

Prepared by: Tim Hogan, Attorney
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PERMANENT RETAINING WALL EASEMENT AGREEMENT

This Permanent Retaining Wall Easement Agreement ("Easement Agreement") is entered into this _____ day of _____, 2026, by and between the CITY OF DEADWOOD, SOUTH DAKOTA, a municipal corporation, whose address is 102 Sherman Street, Deadwood, South Dakota 57732 ("City" or "Grantor"), and DANIKA McFARLAND, a single person, whose address is 37 Lincoln Avenue, Deadwood, South Dakota 57732 ("McFarland" or "Grantee").

RECITALS

A. The City is the owner of the Taylor Street public right-of-way located adjacent to Lots 2 and 3, Block 43, Original Townsite, City of Deadwood, Lawrence County, South Dakota.

B. McFarland is the owner of the following described real property situated in Lawrence County, South Dakota:

The East 20' of Lot 2 and the West 5' of Lot 3, Block 43, City of Deadwood, Lawrence County, South Dakota as shown in Rogers map of the City of Deadwood.

The foregoing property is commonly known as 37 Lincoln Avenue, Deadwood, South Dakota, and is referred to in this Easement Agreement as the "Dominant Estate."

C. McFarland is constructing a retaining wall which will extend into and occupy a portion of the Taylor Street right-of-way and will tie into an existing retaining wall.

D. The location of the proposed retaining wall within the Taylor Street right-of-way is depicted upon the drawing entitled "Exhibit A Showing the Location of Proposed Retaining Walls Within Taylor Street Right of Way Adjacent to Lots 2 and 3, Block 43 Original Townsite, City of Deadwood Lawrence County, South Dakota," prepared by Ponderosa Land Surveys, L.L.C., dated August 26, 2026, Project No. 26-195, drawn by L. D. Verm, and described as an exhibit drawing for easement purposes. A copy of the drawing is attached hereto as Exhibit A and incorporated herein by this reference.

E. The parties desire to establish of record McFarland's right, and the rights of future owners of the Dominant Estate, to construct, maintain, repair, replace, and use the retaining wall within the Taylor Street right-of-way upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Grant of Easement. The City hereby grants and conveys to McFarland, and to her successors and assigns as owners of the Dominant Estate, a permanent, nonexclusive easement over, across, and within that portion

of the Taylor Street right-of-way upon which the proposed retaining wall is located as depicted on Exhibit A attached hereto ("Easement Area"). The easement granted herein includes the right to construct, install, maintain, inspect, repair, reconstruct, and replace the retaining wall within the Easement Area, together with such reasonable temporary access over the immediately adjoining portion of the Taylor Street right-of-way as is reasonably necessary to perform such work.

2. Purpose and Limitation of Easement. The easement is granted solely for the construction, existence, use, maintenance, inspection, repair, reconstruction, and replacement of the retaining wall depicted on Exhibit A and for no other purpose.

No structure or improvement other than the retaining wall and improvements reasonably necessary for its proper construction, drainage, support, and maintenance may be constructed within the Easement Area without the prior written approval of the City. Nothing contained herein shall be construed as conveying title to any portion of the Taylor Street right-of-way to McFarland or any subsequent owner of the Dominant Estate.

3. Construction. McFarland shall be solely responsible for all costs and expenses associated with the design and construction of the retaining wall. The retaining wall shall be constructed substantially in the location depicted on Exhibit A and in accordance with all plans approved by the City and all applicable ordinances, building requirements, permits, and other governmental requirements. Nothing contained in this Easement Agreement eliminates or modifies any requirement that McFarland obtain any permit or approval otherwise required by the City or any other governmental authority.

4. Maintenance, Repair, and Replacement. McFarland, and her successors and assigns as owners of the Dominant Estate, shall at their sole cost and expense maintain the retaining wall in good condition and repair. McFarland shall promptly perform all maintenance and repairs reasonably necessary to ensure that the retaining wall does not create a dangerous, defective, or unsafe condition within the Taylor Street right-of-way or upon adjoining property. The foregoing obligation includes, as reasonably necessary, repair, reconstruction, or replacement of the retaining wall and correction of any condition involving the wall that adversely affects the Taylor Street right-of-way.

5. Drainage and Public Right-of-Way. The retaining wall shall be maintained so that it does not unreasonably interfere with the public's use of the Taylor Street right-of-way, existing drainage, surface-water flow, snow removal, public utilities, or other lawful uses of the right-of-way. McFarland shall be responsible for correcting, at her expense, any condition caused by the retaining wall that unreasonably interferes with drainage or otherwise damages the Taylor Street right-of-way.

6. City's Continuing Rights. Except for the easement rights expressly granted herein, the City retains all right, title, and interest in the Taylor Street right-of-way, including the right to use and maintain the right-of-way for lawful public purposes. The City may install, operate, inspect, maintain, repair, or replace streets, utilities, drainage facilities, or other public improvements within the Taylor Street right-of-way, provided that the City shall exercise reasonable care to avoid unnecessary damage to the retaining wall. The existence of the retaining wall shall not prevent the City or any authorized public utility from exercising rights otherwise lawfully existing within the Taylor Street right-of-way.

7. Damage Caused by Retaining Wall. McFarland shall be responsible for any damage to the Taylor Street right-of-way or other City property caused by the failure, deterioration, improper maintenance, repair, reconstruction, or replacement of the retaining wall.

8. Indemnification. To the extent permitted by law, McFarland shall indemnify and hold the City harmless from claims, damages, liabilities, costs, and expenses arising from the construction, existence, maintenance,

repair, reconstruction, or replacement of the retaining wall, except to the extent caused by the negligence or wrongful conduct of the City or its officers, employees, agents, or contractors. The obligations contained in this paragraph shall be binding upon future owners of the Dominant Estate.

9. Easement Appurtenant and Covenants Running With the Land. The easement granted herein is appurtenant to and for the benefit of the real property described above. The easement and the rights and obligations contained in this Easement Agreement shall run with the Dominant Estate and shall be binding upon and inure to the benefit of McFarland and all subsequent owners, successors, and assigns of the Dominant Estate. The easement shall burden the Taylor Street right-of-way owned by the City within the Easement Area depicted on Exhibit A.

10. No Adverse Rights. The use of the Taylor Street right-of-way permitted by this Easement Agreement is by virtue of the express easement granted herein. Neither McFarland nor any successor or assign shall acquire any additional right, title, prescriptive easement, or other interest in the Taylor Street right-of-way by reason of the construction, existence, maintenance, or use of the retaining wall. This type of provision is consistent with your prior life-of-structure easements, which expressly establish that use of another's property is permissive and not adverse.

11. No Consideration Payable. The parties acknowledge and agree that no monetary consideration is payable by either party to the other for the granting of this easement, the consideration for this Easement Agreement consisting of the mutual rights, obligations, and covenants contained herein.

12. Entire Agreement. This Easement Agreement contains the entire agreement between the parties concerning the subject matter hereof. Any amendment to this Easement Agreement shall be in writing, executed by the City and the then-current owner of the Dominant Estate, and recorded in the office of the Lawrence County Register of Deeds.

13. Governing Law. This Easement Agreement shall be interpreted and enforced in accordance with the laws of the State of South Dakota.

14. Recording. This Easement Agreement shall be recorded in the office of the Lawrence County Register of Deeds, and Exhibit A shall be recorded as part of this Easement Agreement.

IN WITNESS WHEREOF, the parties have executed this Permanent Retaining Wall Easement Agreement on the date or dates stated below.

Dated this ____ day of _____, 2026.

CITY OF DEADWOOD, SOUTH DAKOTA

Alea Struble, Mayor
City of Deadwood

ACKNOWLEDGEMENT FOR CITY

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF LAWRENCE)

On this ____ day of _____, 2026, before me personally appeared Alea Struble, Mayor, City of Deadwood, to be the person who is described herein, and who executed the within instrument and acknowledged to me that she executed the same.

ATTEST:

Jessica McKeown
Finance Officer

Dated this ____ day of _____, 2026.

Danika McFarland

ACKNOWLEDGEMENT

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF LAWRENCE)

On this ____ day of _____, 2026, before me, the undersigned officer, personally appeared Danika McFarland, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same for the purposes therein contained.

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

Notary Public – State of South Dakota

My commission expires: _____