

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND ESTABLISHMENT OF HOMEOWNERS ASSOCIATION

"SUGAR CREEK HILLS"  
Dallas County, Iowa

THIS DECLARATION, made this 18th day of August, 1992, by Sugar Creek Farms, Ltd., hereinafter called the "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the real estate located in Dallas County, Iowa, described on Exhibit A attached hereto and hereby made a part hereof, hereinafter called the "Property":

NOW, THEREFORE, Declarant hereby publishes and declares that all of the Property shall be held, sold and conveyed subject to the following easements and restrictions, covenants, conditions, uses, limitations, and obligations, all of which are for the purpose of protecting the value and desirability of the Property and all of which shall be binding upon the Declarant, its successors and assigns, and all parties acquiring or owning any right, title or interest in any part of the Property and their heirs, successors, assigns, grantees, executors, administrators, and devisees:

ARTICLE I.  
DEFINITIONS

1. "Declarant" shall mean Sugar Creek Farms, Ltd., an Iowa corporation, which has made and executed this declaration, and its successors and assigns. A successor or assign of the Declarant shall mean only one person or entity who is both a transferee of more than one Lot and a transferee of all Lots owned by the Declarant immediately prior to such transfer.

2. "Lot Owner" shall mean each person or entity who is a record Owner of a fee or undivided fee interest in Lots 1-13 located within the Property; provided, however, that in the event of the recording of a contract for the sale of a Lot, the contract purchaser shall be deemed the Lot Owner; and provided further that in the event a fee interest of record is held merely for the security of the performance of an obligation, then the obligor in possession shall be deemed the Lot Owner.

A. "Rural Lots" shall mean Lots 10, 11, 12 and/or 13.  
"Rural Lots Owners" shall mean Lot Owners of Lots 10, 11, 12 and/or 13.

B. "Residential Lots" shall mean Lots 1, 2, 3, 4, 5, 6, 7, 8, and/or 9. "Residential Lot Owners" shall mean Lot Owners of Lots 1, 2, 3, 4, 5, 6, 7, 8, and/or 9.

3. "Association" shall mean Sugar Creek Hills Inc., its successors and assigns.

4. "Property" shall mean the real estate above described.

5. "Common Area Lot" shall mean Lot 2 which is a road used for ingress and egress for Lots 1 through 9.

6. "Outlot A and Outlot B" shall be those lots shown on the Plat of Sugar Creek Hills as such. Outlots A and B shall not be subject to any of the covenants, conditions, restrictions, assessments or any other terms of this Declaration. As of the date of this Declaration, Outlots A and B are owned by Sugar Creek Farms, Ltd., the Declarant, and may be sold, developed or used in any legal manner by the Declarant, its assigns, and successors in interest.

#### ARTICLE II. PROPERTY RIGHTS

The right of the Association to dedicate, sell or transfer all or any part of the Common Area Lot to any public agency, authority or utility for such purposes and subject to such conditions as determined by the members of the Association.

#### ARTICLE III. MEMBERSHIP IN ASSOCIATION

Every person or entity who is a record Lot Owner of a fee or undivided fee interest in any Residential Lot and Rural Lot which is subject by covenants of record to assessment by the Association, including contract buyers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Residential Lot or Rural Lot which is subject to assessment by the Association. Ownership of such Residential Lot and/or Rural Lot shall be the sole qualification for membership.

#### ARTICLE IV. VOTING RIGHTS

1. CLASS OF MEMBERSHIP: The Association shall have three classes of voting membership:

A. Class A Members: Class A Members shall be all Residential Lot Owners as defined in Article II with the exception of the Declarant. Class A Members shall be entitled to one vote for each Residential Lot in which they hold the interest required for membership by Article

III. When more than one person holds such interest in any Residential 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 Residential Lot.

B. Class B Members: The Class B Members shall be all Rural Lot Owners as defined in Article II with the exception of the Declarant. Class B Members shall be entitled to one vote for each Rural Lot in which they hold the interest required for membership by Article III. When more than one person holds such interest in any Rural 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 Rural Lot.

C. Class C Member: The Class C Member shall be the Declarant. The Class C Member shall be entitled to three (3) votes for each Residential Lot and each Rural Lot in which it holds the interest required for membership by Article III, provide that the Class C Membership shall cease and be converted to Class A Membership or Class B Membership when the total aggregate votes outstanding in the Class A Membership and Class B Membership exceeds the total votes outstanding in the Class C Membership.

#### ARTICLE V. COVENANT FOR ASSESSMENT:

1. Creation of the Lien and Personal Obligation of Assessments: The Declarant for each Residential Lot owned within the Property hereby covenants, and each Owner of any Residential Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) all annual assessments or charges, and (2) all special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereupon and costs of collection thereof, including reasonable attorney fees, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each assessment, together with such interest and costs shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. This personal obligation shall not pass to his successors in title unless expressly assumed by them.

2. Only Residential Lots are subject to assessment; Rural Lots and the Common Area Lot are excluded.

3. Purpose of Assessments: The assessments levied by the Association shall be used exclusively for the purpose of the improvement and maintenance of the property, services, roads, road right of way, entrance way, utilities, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area Lot, and of the homes situated upon the Property.

4. Special Assessments for Capital Improvements: In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, improvement, unexpected repair or replacement of Common Area Lot, entrances, right of way, or of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 10 days nor more than 30 days in advance of the meeting setting forth the purpose of the meeting.

5. Uniform Rate of assessment: Both annual and special assessments shall be fixed at a uniform rate for all Residential Lots, regardless of size or location within the Property.

6. Quorum for any Action Authorized Under Article V, No. 4: At the first meeting called, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership entitled to vote shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Article V, No. 4, and the required quorum at any such subsequent meeting shall be sixty percent (60%) of those present at said meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

7. Date of Commencement of Annual Assessments: Due Dates of Annual Assessments: To be determined by vote of the Association.

8. Effects of Nonpayment of Assessments: Remedies of the Association: Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of one and one-half percent (1-1/2%) per month, and the Association may bring action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs, and reasonable attorney fees of any such action shall be added to the amount of such assessment.

9. Subordination of the Lien to Mortgages: The lien of the

assessments provided for herein shall be subordinate to the lien of any prior recorded mortgage or mortgages. Sale or transfer of any Lot shall not affect the assessment lien.

10. Only Residential Lot Owners may vote on matters concerning assessments and only Residential Lot Owners shall be considered by purposes of quorums and voting percentage on matters relating to assessments.

ARTICLE VII.  
SPECIFIC PROVISIONS AND USE RESTRICTIONS

The following restrictions and reservations are made a part of the plat and survey known as Sugar Creek Hills Association, Inc., a subdivision in Section 16, Township 78th North, Range 26 West of the 5th P.M. in Dallas County, Iowa, according to the plat thereof recorded in Book \_\_\_\_, page \_\_\_\_, of the Plat Records of Dallas County, Iowa, and shall be binding upon all present and future owners of each and every lot and parcel of ground in said subdivision according to the terms herein specified as covenants running with the land and with the same force and effect as if contained in each subsequent conveyance of said Lots.

1. The following Restrictive Covenants and Use Restrictions shall apply to all Residential Lots and all Rural Lots.

A. All lots described herein shall be known, described, and used solely as residential lots and houses shall be one detached single-family dwellings not to exceed two stories in height. Said lots may not be subdivided.

B. No trailer, basement, tent, shack, garage, barn or other outbuilding erected in the tract shall at any time be used as a residence of a temporary character be permitted nor shall a business of any kind be conducted in a residence.

C. No obnoxious or offensive trade shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

D. Builders shall pick up all material that can blow into another person's yard or into the common property. Trash should be stored in proper containers or piles and not burned as a method of disposal. Building trash should not be left for the Association garbage collectors. Trash as a result of the building is the responsibility of the contractor for environmental disposal.

E. No more than twelve inches (12") of concrete block,

poured concrete or clay tile foundation shall be exposed on any structure and any such exposed materials shall be painted or covered with brick or stone veneer.

F. Titleholder of each lot, vacant or improved, shall keep his lot or lots free of weeds and debris and agrees to take all steps necessary to control erosion on his lot or lots. If, in the opinion of Sugar Creek Hills, Inc., with the concurrence of a majority of the Home Owners Association of Sugar Creek Hill, Inc. property owners, such erosion is not properly controlled, corrective action may be taken by such corporation and the costs thereof assessed against the property owner.

G. Construction of any residences shall be completed within one year from the date said construction is begun and excess dirt from excavation shall be hauled away or used only as a part of a graded landscape plan.

H. A perpetual easement is reserved over the front and rear ten feet of all lots for utility installation and maintenance. Utilities shall be classified as gas, water, sewer, telephone, electricity, and cable television.

I. These Covenants are to run with the land and shall be binding on all parties and all persons claiming under them until June 30, 2001, at which time said Covenants shall be automatically extended for successive periods of ten years unless by a vote of the majority of the landowners of the lots, it is agreed to change the said Covenants in whole or part.

J. If the parties hereto or any of them or their heirs or assigns shall violate or attempt to violate any of the Covenants or Restrictions herein before June 30, 2001, it shall be lawful for any other person or persons owning any other Lots in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such Covenant or Restriction and either to prevent him or them from so doing or to recover damages or other dues for such violation.

K. Invalidation of any one of these covenants by judgment or Court order shall in no ways affect any of the other provision which shall remain in full force and effect.

L. No PA systems will be operated for either voice or music at a noise level that is disturbing to other property owners.

M. No trees of consequence, (in excess of eight inches in diameter) such as walnut, oak, or hickory trees, will be cut down for profit, or for construction or other reasons without the expressed approval of Sugar Creek Hill, Inc. No poplar or cottonwood shall be planted on any lot.

N. Titleholders are required to provide approved and adequate sewage facilities on each lot when a residence is constructed. these facilities will not be shared with adjacent property owners and will be maintained an approved distance from public water supply facilities. No sewage lines or laterals will be run into any creeks or ravines.

O. Owners shall be responsible for any costs in connection with the water, cable television, electrical or telephone services on their lot, underground service will be used.

P. Should a swimming pool be constructed it will be completely underground. No above ground or non-permanent swimming pools will be permitted.

Q. Any liquid fuel tanks (Propane, etc.) must be properly obscured by bushes, decorative fence or some other acceptable means to attempt to hide the view of it from adjacent property owners.

R. No lot will be subdivided.

S. Extension of the existing road (Common Area Lot 2) is prohibited. Lots 1 through 9 will only have access to the existing road.

T. No exterior towers or antennae of any kind shall be constructed, modified, or permitted on the ground of any building plot. Television, radio antennae, and satellite dishes are permitted on dwelling or garages, provided such antennas do not exceed the height which is necessary to obtain reasonably good reception from radio and TV towers located within a 35-mile radius, and are properly screened so as not to be visible from public streets.

U. No use will be made of roads for parking at any time, and no inoperative vehicles will be parked on any property for a period exceeding 30 days.

V. No factory-built structure of closed construction nor any factory-built structure of open construction assembled away from the building site shall be hereafter built on any lot in this tract.

W. The total area of the front elevation of any residence and garage located on any lot shall be finished with a minimum of 25 percent brick or stone or, as an alternative, no brick or stone is required if all sides of the house and garage are finished with horizontal lapped siding with a maximum width of six inches (6").

X. All buildings must have a roof of cedar wood shingles or cedar wood shakes or tile; provided, however, if the design of the dwelling is such that cedar wood shingles or cedar wood shakes or tile are not appropriate (i.e., flat roof), a waiver of this standard may be granted in writing by the Declarant; but in no event shall asphalt or fiberglass shingles be permitted on any lot.

Y. No dwelling shall be constructed or permitted to remain upon any building plot in this subdivision unless it meets the following ground floor area requirements.

(i) One-story dwellings must have a ground floor finished area of not less than 1,800 square feet.

(ii) One and one-half story dwellings must have 1,800 square feet of finished area on the first floor. Total finished area of ground floor and second floor must at least be 2,400 square feet.

(iii) Two-story dwellings must have a total on the main floor and second floor of not less than 2,400 square feet.

(iv) Split entry dwellings must have a finished upper level of not less than 1,600 square feet, and a total finished area of 2,200 square feet.

(v) Split level dwellings must have a finished area directly under roof of not less than 1,500 square feet with a total finished floor area of not less than 2,200 square feet.

(vi) No building shall be erected on any lot unless the design and location is in harmony with existing structures in the tract. The building must not conflict with other buildings in the tract through improper orientation, setbacks, landscaping and screening, grading, traffic circulation, or architectural incompatibility. All buildings



must maintain regard for open view from the street side of any existing buildings on adjoining lots. The buildings must conform in design, architecture, and aesthetic appearance to the majority of existing buildings in the tract.

(vii) In the computation of ground floor area, the same shall not include any porches, breezeways, or attached or built-in garages.

(viii) No private dwelling house permitted above nor any other structure shall be erected on any Lot until the plans and specifications therefor have been submitted to and approved in writing by the Board of Directors of the Association as to outward appearance, color and design and location on the Lot; provided, however, if said Board of Directors fails to approve or disapprove such plans and specifications within 15 days after the same have been submitted, then such approval shall not be required.

2. The following Restrictive Covenants shall only apply to the Residential Lots:

A. No structures shall be erected nearer than 50 feet of the front or rear lot line, nor shall any structure be erected nearer to the side lot line of any lot than that number of feet contained in ten percent of the total average width of such Lot.

B. Any dog run, trash receptacle, tool shed or other outside structure of like nature shall be properly screened by reasonable shrubbery or decorative fence or both.

C. At the start of any construction an acceptable drainage culvert must be established in the drainage ditch at the entrance of the driveway from the road. The driveway must also be rocked to preclude the construction vehicles tracking mud and dirt onto the road.

D. Owners are required to go under the roads when connecting to the water or electric source if located on the other side of the road. If the builder, due to a specific problem such as the sewer system being located in the street, finds it impossible to connect under the road, the owner/builder may secure permission to go

across the road. However, the road must be put back into its proper state by the owner/builder and gravel and its paving added, if needed. If a road is not repaired to the satisfaction of the Association, an owner/builder will be charged with the cost of repair. Also when digging holes on the other side of the road for water, electric, or sewer connections, the land in the Common Area, whether on the owner's side or the other side road, must be put back into its previous state as soon as possible by the contractor, subcontractor or owner.

E. No fence over two (2) feet in height shall be constructed or maintained on any side of a lot facing a public right-of-way. All fences shall have the finished side facing away from the lot.

F. No hedge or shrub planting which obstructs sight-lines at elevations between two (2) and ten (10) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner within the triangular area formed from the intersection of the street property line with the edge of a driveway. No trees shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight-lines.

G. No building or garage shall be constructed, altered, or maintained on any lot unless it has a driveway running from a street to the dwelling, which must be of sufficient area to park at least two cars entirely off the street right-of-way. All driveways shall be constructed of concrete or bituminous surfacing.

H. No large animals shall be allowed to be kept on the property.

I. No building or structure shall be constructed, altered, or maintained on any building plot other than one single-family dwelling with no less than a two-car attached or double basement garage.

J. No sign of any kind or description shall be placed, exposed to view or permitted to remain on any lot, or any street adjacent thereto, except street markers, traffic signs and other government units, and signs not exceeding one hundred square inches (100") in area upon which there shall be exhibited the street number or name of the resident, or both. In the event that any sign other than

those described above shall be placed or exposed to view on any of the lots restricted hereby, the officers or agents of the declarant are hereby given the right to enter upon such a lot and remove such signs. Real estate signs by the builder-developer will be permitted until such development is completed. Signs, not exceeding eight square feet in size, shall be permitted to show property for sale or rent.

3. The following Restrictive Covenants shall only apply to Rural Lots:

A. Rural Lot Owners shall be permitted to maintain on their property no more than four large animals for their personal use.

B. Rural Lot Owners shall be permitted to construct such outbuildings as may be necessary to maintain such animals. All outbuildings must be set back at least fifty feet from any lot line.

C. All pastures shall be mowed or clipped to control weeds. Bedding material and manure from barns may not be stored on property.

D. Rural Lot Owners with large animals shall construct and maintain all necessary fencing to contain their animals.

#### ARTICLE VIII GENERAL PROVISIONS

1. Enforcement. The Association, Declarant, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner and/or Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so hereafter.

2. Severability. Invalidation of any one of these covenants or restriction by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

3. Amendment. These covenants and restrictions shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this declaration, their respective legal representatives, heirs, successors, and assigns until June 30, 2002, after which time said covenants shall be automatically extended for successive periods

of ten (10) years. The covenants and restrictions may be amended by an instrument signed by not less than 75% of the votes of the Lot Owners, provided, however, only Residential Lot Owners shall be allowed to vote on covenants contained in Article III(2) and only Rural Lot Owners shall be allowed to vote on covenants and restrictions contained in Article III(3).

4. Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the Owner.

IN WITNESS WHEREOF, the undersigned, being the Declarant of Sugar Creek Farms, Ltd., has executed this document the 1st day of June, 1992.

Sugar Creek Farms, Ltd.

By: Curt Bradley  
Curt Bradley, President

State of Iowa, County of Dallas: ss

On this 18 day of June, 1992, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Curt Bradley, to me personally known, who being by me duly sworn, did say that he is the President of the corporation executing the within and foregoing instrument, that no seal has been procured by the corporation; that said instrument was signed on behalf of the corporation by authority of its Board of Directors and that Curt Bradley as officer acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

[Signature]  
Notary Public - State of Iowa

