



Planning and Zoning Commission Regular Meeting Agenda

Wednesday, July 03, 2024 at 4:00 PM

City Hall, 102 Sherman Street, Deadwood, SD 57732

1. **Call to Order**

2. **Roll Call**

3. **Approval of Minutes**

- a. Approve the minutes from the June 19, 2024 Planning and Zoning Commission Meeting

4. **Sign Review Commission**

- a. Application for Sign Permit - 61 Sherman Street - Dave's Deli Delights (David Bruechner). Applicant has applied for a new wall sign located above the front door and window of the building exterior. Proposed sign and sign location are compliant with sign ordinance.

- b. Application for Banner Permit - 54 Sherman Street - City of Deadwood (Adams Museum). Per Ordinance 15.32.150.C.4, banners placed by the City of Deadwood solely to promote the history of Deadwood are exempt from regulation.

5. **Planning and Zoning Commission**

- a. Application for Temporary Vendors License - Ray Drea Studios, LLC (Ray Drea) - applicant requests license to sell fine art and paintings during the Sturgis Rally from August 1, 2024 through August 11, 2024.

Actions:

1. Approve/deny Application for Temporary Vendors License

- b. Permanent Utility and Access Easement - 1 Katon Drive (Kraft Living Trust) is for the benefit of 1 Katon Drive legally described as Plat of Lot 3R-1 revised of Katon Subdivision formerly Lot 3R-1 of Katon Subdivision, Lot AB1 of Placer 58, Lot AB1 of Placer Claim 57 and Lot 1 of the subdivision of Tract E-1 being a portion of Placer M.S. 57, Placer M.S. 58 and Hillside Placer M.S. 749 located in the SE 1/4 of Section 27, T5N, R3E, B.H.M. City of Deadwood, Lawrence County, South Dakota.

Easement provides owners of 1 Katon Drive the right to enter property owned by the City of Deadwood (Grantor) legally described as Lot A1 in a portion of Lot H2 and the 66 foot right-of-way of US Highway 85 in Tract 1 of the Jim Lode Mineral Survey 1636; the 66-foot right-of-way of US Highway 85 in Lot 7 and Placer Claim 57 and a portion of Lot H2 and the 66 foot right-of-way of US Highway 85 in M.S. 107; all in Section 27 - Township 5 North - Range 3 East of B.H.M., in the City of Deadwood.

Actions:

1. Approve/deny Permanent Utility and Access Easement

- c. Application for Conditional Use Permit - Construction of Dwelling Unit, Single Family - 307 Cliff Street (Terry and Dawn Bahr) legally described as Lot 1 revised of the subdivision of Tract E-1 formerly Lot 1 of the subdivision of Tract E-1 being a portion of Hillside Placer M.S. 749 located in the SE 1/4 of Section 27, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota.

Actions:

- 1. Public Discussion
- 2. Approve/Deny Application for Conditional Use Permit

- d. Place Conservation Easements on eleven (11) undeveloped properties owned by the City of Deadwood to prevent future development and/or alterations that would encroach upon, damage, or destroy the Deadwood National Historic Landmark District.

Action:

- 1. Review and approve/deny eleven (11) Conservation Easements

6. **Items from Citizens not on Agenda**

(Items considered but no action will be taken at this time.)

7. **Items from Staff**

8. **Adjournment**



Planning and Zoning Commission Regular Meeting Minutes

Wednesday, June 19, 2024 at 4:00 PM

City Hall, 102 Sherman Street, Deadwood, SD 57732

1. Call to Order

The meeting of the Deadwood Planning and Zoning Commission was called to order by Chairman Martinisko on Wednesday, June 19, 2024, at 4:00 p.m. in the Deadwood City Hall Meeting Room, located at 102 Sherman Street, Deadwood, SD 57732.

2. Roll Call

PRESENT

Commissioner (Chair) John Martinisko
 Commissioner (Secretary) Dave Bruce
 Commissioner Charles Eagleson
 Commissioner Ken Owens
 City Commissioner Blake Joseph

STAFF PRESENT

Kevin Kuchenbecker, Planning, Zoning and Historic Preservation Officer
 Trent Mohr, Building Inspector
 Leah Blue-Jones, Zoning Coordinator
 Jessica McKeown, Finance Officer

3. Approval of Minutes

- a. Approve the minutes from the June 5, 2024 Planning & Zoning Commission meeting.

It was moved by Commissioner Bruce and seconded by Commissioner Owens to approve the minutes from the June 5, 2024 Planning and Zoning Commission Meeting. Voting yea: Martinisko, Bruce, Owens, Eagleson.

4. Sign Review Commission

- a. Application for Sign Permit - 20577 Highway 85 - Can Am 85 RV (Brad Kooiker). Applicant has applied to install a new freestanding sign. Sign and its location are compliant with sign ordinance.

Actions: Approve/Deny Sign Permit

Mr. Mohr introduced Application for Sign Permit - 20577 Highway 85 - Can Am 85 RV (Brad Kooiker) and discussed the location and size of the sign. No variance is necessary.

It was moved by Commissioner Owens and seconded by Commissioner Eagleson to approve Application for Sign Permit - 20577 Highway 85 - Can

Am 85 RV (Brad Kooiker). Voting yea: Martinisko, Bruce, Eagleson, Owens.

5. Planning and Zoning Commission

- a. Conditional Use Permit Review for Bed and Breakfast Establishment – 7 Spring Street – The Birdcage (Kenneth Steier), legally described as Lots X, a replat of Lots 1, 2, and 3, Block 1, Miricks Addition and a portion of MS 735, located in the City of Deadwood, Lawrence County, South Dakota.

Action Required:

1. Public Discussion
2. Approval/Denial by Planning and Zoning Commission

Mr. Kuchenbecker introduced Conditional Use Permit Review for Bed and Breakfast Establishment - 7 Spring Street - The Birdcage (Kenneth Steier) and explained the owner was issued a Conditional Use Permit to operate a Bed and Breakfast Establishment on June 8, 2003. Mr. Kuchenbecker further explained the property is licensed with the State of South Dakota as a Vacation Home Establishment, creating a conflict with the permit issued by the city. A Vacation Home Establishment is not allowed in Deadwood's residential districts, which is where the property is located. City staff is aware of complaints against the Short-Term Rental Establishment during its early years in business, however no formal complaints have been filed over the last twenty-four (24) months with the exception of a complaint filed with the city today, June 19, 2024. Mr. Kuchenbecker further reviewed the Staff Report and introduced Ms. Amber Galbraith of Black Hills Premier Vacation Homes, who acts as Property Manager for 7 Spring Street, to the Commission.

Commissioner Bruce clarified that per South Dakota Codified Law, a Bed and Breakfast Establishment must have an owner or owner's agent reside in the Bed and Breakfast Establishment or a contiguous property, however, city ordinance is silent on this issue. Mr. Kuchenbecker responded that Deadwood ordinances will soon be changed to reflect the same language as the state requirement, and further explained that while the city can be stricter than the state in its ordinances, they cannot be less so. This means the owner or owner's agent must be present while the property is being rented if it is a Bed and Breakfast Establishment.

Commissioner Martinisko recommended a condition be added to the Conditional Use Permit requiring an owner or owner's agent be on-site while guests are staying at the property. Ms. Galbraith asked the Commission to explain why an owner or agent needed to be on-site when it wasn't that way before. Commissioner Martinisko stated it has always been a requirement to have an owner on-site, but it wasn't actively enforced in the past.

Ms. Galbraith stated that all licenses and taxes are being paid and believes the property should be grandfathered in, so an owner does not need to be on-site. If this is not possible, she will need time to figure out what to do. Mr. Kuchenbecker responded that having an on-site owner has always been a requirement of the Conditional Use Permit.

Ms. Galbraith stated it is well known in town that the property has been operating as a Vacation Home Establishment and it was never an issue before. She has even worked with a neighbor on Dudley Street to prevent guests from driving down Dudley Street because the neighbor doesn't want guests there. Commissioner Martinisko responded that the city would provide time for the property to become compliant, however, lack of past enforcement does not preclude the city from current enforcement. Every Conditional Use Permit holder in the city is now being reviewed on an annual basis and ordinances are being enforced.

Commissioner Martinisko suggested the property be given ninety (90) to one hundred-eighty (180) days to come into compliance. Ms. Galbraith stated the property is booked for the next year, so she would like to have until the end of 2024, and possibly up to a year, to come into compliance.

Ms. Marlene Todd introduced herself to the Commission as a neighbor and explained that she first began to complain about the property in 2004. She would not complain if the property were being operated as a Bed and Breakfast because it would be a quiet owner-occupied establishment. Instead, she has ten (10) to fifteen (15) people across the street using obscene language. Beer cans have been thrown in her yard. She has been complaining about the property for twenty (20) years. She has sent in photos, written letters and stopped by City Hall to complain. There are only four (4) homes in the neighborhood, and one is a rental property that is not being operated as a Bed and Breakfast and is instead being operated as a Vacation Home. There have been bachelor parties, people have urinated on her property, she has watched cases of alcohol be brought in. She has asked the city in the past to install a speed bump to slow down the renters who speed up the street. She would like the property to be brought into compliance as a Bed and Breakfast Establishment; with an owner or agent on-site and with meals provided. Commissioner Martinisko agreed the goal is to bring the property into compliance so that it operates as a Bed and Breakfast Establishment, and not a Vacation Home Establishment.

Mr. Kuchenbecker clarified that the Conditional Use Permit was provided to the property for a Bed and Breakfast Establishment, and not a Vacation Home Establishment. Because it was never approved as a Vacation Home Establishment, but continues to operate as one, it can not be considered legal non-conforming.

Ms. Todd stated the owners of the property were aware in 2003 that they were supposed to be operating as a Bed and Breakfast and she feels that giving the owners a year to come into compliance is too long. Ms. Galbraith responded that not all guests have parties, and she is willing to contact anyone who is having one and try to put a stop to it. A gift certificate for a donut shop is provided to guests so they can have breakfast. She also visits the property often when they are in between guests.

Commissioner Martinisko asserted that the licensing discrepancy is an issue that needs to be solved. The property has a Conditional Use Permit with the city for a Bed and Breakfast but has a Vacation Home Establishment license with the state. He reiterated that Vacation Homes are not allowed in the residentially zoned districts within the city. Ms. Galbraith responded that the state may have been confused and provided the wrong licensing.

Commissioner Martinisko continued by saying the lack of an owner or agent on-site is also a problem. Ms. Galbraith responded that they visit the site in between guests. Commissioner Owens replied that the purpose of an on-site agent is to control guest behavior during their stay, and to control the amount of people who show up at the location. Ms. Galbraith responded that they only allow ten (10) guests.

Commissioner Owens commented that a year is a long time to allow the property to become compliant. Commissioner Martinisko commented that correcting the licensing with the state to reflect a Bed and Breakfast is being run and to then run the rental as a Bed and Breakfast should only take a few months. Further, the city is not interested in the rental going out of business, only to bring them into compliance with licensing and permit requirements. Those requirements mean that a family style meal must be served, and an owner or agent must be on-site overnight.

Ms. Galbraith inquired as to the number of Short-Term Rentals located within the city limits. Mr. Kuchenbecker responded accordingly. Ms. Galbraith requested a list of those properties. Mr. Kuchenbecker agreed to provide a list of currently licensed properties to Ms. Galbraith.

Commissioner Bruce suggested Ms. Galbraith be permitted to talk with the owners of the property and reconvene with the Planning and Zoning Commission to continue this discussion later. Ms. Galbraith responded positively to the suggestion.

It was moved by Commissioner Bruce and seconded by Commissioner Owens to reconvene and continue the current discussion at the July 17, 2024, Planning and Zoning Commission meeting. Voting yea: Martinisko, Bruce, Eagleson, Owens.

6. Items from Citizens not on Agenda

(Items considered but no action will be taken at this time.)

7. Items from Staff

Further discussion about compliance with state and city regulations pertaining to Short-Term Rentals occurred between City Commissioner Joseph and the Planning and Zoning Commission.

- a. 2024 Annual Conference for South Dakota Planners Association - Box Elder, SD - October 22 - October 24, 2024.

Mr. Kuchenbecker discussed the South Dakota Planners Association 2024 Annual Conference. Members of the Planning and Zoning Commission may wish to attend the event which will be held in October 2024. Please let city staff know if interested.

Mr. Kuchenbecker shared that the Planning and Zoning staff met with the Planning and Zoning Departments of Spearfish and Lead to discuss subdivision and Short-Term Rental ordinances.

Mr. Kuchenbecker congratulated Mr. Mohr on becoming Chair of the South Dakota Building Officials Association (SDBOA).

Further, Mr. Kuchenbecker discussed several trails that are under construction including Homestake Realignment, White Rocks, Welcome Center, and Fuller Brothers. 85 Charles

Street is being cleaned up. The Water Street project is moving along well. Retaining walls at 33 1/2 Jackson Street and 458 Williams Street have been completed. Foundation has been poured at 10 Denver Avenue.

Commissioner Eagleson discussed the Farmers Market. There will be approximately forty (40) vendors. A Chamber of Commerce ribbon cutting ceremony will take place Friday, June 21, 2024, at 4:00 p.m.

8. Adjournment

It was moved by Commissioner Owens and seconded by Commissioner Eagleson to adjourn the Planning and Zoning Commission Meeting. Voting yea: Martinisko, Bruce, Owens, Eagleson.

There being no further business, the Planning and Zoning Commission adjourned at 4:49 p.m.

ATTEST:

Chairman, Planning & Zoning Commission

Leah Blue-Jones, Zoning Coordinator

Secretary, Planning & Zoning Commission

OFFICE OF
Planning & Zoning
 108 Sherman Street
 Telephone (605) 578-2082
 Fax (605) 578-2084



"The Historic City of the Black Hills"
 Deadwood, South Dakota 57732

TRENT MOHR
 Building Inspector
 Dept. of Planning & Zoning
 Telephone: (605) 578-2082
 Fax: (605) 578-2084

SIGN PERMIT STAFF REPORT

Sign Review Commission

July 3, 2024

Applicant: P. David Bruechner

Address: 21415 US 14A, Lead, SD 57754

Site Address of Proposed Signage: 61 Sherman Street (formerly Hoggat Law Office)

Computation of Sign Area

Building Frontage: 24 Feet

Total Available Signage: 48 Square Feet

Existing Signage: None

Remaining Available Signage Area: 48 Square Feet

Proposed Sign Project: Install new wall sign (20 Square Feet)

Proposed Building Materials: Vinyl and poly-metal (see attached rendering)

Proposed Lighting of the Signs: None

Location of Proposed Sign: Above the front door and window centered on the building

Discussion

The sign permit application in review is proposed at a location inside the locally-designated historic district which is regulated by chapter 15.32.300 of the sign ordinance. The current signage at the subject property is compliant with the sign ordinance. The sign proposed in the current application is regulated by 15.32.090 of the Sign Ordinance, reference below.

- A. *Before any sign can be erected or altered in any way, a valid permit must be issued. Any further alteration of the sign shall require an amendment of the existing permit or the issuance of a new permit. Such changes, as well as original permits, shall be issued pursuant to review by the sign review commission. It is unlawful to display, construct, erect, locate or alter any sign without first obtaining a sign permit for such sign.*

The applicant is leasing this building and is going to operate a deli. This sign is to advertise this new business at this location.

The proposed sign and its location are compliant with the sign ordinance.

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Variances

The sign permit application in review as proposed requires no variances from the sign ordinance. Signage variances may be obtained if the sign review commission is able to find *"special circumstances or conditions such as the existence of buildings, topography, vegetation, sign structures, distance or other matters on adjacent lots or within the adjacent public right-of-way that would substantially restrict the effectiveness of the sign in question and such special circumstances or conditions are peculiar to the business or enterprise to which the applicant desires to draw attention and do not apply generally to all businesses or enterprises in the area."* However, it is the responsibility of the applicant to provide adequate evidence of such special circumstances or conditions.

Sign Review Commission Action

Motion to approve permit for new wall sign at 61 Sherman Street

OR

Motion to deny proposed sign permit application as submitted.



proposed location of sign



OFFICE OF
PLANNING, ZONING AND
HISTORIC PRESERVATION
108 Sherman Street
Telephone (605) 578-2082
Fax (605) 722-0786



Kevin Kuchenbecker
Planning, Zoning and
Historic Preservation Officer
Telephone (605) 578-2082
kevin@cityofdeadwood.com

MEMORANDUM

DATE: July 3, 2024

TO: Planning and Zoning Commission

FROM: Kevin Kuchenbecker, Historic Preservation Officer & Planning and Zoning Administrator

RE: Banner Permit Application – 54 Sherman Street

STAFF FINDINGS:

Deadwood History/Adams Museum has applied for a Banner Permit. The banner will be located on the backside of the Adams Museum and will promote Deadwood's legends via a 4-panel waterfall sign. The banner will measure 38" x 152".

Per Deadwood Ordinance 15.32.150.C.4, banners placed by the City of Deadwood solely to promote the history of Deadwood are exempt from regulation.

RECOMMENDED ACTION:

Approval /denial of the Banner Permit Application for Deadwood History/Adams Museum.



BANNER PERMIT APPLICATION

\$200.00 APPLICATION FEE (NOTE: ONE APPLICATION PER BANNER PER FAÇADE REQUIRED)

APPLICANT INFORMATION

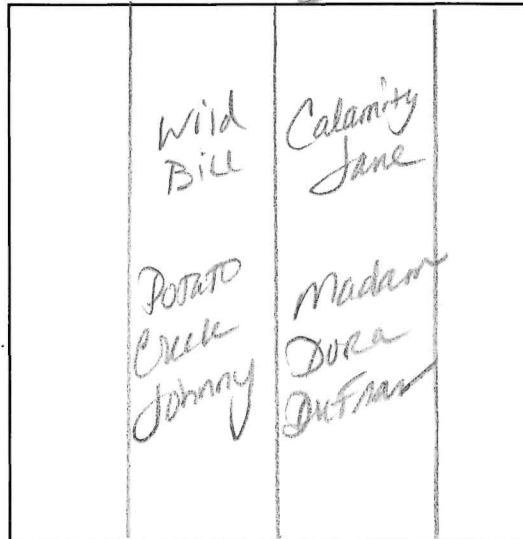
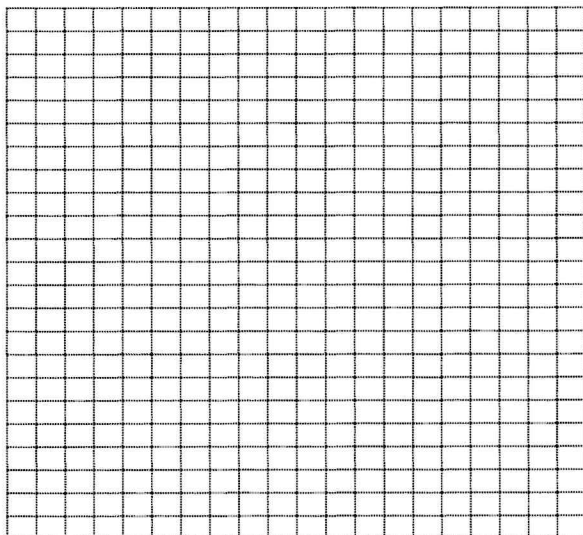
City: Deadwood
 Property Owner's Name: Deadwood History / Adams Museum
 Address: 54 Sherman St. / 150 Sherman St.
 City: Deadwood State: SD Zip: 57732
 Telephone: 605-722-4800 Fax: —

PROPOSED BANNER LOCATION

Business Name: Adams Museum
 Address: 54 Sherman St.
 City: Deadwood State: SD Zip: 57732
 Telephone: 605-578-1714 Fax: —

Description of Proposed Banner Location on Building

Back side of museum



*4 panel waterfall sign
 Promoting Deadwood's legends in the museum
 Similar in design to the current
 BH Redemption banner on the museum*

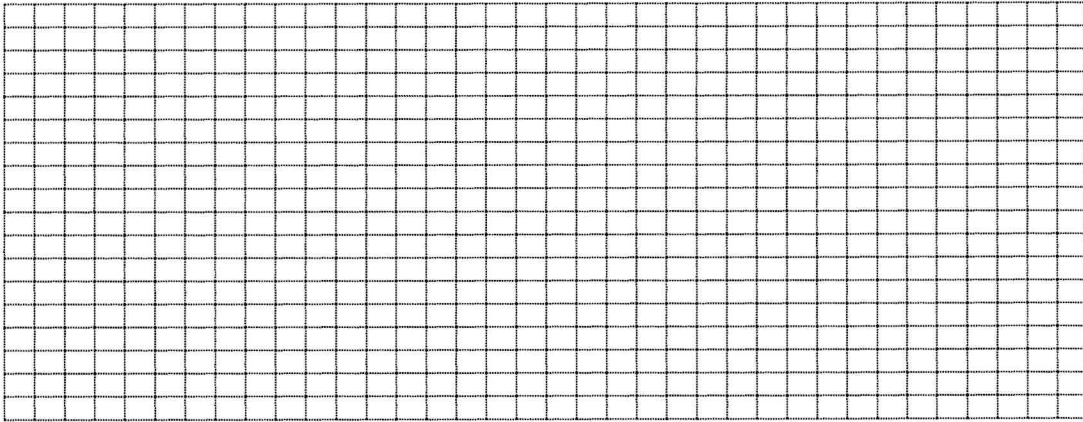
Please return the completed application to the City of Deadwood Planning & Zoning Office - 108 Sherman Street. Revised 02-2020.



DESCRIPTION AND DIMENSIONS OF BANNER

Proposed Banner with dimensions < 96 Square Feet (photograph or sketch of proposed banner)

(4) panels
38" x 150"
w/ pole
pockets -
width of
bottom
152" wide.



BANNER REQUIREMENTS

15.32.100 Banners. "Banner" means a long strip of flexible material, or machine-printed sign, of distinctive design displaying a decoration, slogan, advertising, etc., especially one suspended between two points, generally temporary in nature.

15.32.150 Allowed signs subject to permit.

- B. Banners are allowed only with an approved permit and when used in connection with a special or civic event sponsored by a not-for-profit organization or a government agency. A permit is available through the City, at a rate related to fees listed in the city fee schedule. A permit and fee applies to each banner, per calendar year - each banner shall require an application, each banner is subject to fee.
 1. Special events shall be designated by the city commission annually by resolution.
 2. The permit fee may be waived for a nonprofit organization, provided it obtains a permit from the city.
 3. Banners shall be allowed to be placed no sooner that seventy-two (72) hours prior to the beginning of the event and removed within forty-eight (48) hours after the termination of the event.
 4. Applicants are encouraged to include the City of Deadwood's logo on all banners to promote the branding of Deadwood.
 5. A permit must be reviewed and approved by the Zoning Administrator and the Code Official or their designee. Permits are not guaranteed to receive same day approval.
 6. All approved banners are issued permit stickers, which must be displayed on the banner at all times.
 7. Banners shall not exceed ninety-six (96) square feet in area. No variances to this size limit may be approved by the planning and zoning commission.
 8. Banners shall be a single-piece with no attachments or additions, including but not limited to, the addition of any handwritten letters or symbols.

Please return the completed application to the City of Deadwood Planning & Zoning Office - 108 Sherman Street. Revised 02-2020.

- 9. Only one (1) banner may be placed on any one (1) side of a building or facade. Banners may be placed on temporary structures, including but not limited to, stages or fences that are constructed for special or civic events.
- 10. An applicant who wishes to appeal the decision of the Zoning Administrator and the Code Official may appeal to the planning and zoning commission as provided by statute.
- 11. Application for Banner Permits must be completed and received a minimum of forty eight (48) hours prior to intended installation.

15.32.170 Permit costs. Sign and banner permits shall be charged at a rate related to fees listed in the city fee schedule, per sign or banner - multiple signs may be included in one application, however, each sign in such application is subject to the fee. Each banner applied for must be on an individual application.

APPLICANT'S SIGNATURE(S)

Rose Sparks 5/27/24 _____ _____
 Applicant Date Applicant Date
Rose@deadwoodhistory.com _____
 Email Address Email Address

FINAL APPROVAL SIGNATURES

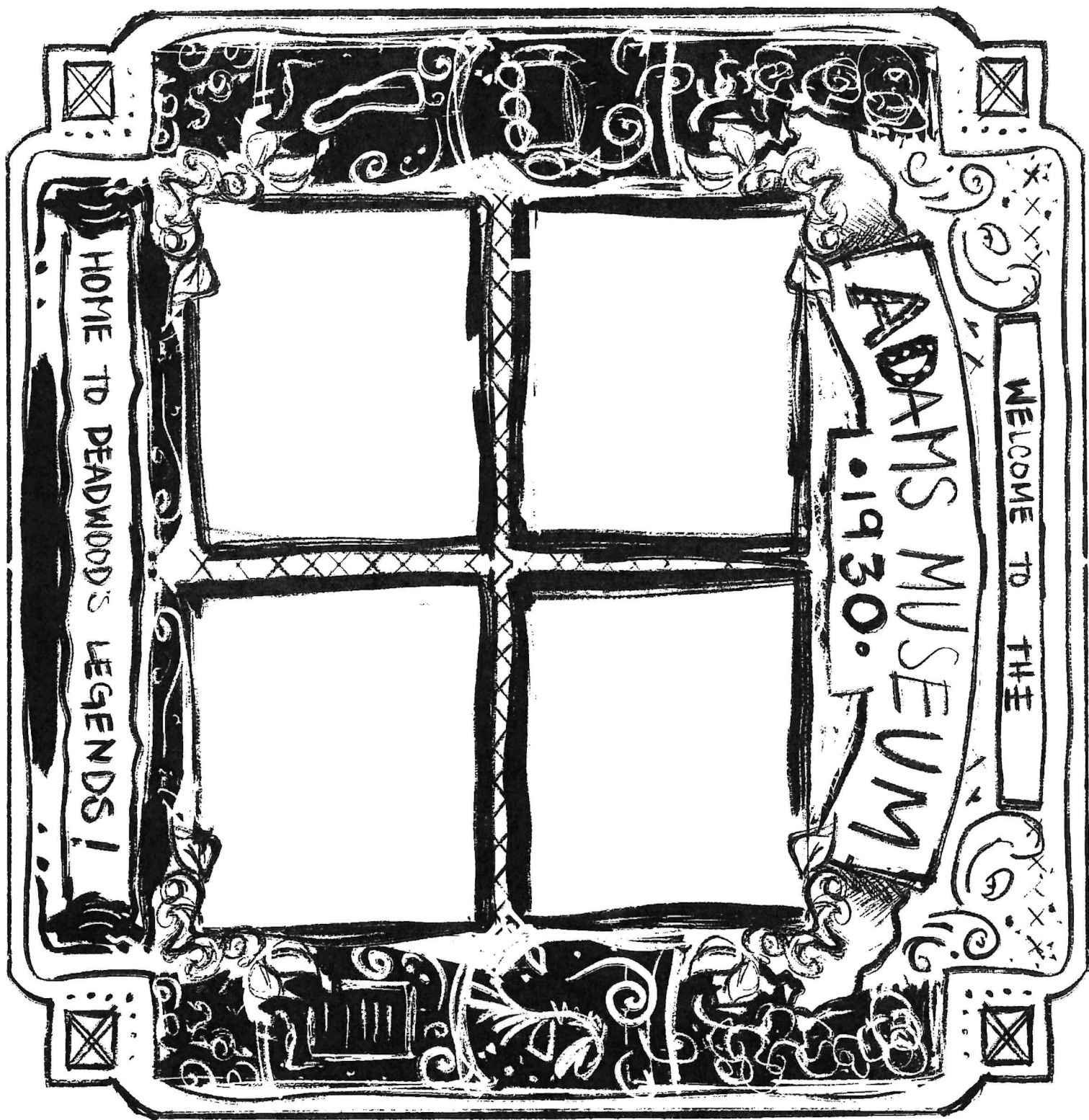
With the authority provided by the City of Deadwood and the Deadwood Planning and Zoning Commission, we the following Planning and Zoning Officer and the City Building Inspector do hereby approve the banner application.

_____ _____ _____ _____
 City Building Inspector Date Planning and Zoning Officer Date

APPEAL REQUIRED

This banner requires a variance and must be reviewed by the Deadwood Planning and Zoning Commission as provided by statute.

_____ _____ _____ _____
 City Building Inspector Date Planning and Zoning Officer Date



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Kevin Kuchenbecker
 Planning, Zoning and
 Historic Preservation Officer
 Telephone (605) 578-2082
 kevin@cityofdeadwood.com

MEMORANDUM

Date: July 3, 2024
To: Planning & Zoning Commission
From: Kevin Kuchenbecker,
 Planning, Zoning and Historic Preservation Officer
Re: Temporary Vendors License Application – Ray Drea Studios, LLC

The Planning & Zoning Office has received a Temporary Vendors License Application from Ray Drea Studios, LLC. The request is to sell fine art and paintings during the Sturgis Rally beginning August 1, 2024, and continuing through August 11, 2024.

The application was received more than 60 days prior to the start of the event.

Ray Drea Studios, LLC has a South Dakota Sales Tax Number.

Ray Drea Studios, LLC will be selling inside of 629 Main Street

This vendor has operated annually in Deadwood for several years and has met all legal requirements set forth in Deadwood Codified Ordinances.

Recommended Motion:

Approve/Deny the Temporary Vendors License Application for Ray Drea Studios, LLC.

Return Completed Form To:
Planning and Zoning
108 Sherman Street
Deadwood, SD 57732



Questions Contact:
Kevin Kuchenbecker
(605) 578-2082 or
kevin@cityofdeadwood.com

Application Date: 6.12.24

APPLICATION FOR TEMPORARY VENDORS LICENSE

The Deadwood Zoning Administrator and Planning & Zoning Commission review all applications.

Applicants: Application must be received **60 days prior** to start of event. Please read thoroughly prior to completing this form. Only complete applications will be considered for review.

Applicant: Ray Drea Telephone: (414) 526-7222

Name of Business: Ray Drea Studios LLC Telephone: (____) _____

Applicant's Mailing Address: 125 Steeple Pointe Ct. Delafield WI 53018
Street City State Zip

Please select your type of vending:

* Outside of a Structure – \$750.00 _____

* Inside of an Existing Structure – \$250.00 X

For a period of fourteen (14) days: Beginning: 8/1/24

Ending: 8/11/24

South Dakota Sales Tax Number: 5001-9683-SE

Physical Street Address of Vending Location: 629 Main St., Deadwood, SD 57732

Contact Name and Phone Number of Property Owners: Ken Gienger 605-639-3004

Complete Description of Goods and/or Services: Fine art paintings for sale

I agree that any falsification, misstatements or omissions, including those related to location and goods to be sold, shall result in immediate revocation of this license and forfeiture of the right to operate within the City Limits of Deadwood. It is further understood that payment of applicable state and city sales tax is made a provision of this license.

Applicant's signature: *Ray Drea* Date submitted: 6.12.24

Fee: \$ _____ Paid On _____ Receipt Number _____

PLANNING AND ZONING ADMINISTRATOR:			
Approved/P&Z Administrator:	Yes	No	Signature: _____ Date: _____
PLANNING AND ZONING COMMISSION:			
Approved/P&Z Commission:	Yes	No	Date: _____

Reason for Denial (if necessary): _____

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Kevin Kuchenbecker
Planning, Zoning and
Historic Preservation Officer
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kevin@cityofdeadwood.com

MEMORANDUM

DATE: July 3, 2024

TO: Planning and Zoning Commission

FROM: Kevin Kuchenbecker, Historic Preservation Officer & Planning and Zoning Administrator

RE: Easement between City of Deadwood and Kraft Living Trust

STAFF FINDINGS:

The Permanent Utility and Private Access Easement between the City of Deadwood (Grantor) and Kraft Living Trust (Grantee) allows Grantee to enter and cross a twenty-four (24) foot wide section of real property owned by Grantor so that Grantee may access the driveway entrance to their property, as reflected in Plat 2024-01580.

RECOMMENDED ACTION:

Approval /denial of the Permanent Utility and Private Access Easement

Prepared by:
Quentin L. Riggins
Gunderson, Palmer, Nelson & Ashmore, LLP
P.O. Box 8045
Rapid City, SD 57709-8045
(605) 342-1078

STATE OF SOUTH DAKOTA)
) ss **PERMANENT UTILITY AND PRIVATE**
COUNTY OF LAWRENCE) **ACCESS EASEMENT**

The City of Deadwood, a South Dakota municipality of 102 Sherman Street, Deadwood, SD 57732 (Grantor) hereby grants and conveys unto the Kraft Living Trust of 18786 Modjeska Road, Trabuco Canyon, CA 92679 (Grantee), a twenty-four (24) foot-wide Permanent Utility and Private Access Easement as shown on the attached Exhibit A, subject to the conditions hereinafter set forth.

The property owned by the Grantor and subject to this Permanent Utility and Private Access Easement is legally described as:

Lot A1 in a portion of Lot H2 and the 66 foot right-of-way of US Highway 85 in Tract 1 of the Jim Lode Mineral Survey 1636; the 66-foot right-of-way of US Highway 85 in Lot 7 and Placer Claim 57 and a portion of Lot H2 and the 66 foot right-of-way of US Highway 85 in M.S. 107; all in Section 27 – Township 5 North – Range 3 East of B.H.M., in the City of Deadwood.

These easements shall include the right to enter upon the afore-described real property and otherwise to do those things reasonably necessary to access the property owned by the Grantee and located at 1 Katon Drive, Deadwood, SD 57732 and legally described as:

Plat of Lot 3R-1 revised of Katon Subdivision formerly Lot 3R-1 of Katon Subdivision, Lot AB1 of Placer 58, Lot AB1 of Placer Claim 57 and Lot 1 of the subdivision of Tract E-1 being a portion of Placer M.S. 57, Placer M.S. 58 and Hillside Placer M.S. 749 located in the SE ¼ of Section 27, T5N, R3E, B.H.M. City of Deadwood, Lawrence County, South Dakota.

These easements will not interfere with Grantor’s ingress and egress to the property via the existing entrance to the property.

Grantee and its successors and assigns agree not to build, create, construct, or permit to be built, created, or constructed any obstruction, building, or other structures upon, over, or under the land

herein described that would interfere with the Grantor’s rights hereunder.

Grantor shall bear all cost associated with the construction, care, maintenance and repair of the easement and agrees to perform all work in a workmanlike manner. Any damage caused to Grantor’s property because of Grantee’s actions will be restored to its original condition at Grantee’s expense.

Dated this _____ day of _____, 2024.

GRANTEE
TRUSTOR, KRAFT LIVING TRUST

Cary Kraft

STATE OF _____)
) ss
COUNTY OF _____)

On this, the ____ day of _____ 2024, before me, the undersigned officer, personally appeared Cary Kraft, who acknowledged that he is the owner of above referenced property and executed the foregoing instrument for the purposes therein.

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

(SEAL)

Notary Public
My commission expires: _____

Dated this _____ day of _____, 2024.

GRANTEE
TRUSTOR, KRAFT LIVING TRUST

Cynthia Kraft

STATE OF _____)
) ss
COUNTY OF _____)

On this, the ____ day of _____ 2024, before me, the undersigned officer, personally appeared Cynthia Kraft, who acknowledged that she is the owner of above referenced property and executed the foregoing instrument for the purposes therein.

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

(SEAL)

Notary Public
My commission expires: _____

CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF LAWRENCE)

On this ____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

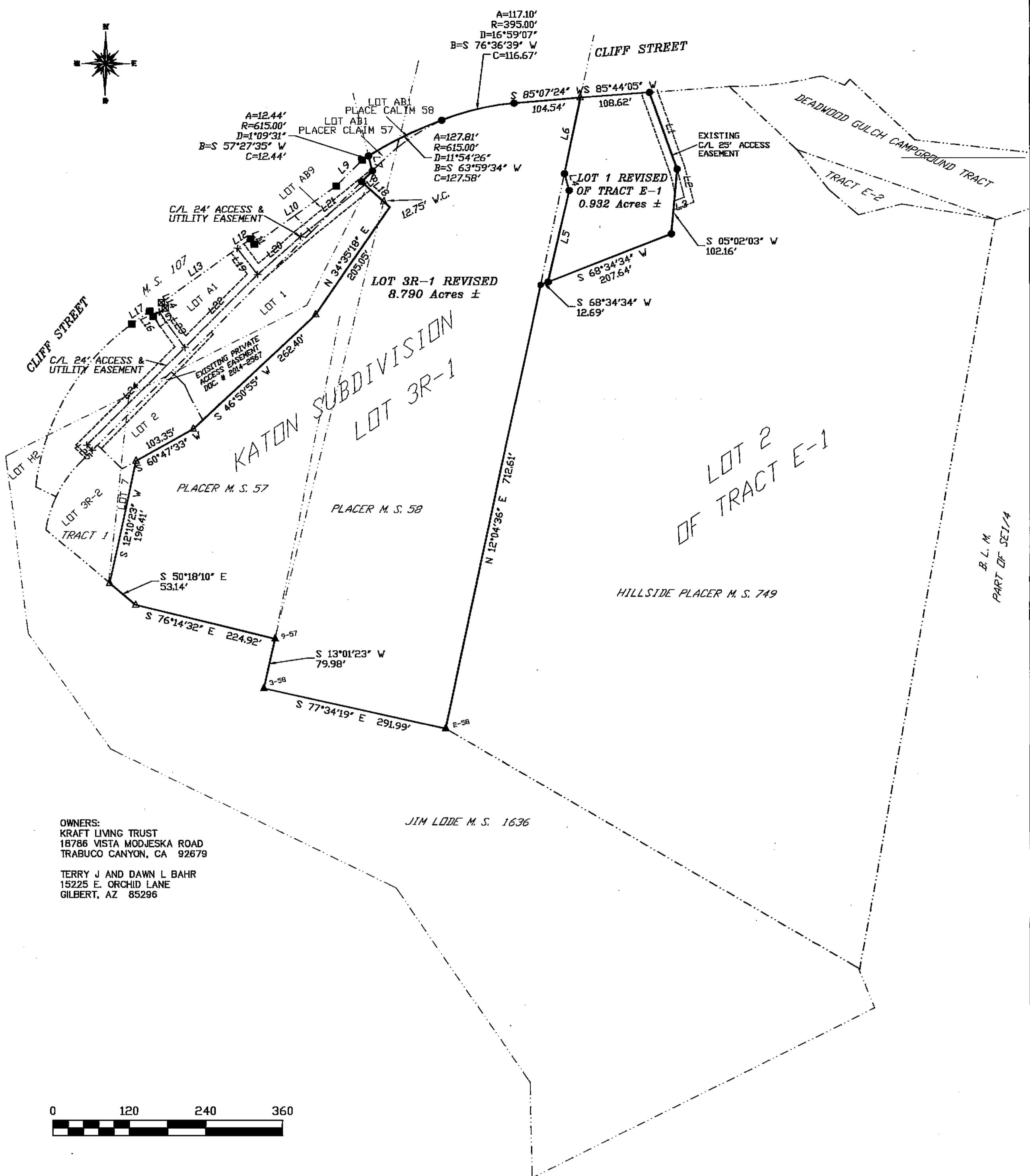
ATTEST

Jessicca McKeown
Finance Officer

**PLAT OF LOT 3R-1 REVISED OF KATON SUBDIVISION
FORMERLY LOT 3R-1 OF KATON SUBDIVISION, LOT AB1 OF PLACER 58, LOT AB1 OF PLACER CLAIM 57
AND LOT 1 OF THE SUBDIVISION OF TRACT E-1
BEING A PORTION OF PLACER M.S. 57, PLACER M.S. 58 AND HILLSIDE PLACER M.S. 749
LOCATED IN THE SE¼ OF SECTION 27, T5N, R3E, B.H.M.
CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA**

AND

**PLAT OF LOT 1 REVISED OF THE SUBDIVISION OF TRACT E-1
FORMERLY LOT 1 OF THE SUBDIVISION OF TRACT E-1
BEING A PORTION OF HILLSIDE PLACER M.S. 749
LOCATED IN THE SE¼ OF SECTION 27, T5N, R3E, B.H.M.
CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA**



OWNERS:
KRAFT LIVING TRUST
18786 VISTA MODJESKA ROAD
TRABUCO CANYON, CA 92679

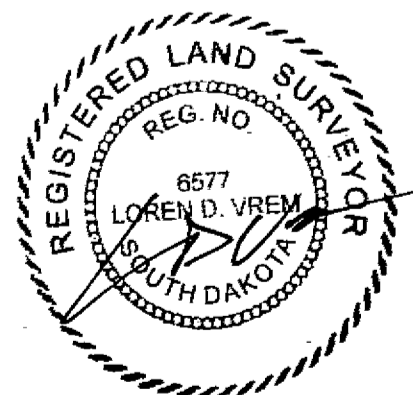
TERRY J AND DAWN L BAHR
15225 E ORCHID LANE
GILBERT, AZ 85296

JIM LODE M. S. 1636



- REBAR CAP (VREM LS6577)
- REBAR & CAP (BANNER)
- REBAR & CAP
- ▲ ORIGINAL STONE
- △ REBAR & CAP (ARLETH LS3977)
- B. L. M. MONUMENT
- SDDOT REBAR & CAP
- ⊠ CHISELED "X" IN CONCRETE

LINE	BEARING	DISTANCE
L1	N 19°33'58" W	127.65'
L2	S 14°14'44" E	45.79'
L3	N 68°57'57" E	16.83'
L4	S 15°57'32" E	27.44'
L5	S 12°58'30" W	147.67'
L6	N 12°04'36" E	122.24'
L7	S 13°36'59" E	24.41'
L8	S 45°02'46" E	23.98'
L9	S 45°01'35" W	57.69'
L10	S 54°27'18" W	157.27'
L11	N 35°32'42" W	10.00'
L12	S 54°27'18" W	25.06'
L13	S 54°27'18" W	146.94'
L14	S 35°32'42" E	10.00'
L15	S 54°27'18" W	23.00'
L16	N 35°32'42" W	10.00'
L17	S 54°27'18" W	34.54'
L18	S 47°56'08" E	59.63'
L19	S 37°22'07" E	51.71'
L20	N 48°28'43" E	90.10'
L21	N 50°56'29" E	129.44'
L22	S 45°01'35" W	162.27'
L23	N 35°32'42" W	68.27'
L24	S 45°01'35" W	216.58'
L25	S 44°58'25" E	12.00'



<p>Prepared By: PONDEROSA LAND SURVEYS, L.L.C. 332A WEST MAIN STREET LEAD, SD 57754 (605) 722-3840</p>	Date:	8/9/2023
	Drawn By:	L. D. Vrem
	Project No.:	23-273
	Dwg. No.:	23-273.dwg

Doc. # 2024-1580 page 1 of 2

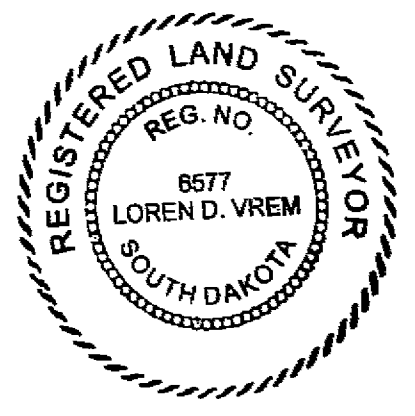
PLAT OF LOT 3R-1 REVISED OF KATON SUBDIVISION
FORMERLY LOT 3R-1 OF KATON SUBDIVISION, LOT AB1 OF PLACER 58, LOT AB1 OF PLACER CLAIM 57
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LOCATED IN THE SE¼ OF SECTION 27, T5N, R3E, B.H.M.
CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA

AND

PLAT OF LOT 1 REVISED OF THE SUBDIVISION OF TRACT E-1
FORMERLY LOT 1 OF THE SUBDIVISION OF TRACT E-1
BEING A PORTION OF HILLSIDE PLACER M.S. 749
LOCATED IN THE SE¼ OF SECTION 27, T5N, R3E, B.H.M.
CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA

SURVEYOR'S CERTIFICATE

I, LOREN D. VREM, 332A WEST MAIN STREET, LEAD, SOUTH DAKOTA, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR IN THE STATE OF SOUTH DAKOTA. THAT AT THE REQUEST OF THE OWNER AND UNDER MY SUPERVISION, I HAVE CAUSED TO BE SURVEYED AND PLATTED THE PROPERTY SHOWN AND DESCRIBED HEREON. TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE PROPERTY WAS SURVEYED IN GENERAL CONFORMANCE WITH THE LAWS OF THE STATE OF SOUTH DAKOTA AND ACCEPTED METHODS AND PROCEDURES OF SURVEYING. DATED THIS 11 DAY OF AUGUST, 2023



SURVEYOR'S CERTIFICATE

I, LOREN D. VREM, 332A WEST MAIN STREET, LEAD, SOUTH DAKOTA, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR IN THE STATE OF SOUTH DAKOTA. THAT AT THE REQUEST OF THE OWNER AND UNDER MY SUPERVISION, I HAVE CAUSED TO BE SURVEYED AND PLATTED THE PROPERTY SHOWN AND DESCRIBED HEREON. TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE PROPERTY WAS SURVEYED IN GENERAL CONFORMANCE WITH THE LAWS OF THE STATE OF SOUTH DAKOTA AND ACCEPTED METHODS AND PROCEDURES OF SURVEYING. DATED THIS _____ DAY OF _____, 20____.

OWNER'S CERTIFICATE
STATE OF ARIZONA COUNTY OF MARICOPA

TERRY AND DAWN BAHR
DO HEREBY CERTIFY THAT I/WE ARE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON, THAT WE DO APPROVE THIS PLAT AS HEREON SHOWN AND THAT DEVELOPMENT OF THIS PROPERTY SHALL CONFORM TO ALL EXISTING APPLICABLE ZONING, SUBDIVISION, EROSION AND SEDIMENT CONTROL REGULATIONS.

OWNER: Terry Bahr
OWNER: Dawn Bahr

ACKNOWLEDGMENT OF OWNER
STATE OF ARIZONA COUNTY OF MARICOPA

ON THIS 28 DAY OF August, 2023 BEFORE ME THE UNDERSIGNED NOTARY PUBLIC, PERSONALLY APPEARED Terry Bahr and Dawn Bahr KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING CERTIFICATE. MY COMMISSION EXPIRES: Feb 28, 2027 NOTARY PUBLIC: [Signature] Deputy Auditor



OWNER'S CERTIFICATE
STATE OF SOUTH DAKOTA COUNTY OF LAWRENCE

KRAFT LIVING TRUST
DO HEREBY CERTIFY THAT I/WE ARE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON, THAT WE DO APPROVE THIS PLAT AS HEREON SHOWN AND THAT DEVELOPMENT OF THIS PROPERTY SHALL CONFORM TO ALL EXISTING APPLICABLE ZONING, SUBDIVISION, EROSION AND SEDIMENT CONTROL REGULATIONS.

OWNER: Cary Kraft as trustee
OWNER: Cindy Kraft as trustee

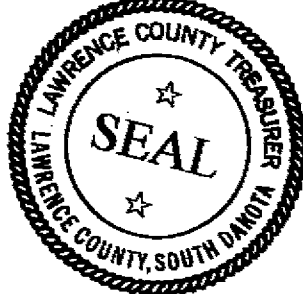
ACKNOWLEDGMENT OF OWNER
STATE OF SOUTH DAKOTA COUNTY OF LAWRENCE

ON THIS 17 DAY OF April, 2024 BEFORE ME THE UNDERSIGNED NOTARY PUBLIC, PERSONALLY APPEARED Cary Kraft + Cindy Kraft trustees of Kraft Living Trust KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING CERTIFICATE. MY COMMISSION EXPIRES: February 28, 2027 NOTARY PUBLIC: Krista Schuster, deputy auditor



CERTIFICATE OF COUNTY TREASURER
STATE OF SOUTH DAKOTA COUNTY OF LAWRENCE

I, Deborah Yriddle, LAWRENCE COUNTY TREASURER, DO HEREBY CERTIFY THAT 2023 TAXES WHICH ARE LIENS UPON THE HEREIN PLATTED PROPERTY HAVE BEEN PAID. DATED THIS 17 DAY OF April, 2024.
LAWRENCE COUNTY TREASURER: Dominic Marshall deputy



APPROVAL OF HIGHWAY AUTHORITY
STATE OF SOUTH DAKOTA COUNTY OF LAWRENCE

THE LOCATION OF THE PROPOSED ACCESS ROADS ABUTTING THE COUNTY OR STATE HIGHWAY AS SHOWN HEREON, IS HEREBY APPROVED. ANY CHANGE IN THE PROPOSED ACCESS SHALL REQUIRE ADDITIONAL APPROVAL.

HIGHWAY AUTHORITY: [Signature]

APPROVAL OF THE CITY OF DEADWOOD PLANNING COMMISSION
STATE OF SOUTH DAKOTA COUNTY OF LAWRENCE

THIS PLAT APPROVED BY THE CITY OF DEADWOOD PLANNING COMMISSION THIS 16 DAY OF August, 2023
ATTEST: [Signature]
CITY PLANNER

APPROVAL OF THE CITY OF DEADWOOD BOARD OF COMMISSIONERS
STATE OF SOUTH DAKOTA COUNTY OF LAWRENCE

BE IT RESOLVED THAT THE CITY OF DEADWOOD BOARD OF COMMISSIONERS HAVING VIEWED THE WITHIN PLAT, DO HEREBY APPROVE THE SAME FOR RECORDING IN THE OFFICE OF THE REGISTER OF DEEDS, LAWRENCE COUNTY, SOUTH DAKOTA, DATED THIS 21 DAY OF August, 2023.

ATTEST: [Signature] FINANCE OFFICER
[Signature] MAYOR



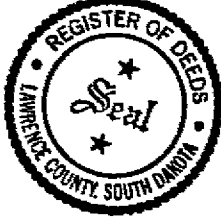
OFFICE OF THE COUNTY DIRECTOR OF EQUALIZATION
STATE OF SOUTH DAKOTA COUNTY OF LAWRENCE

I, LAWRENCE COUNTY DIRECTOR OF EQUALIZATION, DO HEREBY CERTIFY THAT I HAVE RECEIVED A COPY OF THIS PLAT. DATED THIS 17 DAY OF April, 2024.
LAWRENCE COUNTY DIRECTOR OF EQUALIZATION: Brett Runge by Hscoe Seave



OFFICE OF THE REGISTER OF DEEDS
STATE OF SOUTH DAKOTA COUNTY OF LAWRENCE

FILED FOR RECORD THIS 22 DAY OF April, 2024 AT 11:05 O'CLOCK, A. M., AND RECORDED IN DOC. #2024-1580
LAWRENCE COUNTY REGISTER OF DEEDS: David Hansen FEE: \$60.00



Prepared By:
PONDEROSA LAND SURVEYS, L.L.C.
332A WEST MAIN STREET
LEAD, SD 57754
(605) 722-3840

Date:	8/9/2023
Drawn By:	L. D. Vrem
Project No.:	23-273
Dwg. No.:	23-273.dwg

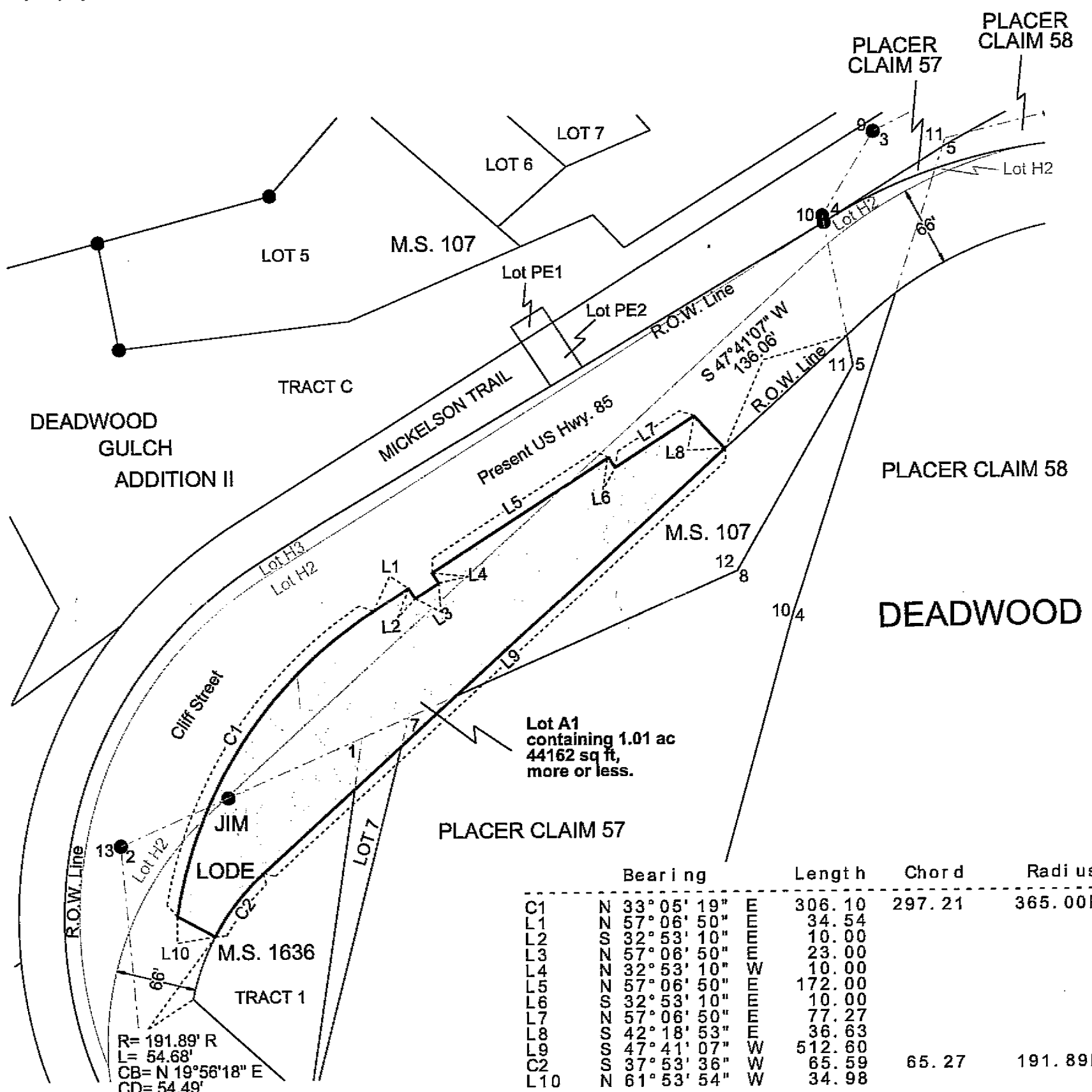
Doc. #2024-1580 page 2 of 2

PLAT OF LOT A1

in a portion of Lot H2 and the 66 foot right-of-way of US Highway 85 in Tract 1 of the Jim Lode Mineral Survey 1636; the 66 foot right-of-way of US Highway 85 in Lot 7 and Placer Claim 57 and a portion of Lot H2 and the 66 foot right-of-way of US Highway 85 in M.S. 107; all in Section 27 - Township 5 North - Range 3 East of B.H.M., in the City of Deadwood

LAWRENCE COUNTY, SOUTH DAKOTA
 Showing a parcel of land to be transferred as public right of way in
 for construction of Project NH-PH 0085(20)26
 Scale: 1 inch = 100 feet

- LEGEND**
- ▨ = existing right of way
 - = found corner
 - = found corner (not used)
 - = set corner
- All monumentation will be set upon project completion



Note: The coordinates, distances and areas shown on this plat are based on the South Dakota State Plane coordinate System - North Zone NAD 83/96 epoch 2002.00 Geoid 03 SF = 0.99979051

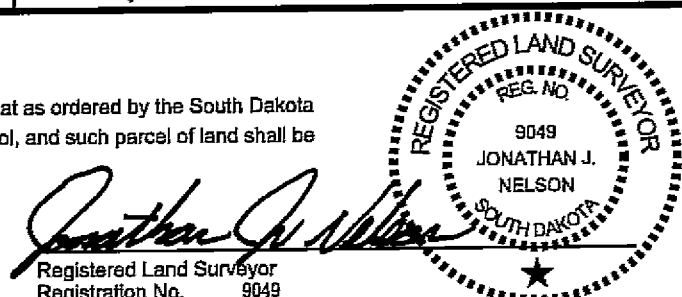
Revised Date: 08/25/2017 CLS

Drawn By Bronson Blow Date 09/11/2013
 Checked By Jon Nelson Date 08/28/2017

SURVEYOR'S CERTIFICATE

I, JONATHAN J. NELSON, Registered Land Surveyor, in and for the State of South Dakota, do hereby certify that as ordered by the South Dakota Department of Transportation the parcel of land as shown on this plat has been surveyed at my direction and under my control, and such parcel of land shall be hereafter known by the lot number designated herein. The location and dimensions of the parcel are shown on this plat.

In witness whereof, I have set my hand and seal this 28th day of August, A.D., 20 17.



OFFICE OF REGISTER OF DEEDS

State of South Dakota

County of Lawrence ss

Filed for record the 2nd day of October, A.D., 20 17, at 11:00 A.M., and recorded in Books of Plats 2017-4498 on Page 1

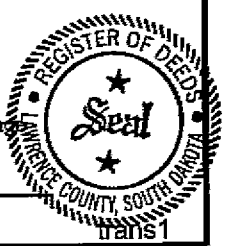
Fee: \$20.00 therein.

Sheree L. Green

Register of Deeds

by

Daouda Hansen
 Deputy



0555

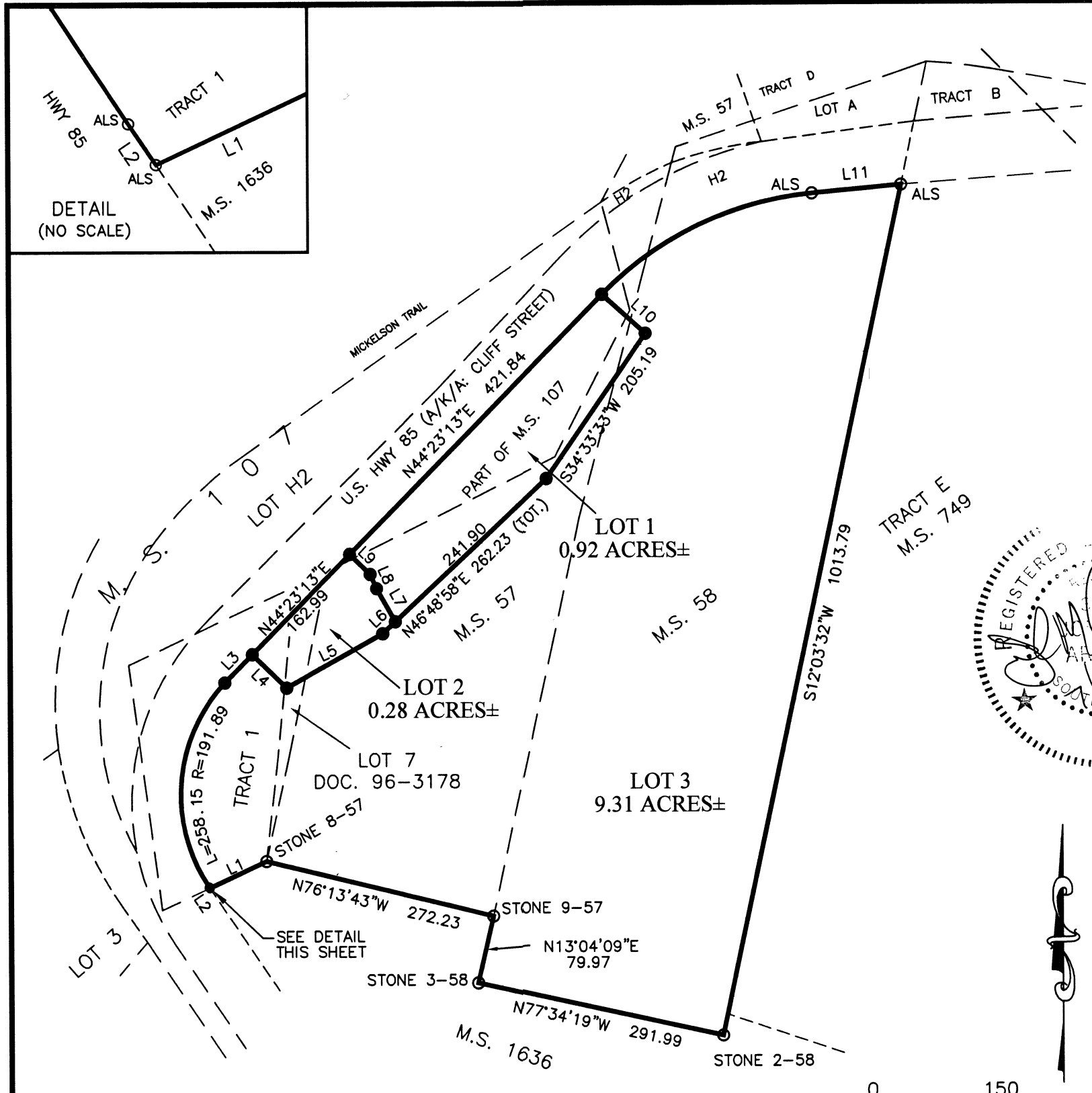
DRAWING NUMBER
2014-2567
 SAFCO PRODUCTS • NEW HOPE, MINNESOTA
 REORDER BY PART NUMBER 6552

DRAWING NUMBER
2014-2567
 SAFCO PRODUCTS • NEW HOPE, MINNESOTA
 REORDER BY PART NUMBER 6552

page 1 of 3

Section 5 Item b.

For Affidavit See Doc #2014-3196



**PLAT OF LOTS 1, 2 AND 3 OF KATON SUBDIVISION,
 UTILITY AND PRIVATE ACCESS EASEMENTS;
 FORMERLY TRACT 1 OF A PORTION OF
 THE JIM LODE IN M.S. 1636, EXCEPT HIGHWAY R-O-W AND LOT H2;
 PART OF M.S. 107, PART OF M.S. 58,
 PART OF M.S. 57 AND PART OF LOT 7
 ALL LYING SOUTH OF THE HIGHWAY RIGHT-OF-WAY,
 ALL LOCATED IN THE SE1/4 OF SECTION 27, T5N., R3E., B.H.M.,
 CITY OF DEADWOOD LAWRENCE COUNTY, SOUTH DAKOTA**

LINE	BEARING	DISTANCE
L1	S64°51'24"W	73.05
L2	N33°55'39"W	1.36
L3	N44°23'13"E	45.91
L4	S45°36'47"E	55.79
L5	N60°45'42"E	128.63
L6	N46°48'58"E	20.33
L7	N29°15'54"W	44.31
L8	N23°51'25"W	18.33
L9	N45°36'47"W	33.38
L10	S47°56'08"E	68.20
L11	N84°40'40"E	104.54



LEGEND:

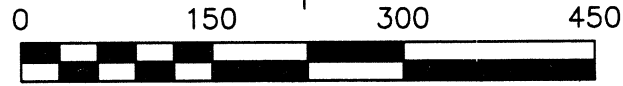
- SET REBAR AND CAP STAMPED ARLETH & ASSOC. LS 3977
- FOUND MONUMENT AS NOTED

NOTES:

1. TOTAL AREA PLATTED THIS PLAT: 10.51 ACRES±.
 TOTAL AREA LOTS THIS PLAT: 10.51 ACRES±.
 TOTAL AREA R-O-W THIS PLAT: 0.00 ACRES±.
2. 5' DRAINAGE AND UTILITY EASEMENTS HEREBY GRANTED ALONG BOTH SIDES OF ALL LOTLINES.
3. BASIS OF BEARING IS DEADWOOD COORDINATE SYSTEM.

SEE SHEET 2 OF 3 FOR EASEMENTS.

OWNER/DEVELOPER:
 PAULA J. KATON, TRUSTEE
 PO BOX 326
 DEADWOOD SD, 57732.
 1-605-578-3045



Doc #2014-2567 Page 1 of 3

	PREPARED BY: ARLETH LAND SURVEYING LLC	24 CLIFF STREET DEADWOOD, SD 57732 605-578-1637	DATE: JULY 2, 2014 REV: SCALE: 1" = 150'	APPROVED: JMA DRAWN: FD DWG: 8565 REPLAT.dwg
	SHEET 1 OF 3			

DRAWING NUMBER
2014-2567

SAFCO PRODUCTS • NEW HOPE, MINNESOTA
REORDER BY PART NUMBER 6552

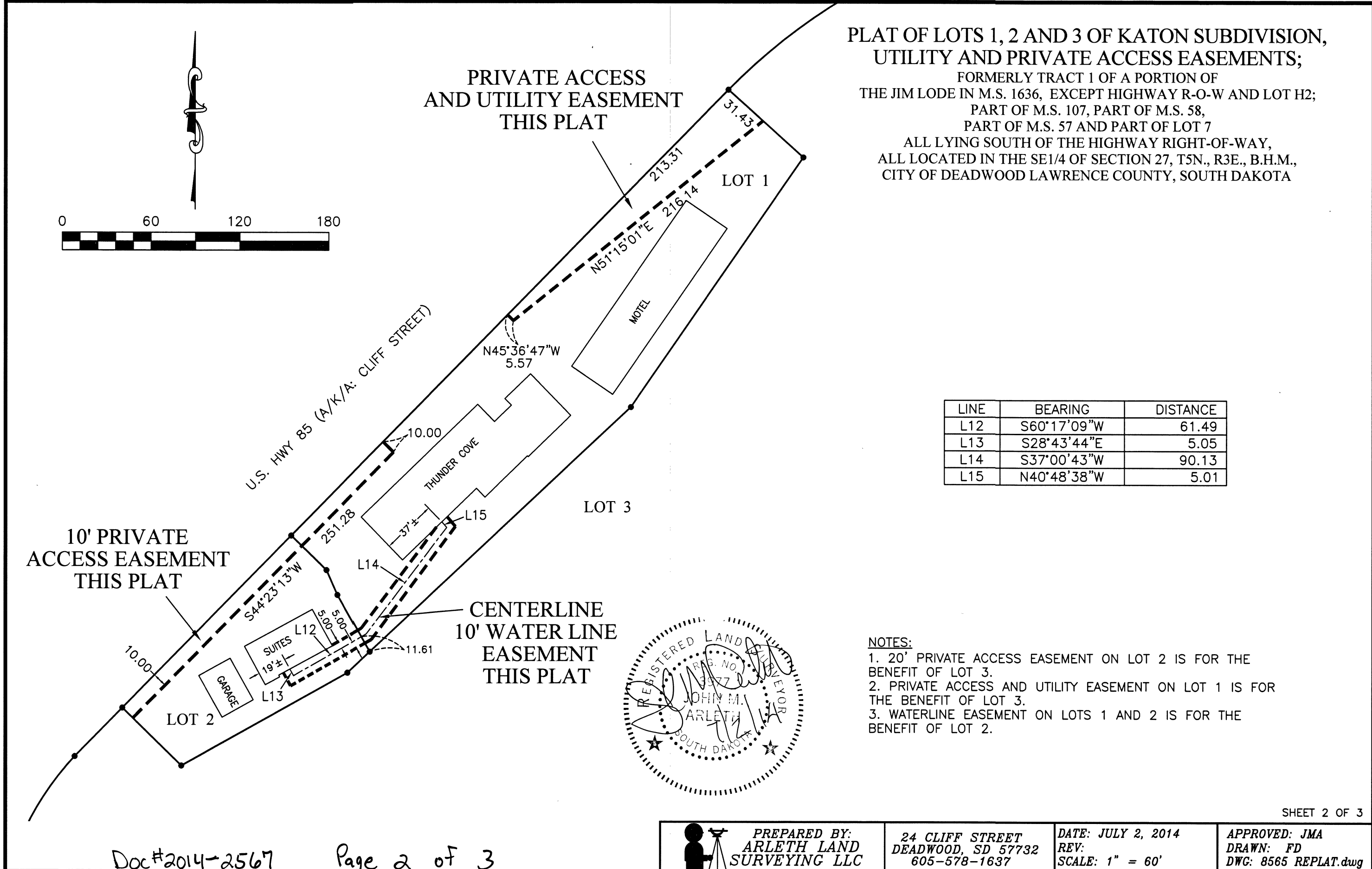
DRAWING NUMBER
2014-2567

SAFCO PRODUCTS • NEW HOPE, MINNESOTA
REORDER BY PART NUMBER 6552

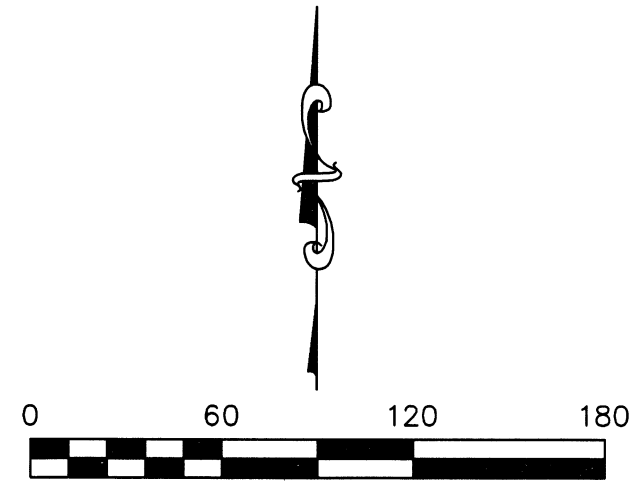
page 2 of 3

Section 5 Item b.

For Affidavit see Doc# 2014-3196

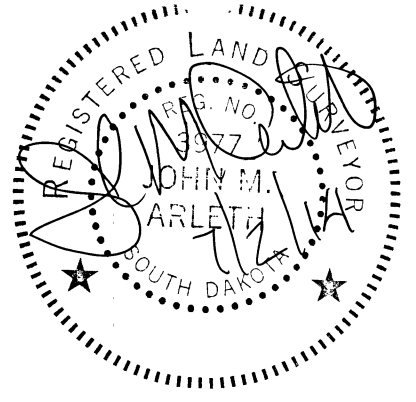


PLAT OF LOTS 1, 2 AND 3 OF KATON SUBDIVISION,
UTILITY AND PRIVATE ACCESS EASEMENTS;
FORMERLY TRACT 1 OF A PORTION OF
THE JIM LODE IN M.S. 1636, EXCEPT HIGHWAY R-O-W AND LOT H2;
PART OF M.S. 107, PART OF M.S. 58,
PART OF M.S. 57 AND PART OF LOT 7
ALL LYING SOUTH OF THE HIGHWAY RIGHT-OF-WAY,
ALL LOCATED IN THE SE1/4 OF SECTION 27, T5N., R3E., B.H.M.,
CITY OF DEADWOOD LAWRENCE COUNTY, SOUTH DAKOTA



LINE	BEARING	DISTANCE
L12	S60°17'09"W	61.49
L13	S28°43'44"E	5.05
L14	S37°00'43"W	90.13
L15	N40°48'38"W	5.01

- NOTES:
- 20' PRIVATE ACCESS EASEMENT ON LOT 2 IS FOR THE BENEFIT OF LOT 3.
 - PRIVATE ACCESS AND UTILITY EASEMENT ON LOT 1 IS FOR THE BENEFIT OF LOT 3.
 - WATERLINE EASEMENT ON LOTS 1 AND 2 IS FOR THE BENEFIT OF LOT 2.



Doc#2014-2567 Page 2 of 3

	PREPARED BY: ARLETH LAND SURVEYING LLC	24 CLIFF STREET DEADWOOD, SD 57732 605-578-1637	DATE: JULY 2, 2014 REV: SCALE: 1" = 60'	APPROVED: JMA DRAWN: FD DWG: 8565 REPLAT.dwg
	SHEET 2 OF 3			

DRAWING NUMBER
2014-2567

SAFCO PRODUCTS • NEW HOPE, MINNESOTA
REORDER BY PART NUMBER 6552

POSITION EDGE OF POINT ON THIS LINE

DRAWING NUMBER
2014-2567

SAFCO PRODUCTS • NEW HOPE, MINNESOTA
REORDER BY PART NUMBER 6552

POSITION EDGE OF POINT ON THIS LINE

For Affidavit See Doc # 2014-3196

PLAT OF LOTS 1, 2 AND 3 OF KATON SUBDIVISION,
UTILITY AND PRIVATE ACCESS EASEMENTS;
FORMERLY TRACT 1 OF A PORTION OF
THE JIM LODE IN M.S. 1636, EXCEPT HIGHWAY R-O-W AND LOT H2;
PART OF M.S. 107, PART OF M.S. 58,
PART OF M.S. 57 AND PART OF LOT 7
ALL LYING SOUTH OF THE HIGHWAY RIGHT-OF-WAY,
ALL LOCATED IN THE SE1/4 OF SECTION 27, T5N., R3E., B.H.M.,
CITY OF DEADWOOD LAWRENCE COUNTY, SOUTH DAKOTA

SURVEYOR'S CERTIFICATE

I, JOHN M. ARLETH, 24 CLIFF ST., DEADWOOD, SD, DO HEREBY CERTIFY THAT I AM A LICENSED LAND SURVEYOR IN THE STATE OF SOUTH DAKOTA. THAT AT THE REQUEST OF THE OWNER AND UNDER MY SUPERVISION, I HAVE CAUSED TO BE SURVEYED AND PLATTED THE PROPERTY SHOWN AND DESCRIBED HEREON. TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE PROPERTY WAS SURVEYED IN GENERAL CONFORMANCE WITH THE LAWS OF THE STATE OF SOUTH DAKOTA AND ACCEPTED METHODS AND PROCEDURES OF SURVEYING.
DATED THIS 27 DAY OF July, 2014.

John M. Arleth
JOHN M. ARLETH, R.L.S. 3977

OWNER'S CERTIFICATE

STATE OF SOUTH DAKOTA COUNTY OF LAWRENCE
Paula J. Katon, Trustee, DO HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON, THAT WE DO APPROVE THIS PLAT AS HEREON SHOWN AND THAT DEVELOPMENT OF THIS PROPERTY SHALL CONFORM TO ALL EXISTING APPLICABLE ZONING, SUBDIVISION, EROSION AND SEDIMENT CONTROL REGULATIONS.

OWNER: Paula J. Katon, Trustee

OWNER: _____

ADDRESS: P.O. Box 326
Deadwood, S.D. 57732

ACKNOWLEDGMENT OF OWNER

STATE OF SOUTH DAKOTA COUNTY OF LAWRENCE
ON THIS 8 DAY OF July, 2014, BEFORE ME THE UNDERSIGNED NOTARY PUBLIC, PERSONALLY APPEARED Paula J. Katon KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING CERTIFICATE.

MY COMMISSION EXPIRES: _____ NOTARY
PUBLIC: Melody Nelson Deputy Auditor

CERTIFICATE OF COUNTY TREASURER

STATE OF SOUTH DAKOTA COUNTY OF LAWRENCE
I, Debra Tridle, LAWRENCE COUNTY TREASURER, DO HEREBY CERTIFY THAT 2013 TAXES WHICH ARE LIENS UPON THE HEREIN PLATTED PROPERTY HAVE BEEN PAID. DATED THIS 8 DAY OF July, 2014.

LAWRENCE COUNTY TREASURER: Pamie Marshall deputy

APPROVAL OF HIGHWAY AUTHORITY

STATE OF SOUTH DAKOTA COUNTY OF LAWRENCE
THE LOCATION OF THE PROPOSED ACCESS ROADS ABUTTING THE COUNTY OR STATE HIGHWAY AS SHOWN HEREON, IS HEREBY APPROVED. ANY CHANGE IN THE PROPOSED ACCESS SHALL REQUIRE ADDITIONAL APPROVAL.

HIGHWAY AUTHORITY: Ronald Green

APPROVAL OF THE CITY OF DEADWOOD PLANNING COMMISSION

STATE OF SOUTH DAKOTA COUNTY OF LAWRENCE
THIS PLAT APPROVED BY THE CITY OF DEADWOOD PLANNING COMMISSION THIS ___ DAY OF 7/2, 2014.

Kolst E Nelson Jr. CITY PLANNER
Jim Shedd CHAIRMAN

APPROVAL OF THE CITY OF DEADWOOD BOARD OF COMMISSIONERS

STATE OF SOUTH DAKOTA COUNTY OF LAWRENCE
BE IT RESOLVED THAT THE CITY OF DEADWOOD BOARD OF COMMISSIONERS HAVING VIEWED THE WITHIN PLAT, DO HEREBY APPROVE THE SAME FOR RECORDING IN THE OFFICE OF THE REGISTER OF DEEDS, LAWRENCE COUNTY, S.D. DATED THIS 7 DAY OF July, 2014.

ATTEST: Mary Overton FINANCE OFFICER
Charles Purcell MAYOR

OFFICE OF THE COUNTY DIRECTOR OF EQUALIZATION

STATE OF SOUTH DAKOTA COUNTY OF LAWRENCE
I, LAWRENCE COUNTY DIRECTOR OF EQUALIZATION, DO HEREBY CERTIFY THAT I HAVE RECEIVED A COPY OF THIS PLAT. DATED THIS 8 DAY OF July, 2014.

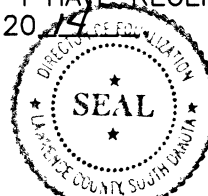
LAWRENCE COUNTY DIRECTOR OF EQUALIZATION: Jim Hodson by Nancy Bodenstern


OFFICE OF THE REGISTER OF DEEDS

STATE OF SOUTH DAKOTA COUNTY OF LAWRENCE
FILED FOR RECORD THIS 8th DAY OF July, 2014, AT 11:59 O'CLOCK, A.M., AND RECORDED IN DOC. 2014-2567.

LAWRENCE COUNTY REGISTER OF DEEDS: Sheree L Green

Fee \$60.00



 PREPARED BY: ARLETH LAND SURVEYING LLC	24 CLIFF STREET DEADWOOD, SD 57732 605-578-1637	DATE: JULY 2, 2014 REV:	APPROVED: JMA DRAWN: FD DWG: 8565 REPLAT.dwg
---	---	----------------------------	--

OFFICE OF
PLANNING, ZONING AND
HISTORIC
PRESERVATION
108 Sherman Street
Telephone (605) 578-2082
Fax (605) 578-2084



Kevin Kuchenbecker
Planning, Zoning and
Historic Preservation Officer
Telephone (605) 578-2082
kevin@cityofdeadwood.com

**PLANNING AND ZONING COMMISSION
STAFF REPORT
CONDITIONAL USE PERMIT**

Staff Report

Date: July 3, 2024
From: Kevin Kuchenbecker
Planning, Zoning & Historic Preservation Officer
RE: Conditional Use Permit – Dwelling Unit, Single Family

APPLICANT(S): Terry and Dawn Bahr

PURPOSE: Application for CUP – Construction of Dwelling Unit, Single Family

ADDRESS: 307 Cliff Street

LEGAL DESCRIPTION: Lot 1 revised of the subdivision of Tract E-1 formerly Lot 1 of the subdivision of Tract E-1 being a portion of Hillside Placer M.S. 749 located in the SE ¼ of Section 27, T5N, R3E, B.H.M. City of Deadwood, Lawrence County, South Dakota.

FILE STATUS: All legal obligations have been completed.

ZONE: CH – Commercial Highway

STAFF FINDINGS:

Surrounding Zoning:

North: CH – Commercial Highway

South: CH – Commercial Highway

East: CH – Commercial Highway

West: CH – Commercial Highway

Surrounding Land Uses:

Highway

Vacation Home Establishment

Vacation Home Establishment

Vacation Home Establishment

SUMMARY OF REQUEST

The applicants have submitted a request for a Conditional Use Permit to construct a Dwelling Unit, Single Family in a CH – Commercial Highway zoning district. On April 24, 2024, a plat was recorded subdividing the existing single lot at 305 Cliff Street into two (2) separate lots. The new lot that was created has been assigned the address 307 Cliff Street. The owners of both 305 and 307 Cliff Street desire to construct a Dwelling Unit, Single Family at 307 Cliff Street.

FACTUAL INFORMATION

1. The property is currently zoned CH – Commercial Highway.
2. The owners of the property operate a Vacation Home Establishment located on the neighboring lot of 305 Cliff Street. The intent of constructing a Dwelling Unit, Single Family at 307 Cliff Street is to provide them a home for personal use near their current Short-Term Rental location.
3. The subject property has access from 305 Cliff Street via a twenty-five (25) foot access easement.
4. The subject property is located within a CH – Commercial Highway zoning location on all sides.
5. The property is not located within a flood zone.
6. Adequate public facilities are available to serve the property.
7. The area is characterized by a mixture of businesses, hotels, campgrounds, and Vacation Home Establishments.

STAFF DISCUSSION

The applicants have submitted a request for a Conditional Use Permit to construct a Dwelling Unit, Single Family and City regulations permit single family homes in CH – Commercial Highway zoning districts with an approved Conditional Use Permit. The applicants operate a Vacation Home Establishment on the neighboring lot, located at 305 Cliff Street, and desire a personal home near their existing business. The applicants are aware that due to the proximity of other Vacation Home Establishments in the area, the Dwelling Unit, Single Family that is to be constructed will be unable to be used as Vacation Home Establishment, to maintain compliance with City of Deadwood Ordinance 17.76.

The Deadwood Zoning Code 17.08 defines a Dwelling Unit, Single Family as the following:

“Dwelling Unit, Single Family” means:

A detached residential dwelling unit other than a mobile home, containing only one dwelling unit and not occupied by more than one family and not used for carrying on any commercial or business activity including providing housing for transient persons.

South Dakota Codified Law 10-13-39 defines a Dwelling Unit, Single Family as the following:

“Dwelling Unit, Single Family” means:

An owner-occupied single-family dwelling is a house, condominium apartment, residential housing consisting of four (4) or less family units, town house, housing cooperatives...which is assessed and taxed as a separate unit, including an attached or unattached garage and the parcel of land upon which the structure is situated is recorded in the records of the director of equalization. A person may only have one dwelling, which is the person’s principal place of residence as defined in Section 12-1-4, classified as an owner-occupied single-family dwelling.

1. Dwelling Units, Single Family may be permitted in the CH – Commercial Highway district under Chapter 17.40.030, Conditional Uses:

The property is in a CH – Commercial Highway zoning district. The applicants plan to utilize the Dwelling Unit, Single Family as an owner-occupied residence, and to maintain compliance with Zoning Code 17.08 by not utilizing the property for any commercial or business activity, including that of providing housing for transient persons.

COMPLIANCE:

1. The Zoning Office provided notice identifying the applicant, describing the project and its location, and giving the scheduled date of the public hearing in accordance with Section 10.10.B.
2. A sign was posted on the property for which the requests were filed.
3. Notice of the time and place of public hearing was published in the designated newspaper of the City of Deadwood.

GENERAL USE STANDARDS FOR CONDITIONAL USE PERMITS:

In reviewing any application under the authority of this chapter and as a further guide to its decision upon the facts of the case, the Commission(s) shall consider, among other things, the following facts:

- A. The proposed use shall be in harmony with the general purposes, goals, objectives, and standards to the City Policy Plan, the ordinance, the district in which it is located, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice by the City of Deadwood.

The City Comprehensive Plan encourages the development of a variety of housing types and to increase the supply of single-family housing units.

- B. Whether or not a community need exists for the proposed use at the proposed location in light of existing and proposed uses of a similar nature in the area and of the need to provide or maintain a proper mix of uses both within the city and also within the immediate area of the proposed use: (a) the proposed use in the proposed location shall not result in either a detrimental over concentration of a particular use from previously permitted uses within the city or within the immediate area of the proposed use.

The subject area is zoned CH – Commercial Highway and is intended to provide locations for commercial uses, which require access to roads and highways, and substantial amounts of parking. The proposed use in the proposed location will not result in a detrimental over concentration of single-family homes.

- C. The proposed use at this location shall not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvement, public sites, or rights-of-way.

The proposed use may not result in a substantial or undue adverse effect on adjacent properties, or the character of the property and the use would not alter the character of the district. To support a denial of a Conditional Use Permit on the grounds that it will cause increased traffic problems, there must be a high degree of probability that the increase would pose a substantial threat to the health and safety of the community.

- D. Whether or not the proposed use increases the proliferation of non-conforming uses as well as previously approved Conditional Use Permits which are still in use, when influenced by matters pertaining to the public health, safety, and general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of provisions and policies of the Policy Plan, this ordinance, or any other plan, program, map or ordinance adopted, or under consideration pursuant to official notice, by the city or other governmental agency having jurisdiction to guide growth and development.

For any conditional use, lot and performance standards shall be the same as similar type uses located in specific districts. The character and use of buildings and structures adjoining or near the property mentioned in the application shall be considered in their entirety.

The proposed use would not increase the proliferation of non-conforming uses for the purposes of Dwelling Units for Single Family use.

- E. Whether or not the proposed use in the proposed area will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, and services specified in this section.

The proposed use will not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services. Existing services will be made available onsite.

CONDITIONS GOVERNING APPLICATIONS AND PROVISIONS:

- A. Following the issuance of a Conditional Use Permit pursuant to the provisions of this ordinance, such permit may be amended, varied, or altered only pursuant to the standards and procedures established by this section for its original approval.
- B. The Board of Adjustments can revoke Conditional Use Permits, once granted, for cause after a hearing is held before them. Complaints seeking the revocation of such permit shall be filed with the Zoning Administrator and may be initiated by the Planning and Zoning Commission OR any three (3) residents within three hundred (300) feet of the property lines of which the application has been filed. All such revocation hearings shall be conducted in the same manner as for the Conditional Use Permit application hearings.
- C. The Planning and Zoning Commission shall have the authority to review Conditional Use Permits at any time and/or on an annual basis and place additional stipulations to mitigate a problem.
- D. If the use permitted under the terms of a Conditional Use Permit has not been started within six (6) months of the date of issuance thereof, said permit shall expire and be canceled by the City Planning Department. Written notice thereof, shall be given to the person(s) affected, together with notice that further use or work as described in the canceled permit shall not proceed, unless and until a new conditional use permit has been obtained.
- E. If the use permitted under the terms of a Conditional Use Permit ceases, for whatever reason, for a period of twelve (12) months, said permit shall expire and be canceled by the City Planning Department. Written notice thereof, shall be given to the person(s) affected, together with notice that further use or work as described in the canceled permit shall not proceed, unless and until a new conditional use permit has been obtained.

If approved, staff recommendations for stipulation(s):

1. The Conditional Use Permit allows for usage as an owner-occupied residence. Utilization of the property for any commercial or business activity, including that of providing housing for transient persons, is not permitted.
2. A lot or legal subdivision shall be allowed only one (1) Conditional Use Permit per ordinance 17.76.010.
3. City of Deadwood Building Inspector must inspect building to ensure it meets all applicable building codes.

ACTION REQUIRED:

1. Approval/Denial by Deadwood Planning and Zoning Commission
2. Approval/Denial by Deadwood Board of Adjustment

Return Completed Form To:
Planning and Zoning
108 Sherman Street
Deadwood, SD 57732



Questions Contact:
Kevin Kuchenbecker
(605) 578-2082 or
kevin@cityofdeadwood.com

Application No. _____

APPLICATION FOR CONDITIONAL USE PERMIT

Application Fee: \$500.00

Applicants: Please read thoroughly prior to completing this form. Only complete applications will be considered for review.

Name of Proposed Development: _____

Street Location of Property: 307 Cliff St, Deadwood SD 57732

Legal Description of Property: Lot 1 Revised of Tract E-1 Formerly Lot 1 of the subdivision of tract E-1 being a portion of Hillside Placer MS 749

Zoning Classification of Property: Highway Commercial

Name of Property Owner: Perry + Dawn Bahr Telephone: (602) 300 4350

Address: 15335 E Orchid Ln Gilbert AZ 85296
Street City State Zip

Name of Applicant: _____ Telephone: () _____

Address: _____
Street City State Zip

1. The following documents shall be submitted:

- a. An improvement survey, including all easements,
- b. Development plan, including site plan with location of buildings, usable open space, off-street parking, loading areas, refuse area, ingress/egress, screening, proposed or existing signage, existing streets, and
- c. A written statement addressing the criteria for approval.

Uses of Building or Land: Personal residence

Signature of Applicant: _____ Date: _____

Signature of Property Owner: Perry Bahr + Dawn Bahr Date: 6/11/24

Fee: \$ 500 Paid On 6/11/24 Receipt Number 194086

Legal Notice Published _____ Date: _____ Hearing Date: _____

PLANNING AND ZONING ADMINISTRATOR:			
Approved/P&Z Administrator:	Yes	No	Signature: _____ Date: _____
PLANNING AND ZONING COMMISSION:			
Approved/P&Z Commission:	Yes	No	Date: _____
DEADWOOD BOARD OF ADJUSTMENT:			
Approved/City Commission:	Yes	No	Date: _____

Reason for Denial (if necessary): _____

From: [Dawn Bahr \(602\)-418-4412](mailto:Dawn Bahr (602)-418-4412)
To: Leah Blue-Jones
Subject: Bahr written statement for 307 Cliff
Date: Wednesday, June 12, 2024 10:41:21 AM

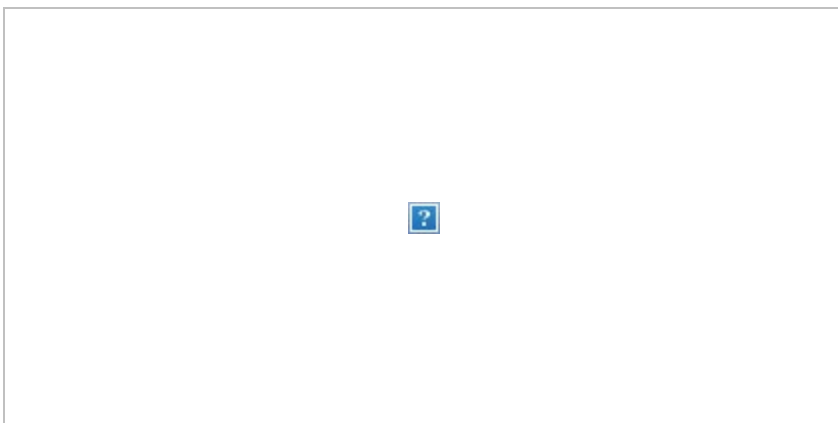
Good morning,

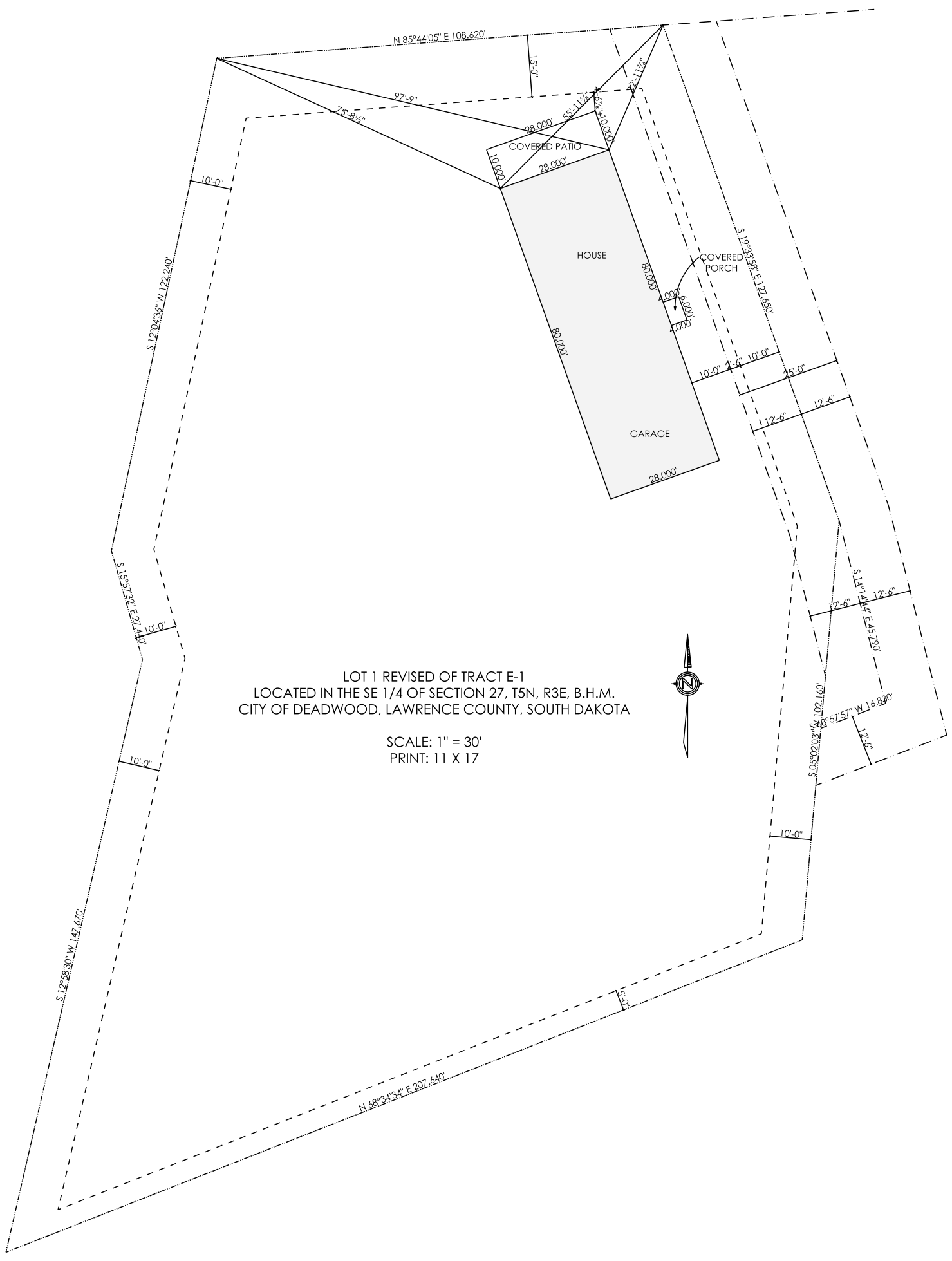
Please see Terry and Dawn's written statement

Terry and Dawn, who own a vacation rental here in Deadwood, are originally from South Dakota and have come to love the town and the Hills. They would like to construct a personal home at 307 Cliff Street so they can enjoy the property themselves and maintain 305 Cliff Street.

Thank you
Terry and Dawn Bahr

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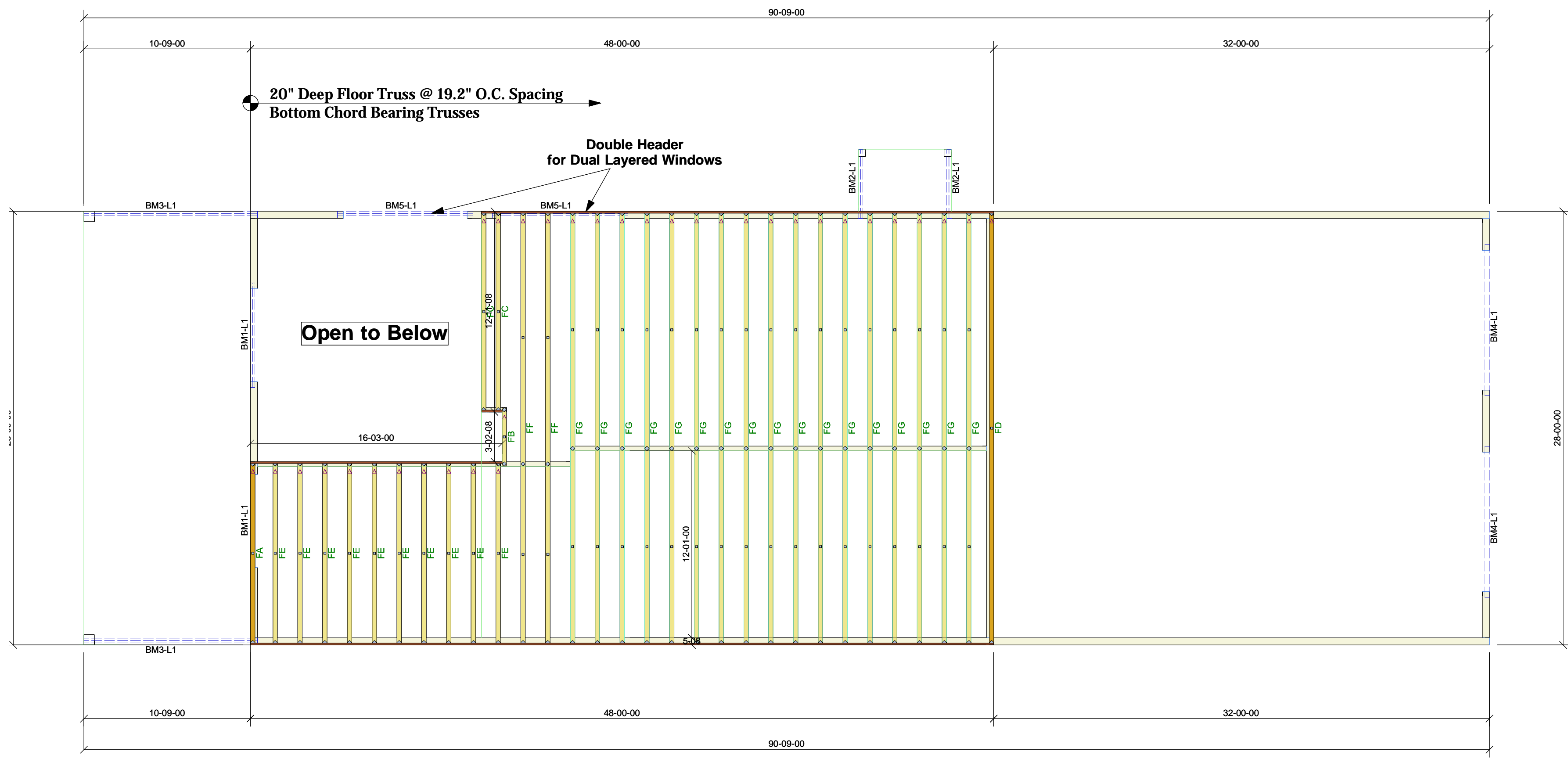


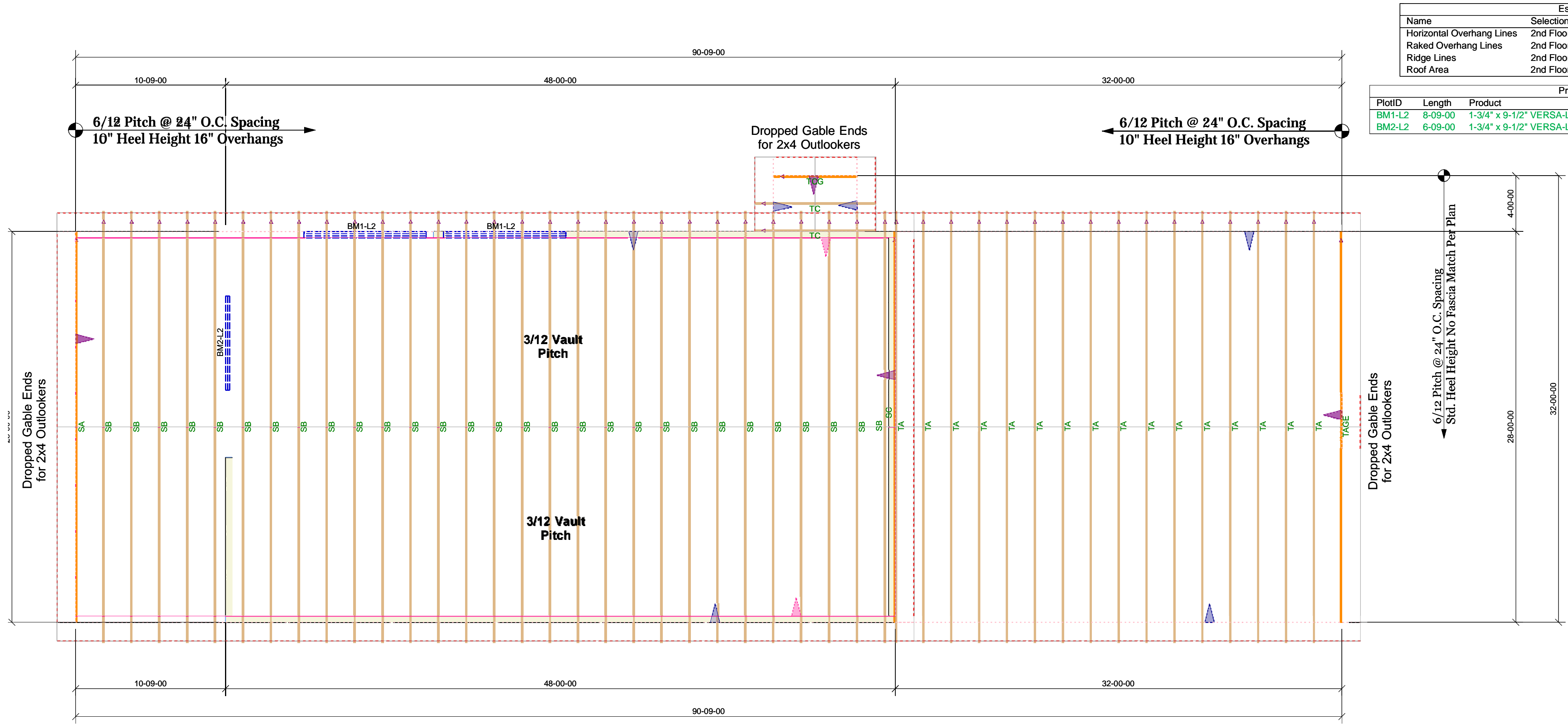
LOT 1 REVISED OF TRACT E-1
 LOCATED IN THE SE 1/4 OF SECTION 27, T5N, R3E, B.H.M.
 CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA

SCALE: 1" = 30'
 PRINT: 11 X 17



Products					
PlotID	Length	Product	Plies	Net Qty	Fab Type
BM1-L1	6-09-00	1-3/4" x 9-1/2" VERSA-LAM® LVL 2.1E 2800 DF	2	4	MFD
BM2-L1	4-05-08	1-3/4" x 9-1/2" VERSA-LAM® LVL 2.1E 2800 DF	2	4	MFD
BM3-L1	11-02-08	1-3/4" x 11-7/8" VERSA-LAM® LVL 2.1E 2800 DF	3	6	MFD
BM4-L1	9-09-00	1-3/4" x 11-7/8" VERSA-LAM® LVL 2.1E 2800 DF	2	4	MFD
BM5-L1	8-09-00	1-3/4" x 11-7/8" VERSA-LAM® LVL 2.1E 2800 DF	3	6	MFD





Estimation				
Name	Selection	Formula	Calculation	
Horizontal Overhang Lines	2nd Floor	Horizontal Overhang Lines	200.17 ft	
Raked Overhang Lines	2nd Floor	Raked Overhang Lines	123.18 ft	
Ridge Lines	2nd Floor	Ridge Lines	100 ft	
Roof Area	2nd Floor	Roof Area	3300 ft²	

Products					
PlotID	Length	Product	Plies	Net Qty	Fab Type
BM1-L2	8-09-00	1-3/4" x 9-1/2" VERSA-LAM® 2.0 2800 DF	3	6	MFD
BM2-L2	6-09-00	1-3/4" x 9-1/2" VERSA-LAM® 2.0 2800 DF	2	2	MFD

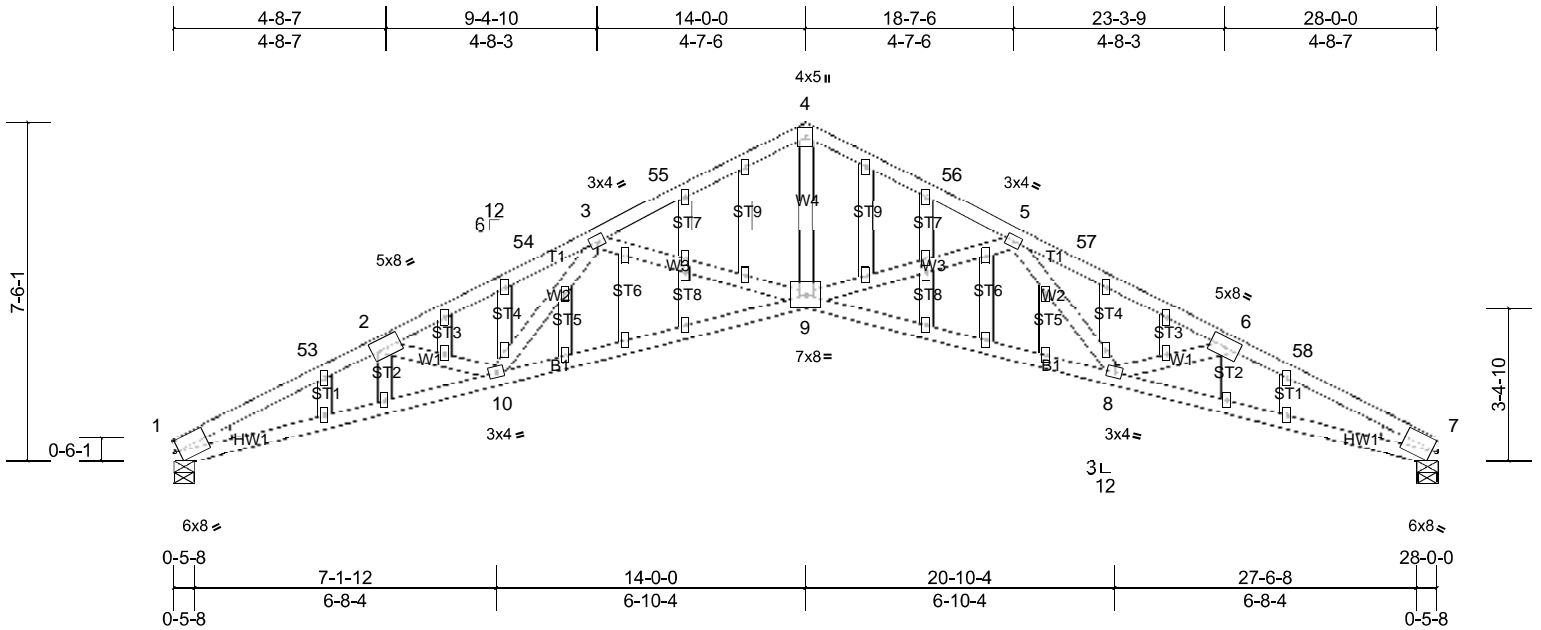
Job Q2401329	Truss SA	Truss Type Scissor Structural Gable	Qty 1	Ply 1	Superior Custom Homes Job Reference (optional)	Section 5 Item c.
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Black Hills Structural Components, Rapid City, SD, user

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Plate Offsets (X, Y): [1:Edge,0-2-14], [6:0-1-4,0-2-8], [7:Edge,0-2-14], [13:0-1-10,0-1-0], [32:0-1-10,0-1-0]

Loading	(psf)	Spacing	2-0-0	CSI	0.65	DEFL	in	(loc)	l/defl	L/d	PLATES	GRIP
TCLL	30.0	Plate Grip DOL	1.15	TC	0.65	Vert(LL)	-0.34	9-10	>989	240	MT20	197/144
(Roof Snow = 30.0)		Lumber DOL	1.15	BC	0.61	Vert(CT)	-0.60	9-10	>563	180		
TCDL	10.0	Rep Stress Incr	YES	WB	0.54	Horz(CT)	0.39	7	n/a	n/a		
BCLL	0.0*	Code	IRC2021/TPI2014	Matrix-MS								
BCDL	10.0											
											Weight: 131 lb	FT = 20%

LUMBER
TOP CHORD 2x4 SPF 2100F 1.8E
BOT CHORD 2x4 SPF 2100F 1.8E
WEBS 2x4 SPF No.2
OTHERS 2x4 SPF No.2
WEDGE Left: 2x4 SPF No.2
Right: 2x4 SPF No.2

BRACING
TOP CHORD
BOT CHORD

Structural wood sheathing directly applied or 3-1-5 oc purlins.
Rigid ceiling directly applied or 10-0-0 oc bracing.

MiTek recommends that Stabilizers and required cross bracing be installed during truss erection, in accordance with Stabilizer Installation guide.

REACTIONS (lb/size) 1=1383/0-5-4, (min. 0-1-11), 7=1383/0-5-4, (min. 0-1-11)
Max Horiz 1=-121 (LC 13)
Max Uplift 1=-151 (LC 12), 7=-151 (LC 13)
Max Grav 1=1394 (LC 18), 7=1394 (LC 19)

FORCES (lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.
TOP CHORD 1-53=-3955/516, 2-53=-3850/532, 2-54=-3770/445, 3-54=-3613/460, 3-55=-2922/368, 4-55=-2826/391, 4-56=-2826/390, 5-56=-2920/368, 5-57=-3650/466, 6-57=-3807/451, 6-58=-3775/509, 7-58=-3880/495
BOT CHORD 1-10=-549/3511, 9-10=-393/3381, 8-9=-334/3373, 7-8=-405/3432
WEBS 4-9=-205/2214, 3-10=0/297, 3-9=-938/267, 5-9=-930/272, 5-8=-12/323

- NOTES**
- 1) Wind: ASCE 7-16; Vult=115mph (3-second gust) Vasd=91mph; TC DL=6.0psf; BCDL=6.0psf; h=25ft; Cat. II; Exp C; Enclosed; MWFRS (envelope) exterior zone and C-C Exterior(2E) 0-2-10 to 3-2-10, Interior (1) 3-2-10 to 11-0-0, Exterior(2R) 11-0-0 to 17-0-0, Interior (1) 17-0-0 to 24-9-6, Exterior(2E) 24-9-6 to 27-9-6 zone; cantilever left and right exposed; end vertical left and right exposed; C-C for members and forces & MWFRS for reactions shown; Lumber DOL=1.60 plate grip DOL=1.60
 - 2) Truss designed for wind loads in the plane of the truss only. For studs exposed to wind (normal to the face), see Standard Industry Gable End Details as applicable, or consult qualified building designer as per ANSI/TPI 1.
 - 3) TCLL: ASCE 7-16; Pf=30.0 psf (Lum DOL=1.15 Plate DOL=1.15); Is=1.0; Rough Cat C; Partially Exp.; Ce=1.0; Cs=1.00; Ct=1.10
 - 4) Unbalanced snow loads have been considered for this design.
 - 5) All plates are 2x4 MT20 unless otherwise indicated.
 - 6) Gable studs spaced at 1-4-0 oc.
 - 7) This truss has been designed for a 10.0 psf bottom chord live load nonconcurrent with any other live loads.
 - 8) * This truss has been designed for a live load of 20.0psf on the bottom chord in all areas where a rectangle 3-06-00 tall by 2-00-00 wide will fit between the bottom chord and any other members.
 - 9) Bearing at joint(s) 1, 7 considers parallel to grain value using ANSI/TPI 1 angle to grain formula. Building designer should verify capacity of bearing surface.
 - 10) Provide mechanical connection (by others) of truss to bearing plate capable of withstanding 151 lb uplift at joint 1 and 151 lb uplift at joint 7.

LOAD CASE(S) Standard

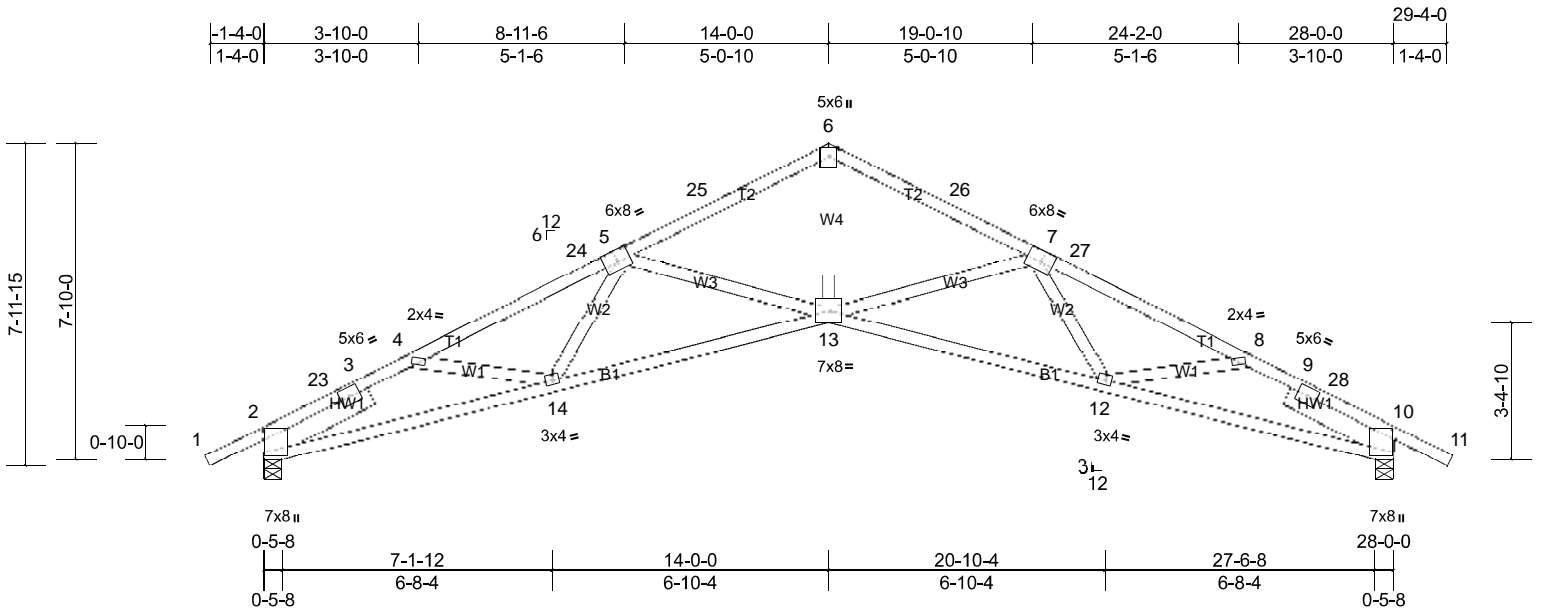
Job Q2401329	Truss SB	Truss Type Scissor	Qty 29	Ply 1	Superior Custom Homes Job Reference (optional)	Section 5 Item c.
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Plate Offsets (X, Y): [2:0-2-13,0-0-1], [5:0-4-0,Edge], [7:0-4-0,Edge], [10:0-2-13,0-0-1]

Loading	(psf)	Spacing	2-0-0	CSI	DEFL	in	(loc)	l/defl	L/d	PLATES	GRIP	
TCLL	30.0	Plate Grip DOL	1.15	TC	0.90	Vert(LL)	-0.31	12-13	>999	240	MT20	197/144
(Roof Snow = 30.0)		Lumber DOL	1.15	BC	0.92	Vert(CT)	-0.56	12-13	>602	180		
TCDL	10.0	Rep Stress Incr	YES	WB	0.50	Horz(CT)	0.37	10	n/a	n/a		
BCLL	0.0*	Code	IRC2021/TP12014	Matrix-MS								
BCDL	10.0											
											Weight: 115 lb	FT = 20%

LUMBER
 TOP CHORD 2x4 SPF No.2
 BOT CHORD 2x4 SPF No.2
 WEBS 2x4 SPF No.2
 SLIDER Left 2x6 SPF 2100F 1.8E -- 3-0-0, Right 2x6 SPF 2100F 1.8E -- 3-0-0

BRACING
 TOP CHORD
 BOT CHORD

Structural wood sheathing directly applied or 1-9-11 oc purlins.
 Rigid ceiling directly applied or 2-2-0 oc bracing.

MiTek recommends that Stabilizers and required cross bracing be installed during truss erection, in accordance with Stabilizer Installation guide.

REACTIONS (lb/size) 2=1512/0-5-4, (min. 0-2-5), 10=1512/0-5-4, (min. 0-2-5)
 Max Horiz 2=-136 (LC 13)
 Max Uplift 2=-188 (LC 12), 10=-188 (LC 13)
 Max Grav 2=1522 (LC 19), 10=1522 (LC 20)

FORCES (lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.
 TOP CHORD 3-4=-3255/456, 4-24=-3459/371, 5-24=-3309/388, 5-25=-2775/310, 6-25=-2667/327, 6-26=-2667/327, 7-26=-2775/310, 7-27=-3309/367, 8-27=-3459/351, 8-9=-3255/390
 BOT CHORD 2-14=-469/2828, 13-14=-372/3195, 12-13=-225/3195, 10-12=-252/2828
 WEBS 6-13=-135/2020, 4-14=0/361, 5-13=-880/269, 7-13=-880/279, 8-12=0/361

- NOTES**
- 1) Wind: ASCE 7-16; Vult=115mph (3-second gust) Vasd=91mph; TCDL=6.0psf; BCDL=6.0psf; h=25ft; Cat. II; Exp C; Enclosed; MWFRS (envelope) exterior zone and C-C Exterior(2E) -1-4-13 to 1-7-3, Interior (1) 1-7-3 to 11-0-0, Exterior(2R) 11-0-0 to 17-0-0, Interior (1) 17-0-0 to 26-4-13, Exterior(2E) 26-4-13 to 29-4-13 zone; cantilever left and right exposed; end vertical left and right exposed; C-C for members and forces & MWFRS for reactions shown; Lumber DOL=1.60 plate grip DOL=1.60
 - 2) TCLL: ASCE 7-16; Pf=30.0 psf (Lum DOL=1.15 Plate DOL=1.15); Is=1.0; Rough Cat C; Partially Exp.; Ce=1.0; Cs=1.00; Ct=1.10
 - 3) Unbalanced snow loads have been considered for this design.
 - 4) This truss has been designed for greater of min roof live load of 16.0 psf or 1.00 times flat roof load of 30.0 psf on overhangs non-concurrent with other live loads.
 - 5) This truss has been designed for a 10.0 psf bottom chord live load nonconcurrent with any other live loads.
 - 6) * This truss has been designed for a live load of 20.0psf on the bottom chord in all areas where a rectangle 3-06-00 tall by 2-00-00 wide will fit between the bottom chord and any other members.
 - 7) Bearing at joint(s) 2, 10 considers parallel to grain value using ANSI/TP1 1 angle to grain formula. Building designer should verify capacity of bearing surface.
 - 8) Provide mechanical connection (by others) of truss to bearing plate capable of withstanding 188 lb uplift at joint 2 and 188 lb uplift at joint 10.

LOAD CASE(S) Standard

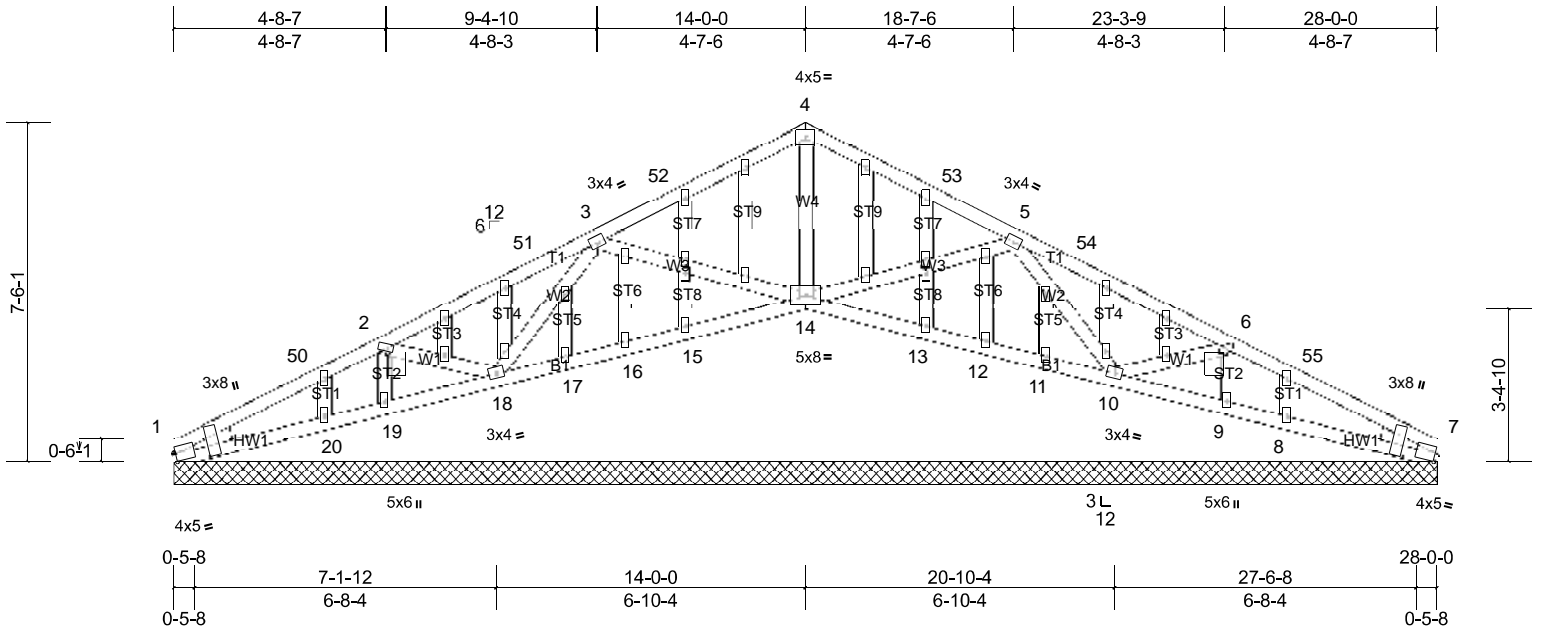
Job Q2401329	Truss SC	Truss Type Scissor Structural Gable	Qty 1	Ply 1	Superior Custom Homes Job Reference (optional)	Section 5 Item c.
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Black Hills Structural Components, Rapid City, SD, user

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Scale = 1:50.5

Plate Offsets (X, Y): [1:0-0-6,Edge], [1:0-3-4,0-9-4], [7:0-0-6,Edge], [7:0-3-4,0-9-4], [23:0-1-10,0-1-0], [31:0-0-10,0-1-0], [36:0-1-10,0-1-0], [43:0-0-10,0-1-0]

Loading	(psf)	Spacing	2-0-0	CSI	0.64	DEFL	in	(loc)	l/defl	L/d	PLATES	GRIP
TCLL	30.0	Plate Grip DOL	1.15	TC	0.64	Vert(LL)	n/a	-	n/a	999	MT20	197/144
(Roof Snow = 30.0)		Lumber DOL	1.15	BC	0.44	Vert(TL)	n/a	-	n/a	999		
TCDL	10.0	Rep Stress Incr	YES	WB	0.31	Horiz(TL)	-0.02	7	n/a	n/a		
BCLL	0.0*	Code	IRC2021/TPI2014	Matrix-MS								
BCDL	10.0											
Weight: 131 lb FT = 20%												

LUMBER
TOP CHORD 2x4 SPF No.2
BOT CHORD 2x4 SPF No.2
WEBS 2x4 SPF No.2
OTHERS 2x4 SPF No.2
WEDGE Left: 2x4 SPF No.2
Right: 2x4 SPF No.2

BRACING
TOP CHORD
BOT CHORD

Structural wood sheathing directly applied or 6-0-0 oc purlins.
Rigid ceiling directly applied or 6-0-0 oc bracing.
MiTek recommends that Stabilizers and required cross bracing be installed during truss erection, in accordance with Stabilizer Installation guide.

REACTIONS All bearings 28-0-0.
(lb) - Max Horiz 1=129 (LC 12)
Max Uplift All uplift 100 (lb) or less at joint(s) 1, 7, 8, 17, 19 except 9=140 (LC 19), 10=281 (LC 13), 14=229 (LC 12), 16=147 (LC 18)
Max Grav All reactions 250 (lb) or less at joint(s) 9, 11, 12, 13, 15, 16, 19, 20 except 1=372 (LC 18), 8=350 (LC 19), 10=993 (LC 19), 14=1076 (LC 18), 17=353 (LC 18)

FORCES (lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.
TOP CHORD 1-50=-734/184, 2-50=-629/195, 2-51=-309/89, 3-52=-122/405, 4-52=-108/617, 4-53=-92/554, 5-53=-105/476, 5-54=-181/979, 6-54=-204/871, 6-55=-45/442, 7-55=-60/368
BOT CHORD 1-20=-244/644, 19-20=-240/644, 18-19=-232/610, 17-18=-40/295, 15-16=-29/258, 14-15=-33/250, 13-14=-425/180, 12-13=-420/179, 11-12=-421/178, 10-11=-425/178, 9-10=-345/117, 8-9=-385/128, 7-8=-313/106
WEBS 4-14=-788/170, 2-18=-440/216, 3-14=-727/261, 5-10=-1003/268, 6-10=-470/222

- NOTES**
- 1) Wind: ASCE 7-16; Vult=115mph (3-second gust) Vasd=91mph; TCCL=6.0psf; BCDL=6.0psf; h=25ft; Cat. II; Exp C; Enclosed; MWFRS (envelope) exterior zone and C-C Exterior(2E) 0-0-0 to 3-0-0, Interior (1) 3-0-0 to 11-0-0, Exterior(2R) 11-0-0 to 17-0-0, Interior (1) 17-0-0 to 25-0-0, Exterior(2E) 25-0-0 to 28-0-0 zone; cantilever left and right exposed; end vertical left and right exposed; C-C for members and forces & MWFRS for reactions shown; Lumber DOL=1.60 plate grip DOL=1.60
 - 2) Truss designed for wind loads in the plane of the truss only. For studs exposed to wind (normal to the face), see Standard Industry Gable End Details as applicable, or consult qualified building designer as per ANSI/TPI 1.
 - 3) TCCL: ASCE 7-16; Pf=30.0 psf (Lum DOL=1.15 Plate DOL=1.15); Is=1.0; Rough Cat C; Partially Exp.; Ce=1.0; Cs=1.00; Ct=1.10
 - 4) Unbalanced snow loads have been considered for this design.
 - 5) All plates are 2x4 MT20 unless otherwise indicated.
 - 6) Gable requires continuous bottom chord bearing.
 - 7) Gable studs spaced at 1-4-0 oc.
 - 8) This truss has been designed for a 10.0 psf bottom chord live load nonconcurrent with any other live loads.
 - 9) * This truss has been designed for a live load of 20.0psf on the bottom chord in all areas where a rectangle 3-06-00 tall by 2-00-00 wide will fit between the bottom chord and any other members.
 - 10) Provide mechanical connection (by others) of truss to bearing plate capable of withstanding 100 lb uplift at joint(s) 1, 17, 19, 8 except (jt=lb) 14=228, 10=281, 16=147, 9=140.
 - 11) Beveled plate or shim required to provide full bearing surface with truss chord at joint(s) 14, 10, 15, 16, 17, 19, 20, 13, 12, 11, 9, 8.

LOAD CASE(S) Standard

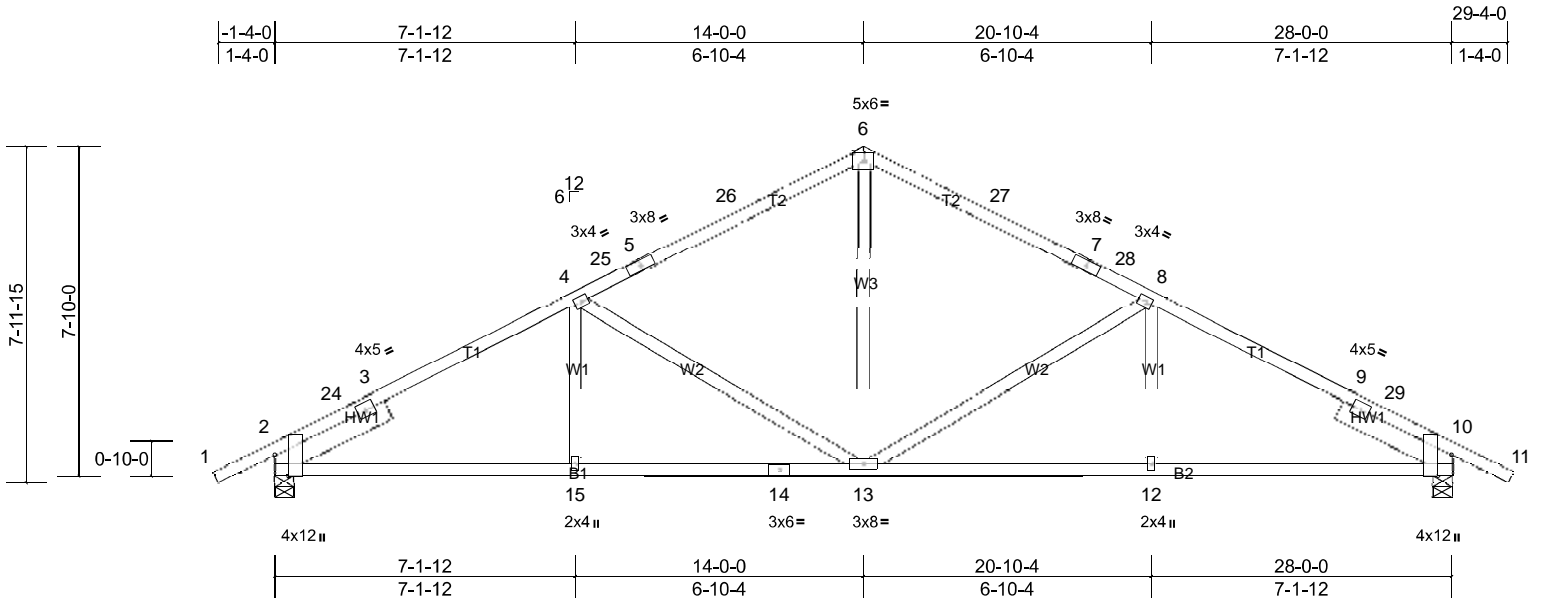
Job Q2401329	Truss TA	Truss Type Common	Qty 16	Ply 1	Superior Custom Homes Job Reference (optional)	Section 5 Item c.
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Black Hills Structural Components, Rapid City, SD, user

Run: 8.72 S Jan 22 2024 Print: 8.720 S Jan 22 2024 MiTek Industries, Inc. Thu Mar 07 12:53:02

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Scale = 1:54.2

Plate Offsets (X, Y): [2:0-6-1,Edge], [10:0-6-1,Edge]

Loading	(psf)	Spacing	2-0-0	CSI	0.80	DEFL	in (loc)	l/defl	L/d	PLATES	GRIP
TCLL	30.0	Plate Grip DOL	1.15	TC	0.80	Vert(LL)	-0.13 13-15	>999	240	MT20	197/144
(Roof Snow = 30.0)		Lumber DOL	1.15	BC	0.81	Vert(CT)	-0.24 13-15	>999	180		
TCDL	10.0	Rep Stress Incr	YES	WB	0.83	Horz(CT)	0.09 10	n/a	n/a		
BCLL	0.0*	Code	IRC2021/TPI2014	Matrix-MS							
BCDL	10.0									Weight: 117 lb	FT = 20%

LUMBER
TOP CHORD 2x4 SPF 2100F 1.8E *Except* T1:2x4 SPF No.2
BOT CHORD 2x4 SPF No.2
WEBS 2x4 SPF No.2
SLIDER Left 2x6 SPF 2100F 1.8E -- 3-0-0, Right 2x6 SPF 2100F 1.8E -- 3-0-0

BRACING
TOP CHORD
BOT CHORD

Structural wood sheathing directly applied or 3-0-3 oc purlins.
Rigid ceiling directly applied or 10-0-0 oc bracing.

MiTek recommends that Stabilizers and required cross bracing be installed during truss erection, in accordance with Stabilizer Installation guide.

REACTIONS (lb/size) 2=1512/0-5-8, (min. 0-2-6), 10=1512/0-5-8, (min. 0-2-6)
Max Horiz 2=-136 (LC 13)
Max Uplift 2=-188 (LC 12), 10=-188 (LC 13)
Max Grav 2=1522 (LC 19), 10=1522 (LC 20)

FORCES (lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.
TOP CHORD 2-24=-523/0, 3-24=-431/0, 3-4=-2156/299, 4-25=-1614/266, 5-25=-1558/266, 5-26=-1491/283, 6-26=-1476/299, 6-27=-1476/299, 7-27=-1491/283, 7-28=-1558/266, 8-28=-1614/266, 8-9=-2156/299, 9-29=-431/0, 10-29=-448/0
BOT CHORD 2-15=-270/1895, 14-15=-244/1895, 13-14=-244/1895, 12-13=-137/1895, 10-12=-137/1895
WEBS 4-13=-749/227, 6-13=-57/796, 8-13=-749/227

- NOTES**
- 1) Wind: ASCE 7-16; Vult=115mph (3-second gust) Vasd=91mph; TCDL=6.0psf; BCDL=6.0psf; h=25ft; Cat. II; Exp C; Enclosed; MWFRS (envelope) exterior zone and C-C Exterior(2E) -1-4-13 to 1-7-3, Interior (1) 1-7-3 to 11-0-0, Exterior(2R) 11-0-0 to 17-0-0, Interior (1) 17-0-0 to 26-4-13, Exterior(2E) 26-4-13 to 29-4-13 zone; cantilever left and right exposed; end vertical left and right exposed; C-C for members and forces & MWFRS for reactions shown; Lumber DOL=1.60 plate grip DOL=1.60
 - 2) TCLL: ASCE 7-16; Pf=30.0 psf (Lum DOL=1.15 Plate DOL=1.15); Is=1.0; Rough Cat C; Partially Exp.; Ce=1.0; Cs=1.00; Ct=1.10
 - 3) Unbalanced snow loads have been considered for this design.
 - 4) This truss has been designed for greater of min roof live load of 16.0 psf or 1.00 times flat roof load of 30.0 psf on overhangs non-concurrent with other live loads.
 - 5) This truss has been designed for a 10.0 psf bottom chord live load nonconcurrent with any other live loads.
 - 6) * This truss has been designed for a live load of 20.0psf on the bottom chord in all areas where a rectangle 3-06-00 tall by 2-00-00 wide will fit between the bottom chord and any other members.
 - 7) Provide mechanical connection (by others) of truss to bearing plate capable of withstanding 188 lb uplift at joint 2 and 188 lb uplift at joint 10.

LOAD CASE(S) Standard

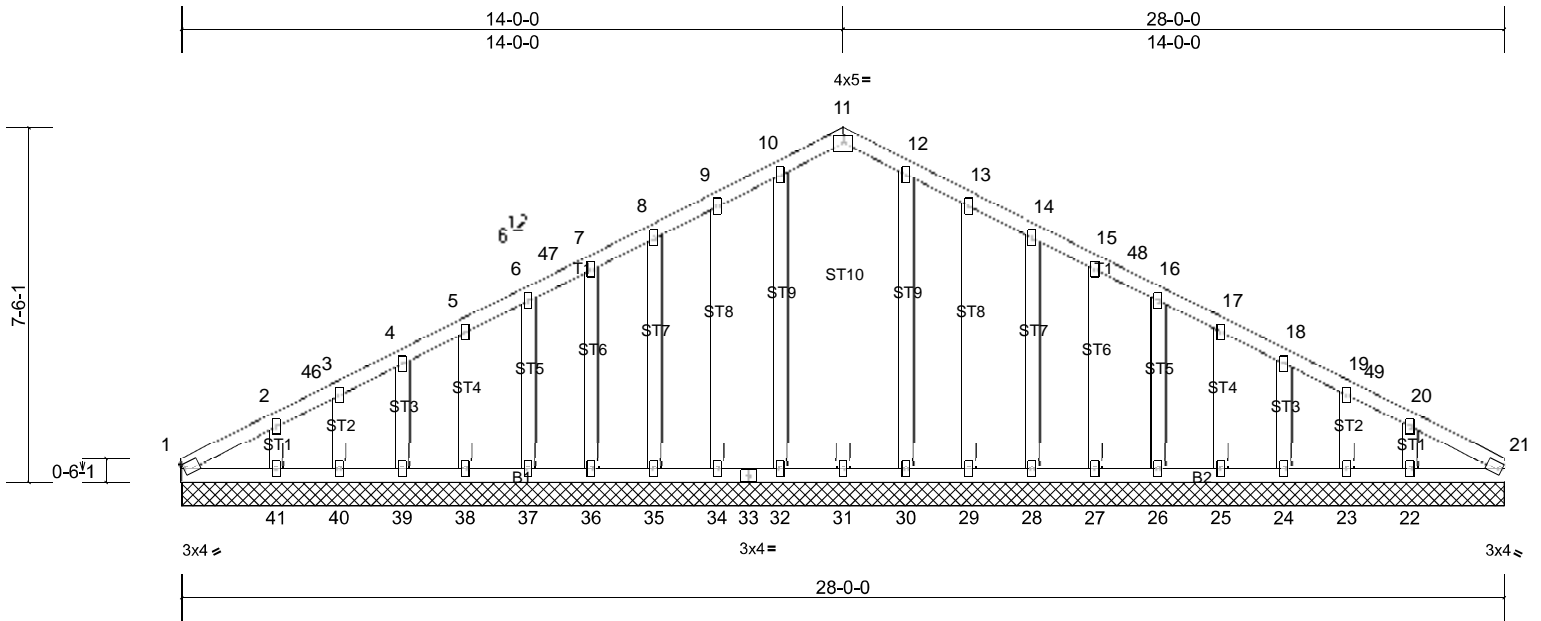
Job Q2401329	Truss TAGE	Truss Type Common Supported Gable	Qty 1	Ply 1	Superior Custom Homes Job Reference (optional)	Section 5 Item c.
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Black Hills Structural Components, Rapid City, SD, user

Run: 8.72 S Jan 22 2024 Print: 8.720 S Jan 22 2024 MiTek Industries, Inc. Thu Mar 07 12:53:03

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Scale = 1:48.2

Loading	(psf)	Spacing	2-0-0	CSI	DEFL	in	(loc)	l/defl	L/d	PLATES	GRIP	
TCLL	30.0	Plate Grip DOL	1.15	TC	0.13	Vert(LL)	n/a	-	n/a	999	MT20	197/144
(Roof Snow = 30.0)		Lumber DOL	1.15	BC	0.10	Vert(TL)	n/a	-	n/a	999		
TCDL	10.0	Rep Stress Incr	YES	WB	0.18	Horiz(TL)	0.00	21	n/a	n/a		
BCLL	0.0*	Code	IRC2021/TPI2014	Matrix-MS								
BCDL	10.0											Weight: 150 lb FT = 20%

LUMBER
 TOP CHORD 2x4 SPF No.2
 BOT CHORD 2x4 SPF No.2
 OTHERS 2x4 SPF No.2

BRACING
 TOP CHORD
 BOT CHORD

Structural wood sheathing directly applied or 10-0-0 oc purlins.
 Rigid ceiling directly applied or 6-0-0 oc bracing.

MiTek recommends that Stabilizers and required cross bracing be installed during truss erection, in accordance with Stabilizer Installation guide.

REACTIONS All bearings 28-0-0.
 (lb) - Max Horiz 1=127 (LC 16), 42=127 (LC 16)
 Max Uplift All uplift 100 (lb) or less at joint(s) 1, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42
 Max Grav All reactions 250 (lb) or less at joint(s) 1, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42 except 22=322 (LC 1)

FORCES (lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.
 TOP CHORD 10-11=-72/271, 11-12=-72/271

- NOTES**
- 1) Wind: ASCE 7-16; Vult=115mph (3-second gust) Vasd=91mph; TCDL=6.0psf; BCDL=6.0psf; h=25ft; Cat. II; Exp C; Enclosed; MWFRS (envelope) exterior zone and C-C Corner(3E) 0-0-0 to 3-0-0, Exterior(2N) 3-0-0 to 11-0-0, Corner(3R) 11-0-0 to 17-0-0, Exterior(2N) 17-0-0 to 25-0-0, Corner(3E) 25-0-0 to 28-0-0 zone; cantilever left and right exposed; end vertical left and right exposed; C-C for members and forces & MWFRS for reactions shown; Lumber DOL=1.60 plate grip DOL=1.60
 - 2) Truss designed for wind loads in the plane of the truss only. For studs exposed to wind (normal to the face), see Standard Industry Gable End Details as applicable, or consult qualified building designer as per ANSI/TPI 1.
 - 3) TCLL: ASCE 7-16; Pf=30.0 psf (Lum DOL=1.15 Plate DOL=1.15); Is=1.0; Rough Cat C; Partially Exp.; Ce=1.0; Cs=1.00; Ct=1.10
 - 4) Unbalanced snow loads have been considered for this design.
 - 5) All plates are 2x4 MT20 unless otherwise indicated.
 - 6) Gable requires continuous bottom chord bearing.
 - 7) Gable studs spaced at 1-4-0 oc.
 - 8) This truss has been designed for a 10.0 psf bottom chord live load nonconcurrent with any other live loads.
 - 9) * This truss has been designed for a live load of 20.0psf on the bottom chord in all areas where a rectangle 3-06-00 tall by 2-00-00 wide will fit between the bottom chord and any other members.
 - 10) Provide mechanical connection (by others) of truss to bearing plate capable of withstanding 100 lb uplift at joint(s) 1, 32, 34, 35, 36, 37, 38, 39, 40, 41, 30, 29, 28, 27, 26, 25, 24, 23, 22, 1.

LOAD CASE(S) Standard

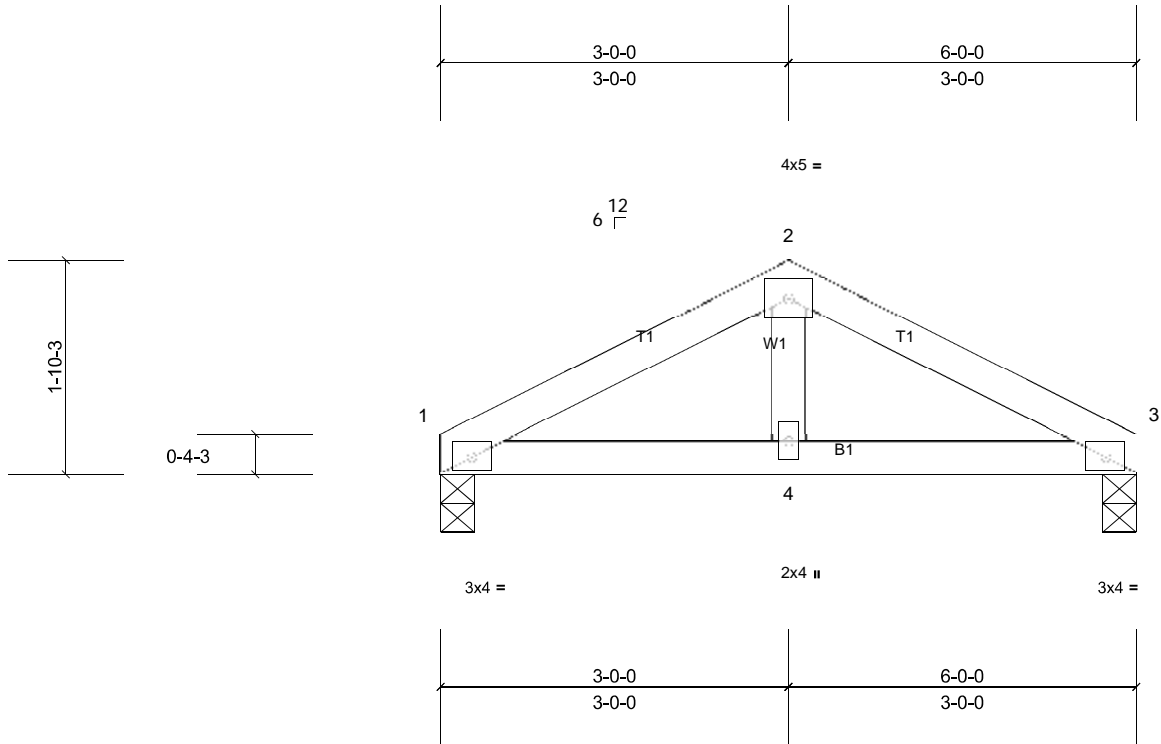
Job Q2401329	Truss TC	Truss Type Common	Qty 2	Ply 1	Superior Custom Homes Job Reference (optional)	Section 5 Item c.
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Black Hills Structural Components, Rapid City, SD, user

Run: 8.72 S Jan 22 2024 Print: 8.720 S Jan 22 2024 MiTek Industries, Inc. Thu Mar 07 12:53:03

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Scale = 1:19.7

Loading	(psf)	Spacing	1-11-4	CSI	DEFL	in	(loc)	l/defl	L/d	PLATES	GRIP	
TCLL (Roof Snow = 30.0)	30.0	Plate Grip DOL	1.15	TC	0.16	Vert(LL)	-0.01	4-10	>999	240	MT20	197/144
TCDL	10.0	Lumber DOL	1.15	BC	0.23	Vert(CT)	-0.01	4-10	>999	180		
BCLL	0.0*	Rep Stress Incr	YES	WB	0.03	Horz(CT)	0.00	3	n/a	n/a		
BCDL	10.0	Code	IRC2021/TPI2014	Matrix-MP							Weight: 16 lb	FT = 20%

LUMBER

TOP CHORD 2x4 SPF No.2
 BOT CHORD 2x4 SPF No.2
 WEBS 2x4 SPF No.2

BRACING

TOP CHORD Structural wood sheathing directly applied or 6-0-0 oc purlins.
 BOT CHORD Rigid ceiling directly applied or 10-0-0 oc bracing.

REACTIONS (lb/size) 1=291/0-3-8, (min. 0-1-8), 3=291/0-3-8, (min. 0-1-8)

Max Horiz 1=-26 (LC 13)
 Max Uplift 1=-33 (LC 12), 3=-33 (LC 13)
 Max Grav 1=333 (LC 18), 3=333 (LC 19)

FORCES (lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.

TOP CHORD 1-2=-402/178, 2-3=-402/178
 BOT CHORD 1-4=-92/315, 3-4=-92/315

NOTES

- 1) Wind: ASCE 7-16; Vult=115mph (3-second gust) Vasd=91mph; TCDL=6.0psf; BCDL=6.0psf; h=25ft; Cat. II; Exp C; Enclosed; MWFRS (envelope) exterior zone and C-C Exterior(2E) zone; cantilever left and right exposed; end vertical left and right exposed; C-C for members and forces & MWFRS for reactions shown; Lumber DOL=1.60 plate grip DOL=1.60
- 2) TCLL: ASCE 7-16; Pf=30.0 psf (Lum DOL=1.15 Plate DOL=1.15); Is=1.0; Rough Cat C; Partially Exp.; Ce=1.0; Cs=1.00; Ct=1.10
- 3) Unbalanced snow loads have been considered for this design.
- 4) This truss has been designed for a 10.0 psf bottom chord live load nonconcurrent with any other live loads.
- 5) * This truss has been designed for a live load of 20.0psf on the bottom chord in all areas where a rectangle 3-06-00 tall by 2-00-00 wide will fit between the bottom chord and any other members.
- 6) Provide mechanical connection (by others) of truss to bearing plate capable of withstanding 33 lb uplift at joint 1 and 33 lb uplift at joint 3.

LOAD CASE(S) Standard

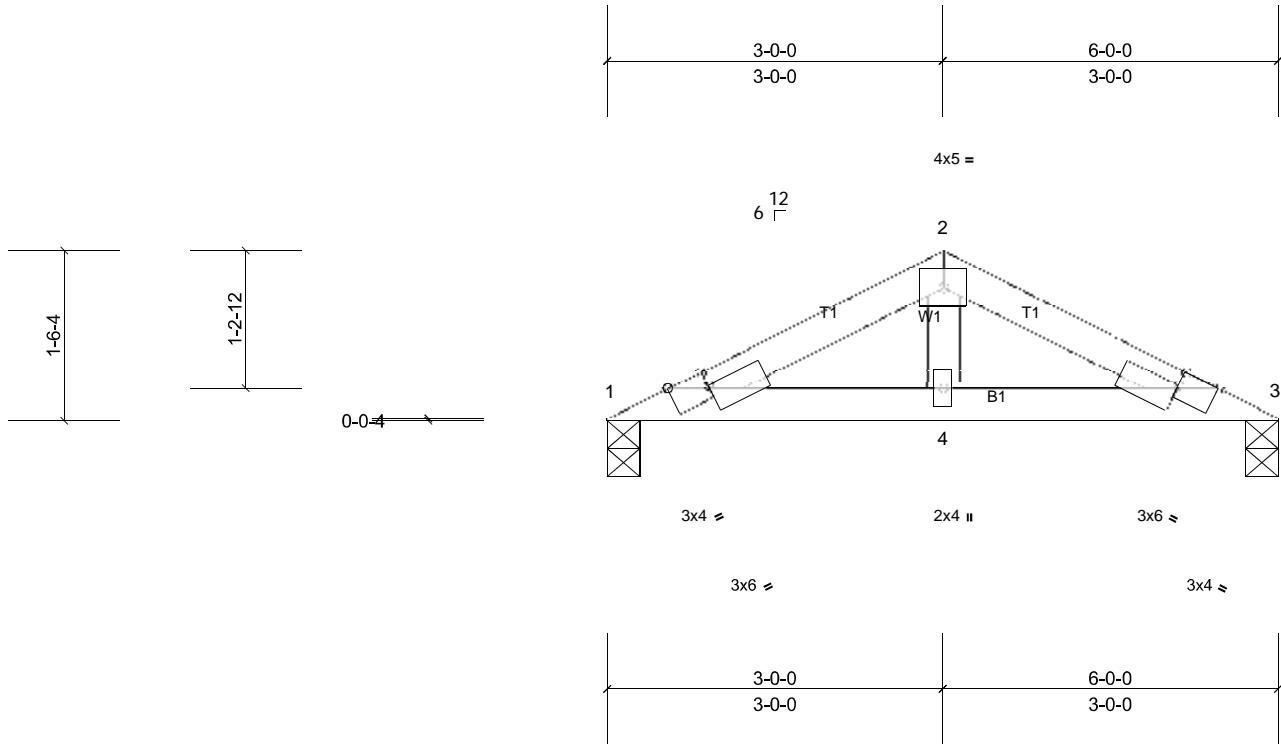
Job Q2401329	Truss TCG	Truss Type Common Structural Gable	Qty 1	Ply 1	Superior Custom Homes Job Reference (optional)	Section 5 Item c.
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Black Hills Structural Components, Rapid City, SD, user

Run: 8.72 S Jan 22 2024 Print: 8.720 S Jan 22 2024 MiTek Industries, Inc. Thu Mar 07 12:53:03

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Scale = 1:20.4

Plate Offsets (X, Y): [1:0-3-15,Edge], [1:0-4-0,0-1-11], [3:0-3-15,Edge], [3:0-4-0,0-1-11]

Loading	(psf)	Spacing	1-11-4	CSI	DEFL	in	(loc)	l/defl	L/d	PLATES	GRIP	
TCLL (Roof Snow = 30.0)	30.0	Plate Grip DOL	1.15	TC	0.13	Vert(LL)	-0.01	4-5	>999	240	MT20	197/144
TCDL	10.0	Lumber DOL	1.15	BC	0.28	Vert(CT)	-0.02	4-5	>999	180		
BCLL	0.0*	Rep Stress Incr	YES	WB	0.05	Horz(CT)	0.01	3	n/a	n/a		
BCDL	10.0	Code	IRC2021/TPI2014	Matrix-MP							Weight: 14 lb	FT = 20%

LUMBER

TOP CHORD 2x4 SPF No.2
 BOT CHORD 2x4 SPF No.2
 WEBS 2x4 SPF No.2

BRACING

TOP CHORD Structural wood sheathing directly applied or 6-0-0 oc purlins.
 BOT CHORD Rigid ceiling directly applied or 10-0-0 oc bracing.

REACTIONS (lb/size) 1=276/0-3-8, (min. 0-1-8), 3=276/0-3-8, (min. 0-1-8)
 Max Horiz 1=23 (LC 12)
 Max Uplift 1=-32 (LC 12), 3=-32 (LC 13)
 Max Grav 1=315 (LC 18), 3=315 (LC 19)

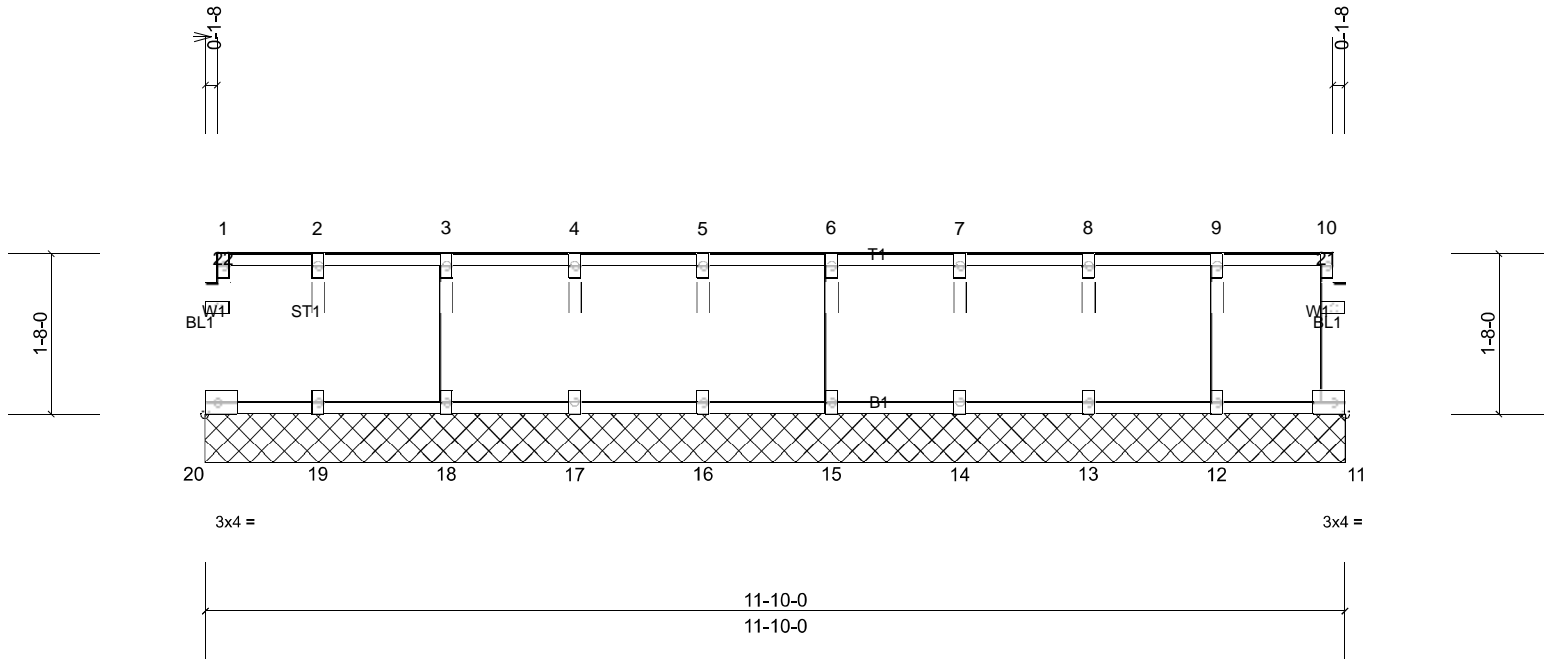
FORCES (lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.

TOP CHORD 1-2=-523/208, 2-3=-451/200
 BOT CHORD 1-4=-168/443, 3-4=-117/376

NOTES

- 1) Wind: ASCE 7-16; Vult=115mph (3-second gust) Vasd=91mph; TCDL=6.0psf; BCDL=6.0psf; h=25ft; Cat. II; Exp C; Enclosed; MWFRS (envelope) exterior zone and C-C Exterior(2E) zone; cantilever left and right exposed; end vertical left and right exposed; C-C for members and forces & MWFRS for reactions shown; Lumber DOL=1.60 plate grip DOL=1.60
- 2) Truss designed for wind loads in the plane of the truss only. For studs exposed to wind (normal to the face), see Standard Industry Gable End Details as applicable, or consult qualified building designer as per ANSI/TPI 1.
- 3) TCLL: ASCE 7-16; Pf=30.0 psf (Lum DOL=1.15 Plate DOL=1.15); Is=1.0; Rough Cat C; Partially Exp.; Ce=1.0; Cs=1.00; Ct=1.10
- 4) Unbalanced snow loads have been considered for this design.
- 5) Gable studs spaced at 1-4-0 oc.
- 6) This truss has been designed for a 10.0 psf bottom chord live load nonconcurrent with any other live loads.
- 7) * This truss has been designed for a live load of 20.0psf on the bottom chord in all areas where a rectangle 3-06-00 tall by 2-00-00 wide will fit between the bottom chord and any other members.
- 8) Provide mechanical connection (by others) of truss to bearing plate capable of withstanding 32 lb uplift at joint 1 and 32 lb uplift at joint 3.

LOAD CASE(S) Standard



Scale = 1:23.9

Loading	(psf)	Spacing	1-7-3	CSI	DEFL	in	(loc)	l/defl	L/d	PLATES	GRIP	
TCLL	40.0	Plate Grip DOL	1.00	TC	0.03	Vert(LL)	n/a	-	n/a	999	MT20	197/144
TCDL	10.0	Lumber DOL	1.00	BC	0.00	Vert(TL)	n/a	-	n/a	999		
BCLL	0.0	Rep Stress Incr	YES	WB	0.02	Horiz(TL)	0.00	11	n/a	n/a		
BCDL	5.0	Code	IRC2021/TP12014	Matrix-R							Weight: 46 lb	FT = 15%F, 15%E

LUMBER

TOP CHORD 2x4 SPF 2100F 1.8E(flat)
 BOT CHORD 2x4 SPF 2100F 1.8E(flat)
 WEBS 2x4 SPF No.2(flat)
 OTHERS 2x4 SPF No.2(flat)

BRACING

TOP CHORD Structural wood sheathing directly applied or 6'-0" oc purlins, except end verticals.
 BOT CHORD Rigid ceiling directly applied or 10'-0" oc bracing.

REACTIONS All bearings 11'-10".
 (lb) - Max Grav All reactions 250 (lb) or less at joint(s) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

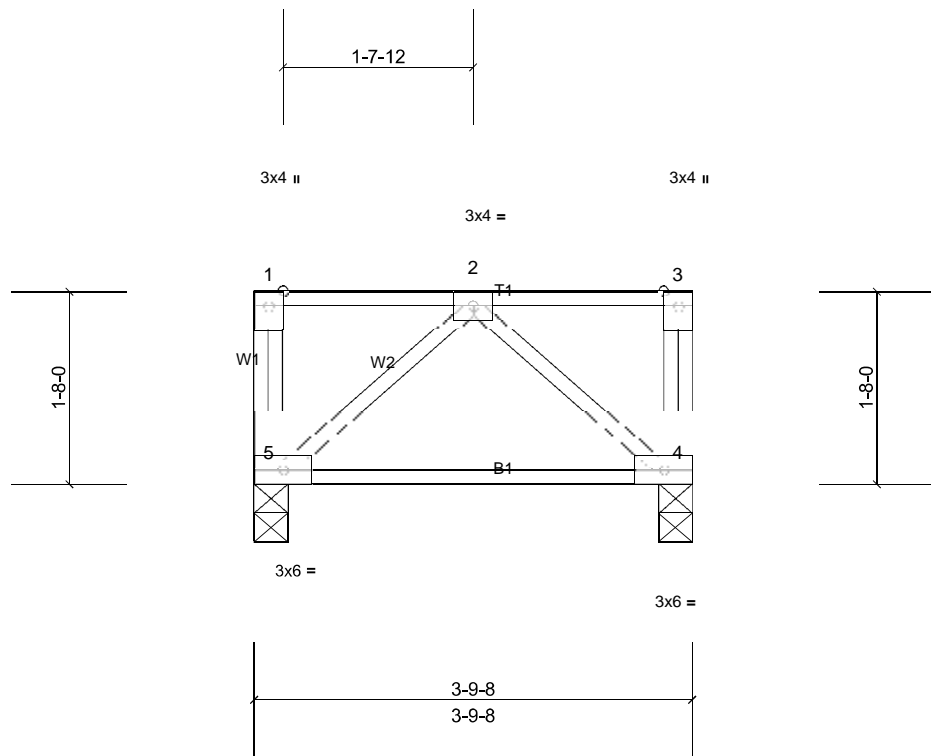
FORCES (lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.

NOTES

- As requested, plates have not been designed to provide for placement tolerances or rough handling and erection conditions. It is the responsibility of the fabricator to increase plate sizes to account for these factors.
- All plates are 1.5x3 MT20 unless otherwise indicated.
- Gable requires continuous bottom chord bearing.
- Truss to be fully sheathed from one face or securely braced against lateral movement (i.e. diagonal web).
- Gable studs spaced at 1'-4" oc.
- Recommend 2x6 strongbacks, on edge, spaced at 10'-0" oc and fastened to each truss with 3-10d (0.131" X 3") nails. Strongbacks to be attached to walls at their outer ends or restrained by other means.

LOAD CASE(S) Standard

Section 5 Item c.



Scale = 1:19.9

Loading	(psf)	Spacing	1-7-3	CSI		DEFL	in	(loc)	l/defl	L/d	PLATES	GRIP
TCLL	40.0	Plate Grip DOL	1.00	TC	0.08	Vert(LL)	n/a	-	n/a	999	MT20	197/144
TCDL	10.0	Lumber DOL	1.00	BC	0.06	Vert(CT)	-0.02	4-5	>999	360		
BCLL	0.0	Rep Stress Incr	YES	WB	0.02	Horz(CT)	0.00	5	n/a	n/a		
BCDL	5.0	Code	IRC2021/TPI2014	Matrix-P							Weight: 20 lb	FT = 15%F, 15%E

LUMBER
 TOP CHORD 2x4 SPF 2100F 1.8E(flat)
 BOT CHORD 2x4 SPF 2100F 1.8E(flat)
 WEBS 2x4 SPF No.2(flat)

BRACING
 TOP CHORD Structural wood sheathing directly applied or 3-9-8 oc purlins, except end verticals.
 BOT CHORD Rigid ceiling directly applied or 10-0-0 oc bracing.

REACTIONS (lb/size) 4=156/0-3-8, (min. 0-1-8), 5=156/0-3-8, (min. 0-1-8)

FORCES (lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.

- NOTES**
- As requested, plates have not been designed to provide for placement tolerances or rough handling and erection conditions. It is the responsibility of the fabricator to increase plate sizes to account for these factors.
 - Recommend 2x6 strongbacks, on edge, spaced at 10-00-00 oc and fastened to each truss with 3-10d (0.131" X 3") nails. Strongbacks to be attached to walls at their outer ends or restrained by other means.

LOAD CASE(S) Standard

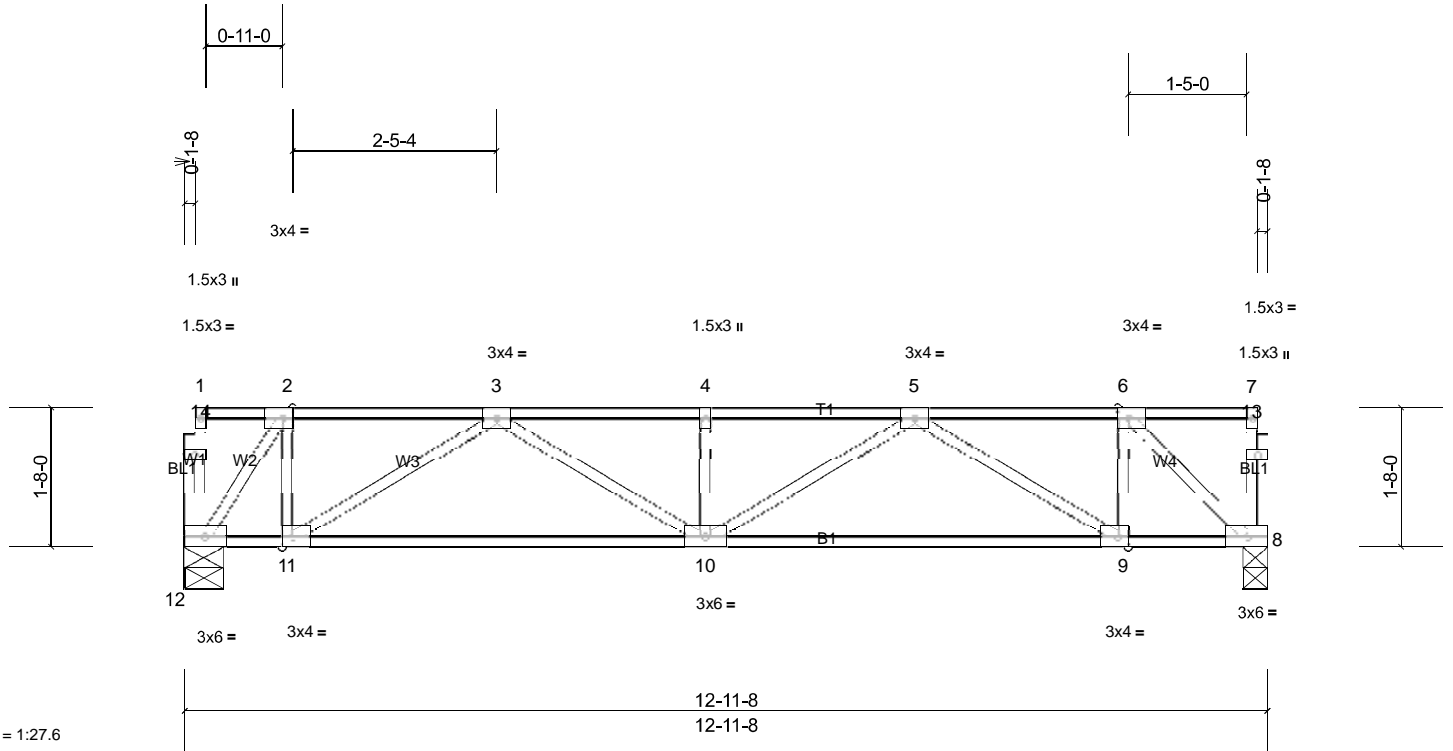


Plate Offsets (X, Y): [2:0-1-8,Edge], [6:0-1-8,Edge], [9:0-1-8,Edge], [11:0-1-8,Edge]

Loading	(psf)	Spacing	1-7-3	CSI	DEFL	in	(loc)	l/defl	L/d	PLATES	GRIP	
TCLL	40.0	Plate Grip DOL	1.00	TC	0.12	Vert(LL)	-0.03	10	>999	480	MT20	197/144
TCDL	10.0	Lumber DOL	1.00	BC	0.16	Vert(CT)	-0.06	9-10	>999	360		
BCLL	0.0	Rep Stress Incr	YES	WB	0.14	Horz(CT)	0.01	8	n/a	n/a		
BCDL	5.0	Code	IRC2021/TPI2014	Matrix-P							Weight: 57 lb	FT = 15%F, 15%E

LUMBER		BRACING	
TOP CHORD	2x4 SPF 2100F 1.8E(flat)	TOP CHORD	Structural wood sheathing directly applied or 6-0-0 oc purlins, except end verticals.
BOT CHORD	2x4 SPF 2100F 1.8E(flat)	BOT CHORD	Rigid ceiling directly applied or 10-0-0 oc bracing.
WEBS	2x4 SPF No.2(flat)		
OTHERS	2x4 SPF No.2(flat)		

REACTIONS (lb/size) 8=554/0-3-8, (min. 0-1-8), 12=554/0-5-8, (min. 0-1-8)

FORCES (lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.

TOP CHORD 2-3=-394/0, 3-4=-1185/0, 4-5=-1185/0, 5-6=-537/0

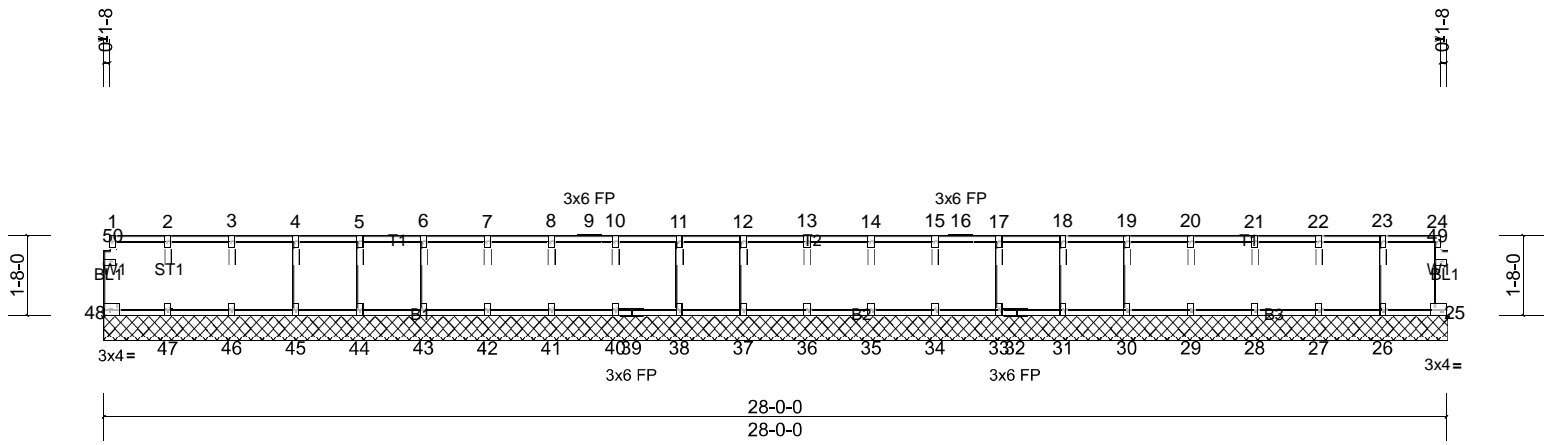
BOT CHORD 11-12=0/394, 10-11=0/956, 9-10=0/1027, 8-9=0/537

WEBS 6-8=-743/0, 6-9=0/334, 5-9=-575/0, 3-10=0/269, 3-11=-660/0, 2-11=0/381, 2-12=-676/0

NOTES

- As requested, plates have not been designed to provide for placement tolerances or rough handling and erection conditions. It is the responsibility of the fabricator to increase plate sizes to account for these factors.
- Recommend 2x6 strongbacks, on edge, spaced at 10-00-00 oc and fastened to each truss with 3-10d (0.131" X 3") nails. Strongbacks to be attached to walls at their outer ends or restrained by other means.

LOAD CASE(S) Standard



Scale = 1:48

Loading	(psf)	Spacing	1-7-3	CSI	DEFL	in (loc)	l/defl	L/d	PLATES	GRIP		
TCLL	40.0	Plate Grip DOL	1.00	TC	0.03	Vert(LL)	n/a	-	n/a	999	MT20	197/144
TCDL	10.0	Lumber DOL	1.00	BC	0.00	Vert(TL)	n/a	-	n/a	999		
BCLL	0.0	Rep Stress Incr	YES	WB	0.02	Horiz(TL)	0.00	25	n/a	n/a		
BCDL	5.0	Code	IRC2021/TP12014	Matrix-R								Weight: 102 lb FT = 15%F, 15%E

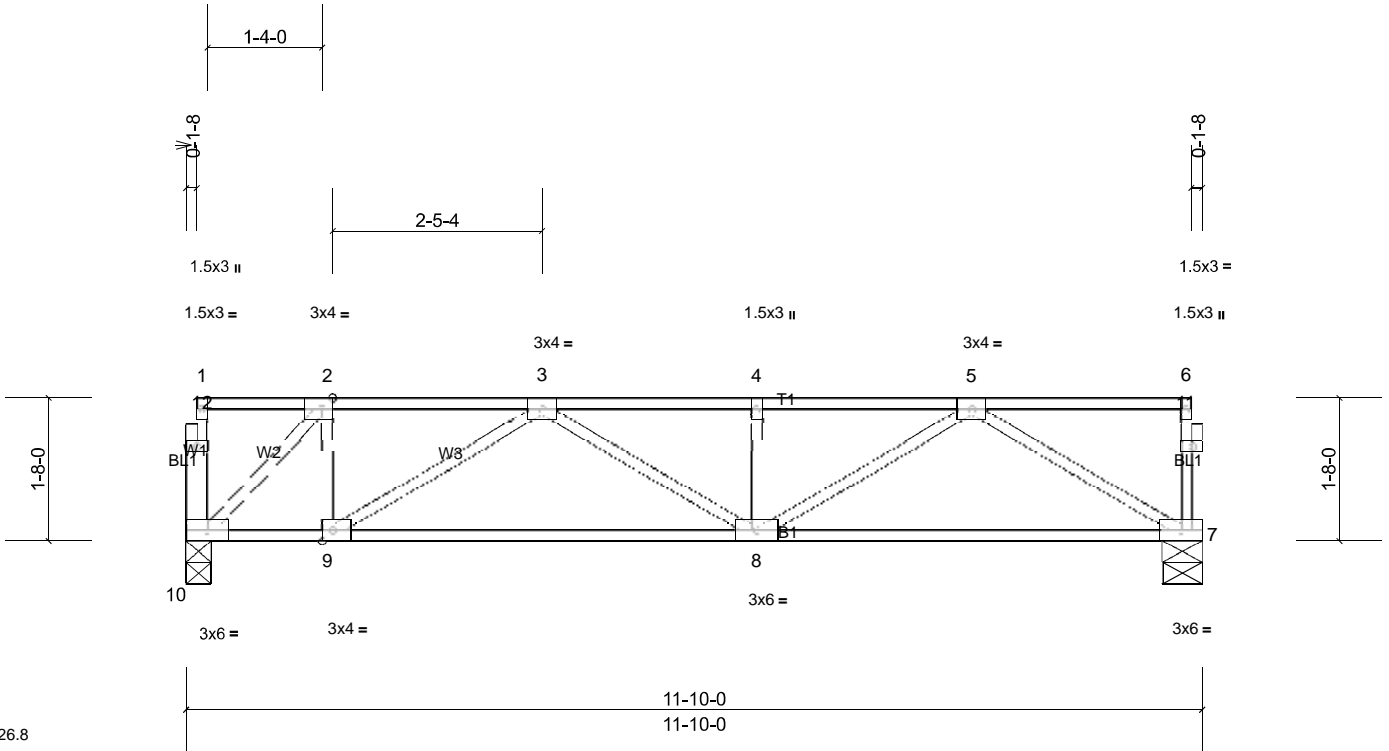
LUMBER TOP CHORD 2x4 SPF 2100F 1.8E(flat) BOT CHORD 2x4 SPF 2100F 1.8E(flat) WEBS 2x4 SPF No.2(flat) OTHERS 2x4 SPF No.2(flat)	BRACING TOP CHORD Structural wood sheathing directly applied or 6-0-0 oc purlins, except end verticals. BOT CHORD Rigid ceiling directly applied or 10-0-0 oc bracing.
---	---

REACTIONS All bearings 28-0-0.
 (lb) - Max Grav All reactions 250 (lb) or less at joint(s) 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48

FORCES (lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.

- NOTES**
- 1) As requested, plates have not been designed to provide for placement tolerances or rough handling and erection conditions. It is the responsibility of the fabricator to increase plate sizes to account for these factors.
 - 2) All plates are 1.5x3 MT20 unless otherwise indicated.
 - 3) Gable requires continuous bottom chord bearing.
 - 4) Truss to be fully sheathed from one face or securely braced against lateral movement (i.e. diagonal web).
 - 5) Gable studs spaced at 1-4-0 oc.
 - 6) Recommend 2x6 strongbacks, on edge, spaced at 10-00-00 oc and fastened to each truss with 3-10d (0.131" X 3") nails. Strongbacks to be attached to walls at their outer ends or restrained by other means.

LOAD CASE(S) Standard



Scale = 1:26.8

Plate Offsets (X, Y): [2:0-1-8,Edge], [9:0-1-8,Edge]

Loading	(psf)	Spacing	1-7-3	CSI	DEFL	in	(loc)	l/defl	L/d	PLATES	GRIP	
TCLL	40.0	Plate Grip DOL	1.00	TC	0.14	Vert(LL)	-0.02	8-9	>999	480	MT20	197/144
TCDL	10.0	Lumber DOL	1.00	BC	0.16	Vert(CT)	-0.05	7-8	>999	360		
BCLL	0.0	Rep Stress Incr	YES	WB	0.17	Horz(CT)	0.01	7	n/a	n/a		
BCDL	5.0	Code	IRC2021/TPI2014	Matrix-P							Weight: 51 lb	FT = 15%F, 15%E

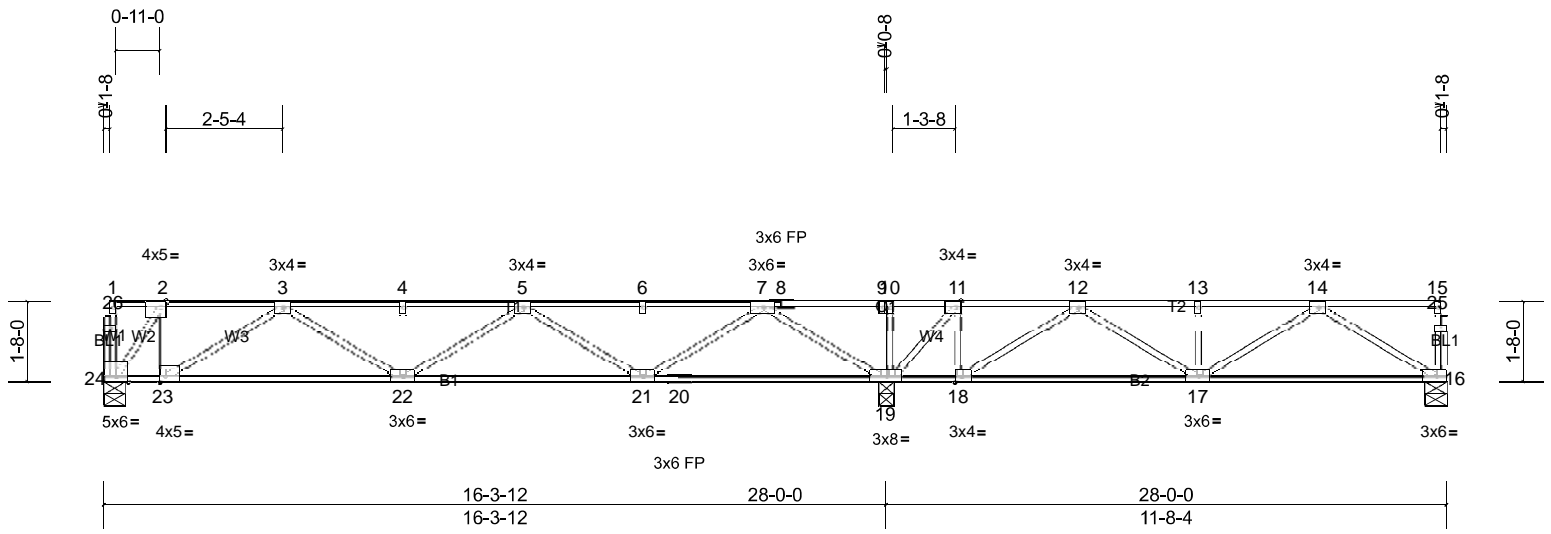
LUMBER		BRACING	
TOP CHORD	2x4 SPF 2100F 1.8E(flat)	TOP CHORD	Structural wood sheathing directly applied or 6-0-0 oc purlins, except end verticals.
BOT CHORD	2x4 SPF 2100F 1.8E(flat)	BOT CHORD	Rigid ceiling directly applied or 10-0-0 oc bracing.
WEBS	2x4 SPF No.2(flat)		
OTHERS	2x4 SPF No.2(flat)		

REACTIONS (lb/size) 7=505/0-5-8, (min. 0-1-8), 10=505/0-3-8, (min. 0-1-8)

FORCES (lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.
 TOP CHORD 2-3=-464/0, 3-4=-978/0, 4-5=-978/0
 BOT CHORD 9-10=0/464, 8-9=0/889, 7-8=0/683
 WEBS 5-7=-793/0, 5-8=0/347, 3-9=-498/0, 2-9=0/292, 2-10=-659/0

NOTES
 1) As requested, plates have not been designed to provide for placement tolerances or rough handling and erection conditions. It is the responsibility of the fabricator to increase plate sizes to account for these factors.
 2) Recommend 2x6 strongbacks, on edge, spaced at 10-00-00 oc and fastened to each truss with 3-10d (0.131" X 3") nails. Strongbacks to be attached to walls at their outer ends or restrained by other means.

LOAD CASE(S) Standard



Scale = 1:48
 Plate Offsets (X, Y): [2:0-1-8,Edge], [11:0-1-8,Edge], [18:0-1-8,Edge], [23:0-1-8,Edge]

Loading	(psf)	Spacing	1-7-3	CSI	DEFL	in	(loc)	l/defl	L/d	PLATES	GRIP	
TCLL	40.0	Plate Grip DOL	1.00	TC	0.16	Vert(LL)	-0.08	21-22	>999	480	MT20	197/144
TCDL	10.0	Lumber DOL	1.00	BC	0.26	Vert(CT)	-0.12	21-22	>999	360		
BCLL	0.0	Rep Stress Incr	YES	WB	0.25	Horz(CT)	0.04	16	n/a	n/a		
BCDL	5.0	Code	IRC2021/TPI2014	Matrix-S								Weight: 117 lb FT = 15%F, 15%E

LUMBER
 TOP CHORD 2x4 SPF 2100F 1.8E(flat)
 BOT CHORD 2x4 SPF 2100F 1.8E(flat)
 WEBS 2x4 SPF No.2(flat)
 OTHERS 2x4 SPF No.2(flat)

BRACING
 TOP CHORD Structural wood sheathing directly applied or 6-0-0 oc purlins, except end verticals.
 BOT CHORD Rigid ceiling directly applied or 10-0-0 oc bracing.

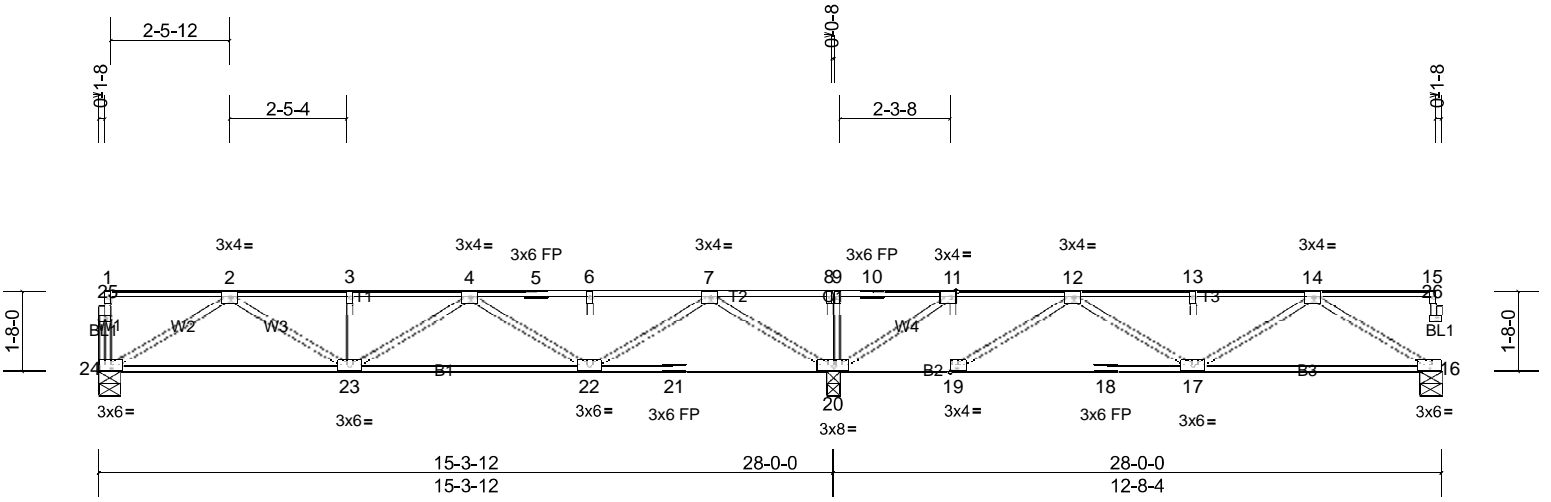
REACTIONS (lb/size) 16=502/0-5-8, (min. 0-1-8), 19=1212/0-3-8, (min. 0-1-8),
 24=705/0-5-4, (min. 0-1-8)
 Max Grav 16=503 (LC 4), 19=1212 (LC 1), 24=705 (LC 3)

FORCES (lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.
 TOP CHORD 2-3=-502/0, 3-4=-1780/0, 4-5=-1780/0, 5-6=-1623/0, 6-7=-1623/0, 11-12=-451/0, 12-13=-972/0, 13-14=-972/0
 BOT CHORD 23-24=0/502, 22-23=0/1307, 21-22=0/1866, 20-21=0/1009, 19-20=0/1009, 18-19=0/451, 17-18=0/879, 16-17=0/680
 WEBS 7-19=-1174/0, 7-21=0/721, 5-21=-286/0, 3-22=0/555, 3-23=-946/0, 2-23=0/531, 2-24=-862/0, 14-16=-790/0, 14-17=0/344,
 12-18=-505/0, 11-18=0/279, 11-19=-639/0

- NOTES**
- Unbalanced floor live loads have been considered for this design.
 - As requested, plates have not been designed to provide for placement tolerances or rough handling and erection conditions. It is the responsibility of the fabricator to increase plate sizes to account for these factors.
 - All plates are 1.5x3 MT20 unless otherwise indicated.
 - Recommend 2x6 strongbacks, on edge, spaced at 10-00-00 oc and fastened to each truss with 3-10d (0.131" X 3") nails. Strongbacks to be attached to walls at their outer ends or restrained by other means.
 - CAUTION, Do not erect truss backwards.
 - Top chord over the bearing at 16-3-12 is required to be field cut at time of installation. No plates are to be damaged or disturbed.

LOAD CASE(S) Standard

Section 5 Item c.



Scale = 1:48

Plate Offsets (X, Y): [11:0-1-8,Edge], [19:0-1-8,Edge]

Loading	(psf)	Spacing	1-7-3	CSI	DEFL	in	(loc)	l/defl	L/d	PLATES	GRIP	
TCLL	40.0	Plate Grip DOL	1.00	TC	0.16	Vert(LL)	-0.07	22-23	>999	480	MT20	197/144
TCDL	10.0	Lumber DOL	1.00	BC	0.24	Vert(CT)	-0.10	22-23	>999	360		
BCLL	0.0	Rep Stress Incr	YES	WB	0.24	Horz(CT)	0.04	16	n/a	n/a		
BCDL	5.0	Code	IRC2021/TPI2014	Matrix-S								Weight: 115 lb FT = 15%F, 15%E

LUMBER	BRACING
TOP CHORD 2x4 SPF 2100F 1.8E(flat)	TOP CHORD Structural wood sheathing directly applied or 6-0-0 oc purlins, except end verticals.
BOT CHORD 2x4 SPF 2100F 1.8E(flat)	BOT CHORD Rigid ceiling directly applied or 10-0-0 oc bracing.
WEBS 2x4 SPF No.2(flat)	
OTHERS 2x4 SPF No.2(flat)	

REACTIONS (lb/size) 16=546/0-5-8, (min. 0-1-8), 20=1211/0-3-5, (min. 0-1-8), 24=661/0-5-4, (min. 0-1-8)
 Max Grav 16=546 (LC 4), 20=1211 (LC 1), 24=662 (LC 3)

FORCES (lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.
 TOP CHORD 2-3=-1498/0, 3-4=-1498/0, 4-5=-1485/0, 5-6=-1485/0, 6-7=-1485/0, 11-12=-743/0, 12-13=-1116/0, 13-14=-1116/0
 BOT CHORD 23-24=0/955, 22-23=0/1657, 21-22=0/943, 20-21=0/943, 19-20=0/743, 18-19=0/1089, 17-18=0/1089, 16-17=0/752
 WEBS 7-20=-1093/0, 7-22=0/637, 2-23=0/638, 2-24=-1106/0, 14-16=-873/0, 14-17=0/427, 12-19=-407/0, 11-20=-868/0

- NOTES**
- 1) Unbalanced floor live loads have been considered for this design.
 - 2) As requested, plates have not been designed to provide for placement tolerances or rough handling and erection conditions. It is the responsibility of the fabricator to increase plate sizes to account for these factors.
 - 3) All plates are 1.5x3 MT20 unless otherwise indicated.
 - 4) Recommend 2x6 strongbacks, on edge, spaced at 10-00-00 oc and fastened to each truss with 3-10d (0.131" X 3") nails. Strongbacks to be attached to walls at their outer ends or restrained by other means.
 - 5) CAUTION, Do not erect truss backwards.
 - 6) Top chord over the bearing at 15-3-12 is required to be field cut at time of installation. No plates are to be damaged or disturbed.

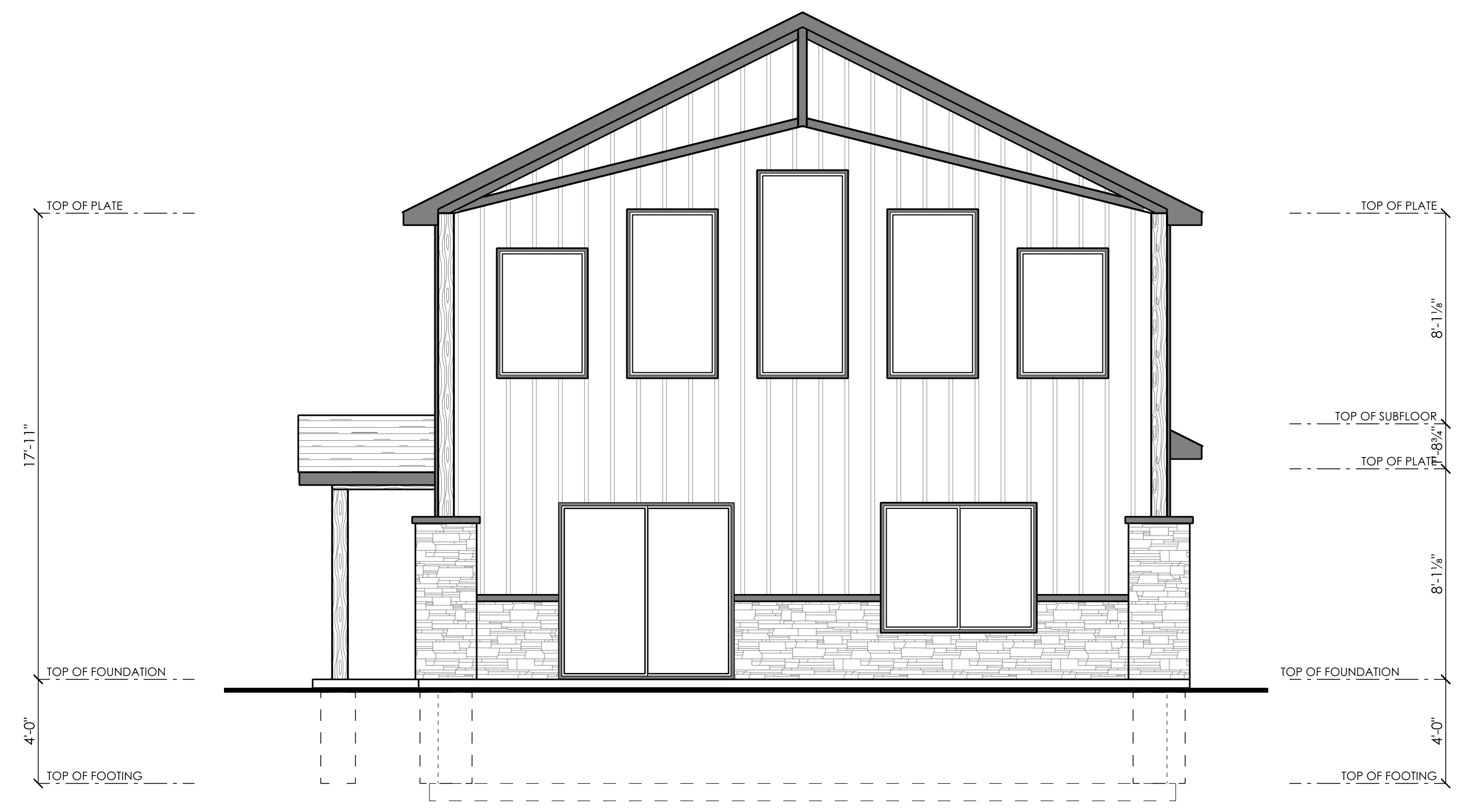
LOAD CASE(S) Standard

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DATE:
February 14, 2024

REVISED:

DRAWN BY:
D.J.C



FRONT ELEVATION
SCALE: 1/4" = 1'-0"



LEFT ELEVATION
SCALE: 1/4" = 1'-0"

C:\DAN FILES (2017-2021)\PROJECTS FOLDER - 2017-2022\TERRY & DAWN BAHR\TS-1400-121223\TS-1400-121223

TERRY & DAWN BAHR

PROJECT REFERENCE | TS-1400-121223

ELEVATIONS

A1.1

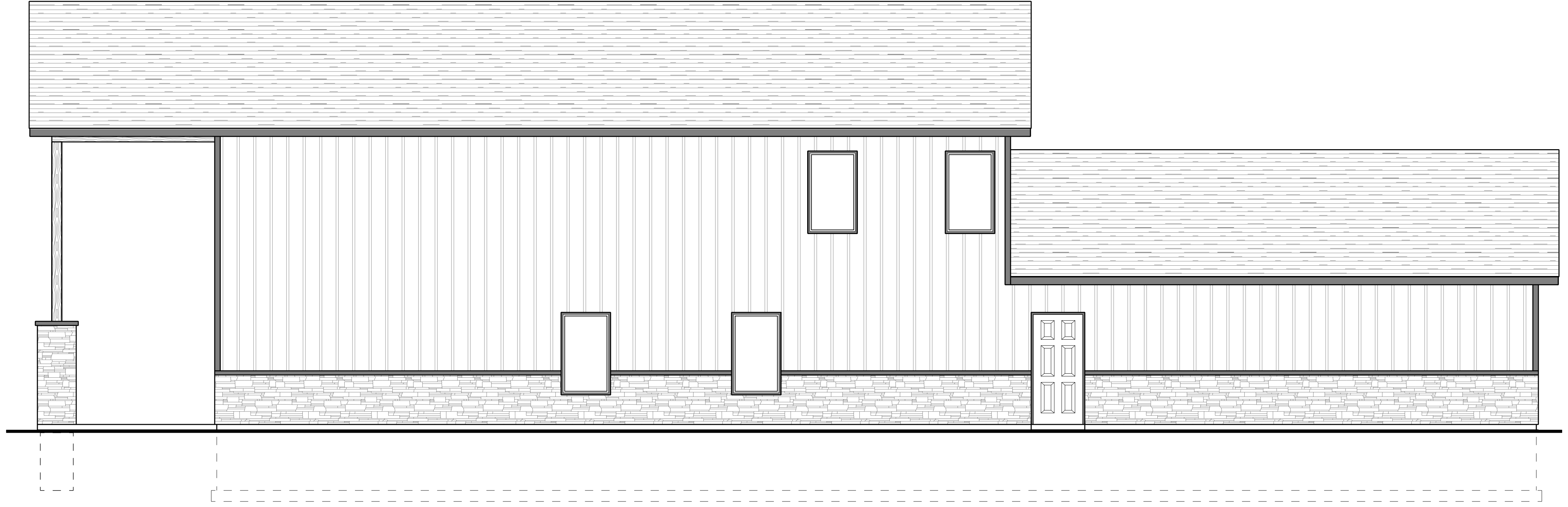
KNIFE GRIP Home Care
 With Affordable Assistance from Sunbelt

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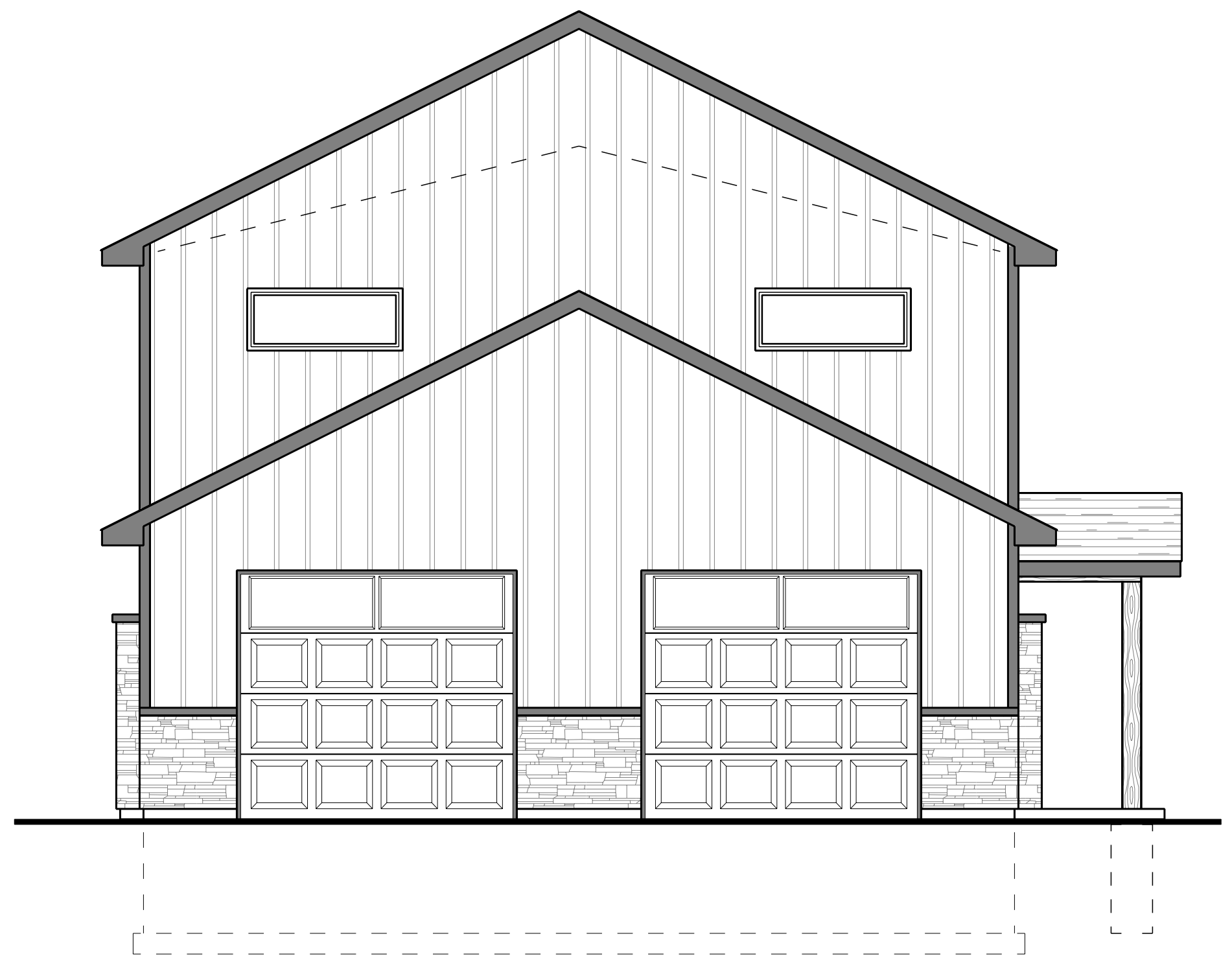
DATE:
February 14, 2024

REVISED:

DRAWN BY:
D.J.C.



RIGHT ELEVATION
 SCALE: 1/4" = 1'-0"



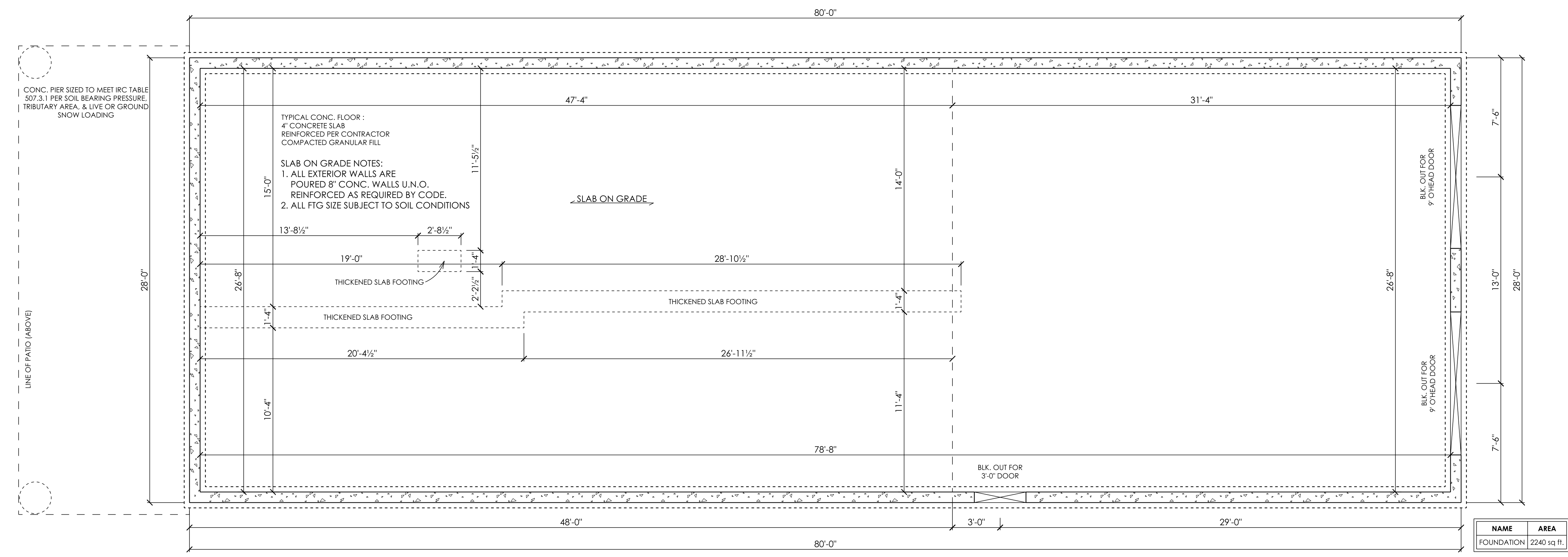
REAR ELEVATION
 SCALE: 1/4" = 1'-0"

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D.JC



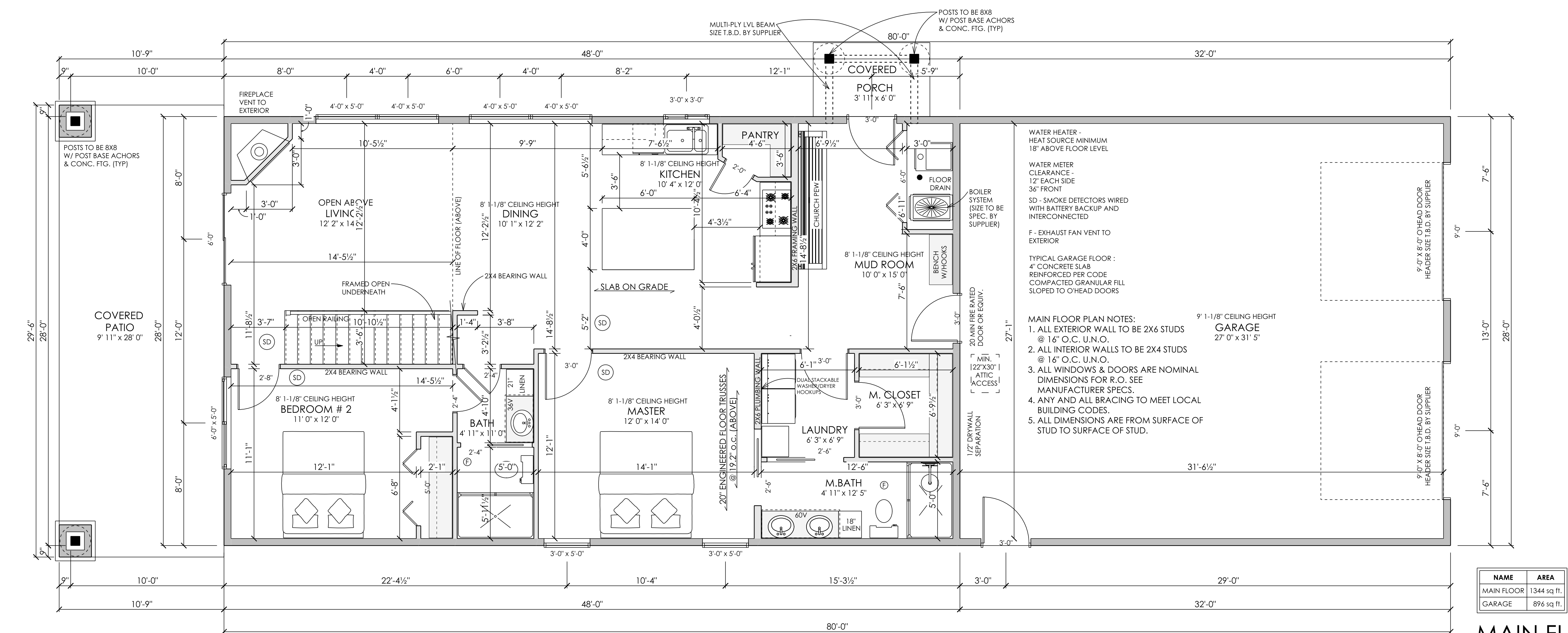
FOUNDATION PLAN
 SCALE: 1/4" = 1'-0"

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DATE: February 14, 2024
 REVISED:

DRAWN BY: D.J.C.

C:\DAN FILES (2017-2021)\PROJECTS FOLDER - 2017-2022\TERRY & DAWN BAHR\TS-1400-121223\TS-1400-121223



NAME	AREA
MAIN FLOOR	1344 sq. ft.
GARAGE	896 sq. ft.

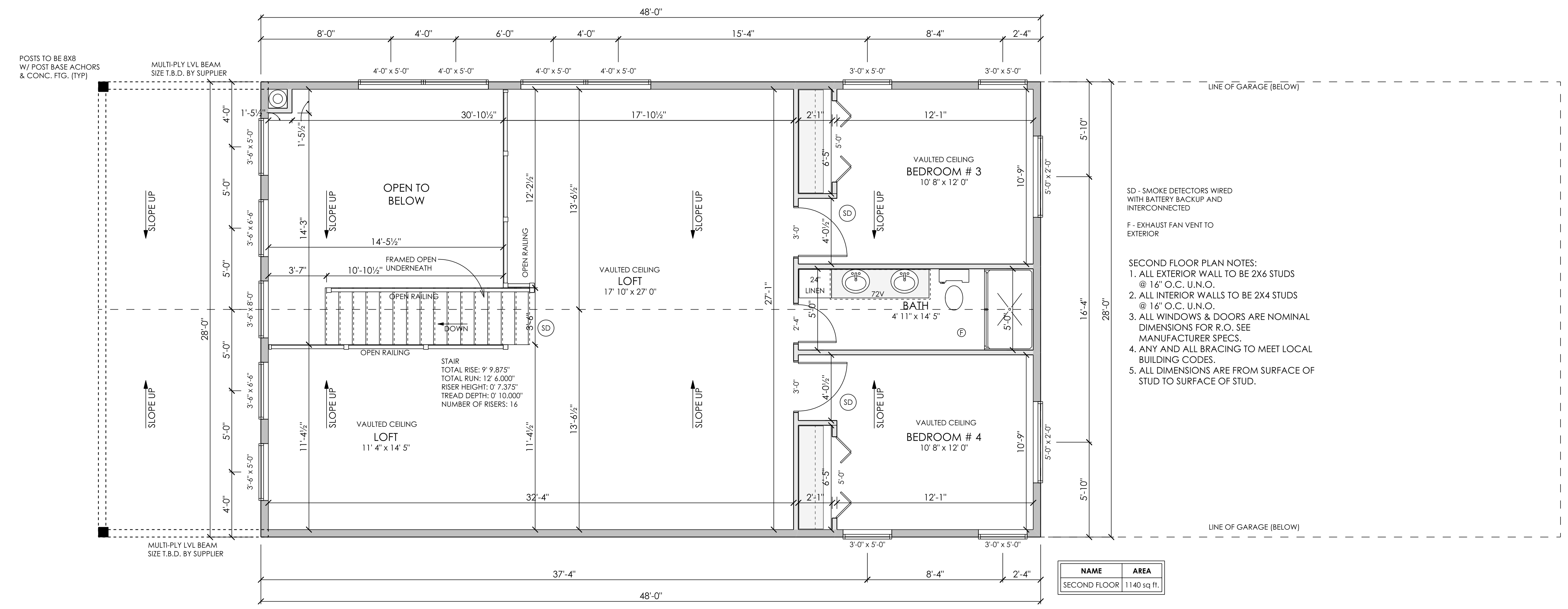
MAIN FLOOR PLAN
 SCALE: 1/4" = 1'-0"

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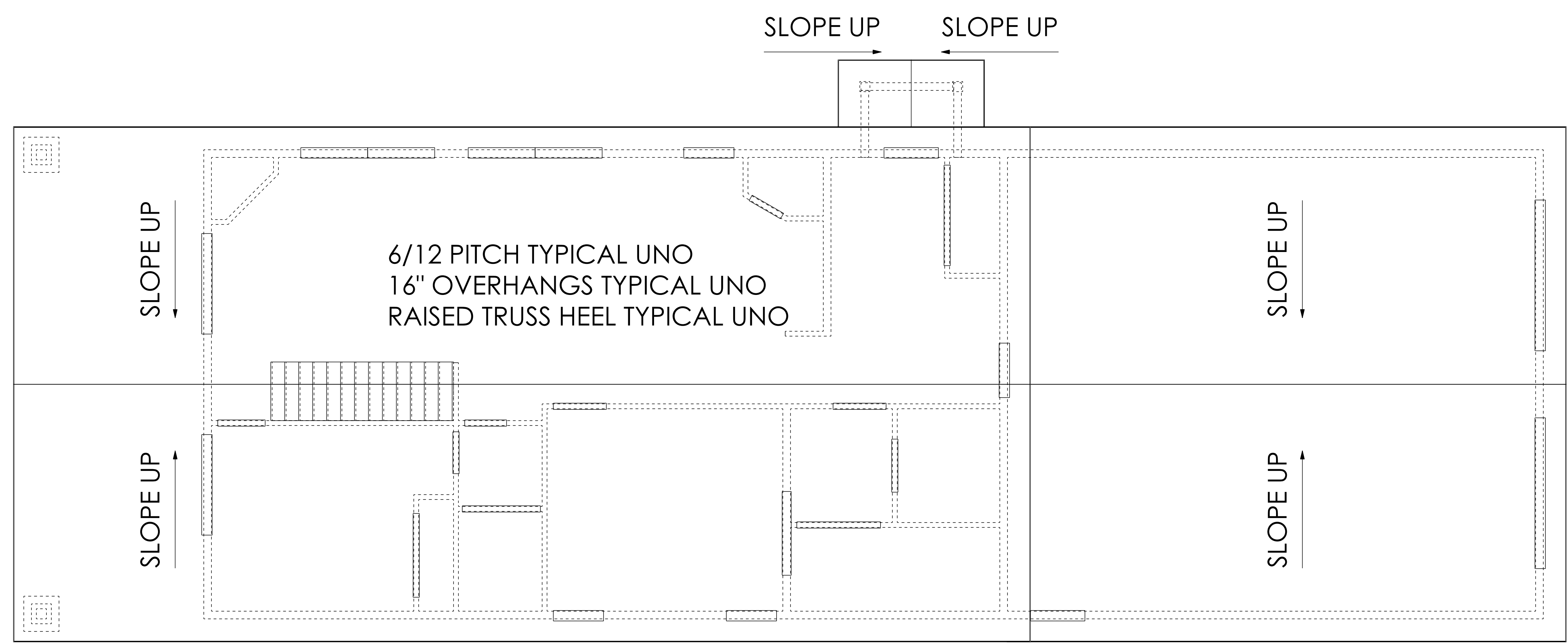
DATE:
February 14, 2024

REVISED:

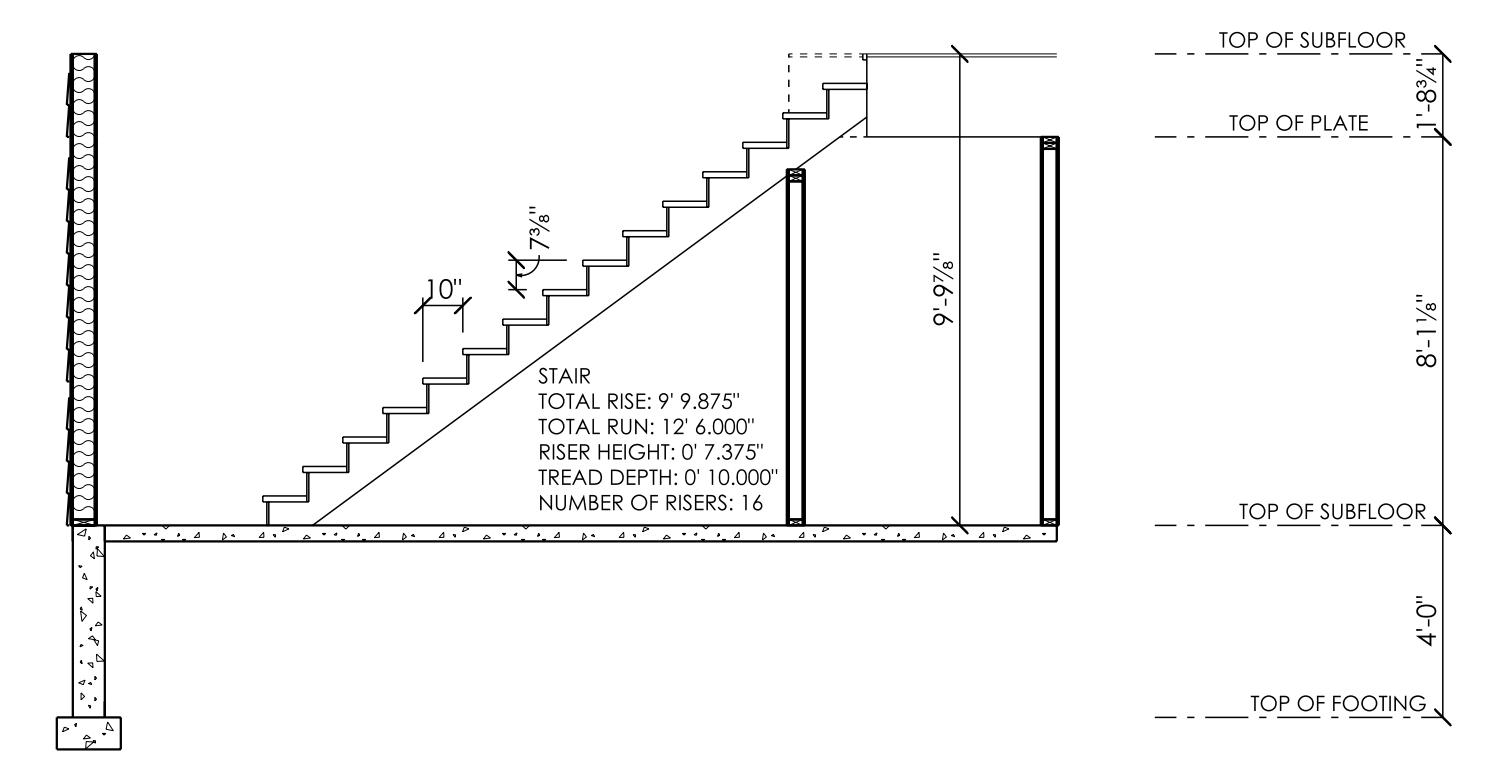
DRAWN BY:
D.J.C.



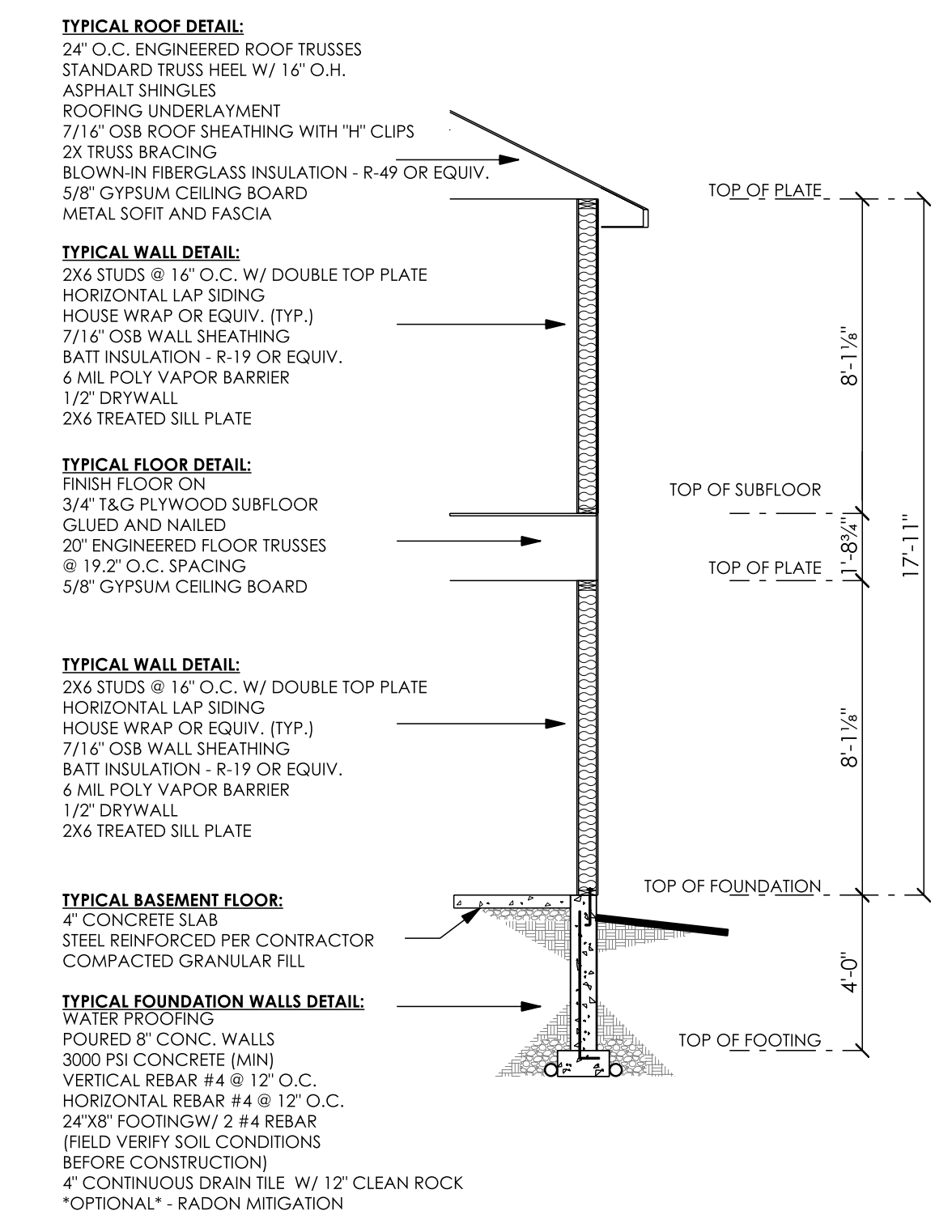
SECOND FLOOR PLAN
 SCALE: 1/4" = 1'-0"



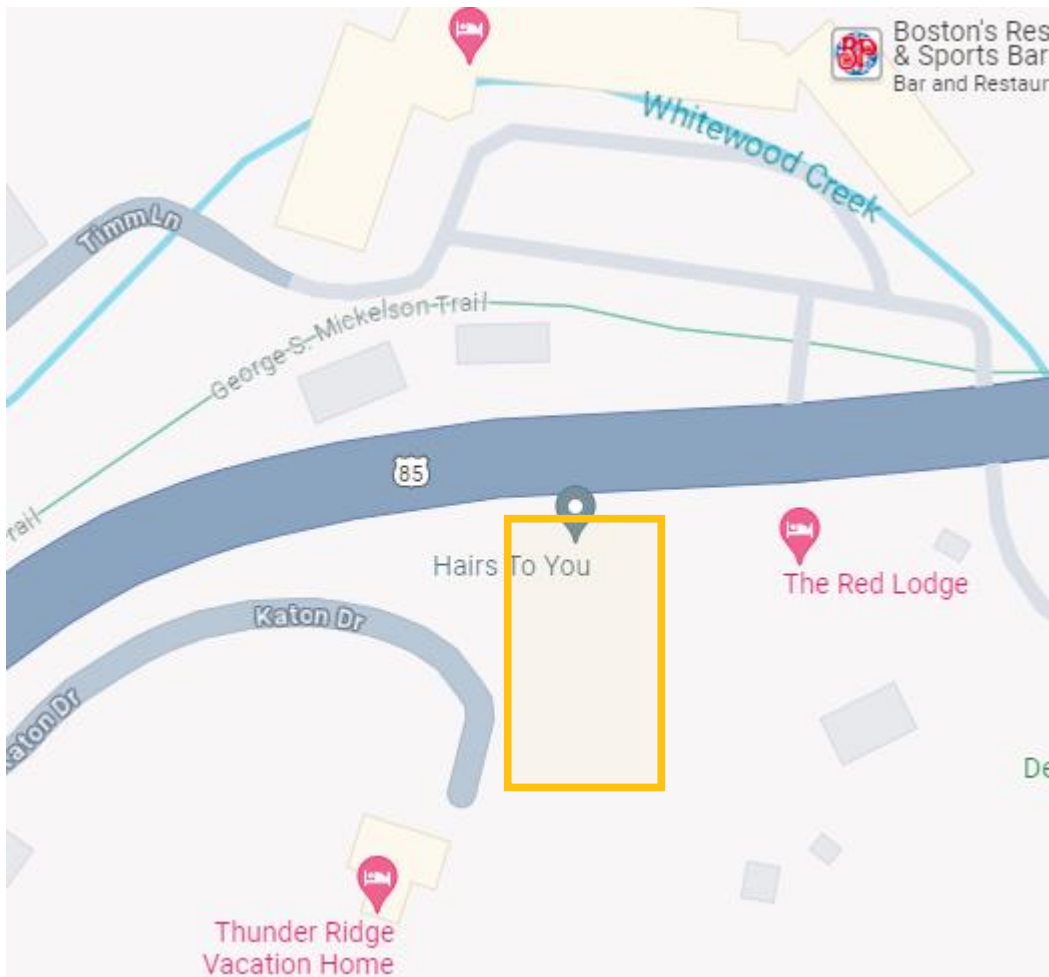
BIRDS EYE PLAN
SCALE: 1/4" = 1'-0"



STAIR SECTION
SCALE: 1/4" = 1'-0"



TYPICAL SECTION
SCALE: 1/4" = 1'-0"



Map of 307 Cliff Street, Deadwood, SD 57732.





Aerial view of 307 Cliff Street, Deadwood, SD 57732.



**NOTICE OF PUBLIC HEARING
BEFORE THE PLANNING AND ZONING COMMISSION**

City of Deadwood
Planning and Zoning Commission
Deadwood, South Dakota 57732

NOTICE IS HEREBY GIVEN, that the following person(s) has applied to the City of Deadwood Planning and Zoning Office for a Conditional Use Permit to construct a Dwelling Unit, Single Family within a district zoned CH - Commercial Highway as allowed under Section 17.40.030 Conditional Uses.

APPLICANTS: Terry and Dawn Bahr

LEGAL DESCRIPTION: LOT 1 REVISED OF THE SUBDIVISION OF TRACT E-1 FORMERLY LOT 1 OF THE SUBDIVISION OF TRACT E-1 BEING A PORTION OF HILLSIDE PLACER M.S. 749 LOCATED IN THE SE ¼ OF SECTION 27, T5N, R3E, B.H.M. CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA.

ADDRESS: 307 Cliff Street

ZONE: CH – Commercial Highway

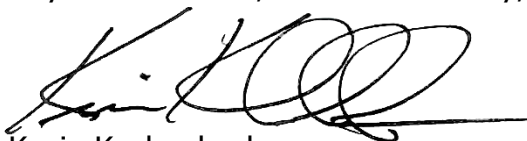
NOTICE IS FURTHER GIVEN that said application will be heard by the Planning and Zoning Commission within and for the City of Deadwood, State of South Dakota, at a regular meeting to be held Wednesday, July 3, 2024, in the Commission Room at 102 Sherman Street, Deadwood, South Dakota, will at 4:00 p.m. or soon thereafter as the matter at which time and place any such person interested may appear and show cause if there be any, why such special exception should not be granted.

NOTICE IS FURTHER GIVEN, that the proposed request for a Dwelling Unit, Single Family is on file and available for public examination at the Deadwood Zoning Office located at 108 Sherman Street, Deadwood, South Dakota.

ANY interested person or his/her agent is invited to submit oral or written comments or suggestions regarding the request to the Commissions or their agent prior to or at the public hearing.

Dated this 13th June 2024

City of Deadwood, Lawrence County, South Dakota



Kevin Kuchenbecker
Planning, Zoning and Historic Preservation Officer

PUBLISH: Black Hills Pioneer: June 18, 2024

Published once at the total approximate cost of \$ _____

OFFICE OF
PLANNING, ZONING AND
HISTORIC PRESERVATION
108 Sherman Street
Telephone (605) 578-2082
Fax (605) 722-0786



Kevin Kuchenbecker
Planning, Zoning and
Historic Preservation Officer
Telephone (605) 578-2082
kevin@cityofdeadwood.com

Public Notification

Date: June 13, 2024
To: Deadwood Property Owner / Resident
From: Kevin Kuchenbecker
Planning, Zoning & Historic Preservation Officer
RE: Request for Conditional Use Permit for Dwelling Unit, Single Family

NOTICE IS HEREBY GIVEN, that the following person(s) has applied to the City of Deadwood Planning and Zoning Office for a Conditional Use Permit for the construction of a Dwelling Unit, Single Family as allowed under Section 17.40.030 Conditional Uses under CH – Commercial Highway.

APPLICANT(S): Terry and Dawn Bahr

LEGAL DESCRIPTION: LOT 1 REVISED OF THE SUBDIVISION OF TRACT E-1 FORMERLY LOT 1 OF THE SUBDIVISION OF TRACT E-1 BEING A PORTION OF HILLSIDE PLACER M.S. 749 LOCATED IN THE SE ¼ OF SECTION 27, T5N, R3E, B.H.M. CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA.

ADDRESS: 307 Cliff Street

NOTICE IS FURTHER GIVEN that said application will be heard by the Planning and Zoning Commission within and for the City of Deadwood, State of South Dakota, at a regular meeting to be held Wednesday, July 3, 2024, in the Commission Room at 102 Sherman Street, Deadwood, South Dakota, will at 4:00 p.m. or soon thereafter as the matter at which time and place any such person interested may appear and show cause if there be any, why such special exception should not be granted. A public hearing will also be held by the Deadwood City Commission at 5:00 p.m. on Monday, July 15, 2024, at the same location.

NOTICE IS FURTHER GIVEN, that the proposed request to construct a Dwelling Unit, Single Family is on file and available for public examination at the Deadwood Planning and Zoning Office located at 108 Sherman Street, Deadwood, South Dakota.

ANY interested person or his/her agent is invited to submit oral or written comments or suggestions regarding the request to the Commissions or their agent prior to or at the public hearing.

The purpose of this mailed notice is to reasonably inform the surrounding property owners of the applications for a Conditional Use Permit and to inform you of the type of use being requested.

If you have any questions, please feel free to contact our office at 605-578-2082.

OFFICE OF
PLANNING, ZONING AND
HISTORIC PRESERVATION
108 Sherman Street
Telephone (605) 578-2082
Fax (605) 722-0786



Kevin Kuchenbecker
Planning, Zoning and
Historic Preservation Officer
Telephone (605) 578-2082
kevin@cityofdeadwood.com

MEMORANDUM

DATE: July 3, 2024

TO: Planning and Zoning Commission

FROM: Kevin Kuchenbecker, Historic Preservation Officer & Planning and Zoning Administrator

RE: Conservation Easements – City of Deadwood Properties

COMMISSION AND STAFF FINDINGS:

Over the past two decades, the City of Deadwood and Deadwood Historic Preservation Commission has acquired a variety of parcels to protect the hillside environs surrounding the Deadwood National Historic Landmark District.

The conservation of eleven (11) properties owned by the City of Deadwood and/or Deadwood Historic Preservation Commission yield significant benefits to the public by protecting the cultural, historical, archaeological, natural, scenic, and recreational values of the properties. Further, the conservation of the properties will keep them free from new structures, alterations or changes that would encroach upon, damage, or destroy the historic properties within and surrounding the Deadwood National Historic Landmark District.

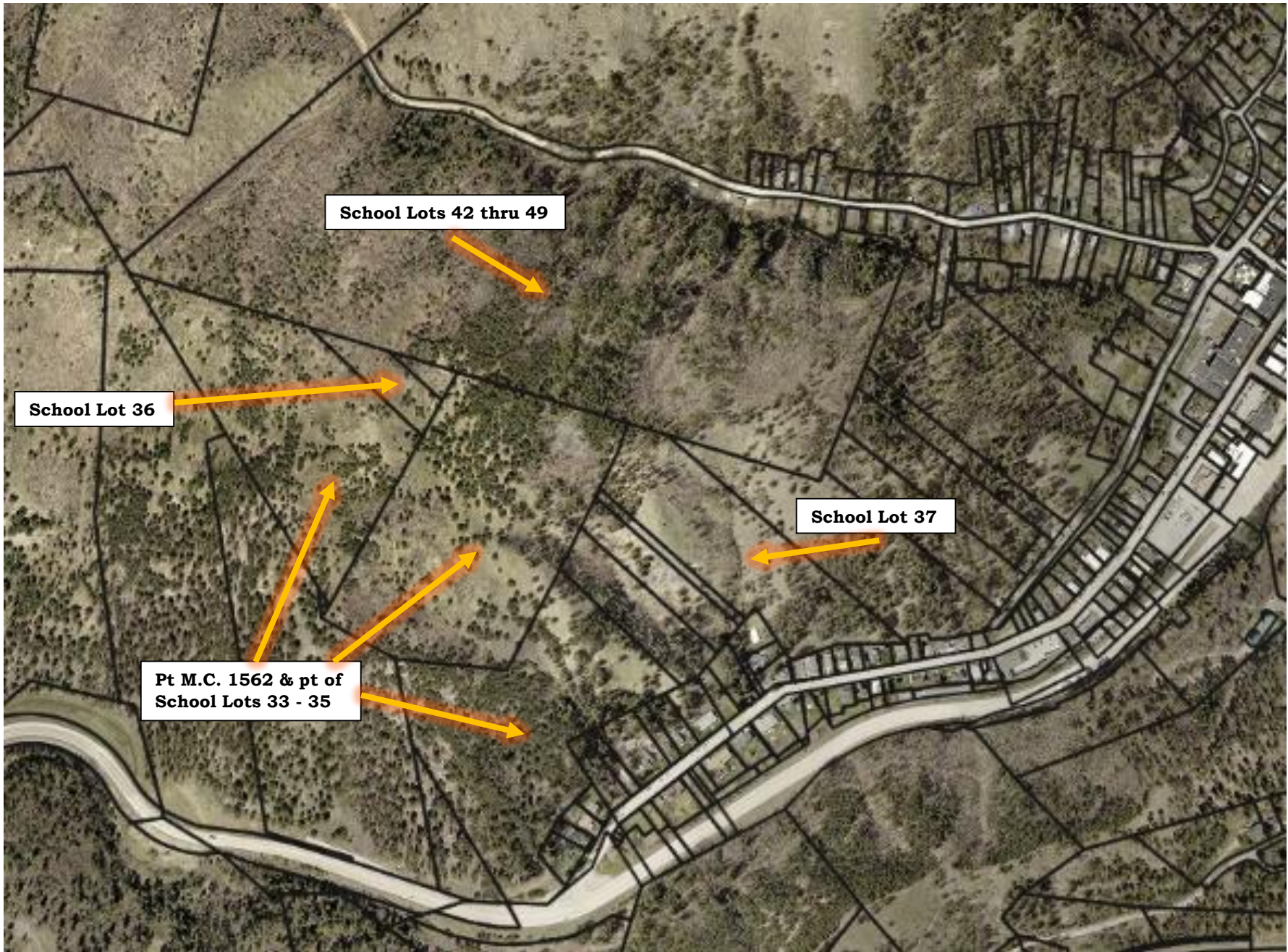
The conservation of the properties, subject to the terms of a Conservation Easement, will yield significant benefits to the public by protecting the properties in perpetuity.

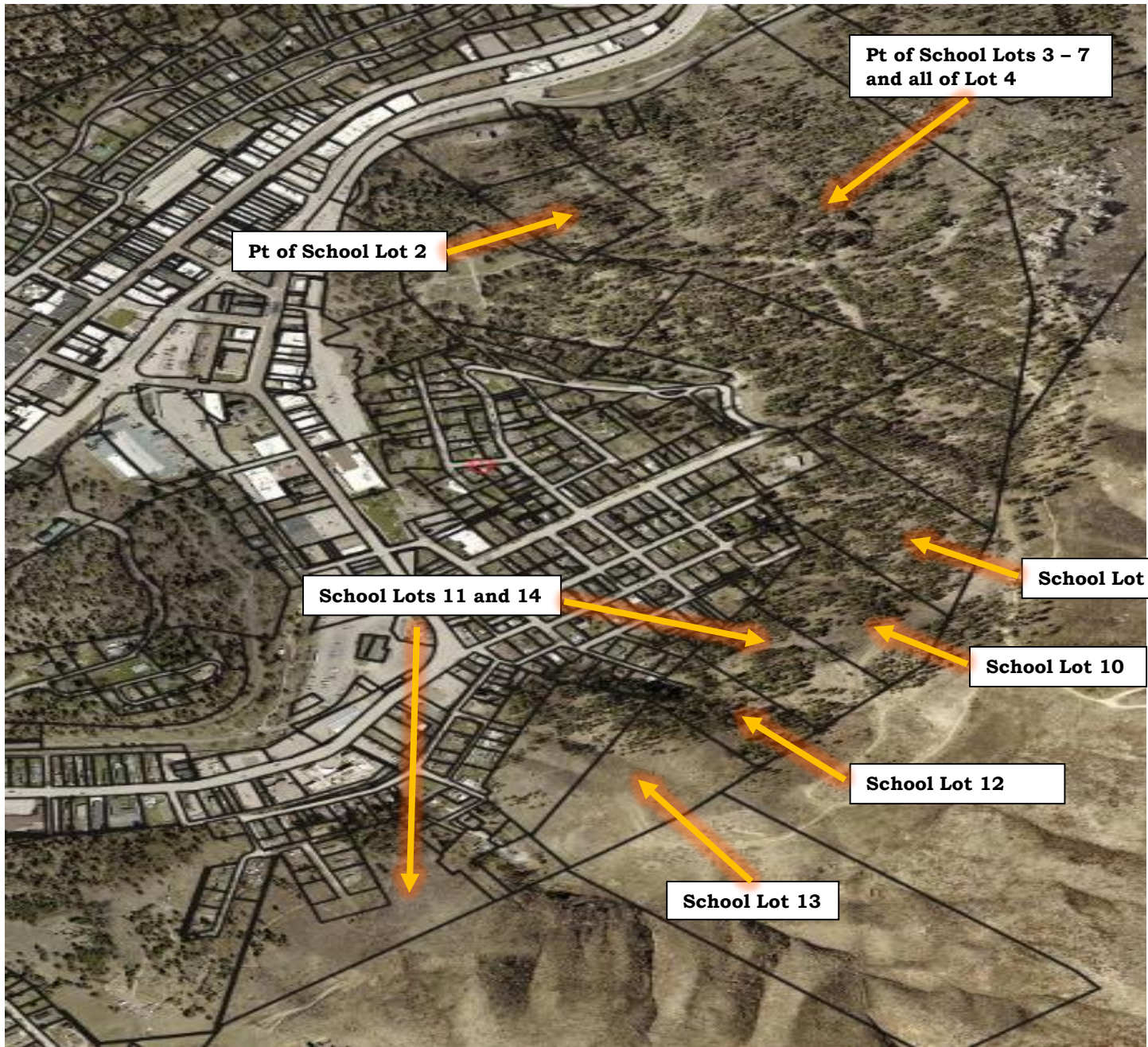
RECOMMENDED ACTION:

Review and recommend approval to the City Commission for the Conservation Easements on eleven (11) properties owned by the City of Deadwood and/or Deadwood Historic Preservation Commission.

Aerial overview of parcels affected by proposed Conservation Easements.







This Instrument Prepared By:
 City of Deadwood
 108 Sherman Street
 Deadwood, SD 57732
 (605) 578-2082
 (605) 587-2084

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (this “Easement”) is granted this ____ day of _____, 2024 by **City of Deadwood**, 108 Sherman Street, Deadwood, SD 57732 (the Grantor) to **the CITY OF DEADWOOD**, City of Deadwood, 108 Sherman Street, Deadwood, SD 57732, a South Dakota municipal government (Grantee):

WHEREAS:

- A. Grantor is the owner in fee of real property (the “Property”) located on School Lot 13 in the City of Deadwood, Lawrence County, South Dakota according to P.L. Rogers Map more particularly described in Exhibit A;
- B. The Property possesses cultural, historical, archaeological, natural, scenic, and recreational values (collectively the “Conservation Values”) of great importance to Grantor, the people of the City of Deadwood and the people of the State of South Dakota; the preservation of which will provide a significant public benefit to the protection of the Deadwood National Historic Landmark District. The Conservation Values, which are more fully described in the Baseline Documentation Report are described in Exhibit B attached hereto and incorporated herein by this reference;
- C. The Property represents open space for the scenic, educational and recreational enjoyment of the general public and will yield a significant public benefit;
- D. Grantor desires to preserve **in perpetuity** the Conservation Values of the Property by granting this Easement and by surrendering the opportunity to engage in economic development of the Property that is inconsistent with such Conservation Values;
- E. The Property has substantial economic value if developed for nonagricultural purposes, but only by potentially harming the Conservation Values and purposes as noted above;
- F. Maintaining the Property’s cultural, historical, archaeological, natural, scenic and recreational values characteristics, and, in particular, maintaining the Property free from new structures, alteration or changes that would encroach upon, damage or destroy the Property and the Deadwood National Historic Landmark District are critical to the protection of this property. The conservation of the Property, subject to the terms of this easement, will yield significant benefits to the public by protecting the Property;

- G. The parties have mutual desires and goals towards the long-term preservation of Deadwood's National Historic Landmark District, the State and National Register Districts, and the local historic district;
- H. The parties desire to conserve the Property by entering into this Conservation Easement pursuant to SDCL 1-19B-56 to 1-19B-60 of the State of South Dakota and Section 170(h) of the Internal Revenue Code; and
- I. Grantor has received independent legal and financial advice regarding this Conservation Easement to the extent that Grantor has deemed necessary. Grantor freely conveys this Conservation Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants contained herein the parties agree as follows:

1. **Grant of Easement.**

- 1.1 *Scope and General Purpose.* Upon and subject to the terms and conditions described herein below, Grantor hereby grants, warrants and conveys to Grantee a conservation easement to preserve and protect the Conservation Values of the Property.
- 1.2 *Term.* This Easement shall be **perpetual**.
- 1.3 *Authority Generally.* Grantee shall have the right and power:
- (a) To enter upon the Property at reasonable times to monitor compliance with and otherwise to enforce the terms of this Easement as more particularly set forth herein; and
 - (b) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in § 10; and
 - (c) To retain as its exclusive right, power and domain, except as expressly reserved to Grantor, all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, it being the intent hereby that such development rights shall, except as expressly reserved, be terminated and extinguished and may not be used on or transferred to any portion of the Property.
 - (d) Grantee may create pedestrian trails, interpretive sites and conduct archaeological investigations consistent with the conservation values identified herein.

- 1.4 *Access.* For all the purposes described in this Easement, Grantee shall have the right to access the Property from, and to travel by vehicle or foot upon and across, any public or private road or unimproved road or path, public or private, on, to or adjoining the Property. In the event the Property is landlocked, Grantee may have access to the Property on and across any adjoining land of Grantor by the route most convenient to Grantee.
2. **Other Grants by Grantee.** This Easement shall not be interpreted to prohibit or restrict Grantor from participating in any state, federal or local government entity or agency programs designed to promote, preserve or enhance the natural characteristics and potential of the Property and to make any grant of any covenant, restriction, easement or title to the Property for that purpose (a “Public Entity Grant”), provided all of the following conditions are met: (i) any such grant is subject to this Easement; (ii) the grant does not impair, harm or otherwise jeopardize the Conservation Values; and (iii) Grantor shall provide prior notice to Grantee complying with §9.
3. **Grantee’s Acceptance.** In reliance upon Grantor’s warranties and representations as described below, Grantee hereby accepts grant of this Easement and the responsibility of monitoring and enforcing its terms and upholding its Conservation Values forever.
4. **Conservation Baseline.** The document entitled “Baseline Documentation Report”, incorporated by this reference, that the Grantor and Grantee mutually agree, as depicted by photographs, maps, and supporting text, describes the general condition of the Property, including Structures and Improvements, and driveways, as located on the Property as of the date of this Conservation Easement.
5. **Grantor’s Warranties and Representations.**
- 5.1 *Purpose.* Grantor acknowledges that despite the Conservation Values of the Property, certain factors, if they were present, would preclude Grantee from accepting this Easement; and Grantee cannot accept this Easement without affirmative assurances that these factors are not present with respect to the Property. Since Grantor is the party most familiar with the Property, Grantor acknowledges the right of Grantee to rely without inquiry on these assurances in the form of Grantor’s warranties and representations as described below.
- 5.2 *Enumeration.* To induce Grantee to accept this Easement, Grantor warrants and represents as follows:
- (a) Grantor is the sole owner of the Property, free of all liens, claims, interests and encumbrances.
- (b) To the best of Grantor’s knowledge:
- (i) Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting, or

otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements and has no current adverse effect on any of the Conservation Values.

- (ii) No deposit, disposal, or other release of any hazardous substance or toxic waste has occurred on or from the Property, which is free of all such contamination.
 - (iii) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.
 - (iv) Grantor and the Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use.
 - (v) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property.
- (c) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
- (d) In determining to grant this Easement, Grantor has relied solely on the advice of his own legal, tax and valuation advisors and not on any representative of Grantee.

6. **Prohibited and Restricted Uses.**

- 6.1 *Encouraged Practices.* Grantee acknowledges that the Conservation Values are available to be preserved, and Grantor and its successors and assigns are encouraged to conduct all permitted operations and practices in accordance with good management practices addressing soil and water conservation, erosion control, historical, cultural resource and habitat protection.
- 6.2 *Promise to Comply.* Grantor covenants and promises that Grantor will not perform, or knowingly allow others to perform, any act or use on or affecting the Property in conflict with this § 6.

6.3 *Specific Terms.* The Property is hereby made subject to the following prohibitions and restrictions:

- (a) No billboards or commercial signs shall be erected on the Property.
- (b) Grantor may transfer the property in any manner as it sees fit. However, the Property shall not otherwise be subdivided by physical, legal or other process, for purposes of transferring ownership of less than the entirety of the Property.
- (c) The Property shall not be subject to any mining, extraction or removal of soil, sand, gravel, oil, natural gas, fuel or other mineral substance or exploration for any such purpose, except for movement of material solely for use on the Property in conjunction with and in furtherance of activities permitted by this Easement.
- (d) Trees on the Property may be cut only for the following: (i) to control insects and disease; (ii) to prevent personal injury or property damage; (iii) to prevent or reduce fire hazard; or (iv) pursuant to a natural resources management plan having the prior approval of Grantee. No plants, flora, fauna or other vegetation may be cut, burned, removed, destroyed, eradicated or harvested except pursuant to a cultural and natural resources management plan approved by Grantee.
- (e) No unpaved portion of the Property shall be paved, including without limitation covering the soil surface with concrete, asphalt, gravel or other material other than soil and grass.
- (f) Grantor shall not transfer, encumber, lease, sell or otherwise separate any water rights from the Property.
- (g) The dumping or accumulation of any kind of trash, garbage, debris, waste, refuse, junk, hazardous chemicals, other unsightly or foreign material, or derelict equipment on the Property is prohibited.
- (h) No Structures or other Improvements may be built on the Property. For purposes of this Easement, "Structure" includes any building or object constructed, installed or placed upon the ground, whether temporarily or permanent, including without limitation residential units, garages, sheds, studios, cabins, moveable buildings, decks, terraces, and garden features such as arbors and gazebos. For purposes of this Easement, "Improvements" shall mean anything that is constructed or installed upon the ground or a Structure, which is not a Structure and includes without limitation driveways, roads, parking areas, gardens, ponds, wells, septic tanks, drainageways, utility lines, fences, walls, paths, trails and walkways.

- (i) There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the Easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. Surface drainage into the Property shall comply with all applicable ordinances, regulations and statutes, including those applicable to water quality.
- (j) No new roads not shown on exhibit A or site plans may be cut through the Property. No motorized vehicles shall be used on the Property, except for maintenance work to protect the Conservation Values, and for Grantee's inspections.
- (k) The Property may not be used for or as a part of any commercial venture to provide hunting, fishing, camping, hiking, biking, lodging, drinking or eating or any other commercial recreational activity.
- (l) No above ground installation of new utility systems or extensions of existing systems, including, without limitation, cell towers, telephone relay towers and any other stand-alone tower structures shall be permitted. No water, sewer, power, fuel or communication lines nor related facilities, or any underground installation, will be permitted if the resulting effect would be to drain, alter, or disturb any wetland on the Property unless permitted by the Corps of Engineers or Environmental Protection Agency, as applicable.

6.4 **Acts of God.** Nothing contained in this Easement shall be construed to impose upon Grantor any liability or obligation for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm and earth movement, or from any prudent action by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

7. **Retained Rights.** Except as otherwise expressly provided in this Easement, Grantor shall retain all incidents, rights, powers and discretion inhering in ownership and possession of the Property including without limited to the following:

- 7.1 *Transfers.* To transfer, lease, mortgage or otherwise encumber the Property, subject and subordinate to this Easement, after compliance with the notice requirements of this Easement in §9.
- 7.2 *Compliance with Public Entity Grants.* Grantor may execute all instruments and documents, provide all assurances and take all actions necessary to comply with

all public entity grants, to the extent required thereby and not impairing, harming or otherwise jeopardizing the Conservation Values.

- 7.3 *Weed Control.* Grantor retains the right to use herbicides to control weeds and other undesirable plants, and the right to use other pesticides to control insects and undesirable wildlife. The use of these chemicals shall be consistent with normal forestry and timber practices.

8. **Retained and Assumed Responsibilities, Obligations and Liabilities.**

- 8.1 *Grantee's Status.* Grantor acknowledges that Grantee shall not be considered, and the parties do not intend this Easement to be construed to create or impose upon Grantee any responsibilities, obligations or liability as, an owner, operator, landlord, tenant or manager of the Property. Grantee's obligations for monitoring and inspection shall be solely for the purpose of preserving Conservation Values and not for the prevention or mitigation of any damage, injury or other harm to persons or property. This Easement shall not be deemed to create any right of action against Grantee in favor of any third party.
- 8.2 *Taxes.* Grantor shall pay before delinquency all taxes, assessment, fees and charges of whatever description levied on or assessed against the Property and/or this Easement; provided, however, that all assessed real estate taxes shall be paid on or before the due date set forth in the county tax statement.
- 8.3 *Management.* Grantor shall continue to be solely responsible for the upkeep, maintenance and management of the Property and preservation and protection of the Conservation Values. In the event Grantee places any interpretive sites or hiking or biking trails, Grantee shall be solely responsible for the upkeep maintenance and management of these improvements. Further, Grantee shall be solely responsible for any reclamation costs incurred by any archeological investigations.
- 8.4 *Insurance.* Grantor shall be solely responsible for maintaining all appropriate casualty, property, liability and workers compensation insurance appropriate for their use and occupation of the Property. Grantee shall be named an additional insured on all such insurance policies related to the Property.
- 8.5 *Compliance with Laws.* Grantor shall remain solely responsible for obtaining all applicable governmental permits and approvals for any activity or use permitted by this Easement and to conduct the foregoing in accordance with and in observation of all applicable federal, state and local laws, rules, regulations and requirements.
- 8.6 *Indemnity.* Grantor shall indemnify, protect, defend with counsel acceptable to Grantee and hold Grantee and its directors, officers, employees, agents, attorneys, volunteers, representatives, successors and assigns (the Indemnified Parties) harmless from and against all claims, actions, administrative

proceedings, liabilities, judgments, damages, punitive damages, penalties, fines, costs, remedial action, compliance requirements, enforcement in clean-up actions of any kind, interests or losses, attorney's fees and expenses (including those incurred in enforcing this indemnity), consultant fees and expert fees arising directly or indirectly from or in connection with (i) injury or death of any person, damage to any property or diminution in the value of property resulting from any act, omission, condition or other matter related to or occurring on or about the Property regardless of cause, including injury, death or other harm to any Indemnified Party; (ii) the presence, suspected presence or release of any hazardous substance whether into the air, soil, surface water or ground water of or at the Property; (iii) any violation or alleged violation of any environmental law affecting the Property, whether occurring prior to or during Grantor's ownership of the Property and whether caused or permitted by Grantor or any person other than Grantor; (iv) any claim or defense by Grantor or any third party that any Indemnified Party is liable as an owner or operator of the Property under any environmental law; or (v) any breach of Grantor's warranties, representations or retained responsibilities, obligations or liabilities hereunder. This indemnity shall not apply if it shall be finally determined that any of the foregoing was caused primarily by the gross negligence or willful misconduct of Grantee.

- 8.7 *Remediation.* If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

9. **Notices and Approvals.**

- 9.1 *Methods.* Any notice or communication under this Easement shall be in writing and delivered (by hand, telecopy, telegraph, telex or courier) or deposited in the United States mail (first class, registered or certified), postage fully prepaid and addressed as stated below. Either party may, from time to time, specify as its address for purposes of this Easement any other address upon the giving of ten days notice thereof to the other party in the manner required by this paragraph. This paragraph shall not prevent the giving of written notice in any other manner, but such notice shall be deemed effective only when and as of its actual receipt at the proper address and by the proper addressee.
- 9.2 *Timing and Substance.* Whenever notice to or approval of Grantee is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material

aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

- 9.3 *Approval.* Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. Grantee's approval may be conditioned on reimbursement of costs incurred in, and reasonable fees for, consideration of the request.

10. **Grantee's Remedies.**

- 10.1 *Notice; Corrective Action.* If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.
- 10.2 *Injunctive Relief.* If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- 10.3 *Damages.* In the event that Grantor does not or cannot cure the noticed violation and effectively restore the Property to its pre-violation state, then Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- 10.4 *Emergency Enforcement.* If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property such as to make notice impracticable, Grantee may pursue its remedies under this § 10 without prior notice to Grantor or without waiting for the period provided for cure to expire. In such instance, Grantee shall provide notice as soon as practicable.

- 10.5 *Scope.* Grantee's rights under this § 10 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in § 10.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this § 10 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 10.6 *Costs.* All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.
- 10.7 *Forbearance.* Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- 10.8 *Waiver.* Grantor hereby waives any defense of laches, estoppel, or prescription.

11. **Extinguishment and Condemnation.**

- 11.1 *Extinguishment.* If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with § 11.2.
- 11.2 *Valuation.* This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of § 11.1, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without

deduction for the value of the Easement, at the time of this grant. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

- 11.3 *Condemnation.* If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in § 11.2.
- 11.4 *Application of Proceeds.* Grantee shall use any proceeds received under the circumstances described in this § 11 in a manner consistent with its conservation purposes, which are exemplified by this grant.
12. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the IRC (or any successor provision then applicable), and authorized to acquire and hold conservation easements under state statute (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee shall give written notice to Grantor of an assignment at least thirty (30) days prior to the effective date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.
13. **General Provisions.**
- 13.1 *Benefit and Binding Effect.* The Easement created by this instrument shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to Grantor and Grantee shall also apply to, be binding upon and inure to the benefit of their respective agents, heirs, executors, administrators, other legal representatives, transferees, successors and assigns.
- 13.2 *No Third Party Beneficiaries.* This Easement is intended solely for the benefit of the parties hereto and shall not be enforceable by or create any claim or right of action in favor of any other party.
- 13.3 *Entire Agreement.*
- (a) This Easement represents the entire and integrated agreement between the parties hereto with respect to the subjects described herein and supersedes

all prior negotiations, representations or agreements, oral or written. Subject to subparagraph (b), this Easement may be amended or modified only in writing signed by the party to be bound by such amendment or modification and stating that it is intended as an amendment or modification of this Easement. The parties waive their rights to amend or modify this Easement in any other manner.

- (b) This Easement may be amended only upon satisfaction of all of the following: (i) written consent of Grantee, which may be granted or withheld in its sole discretion and upon such additional conditions as Grantee may determine to impose in any specific instance; (ii) payment of Grantee's incurred costs and reasonable fees it may impose for the consideration of such amendment; (iii) protection of the Conservation Values are improved or not impaired; (iv) the amendment complies with SDCL 1-19B-56(2)(b) et seq.; and (v) the amendment complies with §170(h) of the Internal Revenue Code. Any such amendment that does not comply with all such requirements shall be void and of no force or effect.

- 13.4 *Severability.* If any one or more of the provisions of this Easement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality or enforceability of such provision in every other respect and the remaining provisions of this Easement shall not be in any way impaired.
- 13.5 *Nonwaiver.* Failure of a party to insist upon adherence to any term of this Easement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term or any other term of this Easement.
- 13.6 *Governing Law.* This Easement shall be governed by and interpreted under the substantive laws of the State of South Dakota without regard to principles of conflicts of law. This Easement shall not be interpreted to negate, supersede or otherwise modify any law, statute, rule, regulation or ordinance (together a Law) imposing additional or more stringent restrictions, including those related to zoning or land use, unless such Law is permitted to be varied by private agreement and the express terms of this agreement have that effect. No approval of this Easement by any governmental authority shall have the effect of negating, superseding or otherwise modifying such Law, or waiving its enforcement, unless expressly so stated as a part of such approval.
- 13.7 *Headings.* The section headings to this Easement are intended solely for the parties' convenience and shall not affect the interpretation or construction of any portion or provision of this Easement.
- 13.8 *Recordation; Publicity.* Grantee shall record this instrument in timely fashion in the official records of Lawrence County, South Dakota and may re-record it at any time as may be required to preserve its rights in this Easement. Grantee

may reasonably publicize the grant of this Easement and use photographs and descriptions of the Property on its web site and other informative materials.

- 13.9 *Liberal Interpretation.* Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and preservation of the Conservation Values. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 13.10 *No Forfeiture.* Nothing contained herein will result in forfeiture by Grantee or reversion of Grantor’s title in any respect.
- 13.11 *Termination.* A party’s rights and obligations under this Easement terminate upon transfer of the party’s interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

IN WITNESS WHEREOF, the parties hereto have executed this Easement on the day and year first above-written.

GRANTOR:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this _____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

GRANTEE:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
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ATTEST

Jessica McKeown
Finance Officer

EXHIBIT A

Baseline Documentation Report

The Property is located near the middle of the Deadwood National Historic Landmark District and the state and national register historic districts of Deadwood, Lawrence County, South Dakota. Deadwood was originally settled in a scenic gulch at the confluence of Whitewood and Deadwood Creeks in 1876, due to the discovery of gold in the Black Hills of South Dakota.

The property is a highly visible undeveloped steep hillside with Ponderosa pine forest scattered with scrub oak and spruce. The property is currently zoned R1 - Residential.

Deadwood is a small town with a historic setting and an aesthetic beauty. The environs afforded Deadwood by its location in the Black Hills offers many environmental benefits for the community. The ponderosa pines and other vegetation on the surrounding hillsides help provide ecosystem services that supply clean air and water to Deadwood, and the rocks and minerals are responsible for the founding and flourishing of Deadwood as a mining town. This property offers these conservation values as well as potential opportunities to experience nature and outdoor recreation such as hiking and biking.

Deadwood's numerous comprehensive plans have identified several goals which match the conservation values provided by this property. These include but are not limited to the following:

1. The City of Deadwood desires to preserve the natural environment, livability, and sense of community.
2. The City of Deadwood desires to protect the scenic, historic, and small city character while emphasizing and preserving the community's historic past for future generations.
3. The City of Deadwood desires to promote the diversification of activities that will attract visitors all seasons of the year.
4. The City of Deadwood desires to support the enhancement and protection of our recreational and cultural amenities.
5. The City of Deadwood desires to protect the historic integrity and the natural environment of Deadwood.

This Instrument Prepared By:
 City of Deadwood
 108 Sherman Street
 Deadwood, SD 57732
 (605) 578-2082
 (605) 587-2084

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (this “Easement”) is granted this ____ day of _____, 2024 by **City of Deadwood**, 108 Sherman Street, Deadwood, SD 57732 (the Grantor) to **the CITY OF DEADWOOD**, City of Deadwood, 108 Sherman Street, Deadwood, SD 57732, a South Dakota municipal government (Grantee):

WHEREAS:

- A. Grantor is the owner in fee of real property (the “Property”) located on Lot 2 being a part of School Lot 1, except Railroad Right of Way, all located in the SW ¼ of Section 23, T.5N, R.3E, B.H.M., City of Deadwood, Lawrence County, South Dakota more particularly described in Exhibit A;
- B. The Property possesses cultural, historical, archaeological, natural, scenic, and recreational values (collectively the “Conservation Values”) of great importance to Grantor, the people of the City of Deadwood and the people of the State of South Dakota; the preservation of which will provide a significant public benefit to the protection of the Deadwood National Historic Landmark District. The Conservation Values, which are more fully described in the Baseline Documentation Report are described in Exhibit B attached hereto and incorporated herein by this reference;
- C. The Property represents open space for the scenic, educational and recreational enjoyment of the general public and will yield a significant public benefit;
- D. Grantor desires to preserve **in perpetuity** the Conservation Values of the Property by granting this Easement and by surrendering the opportunity to engage in economic development of the Property that is inconsistent with such Conservation Values;
- E. The Property has substantial economic value if developed for nonagricultural purposes, but only by potentially harming the Conservation Values and purposes as noted above;
- F. Maintaining the Property’s cultural, historical, archaeological, natural, scenic and recreational values characteristics, and, in particular, maintaining the Property free from new structures, alteration or changes that would encroach upon, damage or destroy the Property and the Deadwood National Historic Landmark District are critical to the protection of this property. The conservation of the Property, subject to the terms of this easement, will yield significant benefits to the public by protecting the Property;

- G. The parties have mutual desires and goals towards the long-term preservation of Deadwood's National Historic Landmark District, the State and National Register Districts, and the local historic district;
- H. The parties desire to conserve the Property by entering into this Conservation Easement pursuant to SDCL 1-19B-56 to 1-19B-60 of the State of South Dakota and Section 170(h) of the Internal Revenue Code; and
- I. Grantor has received independent legal and financial advice regarding this Conservation Easement to the extent that Grantor has deemed necessary. Grantor freely conveys this Conservation Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants contained herein the parties agree as follows:

1. **Grant of Easement.**

- 1.1 *Scope and General Purpose.* Upon and subject to the terms and conditions described herein below, Grantor hereby grants, warrants and conveys to Grantee a conservation easement to preserve and protect the Conservation Values of the Property.
- 1.2 *Term.* This Easement shall be **perpetual**.
- 1.3 *Authority Generally.* Grantee shall have the right and power:
- (a) To enter upon the Property at reasonable times to monitor compliance with and otherwise to enforce the terms of this Easement as more particularly set forth herein; and
 - (b) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in § 10; and
 - (c) To retain as its exclusive right, power and domain, except as expressly reserved to Grantor, all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, it being the intent hereby that such development rights shall, except as expressly reserved, be terminated and extinguished and may not be used on or transferred to any portion of the Property.
 - (d) Grantee may create pedestrian trails, interpretive sites and conduct archaeological investigations consistent with the conservation values identified herein.

- 1.4 *Access.* For all the purposes described in this Easement, Grantee shall have the right to access the Property from, and to travel by vehicle or foot upon and across, any public or private road or unimproved road or path, public or private, on, to or adjoining the Property. In the event the Property is landlocked, Grantee may have access to the Property on and across any adjoining land of Grantor by the route most convenient to Grantee.
2. **Other Grants by Grantee.** This Easement shall not be interpreted to prohibit or restrict Grantor from participating in any state, federal or local government entity or agency programs designed to promote, preserve or enhance the natural characteristics and potential of the Property and to make any grant of any covenant, restriction, easement or title to the Property for that purpose (a “Public Entity Grant”), provided all of the following conditions are met: (i) any such grant is subject to this Easement; (ii) the grant does not impair, harm or otherwise jeopardize the Conservation Values; and (iii) Grantor shall provide prior notice to Grantee complying with §9.
3. **Grantee’s Acceptance.** In reliance upon Grantor’s warranties and representations as described below, Grantee hereby accepts grant of this Easement and the responsibility of monitoring and enforcing its terms and upholding its Conservation Values forever.
4. **Conservation Baseline.** The document entitled “Baseline Documentation Report”, incorporated by this reference, that the Grantor and Grantee mutually agree, as depicted by photographs, maps, and supporting text, describes the general condition of the Property, including Structures and Improvements, and driveways, as located on the Property as of the date of this Conservation Easement.
5. **Grantor’s Warranties and Representations.**
- 5.1 *Purpose.* Grantor acknowledges that despite the Conservation Values of the Property, certain factors, if they were present, would preclude Grantee from accepting this Easement; and Grantee cannot accept this Easement without affirmative assurances that these factors are not present with respect to the Property. Since Grantor is the party most familiar with the Property, Grantor acknowledges the right of Grantee to rely without inquiry on these assurances in the form of Grantor’s warranties and representations as described below.
- 5.2 *Enumeration.* To induce Grantee to accept this Easement, Grantor warrants and represents as follows:
- (a) Grantor is the sole owner of the Property, free of all liens, claims, interests and encumbrances.
- (b) To the best of Grantor’s knowledge:
- (i) Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting, or

otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements and has no current adverse effect on any of the Conservation Values.

- (ii) No deposit, disposal, or other release of any hazardous substance or toxic waste has occurred on or from the Property, which is free of all such contamination.
 - (iii) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.
 - (iv) Grantor and the Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use.
 - (v) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property.
- (c) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
- (d) In determining to grant this Easement, Grantor has relied solely on the advice of his own legal, tax and valuation advisors and not on any representative of Grantee.

6. **Prohibited and Restricted Uses.**

- 6.1 *Encouraged Practices.* Grantee acknowledges that the Conservation Values are available to be preserved, and Grantor and its successors and assigns are encouraged to conduct all permitted operations and practices in accordance with good management practices addressing soil and water conservation, erosion control, historical, cultural resource and habitat protection.
- 6.2 *Promise to Comply.* Grantor covenants and promises that Grantor will not perform, or knowingly allow others to perform, any act or use on or affecting the Property in conflict with this § 6.

6.3 *Specific Terms.* The Property is hereby made subject to the following prohibitions and restrictions:

- (a) No billboards or commercial signs shall be erected on the Property.
- (b) Grantor may transfer the property in any manner as it sees fit. However, the Property shall not otherwise be subdivided by physical, legal or other process, for purposes of transferring ownership of less than the entirety of the Property.
- (c) The Property shall not be subject to any mining, extraction or removal of soil, sand, gravel, oil, natural gas, fuel or other mineral substance or exploration for any such purpose, except for movement of material solely for use on the Property in conjunction with and in furtherance of activities permitted by this Easement.
- (d) Trees on the Property may be cut only for the following: (i) to control insects and disease; (ii) to prevent personal injury or property damage; (iii) to prevent or reduce fire hazard; or (iv) pursuant to a natural resources management plan having the prior approval of Grantee. No plants, flora, fauna or other vegetation may be cut, burned, removed, destroyed, eradicated or harvested except pursuant to a cultural and natural resources management plan approved by Grantee.
- (e) No unpaved portion of the Property shall be paved, including without limitation covering the soil surface with concrete, asphalt, gravel or other material other than soil and grass.
- (f) Grantor shall not transfer, encumber, lease, sell or otherwise separate any water rights from the Property.
- (g) The dumping or accumulation of any kind of trash, garbage, debris, waste, refuse, junk, hazardous chemicals, other unsightly or foreign material, or derelict equipment on the Property is prohibited.
- (h) No Structures or other Improvements may be built on the Property. For purposes of this Easement, "Structure" includes any building or object constructed, installed or placed upon the ground, whether temporarily or permanent, including without limitation residential units, garages, sheds, studios, cabins, moveable buildings, decks, terraces, and garden features such as arbors and gazebos. For purposes of this Easement, "Improvements" shall mean anything that is constructed or installed upon the ground or a Structure, which is not a Structure and includes without limitation driveways, roads, parking areas, gardens, ponds, wells, septic tanks, drainageways, utility lines, fences, walls, paths, trails and walkways.

- (i) There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the Easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. Surface drainage into the Property shall comply with all applicable ordinances, regulations and statutes, including those applicable to water quality.
- (j) No new roads not shown on exhibit A or site plans may be cut through the Property. No motorized vehicles shall be used on the Property, except for maintenance work to protect the Conservation Values, and for Grantee's inspections.
- (k) The Property may not be used for or as a part of any commercial venture to provide hunting, fishing, camping, hiking, biking, lodging, drinking or eating or any other commercial recreational activity.
- (l) No above ground installation of new utility systems or extensions of existing systems, including, without limitation, cell towers, telephone relay towers and any other stand-alone tower structures shall be permitted. No water, sewer, power, fuel or communication lines nor related facilities, or any underground installation, will be permitted if the resulting effect would be to drain, alter, or disturb any wetland on the Property unless permitted by the Corps of Engineers or Environmental Protection Agency, as applicable.

6.4 **Acts of God.** Nothing contained in this Easement shall be construed to impose upon Grantor any liability or obligation for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm and earth movement, or from any prudent action by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

7. **Retained Rights.** Except as otherwise expressly provided in this Easement, Grantor shall retain all incidents, rights, powers and discretion inhering in ownership and possession of the Property including without limited to the following:

- 7.1 *Transfers.* To transfer, lease, mortgage or otherwise encumber the Property, subject and subordinate to this Easement, after compliance with the notice requirements of this Easement in §9.
- 7.2 *Compliance with Public Entity Grants.* Grantor may execute all instruments and documents, provide all assurances and take all actions necessary to comply with

all public entity grants, to the extent required thereby and not impairing, harming or otherwise jeopardizing the Conservation Values.

- 7.3 *Weed Control.* Grantor retains the right to use herbicides to control weeds and other undesirable plants, and the right to use other pesticides to control insects and undesirable wildlife. The use of these chemicals shall be consistent with normal forestry and timber practices.

8. **Retained and Assumed Responsibilities, Obligations and Liabilities.**

- 8.1 *Grantee's Status.* Grantor acknowledges that Grantee shall not be considered, and the parties do not intend this Easement to be construed to create or impose upon Grantee any responsibilities, obligations or liability as, an owner, operator, landlord, tenant or manager of the Property. Grantee's obligations for monitoring and inspection shall be solely for the purpose of preserving Conservation Values and not for the prevention or mitigation of any damage, injury or other harm to persons or property. This Easement shall not be deemed to create any right of action against Grantee in favor of any third party.
- 8.2 *Taxes.* Grantor shall pay before delinquency all taxes, assessment, fees and charges of whatever description levied on or assessed against the Property and/or this Easement; provided, however, that all assessed real estate taxes shall be paid on or before the due date set forth in the county tax statement.
- 8.3 *Management.* Grantor shall continue to be solely responsible for the upkeep, maintenance and management of the Property and preservation and protection of the Conservation Values. In the event Grantee places any interpretive sites or hiking or biking trails, Grantee shall be solely responsible for the upkeep maintenance and management of these improvements. Further, Grantee shall be solely responsible for any reclamation costs incurred by any archeological investigations.
- 8.4 *Insurance.* Grantor shall be solely responsible for maintaining all appropriate casualty, property, liability and workers compensation insurance appropriate for their use and occupation of the Property. Grantee shall be named an additional insured on all such insurance policies related to the Property.
- 8.5 *Compliance with Laws.* Grantor shall remain solely responsible for obtaining all applicable governmental permits and approvals for any activity or use permitted by this Easement and to conduct the foregoing in accordance with and in observation of all applicable federal, state and local laws, rules, regulations and requirements.
- 8.6 *Indemnity.* Grantor shall indemnify, protect, defend with counsel acceptable to Grantee and hold Grantee and its directors, officers, employees, agents, attorneys, volunteers, representatives, successors and assigns (the Indemnified Parties) harmless from and against all claims, actions, administrative

proceedings, liabilities, judgments, damages, punitive damages, penalties, fines, costs, remedial action, compliance requirements, enforcement in clean-up actions of any kind, interests or losses, attorney's fees and expenses (including those incurred in enforcing this indemnity), consultant fees and expert fees arising directly or indirectly from or in connection with (i) injury or death of any person, damage to any property or diminution in the value of property resulting from any act, omission, condition or other matter related to or occurring on or about the Property regardless of cause, including injury, death or other harm to any Indemnified Party; (ii) the presence, suspected presence or release of any hazardous substance whether into the air, soil, surface water or ground water of or at the Property; (iii) any violation or alleged violation of any environmental law affecting the Property, whether occurring prior to or during Grantor's ownership of the Property and whether caused or permitted by Grantor or any person other than Grantor; (iv) any claim or defense by Grantor or any third party that any Indemnified Party is liable as an owner or operator of the Property under any environmental law; or (v) any breach of Grantor's warranties, representations or retained responsibilities, obligations or liabilities hereunder. This indemnity shall not apply if it shall be finally determined that any of the foregoing was caused primarily by the gross negligence or willful misconduct of Grantee.

- 8.7 *Remediation.* If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

9. **Notices and Approvals.**

- 9.1 *Methods.* Any notice or communication under this Easement shall be in writing and delivered (by hand, telecopy, telegraph, telex or courier) or deposited in the United States mail (first class, registered or certified), postage fully prepaid and addressed as stated below. Either party may, from time to time, specify as its address for purposes of this Easement any other address upon the giving of ten days notice thereof to the other party in the manner required by this paragraph. This paragraph shall not prevent the giving of written notice in any other manner, but such notice shall be deemed effective only when and as of its actual receipt at the proper address and by the proper addressee.
- 9.2 *Timing and Substance.* Whenever notice to or approval of Grantee is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material

aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

- 9.3 *Approval.* Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. Grantee's approval may be conditioned on reimbursement of costs incurred in, and reasonable fees for, consideration of the request.

10. **Grantee's Remedies.**

- 10.1 *Notice; Corrective Action.* If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.
- 10.2 *Injunctive Relief.* If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- 10.3 *Damages.* In the event that Grantor does not or cannot cure the noticed violation and effectively restore the Property to its pre-violation state, then Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- 10.4 *Emergency Enforcement.* If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property such as to make notice impracticable, Grantee may pursue its remedies under this § 10 without prior notice to Grantor or without waiting for the period provided for cure to expire. In such instance, Grantee shall provide notice as soon as practicable.

- 10.5 *Scope.* Grantee's rights under this § 10 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in § 10.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this § 10 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 10.6 *Costs.* All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.
- 10.7 *Forbearance.* Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- 10.8 *Waiver.* Grantor hereby waives any defense of laches, estoppel, or prescription.

11. **Extinguishment and Condemnation.**

- 11.1 *Extinguishment.* If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with § 11.2.
- 11.2 *Valuation.* This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of § 11.1, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without

deduction for the value of the Easement, at the time of this grant. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

11.3 *Condemnation.* If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in § 11.2.

11.4 *Application of Proceeds.* Grantee shall use any proceeds received under the circumstances described in this § 11 in a manner consistent with its conservation purposes, which are exemplified by this grant.

12. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the IRC (or any successor provision then applicable), and authorized to acquire and hold conservation easements under state statute (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee shall give written notice to Grantor of an assignment at least thirty (30) days prior to the effective date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

13. **General Provisions.**

13.1 *Benefit and Binding Effect.* The Easement created by this instrument shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to Grantor and Grantee shall also apply to, be binding upon and inure to the benefit of their respective agents, heirs, executors, administrators, other legal representatives, transferees, successors and assigns.

13.2 *No Third Party Beneficiaries.* This Easement is intended solely for the benefit of the parties hereto and shall not be enforceable by or create any claim or right of action in favor of any other party.

13.3 *Entire Agreement.*

(a) This Easement represents the entire and integrated agreement between the parties hereto with respect to the subjects described herein and supersedes

all prior negotiations, representations or agreements, oral or written. Subject to subparagraph (b), this Easement may be amended or modified only in writing signed by the party to be bound by such amendment or modification and stating that it is intended as an amendment or modification of this Easement. The parties waive their rights to amend or modify this Easement in any other manner.

- (b) This Easement may be amended only upon satisfaction of all of the following: (i) written consent of Grantee, which may be granted or withheld in its discretion and upon such additional conditions as Grantee may determine to impose in any specific instance; (ii) payment of Grantee's incurred costs and reasonable fees it may impose for the consideration of such amendment; (iii) protection of the Conservation Values are improved or not impaired; (iv) the amendment complies with SDCL 1-19B-56(2)(b) et seq.; and (v) the amendment complies with §170(h) of the Internal Revenue Code. Any such amendment that does not comply with all such requirements shall be void and of no force or effect.

- 13.4 *Severability.* If any one or more of the provisions of this Easement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality or enforceability of such provision in every other respect and the remaining provisions of this Easement shall not be in any way impaired.
- 13.5 *Nonwaiver.* Failure of a party to insist upon adherence to any term of this Easement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term or any other term of this Easement.
- 13.6 *Governing Law.* This Easement shall be governed by and interpreted under the substantive laws of the State of South Dakota without regard to principles of conflicts of law. This Easement shall not be interpreted to negate, supersede or otherwise modify any law, statute, rule, regulation or ordinance (together a Law) imposing additional or more stringent restrictions, including those related to zoning or land use, unless such Law is permitted to be varied by private agreement and the express terms of this agreement have that effect. No approval of this Easement by any governmental authority shall have the effect of negating, superseding or otherwise modifying such Law, or waiving its enforcement, unless expressly so stated as a part of such approval.
- 13.7 *Headings.* The section headings to this Easement are intended solely for the parties' convenience and shall not affect the interpretation or construction of any portion or provision of this Easement.
- 13.8 *Recordation; Publicity.* Grantee shall record this instrument in timely fashion in the official records of Lawrence County, South Dakota and may re-record it at any time as may be required to preserve its rights in this Easement. Grantee

may reasonably publicize the grant of this Easement and use photographs and descriptions of the Property on its web site and other informative materials.

- 13.9 *Liberal Interpretation.* Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and preservation of the Conservation Values. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 13.10 *No Forfeiture.* Nothing contained herein will result in forfeiture by Grantee or reversion of Grantor’s title in any respect.
- 13.11 *Termination.* A party’s rights and obligations under this Easement terminate upon transfer of the party’s interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

IN WITNESS WHEREOF, the parties hereto have executed this Easement on the day and year first above-written.

GRANTOR:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this _____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

GRANTEE:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this _____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

EXHIBIT A

Baseline Documentation Report

The Property is located near the middle of the Deadwood National Historic Landmark District and the state and national register historic districts of Deadwood, Lawrence County, South Dakota. Deadwood was originally settled in a scenic gulch at the confluence of Whitewood and Deadwood Creeks in 1876, due to the discovery of gold in the Black Hills of South Dakota.

The property is a highly visible undeveloped steep hillside with Ponderosa pine forest scattered with scrub oak and spruce. The property is currently zoned PF – Park Forest.

Deadwood is a small town with a historic setting and an aesthetic beauty. The environs afforded Deadwood by its location in the Black Hills offers many environmental benefits for the community. The ponderosa pines and other vegetation on the surrounding hillsides help provide ecosystem services that supply clean air and water to Deadwood, and the rocks and minerals are responsible for the founding and flourishing of Deadwood as a mining town. This property offers these conservation values as well as potential opportunities to experience nature and outdoor recreation such as hiking and biking.

Deadwood's numerous comprehensive plans have identified several goals which match the conservation values provided by this property. These include but are not limited to the following:

1. The City of Deadwood desires to preserve the natural environment, livability, and sense of community.
2. The City of Deadwood desires to protect the scenic, historic, and small city character while emphasizing and preserving the community's historic past for future generations.
3. The City of Deadwood desires to promote the diversification of activities that will attract visitors all seasons of the year.
4. The City of Deadwood desires to support the enhancement and protection of our recreational and cultural amenities.
5. The City of Deadwood desires to protect the historic integrity and the natural environment of Deadwood.

This Instrument Prepared By:
 City of Deadwood
 108 Sherman Street
 Deadwood, SD 57732
 (605) 578-2082
 (605) 587-2084

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (this “Easement”) is granted this ____ day of _____, 2024 by **City of Deadwood**, 108 Sherman Street, Deadwood, SD 57732 (the Grantor) to **the CITY OF DEADWOOD**, City of Deadwood, 108 Sherman Street, Deadwood, SD 57732, a South Dakota municipal government (Grantee):

WHEREAS:

- A. Grantor is the owner in fee of real property (the “Property”) located on School Lot 10 in the City of Deadwood, Lawrence County, South Dakota according to P.L. Rogers Map more particularly described in Exhibit A;
- B. The Property possesses cultural, historical, archaeological, natural, scenic, and recreational values (collectively the “Conservation Values”) of great importance to Grantor, the people of the City of Deadwood and the people of the State of South Dakota; the preservation of which will provide a significant public benefit to the protection of the Deadwood National Historic Landmark District. The Conservation Values, which are more fully described in the Baseline Documentation Report are described in Exhibit B attached hereto and incorporated herein by this reference;
- C. The Property represents open space for the scenic, educational and recreational enjoyment of the general public and will yield a significant public benefit;
- D. Grantor desires to preserve **in perpetuity** the Conservation Values of the Property by granting this Easement and by surrendering the opportunity to engage in economic development of the Property that is inconsistent with such Conservation Values;
- E. The Property has substantial economic value if developed for nonagricultural purposes, but only by potentially harming the Conservation Values and purposes as noted above;
- F. Maintaining the Property’s cultural, historical, archaeological, natural, scenic and recreational values characteristics, and, in particular, maintaining the Property free from new structures, alteration or changes that would encroach upon, damage or destroy the Property and the Deadwood National Historic Landmark District are critical to the protection of this property. The conservation of the Property, subject to the terms of this easement, will yield significant benefits to the public by protecting the Property;

- G. The parties have mutual desires and goals towards the long-term preservation of Deadwood's National Historic Landmark District, the State and National Register Districts, and the local historic district;
- H. The parties desire to conserve the Property by entering into this Conservation Easement pursuant to SDCL 1-19B-56 to 1-19B-60 of the State of South Dakota and Section 170(h) of the Internal Revenue Code; and
- I. Grantor has received independent legal and financial advice regarding this Conservation Easement to the extent that Grantor has deemed necessary. Grantor freely conveys this Conservation Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants contained herein the parties agree as follows:

1. **Grant of Easement.**

- 1.1 *Scope and General Purpose.* Upon and subject to the terms and conditions described herein below, Grantor hereby grants, warrants and conveys to Grantee a conservation easement to preserve and protect the Conservation Values of the Property.
- 1.2 *Term.* This Easement shall be **perpetual**.
- 1.3 *Authority Generally.* Grantee shall have the right and power:
- (a) To enter upon the Property at reasonable times to monitor compliance with and otherwise to enforce the terms of this Easement as more particularly set forth herein; and
 - (b) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in § 10; and
 - (c) To retain as its exclusive right, power and domain, except as expressly reserved to Grantor, all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, it being the intent hereby that such development rights shall, except as expressly reserved, be terminated and extinguished and may not be used on or transferred to any portion of the Property.
 - (d) Grantee may create pedestrian trails, interpretive sites and conduct archaeological investigations consistent with the conservation values identified herein.

- 1.4 *Access.* For all the purposes described in this Easement, Grantee shall have the right to access the Property from, and to travel by vehicle or foot upon and across, any public or private road or unimproved road or path, public or private, on, to or adjoining the Property. In the event the Property is landlocked, Grantee may have access to the Property on and across any adjoining land of Grantor by the route most convenient to Grantee.
2. **Other Grants by Grantee.** This Easement shall not be interpreted to prohibit or restrict Grantor from participating in any state, federal or local government entity or agency programs designed to promote, preserve or enhance the natural characteristics and potential of the Property and to make any grant of any covenant, restriction, easement or title to the Property for that purpose (a “Public Entity Grant”), provided all of the following conditions are met: (i) any such grant is subject to this Easement; (ii) the grant does not impair, harm or otherwise jeopardize the Conservation Values; and (iii) Grantor shall provide prior notice to Grantee complying with §9.
3. **Grantee’s Acceptance.** In reliance upon Grantor’s warranties and representations as described below, Grantee hereby accepts grant of this Easement and the responsibility of monitoring and enforcing its terms and upholding its Conservation Values forever.
4. **Conservation Baseline.** The document entitled “Baseline Documentation Report”, incorporated by this reference, that the Grantor and Grantee mutually agree, as depicted by photographs, maps, and supporting text, describes the general condition of the Property, including Structures and Improvements, and driveways, as located on the Property as of the date of this Conservation Easement.
5. **Grantor’s Warranties and Representations.**
- 5.1 *Purpose.* Grantor acknowledges that despite the Conservation Values of the Property, certain factors, if they were present, would preclude Grantee from accepting this Easement; and Grantee cannot accept this Easement without affirmative assurances that these factors are not present with respect to the Property. Since Grantor is the party most familiar with the Property, Grantor acknowledges the right of Grantee to rely without inquiry on these assurances in the form of Grantor’s warranties and representations as described below.
- 5.2 *Enumeration.* To induce Grantee to accept this Easement, Grantor warrants and represents as follows:
- (a) Grantor is the sole owner of the Property, free of all liens, claims, interests and encumbrances.
- (b) To the best of Grantor’s knowledge:
- (i) Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting, or

otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements and has no current adverse effect on any of the Conservation Values.

- (ii) No deposit, disposal, or other release of any hazardous substance or toxic waste has occurred on or from the Property, which is free of all such contamination.
 - (iii) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.
 - (iv) Grantor and the Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use.
 - (v) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property.
- (c) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
- (d) In determining to grant this Easement, Grantor has relied solely on the advice of his own legal, tax and valuation advisors and not on any representative of Grantee.

6. **Prohibited and Restricted Uses.**

- 6.1 *Encouraged Practices.* Grantee acknowledges that the Conservation Values are available to be preserved, and Grantor and its successors and assigns are encouraged to conduct all permitted operations and practices in accordance with good management practices addressing soil and water conservation, erosion control, historical, cultural resource and habitat protection.
- 6.2 *Promise to Comply.* Grantor covenants and promises that Grantor will not perform, or knowingly allow others to perform, any act or use on or affecting the Property in conflict with this § 6.

6.3 *Specific Terms.* The Property is hereby made subject to the following prohibitions and restrictions:

- (a) No billboards or commercial signs shall be erected on the Property.
- (b) Grantor may transfer the property in any manner as it sees fit. However, the Property shall not otherwise be subdivided by physical, legal or other process, for purposes of transferring ownership of less than the entirety of the Property.
- (c) The Property shall not be subject to any mining, extraction or removal of soil, sand, gravel, oil, natural gas, fuel or other mineral substance or exploration for any such purpose, except for movement of material solely for use on the Property in conjunction with and in furtherance of activities permitted by this Easement.
- (d) Trees on the Property may be cut only for the following: (i) to control insects and disease; (ii) to prevent personal injury or property damage; (iii) to prevent or reduce fire hazard; or (iv) pursuant to a natural resources management plan having the prior approval of Grantee. No plants, flora, fauna or other vegetation may be cut, burned, removed, destroyed, eradicated or harvested except pursuant to a cultural and natural resources management plan approved by Grantee.
- (e) No unpaved portion of the Property shall be paved, including without limitation covering the soil surface with concrete, asphalt, gravel or other material other than soil and grass.
- (f) Grantor shall not transfer, encumber, lease, sell or otherwise separate any water rights from the Property.
- (g) The dumping or accumulation of any kind of trash, garbage, debris, waste, refuse, junk, hazardous chemicals, other unsightly or foreign material, or derelict equipment on the Property is prohibited.
- (h) No Structures or other Improvements may be built on the Property. For purposes of this Easement, "Structure" includes any building or object constructed, installed or placed upon the ground, whether temporarily or permanent, including without limitation residential units, garages, sheds, studios, cabins, moveable buildings, decks, terraces, and garden features such as arbors and gazebos. For purposes of this Easement, "Improvements" shall mean anything that is constructed or installed upon the ground or a Structure, which is not a Structure and includes without limitation driveways, roads, parking areas, gardens, ponds, wells, septic tanks, drainageways, utility lines, fences, walls, paths, trails and walkways.

- (i) There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the Easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. Surface drainage into the Property shall comply with all applicable ordinances, regulations and statutes, including those applicable to water quality.
- (j) No new roads not shown on exhibit A or site plans may be cut through the Property. No motorized vehicles shall be used on the Property, except for maintenance work to protect the Conservation Values, and for Grantee's inspections.
- (k) The Property may not be used for or as a part of any commercial venture to provide hunting, fishing, camping, hiking, biking, lodging, drinking or eating or any other commercial recreational activity.
- (l) No above ground installation of new utility systems or extensions of existing systems, including, without limitation, cell towers, telephone relay towers and any other stand-alone tower structures shall be permitted. No water, sewer, power, fuel or communication lines nor related facilities, or any underground installation, will be permitted if the resulting effect would be to drain, alter, or disturb any wetland on the Property unless permitted by the Corps of Engineers or Environmental Protection Agency, as applicable.

6.4 **Acts of God.** Nothing contained in this Easement shall be construed to impose upon Grantor any liability or obligation for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm and earth movement, or from any prudent action by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

7. **Retained Rights.** Except as otherwise expressly provided in this Easement, Grantor shall retain all incidents, rights, powers and discretion inhering in ownership and possession of the Property including without limited to the following:

- 7.1 *Transfers.* To transfer, lease, mortgage or otherwise encumber the Property, subject and subordinate to this Easement, after compliance with the notice requirements of this Easement in §9.
- 7.2 *Compliance with Public Entity Grants.* Grantor may execute all instruments and documents, provide all assurances and take all actions necessary to comply with

all public entity grants, to the extent required thereby and not impairing, harming or otherwise jeopardizing the Conservation Values.

- 7.3 *Weed Control.* Grantor retains the right to use herbicides to control weeds and other undesirable plants, and the right to use other pesticides to control insects and undesirable wildlife. The use of these chemicals shall be consistent with normal forestry and timber practices.

8. **Retained and Assumed Responsibilities, Obligations and Liabilities.**

- 8.1 *Grantee's Status.* Grantor acknowledges that Grantee shall not be considered, and the parties do not intend this Easement to be construed to create or impose upon Grantee any responsibilities, obligations or liability as, an owner, operator, landlord, tenant or manager of the Property. Grantee's obligations for monitoring and inspection shall be solely for the purpose of preserving Conservation Values and not for the prevention or mitigation of any damage, injury or other harm to persons or property. This Easement shall not be deemed to create any right of action against Grantee in favor of any third party.
- 8.2 *Taxes.* Grantor shall pay before delinquency all taxes, assessment, fees and charges of whatever description levied on or assessed against the Property and/or this Easement; provided, however, that all assessed real estate taxes shall be paid on or before the due date set forth in the county tax statement.
- 8.3 *Management.* Grantor shall continue to be solely responsible for the upkeep, maintenance and management of the Property and preservation and protection of the Conservation Values. In the event Grantee places any interpretive sites or hiking or biking trails, Grantee shall be solely responsible for the upkeep maintenance and management of these improvements. Further, Grantee shall be solely responsible for any reclamation costs incurred by any archeological investigations.
- 8.4 *Insurance.* Grantor shall be solely responsible for maintaining all appropriate casualty, property, liability and workers compensation insurance appropriate for their use and occupation of the Property. Grantee shall be named an additional insured on all such insurance policies related to the Property.
- 8.5 *Compliance with Laws.* Grantor shall remain solely responsible for obtaining all applicable governmental permits and approvals for any activity or use permitted by this Easement and to conduct the foregoing in accordance with and in observation of all applicable federal, state and local laws, rules, regulations and requirements.
- 8.6 *Indemnity.* Grantor shall indemnify, protect, defend with counsel acceptable to Grantee and hold Grantee and its directors, officers, employees, agents, attorneys, volunteers, representatives, successors and assigns (the Indemnified Parties) harmless from and against all claims, actions, administrative

proceedings, liabilities, judgments, damages, punitive damages, penalties, fines, costs, remedial action, compliance requirements, enforcement in clean-up actions of any kind, interests or losses, attorney's fees and expenses (including those incurred in enforcing this indemnity), consultant fees and expert fees arising directly or indirectly from or in connection with (i) injury or death of any person, damage to any property or diminution in the value of property resulting from any act, omission, condition or other matter related to or occurring on or about the Property regardless of cause, including injury, death or other harm to any Indemnified Party; (ii) the presence, suspected presence or release of any hazardous substance whether into the air, soil, surface water or ground water of or at the Property; (iii) any violation or alleged violation of any environmental law affecting the Property, whether occurring prior to or during Grantor's ownership of the Property and whether caused or permitted by Grantor or any person other than Grantor; (iv) any claim or defense by Grantor or any third party that any Indemnified Party is liable as an owner or operator of the Property under any environmental law; or (v) any breach of Grantor's warranties, representations or retained responsibilities, obligations or liabilities hereunder. This indemnity shall not apply if it shall be finally determined that any of the foregoing was caused primarily by the gross negligence or willful misconduct of Grantee.

- 8.7 *Remediation.* If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

9. Notices and Approvals.

- 9.1 *Methods.* Any notice or communication under this Easement shall be in writing and delivered (by hand, telecopy, telegraph, telex or courier) or deposited in the United States mail (first class, registered or certified), postage fully prepaid and addressed as stated below. Either party may, from time to time, specify as its address for purposes of this Easement any other address upon the giving of ten days notice thereof to the other party in the manner required by this paragraph. This paragraph shall not prevent the giving of written notice in any other manner, but such notice shall be deemed effective only when and as of its actual receipt at the proper address and by the proper addressee.
- 9.2 *Timing and Substance.* Whenever notice to or approval of Grantee is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material

aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

- 9.3 *Approval.* Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. Grantee's approval may be conditioned on reimbursement of costs incurred in, and reasonable fees for, consideration of the request.

10. **Grantee's Remedies.**

- 10.1 *Notice; Corrective Action.* If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.
- 10.2 *Injunctive Relief.* If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- 10.3 *Damages.* In the event that Grantor does not or cannot cure the noticed violation and effectively restore the Property to its pre-violation state, then Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- 10.4 *Emergency Enforcement.* If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property such as to make notice impracticable, Grantee may pursue its remedies under this § 10 without prior notice to Grantor or without waiting for the period provided for cure to expire. In such instance, Grantee shall provide notice as soon as practicable.

- 10.5 *Scope.* Grantee's rights under this § 10 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in § 10.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this § 10 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 10.6 *Costs.* All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.
- 10.7 *Forbearance.* Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- 10.8 *Waiver.* Grantor hereby waives any defense of laches, estoppel, or prescription.

11. Extinguishment and Condemnation.

- 11.1 *Extinguishment.* If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with § 11.2.
- 11.2 *Valuation.* This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of § 11.1, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without

deduction for the value of the Easement, at the time of this grant. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

11.3 *Condemnation.* If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in § 11.2.

11.4 *Application of Proceeds.* Grantee shall use any proceeds received under the circumstances described in this § 11 in a manner consistent with its conservation purposes, which are exemplified by this grant.

12. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the IRC (or any successor provision then applicable), and authorized to acquire and hold conservation easements under state statute (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee shall give written notice to Grantor of an assignment at least thirty (30) days prior to the effective date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

13. **General Provisions.**

13.1 *Benefit and Binding Effect.* The Easement created by this instrument shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to Grantor and Grantee shall also apply to, be binding upon and inure to the benefit of their respective agents, heirs, executors, administrators, other legal representatives, transferees, successors and assigns.

13.2 *No Third Party Beneficiaries.* This Easement is intended solely for the benefit of the parties hereto and shall not be enforceable by or create any claim or right of action in favor of any other party.

13.3 *Entire Agreement.*

(a) This Easement represents the entire and integrated agreement between the parties hereto with respect to the subjects described herein and supersedes

all prior negotiations, representations or agreements, oral or written. Subject to subparagraph (b), this Easement may be amended or modified only in writing signed by the party to be bound by such amendment or modification and stating that it is intended as an amendment or modification of this Easement. The parties waive their rights to amend or modify this Easement in any other manner.

- (b) This Easement may be amended only upon satisfaction of all of the following: (i) written consent of Grantee, which may be granted or withheld in its sole discretion and upon such additional conditions as Grantee may determine to impose in any specific instance; (ii) payment of Grantee's incurred costs and reasonable fees it may impose for the consideration of such amendment; (iii) protection of the Conservation Values are improved or not impaired; (iv) the amendment complies with SDCL 1-19B-56(2)(b) et seq.; and (v) the amendment complies with §170(h) of the Internal Revenue Code. Any such amendment that does not comply with all such requirements shall be void and of no force or effect.

- 13.4 *Severability.* If any one or more of the provisions of this Easement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality or enforceability of such provision in every other respect and the remaining provisions of this Easement shall not be in any way impaired.
- 13.5 *Nonwaiver.* Failure of a party to insist upon adherence to any term of this Easement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term or any other term of this Easement.
- 13.6 *Governing Law.* This Easement shall be governed by and interpreted under the substantive laws of the State of South Dakota without regard to principles of conflicts of law. This Easement shall not be interpreted to negate, supersede or otherwise modify any law, statute, rule, regulation or ordinance (together a Law) imposing additional or more stringent restrictions, including those related to zoning or land use, unless such Law is permitted to be varied by private agreement and the express terms of this agreement have that effect. No approval of this Easement by any governmental authority shall have the effect of negating, superseding or otherwise modifying such Law, or waiving its enforcement, unless expressly so stated as a part of such approval.
- 13.7 *Headings.* The section headings to this Easement are intended solely for the parties' convenience and shall not affect the interpretation or construction of any portion or provision of this Easement.
- 13.8 *Recordation; Publicity.* Grantee shall record this instrument in timely fashion in the official records of Lawrence County, South Dakota and may re-record it at any time as may be required to preserve its rights in this Easement. Grantee

may reasonably publicize the grant of this Easement and use photographs and descriptions of the Property on its web site and other informative materials.

- 13.9 *Liberal Interpretation.* Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and preservation of the Conservation Values. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 13.10 *No Forfeiture.* Nothing contained herein will result in forfeiture by Grantee or reversion of Grantor’s title in any respect.
- 13.11 *Termination.* A party’s rights and obligations under this Easement terminate upon transfer of the party’s interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

IN WITNESS WHEREOF, the parties hereto have executed this Easement on the day and year first above-written.

GRANTOR:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this _____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

GRANTEE:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this _____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

EXHIBIT A

Baseline Documentation Report

The Property is located near the middle of the Deadwood National Historic Landmark District and the state and national register historic districts of Deadwood, Lawrence County, South Dakota. Deadwood was originally settled in a scenic gulch at the confluence of Whitewood and Deadwood Creeks in 1876, due to the discovery of gold in the Black Hills of South Dakota.

The property is a highly visible undeveloped steep hillside with Ponderosa pine forest scattered with scrub oak and spruce. The property is currently zoned R1 - Residential.

Deadwood is a small town with a historic setting and an aesthetic beauty. The environs afforded Deadwood by its location in the Black Hills offers many environmental benefits for the community. The ponderosa pines and other vegetation on the surrounding hillsides help provide ecosystem services that supply clean air and water to Deadwood, and the rocks and minerals are responsible for the founding and flourishing of Deadwood as a mining town. This property offers these conservation values as well as potential opportunities to experience nature and outdoor recreation such as hiking and biking.

Deadwood's numerous comprehensive plans have identified several goals which match the conservation values provided by this property. These include but are not limited to the following:

1. The City of Deadwood desires to preserve the natural environment, livability, and sense of community.
2. The City of Deadwood desires to protect the scenic, historic, and small city character while emphasizing and preserving the community's historic past for future generations.
3. The City of Deadwood desires to promote the diversification of activities that will attract visitors all seasons of the year.
4. The City of Deadwood desires to support the enhancement and protection of our recreational and cultural amenities.
5. The City of Deadwood desires to protect the historic integrity and the natural environment of Deadwood.

This Instrument Prepared By:
 City of Deadwood
 108 Sherman Street
 Deadwood, SD 57732
 (605) 578-2082
 (605) 587-2084

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (this “Easement”) is granted this ____ day of _____, 2024 by **City of Deadwood**, 108 Sherman Street, Deadwood, SD 57732 (the Grantor) to **the CITY OF DEADWOOD**, City of Deadwood, 108 Sherman Street, Deadwood, SD 57732, a South Dakota municipal government (Grantee):

WHEREAS:

- A. Grantor is the owner in fee of real property (the “Property”) located on School Lots 11 and 14, City of Deadwood, Lawrence County, South Dakota more particularly described in Exhibit A;
- B. The Property possesses cultural, historical, archaeological, natural, scenic, and recreational values (collectively the “Conservation Values”) of great importance to Grantor, the people of the City of Deadwood and the people of the State of South Dakota; the preservation of which will provide a significant public benefit to the protection of the Deadwood National Historic Landmark District. The Conservation Values, which are more fully described in the Baseline Documentation Report are described in Exhibit B attached hereto and incorporated herein by this reference;
- C. The Property represents open space for the scenic, educational and recreational enjoyment of the general public and will yield a significant public benefit;
- D. Grantor desires to preserve **in perpetuity** the Conservation Values of the Property by granting this Easement and by surrendering the opportunity to engage in economic development of the Property that is inconsistent with such Conservation Values;
- E. The Property has substantial economic value if developed for nonagricultural purposes, but only by potentially harming the Conservation Values and purposes as noted above;
- F. Maintaining the Property’s cultural, historical, archaeological, natural, scenic and recreational values characteristics, and, in particular, maintaining the Property free from new structures, alteration or changes that would encroach upon, damage or destroy the Property and the Deadwood National Historic Landmark District are critical to the protection of this property. The conservation of the Property, subject to the terms of this easement, will yield significant benefits to the public by protecting the Property;

- G. The parties have mutual desires and goals towards the long-term preservation of Deadwood's National Historic Landmark District, the State and National Register Districts, and the local historic district;
- H. The parties desire to conserve the Property by entering into this Conservation Easement pursuant to SDCL 1-19B-56 to 1-19B-60 of the State of South Dakota and Section 170(h) of the Internal Revenue Code; and
- I. Grantor has received independent legal and financial advice regarding this Conservation Easement to the extent that Grantor has deemed necessary. Grantor freely conveys this Conservation Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants contained herein the parties agree as follows:

1. **Grant of Easement.**

- 1.1 *Scope and General Purpose.* Upon and subject to the terms and conditions described herein below, Grantor hereby grants, warrants and conveys to Grantee a conservation easement to preserve and protect the Conservation Values of the Property.
- 1.2 *Term.* This Easement shall be **perpetual**.
- 1.3 *Authority Generally.* Grantee shall have the right and power:
- (a) To enter upon the Property at reasonable times to monitor compliance with and otherwise to enforce the terms of this Easement as more particularly set forth herein; and
 - (b) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in § 10; and
 - (c) To retain as its exclusive right, power and domain, except as expressly reserved to Grantor, all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, it being the intent hereby that such development rights shall, except as expressly reserved, be terminated and extinguished and may not be used on or transferred to any portion of the Property.
 - (d) Grantee may create pedestrian trails, interpretive sites and conduct archaeological investigations consistent with the conservation values identified herein.

- 1.4 *Access.* For all the purposes described in this Easement, Grantee shall have the right to access the Property from, and to travel by vehicle or foot upon and across, any public or private road or unimproved road or path, public or private, on, to or adjoining the Property. In the event the Property is landlocked, Grantee may have access to the Property on and across any adjoining land of Grantor by the route most convenient to Grantee.
2. **Other Grants by Grantee.** This Easement shall not be interpreted to prohibit or restrict Grantor from participating in any state, federal or local government entity or agency programs designed to promote, preserve or enhance the natural characteristics and potential of the Property and to make any grant of any covenant, restriction, easement or title to the Property for that purpose (a “Public Entity Grant”), provided all of the following conditions are met: (i) any such grant is subject to this Easement; (ii) the grant does not impair, harm or otherwise jeopardize the Conservation Values; and (iii) Grantor shall provide prior notice to Grantee complying with §9.
3. **Grantee’s Acceptance.** In reliance upon Grantor’s warranties and representations as described below, Grantee hereby accepts grant of this Easement and the responsibility of monitoring and enforcing its terms and upholding its Conservation Values forever.
4. **Conservation Baseline.** The document entitled “Baseline Documentation Report”, incorporated by this reference, that the Grantor and Grantee mutually agree, as depicted by photographs, maps, and supporting text, describes the general condition of the Property, including Structures and Improvements, and driveways, as located on the Property as of the date of this Conservation Easement.
5. **Grantor’s Warranties and Representations.**
- 5.1 *Purpose.* Grantor acknowledges that despite the Conservation Values of the Property, certain factors, if they were present, would preclude Grantee from accepting this Easement; and Grantee cannot accept this Easement without affirmative assurances that these factors are not present with respect to the Property. Since Grantor is the party most familiar with the Property, Grantor acknowledges the right of Grantee to rely without inquiry on these assurances in the form of Grantor’s warranties and representations as described below.
- 5.2 *Enumeration.* To induce Grantee to accept this Easement, Grantor warrants and represents as follows:
- (a) Grantor is the sole owner of the Property, free of all liens, claims, interests and encumbrances.
- (b) To the best of Grantor’s knowledge:
- (i) Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting, or

otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements and has no current adverse effect on any of the Conservation Values.

- (ii) No deposit, disposal, or other release of any hazardous substance or toxic waste has occurred on or from the Property, which is free of all such contamination.
 - (iii) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.
 - (iv) Grantor and the Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use.
 - (v) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property.
- (c) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
- (d) In determining to grant this Easement, Grantor has relied solely on the advice of his own legal, tax and valuation advisors and not on any representative of Grantee.

6. **Prohibited and Restricted Uses.**

- 6.1 *Encouraged Practices.* Grantee acknowledges that the Conservation Values are available to be preserved, and Grantor and its successors and assigns are encouraged to conduct all permitted operations and practices in accordance with good management practices addressing soil and water conservation, erosion control, historical, cultural resource and habitat protection.
- 6.2 *Promise to Comply.* Grantor covenants and promises that Grantor will not perform, or knowingly allow others to perform, any act or use on or affecting the Property in conflict with this § 6.

6.3 *Specific Terms.* The Property is hereby made subject to the following prohibitions and restrictions:

- (a) No billboards or commercial signs shall be erected on the Property.
- (b) Grantor may transfer the property in any manner as it sees fit. However, the Property shall not otherwise be subdivided by physical, legal or other process, for purposes of transferring ownership of less than the entirety of the Property.
- (c) The Property shall not be subject to any mining, extraction or removal of soil, sand, gravel, oil, natural gas, fuel or other mineral substance or exploration for any such purpose, except for movement of material solely for use on the Property in conjunction with and in furtherance of activities permitted by this Easement.
- (d) Trees on the Property may be cut only for the following: (i) to control insects and disease; (ii) to prevent personal injury or property damage; (iii) to prevent or reduce fire hazard; or (iv) pursuant to a natural resources management plan having the prior approval of Grantee. No plants, flora, fauna or other vegetation may be cut, burned, removed, destroyed, eradicated or harvested except pursuant to a cultural and natural resources management plan approved by Grantee.
- (e) No unpaved portion of the Property shall be paved, including without limitation covering the soil surface with concrete, asphalt, gravel or other material other than soil and grass.
- (f) Grantor shall not transfer, encumber, lease, sell or otherwise separate any water rights from the Property.
- (g) The dumping or accumulation of any kind of trash, garbage, debris, waste, refuse, junk, hazardous chemicals, other unsightly or foreign material, or derelict equipment on the Property is prohibited.
- (h) No Structures or other Improvements may be built on the Property. For purposes of this Easement, "Structure" includes any building or object constructed, installed or placed upon the ground, whether temporarily or permanent, including without limitation residential units, garages, sheds, studios, cabins, moveable buildings, decks, terraces, and garden features such as arbors and gazebos. For purposes of this Easement, "Improvements" shall mean anything that is constructed or installed upon the ground or a Structure, which is not a Structure and includes without limitation driveways, roads, parking areas, gardens, ponds, wells, septic tanks, drainageways, utility lines, fences, walls, paths, trails and walkways.

- (i) There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the Easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. Surface drainage into the Property shall comply with all applicable ordinances, regulations and statutes, including those applicable to water quality.
- (j) No new roads not shown on exhibit A or site plans may be cut through the Property. No motorized vehicles shall be used on the Property, except for maintenance work to protect the Conservation Values, and for Grantee's inspections.
- (k) The Property may not be used for or as a part of any commercial venture to provide hunting, fishing, camping, hiking, biking, lodging, drinking or eating or any other commercial recreational activity.
- (l) No above ground installation of new utility systems or extensions of existing systems, including, without limitation, cell towers, telephone relay towers and any other stand-alone tower structures shall be permitted. No water, sewer, power, fuel or communication lines nor related facilities, or any underground installation, will be permitted if the resulting effect would be to drain, alter, or disturb any wetland on the Property unless permitted by the Corps of Engineers or Environmental Protection Agency, as applicable.

6.4 **Acts of God.** Nothing contained in this Easement shall be construed to impose upon Grantor any liability or obligation for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm and earth movement, or from any prudent action by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

7. **Retained Rights.** Except as otherwise expressly provided in this Easement, Grantor shall retain all incidents, rights, powers and discretion inhering in ownership and possession of the Property including without limited to the following:

- 7.1 *Transfers.* To transfer, lease, mortgage or otherwise encumber the Property, subject and subordinate to this Easement, after compliance with the notice requirements of this Easement in §9.
- 7.2 *Compliance with Public Entity Grants.* Grantor may execute all instruments and documents, provide all assurances and take all actions necessary to comply with

all public entity grants, to the extent required thereby and not impairing, harming or otherwise jeopardizing the Conservation Values.

- 7.3 *Weed Control.* Grantor retains the right to use herbicides to control weeds and other undesirable plants, and the right to use other pesticides to control insects and undesirable wildlife. The use of these chemicals shall be consistent with normal forestry and timber practices.

8. **Retained and Assumed Responsibilities, Obligations and Liabilities.**

- 8.1 *Grantee's Status.* Grantor acknowledges that Grantee shall not be considered, and the parties do not intend this Easement to be construed to create or impose upon Grantee any responsibilities, obligations or liability as, an owner, operator, landlord, tenant or manager of the Property. Grantee's obligations for monitoring and inspection shall be solely for the purpose of preserving Conservation Values and not for the prevention or mitigation of any damage, injury or other harm to persons or property. This Easement shall not be deemed to create any right of action against Grantee in favor of any third party.
- 8.2 *Taxes.* Grantor shall pay before delinquency all taxes, assessment, fees and charges of whatever description levied on or assessed against the Property and/or this Easement; provided, however, that all assessed real estate taxes shall be paid on or before the due date set forth in the county tax statement.
- 8.3 *Management.* Grantor shall continue to be solely responsible for the upkeep, maintenance and management of the Property and preservation and protection of the Conservation Values. In the event Grantee places any interpretive sites or hiking or biking trails, Grantee shall be solely responsible for the upkeep maintenance and management of these improvements. Further, Grantee shall be solely responsible for any reclamation costs incurred by any archeological investigations.
- 8.4 *Insurance.* Grantor shall be solely responsible for maintaining all appropriate casualty, property, liability and workers compensation insurance appropriate for their use and occupation of the Property. Grantee shall be named an additional insured on all such insurance policies related to the Property.
- 8.5 *Compliance with Laws.* Grantor shall remain solely responsible for obtaining all applicable governmental permits and approvals for any activity or use permitted by this Easement and to conduct the foregoing in accordance with and in observation of all applicable federal, state and local laws, rules, regulations and requirements.
- 8.6 *Indemnity.* Grantor shall indemnify, protect, defend with counsel acceptable to Grantee and hold Grantee and its directors, officers, employees, agents, attorneys, volunteers, representatives, successors and assigns (the Indemnified Parties) harmless from and against all claims, actions, administrative

proceedings, liabilities, judgments, damages, punitive damages, penalties, fines, costs, remedial action, compliance requirements, enforcement in clean-up actions of any kind, interests or losses, attorney's fees and expenses (including those incurred in enforcing this indemnity), consultant fees and expert fees arising directly or indirectly from or in connection with (i) injury or death of any person, damage to any property or diminution in the value of property resulting from any act, omission, condition or other matter related to or occurring on or about the Property regardless of cause, including injury, death or other harm to any Indemnified Party; (ii) the presence, suspected presence or release of any hazardous substance whether into the air, soil, surface water or ground water of or at the Property; (iii) any violation or alleged violation of any environmental law affecting the Property, whether occurring prior to or during Grantor's ownership of the Property and whether caused or permitted by Grantor or any person other than Grantor; (iv) any claim or defense by Grantor or any third party that any Indemnified Party is liable as an owner or operator of the Property under any environmental law; or (v) any breach of Grantor's warranties, representations or retained responsibilities, obligations or liabilities hereunder. This indemnity shall not apply if it shall be finally determined that any of the foregoing was caused primarily by the gross negligence or willful misconduct of Grantee.

- 8.7 *Remediation.* If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

9. **Notices and Approvals.**

- 9.1 *Methods.* Any notice or communication under this Easement shall be in writing and delivered (by hand, telecopy, telegraph, telex or courier) or deposited in the United States mail (first class, registered or certified), postage fully prepaid and addressed as stated below. Either party may, from time to time, specify as its address for purposes of this Easement any other address upon the giving of ten days notice thereof to the other party in the manner required by this paragraph. This paragraph shall not prevent the giving of written notice in any other manner, but such notice shall be deemed effective only when and as of its actual receipt at the proper address and by the proper addressee.
- 9.2 *Timing and Substance.* Whenever notice to or approval of Grantee is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material

aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

- 9.3 *Approval.* Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. Grantee's approval may be conditioned on reimbursement of costs incurred in, and reasonable fees for, consideration of the request.

10. **Grantee's Remedies.**

- 10.1 *Notice; Corrective Action.* If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.
- 10.2 *Injunctive Relief.* If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- 10.3 *Damages.* In the event that Grantor does not or cannot cure the noticed violation and effectively restore the Property to its pre-violation state, then Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- 10.4 *Emergency Enforcement.* If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property such as to make notice impracticable, Grantee may pursue its remedies under this § 10 without prior notice to Grantor or without waiting for the period provided for cure to expire. In such instance, Grantee shall provide notice as soon as practicable.

- 10.5 *Scope.* Grantee's rights under this § 10 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in § 10.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this § 10 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 10.6 *Costs.* All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.
- 10.7 *Forbearance.* Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- 10.8 *Waiver.* Grantor hereby waives any defense of laches, estoppel, or prescription.

11. **Extinguishment and Condemnation.**

- 11.1 *Extinguishment.* If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with § 11.2.
- 11.2 *Valuation.* This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of § 11.1, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without

deduction for the value of the Easement, at the time of this grant. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

- 11.3 *Condemnation.* If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in § 11.2.
- 11.4 *Application of Proceeds.* Grantee shall use any proceeds received under the circumstances described in this § 11 in a manner consistent with its conservation purposes, which are exemplified by this grant.
12. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the IRC (or any successor provision then applicable), and authorized to acquire and hold conservation easements under state statute (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee shall give written notice to Grantor of an assignment at least thirty (30) days prior to the effective date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.
13. **General Provisions.**
- 13.1 *Benefit and Binding Effect.* The Easement created by this instrument shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to Grantor and Grantee shall also apply to, be binding upon and inure to the benefit of their respective agents, heirs, executors, administrators, other legal representatives, transferees, successors and assigns.
- 13.2 *No Third Party Beneficiaries.* This Easement is intended solely for the benefit of the parties hereto and shall not be enforceable by or create any claim or right of action in favor of any other party.
- 13.3 *Entire Agreement.*
- (a) This Easement represents the entire and integrated agreement between the parties hereto with respect to the subjects described herein and supersedes

all prior negotiations, representations or agreements, oral or written. Subject to subparagraph (b), this Easement may be amended or modified only in writing signed by the party to be bound by such amendment or modification and stating that it is intended as an amendment or modification of this Easement. The parties waive their rights to amend or modify this Easement in any other manner.

- (b) This Easement may be amended only upon satisfaction of all of the following: (i) written consent of Grantee, which may be granted or withheld in its sole discretion and upon such additional conditions as Grantee may determine to impose in any specific instance; (ii) payment of Grantee's incurred costs and reasonable fees it may impose for the consideration of such amendment; (iii) protection of the Conservation Values are improved or not impaired; (iv) the amendment complies with SDCL 1-19B-56(2)(b) et seq.; and (v) the amendment complies with §170(h) of the Internal Revenue Code. Any such amendment that does not comply with all such requirements shall be void and of no force or effect.

- 13.4 *Severability.* If any one or more of the provisions of this Easement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality or enforceability of such provision in every other respect and the remaining provisions of this Easement shall not be in any way impaired.
- 13.5 *Nonwaiver.* Failure of a party to insist upon adherence to any term of this Easement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term or any other term of this Easement.
- 13.6 *Governing Law.* This Easement shall be governed by and interpreted under the substantive laws of the State of South Dakota without regard to principles of conflicts of law. This Easement shall not be interpreted to negate, supersede or otherwise modify any law, statute, rule, regulation or ordinance (together a Law) imposing additional or more stringent restrictions, including those related to zoning or land use, unless such Law is permitted to be varied by private agreement and the express terms of this agreement have that effect. No approval of this Easement by any governmental authority shall have the effect of negating, superseding or otherwise modifying such Law, or waiving its enforcement, unless expressly so stated as a part of such approval.
- 13.7 *Headings.* The section headings to this Easement are intended solely for the parties' convenience and shall not affect the interpretation or construction of any portion or provision of this Easement.
- 13.8 *Recordation; Publicity.* Grantee shall record this instrument in timely fashion in the official records of Lawrence County, South Dakota and may re-record it at any time as may be required to preserve its rights in this Easement. Grantee

may reasonably publicize the grant of this Easement and use photographs and descriptions of the Property on its web site and other informative materials.

- 13.9 *Liberal Interpretation.* Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and preservation of the Conservation Values. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 13.10 *No Forfeiture.* Nothing contained herein will result in forfeiture by Grantee or reversion of Grantor’s title in any respect.
- 13.11 *Termination.* A party’s rights and obligations under this Easement terminate upon transfer of the party’s interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

IN WITNESS WHEREOF, the parties hereto have executed this Easement on the day and year first above-written.

GRANTOR:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this _____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

GRANTEE:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this _____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

EXHIBIT A

Baseline Documentation Report

The Property is located near the middle of the Deadwood National Historic Landmark District and the state and national register historic districts of Deadwood, Lawrence County, South Dakota. Deadwood was originally settled in a scenic gulch at the confluence of Whitewood and Deadwood Creeks in 1876, due to the discovery of gold in the Black Hills of South Dakota.

The property is a highly visible undeveloped steep hillside with Ponderosa pine forest scattered with scrub oak and spruce. The property is currently zoned R1 - Residential.

Deadwood is a small town with a historic setting and an aesthetic beauty. The environs afforded Deadwood by its location in the Black Hills offers many environmental benefits for the community. The ponderosa pines and other vegetation on the surrounding hillsides help provide ecosystem services that supply clean air and water to Deadwood, and the rocks and minerals are responsible for the founding and flourishing of Deadwood as a mining town. This property offers these conservation values as well as potential opportunities to experience nature and outdoor recreation such as hiking and biking.

Deadwood's numerous comprehensive plans have identified several goals which match the conservation values provided by this property. These include but are not limited to the following:

1. The City of Deadwood desires to preserve the natural environment, livability, and sense of community.
2. The City of Deadwood desires to protect the scenic, historic, and small city character while emphasizing and preserving the community's historic past for future generations.
3. The City of Deadwood desires to promote the diversification of activities that will attract visitors all seasons of the year.
4. The City of Deadwood desires to support the enhancement and protection of our recreational and cultural amenities.
5. The City of Deadwood desires to protect the historic integrity and the natural environment of Deadwood.

This Instrument Prepared By:
 City of Deadwood
 108 Sherman Street
 Deadwood, SD 57732
 (605) 578-2082
 (605) 587-2084

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (this “Easement”) is granted this ____ day of _____, 2024 by **City of Deadwood**, 108 Sherman Street, Deadwood, SD 57732 (the Grantor) to **the CITY OF DEADWOOD**, City of Deadwood, 108 Sherman Street, Deadwood, SD 57732, a South Dakota municipal government (Grantee):

WHEREAS:

- A. Grantor is the owner in fee of real property (the “Property”) located on School Lot 37 in the City of Deadwood, Lawrence County, South Dakota according to P.L. Rodgers Map more particularly described in Exhibit A;
- B. The Property possesses cultural, historical, archaeological, natural, scenic, and recreational values (collectively the “Conservation Values”) of great importance to Grantor, the people of the City of Deadwood and the people of the State of South Dakota; the preservation of which will provide a significant public benefit to the protection of the Deadwood National Historic Landmark District. The Conservation Values, which are more fully described in the Baseline Documentation Report are described in Exhibit B attached hereto and incorporated herein by this reference;
- C. The Property represents open space for the scenic, educational and recreational enjoyment of the general public and will yield a significant public benefit;
- D. Grantor desires to preserve **in perpetuity** the Conservation Values of the Property by granting this Easement and by surrendering the opportunity to engage in economic development of the Property that is inconsistent with such Conservation Values;
- E. The Property has substantial economic value if developed for nonagricultural purposes, but only by potentially harming the Conservation Values and purposes as noted above;
- F. Maintaining the Property’s cultural, historical, archaeological, natural, scenic and recreational values characteristics, and, in particular, maintaining the Property free from new structures, alteration or changes that would encroach upon, damage or destroy the Property and the Deadwood National Historic Landmark District are critical to the protection of this property. The conservation of the Property, subject to the terms of this easement, will yield significant benefits to the public by protecting the Property;

- G. The parties have mutual desires and goals towards the long-term preservation of Deadwood's National Historic Landmark District, the State and National Register Districts, and the local historic district;
- H. The parties desire to conserve the Property by entering into this Conservation Easement pursuant to SDCL 1-19B-56 to 1-19B-60 of the State of South Dakota and Section 170(h) of the Internal Revenue Code; and
- I. Grantor has received independent legal and financial advice regarding this Conservation Easement to the extent that Grantor has deemed necessary. Grantor freely conveys this Conservation Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants contained herein the parties agree as follows:

1. **Grant of Easement.**

- 1.1 *Scope and General Purpose.* Upon and subject to the terms and conditions described herein below, Grantor hereby grants, warrants and conveys to Grantee a conservation easement to preserve and protect the Conservation Values of the Property.
- 1.2 *Term.* This Easement shall be **perpetual**.
- 1.3 *Authority Generally.* Grantee shall have the right and power:
- (a) To enter upon the Property at reasonable times to monitor compliance with and otherwise to enforce the terms of this Easement as more particularly set forth herein; and
 - (b) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in § 10; and
 - (c) To retain as its exclusive right, power and domain, except as expressly reserved to Grantor, all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, it being the intent hereby that such development rights shall, except as expressly reserved, be terminated and extinguished and may not be used on or transferred to any portion of the Property.
 - (d) Grantee may create pedestrian trails, interpretive sites and conduct archaeological investigations consistent with the conservation values identified herein.

- 1.4 *Access.* For all the purposes described in this Easement, Grantee shall have the right to access the Property from, and to travel by vehicle or foot upon and across, any public or private road or unimproved road or path, public or private, on, to or adjoining the Property. In the event the Property is landlocked, Grantee may have access to the Property on and across any adjoining land of Grantor by the route most convenient to Grantee.
2. **Other Grants by Grantee.** This Easement shall not be interpreted to prohibit or restrict Grantor from participating in any state, federal or local government entity or agency programs designed to promote, preserve or enhance the natural characteristics and potential of the Property and to make any grant of any covenant, restriction, easement or title to the Property for that purpose (a “Public Entity Grant”), provided all of the following conditions are met: (i) any such grant is subject to this Easement; (ii) the grant does not impair, harm or otherwise jeopardize the Conservation Values; and (iii) Grantor shall provide prior notice to Grantee complying with §9.
3. **Grantee’s Acceptance.** In reliance upon Grantor’s warranties and representations as described below, Grantee hereby accepts grant of this Easement and the responsibility of monitoring and enforcing its terms and upholding its Conservation Values forever.
4. **Conservation Baseline.** The document entitled “Baseline Documentation Report”, incorporated by this reference, that the Grantor and Grantee mutually agree, as depicted by photographs, maps, and supporting text, describes the general condition of the Property, including Structures and Improvements, and driveways, as located on the Property as of the date of this Conservation Easement.
5. **Grantor’s Warranties and Representations.**
- 5.1 *Purpose.* Grantor acknowledges that despite the Conservation Values of the Property, certain factors, if they were present, would preclude Grantee from accepting this Easement; and Grantee cannot accept this Easement without affirmative assurances that these factors are not present with respect to the Property. Since Grantor is the party most familiar with the Property, Grantor acknowledges the right of Grantee to rely without inquiry on these assurances in the form of Grantor’s warranties and representations as described below.
- 5.2 *Enumeration.* To induce Grantee to accept this Easement, Grantor warrants and represents as follows:
- (a) Grantor is the sole owner of the Property, free of all liens, claims, interests and encumbrances.
- (b) To the best of Grantor’s knowledge:
- (i) Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting, or

otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements and has no current adverse effect on any of the Conservation Values.

- (ii) No deposit, disposal, or other release of any hazardous substance or toxic waste has occurred on or from the Property, which is free of all such contamination.
 - (iii) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.
 - (iv) Grantor and the Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use.
 - (v) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property.
- (c) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
- (d) In determining to grant this Easement, Grantor has relied solely on the advice of his own legal, tax and valuation advisors and not on any representative of Grantee.

6. **Prohibited and Restricted Uses.**

- 6.1 *Encouraged Practices.* Grantee acknowledges that the Conservation Values are available to be preserved, and Grantor and its successors and assigns are encouraged to conduct all permitted operations and practices in accordance with good management practices addressing soil and water conservation, erosion control, historical, cultural resource and habitat protection.
- 6.2 *Promise to Comply.* Grantor covenants and promises that Grantor will not perform, or knowingly allow others to perform, any act or use on or affecting the Property in conflict with this § 6.

6.3 *Specific Terms.* The Property is hereby made subject to the following prohibitions and restrictions:

- (a) No billboards or commercial signs shall be erected on the Property.
- (b) Grantor may transfer the property in any manner as it sees fit. However, the Property shall not otherwise be subdivided by physical, legal or other process, for purposes of transferring ownership of less than the entirety of the Property.
- (c) The Property shall not be subject to any mining, extraction or removal of soil, sand, gravel, oil, natural gas, fuel or other mineral substance or exploration for any such purpose, except for movement of material solely for use on the Property in conjunction with and in furtherance of activities permitted by this Easement.
- (d) Trees on the Property may be cut only for the following: (i) to control insects and disease; (ii) to prevent personal injury or property damage; (iii) to prevent or reduce fire hazard; or (iv) pursuant to a natural resources management plan having the prior approval of Grantee. No plants, flora, fauna or other vegetation may be cut, burned, removed, destroyed, eradicated or harvested except pursuant to a cultural and natural resources management plan approved by Grantee.
- (e) No unpaved portion of the Property shall be paved, including without limitation covering the soil surface with concrete, asphalt, gravel or other material other than soil and grass.
- (f) Grantor shall not transfer, encumber, lease, sell or otherwise separate any water rights from the Property.
- (g) The dumping or accumulation of any kind of trash, garbage, debris, waste, refuse, junk, hazardous chemicals, other unsightly or foreign material, or derelict equipment on the Property is prohibited.
- (h) No Structures or other Improvements may be built on the Property. For purposes of this Easement, "Structure" includes any building or object constructed, installed or placed upon the ground, whether temporarily or permanent, including without limitation residential units, garages, sheds, studios, cabins, moveable buildings, decks, terraces, and garden features such as arbors and gazebos. For purposes of this Easement, "Improvements" shall mean anything that is constructed or installed upon the ground or a Structure, which is not a Structure and includes without limitation driveways, roads, parking areas, gardens, ponds, wells, septic tanks, drainageways, utility lines, fences, walls, paths, trails and walkways.

- (i) There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the Easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. Surface drainage into the Property shall comply with all applicable ordinances, regulations and statutes, including those applicable to water quality.
- (j) No new roads not shown on exhibit A or site plans may be cut through the Property. No motorized vehicles shall be used on the Property, except for maintenance work to protect the Conservation Values, and for Grantee's inspections.
- (k) The Property may not be used for or as a part of any commercial venture to provide hunting, fishing, camping, hiking, biking, lodging, drinking or eating or any other commercial recreational activity.
- (l) No above ground installation of new utility systems or extensions of existing systems, including, without limitation, cell towers, telephone relay towers and any other stand-alone tower structures shall be permitted. No water, sewer, power, fuel or communication lines nor related facilities, or any underground installation, will be permitted if the resulting effect would be to drain, alter, or disturb any wetland on the Property unless permitted by the Corps of Engineers or Environmental Protection Agency, as applicable.

6.4 **Acts of God.** Nothing contained in this Easement shall be construed to impose upon Grantor any liability or obligation for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm and earth movement, or from any prudent action by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

7. **Retained Rights.** Except as otherwise expressly provided in this Easement, Grantor shall retain all incidents, rights, powers and discretion inhering in ownership and possession of the Property including without limited to the following:

- 7.1 *Transfers.* To transfer, lease, mortgage or otherwise encumber the Property, subject and subordinate to this Easement, after compliance with the notice requirements of this Easement in §9.
- 7.2 *Compliance with Public Entity Grants.* Grantor may execute all instruments and documents, provide all assurances and take all actions necessary to comply with

all public entity grants, to the extent required thereby and not impairing, harming or otherwise jeopardizing the Conservation Values.

- 7.3 *Weed Control.* Grantor retains the right to use herbicides to control weeds and other undesirable plants, and the right to use other pesticides to control insects and undesirable wildlife. The use of these chemicals shall be consistent with normal forestry and timber practices.

8. **Retained and Assumed Responsibilities, Obligations and Liabilities.**

- 8.1 *Grantee's Status.* Grantor acknowledges that Grantee shall not be considered, and the parties do not intend this Easement to be construed to create or impose upon Grantee any responsibilities, obligations or liability as, an owner, operator, landlord, tenant or manager of the Property. Grantee's obligations for monitoring and inspection shall be solely for the purpose of preserving Conservation Values and not for the prevention or mitigation of any damage, injury or other harm to persons or property. This Easement shall not be deemed to create any right of action against Grantee in favor of any third party.
- 8.2 *Taxes.* Grantor shall pay before delinquency all taxes, assessment, fees and charges of whatever description levied on or assessed against the Property and/or this Easement; provided, however, that all assessed real estate taxes shall be paid on or before the due date set forth in the county tax statement.
- 8.3 *Management.* Grantor shall continue to be solely responsible for the upkeep, maintenance and management of the Property and preservation and protection of the Conservation Values. In the event Grantee places any interpretive sites or hiking or biking trails, Grantee shall be solely responsible for the upkeep maintenance and management of these improvements. Further, Grantee shall be solely responsible for any reclamation costs incurred by any archeological investigations.
- 8.4 *Insurance.* Grantor shall be solely responsible for maintaining all appropriate casualty, property, liability and workers compensation insurance appropriate for their use and occupation of the Property. Grantee shall be named an additional insured on all such insurance policies related to the Property.
- 8.5 *Compliance with Laws.* Grantor shall remain solely responsible for obtaining all applicable governmental permits and approvals for any activity or use permitted by this Easement and to conduct the foregoing in accordance with and in observation of all applicable federal, state and local laws, rules, regulations and requirements.
- 8.6 *Indemnity.* Grantor shall indemnify, protect, defend with counsel acceptable to Grantee and hold Grantee and its directors, officers, employees, agents, attorneys, volunteers, representatives, successors and assigns (the Indemnified Parties) harmless from and against all claims, actions, administrative

proceedings, liabilities, judgments, damages, punitive damages, penalties, fines, costs, remedial action, compliance requirements, enforcement in clean-up actions of any kind, interests or losses, attorney's fees and expenses (including those incurred in enforcing this indemnity), consultant fees and expert fees arising directly or indirectly from or in connection with (i) injury or death of any person, damage to any property or diminution in the value of property resulting from any act, omission, condition or other matter related to or occurring on or about the Property regardless of cause, including injury, death or other harm to any Indemnified Party; (ii) the presence, suspected presence or release of any hazardous substance whether into the air, soil, surface water or ground water of or at the Property; (iii) any violation or alleged violation of any environmental law affecting the Property, whether occurring prior to or during Grantor's ownership of the Property and whether caused or permitted by Grantor or any person other than Grantor; (iv) any claim or defense by Grantor or any third party that any Indemnified Party is liable as an owner or operator of the Property under any environmental law; or (v) any breach of Grantor's warranties, representations or retained responsibilities, obligations or liabilities hereunder. This indemnity shall not apply if it shall be finally determined that any of the foregoing was caused primarily by the gross negligence or willful misconduct of Grantee.

- 8.7 *Remediation.* If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

9. **Notices and Approvals.**

- 9.1 *Methods.* Any notice or communication under this Easement shall be in writing and delivered (by hand, telecopy, telegraph, telex or courier) or deposited in the United States mail (first class, registered or certified), postage fully prepaid and addressed as stated below. Either party may, from time to time, specify as its address for purposes of this Easement any other address upon the giving of ten days notice thereof to the other party in the manner required by this paragraph. This paragraph shall not prevent the giving of written notice in any other manner, but such notice shall be deemed effective only when and as of its actual receipt at the proper address and by the proper addressee.
- 9.2 *Timing and Substance.* Whenever notice to or approval of Grantee is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material

aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

- 9.3 *Approval.* Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. Grantee's approval may be conditioned on reimbursement of costs incurred in, and reasonable fees for, consideration of the request.

10. **Grantee's Remedies.**

- 10.1 *Notice; Corrective Action.* If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.
- 10.2 *Injunctive Relief.* If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- 10.3 *Damages.* In the event that Grantor does not or cannot cure the noticed violation and effectively restore the Property to its pre-violation state, then Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- 10.4 *Emergency Enforcement.* If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property such as to make notice impracticable, Grantee may pursue its remedies under this § 10 without prior notice to Grantor or without waiting for the period provided for cure to expire. In such instance, Grantee shall provide notice as soon as practicable.

- 10.5 *Scope.* Grantee's rights under this § 10 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in § 10.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this § 10 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 10.6 *Costs.* All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.
- 10.7 *Forbearance.* Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- 10.8 *Waiver.* Grantor hereby waives any defense of laches, estoppel, or prescription.

11. **Extinguishment and Condemnation.**

- 11.1 *Extinguishment.* If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with § 11.2.
- 11.2 *Valuation.* This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of § 11.1, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without

deduction for the value of the Easement, at the time of this grant. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

11.3 *Condemnation.* If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in § 11.2.

11.4 *Application of Proceeds.* Grantee shall use any proceeds received under the circumstances described in this § 11 in a manner consistent with its conservation purposes, which are exemplified by this grant.

12. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the IRC (or any successor provision then applicable), and authorized to acquire and hold conservation easements under state statute (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee shall give written notice to Grantor of an assignment at least thirty (30) days prior to the effective date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

13. **General Provisions.**

13.1 *Benefit and Binding Effect.* The Easement created by this instrument shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to Grantor and Grantee shall also apply to, be binding upon and inure to the benefit of their respective agents, heirs, executors, administrators, other legal representatives, transferees, successors and assigns.

13.2 *No Third Party Beneficiaries.* This Easement is intended solely for the benefit of the parties hereto and shall not be enforceable by or create any claim or right of action in favor of any other party.

13.3 *Entire Agreement.*

(a) This Easement represents the entire and integrated agreement between the parties hereto with respect to the subjects described herein and supersedes

all prior negotiations, representations or agreements, oral or written. Subject to subparagraph (b), this Easement may be amended or modified only in writing signed by the party to be bound by such amendment or modification and stating that it is intended as an amendment or modification of this Easement. The parties waive their rights to amend or modify this Easement in any other manner.

- (b) This Easement may be amended only upon satisfaction of all of the following: (i) written consent of Grantee, which may be granted or withheld in its sole discretion and upon such additional conditions as Grantee may determine to impose in any specific instance; (ii) payment of Grantee's incurred costs and reasonable fees it may impose for the consideration of such amendment; (iii) protection of the Conservation Values are improved or not impaired; (iv) the amendment complies with SDCL 1-19B-56(2)(b) et seq.; and (v) the amendment complies with §170(h) of the Internal Revenue Code. Any such amendment that does not comply with all such requirements shall be void and of no force or effect.

- 13.4 *Severability.* If any one or more of the provisions of this Easement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality or enforceability of such provision in every other respect and the remaining provisions of this Easement shall not be in any way impaired.
- 13.5 *Nonwaiver.* Failure of a party to insist upon adherence to any term of this Easement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term or any other term of this Easement.
- 13.6 *Governing Law.* This Easement shall be governed by and interpreted under the substantive laws of the State of South Dakota without regard to principles of conflicts of law. This Easement shall not be interpreted to negate, supersede or otherwise modify any law, statute, rule, regulation or ordinance (together a Law) imposing additional or more stringent restrictions, including those related to zoning or land use, unless such Law is permitted to be varied by private agreement and the express terms of this agreement have that effect. No approval of this Easement by any governmental authority shall have the effect of negating, superseding or otherwise modifying such Law, or waiving its enforcement, unless expressly so stated as a part of such approval.
- 13.7 *Headings.* The section headings to this Easement are intended solely for the parties' convenience and shall not affect the interpretation or construction of any portion or provision of this Easement.
- 13.8 *Recordation; Publicity.* Grantee shall record this instrument in timely fashion in the official records of Lawrence County, South Dakota and may re-record it at any time as may be required to preserve its rights in this Easement. Grantee

may reasonably publicize the grant of this Easement and use photographs and descriptions of the Property on its web site and other informative materials.

- 13.9 *Liberal Interpretation.* Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and preservation of the Conservation Values. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 13.10 *No Forfeiture.* Nothing contained herein will result in forfeiture by Grantee or reversion of Grantor’s title in any respect.
- 13.11 *Termination.* A party’s rights and obligations under this Easement terminate upon transfer of the party’s interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

IN WITNESS WHEREOF, the parties hereto have executed this Easement on the day and year first above-written.

GRANTOR:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this _____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

GRANTEE:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

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ATTEST

Jessica McKeown
Finance Officer

EXHIBIT A

Baseline Documentation Report

The Property is located near the middle of the Deadwood National Historic Landmark District and the state and national register historic districts of Deadwood, Lawrence County, South Dakota. Deadwood was originally settled in a scenic gulch at the confluence of Whitewood and Deadwood Creeks in 1876, due to the discovery of gold in the Black Hills of South Dakota.

The property is a highly visible undeveloped steep hillside with Ponderosa pine forest scattered with scrub oak and spruce. The property is currently zoned PF – Park Forest.

Deadwood is a small town with a historic setting and an aesthetic beauty. The environs afforded Deadwood by its location in the Black Hills offers many environmental benefits for the community. The ponderosa pines and other vegetation on the surrounding hillsides help provide ecosystem services that supply clean air and water to Deadwood, and the rocks and minerals are responsible for the founding and flourishing of Deadwood as a mining town. This property offers these conservation values as well as potential opportunities to experience nature and outdoor recreation such as hiking and biking.

Deadwood's numerous comprehensive plans have identified several goals which match the conservation values provided by this property. These include but are not limited to the following:

1. The City of Deadwood desires to preserve the natural environment, livability, and sense of community.
2. The City of Deadwood desires to protect the scenic, historic, and small city character while emphasizing and preserving the community's historic past for future generations.
3. The City of Deadwood desires to promote the diversification of activities that will attract visitors all seasons of the year.
4. The City of Deadwood desires to support the enhancement and protection of our recreational and cultural amenities.
5. The City of Deadwood desires to protect the historic integrity and the natural environment of Deadwood.

This Instrument Prepared By:
 City of Deadwood
 108 Sherman Street
 Deadwood, SD 57732
 (605) 578-2082
 (605) 587-2084

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (this “Easement”) is granted this ____ day of _____, 2024 by **City of Deadwood**, 108 Sherman Street, Deadwood, SD 57732 (the Grantor) to **the CITY OF DEADWOOD**, City of Deadwood, 108 Sherman Street, Deadwood, SD 57732, a South Dakota municipal government (Grantee):

WHEREAS:

- A. Grantor is the owner in fee of real property (the “Property”) located on School Lot 33 in the City of Deadwood according to P.L. Rogers Map of the City of Deadwood, Lawrence County, South Dakota, excepting therefrom Lots 33A, 33B, 33C, 33D, 33E, and 33F of the subdivision of School Lot 33 as set out in Plat Book 1 Page 277 and excepting therefrom Lot H-2 And H-2 deeded for highway right of way; and excepting therefrom any conflict with M.S. 262 or Probate Lots; -and- School Lots 34, 35 in the City of Deadwood, according to P.L. Rogers Map of the City of Deadwood, Lawrence County, South Dakota, excepting therefrom a portion of School Lot 44 deeded to Black Hills Utilities Company In Book 241 Page 178 more particularly described in Exhibit A;
- B. The Property possesses cultural, historical, archaeological, natural, scenic, and recreational values (collectively the “Conservation Values”) of great importance to Grantor, the people of the City of Deadwood and the people of the State of South Dakota; the preservation of which will provide a significant public benefit to the protection of the Deadwood National Historic Landmark District. The Conservation Values, which are more fully described in the Baseline Documentation Report are described in Exhibit B attached hereto and incorporated herein by this reference;
- C. The Property represents open space for the scenic, educational and recreational enjoyment of the general public and will yield a significant public benefit;
- D. Grantor desires to preserve **in perpetuity** the Conservation Values of the Property by granting this Easement and by surrendering the opportunity to engage in economic development of the Property that is inconsistent with such Conservation Values;
- E. The Property has substantial economic value if developed for nonagricultural purposes, but only by potentially harming the Conservation Values and purposes as noted above;

- F. Maintaining the Property's cultural, historical, archaeological, natural, scenic and recreational values characteristics, and, in particular, maintaining the Property free from new structures, alteration or changes that would encroach upon, damage or destroy the Property and the Deadwood National Historic Landmark District are critical to the protection of this property. The conservation of the Property, subject to the terms of this easement, will yield significant benefits to the public by protecting the Property;
- G. The parties have mutual desires and goals towards the long-term preservation of Deadwood's National Historic Landmark District, the State and National Register Districts, and the local historic district;
- H. The parties desire to conserve the Property by entering into this Conservation Easement pursuant to SDCL 1-19B-56 to 1-19B-60 of the State of South Dakota and Section 170(h) of the Internal Revenue Code; and
- I. Grantor has received independent legal and financial advice regarding this Conservation Easement to the extent that Grantor has deemed necessary. Grantor freely conveys this Conservation Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants contained herein the parties agree as follows:

1. **Grant of Easement.**

- 1.1 *Scope and General Purpose.* Upon and subject to the terms and conditions described herein below, Grantor hereby grants, warrants and conveys to Grantee a conservation easement to preserve and protect the Conservation Values of the Property.
- 1.2 *Term.* This Easement shall be **perpetual**.
- 1.3 *Authority Generally.* Grantee shall have the right and power:
- (a) To enter upon the Property at reasonable times to monitor compliance with and otherwise to enforce the terms of this Easement as more particularly set forth herein; and
 - (b) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in § 10; and
 - (c) To retain as its exclusive right, power and domain, except as expressly reserved to Grantor, all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, it being the intent hereby that such development rights shall, except as expressly reserved, be

terminated and extinguished and may not be used on or transferred to any portion of the Property.

(d) Grantee may create pedestrian trails, interpretive sites and conduct archaeological investigations consistent with the conservation values identified herein.

1.4 *Access.* For all the purposes described in this Easement, Grantee shall have the right to access the Property from, and to travel by vehicle or foot upon and across, any public or private road or unimproved road or path, public or private, on, to or adjoining the Property. In the event the Property is landlocked, Grantee may have access to the Property on and across any adjoining land of Grantor by the route most convenient to Grantee.

2. **Other Grants by Grantee.** This Easement shall not be interpreted to prohibit or restrict Grantor from participating in any state, federal or local government entity or agency programs designed to promote, preserve or enhance the natural characteristics and potential of the Property and to make any grant of any covenant, restriction, easement or title to the Property for that purpose (a “Public Entity Grant”), provided all of the following conditions are met: (i) any such grant is subject to this Easement; (ii) the grant does not impair, harm or otherwise jeopardize the Conservation Values; and (iii) Grantor shall provide prior notice to Grantee complying with §9.

3. **Grantee’s Acceptance.** In reliance upon Grantor’s warranties and representations as described below, Grantee hereby accepts grant of this Easement and the responsibility of monitoring and enforcing its terms and upholding its Conservation Values forever.

4. **Conservation Baseline.** The document entitled “Baseline Documentation Report”, incorporated by this reference, that the Grantor and Grantee mutually agree, as depicted by photographs, maps, and supporting text, describes the general condition of the Property, including Structures and Improvements, and driveways, as located on the Property as of the date of this Conservation Easement.

5. **Grantor’s Warranties and Representations.**

5.1 *Purpose.* Grantor acknowledges that despite the Conservation Values of the Property, certain factors, if they were present, would preclude Grantee from accepting this Easement; and Grantee cannot accept this Easement without affirmative assurances that these factors are not present with respect to the Property. Since Grantor is the party most familiar with the Property, Grantor acknowledges the right of Grantee to rely without inquiry on these assurances in the form of Grantor’s warranties and representations as described below.

5.2 *Enumeration.* To induce Grantee to accept this Easement, Grantor warrants and represents as follows:

- (a) Grantor is the sole owner of the Property, free of all liens, claims, interests and encumbrances.
- (b) To the best of Grantor's knowledge:
- (i) Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements and has no current adverse effect on any of the Conservation Values.
 - (ii) No deposit, disposal, or other release of any hazardous substance or toxic waste has occurred on or from the Property, which is free of all such contamination.
 - (iii) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.
 - (iv) Grantor and the Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use.
 - (v) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property.
- (c) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
- (d) In determining to grant this Easement, Grantor has relied solely on the advice of his own legal, tax and valuation advisors and not on any representative of Grantee.

6. **Prohibited and Restricted Uses.**

- 6.1 *Encouraged Practices.* Grantee acknowledges that the Conservation Values are available to be preserved, and Grantor and its successors and assigns are encouraged to conduct all permitted operations and practices in accordance with good management practices addressing soil and water conservation, erosion control, historical, cultural resource and habitat protection.
- 6.2 *Promise to Comply.* Grantor covenants and promises that Grantor will not perform, or knowingly allow others to perform, any act or use on or affecting the Property in conflict with this § 6.
- 6.3 *Specific Terms.* The Property is hereby made subject to the following prohibitions and restrictions:
- (a) No billboards or commercial signs shall be erected on the Property.
 - (b) Grantor may transfer the property in any manner as it sees fit. However, the Property shall not otherwise be subdivided by physical, legal or other process, for purposes of transferring ownership of less than the entirety of the Property.
 - (c) The Property shall not be subject to any mining, extraction or removal of soil, sand, gravel, oil, natural gas, fuel or other mineral substance or exploration for any such purpose, except for movement of material solely for use on the Property in conjunction with and in furtherance of activities permitted by this Easement.
 - (d) Trees on the Property may be cut only for the following: (i) to control insects and disease; (ii) to prevent personal injury or property damage; (iii) to prevent or reduce fire hazard; or (iv) pursuant to a natural resources management plan having the prior approval of Grantee. No plants, flora, fauna or other vegetation may be cut, burned, removed, destroyed, eradicated or harvested except pursuant to a cultural and natural resources management plan approved by Grantee.
 - (e) No unpaved portion of the Property shall be paved, including without limitation covering the soil surface with concrete, asphalt, gravel or other material other than soil and grass.
 - (f) Grantor shall not transfer, encumber, lease, sell or otherwise separate any water rights from the Property.
 - (g) The dumping or accumulation of any kind of trash, garbage, debris, waste, refuse, junk, hazardous chemicals, other unsightly or foreign material, or derelict equipment on the Property is prohibited.
 - (h) No Structures or other Improvements may be built on the Property. For purposes of this Easement, "Structure" includes any building or object

constructed, installed or placed upon the ground, whether temporarily or permanent, including without limitation residential units, garages, sheds, studios, cabins, moveable buildings, decks, terraces, and garden features such as arbors and gazebos. For purposes of this Easement, "Improvements" shall mean anything that is constructed or installed upon the ground or a Structure, which is not a Structure and includes without limitation driveways, roads, parking areas, gardens, ponds, wells, septic tanks, drainageways, utility lines, fences, walls, paths, trails and walkways.

- (i) There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the Easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. Surface drainage into the Property shall comply with all applicable ordinances, regulations and statutes, including those applicable to water quality.
- (j) No new roads not shown on exhibit A or site plans may be cut through the Property. No motorized vehicles shall be used on the Property, except for maintenance work to protect the Conservation Values, and for Grantee's inspections.
- (k) The Property may not be used for or as a part of any commercial venture to provide hunting, fishing, camping, hiking, biking, lodging, drinking or eating or any other commercial recreational activity.
- (l) No above ground installation of new utility systems or extensions of existing systems, including, without limitation, cell towers, telephone relay towers and any other stand-alone tower structures shall be permitted. No water, sewer, power, fuel or communication lines nor related facilities, or any underground installation, will be permitted if the resulting effect would be to drain, alter, or disturb any wetland on the Property unless permitted by the Corps of Engineers or Environmental Protection Agency, as applicable.

6.4 **Acts of God.** Nothing contained in this Easement shall be construed to impose upon Grantor any liability or obligation for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm and earth movement, or from any prudent action by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

7. **Retained Rights.** Except as otherwise expressly provided in this Easement, Grantor shall retain all incidents, rights, powers and discretion inhering in ownership and possession of the Property including without limited to the following:
- 7.1 *Transfers.* To transfer, lease, mortgage or otherwise encumber the Property, subject and subordinate to this Easement, after compliance with the notice requirements of this Easement in §9.
- 7.2 *Compliance with Public Entity Grants.* Grantor may execute all instruments and documents, provide all assurances and take all actions necessary to comply with all public entity grants, to the extent required thereby and not impairing, harming or otherwise jeopardizing the Conservation Values.
- 7.3 *Weed Control.* Grantor retains the right to use herbicides to control weeds and other undesirable plants, and the right to use other pesticides to control insects and undesirable wildlife. The use of these chemicals shall be consistent with normal forestry and timber practices.
8. **Retained and Assumed Responsibilities, Obligations and Liabilities.**
- 8.1 *Grantee's Status.* Grantor acknowledges that Grantee shall not be considered, and the parties do not intend this Easement to be construed to create or impose upon Grantee any responsibilities, obligations or liability as, an owner, operator, landlord, tenant or manager of the Property. Grantee's obligations for monitoring and inspection shall be solely for the purpose of preserving Conservation Values and not for the prevention or mitigation of any damage, injury or other harm to persons or property. This Easement shall not be deemed to create any right of action against Grantee in favor of any third party.
- 8.2 *Taxes.* Grantor shall pay before delinquency all taxes, assessment, fees and charges of whatever description levied on or assessed against the Property and/or this Easement; provided, however, that all assessed real estate taxes shall be paid on or before the due date set forth in the county tax statement.
- 8.3 *Management.* Grantor shall continue to be solely responsible for the upkeep, maintenance and management of the Property and preservation and protection of the Conservation Values. In the event Grantee places any interpretive sites or hiking or biking trails, Grantee shall be solely responsible for the upkeep maintenance and management of these improvements. Further, Grantee shall be solely responsible for any reclamation costs incurred by any archeological investigations.
- 8.4 *Insurance.* Grantor shall be solely responsible for maintaining all appropriate casualty, property, liability and workers compensation insurance appropriate for their use and occupation of the Property. Grantee shall be named an additional insured on all such insurance policies related to the Property.

- 8.5 *Compliance with Laws.* Grantor shall remain solely responsible for obtaining all applicable governmental permits and approvals for any activity or use permitted by this Easement and to conduct the foregoing in accordance with and in observation of all applicable federal, state and local laws, rules, regulations and requirements.
- 8.6 *Indemnity.* Grantor shall indemnify, protect, defend with counsel acceptable to Grantee and hold Grantee and its directors, officers, employees, agents, attorneys, volunteers, representatives, successors and assigns (the Indemnified Parties) harmless from and against all claims, actions, administrative proceedings, liabilities, judgments, damages, punitive damages, penalties, fines, costs, remedial action, compliance requirements, enforcement in clean-up actions of any kind, interests or losses, attorney's fees and expenses (including those incurred in enforcing this indemnity), consultant fees and expert fees arising directly or indirectly from or in connection with (i) injury or death of any person, damage to any property or diminution in the value of property resulting from any act, omission, condition or other matter related to or occurring on or about the Property regardless of cause, including injury, death or other harm to any Indemnified Party; (ii) the presence, suspected presence or release of any hazardous substance whether into the air, soil, surface water or ground water of or at the Property; (iii) any violation or alleged violation of any environmental law affecting the Property, whether occurring prior to or during Grantor's ownership of the Property and whether caused or permitted by Grantor or any person other than Grantor; (iv) any claim or defense by Grantor or any third party that any Indemnified Party is liable as an owner or operator of the Property under any environmental law; or (v) any breach of Grantor's warranties, representations or retained responsibilities, obligations or liabilities hereunder. This indemnity shall not apply if it shall be finally determined that any of the foregoing was caused primarily by the gross negligence or willful misconduct of Grantee.
- 8.7 *Remediation.* If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

9. **Notices and Approvals.**

- 9.1 *Methods.* Any notice or communication under this Easement shall be in writing and delivered (by hand, telecopy, telegraph, telex or courier) or deposited in the United States mail (first class, registered or certified), postage fully prepaid and addressed as stated below. Either party may, from time to time, specify as its

address for purposes of this Easement any other address upon the giving of ten days notice thereof to the other party in the manner required by this paragraph. This paragraph shall not prevent the giving of written notice in any other manner, but such notice shall be deemed effective only when and as of its actual receipt at the proper address and by the proper addressee.

- 9.2 *Timing and Substance.* Whenever notice to or approval of Grantee is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.
- 9.3 *Approval.* Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. Grantee's approval may be conditioned on reimbursement of costs incurred in, and reasonable fees for, consideration of the request.

10. **Grantee's Remedies.**

- 10.1 *Notice; Corrective Action.* If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.
- 10.2 *Injunctive Relief.* If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- 10.3 *Damages.* In the event that Grantor does not or cannot cure the noticed violation and effectively restore the Property to its pre-violation state, then Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental

values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

- 10.4 *Emergency Enforcement.* If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property such as to make notice impracticable, Grantee may pursue its remedies under this § 10 without prior notice to Grantor or without waiting for the period provided for cure to expire. In such instance, Grantee shall provide notice as soon as practicable.
- 10.5 *Scope.* Grantee's rights under this § 10 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in § 10.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this § 10 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 10.6 *Costs.* All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.
- 10.7 *Forbearance.* Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- 10.8 *Waiver.* Grantor hereby waives any defense of laches, estoppel, or prescription.

11. **Extinguishment and Condemnation.**

- 11.1 *Extinguishment.* If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or

involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with § 11.2.

- 11.2 *Valuation.* This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of § 11.1, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.
- 11.3 *Condemnation.* If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in § 11.2.
- 11.4 *Application of Proceeds.* Grantee shall use any proceeds received under the circumstances described in this § 11 in a manner consistent with its conservation purposes, which are exemplified by this grant.
12. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the IRC (or any successor provision then applicable), and authorized to acquire and hold conservation easements under state statute (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee shall give written notice to Grantor of an assignment at least thirty (30) days prior to the effective date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.
13. **General Provisions.**
- 13.1 *Benefit and Binding Effect.* The Easement created by this instrument shall be a servitude running with the land in perpetuity. Every provision of this Easement

that applies to Grantor and Grantee shall also apply to, be binding upon and inure to the benefit of their respective agents, heirs, executors, administrators, other legal representatives, transferees, successors and assigns.

- 13.2 *No Third Party Beneficiaries.* This Easement is intended solely for the benefit of the parties hereto and shall not be enforceable by or create any claim or right of action in favor of any other party.
- 13.3 *Entire Agreement.*
- (a) This Easement represents the entire and integrated agreement between the parties hereto with respect to the subjects described herein and supersedes all prior negotiations, representations or agreements, oral or written. Subject to subparagraph (b), this Easement may be amended or modified only in writing signed by the party to be bound by such amendment or modification and stating that it is intended as an amendment or modification of this Easement. The parties waive their rights to amend or modify this Easement in any other manner.
- (b) This Easement may be amended only upon satisfaction of all of the following: (i) written consent of Grantee, which may be granted or withheld in its sole discretion and upon such additional conditions as Grantee may determine to impose in any specific instance; (ii) payment of Grantee's incurred costs and reasonable fees it may impose for the consideration of such amendment; (iii) protection of the Conservation Values are improved or not impaired; (iv) the amendment complies with SDCL 1-19B-56(2)(b) et seq.; and (v) the amendment complies with §170(h) of the Internal Revenue Code. Any such amendment that does not comply with all such requirements shall be void and of no force or effect.
- 13.4 *Severability.* If any one or more of the provisions of this Easement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality or enforceability of such provision in every other respect and the remaining provisions of this Easement shall not be in any way impaired.
- 13.5 *Nonwaiver.* Failure of a party to insist upon adherence to any term of this Easement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term or any other term of this Easement.
- 13.6 *Governing Law.* This Easement shall be governed by and interpreted under the substantive laws of the State of South Dakota without regard to principles of conflicts of law. This Easement shall not be interpreted to negate, supersede or otherwise modify any law, statute, rule, regulation or ordinance (together a Law) imposing additional or more stringent restrictions, including those related to zoning or land use, unless such Law is permitted to be varied by private

agreement and the express terms of this agreement have that effect. No approval of this Easement by any governmental authority shall have the effect of negating, superseding or otherwise modifying such Law, or waiving its enforcement, unless expressly so stated as a part of such approval.

- 13.7 *Headings.* The section headings to this Easement are intended solely for the parties' convenience and shall not affect the interpretation or construction of any portion or provision of this Easement.
- 13.8 *Recordation; Publicity.* Grantee shall record this instrument in timely fashion in the official records of Lawrence County, South Dakota and may re-record it at any time as may be required to preserve its rights in this Easement. Grantee may reasonably publicize the grant of this Easement and use photographs and descriptions of the Property on its web site and other informative materials.
- 13.9 *Liberal Interpretation.* Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and preservation of the Conservation Values. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 13.10 *No Forfeiture.* Nothing contained herein will result in forfeiture by Grantee or reversion of Grantor's title in any respect.
- 13.11 *Termination.* A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

IN WITNESS WHEREOF, the parties hereto have executed this Easement on the day and year first above-written.

GRANTOR:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this ____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

GRANTEE:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this ____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

EXHIBIT A

Baseline Documentation Report

The Property is located near the middle of the Deadwood National Historic Landmark District and the state and national register historic districts of Deadwood, Lawrence County, South Dakota. Deadwood was originally settled in a scenic gulch at the confluence of Whitewood and Deadwood Creeks in 1876, due to the discovery of gold in the Black Hills of South Dakota.

The property is a highly visible undeveloped steep hillside with Ponderosa pine forest scattered with scrub oak and spruce. The property is currently zoned PF – Park Forest.

Deadwood is a small town with a historic setting and an aesthetic beauty. The environs afforded Deadwood by its location in the Black Hills offers many environmental benefits for the community. The ponderosa pines and other vegetation on the surrounding hillsides help provide ecosystem services that supply clean air and water to Deadwood, and the rocks and minerals are responsible for the founding and flourishing of Deadwood as a mining town. This property offers these conservation values as well as potential opportunities to experience nature and outdoor recreation such as hiking and biking.

Deadwood's numerous comprehensive plans have identified several goals which match the conservation values provided by this property. These include but are not limited to the following:

1. The City of Deadwood desires to preserve the natural environment, livability, and sense of community.
2. The City of Deadwood desires to protect the scenic, historic, and small city character while emphasizing and preserving the community's historic past for future generations.
3. The City of Deadwood desires to promote the diversification of activities that will attract visitors all seasons of the year.
4. The City of Deadwood desires to support the enhancement and protection of our recreational and cultural amenities.
5. The City of Deadwood desires to protect the historic integrity and the natural environment of Deadwood.

This Instrument Prepared By:
 City of Deadwood
 108 Sherman Street
 Deadwood, SD 57732
 (605) 578-2082
 (605) 587-2084

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (this “Easement”) is granted this ____ day of _____, 2024 by **City of Deadwood**, 108 Sherman Street, Deadwood, SD 57732 (the Grantor) to **the CITY OF DEADWOOD**, City of Deadwood, 108 Sherman Street, Deadwood, SD 57732, a South Dakota municipal government (Grantee):

WHEREAS:

- A. Grantor is the owner in fee of real property (the “Property”) located on School Lot 9 in the City of Deadwood, Lawrence County, South Dakota, according to the P.L. Rogers Map of the City of Deadwood, Lawrence County, South Dakota more particularly described in Exhibit A;
- B. The Property possesses cultural, historical, archaeological, natural, scenic, and recreational values (collectively the “Conservation Values”) of great importance to Grantor, the people of the City of Deadwood and the people of the State of South Dakota; the preservation of which will provide a significant public benefit to the protection of the Deadwood National Historic Landmark District. The Conservation Values, which are more fully described in the Baseline Documentation Report are described in Exhibit B attached hereto and incorporated herein by this reference;
- C. The Property represents open space for the scenic, educational and recreational enjoyment of the general public and will yield a significant public benefit;
- D. Grantor desires to preserve **in perpetuity** the Conservation Values of the Property by granting this Easement and by surrendering the opportunity to engage in economic development of the Property that is inconsistent with such Conservation Values;
- E. The Property has substantial economic value if developed for nonagricultural purposes, but only by potentially harming the Conservation Values and purposes as noted above;
- F. Maintaining the Property’s cultural, historical, archaeological, natural, scenic and recreational values characteristics, and, in particular, maintaining the Property free from new structures, alteration or changes that would encroach upon, damage or destroy the Property and the Deadwood National Historic Landmark District are critical to the protection of this property. The conservation of the Property, subject to the terms of this easement, will yield significant benefits to the public by protecting the Property;

- G. The parties have mutual desires and goals towards the long-term preservation of Deadwood's National Historic Landmark District, the State and National Register Districts, and the local historic district;
- H. The parties desire to conserve the Property by entering into this Conservation Easement pursuant to SDCL 1-19B-56 to 1-19B-60 of the State of South Dakota and Section 170(h) of the Internal Revenue Code; and
- I. Grantor has received independent legal and financial advice regarding this Conservation Easement to the extent that Grantor has deemed necessary. Grantor freely conveys this Conservation Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants contained herein the parties agree as follows:

1. **Grant of Easement.**

- 1.1 *Scope and General Purpose.* Upon and subject to the terms and conditions described herein below, Grantor hereby grants, warrants and conveys to Grantee a conservation easement to preserve and protect the Conservation Values of the Property.
- 1.2 *Term.* This Easement shall be **perpetual**.
- 1.3 *Authority Generally.* Grantee shall have the right and power:
- (a) To enter upon the Property at reasonable times to monitor compliance with and otherwise to enforce the terms of this Easement as more particularly set forth herein; and
 - (b) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in § 10; and
 - (c) To retain as its exclusive right, power and domain, except as expressly reserved to Grantor, all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, it being the intent hereby that such development rights shall, except as expressly reserved, be terminated and extinguished and may not be used on or transferred to any portion of the Property.
 - (d) Grantee may create pedestrian trails, interpretive sites and conduct archaeological investigations consistent with the conservation values identified herein.

- 1.4 *Access.* For all the purposes described in this Easement, Grantee shall have the right to access the Property from, and to travel by vehicle or foot upon and across, any public or private road or unimproved road or path, public or private, on, to or adjoining the Property. In the event the Property is landlocked, Grantee may have access to the Property on and across any adjoining land of Grantor by the route most convenient to Grantee.
2. **Other Grants by Grantee.** This Easement shall not be interpreted to prohibit or restrict Grantor from participating in any state, federal or local government entity or agency programs designed to promote, preserve or enhance the natural characteristics and potential of the Property and to make any grant of any covenant, restriction, easement or title to the Property for that purpose (a “Public Entity Grant”), provided all of the following conditions are met: (i) any such grant is subject to this Easement; (ii) the grant does not impair, harm or otherwise jeopardize the Conservation Values; and (iii) Grantor shall provide prior notice to Grantee complying with §9.
3. **Grantee’s Acceptance.** In reliance upon Grantor’s warranties and representations as described below, Grantee hereby accepts grant of this Easement and the responsibility of monitoring and enforcing its terms and upholding its Conservation Values forever.
4. **Conservation Baseline.** The document entitled “Baseline Documentation Report”, incorporated by this reference, that the Grantor and Grantee mutually agree, as depicted by photographs, maps, and supporting text, describes the general condition of the Property, including Structures and Improvements, and driveways, as located on the Property as of the date of this Conservation Easement.
5. **Grantor’s Warranties and Representations.**
- 5.1 *Purpose.* Grantor acknowledges that despite the Conservation Values of the Property, certain factors, if they were present, would preclude Grantee from accepting this Easement; and Grantee cannot accept this Easement without affirmative assurances that these factors are not present with respect to the Property. Since Grantor is the party most familiar with the Property, Grantor acknowledges the right of Grantee to rely without inquiry on these assurances in the form of Grantor’s warranties and representations as described below.
- 5.2 *Enumeration.* To induce Grantee to accept this Easement, Grantor warrants and represents as follows:
- (a) Grantor is the sole owner of the Property, free of all liens, claims, interests and encumbrances.
- (b) To the best of Grantor’s knowledge:
- (i) Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting, or

otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements and has no current adverse effect on any of the Conservation Values.

- (ii) No deposit, disposal, or other release of any hazardous substance or toxic waste has occurred on or from the Property, which is free of all such contamination.
 - (iii) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.
 - (iv) Grantor and the Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use.
 - (v) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property.
- (c) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
- (d) In determining to grant this Easement, Grantor has relied solely on the advice of his own legal, tax and valuation advisors and not on any representative of Grantee.

6. **Prohibited and Restricted Uses.**

- 6.1 *Encouraged Practices.* Grantee acknowledges that the Conservation Values are available to be preserved, and Grantor and its successors and assigns are encouraged to conduct all permitted operations and practices in accordance with good management practices addressing soil and water conservation, erosion control, historical, cultural resource and habitat protection.
- 6.2 *Promise to Comply.* Grantor covenants and promises that Grantor will not perform, or knowingly allow others to perform, any act or use on or affecting the Property in conflict with this § 6.

6.3 *Specific Terms.* The Property is hereby made subject to the following prohibitions and restrictions:

- (a) No billboards or commercial signs shall be erected on the Property.
- (b) Grantor may transfer the property in any manner as it sees fit. However, the Property shall not otherwise be subdivided by physical, legal or other process, for purposes of transferring ownership of less than the entirety of the Property.
- (c) The Property shall not be subject to any mining, extraction or removal of soil, sand, gravel, oil, natural gas, fuel or other mineral substance or exploration for any such purpose, except for movement of material solely for use on the Property in conjunction with and in furtherance of activities permitted by this Easement.
- (d) Trees on the Property may be cut only for the following: (i) to control insects and disease; (ii) to prevent personal injury or property damage; (iii) to prevent or reduce fire hazard; or (iv) pursuant to a natural resources management plan having the prior approval of Grantee. No plants, flora, fauna or other vegetation may be cut, burned, removed, destroyed, eradicated or harvested except pursuant to a cultural and natural resources management plan approved by Grantee.
- (e) No unpaved portion of the Property shall be paved, including without limitation covering the soil surface with concrete, asphalt, gravel or other material other than soil and grass.
- (f) Grantor shall not transfer, encumber, lease, sell or otherwise separate any water rights from the Property.
- (g) The dumping or accumulation of any kind of trash, garbage, debris, waste, refuse, junk, hazardous chemicals, other unsightly or foreign material, or derelict equipment on the Property is prohibited.
- (h) No Structures or other Improvements may be built on the Property. For purposes of this Easement, "Structure" includes any building or object constructed, installed or placed upon the ground, whether temporarily or permanent, including without limitation residential units, garages, sheds, studios, cabins, moveable buildings, decks, terraces, and garden features such as arbors and gazebos. For purposes of this Easement, "Improvements" shall mean anything that is constructed or installed upon the ground or a Structure, which is not a Structure and includes without limitation driveways, roads, parking areas, gardens, ponds, wells, septic tanks, drainageways, utility lines, fences, walls, paths, trails and walkways.

- (i) There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the Easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. Surface drainage into the Property shall comply with all applicable ordinances, regulations and statutes, including those applicable to water quality.
- (j) No new roads not shown on exhibit A or site plans may be cut through the Property. No motorized vehicles shall be used on the Property, except for maintenance work to protect the Conservation Values, and for Grantee's inspections.
- (k) The Property may not be used for or as a part of any commercial venture to provide hunting, fishing, camping, hiking, biking, lodging, drinking or eating or any other commercial recreational activity.
- (l) No above ground installation of new utility systems or extensions of existing systems, including, without limitation, cell towers, telephone relay towers and any other stand-alone tower structures shall be permitted. No water, sewer, power, fuel or communication lines nor related facilities, or any underground installation, will be permitted if the resulting effect would be to drain, alter, or disturb any wetland on the Property unless permitted by the Corps of Engineers or Environmental Protection Agency, as applicable.

6.4 **Acts of God.** Nothing contained in this Easement shall be construed to impose upon Grantor any liability or obligation for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm and earth movement, or from any prudent action by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

7. **Retained Rights.** Except as otherwise expressly provided in this Easement, Grantor shall retain all incidents, rights, powers and discretion inhering in ownership and possession of the Property including without limited to the following:

- 7.1 *Transfers.* To transfer, lease, mortgage or otherwise encumber the Property, subject and subordinate to this Easement, after compliance with the notice requirements of this Easement in §9.
- 7.2 *Compliance with Public Entity Grants.* Grantor may execute all instruments and documents, provide all assurances and take all actions necessary to comply with

all public entity grants, to the extent required thereby and not impairing, harming or otherwise jeopardizing the Conservation Values.

- 7.3 *Weed Control.* Grantor retains the right to use herbicides to control weeds and other undesirable plants, and the right to use other pesticides to control insects and undesirable wildlife. The use of these chemicals shall be consistent with normal forestry and timber practices.

8. **Retained and Assumed Responsibilities, Obligations and Liabilities.**

- 8.1 *Grantee's Status.* Grantor acknowledges that Grantee shall not be considered, and the parties do not intend this Easement to be construed to create or impose upon Grantee any responsibilities, obligations or liability as, an owner, operator, landlord, tenant or manager of the Property. Grantee's obligations for monitoring and inspection shall be solely for the purpose of preserving Conservation Values and not for the prevention or mitigation of any damage, injury or other harm to persons or property. This Easement shall not be deemed to create any right of action against Grantee in favor of any third party.
- 8.2 *Taxes.* Grantor shall pay before delinquency all taxes, assessment, fees and charges of whatever description levied on or assessed against the Property and/or this Easement; provided, however, that all assessed real estate taxes shall be paid on or before the due date set forth in the county tax statement.
- 8.3 *Management.* Grantor shall continue to be solely responsible for the upkeep, maintenance and management of the Property and preservation and protection of the Conservation Values. In the event Grantee places any interpretive sites or hiking or biking trails, Grantee shall be solely responsible for the upkeep maintenance and management of these improvements. Further, Grantee shall be solely responsible for any reclamation costs incurred by any archeological investigations.
- 8.4 *Insurance.* Grantor shall be solely responsible for maintaining all appropriate casualty, property, liability and workers compensation insurance appropriate for their use and occupation of the Property. Grantee shall be named an additional insured on all such insurance policies related to the Property.
- 8.5 *Compliance with Laws.* Grantor shall remain solely responsible for obtaining all applicable governmental permits and approvals for any activity or use permitted by this Easement and to conduct the foregoing in accordance with and in observation of all applicable federal, state and local laws, rules, regulations and requirements.
- 8.6 *Indemnity.* Grantor shall indemnify, protect, defend with counsel acceptable to Grantee and hold Grantee and its directors, officers, employees, agents, attorneys, volunteers, representatives, successors and assigns (the Indemnified Parties) harmless from and against all claims, actions, administrative

proceedings, liabilities, judgments, damages, punitive damages, penalties, fines, costs, remedial action, compliance requirements, enforcement in clean-up actions of any kind, interests or losses, attorney's fees and expenses (including those incurred in enforcing this indemnity), consultant fees and expert fees arising directly or indirectly from or in connection with (i) injury or death of any person, damage to any property or diminution in the value of property resulting from any act, omission, condition or other matter related to or occurring on or about the Property regardless of cause, including injury, death or other harm to any Indemnified Party; (ii) the presence, suspected presence or release of any hazardous substance whether into the air, soil, surface water or ground water of or at the Property; (iii) any violation or alleged violation of any environmental law affecting the Property, whether occurring prior to or during Grantor's ownership of the Property and whether caused or permitted by Grantor or any person other than Grantor; (iv) any claim or defense by Grantor or any third party that any Indemnified Party is liable as an owner or operator of the Property under any environmental law; or (v) any breach of Grantor's warranties, representations or retained responsibilities, obligations or liabilities hereunder. This indemnity shall not apply if it shall be finally determined that any of the foregoing was caused primarily by the gross negligence or willful misconduct of Grantee.

- 8.7 *Remediation.* If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

9. **Notices and Approvals.**

- 9.1 *Methods.* Any notice or communication under this Easement shall be in writing and delivered (by hand, telecopy, telegraph, telex or courier) or deposited in the United States mail (first class, registered or certified), postage fully prepaid and addressed as stated below. Either party may, from time to time, specify as its address for purposes of this Easement any other address upon the giving of ten days notice thereof to the other party in the manner required by this paragraph. This paragraph shall not prevent the giving of written notice in any other manner, but such notice shall be deemed effective only when and as of its actual receipt at the proper address and by the proper addressee.
- 9.2 *Timing and Substance.* Whenever notice to or approval of Grantee is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material

aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

- 9.3 *Approval.* Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. Grantee's approval may be conditioned on reimbursement of costs incurred in, and reasonable fees for, consideration of the request.

10. **Grantee's Remedies.**

- 10.1 *Notice; Corrective Action.* If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.
- 10.2 *Injunctive Relief.* If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- 10.3 *Damages.* In the event that Grantor does not or cannot cure the noticed violation and effectively restore the Property to its pre-violation state, then Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- 10.4 *Emergency Enforcement.* If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property such as to make notice impracticable, Grantee may pursue its remedies under this § 10 without prior notice to Grantor or without waiting for the period provided for cure to expire. In such instance, Grantee shall provide notice as soon as practicable.

- 10.5 *Scope.* Grantee's rights under this § 10 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in § 10.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this § 10 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 10.6 *Costs.* All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.
- 10.7 *Forbearance.* Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- 10.8 *Waiver.* Grantor hereby waives any defense of laches, estoppel, or prescription.

11. Extinguishment and Condemnation.

- 11.1 *Extinguishment.* If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with § 11.2.
- 11.2 *Valuation.* This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of § 11.1, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without

deduction for the value of the Easement, at the time of this grant. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

- 11.3 *Condemnation.* If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in § 11.2.
- 11.4 *Application of Proceeds.* Grantee shall use any proceeds received under the circumstances described in this § 11 in a manner consistent with its conservation purposes, which are exemplified by this grant.
12. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the IRC (or any successor provision then applicable), and authorized to acquire and hold conservation easements under state statute (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee shall give written notice to Grantor of an assignment at least thirty (30) days prior to the effective date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.
13. **General Provisions.**
- 13.1 *Benefit and Binding Effect.* The Easement created by this instrument shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to Grantor and Grantee shall also apply to, be binding upon and inure to the benefit of their respective agents, heirs, executors, administrators, other legal representatives, transferees, successors and assigns.
- 13.2 *No Third Party Beneficiaries.* This Easement is intended solely for the benefit of the parties hereto and shall not be enforceable by or create any claim or right of action in favor of any other party.
- 13.3 *Entire Agreement.*
- (a) This Easement represents the entire and integrated agreement between the parties hereto with respect to the subjects described herein and supersedes

all prior negotiations, representations or agreements, oral or written. Subject to subparagraph (b), this Easement may be amended or modified only in writing signed by the party to be bound by such amendment or modification and stating that it is intended as an amendment or modification of this Easement. The parties waive their rights to amend or modify this Easement in any other manner.

- (b) This Easement may be amended only upon satisfaction of all of the following: (i) written consent of Grantee, which may be granted or withheld in its sole discretion and upon such additional conditions as Grantee may determine to impose in any specific instance; (ii) payment of Grantee's incurred costs and reasonable fees it may impose for the consideration of such amendment; (iii) protection of the Conservation Values are improved or not impaired; (iv) the amendment complies with SDCL 1-19B-56(2)(b) et seq.; and (v) the amendment complies with §170(h) of the Internal Revenue Code. Any such amendment that does not comply with all such requirements shall be void and of no force or effect.

- 13.4 *Severability.* If any one or more of the provisions of this Easement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality or enforceability of such provision in every other respect and the remaining provisions of this Easement shall not be in any way impaired.
- 13.5 *Nonwaiver.* Failure of a party to insist upon adherence to any term of this Easement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term or any other term of this Easement.
- 13.6 *Governing Law.* This Easement shall be governed by and interpreted under the substantive laws of the State of South Dakota without regard to principles of conflicts of law. This Easement shall not be interpreted to negate, supersede or otherwise modify any law, statute, rule, regulation or ordinance (together a Law) imposing additional or more stringent restrictions, including those related to zoning or land use, unless such Law is permitted to be varied by private agreement and the express terms of this agreement have that effect. No approval of this Easement by any governmental authority shall have the effect of negating, superseding or otherwise modifying such Law, or waiving its enforcement, unless expressly so stated as a part of such approval.
- 13.7 *Headings.* The section headings to this Easement are intended solely for the parties' convenience and shall not affect the interpretation or construction of any portion or provision of this Easement.
- 13.8 *Recordation; Publicity.* Grantee shall record this instrument in timely fashion in the official records of Lawrence County, South Dakota and may re-record it at any time as may be required to preserve its rights in this Easement. Grantee

may reasonably publicize the grant of this Easement and use photographs and descriptions of the Property on its web site and other informative materials.

- 13.9 *Liberal Interpretation.* Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and preservation of the Conservation Values. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 13.10 *No Forfeiture.* Nothing contained herein will result in forfeiture by Grantee or reversion of Grantor’s title in any respect.
- 13.11 *Termination.* A party’s rights and obligations under this Easement terminate upon transfer of the party’s interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

IN WITNESS WHEREOF, the parties hereto have executed this Easement on the day and year first above-written.

GRANTOR:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this _____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

GRANTEE:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
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ATTEST

Jessica McKeown
Finance Officer

EXHIBIT A

Baseline Documentation Report

The Property is located near the middle of the Deadwood National Historic Landmark District and the state and national register historic districts of Deadwood, Lawrence County, South Dakota. Deadwood was originally settled in a scenic gulch at the confluence of Whitewood and Deadwood Creeks in 1876, due to the discovery of gold in the Black Hills of South Dakota.

The property is a highly visible undeveloped steep hillside with Ponderosa pine forest scattered with scrub oak and spruce. The property is currently zoned R1 - Residential.

Deadwood is a small town with a historic setting and an aesthetic beauty. The environs afforded Deadwood by its location in the Black Hills offers many environmental benefits for the community. The ponderosa pines and other vegetation on the surrounding hillsides help provide ecosystem services that supply clean air and water to Deadwood, and the rocks and minerals are responsible for the founding and flourishing of Deadwood as a mining town. This property offers these conservation values as well as potential opportunities to experience nature and outdoor recreation such as hiking and biking.

Deadwood's numerous comprehensive plans have identified several goals which match the conservation values provided by this property. These include but are not limited to the following:

1. The City of Deadwood desires to preserve the natural environment, livability, and sense of community.
2. The City of Deadwood desires to protect the scenic, historic, and small city character while emphasizing and preserving the community's historic past for future generations.
3. The City of Deadwood desires to promote the diversification of activities that will attract visitors all seasons of the year.
4. The City of Deadwood desires to support the enhancement and protection of our recreational and cultural amenities.
5. The City of Deadwood desires to protect the historic integrity and the natural environment of Deadwood.

This Instrument Prepared By:
 City of Deadwood
 108 Sherman Street
 Deadwood, SD 57732
 (605) 578-2082
 (605) 587-2084

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (this “Easement”) is granted this ____ day of _____, 2024 by **City of Deadwood**, 108 Sherman Street, Deadwood, SD 57732 (the Grantor) to **the CITY OF DEADWOOD**, City of Deadwood, 108 Sherman Street, Deadwood, SD 57732, a South Dakota municipal government (Grantee):

WHEREAS:

- A. Grantor is the owner in fee of real property (the “Property”) located on School Lot 12 in the City of Deadwood, Lawrence County, South Dakota, according to P.L. Rodgers Map of said City of Deadwood more particularly described in Exhibit A;
- B. The Property possesses cultural, historical, archaeological, natural, scenic, and recreational values (collectively the “Conservation Values”) of great importance to Grantor, the people of the City of Deadwood and the people of the State of South Dakota; the preservation of which will provide a significant public benefit to the protection of the Deadwood National Historic Landmark District. The Conservation Values, which are more fully described in the Baseline Documentation Report are described in Exhibit B attached hereto and incorporated herein by this reference;
- C. The Property represents open space for the scenic, educational and recreational enjoyment of the general public and will yield a significant public benefit;
- D. Grantor desires to preserve **in perpetuity** the Conservation Values of the Property by granting this Easement and by surrendering the opportunity to engage in economic development of the Property that is inconsistent with such Conservation Values;
- E. The Property has substantial economic value if developed for nonagricultural purposes, but only by potentially harming the Conservation Values and purposes as noted above;
- F. Maintaining the Property’s cultural, historical, archaeological, natural, scenic and recreational values characteristics, and, in particular, maintaining the Property free from new structures, alteration or changes that would encroach upon, damage or destroy the Property and the Deadwood National Historic Landmark District are critical to the protection of this property. The conservation of the Property, subject to the terms of this easement, will yield significant benefits to the public by protecting the Property;

- G. The parties have mutual desires and goals towards the long-term preservation of Deadwood's National Historic Landmark District, the State and National Register Districts, and the local historic district;
- H. The parties desire to conserve the Property by entering into this Conservation Easement pursuant to SDCL 1-19B-56 to 1-19B-60 of the State of South Dakota and Section 170(h) of the Internal Revenue Code; and
- I. Grantor has received independent legal and financial advice regarding this Conservation Easement to the extent that Grantor has deemed necessary. Grantor freely conveys this Conservation Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants contained herein the parties agree as follows:

1. **Grant of Easement.**

- 1.1 *Scope and General Purpose.* Upon and subject to the terms and conditions described herein below, Grantor hereby grants, warrants and conveys to Grantee a conservation easement to preserve and protect the Conservation Values of the Property.
- 1.2 *Term.* This Easement shall be **perpetual**.
- 1.3 *Authority Generally.* Grantee shall have the right and power:
- (a) To enter upon the Property at reasonable times to monitor compliance with and otherwise to enforce the terms of this Easement as more particularly set forth herein; and
 - (b) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in § 10; and
 - (c) To retain as its exclusive right, power and domain, except as expressly reserved to Grantor, all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, it being the intent hereby that such development rights shall, except as expressly reserved, be terminated and extinguished and may not be used on or transferred to any portion of the Property.
 - (d) Grantee may create pedestrian trails, interpretive sites and conduct archaeological investigations consistent with the conservation values identified herein.

- 1.4 *Access.* For all the purposes described in this Easement, Grantee shall have the right to access the Property from, and to travel by vehicle or foot upon and across, any public or private road or unimproved road or path, public or private, on, to or adjoining the Property. In the event the Property is landlocked, Grantee may have access to the Property on and across any adjoining land of Grantor by the route most convenient to Grantee.
2. **Other Grants by Grantee.** This Easement shall not be interpreted to prohibit or restrict Grantor from participating in any state, federal or local government entity or agency programs designed to promote, preserve or enhance the natural characteristics and potential of the Property and to make any grant of any covenant, restriction, easement or title to the Property for that purpose (a “Public Entity Grant”), provided all of the following conditions are met: (i) any such grant is subject to this Easement; (ii) the grant does not impair, harm or otherwise jeopardize the Conservation Values; and (iii) Grantor shall provide prior notice to Grantee complying with §9.
3. **Grantee’s Acceptance.** In reliance upon Grantor’s warranties and representations as described below, Grantee hereby accepts grant of this Easement and the responsibility of monitoring and enforcing its terms and upholding its Conservation Values forever.
4. **Conservation Baseline.** The document entitled “Baseline Documentation Report”, incorporated by this reference, that the Grantor and Grantee mutually agree, as depicted by photographs, maps, and supporting text, describes the general condition of the Property, including Structures and Improvements, and driveways, as located on the Property as of the date of this Conservation Easement.
5. **Grantor’s Warranties and Representations.**
- 5.1 *Purpose.* Grantor acknowledges that despite the Conservation Values of the Property, certain factors, if they were present, would preclude Grantee from accepting this Easement; and Grantee cannot accept this Easement without affirmative assurances that these factors are not present with respect to the Property. Since Grantor is the party most familiar with the Property, Grantor acknowledges the right of Grantee to rely without inquiry on these assurances in the form of Grantor’s warranties and representations as described below.
- 5.2 *Enumeration.* To induce Grantee to accept this Easement, Grantor warrants and represents as follows:
- (a) Grantor is the sole owner of the Property, free of all liens, claims, interests and encumbrances.
- (b) To the best of Grantor’s knowledge:
- (i) Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting, or

otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements and has no current adverse effect on any of the Conservation Values.

- (ii) No deposit, disposal, or other release of any hazardous substance or toxic waste has occurred on or from the Property, which is free of all such contamination.
 - (iii) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.
 - (iv) Grantor and the Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use.
 - (v) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property.
- (c) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
- (d) In determining to grant this Easement, Grantor has relied solely on the advice of his own legal, tax and valuation advisors and not on any representative of Grantee.

6. **Prohibited and Restricted Uses.**

- 6.1 *Encouraged Practices.* Grantee acknowledges that the Conservation Values are available to be preserved, and Grantor and its successors and assigns are encouraged to conduct all permitted operations and practices in accordance with good management practices addressing soil and water conservation, erosion control, historical, cultural resource and habitat protection.
- 6.2 *Promise to Comply.* Grantor covenants and promises that Grantor will not perform, or knowingly allow others to perform, any act or use on or affecting the Property in conflict with this § 6.

6.3 *Specific Terms.* The Property is hereby made subject to the following prohibitions and restrictions:

- (a) No billboards or commercial signs shall be erected on the Property.
- (b) Grantor may transfer the property in any manner as it sees fit. However, the Property shall not otherwise be subdivided by physical, legal or other process, for purposes of transferring ownership of less than the entirety of the Property.
- (c) The Property shall not be subject to any mining, extraction or removal of soil, sand, gravel, oil, natural gas, fuel or other mineral substance or exploration for any such purpose, except for movement of material solely for use on the Property in conjunction with and in furtherance of activities permitted by this Easement.
- (d) Trees on the Property may be cut only for the following: (i) to control insects and disease; (ii) to prevent personal injury or property damage; (iii) to prevent or reduce fire hazard; or (iv) pursuant to a natural resources management plan having the prior approval of Grantee. No plants, flora, fauna or other vegetation may be cut, burned, removed, destroyed, eradicated or harvested except pursuant to a cultural and natural resources management plan approved by Grantee.
- (e) No unpaved portion of the Property shall be paved, including without limitation covering the soil surface with concrete, asphalt, gravel or other material other than soil and grass.
- (f) Grantor shall not transfer, encumber, lease, sell or otherwise separate any water rights from the Property.
- (g) The dumping or accumulation of any kind of trash, garbage, debris, waste, refuse, junk, hazardous chemicals, other unsightly or foreign material, or derelict equipment on the Property is prohibited.
- (h) No Structures or other Improvements may be built on the Property. For purposes of this Easement, "Structure" includes any building or object constructed, installed or placed upon the ground, whether temporarily or permanent, including without limitation residential units, garages, sheds, studios, cabins, moveable buildings, decks, terraces, and garden features such as arbors and gazebos. For purposes of this Easement, "Improvements" shall mean anything that is constructed or installed upon the ground or a Structure, which is not a Structure and includes without limitation driveways, roads, parking areas, gardens, ponds, wells, septic tanks, drainageways, utility lines, fences, walls, paths, trails and walkways.

- (i) There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the Easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. Surface drainage into the Property shall comply with all applicable ordinances, regulations and statutes, including those applicable to water quality.
- (j) No new roads not shown on exhibit A or site plans may be cut through the Property. No motorized vehicles shall be used on the Property, except for maintenance work to protect the Conservation Values, and for Grantee's inspections.
- (k) The Property may not be used for or as a part of any commercial venture to provide hunting, fishing, camping, hiking, biking, lodging, drinking or eating or any other commercial recreational activity.
- (l) No above ground installation of new utility systems or extensions of existing systems, including, without limitation, cell towers, telephone relay towers and any other stand-alone tower structures shall be permitted. No water, sewer, power, fuel or communication lines nor related facilities, or any underground installation, will be permitted if the resulting effect would be to drain, alter, or disturb any wetland on the Property unless permitted by the Corps of Engineers or Environmental Protection Agency, as applicable.

6.4 **Acts of God.** Nothing contained in this Easement shall be construed to impose upon Grantor any liability or obligation for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm and earth movement, or from any prudent action by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

7. **Retained Rights.** Except as otherwise expressly provided in this Easement, Grantor shall retain all incidents, rights, powers and discretion inhering in ownership and possession of the Property including without limited to the following:

- 7.1 *Transfers.* To transfer, lease, mortgage or otherwise encumber the Property, subject and subordinate to this Easement, after compliance with the notice requirements of this Easement in §9.
- 7.2 *Compliance with Public Entity Grants.* Grantor may execute all instruments and documents, provide all assurances and take all actions necessary to comply with

all public entity grants, to the extent required thereby and not impairing, harming or otherwise jeopardizing the Conservation Values.

- 7.3 *Weed Control.* Grantor retains the right to use herbicides to control weeds and other undesirable plants, and the right to use other pesticides to control insects and undesirable wildlife. The use of these chemicals shall be consistent with normal forestry and timber practices.

8. **Retained and Assumed Responsibilities, Obligations and Liabilities.**

- 8.1 *Grantee's Status.* Grantor acknowledges that Grantee shall not be considered, and the parties do not intend this Easement to be construed to create or impose upon Grantee any responsibilities, obligations or liability as, an owner, operator, landlord, tenant or manager of the Property. Grantee's obligations for monitoring and inspection shall be solely for the purpose of preserving Conservation Values and not for the prevention or mitigation of any damage, injury or other harm to persons or property. This Easement shall not be deemed to create any right of action against Grantee in favor of any third party.
- 8.2 *Taxes.* Grantor shall pay before delinquency all taxes, assessment, fees and charges of whatever description levied on or assessed against the Property and/or this Easement; provided, however, that all assessed real estate taxes shall be paid on or before the due date set forth in the county tax statement.
- 8.3 *Management.* Grantor shall continue to be solely responsible for the upkeep, maintenance and management of the Property and preservation and protection of the Conservation Values. In the event Grantee places any interpretive sites or hiking or biking trails, Grantee shall be solely responsible for the upkeep maintenance and management of these improvements. Further, Grantee shall be solely responsible for any reclamation costs incurred by any archeological investigations.
- 8.4 *Insurance.* Grantor shall be solely responsible for maintaining all appropriate casualty, property, liability and workers compensation insurance appropriate for their use and occupation of the Property. Grantee shall be named an additional insured on all such insurance policies related to the Property.
- 8.5 *Compliance with Laws.* Grantor shall remain solely responsible for obtaining all applicable governmental permits and approvals for any activity or use permitted by this Easement and to conduct the foregoing in accordance with and in observation of all applicable federal, state and local laws, rules, regulations and requirements.
- 8.6 *Indemnity.* Grantor shall indemnify, protect, defend with counsel acceptable to Grantee and hold Grantee and its directors, officers, employees, agents, attorneys, volunteers, representatives, successors and assigns (the Indemnified Parties) harmless from and against all claims, actions, administrative

proceedings, liabilities, judgments, damages, punitive damages, penalties, fines, costs, remedial action, compliance requirements, enforcement in clean-up actions of any kind, interests or losses, attorney's fees and expenses (including those incurred in enforcing this indemnity), consultant fees and expert fees arising directly or indirectly from or in connection with (i) injury or death of any person, damage to any property or diminution in the value of property resulting from any act, omission, condition or other matter related to or occurring on or about the Property regardless of cause, including injury, death or other harm to any Indemnified Party; (ii) the presence, suspected presence or release of any hazardous substance whether into the air, soil, surface water or ground water of or at the Property; (iii) any violation or alleged violation of any environmental law affecting the Property, whether occurring prior to or during Grantor's ownership of the Property and whether caused or permitted by Grantor or any person other than Grantor; (iv) any claim or defense by Grantor or any third party that any Indemnified Party is liable as an owner or operator of the Property under any environmental law; or (v) any breach of Grantor's warranties, representations or retained responsibilities, obligations or liabilities hereunder. This indemnity shall not apply if it shall be finally determined that any of the foregoing was caused primarily by the gross negligence or willful misconduct of Grantee.

- 8.7 *Remediation.* If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

9. **Notices and Approvals.**

- 9.1 *Methods.* Any notice or communication under this Easement shall be in writing and delivered (by hand, telecopy, telegraph, telex or courier) or deposited in the United States mail (first class, registered or certified), postage fully prepaid and addressed as stated below. Either party may, from time to time, specify as its address for purposes of this Easement any other address upon the giving of ten days notice thereof to the other party in the manner required by this paragraph. This paragraph shall not prevent the giving of written notice in any other manner, but such notice shall be deemed effective only when and as of its actual receipt at the proper address and by the proper addressee.
- 9.2 *Timing and Substance.* Whenever notice to or approval of Grantee is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material

aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

- 9.3 *Approval.* Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. Grantee's approval may be conditioned on reimbursement of costs incurred in, and reasonable fees for, consideration of the request.

10. **Grantee's Remedies.**

- 10.1 *Notice; Corrective Action.* If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.
- 10.2 *Injunctive Relief.* If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- 10.3 *Damages.* In the event that Grantor does not or cannot cure the noticed violation and effectively restore the Property to its pre-violation state, then Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- 10.4 *Emergency Enforcement.* If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property such as to make notice impracticable, Grantee may pursue its remedies under this § 10 without prior notice to Grantor or without waiting for the period provided for cure to expire. In such instance, Grantee shall provide notice as soon as practicable.

- 10.5 *Scope.* Grantee's rights under this § 10 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in § 10.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this § 10 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 10.6 *Costs.* All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.
- 10.7 *Forbearance.* Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- 10.8 *Waiver.* Grantor hereby waives any defense of laches, estoppel, or prescription.

11. **Extinguishment and Condemnation.**

- 11.1 *Extinguishment.* If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with § 11.2.
- 11.2 *Valuation.* This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of § 11.1, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without

deduction for the value of the Easement, at the time of this grant. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

11.3 *Condemnation.* If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in § 11.2.

11.4 *Application of Proceeds.* Grantee shall use any proceeds received under the circumstances described in this § 11 in a manner consistent with its conservation purposes, which are exemplified by this grant.

12. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the IRC (or any successor provision then applicable), and authorized to acquire and hold conservation easements under state statute (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee shall give written notice to Grantor of an assignment at least thirty (30) days prior to the effective date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

13. **General Provisions.**

13.1 *Benefit and Binding Effect.* The Easement created by this instrument shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to Grantor and Grantee shall also apply to, be binding upon and inure to the benefit of their respective agents, heirs, executors, administrators, other legal representatives, transferees, successors and assigns.

13.2 *No Third Party Beneficiaries.* This Easement is intended solely for the benefit of the parties hereto and shall not be enforceable by or create any claim or right of action in favor of any other party.

13.3 *Entire Agreement.*

(a) This Easement represents the entire and integrated agreement between the parties hereto with respect to the subjects described herein and supersedes

all prior negotiations, representations or agreements, oral or written. Subject to subparagraph (b), this Easement may be amended or modified only in writing signed by the party to be bound by such amendment or modification and stating that it is intended as an amendment or modification of this Easement. The parties waive their rights to amend or modify this Easement in any other manner.

- (b) This Easement may be amended only upon satisfaction of all of the following: (i) written consent of Grantee, which may be granted or withheld in its sole discretion and upon such additional conditions as Grantee may determine to impose in any specific instance; (ii) payment of Grantee's incurred costs and reasonable fees it may impose for the consideration of such amendment; (iii) protection of the Conservation Values are improved or not impaired; (iv) the amendment complies with SDCL 1-19B-56(2)(b) et seq.; and (v) the amendment complies with §170(h) of the Internal Revenue Code. Any such amendment that does not comply with all such requirements shall be void and of no force or effect.

- 13.4 *Severability.* If any one or more of the provisions of this Easement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality or enforceability of such provision in every other respect and the remaining provisions of this Easement shall not be in any way impaired.
- 13.5 *Nonwaiver.* Failure of a party to insist upon adherence to any term of this Easement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term or any other term of this Easement.
- 13.6 *Governing Law.* This Easement shall be governed by and interpreted under the substantive laws of the State of South Dakota without regard to principles of conflicts of law. This Easement shall not be interpreted to negate, supersede or otherwise modify any law, statute, rule, regulation or ordinance (together a Law) imposing additional or more stringent restrictions, including those related to zoning or land use, unless such Law is permitted to be varied by private agreement and the express terms of this agreement have that effect. No approval of this Easement by any governmental authority shall have the effect of negating, superseding or otherwise modifying such Law, or waiving its enforcement, unless expressly so stated as a part of such approval.
- 13.7 *Headings.* The section headings to this Easement are intended solely for the parties' convenience and shall not affect the interpretation or construction of any portion or provision of this Easement.
- 13.8 *Recordation; Publicity.* Grantee shall record this instrument in timely fashion in the official records of Lawrence County, South Dakota and may re-record it at any time as may be required to preserve its rights in this Easement. Grantee

may reasonably publicize the grant of this Easement and use photographs and descriptions of the Property on its web site and other informative materials.

- 13.9 *Liberal Interpretation.* Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and preservation of the Conservation Values. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 13.10 *No Forfeiture.* Nothing contained herein will result in forfeiture by Grantee or reversion of Grantor’s title in any respect.
- 13.11 *Termination.* A party’s rights and obligations under this Easement terminate upon transfer of the party’s interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

IN WITNESS WHEREOF, the parties hereto have executed this Easement on the day and year first above-written.

GRANTOR:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this _____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

GRANTEE:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this _____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

EXHIBIT A

Baseline Documentation Report

The Property is located near the middle of the Deadwood National Historic Landmark District and the state and national register historic districts of Deadwood, Lawrence County, South Dakota. Deadwood was originally settled in a scenic gulch at the confluence of Whitewood and Deadwood Creeks in 1876, due to the discovery of gold in the Black Hills of South Dakota.

The property is a highly visible undeveloped steep hillside with Ponderosa pine forest scattered with scrub oak and spruce. The property is currently zoned R1 - Residential.

Deadwood is a small town with a historic setting and an aesthetic beauty. The environs afforded Deadwood by its location in the Black Hills offers many environmental benefits for the community. The ponderosa pines and other vegetation on the surrounding hillsides help provide ecosystem services that supply clean air and water to Deadwood, and the rocks and minerals are responsible for the founding and flourishing of Deadwood as a mining town. This property offers these conservation values as well as potential opportunities to experience nature and outdoor recreation such as hiking and biking.

Deadwood's numerous comprehensive plans have identified several goals which match the conservation values provided by this property. These include but are not limited to the following:

1. The City of Deadwood desires to preserve the natural environment, livability, and sense of community.
2. The City of Deadwood desires to protect the scenic, historic, and small city character while emphasizing and preserving the community's historic past for future generations.
3. The City of Deadwood desires to promote the diversification of activities that will attract visitors all seasons of the year.
4. The City of Deadwood desires to support the enhancement and protection of our recreational and cultural amenities.
5. The City of Deadwood desires to protect the historic integrity and the natural environment of Deadwood.

This Instrument Prepared By:
 City of Deadwood
 108 Sherman Street
 Deadwood, SD 57732
 (605) 578-2082
 (605) 587-2084

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (this “Easement”) is granted this ____ day of _____, 2024 by **City of Deadwood**, 108 Sherman Street, Deadwood, SD 57732 (the Grantor) to **the CITY OF DEADWOOD**, City of Deadwood, 108 Sherman Street, Deadwood, SD 57732, a South Dakota municipal government (Grantee):

WHEREAS:

- A. Grantor is the owner in fee of real property (the “Property”) located on School Lots 42, 43, 44, 45, 46, 47, 48, And 49 In the City of Deadwood, According to P.L. Rogers Map of the City of Deadwood, Lawrence County, South Dakota, excepting therefrom a portion of School Lot 44 deeded to Black Hills Utilities Company in Book 241 Page 178 more particularly described in Exhibit A;
- B. The Property possesses cultural, historical, archaeological, natural, scenic, and recreational values (collectively the “Conservation Values”) of great importance to Grantor, the people of the City of Deadwood and the people of the State of South Dakota; the preservation of which will provide a significant public benefit to the protection of the Deadwood National Historic Landmark District. The Conservation Values, which are more fully described in the Baseline Documentation Report are described in Exhibit B attached hereto and incorporated herein by this reference;
- C. The Property represents open space for the scenic, educational and recreational enjoyment of the general public and will yield a significant public benefit;
- D. Grantor desires to preserve **in perpetuity** the Conservation Values of the Property by granting this Easement and by surrendering the opportunity to engage in economic development of the Property that is inconsistent with such Conservation Values;
- E. The Property has substantial economic value if developed for nonagricultural purposes, but only by potentially harming the Conservation Values and purposes as noted above;
- F. Maintaining the Property’s cultural, historical, archaeological, natural, scenic and recreational values characteristics, and, in particular, maintaining the Property free from new structures, alteration or changes that would encroach upon, damage or destroy the Property and the Deadwood National Historic Landmark District are critical

to the protection of this property. The conservation of the Property, subject to the terms of this easement, will yield significant benefits to the public by protecting the Property;

- G. The parties have mutual desires and goals towards the long-term preservation of Deadwood's National Historic Landmark District, the State and National Register Districts, and the local historic district;
- H. The parties desire to conserve the Property by entering into this Conservation Easement pursuant to SDCL 1-19B-56 to 1-19B-60 of the State of South Dakota and Section 170(h) of the Internal Revenue Code; and
- I. Grantor has received independent legal and financial advice regarding this Conservation Easement to the extent that Grantor has deemed necessary. Grantor freely conveys this Conservation Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants contained herein the parties agree as follows:

1. **Grant of Easement.**

- 1.1 *Scope and General Purpose.* Upon and subject to the terms and conditions described herein below, Grantor hereby grants, warrants and conveys to Grantee a conservation easement to preserve and protect the Conservation Values of the Property.
- 1.2 *Term.* This Easement shall be **perpetual**.
- 1.3 *Authority Generally.* Grantee shall have the right and power:
 - (a) To enter upon the Property at reasonable times to monitor compliance with and otherwise to enforce the terms of this Easement as more particularly set forth herein; and
 - (b) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in § 10; and
 - (c) To retain as its exclusive right, power and domain, except as expressly reserved to Grantor, all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, it being the intent hereby that such development rights shall, except as expressly reserved, be terminated and extinguished and may not be used on or transferred to any portion of the Property.

(d) Grantee may create pedestrian trails, interpretive sites and conduct archaeological investigations consistent with the conservation values identified herein.

- 1.4 *Access.* For all the purposes described in this Easement, Grantee shall have the right to access the Property from, and to travel by vehicle or foot upon and across, any public or private road or unimproved road or path, public or private, on, to or adjoining the Property. In the event the Property is landlocked, Grantee may have access to the Property on and across any adjoining land of Grantor by the route most convenient to Grantee.
2. **Other Grants by Grantee.** This Easement shall not be interpreted to prohibit or restrict Grantor from participating in any state, federal or local government entity or agency programs designed to promote, preserve or enhance the natural characteristics and potential of the Property and to make any grant of any covenant, restriction, easement or title to the Property for that purpose (a “Public Entity Grant”), provided all of the following conditions are met: (i) any such grant is subject to this Easement; (ii) the grant does not impair, harm or otherwise jeopardize the Conservation Values; and (iii) Grantor shall provide prior notice to Grantee complying with §9.
3. **Grantee’s Acceptance.** In reliance upon Grantor’s warranties and representations as described below, Grantee hereby accepts grant of this Easement and the responsibility of monitoring and enforcing its terms and upholding its Conservation Values forever.
4. **Conservation Baseline.** The document entitled “Baseline Documentation Report”, incorporated by this reference, that the Grantor and Grantee mutually agree, as depicted by photographs, maps, and supporting text, describes the general condition of the Property, including Structures and Improvements, and driveways, as located on the Property as of the date of this Conservation Easement.
5. **Grantor’s Warranties and Representations.**
- 5.1 *Purpose.* Grantor acknowledges that despite the Conservation Values of the Property, certain factors, if they were present, would preclude Grantee from accepting this Easement; and Grantee cannot accept this Easement without affirmative assurances that these factors are not present with respect to the Property. Since Grantor is the party most familiar with the Property, Grantor acknowledges the right of Grantee to rely without inquiry on these assurances in the form of Grantor’s warranties and representations as described below.
- 5.2 *Enumeration.* To induce Grantee to accept this Easement, Grantor warrants and represents as follows:
- (a) Grantor is the sole owner of the Property, free of all liens, claims, interests and encumbrances.
- (b) To the best of Grantor’s knowledge:

- (i) Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements and has no current adverse effect on any of the Conservation Values.
 - (ii) No deposit, disposal, or other release of any hazardous substance or toxic waste has occurred on or from the Property, which is free of all such contamination.
 - (iii) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.
 - (iv) Grantor and the Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use.
 - (v) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property.
- (c) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
- (d) In determining to grant this Easement, Grantor has relied solely on the advice of his own legal, tax and valuation advisors and not on any representative of Grantee.

6. **Prohibited and Restricted Uses.**

- 6.1 *Encouraged Practices.* Grantee acknowledges that the Conservation Values are available to be preserved, and Grantor and its successors and assigns are encouraged to conduct all permitted operations and practices in accordance with good management practices addressing soil and water conservation, erosion control, historical, cultural resource and habitat protection.

- 6.2 *Promise to Comply.* Grantor covenants and promises that Grantor will not perform, or knowingly allow others to perform, any act or use on or affecting the Property in conflict with this § 6.
- 6.3 *Specific Terms.* The Property is hereby made subject to the following prohibitions and restrictions:
- (a) No billboards or commercial signs shall be erected on the Property.
 - (b) Grantor may transfer the property in any manner as it sees fit. However, the Property shall not otherwise be subdivided by physical, legal or other process, for purposes of transferring ownership of less than the entirety of the Property.
 - (c) The Property shall not be subject to any mining, extraction or removal of soil, sand, gravel, oil, natural gas, fuel or other mineral substance or exploration for any such purpose, except for movement of material solely for use on the Property in conjunction with and in furtherance of activities permitted by this Easement.
 - (d) Trees on the Property may be cut only for the following: (i) to control insects and disease; (ii) to prevent personal injury or property damage; (iii) to prevent or reduce fire hazard; or (iv) pursuant to a natural resources management plan having the prior approval of Grantee. No plants, flora, fauna or other vegetation may be cut, burned, removed, destroyed, eradicated or harvested except pursuant to a cultural and natural resources management plan approved by Grantee.
 - (e) No unpaved portion of the Property shall be paved, including without limitation covering the soil surface with concrete, asphalt, gravel or other material other than soil and grass.
 - (f) Grantor shall not transfer, encumber, lease, sell or otherwise separate any water rights from the Property.
 - (g) The dumping or accumulation of any kind of trash, garbage, debris, waste, refuse, junk, hazardous chemicals, other unsightly or foreign material, or derelict equipment on the Property is prohibited.
 - (h) No Structures or other Improvements may be built on the Property. For purposes of this Easement, "Structure" includes any building or object constructed, installed or placed upon the ground, whether temporarily or permanent, including without limitation residential units, garages, sheds, studios, cabins, moveable buildings, decks, terraces, and garden features such as arbors and gazebos. For purposes of this Easement, "Improvements" shall mean anything that is constructed or installed upon the ground or a Structure, which is not a Structure and includes without limitation

driveways, roads, parking areas, gardens, ponds, wells, septic tanks, drainageways, utility lines, fences, walls, paths, trails and walkways.

- (i) There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the Easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. Surface drainage into the Property shall comply with all applicable ordinances, regulations and statutes, including those applicable to water quality.
- (j) No new roads not shown on exhibit A or site plans may be cut through the Property. No motorized vehicles shall be used on the Property, except for maintenance work to protect the Conservation Values, and for Grantee's inspections.
- (k) The Property may not be used for or as a part of any commercial venture to provide hunting, fishing, camping, hiking, biking, lodging, drinking or eating or any other commercial recreational activity.
- (l) No above ground installation of new utility systems or extensions of existing systems, including, without limitation, cell towers, telephone relay towers and any other stand-alone tower structures shall be permitted. No water, sewer, power, fuel or communication lines nor related facilities, or any underground installation, will be permitted if the resulting effect would be to drain, alter, or disturb any wetland on the Property unless permitted by the Corps of Engineers or Environmental Protection Agency, as applicable.

6.4 **Acts of God.** Nothing contained in this Easement shall be construed to impose upon Grantor any liability or obligation for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm and earth movement, or from any prudent action by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

7. **Retained Rights.** Except as otherwise expressly provided in this Easement, Grantor shall retain all incidents, rights, powers and discretion inhering in ownership and possession of the Property including without limited to the following:

7.1 *Transfers.* To transfer, lease, mortgage or otherwise encumber the Property, subject and subordinate to this Easement, after compliance with the notice requirements of this Easement in §9.

- 7.2 *Compliance with Public Entity Grants.* Grantor may execute all instruments and documents, provide all assurances and take all actions necessary to comply with all public entity grants, to the extent required thereby and not impairing, harming or otherwise jeopardizing the Conservation Values.
- 7.3 *Weed Control.* Grantor retains the right to use herbicides to control weeds and other undesirable plants, and the right to use other pesticides to control insects and undesirable wildlife. The use of these chemicals shall be consistent with normal forestry and timber practices.

8. **Retained and Assumed Responsibilities, Obligations and Liabilities.**

- 8.1 *Grantee's Status.* Grantor acknowledges that Grantee shall not be considered, and the parties do not intend this Easement to be construed to create or impose upon Grantee any responsibilities, obligations or liability as, an owner, operator, landlord, tenant or manager of the Property. Grantee's obligations for monitoring and inspection shall be solely for the purpose of preserving Conservation Values and not for the prevention or mitigation of any damage, injury or other harm to persons or property. This Easement shall not be deemed to create any right of action against Grantee in favor of any third party.
- 8.2 *Taxes.* Grantor shall pay before delinquency all taxes, assessment, fees and charges of whatever description levied on or assessed against the Property and/or this Easement; provided, however, that all assessed real estate taxes shall be paid on or before the due date set forth in the county tax statement.
- 8.3 *Management.* Grantor shall continue to be solely responsible for the upkeep, maintenance and management of the Property and preservation and protection of the Conservation Values. In the event Grantee places any interpretive sites or hiking or biking trails, Grantee shall be solely responsible for the upkeep maintenance and management of these improvements. Further, Grantee shall be solely responsible for any reclamation costs incurred by any archeological investigations.
- 8.4 *Insurance.* Grantor shall be solely responsible for maintaining all appropriate casualty, property, liability and workers compensation insurance appropriate for their use and occupation of the Property. Grantee shall be named an additional insured on all such insurance policies related to the Property.
- 8.5 *Compliance with Laws.* Grantor shall remain solely responsible for obtaining all applicable governmental permits and approvals for any activity or use permitted by this Easement and to conduct the foregoing in accordance with and in observation of all applicable federal, state and local laws, rules, regulations and requirements.
- 8.6 *Indemnity.* Grantor shall indemnify, protect, defend with counsel acceptable to Grantee and hold Grantee and its directors, officers, employees, agents,

attorneys, volunteers, representatives, successors and assigns (the Indemnified Parties) harmless from and against all claims, actions, administrative proceedings, liabilities, judgments, damages, punitive damages, penalties, fines, costs, remedial action, compliance requirements, enforcement in clean-up actions of any kind, interests or losses, attorney's fees and expenses (including those incurred in enforcing this indemnity), consultant fees and expert fees arising directly or indirectly from or in connection with (i) injury or death of any person, damage to any property or diminution in the value of property resulting from any act, omission, condition or other matter related to or occurring on or about the Property regardless of cause, including injury, death or other harm to any Indemnified Party; (ii) the presence, suspected presence or release of any hazardous substance whether into the air, soil, surface water or ground water of or at the Property; (iii) any violation or alleged violation of any environmental law affecting the Property, whether occurring prior to or during Grantor's ownership of the Property and whether caused or permitted by Grantor or any person other than Grantor; (iv) any claim or defense by Grantor or any third party that any Indemnified Party is liable as an owner or operator of the Property under any environmental law; or (v) any breach of Grantor's warranties, representations or retained responsibilities, obligations or liabilities hereunder. This indemnity shall not apply if it shall be finally determined that any of the foregoing was caused primarily by the gross negligence or willful misconduct of Grantee.

- 8.7 *Remediation.* If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

9. **Notices and Approvals.**

- 9.1 *Methods.* Any notice or communication under this Easement shall be in writing and delivered (by hand, telecopy, telegraph, telex or courier) or deposited in the United States mail (first class, registered or certified), postage fully prepaid and addressed as stated below. Either party may, from time to time, specify as its address for purposes of this Easement any other address upon the giving of ten days notice thereof to the other party in the manner required by this paragraph. This paragraph shall not prevent the giving of written notice in any other manner, but such notice shall be deemed effective only when and as of its actual receipt at the proper address and by the proper addressee.
- 9.2 *Timing and Substance.* Whenever notice to or approval of Grantee is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the

date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

- 9.3 *Approval.* Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. Grantee's approval may be conditioned on reimbursement of costs incurred in, and reasonable fees for, consideration of the request.

10. **Grantee's Remedies.**

- 10.1 *Notice; Corrective Action.* If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.
- 10.2 *Injunctive Relief.* If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- 10.3 *Damages.* In the event that Grantor does not or cannot cure the noticed violation and effectively restore the Property to its pre-violation state, then Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- 10.4 *Emergency Enforcement.* If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property such as to make notice impracticable, Grantee may pursue its remedies under this § 10 without prior

notice to Grantor or without waiting for the period provided for cure to expire. In such instance, Grantee shall provide notice as soon as practicable.

- 10.5 *Scope.* Grantee's rights under this § 10 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in § 10.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this § 10 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 10.6 *Costs.* All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.
- 10.7 *Forbearance.* Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- 10.8 *Waiver.* Grantor hereby waives any defense of laches, estoppel, or prescription.

11. **Extinguishment and Condemnation.**

- 11.1 *Extinguishment.* If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with § 11.2.
- 11.2 *Valuation.* This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of § 11.1, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the

Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

11.3 *Condemnation.* If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in § 11.2.

11.4 *Application of Proceeds.* Grantee shall use any proceeds received under the circumstances described in this § 11 in a manner consistent with its conservation purposes, which are exemplified by this grant.

12. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the IRC (or any successor provision then applicable), and authorized to acquire and hold conservation easements under state statute (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee shall give written notice to Grantor of an assignment at least thirty (30) days prior to the effective date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

13. **General Provisions.**

13.1 *Benefit and Binding Effect.* The Easement created by this instrument shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to Grantor and Grantee shall also apply to, be binding upon and inure to the benefit of their respective agents, heirs, executors, administrators, other legal representatives, transferees, successors and assigns.

13.2 *No Third Party Beneficiaries.* This Easement is intended solely for the benefit of the parties hereto and shall not be enforceable by or create any claim or right of action in favor of any other party.

13.3 *Entire Agreement.*

(a) This Easement represents the entire and integrated agreement between the parties hereto with respect to the subjects described herein and supersedes all prior negotiations, representations or agreements, oral or written. Subject to subparagraph (b), this Easement may be amended or modified only in writing signed by the party to be bound by such amendment or modification and stating that it is intended as an amendment or modification of this Easement. The parties waive their rights to amend or modify this Easement in any other manner.

(b) This Easement may be amended only upon satisfaction of all of the following: (i) written consent of Grantee, which may be granted or withheld in its sole discretion and upon such additional conditions as Grantee may determine to impose in any specific instance; (ii) payment of Grantee's incurred costs and reasonable fees it may impose for the consideration of such amendment; (iii) protection of the Conservation Values are improved or not impaired; (iv) the amendment complies with SDCL 1-19B-56(2)(b) et seq.; and (v) the amendment complies with §170(h) of the Internal Revenue Code. Any such amendment that does not comply with all such requirements shall be void and of no force or effect.

13.4 *Severability.* If any one or more of the provisions of this Easement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality or enforceability of such provision in every other respect and the remaining provisions of this Easement shall not be in any way impaired.

13.5 *Nonwaiver.* Failure of a party to insist upon adherence to any term of this Easement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term or any other term of this Easement.

13.6 *Governing Law.* This Easement shall be governed by and interpreted under the substantive laws of the State of South Dakota without regard to principles of conflicts of law. This Easement shall not be interpreted to negate, supersede or otherwise modify any law, statute, rule, regulation or ordinance (together a Law) imposing additional or more stringent restrictions, including those related to zoning or land use, unless such Law is permitted to be varied by private agreement and the express terms of this agreement have that effect. No approval of this Easement by any governmental authority shall have the effect of negating, superseding or otherwise modifying such Law, or waiving its enforcement, unless expressly so stated as a part of such approval.

13.7 *Headings.* The section headings to this Easement are intended solely for the parties' convenience and shall not affect the interpretation or construction of any portion or provision of this Easement.

- 13.8 *Recordation; Publicity.* Grantee shall record this instrument in timely fashion in the official records of Lawrence County, South Dakota and may re-record it at any time as may be required to preserve its rights in this Easement. Grantee may reasonably publicize the grant of this Easement and use photographs and descriptions of the Property on its web site and other informative materials.
- 13.9 *Liberal Interpretation.* Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and preservation of the Conservation Values. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 13.10 *No Forfeiture.* Nothing contained herein will result in forfeiture by Grantee or reversion of Grantor's title in any respect.
- 13.11 *Termination.* A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

IN WITNESS WHEREOF, the parties hereto have executed this Easement on the day and year first above-written.

GRANTOR:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this _____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

GRANTEE:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this _____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

EXHIBIT A

Baseline Documentation Report

The Property is located near the middle of the Deadwood National Historic Landmark District and the state and national register historic districts of Deadwood, Lawrence County, South Dakota. Deadwood was originally settled in a scenic gulch at the confluence of Whitewood and Deadwood Creeks in 1876, due to the discovery of gold in the Black Hills of South Dakota.

The property is a highly visible undeveloped steep hillside with Ponderosa pine forest scattered with scrub oak and spruce. The property is currently zoned PF – Park Forest.

Deadwood is a small town with a historic setting and an aesthetic beauty. The environs afforded Deadwood by its location in the Black Hills offers many environmental benefits for the community. The ponderosa pines and other vegetation on the surrounding hillsides help provide ecosystem services that supply clean air and water to Deadwood, and the rocks and minerals are responsible for the founding and flourishing of Deadwood as a mining town. This property offers these conservation values as well as potential opportunities to experience nature and outdoor recreation such as hiking and biking.

Deadwood's numerous comprehensive plans have identified several goals which match the conservation values provided by this property. These include but are not limited to the following:

1. The City of Deadwood desires to preserve the natural environment, livability, and sense of community.
2. The City of Deadwood desires to protect the scenic, historic, and small city character while emphasizing and preserving the community's historic past for future generations.
3. The City of Deadwood desires to promote the diversification of activities that will attract visitors all seasons of the year.
4. The City of Deadwood desires to support the enhancement and protection of our recreational and cultural amenities.
5. The City of Deadwood desires to protect the historic integrity and the natural environment of Deadwood.

This Instrument Prepared By:
 City of Deadwood
 108 Sherman Street
 Deadwood, SD 57732
 (605) 578-2082
 (605) 587-2084

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (this “Easement”) is granted this ____ day of _____, 2024 by **City of Deadwood**, 108 Sherman Street, Deadwood, SD 57732 (the Grantor) to **the CITY OF DEADWOOD**, City of Deadwood, 108 Sherman Street, Deadwood, SD 57732, a South Dakota municipal government (Grantee):

WHEREAS:

- A. Grantor is the owner in fee of real property (the “Property”) located on School Lot 2 in the City of Deadwood, Lawrence County, South Dakota, according to P.L. Rogers Map of the City of Deadwood, except Lot 1 of Fink Flats as shown in Plat Document #81-38 including any part of School Lot 2 which may conflict with Probate Lots 389 and 401; and except Railroad Right of Way as recorded in Book 79 Page 168; and except a portion of School Lot 2 which is owned by Lawrence County as set forth in Treasurer’s Tax Deed filed as Document #82-5891 more particularly described in Exhibit A;
- B. The Property possesses cultural, historical, archaeological, natural, scenic, and recreational values (collectively the “Conservation Values”) of great importance to Grantor, the people of the City of Deadwood and the people of the State of South Dakota; the preservation of which will provide a significant public benefit to the protection of the Deadwood National Historic Landmark District. The Conservation Values, which are more fully described in the Baseline Documentation Report are described in Exhibit B attached hereto and incorporated herein by this reference;
- C. The Property represents open space for the scenic, educational and recreational enjoyment of the general public and will yield a significant public benefit;
- D. Grantor desires to preserve **in perpetuity** the Conservation Values of the Property by granting this Easement and by surrendering the opportunity to engage in economic development of the Property that is inconsistent with such Conservation Values;
- E. The Property has substantial economic value if developed for nonagricultural purposes, but only by potentially harming the Conservation Values and purposes as noted above;
- F. Maintaining the Property’s cultural, historical, archaeological, natural, scenic and recreational values characteristics, and, in particular, maintaining the Property free

from new structures, alteration or changes that would encroach upon, damage or destroy the Property and the Deadwood National Historic Landmark District are critical to the protection of this property. The conservation of the Property, subject to the terms of this easement, will yield significant benefits to the public by protecting the Property;

- G. The parties have mutual desires and goals towards the long-term preservation of Deadwood's National Historic Landmark District, the State and National Register Districts, and the local historic district;
- H. The parties desire to conserve the Property by entering into this Conservation Easement pursuant to SDCL 1-19B-56 to 1-19B-60 of the State of South Dakota and Section 170(h) of the Internal Revenue Code; and
- I. Grantor has received independent legal and financial advice regarding this Conservation Easement to the extent that Grantor has deemed necessary. Grantor freely conveys this Conservation Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants contained herein the parties agree as follows:

1. **Grant of Easement.**

- 1.1 *Scope and General Purpose.* Upon and subject to the terms and conditions described herein below, Grantor hereby grants, warrants and conveys to Grantee a conservation easement to preserve and protect the Conservation Values of the Property.
- 1.2 *Term.* This Easement shall be **perpetual**.
- 1.3 *Authority Generally.* Grantee shall have the right and power:
 - (a) To enter upon the Property at reasonable times to monitor compliance with and otherwise to enforce the terms of this Easement as more particularly set forth herein; and
 - (b) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in § 10; and
 - (c) To retain as its exclusive right, power and domain, except as expressly reserved to Grantor, all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, it being the intent hereby that such development rights shall, except as expressly reserved, be terminated and extinguished and may not be used on or transferred to any portion of the Property.

(d) Grantee may create pedestrian trails, interpretive sites and conduct archaeological investigations consistent with the conservation values identified herein.

- 1.4 *Access.* For all the purposes described in this Easement, Grantee shall have the right to access the Property from, and to travel by vehicle or foot upon and across, any public or private road or unimproved road or path, public or private, on, to or adjoining the Property. In the event the Property is landlocked, Grantee may have access to the Property on and across any adjoining land of Grantor by the route most convenient to Grantee.
2. **Other Grants by Grantee.** This Easement shall not be interpreted to prohibit or restrict Grantor from participating in any state, federal or local government entity or agency programs designed to promote, preserve or enhance the natural characteristics and potential of the Property and to make any grant of any covenant, restriction, easement or title to the Property for that purpose (a “Public Entity Grant”), provided all of the following conditions are met: (i) any such grant is subject to this Easement; (ii) the grant does not impair, harm or otherwise jeopardize the Conservation Values; and (iii) Grantor shall provide prior notice to Grantee complying with §9.
3. **Grantee’s Acceptance.** In reliance upon Grantor’s warranties and representations as described below, Grantee hereby accepts grant of this Easement and the responsibility of monitoring and enforcing its terms and upholding its Conservation Values forever.
4. **Conservation Baseline.** The document entitled “Baseline Documentation Report”, incorporated by this reference, that the Grantor and Grantee mutually agree, as depicted by photographs, maps, and supporting text, describes the general condition of the Property, including Structures and Improvements, and driveways, as located on the Property as of the date of this Conservation Easement.
5. **Grantor’s Warranties and Representations.**
- 5.1 *Purpose.* Grantor acknowledges that despite the Conservation Values of the Property, certain factors, if they were present, would preclude Grantee from accepting this Easement; and Grantee cannot accept this Easement without affirmative assurances that these factors are not present with respect to the Property. Since Grantor is the party most familiar with the Property, Grantor acknowledges the right of Grantee to rely without inquiry on these assurances in the form of Grantor’s warranties and representations as described below.
- 5.2 *Enumeration.* To induce Grantee to accept this Easement, Grantor warrants and represents as follows:
- (a) Grantor is the sole owner of the Property, free of all liens, claims, interests and encumbrances.
- (b) To the best of Grantor’s knowledge:

- (i) Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements and has no current adverse effect on any of the Conservation Values.
 - (ii) No deposit, disposal, or other release of any hazardous substance or toxic waste has occurred on or from the Property, which is free of all such contamination.
 - (iii) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.
 - (iv) Grantor and the Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use.
 - (v) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property.
- (c) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
- (d) In determining to grant this Easement, Grantor has relied solely on the advice of his own legal, tax and valuation advisors and not on any representative of Grantee.

6. **Prohibited and Restricted Uses.**

- 6.1 *Encouraged Practices.* Grantee acknowledges that the Conservation Values are available to be preserved, and Grantor and its successors and assigns are encouraged to conduct all permitted operations and practices in accordance with good management practices addressing soil and water conservation, erosion control, historical, cultural resource and habitat protection.

- 6.2 *Promise to Comply.* Grantor covenants and promises that Grantor will not perform, or knowingly allow others to perform, any act or use on or affecting the Property in conflict with this § 6.
- 6.3 *Specific Terms.* The Property is hereby made subject to the following prohibitions and restrictions:
- (a) No billboards or commercial signs shall be erected on the Property.
 - (b) Grantor may transfer the property in any manner as it sees fit. However, the Property shall not otherwise be subdivided by physical, legal or other process, for purposes of transferring ownership of less than the entirety of the Property.
 - (c) The Property shall not be subject to any mining, extraction or removal of soil, sand, gravel, oil, natural gas, fuel or other mineral substance or exploration for any such purpose, except for movement of material solely for use on the Property in conjunction with and in furtherance of activities permitted by this Easement.
 - (d) Trees on the Property may be cut only for the following: (i) to control insects and disease; (ii) to prevent personal injury or property damage; (iii) to prevent or reduce fire hazard; or (iv) pursuant to a natural resources management plan having the prior approval of Grantee. No plants, flora, fauna or other vegetation may be cut, burned, removed, destroyed, eradicated or harvested except pursuant to a cultural and natural resources management plan approved by Grantee.
 - (e) No unpaved portion of the Property shall be paved, including without limitation covering the soil surface with concrete, asphalt, gravel or other material other than soil and grass.
 - (f) Grantor shall not transfer, encumber, lease, sell or otherwise separate any water rights from the Property.
 - (g) The dumping or accumulation of any kind of trash, garbage, debris, waste, refuse, junk, hazardous chemicals, other unsightly or foreign material, or derelict equipment on the Property is prohibited.
 - (h) No Structures or other Improvements may be built on the Property. For purposes of this Easement, "Structure" includes any building or object constructed, installed or placed upon the ground, whether temporarily or permanent, including without limitation residential units, garages, sheds, studios, cabins, moveable buildings, decks, terraces, and garden features such as arbors and gazebos. For purposes of this Easement, "Improvements" shall mean anything that is constructed or installed upon the ground or a Structure, which is not a Structure and includes without limitation

driveways, roads, parking areas, gardens, ponds, wells, septic tanks, drainageways, utility lines, fences, walls, paths, trails and walkways.

- (i) There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the Easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. Surface drainage into the Property shall comply with all applicable ordinances, regulations and statutes, including those applicable to water quality.
- (j) No new roads not shown on exhibit A or site plans may be cut through the Property. No motorized vehicles shall be used on the Property, except for maintenance work to protect the Conservation Values, and for Grantee's inspections.
- (k) The Property may not be used for or as a part of any commercial venture to provide hunting, fishing, camping, hiking, biking, lodging, drinking or eating or any other commercial recreational activity.
- (l) No above ground installation of new utility systems or extensions of existing systems, including, without limitation, cell towers, telephone relay towers and any other stand-alone tower structures shall be permitted. No water, sewer, power, fuel or communication lines nor related facilities, or any underground installation, will be permitted if the resulting effect would be to drain, alter, or disturb any wetland on the Property unless permitted by the Corps of Engineers or Environmental Protection Agency, as applicable.

6.4 **Acts of God.** Nothing contained in this Easement shall be construed to impose upon Grantor any liability or obligation for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm and earth movement, or from any prudent action by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

7. **Retained Rights.** Except as otherwise expressly provided in this Easement, Grantor shall retain all incidents, rights, powers and discretion inhering in ownership and possession of the Property including without limited to the following:

7.1 *Transfers.* To transfer, lease, mortgage or otherwise encumber the Property, subject and subordinate to this Easement, after compliance with the notice requirements of this Easement in §9.

- 7.2 *Compliance with Public Entity Grants.* Grantor may execute all instruments and documents, provide all assurances and take all actions necessary to comply with all public entity grants, to the extent required thereby and not impairing, harming or otherwise jeopardizing the Conservation Values.
- 7.3 *Weed Control.* Grantor retains the right to use herbicides to control weeds and other undesirable plants, and the right to use other pesticides to control insects and undesirable wildlife. The use of these chemicals shall be consistent with normal forestry and timber practices.

8. **Retained and Assumed Responsibilities, Obligations and Liabilities.**

- 8.1 *Grantee's Status.* Grantor acknowledges that Grantee shall not be considered, and the parties do not intend this Easement to be construed to create or impose upon Grantee any responsibilities, obligations or liability as, an owner, operator, landlord, tenant or manager of the Property. Grantee's obligations for monitoring and inspection shall be solely for the purpose of preserving Conservation Values and not for the prevention or mitigation of any damage, injury or other harm to persons or property. This Easement shall not be deemed to create any right of action against Grantee in favor of any third party.
- 8.2 *Taxes.* Grantor shall pay before delinquency all taxes, assessment, fees and charges of whatever description levied on or assessed against the Property and/or this Easement; provided, however, that all assessed real estate taxes shall be paid on or before the due date set forth in the county tax statement.
- 8.3 *Management.* Grantor shall continue to be solely responsible for the upkeep, maintenance and management of the Property and preservation and protection of the Conservation Values. In the event Grantee places any interpretive sites or hiking or biking trails, Grantee shall be solely responsible for the upkeep maintenance and management of these improvements. Further, Grantee shall be solely responsible for any reclamation costs incurred by any archeological investigations.
- 8.4 *Insurance.* Grantor shall be solely responsible for maintaining all appropriate casualty, property, liability and workers compensation insurance appropriate for their use and occupation of the Property. Grantee shall be named an additional insured on all such insurance policies related to the Property.
- 8.5 *Compliance with Laws.* Grantor shall remain solely responsible for obtaining all applicable governmental permits and approvals for any activity or use permitted by this Easement and to conduct the foregoing in accordance with and in observation of all applicable federal, state and local laws, rules, regulations and requirements.
- 8.6 *Indemnity.* Grantor shall indemnify, protect, defend with counsel acceptable to Grantee and hold Grantee and its directors, officers, employees, agents,

attorneys, volunteers, representatives, successors and assigns (the Indemnified Parties) harmless from and against all claims, actions, administrative proceedings, liabilities, judgments, damages, punitive damages, penalties, fines, costs, remedial action, compliance requirements, enforcement in clean-up actions of any kind, interests or losses, attorney's fees and expenses (including those incurred in enforcing this indemnity), consultant fees and expert fees arising directly or indirectly from or in connection with (i) injury or death of any person, damage to any property or diminution in the value of property resulting from any act, omission, condition or other matter related to or occurring on or about the Property regardless of cause, including injury, death or other harm to any Indemnified Party; (ii) the presence, suspected presence or release of any hazardous substance whether into the air, soil, surface water or ground water of or at the Property; (iii) any violation or alleged violation of any environmental law affecting the Property, whether occurring prior to or during Grantor's ownership of the Property and whether caused or permitted by Grantor or any person other than Grantor; (iv) any claim or defense by Grantor or any third party that any Indemnified Party is liable as an owner or operator of the Property under any environmental law; or (v) any breach of Grantor's warranties, representations or retained responsibilities, obligations or liabilities hereunder. This indemnity shall not apply if it shall be finally determined that any of the foregoing was caused primarily by the gross negligence or willful misconduct of Grantee.

- 8.7 *Remediation.* If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

9. **Notices and Approvals.**

- 9.1 *Methods.* Any notice or communication under this Easement shall be in writing and delivered (by hand, telecopy, telegraph, telex or courier) or deposited in the United States mail (first class, registered or certified), postage fully prepaid and addressed as stated below. Either party may, from time to time, specify as its address for purposes of this Easement any other address upon the giving of ten days notice thereof to the other party in the manner required by this paragraph. This paragraph shall not prevent the giving of written notice in any other manner, but such notice shall be deemed effective only when and as of its actual receipt at the proper address and by the proper addressee.
- 9.2 *Timing and Substance.* Whenever notice to or approval of Grantee is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the

date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

- 9.3 *Approval.* Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. Grantee's approval may be conditioned on reimbursement of costs incurred in, and reasonable fees for, consideration of the request.

10. **Grantee's Remedies.**

- 10.1 *Notice; Corrective Action.* If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.
- 10.2 *Injunctive Relief.* If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- 10.3 *Damages.* In the event that Grantor does not or cannot cure the noticed violation and effectively restore the Property to its pre-violation state, then Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- 10.4 *Emergency Enforcement.* If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property such as to make notice impracticable, Grantee may pursue its remedies under this § 10 without prior

notice to Grantor or without waiting for the period provided for cure to expire. In such instance, Grantee shall provide notice as soon as practicable.

- 10.5 *Scope.* Grantee's rights under this § 10 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in § 10.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this § 10 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 10.6 *Costs.* All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.
- 10.7 *Forbearance.* Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- 10.8 *Waiver.* Grantor hereby waives any defense of laches, estoppel, or prescription.

11. **Extinguishment and Condemnation.**

- 11.1 *Extinguishment.* If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with § 11.2.
- 11.2 *Valuation.* This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of § 11.1, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the

Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

11.3 *Condemnation.* If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in § 11.2.

11.4 *Application of Proceeds.* Grantee shall use any proceeds received under the circumstances described in this § 11 in a manner consistent with its conservation purposes, which are exemplified by this grant.

12. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the IRC (or any successor provision then applicable), and authorized to acquire and hold conservation easements under state statute (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee shall give written notice to Grantor of an assignment at least thirty (30) days prior to the effective date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

13. **General Provisions.**

13.1 *Benefit and Binding Effect.* The Easement created by this instrument shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to Grantor and Grantee shall also apply to, be binding upon and inure to the benefit of their respective agents, heirs, executors, administrators, other legal representatives, transferees, successors and assigns.

13.2 *No Third Party Beneficiaries.* This Easement is intended solely for the benefit of the parties hereto and shall not be enforceable by or create any claim or right of action in favor of any other party.

13.3 *Entire Agreement.*

- (a) This Easement represents the entire and integrated agreement between the parties hereto with respect to the subjects described herein and supersedes all prior negotiations, representations or agreements, oral or written. Subject to subparagraph (b), this Easement may be amended or modified only in writing signed by the party to be bound by such amendment or modification and stating that it is intended as an amendment or modification of this Easement. The parties waive their rights to amend or modify this Easement in any other manner.
- (b) This Easement may be amended only upon satisfaction of all of the following: (i) written consent of Grantee, which may be granted or withheld in its sole discretion and upon such additional conditions as Grantee may determine to impose in any specific instance; (ii) payment of Grantee's incurred costs and reasonable fees it may impose for the consideration of such amendment; (iii) protection of the Conservation Values are improved or not impaired; (iv) the amendment complies with SDCL 1-19B-56(2)(b) et seq.; and (v) the amendment complies with §170(h) of the Internal Revenue Code. Any such amendment that does not comply with all such requirements shall be void and of no force or effect.

13.4 *Severability.* If any one or more of the provisions of this Easement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality or enforceability of such provision in every other respect and the remaining provisions of this Easement shall not be in any way impaired.

13.5 *Nonwaiver.* Failure of a party to insist upon adherence to any term of this Easement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term or any other term of this Easement.

13.6 *Governing Law.* This Easement shall be governed by and interpreted under the substantive laws of the State of South Dakota without regard to principles of conflicts of law. This Easement shall not be interpreted to negate, supersede or otherwise modify any law, statute, rule, regulation or ordinance (together a Law) imposing additional or more stringent restrictions, including those related to zoning or land use, unless such Law is permitted to be varied by private agreement and the express terms of this agreement have that effect. No approval of this Easement by any governmental authority shall have the effect of negating, superseding or otherwise modifying such Law, or waiving its enforcement, unless expressly so stated as a part of such approval.

13.7 *Headings.* The section headings to this Easement are intended solely for the parties' convenience and shall not affect the interpretation or construction of any portion or provision of this Easement.

- 13.8 *Recordation; Publicity.* Grantee shall record this instrument in timely fashion in the official records of Lawrence County, South Dakota and may re-record it at any time as may be required to preserve its rights in this Easement. Grantee may reasonably publicize the grant of this Easement and use photographs and descriptions of the Property on its web site and other informative materials.
- 13.9 *Liberal Interpretation.* Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and preservation of the Conservation Values. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 13.10 *No Forfeiture.* Nothing contained herein will result in forfeiture by Grantee or reversion of Grantor's title in any respect.
- 13.11 *Termination.* A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

IN WITNESS WHEREOF, the parties hereto have executed this Easement on the day and year first above-written.

GRANTOR:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this _____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

GRANTEE:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this _____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

EXHIBIT A

Baseline Documentation Report

The Property is located near the middle of the Deadwood National Historic Landmark District and the state and national register historic districts of Deadwood, Lawrence County, South Dakota. Deadwood was originally settled in a scenic gulch at the confluence of Whitewood and Deadwood Creeks in 1876, due to the discovery of gold in the Black Hills of South Dakota.

The property is a highly visible undeveloped steep hillside with Ponderosa pine forest scattered with scrub oak and spruce. The property is currently zoned PF – Park Forest.

Deadwood is a small town with a historic setting and an aesthetic beauty. The environs afforded Deadwood by its location in the Black Hills offers many environmental benefits for the community. The ponderosa pines and other vegetation on the surrounding hillsides help provide ecosystem services that supply clean air and water to Deadwood, and the rocks and minerals are responsible for the founding and flourishing of Deadwood as a mining town. This property offers these conservation values as well as potential opportunities to experience nature and outdoor recreation such as hiking and biking.

Deadwood's numerous comprehensive plans have identified several goals which match the conservation values provided by this property. These include but are not limited to the following:

1. The City of Deadwood desires to preserve the natural environment, livability, and sense of community.
2. The City of Deadwood desires to protect the scenic, historic, and small city character while emphasizing and preserving the community's historic past for future generations.
3. The City of Deadwood desires to promote the diversification of activities that will attract visitors all seasons of the year.
4. The City of Deadwood desires to support the enhancement and protection of our recreational and cultural amenities.
5. The City of Deadwood desires to protect the historic integrity and the natural environment of Deadwood.

This Instrument Prepared By:
 City of Deadwood
 108 Sherman Street
 Deadwood, SD 57732
 (605) 578-2082
 (605) 587-2084

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (this “Easement”) is granted this ____ day of _____, 2024 by **City of Deadwood**, 108 Sherman Street, Deadwood, SD 57732 (the Grantor) to **the CITY OF DEADWOOD**, City of Deadwood, 108 Sherman Street, Deadwood, SD 57732, a South Dakota municipal government (Grantee):

WHEREAS:

- A. Grantor is the owner in fee of real property (the “Property”) located on School Lot 3 in the City of Deadwood, Lawrence County, South Dakota, according to P.L. Rogers Map of the City of Deadwood, according To P.L. Rogers Map except Railroad Right of Way in Book 79 Page 165 and except any part in conflict with Probate Lots 91, 302, 303 and 204 in the City of Deadwood. School Lot 4 in the City of Deadwood, Lawrence County, South Dakota, according to P.L. Rogers Map of the City of Deadwood, according to P.L. Rogers Map except Railroad Right of Way as set out in Book 79 Page 165. School Lots 5, 6, and 7 in the City of Deadwood, Lawrence County, South Dakota, according to P.L. Rogers Map of the City of Deadwood more particularly described in Exhibit A;
- B. The Property possesses cultural, historical, archaeological, natural, scenic, and recreational values (collectively the “Conservation Values”) of great importance to Grantor, the people of the City of Deadwood and the people of the State of South Dakota; the preservation of which will provide a significant public benefit to the protection of the Deadwood National Historic Landmark District. The Conservation Values, which are more fully described in the Baseline Documentation Report are described in Exhibit B attached hereto and incorporated herein by this reference;
- C. The Property represents open space for the scenic, educational and recreational enjoyment of the general public and will yield a significant public benefit;
- D. Grantor desires to preserve **in perpetuity** the Conservation Values of the Property by granting this Easement and by surrendering the opportunity to engage in economic development of the Property that is inconsistent with such Conservation Values;
- E. The Property has substantial economic value if developed for nonagricultural purposes, but only by potentially harming the Conservation Values and purposes as noted above;

- F. Maintaining the Property's cultural, historical, archaeological, natural, scenic and recreational values characteristics, and, in particular, maintaining the Property free from new structures, alteration or changes that would encroach upon, damage or destroy the Property and the Deadwood National Historic Landmark District are critical to the protection of this property. The conservation of the Property, subject to the terms of this easement, will yield significant benefits to the public by protecting the Property;
- G. The parties have mutual desires and goals towards the long-term preservation of Deadwood's National Historic Landmark District, the State and National Register Districts, and the local historic district;
- H. The parties desire to conserve the Property by entering into this Conservation Easement pursuant to SDCL 1-19B-56 to 1-19B-60 of the State of South Dakota and Section 170(h) of the Internal Revenue Code; and
- I. Grantor has received independent legal and financial advice regarding this Conservation Easement to the extent that Grantor has deemed necessary. Grantor freely conveys this Conservation Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants contained herein the parties agree as follows:

1. **Grant of Easement.**

- 1.1 *Scope and General Purpose.* Upon and subject to the terms and conditions described herein below, Grantor hereby grants, warrants and conveys to Grantee a conservation easement to preserve and protect the Conservation Values of the Property.
- 1.2 *Term.* This Easement shall be **perpetual**.
- 1.3 *Authority Generally.* Grantee shall have the right and power:
- (a) To enter upon the Property at reasonable times to monitor compliance with and otherwise to enforce the terms of this Easement as more particularly set forth herein; and
 - (b) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in § 10; and
 - (c) To retain as its exclusive right, power and domain, except as expressly reserved to Grantor, all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, it being the intent hereby that such development rights shall, except as expressly reserved, be

terminated and extinguished and may not be used on or transferred to any portion of the Property.

(d) Grantee may create pedestrian trails, interpretive sites and conduct archaeological investigations consistent with the conservation values identified herein.

1.4 *Access.* For all the purposes described in this Easement, Grantee shall have the right to access the Property from, and to travel by vehicle or foot upon and across, any public or private road or unimproved road or path, public or private, on, to or adjoining the Property. In the event the Property is landlocked, Grantee may have access to the Property on and across any adjoining land of Grantor by the route most convenient to Grantee.

2. **Other Grants by Grantee.** This Easement shall not be interpreted to prohibit or restrict Grantor from participating in any state, federal or local government entity or agency programs designed to promote, preserve or enhance the natural characteristics and potential of the Property and to make any grant of any covenant, restriction, easement or title to the Property for that purpose (a “Public Entity Grant”), provided all of the following conditions are met: (i) any such grant is subject to this Easement; (ii) the grant does not impair, harm or otherwise jeopardize the Conservation Values; and (iii) Grantor shall provide prior notice to Grantee complying with §9.

3. **Grantee’s Acceptance.** In reliance upon Grantor’s warranties and representations as described below, Grantee hereby accepts grant of this Easement and the responsibility of monitoring and enforcing its terms and upholding its Conservation Values forever.

4. **Conservation Baseline.** The document entitled “Baseline Documentation Report”, incorporated by this reference, that the Grantor and Grantee mutually agree, as depicted by photographs, maps, and supporting text, describes the general condition of the Property, including Structures and Improvements, and driveways, as located on the Property as of the date of this Conservation Easement.

5. **Grantor’s Warranties and Representations.**

5.1 *Purpose.* Grantor acknowledges that despite the Conservation Values of the Property, certain factors, if they were present, would preclude Grantee from accepting this Easement; and Grantee cannot accept this Easement without affirmative assurances that these factors are not present with respect to the Property. Since Grantor is the party most familiar with the Property, Grantor acknowledges the right of Grantee to rely without inquiry on these assurances in the form of Grantor’s warranties and representations as described below.

5.2 *Enumeration.* To induce Grantee to accept this Easement, Grantor warrants and represents as follows:

- (a) Grantor is the sole owner of the Property, free of all liens, claims, interests and encumbrances.
- (b) To the best of Grantor's knowledge:
 - (i) Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements and has no current adverse effect on any of the Conservation Values.
 - (ii) No deposit, disposal, or other release of any hazardous substance or toxic waste has occurred on or from the Property, which is free of all such contamination.
 - (iii) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.
 - (iv) Grantor and the Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use.
 - (v) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property.
- (c) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
- (d) In determining to grant this Easement, Grantor has relied solely on the advice of his own legal, tax and valuation advisors and not on any representative of Grantee.

6. **Prohibited and Restricted Uses.**

- 6.1 *Encouraged Practices.* Grantee acknowledges that the Conservation Values are available to be preserved, and Grantor and its successors and assigns are encouraged to conduct all permitted operations and practices in accordance with good management practices addressing soil and water conservation, erosion control, historical, cultural resource and habitat protection.
- 6.2 *Promise to Comply.* Grantor covenants and promises that Grantor will not perform, or knowingly allow others to perform, any act or use on or affecting the Property in conflict with this § 6.
- 6.3 *Specific Terms.* The Property is hereby made subject to the following prohibitions and restrictions:
- (a) No billboards or commercial signs shall be erected on the Property.
 - (b) Grantor may transfer the property in any manner as it sees fit. However, the Property shall not otherwise be subdivided by physical, legal or other process, for purposes of transferring ownership of less than the entirety of the Property.
 - (c) The Property shall not be subject to any mining, extraction or removal of soil, sand, gravel, oil, natural gas, fuel or other mineral substance or exploration for any such purpose, except for movement of material solely for use on the Property in conjunction with and in furtherance of activities permitted by this Easement.
 - (d) Trees on the Property may be cut only for the following: (i) to control insects and disease; (ii) to prevent personal injury or property damage; (iii) to prevent or reduce fire hazard; or (iv) pursuant to a natural resources management plan having the prior approval of Grantee. No plants, flora, fauna or other vegetation may be cut, burned, removed, destroyed, eradicated or harvested except pursuant to a cultural and natural resources management plan approved by Grantee.
 - (e) No unpaved portion of the Property shall be paved, including without limitation covering the soil surface with concrete, asphalt, gravel or other material other than soil and grass.
 - (f) Grantor shall not transfer, encumber, lease, sell or otherwise separate any water rights from the Property.
 - (g) The dumping or accumulation of any kind of trash, garbage, debris, waste, refuse, junk, hazardous chemicals, other unsightly or foreign material, or derelict equipment on the Property is prohibited.
 - (h) No Structures or other Improvements may be built on the Property. For purposes of this Easement, "Structure" includes any building or object

constructed, installed or placed upon the ground, whether temporarily or permanent, including without limitation residential units, garages, sheds, studios, cabins, moveable buildings, decks, terraces, and garden features such as arbors and gazebos. For purposes of this Easement, "Improvements" shall mean anything that is constructed or installed upon the ground or a Structure, which is not a Structure and includes without limitation driveways, roads, parking areas, gardens, ponds, wells, septic tanks, drainageways, utility lines, fences, walls, paths, trails and walkways.

- (i) There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the Easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. Surface drainage into the Property shall comply with all applicable ordinances, regulations and statutes, including those applicable to water quality.
- (j) No new roads not shown on exhibit A or site plans may be cut through the Property. No motorized vehicles shall be used on the Property, except for maintenance work to protect the Conservation Values, and for Grantee's inspections.
- (k) The Property may not be used for or as a part of any commercial venture to provide hunting, fishing, camping, hiking, biking, lodging, drinking or eating or any other commercial recreational activity.
- (l) No above ground installation of new utility systems or extensions of existing systems, including, without limitation, cell towers, telephone relay towers and any other stand-alone tower structures shall be permitted. No water, sewer, power, fuel or communication lines nor related facilities, or any underground installation, will be permitted if the resulting effect would be to drain, alter, or disturb any wetland on the Property unless permitted by the Corps of Engineers or Environmental Protection Agency, as applicable.

6.4 **Acts of God.** Nothing contained in this Easement shall be construed to impose upon Grantor any liability or obligation for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm and earth movement, or from any prudent action by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

7. **Retained Rights.** Except as otherwise expressly provided in this Easement, Grantor shall retain all incidents, rights, powers and discretion inhering in ownership and possession of the Property including without limited to the following:

7.1 *Transfers.* To transfer, lease, mortgage or otherwise encumber the Property, subject and subordinate to this Easement, after compliance with the notice requirements of this Easement in §9.

7.2 *Compliance with Public Entity Grants.* Grantor may execute all instruments and documents, provide all assurances and take all actions necessary to comply with all public entity grants, to the extent required thereby and not impairing, harming or otherwise jeopardizing the Conservation Values.

7.3 *Weed Control.* Grantor retains the right to use herbicides to control weeds and other undesirable plants, and the right to use other pesticides to control insects and undesirable wildlife. The use of these chemicals shall be consistent with normal forestry and timber practices.

8. **Retained and Assumed Responsibilities, Obligations and Liabilities.**

8.1 *Grantee's Status.* Grantor acknowledges that Grantee shall not be considered, and the parties do not intend this Easement to be construed to create or impose upon Grantee any responsibilities, obligations or liability as, an owner, operator, landlord, tenant or manager of the Property. Grantee's obligations for monitoring and inspection shall be solely for the purpose of preserving Conservation Values and not for the prevention or mitigation of any damage, injury or other harm to persons or property. This Easement shall not be deemed to create any right of action against Grantee in favor of any third party.

8.2 *Taxes.* Grantor shall pay before delinquency all taxes, assessment, fees and charges of whatever description levied on or assessed against the Property and/or this Easement; provided, however, that all assessed real estate taxes shall be paid on or before the due date set forth in the county tax statement.

8.3 *Management.* Grantor shall continue to be solely responsible for the upkeep, maintenance and management of the Property and preservation and protection of the Conservation Values. In the event Grantee places any interpretive sites or hiking or biking trails, Grantee shall be solely responsible for the upkeep maintenance and management of these improvements. Further, Grantee shall be solely responsible for any reclamation costs incurred by any archeological investigations.

8.4 *Insurance.* Grantor shall be solely responsible for maintaining all appropriate casualty, property, liability and workers compensation insurance appropriate for their use and occupation of the Property. Grantee shall be named an additional insured on all such insurance policies related to the Property.

- 8.5 *Compliance with Laws.* Grantor shall remain solely responsible for obtaining all applicable governmental permits and approvals for any activity or use permitted by this Easement and to conduct the foregoing in accordance with and in observation of all applicable federal, state and local laws, rules, regulations and requirements.
- 8.6 *Indemnity.* Grantor shall indemnify, protect, defend with counsel acceptable to Grantee and hold Grantee and its directors, officers, employees, agents, attorneys, volunteers, representatives, successors and assigns (the Indemnified Parties) harmless from and against all claims, actions, administrative proceedings, liabilities, judgments, damages, punitive damages, penalties, fines, costs, remedial action, compliance requirements, enforcement in clean-up actions of any kind, interests or losses, attorney's fees and expenses (including those incurred in enforcing this indemnity), consultant fees and expert fees arising directly or indirectly from or in connection with (i) injury or death of any person, damage to any property or diminution in the value of property resulting from any act, omission, condition or other matter related to or occurring on or about the Property regardless of cause, including injury, death or other harm to any Indemnified Party; (ii) the presence, suspected presence or release of any hazardous substance whether into the air, soil, surface water or ground water of or at the Property; (iii) any violation or alleged violation of any environmental law affecting the Property, whether occurring prior to or during Grantor's ownership of the Property and whether caused or permitted by Grantor or any person other than Grantor; (iv) any claim or defense by Grantor or any third party that any Indemnified Party is liable as an owner or operator of the Property under any environmental law; or (v) any breach of Grantor's warranties, representations or retained responsibilities, obligations or liabilities hereunder. This indemnity shall not apply if it shall be finally determined that any of the foregoing was caused primarily by the gross negligence or willful misconduct of Grantee.
- 8.7 *Remediation.* If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

9. **Notices and Approvals.**

- 9.1 *Methods.* Any notice or communication under this Easement shall be in writing and delivered (by hand, telecopy, telegraph, telex or courier) or deposited in the United States mail (first class, registered or certified), postage fully prepaid and addressed as stated below. Either party may, from time to time, specify as its

address for purposes of this Easement any other address upon the giving of ten days notice thereof to the other party in the manner required by this paragraph. This paragraph shall not prevent the giving of written notice in any other manner, but such notice shall be deemed effective only when and as of its actual receipt at the proper address and by the proper addressee.

- 9.2 *Timing and Substance.* Whenever notice to or approval of Grantee is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.
- 9.3 *Approval.* Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. Grantee's approval may be conditioned on reimbursement of costs incurred in, and reasonable fees for, consideration of the request.

10. **Grantee's Remedies.**

- 10.1 *Notice; Corrective Action.* If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.
- 10.2 *Injunctive Relief.* If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- 10.3 *Damages.* In the event that Grantor does not or cannot cure the noticed violation and effectively restore the Property to its pre-violation state, then Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental

values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

- 10.4 *Emergency Enforcement.* If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property such as to make notice impracticable, Grantee may pursue its remedies under this § 10 without prior notice to Grantor or without waiting for the period provided for cure to expire. In such instance, Grantee shall provide notice as soon as practicable.
- 10.5 *Scope.* Grantee's rights under this § 10 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in § 10.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this § 10 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 10.6 *Costs.* All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.
- 10.7 *Forbearance.* Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- 10.8 *Waiver.* Grantor hereby waives any defense of laches, estoppel, or prescription.

11. **Extinguishment and Condemnation.**

- 11.1 *Extinguishment.* If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or

involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with § 11.2.

- 11.2 *Valuation.* This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of § 11.1, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.
- 11.3 *Condemnation.* If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in § 11.2.
- 11.4 *Application of Proceeds.* Grantee shall use any proceeds received under the circumstances described in this § 11 in a manner consistent with its conservation purposes, which are exemplified by this grant.
12. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the IRC (or any successor provision then applicable), and authorized to acquire and hold conservation easements under state statute (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee shall give written notice to Grantor of an assignment at least thirty (30) days prior to the effective date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.
13. **General Provisions.**
- 13.1 *Benefit and Binding Effect.* The Easement created by this instrument shall be a servitude running with the land in perpetuity. Every provision of this Easement

that applies to Grantor and Grantee shall also apply to, be binding upon and inure to the benefit of their respective agents, heirs, executors, administrators, other legal representatives, transferees, successors and assigns.

- 13.2 *No Third Party Beneficiaries.* This Easement is intended solely for the benefit of the parties hereto and shall not be enforceable by or create any claim or right of action in favor of any other party.
- 13.3 *Entire Agreement.*
- (a) This Easement represents the entire and integrated agreement between the parties hereto with respect to the subjects described herein and supersedes all prior negotiations, representations or agreements, oral or written. Subject to subparagraph (b), this Easement may be amended or modified only in writing signed by the party to be bound by such amendment or modification and stating that it is intended as an amendment or modification of this Easement. The parties waive their rights to amend or modify this Easement in any other manner.
- (b) This Easement may be amended only upon satisfaction of all of the following: (i) written consent of Grantee, which may be granted or withheld in its sole discretion and upon such additional conditions as Grantee may determine to impose in any specific instance; (ii) payment of Grantee's incurred costs and reasonable fees it may impose for the consideration of such amendment; (iii) protection of the Conservation Values are improved or not impaired; (iv) the amendment complies with SDCL 1-19B-56(2)(b) et seq.; and (v) the amendment complies with §170(h) of the Internal Revenue Code. Any such amendment that does not comply with all such requirements shall be void and of no force or effect.
- 13.4 *Severability.* If any one or more of the provisions of this Easement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality or enforceability of such provision in every other respect and the remaining provisions of this Easement shall not be in any way impaired.
- 13.5 *Nonwaiver.* Failure of a party to insist upon adherence to any term of this Easement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term or any other term of this Easement.
- 13.6 *Governing Law.* This Easement shall be governed by and interpreted under the substantive laws of the State of South Dakota without regard to principles of conflicts of law. This Easement shall not be interpreted to negate, supersede or otherwise modify any law, statute, rule, regulation or ordinance (together a Law) imposing additional or more stringent restrictions, including those related to zoning or land use, unless such Law is permitted to be varied by private

agreement and the express terms of this agreement have that effect. No approval of this Easement by any governmental authority shall have the effect of negating, superseding or otherwise modifying such Law, or waiving its enforcement, unless expressly so stated as a part of such approval.

- 13.7 *Headings.* The section headings to this Easement are intended solely for the parties' convenience and shall not affect the interpretation or construction of any portion or provision of this Easement.
- 13.8 *Recordation; Publicity.* Grantee shall record this instrument in timely fashion in the official records of Lawrence County, South Dakota and may re-record it at any time as may be required to preserve its rights in this Easement. Grantee may reasonably publicize the grant of this Easement and use photographs and descriptions of the Property on its web site and other informative materials.
- 13.9 *Liberal Interpretation.* Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and preservation of the Conservation Values. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 13.10 *No Forfeiture.* Nothing contained herein will result in forfeiture by Grantee or reversion of Grantor's title in any respect.
- 13.11 *Termination.* A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

IN WITNESS WHEREOF, the parties hereto have executed this Easement on the day and year first above-written.

GRANTOR:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this _____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

GRANTEE:
CITY OF DEADWOOD

DAVID R. RUTH JR., MAYOR
CITY OF DEADWOOD

DATE

STATE OF SOUTH DAKOTA)
SS)
COUNTY OF LAWRENCE)

On this _____ day of _____, in the year _____, before me personally appeared David R. Ruth Jr., Mayor, City of Deadwood to be the persons who are described in, and who executed the within instrument and acknowledge to me that they executed the same.

ATTEST

Jessica McKeown
Finance Officer

EXHIBIT A

Baseline Documentation Report

The Property is located near the middle of the Deadwood National Historic Landmark District and the state and national register historic districts of Deadwood, Lawrence County, South Dakota. Deadwood was originally settled in a scenic gulch at the confluence of Whitewood and Deadwood Creeks in 1876, due to the discovery of gold in the Black Hills of South Dakota.

The property is a highly visible undeveloped steep hillside with Ponderosa pine forest scattered with scrub oak and spruce. The property is currently zoned PF – Park Forest.

Deadwood is a small town with a historic setting and an aesthetic beauty. The environs afforded Deadwood by its location in the Black Hills offers many environmental benefits for the community. The ponderosa pines and other vegetation on the surrounding hillsides help provide ecosystem services that supply clean air and water to Deadwood, and the rocks and minerals are responsible for the founding and flourishing of Deadwood as a mining town. This property offers these conservation values as well as potential opportunities to experience nature and outdoor recreation such as hiking and biking.

Deadwood's numerous comprehensive plans have identified several goals which match the conservation values provided by this property. These include but are not limited to the following:

1. The City of Deadwood desires to preserve the natural environment, livability, and sense of community.
2. The City of Deadwood desires to protect the scenic, historic, and small city character while emphasizing and preserving the community's historic past for future generations.
3. The City of Deadwood desires to promote the diversification of activities that will attract visitors all seasons of the year.
4. The City of Deadwood desires to support the enhancement and protection of our recreational and cultural amenities.
5. The City of Deadwood desires to protect the historic integrity and the natural environment of Deadwood.