

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Real Property Transactions and Related Information

This Confidentiality and Non-Disclosure Agreement (“Agreement”) is entered into as of August 3, 2026 (the “Effective Date”), by and between (i) **Real Properties of the Black Hills**, acting through its broker, **Mike Percivich** (“RPBH”), and (ii) the **City of Deadwood, South Dakota**, a South Dakota municipal corporation (“City”). RPBH and the City are each a “Party” and together the “Parties.”

Recitals

A. The Parties desire to evaluate, discuss, negotiate, facilitate, or undertake one or more possible acquisitions, dispositions, exchanges, options, leases, easements, development arrangements, financing arrangements, or other transactions involving certain real property in or affecting the City of Deadwood (collectively, the “Transactions”).

B. In connection with the Transactions, a Party may disclose nonpublic business, financial, negotiating, ownership, valuation, title, development, planning, or other information that the disclosing Party considers confidential.

D. The Parties previously entered into a Real Estate Broker Services Agreement dated August 3, 2026 (the “Broker Services Agreement”), under which RPBH provides authorized real estate brokerage services to the City, including strategy, review of offers, negotiations, marketing, coordination of closings, and other customary services relating to City real property transactions. This Agreement supplements the Broker Services Agreement by establishing additional requirements for the treatment of confidential transaction information.

C. The City is a public body subject to applicable South Dakota open-records, open-meetings, records-retention, procurement, ethics, and other governmental requirements. The Parties intend this Agreement to protect information only to the fullest extent permitted by law and not to restrict any disclosure or public action required by law.

Agreement

1. Purpose

Confidential Information may be used solely in performing services requested and authorized by the City under the Broker Services Agreement, including evaluating, planning, marketing, negotiating, documenting, closing, administering, or otherwise carrying out authorized Transactions, and for no unrelated purpose. RPBH may not list, market, negotiate, purchase, sell, or otherwise bind the City regarding any specific Transaction unless the City has authorized the action in writing and in accordance with South Dakota law and City ordinances.

2. Confidential Information

“Confidential Information” means nonpublic information disclosed in any form by or on behalf of a Party regarding a Transaction, including: identities of prospective parties or beneficial owners; property addresses and legal descriptions before public disclosure is required; proposed prices, terms, concessions, negotiating positions, appraisals, broker opinions, financial information, financing sources, title matters, environmental or inspection information, development concepts, feasibility analyses, drawings, schedules, draft agreements, internal deliberative materials, and the existence or status of negotiations. Oral information is Confidential Information only if identified as confidential when disclosed and summarized in writing to the receiving Party within ten (10) business days. Information marked “Confidential” will be treated accordingly, but failure to mark information does not waive protection if its confidential nature is reasonably apparent.

3. Exclusions

Confidential Information does not include information that the receiving Party can demonstrate: (a) is or becomes publicly available other than through a breach of this Agreement; (b) was lawfully known without a duty of confidentiality before disclosure; (c) is received lawfully from a third party without a duty of confidentiality; (d) is independently developed without use of Confidential Information; or (e) must be disclosed under applicable law, court order, subpoena, governmental process, or the public-records or open-meetings requirements addressed in Section 7.

4. Duties of Receiving Party

1. Use Confidential Information only for the Purpose stated in Section 1.
2. Protect Confidential Information using at least reasonable care and no less care than the receiving Party uses for its own information of similar sensitivity.

3. Disclose Confidential Information only to elected or appointed officials, employees, attorneys, accountants, lenders, insurers, consultants, brokers, title professionals, appraisers, engineers, inspectors, contractors, or other representatives who have a need to know for the Purpose and who are informed of, or otherwise bound by, confidentiality obligations consistent with this Agreement.
4. Remain responsible for any breach by its representatives to the extent permitted by law.
5. Not issue a press release or public statement concerning a Transaction or use another Party's name, logo, or marks in publicity without prior written approval, except as required by law or for an official City agenda, notice, meeting, record, or action.

5. No Contact; No Circumvention

Unless otherwise authorized in writing or required for official governmental functions, a receiving Party will not use Confidential Information to bypass another Party in negotiations, directly solicit a disclosed counterparty concerning the same Transaction, or contact an owner, tenant, lender, investor, or other transaction participant identified through Confidential Information. This Section does not prohibit communications already occurring independently, communications required by law, or communications undertaken by the City through its normal governmental, regulatory, public-safety, or administrative processes.

6. Security and Unauthorized Disclosure

Each receiving Party will use reasonable administrative, physical, and electronic safeguards. Upon discovering an unauthorized use or disclosure, the receiving Party will promptly notify the disclosing Party, take reasonable steps to contain and mitigate the incident, and reasonably cooperate in addressing it, subject to applicable law and privilege.

7. City Legal Obligations; Public Records and Meetings

1. **No promise contrary to law.** Nothing in this Agreement requires the City, its governing body, officers, employees, agents, or records custodian to withhold, destroy, alter, delay, or improperly classify any record or information, close any meeting, avoid any agenda or notice requirement, or take any action contrary to applicable law.
2. **Public-records requests.** If the City receives a request or demand for information claimed confidential under this Agreement, the City will determine disclosure obligations in good faith under applicable law. To the extent lawful and reasonably practicable, the City will give the disclosing Party prompt written

notice before release so that the disclosing Party may seek a protective order or other remedy at its own expense. The City may disclose information when its legal counsel or records custodian determines disclosure is required, without liability under this Agreement.

3. **Segregation and identification.** A private Party providing information to the City should clearly identify the specific material claimed confidential and, upon request, provide a written explanation of the legal basis for nondisclosure and a reasonably redacted version. Such identification is not binding on the City or any court.
4. **Open meetings and official action.** Any discussion, executive session, agenda, notice, minutes, vote, approval, expenditure, disposition, acquisition, or other official action relating to a Transaction will be handled as required by applicable law. This Agreement does not itself authorize a closed meeting or executive session.
5. **Records retention.** The City may retain all information and records as required by law, policy, litigation hold, audit, or records-retention schedule, notwithstanding any return-or-destruction request.

8. Ownership; No License; Accuracy

All Confidential Information remains the property of the disclosing Party or its lawful owner. No intellectual-property or other rights are granted except the limited right to use the information for the Purpose. Confidential Information is provided “as is.” Except as stated in a definitive written agreement, no Party makes any representation or warranty regarding its accuracy or completeness and no Party is obligated to update it.

9. No Obligation; Governmental Authority

This Agreement does not require either Party to pursue or consummate a Transaction. Consistent with the Broker Services Agreement, RPBH acts as an independent contractor and not as an employee, officer, or agent of the City, except to the limited extent expressly authorized in writing for a specific Transaction. All offers, counteroffers, purchase agreements, listing agreements, agency agreements, closing documents, and related transaction documents remain subject to City review and approval before execution. Nothing in this Agreement commits City funds, modifies the compensation provisions of the Broker Services Agreement, conveys property, waives any governmental, legislative, regulatory, zoning, permitting, police, public-safety, taxing, eminent-domain, or other authority, or binds the City Council to take or refrain from official action.

10. Return or Destruction

Upon written request, a receiving Party will, to the extent reasonably practicable, return or destroy Confidential Information and copies, except that the receiving Party may retain: (a) one archival copy for legal or compliance purposes; (b) automatically created backup copies not readily accessible in the ordinary course; and (c) any material required to be retained by law, policy, audit, litigation hold, or records-retention requirements. Retained material remains subject to this Agreement for the applicable term.

11. Term and Survival

This Agreement begins on August 3, 2026 and remains effective while the Broker Services Agreement is in effect, including any written renewal, extension, or modification of that agreement. Under the Broker Services Agreement, the initial term is one (1) year beginning on its effective date; it may be renewed by written agreement for additional one-year terms, for a maximum of five (5) consecutive years including the initial term; and either Party may terminate it without cause upon thirty (30) days' written notice. Termination of the Broker Services Agreement automatically terminates this Agreement, except that confidentiality and restricted-use obligations survive for three (3) years after each disclosure; any trade secret will be protected for so long as it remains a trade secret under applicable law; and the City's obligations remain limited by Section 7 and applicable law.

12. Remedies; No Waiver of Defenses

A Party may seek available legal or equitable relief for an actual or threatened breach, subject to applicable law. No provision creates a private right of action not otherwise recognized by law, waives governmental immunity, statutory protections, defenses, limitations, notice requirements, or damage caps, or authorizes an award of attorney fees except as allowed by law or a separate written agreement.

13. Notices

Notices under this Agreement must be in writing and delivered personally, by nationally recognized overnight carrier, by certified U.S. mail, return receipt requested, or by email with confirmation of receipt, to the addresses below or to any replacement address designated by notice.

Real Properties of the Black Hills	City of Deadwood
Attn: Mike Percivich, Broker	Attn:
Address:	
	Address:
Email:	
	Email:

14. General Provisions

1. **Authority.** Each signer represents that the signer is authorized to execute this Agreement for the identified Party. Mike Percivich signs solely as the authorized broker and representative of Real Properties of the Black Hills and not in his individual capacity. The City's execution is subject to all approvals required by law.
2. **Governing law and venue.** South Dakota law governs this Agreement, without regard to conflict-of-laws principles. Any action must be brought in a court of competent jurisdiction in Lawrence County, South Dakota, unless applicable law requires otherwise.
3. **Relationship to Broker Services Agreement; entire agreement.** This Agreement supplements and does not replace the Broker Services Agreement. The Broker Services Agreement continues to govern appointment, scope of brokerage services, transaction authorization, compensation, licensing and professional duties, conflicts of interest and dual representation, status reporting, records, insurance, indemnification, non-appropriation, renewal, and termination. In the event of a conflict, the Broker Services Agreement controls as to brokerage services, compensation, authority, and termination, while this Agreement controls as to the handling and permitted use of Confidential Information; provided, applicable law controls over both agreements. Together, the two agreements constitute the entire agreement concerning confidentiality related to services and Transactions under the Broker Services Agreement and supersede prior confidentiality understandings on that subject. Any amendment or waiver must be in writing, signed by authorized representatives of both Parties, and, for the City, duly authorized as required by law.
4. **Assignment.** No Party may assign this Agreement without the prior written consent of the other Parties, except to a successor by merger or transfer of substantially all relevant assets, provided the successor agrees in writing to be bound. No assignment may bind the City without required authorization.

5. **Severability and construction.** If any provision is unenforceable, it will be modified to the minimum extent necessary or severed, and the remainder will continue in effect. Headings are for convenience only. This Agreement will not be construed against a Party because it drafted any portion.
6. **No partnership or agency.** This Agreement does not create a partnership, joint venture, fiduciary relationship, brokerage relationship, agency, employment relationship, or third-party beneficiary.
7. **Counterparts and electronic signatures.** This Agreement may be signed in counterparts and by electronic signature, each of which is deemed an original and all of which together form one instrument, to the extent permitted by law.
- 8.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

REAL PROPERTIES OF THE BLACK HILLS

By: _____

Mike Percivich, Broker

Date: _____

CITY OF DEADWOOD, SOUTH DAKOTA

By: _____

Name:

Title:

Date:

Attest:

Name/Title:

Date: