

Prepared by:  
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Rapid City, SD 57709  
605-342-1078

**RECREATIONAL NON-MOTORIZED EASEMENT AGREEMENT**

**THIS RECREATIONAL HIKING AND BIKING EASEMENT AGREEMENT** ("Agreement") is entered into effective the 15<sup>th</sup> day of ~~October, 2023~~, by and between TNF PROPERTIES, LLP ("Owner"), 515 S. Main Street, Lead, South Dakota 57754, and CITY OF DEADWOOD ("CITY"), a South Dakota Municipality, of 102 Sherman Street, Deadwood, South Dakota 57732. The foregoing entities may be referred to hereinafter individually as a "Party" and collectively as the "Parties."

BA  
May, 2024

**RECITALS**

1. Owner owns the following-described real property in Lawrence County, South Dakota:  
  
Lot 1R-A of Deadwood Gulch Addition II (Plat 2007-03846) in  
Section 27, T5N, R3E, BHM, Deadwood, Lawrence County, South Dakota
2. CITY desires to construct and maintain a recreational hiking and biking trail on the Owner's land for use by the public (the "Trail").
3. Owner is willing to grant CITY an easement for the Trail on the terms set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing, the Parties agree as follows:

1. **Grant of Easement:** Owner hereby grants to CITY a nonexclusive easement (the "Easement") over and across the Owner's lands for CITY and the public to use as the Trail. The Easement shall be twenty (20) feet wide, including any ditches and layback slopes, and located as generally described on the drawing attached hereto as Exhibit A, which by this reference is incorporated herein.
2. **Reservation of Right of Use:** Owner reserves, for itself and its partners, related entities, affiliates, contractors, employees, successors and assigns, the right to use and cross the Easement to access the Owner lands and other lands.
3. **Permitted Uses, No Charge for Use:** The Easement and the Trail may only be used for recreational non-motorized purposes. No entity may charge for use of the

Easement and the Trail. In the event that the Easement and the Trail are a component of a larger event, fees may be collected for that larger event.

4. **Construction & Maintenance:** It shall be the responsibility of CITY to construct, maintain and repair the Trail. The Trail and Easement shall be maintained to minimize drainage, and water barriers shall be installed as necessary to prevent unreasonable erosion. The Trail and Easement shall be maintained at all times to minimize damage to the Owner lands. All cuts and laybacks shall be maintained to prevent sloughing. Owner shall have no duty or obligation to maintain or repair the Trail or Easement. CITY may use motorized equipment for the maintenance of the trail.
5. **Excavations.** All excavation, digging, cutting and trenching ("excavations") plans and excavations must be approved in writing by Owner prior to the commencement of any excavating. Owner shall have the right to observe all excavations. Owner shall also have the right to stop any excavating activity it deems potentially harmful to the environment, to property or to persons.
6. **Application of SDCL 20-9-12, 13 and 14:** It is understood that Owner enters into this Agreement and grants the Easement on the condition that SDCL 20-9-12, 13 and 14 apply to the construction, maintenance and use of the Trail and Easement, so that Owner has no liability for any damages or injuries arising out of such construction, maintenance and use. If for any reason Owner forms the opinion that SDCL 20-9-12, 13 and 14 do not apply, Owner may terminate the Easement and the Agreement by recording a notice of such termination in the office of the Lawrence County Register of Deeds and giving notice of the same to CITY. CITY shall then reclaim the Trail and Easement pursuant to the terms of Paragraph 9 hereof.
7. **Indemnification and Hold Harmless:** CITY indemnifies and holds Owner, its partners, related entities, affiliates, contractors, employees, successors and assigns, harmless from any damage, loss, liability, injury, death, or any claim therefore (including attorney's fees, fines, and penalties) to persons, property, natural resources and the environment, including environmental liability, and responsibility of every kind and character arising out of construction, maintenance, or use of the Trail and Easement by anyone.
8. **No Warranty:** This Easement is granted without warranty or representation of any kind as to the title, physical or environmental condition, safety or fitness or suitability of use for any purpose of the lands subject to the Easement, or of any other adjacent or nearby lands owned or controlled by Owner, and the grant of the Easement does not create a severance of the surface and mineral estates with respect to the Easement.
9. **Default:** Should CITY default in the performance of any of its obligations under this Agreement, including, without limitation, compliance with laws as required by

Section 14 below, Owner may give written notice of the nature of the default to CITY. CITY shall have thirty (30) days after the date of the notice of default to cure the default. If the default is not cured to the sole satisfaction of Owner within said thirty (30) day period, then Owner may terminate the Easement and the Agreement by recording a notice of such termination in the office of the Lawrence County Register of Deeds.

10. **Reclamation.** Upon the termination of this Agreement, CITY shall remove within a reasonable time all improvements, signs and structures caused to be placed on the Easement by CITY, and shall reclaim and restore the Trail and Easement to a condition satisfactory to Owner. If CITY fails to remove, restore and reclaim in a reasonable time, Owner may do so and all costs incurred by Owner shall be reimbursed to Owner by CITY.
11. **Binding Effect:** This Agreement and the Easement granted herein shall be binding upon the Parties hereto, their successors and assigns, and shall run with the lands described.
12. **Time of Essence:** Time is of the essence of this Agreement.
13. **Governing Law - Jurisdiction and Venue:** This Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota as though made and to be fully performed in that state without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction. Each party irrevocably and unconditionally waives, to fullest extent permitted by law, any right it may have to a trial by jury in any legal action, proceeding, cause or action, or counterclaim arising out of or relating to this agreement, or the transactions contemplated hereby.
14. **Compliance With All Laws:** In constructing, maintaining, repairing and using the Trail and Easement, CITY, its contractors and subcontractors, shall comply with all applicable Federal, State and local laws, rules and regulations, including all environmental laws, rules and regulations.
15. **Neutral Construction:** This Agreement and the wording contained herein accords with the negotiations of the Parties. Accordingly, no provision hereof shall be construed against one Party or in favor of another Party merely by reason of draftsmanship.
16. **Entire Agreement and Amendment:** This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof. This Agreement may only be amended, modified, or supplemented by a written instrument signed by all the Parties expressly stating that such instrument is intended to amend, modify or supplement this Agreement.
17. **Severability:** If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, such provision shall be enforced to the fullest



CITY OF DEADWOOD

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

STATE OF SOUTH DAKOTA )

ss)

COUNTY OF LAWRENCE )

On this \_\_\_\_ of \_\_\_\_\_, 2023, before me, the undersigned officer, personally appeared \_\_\_\_\_ of the City of Deadwood known to me or satisfactorily proven to be the persons described in the foregoing instrument, and acknowledged executing the same in the capacity therein stated for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

(SEAL)


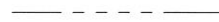


\_\_\_\_\_  
Notary Public  
My Commission Expires \_\_\_\_\_

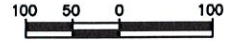
# RECREATION EASEMENT

LOT 1R-A OF DEADWOOD GULCH ADDITION II  
(PLAT 2007-03846)  
IN SECTION 27, T5N, R3E, BHM  
DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA

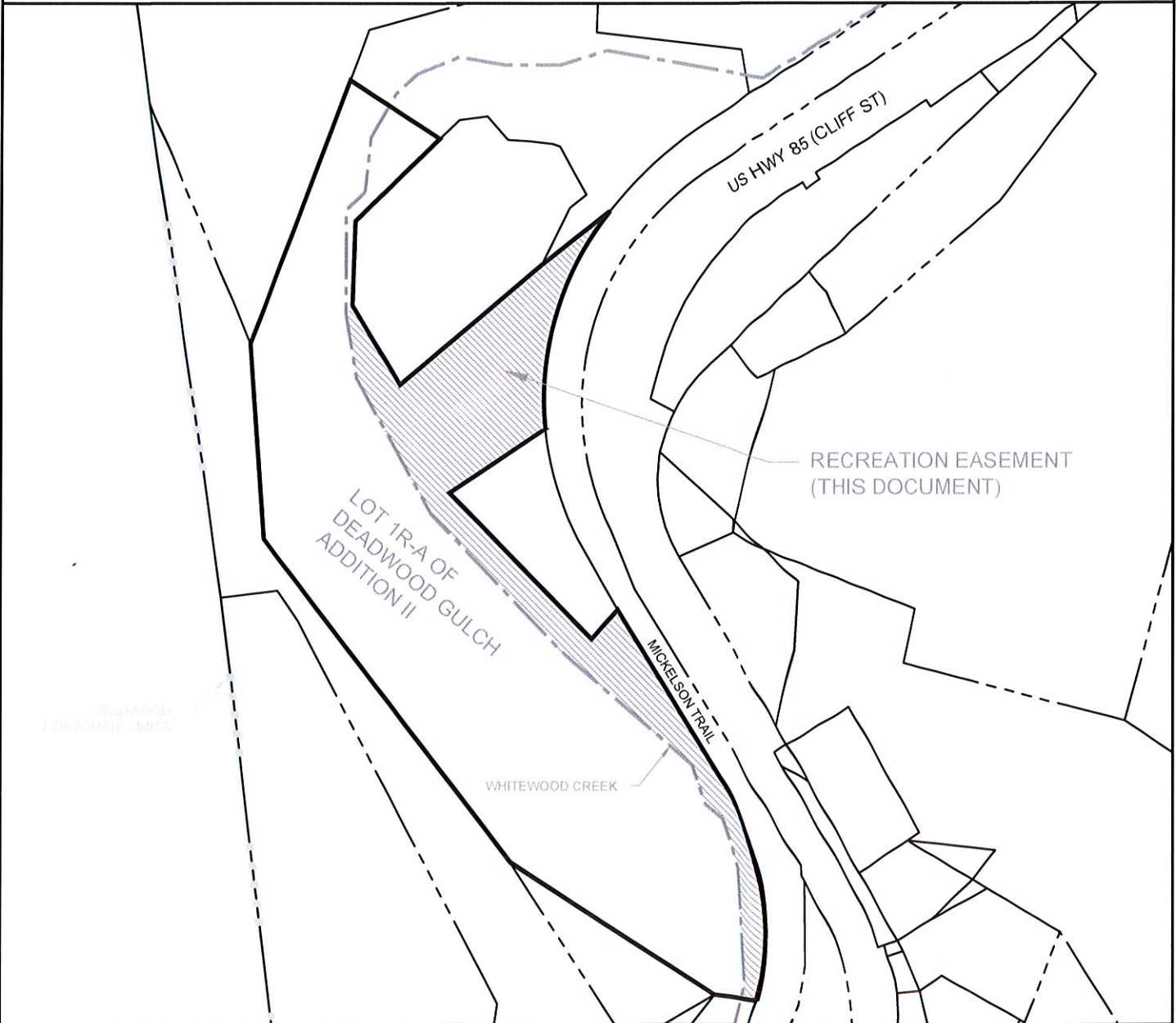


## LEGEND

-  PROPERTY AS DESCRIBED
-  PROPERTY LINE
-  WHITEWOOD CREEK
-  RECREATION EASEMENT AREA  
(THIS EXHIBIT)



NOTE: THE INTENT OF THE EASEMENT AS SHOWN IS TO PROVIDE RECREATIONAL AREAS BETWEEN THE EAST BANK OF WHITEWOOD CREEK AND MICKELSON TRAIL ON THE PROPERTY AS DESCRIBED.



P:\23-123\AutocAD\21-141\LEGL.dwg  
10-3-23

OWNERS:  
TNF PROPERTIES, LLP  
515 S. MAIN STREET  
LEAD, SD 57754

# EXHIBIT A

PROJECT NO.  
23-123  
FIGURE NO.  
1 OF 1