



# Historic Preservation Commission Agenda

Wednesday, June 26, 2024 at 4:00 PM

City Hall, 102 Sherman Street, Deadwood, SD 57732

---

1. **Call Meeting to Order**

2. **Roll Call**

3. **Approval of Minutes**

[a.](#) Minutes from 06/12/24 meeting

4. **Voucher Approvals**

[a.](#) HP Operating Vouchers 06/26/24

[b.](#) HP Grant Vouchers

[c.](#) HP Revolving Vouchers

5. **HP Programs and Revolving Loan Program**

a. Historic Preservation Loan Requests

Sean and Tiffany Byrne - 20 Denver - Extension Request

Danika McFarland - 37 Lincoln - Extension Request

6. **Old or General Business**

[a.](#) Recommendation to place Conservation Easements on eleven (11) undeveloped properties owned by the City of Deadwood and/or Deadwood Historic Preservation Commission to prevent future development and/or alterations that would encroach upon, damage, or destroy the Deadwood National Historic Landmark District.

[b.](#) Permission to purchase four outdoor interpretive panels from Pannier Graphics at a cost not to exceed \$3,400.00 (to be paid from HP Public Education).

[c.](#) Consider recommendation for proposed changes to the Upper Floor Revitalization Program.

[d.](#) Consider recommendation to establish procedures for Satisfaction of Historic Preservation Grants.

[e.](#) Consider recommendation to increase Interest Rates for Historic Preservation Loan Programs.

[f.](#) Consider recommendation for changes to Retaining Wall Program

[g.](#) Recommend awarding 2024 Round 2 Outside of Deadwood Grants

[h.](#) Nugget Saloon, LLC - Historic Façade Program - Expand Scope of Work

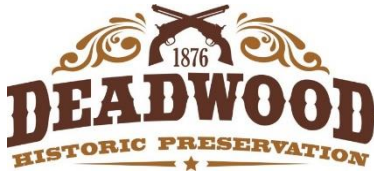
7. **New Matters Before the Deadwood Historic District Commission**

[a.](#) COA 240103 - Nugget Saloon LLC - 608 Main - Exterior repairs to facade

[b.](#) COA 240100 - Joel Livengood - 732 Main - Replace siding on garage

8. **New Matters Before the Deadwood Historic Preservation Commission**
9. **Items from Citizens not on Agenda**  
(Items considered but no action will be taken at this time.)
10. **Staff Report**  
(Items considered but no action will be taken at this time.)
  - a. Staff update on Adams House Museum - roof, porch repair and paint.
  - b. Check/Plaque Presentation Beal Cemetery July 1, 2024, 2:00 p.m. - leave at 1:00 p.m.
  - c. List of Historic Preservation Commission assignments to committees
11. **Committee Reports**  
(Items considered but no action will be taken at this time.)
12. **Adjournment**

**Note:** All Applications MUST arrive at the City of Deadwood Historic Preservation Office by 5:00 p.m. MST on the 1st or 3rd Wednesday of every month in order to be considered at the next regularly scheduled Historic Preservation Commission Meeting.



## Historic Preservation Commission Minutes

Wednesday, June 12, 2024, at 4:00 PM

City Hall, 102 Sherman Street, Deadwood, SD 57732

### 1. Call Meeting to Order

A quorum present, Commission Chair Posey called the Deadwood Historic Preservation Commission meeting to order on June 12, 2024, at 4:01 p.m. Commissioner Posey turned the meeting over to Commission Vice Chair Diede.

- a. Acknowledgement of Years of Service for outgoing Commissioners:  
Robin Carmody (6 Years) and Beverly Posey (7 Years)

Mr. Kuchenbecker and City Commissioner Joseph presented Commissioners Carmody and Posey with glass plaques in recognition of their service as HP Commissioners. Commissioner Posey was also presented with a gavel plaque in recognition of her service as HP Commission Chair.

- b. Swearing in of new Historic Preservation Commissioners:  
Anita Knipper and Jesse Allen

City Commissioner Joseph swore in newly appointed HP Commissioner Anita Knipper and Jesse Allen.

### 2. Roll Call

PRESENT

HP Commissioner Anita Knipper  
HP Commissioner Leo Diede  
HP Commissioner Jesse Allen  
HP Commissioner Vicki Dar  
HP Commissioner Trevor Santochi  
HP Commissioner Tony Williams  
City Commissioner Blake Joseph

ABSENT

HP Commissioner Molly Brown

STAFF PRESENT

Kevin Kuchenbecker, Historic Preservation Officer  
Bonny Anfinson, Historic Preservation Coordinator  
Amy Greba, Administrative Assistant

Mike Walker, Neighborworks

- a. Election of 2024-2025 Historic Preservation Commission Officers:  
Chairperson, Vice Chairperson, and 2nd Vice Chairperson

***It was motioned by Commissioner Santochi and seconded by Commissioner Williams to nominate Commissioner Leo Diede as HP Commission Chair. Voting Yea: Knipper, Williams, Santochi, Allen, Dar.***

***It was motioned by Commissioner Santochi and seconded by Commissioner Williams to nominate Commissioner Vicki Dar as HP Commission Vice Chair. Voting Yea: Knipper, Williams, Santochi, Diede, Allen.***

***It was motioned by Commissioner Dar and seconded by Commissioner Williams to nominate Commissioner Trevor Santochi as HP Commission 2<sup>nd</sup> Vice Chair. Voting Yea: Knipper, Williams, Diede, Allen, Dar.***

### **3. Approval of Minutes**

- a. HP Commission Minutes

***It was motioned by Commissioner Santochi and seconded by Commissioner Dar to approve minutes of the May 22, 2024, meeting. Voting Yea: Knipper, Williams, Santochi, Diede, Allen, Dar.***

### **4. Voucher Approvals**

- a. HP Operating Vouchers

***It was motioned by Commissioner Williams and seconded by Commissioner Santochi to approve HP Operating Vouchers in the amount of \$163,495.32. Voting Yea: Knipper, Williams, Santochi, Diede, Allen, Dar.***

- c. HP Grant Vouchers

***It was motioned by Commissioner Williams and seconded by Commissioner Santochi to approve HP Grant Vouchers in the amount of \$14,129.49. Voting Yea: Knipper, Williams, Santochi, Diede, Allen, Dar.***

- d. HP Revolving Vouchers

***It was motioned by Commissioner Dar and seconded by Commissioner Allen to approve HP Revolving Vouchers in the amount of \$3,060.00. Voting Yea: Knipper, Williams, Santochi, Diede, Allen, Dar.***

### **5. HP Programs and Revolving Loan Program**

- a. Historic Preservation Program Application

Ross & Donna Abrams – 326 Williams St. – Elderly Resident Program

***It was moved by Commissioner Dar and Seconded by Commission Williams to accept Ross and Donna Abrams, 326 Williams St. into the Elderly Resident Program. Voting Yea: Knipper, Williams, Santochi, Diede, Allen, Dar.***

Accept Robb & Wendy Nelson, 19 Centennial, into the Retaining Wall Program

Mr. Kuchenbecker stated The Historic Preservation Commission has received an application from Robb & Wendy Nelson to accept 19 Centennial into the retaining



wall program. This request is for the retaining wall on the vacant lot that is beginning to deteriorate. Staff is recommending accepting them into the program as it fits the criteria of the retaining wall program.

***It was motioned by Commissioner Santochi and Seconded by Commissioner Dar to accept Robb & Wendy Nelson, 19 Centennial, into the retaining wall program for the retaining wall located in the vacant lot. Voting Yea: Knipper, Williams, Santochi, Diede, Allen, Dar.***

## 6. Old or General Business

Historic Preservation Commissioner Assignments for the 2024-2025 term

Commissioners selected committees they will serve on for the 2024-2025 season.

### a. Historic Preservation Commissioner Assignments for the 2024-2025 term

#### HPC OFFICERS

- \_\_\_ Leo Diede \_\_\_\_\_ Chairperson
- \_\_\_ Vicki Dar \_\_\_\_\_ Vice Chair
- \_\_\_ Trevor Santochi \_\_\_\_\_ 2<sup>nd</sup> Vice Chair

#### HISTORIC PRESERVATION COMMITTEES

**Projects Committee** Meets as needed

- \_\_\_ Anita Knipper \_\_\_\_\_
- \_\_\_ Jesse Allen \_\_\_\_\_
- \_\_\_ Trevor Santochi \_\_\_\_\_

**Loan & Grant Programs Committee** Meets 1<sup>st</sup> and 3<sup>rd</sup> Tuesday of each month – 10:30 a.m. – City Hall

- \_\_\_ Leo Diede \_\_\_\_\_ Chairperson
- \_\_\_ Vicki Dar \_\_\_\_\_ Vice Chair
- \_\_\_ Trevor Santochi \_\_\_\_\_ 2<sup>nd</sup> Vice Chair

#### HISTORIC PRESERVATION COMMUNITY BOARD REPRESENTATIVES

**Chamber of Commerce** Meets 2<sup>nd</sup> Tuesday of the month 9:00 a.m. at Welcome Center – except August

- \_\_\_ Leo Diede \_\_\_\_\_
- \_\_\_ Vicki Dar \_\_\_\_\_

#### **Deadwood Alive**

- \_\_\_ Jesse Allen \_\_\_\_\_

#### DEADWOOD REVITALIZATION AND MAIN STREET INITIATIVE

**Organization (Steering) Committee (MSI)** 3<sup>rd</sup> Wednesday of each month – 12:00 p.m. Welcome Center

- \_\_\_ Leo Diede \_\_\_\_\_ Chairperson
- \_\_\_ Vicki Dar \_\_\_\_\_ Vice Chair
- \_\_\_ Trevor Santochi \_\_\_\_\_ 2<sup>nd</sup> Vice Chair

**Economic Restructuring** Meets Tuesday before MSI meeting, 9:00 a.m. at City Hall (location may vary)

- \_\_\_ Tony Williams \_\_\_\_\_
- \_\_\_ Trevor Santochi \_\_\_\_\_
- \_\_\_ Anita Knipper \_\_\_\_\_

**Design Committee** Meets 2<sup>nd</sup> Tuesday of each month 3:30 p.m. at City Hall

- \_\_\_ Vicki Dar \_\_\_\_\_
- \_\_\_\_\_

**Promotion Committee** Meets 1<sup>st</sup> Tuesday of each month at 1:00 p.m. at City Hall

- \_\_\_ Jesse Allen \_\_\_\_\_
- \_\_\_ Vicki Dar \_\_\_\_\_
- Anita Knipper

**Rec & Trails**

- Jesse Allen

## 7. New Matters Before the Deadwood Historic District Commission

- a. COA 240092 - Northern Hills Alliance for Children - 753 Main - Construct two shed roofs

Mr. Kuchenbecker stated the applicant has submitted an application for a Certificate of Appropriateness at 753 Main, a non-contributing structure located in the Upper Main Deadwood City Planning Unit in the City of Deadwood. The applicant is requesting permission to construct two shed roofs on the front of the structure. The objective of this project is to improve the water dispersion and drainage from the building, thereby eliminating problematic ice damming overhead, and on the ground in front of the high traffic main entrance. This will ensure the safety and convenience of all visitors, staff and children of the facility, as well as ensure the elemental integrity of the building. The original design of this resource has caused issues with the roof and moisture. The proposed design compliments the original design of a gable roof over the entry but is set back to address moisture and ice dams at this location. This should be considered a preliminary design as the City will require a structural engineer to review the plans as well as the buildings' structural components. Any changes resulting from the engineer's review would be subject to review by the Deadwood Historic District Commission. The proposed work and changes do not encroach upon, damage or destroy a historic resource or have an adverse effect on the character of the building or the historic character of the State and National Register Historic Districts or the Deadwood National Historic Landmark District.

***It was motioned by Commissioner Dar and seconded by Commissioner Williams based upon the guidance found in DCO 17.68.050, I find that the exterior alteration proposed is congruous with the historical, architectural, archaeological or cultural aspects of the district and MOVE to grant Certification of Appropriateness. Voting Yea: Knipper, Williams, Santochi, Diede, Allen, Dar.***

- b. Request to Reconsider COA 240040 - 745 Main Street – Window Sashes

Mr. Kuchenbecker stated the Historic Preservation Commission has received a request from the owner of 745 Main Street asking for permission to replace the entire window assembly instead of only the sashes. At the April 10, 2024, meeting approval was given to accept the property at 745 Main Street into the façade

program and issued a Certificate of Appropriateness contingent upon only the window sashes be replaced in order to preserve the original stucco.

The owner is making every effort to repair the frames and replace the sashes and has received recommendations from window suppliers and contractors. The consensus is the condition of the window frames would not support the installation of new sashes. The contractor stated the windows could be replaced from the inside of the building with little to no damage to the existing stucco, this was the major concern from staff was to protect the exterior stucco finish. Furthermore, wood windows would be the acceptable option and not the vinyl window option.

Before the meeting specs were presented for wood windows to replace the vinyl windows previously presented. Based on additional details surrounding the window replacement options, the proposed work and changes do not encroach upon, damage, or destroy a historic resource or have an adverse effect on the character of the building or the historic character of the State and National Register Historic Districts or the Deadwood National Historic Landmark District.

***It was motioned by Commissioner Williams and seconded by Commissioner Santochi based upon all the evidence presented and the amending to the use of wood windows, I find that this project DOES NOT encroach upon, damage, or destroy any historic property included in the national register of historic places or the state register of historic places, and therefore move to grant a project approval. Voting Yea: Knipper, Williams, Santochi, Diede, Allen, Dar.***

## **8. New Matters Before the Deadwood Historic Preservation Commission**

- a. PA 240083 - Ross & Donna Abrams - 326 Williams - Replace stairs and deck

Mr. Kuchenbecker stated the applicant has submitted an application for Project Approval for work at 326 Williams, a contributing structure located in the Forest Hill Planning Unit in the City of Deadwood. The applicant is requesting permission to remove and replace the stairway and deck from the sidewalk to the front door as required by court decision for infringement on adjacent property. New material to be Cedar-tone pressure treated lumber. Second level stairway to be moved approximately four feet to the right to intersect with upper-level deck. The proposed work and changes do not encroach upon, damage, or destroy a historic resource or have an adverse effect on the character of the building or the historic character of the State and National Register Historic Districts or the Deadwood National Historic Landmark District.

***It was motioned by Commissioner Dar and seconded by Commissioner Williams Based upon all the evidence presented, I find that this project DOES NOT encroach upon, damage, or destroy any historic property included in the national register of historic places or the state register of historic places, and therefore move to grant a project approval. Voting Yea: Knipper, Williams, Santochi, Diede, Allen, Dar.***

- b. PA 240086 - Mary Tautkus - 42 Wabash - Construct Carport

Mr. Kuchenbecker stated the applicant has submitted an application for Project Approval for work at 42 Wabash St., a contributing structure located in the Cleveland Planning Unit in the City of Deadwood.

The applicant is requesting permission to construct a car port. This will be wood construction and styled to match the house. The carport will be a 16x22 gabled roof constructed on a 17'x24' concrete pad that is already in place. The proposed work and changes do not encroach upon, damage, or destroy a historic resource or have an adverse effect on the character of the building or the historic character of the State and National Register Historic Districts or the Deadwood National Historic Landmark District.

***It was motioned by Commissioner Santochi and seconded by Commissioner Dar based upon all the evidence presented, I find that this project DOES NOT encroach upon, damage, or destroy any historic property included in the national register of historic places or the state register of historic places, and therefore move to grant a project approval. Voting Yea: Knipper, Williams, Santochi, Diede, Allen, Dar.***

- c. PA 240085 - Larry & Jenica Griffith - 23 Washington - Install 6-foot privacy fence

Mr. Kuchenbecker stated the applicant has submitted an application for Project Approval for work at 23 Washington St., a contributing structure located in the Ingleside Planning Unit in the City of Deadwood. The applicant requests permission to install a 6-foot wood privacy fence on the upper portion of lot along Jackson and Washington Street. Upon completion of a site visit by City staff, there are concerns regarding the sightlines with vehicular traffic in addition to the visual impact to the neighborhood. While there are several privacy fences in and around the Ingleside Planning Unit, almost all are either side or rear yards and not front yards. There is an exception with the vacant lot across the street. An alternative style fence compatible with the resource would be a better solution; however, the applicant is attempting to garner a fenced in yard for their pets as well as privacy from tourists.

Based on the proposed work and changes (location and style of fence) the project would encroach upon a historic resource as well as have an adverse effect on the character of the building or the historic character of the State and National Register Historic Districts or the Deadwood National Historic Landmark District.

***First Motion: It was motioned by Commissioner Santochi and seconded by Commissioner Williams based upon all the evidence presented, I move to make a finding that this project DOES encroach upon, damage, or destroy any historic property included in the national register of historic places or the state register of historic places. Voting Yea: Knipper, Williams, Santochi, Diede, Allen, Dar.***

***Second Motion: Based upon the guidance in the U.S. Department of the Interior standards for historic preservation, restoration, and rehabilitation projects adopted by rules promulgated pursuant to SDCL 1-19A & 1-19B, et seq, I find that the project is ADVERSE to Deadwood and move to DENY the project as presented. Voting Yea: Knipper, Williams, Santochi, Diede, Allen, Dar.***

- e. PA 240089 - Katherine Sims - 11 Jackson - Replace deck railing and lattice; Install iron picket fence, construct ground level deck

The applicant has submitted an application for Project Approval for work at 11 Jackson St., a contributing structure located in the Ingleside Planning Unit in the City of Deadwood. The applicant is requesting permission to replace the railing on the existing deck to match/complement the proposed fence. Replace the wooden lattice under the existing deck to make it a solid enclosure for privacy. Add fencing at locations outlined in red on the diagram. Fencing will either be composite, powder coated aluminum or combo wood/iron pickets. Fencing to complement replacement deck railing. Construct a ground level deck next to the existing deck. This is highlighted in orange on the attached diagram. The proposed work and changes do not encroach upon, damage or destroy a historic resource or have an adverse effect on the character of the building or the historic character of the State and National Register Historic Districts or the Deadwood National Historic Landmark District.

***It was motioned by Commissioner Dar and seconded by Commissioner Williams based upon all the evidence presented and the inclusion of recommendations from HP Staff, I find that this project DOES NOT encroach upon, damage, or destroy any historic property included in the national register of historic places or the state register of historic places, and therefore move to grant a project approval. Voting Yea: Knipper, Williams, Santochi, Diede, Allen, Dar.***

- e. PA 240090 - Ben & Sheri Greenlee - 52 Van Buren - Replace windows and install patio door

Mr. Kuchenbecker stated the applicant has submitted an application for Project Approval for work at 52 Van Buren, a Contributing structure located in the Ingleside Planning Unit in the City of Deadwood. The applicant is remodeling the interior and is requesting permission to replace the windows of the structure. The two front windows and right back side windows will be replaced with wood double hung windows to match the current windows. On the right side of the structure the first window will be replaced with a patio door, the 2nd window will be replaced with a Minnkota Awning window, the 3rd window will be removed and covered. The 4<sup>th</sup> window will be replaced with a wood window to match the front windows. On the rear of the structure, the bedroom window will be replaced with a picture type window and the bathroom window will be replaced. Both windows will be Minnekota windows. The Marvin wood double hung windows are appropriate to the resource; however, the Minnkota vinyl clad windows are inappropriate materials and do not meet the Secretary of Interior Standards for Rehabilitation. It is staff's opinion the use of vinyl windows does damage a historic property and therefore will have an adverse effect on the character of the building or the historic character of the State and National Register Historic Districts or the Deadwood National Historic Landmark District. Mr. Kuchenbecker mentioned since time of original project application their contractor has supplied staff with samples of Sierra Pacific Windows (wood) for replacing Minnkota Vinyl Windows.

***It was motioned by Commissioner Dar and seconded by Commissioner Williams based upon all the evidence presented and City Staff recommended approval of the wood windows option from Sierra Pacific Windows, I find that this project DOES NOT encroach upon, damage, or destroy any historic property included in the national register of historic places or the state register of historic places, and therefore move to grant a project approval. Voting Yea: Knipper, Williams, Santochi, Diede, Allen, Dar.***

## **9. Items from Citizens not on Agenda**

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

Ms. Carmody asked the Commission if they were aware of the condition at Adam's House. She voiced her frustration regarding water damage, lights not working, loose boards on front porch, and peeling paint. Mr. Kuchenbecker stated the roof damage occurred during a storm and was held up by insurance. He will touch base with Public Works and report back to the Commission in two weeks.

## **10. Staff Report**

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

Mr. Kuchenbecker shared that many projects are happening throughout the departments. Trails update: Re-routing of Homestake Trail and will join with White Rocks. Next project will be Fuller Brothers trail. In total there are about 5 miles of trail building happening in/around Deadwood.

RCI began work on Whitewood Creek Trail.

FEMA project is finishing up behind Comfort Inn (RCS Contractor). Complete Concrete beginning work along Water St. performing trenching along Cemetery St.

Retaining wall projects continue to move along smoothly. 33.5 Jackson and 458 Williams completed, pre-construction meeting on 10 Denver next week, and will move on to 74 Van Buren, also.

Collecting quotes for foundation work at 85 Charles.

## **11. Committee Reports**

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

Commissioner Dar reminded Commission that Farmer's Market begins June 21. She attended the CGL Conference in Sioux Falls last week. Promotions update- Hops & Hogs collected over \$600 in donations for Feeding Deadwood, with the Posey's rounding it up to an even \$1,000. Thanked them for that contribution.

Commissioner Santochi shared that he hiked some of the trails. Asked who oversees them. Mr. Kuchenbecker said Randy Adler, Recreation & Parks Director. Commissioner Santochi mentioned there are a few locations that may need warning signs. He would speak with Randy about them.

Commissioner Allen said it's getting busy in Deadwood. Last weekend had two sold-out concerts at DMG and PBR, then Wild Bill Days this coming weekend. June 20<sup>th</sup> will be the first Whitewood Creek clean-up organized by the Trails Committee. They will happen every 3<sup>rd</sup> Thursday. Volunteers are welcome to help.

Commissioner Diede read Thank You's from scholarship recipients, Ethan Hess and Kaitlyn Martin.

**12. Adjournment**

***It was motioned by Commissioner Santochi and seconded by Commissioner Williams to adjourn the Historic Preservation Commission meeting. Voting Yea: Carmody, Williams, Santochi, Posey, Diede.***

The HP Commission meeting adjourned at 5:05 p.m.

ATTEST:

---

Chairman, Historic Preservation Commission

*Minutes by Amy Greba, Administrative Assistant*

# Historic Preservation Commission

## Bill List - 2024

OPERATING ACCOUNT: Historic Preservation	
<b>HP Operating Account Total:</b>	<b>\$ 277,095.64</b>

Approved by \_\_\_\_\_ on \_\_\_\_/\_\_\_\_/\_\_\_\_  
HP Chairperson

HPC	06/26/24
Batch	07/02/24



PACKET: 06677 07/02/24 - HP OPERATING -

VENDOR SET: 01 CITY OF DEADWOOD

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----			GROSS	P.O. #		
ITEM DATE	BANK CODE	-----DESCRIPTION-----	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
=====						
01-4711	AMAZON CAPITAL SERVICES					
I-1KHT-HYV9-QPY4		LAPTOP BAGS & SUPPLIES	81.48			
6/13/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		LAPTOP BAG, MOUSE, SUPPLIES		215 4641-426	SUPPLIES	37.50
		LAPTOP BAG, MOUSE- LEAH		101 4640-426	SUPPLIES	43.98
=====						
I-1MKG-TKCG-16KV		FLASH DRIVES & FRAMES	71.96			
6/24/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		FLASH DRIVES & FRAMES		215 4641-426	SUPPLIES	71.96
=====						
I-1MWN-GCCF-DQW4		RICOH SCANNER & FLASH DRIVES	846.65			
6/22/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		RICOH SCANNER & FLASH DRIVES		215 4573-335	HIST. INTERP. ARCHIVE DE	846.65
		=== VENDOR TOTALS ===	1,000.09			
=====						
01-0314	BLACK HILLS MINING MUSEUM					
I-062724		ARCHIVE SUPPLIES, SIGNS	1,191.24			
6/27/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		ARCHIVE SUPPLIES, SIGNS		215 4575-520	GRANT/LOAN PROJECTS OUTS	1,191.24
		=== VENDOR TOTALS ===	1,191.24			
=====						
01-5209	BRANCH CONSTRUCTION SERVICES,					
I-PAYAPP#1		74 VAN BUREN RW	3,705.00			
6/21/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		74 VAN BUREN RW		215 4575-515	GRANT/LOAN RETAINING WAL	3,705.00
		=== VENDOR TOTALS ===	3,705.00			
=====						
01-1219	BROKEN BOOT GOLD MINE, INC.					
I-061824		REPAIR DOORS	1,075.00			
6/18/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		REPAIR DOORS		215 4575-510	GRANT/LOAN NON-PROFIT IN	1,075.00
		=== VENDOR TOTALS ===	1,075.00			
=====						
01-0510	GOLDEN WEST TECHNOLOGIES, INC.					
I-425676		ARCHIVES COMPUTER MAINT	450.00			
6/11/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		ARCHIVES COMPUTER MAINT		215 4573-335	HIST. INTERP. ARCHIVE DE	450.00
=====						
I-425677		LAPTOPS- LEAH & BONNY	3,738.00			
6/11/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		LAPTOP - BONNY		215 4641-434	MACHINERY/EQUIPMENT	1,869.00
		LAPTOP - LEAH		101 4640-434	EQUIPMENT	1,869.00

PACKET: 06677 07/02/24 - HP OPERATING -

VENDOR SET: 01 CITY OF DEADWOOD

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----			GROSS	P.O. #		
ITEM DATE	BANK CODE	-----DESCRIPTION-----	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
=====						
01-0510	GOLDEN WEST TECHNOLOGIES, INC. ( ** CONTINUED ** )					
I-425714		ARCGIS - ZACH	450.00			
6/12/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		ARCGIS - ZACH		215 4573-340	HIST. INTERP. GIS	450.00
		=== VENDOR TOTALS ===	4,638.00			
=====						
01-0782	JACOBS PRECISION WELDING					
I-31206		INTERP SIGN METAL SUPPLIES	25.57			
6/19/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		INTERP SIGN METAL SUPPLIES		215 4572-235	VISITOR MGMT ADVOCATE	25.57
		=== VENDOR TOTALS ===	25.57			
=====						
01-5016	JOE DIRT SEPTIC & DRAIN LLC					
I-531699		33.5 JACKSON CLEAN STORM DRAI	643.00			
6/05/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		33.5 JACKSON CLEAN STORM DRAIN		215 4575-515	GRANT/LOAN RETAINING WAL	643.00
		=== VENDOR TOTALS ===	643.00			
=====						
01-4875	KNIPPER, ANITA					
I-061024		STRING LIGHTS - METHODIST PAR	107.00			
6/05/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		STRING LIGHTS - METHODIST PARK		215 4576-630	PROFES. SERV. NEIGHBORH.	107.00
		=== VENDOR TOTALS ===	107.00			
=====						
01-1827	MS MAIL					
I-14621		JUNE NEWSLETTER	736.80			
6/18/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: Y		
		JUNE NEWSLETTER		215 4641-423	PUBLISHING	736.80
		=== VENDOR TOTALS ===	736.80			
=====						
01-0563	RCS CONSTRUCTION					
I-202245.1F		458 WILLIAMS	82,000.00			
6/25/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: Y		
		458 WILLIAMS		215 4577-775	CAPITAL ASSETS GENERAL M	82,000.00
I-202414.1		10 DENVER	58,320.00			
6/25/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: Y		
		10 DENVER		215 4577-755	CAPITAL ASSETS RETAINING	58,320.00

PACKET: 06677 07/02/24 - HP OPERATING -

VENDOR SET: 01 CITY OF DEADWOOD

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----			GROSS	P.O. #		
ITEM DATE	BANK CODE	-----DESCRIPTION-----	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
=====						
01-0563	RCS CONSTRUCTION	( ** CONTINUED ** )				
-----						
I-PAYAPP#3		33.5 JACKSON RETAINING WALL	52,472.50			
6/25/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: Y		
		33.5 JACKSON RETAINING WALL		215 4575-515	GRANT/LOAN RETAINING WAL	52,472.50
		=== VENDOR TOTALS ===	192,792.50			
=====						
01-3366	ROGERS CONSTRUCTION, INC.					
-----						
I-001		WELCOME CENTER TRAIL	69,097.50			
6/24/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		WELCOME CENTER TRAIL		215 4577-775	CAPITAL ASSETS GENERAL M	69,097.50
		=== VENDOR TOTALS ===	69,097.50			
=====						
01-4739	TWIN CITY HARDWARE-HP PAINT PR					
-----						
I-2406-0000918		37 WASHINGTON	39.99			
6/04/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		37 WASHINGTON		215 4575-525	GRANT/LOAN PAINT PROGRAM	39.99
-----						
I-2406-000454		416 WILLIAMS	49.99			
6/01/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		416 WILLIAMS		215 4575-525	GRANT/LOAN PAINT PROGRAM	49.99
-----						
I-2406-000686-1		26 BURNHAM	98.96			
6/03/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		26 BURNHAM		215 4575-525	GRANT/LOAN PAINT PROGRAM	98.96
-----						
I-2406-001116		32 CHARLES	294.95			
6/05/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		32 CHARLES		215 4575-525	GRANT/LOAN PAINT PROGRAM	294.95
-----						
I-2406-001557		32 CHARLES	207.96			
6/08/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		32 CHARLES		215 4575-525	GRANT/LOAN PAINT PROGRAM	207.96
-----						
I-2406-002069		32 CHARLES	60.99			
6/11/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		32 CHARLES		215 4575-525	GRANT/LOAN PAINT PROGRAM	60.99
-----						
I-2406-002583		26 BURNHAM	83.88			
6/14/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		26 BURNHAM		215 4575-525	GRANT/LOAN PAINT PROGRAM	83.88
-----						
I-2406-003632		26 BURNHAM	242.96			
6/20/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		26 BURNHAM		215 4575-525	GRANT/LOAN PAINT PROGRAM	242.96

PACKET: 06677 07/02/24 - HP OPERATING -

VENDOR SET: 01 CITY OF DEADWOOD

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----			GROSS	P.O. #		
ITEM DATE	BANK CODE	-----DESCRIPTION-----	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
=====						
01-4739		TWIN CITY HARDWARE-HP PAINT PR ( ** CONTINUED ** )				
I-2406-004032		26 BURNHAM	27.16			
6/23/2024	FNBP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		26 BURNHAM		215 4575-525	GRANT/LOAN PAINT PROGRAM	27.16
=====						
I-2406-004369		822 MAIN	169.95			
6/25/2024	FNBP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		822 MAIN		215 4575-525	GRANT/LOAN PAINT PROGRAM	169.95
=== VENDOR TOTALS ===			1,276.79			
=====						
01-4275		YESCO RAPID CITY				
I-SVO-3965		TOOTSIE SIGN	807.15			
6/12/2024	FNBP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		TOOTSIE SIGN		215 4572-235	VISITOR MGMT ADVOCATE	807.15
=== VENDOR TOTALS ===			807.15			
=== PACKET TOTALS ===			277,095.64			



APPROVED BY \_\_\_\_\_  
ON \_\_\_\_\_

PACKET: 06677 07/02/24 - HP OPERATING -  
 VENDOR SET: 01 CITY OF DEADWOOD  
 SEQUENCE : ALPHABETIC  
 DUE TO/FROM ACCOUNTS SUPPRESSED

\*\* T O T A L S \*\*

INVOICE TOTALS	277,095.64
DEBIT MEMO TOTALS	0.00
CREDIT MEMO TOTALS	0.00

BATCH TOTALS	277,095.64
--------------	------------

\*\* G/L ACCOUNT TOTALS \*\*

BANK	YEAR	ACCOUNT	NAME	AMOUNT	=====LINE ITEM=====		=====GROUP BUDGET=====	
					ANNUAL BUDGET	BUDGET OVER AVAILABLE BUDG	ANNUAL BUDGET	BUDGET OVER AVAILABLE BUDG
	2024	101-2020	ACCOUNTS PAYABLE	1,912.98-*				
		101-4640-426	SUPPLIES	43.98	3,000	2,573.89		
		101-4640-434	EQUIPMENT	1,869.00	0	1,869.00- Y		
		215-2020	ACCOUNTS PAYABLE	275,182.66-*				
		215-4572-235	VISITOR MGMT ADVOCATE	832.72	220,000	95,360.03	819,000	491,691.04
		215-4573-335	HIST. INTERP. ARCHIVE DE	1,296.65	43,300	35,679.87		
		215-4573-340	HIST. INTERP. GIS	450.00	27,250	15,885.00		
		215-4575-510	GRANT/LOAN NON-PROFIT IN	1,075.00	40,000	38,925.00		
		215-4575-515	GRANT/LOAN RETAINING WAL	56,820.50	575,000	405,262.06		
		215-4575-520	GRANT/LOAN PROJECTS OUTS	1,191.24	100,000	23,704.25		
		215-4575-525	GRANT/LOAN PAINT PROGRAM	1,276.79	25,000	22,186.25		
		215-4576-630	PROFES. SERV. NEIGHBORH.	107.00	8,000	7,786.80		
		215-4577-755	CAPITAL ASSETS RETAINING	58,320.00	475,000	415,414.49		
		215-4577-775	CAPITAL ASSETS GENERAL M	151,097.50	75,000	76,750.20- Y		
		215-4641-423	PUBLISHING	736.80	15,000	10,835.06		
		215-4641-426	SUPPLIES	109.46	15,000	10,658.19		
		215-4641-434	MACHINERY/EQUIPMENT	1,869.00	11,148	4,837.96		
		999-1301	DUE FROM FUND 101	1,912.98 *				
		999-1306	DUE FROM FUND 215	275,182.66 *				
			** 2024 YEAR TOTALS	277,095.64				

6/26/2024 11:42 AM

A/P Regular Open Item Register

Section 4 Item a.

PACKET: 06677 07/02/24 - HP OPERATING -

VENDOR SET: 01 CITY OF DEADWOOD

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

\*\* POSTING PERIOD RECAP \*\*

FUND	PERIOD	AMOUNT
101	7/2024	1,912.98
215	7/2024	275,182.66

NO ERRORS

NO WARNINGS

\*\* END OF REPORT \*\*

TOTAL ERRORS: 0 TOTAL WARNINGS: 0

# Historic Preservation Commission 2024 Grant Funds

HP GRANT ACCOUNT: Historic Preservation	
<b>HP Grant Account Total:</b>	<b>\$ 32,576.50</b>

Approved by \_\_\_\_\_ on \_\_\_/\_\_\_/\_\_\_  
HP Chairperson

Approved by \_\_\_\_\_ on \_\_\_/\_\_\_/\_\_\_  
HP Officer

HPC	06/26/24
Batch	07/02/24

PACKET: 06681\_07/02/24 HP GRANTS BA  
 VENDOR SET: 01 CITY OF DEADWOOD  
 SEQUENCE : ALPHABETIC  
 DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----			GROSS	P.O. #		
POST DATE	BANK CODE	-----DESCRIPTION-----	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
=====						
01-5251	MCCORMICK CUSTOM BUILDERS					
I-101		26 BURNHAM SORENSON	813.65			
7/02/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		26 BURNHAM SORENSON		216 4653-962-04	SIDING GRANT EXPENSE	813.65
-----						
I-102		26 BURNHAM SORENSON	1,620.00			
7/02/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		26 BURNHAM SORENSON		216 4653-962-04	SIDING GRANT EXPENSE	1,620.00
=== VENDOR TOTALS ===			2,433.65			
=====						
01-0563	RCS CONSTRUCTION					
I-3F RW 33 1/2 JACKS		33 1/2 JACKSON RW JULIUS	20,000.00			
7/02/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: Y		
		33 1/2 JACKSON RW JULIUS		216 4653-962-01	SPECIAL NEEDS GRANT EXP.	10,000.00
		33 1/2 JACKSON RW JULIUS		216 4653-962-08	FOUNDATION GRANT EXPENSE	10,000.00
=== VENDOR TOTALS ===			20,000.00			
=====						
01-4877	SCHLOSSER CONSTRUCTION & FOUND					
I-1030		320 WILLIAMS HEPPER	9,690.00			
7/02/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: Y		
		320 WILLIAMS HEPPER		216 4653-962-08	FOUNDATION GRANT EXPENSE	9,690.00
=== VENDOR TOTALS ===			9,690.00			
=====						
01-4086	TWIN CITY HARDWARE - GRANTS					
I-2405-000082		26 BURNHAM SORENSON	435.88			
7/02/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		26 BURNHAM SORENSON		216 4653-962-04	SIDING GRANT EXPENSE	435.88
-----						
I-2406000812		26 BURNHAM SORENSON	16.97			
7/02/2024	FNBAP	DUE: 7/02/2024 DISC: 7/02/2024		1099: N		
		26 BURNHAM SORENSON		216 4653-962-04	SIDING GRANT EXPENSE	16.97
=== VENDOR TOTALS ===			452.85			
=== PACKET TOTALS ===			32,576.50			



PACKET: 06681,07/02/24 HP GRANTS BA

VENDOR SET: 01 CITY OF DEADWOOD

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

\*\* T O T A L S \*\*

INVOICE TOTALS	32,576.50
DEBIT MEMO TOTALS	0.00
CREDIT MEMO TOTALS	0.00

BATCH TOTALS	32,576.50
--------------	-----------

\*\* G/L ACCOUNT TOTALS \*\*

BANK	YEAR	ACCOUNT	NAME	AMOUNT	=====LINE ITEM=====		=====GROUP BUDGET=====	
					ANNUAL BUDGET	BUDGET OVER AVAILABLE BUDG	ANNUAL BUDGET	BUDGET OVER AVAILABLE BUDG
	2024	216-2020	ACCOUNTS PAYABLE	32,576.50-*				
		216-4653-962-01	SPECIAL NEEDS GRANT EXP.	10,000.00	50,000		52,503.27	
		216-4653-962-04	SIDING GRANT EXPENSE	2,886.50	60,000		44,836.96	
		216-4653-962-08	FOUNDATION GRANT EXPENSE	19,690.00	60,000		40,310.00	
		999-1307	DUE FROM FUND 216	32,576.50 *				
			** 2024 YEAR TOTALS	32,576.50				

6/26/2024 10:25 AM

A/P Regular Open Item Register

Section 4 Item b.

PACKET: 06681,07/02/24 HP GRANTS BA

VENDOR SET: 01 CITY OF DEADWOOD

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

\*\* POSTING PERIOD RECAP \*\*

FUND	PERIOD	AMOUNT
216	7/2024	32,576.50

NO ERRORS

NO WARNINGS

\*\* END OF REPORT \*\*

TOTAL ERRORS: 0 TOTAL WARNINGS: 0

6/26/2024 9:19am

HP REVOLVING LOAN FUND  
A/P Invoices Report  
6/1/2024 - 6/30/2024  
Batch = 2

Detail Memo	Fund	Acct	Cc1	Cc2	Cc3	Acct Description	Debit	Credit
06/2024								
TWIN CITY HARDWARE - 2405-000087 2405-299 - 6/26/2024 - 4,598.65 - Batch: 2 - Header Memo: Materials-57 Forest-Fairburn								
Materials-57 Forest-Fairburn	100	1201				NOTES RECEIVABLE	4,598.65	
Materials-57 Forest-Fairburn	100	2000				ACCOUNTS PAYABLE		4,598.65
Total:							<u>4,598.65</u>	<u>4,598.65</u>
Total:							<u>4,598.65</u>	<u>4,598.65</u>
Report Total:							<u><u>4,598.65</u></u>	<u><u>4,598.65</u></u>

Deadwood HP Total Loans 5/31/2024	
Accounting Balance (Fund EZ) Loans per Balance Sheet - Acct 100-1201	This Month \$2,253,659.15
<b>TOTAL</b>	<b>\$ 2,253,659.15</b>
Loan Base: Investor Trial Balance Report	This Month <b>\$ 2,234,538.98</b>
	\$1,920.00 Baucom
	\$ 4,100.00 Baucom
	\$ 4,480.00 Baucom
5/22/2024 Meeting Packet	\$8,620.17 Heckman
<b>TOTAL</b>	<b>\$ 2,253,659.15</b>
<b>Difference</b>	<b>\$ -</b>

Deadwood HP Total Loans 5/31/2024	
Accounting Balance (Fund EZ) Loans per Balance Sheet	\$2,253,659.15
<b>TOTAL</b>	<b>\$ 2,253,659.15</b>
Loan Base: Pool Trial Balance Report	<b>\$ 2,234,538.98</b>
	\$1,920.00 Baucom
	\$ 4,100.00 Baucom
	\$ 4,480.00 Baucom
5/22/2024 Meeting Packet	\$8,620.17 Heckman
<b>TOTAL</b>	<b>\$ 2,253,659.15</b>
<b>Difference</b>	<b>\$ -</b>

6/5/2024 3:51pm

HP REVOLVING LOAN FUND  
Balance Sheet  
As of Date: 5/31/2024

Page 1 of 1

	Current Year	Prior Year
<b>Assets</b>		
Current Assets		
CASH-SAVINGS	1,445,879.12	2,048,998.79
CASH-INVESTED	777,912.43	772,126.55
ACCRUED INTEREST RECEIVABLE	1,536.42	1,536.42
LATE FEES RECEIVABLE	3,986.87	3,986.87
Total Current Assets	2,229,314.84	2,826,648.63
Other Assets		
NOTES RECEIVABLE	2,253,659.15	2,140,507.39
Total Other Assets	2,253,659.15	2,140,507.39
<b>Total Assets</b>	<b>4,482,973.99</b>	<b>4,967,156.02</b>
<b>Liabilities &amp; Net Assets</b>		
Liabilities		
Current Liabilities		
Allowance for Uncollected	(39,698.34)	5,862.89
ACCOUNTS PAYABLE	(1,449.34)	(1,449.34)
YE Accounts Payable	1,449.34	1,449.34
Total Current Liabilities	(39,698.34)	5,862.89
Total Liabilities	(39,698.34)	5,862.89
Net Assets		
NET ASSETS	4,608,323.95	4,608,323.95
Fund Balance	56,035.78	56,035.78
NET EARNINGS(LOSS)	(2,019,417.49)	(1,580,796.69)
PRIOR YEAR EARNINGS (LOSS)	116,204.47	116,204.47
HP BUDGET	(13,474.38)	(13,474.38)
PRIOR YEAR HP BUDGET	1,775,000.00	1,775,000.00
Total Net Assets	4,522,672.33	4,961,293.13
<b>Total Liabilities &amp; Net Assets</b>	<b>4,482,973.99</b>	<b>4,967,156.02</b>

6/5/2024 3:51pm

HP REVOLVING LOAN FUND  
Statement of Revenue and Expense  
Current Period: 5/1/2024 - 5/31/2024  
Year-to-Date: 1/1/2024 - 5/31/2024

Page 1 of 1

	Current Year Current Period	Current Year Year-to-Date	Prior Year Current Period	Prior Year Year-to-Date
<b>Revenue</b>				
PERM LOAN INTEREST	2,377.81	11,256.88	919.01	4,297.93
SAVINGS INTEREST	3,738.02	21,187.52	0.00	2,344.34
SERVICE FEES	234.11	1,133.92	240.00	1,460.00
LATE FEES	50.00	311.05	75.00	437.16
APPLICATION FEES	0.00	9,390.31	4,830.16	6,939.13
CLOSING COSTS	0.00	2,351.76	969.92	1,658.88
<b>Total Revenue</b>	<b>6,399.94</b>	<b>45,631.44</b>	<b>7,034.09</b>	<b>17,137.44</b>
<b>Expenses</b>				
PROF & ADMIN FEES	3,000.00	12,520.00	4,044.25	18,113.25
CLOSING COSTS DISBURSE	90.00	2,127.90	330.00	1,510.92
Windows Grant Expense	162.50	28,714.67	6,691.18	8,583.59
Elderly Grant Expense	1,041.15	10,787.99	30.00	1,473.30
Siding Grant Expense	0.00	10,147.05	5,241.60	14,958.57
Facade Grant Expense	0.00	268,030.00	0.00	0.00
Loss on asset	0.00	0.00	0.00	5,897.08
<b>Total Expenses</b>	<b>4,293.65</b>	<b>332,327.61</b>	<b>16,337.03</b>	<b>50,536.71</b>
<b>Excess or (Deficiency) of Revenue Over Expenses</b>	<b>2,106.29</b>	<b>(286,696.17)</b>	<b>(9,302.94)</b>	<b>(33,399.27)</b>

Time: 10:29:29  
Date: 05/31/2024

**TRIAL BALANCE: POOLS**

Page: 1  
Run By: SUSAN17

Range Of Investors  
All Pools

NHS of Black Hills

Version: 3.1.26

Investor Loan #	Loan #	Borrower	Ln Tp	Bs Cd	Int Paid To Date	Due Date	Last Tran Date	Borrower Rate	Split Rate	Investor Rate	Service Code	Service Fee	Payment Amount	Current Pool Balance	Impound Balance	Suspense Balance
>>> INVESTOR #: HP POOL #: C0 DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual																
HPC0DWDH	HPC0DWDH	Deadwood Histor	2	0	05/01/24	06/01/24	05/01/24	0.0000	No	0.0000	Curr	0.0000	416.67	14090.00	0.00	0.00
LIFE SAFTY	HPLSNGT07	Nugget Saloon L	2	0	05/01/24	06/01/24	05/02/24	0.0000	No	0.0000	Curr	0.0000	165.72	27409.47	0.00	0.00
HPRRWPSH	HPRRWPSHA	Shama,Larry	2	0	05/01/24	06/01/24	05/02/24	0.0000	No	0.0000	Curr	0.0000	400.00	22800.00	0.00	0.00
Group Totals:													982.39	64299.47	0.00	0.00
>>> INVESTOR #: HP POOL #: C5 DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual																
HPCRLNUG	HPCRLNUGG	Nugget Saloon,	2	0	05/01/24	06/01/24	05/02/24	5.0000	No	5.0000	Curr	0.0000	1212.84	224561.59	0.00	0.00
Group Totals:													1212.84	224561.59	0.00	0.00
>>> INVESTOR #: HP POOL #: CUFR DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual																
HPCUPFLA	HPCUPFLAL	Deadwood Main,	2	0	05/01/24	06/01/24	05/01/24	0.0000	No	0.0000	Curr	0.0000	1041.67	224999.92	0.00	0.00
Group Totals:													1041.67	224999.92	0.00	0.00
>>> INVESTOR #: HP POOL #: R0 DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual																
11-240003	11-240003	Dragon Belly, L	2	0	05/28/24	07/01/24	05/29/24	0.0000	No	0.0000	Curr	0.0000	46.78	2806.84	0.00	0.00
HPLSKIR	HPLSKIR	Kirkpatrick,Eli	2	0	06/01/24	07/01/24	05/13/24	0.0000	No	0.0000	Curr	0.0000	104.17	6435.00	0.00	0.00
HPLSRLPON	HPLSRLPON	Pontius,James	2	0	05/01/24	06/01/24	05/15/24	0.0000	No	0.0000	Curr	0.0000	113.04	982.40	0.00	0.00
HPR0SJOM	HPR0SJOM	Sjomeling,Danie	2	0	05/01/24	06/01/24	05/08/24	0.0000	No	0.0000	Curr	0.0000	136.43	12824.27	0.00	0.00
HPRLFKN	HPRLFKN	Knipper,Anita	2	0	06/01/24	07/01/24	05/28/24	0.0000	No	0.0000	Curr	0.0000	208.33	14583.50	0.00	0.00
HPRLLSWES	HPRLLSWES	Westendorf,Rand	2	0	05/01/24	06/01/24	05/01/24	0.0000	No	0.0000	Curr	0.0000	166.67	10250.00	0.00	0.00
LSAFETY	HPRLSBOBO	The Fht Company	2	0	05/01/24	06/01/24	05/15/24	0.0000	No	0.0000	Curr	0.0000	191.32	10713.92	0.00	0.00
LIFE SFTY	HPRLSBRE	Breland,Philip	2	0	12/01/24	01/01/25	01/01/24	0.0000	No	0.0000	Curr	0.0000	416.67	14999.92	0.00	0.00
HPRLSCOUP	HPRLSCOUP	Paha Sapa Holdi	2	0	06/01/24	07/01/24	05/16/24	0.0000	No	0.0000	Curr	0.0000	138.89	23333.32	0.00	0.00
HPRLSEMAN	HPRLSEMAN	Emanuel,Karl	2	0	04/22/24	06/01/24	04/22/24	0.0000	No	0.0000	Curr	0.0000	208.33	25000.00	0.00	0.00
HPRLSFAS	HPRLSFAS	Fasnacht,Glenn	2	0	05/01/24	06/01/24	05/17/24	0.0000	No	0.0000	Curr	0.0000	160.55	15091.86	0.00	0.00
LIFE SFTY	HPRLSGREE	Greenlee,Benjam	2	0	05/01/24	06/01/24	05/03/24	0.0000	No	0.0000	Curr	0.0000	416.67	22083.31	0.00	0.00
HPRLSHERT	HPRLSHERT	Herd,David	2	0	05/01/24	06/01/24	05/08/24	0.0000	No	0.0000	Curr	0.0000	208.33	16458.47	0.00	0.00
LIFE SAFTY	HPRLSJNWM	Johnson,Michael	2	0	06/01/24	07/01/24	05/29/24	0.0000	No	0.0000	Curr	0.0000	138.89	22499.98	0.00	0.00
Life Sfty	HPRLSJHON	Johnson,Joette	2	0	05/01/24	06/01/24	05/06/24	0.0000	No	0.0000	Curr	0.0000	138.89	45113.78	0.00	0.00
LIFE SAFTY	HPRLSPOTT	Cara Mia Lic,Ca	2	0	06/01/24	07/01/24	05/29/24	0.0000	No	0.0000	Curr	0.0000	208.33	22708.37	0.00	0.00
HPRLSRICH	HPRLSRICH	Richerson,Jacqu	2	0	06/01/24	07/01/24	05/22/24	0.0000	No	0.0000	Curr	0.0000	364.40	18220.08	0.00	0.00
HPRLSRITZ	HPRLSRITZ	Ritz,Jody	2	0	05/01/24	06/01/24	04/29/24	0.0000	No	0.0000	Curr	0.0000	51.77	3814.55	0.00	0.00

Time: 10:29:29  
Date: 05/31/2024

**TRIAL BALANCE: POOLS**

Page: 2  
Run By: SUSAN17

Range Of Investors  
All Pools

NHS of Black Hills

Version: 3.1.26

Investor Loan #	Loan #	Borrower	Ln Tp	Bs Cd	Int Paid To Date	Due Date	Last Tran Date	Borrower Rate	Split Rate	Investor Rate	Service Code	Service Fee	Payment Amount	Current Pool Balance	Impound Balance	Suspense Balance
HPRLSSMIT	HPRLSSMIT	Smith,Gordon	2	0	08/01/24	09/01/24	05/16/24	0.0000	No	0.0000	Curr	0.0000	145.68	7429.88	0.00	0.00
LIFE SAFTY	HPRLSTHOM	Thompson II,Mar	2	0	06/01/24	07/01/24	05/13/24	0.0000	No	0.0000	Curr	0.0000	104.17	23536.64	0.00	0.00
HPRLSTHOF	HPRLSTHOR	Thoresen,Skylar	2	0	05/01/24	06/01/24	05/15/24	0.0000	No	0.0000	Curr	0.0000	31.12	1090.88	0.00	0.00
HPRLSTREN	HPRLSTREN	Trentz,Sylvia	2	0	06/01/24	07/01/24	05/02/24	0.0000	No	0.0000	Curr	0.0000	96.47	20606.68	0.00	0.00
Life SFTY	HPRLSUNDE	Underhill,Ronal	2	0	05/01/24	06/01/24	05/03/24	0.0000	No	0.0000	Curr	0.0000	104.17	21106.13	0.00	0.00
HPRLSWEB	HPRLSWEB	Weber,Todd	2	0	06/01/24	07/01/24	05/13/24	0.0000	No	0.0000	Curr	0.0000	66.43	14149.42	0.00	0.00
HPRLBUS	HPRLBUS	Bussiere,Erica	2	0	04/01/24	05/01/24	04/08/24	0.0000	No	0.0000	Curr	0.0000	60.78	4845.38	0.00	0.00
HPRRW0EMI	HPRRW0EMR	Emrick Real Est	2	0	05/01/24	06/01/24	05/01/24	0.0000	No	0.0000	Curr	0.0000	207.59	24079.78	0.00	0.00
LIFE SAFEY	HPSLRUNG	Runge,Michael	2	0	06/01/24	07/01/24	05/20/24	0.0000	No	0.0000	Curr	0.0000	208.33	7000.00	0.00	0.00
Group Totals:													4443.20	411764.36	0.00	0.00
>>> INVESTOR #: HP POOL #: R3.0 DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual																
PRSV	HPRPRV7EM	The Fht Company	2	0	05/01/24	06/01/24	05/15/24	3.0000	No	3.0000	Curr	0.0000	244.21	17686.77	0.00	0.00
HPRPRVCOI	HPRPRVCOU	Paha Sapa Holdi	2	0	06/01/24	07/01/24	05/16/24	3.0000	No	3.0000	Curr	0.0000	111.88	15698.01	0.00	0.00
PRESERVAT	HPRPRVJOH	Johnson,Michael	2	0	06/01/24	07/01/24	05/29/24	3.0000	No	3.0000	Curr	0.0000	172.65	22974.61	0.00	0.00
Preservatn	HPRPRVPOT	Cara Mia Lic,Ca	2	0	06/01/24	07/01/24	05/29/24	3.0000	No	3.0000	Curr	0.0000	241.40	22497.94	0.00	0.00
HPRPRVRIC	HPRPRVRIC	Richerson,Jacqu	2	0	06/01/24	07/01/24	05/22/24	3.0000	No	3.0000	Curr	0.0000	329.96	22266.23	0.00	0.00
HPRPSVHOI	HPRPSVHOH	Hohn,John	2	0	06/01/24	07/01/24	05/10/24	3.0000	No	3.0000	Curr	0.0000	126.97	7608.95	0.00	0.00
PRESV 3	HPRPVUND3	Underhill,Ronal	2	0	05/01/24	06/01/24	05/13/24	3.0000	No	3.0000	Curr	0.0000	138.65	23599.78	0.00	0.00
HPRREFALL	HPRREFALL	Allen,Jesse	2	0	06/01/24	07/01/24	05/14/24	3.0000	No	3.0000	Curr	0.0000	103.56	17008.36	0.00	0.00
HPRREFGAT	HPRREFGAT	Gathmann,Naomi	2	0	05/01/24	06/01/24	05/10/24	3.0000	No	3.0000	Curr	0.0000	139.02	11369.25	0.00	0.00
Group Totals:													1608.30	160709.90	0.00	0.00
>>> INVESTOR #: HP POOL #: R3.5 DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual																
HPRPRSCH	HPRPRSCH	Schramm,Steven	2	0	06/01/24	07/01/24	05/08/24	3.5000	No	3.5000	Curr	0.0000	60.83	4838.86	0.00	0.00
Prsv 1	HPRPRSUN1	Underhill,Ronal	2	0	05/01/24	06/01/24	05/03/24	3.5000	No	3.5000	Curr	0.0000	144.99	22149.31	0.00	0.00
HPRPRVSJC	HPRPRVSJO	Sjomeling,Danie	2	0	05/01/24	06/01/24	05/08/24	3.5000	No	3.5000	Curr	0.0000	131.85	20966.16	0.00	0.00
Presv 2	HPRPVUN2	Underhill,Ronal	2	0	05/01/24	06/01/24	05/03/24	3.5000	No	3.5000	Curr	0.0000	144.99	22586.30	0.00	0.00
Group Totals:													482.66	70540.63	0.00	0.00
>>> INVESTOR #: HP POOL #: R4 DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual																
Refinance	11-240001	Lewis,Tracy	2	0	05/01/24	06/01/24	05/13/24	4.0000	No	4.0000	Curr	0.0000	364.25	26096.36	0.00	0.00
11-240002	11-240002	Coomes,Tim	2	0	05/01/24	06/01/24	05/02/24	4.0000	No	4.0000	Curr	0.0000	179.26	9397.77	0.00	0.00
HPRLFFS47	HPRLFFS47	Fosso,Bonnie R	2	0	05/01/24	06/01/24	05/15/24	4.0000	No	4.0000	Curr	0.0000	119.29	21459.35	0.00	0.00
PRESV	HPRPRLFJO	Johnson,Joette	2	0	05/01/24	06/01/24	05/06/24	4.0000	No	4.0000	Curr	0.0000	119.35	23640.28	0.00	0.00



Time: 10:29:29  
Date: 05/31/2024

**TRIAL BALANCE: POOLS**

Page: 3  
Run By: SUSAN17

Range Of Investors  
All Pools

NHS of Black Hills

Version: 3.1.26

Investor Loan #	Loan #	Borrower	Ln Tp	Bs Cd	Int Paid To Date	Due Date	Last Tran Date	Borrower Rate	Split Rate	Investor Rate	Service Code	Service Fee	Payment Amount	Current Pool Balance	Impound Balance	Suspense Balance
HPRRLOLSN	HPRRLOLSN	Olson,Steven	2	0	05/01/24	06/01/24	05/13/24	4.0000	No	4.0000	Curr	0.0000	110.69	7334.84	0.00	0.00
HPRRLTHOM	HPRRLTHOM	Thompson, Lee	2	0	05/01/24	06/01/24	05/08/24	4.0000	No	4.0000	Curr	0.0000	268.84	17604.44	0.00	0.00
Group Totals:													1161.68	105533.04	0.00	0.00
>>> INVESTOR #: HP POOL #: R5 DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual																
HPRLSCHMI	HPRLSCHMI	Schmidt, Mike	2	0	05/01/24	06/01/24	05/02/24	5.0000	No	5.0000	Curr	0.0000	506.82	21113.42	0.00	0.00
PRSV	HPRPSVGRE	Greenlee, Benjam	2	0	05/01/24	06/01/24	05/03/24	5.0000	No	5.0000	Curr	0.0000	353.35	23233.83	0.00	0.00
Group Totals:													860.17	44347.25	0.00	0.00
>>> INVESTOR #: HP POOL #: RIP-C DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual																
PSV	00-240022	Costopoulos, LI	11	1	04/19/24	04/01/25	05/22/24	0.0000	No	0.0000	Curr	0.0000	0.01	5603.29	0.00	0.00
Life Sfty	00-240027	Costopoulos, LI	11	1	04/19/24	04/01/25	05/22/24	0.0000	No	0.0000	Curr	0.0000	0.01	42129.00	0.00	0.00
Group Totals:													0.02	47732.29	0.00	0.00
>>> INVESTOR #: HP POOL #: RIP-R DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual																
RW- payabe	00-240015	Fasnacht, Glenn	11	1	04/23/24	04/01/25	04/23/24	0.0000	No	0.0000	Curr	0.0000	0.01	1815.82	0.00	0.00
FOUNDATIO	CHPFNDMCF	Mcfarland, Danik	11	1	07/10/23	07/01/24	07/10/23	0.0000	No	0.0000	Curr	0.0000	0.01	0.00	0.00	0.00
FOUNDATIO	CHPRFNDEM	Emrick Real Est	11	1	12/19/23	01/01/25	12/27/23	0.0000	No	0.0000	Curr	0.0000	0.01	0.00	0.00	0.00
FND	CHPRFNDA	Fairbairn, Nancy	11	1	08/23/23	09/01/24	08/17/23	0.0000	No	0.0000	Curr	0.0000	0.01	0.00	0.00	0.00
FND	CHPRFNDE	Heckman, Kyle	11	1	08/28/23	08/01/24	08/29/23	0.0000	No	0.0000	Curr	0.0000	0.01	0.00	0.00	0.00
LIFE SFTY	CHPRLSBY	Byrne, Tiffany	11	1	11/07/23	08/01/24	12/05/23	0.0000	No	0.0000	Curr	0.0000	0.01	8936.58	0.00	0.00
LS RIP	CHPRLSDRU	Laine-drummond,	11	1	09/20/23	10/01/24	11/07/23	0.0000	No	0.0000	Curr	0.0000	0.01	10975.78	0.00	0.00
LF SFTY	CHPRLSFAI	Fairbairn, Nancy	11	1	08/22/23	09/01/24	08/17/23	0.0000	No	0.0000	Curr	0.0000	0.01	0.00	0.00	0.00
LIFE SFTY	CHPRLSHE	Heckman, Kyle	11	1	08/28/23	08/01/24	08/29/23	0.0000	No	0.0000	Curr	0.0000	0.01	0.00	0.00	0.00
LIFE SFTY	CHPRLSPAR	Parham, Michael	11	1	09/20/23	10/01/24	12/20/23	0.0000	No	0.0000	Curr	0.0000	0.01	25000.00	0.00	0.00
PRSV	CHPRPRVFA	Fairbairn, Nancy	11	1	08/23/23	09/01/24	08/23/23	0.0000	No	0.0000	Curr	0.0000	0.01	4205.92	0.00	0.00
PRSV	CHPRPRVHE	Heckman, Kyle	11	1	08/30/23	08/01/24	08/30/23	0.0000	No	0.0000	Curr	0.0000	0.01	2651.96	0.00	0.00
PRESV	CHPRPSVEM	Emrick Real Est	11	1	01/02/24	01/01/25	01/02/24	0.0000	No	0.0000	Curr	0.0000	0.01	3482.51	0.00	0.00
PRESERVAT	CHPRPVBYR	Byrne, Tiffany	11	1	02/07/22	08/01/24	02/07/22	0.0000	No	0.0000	Curr	0.0000	0.01	2300.67	0.00	0.00
SIDING	CHPRSIDBY	Byrne, Tiffany	11	1	01/26/22	08/01/24	02/07/22	0.0000	No	0.0000	Curr	0.0000	0.01	0.00	0.00	0.00
SIDING	CHPRSIDEM	Emrick Real Est	11	1	12/19/23	01/01/25	12/27/23	0.0000	No	0.0000	Curr	0.0000	0.01	0.00	0.00	0.00
SIDING	CHPRSIDFA	Fairbairn, Nancy	11	1	08/23/23	09/01/24	08/17/23	0.0000	No	0.0000	Curr	0.0000	0.01	0.00	0.00	0.00
SIDING	CHPRSIDHE	Heckman, Kyle	11	1	08/28/23	08/01/24	08/29/23	0.0000	No	0.0000	Curr	0.0000	0.01	0.00	0.00	0.00
VACANT	CHPRVACFA	Fairbairn, Nancy	11	1	08/23/23	09/01/24	08/17/23	0.0000	No	0.0000	Curr	0.0000	0.01	0.00	0.00	0.00
VAC	CHPRVACPA	Parham, Michael	11	1	12/20/23	10/01/24	03/06/24	0.0000	No	0.0000	Curr	0.0000	0.01	10000.00	0.00	0.00

Time: 10:29:29  
Date: 05/31/2024

**TRIAL BALANCE: POOLS**

Page: 4  
Run By: SUSAN17

Range Of Investors  
All Pools

NHS of Black Hills

Version: 3.1.26

Investor Loan #	Loan #	Borrower	Ln Tp	Bs Cd	Int Paid To Date	Due Date	Last Tran Date	Borrower Rate	Split Rate	Investor Rate	Service Code	Service Fee	Payment Amount	Current Pool Balance	Impound Balance	Suspense Balance
WINDOWS	CHPRWINBY	Byrne,Tiffany	11	1	01/26/22	08/01/24	02/07/22	0.0000	No	0.0000	Curr	0.0000	0.01	0.00	0.00	0.00
WIN	CHPRWINEM	Emrick Real Est	11	1	12/19/23	01/01/25	12/27/23	0.0000	No	0.0000	Curr	0.0000	0.01	0.00	0.00	0.00
WIN	CHPRWINFA	Fairbairn,Nancy	11	1	08/23/23	09/01/24	08/17/23	0.0000	No	0.0000	Curr	0.0000	0.01	0.00	0.00	0.00
LIFE SFTY	HPRLSEMR	Emrick Real Est	11	1	12/19/23	01/01/25	12/27/23	0.0000	No	0.0000	Curr	0.0000	0.01	0.00	0.00	0.00
Group Totals:													0.24	69369.24	0.00	0.00
>>> INVESTOR #: HP POOL #: RRW0 DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual																
HPRRWOMIK	HPRRWOMIK	Mikla,Christine	2	0	06/01/24	07/01/24	05/29/24	0.0000	No	0.0000	Curr	0.0000	164.59	31799.17	0.00	0.00
RW PAYABLE	HPRRWOWE	Owens,Tracy	2	0	05/01/24	06/01/24	05/07/24	0.0000	No	0.0000	Curr	0.0000	118.98	26531.94	0.00	0.00
HPRRWPFSTI	HPRRWPFSTE	Sternhagen,Aaro	2	0	05/01/24	06/01/24	05/08/24	0.0000	No	0.0000	Curr	0.0000	167.48	8541.51	0.00	0.00
RW Payable	HPRWOREAU	Reausaw,Bernie	2	0	07/01/24	08/01/24	05/10/24	0.0000	No	0.0000	Curr	0.0000	740.68	11110.37	0.00	0.00
RW PAYABLE	HPRWPGASR	Gasper Iii,Jose	2	0	06/01/24	07/01/24	05/29/24	0.0000	No	0.0000	Curr	0.0000	252.24	13873.21	0.00	0.00
RW PAYABLE	HPRWPPWEB	Weber,Todd	2	0	05/01/24	06/01/24	05/03/24	0.0000	No	0.0000	Curr	0.0000	161.58	12118.81	0.00	0.00
Group Totals:													1605.55	103975.01	0.00	0.00
>>> INVESTOR #: HP POOL #: RRW4 DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual																
HPRWSWAN	HPRWSWAN2	Swaney,David	2	0	05/01/24	06/01/24	05/13/24	4.0000	No	4.0000	Curr	0.0000	60.22	11104.98	0.00	0.00
Group Totals:													60.22	11104.98	0.00	0.00
>>> INVESTOR #: HP POOL #: RRW5 DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual																
CLIENT RW	HPRWBOB05	Bobolz,Lance	2	0	05/01/24	06/01/24	05/10/24	5.0000	No	5.0000	Curr	0.0000	116.04	13315.85	0.00	0.00
Group Totals:													116.04	13315.85	0.00	0.00
>>> INVESTOR #: HP POOL #: RSFND DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual																
HPCFNDKNI	HPCFNDKNI	Knipper,Anita	2	0	11/07/19	11/07/29	11/07/19	0.0000	No	0.0000	Curr	0.0000	0.00	9970.52	0.00	0.00
HPFND771	HPFND770	Dragon Belly LI	2	0	03/17/20	03/01/30	03/18/20	0.0000	No	0.0000	Curr	0.0000	0.00	9461.50	0.00	0.00
HPFND772	HPFND772	Dragon Belly LI	2	0	03/17/20	03/01/30	03/18/20	0.0000	No	0.0000	Curr	0.0000	0.00	9817.75	0.00	0.00
HPFNDHILL	HPFNDHILL	Hills Partnersh	2	0	12/30/19	11/30/29	01/29/20	0.0000	No	0.0000	Curr	0.0000	0.00	8250.95	0.00	0.00
Foundation	HPFNDPOT	Cara Mia, Llc,C	2	0	10/24/22	10/01/32	10/27/22	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
FND	HPRFND7EM	The Fht Company	2	0	05/09/23	05/01/33	05/10/23	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
FOUNDATIOI	HPRFNDBOB	The Fhe Company	2	0	11/30/32	12/01/32	12/02/22	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
FOUNDATIOI	HPRFNDBRE	Breland,Philip	2	0	11/11/22	11/01/32	11/11/22	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
FOUNDATIOI	HPRFNDBUS	Bussiere,Erica	2	0	12/24/20	01/01/31	12/24/20	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
HPRFNDBYF	HPRFNDBYR	Byrne,Tiffany	2	0	01/25/24	01/01/34	01/29/24	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
FND	HPRFNDGRE	Greenlee,Benjam	2	0	09/29/23	10/01/33	10/03/23	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00

Time: 10:29:29  
Date: 05/31/2024

**TRIAL BALANCE: POOLS**

Page: 5  
Run By: SUSAN17

Range Of Investors  
All Pools

NHS of Black Hills

Version: 3.1.26

Investor Loan #	Loan #	Borrower	Ln Tp	Bs Cd	Int Paid To Date	Due Date	Last Tran Date	Borrower Rate	Split Rate	Investor Rate	Service Code	Service Fee	Payment Amount	Current Pool Balance	Impound Balance	Suspense Balance
HPRFNDHO	HPRFNDHO	Hohn, John	2	0	10/23/22	11/01/32	10/24/22	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
FOUNDATIO	HPRFNDJOH	Johnson, Michael	2	0	11/18/22	11/01/32	11/18/22	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
Foundation	HPRFNDMUN	Munce, Jeffrey	2	0	12/28/20	12/01/30	12/29/20	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
HPRFNDSMI	HPRFNDSMI	Smith, Gordon	2	0	10/23/23	10/01/33	10/26/23	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
FOUNDATIO	HPRFNDUND	Underhill, Ronal	2	0	03/09/21	03/01/31	03/09/21	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00

Group Totals: 0.00 157500.72 0.00 0.00

>>> INVESTOR #: HP POOL #: RSPE DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual

CHPSNEBRC	CHPSNEBRG	Berg, Tim	11	1	11/18/15	11/12/25	12/31/18	0.0000	No	0.0000	Curr	0.0000	0.01	5691.42	0.00	0.00
CHPSNEWO	CHPSNEWOO	Parham, Karin	11	1	02/06/14	08/01/24	04/01/14	0.0000	No	0.0000	Curr	0.0000	0.01	7155.88	0.00	0.00
CHPSPEJJO	CHPSPEJJO	Sjomeling, Rober	11	1	06/19/14	10/01/24	07/24/14	0.0000	No	0.0000	Curr	0.0000	0.01	10000.00	0.00	0.00
HP SNE	HPSNEWHTO	White, V. Caroly	2	0	07/01/17	06/01/27	06/15/17	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00

Group Totals: 0.03 32847.30 0.00 0.00

>>> INVESTOR #: HP POOL #: RSSID DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual

CHPSIDJLS	CHPSIDJLS	Julius, Dorrene	11	1	08/16/16	09/09/25	01/31/18	0.0000	No	0.0000	Curr	0.0000	0.01	2937.88	0.00	0.00
CHPSIDLW0	CHPSIDLW0	Lewis, Tracy	2	0	03/20/17	03/01/27	04/01/17	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
CHPSIDSHP	CHPSIDSHP	Shepherd, Lanny	11	1	11/18/15	10/30/25	12/31/18	0.0000	No	0.0000	Curr	0.0000	0.01	6997.50	0.00	0.00
CHPSIDWRT	CHPSIDWRT	Wright, Alan	11	1	04/08/15	09/17/24	08/06/15	0.0000	No	0.0000	Curr	0.0000	0.01	10000.00	0.00	0.00
SIDING	HPRSID106	Oberlander, Bruc	2	0	10/22/20	10/01/30	10/23/20	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
HPRSIDANT	HPRSIDANT	Antrim, James	2	0	07/02/21	06/01/31	07/02/21	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
HPRSIDBRE	HPRSIDBRE	Breland, Philip	2	0	11/30/23	12/01/33	11/30/23	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
SIDING	HPRSIDCOU	Paha Sapa Holdi	2	0	03/07/23	04/01/33	03/21/23	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
SIDING	HPRSIDJOH	Johnson, Michael	2	0	11/18/22	11/01/32	11/18/22	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
SIDING	HPRSIDUND	Underhill, Ronal	2	0	10/17/22	11/01/32	10/24/22	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
HPSID770	HPSID700	Dragon Belly, L	2	0	03/24/20	03/01/30	03/23/20	0.0000	No	0.0000	Curr	0.0000	0.00	3331.80	0.00	0.00
HPSIDKNI	HPSIDKNI	Knipper, Anita	2	0	11/07/19	11/07/29	11/07/19	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
HPSIDSMT0	HPSIDSMT0	Smith, Edwin	11	1	11/25/16	12/01/26	12/20/16	0.0000	No	0.0000	Curr	0.0000	0.01	10000.00	0.00	0.00
HP SIDING	HPSIDWHTO	White, V. Caroly	2	0	07/01/17	06/01/27	06/15/17	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00

Group Totals: 0.04 123267.18 0.00 0.00

>>> INVESTOR #: HP POOL #: RSWIN DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual

CHPWINJL2	CHPWINJL2	Julius, Dorrene	11	1	08/02/16	04/27/26	09/28/17	0.0000	No	0.0000	Curr	0.0000	0.01	15066.88	0.00	0.00
CHPWINLW0	CHPWINLW0	Lewis, Tracy	2	0	03/17/17	03/01/27	04/01/17	0.0000	No	0.0000	Curr	0.0000	0.00	8268.42	0.00	0.00
CHPWINMR5	CHPWINMRS	Morris, Wayne	11	1	08/26/15	08/26/25	12/31/18	0.0000	No	0.0000	Curr	0.0000	0.01	4536.00	0.00	0.00

Time: 10:29:29  
Date: 05/31/2024

**TRIAL BALANCE: POOLS**

Range Of Investors  
All Pools

NHS of Black Hills

Version: 3.1.26

Investor Loan #	Loan #	Borrower	Ln Tp	Bs Cd	Int Paid To Date	Due Date	Last Tran Date	Borrower Rate	Split Rate	Investor Rate	Service Code	Service Fee	Payment Amount	Current Pool Balance	Impound Balance	Suspense Balance
CHPWINSHP	CHPWINSHP	Shepherd,Lanny	11	1	12/23/15	10/30/25	12/31/18	0.0000	No	0.0000	Curr	0.0000	0.01	2940.00	0.00	0.00
HPCWINKNI	HPCWINKNI	Knipper,Anita	2	0	11/07/19	11/07/29	11/07/19	0.0000	No	0.0000	Curr	0.0000	0.00	20000.00	0.00	0.00
WINDOW	HPWIN106	Oberlander,Bruc	2	0	10/22/20	10/01/30	10/23/20	0.0000	No	0.0000	Curr	0.0000	0.00	3200.00	0.00	0.00
HPRWIN770	HPRWIN770	Dragon Belly, L	2	0	01/16/24	01/01/34	01/16/24	0.0000	No	0.0000	Curr	0.0000	0.00	1507.96	0.00	0.00
HPRWIN772	HPRWIN772	Dragon Belly, L	2	0	01/16/24	01/01/34	01/16/24	0.0000	No	0.0000	Curr	0.0000	0.00	1769.70	0.00	0.00
HPRWINANT	HPRWINANT	Antrim,James	2	0	07/01/21	06/01/31	07/02/21	0.0000	No	0.0000	Curr	0.0000	0.00	20000.00	0.00	0.00
WIN/DOORS	HPRWINBLA	Blair,Christoph	2	0	05/23/24	05/01/34	05/29/24	0.0000	No	0.0000	Curr	0.0000	0.00	6597.23	0.00	0.00
HPRWINBRE	HPRWINBRE	Breland,Philip	2	0	01/03/24	01/01/34	01/03/24	0.0000	No	0.0000	Curr	0.0000	0.00	7000.00	0.00	0.00
HPRWINCOL	HPRWINCOU	Paha Sapa Holdi	2	0	04/01/32	05/01/33	05/05/23	0.0000	No	0.0000	Curr	0.0000	0.00	11400.00	0.00	0.00
HPRWINHOH	HPRWINHOH	Hohn,John	2	0	11/08/23	12/01/33	11/15/23	0.0000	No	0.0000	Curr	0.0000	0.00	9500.00	0.00	0.00
WINDOWS	HPRWINJOH	Johnson,Michael	2	0	11/18/22	11/01/32	11/18/22	0.0000	No	0.0000	Curr	0.0000	0.00	16800.00	0.00	0.00
Windows	HPRWINMUN	Munce,Jeffrey	2	0	12/28/20	12/01/30	12/28/20	0.0000	No	0.0000	Curr	0.0000	0.00	19850.00	0.00	0.00
WINDOWS	HPRWINPOT	Cara Mia Llc,Ca	2	0	06/23/23	06/01/33	07/03/23	0.0000	No	0.0000	Curr	0.0000	0.00	7237.90	0.00	0.00
Windows	HPRWINUND	Underhill,Ronal	2	0	11/22/23	11/01/33	11/22/23	0.0000	No	0.0000	Curr	0.0000	0.00	2271.93	0.00	0.00
HPWIN772	HPWIN772	Dragon Belly Lj	2	0	03/17/20	03/01/30	03/18/20	0.0000	No	0.0000	Curr	0.0000	0.00	6660.40	0.00	0.00
HPWINBOB0	HPWINBOB0	The Fhe Company	2	0	05/14/20	05/01/30	05/14/20	0.0000	No	0.0000	Curr	0.0000	0.00	18000.00	0.00	0.00
HPWINHILL	HPWINHILL	Hills Partnersh	2	0	12/30/19	12/30/29	01/29/20	0.0000	No	0.0000	Curr	0.0000	0.00	751.56	0.00	0.00
HPWINKIN	HPWINKIN	Kinkler,Brian	2	0	01/17/20	02/01/30	01/17/20	0.0000	No	0.0000	Curr	0.0000	0.00	1600.00	0.00	0.00
HPWINPET	HPWINPET	Dragon Belly Lj	2	0	03/17/20	03/01/30	03/18/20	0.0000	No	0.0000	Curr	0.0000	0.00	13718.64	0.00	0.00
HP WIN	HPWINREA0	Reausaw,Bernie	2	0	11/01/18	11/01/28	12/18/18	0.0000	No	0.0000	Curr	0.0000	0.00	20000.00	0.00	0.00
WIN FORG	HPWINSHAM	Shama,Larry	2	0	10/01/17	09/01/27	11/10/17	0.0000	No	0.0000	Curr	0.0000	0.00	16793.63	0.00	0.00
HPWINSMT0	HPWINSMT0	Smith,Edwin	11	1	11/25/16	12/01/26	12/20/16	0.0000	No	0.0000	Curr	0.0000	0.01	3200.00	0.00	0.00
HP WINDOW	HPWINWHT0	White,V. Caroly	2	0	07/01/17	06/01/27	06/15/17	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00

Group Totals: 0.04 248670.25 0.00 0.00

>>> INVESTOR #: HP POOL #: RVAC DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual

VAC HOME	HPRVACBO	The Fht Company	2	0	05/09/23	05/01/33	05/10/23	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
HPRVACBYR	HPRVACBYR	Byrne,Tiffany	2	0	01/25/24	01/01/34	01/29/24	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
VAC HOME	HPRVACJOH	Johnson,Michael	2	0	11/18/22	11/01/32	11/18/22	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
VAC HOME	HPRVACMCF	Mcfarland,Danik	2	0	12/31/23	12/01/33	01/08/24	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
VACANT	HPRVACPOT	Cara Mia Lic,Ca	2	0	10/24/22	10/01/32	10/27/22	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
VACANT	HPRVACTHO	Thompson Ii,Mar	2	0	02/13/23	02/01/33	02/13/23	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
VAC HM	HPRVACUND	Underhill,Ronal	2	0	03/09/21	03/01/31	03/09/21	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
HPRVACWEI	HPRVACWEB	Weber,Todd	2	0	07/02/21	07/01/31	07/02/21	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00

Time: 10:29:29  
Date: 05/31/2024

**TRIAL BALANCE: POOLS**

Page: 7  
Run By: SUSAN17

Range Of Investors  
All Pools

NHS of Black Hills

Version: 3.1.26

Investor Loan #	Loan #	Borrower	Ln Tp	Bs Cd	Int Paid To Date	Due Date	Last Tran Date	Borrower Rate	Split Rate	Investor Rate	Service Code	Service Fee	Payment Amount	Current Pool Balance	Impound Balance	Suspense Balance
VACANT LN	HPVACBIAL	Bialas,Kurt	2	0	03/01/18	03/01/28	03/05/18	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
HPVANCMJM	HPVANCMJ0	Johnson,Michael	2	0	12/01/18	12/01/28	12/12/18	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
HPVNCNTBLM	HPVNCNTBLM	Bloom,Christoph	2	1	08/18/16	08/18/26	10/01/16	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
HP VACANT	HPVCNWH0	White,V. Caroly	2	0	07/01/17	06/01/27	06/15/17	0.0000	No	0.0000	Curr	0.0000	0.00	10000.00	0.00	0.00
Group Totals:													0.00	120000.00	0.00	0.00
Investor Totals:													13575.09	2234538.98	0.00	0.00

>>> INVESTOR #: HPRW POOL #: PERM DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual Payrr

CITY RW	CONRWBOB0	Bobolz,Lance	11	1	12/01/17	12/01/27	01/01/18	0.0000	No	0.0000	Curr	0.0000	0.01	18042.61	0.00	0.00
CONRWCOB	CONRWCOOM	Coomes,Tim	11	1	02/11/19	03/01/29	02/11/19	0.0000	No	0.0000	Curr	0.0000	0.01	67491.73	0.00	0.00
CONRWFEN	CONRWFEN0	Fenton,Kris	11	1	06/13/18	06/01/28	07/01/18	0.0000	No	0.0000	Curr	0.0000	0.01	17584.40	0.00	0.00
CONRWMIKL	CONRWMIKL	Mikla,Christine	2	0	03/08/21	04/01/26	03/08/21	0.0000	No	0.0000	Curr	0.0000	0.00	91445.00	0.00	0.00
RW Forgiv	CONRWREAU	Reausaw,Bernie	2	0	09/24/20	10/01/30	09/24/20	0.0000	No	0.0000	Curr	0.0000	0.00	105468.23	0.00	0.00
CONRWVWH	CONRWVWHI	White,V. Caroly	11	1	09/20/16	09/20/26	09/26/16	0.0000	No	0.0000	Curr	0.0000	0.01	90073.00	0.00	0.00
CRW GRANT	CONRWWHT2	White,V. Caroly	11	1	10/18/17	11/01/27	11/08/17	0.0000	No	0.0000	Curr	0.0000	0.01	8699.04	0.00	0.00
CITY RW	HPCONBOBO	Bobolz,Lance	11	1	01/01/18	01/01/28	01/01/18	0.0000	No	0.0000	Curr	0.0000	0.01	199815.00	0.00	0.00
HPRRWCEM	HPRRWCEMR	Ernick Real Est	2	0	01/22/24	01/01/34	01/22/24	0.0000	No	0.0000	Curr	0.0000	0.00	45082.88	0.00	0.00
RW FORG	HPRRWCOWE	Owens,Tracy	2	0	11/16/22	11/01/27	11/16/22	0.0000	No	0.0000	Curr	0.0000	0.00	103803.20	0.00	0.00
HPRRWFSH	HPRRWFSHA	Shama,Larry	2	0	01/17/24	01/01/29	01/18/24	0.0000	No	0.0000	Curr	0.0000	0.00	186448.00	0.00	0.00
HPRRWFTE	HPRRWFTE	Sternhagen,Aaro	2	0	08/02/23	08/01/33	08/02/23	0.0000	No	0.0000	Curr	0.0000	0.00	8670.00	0.00	0.00
RW CITY	HPRWCSHEP	Shepherd,Lanny	2	0	11/13/20	10/01/30	11/13/20	0.0000	No	0.0000	Curr	0.0000	0.00	18616.85	0.00	0.00
RW FORG	HPRWFGASR	Gaspar Iii,Jose	2	0	12/20/21	01/01/27	12/20/21	0.0000	No	0.0000	Curr	0.0000	0.00	48928.95	0.00	0.00
RW Forgiv	HPRWFWEB	Weber,Todd	2	0	08/05/20	08/01/30	08/06/20	0.0000	No	0.0000	Curr	0.0000	0.00	82607.50	0.00	0.00
Group Totals:													0.06	1092776.39	0.00	0.00

>>> INVESTOR #: HPRW POOL #: RIP DISTRIBUTION RATE: 0.0000 COMPUTATION: Actual/Actual Paymer

RW- Forg	00-240016	Julius,Dorrene	11	1	04/10/24	05/01/25	04/10/24	0.0000	No	0.0000	Curr	0.0000	0.01	76320.00	0.00	0.00
RW- Forg	00-240017	Fasnacht,Glenn	11	1	04/23/24	04/01/25	04/23/24	0.0000	No	0.0000	Curr	0.0000	0.01	0.00	0.00	0.00
Group Totals:													0.02	76320.00	0.00	0.00
Investor Totals:													0.08	1169096.39	0.00	0.00
Report Totals:													13575.17	3403635.37	0.00	0.00

**Deadwood Historic Preservation  
Revolving Loan Fund**

**Investor # HP = DHP Revolving Loan Fund**

Loan # Code	Pool Code	Loan Type	Interest Rate	Program
-------------	-----------	-----------	---------------	---------

11	R 0	Residential	0.00%	Revolving Loan Fund
11	R 3.0	Residential	3.00%	Revolving Loan Fund
11	R 3.5	Residential	3.50%	Revolving Loan Fund
11	R 4	Residential	4.00%	Revolving Loan Fund
11	R 4.5	Residential	4.50%	Revolving Loan Fund
11	R 5.0	Residential	5.00%	Revolving Loan Fund

21	RSFND	Residential	0.00%	Foundation Program
22	RSSID	Residential	0.00%	Siding Program
23	RSWIN	Residential	0.00%	Window Program
24	RSPE	Residential	0.00%	Special Needs Elderly
25	RSVAC	Residential	0.00%	Vacant Home Program

31	RRW0	Residential	0.00%	Retaining Wall- Owner
31	RRW4	Residential	4.00%	Retaining Wall- Owner
31	RRW5	Residential	5.00%	Retaining Wall- Owner

OO	RIP-R	Residential	0.00%	RW Owner- In Construction
----	-------	-------------	-------	---------------------------

**Investor #HPRW = City of Deadwood Portion of Retaining Wall- Forgivable**

32	Perm	Residential	0.00%	Retaining Wall- City Portion
----	------	-------------	-------	------------------------------

OO	CRW-Pe	Residential	0.00%	RW City- In Construction
----	--------	-------------	-------	--------------------------

Loan # Code	Pool Code	Loan Type	Interest Rate	Program
-------------	-----------	-----------	---------------	---------

41	C0	Commercial	0.00%	Revolving Loan Fund
41	C1	Commercial	1.00%	Revolving Loan Fund
41	C2	Commercial	2.00%	Revolving Loan Fund
41	C3	Commercial	3.00%	Revolving Loan Fund
41	C4	Commercial	4.00%	Revolving Loan Fund
41	C5	Commercial	5.00%	Revolving Loan Fund
41	C6	Commercial	6.00%	Revolving Loan Fund
41	C7	Commercial	7.00%	Revolving Loan Fund
42	CFAC	Commercial	0.00%	Façade Easement Loan
43	CUFR	Commercial	0.00%	Upper Floor Revital Loan

OO	RIP-C	Commercial	0.00%	Const. Projects in Process
----	-------	------------	-------	----------------------------

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)  
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:

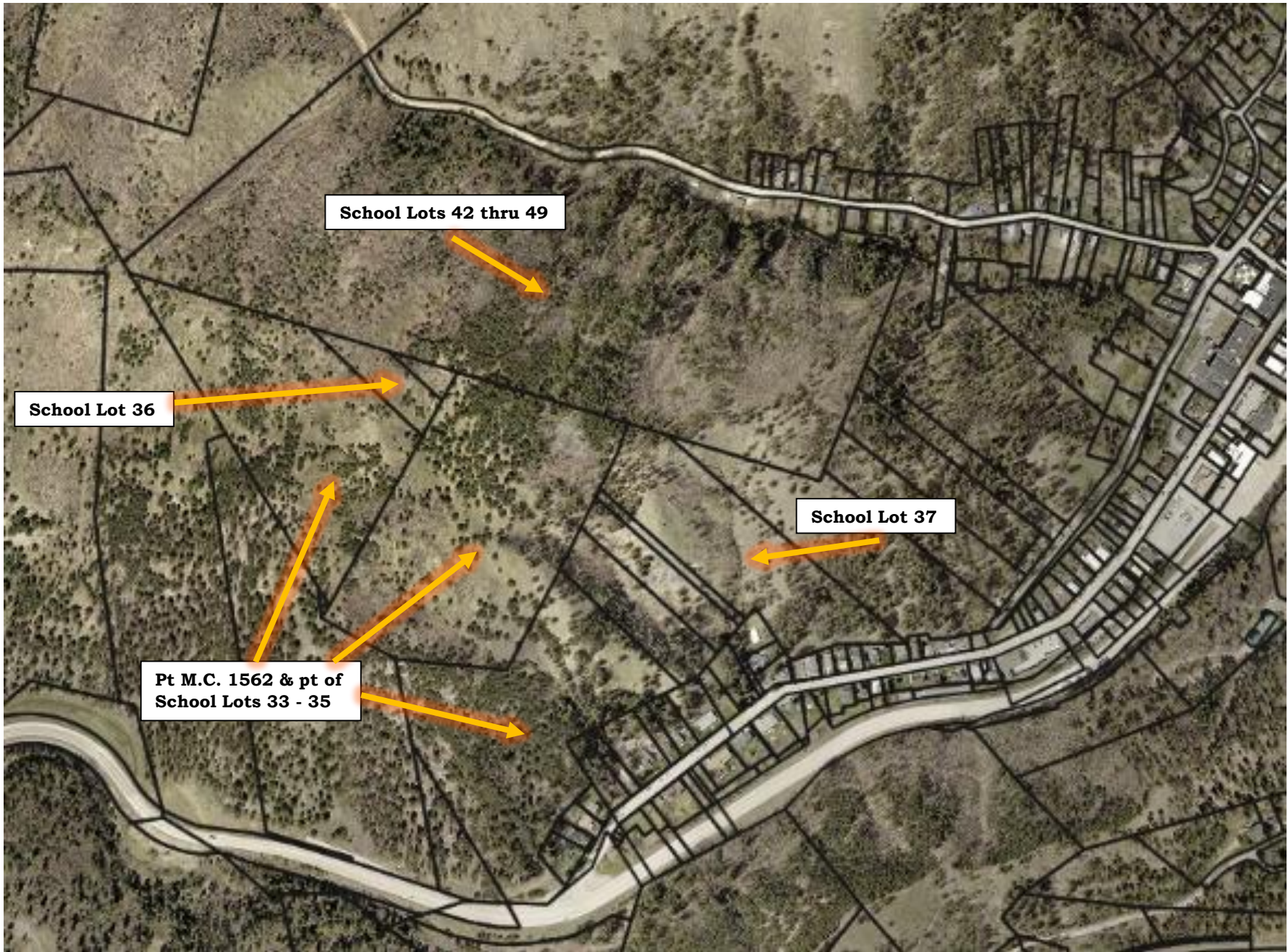
1. The City of Deadwood desires to preserve the natural environment, livability, and sense of community.
2. The City of Deadwood desires to protect the scenic, historic, and small city character while emphasizing and preserving the community's historic past for future generations.
3. The City of Deadwood 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.



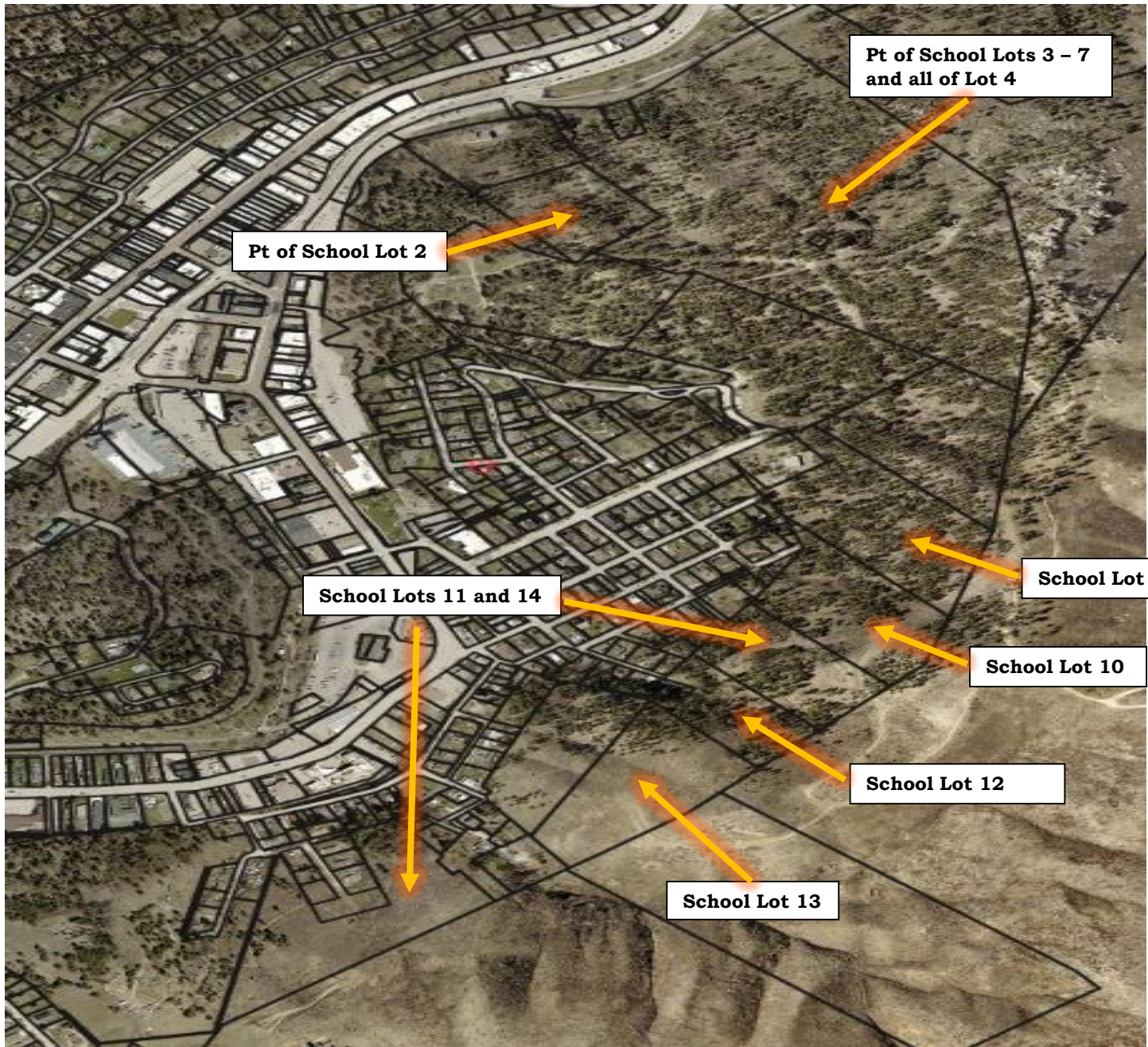
Aerial overview of parcels affected by proposed Conservation Easements.













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:** June 5, 2024

**TO:** Deadwood Historic Preservation 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.

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 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 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)

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 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)  
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 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.

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: June 18, 2024  
To: Deadwood Historic Preservation Commission  
From: Kevin Kuchenbecker, Historic Preservation Officer  
Mike Runge, City Archivist  
Re: Pannier Graphics, Outdoor Interpretive Panels

---

The City of Deadwood Archives is requesting permission to purchase four (4) outdoor interpretive panels from Pannier Graphics of Gibsonia, PA to be placed throughout Deadwood Gulch as part of Deadwood's Historic Walking Tour.

As part of this quote, the Historic Preservation Office would like to update and add the following panels to the downtown walking tour:

- 18 x 24" First Baptist Church, 110 Sherman Steet, single pedestal.
- 18 x 24" Serving the Black Hills, Outlaw Square, wall mount.
- 18 x 24" Deadwood Changing, Outlaw Square, single pedestal.
- 24 x 36" Deadwood Formation, Deadwood Welcome Center, double pedestal.

## RECOMMENDTION

Recommend to the City Commission to allow the Historic Preservation Office permission to purchase four outdoor interpretive signs from Pannier Graphics at a cost not to exceed \$3,400.00 dollars. (Budgeted from HP Public Education line item.)





345 Oak Road . Gibsonia, PA 15044  
 724-265-4900 . 724-265-4300 (fax)  
 www.PannierGraphics.com

DATE: 6/13/2024

Section 6 Item b.

**QUOTE: E202406057**

City of Deadwood  
 108 Sherman Street  
 Deadwood SD 57732

Contact: Mike Runge  
 Phone: (605) 578-2082x2222  
 Email: michael.runge@cityofdeadwood.com  
 Project: Deadwood Walking Tour Updates

Quantity	Description	Unit Price	Extended Price
3	24"w x 18"h x .090 Fiberglass Embedded (FE) Panels. All different. Single-faced. Matte finish. Square cut. No holes.	\$209.00	\$627.00
2	Aluminum Single Pedestal Exhibit Bases for 24"w x 18"h Panels. Visual area will be 23"w x 17"h. Includes (1) 3" x 3" x 57" post. Direct embedment. Powder coated Black with a textured finish.	\$360.00	\$720.00
1	Aluminum Rail Mounted Exhibit Base for 24"w x 18"h Panel. Visual area will be 23"w x 17"h. Powder coated Black with a textured finish.	\$435.00	\$435.00
1	36"w x 24"h x .090 Fiberglass Embedded (FE) Panel. Single-faced. Matte finish. Square cut. No holes.	\$375.00	\$375.00
1	Aluminum Double Pedestal Exhibit Base for 36"w x 24"h Panel. Visual area will be 35"w x 23"h. Includes (2) 4" x 4" x 57" posts for direct embedment. Powder coated Black with a textured finish.	\$600.00	\$600.00

**Sale Amount: \$2,757.00**  
**Estimated Shipping to 57732: \$465.00**  
**Total Amount: \$3,222.00**

**TERMS AND CONDITIONS**

- By signing this quote, the customer agrees to all terms and conditions in this document.
- **Payment: Net 30 Days.**

*Summer Timmer*

Summer Timmer  
 Account Manager  
 724-265-4900 x207  
 slt@pannier.com

*Mike Runge*

06-14-2024

Customer Acceptance/Date

Mike Runge City Archivist

Print Name and Title



## TERMS & CONDITIONS

### PANELS

**Panel Files:** Pricing is based on receiving print-ready files. For more information, refer to our [File Preparation Guidelines](#). Completed files can be uploaded to our [FTP Site](#).

**Panel Design:** If Pannier is designing, preliminary design will be developed via PDF submittals and delivered over email. Pricing includes two rounds of revisions prior to delivery of a hard copy proof for each original design.

**Proofs:** One proof of each original will be submitted for the customer's approval. This printout will represent the actual color and resolution of the final embedded panel. Final changes may be made to this printout before proceeding to production.

### PRICING

**Pricing:** Sale Amount is valid for 60 days from the quote date.

**Pricing:** Sale Amount subject to change if all approvals are not completed within 120 days of original quote date.

**Credit Card Fee:** A fee of 3% will be applied to all credit card transactions. (By providing your credit card information, you are agreeing to these terms.)

**Cancellation:** If order is cancelled, time and materials spent up to that point will be assessed and a final invoice will be provided. This invoice will carry a minimum charge of \$250, and cover agreed upon and completed work up to the point of cancellation.

### SHIPPING

**Packaging:** Order will be bulk packed and one shipment.

**Production:** Production begins only after customer provides all necessary payments, delivery information, artwork and frame drawing approvals.

**Delivery:** 30-40 business days (6-8 calendar weeks) after Pannier receives all necessary deposits and approvals, unless otherwise noted.

**Shipping:** Estimated shipping does not include any special services such as a liftgate, inside delivery or delivery to a residential address. Order may be delivered via an 18-wheeler truck. Depending on the size of the order, the shipment may need to be offloaded with a forklift.

**Shipping Estimate:** Shipping cost shown above is an estimate generated on the day the quote is written. Estimate includes packaging and handling. Final shipping charges can vary based on the volatility of the transit industry. Additional shipping charges may be invoiced at time of shipment.

**FOB Destination:** Freight Prepaid & Add

**Sales Tax:** If sales tax exempt, please provide documentation.



345 Oak Road . Gibsonia, PA 15044  
 724.265.4900 . 724-265-4300 (fax)  
 www.PannierGraphics.com

Section 6 Item b.

## Delivery Address Form

Please fill out the following form to confirm the delivery address of your order from Pannier. Deliveries are typically made Monday through Friday, 8 am-5 pm. The order may be delivered via an 18-wheeler truck.

There may be multiple crates depending on the size of the order. You will be required to unload the shipment from the truck at the delivery site. All shipping information, such as delivery date and tracking information, will be emailed to you once the order has shipped.

Company Name:

City of Deadwood

Delivery Contact Name:

Mike Runge

Physical Delivery Address:

108 Sherman Street  
 Deadwood, SD 57732

Delivery Contact Phone Number:

605-578-2082

Receiving Days For Physical Address Location (check all that apply):

- Monday
- Wednesday
- Friday
- Tuesday
- Thursday

Call For Appointment? \*If an appointment is required, delivery will be delayed by at least one business day. The delivery contact will receive a phone call from the shipping company to set up a delivery date.\*Please note that if your order is shipping via UPS Ground, special services are not available.\*

Yes  No

Receiving Hours For Physical Address Location (write in hours):

8:00am to 5:00pm Mountain Time

Please check any special services needed. These services WILL require additional charges unless they were included in the quote. By checking the box, you agree to the charge. \*Please note that if your order is shipping UPS Ground, special services are not available.\*

Email address to send invoice to:

archives@cityofdeadwood

- Inside Delivery and Lift Gate - \$120.00
- Lift Gate - \$95.00
- Residential Delivery - \$50.00

## Hard-Copy Proof Address Form

If you ordered FE or GCL panels, you will receive a hard-copy proof of each unique panel design. These are sent via UPS. You will receive email confirmation when they are sent. Please provide an address below. Please note, we cannot ship to a PO Box.


- Please use Delivery Address entered above.
- Please use the following address and contact informaton:

please use above address



# Signature Certificate

Reference number: NPGVQ-TWZHN-WAQ9X-2HKZE

Signer	Timestamp	Signature
<b>Mike Runge</b> Email: michael.runge@cityofdeadwood.com		
Sent:	14 Jun 2024 15:00:28 UTC	
Viewed:	14 Jun 2024 15:01:18 UTC	
Signed:	14 Jun 2024 15:06:04 UTC	
<b>Recipient Verification:</b>		IP address: 67.158.27.170
✓Email verified	14 Jun 2024 15:01:18 UTC	Location: Spearfish, United States

Document completed by all parties on:  
14 Jun 2024 15:06:04 UTC

Page 1 of 1



### Signed with PandaDoc

PandaDoc is a document workflow and certified eSignature solution trusted by 50,000+ companies worldwide.





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:** June 20, 2024  
**To:** Deadwood Historic Preservation Commission  
**From:** Kevin Kuchenbecker, Historic Preservation Officer  
 Bonny Anfinson, Program Coordinator  
**Re:** Proposed Changes to Upper Floor Revitalization Program

---

In an effort to spur revitalization and usage of upper floors on Main Street, the Historic Preservation Commission created a revolving loan for upper floor rehabilitation on structures in the local historic district in 2018. The program was set up as a 0% three-year loan with a maximum amount of \$250,000 per resource. There have been a couple of businesses who have utilized this program; however, there is an opinion it has been underutilized due to the rise of construction costs and additional requirements for commercial properties to install required sprinkler systems.

The Loan Committee discussed changes to the revolving loan to a square foot allowance to better support the larger structures on Historic Main Street. The recommendation is to change the loan to a five-year loan with the first three years at 0% and the fourth and fifth year be at 3% interest rate. The loan amount will be \$100 per square foot of floor space capped at \$500,000 maximum.

The Loan Committee has reviewed this request and recommends approval.

### **Recommended Motion:**

Move to the change the revolving loan for upper floor development to a square foot allowance to better support the larger structures on Historic Main Street and change the loan to a five-year loan with the first three years at 0% and the fourth and fifth year be at 3% interest rate. The loan amount will be \$100 per square foot of floor space, capped at \$500,000 maximum loan to qualified borrowers.

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:** June 20, 2024  
**To:** Deadwood Historic Preservation Commission  
**From:** Kevin Kuchenbecker, Historic Preservation Officer  
 Bonny Anfinson, Program Coordinator  
**Re:** Satisfaction of Grants Procedure

---

Upon approval and acceptance of the grant programs an agreement is recorded at the County Register of Deeds. If the property is sold or the owner refinances, this agreement will show up during the title search. Title Companies and banks request the grant be satisfied so there will be a clear title. Currently, when satisfying a grant there is no procedure, but staff has been taking the requests to Loan Committee and then to Historic Preservation Commission for approval. This is a long and timely process and it has been difficult to meet closing dates so the majority of the time the approval is after the fact.

Staff is requesting a procedure be put into place so satisfaction of grants can be done quickly without needing Historic Preservation Commission approval. The satisfaction does not release the owner or new owner from maintaining the structure to the Minimum Maintenance Standards or to allow the property to deteriorate to a point of demolition by neglect. The satisfaction only releases the grant dollar amount associated with the agreement.

### **Recommended Motion:**

Move to establish a procedure to give the authority of preparing and approving grant satisfactions for title companies and banks to the Historic Preservation Officer or his/her designee.

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:** June 20, 2024  
**To:** Deadwood Historic Preservation Commission  
**From:** Kevin Kuchenbecker, Historic Preservation Officer  
 Bonny Anfinson, Program Coordinator  
**Re:** Proposed Increase to Loan Interest Rates

---

Residential Mortgage interest rates have increased dramatically since November of 2022. Currently, the prime interest rate is 8.5% from 7.00% in November of 2022, when we last changed interest rates. The Historic Preservation loan interest rates have remained at 3-5% during this same period.

The Loan Committee is recommending increasing the interest rates as follows:

- Increase the interest rate from 4% to 5% for Owner Occupied properties
- Increase the interest rate from 5% to 6% for NON-Owner-Occupied properties
- Increase the interest rate from 5% to 6% for Commercial properties

The Loan Committee has reviewed this request and recommend approval.

### **Recommended Motion:**

Move to increase the interest rate to 5% for owner occupied properties; 6% for non-owner occupied properties; 6% for commercial properties.

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:** June 20, 2024  
**To:** Deadwood Historic Preservation Commission  
**From:** Kevin Kuchenbecker, Historic Preservation Officer  
 Bonny Anfinson, Program Coordinator  
**Re:** Change to Forgivable Retaining Wall Program

---

The current procedure for the forgivable portion of the retaining wall loan program has created a negative effect on our property owners in being able to access equity on these properties. The forgivable portion of the program is the city portion of the retaining wall costs from the Historic Preservation's annual operating budget. If the property is refinanced or sold within 10 years a prorated portion is paid back to the city.

Changing this portion of the loan to a grant would help remedy the issue to our residential property owners. The recapture clause on a grant is the same as the revolving loan. The Loan Committee and staff has reviewed this process and recommend approval for this alteration to the retaining wall program.

### **Recommended Motion:**

Move to change the revolving loan portion of the retaining wall program to a grant with recapture clause.





## **MEMORANDUM**

**Date:** February 9, 2024  
**To:** Deadwood Historic Preservation Commission  
**From:** Kevin Kuchenbecker, Planning, Zoning & Historic Preservation Officer  
 Bonny Anfinson, Preservation Coordinator  
**Re:** 2024 Round 1 Outside of Deadwood Grants

On June 20, 2024, the Projects Committee reviewed the 2024 Round 2 Outside of Deadwood Grant applications. This round included six (6) Outside of Deadwood Grant applications for a project total of \$182,616.95 which included requests from the program of \$53,080.00.

The budget for 2024 is set at \$100,000.00 with two funding cycles, January and June of each year. Round 2 budget is set at \$50,000.00. The Projects Committee closely reviewed the applications and made the following recommendations for grant approval. The table lists the applicant, project, location and amount for six grants totaling \$50,000.00.

The Project Committee recommends approval of the 2024 Round 2 Outside of Deadwood Grants as follows:

<b>2024 RD 2 Outside of Deadwood Grant Requests</b>					
<b>Organization Name</b>	<b>City</b>	<b>Project Budget</b>	<b>Matching Funds</b>	<b>Amount Requested</b>	<b>Suggested Approval</b>
Dakotaland Museum - Item A	Huron	\$9,000.00	\$4,500.00	\$4,500.00	<b>\$ 5,000.00</b>
Lead/Deadwood Sanitary District - Item B	Lead	\$80,000.00	\$70,000.00	\$10,000.00	<b>\$ 10,000.00</b>
Rocky Mountain Elk Foundation - Item C	Belle Fourche	\$20,775.00	\$11,575.00	\$9,200.00	<b>\$ 10,000.00</b>
SD Historic Society Foundation - Item D	Pierre	\$19,948.95	\$10,568.95	\$9,380.00	<b>\$ 5,000.00</b>
Sully County - Item E	Onida	\$23,893.00	\$13,893.00	\$10,000.00	<b>\$ 10,000.00</b>
St. Wenceslaus Catholic Church - Item F	Tabor	\$29,000.00	\$19,000.00	\$10,000.00	<b>\$ 10,000.00</b>
<b>TOTAL GRANT REQUESTS</b>		<b>\$182,616.95</b>	<b>\$129,536.95</b>	<b>\$53,080.00</b>	<b>\$ 50,000.00</b>

Recommended Motion:

*Move to recommend to the City Commission to approve the 2024 Round 2 Outside of Deadwood Grants in the amount of \$50,000.00.*

### 2024 RD 2 Outside of Deadwood Grant Requests

Organization Name	City	Project Budget	Matching Funds	Amount Requested	Suggested Approval
Dakotaland Museum - Item A	Huron	\$9,000.00	\$4,500.00	\$4,500.00	\$ -
Lead/Deadwood Sanitary District - Item B	Lead	\$80,000.00	\$70,000.00	\$10,000.00	\$ -
Rocky Mountain Elk Foundation - Item C	Belle Fourche	\$20,775.00	\$11,575.00	\$9,200.00	\$ -
SD Historic Society Foundation - Item D	Pierre	\$19,948.95	\$10,568.95	\$9,380.00	\$ -
Sully County - Item E	Onida	\$23,893.00	\$3,893.00	\$10,000.00	\$ -
St. Wenceslaus Catholic Church - Item F	Tabor	\$29,000.00	\$19,000.00	\$10,000.00	\$ -
<b>TOTAL GRANT REQUESTS</b>		<b>\$182,616.95</b>	<b>\$119,536.95</b>	<b>\$53,080.00</b>	<b>\$ -</b>

## ITEM A

### DAKOTALAND MUSEUM – CENTENNIAL STONE CHURCH CENTER

**Budget: \$9,000.00    Request: \$4,500.00**

#### Scope of Work to be Performed:

Tuckpointing the stonework of the exterior of the building, all around. The grout is cracking and completely missing in several places. It appears to have been repaired more than once using different compositions and colors of mortar. The damage has reached the stage where water can enter between the stones, freezing and eroding more grout and causing expansion damage. Soon, the water will find its way inside the building, ruining the interior walls and causing mold and mildew problems as well as becoming a threat to the archives and artifacts stored in the building. Many of these items belonged to Gladys Pyle. Along with clothing, books and dishes, the archives contain extensive files of her photos, newspaper clippings and other papers.

#### Relationship of this Project to History of Deadwood:

Gladys Pyle, the first woman in the United States to be elected to the U.S. Senate, was also the first woman in South Dakota to serve on a federal grand jury which was convened in Deadwood.

#### Staff Comment:

None for this project.



Dakotaland Museum, Pyle House  
Museum, Centennial Stone Church  
Center

### Organization Summary

## Dakotaland Museum, Pyle House Museum, Centennial Stone Church Center

PO Box 1254  
PO Box 1254  
Huron, SD 57350

Louise Carroll Van Poll  
dakotalandmuseum@gmail.com  
O: 605-352-2528  
M: 605-352-2528

### Organization Request Summary

**Requests:** 9      **Requests Granted:** 6      **Total Granted:** \$40,555.00      **Total Paid:** \$40,555.00

Decided	Process Name	Project Name	Status	Granted	Paid
	Outside of Deadwood Grants	2024 RD2 Outside of Deadwood Grant Centennial Stone Church	ApplicationComplete		
03/06/2024	Outside of Deadwood Grants	2024 RD1 Outside of Deadwood Grant Pyle House Museum	Approved	\$1,750.00	\$1,750.00
	Outside of Deadwood Grants		ApplicationDraft		
07/31/2023	Outside of Deadwood Grants	2023 RD2 Outside of Deadwood Grant	Approved	\$4,550.00	\$4,550.00
08/02/2022	Outside of Deadwood Grants	2022 RD2 Dakotaland Museum Centennial Stone Church Roof Repair	Approved	\$10,000.00	\$10,000.00
	Outside of Deadwood Grants	2021 Pyle House Museum Repairs	ApplicationComplete		
01/26/2017	Outside of Deadwood Grants	2017 RD1 Restoration of Storm Windows	Closed	\$3,000.00	\$3,000.00
06/25/2015	Outside of Deadwood Grants	2015 RD2 Abate Exterior Lead Paint	Closed	\$16,755.00	\$16,755.00
01/28/2013	Outside of Deadwood Grants	2013 RD1 Dakotaland, Centennial Stone Church, Pyle House	Closed	\$4,500.00	\$4,500.00

[Back to Beginning](#)

Printed On: 17 June 2024

## ITEM B

### LEAD/DEADWOOD SANITARY DISTRICT – ENGLEWOOD HYDROELECTRIC PLANT

**Budget: \$80,000.00 Request: \$10,000.00**

#### Scope of Work to be Performed:

Repair deteriorated exterior masonry, including replacement of damaged bricks and tuck pointing

#### Relationship of this Project to History of Deadwood:

Englewood hydro was built as a prototype to demonstrate that hydroelectric power could serve the needs of the Homestake mine and served as the model for Hydro #2 in Spearfish Canyon. Englewood hydro was the first to demonstrate that hydro could replace coal fired steam engines in company mills. It was designed and built by Thomas Grier and commissioned in 1906 and is an example of the innovation in electric power in the Deadwood area.

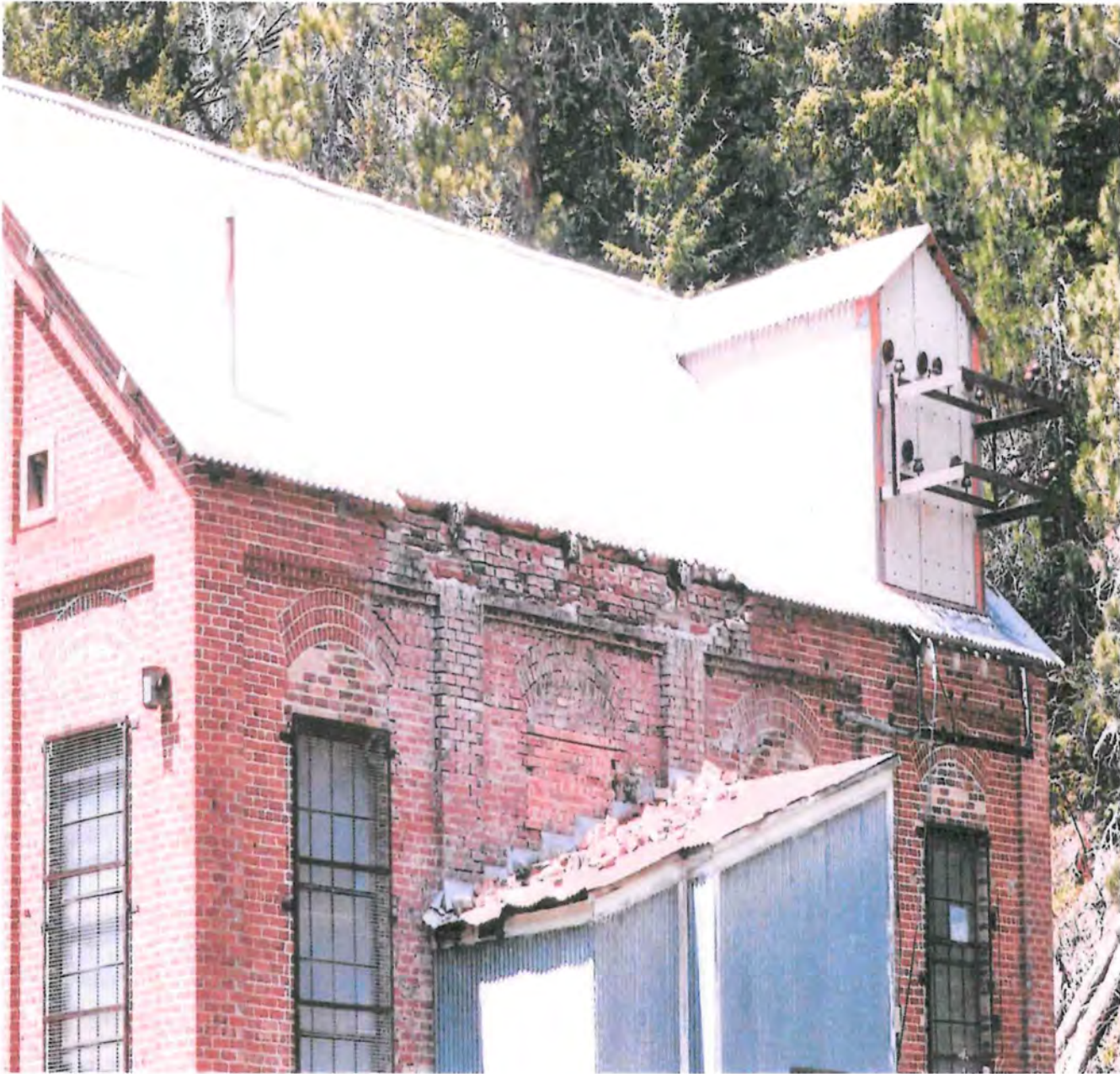
#### Staff Comment:

No comments for this project.

Pictures below









Lead/Deadwood Sanitary District

*Organization Summary***Lead/Deadwood Sanitary District**

21662 Hanna Road  
P.O. Box 413  
Deadwood, SD 57732

terryw@vastbb.net  
O: 605-578-7835

*Organization Request Summary*

**Requests:** 2      **Requests Granted:** 1      **Total Granted:** \$10,000.00      **Total Paid:** \$9,886.19

Decided	Process Name	Project Name	Status	Granted	Paid
	Outside of Deadwood Grants	2024 RD2 Outside of Deadwood Grant Hydroelectric Plant	ApplicationComplete		
03/20/2020	Outside of Deadwood Grants	2020 RD 1 Outside of Deadwood Grant	Closed	\$10,000.00	\$9,886.19
				0	

[Back to Beginning](#)



## ITEM C

### ROCKY MOUNTAIN ELK FOUNDATION – GRANT FARRELL HARDWARE/THOMAS DRUG BLDG.

**Budget: \$20,775.00 Request: \$9,200.00**

#### Scope of Work to be Performed:

We are wanting to restore the exterior of this historic building back to its former glory. This will be done in several stages ("front, side, rear"). In the 1950's the original masonry was covered up for a more modern look. We would like to remove this and expose and recondition the original facade underneath. Along with this we would repair Windows and molding with modern materials while retaining the historic look and feel from the 1900's. This would be the first stage to be completed which is the "front" towards State street. The "bones" of this building are in great shape and have stood the test of time. All of our stages of this project will focus mainly on cosmetic restoration and refurbishment.

#### Relationship of the Project to History of Deadwood:

This building is the oldest building on our main street. It was built in 1895 as Farrell Hardware and was the only building to completely survive the fire of 1896. I cannot tie this building directly to Deadwood but I find it very hard to believe that Bullock did not play a hand in this building as he was a very influential part of getting our Downtown area established. I don't have a lot of information about all the different businesses or owners that have played a part in the buildings history but we would like to see it return to its former glory. This whole downtown block is on the National Register of Historic Places and we would love to have our building reflect that image.

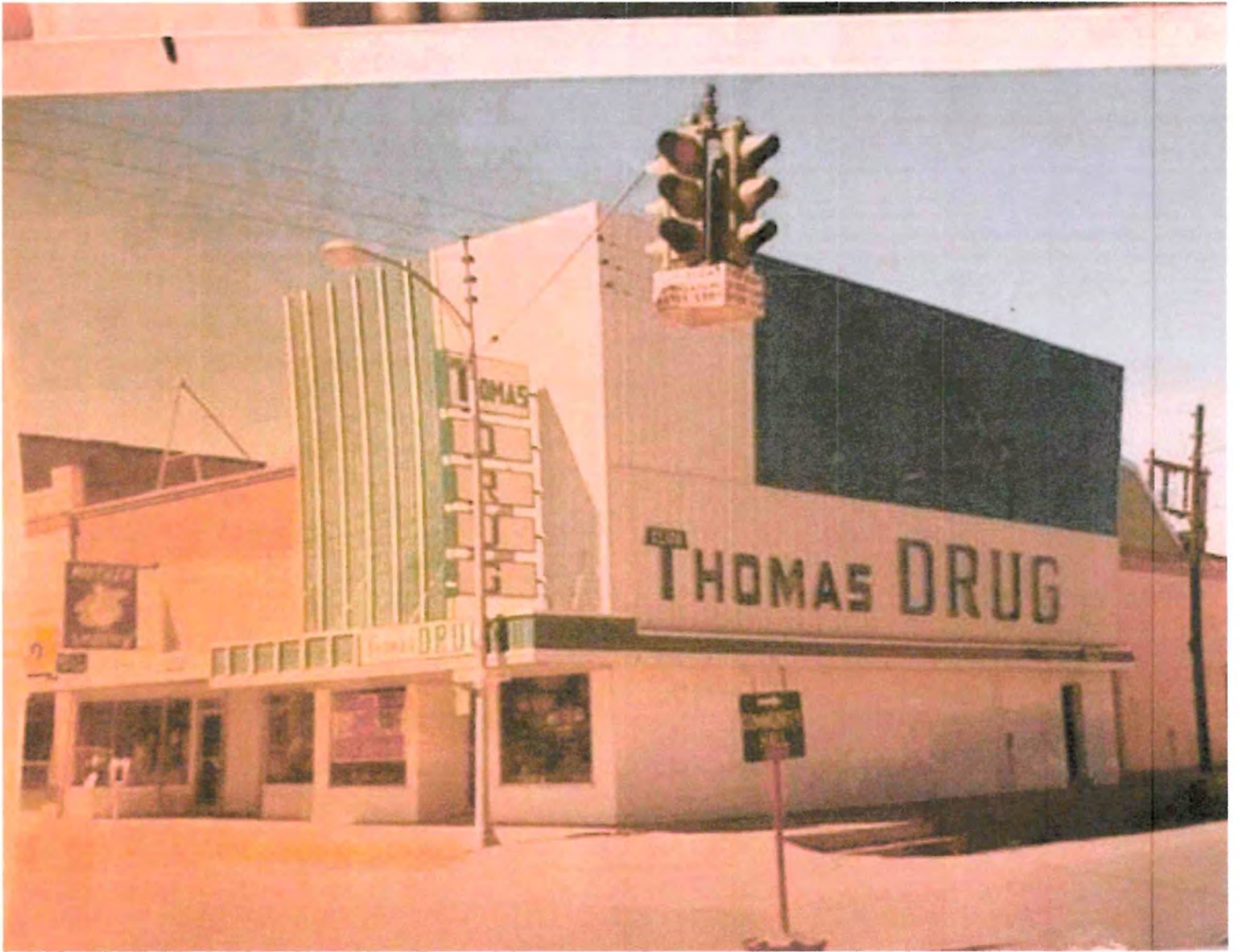
#### Staff Comment:

This would be a great project. The transformation would be a great example for others to follow.

Pictures below.









FIRST MEETING PLACE NOV 1894 TO ~~APRIL 1895~~ <sup>JULY 1895</sup>  
 (THE FRONT OF BUILDING HAS BEEN CHANGED (REMOVED))







Rocky Mountain Elk Foundation

*Organization Summary***Rocky Mountain Elk Foundation**

521 State Street  
Belle Fourche, SD 57717

porcupinebflc@gmail.com  
O: 605-210-2013

*Organization Request Summary*

**Requests:** 1      **Requests Granted:** 0      **Total Granted:** \$ 0.00      **Total Paid:** \$ 0.00

Decided	Process Name	Project Name	Status	Granted	Paid
	Outside of Deadwood Grants	2024 RD2 Outside of Deadwood Grant Farrell Hardware/Thomas Drug Building	ApplicationComplete		

[Back to Beginning](#)

Printed On: 17 June 2024



## ITEM D

### South Dakota Historical Society Foundation – Cataloging Black Hills Mining & Milling Photos

**Budget: \$19,948.95 Request: \$9,380.00**

#### Scope of Work to be Performed:

The State Archives exists to collect, preserve, process/catalog and provide reference access to those primary and secondary research sources, regardless of format, which best document the political, social, cultural, economic, and natural history of Dakota territory and the State of South Dakota, its political subdivisions and citizenry; and those secondary (published) sources which similarly document the history of adjacent states with which South Dakota's history is closely intertwined.

Over one million photographic images are stored and cataloged at the State Archives and that number steadily increases. The photos vary in size and format including glass plate negatives, slides, prints, negatives, and digital images. With few exceptions, the images are available to the public in the archives research room. To preserve the images and prevent further loss of information as well as to make the images more widely available the archives is proposing to digitize a selection of these photographs.

The mining and milling photo collection consists of 213 black and white prints representing mines and mills throughout the Black Hills. The prints range in size from 4x6 to 8x10 and include stereoscopic views. Almost all photographs have detailed captions. Through photographs of both abandoned and working mines, this collection documents the development of mining in the Black Hills, showcasing its evolution from primitive claim shanties and mining camps to sophisticated, large-scale operations embracing whole towns. The decline of mining is highlighted through the presence of many photographs of abandoned mines and other structures. Also shown are the variety of sawmills, smelters, and other processing facilities that sprung up to support mining operations and to transport and transform raw materials. Scenes in the collection include gold panning, mining camps, sluices, dredges, rail carts, mining towns, decaying structures, and various minerals, including gold and uranium ore.

In addition, the grant project proposes to digitize approximately 13,000 pages of land resurvey records associated with lands in the Black Hills. This collection consists of field notes for land surveys that were conducted by the U.S. General Land Office dating from 1886-2012. Land surveys create, define, and mark the boundaries and subdivisions of South Dakota lands, and are the basis of all land ownership in the state. These resurveys re-establish markers, fill in gaps, and correct errors from the original surveys. The notes are frequently consulted by current land surveyors while they are hunting for markers in the field. The older pages will need to be handled with care and scanned individually, while the more current pages may be



scanned using a feeder. These pages would join the original land surveys that are already in the South Dakota Digital Archives.

The land records and photographs in this application would be digitized, cataloged, and loaded to the South Dakota Digital Archives where they would be available worldwide. The South Dakota Digital Archives contains 91,866 items from the State Archives including photographic images, government and manuscript collections, original land survey records, the South Dakota Historical Society publication the *Wi-lyohi*, and Dakota Territory maps. Most recently, the State Archives added 63 audio recordings of oral histories and their associated transcripts. The South Dakota Digital Archives makes information easily accessible while also preserving the original records by minimizing damage from handling.

The staffing for the grant project consists of a scanning technician and a digital technician. Both positions are grant or donation funded employees and not state employees. The staff will scan and catalog the photographs and the land records, create searchable metadata, and load the images into the South Dakota Digital Archives for free public viewing online. Both the land survey records, and the photographs fit the scope of the project and can withstand the scanning process without being damaged.

Care is taken to remove staples, flatten wrinkles or edges, and ensure the best possible image. We scan at a high resolution to guarantee that the costs and time expended on reformatting are used to the fullest and to ensure that the staff will not have to re-digitize this collection at a future point. The collections are digitized and cataloged in-house by specialized staff. The scanning technician will prep the collection, digitize the collection using an Epson Expression 12000XL photo flat scanner, and provide basic metadata about the collection.

The digital technician catalogs the collection into a database system using Dublin Core standards which includes the initial set up and creation of the project. Research is performed to ensure the records are correctly cataloged and have the proper identification. The digital technician performs file conversion or combines multiple files into one if needed. The collection is cataloged, and metadata is created using uniform subject headings. Quality control checks are performed on the digitized images and the files are uploaded to the South Dakota Digital Archives. The processes are labor intensive, but the methods meet archival standards and ensure that no harm comes to the original collection during the processes. This slow and deliberate process ensures the quality of the final product as well as the protection of the originals being scanned.

Prepping the collection for digitization would start immediately after grant award notification in April 2024. The digital technician and the scanning technician would set up the metadata fields, prep the collection by removing any staples and ensure that the project is ready to move forward. The digitization of the photographs and land survey records would start immediately after the prep work.

Relationship of this Project to History of Deadwood:

The cataloging of the photographs and land survey records will make them searchable and researchers will be able to locate them easily on the South Dakota Digital Archives, which make this a valuable resource to citizens in South Dakota. The funds will be used to provide personnel to scan, provide quality control, and catalog the images and land surveys. Authors use the images in books; students use the images in reports; images are used in public places such as restaurants and hotels. The land survey records are important and helpful to anyone doing land research in the Black Hills. The images and land records are relevant to the history of Deadwood because of the subject matter and location. Both are useful for the importance of telling the history of the state.

Staff Comment:

This was reviewed in the 2024 Round 1 application requests but because they already had an open grant we were unable to fulfill their request. The applicant has requested we review this request in Round 2. The other grant has been completed.

Sample image from the Mining and Milling Collection



**The Peerless Mine, 3 ½ miles west of Keystone, S.D., undated**

South Dakota State Historical Society  
Foundation

### Organization Summary

# South Dakota State Historical Society Foundation

900 Governors Drive  
Pierre, SD 57501

O: 605-773-3458

### Organization Request Summary

**Requests:** 12      **Requests Granted:** 9      **Total Granted:** \$181,950.00      **Total Paid:** \$181,950.00

Decided	Process Name	Project Name	Status	Granted	Paid
	Outside of Deadwood Grants	2024 RD2 Outside of Deadwood Grant Cataloging of Records	ApplicationComplete		
01/24/2024	Outside of Deadwood Grants	2023 RD2 Outside of Deadwood Grant Request	Closed	\$10,000.00 0	\$10,000.00 0
01/18/2019	Outside of Deadwood Grants	2019 RD2 Digitization of Maps	Closed	\$8,000.00	\$8,000.00
07/03/2018	Outside of Deadwood Grants	2018 RD2 Digitize Early Dakota Territory Maps	Closed	\$15,000.00 0	\$15,000.00 0
02/21/2018	Outside of Deadwood Grants	2018 RD1 Photo Digital Imaging Project	Denied		
07/05/2017	Outside of Deadwood Grants	2017 RD2 Badger Clark Poetry Book	Denied		
01/26/2017	Outside of Deadwood Grants	2017 RD1 Photo Digital Imaging	Closed	\$24,800.00 0	\$24,800.00 0
02/04/2016	Outside of Deadwood Grants	2016 RD1 Photo Digitization	Closed	\$20,000.00 0	\$20,000.00 0
02/25/2015	Outside of Deadwood Grants	2015 RD1 Archival Development	Closed	\$20,000.00 0	\$20,000.00 0
02/21/2014	Outside of Deadwood Grants	2014 RD1 Photo Digital Imaging	Closed	\$19,150.00 0	\$19,150.00 0
07/24/2013	Outside of Deadwood Grants	2013 RD2 The First Lady Gowns Exhibit	Closed	\$15,000.00 0	\$15,000.00 0
12/13/2003	Outside of Deadwood Grants	2004 Taking South Dakota History on the Road Program	Closed	\$50,000.00 0	\$50,000.00 0

[Back to Beginning](#)



## ITEM E

### SULLY COUNTY – SULLY COUNTY COURTHOUSE

**Budget: \$23,893.00 Request: \$10,000.00**

#### Scope of Work to be Performed:

All masonry surfaces shall be washed with pressurized water, stubborn stains removed, surface cleaned with chemical agent, and entire site rinsed. All mortar joints will be inspected, repaired & cleaned. All defective mortar joints will be filled and tightly packed with type "O" masonry pointing mortar that will be colored and tooled to match the adjacent joints as closely as possible. All skyward facing head joints will be cleaned and resealed with a bond breaker installed in the bottom of the joint to ensure four-sided adhesion. Areas of spalled, deteriorated or fractured stone will be repaired or removed to create a sound surface and then patched with restoration mortar, carved and finished to match the original profile as closely as possible.

#### Relationship of the Project to History of Deadwood:

Architect W.M. Rich of the Black Hills Co. of Deadwood designed the Sully County Courthouse, which was built in 1911-1913 at a cost of \$65,173. His company was located in Deadwood prior to dissolving due to funding issues. Despite the company's short history, Rich and his associates designed several courthouses as well as homes, churches and various businesses throughout South Dakota, Colorado & Nebraska.

#### Staff Comments:

A more in-depth proposal is available from the contractor if the committee wishes to review.

Picture below.



Sully County

*Organization Summary***Sully County**

700 Ash Avenue  
 PO Box 265  
 Onida, SD 57564

*Organization Request Summary*

**Requests: 2      Requests Granted: 1      Total Granted: \$7,500.00      Total Paid: \$7,500.00**

Decided	Process Name	Project Name	Status	Granted	Paid
	Outside of Deadwood Grants	2024 RD2 Outside of Deadwood Grant Sully Co Courthouse	ApplicationComplete		
07/05/2017	Outside of Deadwood Grants	2017 RD2 Sully County Court House - Judge's Chambers	Closed	\$7,500.00	\$7,500.00

[Back to Beginning](#)

Printed On: 17 June 2024

## ITEM F

### ST. WENCESLAUS CATHOLIC CHURCH

**Budget: \$29,000.00 Request: \$10,000.00**

#### Scope of Work to be Performed:

On May 12, 2022 a huge derecho came through our little town of Tabor. When it had finished it not only uprooted many trees but it had taken off the steeple from our church. After the destruction across South Dakota at that time it was difficult to find someone to repair the damage however a local colony took the job and repaired the steeple for us. However, painting was not part of what they did so we were happy to at least have the repairs. From this point our church has taken on several leadership changes and we would like to finish this project to restore our church to its original beauty. Our scope appears very simple but because of the height it is difficult. (The project is painting)

#### Relationship of the Project to History of Deadwood:

Near the end of 1869 and the start of 1870 Czech settlers started to migrate to Dakota Territory and the Tabor area. Since most of these Czech immigrants were of the Catholic faith, their first thoughts were to organize a religious community. In 1871 the Reading Club of the Tabor parish was organized, and is considered the birth date of the St. Wenceslaus parish. The society dissolved in 1899. The following parishioners were charter members: Thomas Kostel, Vaclav Bouska, John Souhrada, Jos. V. Wagner, Thomas Souhrada, John Hruska, Vit Marek, Joseph Hruska, Vaclav S. Petrik, Joseph Cansky, Mathew Horacek, John Chromy, Vit Wagner, John Kocer, Vit Kocer, Frank Sykora, Joseph Novotny, John Hakl, Anton Rothschadl, Albert F. Wagner, Frank Welfl, Frank Koupal, Frank Hruska, Thomas Sykora, Vaclav Carda, John Kudrna, Frank Soukup, Linhart Honner, Albert Melichar, Anton Kocer, Frank Blachnik, and Mathew Souhrada. The early pioneers met on Sundays in private services. Men such as Vaclav Janda, John Hakl and others served the Lord by reading scripture and leading the services to the gathered faithful.

It was at one of these Sunday services that the faithful members of the literary society decided to purchase land where a church could be constructed. The people used the law concerning homesteads and secured 160 acres under the right of preemption of purchase. At a meeting of the Reading Club of the Tabor parish on April 14, 1872 in the home of John Hakl the purposes, desires, and business was discussed at the meeting. After a very lengthy discussion about the business at hand, it was decided to reconvene the next day; so on April 15, 1872 it was decided to purchase the land from Johanna Kocer for \$200. The land was recorded in the names of John Hakl and Vaclav Janda. Fifty-three lots each 220 feet by 286 2/3 feet in size were plated so that each resident of the town would own a lot.

One lot was set aside for a church, one lot for a cemetery, and one lot for a school. Since a cemetery had already been established with several graves and not wanting to disturb them, a jog in the street was created and that is why East Yankton Street on the south side of the church does not line up with West Yankton Street. Streets were to be 65 feet wide. Forty acres were set aside for future community needs.

Father. Emmanuel Anton Bouska, arrived in Tabor in the fall of 1893 and served the parish until his death on February 18, 1941. Msgr. Bouska served the parish for 48 years and was 75 years old when he died.

Under the supervision of Msgr. Bouska many changes took place. When Bishop O'Gorman gave the confirmation in June of 1893, the children being confirmed could not even crowd into the old chalk rock church. After several meetings with parishioners, Msgr. Bouska started preparations for the construction of a new church. He traveled around visiting all parish members and collected contributions of \$700 and pledges of \$4,000 for the construction of a new church and school.

In 1894 and 1895 there was only half a crop, and the idea of building a church and school completely broke down. The money was returned, and the pledges torn up. In 1898 collections for the church and school began again. Helping Msgr. Bouska to collect for the school were Vit Marek, Anton Rotschadl, and Albert Wagner. Collecting for the church were Joseph V. Wagner, Joseph Novotny, Mathew Horacek, and others.

The new church is 42 feet wide by 132 feet long, constructed of pressed brick with all material, delivered by rail, hauled by volunteer parishioners from Lesterville since there was not a railroad in Tabor at that time. The basement excavation work and many other construction activities was also provided by volunteers from the parish.

All of the altars, stained glass windows, ornate vestments, pews, statuary, etc. were the donations of parishioners and others. The cost of the construction of the church was \$15,304.51 not including the volunteer hours put in by the parishioners and half rate delivery by the Milwaukee railroad and it is estimated that these items saved at least \$6,500 to the church treasury. The cost for the interior furnishings amounted to about \$4,000. Consecration of the new church building was done in 1899 by Bishop O'Gorman.

On July 16, 1914, Father Emanuel A. Bouska celebrated his 25th anniversary of the priesthood. Most Rev. Bishop Thomas O'Gorman, Bishop of the Sioux Falls diocese; Msgr. and General Vicar of the Diocese, Flynn; Msgr. George Shehan and 63 priests were in attendance for the celebration. The Rev. Dean Petlach of Verdigre, Nebraska delivered the sermon. The dinner for the guests was prepared in the school under the care of the long-time housekeeper, Mrs. Mary Bodine.

The procession to the church formed in the society Hall and was led by the Parade Marshall of the Celebration on a horse ridden by Mr. Joseph Novotny, Sr. The procession arrived at the



rectory, where the Most Rev. Bishop O'Gorman, Father Bouska and the other church dignitaries and priests joined in.

In preparation for this celebration donations were solicited for the decoration and frescoing of the interior of the church, also buy the Stations of the Cross. The donations were \$3,000 and the fresco paintings by eastern artists were true works of art. The original designs of the church were covered when leaks in the roof and changes in summer and winter temperatures cracked the plaster. The designs of the interior of the church can still be followed as the covering was placed over the frescoing as the same design.

On May 6, 1915, a second unprecedented celebration took place. Father E. A. Bouska was elevated to the rank of Monsignor and Domestic Prelate. Bishop O'Gorman and 60 priests gathered for this celebration. There was a procession from the Social Hall again led by Marshall Novotny. The church was again filled to overflowing.

Other honors bestowed upon Msgr. Bouska were that in 1902 he was selected and named advisor to the bishop, and in 1908 made permanent rector. He also spent time writing the history of Czech Catholic parishes in South Dakota which was published by J. A. Dvorak in 1920. In 1919 Msgr. Bouska along with the Rev. Oldrich Zlamal of Cleveland, Ohio were sent to Czechoslovakia as delegates to the newly formed country.

The Golden Jubilee of Msgr. Emanuel Anton Bouska, P.R. (Permanent Rector), took place on July 12, 1938. A large delegation was here from Chicago, Omaha, Brainard and other Nebraska towns, and many South Dakota towns. The Most Reverend Louis B. Kucera of Lincoln, Nebraska was also in attendance. Several Monsignors, two abbots, and about 45 priests comprised the church dignitaries. Another procession took place starting at the Thompson Yards (now Tabor Lumber Co-op) with the Tabor municipal band, Knights of St. George of Brainard, Nebraska in full regalia; Knights of St. Wenceslaus of Tabor; Tabor Fire Department, American Legion and Auxiliary of Tabor, Tabor Catholic Sokols; Catholic Workman of Tabor and Dante and many others took part. Marshal of the day was James C. Vlcek who was instructor of the Sokols.

Sometime between 1902 and 1914 the front steps to the church were changed. In honor of the 75th anniversary of the parish in 1946 a tile was attached to the ceiling and walls of the church to protect it from deterioration. A new slate roof was also placed over the existing wooden shingles to protect the room from further leaks. The cement and wooden borders surrounding the graves in the cemetery were removed in the 1940's.

Staff Comments:

None for this project







St. Wenceslaus Catholic Church

*Organization Summary*

# St. Wenceslaus Catholic Church

205 N Lidice Street  
30624 431st Avenue  
Tabor, SD 57063

Fr. Tom Anderson  
rhejna1@hcinet.net  
O: 605-660-1483

*Organization Request Summary*

**Requests:** 1      **Requests Granted:** 0      **Total Granted:** \$ 0.00      **Total Paid:** \$ 0.00

Decided	Process Name	Project Name	Status	Granted	Paid
	Outside of Deadwood Grants	2024 RD2 Outside of Deadwood Grant St. Wencelslaus Church	ApplicationDraft		

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:** June 20, 2024  
**To:** Deadwood Historic Preservation Commission  
**From:** Kevin Kuchenbecker, Historic Preservation Officer  
 Bonny Anfinson, Program Coordinator  
**Re:** Nugget Saloon, LLC - Façade Program Expanded Scope of Work

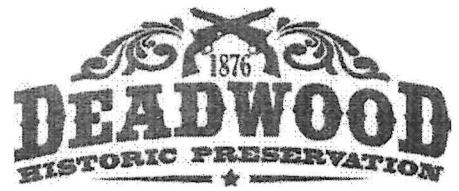
---

The Nugget Saloon LLC was entered into the Façade Program in November of 2015. As per the program guidelines the project was approved for \$40,800.00 with a cap of \$75,000.00. The applicant now wishes to continue the façade repairs using the remaining funds of the program. The cost of the proposed repairs will be \$15,665.10 and the reimbursable amount is 80% of the project cost for \$12,532.00. Currently there is \$34,200.00 remaining on this grant.

Staff has conducted a site visit to discuss the proposed scope of work and recommends approval of the additional funding request.

**Recommended Motion:**

*Move to approve the Nugget Saloon LLC additional funding request for the façade repairs for cost totaling \$12,532.00.*



# Historic Facade Easement Program Application

Please read the attached Policy Guidelines, Administrative Procedures and provide the requested information.

1. Address of Property:

606 Main Street

3. Owner of property - (if different from applicant):

Nugget Saloon LLC  
(applicant)

2. Applicant's name & mailing address:

Nugget Saloon LLC  
398 Main St  
Deadwood SD 57732

Telephone: ( ) SAME

E-mail \_\_\_\_\_

Telephone: (605) 920-0537

E-mail lee.harstad@yahoo.com

4. Project Costs:

Total cost of the façade restoration project:

\$ \$ 15,665.10

Amount requested for the façade project

(Keep in mind eligible expenses and program maximums)

\$ \$ 12,532.08

Total cost of building rehabilitation project

(Include additional interior work planned)

\$ \$ 17,765.10

5. Façade Easement Program Area – Deadwood Local Historic District



Deadwood Historic Preservation Commission  
Historic Façade Easement Program Application  
Page 2 of 2

6. Required Supporting Documentation

- a. Complete a City of Deadwood Application for Certificate of Appropriateness and attach it to this document.
  - Provide detailed description of exterior changes including materials, colors and dimensions
  - Proposed rehabilitation renderings and elevations
  - Current and historic photos of the building
  - Project budget including the entire project and façade project
  - Project timeline
  - General information on project financing or other such information showing feasibility of project
  - Conformance of the project with the Secretary of Interior Standards for Rehabilitation and the Deadwood Downtown Design Guidelines
- b. Acknowledgement of façade easement.

7. Certification

I certify all information contained in this application and all information furnished in support of this application is given for the purpose of obtaining façade easement as true and complete to the best of my knowledge and belief. I acknowledge I have read the policy guidelines for the program included with and for this application and agree to all of the terms and conditions contained in the policy guidelines. I agree any contractors which I hire for this project will hold contractors licenses with the City of Deadwood and will require they also agree to and abide by the terms and conditions of the policy guidelines.

I acknowledge the Deadwood Historic Preservation Commission is merely purchasing the façade and neither the Historic Preservation Commission nor the City of Deadwood is or will be responsible for satisfactory performance of the work or payment for the same beyond the project approval by the Historic Preservation Commission. I acknowledge I am solely responsible for selecting any contractors hired in connection with the project and in requiring satisfactory performance by such contractor. I agree to indemnify and hold harmless the Deadwood Historic Preservation Commission and the City of Deadwood against losses, costs, damages, expenses and liabilities of any nature directly or indirectly resulting from or arising out of or relating to the Deadwood Historic Preservation Commission's acceptance, consideration, approval, or disapproval of this application and the issuance or non-issuance of a façade easement.

Applicant's signature: 

Date submitted: 6/7/24

Owner's signature: 

Date submitted: 6/7/24

Please return the completed application along with the Certificate of Appropriateness to:

City of Deadwood  
Planning, Zoning & Historic Preservation  
108 Sherman Street  
Deadwood, SD 57732  
605-578-2082

Adopted 06/24/15  
Revised 10/24/18

Date: June 20, 2024

Case No. 240103  
Address: 606 MAIN ST

### Staff Report

The applicant has submitted an application for CERTIFICATE OF APPROPRIATENESS for work at 606 MAIN ST, a CONTRIBUTING structure located in DEADWOOD CITY Planning Unit in the City of Deadwood.

Applicant: Nugget Saloon LLC  
Owner: Nugget Saloon LLC  
Constructed: 1891-1897

### CRITERIA FOR THE ISSUANCE OF A CERTIFICATE OF APPROPRIATENESS

**The Historic District Commission shall use the following criteria in granting or denying the CERTIFICATE OF APPROPRIATENESS:**

#### General Factors:

**1. Historic significance of the resource:** This is another of the buildings constructed after the fire in March 1894. The second story originally featured bay windows and the storefront was similar to others in the vicinity. L.M. Parker operated a grocery store here until 1917. Other tenants have included the Ruth Brothers Machine Works and Country Club Beverage and Supply. Most of the detail of the original building has been obscured producing a rather plain-warehouse facade for the building; however the bracketed protruding cornice and remnants of masonry arches suggests and Italianate turn of the century commercial building.

**2. Architectural design of the resource and proposed alterations:** The applicant is requesting permission to continue the repairs to the façade that were started in 2016 through the Façade Program. At that time, only the windows were completed. Plans are to install dark mirrored glass in the arched brick area above the windows, repair and paint brick on upper half of building. Repair the Corbel in red color and paint the upper half of the building in dark grey.

**Attachments:** Yes

**Plans:** No

**Photos:** Yes

#### Staff Opinion:

Staff has met with the applicant and discussed possible additional work to bring back some of the proportions of the façade which would include the allusion of full storefront windows on the façade. The dark glass over the brick would improve the overall proportions of the lower façade; however, this glass should not be mirrored. Additionally, the façade, while repainting is appropriate since the brick is already painted, it is staff's opinion the color should still be a reddish brick color and the cornice should remain in the same color scheme.

With staff's recommendations above, the proposed work and changes do not encroach upon, damage or destroy a historic resource or have an adverse effect on the character of the building or the historic character of the Local, State and National Register Historic Districts or the Deadwood National Historic Landmark District.



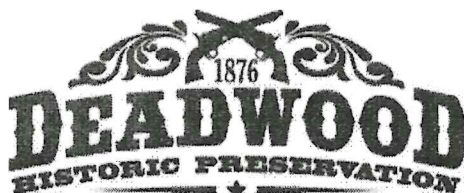
**Motions available for commission action for Certificate of Appropriateness:**

**A:** Based upon the guidance found in DCO 17.68.050, I find that the exterior alteration proposed is congruous with the historical, architectural, archaeological or cultural aspects of the district and MOVE to grant Certification of Appropriateness.

**OR**

**B:** Based upon the guidance found in DCO 17.68.050, I find that the exterior alteration proposed is incongruous with the historical, architectural, archaeological or cultural aspects of the district and MOVE to deny Certification of Appropriateness.

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



**FOR OFFICE USE ONLY**  
 Case No. 240103  
 Project Approval  
 Certificate of Appropriateness  
 Date Received 6/7/24  
 Date of Hearing 6/26/24

## City of Deadwood Application for Project Approval OR Certificate of Appropriateness

The Deadwood Historic Preservation Commission reviews all applications. Approval is issued for proposed work in keeping with City of Deadwood Ordinances & Guidelines, South Dakota State Administrative Rules and the Secretary of the Interior's Standards for Rehabilitation.

This application must be typed or printed in ink and submitted to:

City of Deadwood  
 Deadwood Historic Preservation Office  
 108 Sherman Street  
 Deadwood, SD 57732

FOR INFORMATION REGARDING THIS FORM, CALL 605-578-2082

PROPERTY INFORMATION	
Property Address:	<u>606 Main Street</u>
Historic Name of Property (if known):	<u>Nugget / Bock (Complex)</u>

APPLICANT INFORMATION	
Applicant is:	<input checked="" type="checkbox"/> owner <input type="checkbox"/> contractor <input type="checkbox"/> architect <input type="checkbox"/> consultant <input type="checkbox"/> other

Owner's Name: Nugget Saloon LLC  
 Address: 388 Main St  
 City: Dead State: SD Zip: 57732  
 Telephone: 920-0537 Fax: —  
 E-mail: lee.harstad@yahoo.com

Architect's Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 E-mail: \_\_\_\_\_

Contractor's Name: Ancestor Concrete  
 Address: PO Box 762  
 City: Belle Four State: SD Zip: 57717  
 Telephone: 569-2657 Fax: —  
 E-mail: lvance2657@gmail.com

Agent's Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 E-mail: \_\_\_\_\_

TYPE OF IMPROVEMENT			
<input type="checkbox"/> Alteration (change to exterior)	<input type="checkbox"/> New Building	<input type="checkbox"/> Addition	<input type="checkbox"/> Accessory Structure
<input type="checkbox"/> New Construction	<input type="checkbox"/> Re-Roofing	<input type="checkbox"/> Wood Repair	<input checked="" type="checkbox"/> Exterior Painting
<input type="checkbox"/> General Maintenance	<input checked="" type="checkbox"/> Siding	<input checked="" type="checkbox"/> Windows	<input type="checkbox"/> Porch/Deck
<input type="checkbox"/> Other _____	<input type="checkbox"/> Awning	<input type="checkbox"/> Sign	<input type="checkbox"/> Fencing

Windows:  
Stretch's  
6/22  
224 Main  
Central  
City, SD  
57784  
605-578  
3907

**FOR OFFICE USE ONLY**  
Case No. \_\_\_\_\_

ACTIVITY: (CHECK AS APPLICABLE)			
Project Start Date: <u>ASAP</u>	Project Completion Date (anticipated): <u>9-1-24 to 11-1-24</u>		
<input checked="" type="checkbox"/> ALTERATION	<input checked="" type="checkbox"/> Front	<input type="checkbox"/> Side(s)	<input checked="" type="checkbox"/> Rear
<input type="checkbox"/> ADDITION	<input type="checkbox"/> Front	<input type="checkbox"/> Side(s)	<input type="checkbox"/> Rear
<input type="checkbox"/> NEW CONSTRUCTION	<input type="checkbox"/> Residential <input type="checkbox"/> Other _____		
<input type="checkbox"/> ROOF	<input type="checkbox"/> New	<input type="checkbox"/> Re-roofing	<input type="checkbox"/> Material
	<input type="checkbox"/> Front	<input type="checkbox"/> Side(s)	<input type="checkbox"/> Rear <input type="checkbox"/> Alteration to roof
<input type="checkbox"/> GARAGE	<input type="checkbox"/> New	<input type="checkbox"/> Rehabilitation	
	<input type="checkbox"/> Front	<input type="checkbox"/> Side(s)	<input type="checkbox"/> Rear
<input type="checkbox"/> FENCE/GATE	<input type="checkbox"/> New	<input type="checkbox"/> Replacement	
	<input type="checkbox"/> Front	<input type="checkbox"/> Side(s)	<input type="checkbox"/> Rear
Material _____ Style/type _____ Dimensions _____			
<input checked="" type="checkbox"/> WINDOWS	<input type="checkbox"/> STORM WINDOWS	<input type="checkbox"/> DOORS	<input type="checkbox"/> STORM DOORS
	<input type="checkbox"/> Restoration	<input checked="" type="checkbox"/> Replacement	<input type="checkbox"/> New
	<input type="checkbox"/> Front	<input type="checkbox"/> Side(s)	<input type="checkbox"/> Rear
Material <u>Glass</u> Style/type <u>Mirrored/Dark</u>			
<input type="checkbox"/> PORCH/DECK	<input type="checkbox"/> Restoration	<input type="checkbox"/> Replacement	<input type="checkbox"/> New
	<input type="checkbox"/> Front	<input type="checkbox"/> Side(s)	<input type="checkbox"/> Rear
Note: Please provide detailed plans/drawings			
<input type="checkbox"/> SIGN/AWNING	<input type="checkbox"/> New	<input type="checkbox"/> Restoration	<input type="checkbox"/> Replacement
Material _____ Style/type _____ Dimensions _____			
<input type="checkbox"/> OTHER – Describe in detail below or use attachments			

**DESCRIPTION OF ACTIVITY**

Describe in detail, the above activity (use attachments if necessary including type of materials to be used) and submit as applicable. Descriptive materials such as photos and drawings are necessary to illustrate the work and to help the commissioners and staff evaluate the proposed changes. Information should be supplied for each element of the proposed work along with general drawings and/or photographs as appropriate.

Failure to supply adequate documentation could result in delays in processing and denial of the request. Describe in detail below (add pages as necessary).

See Attached  
"606 Main Street"



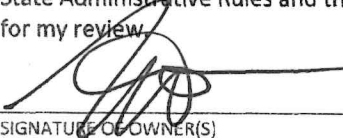
FOR OFFICE USE ONLY  
Case No. \_\_\_\_\_

**SIGNATURES**

I **HEREBY CERTIFY** I understand this application will not be accepted and processed until all the requested information has been supplied. I realize drawings and measurements must be exact and if errors result in a violation of the Commission's approval, then appropriate changes will have to be made. I also understand this application may require a site visit / additional research by staff and a PUBLIC HEARING by the DEADWOOD HISTORIC PRESERVATION COMMISSION.

I understand this application is for a Certificate of Appropriateness or Project Approval only and that a building permit is required for any uses associated with this location prior to any constructions, alterations, etc. All statements are true to the best of my knowledge and belief.

I understand approval is issued for proposed work in keeping with City of Deadwood Ordinances, South Dakota State Administrative Rules and the Secretary of the Interior's Standards for Rehabilitation and copies are available for my review.

 \_\_\_\_\_  
SIGNATURE OF OWNER(S)                      DATE      6/7/24

\_\_\_\_\_  
SIGNATURE OF AGENT(S)                      DATE

\_\_\_\_\_  
SIGNATURE OF OWNER(S)                      DATE

\_\_\_\_\_  
SIGNATURE OF AGENT(S)                      DATE

\_\_\_\_\_  
SIGNATURE OF OWNER(S)                      DATE

\_\_\_\_\_  
SIGNATURE OF AGENT(S)                      DATE

**APPLICATION DEADLINE**

This form and all supporting documentation **MUST** arrive by 5:00 p.m. on the 1<sup>st</sup> or 3<sup>rd</sup> Wednesday of every month to be considered at the next Historic Preservation Commission Meeting. The meeting schedule and filing deadlines are on file with the Historic Preservation Office. Any information not provided to staff in advance of the meeting will not be considered by the Commission during their deliberation. Please call if you have any questions and staff will assist you.

**Please use the attached criteria checklist as a guide to completing the application.** Incomplete applications cannot be reviewed and will be returned to you for more information. All submitted materials will be retained by the Historic Preservation Office. Do not submit your only copy of any piece of documentation.

The City of Deadwood Historic Preservation Office has numerous resources available for your assistance upon request.

**606 Main Street**  
**June 2024 - Facade Program Application**  
**Nugget Saloon LLC**





# Ancestor Concrete & Masonry LLC

10239 Buena Vista Lane  
 Belle Fourche, SD 57717  
 Vance Heidegger • (605) 569-2657

## PROPOSAL AND ACCEPTANCE

3542

PROPOSAL SUBMITTED TO <i>Wayne Morris</i>	PHONE	DATE
STREET <i>606 Main St</i>	JOB NAME <i>Next to Historic Brothel</i>	
CITY, STATE AND ZIP CODE <i>DeSmet SD 57732</i>	JOB LOCATION <i>606 Main St</i>	
ARCHITECT	DATE OF PLANS	JOB PHONE

We hereby submit specifications and estimates for: *Repaint of brickwork above windows*

*AREA 5.20 70'x8' 240  $\phi$  x 2 coats \$600.<sup>00</sup>*  
*Corbels above brickwork 30'x16" x 2 coats 2800.<sup>00</sup>*  
*mobilization w/ scaffolding 5,500.<sup>00</sup>*

*2.5% EXIST TAX DUE UPON BILLING*

We propose hereby to furnish material and labor -- complete in accordance with general specifications for the sum of

*50% Due upon start of project*

Payment to be made as follows:

*Remaining balance due upon completion + EXIST TAX*

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra work shall be executed only upon written orders and not assumed as extra charge over and above the contract. All agreements contingent upon strikes, accidents or delays beyond our control. There is no liability for injury and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. I agree to do the work as specified. Payment will be made as follows:

Date of Acceptance



**STRETCH'S GLASS & CUSTOM PARTS**  
**224 CENTRAL MAIN ST**  
**CENTRAL CITY, SD 57754**

**PH:(605) 578-3907 FAX:**

Federal Tax ID: 460436798

P/O#:	Cust State Tax ID:	<b>Quote: Q040397</b>
Taken By: Ray	Cust Fed Tax ID:	<b>Date: 6/5/2024</b>
Installer:	Ship Via:	<b>Time: 04:00 PM</b>
SalesRep:	Adv. Code:	
<b>Bill To: Cash</b>		<b>Sold To: Cash</b>
NUGGET SALOON LLC		NUGGET SALOON LLC

Qty	Part Number	Description	List	Disc%	Sell	Total
1	MISC	4 WINDOW TRANSOM FACADE MIRRORED GLASS INSTALLED	\$2,300.00	0	\$2,300.00	\$2,300.00
1	MISC	606 MAIN ST DEADWOOD	\$0.00	0	\$0.00	\$0.00

Thank You for your patronage

*Vance*  
 $\downarrow$   
 $12,900 + 2.5\%$   
 $= 13207$   
 $2442.60$   
 $= 1566$

Sub Total:	\$2,300.00
Tax:	\$142.60
<b>Total:</b>	<b>\$2,442.60</b>

Date: May 18, 2023

Case No. 230046

Address: 732 Main Street - Garage

**Staff Report**

The applicant has submitted an application for Certificate of Appropriateness for work at 732 Main Street, a non-contributing structure located in the Deadwood City Planning Unit in the City of Deadwood.

Applicant: Joel Livengood

Owner: Villagood Properties LLC

Constructed: 1970s

**CRITERIA FOR THE ISSUANCE OF A CERTIFICATE OF APPROPRIATENESS**

**The Historic District Commission shall use the following criteria in granting or denying the Certificate of Appropriateness:**

**General Factors:**

- 1. Historic significance of the resource:** This structure currently does not qualify for the historic register.
- 2. Architectural design of the resource and proposed alterations:** The applicant is requesting permission to install cedar siding to match the house. Paint with same colors as house.

**Attachments:** Yes**Plans:** No**Photos:** Yes**Staff Opinion:**

The proposed work and changes do not encroach upon, damage, or destroy a historic resource or have an adverse effect on the character of the building or the historic character of the State and National Register Historic Districts or the Deadwood National Historic Landmark District.

**Motions available for commission action:**

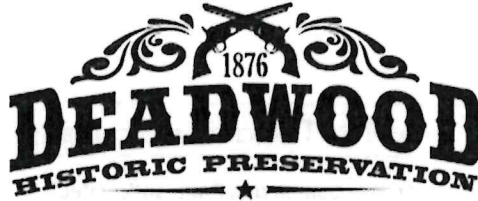
**A:** Based upon the guidance found in DCO 17.68.050, I find that the exterior alteration proposed is congruous with the historical, architectural, archaeological or cultural aspects of the district and MOVE to grant Certification of Appropriateness.

**OR**

**B:** Based upon the guidance found in DCO 17.68.050, I find that the exterior alteration proposed is incongruous with the historical, architectural, archaeological or cultural aspects of the district and MOVE to deny Certification of Appropriateness.



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



<b>FOR OFFICE</b>	Section 7 Item b.
Case No.	240100
<input type="checkbox"/> Project Approval	
<input checked="" type="checkbox"/> Certificate of Appropriateness	
Date Received	6/17/24
Date of Hearing	6/26/24

## City of Deadwood Application for Project Approval OR Certificate of Appropriateness

The Deadwood Historic Preservation Commission reviews all applications. Approval is issued for proposed work in keeping with City of Deadwood Ordinances & Guidelines, South Dakota State Administrative Rules and the Secretary of the Interior's Standards for Rehabilitation.

This application must be typed or printed in ink and submitted to:

City of Deadwood  
 Deadwood Historic Preservation Office  
 108 Sherman Street  
 Deadwood, SD 57732

FOR INFORMATION REGARDING THIS FORM, CALL 605-578-2082

PROPERTY INFORMATION
Property Address: <u>732 MAIN ST.</u>
Historic Name of Property (if known):

APPLICANT INFORMATION
Applicant is: <input checked="" type="checkbox"/> owner <input checked="" type="checkbox"/> contractor <input checked="" type="checkbox"/> architect <input type="checkbox"/> consultant <input type="checkbox"/> other _____

Owner's Name: <u>JOEL LIVENGOOD</u>
Address: <u>508 CROWN ST</u>
City: <u>LEAD</u> State: <u>SD</u> Zip: <u>57754</u>
Telephone: <u>605-920-9376</u> Fax: <u>N/A</u>
E-mail: <u>livengood19@yahoo</u>

Architect's Name: <u>SAME</u>
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____
E-mail: _____

Contractor's Name: <u>SAME</u>
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____
E-mail: _____

Agent's Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____
E-mail: _____

TYPE OF IMPROVEMENT			
<input checked="" type="checkbox"/> Alteration (change to exterior)	<input type="checkbox"/> New Building	<input type="checkbox"/> Addition	<input type="checkbox"/> Accessory Structure
<input type="checkbox"/> New Construction	<input type="checkbox"/> Re-Roofing	<input type="checkbox"/> Wood Repair	<input checked="" type="checkbox"/> Exterior Painting
<input type="checkbox"/> General Maintenance	<input checked="" type="checkbox"/> Siding	<input type="checkbox"/> Windows	<input type="checkbox"/> Porch/Deck
<input type="checkbox"/> Other _____	<input type="checkbox"/> Awning	<input type="checkbox"/> Sign	<input type="checkbox"/> Fencing

FOR OFFICE USE ONLY  
Case No. \_\_\_\_\_

**ACTIVITY: (CHECK AS APPLICABLE)**

Project Start Date: ASAP Project Completion Date (anticipated): 2 WEEKS

**ALTERATION**     Front     Side(s)     Rear

**ADDITION**     Front     Side(s)     Rear

**NEW CONSTRUCTION**     Residential     Other \_\_\_\_\_

**ROOF**     New     Re-roofing     Material  
 Front     Side(s)     Rear     Alteration to roof

**GARAGE ONLY**     New     Rehabilitation  
 Front     Side(s)     Rear

**FENCE/GATE**     New     Replacement  
 Front     Side(s)     Rear  
Material \_\_\_\_\_ Style/type \_\_\_\_\_ Dimensions \_\_\_\_\_

**WINDOWS**     **STORM WINDOWS**     **DOORS**     **STORM DOORS**  
 Restoration     Replacement     New  
 Front     Side(s)     Rear  
Material \_\_\_\_\_ Style/type \_\_\_\_\_

**PORCH/DECK**     Restoration     Replacement     New  
 Front     Side(s)     Rear  
Note: Please provide detailed plans/drawings

**SIGN/AWNING**     New     Restoration     Replacement  
Material \_\_\_\_\_ Style/type \_\_\_\_\_ Dimensions \_\_\_\_\_

**OTHER** – Describe in detail below or use attachments



**DESCRIPTION OF ACTIVITY**

Describe in detail, the above activity (use attachments if necessary including type of materials to be used) and submit as applicable. Descriptive materials such as photos and drawings are necessary to illustrate the work and to help the commissioners and staff evaluate the proposed changes. Information should be supplied for each element of the proposed work along with general drawings and/or photographs as appropriate.

Failure to supply adequate documentation could result in delays in processing and denial of the request. Describe in detail below (add pages as necessary).

INSTALL CEDAR SIDING TO MATCH HOUSE.

PAINT WITH SAME COLORS OF HOUSE.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**FOR OFFICE USE ONLY**  
Case No. \_\_\_\_\_

**SIGNATURES**

**I HEREBY CERTIFY** I understand this application will not be accepted and processed until all the requested information has been supplied. I realize drawings and measurements must be exact and if errors result in a violation of the Commission's approval, then appropriate changes will have to be made. I also understand this application may require a site visit / additional research by staff and a PUBLIC HEARING by the DEADWOOD HISTORIC PRESERVATION COMMISSION.

I understand this application is for a Certificate of Appropriateness or Project Approval only and that a building permit is required for any uses associated with this location prior to any constructions, alterations, etc. All statements are true to the best of my knowledge and belief.

I understand approval is issued for proposed work in keeping with City of Deadwood Ordinances, South Dakota State Administrative Rules and the Secretary of the Interior's Standards for Rehabilitation and copies are available for my review.

\_\_\_\_\_  
SIGNATURE OF OWNER(S)                      DATE      6/17/24

\_\_\_\_\_  
SIGNATURE OF AGENT(S)                      DATE

\_\_\_\_\_  
SIGNATURE OF OWNER(S)                      DATE

\_\_\_\_\_  
SIGNATURE OF AGENT(S)                      DATE

\_\_\_\_\_  
SIGNATURE OF OWNER(S)                      DATE

\_\_\_\_\_  
SIGNATURE OF AGENT(S)                      DATE

**APPLICATION DEADLINE**

This form and all supporting documentation **MUST** arrive by 5:00 p.m. on the 1<sup>st</sup> or 3<sup>rd</sup> Wednesday of every month to be considered at the next Historic Preservation Commission Meeting. The meeting schedule and filing deadlines are on file with the Historic Preservation Office. Any information not provided to staff in advance of the meeting will not be considered by the Commission during their deliberation. Please call if you have any questions and staff will assist you.

**Please use the attached criteria checklist as a guide to completing the application.** Incomplete applications cannot be reviewed and will be returned to you for more information. All submitted materials will be retained by the Historic Preservation Office. Do not submit your only copy of any piece of documentation.

The City of Deadwood Historic Preservation Office has numerous resources available for your assistance upon request.



## Criteria Checklist for Project Approval OR Certificate of Appropriateness

### SUBMITTAL CRITERIA CHECKLIST

The documentation listed below will assist in the submission of the application. ***Not all information listed below is required for each project. In order to save time and effort, please consult with the Historic Preservation Office prior to completing your application.***

#### ALL WORK:

- Photograph of house and existing conditions from all relevant sides.

#### RENOVATIONS AND ADDITIONS:

- Elevation and plan drawings to scale indicating proposed alterations or additions, clearly indicating the existing building and what is proposed and including the relationship to adjacent structures. Make sure to include door and window design if altered. Manufacturer's catalog data may be used, if applicable.
- Exterior material description.
- Site plan showing dimensions of lot and location of existing building(s) or structure(s) on lot, location of additions, dimensions of existing structure and additions. (Show use of addition and location of windows and doors if applicable.)
- Photograph of existing conditions from all elevations.
- Color samples and placement on the structure.
- Historic photographs should accompany any request to return a structure to an earlier historic appearance. (Please note our archives may be of great assistance)

#### MATERIAL CHANGES:

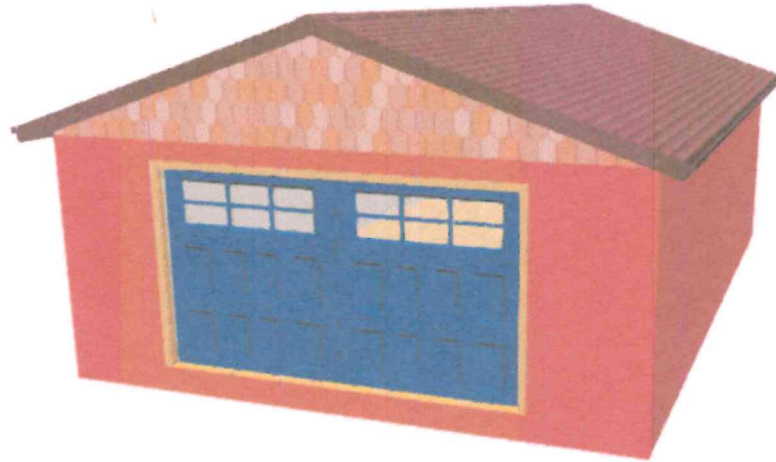
- Written description of area involved.
- Color photographs or slides of areas involved and surrounding structures if applicable.
- Sample or photo of materials involved.

#### PAINTING, SIDING:

- Color photographs of all areas involved and surrounding structures if applicable.
- Samples of colors and/or materials to be used.
- Dimensioned elevation and section to scale, showing design of fence, material, and height in relationship to adjacent structures.

#### NEW CONSTRUCTION:

- Elevation drawings to scale showing all sides and dimensions. Elevation drawings to scale showing relationship to structures immediately adjacent.
- Photograph of proposed site and adjacent buildings on adjoining properties.
- Site plan including building footprint and location of off-street parking showing setbacks. Include number of spaces, surface material, screening and all other information required under Parking Areas.
- Material list including door and window styles, colors and texture samples.
- Scale model indicating significant detail. (This may be required for major construction. Please consult Historic Preservation Commission staff.)
- Color photographs of proposed site and structures within vicinity of new building.



SCALLOPS TO BE  
SAME COLOR AS  
TAN TRIM.

DOOR TO MATCH  
BLUE ON HOUSE.

SIDING TO  
MATCH ORANGE ON  
HOUSE.



**2024-2025 Historic Preservation Commission and Revitalization  
Committee Assignments**

**HPC OFFICERS**

- \_\_\_ Leo Diede \_\_\_\_\_ Chairperson
- \_\_\_ Vicki Dar \_\_\_\_\_ Vice Chair
- \_\_\_ Trevor Santochi \_\_\_\_\_ 2<sup>nd</sup> Vice Chair

**HISTORIC PRESERVATION COMMITTEES**

**Projects Committee** Meets as needed

- \_\_\_ Anita Knipper \_\_\_\_\_
- \_\_\_ Jesse Allen \_\_\_\_\_
- \_\_\_ Trevor Santochi \_\_\_\_\_

**Loan & Grant Programs Committee** Meets 1<sup>st</sup> and 3<sup>rd</sup> Tuesday of each month – 10:30 a.m. – City Hall

- \_\_\_ Leo Diede \_\_\_\_\_ Chairperson
- \_\_\_ Vicki Dar \_\_\_\_\_ Vice Chair
- \_\_\_ Trevor Santochi \_\_\_\_\_ 2<sup>nd</sup> Vice Chair

**HISTORIC PRESERVATION COMMUNITY BOARD REPRESENTATIVES**

**Chamber of Commerce** Meets 2<sup>nd</sup> Tuesday of the month 9:00 a.m. at Welcome Center – except August

- \_\_\_ Leo Diede \_\_\_\_\_
- \_\_\_ Vicki Dar \_\_\_\_\_

**Deadwood Alive**

- \_\_\_ Jesse Allen \_\_\_\_\_

**DEADWOOD REVITALIZATION AND MAIN STREET INITIATIVE**

**Organization (Steering) Committee (MSI)** 3<sup>rd</sup> Wednesday of each month – 12:00 p.m. Welcome Center

- \_\_\_ Leo Diede \_\_\_\_\_ Chairperson
- \_\_\_ Vicki Dar \_\_\_\_\_ Vice Chair
- \_\_\_ Trevor Santochi \_\_\_\_\_ 2<sup>nd</sup> Vice Chair

**Economic Restructuring** Meets Tuesday before MSI meeting, 9:00 a.m. at City Hall (location may vary)

- \_\_\_ Tony Williams \_\_\_\_\_
- \_\_\_ Trevor Santochi \_\_\_\_\_
- \_\_\_ Anita Knipper \_\_\_\_\_

**Design Committee** Meets 2<sup>nd</sup> Tuesday of each month 3:30 p.m. at City Hall

- \_\_\_ Vicki Dar \_\_\_\_\_
- \_\_\_ Molly Brown \_\_\_\_\_

**Promotion Committee** Meets 1<sup>st</sup> Tuesday of each month at 1:00 p.m. at City Hall

- \_\_\_ Jesse Allen \_\_\_\_\_
- \_\_\_ Vicki Dar \_\_\_\_\_
- \_\_\_ Anita Knipper \_\_\_\_\_

**Recreation & Trails**

- Jesse Allen