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**Office of the County Recorder
Washington County, Minnesota**

*Debra Ledvina, County Recorder
Jennifer Wagenius, Auditor Treasurer*

**CONSERVATION EASEMENT
AND
MANAGEMENT PLAN
Hills of Spring Creek, Baytown Township, Minnesota**

This CONSERVATION EASEMENT AND MANAGEMENT PLAN (“*Easement*”) is granted this 10th day of November 2021, by Derrick Custom Homes, Inc., a Wisconsin corporation (the “*Owner*”) to the Hills of Spring Creek, Inc., a Minnesota non-profit corporation (the “*Easement Holder*”). Any capitalized terms not defined herein shall have the meanings as defined in the Declaration of Covenants, Conditions and Restrictions for Hills of Spring Creek.

RECITALS:

- A. **OWNER.** The Owner is the current owner of real property located in Washington County, Minnesota, known as Outlots A through G of the Plat of Hills of Spring Creek (the “*Plat*”), as further described on Exhibit A attached hereto and incorporated herein (the “*Protected Property*”).
- B. **PROTECTED PROPERTY.** The Protected Property consists of seven (7) outlots within a residential subdivision, as generally depicted on the “Property Map” attached hereto as Exhibit B. The Protected Property includes woodlands, open fields, and wetlands. The Hills of Spring Creek is a clustered residential development, to be developed by the Owner. The Plat will include up to 101 single-family residential homes on approximately 74 acres of property adjacent to or near the Protected Property. The Protected Property is currently used for low impact recreation, nature observation and agriculture. Some of the protected property lies within utility easements.
- C. **CONSERVATION VALUES.** The Protected Property has the following natural, agricultural, scenic and open space qualities of significant importance:
- The relatively undeveloped natural character of the Protected Property provides habitat for a variety of plants, animals, and aquatic communities common to oaksavanna, woodlands, and shallow wetlands.
 - The open space of the Protected Property helps shape the character of the surrounding residential development and an adjacent residential development, and provides opportunities for low impact trail use and nature observation by nearby residents.

- The Protected Property provides continuity with the undeveloped and relatively natural adjacent outlets on the adjacent development and also nearby state-owned properties, adding protected wildlife habitat and open space in this region of rapidly developing residential communities.

Collectively, these natural, agricultural, scenic and open space qualities of the Protected Property comprise its “Conservation Values.”

These Conservation Values have not been and are not likely to be adversely affected to any substantial extent by the continued use of the Protected Property as described above or as authorized in this Easement, or by the use, maintenance or construction of those structures and improvements that presently exist on the Protected Property or that are authorized below.

D. CONSERVATION POLICY. Preservation of the Protected Property will further those governmental policies established by the following:

- Minnesota Statutes Chapter 84C, which recognizes the importance of private conservation efforts by authorizing conservation easements for the protection of natural, scenic, or open space values of real property, assuring its availability for agriculture, forest, recreational, or open space use, protecting natural resources, and maintaining or enhancing air or water quality.
- Washington County 2015 Comprehensive Plan, A Policy Guide to 2015, which provides as one of its goals the preservation of the existing rural character and natural landscapes of the County for future generations. The Plan recognizes and supports the use of clustered housing with common openland preserved as permanent open space by means of a conservation easement.
- Washington County Development Code, Chapter 2, Part 3, - Performance Standards, Section 4, Paragraph 4.7, which requires that open space in an Open Space Design Development shall be subject to a conservation easement restricting its use and development.
- Minnesota Statutes Chapter 103A.201 and 103A.202, which specifically promote the protection of wetlands.

E. CONSERVATION INTENT. The Owner and Easement Holder are committed to protecting and preserving the Conservation Values of the Protected Property in perpetuity. Accordingly, it is their intent to create and implement a conservation easement that is binding upon the Owner and all future owners of the Protected Property and that conveys to the Easement Holder the right to protect and preserve the Conservation Values of the Protected Property for the benefit of this generation and generations to come.

CONVEYANCE OF CONSERVATION EASEMENT:

Pursuant to the laws of the State of Minnesota, and in particular Minnesota Statutes Chapter 84C, and in consideration of the facts recited above and the mutual covenants contained

herein, the Owner hereby grants and conveys to the Easement Holder and its successors and assigns a perpetual conservation easement over the Protected Property. This Easement consists of the following rights, terms and restrictions:

1. **CONSERVATION PURPOSE.** The purpose of this Easement is to preserve and protect in perpetuity the Conservation Values of the Protected Property identified above by confining the development, management and use of the Protected Property to activities that are consistent with the preservation of the Conservation Values, by prohibiting activities that significantly impair or interfere with these Conservation Values, and by providing for remedies in the event of any violation of this Easement.

The terms of this Easement are specifically intended to provide a significant public benefit by:

- Protecting natural habitat for wildlife and plants, both terrestrial and aquatic, in a rapidly developing region.
- Protecting this relatively natural setting of undeveloped parcels to facilitate low-impact trail use and nature observation.
- Creating permanent open space in a clustered residential setting called *Hills of Spring Creek*

2. **LAND USE RESTRICTIONS.** Any activity on or use of the Protected Property that is inconsistent with the purposes of this Easement is prohibited. Except as specifically permitted in paragraph 3 below and without limiting the general prohibition above, restrictions imposed upon the Protected Property expressly include the following:

- 2.1. Industrial and Commercial Activity. No industrial or commercial use of the Protected Property is allowed except for that limited agricultural use specifically permitted in paragraphs 3.4 and 3.6 below.
- 2.2. Residential Development. No residential use or development of the Protected Property is allowed.
- 2.3. Right of Way. No right of way shall be granted across the Protected Property in conjunction with any industrial, commercial or residential use or development of other land not protected by this Easement, except the existing easements for utilities and other easements shown on the Plat, including access by utility companies to existing high tension power lines and towers.
- 2.4. Density. No portion of the Protected Property may be used to satisfy land area requirements for other property not subject to this Easement for purposes of calculating building density, lot coverage or open space under otherwise applicable laws, regulations or ordinances controlling land use other than the Plat recorded prior to or contemporaneous with this Easement for the development known as *Hills of Spring Creek*. No development rights that have been encumbered or extinguished by this Easement may be transferred to any other property other than the property

within the Plat of *Hills of Spring Creek*.

- 2.5. Structures and Improvements. No temporary or permanent buildings, structures, utilities, roads or other improvements of any kind may be placed or constructed on the Protected Property, except as specifically authorized in paragraph 3, as shown on the Plat, or as otherwise set forth below.
- a. Utilities. Utility systems and facilities may be installed, maintained, repaired, extended and replaced only to serve uses and activities specifically permitted by this Easement or to serve the overall residential development known as *Hills of Spring Creek*. This includes, without limitation, all systems and facilities necessary to provide on-site power, fuel, water, storm water drainage, community septic systems, waste disposal and communication, and any common irrigation system and components thereof, but shall not permit communication towers, wind turbines, or similar structures without the prior written approval of the Easement Holder and Baytown Township. Any high power tension lines running through, over or beneath the Protected Property with recorded easements shall be permitted. Utility systems and facilities shall be installed or constructed with minimal grading and disturbance to vegetation. Following installation or construction, the surface shall be restored in a timely manner to a condition consistent with the conservation purposes of this Easement.
 - b. Signs. No billboards or other signs may be placed or erected on the Protected Property except for small, unlighted signs for informational or interpretive purposes, and those signs authorized in paragraph 3.5
 - c. Roads and Trails. No new roads or other rights of way may be established or constructed on the Protected Property without the prior written approval of the Easement Holder and Baytown Township, except for a road to access and service the common waste treatment system and the common irrigation system. The common waste treatment system is generally depicted on Outlot F on the Property Map. The common irrigation system consists of service ponds and buried piping generally running within the Outlots, within and/or adjacent to lots within the subdivision. This common irrigation system will allow for conservation reuse of water runoff and rainfall. Paths and foot trails may be established and constructed on the Protected Property for non-motorized, recreational uses as described in the Habitat and Open Space Management Plan set forth herein and as described in Paragraph 3 below. Such paths or foot trails may be subject to public easements for trail use.
 - d. Fences. Fences may be constructed, maintained, improved, replaced or removed to mark boundaries, to secure the Protected Property, or as needed in carrying out activities permitted by this Easement. Fences must follow the Declaration of Easements, Covenants and Restrictions for Hills of Spring Creek ("*Declaration*") and be approved by the Easement Holder.
 - e. Outdoor Lighting. With the exception for lighting related to illumination of the waste treatment system control building(s) as provided in paragraph 3.2 below, or in

connection with permitted utilities, or in connection with the development's monument(s), and unless otherwise required by law, no lighting shall be permitted on the Protected Property.

- 2.6. Dumping. No trash, non-compostable garbage, hazardous or toxic substances, junk or other unsightly material may be dumped or accumulated or allowed to remain on the Protected Property.
- 2.7. Mining. No mining, drilling, exploring for or removing of any minerals or fossil fuels from the Protected Property is allowed.
- 2.8. Topography and Surface Alteration. After grading of *Hills of Spring Creek* is completed, no alteration or change in the topography or the surface of the Protected Property is allowed. This includes no ditching, draining or filling and no excavation or removal of soil, sand, gravel, rock or other materials, except as incidental to the development of *Hills of Spring Creek* or activities or uses specifically permitted by this Easement.
- 2.9. Water. With the exception of drainage easements reserved on the recorded plat of *Hills of Spring Creek*, no alteration or manipulation of natural watercourses, lakes, shorelines, wetlands or other surface or subsurface bodies of water or creation of new wetlands or water bodies is allowed except to restore or enhance wildlife habitat or native biological communities or to improve or enhance the function and quality of existing wetlands in accordance with the Habitat and Open Space Management Plan. No activities or uses of the Protected Property that cause significant erosion or are significantly detrimental to water quality shall be permitted.
- 2.10. Vegetation Management. After grading in connection with the development of *Hills of Spring Creek* is completed, no removal, cutting, pruning, trimming or mowing of any trees or other vegetation, living or dead, and no introduction of non-native species is allowed except as follows:
 - a. In conjunction with agricultural use permitted in paragraphs 3.4 and 3.6 below, and in conjunction with habitat management and restoration in accordance with the Habitat and Open Space Management Plan referenced in paragraph 3.3 below.
 - b. As reasonably required to construct and maintain trails permitted under paragraph 2.5.c above, provided that vegetation shall be restored following any such construction to a condition consistent with the conservation purposes of this Easement.
 - c. As reasonably required to prevent or control insects, noxious weeds, invasive vegetation, disease, fire, personal injury or property damage.
- 2.11. Vehicles. After the grading of *Hills of Spring Creek* is completed, no use of motorized vehicles on the Protected Property is allowed except in conjunction with permitted agricultural use, habitat maintenance, restoration or enhancement, or in conjunction with the creation or maintenance of trails as permitted under the Habitat

and Open Space Management Plan. This provision is not intended to prohibit the use of any emergency vehicle on the Protected Property or the use of motor vehicles on any permitted driveway.

- 2.12. Subdivision. The Protected Property may not be divided, subdivided, or partitioned. The Protected Property may be conveyed only in its entirety as a single parcel, regardless whether it consists of or was acquired as separate parcels or is treated as separate parcels for property tax or other purposes. This provision does not, however, prohibit the division of the Protected Property when a portion of the Protected Property is being conveyed to a conservation organization described in paragraph 7.1 of this Easement.
3. **RESERVED RIGHTS**. The Owner retains all rights associated with ownership and use of the Protected Property that are not expressly restricted or prohibited by this Easement. The Owner may not, however, exercise these rights in a manner that would adversely impact the Conservation Values of the Protected Property. Additionally, the Owner must give notice to the Easement Holder before exercising any reserved right that might have an adverse impact on the Conservation Values associated with the Protected Property.

Without limiting the generality of the above, the following rights are expressly reserved and the Owner may use and allow others to use the Protected Property as follows:

- 3.1. Right to Convey. The Owner may sell, give, lease, bequeath, devise, mortgage or otherwise encumber or convey the Protected Property.
- a. Any conveyance or encumbrance of the Protected Property is subject to this Easement.
 - b. The Owner will reference or insert the terms of this Easement in any deed or other document or conveyance by which the Owner conveys title to the Protected Property. The Owner will also specify to what extent reserved rights have been exercised, if at all, and are no longer available for use by the new owner and which reserved rights are specifically allocated to the property being conveyed in accordance with other provisions of this Easement.
 - c. The Owner will notify the Easement Holder of any conveyance within fifteen (15) days after closing and will provide Easement Holder with the name and address of the owner and a copy of the deed transferring title.
 - d. If the Protected Property is owned by an association of homeowners, the Owner shall provide the Easement Holder with the name and address of the contact person for the association.

The enforceability or validity of this Easement will not be impaired or limited by

any failure of the Owner to comply with this subparagraph.

- 3.2. Recreational and Educational Uses. The Protected Property may be used for recreational activities, including without limitation hiking, cross-country skiing, nature observation or study, and other similar low impact non-motorized recreational and educational programs or activities. Minor rustic structures such as trail barriers, picnic tables, one gazebo not to exceed 400 square feet, benches, and informational kiosks, as well as playground and informational equipment, may be placed on the Protected Property in conjunction with these activities. Playground equipment shall be limited to structures such as swing sets, slides, jungle gyms and climbing structures.
- 3.3. Habitat and Open Space Management. The Protected Property shall be used to create, maintain, restore or enhance habitat for wildlife and native biological communities and for the construction and maintenance of non-motorized trails in accordance with a Habitat and Open Space Management Plan set forth in Section 6 of this Easement.
- 3.4. Agricultural Use of Outlots. Outlots within the Protected Property may be used to produce crops and for other and related agricultural purposes. These permitted agricultural uses include the right to establish, maintain, and use cultivated fields, orchards, and tree farms. No buildings or structures are permitted. No grazing of livestock is permitted.
- 3.5 Construction Signs. Owner shall have the right, during the construction and development of *Hills of Spring Creek*, to erect and maintain necessary promotional signs advertising lots and homes for sale within *Hills of Spring Creek*. Such signs shall be removed by the Owner from the Protected Property upon completion of the *Hills of Spring Creek*.
4. EASEMENT HOLDER'S RIGHTS AND REMEDIES. In order to accomplish the purposes of this Easement, the Easement Holder shall have the following rights and remedies:
 - 4.1. Right to Enter. Easement Holder has the right to enter the Protected Property at reasonable times and in a reasonable manner for the following purposes:
 - a. To inspect the Protected Property and to monitor compliance with the terms of this Easement.
 - b. To obtain evidence for use in seeking judicial or other enforcement of this Easement.
 - c. To survey or otherwise mark the boundaries of all or part of the Protected Property if necessary to determine whether there has been or may be a violation of this Easement. Any survey or boundary demarcation completed under this provision will be at the Owner's expense.

d. To otherwise exercise its rights under this Easement.

4.2. Right of Enforcement. The Easement Holder shall have the right to prevent or remedy violations of this Easement through appropriate judicial action brought against any Owner or other person who violates or threatens to violate any provision of this Easement, in any court of competent jurisdiction.

a. Notice. Easement Holder may not initiate judicial action until the Owner or person violating or threatening to violate this Easement has been given notice of the violation, or threatened violation and a reasonable opportunity to correct the violation, not to exceed thirty (30) days. This provision shall not apply if, in the sole discretion of the Easement Holder, immediate judicial action is necessary to prevent or mitigate significant damage to the Protected Property or if reasonable, good faith efforts to notify the Owner or other person are unsuccessful.

b. Remedies. Remedies available to Easement Holder in enforcing this Easement include the right to request temporary or permanent injunctive relief for any violation or threatened violation of this Easement, to require restoration of the Protected Property to its condition at the time of this conveyance or as otherwise necessitated by a violation of this Easement, to seek specific performance or declaratory relief and to recover damages resulting from a violation of this Easement or injury to any Conservation Values protected by this Easement. These remedies are cumulative and are available without requiring Easement Holder to prove actual damage to the Conservation Values protected by this Easement. The Easement Holder and Owner also recognize that restoration, regardless of the cost, may be the only adequate remedy for violations of this Easement. Easement Holder is entitled to seek expedited relief, ex parte if necessary; and shall not be required to post any bond applicable to a petition for such relief.

c. Costs of Enforcement. The Owner or person violating or threatening to violate this Easement shall be responsible for all reasonable costs incurred by the Easement Holder in enforcing this Easement, including without limitation costs of suit, attorneys' fees, and expenses related to restoration of the Protected Property. If, however, the Owner or other defendant ultimately prevails in a judicial enforcement action, each party shall be responsible for its own costs and attorneys' fees.

d. Discretionary Enforcement. Enforcement of the terms of this Easement is solely at the discretion of the Easement Holder. Easement Holder does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Easement by reason of any delay or prior failure by Easement Holder to discover a violation or initiate enforcement proceedings.

e. Acts Beyond Owner's Control. Notwithstanding the foregoing, the Easement Holder may not bring any action against the Owner or other person for any change to the Protected Property solely from natural causes such as changes

caused by fire, flood, storm, natural deterioration or resulting from reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.

- f. **Third Parties.** In the event a guest, agent or invitee of an Owner violates or threatens to violate this Easement, and such Owner fails to reasonably enforce third party compliance with this Easement and/or fails to restore the Protected Property to its condition before the violation occurred, Easement Holder may bring an action against the Owner for changes to the Protected Property resulting from the causes created by third parties.
 - g. **Right to Report.** In addition to other remedies, Easement Holder has the right to report any environmental concerns or conditions or any actual or potential violations of any environmental laws to appropriate regulatory agencies.
- 4.3. **Signs and Markers.** Easement Holder has the right to place and keep on the Protected Property signs and markers that identify the land as protected by this Easement. Easement Holder may, in its discretion, place such signs or markers in locations and quantities it deems necessary to establish the boundaries of the Protected Property.
- 4.4. **Limitation on Rights.** Nothing in this Easement gives Easement Holder the right or responsibility to exercise physical control over day-to-day operations on the Protected Property or to become involved in management decisions involving the use, handling or disposal of hazardous substances or to otherwise become an “operator” of the Protected Property Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act, the Minnesota Environmental Response and Liability Act, or other similar successor statutes or laws whether federal, state or local in nature, regarding responsibility for environmental conditions associated with contamination.
5. **PUBLIC ACCESS.** Nothing in this Easement gives the general public a right to enter upon or use the Protected Property where no such right exists otherwise. However, the public has a right to use any public trails established on the Protected Property.
6. **HABITAT AND OPEN SPACE MANAGEMENT PLAN.** The Owner and its successors and assigns, and its contractors retained to manage the Protected Property shall do so in a manner that will promote and protect native plants, wildlife, wildlife and plant habitat, agriculture crop farming and appropriate passive recreation on the pedestrian corridor trailways within the Protected Property, and in a manner consistent with the following.
- 6.1 Use the clustered open space development concept to foster ongoing protection of the wetlands, woodlands, upland grasses, open prairie and wildlife habitat contained within the Protected Property and protect and maintain the natural buffer zones between current and new residential lots and the corridors between established habitat areas.
 - a. The Protected Property shall not have building structures or any other intrusive man made elements except (i) the trailways intended only for pedestrian

recreation use, and viewing of the natural beauty of the open space, and (ii) as otherwise identified in this Easement.

- b. The Protected Property shall be left untouched and allowed to continue natural existence except (i) where there is a need to remove and or manage noxious and or intrusive vegetation species, and (ii) the water treatment facilities and related systems and irrigation systems; and (iii) as otherwise provided in this Easement. Such management of noxious/intrusive species shall be done selectively and with as minimal negative impact as possible to surrounding native species.
- c. No grading, clearing, cutting, mowing, removal, and or poisoning shall be allowed on the open space. Exceptions to this requirement are as follows:
 - i. Agricultural crop farming may be allowed;
 - ii. Certain conditions may arise where the management of the open space may prescribe mowing to enhance plant vigor, or in some circumstances, to decrease extreme fire danger. Buffers may be mowed between residential housing and open space to reduce fire hazard. Strips may be mowed along the side of open space trails.
 - iii. Removal of dead or hazardous vegetation from the open space is allowed with approval from the Owner.
 - iv. Removal of dangerous animals, or when certain circumstances arise where selective removal of wildlife is recommended by the Minnesota DNR, is allowed when approved by the Owner and Baytown Township.
 - v. Maintenance vehicles are restricted to trails, unless prior approval from the Owner has been obtained.
 - vi. Hills of Spring Creek residents, the Association, or any other owner within the development shall not create a garden, landscape, playground or any other type of improvement in the open space or within the Protected Property unless authorized in this Easement. Such improvement shall require written consent from the Association and Baytown Township.
 - v. Buffer zones beyond residential lots shall remain untouched, or repaired and untouched, after initial grading except as otherwise provided herein.
 - vi. Wetland basins shall not be disturbed. Use of construction best practices to prevent erosion, runoff, and unintended infiltration into the Outlots shall be exercised and mitigation instituted if necessary.

6.2 Protect and preserve the rural and natural character of the open space land for the purpose of conserving, into perpetuity, the beauty and serenity of the open space land.

- a. Management of the Protected Property shall, where reasonably viable and

appropriate, follow the same land use management practices as the neighboring Bayport Water Management Area (“WMA”) that abuts much of the open space development property. Where the Bayport WMA land management policies and practices are in conflict with the Hills of Spring Creek covenants and restrictions or Easement, and this Section 6, this plan, where allowed by law, shall take precedence. Hunting, trapping, and or harvesting wildlife, and or vegetation in the Hills of Spring Creek open space areas is strictly forbidden unless otherwise stated in this plan.

b. The open space of the Protected Property is meant to include unbuildable areas (such as wetlands or steep slopes) or existing tree strands and wildlife areas. These open areas shall be left untouched unless otherwise specified in this Easement and plan.

c. Permanent signs, trailway markers, benches, informational notices, bird houses, picnic tables and seating, or other such additional articles may be added to the conservancy areas, however, placement of these articles must be done within 3 feet of a trailway edge, limited in total quantity, and be designed, constructed, finished, and installed in a manner complimentary to the rustic and natural surrounding land. Owner approval is required prior to such installation.

d. No fences, except those already in existence or those surrounding and protecting the Waste Treatment System and or Common Irrigation System, or stated elsewhere within this Easement, are allowed to be permanently installed on the open space land.

e. Should any of the open space require restoration, the Owner shall hire a professional service provider, at the Owner’s cost, to accomplish the restoration

f. Where there is common use development structures (i.e. Waste Treatment equipment sheds, Common Irrigation pump houses and components, drain field fences) erected on the development, these structures will be designed, constructed, finished, and installed in a manner complimentary to the rustic and natural surrounding land. These structures will be maintained and managed accordingly throughout their life span.

6.3 Establish and allow for community use of trailways through the natural settings of the open space.

a. Trailways will be developed and installed, as well as repaired and replaced, in accordance with the Township ordinances. Trailways, where appropriate and practical, shall be located to encourage safe access to habitat areas while minimizing the impact to the surrounding land.

b. Where there are existing adjacent property trailways abutting to Hills of Spring Creek open space, every effort shall be made to appropriately connect these trailways within Hills of Spring Creek.

c. Trailway use shall be for pedestrian recreation only. No motor vehicles, other than those indicated in the Hills of Spring Creek declaration of covenants and restrictions, shall be allowed upon the trailway system.

d. No motorized vehicle shall be allowed to operate within the Protected Property except where authorized by the declaration of covenants for Hills of Spring Creek, or when used for permitted agricultural purposes.

6.4 Allow for agricultural use including crop farming where viable and suitable.

a. Owner shall designate from time to time Outlots within the Protected Property to be used for agricultural crop farming purposes only. One such outlot(s) are no longer used for crop farming, it/they shall be returned to a natural state and, where feasible, restored to natural prairie.

6.5. Promote water conservation through the use of community irrigation ponds that collect and reuse water runoff and rainfall. Construct and manage these common irrigation ponds so they blend with the landscape and property; and be used to irrigate Lot owner properties.

a. Use of the Common Irrigation System for irrigating Lot owner properties and common properties will be required for all owners.

b. Common irrigation ponds will be maintained and managed so as to encourage capture of rain water and runoff, as well as constructed and operated to blend with the natural and rural surroundings of the surrounding lands

c. Common Irrigation water delivered to residents Lots, and common property, shall be managed by a third party partner that implements best practices for the conservation and management of water.

7. GENERAL PROVISIONS.

7.1 Assignment. This Easement may be assigned or transferred by the Easement Holder only to a conservation organization which is a qualified organization under Section 170(h) of the Internal Revenue Code and related regulations and which is authorized to hold conservation easements under Minnesota law. Any future holder of this Easement shall have all of the rights conveyed by this Easement. As a condition of any assignment or transfer, the Easement Holder shall require any future holder of this Easement to continue to carry out the conservation purposes of this Easement in perpetuity. Easement Holder shall notify the Owner of any assignment within fifteen (15) days of the assignment and will provide the Owner with the name and address of the new holder.

7.2. Amendment. This Easement may be modified or amended by mutual agreement of the parties hereto. However, no amendment or modification will be allowed if, in the sole and exclusive judgment of the Easement Holder, such amendment (i) does not further the purposes of this Easement, (ii) will adversely impact the Conservation Values protected by this Easement, (iii) affects the perpetual duration of the Easement, or (iv) affects the validity of the Easement under Minnesota law or the Internal Revenue Code. Any amendment or modification shall be in writing and recorded in the same manner as this Easement.

7.3. Extinguishment. Extinguishment or termination of this Easement is subject to the following:

- a. This Easement may be extinguished only through judicial proceedings and only under the following circumstances:
 - (i) if unexpected change in the conditions of or surrounding the Protected Property makes the continued use of the Protected Property for the conservation purposes set out above impossible or impractical, or
 - (ii) pursuant to the proper exercise of the power of eminent domain.
- b. The Owner recognizes that uses of the Protected Property prohibited by this Easement may, in the future, become more economically viable than those uses permitted by the Easement. The Owner also recognizes that neighboring properties may, in the future, be put entirely to uses not permitted on the Protected Property by this Easement. The Owner and Easement Holder believe that such changes will increase the public benefit provided by this Easement. Therefore, such changes are not considered unexpected changes and shall not be deemed to be circumstances justifying the extinguishment of this Easement as otherwise set forth above.
- c. Proceeds. If this Easement is extinguished or terminated in whole or in part, Easement Holder is entitled to a portion of any proceeds of a sale, exchange or involuntary conversion in an amount that is equal to the fair market value of this Easement at the time of the extinguishment but that is not less than an amount equal to the proportionate value that this Easement bears to the value of the Protected Property as a whole at the time of this conveyance. Easement Holder shall use its share of any proceeds in a manner consistent with the conservation purposes of this Easement.

7.4. Warranties. The Owner represents and warrants as follows:

- a. The Owner is the sole owner of the Protected Property in fee simple and has the right and ability to convey this Easement to Easement Holder.
- b. The Protected Property is free and clear of all encumbrances other than those subordinated to this Easement.
- c. The Owner has no actual knowledge of any use or release of hazardous waste or toxic substances on the Protected Property that is in violation of a federal, state or local environmental law and will defend, indemnify and hold Easement Holder harmless against any claims of contamination from such substances.

7.5. Ownership Costs and Liabilities. The Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership of the Protected Property, including operation, upkeep and maintenance of the Protected Property.

The Owner agrees to defend, indemnify and hold Easement Holder harmless from any and all costs or liability for any personal injury or property damage occurring on or related to the Protected Property or the existence of this Easement. The Owner will name Easement Holder as an additional insured on any general liability insurance policy carried by the Owner with respect to the Protected Property.

- 7.6. Notice and Approval. Any notice or request for approval required by this Easement must be written and is subject to the following:
- a. Delivery. Any required notice or request for approval must be delivered personally or sent by first class mail or other nationally recognized delivery service to the appropriate party at the following addresses (or other address specified in writing):

To the Owner:

Derrick Custom Homes, Inc.
1505 Highway 65
PO Box 445
New Richmond, WI 54017
 - b. Timing. Unless otherwise specified in this Easement, any required notice or request for approval must be delivered at least 30 days prior to the date proposed for initiating the activity in question.
 - c. Content. The notice or request for approval must include sufficient information to allow Easement Holder to make an informed decision as to whether any proposed activity is consistent with the terms and purposes of this Easement. At a minimum this would include (i) the location, nature and scope of the proposed activity, (ii) the proposed use, design and location of any building, structure or improvement and (iii) the potential impact on the Conservation Values of the Protected Property.
 - d. Approval. Easement Holder may withhold its approval if it determines that the proposal is inconsistent with the terms or purposes of this Easement or lacks sufficient information to allow Easement Holder to reach an informed decision. Easement Holder may condition its approval on the Owner's acceptance of modifications which would, in Easement Holder's judgment, make any proposed activity consistent with this Easement.
- 7.7. Binding Effect. This Easement shall run with and burden the Protected Property in perpetuity. The terms of this Easement are binding and enforceable against the Owner of the Protected Property, its successors in title, and all other parties entitled to possess or use the Protected Property. This Easement creates a property right immediately vested in Easement Holder and its successors and assigns that cannot be terminated or extinguished except as set out herein. If at any time the Easement Holder or other holder of this Easement becomes the owner of all or a portion of the fee interest in the Protected Property, this Easement shall not be deemed to merge with the underlying

fee interest but shall remain in force and effect unless otherwise terminated or extinguished as set out herein.

- 7.8. Definitions. Unless the context requires otherwise, the term "Owner" includes, jointly and severally, the current owner or owners of the Protected Property identified above and their personal representatives, heirs, successors and assigns in title to the Protected Property.
- 7.9. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon the transfer or termination of that party's interest in this Easement or the Protected Property, provided, however, that any liability for acts or omissions occurring prior to the transfer or termination will survive that transfer or termination.
- 7.10. Recording. Easement Holder will record this Easement in a timely manner in the official records for the county in which the Protected Property is located. Easement Holder may re-record this Easement or any other documents necessary to protect its rights under this Easement or to assure the perpetual enforceability of this Easement.
- 7.11. Controlling Law and Construction. This Easement shall be governed by the laws of the State of Minnesota and construed to resolve any ambiguities or questions of validity of specific provisions in favor of giving maximum effect to its conservation purposes and to the policies and purposes of Minnesota Statutes Chapter 84C.
- 7.12. Severability. A determination that any provision or specific application of this Easement is invalid shall not affect the validity of the remaining provisions or any future application.
- 7.13. Additional Documents. The Owner agrees to execute or provide any additional documents reasonably requested by Easement Holder to carry out in perpetuity the provisions and the intent of this Easement, including, but not limited to any documents needed to correct any legal description or title matter or to comply with any federal, state, or local law, rule or regulation.
- 7.14. Entire Agreement. This document sets forth the entire agreement of the parties with respect this Easement and supersedes all prior discussions or understandings.
- 7.15. Counterparts. This Easement may be executed in one or more counterparts, each of which shall be deemed an original. The signatures to this Easement may be executed and notarized on separate pages and when attached to this document shall constitute one complete document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Owner has voluntarily executed this CONSERVATION EASEMENT AND MANAGEMENT PLAN this 10 day of November, 2021.

OWNER:

DERRICK CUSTOM HOMES, INC.

By: Ronald L. Derrick
Name: Ronald L. Derrick
Title: President

STATE OF Wisconsin)
)ss.
COUNTY OF St. Croix)

The foregoing instrument was acknowledged before me this 10th day of November 2021, by Ronald L. Derrick, the President of Derrick Custom Homes, Inc., a Wisconsin corporation, to me known to be the person who executed the same on behalf of the company.

BERNADETTE L. L'ALLIER
Notary Public-State of Wisconsin

Bernadette L. L'Allier
Notary Public
My commission expires 10-23-2024

EASEMENT HOLDER:

HILLS OF SPRING CREEK, INC.

By: Ronald L. Derrick
Name: Ronald L. Derrick
Title: MANAGING MEMBER

STATE OF Wisconsin)
)ss.
COUNTY OF St. Croix)

The foregoing instrument was acknowledged before me this 10th day of November 2021, by Ronald L. Derrick, the Managing Member of Hills of Spring Creek, Inc., a Minnesota corporation, to me known to be the person who executed the same on behalf of the company.

Bernadette L. L'Allier
Notary Public
My commission expires 10-23-2024

BERNADETTE L. L'ALLIER
Notary Public-State of Wisconsin

EXHIBIT A

Legal Description of Protected Property:

Outlots A, B, C, D, E, F and G, *Hills of Spring Creek*, according to the plat on file and of record in the Office of the County Recorder, Washington County, Minnesota.