

Prepared by:
Deadwood Historic Preservation Commission
City of Deadwood
108 Sherman Street
Deadwood, SD 57732
(605) 578-2082
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DEED OF CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT AGREEMENT is made and entered into this ____ day of _____, 20__, between Marquerite E. Olesen and Richard A. Olesen, 624 Main Street, Deadwood, South Dakota, 57732, hereinafter referred to as the "Grantor", and the City of Deadwood, 102 Sherman Street, Deadwood, SD 57732, a South Dakota municipal government, hereafter referred to as the "Grantee".

WHEREAS:

- A. Grantor has fulfilled the requirements of the lease agreement and the ownership shall be transferred to the Grantor for the Wild Bill Bar Sign (the "Property") located on the front of the structure at 624 Main Street, Deadwood, South Dakota, more particularly described in Exhibit A and shown on Exhibit B attached hereto and incorporated herein by this reference;
- B. The Property possess culturally, historically, and architecturally 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.
- C. Maintaining the Property's historic and architectural characteristics, and, in particular, maintaining the Property free from new structures, alteration or changes that would encroach upon, damage or destroy the Property 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;
- D. 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;
- E. 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
- F. 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. General Provisions.

- 1.1 Grantee's Representation. Grantee represents and warrants that it is a governmental body empowered to hold an interest in real property under the laws of this state.
- 1.2 Grant of Conservation Easement. Grantor voluntarily grants and conveys to Grantee in consideration of the completion of the Lease Agreement and Grantee voluntarily accepts, this Conservation Easement to run with the land in perpetuity under the provisions of SDCL 1-19B-56 to 1-19B-60, inclusive, commencing on the date when it is filed with the Lawrence County Register of Deeds.
- 1.3 Purpose. The purpose of this Conservation Easement is to conserve and protect the Property's historic and architectural characteristics as part of National Historic Landmark district, the State and National Register districts, and the local historic district; maintain the Property as referenced in the recitals above, while providing for its compatible use, including further development consistent with the character of the historic districts.
- 1.4 Implementation. This Conservation Easement shall be implemented by maintaining and preserving the Property in accordance with the provisions herein.

2. Definitions.

- 2.1 Baseline Documentation Report. 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.
 - 2.2 Foot Print of Structures. The Foot Print of a structure shall be that measurement encompassing the enclosed ground floor area, as measured from the exterior, at the point of contact with, or extending/cantilevering above, the ground, and does not apply to unenclosed decks, patios or porches.
 - 2.3 Grantee. The term "Grantee" includes the original Grantee and its successor and assigns.
 - 2.4 Grantor. The term "Grantor" includes the original Grantor his or her heirs, successors and assigns, and all future owners of all or any portion of the Property.
3. **Reserved Rights of Grantor**. Grantor reserves for himself and his successors in interest with respect to the Property, all rights with respect to the Property except as provided herein, including, without limitation, the right of exclusive use, possession and enjoyment of the Property, and the right to sell, transfer, lease, mortgage or otherwise encumber the Property, subject to the restrictions and covenants set forth in this Conservation Easement. Nothing contained in this Conservation Easement shall be construed as a grant to the general public or to any other person or entity, of any right to enter upon any part of the Property, except as otherwise provided for in Sections 5.2 and 6.2 of this Conservation Easement.

4. **Restrictions Applicable to the Property.** The following restrictions apply to the Property.

4.0 **Use.** The Property may be used for residential, educational, or commercial purposes except as permitted herein so long as they are not inconsistent with the terms and purposes of this Conservation Easement. Industrial uses are not permitted.

4.3 **Permitted Structures and Improvements.** No permanent or temporary structures or other improvements shall hereafter be placed or maintained on the Property, except as specifically provided for below, with prior notice and approval pursuant to Section 5.2.

- a. **Existing Structures and Improvements.** The existing structures and improvements on the Property, including, without limitation, the existing building, and accessory structures, retaining walls, fences, and access are permitted. The existing structures and improvements shall maintain the Property in a good and sound state of repair and to maintain the subject Property, including the other structures or features of the site, according to the Standards and to Deadwood Municipal Code 17.68.090 and 17.68.100, so as to prevent deterioration and preserve the architectural and historical integrity of the Property. All such activities shall be consistent with the restrictions set forth in this Conservation Easement. All existing structures and their accessory structures are documented in the Baseline Documentation Report.
- b. **Accessory Structures and Improvements.** Accessory Structures and Improvements are permitted so long as they are compatible with the Property and Historic Districts and are approved by the Grantee and the appropriate divisions of state and local government.
- c. **Incidental Landscape and Garden Structures and Improvements.** Incidental Landscape and Garden Structures and Improvements are permitted so long as they are compatible with the Property and Historic Districts.
- d. **Improvements.** Improvements as reasonably necessary to serve the permitted Structures may be located and maintained on the Property. Grantee shall give such permission only if Grantee finds that such use of improvement on the Property is consistent with the conservation purposes of this Conservation Easement and that such does not encroach upon, damage or destroy the Property or have an adverse effect on the historic districts in which the property is located.

5. **Additional Covenants and Provisions.**

5.1 **Existing Conditions and Baseline Documentation Report.** By its execution of this Conservation Easement, Grantee acknowledges that Grantor's present uses of the Property are compatible with the purposes of this Conservation Easement. In order to evidence the present condition of the Property (including both natural and man-made features) and to facilitate future monitoring and enforcement of this Easement, a Baseline Documentation Report describing such condition at the date hereof, has been prepared and subscribed by both parties, is incorporated herein by this reference, and a copy thereof has been delivered to Grantor and an original copy will be kept on file with the Grantee.

5.2 Required Notice. Grantor agrees to give Grantee written notice before exercising any reserved right as delineated in this Conservation Easement as follows.

- a. Restrictions on activities that would affect historically significant components of the Property. The Grantor agrees that no construction, alteration, or remodeling or any other activity shall be undertaken or permitted to be undertaken on the Property which would affect historically significant features identified in Exhibit C; exterior construction materials, architectural details, form, fenestration, height of the Property, or adversely affect its structural soundness without prior written permission of the Grantee affirming that such reconstruction, repair, repainting, refinishing, rehabilitation, preservation, or restoration will meet The Secretary of the Interior's *Standards for the Treatment of Historic Properties* (hereinafter referred to as the "Standards").
- b. Restrictions on activities that would affect archeological resources. The Grantor agrees that no ground disturbing activity, defined as any activity extending deeper than twelve (12) inches, shall be undertaken or permitted to be undertaken on the Property which would affect historically significant archeological resources identified in Exhibit C without prior written permission of the Grantee affirming that such work will meet The Secretary of the Interior's *"Standards for Archeology and Historic Preservation."*
- c. Construction Notice. In order to facilitate the monitoring of this Conservation Easement, to ensure continuing communication, and to determine that new or modified permitted Structures conform to the terms of this Conservation Easement, Grantor shall submit to Grantee sufficient written information. Such information shall allow Grantee to confirm that the Structures proposed for construction: (1) conform to the use or uses permitted within that area, as marked on Exhibit B; (2) confirm the proposed undertaking does not encroach upon, damage or destroy a historic resource; and (3) do not violate any of the terms or conditions of this Easement. Said information shall include the proposed undertaking for the Property.
- d. Approval. Pursuant to actions or activities requiring approvals in this Conservation Easement, Grantor shall submit to Grantee sufficient written information to allow for a determination by Grantee that such action or activity is in compliance with the purposes, terms and intent of this Conservation Easement. Grantee shall have forty-five (45) days from the receipt of the information, and an additional ten (10) days as provided in the following paragraph (or such longer period as the parties may agree to in writing) within which to review such materials and grant or deny approval.

Notice shall be pursuant to Section 5.3 herein. Grantee may review the proposed site to confirm that the proposed action or activity is in compliance with this Conservation Easement, and shall notify Grantor as to whether or not the proposal is in compliance with the terms of this Conservation Easement, not more than forty-five (45) days from receipt of the notice. If Grantee fails to respond within forty-five (45) days, Grantor will further contact Grantee to confirm that Grantee received the first notice, and if after ten (10) days Grantee does not respond, the proposals shall be deemed approved. In approving such proposals, Grantee may attach such conditions as it

reasonably deems necessary to comply with the purposes, terms and intent of this Conservation Easement

- 5.3 Notice and Approval Requests, Responses, in Writing. Any written notice or approval request required or desired to be given under this Conservation Easement by Grantor, and any subsequent response from Grantee, shall be in writing and shall be deemed given when received, or three (3) days after mailing by certified mail, or by FedEx or a similar public or private courier service which provides receipt of delivery, properly addressed as follows: (a) if to Grantee, at address set forth above; (b) if to Grantor, at the address set forth above, (c) if to any subsequent owner, at the address of the Property. Any party can change the address to which notices are to be sent to him, her or it by giving notice pursuant to this paragraph.
- 5.4 Enforcement. The Grantee shall have the right to enforce this Conservation Easement at law or in equity, including, without limitation, pursuant to the provisions of this Conservation Easement against any or all of the owners of the Property or any part thereof. If the Grantee, upon inspection of the property, finds what appears to be a violation, or threatened violation, of this Conservation Easement, Grantee shall notify the party in violation or threatening the violation, who shall, in the case of an existing violation, promptly cure the violation by (a) ceasing the same and (b) restoring the Property to the condition before such violation, or in the case of a threatened violation, refrain from the activity that would result in the violation. The Grantee may exercise its discretion to seek injunctive relief in a court having jurisdiction.

Except when an ongoing or imminent violation will irreversibly diminish or impair the cultural, historical and architectural importance of the Property, the Grantee shall give the Grantor written notice of the violation. If the violation continues for more than thirty (30) days after notice specifying such violation is given (or in the case of a violation which cannot with reasonable diligence be remedied within a period of thirty (30) days but which the party in violation has commenced to remedy with all reasonable diligence within such 30-day period, then for such longer period as may be necessary to remedy the same with all reasonable diligence), Grantee may take any formal action, including, but not limited to, legal action.

At any time, if Grantee determines, in its sole discretion, that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may seek immediate injunctive relief and may pursue all its available legal remedies. If a court, having jurisdiction, determines that a violation exists or has occurred, the Grantee may obtain an injunction to stop the violation, temporarily or permanently. A court may also issue a mandatory injunction requiring the Grantor to restore the Property to a condition that would be consistent with preservation purposes of the Deadwood Historic Preservation Commission and to the Existing Conditions and Baseline Documentation prior to the violation.

Grantee's remedies described in this Conservation Easement shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Such remedies include the right to recover any damages for violation of the terms of this Conservation Easement or injury to the conservation values protected by this Conservation Easement, including, without limitation, damages for the loss of scenic, aesthetic or ecological

values and to require restoration of the Property to the condition that existed prior to any such injury.

The current Grantor (owner) shall reimburse Grantee for all reasonable expenses incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessary to cure the violation.

Should Grantor prevail in a judicial enforcement action, each party shall bear its own costs. Failure to enforce any restriction or covenant herein contained shall in no event be deemed a waiver of a right to do so thereafter as to the same violation or breach or as to one occurring prior or subsequent thereto.

The failure of the Grantee to discover a violation or to take immediate action to correct a violation shall not bar it from doing so at a later time.

5.5 Casualty damage or destruction. In the event that the Property or any part of it shall be damaged or destroyed by fire, flood, windstorm, earth movement, or other casualty, the Grantor shall notify the Grantee in writing within 14 days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Property and to protect public safety, shall be undertaken by the Grantor without the Grantee's prior written approval indicating that the proposed work will meet the Standards. The Grantee shall give its written approval, if any, of any proposed work within 60 days of receiving the request from the Grantor. If after reviewing the condition of the property, the Grantee determines that the property has been so damaged that it is incapable of repair, the Grantee will notify the Grantor in writing if the damage or destruction is caused by the gross negligence or the intentional acts of the Grantor or future owner, then the Grantee will initiate requisite legal action to recover, at a minimum, the grant funds applied to the property which will then be returned to the Deadwood Historic Preservation Commission.

5.6 Amendments. This Conservation Easement may be amended only upon the written consent of Grantee and the then current Grantor (owner) of the Property for that portion of the Property for which an amendment to this Conservation Easement is sought. Grantee, on a case-by-case basis, may agree to amend individual provisions of the Conservation Easement, provided the amendment shall be consistent with preservation purpose of this easement and shall not reduce its term of duration. No amendment may be granted unless the Grantee determines that such amendment will not adversely affect the architectural and historic character of the Property and other protective goals of this Conservation Easement and is otherwise consistent with the overall purposes of this Easement.

Any amendment of this Easement shall be at the discretion of the Grantee (which may establish such requirements for the submission of plans and other documentation as it deems necessary to make the determination required or permitted of it hereunder) and shall comply with South Dakota Codified Law and Section 170(h) of the Internal Revenue Code. Any such amendment that does not comply with South Dakota Codified Law or Section 170(h) shall be void and of no force or effect.

Grantor requesting the amendment shall reimburse Grantee for all expenses, including staff time and reasonable attorneys' fees, incurred in preparing and executing the amendment. Any such amendment shall not be effective unless it is executed in the same manner as this easement, refers expressly to this easement, and is filed with the Lawrence County Register of Deeds.

- 5.7 Notices of Property Conveyance, Lease or Transfer. Grantor shall give Grantee notice of any subsequent conveyance, including, without limitation, transfer, lease or mortgage of the Property, and any deed or other instrument evidencing or effecting such conveyance shall contain language substantially as follows: "This [conveyance, lease, mortgage, easement, etc.] is subject to a Conservation Easement which runs with the land and which was granted to Deadwood Historic Preservation Commission, by instrument dated _____, 20____, and recorded in the Office of the Register of Deeds for Lawrence County, South Dakota," The failure to include such language in any deed or instrument shall not affect the validity of this Conservation Easement or its applicability to such property.
- 5.8 Taxes and Assessments. Grantor shall pay all taxes, levies, and assessments and other governmental or municipal charges, which may become a lien on the Property, including any taxes or levies imposed to make those payments. If Grantor fails to make such payments, Grantee is authorized to make such payments (but shall have no obligation to do so) upon ten (10) days prior notice to Grantor, according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy thereof. The payment, if made by Grantee, shall become a lien on the Property of the same priority as the item if not paid would have become, and shall bear interest until paid by Grantor at two percentage points over the prime rate of interest from time to time charged by First National Bank, N.A. or its corporate successor.
- 5.9 Severability. Invalidation of any provision of this Conservation Easement by court judgment, order, statute or otherwise shall not affect any other provisions, which shall be and remain in force and effect.
- 5.10 Binding Effect. The provisions of this Conservation Easement shall run with the Property in perpetuity and shall bind and be enforceable against the Grantor, and all future owners and any party entitled to possession or use of the Property or any portion thereof while such party is the owner or entitled to possession or use thereof. Notwithstanding the foregoing, upon any transfer of title, the transferor shall, with respect to the Property transferred cease being a Grantor or owner with respect to such Property for purposes of this Conservation Easement and shall, with respect to the Property transferred, have no further responsibility, rights or liability hereunder for acts or conditions arising thereafter on or with respect to such Property, but the transferor shall remain liable for earlier acts and conditions occurring during the period of his or her ownership or conduct.
- 5.11 Indemnification. Grantee has no obligations relating to the maintenance of the Property. Grantee shall not be responsible for injuries or damage to persons or property in connection with Grantee's administration and/or enforcement of this Conservation Easement or otherwise with respect to the condition of the Property, provided that the foregoing shall not absolve Grantee of any liabilities it might otherwise have,

independently of this Agreement, for wrongfully and directly, without the participation or consent of the Grantor, causing any dangerous condition to come into existence on the Property. Except in the last-described instance, Grantor agrees to indemnify and hold Grantee and its trustees/directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") harmless from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees (collectively, "Losses"), arising from or in any way connected with: (1) injury to or the death of any person, or damage to any property or property interest, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the actions of any of the Indemnified Parties as set forth in the previous sentence; and (2) tax benefits or consequences of any kind which result or do not result from entering into this Conservation Easement.

Grantor hereby releases, waives any rights, and covenants not to sue Grantee with respect to any Losses identified in this Section 5.11. Grantor's obligations to hold harmless, indemnify and defend Grantee as specified in this Conservation Easement shall survive indefinitely and shall not be abrogated if Grantee transfers this Conservation Easement to another party. Grantee shall have no liability to Grantor or any other owner for Grantee's acts, taken in good faith, in connection with the administration of this Conservation Easement.

5.12 Further Acts. Each party shall perform any further acts and execute and deliver any documents, including amendments to this Conservation Easement, which may be reasonably necessary to (a) carry out the provisions of this Easement, (b) qualify this instrument as a conservation easement under South Dakota Codified Law or any regulations promulgated pursuant thereto, and (c) if applicable, carry out the Grantor's intent that as of the date hereof this Conservation Easement shall be deemed a transfer of a qualified real property interest for conservation purposes as defined by Section 170(h) of the Internal Revenue Code.

5.13 Local, State and Federal Laws in Effect. The Property remains subject to all applicable local, state and federal laws and regulations.

6. Qualified Conservation Contribution Covenants.

6.1. Assignment and Continuity. Grantee agrees that it will assign or transfer this Conservation Easement only to an assignee that (a) is a Qualified Organization as defined in Section 170(h) of the Internal Revenue Code and which (b) agrees to continue to carry out the conservation purposes of this Conservation Easement as defined under Section 170(h) and the regulations thereunder. No assignment shall be made which adversely affects the status of the transactions herein contemplated under Section 170(h) of the Internal Revenue Code. Any assignee must be an entity able to enforce this Conservation Easement, having purposes similar to those of Grantee that encompass those of this Conservation Easement. If the Grantee ever ceases to exist or no longer qualifies under Section 170(h) or applicable state law, it will assign this Conservation Easement to a Qualified Organization. If it fails to do so, a court with jurisdiction may transfer this

easement to another qualified organization having similar purposes that agrees to assume the responsibility.

- 6.2 Right to inspect. The Grantor agrees that the Grantee, its employees, agents and designees shall have the right to inspect the Property in order to ascertain whether the provisions of this easement agreement are being observed. Notice of such inspections shall be delivered to the Grantor, her designee(s) or agent(s) at least twenty-four (24) hours prior to such inspection. The inspection shall be conducted between the hours of 8 a.m. and 5 p.m. on a weekday that is not a legal holiday recognized by the State of South Dakota or at a date and time agreeable to the Grantee and Grantor.

Grantee or its designees shall also have the right to inspect the Property at any time, without prior notice, if Grantee has cause to believe the provisions of the Conservation Easement have been, or are being, violated.

- 6.3 Interpretation. This instrument is intended to create a "qualified real property interest" for "conservation purposes," under the provisions of SDCL 1-19B-56 to 1-19B-60, inclusive, and Section 170(h) of the Internal Revenue Code, and shall be interpreted consistently with such intention. In the event any provision has been omitted from this instrument necessary to qualify the interest hereby granted as such a "qualified real property interest" for "conservation purposes," such provision shall be deemed incorporated herein to the extent necessary to cause the interest hereby granted to be so qualified. If any provision of this Conservation Easement is deemed contrary to the provisions of Section 170(h) of the Internal Revenue Code, such provisions shall be modified or excluded to the extent necessary to cause the interest hereby granted to be so qualified.

- 6.4 Perpetuation of Easement. The fact that any use of the Property that is expressly prohibited by the terms of this Conservation Easement may become greatly more economically valuable than uses permitted by the terms of the Conservation Easement, or that neighboring properties may, in the future, be put entirely to uses that are not permitted by this Conservation Easement, has been considered by Grantor in granting this Conservation Easement and by Grantee in accepting it. Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Conservation Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Conservation Easement. In addition, the inability of Grantor, his or her successors and assigns, to conduct or implement any or all of the uses permitted under the terms of this Conservation Easement, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment.

- 6.5 Effective date. This Conservation Easement shall become effective when the Grantee files it in the Office of the Register of Deeds for Lawrence County, South Dakota, with a copy of the recorded instrument provided to the Grantee for its conservation easement file.

IN WITNESS WHEREOF, the parties have executed and delivered this instrument on the date or dates set forth below their respective names.

GRANTOR: _____
Marguerite E. Olesen

STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF LAWRENCE)

On this _____ day of _____, 2026, before me, the undersigned officer, personally appeared Marguerite E. Olesen known to me as the person who executed the foregoing instrument for the purposes therein contained.

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

Notary Public
My Commission Expires: _____

GRANTOR: _____
Richard A. Olesen

STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF LAWRENCE)

On this _____ day of _____, 2026, before me, the undersigned officer, personally appeared Richard A. Olesen known to me as the person who executed the foregoing instrument for the purposes therein contained.

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

Notary Public
My Commission Expires: _____

GRANTEE:

City of Deadwood

By: _____ Date: _____

Its: Alea Struble, Mayor

On this _____ day of _____, in the year 2026, before me personally appeared Alea Struble, 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