

Prepared By: 30.08a (1312)
Hagen, Wilka & Archer, LLP
600 S. Main Ave, Suite 102
PO Box 964
Sioux Falls, SD 57101-0964
605-334-0005

Recorded Sep 22, 2020 at 08:06
In Book 292 of Misc. on Page 532

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

By Clayton, Deputy 3080



R031285

CONSTRUCTION, MAINTENANCE AND ACCESS EASEMENT AGREEMENT

THIS CONSTRUCTION, MAINTENANCE AND ACCESS EASEMENT AGREEMENT ("Agreement") is made on this 11 day of Sept, 2020, by and between **WILLOW'S EDGE HOMEOWNER'S ASSOCIATION, INC.**, a South Dakota non-profit corporation, of 615 S. Red Spruce Circle, Sioux Falls, South Dakota 57110 ("HOA") and **THUNDERCREEK CUSTOM HOMES, INC.**, a South Dakota corporation, of 6236 S. Pinnacle Place, Suite 105, Sioux Falls, South Dakota 57108 ("Thundercreek").

WITNESSETH:

WHEREAS, Thundercreek is the owner in fee of real estate ("Property") legally described as:

Lot 5A in Block 2 of Arbor's Edge Addition to the City of Sioux Falls, Minnehaha County, South Dakota, according to the recorded plat thereof.

AND WHEREAS, pursuant to that certain Declaration of Covenants, recorded October 17, 2013 in Book 275 of Misc. on Page 227 in the Register of Deeds, Minnehaha County, South Dakota (as amended, the "Declaration"), the Declarant identified therein imposed upon the Properties (as defined in the Declaration and including the Property) to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties, and to establish the HOA for the purpose of the foregoing;

AND WHEREAS, for the benefit of the Property and all other Properties and to facilitate the purposes set forth in the Declaration, the HOA desires an easement across and to the Property allowing HOA its invitees, owners, officers, agents, contractors, employees and guests, an easement for access, ingress and egress and for the orderly construction and ongoing maintenance of a pump house with a footprint of approximately 8 feet by 8 feet and related facilities for the well and irrigation system which services Properties ("Facilities"), and Thundercreek desires to grant such easement.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein, and other good and valuable consideration, which is hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Thundercreek hereby grants to HOA, and its assignees, successors, owners, officers, employees, agents, tenants, contractors, customers and invitees a vehicular

and pedestrian easement for the purposes of access, ingress and egress across and over those portions of the Property to be used for or in connection with the Facilities as shown on the attached Exhibit A.

Thundercreek further grant easement over the areas of the Property immediately surrounding the easement parcel described in this Section 1 as may be reasonably necessary for the construction and maintenance of the Facilities.

2. Maintenance of Easement Area. The HOA shall be responsible for the coordination and supervision of the maintenance of the Facilities and landscaping of the easement areas described in Section 1 above. The HOA and such person appointed to coordinate and supervise the maintenance and landscaping activities shall hire, coordinate and supervise all construction, landscaping, mowing, repairs, maintenance, replacement or other work to be performed related to the Facilities on the easement areas.


The HOA shall be responsible for paying the personal property taxes and assessments, if any, on the Facilities, but shall not be responsible for paying any portion of the real estate or other taxes or assessments, if any, on the Property.

3. Unimpeded Access. HOA and Thundercreek agree that no barricade or other divider will be constructed and placed on the Property which will prohibit or discourage the free and uninterrupted vehicular or pedestrian access to and throughout the easement area for the purposes set forth herein.
4. Covenants Running with Land. The easements hereby granted, the restrictions hereby imposed, and the agreements herein contained shall be easements, restrictions, and covenants running with the land and shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, successors and assigns, including, but without limitation, all subsequent owners of the Property, and any successor-in-interest, and all persons claiming under them.
6. No Dedication. Nothing contained in this Agreement will be deemed to constitute a gift, grant or dedication of any portion of the Property to the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement will be strictly limited to the private use of the parties hereto and their respective tenants, assignees, successors, officers, employees, agents, customers and invitees. This Agreement is intended to benefit the parties and their respective tenants, assignees, successors, officers, employees, agents, customers and invitees and is not intended to benefit any person which is not a party or third party beneficiary hereunder or to give any such person any rights hereunder.
7. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument but in making proof hereof it shall only be necessary to produce one such counterpart.

8. Amendment. This Agreement and any provision herein contained may be terminated, extended, modified or amended upon written consent of the owners of the Property and the HOA.
9. Entire Agreement. This Agreement supersedes all agreements previously made between the parties relating to this subject matter to the extent they conflict with this Agreement.
10. Notices. All notices under this agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at their last known addresses.
11. Non-Waiver. No delay or failure by either party to exercise any right under this agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.
12. Headings. Headings in this agreement are for convenience only and shall not be used to interpret or constructing provisions.
13. Governing Law. This agreement shall be construed under the laws of the State of South Dakota.

IN WITNESS WHEREOF, the parties have executed this Construction, Maintenance and Access Easement Agreement as of the day and year first above written.

WILLOW'S EDGE HOMEOWNER'S ASSOCIATION, INC.

By: 
Its: Willow's Edge Home Assn

THUNDERCREEK CUSTOM HOMES, INC.


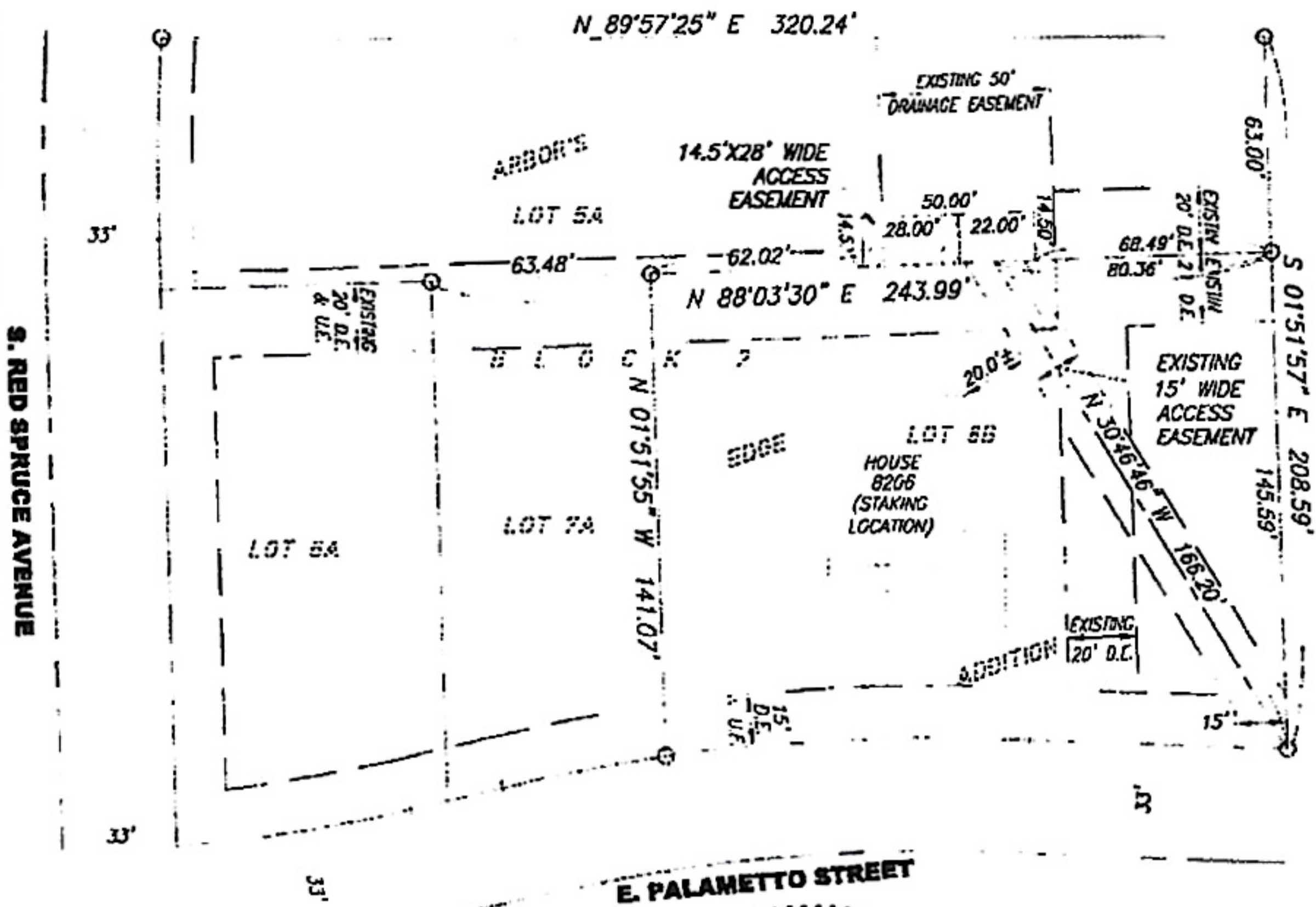
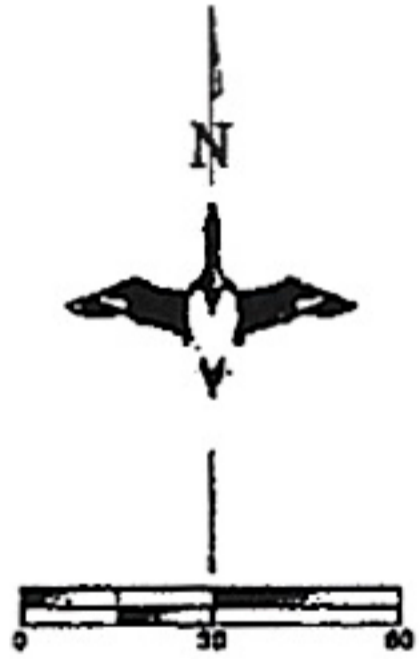
By: 
Its: Thunder Creek

EXHIBIT "A"



LEGAL DESCRIPTION:
 AN EASEMENT FOR INGRESS/EGRESS LOCATED WITHIN LOT 5A IN BLOCK 2 OF ARBOR'S EDGE ADDITION, AN ADDITION TO THE CITY OF SIOUX FALLS, MINNEHAHA COUNTY, SOUTH DAKOTA.

CONTAINING 408 SQUARE FEET OR 0.01 ACRES, MORE OR LESS.



SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS EXHIBIT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF SOUTH DAKOTA.

Paul A. Sandman 9-17-20
 PAULA A. SANDMAN DATE
 R.L.S. 8145
 (THIS PAGE ONLY IS COVERED BY THIS SEAL)

- LEGEND**
- EXISTING PROPERTY LINE
 - PLATTED PARCEL
 - FOUND IRON PIN W/CAP #8145 (UNLESS OTHERWISE NOTED)
 - SET NO. 5 FEBAR W/CAP RLS NO. 8145
 - (R) RECORD DIMENSION

PREPARED BY:



Land Surveying and GPS Consulting
 211 E. 14th Street Suite 100
 Sioux Falls, South Dakota 57104
 Phone: (605) 339-8901 FAX: (605) 274-8951

Project Number: 19-763
 Date: 09/25/2020
 Drawn By: JEB
 Approved By: PAS
 Sheets: 1 of 1

SURVEY REQUESTED BY: TRADEMARK HOMES
 RETURN TO: MIDWEST LAND SURVEYING, INC. ATTN: PAUL A. SANDMAN