

ARTICLE VIII

EASEMENTS AND ENCROACHMENTS

Section 1. General Easements. Each Lot shall be subject to the following easements in favor of the Association and the other Owners:

(a) Every portion of a structure upon a Lot which contributes to the support of any structure not on the same Lot is burdened with an easement of such support.

(b) Each Lot is burdened with an easement through the Lot and through the attic and basement of any structure thereon for conduits, ducts, plumbing, wiring, pipes and other facilities for the furnishing of utilities and services to other Lots, including the location of utility meters on one Lot for the service to other Lots.

(c) Each Lot is burdened with an easement of ingress and egress for maintenance, repair and replacement of Association Responsibility Elements by the Association.

(d) Each Lot is burdened with an easement for common driveway usage with other designated Lots where shown on a recorded subdivision plat.

(e) Each Lot is burdened with an easement for surface drainage for the benefit of all other Lots and the Common Area.

(f) Each Lot is burdened with an encroachment easement for minor encroachments of common walls due to settling, shifting or inexact location during construction.

(g) Each Lot is burdened with easements for public utilities and sidewalks as may be shown upon any recorded subdivision plat.

Section 2. Drainage, Utility and Sewer Easements. As noted on the Plat, Declarant has reserved certain areas of the Lots and Common Area for Drainage, Public Utility and Sewer Easements. In doing so, it is the intention of Declarant to provide the needed flexibility to itself, for the benefit of all Lots and Owners, to properly install and allow to be maintained all electrical, telephone, water, gas, sewer and other utility services, (including all lines, pipes, wires, cables, ducts,

etc.,) to the Living Units constructed on the various Lots. No other improvements or permanent structures (excluding walkways, driveways and fences) shall be placed within such utility easements and any fences so installed shall be and are expressly subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public or private utility to construct, maintain, repair or remove any necessary facilities and the right of Declarant and the Association to provide for and maintain appropriate drainage.

Section 3. Additional Easement Rights. Declarant reserves unto itself, for the benefit of all Lots and Owners, an easement and full right, title and authority to relocate, alter, or otherwise leave the location of any drainage, utility, and sewer easement and to grant such further easements, licenses and rights of way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any Lot or Lots or any portion of Common Area. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, utility and sewer easement, or other easement, license or right-of-way by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Polk County, Iowa and any Owner of any Lot shall take title subject to the right and easements reserved herein; provided, however, the rights reserved in this Section 3 shall not be exercised in a manner which unreasonably and adversely affects any Building or portion thereof located upon any Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any Lot. The rights and easements reserved by Declarant in this Section 2 shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate when Declarant shall have conveyed the last Lot within the Properties.

Section 4. Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon the Common Areas and any pedestrian walkways or sidewalks.

Section 5. Easement for Signs. Declarant reserves unto itself for so long as it owns any Lot, the right and easement to erect and maintain such entryway, identification and "For Sale" sign or signs within the Properties as Declarant deems reasonably necessary.

Section 6. Encroachment. If, by reason of the location, construction, settling or shifting of a Building, any part of a Building consisting of single-family residence appurtenant to a Lot (hereinafter in this Article VIII referred to as the "Encroaching Unit") encroaches upon any minor portion of any other adjacent Lot, then in such event, an exclusive easement shall be deemed to exist and run to the Owner of the Encroaching Unit for the maintenance, use and enjoyment of the Encroaching Unit and all appurtenances thereto. Upon the written demand from the owner of an Encroaching Unit, the owner of the Lot upon which said unit encroaches shall deed to the owner of the Encroaching Unit that portion of the Lot upon which the Encroaching Unit is located. The deed shall be by Quit Claim Deed free and clear of any mortgages and encumbrances. All costs of abstracting, releases of mortgages, recording fees, engineering fees and legal fees shall be paid by the owner of the Encroaching Unit.

Section 7. Driveways and Access. An easement is hereby reserved and granted to each Lot for driveway and access purposes over the Common Area wherein the driveway serving such Lot is located. This easement shall extend from the Lot to the dedicated public street. Further, an easement is hereby reserved and granted for the use of all Lots served by one common driveway. To the extent that a driveway or a portion of a driveway serving a Lot is located partially or wholly on another Lot or Lots, the Lot Owners served by such driveway shall have the benefit of

an easement over that portion of the other Lot or Lots covered by the driveway. This driveway easement shall be for ingress and egress purposes and no Lot Owner shall park or allowed to be parked any vehicle or other obstruction within the driveway area, so as to prevent access to the other Lot or Lots which such driveway serves. Further, there is hereby reserved and granted an easement for the benefit of each Lot served by a sidewalk and pedestrian walkway located partially or wholly on the common area or another Lot or Lots. This latter easement is for the purpose of allowing pedestrian access from the public street to the Lot served by such sidewalk or pedestrian walkway. No Owner shall obstruct or allow obstructions on any sidewalk or pedestrian walkway which would impair the use or access by the Lot Owner which such sidewalk or pedestrian walkway serves.

ARTICLE IX

PARKING RIGHTS

Subject to the provisions of Article VIII, Section 7, above, the paved driveway in front of each Owner's garage shall be for the exclusive benefit of such Owner and his guests. No one shall use these parking spaces for parking or storing of boats, snowmobiles, trailers, camping vehicles, or other recreational vehicles, or for parking of trucks or other commercial vehicles, except temporarily or incidentally for the making of pickup and deliveries to neighboring Lots. No bicycles, toys or other private property shall be allowed to obstruct any driveway, nor shall the same be stored in the open alongside building walls or other locations of public view. No vehicles shall be parked so as to impede access from or to any Lot or public street. No fence, barrier or other obstruction of any kind shall ever be placed or constructed so as to impede access from or to any Lot or public street.

ARTICLE X

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the

Properties and placed on the dividing lines between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The costs of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty: If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right of Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

#### ARTICLE XI

##### ARCHITECTURAL CONTROL

No building, fence, wall or other structure, except as originally constructed by or on behalf of Declarant or Original Builder, shall be commenced, erected, altered or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein, other than by the Board of Directors, be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the



same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided. This Article shall not apply to any construction, improvements or alterations made by Declarant, including the construction of fences on the Common Areas.

ARTICLE XII

SIGNS AND HOME OCCUPATIONS

Section 1. Signs. Prior to January 1, 1988, no advertising signs of any kind including rental or "for rent" signs (other than interior window signs) shall be displayed on any Lot without the prior written approval of Declarant. Further, no signs of any nature, kind or description shall be erected, placed or maintained on any Lot which identify, advertise or in any way describe the existence or conduct of a home occupation. Nothing in this Article shall affect the rights of Declarant provided in Article VIII, Section 5.

Section 2. Home Occupations. No home occupation shall be conducted or maintained on any Lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of any such Lot and which is generally or regularly conducted in another location away from such Lot. Nothing contained herein shall be construed or interpreted to affect the activities of Declarant in the sale of Lots or single-family dwellings as a part of the development of the Properties.

ARTICLE XIII

COVENANTS WITH CITY

Section 1. Indemnification of City of West Des Moines, Iowa. The Declarant and/or the Association, its successors or assigns, agree to defend, indemnify, protect and save harmless the City of West Des

Moines, Iowa, and its political subdivisions, including any of its officers, employees or agents, from and against any judgments, awards, claims or expenses or other things whatsoever, including attorney fees, costs or disbursements, arising out of or in connection with any act or act of negligence, causes omissions, fault, misconduct, claims, damages, suits or other actions developed, brought or asserted by any person, firm, corporation, entity or estate, or to any property of any person, against the said City by reason of, in connection with, related to or growing out of directly or indirectly the duties and responsibilities which are imposed upon the Owners or the Association, its successors and assigns, with respect to the obligations under this Declaration or with respect to their acts and duties imposed under this Declaration or the final development plan as approved by the City Council or related to or growing out of directly or indirectly the maintaining, cleaning out, grading, repairing, construction or reconstruction of any public drainageway, swale or storm sewer located over, on, or across the storm drainage and detention easements, if any, located within the land which is the subject matter of this Declaration. This Section shall not be amended so as to affect the provisions of this Article.

Section 2. Right of Public Access. Officers, employees or contracted agents of the City of West Des Moines shall have the right and authority to enter upon the common area of the subject property for the administration of general public services including Fire Protection, Law Enforcement and administration of the Water Works Rules and Regulations and any applicable agreements for providing water service. Furthermore, this Article shall grant too the City the right to enter upon the common area for the enforcement of the City's Animal Protection and Control Ordinance, Title III, Chapter 2 of the City Code, wherein, it shall be considered unlawful for any person to allow cats, dogs, cattle, horses, swine, fowl, or other animals being harbored by any unit owner or occupant to run at large outside the premises of the living unit or garage under the exclusive occupation by an individual unit

occupant or Owner. This Section shall not be amended so as to affect the provisions of this Article.

Section 3. Alterations or Improvements for Public Roads or Other Public Purposes. In addition to common expenses authorized herein, the Board of Directors shall levy in any assessment year a special assessment for the purpose of defraying, in whole or in part, the cost of any special assessment obligation for public roads, public utilities or other public purposes which the City of West Des Moines may assess on any project even though the assessment boundaries may only cover a portion of the property falling within this Declaration. Any such special assessment shall be spread against the Association and/or all the unit Owners each for their proportionate share. The Association may enter into a contract and waiver with the City of West Des Moines, Iowa, concerning any project involving a special assessment. If contract and waiver is used and adopted, the Association, on behalf of all unit Owners and members of the Association, shall execute all documents required in connection with said contract and waiver in the form generally required by the City of West Des Moines, Iowa. The Board of Directors may execute such documents only after securing a vote of a majority of members in person or by proxy at a meeting duly called for this purpose. If the Declarant, for each unit Owner within the property, the Owner of any unit, and the Association and its successors and assigns enter into a contract and waiver agreement with the City of West Des Moines, they hereby waive, in connection with said assessment, all legal formalities of whatever kind and character required by the laws of the State of Iowa to be observed by municipalities in the construction of like improvements where expenses of said improvements are to be assessed against a project, district or area. All questions of jurisdiction, the amount of the assessment, and all other legal requirements, are hereby waived in favor of the City of West Des Moines, Iowa. The method of collection of any assessment made pursuant to the provisions of this paragraph shall be the same as provided in Article IV



for the collection of common expenses from unit owners. This Section shall not be amended so as to affect the provisions of this Article.

Section 4. Architectural Control. Development within the Properties shall be in accordance with the site plan as approved by the City of West Des Moines City Council on August 12, 1985, and City Ordinance No. 632 as amended, for the initial development within the project and the construction of all accessory structures including utilities, parking lots, driveways and garages associated with each Living Unit built. From and after completion of construction and conveyance by Declarant of each Living Unit, no building, fence, wall, awning, canopy, or other structure shall be commenced, erected or maintained upon such lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, material and location of the same is in conformity to applicable Building Codes, Ordinance No. 632 as amended and any other applicable ordinances of the City of West Des Moines, Iowa.

Such improvement shall be submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography, by the Board of Directors of the Association or by an Architectural Committee composed of three or more representatives appointed by the Board of Directors. In the event said Board or its designated committee, fails to approve or disapprove such design or location within thirty (30) days by written notice after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. The prevailing party in any action brought by the Association pursuant to this Article shall be entitled to recover from the other party reasonable attorneys fees together with all necessary costs and disbursements in connection therewith. The Architectural Control Committee shall advise the Board of Directors of the Association of future maintenance and capital improvement to the Properties and perform

such other functions as provided by the By-Laws and as the Board of Directors may from time to time designate.

ARTICLE XIV

USE RESTRICTIONS

Section 1. Subjection of the Property of Certain Provisions. The ownership, use, occupation and enjoyment of each Lot and the Common Area shall be subject to the provisions of the By-Laws and Articles of Incorporation of the Association, and this Declaration, all of which provisions irrespective of where set forth or classified shall have equal status and shall be enforceable and binding as a covenant, condition, restriction or requirement running with the land and shall be binding on and enforceable against each and all Lots and the Owners thereof and their respective assigns, lessees, tenants, occupants and successors in interest.

Section 2. No Lot shall be used for any purpose other than for single-family residential purposes, except for rights of Declarant as provided in Articles II, Section 2(e) hereof.

Section 3. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs and cats weighing less than 15 pounds at full growth may be kept, provided that they are not kept, bred or maintained for any commercial purposes. The Association may, by rules and regulations, prohibit or further limit the raising, breeding or keeping on any Lot, frontlot, or rearlot of any pet.

Section 4. No noxious or offensive activities not involving the maintenance of Lots or Common Area shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighborhood; nor shall any Lot be used for any unlawful purpose. Nor shall any Owner cause, or suffer or harbor the source of, any noise or activity which disturbs the peace, comfort and quiet enjoyment of other Owners or those claiming under or through other Owners.

Section 5. The Owner of each Lot shall keep the same free of weeds and debris.

Section 6. All trash receptacles and garbage cans shall be stored in the garages on each Lot. This restriction shall not preclude the placement of waste containers outside of such area on a temporary basis if so required by governmental regulation or terms of contract with a commercial waste collector.

Section 7. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other building shall be used on any Lot or the Common Area at any time as a residence, either temporarily or permanently.

Section 8. No Tower or antennae shall be placed upon any Lot or upon the roof of any Living Unit.

Section 9. No personal property shall be stored or left upon a Lot except within the residential structure or garage located upon the Lot. Garage doors shall be kept closed except during times of access to the garage.

Section 10. Unit Owners shall be individually responsible for utility charges which they incur for water and sewer services, in the same manner as persons occupying single-family, detached houses. If any such charge remains due and delinquent for more than thirty (30) days, the municipality may bill the Association for the amount so delinquent, and the same shall be paid by the Association, reserving the right of the subject Unit Owner and/or the Association to contest such charge. Reimbursement to the Association for all such sums paid, and reasonable expenses incurred contesting such charges, together with interest thereon from the date of expenditure, at the highest lawful rate for individuals shall be due upon written demand from the Association, and shall be a lien on the subject Lot from the date of such demand, collectible as if it were a special assessment against the subject Lot only. The foregoing shall be in addition to all other remedies available to the Association at law or in equity.

Section 11. Nothing shall be altered in, constructed in, or removed from the Common Area, except upon written consent of the Board of Directors of the Association, which may be given through regulations of the Associations.

Section 12. No boat, snowmobile, recreational vehicle, trailer or other vehicle other than automobiles shall be stored or parked in any driveway or street. The Association may, by regulation or rule, limit or prohibit the parking of automobiles on any driveway. In the event of violation of this provision, the Association may, after reasonable notice, remove such boat, snowmobile, recreational vehicle, trailer or other vehicle.

Section 13. No activity shall be allowed which unduly interferes with the peaceful possession and use of the property by the Owners nor shall any fire hazard or unsightly accumulation of refuse be allowed.

Section 14. Nothing shall be done or kept in any Lot or in the Common Area which will increase the rate of insurance on the Common Area or the Association Responsibility Elements, without the proper written consent of the Board of Directors of the Association. No Owner shall permit anything to be done or kept in his Lot or in the Common Area which will result in the cancellation of insurance on any Lot or any part of the Common Area or the Association Responsibility Elements, which would be in violation of any law, or which may be or become a nuisance or annoyance to the other Owners.

Section 15. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance modification or repair of property shall be the same as the responsibility for the maintenance and repaired of the property concerned.

Section 16. The Board of Directors of the Association shall have the authority to adopt rules and regulations governing the use of Lots, the Common Area and the Association Responsibility Elements and such



rules shall be observed and obeyed by the Owners, their guest, lessees, assigns and licensees.

Section 17. Agents of or contractors hired by the Board of Directors of the Association may enter any Lot when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the Owners as practicable.

Section 18. Neither the Owners nor the Association nor the use of the Common Area shall interfere with the completion of the contemplated improvements and the sale of the Lots by the Declarant. The Declarant may make such use of the unsold Lots and the Common Area as may facilitate such completion and sale, including, but not limited to, the maintenance of a sales office, model home, the showing of the property and the display of signs.

Section 19. No Waiver. Failure of the Association or any Owner to enforce any covenant, condition or restriction, this Declaration, the Articles of Incorporation or By-Laws of the Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to enforce the same thereafter.

#### ARTICLE XV

##### GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the persons in ownership from time to time of the Lots and all parties claiming under them, and the City of West Des Moines (if it so elects by approval of its City Council) shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Iowa law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained



herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 2. Amendment. This Declaration may be amended or changed at any time within ten (10) years following the date of recordation by an instrument recorded in the Office of the Recorder of Polk County, Iowa, signed or approved in writing by a majority of the then Owners; provided, however, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. This Declaration may also be amended by Declarant, if it then has any ownership interest in the Properties, at any time within four (4) years after the recordation hereof in order to satisfy the requirements of any of the Federal Mortgage Agencies. Any such amendments shall be recorded and shall be subject to the prior written approval of any of the Federal Mortgage Agencies having an interest in the Properties or any portion thereof. This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty-one (21) years from the date of recordation in the Office of the Recorder of Polk County, Iowa, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten-year period it is amended or changed in whole or in part as hereinabove provided. Invalidation of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way effect any of the other provisions hereof, but the same shall remain in full force and effect.

Section 3. HUD Approval. As long as there is a Class B membership, the following actions will require the prior approval of the

Department of Housing and Urban Development: annexation of additional property, dedication of Common Area, and amendment of this Declaration.

Section 4. Notice to Mortgagees. The Association, upon request, shall provide written notification to any lender holding a first mortgage upon any Lot specifying the defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents which default has not been cured within sixty (60) days.

Section 5. Restriction on Rental. In order to protect the integrity of this subdivision and to insure that those persons residing therein have similar proprietary interests in their Lots and Living Units, no Lot and the Living Unit located thereon shall be leased or rented for a period of time of less than one(1) year and no lease or rental agreement to any such tenants or lessee shall be extended or renewed for a shorter period of time.

IN WITNESS WHEREOF, Milo L. DePhillips and Mary DePhillips, husband and wife, have caused this Declaration to be executed this 11 day of March, 1986.

DECLARANT:

Milo L. DePhillips  
Milo DePhillips

Mary T. DePhillips  
Mary T. DePhillips

CENTRAL LIFE ASSURANCE COMPANY

By [Signature]  
Vice President Title

By [Signature]  
Assistant Secretary Title



STATE OF IOWA )  
 ) ss.  
COUNTY OF POLK )

On this 11 day of March, 1986, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Milo DePhillips and Mary T. DePhillips, husband and wife, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.



Charlotte Lee Lepplein  
Notary Public in and for the State  
of Iowa

STATE OF IOWA )  
 ) ss.  
COUNTY OF POLK )

On this 14 day of March, 1986, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared G. Joseph Syata and Diane M. Davidson to me personally known, who, being by me duly sworn, did say that they are the Vice President and Asst Secretary, respectively, of said corporation executing the within and foregoing instrument to which this is attached, that the seal affixed hereto has been procured by the said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that the said G. Joseph Syata and Diane M. Davidson as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.



Linda Andreini  
Notary Public in and for the State  
of Iowa