

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
BENNETT FARMS SUBDIVISION
MADISON COUNTY, IOWA**

We, Corkrean Homes, Inc., hereinafter referred to as ADeclarant@ are now the fee simple owners and record titleholders of the following-described real estate:

THE NORTH HALF OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11 TOWNSHIP 76 NORTH, RANGE 28 WEST OF THE 5TH P.M., MADISON COUNTY, IOWA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SECTION 11, TOWNSHIP 76 NORTH, RANGE 28 WEST OF THE 5TH P.M., MADISON COUNTY, IOWA; THENCE SOUTH 88°154'13" WEST 2,619.71 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 11; THENCE SOUTH 88°147'25" WEST 1,323.79 FEET TO THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 11; THENCE SOUTH 00°157'51" WEST 1,323.63 FEET TO THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE NORTH 88°143'49" EAST 3,955.55 FEET TO THE SOUTHEAST CORNER OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 11; THENCE NORTH 00°127'14" EAST 1,313.90 FEET TO THE POINT OF BEGINNING CONTAINING 119.590 ACRES INCLUDING 5.358 ACRES OF COUNTY ROAD RIGHT-OF-WAY.

which real estate is being platted as Bennett Farms Subdivision, Madison County, Iowa.

Said owner does hereby impose and subject said real estate to certain regulations, covenants, restrictions and easements as to the use and occupancy thereof, as follows:

ARTICLE I.

Definitions

Section 1. AAssociation@shall refer to the Bennett Farms Subdivision Homeowners= Association, which shall be a non-profit residential real estate management association, its successors and assigns.

Section 2. AOwner@shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the property, except that a vendee in possession under a recorded contract of sale of any lot shall be considered the owner

rather than the contract seller being the owner. Those having an interest merely as security for the performance of an obligation shall not be considered an owner.

Section 3. AProperties@shall mean and refer to that certain real property hereinbefore described and such additional real property which includes lots or plats as may hereafter become subject by covenants of record to assessment by the Association or hereinafter become Common Area.

Section 4. ACommon Area@shall mean and refer to the roadway, including the improvements thereon, ownership of which shall be retained by the Association for the common use and enjoyment of the owners.. The Common Area shall also be all portions of paving, rock roads, and utilities located in the Common Area. The Common Area and any improvements thereon shall be conveyed to the Association.

Section 5. ALots@shall mean and refer to the numbered lots as shown upon any Plats within the Property.

Section 6. AAssociation Responsibility Elements@shall mean the following, whether located upon a ALot@or upon the ACommon Area@ (a) The access roads constructed by the Declarant or the Association and owned by the Association. (b) Conduits, ducts, plumbing, wiring, pipes and other facilities located on the above roads which are carrying any service to any ALot@ (c) Street signs owned by the Association, including such signs located on property owned by Madison County, Iowa.

ARTICLE II.

Property Rights and Maintenance

Section 1. Owners=Easements and Enjoyment. Every Owner shall have a right and easement and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Board of Directors of the Association to dedicate or transfer any part of the Common Area to any public agency, authority or utility for such purposes. No such dedication or transfer by the Board of Directors shall be effective unless an instrument agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family or his tenants.

Section 3. Association Responsibility Elements. No person, other than the owner of a Lot, his or her invitees and other users of the roads, shall have the right to enter upon, use or affect an Association Responsibility Element located adjacent to a Lot except that the Association and its designees may enter the Common Area at reasonable times for the following purposes: (a) Enforcement of any provision of this Declaration or the Articles of Incorporation or the By-Laws of the Association. (b) Mowing and maintenance of grass areas. (c) Snow removal. (d) Inspection, maintenance or repair of any Association Responsibility Element. and (e) For any other reasonable purpose of the Association.

Section 4. Maintenance. The Association shall be responsible for the maintenance of the Common Area and the improvements thereon, as well as the Association Responsibility Elements as herein defined.

ARTICLE III.

Membership and Voting Rights.

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

Section 2. All owners shall be entitled to one vote in the Association for each Lot. When more than one person holds an interest to any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine; but, in no event, shall more than one vote be cast with respect to any Lot.

Section 3. Notwithstanding any other provisions of this Declaration, the Declarant, its successors and assigns, shall be the sole voting membership of the Association until Declarant no longer owns any portion of the property, or until Declarant waives in writing this right to be the sole voting membership, whichever first occurs. While the sole voting member the Declarant, its successors and assigns, shall have the right to elect all Directors of the Association. Declarant shall waive in writing his right to be the sole voting membership when all lots have been sold.

ARTICLE IV.

Covenants for Maintenance Assessments.

Section 1. Creation of Liens and Personal Obligations of Assessments. The Declarant, for each Lot owned within the properties, hereby covenants, and each Owner of any Lot by acceptance of a Deed thereof, whether or not it shall be so expressed in such deed, is deemed to consent and agree to pay to the Association: (1) Annual assessments or charges; and (2) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, together with interest, costs and reasonable attorney's fees, which shall be a charge upon each Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, cost and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such Lot

at the time the assessment became due. The personal obligation for delinquent assessments shall not pass to the owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by and for the Association shall be used exclusively to promote the health, safety and welfare of the residents of the property and for the improvement and maintenance of the Common Area and the Association Responsibility Elements.

Section 3. Annual Assessment. (a) For the period commencing January 1st of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment shall be fixed by the Board of Directors of the Association. (b) The Board of Directors shall fix the annual assessment each year thereafter. (c) A Lot shall not be subject to assessment until the first day of the month following the date of possession of such Lot.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessment 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, reconstruction, repair or replacement of a capital improvement upon the Common Area, which shall include the surfacing or maintenance of any such roads.

Written notice of any meeting called for the purpose of taking any action authorized under this Section shall be sent to all Members entitled to vote not less than 10 days nor more than 30 days in advance of the meeting. The acts approved by a majority of lot holders present at the meeting shall constitute acts of the members.

Section 6. Uniform Rate of Assessment. Annual assessments, special assessments for capital improvements, and insurance assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis, except as otherwise specifically provided herein.

Section 7. Date of Commencement of Annual Assessments: Due Dates. Annual

assessments shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least 30 days in advance of each annual assessment period. Written notice by ordinary mail of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid. A properly executed Certificate of the Association as to the status of an assessment on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Insurance and Insurance Assessments. In addition to the annual assessments and 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. This provision shall not relieve any owner of any Lot from obtaining homeowners=liability insurance and casualty insurance for the property of such owner. In the event of a casualty loss upon the Common Area, the Association shall be responsible for the repair and restoration of the Common Area and the Owner shall be responsible for the repair and restoration of any building or improvements on his Lot.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments not paid within 30 days after the due date shall bear interest from the due date at the rate of 12% per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against property. 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 10. Utilities. Each Owner shall be responsible for payment of all utility

services to his Lot, including but not limited to, electricity, water, gas, telephone, sewer services, and cable television services. Each Owner, or group of Owners, shall also be responsible for servicing their private mechanical sanitary sewer systems or any other type of sewer system used, per manufacturers or designers recommendations but in no case less than annually, as well as maintaining same so as to be in compliance with all health, safety and other local, county, state and federal codes, rules, regulations or laws of every kind or nature applicable thereto. Further, each Owner, or group of Owners, shall supply written proof and documentation of the routine maintenance of their respective private mechanical sanitary sewer system, or other system used, to the Association, as the Association requires from time to time. If Owner, or group of Owners, does not comply with this requirement, and after written notice by the Association (in the form as set by the Association), the Association may, but is not required to, treat the respective Owner or Owner's sewer system as an Association Responsibility Element upon the Lot(s), and inspect, service, repair and/or maintain said sewer system as the association sees fit, and charge the cost of same directly to the respective Lot Owner or Owners as a Special Assessment, as elsewhere provided.

Section 11. Assessments for County Related Improvements. Notwithstanding any other provisions of this Article, the Board of Directors may establish an assessment for the maintenance, improvements or reconstruction of street signs, street lights, fences and sidewalks, if necessary, to comply with any directive of Madison County, Iowa.

ARTICLE V.

Architectural Control

No alteration of surface drainage be made until the plans and specifications showing the nature, kind, shape, height, material and location of the same have been submitted to and approved in writing as to the topography by the Board of Directors of the Association. In the

event said Board of Directors fails to approve or disapprove such design and location within 30 days 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. This Article shall not apply to construction, improvements or alterations made by the Declarant.

Declarant, their heirs successors and assigns, shall have the right as long as declarant, their heirs successors and assigns, own any lot or lots within the subdivision to approve all building plans and specifications prior to the construction of any improvements on any lot in the subdivision. Any owner of any lot in the subdivision shall submit building plans and specifications for approval to declarant prior to commencing construction on any lot. No construction of improvements shall be made on any lot without the express written approval of declarant, whose decision shall be final and binding as to all parties.

ARTICLE VI.

Easements

Each Lot is burdened with an easement for surface drainage for the benefit of all other Lots and Common Areas. Each Lot is burdened with easements for public utilities and sidewalks, if the latter is required by Madison County.

ARTICLE VII.

Use Restrictions

Section 1. Subjection of the Property to 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 or enforceable against each and all Lots and the Owners thereof and their respective assigns, lessees, tenants, occupants and successors in interest.

Section 2. Use of Properties. The use of the Properties shall be in accordance with and subject to the following provisions:

- (a) All lots in said plat shall be used only for single-family residential purposes. No structure shall be erected on any lot except the residential dwelling structure, which shall be at least 1250 square feet in area, a one- to three-car garage and certain accessory buildings provided that accessory buildings other than garages may not be erected in excess of 1000 square feet in area. No mobile homes, earth homes, manufactured homes, or berm homes shall be erected or placed on any of the lots in Bennett Farms Subdivision. No hog confinement, nursery or finishing structure, cattle finishing structure, poultry laying or raising houses shall be erected on any of the lots in said Bennett Farms Subdivision.
- (b) The requirements contained in the Madison County Zoning Ordinance as to lot area, width and yard requirements shall apply to all lots within the subdivision. A setback as shown on the Plat for Bennett Farms Subdivision shall apply.
- (c) No lot in the plat shall be further subdivided, except that a lot may be divided and sold to or with adjoining lots to increase their size.
- (d) No trailer, basement, tent, shack, garage, barn or other accessory building in the tract shall at any time be used as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted.
- (e) No building shall be erected on any building lot unless the design and location is in harmony with the existing structures and locations in the tract and does not violate any of these protective covenants.

- (f) The titleholder of each lot, vacant or improved, shall keep his lot or lots free of weeds and debris, and shall not engage in any activity which is a nuisance.
- (g) These use restrictions set forth in this Section 2 of Article VII are to run with the land, and shall be binding on all parties and persons claiming through or under them until January 1, 2024, at which time said covenants shall be automatically extended for successive periods of 10 years, unless by a vote of the majority of the then owners of the lots, it is agreed to delete and said covenants in whole or in part. No new or additional covenants shall be added unless all of the owners of the lots in said Bennett Farms Subdivision agree in writing to any such additional covenants.
- (h) If any person shall violate or attempt to violate any of the covenants, conditions or restrictions contained herein, it shall be lawful for any owner of any lot or lots in the subdivision to institute proceedings in law or in equity against the person or persons violation or attempting to violate any such covenants, conditions or restrictions, and to prevent or enjoin him or them from so doing or recover damages for such violation.
- (I) Invalidation of any one of these provisions by judgment or court order shall not affect any of the other provisions which shall remain in full force and effect.
- (j) If any lot owner decides to erect a fence upon his lot, the total cost of installation of such fence shall be borne by said lot owner as well as the cost of all future maintenance of the fence. No adjoining lot owner shall be required to participate in the cost of the erection or maintenance of any fence. Any fence erected shall be the sole property of the lot owner and can be removed by such lot owner at his discretion. Nothing in this paragraph shall be deemed to preclude a fencing

agreement between adjoining lot owners for erection and maintenance of a common fence; however, for any such common fence agreement to be enforceable upon future lot owners, such fencing agreement must be in writing and filed on record in the Madison County Recorder's office in order to apprise prospective purchasers of their obligations with respect to such fencing.

- (k) With respect to exterior partition fences it shall be the responsibility and obligation of each lot owner to maintain a lawful partition fence separating his lot from adjoining unplatted real estate.
- (l) No animals shall be kept or maintained on any of the lots in Bennett Farms Subdivision except ordinary household pets, not to exceed a reasonable number for each lot, and one (1) horse per lot.
- (m) The Board of Directors of the Association shall have the authority to adopt rules and regulations governing the use Lots at the Common Area and the Association Responsibility Elements. Such rules shall be observed and obeyed by the Owners, their guests, lessees, assigns, and licensees.
- (n) Agents or contractors hired by the Board of Directors of the Association may enter any Lot when necessary in connection with any installation, repair, removal, replacement or inspection of any Association responsibility element, or in connection with landscaping, or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the Owner as practicable.
- (o) An Owner shall be liable to the Association for the expense of any maintenance, repair or replacement to the Common Area or the Association Responsibility Elements rendered necessary by his act, neglect, or carelessness, or by that of his

family, guests, employee, agents, or lessee, which liability shall include any increase in insurance rates resulting therefrom.

- (p) 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 of sale.
- (q) Police, firemen, emergency units, inspectors and any other public officials or law enforcement agencies shall have the same right of entry onto and the same enforcement powers as to the Common Area as they have with respect to public streets and publicly owned parks and areas.

ARTICLE VIII.

Non-Waiver of Provisions

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.

Dated this ____ day of _____, 2004.

CORKREAN HOMES, INC.

By _____
Jennifer Stover, President

By _____

Patrick F. Corkrean, Vice President

STATE OF IOWA :
 :SS
COUNTY OF MADISON :

On this ____ day of _____, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared Jennifer Stover and Patrick F. Corkrean, to me personally known, who being by me duly sworn, did say that they are the President and Vice President, respectively of said corporation; that no seal has been procured by said Corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and, that the President and Vice President, 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.

Notary Public in and for the State of Iowa