

This Instrument Prepared By:  
Deadwood Historic Preservation Commission  
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 20<sup>th</sup> day of April, 2021 by **ZCN, LLC, a South Dakota Limited Liability Company**, 4201 S. Minnesota Ave, Suite 113, Sioux Falls, SD 57105 (the “Grantor”) to the **DEADWOOD HISTORIC PRESERVATION COMMISSION**, 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 Tract B of McGovern Hill Addition, located in the SE1/4 Section 22, SW1/4 Section 23, NW1/4 Section 26 and NE1/4 Section 27, T5N, R3E, BHM, City of Deadwood, Lawrence County, South Dakota, more particularly shown and 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 are more fully described in the Baseline Documentation Report attached as Exhibit B and incorporated herein by this reference;
- C. The Property is located within the boundaries of the Deadwood National Historic Landmark District.
- D. The Property represents open space for the scenic and visual enjoyment of the general public and will yield a significant public benefit;
- E. Protection of the Conservation Values of the Property is consistent with and advances conservation public policies of state and local governments, because South Dakota statutes clearly identify open space, wildlife habitat and scenic values protection as part of the State’s public policy, “retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forest, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving historical, architectural, archaeological, paleontological or other culture aspects of real property”.

- F. 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;
- G. The Property is located adjacent to the Deadwood Mountain Grand Resort, and therefore has substantial economic value if developed for nonagricultural purposes, but only by potentially harming the Conservation Values and Purposes as noted herein;
- H. 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 the Property. The conservation of the Property, subject to the terms of this Easement, will yield significant benefits to the public by protecting the Property;
- I. 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;
- J. The Grantee is a qualified organization under § 170(h) of the Internal Revenue Code ("IRC") because of its status as a governmental unit described in IRC § 170(b)(1)(A)(v), and policies, goals, and missions of Grantee are found and expressed, in relevant part, on Exhibit B.
- K. Grantee is willing to accept this Easement, to preserve and protect the Conservation Values of the Property in perpetuity in accordance with the terms of this instrument for the benefit of this generation and generations to come, subject nevertheless to the reservations and to the terms and conditions and obligations set out herein and imposed hereby;
- L. The parties desire to conserve the Property by entering into this Easement pursuant to SDCL 1-19B-56 to 1-19B-60 of the State of South Dakota and IRC §170(h); and
- M. Grantor has received independent legal and financial advice regarding this Easement to the extent that Grantor has deemed necessary. Grantor freely conveys this 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, and with the intention of making an absolute and unconditional gift, Grantor hereby gives, grants, warrants and conveys to

Grantee a conservation easement of the nature and character set forth herein, to preserve, protect, and maintain the Conservation Values of the Property.

1.2 *Term.* This Easement shall be **perpetual**.

1.3 *Authority Generally.* To accomplish the Conservation Purposes of this Easement, Grantee shall have the right and power to generally preserve and protect the Conservation Values and Conservation purposes, and specifically:

- (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;
- (b) To prevent any activity on or use of the Property that is inconsistent with the Conservation Purposes 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 Section 11;
- (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; and
- (d) To provide the public with visual access to the Property (but not physical access) for the public's scenic enjoyment of the Property.

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 Section 10.
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 Grantor and Grantee mutually agree the “Baseline Documentation Report”, set forth on Exhibit C, as depicted by 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 Easement. The Baseline Documentation Report will be used by Grantee to assure that any future changes in use of the Property will be consistent with the terms of this Easement.

5. **Purposes.** The Easement is hereby granted exclusively for the following purposes (together the “Conservation Purposes”):

- 5.1 *Preservation.* To assure that the Property will be retained in perpetuity in its predominantly undeveloped, historic, and open space condition;
- 5.2 *Scenic Enjoyment.* To preserve, protect and maintain the Property as open space for the scenic and visual enjoyment of the general public.
- 5.3 *Historic Preservation.* To assure that the Property remains in its undeveloped state to preserve the historic values of the Deadwood National Historic Landmark District.

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

- 6.1 *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.
- 6.2 *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.

## 7. Prohibited and Restricted Uses.

- 7.1 *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.
- 7.2 *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 Section 7.
- 7.3 *Specific Terms.* Any activity that is inconsistent with the Conservation Purposes of this Easement is prohibited. Without limited the generality of the foregoing, 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) 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, refuge, 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 B 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.

7.4 **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.

8. **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:

- 8.1 *Transfers.* To gift, transfer, lease, mortgage or otherwise encumber the Property, subject and subordinate to this Easement, after compliance with the notice requirements of this Easement in Section 10. Grantor agrees that the terms, conditions, restrictions, and purposes of this Easement will be inserted by it in any subsequent deed, or other legal instrument, by which it divests itself of either the fee simple title to or of its possessory interest in the Property.
- 8.2 *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.

- 8.3 *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.
- 8.4 *Other Ownership Rights.* To exercise all rights accruing from Grantor's ownership of the Easement Property, including the right to engage in, or permit or invite others to engage in, all uses of the Easement Property that are not expressly prohibited and are not inconsistent with the purposes of this Easement.

#### **9. Retained and Assumed Responsibilities, Obligations and Liabilities.**

- 9.1 *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.
- 9.2 *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.
- 9.3 *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.
- 9.4 *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.
- 9.5 *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.

9.6 *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 (i) solely by the negligence of the Indemnified Parties or (ii) primarily by the gross negligence or willful misconduct of the Indemnified Parties.

9.7 *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.

## 10. Notices and Approvals.

10.1 *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 (10) 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.

- 10.2 *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.
- 10.3 *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.

## 11. Grantee's Remedies.

- 11.1 *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.
- 11.2 *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.
- 11.3 *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.

- 11.4 *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 Section 11 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.
- 11.5 *Scope.* Grantee's rights under this Section 11 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 Section 11.2, 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 Section 11 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 11.6 *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.
- 11.7 *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.
- 11.8 *Waiver.* Grantor hereby waives any defense of laches, estoppel, or prescription.

## **12. Extinguishment and Condemnation.**

- 12.1 *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 Section 12.2.

12.2 *Valuation.* This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Section 12.1, 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. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to IRC §170(h).

12.3 *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 Section 12.2.

12.4 *Application of Proceeds.* Grantee shall use any proceeds received under the circumstances described in this Section 12 in a manner consistent with the Conservation Purposes, which are exemplified by this grant.

13. **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 Values and Purposes 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.

14. **General Provisions.**

14.1 *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.

14.2 *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.

14.3 *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 IRC §170(h). Any such amendment that does not comply with all such requirements shall be void and of no force or effect.

14.4 *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.

14.5 *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.

14.6 *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.

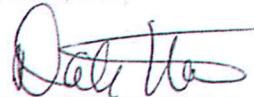
- 14.7 *Headings.* The section headings to this Easement are intended solely for the parties' convenience and shall not affect the interpretation or construction of any portion or provision of this Easement.
- 14.8 *Recordation; Publicity.* Grantee shall record this instrument in timely fashion in the 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.
- 14.9 *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.
- 14.10 *No Forfeiture.* Nothing contained herein will result in forfeiture by Grantee or reversion of Grantor's title in any respect.
- 14.11 *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.

**[Signature pages follow]**

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

**GRANTOR:**

**ZCN, LLC**



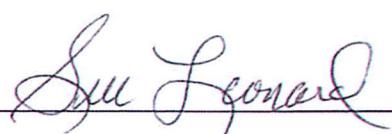
By: Dale Morris  
Its: Sole Member

STATE OF TENNESSEE ) : SS  
COUNTY OF DAVIDSON )

On this the 20<sup>th</sup> day of April, 2021, before me, the undersigned officer, personally appeared Dale Morris, who acknowledged himself to be the sole member of ZCN, LLC, a South Dakota Limited Liability Company, and that he, as such officer being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

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



  
Notary Public - Tennessee  
My Commission Expires: **May 9, 2023**  
My commission expires: \_\_\_\_\_

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

**GRANTEE: DEADWOOD  
HISTORIC PRESERVATION  
COMMISSION, CITY OF  
DEADWOOD,**

A South Dakota Municipal  
Government

By Dale Berg

Its: Chairman

108 Sherman Street  
Deadwood, SD 57732

STATE OF SOUTH DAKOTA ) : SS  
COUNTY OF LAWRENCE )

On this the 29<sup>th</sup> day of April, 2021, before me, the undersigned officer, personally appeared Dale Berg, who acknowledged himself to be the Chairman of Deadwood Historic Preservation Commission, a South Dakota municipal government, and that he, as such officer being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

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

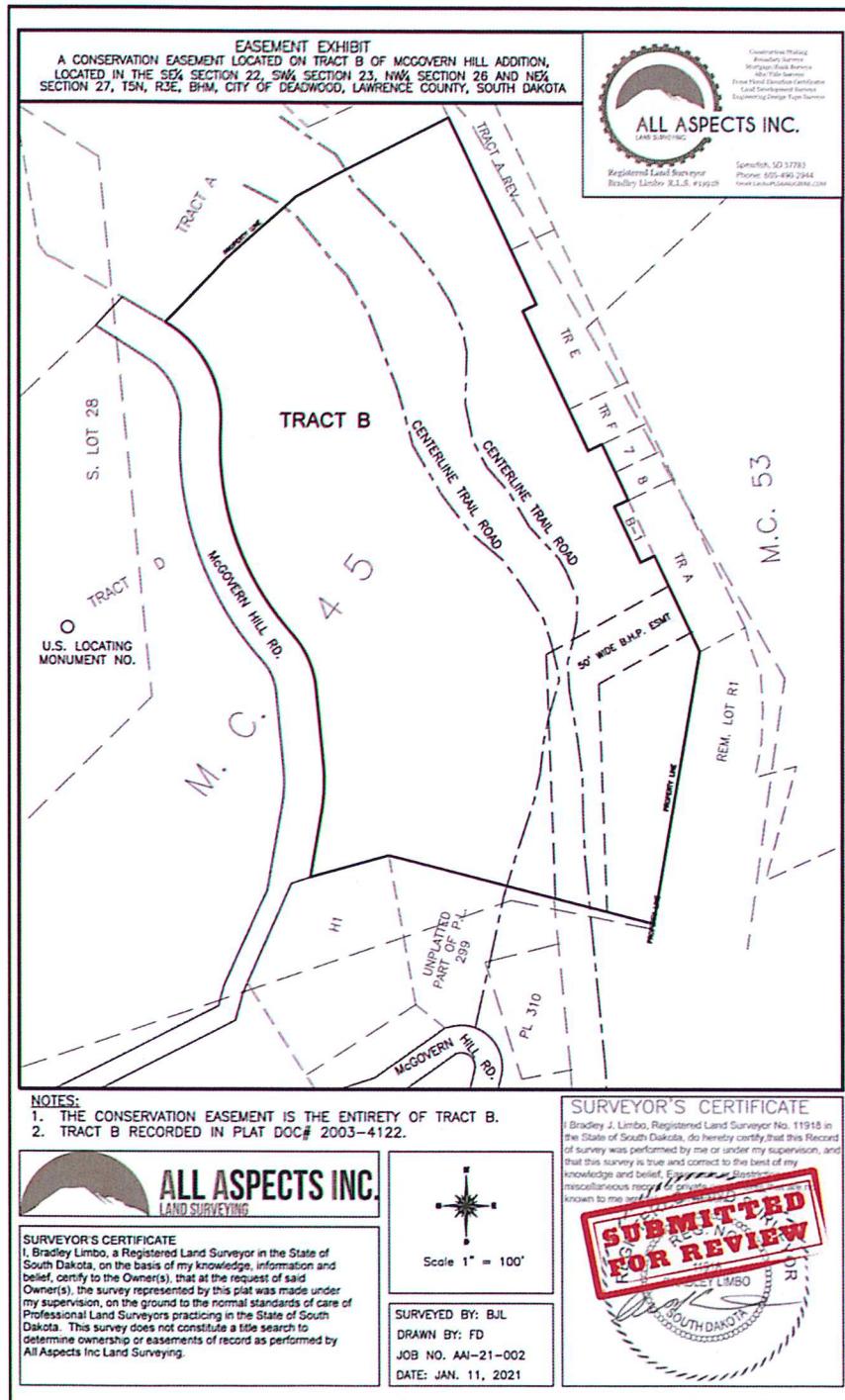
Misty Trewhella

Notary Public - South Dakota

My commission expires: September 28, 2024

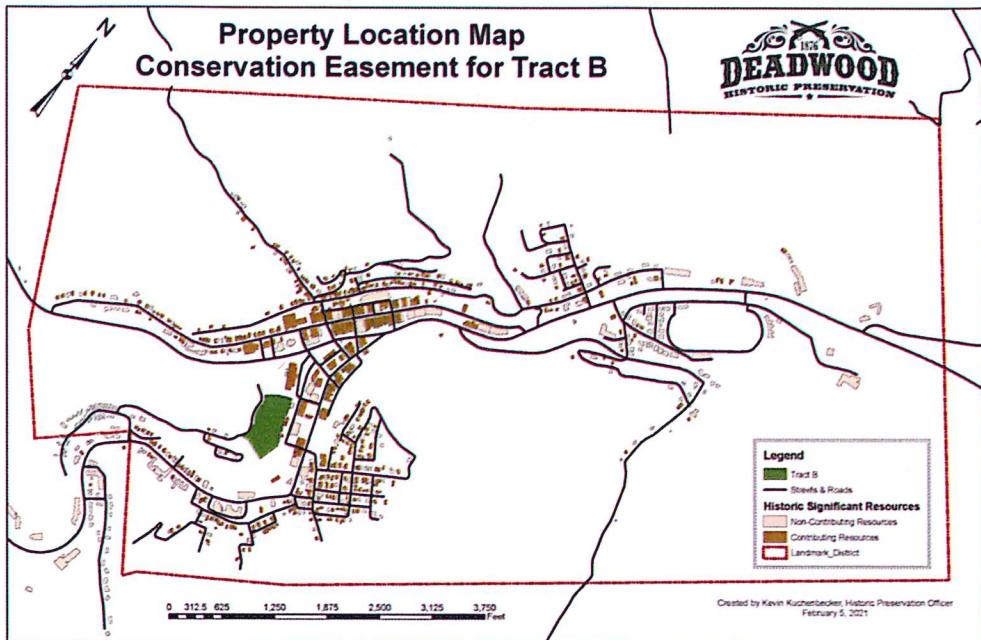


## EXHIBIT A



## EXHIBIT B

### Baseline Documentation Report Map showing location of Property



### Description of Property

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 contains several archeological features including identified foundations near the bottom of the property dating to near the founding of the mining camp of South Deadwood and the weir ditch providing "slimes" to the 1906 Homestake Mining Company's Slime Plant. It also contains an abandoned roadway and a deserted railroad spur with associated features.

The property is currently zoned for commercial use. The Property is adjacent to four residential properties and the rehabilitated Slime Plant now used as multi-use commercial property and known as the Deadwood Mountain Grand. Access to the property is limited due to the constraints associated with the hillside. McGovern Hill Road abuts the upper limits of the property and the Homestake Trail passes near the South side of the property.

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.