

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

## **CONSTRUCTION AND MAINTENANCE EASEMENT**

THIS **EASEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between City of Deadwood, a South Dakota municipality, which address is 102 Sherman Street, Deadwood, South Dakota, 57732, here in offer referred to as “GRANTEE,” **and** David H. Wilkinson and Lori May Wilkinson, Trustees of the David H. Wilkinson and Lori May Wilkinson Revocable Trust Agreement, 2105 South 87th St., Omaha, NE 68124, hereinafter referred to as “GRANTOR.”

Grantor, in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, hereby grants, bargains, sells and conveys to Grantee, its agents, representatives, successors and assigns, the right and privilege to use a temporary easement, to enter upon the lands of Grantors for the purpose of constructing, reconstructing and maintaining the existing retaining wall supporting a portion of Fremont Street in the City of Deadwood.

The real estate subject to this construction and maintenance easement is specifically described and/or depicted as follows:

**PORTIONS OF LOTS 5, 6, AND 7 OF HIGHLAND ADDITION TO THE CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA FORMERLY A PORTION LOT 6 AND 7 OF HIGHLAND ADDITION LOCATED IN THE NW1/4 OF SECTION 26, T5N, R3E, B.H.M., as shown on Exhibit A attached hereto and by such reference incorporated herein,**

This grant shall include the right of ingress and egress over adjacent lands of Grantors as is reasonably necessary to access the western boundary of the property to maintain the retaining wall; and the right to use so much of the adjoining property of Grantors, during construction, reconstruction or continuing maintenance of the existing retaining wall supporting Fremont Street and for use as a temporary storage site for construction equipment as may be necessary to accommodate the operation of construction machinery and equipment. In exercising its rights of ingress or egress Grantee shall, whenever practicable, use the existing driveway adjacent to Fremont Street and shall timely repair any damage or surface disturbance caused by or resulting from Grantees use thereof and timely restore Grantors’ property to its original condition or better, as of the date of this document.

City shall conduct its construction activities on the easement area so as not to unreasonably interfere with the Grantor’s, quiet use and enjoyment of the rest of their property for parking and other family activities.

It is the intention of the parties hereto that Grantors are hereby conveying the easement herein specified without divesting themselves, their heirs or assigns, of the right to the continuing use and enjoyment of the their property area: **PROVIDED**, however, such use shall not, in the judgment of said Grantee, interfere unreasonably with or endanger the construction or maintenance activities the retaining

wall, and provided further that no structure shall be constructed on the easement without first consulting with the Grantee.

Grantee's shall use their best efforts to provide Grantor's at least forty-five (45) days advanced notice of its intent to conduct any, repairs or other maintenance on the retaining wall and an estimated completion time for such construction activities. This prior notice requirement shall not apply to any emergency or imminent danger to public safety or property damage.

The foregoing rights are granted upon the express understanding and on the condition that Grantee will assume all liability and indemnify, hold harmless and defend Grantor, it's heirs or successor and assigns, for any and all claims, lawsuits or damages for injuries and/or damages to persons, or property, real or personal caused by or arising out of Grantee's construction activities or use of the property or failure to use due care in its exercise of the granted rights unless such claims, lawsuits, or demands for injuries or/damages are the result of structures being placed on the easement without Grantee's permission.

*[signatures and acknowledgements on following pages]*



GRANTEE  
CITY OF DEADWOOD:

By: \_\_\_\_\_  
David R. Ruth, Jr.  
Its: Mayor

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 person who is described in, and who executed the within instrument and acknowledge to me that he executed the same.

ATTEST

\_\_\_\_\_  
Jessica McKeown  
Finance Officer