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Prepared by:

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Spruce Glen, Inc.
P.O. Box. 187
Dell Rapids, SD 57022
605-428-5483



Recorded May 25, 2021 at 10:27
In Book 295 of Misc. on Page 215

Julie D. Risty, Register of Deeds
Minnehaha County, South Dakota

Julie D. Risty Deputy *JR*

R117746

SPRUCE GLEN

DECLARATION OF RESERVATIONS AND RESTRICTIVE COVENANTS AND CONDITIONS

THIS DECLARATION is made on this 24th day of May 2021, by SPRUCE GLEN, INC., a South Dakota Corporation, with its principal office located at P.O. Box 187, Dell Rapids, South Dakota, 57022, hereinafter called the "Developer,"

WHEREAS, the Developer is the fee owner of the real property hereinafter legally described, and

WHEREAS, the Developer intends to develop and offer for sale Lots and Tracts to be located within SPRUCE GLEN, an Addition to Dell Rapids (herein sometimes referred to as the "Development") and is desirous of subjecting all of the land located within this Development to certain covenants, easements, restrictions, conditions and charges as hereinafter set forth; and

WHEREAS, the Developer has decided to the Dell Rapids Golf Course (now known as Rocky Run Golf Course) land to be developed and utilized as a golf course, and it is mutually understood and agreed between Rocky Run Golf Course and the Developer that certain Lots and Tracts within the Development to be sold by the Developer will be adjacent to portions of the golf course owned and operated by the Rocky Run Golf Course; and

WHEREAS, Owners owning or purchasing Lots lying in proximity to the golf course will, under and pursuant to these restrictive covenants and conditions, assume certain special risks which will be set forth with more particularity in these Restrictive Covenants, Conditions and Restrictions; and

WHEREAS, the Developer reserves for itself, its successors and assigns easements for public utilities, drainage and storm sewers which are identified and shown on the plat or plats of Spruce Glen, an Addition to Dell Rapids, South Dakota, filed and to be filed by the Developer to insure the harmonious and systematic development of the Property.

NOW, THEREFORE, the Developer hereby declares that the real property located in Minnehaha County, South Dakota, and legally described as:

LOTS 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, AND 12 OF BLOCK 15 ALL IN SPRUCE GLEN ADDITION OF THE CITY OF DELL RAPIDS, MINNEHAHA COUNTY, SOUTH DAKOTA.

(hereinafter referred to as the "Property") shall be held, transferred, sold, conveyed and occupied subject to the conditions, restrictions, easements, charges and liens as hereinafter set forth, which covenants, restrictions and easements shall run with the Property and shall be binding upon all parties having any right, title or interest in the Property or any part thereof, together with their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I Definitions

1.1 Definitions. The following words, when used in this Declaration, shall have the following meanings:

(a) "Developer" shall mean and refer to Spruce Glen, Inc., a South Dakota corporation, its successors and assigns.

(b) "Lot" or "Tract" shall mean and refer to any lot or tract or parcel of land designated as a lot or tract shown upon any recorded plat or subdivision map of the Property. When used herein, the terms Lot or Tract may be used interchangeably.

(c) "Manufactured Home" shall mean a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term shall specifically exclude any structure constructed off-site in compliance with the Uniform Building Code opposed to the Housing and Urban Building Code.

(d) "Owner" shall mean and refer to the record owner of each Lot or Tract within the Property, whether one or more persons or entities, of a fee simple title, but excluding any person having such interest merely as security for the performance of an obligation.

(e) "Rocky Run Golf Course" shall mean and refer to the golf course currently located in Section 8, Township 104 North, Range 49 West of the 5th P.M., Minnehaha County, South Dakota, as such course may be modified or revised from time to time, including any successor entities or organizations.

(f) "Spruce Glen Addition" shall mean and refer to all of the lands and associated streets and dedicated public access which is and/or will be a part of Spruce Glen, an Addition to Dell Rapids, Minnehaha County, South Dakota and shown on the plat described herein.

ARTICLE II Additional Platting of Spruce Glen Addition

2.1 The Developer shall have the right, without obtaining the consent of the Owners, to bring within the scheme of Spruce Glen Addition and this Declaration additional real property which will be described in additional plats to be recorded. Such supplemental plats and Declarations may contain certain modifications and complimentary additions to reflect the different character, if any, of the additional property which will become a part of Spruce Glen addition.

ARTICLE III Easements

3.1 Easements. Easements are hereby reserved by the Developer for water, sewer, electricity, gas, telephone, storm sewers, drainage, television, street lights, snow removal, signage and the like, all as more particularly shown on the plat or plats of Spruce Glen Addition.

3.2 Use of Easements. Said reserved easement areas may be utilized for the purposes of ingress, egress, and for the installation, replacing, repairing and maintaining of utilities placed within the easement areas.

3.3 Dedication. The easement areas reserved by the Developer as shown on the recorded plats of Spruce Glen Addition are hereby dedicated to those utilities and entities that provide the various services referred to in paragraph 3.1 above.

3.4 Maintenance of Easement Areas. The Owner of a Lot or Tract shall maintain the easement area located upon his Property, except for those improvements for which a public utility or public authority is responsible. No structure, planting or other materials shall be placed or permitted to remain or to interfere with the dedicated easement areas.

ARTICLE IV Golf Course Lots

4.1 Golf Course Lots. Certain Lots within the Property may be adjacent and contiguous to the Rocky Run Golf Course which adjoins but is not a part of the Property.

(a) All purchasers of Lots which abut or adjoin the Rocky Run Golf Course are hereby placed on notice that such Lots may be affected by acts and occurrences resulting from the use, operation and maintenance of a golf course.

(b) By accepting a conveyance of a Lot abutting or adjoining the Rocky Run Golf Course, any Owner for itself, its heirs, personal representatives, assigns, successors and invitees assumes the risk of injury or damage to their person or property resulting from the use, operation and maintenance of a golf course.

(c) By accepting a conveyance of a Lot abutting or adjoining Rocky Run Golf Course, any Owner for itself, its heirs, personal representatives, assigns, successors and invitees agrees to release and hold harmless the Developer and the Rocky Run Golf Course (including in connection with the foregoing, elected and appointed officials, directors, officers, employees, servants and agents) from the use, operation and maintenance of a golf course.

ARTICLE V Architectural Review Committee to Approve Plans Prior to Construction

5.1 Purposes and Authority. In order to maintain the criteria for standards, to prevent the impairment of the attractiveness of the individual Lots, and to maintain the desired tone of the residential community, and thereby secure to each Owner the full benefit and enjoyment of its Lot with no greater restriction on the free and undisturbed use of a Lot than is necessary to ensure the same advantages for the other Owners, an Architectural Review Committee is hereby established, initially appointed by the Developer's Board of Directors and governed by Article VII below.

5.2 Procedure. Before commencing any permanent improvement on or to any of the described Lots, including landscaping, the construction or external alteration of any building, enclosure, fence or any other structure, the Owner shall first submit a site plan and plans and specifications, including as applicable, in the sole discretion of the Architectural Review Committee, architectural, engineering and landscape plans for the written approval of the Architectural Review Committee. In the event that such Committee fails to approve or disapprove plans submitted to it or to request additional information reasonably required within thirty (30) days after the receipt of such plans and specifications, the plans as submitted shall be deemed approved.

5.3 Right to Inspect. Any member of the Architectural Review Committee shall have the right, during reasonable hours and after reasonable notice, to inspect for the purpose of ascertaining whether or not the

covenants contained in this Declaration have been or are being complied with. Such person or persons shall not be deemed guilty of trespass by reason of such entry.

5.4 No Waiver of Future Approvals. The approval of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

5.5 No Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the Architectural Review Committee shall not bear any responsibility of ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, land use regulations or any other governmental regulations or requirements. The Developer, the Board of Directors, any committee or member of any of the foregoing shall not be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any unit.

ARTICLE VI Restrictions

6.1 Zoning and Yard Requirements. The Property is or will be zoned residential. All Lots shall comply with the applicable ordinances and regulations of the City of Dell Rapids, as amended from time to time. In addition to all applicable municipal ordinances, the all Lots shall comply with minimum yard requirements as follows: front yard setback - 25 feet; side yard setbacks - 7 feet; rear yard setback - 25 feet. No enclosed or covered structures of any type or swimming pools shall be allowed within the 25-foot rear yard setback of lots adjacent to the golf course.

6.2 Land Use. No Lot shall be used for any purpose except for a single family residential dwelling or twin home. No Lot in the Property may be subdivided, reduced in size or replatted into one or more smaller Lots, except by the Developer; provided, however, Owners may acquire an entire or a portion of an adjacent Lot for purposes of increasing the size of their Lot, but any adjacent Lot may never contain more than one detached single family dwelling or twin home except for certain lots designated by the Developer for condominiums and zoned as such.

6.3 Style and Nature of Buildings. No building shall be constructed, altered or permitted to remain on any Lot in the Property other than a single family dwelling or twin home. No structure shall exceed two stories in height above the highest point on the Lot where the surface of the earth contacts the structure. All building construction must comply with the restrictions and requirements of these covenants, any County and City Ordinances, amendments or building code requirements of Dell Rapids, South Dakota. All external furnaces, air conditioners, heat pumps and other items or devices of like or similar nature shall be concealed from the public view by foliage or appropriate screening devices. Construction, once commenced on any Lot, must be diligently and steadily pursued until completion. Each dwelling constructed on the Property shall conform to the following requirements:

(a) Single-level structures shall be constructed with a fully enclosed surface area of no less than 1300 square feet provided that a three-stall garage is attached to said structure on any lot where no portion of that lot abuts or adjoins the Rocky Run Golf Course. All other single-level structures shall be constructed with a fully enclosed surface level area of no less than 1500 square feet. If zoning regulations allow twin homes to be built on the Lot, no twin home shall be built with less than 1,200 square feet per living unit.

(b) No one and one-half story structure shall be constructed with a fully enclosed surface level of less than 1,400 square feet and with no less than 2000 total square feet at and above the enclosed surface level.

(c) No two-level or higher structure shall be constructed with a fully enclosed surface level area of less than 1,000 square feet and with no less than 1800 total square feet at and above the enclosed surface level. No tri-level structure shall be constructed having a fully enclosed floor area of less than 2,200 square feet.

(d) For purposes of these restrictions, a "split-foyer" structure consisting of an upper level and a basement shall be considered a single-level structure.

(e) For purposes of these restrictions, "surface level" is the first-floor level of a residence that is entirely upon the surface of the earth. Any floor level that is in whole or in part below the surface of and/or surrounded by earth shall not be considered a "surface level". Garages and open porches are excluded in calculating the above areas.

(f) All dwellings shall have a fully enclosed double garage or larger to serve the principal residence. All such garages must be permanently constructed on concrete foundations, and the exterior design shall be in conformance with the principal residence.

(g) Only natural wood, brick, stucco, natural stone, textured hardboard (lap application) or oriented strand board (lap application) shall be used as siding materials on the structures located within the Lot. No plywood, hardboard or oriented strand board siding in the form of panels or sheets shall be used as siding. All roofs shall be covered with cedar shingles, cedar shakes, clay tile, asphalt, or fiberglass shingles.

(h) Except as is immediately required for the construction of a particular dwelling, the grade of a Lot shall not be altered or changed in any significant fashion.

(i) All roofing, siding and colors at time of original construction or future changes thereto shall be submitted to and approved by the Architectural Review Committee. Roof slopes shall be a minimum 5:12 unless approved by the Architectural Review Committee and only then when a lower pitch is integral to the design of the Home.

(j) Dog runs, or kennels shall not be permitted in the front yard or the required rear yard and side yard setbacks, and the size of dog runs or kennels must contain no more than 72 square feet. Materials for the kennel or run and location must be approved by the Architectural Review Committee.

(k) Mailboxes shall be of the type and size approved by the Architectural Review Committee.

(l) All drives and walkways shall be constructed of concrete, stone, or brick. Exceptions of long shared private drives or streets may be constructed of asphalt, if approved by the Architectural Review Committee.

6.4 Prohibited Activities.

(a) The following activities and structures are hereby prohibited on the Property:

(1) Any structure of temporary character, trailer, mobile homes, manufactured homes, tents, shacks, barns, or other structures of a temporary character; provided, however, temporary sales offices to be used by the Developer shall be permitted.

(2) Satellite dishes, except those less than 4 feet in diameter, which shall be located in the rear yard not any closer than 20 feet from the rear and side yard lot lines except a permissive satellite dish must be at least 25 feet from the rear lot line for those lots adjacent to the Rocky Run Golf Course or attached to the structure but not extending more than 5 feet above the roof line at the point of attachment.

(3) Recreational vehicles (RV's), campers and camping trailers except and while loading and unloading, and except those RV's that are owned by guests and located with the Property. Guest's RV's, boats, and trailers, unless garaged, shall not be parked on the Property for more than 72 hours.

(4) Animals, livestock or poultry of any kind raised, bred or kept on any Lot, except that dogs or cats may be kept provided that they are kept, bred or maintained for no reason other than as household pets.

(5) Business enterprises, including self-employed businesses where the public is invited. Additionally, the operation of road and recreational vehicles, except golf cars, shall not be permitted on any of the Lots subject to these covenants and restrictions.

(6) No noxious or offensive trade or activity, as defined by law, shall be carried on upon a Lot in the Property, nor shall anything be done which may become an annoyance or nuisance, as defined by law.

(7) Window or wall heating units and window or wall air conditioning units.

(8) Wind turbines or solar panels.

(9) Mining activities and private water wells.

(10) Spot lights, flood lights or other lighting that interferes with the enjoyment of adjoining or neighboring Lots.

(11) Above grade swimming pools.

(12) No existing house or garage may be moved onto or relocated on any lot.

(13) Permanent clotheslines.

(b) In addition to said prohibited activities, Owners of Lots within the Development shall do and perform the following:

(1) Owners of vacant Lots must keep and maintain those Lots in a neat and clean appearance. Each Lot shall be regularly mowed to keep the length of grass and weeds growing thereon at six inches or less, and weeds shall be sprayed at least annually. Upon failure to comply with this covenant, and after three days notice is given, the Architectural Review Committee may perform such maintenance as is necessary and bill the Lot Owner, as provided herein, for all expense incurred.

(2) Refuse and rubbish. No Lot shall be used or maintained as dumping ground for rubbish or a storage area for any trash, garbage or other waste. Any such trash, garbage or other waste shall be kept within sanitary containers, and shall be stored either underground or within garages, or within a screened device for that purpose.

(3) Signs. No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than six square feet advertising a residence for sale or rent, or signs used by the Developer or a contractor to advertise the property during the construction and sales period; provided, however, permanent identification signs may be constructed by the Developer at the perimeter of the area, and signs of a temporary nature may be placed by the Developer to advertise the Development during the development and sale of the Property.

(4) Removal of Soil and Grade Level. No soil shall be removed from the Property resulting from any excavation without first obtaining the written approval of the Architectural

Review Committee. There shall be no material change in the grade levels as they now exist without approval of such Committee.

(5) Construction of the residential structure shall begin within one year of closing and purchase of the lot.

(6) The yard of each residential structure shall be landscaped and seeded or sodded within one year of the erection of the dwelling. Lawns will consist of natural turf only and all trees planted thereon shall be at least one and one half inches in diameter at time of planting, evergreen trees at least 18" in height, and all Elm, Poplar, and similar "weed" type trees are prohibited.

(7) Pools. Plans and specifications for swimming pools must be submitted to the Architectural Review Committee for review and approval in writing.

(8) Fences. Front yards shall not be fenced. Rear yards of Lots adjacent to the Rocky Run Golf Course may be fenced provided that any fence constructed in the rear yard setback area must not exceed 42 inches in height and the fence installed shall be black or brown in color, and made of vinyl coated chain-link fence or rod iron, except as otherwise approved by the Committee in its sole discretion.

(9) Runoff and erosion shall be controlled on site during construction with erosion control barriers. All disturbed ground areas of a building site shall be sodded, seeded, covered with plants or mulched with approved landscape materials.

(10) All dwellings and structures, drives and walkways, fencing, landscaping including trees and turf shall be properly maintained. If any Lot is not properly maintained, written notice will be given to the Owner by the Architectural Review Committee and a reasonable time period will be allowed within which repairs must be made.

ARTICLE VII Architectural Review Committee

7.1 Architectural Review Committee. Whenever used in this Declaration, "Architectural Review Committee" or "the Committee" shall mean and refer to the Architectural Review Committee, with the power and authority as set forth in this Declaration.

7.2 Committee Membership. While the Developer holds legal title to any Lot within the Property, the Developer shall serve as the Architectural Review Committee. At such time that the Developer no longer owns any interest in the Property, each Owner shall be a Member of the Committee. The foregoing, however, is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation, which shall include a contract for deed vendor. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Unit which is subject to assessment by the Committee.

7.3 Rights of Committee Members. There shall be one class of Membership within the Committee. Members shall be entitled to cast one (1) vote for each Lot in which they hold an interest. When more than one person or entity holds an interest in any Lot, all such persons or entities shall be Members; however, the one (1) vote for such Lot shall be exercised as they, among themselves, determine. In no event shall more than one (1) vote be cast with respect to any one Lot.

ARTICLE VIII General Provisions

8.1 Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by

a majority of the then owners of the Lots within the Addition has been recorded in Minnehaha County, South Dakota, Register of Deeds office agreeing to change said covenants in whole or in part.

8.2 Enforcement. The Developer shall be charged initially with enforcement of the covenants and restrictions of this Declaration. Upon the Developer's sale of all the Lots subject to this Declaration, the Architectural Review Committee shall assume the duty to enforce or ensure compliance with the covenants and restrictions contained herein. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

8.3 Failure to Enforce. The failure to enforce any of the covenants or restrictions herein set forth as to any violation by the Developer, the Committee, their agent(s) and/or assignees, or any property Owner, of any term, condition or covenant contained herein shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or different term, condition or covenant herein. Moreover, no such failure to enforce shall entitle any Owner to claim, sue for, or receive any damages or other payment from Developer or Committee. In addition, if the Developer or Committee is named by any Owner in any legal action, said Developer or Committee shall be entitled to recover from said Owner reasonable attorney fees in defending said action.

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

8.5 Amendments. Unless otherwise noted, this Declaration may be amended in the following manner:

- (a) Written notice of a proposed amendment shall be provided to all Owners; and
- (b) Approval of no less than a majority of all Owners shall be required to amend, revoke or modify this Declaration.

Dated as of the month, day and year written above

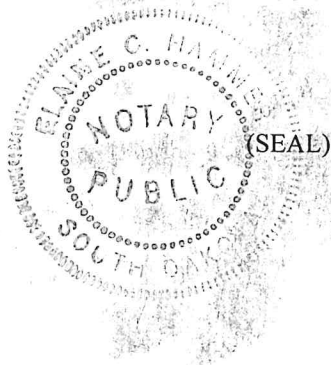
SPRUCE GLEN, INC.

Jill J. Adams, Treasurer

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF MINNEHAHA)

On this 21st day of May, 2021, before me, the undersigned officer, personally appeared Jill J. Hansen, who acknowledged herself to be the Treasurer of Spruce Glen, Inc., a corporation, and that she as such Treasurer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by herself as such Treasurer.

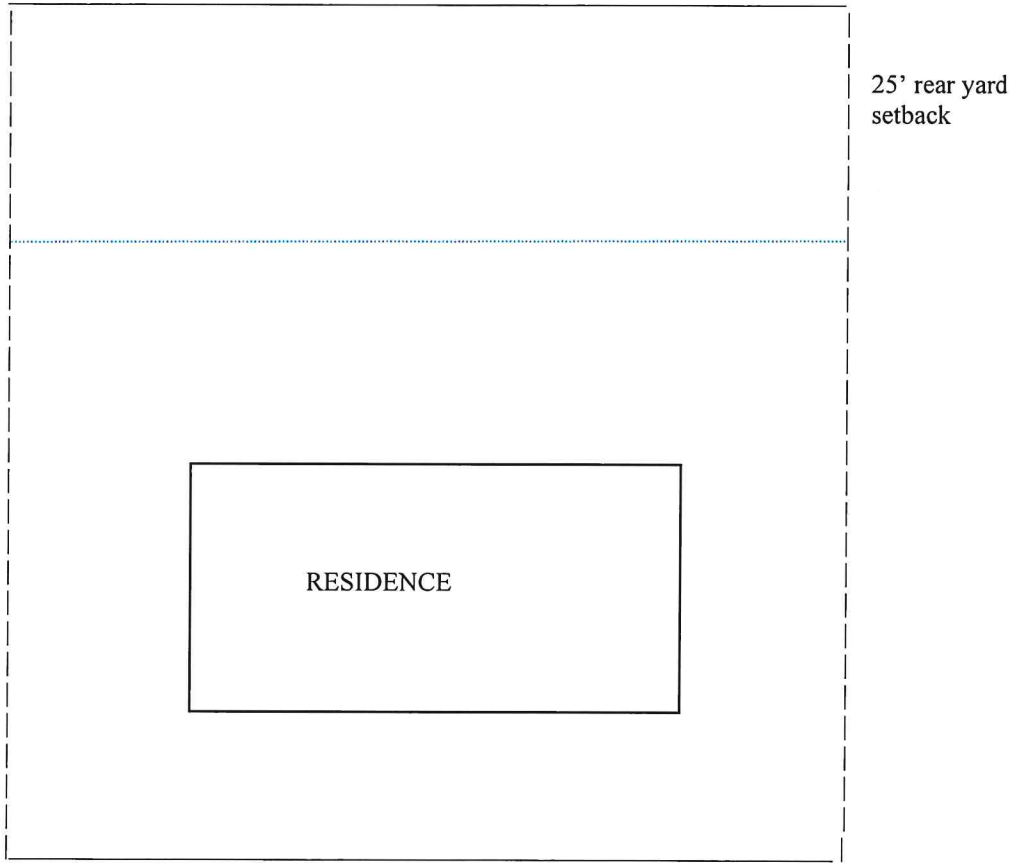
IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public - South Dakota
Commission expires: November 24, 2021

EXHIBIT 1
SPRUCE GLEN, an Addition to
Dell Rapids, Minnehaha County, South Dakota

GOLF COURSE



STREET

RECEIVED
10-27
MAY 25 2021



Spruce Glen Inc
30pd (11721)

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SEP - 9 2021

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Prepared by:

Jennifer E. Bunkers
Boyce Law Firm, LLP
300 S. Main Ave.
P.O. Box. 5015
Sioux Falls, SD 57104-5015
605-336-2424



Recorded Sep 02, 2021 at 08:10
In Book 296 of Misc on Page 60

Julie D. Risty, Register of Deeds
Minnehaha County, South Dakota

By JE, Deputy 30pd

#130937

**PRIVATE PATH EASEMENT AND
RESTRICTIVE COVENANT AGREEMENT**

THIS PRIVATE PATH EASEMENT AND RESTRICTIVE COVENANT AGREEMENT (the "Agreement") is made on this 1 day of Sept, 2021, by and among SPRUCE GLEN, INC., a South Dakota Corporation, with its principal office located at P.O. Box 187, Dell Rapids, South Dakota, 57022 (hereinafter the "Developer"), Colin D. Karst, a single individual, of 1401 Wedge Way, Dell Rapids, South Dakota, 57022, (hereinafter "Karst"), and Cole Langer & Makenzie Langer, husband and wife, of 1011 Iron Circle, Dell Rapids, South Dakota, 57022 (collectively hereinafter "Langer").

RECITALS:

A. The Developer is the fee owner of the real property legally described as follows (hereinafter "Developer Lots"):

LOTS 2, 3, 4, 5 AND 6 OF BLOCK 14; AND
LOTS 9, 10, 11, 12 AND 13A OF BLOCK 15;
ALL IN SPRUCE GLEN ADDITION TO THE CITY OF DELL RAPIDS,
MINNEHAHA COUNTY, SOUTH DAKOTA.

B. Karst is the fee owner of the real property legally described as follows (hereinafter "Karst Lot"):

LOT 1 OF BLOCK 14 IN SPRUCE GLEN ADDITION TO THE CITY OF DELL
RAPIDS, MINNEHAHA COUNTY, SOUTH DAKOTA.

C. Langer is the fee owner of the real property legally described as follows (hereinafter "Langer Lot"):

LOT 8 OF BLOCK 15 IN SPRUCE GLEN ADDITION TO THE CITY OF DELL
RAPIDS, MINNEHAHA COUNTY, SOUTH DAKOTA.

D. The Developer Lots, Karst Lot and Langer Lot shall be referred to herein collectively as the "Property."

E. The Developer intends to construct and install a private access path over and upon a portion of the Property, and the parties are desirous of subjecting the such private access path to certain covenants and easements as hereinafter set forth.

NOW, THEREFORE, the parties agree to be bound as follows:

1. Definitions. The following words, when used in this Agreement, shall have the following meanings:

- (a) "Developer" shall mean and refer to Spruce Glen, Inc., a South Dakota corporation, its successors and assigns.
- (b) "Lot" shall mean and refer to any lot or tract or parcel of land designated as a lot or tract shown upon any recorded plat or subdivision map of the Property.
- (c) "Owner" shall mean and refer to the record fee owner of each Lot within the Property, including but not limited to the Developer, Karst and Langer, whether one or more persons or entities, of a fee simple title, but excluding any person having such interest merely as security for the performance of an obligation.

2. Grant of Easement. The Parties hereby create and reserve unto themselves and all subsequent Owners of the Property a perpetual easement for the purpose of installing, improving, operating, inspecting, maintaining, repairing and replacing a private access path (the "Private Path") on, upon and within the area shown and designed on Exhibit A, attached hereto and incorporated by this reference (the "Private Path Easement").

3. Obstructions. Except as set forth below in this Section 3, no Owner may temporarily or permanently obstruct the Private Path Easement Area so as to unreasonably limit the use and enjoyment of the same by the other Owners and the Owner's employees, agents, invitees and contractors, including (without limitation) placing any permanent structure or landscaping items within the Private Path Easement Area, or otherwise encroaching upon or blocking the Private Path Easement Area.

4. Restricted Use. Use of the Private Path shall be restricted to pedestrian traffic and the operation of golf carts, bicycles, or other non-motorized vehicles. No other motorized vehicle traffic shall be permitted on the Private Path except as may be required for construction, maintenance, repair or replacement of the Private Path.

5. Initial Construction. Developer shall, at its expense, be solely responsible for the initial construction of the Private Path, including (without limitation) obtaining required permitting, if any, from applicable government municipalities and providing such municipalities with initial "as-built" plans for the Private Path if required. Thereafter, the Owners shall, collectively, be responsible for the ongoing supervision, operation, inspection, maintenance, care, repair and replacement of all portions of the Private Path as they may agree. All costs and expenses incurred by the Owners in discharging their duties and obligations as set forth herein (including, without limitation costs associated with the repair and maintenance of the Private Path, regardless of the cause or nature thereof) shall be allocated among the Owners *pro rata* based upon the total number of Lots owned by each Owner. The Owners shall reasonably cooperate with each other in planning, coordinating, undertaking and paying for the matters described herein, including (without limitation) promptly and equitably reimbursing each other for costs and expenses incurred, as applicable. Nothing in this paragraph 5 shall be construed as limiting any provision of paragraphs 6 through 8 below.

6. Events of Default. Each of the following shall constitute an "Event of Default" under this Agreement: (a) an Owner's failure to pay any amount owed by it under this Agreement within 30 days after any other Owner's written demand for such payment, and (b) an Owner's failure to fully perform any non-monetary obligation under this Agreement within 30 days after written notice of such failure from any other Owner.

7. Remedies. Upon and after the occurrence of an Event of Default, each of the non-defaulting Owners shall be entitled to exercise such rights, and pursue such remedies, against the defaulting Owner as may be provided for in this Agreement, at law and/or in equity (including, without limitation, specific performance and injunctive relief). Without limiting the foregoing:

- (a) Upon and after the occurrence of a non-monetary Event of Default, the non-defaulting Owners (or any one or more of them) may, but are not obligated to, enter upon the land of the defaulting Owner and perform or cause to be performed any actions necessary to cure the Event of Default, in which case the defaulting Owner shall pay all costs incurred by any other Owner in curing (or attempting to cure) the default, plus interest at the rate of 18% per annum; and
- (b) In addition to all other rights and remedies any non-defaulting Owner(s) may have:
 - (1) Each Owner shall be entitled to recover from any defaulting Owner all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by it in connection with the enforcement of this Agreement and/or the exercise or pursuit of any right or remedy as a result of the subject default;
 - (2) All amounts owed by a defaulting Owner to any other Owner in connection with the default shall bear interest at the rate of 18% per annum; and
 - (3) Each Owner shall be entitled to place a lien upon all Lots then owned (in whole or in part) by the defaulting Owner in the amount of all costs and other amounts (including, without limitation, interest) owed to him by the defaulting Owner.
- (c) Any Owner's waiver of an Event of Default shall not constitute a waiver of any prior or future Event of Default. Neither the failure of any Owner to exercise, nor any delay by any Owner in exercising, any right, power, restriction or remedy upon any default, may be construed as a waiver of the default or as a waiver of the right to exercise any right, power, restriction or remedy at a later time.

8. Indemnification. Each Owner shall indemnify, defend, save and hold harmless each other Owner and its shareholders, members, directors, officers, managers, partners, employees, agents, heirs, personal representatives, successors and assigns (each, an "Indemnitee"), and shall reimburse each Indemnitee, for from and against any and all claims, demands, actions, losses, liabilities, penalties, damages, costs and expenses (including, without limitation, reasonably attorney's fees) made against or incurred by the Indemnitee in connection with, arising from or, directly or indirectly, relating to: (a) the Owner's failure to fully perform in accordance with this Agreement, and/or (b) the Owner's negligence in performing its duties under this Agreement. Nothing in this paragraph 8 may be construed as limiting any other provision(s) of paragraph 6 and 7 above.

9. Binding Effect. All of the provisions, covenants and easements contained in this Agreement are appurtenant to the Lots, and shall constitute covenants, restrictions, conditions, reservations and easements running with the land, and shall benefit and burden the Lots and the Owners

and their respective heirs, personal representatives, successors and assigns, regardless of whether this Agreement is referred to in any conveyance of any Lot. Without limiting the foregoing, in the event any Owner sells, transfers, conveys or otherwise changes ownership of its Lot, the transferee automatically succeeds, assumes and agrees to perform all of the Owner's rights, privileges, obligations and liabilities under this Agreement (including, without limitation, those arising in the future).

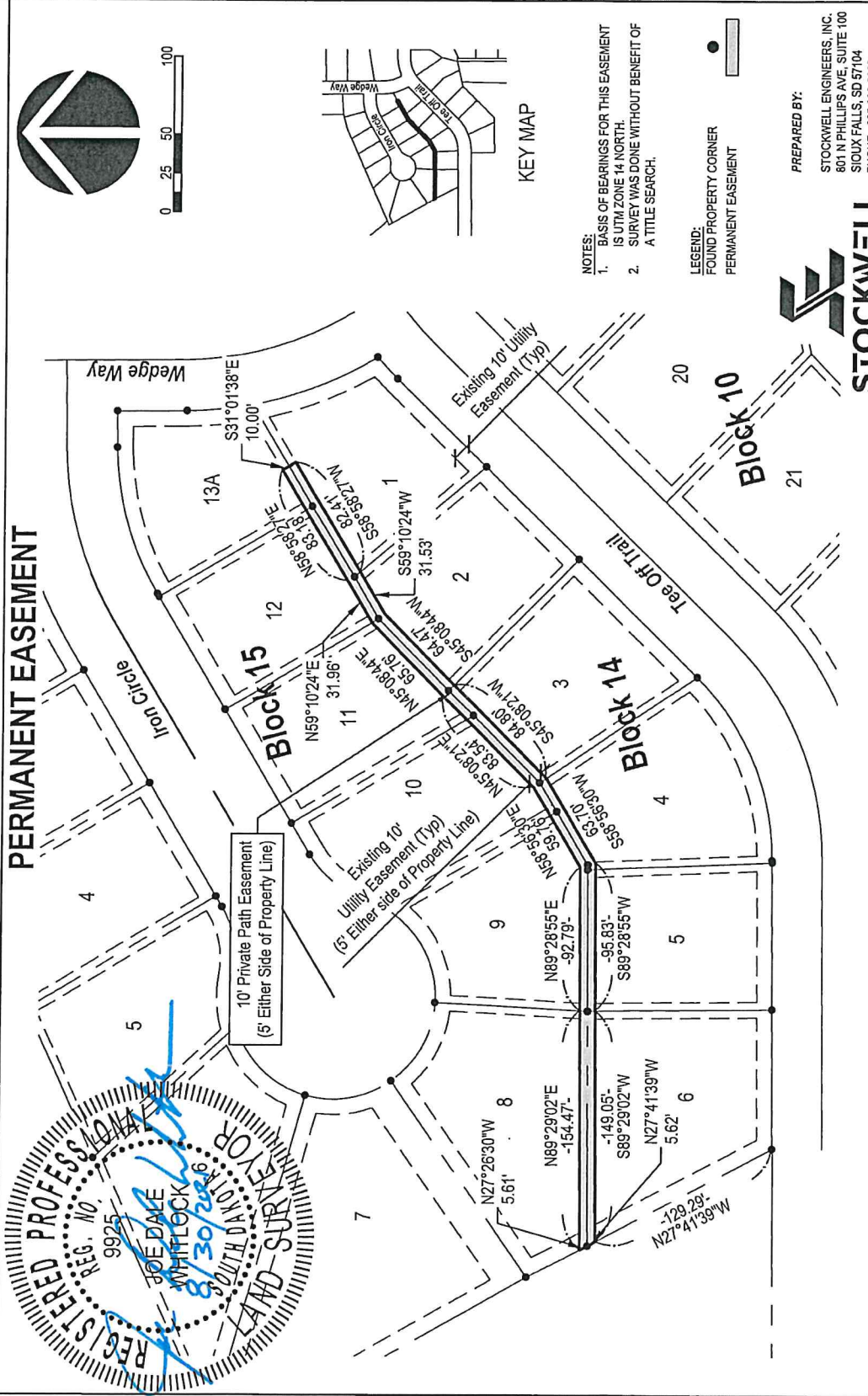
10. General Provisions.

- (a) Recording. This Agreement shall be filed for recording with the Register of Deeds in and for Minnehaha County, South Dakota.
- (b) No Public Dedication. No public dedication of the Private Path Easement Area, nor any other part of any Lot, is being made by this Agreement.
- (c) Relationship of the Parties. This Agreement does not make any Owner a general or special agent, legal representative, subsidiary, joint venture, partner or employee of any other Owner(s) for any purpose.
- (d) Governing Law; Forum Selection; Attorneys' Fees. This Agreement shall be governed by the laws of the State of South Dakota without regard to its conflict of laws rules. Any legal action arising from or relating to this Agreement shall be venued exclusively in a state court situated in Minnehaha County, South Dakota. The parties hereby consent to the personal jurisdiction of said court and waive any argument that any such forum is not convenient. In the event any legal action is commenced to enforce and/or interpret any provision(s) of this Agreement, the substantially prevailing party (as determined by the court) in any such action shall be entitled to recover from the other party the substantially prevailing party's attorneys' fees and all other costs incurred in connection therewith, in addition to all other remedies to which the substantially prevailing party may be entitled.
- (e) Severability. The invalidity or unenforceability of any term or provision of this Agreement, or the application of such term or provision to any person or circumstances, shall not impair or affect the remainder of this Agreement, nor its application to other persons and circumstances, and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect.
- (f) Pronouns and Titles. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, or neuter, or the singular or plural, as the identity of the person, persons, entity, or entities and context may require. Titles of articles, sections and subsections of this Agreement are included for convenience purposes only and shall not be construed as substantive parts of this Agreement.
- (g) Entire Agreement; Amendments. This written Agreement, including the Recitals (which are hereby incorporated herein as substantive provisions of this Agreement) and Exhibit A, supersedes any and all prior negotiations, understandings and agreements with respect to the subject matter of this Agreement. To the extent inconsistent with the terms of any prior grants of easements with respect to the Lots, the terms of this Agreement shall control. This Agreement may be amended, modified, supplemented, repealed, replaced or otherwise changed only in a writing signed by all Owners.

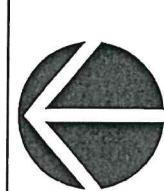
11. Time. Time is of the essence hereof.

EXHIBIT A

SHOWING A PERMANENT PRIVATE PATH EASEMENT IN LOTS 1 THRU 6 IN BLOCK 14 AND LOTS 8 THRU 13A IN BLOCK 15 OF SPRUCE GLEN ADDITION TO THE CITY OF DELL RAPIDS, MINNEHAHA COUNTY, SOUTH DAKOTA.



REGISTERED PROFESSIONAL LAND SURVEYOR
 REG. No. 9925
 JOE DAVE WHITLOCK
 8/30/2021
 SOUTH DAKOTA



KEY MAP

- NOTES:
1. BASIS OF BEARINGS FOR THIS EASEMENT IS UTM ZONE 14 NORTH.
 2. SURVEY WAS DONE WITHOUT BENEFIT OF A TITLE SEARCH.

- LEGEND:
- FOUND PROPERTY CORNER
 - PERMANENT EASEMENT

PREPARED BY:
 STOCKWELL ENGINEERS, INC.
 801 N PHILLIPS AVE, SUITE 100
 SIOUX FALLS, SD 57104
 PHONE: 605-338-6668



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