

## **PURCHASE AGREEMENT**

THIS PURCHASE AGREEMENT is made and entered into this \_\_\_\_ day of April, 2024, by and between **The City of Deadwood**, a South Dakota municipality with a mailing address of 108 Sherman Street, Deadwood, SD 57732 or its assigns (hereinafter referred to as "Buyer") and **Dennis L. Sabo and Brenda G. Sabo**, with a mailing address of \_\_\_\_\_ (hereinafter referred to as "Seller").

### **W I T N E S S E T H:**

WHEREAS, SELLER is the owner of a certain real property located at 85 Charles Street, Deadwood, South Dakota; and

WHEREAS, Seller desires to sell and Buyer desires to purchase the real property.

NOW, THEREFORE, in consideration of the mutual promises and conditions hereinafter set forth, Buyer and Seller hereby agree as follows:

### **ARTICLE I**

#### **PURCHASE AND SALE**

A. **Purchase and Sale.** Subject to the terms and conditions of this Agreement, Buyer hereby agrees to purchase and Seller hereby agrees to sell the real property owned by Seller and described on Exhibit "A", attached hereto and incorporated herein by reference (the "Real Property"), and all rights, privileges, assets, titles, and interests of Seller related to the Real Property (collectively the "Property").

### **ARTICLE II**

#### **PURCHASE PRICE**

A. **Purchase Price.** The purchase price for the Property described in Article I will be Seventy Five Thousand Dollars (\$75,000).

B. **Method of Payment.** The total purchase price of Seventy Five Thousand Dollars (\$75,000) shall be due and payable in cash or certified funds at closing.

## ARTICLE III

### CONDITIONS PRECEDENT

A. Title Insurance. Within thirty (30) days of the date of this Agreement, Seller shall deliver to Buyer evidence of title in the form of a current commitment for an Owner's Policy of Title Insurance issued by a qualified title insurance company doing business in the State of South Dakota setting forth the state of title to the Real Property and legible, true copies of all documents referred to in the Title Commitment as exceptions to title or otherwise constituting exceptions to title (the "Title Commitment"). The cost of a Title Policy from First American Title Company in Rapid City, South Dakota, shall be split between Seller and Buyer.

Buyer shall have a period of ten (10) business days from the date of receipt of the Title Commitment within which to review and give Seller written notice of any reasonable objections to the condition of title or other matters directly related to the Real Property as reflected by the Title Commitment. If Buyer gives written notice of its reasonable objections within the five (5)-day period, Seller shall deliver to Buyer written notice that either (i) the Seller will, at its sole cost and expense, attempt to remove the exceptions to which Buyer has objected on or before the Closing Date or (ii) Seller is unwilling or unable to remove any such exception to title or correct any other matter. Provided, however, that Seller shall not have any election rights with respect to any lien or judgment securing an indebtedness of an ascertainable amount, and Seller, in such event, shall cause any such lien or judgment to be released at or prior to the Closing Date. If Seller is unable (following attempts or otherwise) or unwilling to remove any exception to title, Buyer may either (i) purchase the Property subject to such exceptions or (ii) terminate this Agreement. If Buyer fails to object to the condition of title within the five (5)-day period, Buyer will be deemed to have waived its objections.

C. Inspection. Buyer shall have a period, beginning on the date of this Agreement and continuing for a period of thirty (30) days thereafter, to inspect the Property (the "Inspection Period"). Buyer shall be afforded complete access to the Property to conduct its inspection and to make such tests, studies, surveys, examinations, appraisals, and due diligence investigations as deemed necessary or desirable by Buyer, in Buyer's sole discretion. Seller shall furnish to Buyer or its authorized representatives such additional information, documents, surveys, and/or studies in Seller's possession as Buyer shall reasonably request. If as a result of Buyer's inspection, Buyer determines that it does not want to proceed with this transaction, Buyer may terminate this Agreement by written notice to Seller on or prior to the last day of the Inspection Period, and neither Buyer nor Seller shall have any liability to the other.

## ARTICLE IV

### CLOSING

A. Closing Date. The "Closing Date" shall be on a date mutually determined by Buyer and Seller, but in any event not later than ninety (90) days following the date of this Agreement.

B. Events of Closing. At closing, Seller shall deliver, or cause to be delivered, to Buyer the following:

1. A properly executed Deed in statutory form sufficient to convey to Buyer fee simple title to the Real Property free and clear of all liens and encumbrances except for items approved, assumed or otherwise waived by Buyer;
2. Any other documents reasonably requested by Buyer, counsel for Buyer, or the Title Company authorizing the sale of the Property and the execution of this Agreement and any and all other related documents by the proper representatives of Seller;

At closing, Buyer shall deliver, or cause to be delivered, to Seller the following:

1. The purchase price;
2. Any documents reasonably requested by Seller, counsel for Seller, or the Title Company; and
3. Recording fees, transfer fees and deed preparation fees will be paid by the Buyer; Buyer and Seller will each be responsible for paying their own attorneys' fees.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF SELLER

A. Representations and Warranties. As a further inducement to Buyer to enter into this Agreement and to consummate the transaction contemplated by this Agreement, Seller does hereby represent and warrant to Buyer and agrees as follows:

1. Seller has good and insurable title to the Property. The title to be conveyed shall be merchantable, fee simple title, free and clear of all liens, encumbrances, restrictions, and easements except those exceptions disclosed on the Title Commitment if approved or otherwise waived by Buyer;
2. Seller has full right, power, and authority and has taken all requisite action to enter into this Agreement and to sell and convey the Property to Buyer as provided in this Agreement and to carry out its obligation as set forth in

this Agreement;

3. Seller has not received notice from any city or other governmental authority of any violation affecting any portion of the Property except as disclosed in writing to Buyer prior to the execution of this Agreement, if any; and

## ARTICLE VI

### REAL ESTATE TAXES

A. Taxes. Seller warrants that all 2023 real property taxes which are payable in 2024 have been or will be paid prior to closing. Taxes for 2024 shall be pro rated to the date of closing, with Seller paying the proportionate share of such taxes through closing.

## ARTICLE VII

### EMINENT DOMAIN

A. Buyer's Options. In the event that any eminent domain or condemnation proceedings affecting more than ten percent (10%) of the Property shall be commenced or threatened prior to the Closing Date, Buyer may, at its option, and in its sole and absolute discretion, (a) terminate this Agreement by notice in writing to Seller or (b) elect to carry out this Agreement despite such proceedings. If Buyer terminates this Agreement, the Earnest Money shall immediately be refunded to Buyer. If Buyer elects to carry out this Agreement, Seller shall promptly assign and pay over to Buyer all of Seller's right, title and interest in and to any compensation, damages, or sales proceeds payable as a result of such condemnation or eminent domain proceedings.

## ARTICLE VIII

### BROKERAGE FEES

A. Indemnification. Each party represents to the other that it has not utilized any broker or agent with respect to the purchase and sale of the Property and each agrees to indemnify and save the other harmless from any and all liability, cost and expense, including reasonable attorneys' fees, arising from the claims of any broker or agent.

## ARTICLE IX

### DAMAGE

A. Risk of Loss. The risk of loss due to fire or other casualty up to the time of closing will be borne by Seller. In the event any such loss occurs prior to the date of closing, Buyer shall have the right and option to terminate this Agreement on notice to Seller sent within fifteen (15) calendar days of such loss, and upon such termination, there shall be no further liability on the part of Seller or Buyer hereunder.

## ARTICLE X

### ASSIGNMENT AND SUCCESSION

A. Assignment and Succession. This Agreement shall bind and inure to the benefit of the successors and assigns of the respective parties. Buyer shall have the right to assign this Agreement to an affiliate of Buyer.

## ARTICLE XI

### NOTICES

A. Notice Address. Any notice hereunder shall be given in writing to the party for whom it is intended in person or by registered mail at the address indicated in the first paragraph of this Agreement or such future address as may be designated in writing and to any permitted successor or assignee of either party, at the address stated in the notice of succession or assignment.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

A. Entire Agreement. This Agreement and the Exhibits attached hereto comprise the entire Agreement between Buyer and Seller and any amendment to this Agreement or to the Exhibits to this Agreement shall be in writing only, signed by Buyer and Seller.

B. Severability. In the event that any term, condition, or provision of this Agreement is held to be invalid by any Court of competent jurisdiction, such holding or holdings shall not invalidate or make unenforceable any other term, condition or provision of this Agreement. The remaining terms, conditions and provisions shall be fully severable, and shall be construed and enforced as if such invalid term, condition or provision had never been inserted in this

Agreement initially.

C. Text to Control. The headings of Articles and Sections are included solely for convenience. If a conflict exists between any heading and the text of this Agreement, the text shall control.

E. Extensions and Modifications. No extension, modification or supplement to this Agreement will be effective unless made in writing and signed by each party, except as otherwise permitted herein.

F. Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of South Dakota without regard to choice of law rules. The parties agree that all actions and proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State court located in the County of Lawrence, State of South Dakota. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this section.

G. Litigation. Seller is not now a party to any litigation affecting the Property the subject thereof, or any part thereof, or Seller's right to sell the Property the subject thereof, including, but not limited to, condemnation or eminent domain proceedings and Seller knows of no litigation or threatened litigation affecting the Property or any part thereof; Seller covenants and agrees to give to Buyer prompt notice of the institution of any such litigation prior to closing.

H. Right of First Refusal or Option. Seller has not granted any right of first refusal or option to acquire fee title or any title interest to the Property or any portion thereof or interest therein.

## ARTICLE XIII

### EXECUTION IN COUNTERPART

This Agreement may be executed in one (1) or more counterparts, each of them shall be considered an original document, but all of which shall be considered one (1) and the same agreement and shall become binding when one (1) or more counterparts have been signed by each of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

BUYER:

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City of Deadwood  
By: Kevin Kuchenbecker, Historic Preservation Officer

Attest:

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**SELLER:**

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Dennis L. Sabo

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Brenda G. Sabo



**EXHIBIT "A"**

Lot 11 and 13 in Block 74, Original Plat of the City of Deadwood, Lawrence County, South Dakota, also known as 85 Charles Street, Deadwood, Lawrence County, South Dakota.