

Prepared By:

Nies Karras & Skjoldal, P.C.

PO Box 759

Spearfish, SD 57783

(605) 642-2757

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR [REDACTED] SUBDIVISION**

THIS DECLARATION, made this ___ day of March, 2024, by **Lead-Deadwood School District**, a South Dakota school district, 320 South Main Street, Lead, SD 57754 (hereinafter referred to as "Declarant"):

RECITALS

1. Declarant owns the following described real property (hereinafter referred to as the "Property"), to-wit:

[LEGAL]

2. Declarant intends to sell the Property to a Developer, who will develop and sell lots within the Property and by this declaration imposes on the lots within the Property covenants, conditions, and restrictions under a general scheme or plan for the benefit of the owners, now therefore:

DECLARATION

Declarant hereby declares the lots within the Property above described, shall be sold and conveyed subject to the following easements, restrictions, covenants, and conditions, to protect the value of the lots, promote the purpose of the development of the Property, to maintain the aesthetic qualities, and to protect and promote the general welfare of the owners of the Property, which easements, restrictions, covenants and conditions shall run with the land and be binding on all parties having any right, title or interest in the Property or any portion thereof, and their heirs, successors and assigns. However, nothing herein is intended to or shall limit application of all applicable planning and zoning ordinances and rules which impose restrictions more stringent or limited than those set forth herein.

1. Definitions. The following words when used in this Declaration or any amendment or supplement hereto (unless the context shall otherwise clearly indicate or prohibit) shall have the following meanings:

1.1 “Association” shall mean and refer to the [redacted] **Homeowners Association**, which has the power, duty and responsibility of collecting the assessments and charges hereinafter prescribed, and has the right of administering and enforcing the Covenants and Restrictions.

1.2 “Declarant” shall mean and refer to **Lead-Deadwood School District**.

1.3 “Developer” shall mean and refer to **Lead-Deadwood School District** until such time as **Lead-Deadwood School District** assigns such rights to a third party. Upon such assignment, such third party shall have all rights and obligations as Developer.

1.4 “Lot” shall mean and refer to any plot or tract of land shown upon any recorded subdivision map(s) or plat(s) of the Property as amended from time to time, which is designated as a lot therein, and which is or will be improved with a residential dwelling in conformity with the building restrictions herein set forth.

1.5 “Member” shall mean and refer to each Owner of a Lot.

1.6 “Owner” shall mean and refer to each and every person or business entity who or which is a record owner of a fee or undivided fee interest in any Lot subject to these Covenants and Restrictions. The word “Owner” shall not include person(s) or entity(ies) who hold a bona fide lien or interest in a Lot as security for the performance of an obligation.

1.7 “Property” means all of the real estate legally described above and any subdivision or replat of any portion thereof or of any Lot added thereto of any adjoining real estate added thereto by the Declarant or Developer.

2. Platting. Declarant tentatively plans [redacted] Lots, more or less, to be located within the boundaries of the Property, which Lots shall be platted as the development of the project proceeds. Declarant or Developer may replat portions of the Property or add additional property consistent with the development objectives of Declarant or Developer and place or grant such easements as deemed appropriate by Declarant or Developer for providing ingress, egress, and services for the Property and Owners.

It is Declarant's specific desire and directive that Tract 3 be subdivided into forty-eight (48) or less Lots, and at no time shall Tract 3 be subdivided into more than forty-eight (48) Lots unless Declarant provides prior written consent, which may be withheld in Declarant's sole discretion. This provision does not prohibit the combination or subdivision of Lots in Tract 3 provided the total number of Lots in Tract 3 at no time exceeds forty-eight (48) Lots.

3. Membership and Voting Rights.

3.1 Membership. Every Owner of a Lot shall automatically be and must remain a Member of the Association in good standing. The Board of Directors may temporarily suspend the voting rights of any Member who is not in good standing until past unpaid amounts are paid in full.

3.2 Voting Rights. The Association shall have two classes of voting membership:

CLASS A: The Class A Members shall be all Owners except the Declarant, and shall be entitled to one vote for each Lot in which they hold the interest required for membership.

CLASS B: The Class B Member shall be the Declarant, and shall be entitled to five votes for each Lot in which it holds the interest required for membership.

3.3 Quorum, Notice, and Voting Requirements. The quorum, notice, and voting requirements of and pertaining to the Association are set forth within the Articles of Incorporation and Bylaws of the Association, as the same may be amended from time to time. Any action by or on behalf of the Association may be taken with the consent given in writing and signed by Members who collectively hold or control more than sixty percent (60%) of the outstanding votes of the Association.

4. Developer's Obligations. Declarant intends to sell all of the Property except for Lots _____ of Block _____ to a third party who will be assigned the rights and obligations of Developer. In addition to the other obligations set forth herein, the third party who is assigned the rights and obligations of Developer shall have the following obligations related to Lots _____ of Block _____:

4.1 Install at its cost on each Lot all infrastructure necessary for the construction and sale of residence thereon (including but not limited to sanitary and storm sewers, utility hookups, roads, drainage, power, telecommunications, and any other improvements required by the City of Lead under Ordinance § 154.51).

4.2 Perform preliminary landscaping of and re-vegetate each Lot so as to minimize weeds and other unwanted vegetation until the residence is constructed.

4.2 Installation of all portions of the walking/hiking path set forth on the preliminary plat of the Subdivision.

5. General Powers and Duties of Board of Directors. The affairs of the Association shall be conducted by its Board of Directors (hereinafter referred to as the "Board"). The Board shall be selected in accordance with the Articles of Incorporation and Bylaws of the Association. The Board shall have the right to enforce the provisions of this Declaration and any rules made hereunder and to enjoin and/or seek damages from any Owner for violation of such provisions of rules. The Board shall have to fine Owners for violations of the provisions of rules herein and place a lien on the subject Lot for fines which are not paid within a reasonable time. Neither any Member, the Board, any Director, nor any officer of the Association shall be personally liable for debts contracted for, or otherwise incurred by the Association. The Board may establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses.

6. Covenants for Assessments.

6.1 Assessments. The Board will determine the amount of the general assessment for each Lot subject to assessment. General and Special assessments are due and payable on dates specified by the Board. The Board shall make reasonable efforts to determine the amount of the general or special assessment and to give written notice of the assessment for each Lot to the owner with due dates of periodic installments to be paid. The Board shall maintain a roster of the Lots and the general or special assessments due and shall make the roster available for inspection of a Member on request. Assessments may be collected on a monthly, quarterly, semi-annual or annual basis at the discretion of the Board.

6.2 Personal Obligation of Assessments and Lien Created. Each owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed, as a part of the purchase money consideration for such deed and conveyance, to covenant and agree to pay to the Association regular assessments or charges. The general or special assessments, together with interest thereon, at the statutory rate for money due and owing from time to time from, and after the date the same becomes due and payable, together with costs of collection, shall be a charge on each Lot subject to assessment and shall be continuing lien against which such assessment is made. Each assessment, together with interest thereon, and costs of collection, in addition to becoming a lien against each Lot, shall also be a joint and several personal obligation of the person, group of persons or entity who was the owner of such

Lot at the time when the assessment became due and payable, or who acquired ownership thereafter. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first mortgage now or hereafter placed upon any Lot subject to assessments; provided, however, that sale or transfer pursuant to a decree of foreclosure, or any other proceedings in lieu of foreclosure shall not relieve such Lot from liability for any assessments becoming due after such sale or transfer nor from any lien of any such subsequent assessments.

6.3 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes of (a) promoting the health, recreation, safety, and welfare of the residents of the Property; and, (b) enforcing the provisions of this Declaration and any rules made hereunder and to enjoin and/or seek damages from any Owner for violation of such provisions of rules.

6.4 General Assessments. The Board may set the general assessment on a Lot at a base rate not to exceed **Five Hundred Dollars (\$500.00)** per year. After January 1, 2025, the Board may increase the amount of the general assessment by no more than an additional ten percent (10%) each year without approval by two-thirds of the Owners present or represented by proxy at an annual meeting or at a special meeting called for that purpose. The general assessment on all Lots shall be effective on the first day of January each year and is a lien on the property. Failure to make timely payments, as set by the Board of Directors, results in a lien attaching to the Lot which may be enforced by the Board as provided herein.

6.5 Special Assessments. The Board may impose special assessments, in addition to the general assessments, for capital improvements or capital replacements. Special assessment shall only be levied by a resolution approved by two thirds of the votes of the Owners present or represented by proxy at an annual meeting or at a special meeting called for that purpose. Any special assessment shall be on a per Lot basis only.

6.6 Reserves. The Board may establish a reserve fund for replacements and for general operating expenses by the allocation and payment monthly or other term of an amount to be designated. Such fund or funds shall be deemed to be a common expense of the Association and shall be deposited in FDIC insured accounts, as the Board deems appropriate. The reserve for replacements may be used only for improvements on the property or replacement of improvements or for operating contingencies of non-recurring nature. The proportionate interest of any Lot owner in any reserve shall be considered an appurtenance of the Lot and shall not be separately withdrawn, assigned, or transferred or otherwise separated from the Lot for which it appertains and it shall be deemed to be transferred with the Lot.

6.7 Declarant's Reserved Rights For Non-Assessment. Notwithstanding the provisions as hereinabove set forth, Declarant, or its assigns or successors in interest, excluding Owners, shall not be required to pay general assessments or special assessments or other charges or fees, including without limitation any assessments or fees imposed by any Road District or Improvement District, for any Lot or real property in which it has an interest. The foregoing limitations shall not apply to any Lot within the Property formally platted and filed with the Lawrence County Register of Deeds in which the Declarant, or its assigns or successors, excluding Owners, possesses an interest, but only from and after the date and time the Lot has been occupied for residential purposes.

7. Architectural and Landscape Control.

7.1 Design Review Committee. The Board shall act as the Design Review Committee, but the Board of Directors may appoint a separate Design Review Committee in its sole discretion, with such powers and discretions as the Board may delegate from time to time.

7.2 Development Standards. The Design Review Committee shall establish reasonable procedural rules, regulations, restrictions, architectural standards, design guidelines and development standards (collectively the "Development Standards"), which the Design Review Committee may, from time to time in its sole discretion, amend, repeal or augment. The Development Standards may include, among other things, those restrictions and limitations set forth below.

7.3 Approval and Conformity of Plans. No building, fence, wall or other structure or improvement of whatever type shall be commenced, erected, or maintained upon the Property, nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot or the landscaping, grading or drainage thereof, including, without limitation, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee in accordance with the Development Standards as to harmony of external design and location in relation to surrounding structures and topography.

All changes or additions to the approved plans before, during, or subsequent to their initial construction must be approved by the Design Review Committee, before the alteration may be implemented.

Plans and specifications shall be approved by the Design Review Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, and by approving such plans and specifications neither the Design Review Committee, the members thereof, nor the Developer assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the Design Review Committee, any member thereof, nor the Developer shall be liable to any owner or other Person for any damage, loss or prejudice suffered or claimed on account of **(a)** the approval or disapproval of any plans, drawings and specifications, whether or not defective; or, **(b)** the construction or performance of any work whether or not pursuant to approved plans, drawings and specifications.

7.4 Timely Completion of Construction. Upon approval of plans by the Design Review Committee, construction shall commence within twelve (12) months from the date of approval. Unless extended by the Committee, if construction has not commenced within twelve (12) months after approval, the approval will then expire and the submission and approval process must be repeated. After commencement of construction, any home or improvement or alteration approved by the Design Review Committee shall be completed within twelve (12) months of commencement unless, in the discretion of the Design Review Committee, the circumstances support a longer period.

7.5 Construction. All buildings shall be stick built on site, and no mobile or modular homes are allowed. No temporary structures or conex or cargo containers are allowed unless specifically allowed in advance by the Design Review Committee.

7.6 Grading, Drainage, and Subsoil Conditions. Site grading must be accomplished with minimum disruption to a Lot, without altering natural discharge points of surface drainage from a Lot, and without creating conditions that could precipitate unnecessary soil erosion, slippage, or subsidence.

7.7 Signage. No sign or signs shall be displayed to the public view from any Lot except that: **(a)** Lot Owners may, with the consent of the Design Review committee, display a single tasteful "for sale" or "for rent" sign, no larger than four square feet; **(b)** signs indicating security protection shall be permitted, with the consent of the Design Review Committee, provided that such signs are ground or wall mounted, no larger than one square foot, limited to one per Lot; **(c)**

Signs for temporary single events, such as a garage sale sign, may be permitted for a specific period of time, upon approval by the Design Review Committee of a written request by the owner describing the nature of the sign and the requested time period of display; and, **(d)** all permitted signs, regardless of type, are subject to the approval of the Design Review committee for style, design, color, text, location, and duration of exhibit, prior to their placement for display.

7.8 Residence Size. Residences intended for construction shall comply with the applicable City of Lead ordinance regarding minimum size and dimensions. Combination shop/houses ("barndominiums") are allowed, provided there is a discrete, enclosed housing structure which is separate from the barn or shop portion. Per City of Lead ordinances, two off-street parking spaces per lot are required.

7.9 Exterior Colors. The color combination of exterior materials should generally be subtle and tasteful to blend with the neighborhood and landscape. Traditional muted earthtones and darker grays are acceptable colors, as are classic black and white color schemes. All color schemes, including roof colors, must be approved by the Design Review Board prior to their application to any portion of a structure.

7.10 Sewage Disposal System. Any Lot which can be hooked up to the City of Lead sewer system shall be so hooked up. If such hookup is not allowed or practical, a septic system shall be allowed, but only properly engineered individual septic tanks or as otherwise required and approved by an appropriate governmental agency. All wastewater systems must be designed by a Professional Engineer (P.E.) licensed in South Dakota, who will prepare and stamp the permit application that must be submitted to the appropriate governmental agency for review before a system is constructed. No cesspools or outside toilets are permitted. All septic tanks must be pumped at least once every three years and evidence of pumping must be provided to the Board of Directors or their agent prior to the annual meeting of the Association at least once every three years. There is "NO PROPOSED PUBLIC SEWAGE DISPOSAL SYSTEM."

8. Use and Occupancy Control.

8.1 Lot Size. Regardless of any applicable minimum lot size permitted by a subdivision or zoning ordinance, no Lot shall be subdivided into smaller Lots or conveyed in less than full or original dimensions as conveyed. However, two or more adjacent Lots may be combined into one Lot and conveyed as one Lot. Re-platted Lots, combining two or more adjacent Lots, shall be subject to general and special assessments as a single Lot after the Lots have been re-platted and filed in the Lawrence County Register of Deeds Office. Should any re-platted Lots be subsequently separated and re-platted into multiple Lots, all newly-platted Lots created shall be subject to all assessments which would have accrued against each Lot except for the combination into a single Lot, and no such re-platting shall increase the number of newly-platted Lots beyond the number of Lots originally combined.

8.2 Residential Use. No more than one single-family dwelling may be constructed on any Lot. Each Lot may be used only for residential purposes. However, Owners may use a portion of their home for limited business purposes. Businesses requiring or which operate upon regular scheduled appointments shall not be allowed. No extraordinary traffic is allowed. No commercial business activity other than an in-home occupation use in conformance with this section may be conducted upon any Lot within the Property. However, nothing in this Section shall be construed to relieve any person from compliance with any and all applicable laws. No business or commercial building may be erected on any Lot. No temporary buildings, structures or trailers may be erected, placed or maintained on any Lot except as expressly permitted by, and in compliance with, the Development Standards. Nothing herein contained shall be deemed to limit the Developer's rights as set forth herein. No offensive noises, vibration, smoke, dust, odors, heat or glare shall be permitted to emanate from any Lot, and no exterior storage or display of any business materials or advertising is permitted. Customer traffic on a non-incident basis is

prohibited, but catalog, postal and/or telephone sales are permitted. Employee numbers must be limited so as not to annoy or disrupt subdivision residents.

8.3 Violation of Law or Insurance. No Owner shall permit anything to be done or kept in his Lot which will result in the cancellation of insurance thereon or which would be in violation of any law.

8.4 Animals. Up to three (3) standard domesticated household pets (dog, cat, etc.) may be kept on a Lot at any one time. Chickens may be kept on a Lot but only as allowed by the City of Lead; no roosters are allowed. No animals shall be kept, bred or raised on a Lot for commercial purposes. No livestock, horses, or other large animals are allowed. In no event shall any domestic pet be allowed to run free away from its owner's Lot without a leash, or so as to create a nuisance. Pets shall not be permitted to make objectionable noise or constitute a nuisance or inconvenience to the Owner of any Lot within the Property and shall be removed upon request of the Board.

8.5 Nuisances. No Owner shall permit or suffer anything to be done or kept about or within his Lot, or on or about the Project, which will obstruct or interfere with the right of other Owners. All outdoor lighting shall be designed to reduce the impact of the lights on neighboring lots and avoid "light pollution". All outdoor lighting shall include covers or face downward, and sodium chloride, neon, or related bulbs shall not be used. No freestanding light poles may be used. No sound or smell shall be allowed to be emitted from a Lot which is a nuisance to neighbors.

8.6 Outdoor Storage. Outdoor storage of debris, material, containers, and/or equipment, is prohibited. The Board may direct the removal or require the indoor storage of any vehicle it deems to be visually distracting.

8.7 Garbage. No garbage or trash shall be kept, maintained or contained in any Lot so as to be visible from another Lot. No incinerators shall be kept or maintained in any Lot. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot.

8.8 Lot Maintenance. Without limiting any other provision in this Section, each Owner shall maintain and keep his or her Lot at all times in a safe and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners or other Persons of their respective Lots.

8.9 Rental. All leases or non-owner occupancy arrangements must be in writing and shall each have a minimum term of twelve (12) months, unless a shorter period is permitted specifically by the Association in the Association's sole discretion. Unless specifically permitted by the Association in the Association's sole discretion, no short-term leases such as "VRBO" or "AirBnB" are permitted. The Association must pre-approve all leases prior to execution, and, if the lease is approved by the Association, the Owner and the Owner's tenant shall provide the Association with an executed copy of the lease.

8.10 Right to Enter and Costs Assessed. The Association may, in the interest of the general welfare of all Members and after reasonable notice, enter upon any Lot or the exterior of any dwelling at reasonable daylight hours for the purpose of inspecting, removing or correcting any violations or breach of any attempted violation of any of the covenants or restrictions contained in this section, or for the purpose of abating anything herein as a prohibited use or a nuisance or failure to properly maintain a Lot, and no such entry or inspection shall be considered a trespass or otherwise be considered a wrongful action; provided, however, that no such action shall be taken without a resolution of the Board of Directors of the Association. The Board of Directors of the Association may adopt such mandatory penalties as they deem appropriate for violation of any section hereof and upon violation and notice thereof being given to the violator

and failure to cure the same within five days thereof, said penalty shall be assessed. All penalties or any cost for removal or correction shall be added to and become a part of the general or special assessment to which such Lot is subject; and, if such penalty is not paid, the Board may record a lien against the Lot as is set forth herein.

9. Rights of First Mortgagee. Other provisions of this Declaration notwithstanding, the Association, the Board of Directors of the Association and the Members shall not without the prior written approval of all first mortgagees of record of Lots totally abandon all the covenants and restrictions established by this Declaration. Upon written request therefor, first mortgagees of record shall be given written notice by the Board of Directors of the Association of any default in payment of assessments or in the discharge of other obligations pursuant to this Declaration not cured within the time provided by the Owner of a Lot in which such mortgagee has a security interest.

10. Rights of Declarant. All other provisions of this Declaration notwithstanding, the Association, its Board of Directors, the Members, and any Improvement District shall not without prior written approval of Declarant: **(a)** amend or totally abandon the covenants and restrictions established by this Declaration; **(b)** Amend or totally abandon the Articles or the Bylaws of the Association; or, **(c)** impose general assessments or special assessments or other charges or fees upon the Declarant or upon any real property in which Declarant has an interest. No such action shall be valid without the prior written approval of the Declarant. Further, Declarant reserves the right to, without the permission of any Owner or the Association, prepare and file from time to time such Supplemental Declaration(s) as may be necessary or appropriate to conform these Covenants to governing ordinances as may be necessary, if at all, as required by Lawrence County, South Dakota. Declarant's rights as set forth in the foregoing section and all other provisions as herein contained requiring the consent or approval of Declarant shall terminate upon the date the Declarant no longer has an interest in any of the Property.

11. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or any Owner, their respective legal representatives, successors and assigns for a term of ten (10) years from the date of recordation of the Declaration, after which the said covenants shall be automatically extended for successive periods of ten (10) years each. However, this Declaration may be amended at any time, except where permanent easements or other permanent rights or interests are herein created, or rights or interests are created in third persons, by an instrument signed by Owners of **two-thirds** ($\frac{2}{3}$) of the Lots described within the Property, and placed of record wherein this Declaration is recorded. No such amendment shall be effective unless written notice of the proposed amendment is sent to every Owner thirty (30) days prior to action being taken on the proposed amendment. No change of circumstances or conditions shall operate to amend any of the provisions of this Declaration, which may be amended only in the manner hereinabove provided. None of the provisions of this Declaration shall be construed as a condition subsequent or as creating a possibility of reverter.

12. Incorporation by Reference on Resale. In the event any Owner sells or otherwise transfers his Lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants and restrictions set forth in this Declaration, although the failure to do so shall not be deemed to defeat, alter, or terminate these covenants and restrictions as set forth in this Declaration as to said Property transferred.

13. Notices. Any notice required to be sent to any Member or Owner of a Lot or any First Mortgagee of a Lot under the provisions of this Declaration shall be deemed to have been given when mailed by first class mail, postage prepaid, to such Member, Owner or mortgagee at the address as it appears on the records of the Association at the time of such mailing. It shall be the duty of each Member, Owner, or Mortgagee to provide written notice of address or change of address to the Association.

14. Enforcement. These covenants and restrictions may be enforced by the Association or any Member or Owner. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenants or restriction, either to restrain or enjoin violation or to recover damages, and against the Property or any Lot to enforce any lien created by these covenants, except for monetary penalties, which may only be enforced by the Association. The failure or forbearance by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver or work as an estoppel of the right to do so thereafter.

15. Binding Effect and Compliance. Each Owner, the Owner's heirs and assigns or any person acquiring any rights or privileges therefrom shall be fully bound by and shall comply with the provisions of these declarations, by the decisions of the Declarant, by the By-Laws and Articles of Incorporation of the Association, rules, regulations, decisions and resolutions of the Board of Directors or their authorized agent of the Association and any amendments hereinafter duly adopted to these covenants or said By-Laws or Articles of Incorporation, and failure to comply with such provisions, decisions or resolutions shall be grounds for action as so authorized, action to recover sums due or for damages, or action for injunctive relief.

16. Invalidity and Severability of Provisions. Each and every covenant, restriction, provision, section and paragraph of this Declaration is deemed severable and in the event that any one or more of the same are declared to be invalid or unenforceable, all remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Declarant has hereunto set its hand and seal the day and year first above written.

[SIGNATURE]