the Association by deed the Common Area at a subsequent time and before conveyance of the first Lot.

Section 5. "Lot" shall mean and refer to the numbered Lots shown upon any recorded Plat of the Properties with the exception of the Common Area. In the event any part of the Properties is replatted and a subsequent Plat is recorded, then "Lot" shall refer to the numbered lots shown on such replatting and such subsequent recorded Plat. With

respect to any single-family portion of any Building that may be constructed on a part of more than one of such Lots, "Lot" shall mean and refer to the real estate conveyed in connection with such dwelling unit.

Section 6. "Declarant" shall mean and refer to Town and Country Home Remodeling Ltd., its successors and assigns.

Section 7. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

Section 8. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions to which the Properties are subject.

Section 9. "Living Unit" shall mean and refer to any portion of a building situated upon a Lot and designed and intended for use and occupancy as a resident by a single family.

Section 10. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 11. "Building" shall mean and refer to any single-family attached or detached dwelling unit that may be constructed on a Lot or a part of more than one Lot and shall include any attached or detached garage building conveyed with the Lot.

Section 12. "Federal Mortgage Agencies" shall mean and refer to those federal agencies who have or may come to have an interest in the Properties, or any portion thereof, such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or successors to their interests.

Section 13. "Association Responsibility Elements" shall mean the following, whether located upon a Lot or upon the Common Area:

(a) The exterior surface of the Buildings upon a Lot, excluding windows, doors, patios and decks.

(b) The structural portion of the Building upon a Lot.

(c) The roof, gutters, downspouts, and foundations of the Buildings upon a Lot.

(d) Any common wall between residential structures upon Lots, except the interior surfaces thereof.

(e) The yard surrounding the residential structure upon a Lot, except for trees and shrubbery and except that portions of the yard between detached garage and the front of the hiking unit.

(f) Driveways and sidewalks.

(g) Conduits, ducts, plumbing, wiring, pipes and other facilities within the attic or basement of a residential structure which are carrying any service to more than one Lot.

## ARTICLE II

### PROPERTY RIGHTS IN COMMON AREAS

Section 1. Obligations of the Association. The Association, subject to the rights of the Owners as set forth in the Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners, of the Common Area conveyed to it and all improvements thereon, and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management.

No person other than the Owner of a Lot and his invitees shall have the right to enter upon, use or affect an Association Responsibility Element located within a Lot, except that the Association and its designates may enter upon and within a Lot and the Buildings located thereon at reasonable times for the following purposes:

(a) Installation, repair, removal, replacement or inspection of an Association Responsibility Element.

(b) Enforcement of any provision of this Declaration or the Articles of Incorporation or the By-Laws of the Association.

(c) Mowing and maintenance of grass areas.

In the event that the need for maintenance or repair of any portion of the Common Area, the improvements thereon, or of any Association

Responsibility Elements is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitees of an Owner, the cost of such maintenance or repair shall be added to and become part of the assessment to which the Owner is subject and a lien upon the Lot and living unit of such Owner and shall become due and payable upon demand.

Section 2. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which may be delegated to family members, lessees and guests of every Owner, (subject to any reasonable and nondiscriminatory rules and regulations which may be enacted by the Association) which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights of the Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations; provided, however, that nothing contained in this paragraph shall be deemed to deny an Owner access to and from his Lot.

(b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

(c) The right and obligation of the Association to maintain sewer and other underground utilities located within the Properties.

(d) The right of the Declarant, its successors and assigns to designate, establish, grant, dedicate, install and/or maintain utility and drainage easements within the Common Area;

(e) The right of the Declarant to maintain within any Living Unit a sales office, together with access, ingress, and egress to and from said Living Unit, any number of model Living Units, Common Area,

easements, and unsold Lots for Declarant and Declarant's invitees in conjunction with its business operated from said sales office;

(f) The right of Declarant to provide in the Common Area, landscaping, outdoor furniture and recreational equipment, signs, decorative structures and necessary appurtenant utilities;

(g) The Rules and Regulations promulgated and published by the Association's Board of Directors, the Articles of Incorporation and Bylaws, and those accompanying this Declaration; and

(h) The right of the Association to mortgage any or all of the Common Area with the assent of two-thirds (2/3rds) of the votes of each class of members.

Section 3. Title to Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it shall convey to the Association from time to time and as it is subsequently determined, the fee title to all Common Area, free and clear of all mechanic's liens or any liens or encumbrances whatsoever except covenants, easements, conditions and restrictions created by this Declaration, or granted to the City of West Des Moines, Iowa. The transfer of title to the Common Area shall be accomplished on or before the recorded conveyance of the first Lot by Declarant.

Until the construction work on all Living Units within the Properties, and appurtenant improvements incidental to said Living Units, is completed, Declarant or its assignee shall have the right to enter upon the Common Area for the purpose of completing such work and performing under applicable guarantees.

Section 4. Use of the Common Area. The Common Area shall be used strictly in accordance with the provisions of the Declaration. No Owner shall obstruct or interfere whatever with the rights and privileges of other Owners or the Association in the Common Area, and nothing shall be planted, altered, constructed upon, or removed from the Common Area, except by prior written consent of the Association. If an Owner violates this section, the Association shall have the right to restore the

Common Area to the prior condition and charge and assess the cost thereof against the Owner who violates this section and such cost shall become a special assessment and a lien upon the Lot and Living Unit of such Owner and shall become due and payable upon demand. The Association shall have the same rights and powers to collect the cost of such restoration as provided in Article IV for the collection of delinquent assessments. If an Owner interferes with the rights and privileges of another Owner in the use of the Common Area, the Association or the offended Owner may commence an action to enjoin such interference and the prevailing party shall be entitled to recover such reasonable attorneys' fees as the Court may allow together with all necessary costs and disbursements incurred in connection therewith.

Section 5. Duration. The Common Area as ultimately described pursuant to Article I, Section 4, shall not be changed and shall continue in perpetuity except by approval of both the Association and the City of West Des Moines.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Ownership of a Lot shall be the sole qualification for membership.

Section 2. Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant and Central, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B members shall be the Declarant, and Central so long as it is the owner of any lots. The Class B members shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership,
- or
- (b) on January 1, 1991.

Section 3. Board of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association's By-laws. The Board of Directors shall manage the affairs of the Association.

Section 4. Suspension of Voting Rights. The Association shall suspend the voting rights of a Member for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

Section 5. Notice of Member's Meetings. Unless the Articles of Incorporation or the Bylaws otherwise provide, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered no less than five (5) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the president or secretary, or the officer or persons calling the meetings, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 6. Duration. No dissolution of the Association shall occur without the prior approval and consent of the City of West Des Moines.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot 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: (1) monthly assessments or charges, and (2) special assessments for capital improvements and operating deficits; and special assessments as provided in this Article IV, Article VI and Article VII; such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments: The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and the Living Units situated on the Properties and for other purposes specifically provided herein.

Section 3. Maximum Monthly Assessment. Until January 1, 1987, the maximum monthly assessment for each Unit Owner shall be Fifty Dollars (\$50.00) per Lot.

(a) From and after January 1, 1987, the maximum monthly assessment may be increased effective January 1 of each year not more than 10% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1, 1987, the maximum monthly assessment may be increased above 10% by a vote of a majority of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors shall fix the monthly assessment at an amount not in excess of the maximum.

(d) A portion of such monthly assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Areas, the building exteriors or of any capital improvement which the Association is required to maintain.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of all classes of members who are voting in person or by proxy at a meeting duly called for this purpose, with regard to class designation.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 5 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such

subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Monthly Assessments: Due Dates. The monthly assessments provided for herein shall commence as to each respective Lot on the first day of the first month following the date of conveyance to an Owner of a Lot with completed Living Unit constructed thereon and for which a certificate of occupancy has been issued. Lots owned by the Declarant which do not have completed Living Units constructed thereon and for which certificates of occupancy have not been issued, shall be exempt from the assessments described in this Article IV and the assessments described in Article VII. The maintenance responsibilities of the Association as to each Lot shall commence concurrently with the commencement of monthly assessments. The insurance assessment provided for in Article VII shall commence as to each Lot on the first day of the first month following the date of conveyance of said Lot to an Owner. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the

due date shall bear interest from the due date at the rate of 15% per annum or at the highest rate allowed by Iowa Law, whichever is higher. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the petition in such action, including reasonable attorney's fees. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of Assessments Liens. If any Lot subject to a lien created by any provision in this Declaration shall be subject to the lien of a first Mortgage of record: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (ii) the foreclosure of the lien of such Mortgage or the acceptance of a deed in lieu of the foreclosure by the Mortgagee, shall not operate to affect or impair the lien except that assessment liens, if any, as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of assessments, if any, that have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall have come due up to

the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting owner personally.

ARTICLE V

DECLARANT'S RIGHTS

Section 1. Declarant reserves the right to use any of the Lots as models and to sell, assign or conduct other businesses in connection with the construction and development of the project from any of such Lots prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain models, erect signs, maintain an office, staff the office with employees, and to show Lots then unsold. Declarant retains the right to be considered an Owner of any Lot that remains unsold. Declarant also reserves the right to make changes in the location or manner of construction of buildings and other improvements.

Section 2. Upon obtaining title to any Lot or Lots from Declarant by virtue of a foreclosure action or deed in lieu of foreclosure, the person obtaining title shall have the same rights as Declarant in connection with said Lot or Lots, including but not limited to, Declarant's rights reserved in this Article V and Declarant's Class B membership in the Association.

ARTICLE VI

MAINTENANCE

Section 1. Maintenance by Owners. The Owner of each Lot shall furnish and be responsible for, at his own expense, all maintenance, and repairs of his Lot and all structures, improvements and equipment located thereon, except for the Association Responsibility Element but including decorating and replacements within his residence, including

the heating and air conditioning systems and any partitions and interior walls. He shall be responsible for the maintenance, repair and replacement of all windows in his Living Unit, the doors leading into the Living Unit, all decks and patios attached to or adjacent to his Living Unit, all windows, doors and interior surfaces of any garage building located on his Lot, and any and all other maintenance, repair, and replacements of the improvements on his Lot unless otherwise provided herein.

Section 2. Maintenance Obligations of Association. In addition to maintenance of the Common Areas and any improvements located thereon, the Association shall provide all maintenance, repair and replacement of the Association Responsibility Elements.

Section 3. Responsibility for Willful or Negligent Acts. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessments to which such Lot is subject.

Section 4. Snow Removal. Unless and until otherwise determined by the Board of Directors of the Association, the Association shall be responsible for snow removal from all lots and from the driveway servicing each lot, including any portions of the driveways within the common areas, serving the lots.

Section 5. Boulevard Entrance. Declarant has constructed the center island median in the Boulevard entry to the properties situated in Elm Circle, which is or will be dedicated to the City of West Des Moines. Notwithstanding that the center island, median is located in a public street, the Association shall be responsible to repair and maintain the landscaping on the center island, mow and maintain grass areas, and shall keep the same in a neat, clean and presentable condition at all times. This Section shall not be amended or repealed so as to affect the Association's responsibility for maintenance of the

center island median within Elm Circle unless approved in writing by the City Council of the City of West Des Moines, Iowa.

ARTICLE VII

INSURANCE AND INSURANCE ASSESSMENT

Section 1. Insurance and Insurance Assessment. In addition to the annual assessments and the special assessments for capital improvements, the Association may levy assessments for insurance purchased by the Association. the Association shall obtain liability and casualty insurance for the Common Area and for the Association Responsibility Elements. Unless otherwise determined by the Board of Directors of the Association, each Owner shall be responsible for obtaining homeowner's liability insurance and casualty insurance for property which is not part of the Association Responsibility Elements; the Board of Directors may require an Owner's casualty insurance to be obtained from the same insurer as the insurer under the Association's casualty insurance for the Association Responsibility Elements. In the event of casualty loss, the Association shall be responsible for repair and restoration of the Common Area and Association Responsibility Elements, and the Owner shall be responsible for repair and restoration of all other portions of the buildings and improvements upon his Lot, except to the extent that the Board of Directors of the Association has determined to obtain casualty insurance for such portions which are not part of the Association Responsibility Elements in which case the Association shall apply and insurance proceeds received for such portions to such repair and restoration of such portions.

Section 2. Distribution to Mortgagee. In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the Owner and his mortgagee jointly.