

## LEASE AGREEMENT

The parties to this Lease Agreement are as follows:

- A. Meade School District 46-1 of 1230 Douglas Street, Sturgis, South Dakota 57785, hereinafter referred to as “Landlord”; and
- B. Bear Butte Creek Historic Preservation Council, of 13010 Lamphere Ranch Rd., Sturgis, SD 57785, hereinafter referred to as “Tenant”.

### RECITALS

For and in consideration of this Lease Agreement, the sufficiency of which is acknowledged by Landlord and Tenant, Landlord hereby leases to Tenant and Tenant does hereby lease from Landlord the real property located in Meade County, South Dakota, as noted on the map attached hereto as Exhibit A and by this reference incorporated herein, consisting of 180 acres, more or less. Said Lease is made under the following terms and conditions, which terms and conditions may from time to time be discussed in good faith by the parties, and may be altered in writing by the mutual agreement of the parties:

1. **INITIAL TERM AND RENEWALS.** The initial term of this Lease shall commence on March 1, 2021, and continue for a period of 30 years.

If the parties agree, this Lease will renew for two (2) additional 30-year terms as follows: If a party desires to renew this Lease for an additional term, the party shall provide written notice to the other party at least one hundred eighty (180) days prior to the end of the of the then-current initial or renewal term, as the case may be, and the parties shall then discuss in good faith such renewal. If the parties mutually agree to renew the Lease for such additional term, they shall execute a written consent to such renewal.

2. **TERMINATION.** This Lease may be terminated by Landlord in the event Tenant ceases to exist without a successor being organized, or in the event either Tenant or its successor ceases to use the Leased Premises consistent with the uses set forth herein for a continuous 24 (twenty-four) month period. In the event Landlord desires to terminate this Lease pursuant to this provision, Landlord shall serve Tenant, via certified mail, with an intent to terminate and Tenant shall have a period of 180 days during which Tenant may provide reasonable assurance to Landlord of Tenant’s intent to continue to use the Leased Premises consistent with the uses set forth herein. Reasonable assurance may include but not be limited to holding an actual event on the Leased Premises consistent with this Lease or providing reasonable assurance that such an event will be held in the future.

Tenant may terminate this lease prior to the end of a term by giving Landlord 180 days’ prior written notice of such termination.

3. **CONSIDERATION.** Tenant hereby pays to Landlord the sum of \$1.00 (One Dollar), which amount shall be the total consideration to be paid by Tenant to Landlord during the initial term of this Lease and any renewal period. This Lease does not express or imply that Tenant's activities have received the endorsement of Landlord or that Landlord is in any fashion promoting or encouraging Tenant's activities but is offered to the Tenant as a community service pursuant to SDCL 13-24-20.

4. **UTILITIES.** Tenant shall be responsible for the installation of all utilities on the Leased Premises and shall acquire all necessary permits required for such installation, all at the sole cost of the Tenant.

5. **USE OF AND IMPROVEMENTS MADE TO THE LEASED PREMISES.** Tenant may use the Leased Premises for any and all activities reasonably associated with the purposes of Tenant so long as such uses are in compliance with all of the terms of this Lease. Tenant's purposes, as set forth in its Bylaws, are as follows: "preserving, protecting and promoting the history of the Bear Butte historical area, Sturgis, and Meade County." Tenant's use shall be limited to, and shall not be expanded beyond, the uses directly related to the preceding sentence, and Tenant shall not engage in the extraction of natural resources on the Leased Property.

Tenant shall assure the Leased Premises is kept free of trash and debris. Tenant shall assure the Leased Premises is utilized safely and carefully, and shall not allow hunting, open fires, fireworks, swimming, or other activities which Landlord reasonably designates as dangerous. Tenant shall further install appropriate signage publicly restricting such reasonably dangerous usage. If Tenant desires to use the Lease Premises for activities during which the public will be on the Leased Premises after sunset or before sunrise, or for other activities outside the scope of Tenant's general use, Tenant shall obtain Landlord's prior written permission.

Tenant may construct improvements upon the Leased Premises at Tenant's sole cost, but Tenant shall first present a proposal describing the improvements and their location upon the Leased Premises to Landlord for review and approval. Approval by Landlord shall not be unreasonably withheld, but Landlord may require modifications if deemed necessary. Improvements may include construction of roads, buildings, fences and necessary dirt work. Tenant warrants to Landlord that all improvements shall be designed and constructed according to applicable building codes by properly licensed and insured professionals. Any improvements constructed upon the Leased Premises may be removed by Tenant at the termination of this Lease if any damage caused to the Leased Premises by said removal is repaired by Tenant. In the event removal of an improvement would cause irreparable damage to the Leased Premises, then said improvement shall become a permanent fixture to the Leased Premises and shall not be removed upon termination of this Lease and shall become the property of Landlord without compensation to the Tenant. Tenant acknowledges the Leased Premises is zoned by the City of Sturgis as Public

Land Zoning District and Tenant agrees to at all times comply with all portions of City of Sturgis 1984 Revised Ordinances Title 18.05.03, as from time to time amended.

Tenant has been advised of the risk of flooding by Bear Butte Creek and further advised of the presence of wildlife on the Leased Premises.

Tenant acknowledges public access to the Leased Premises is limited to the south side of the Leased Premises along the walking path or the west side of the Leased Premises. The public may not access the Leased Premises via the Sturgis Brown High School parking lot unless the District gives prior written consent to such access. Tenant and Tenant's members, agents, and/or volunteers may utilize such parking lot, but Tenant shall not allow the general public to cross such parking lot unless the District's prior written consent is received. Tenant shall be responsible to repair any damage to the parking lot caused by Tenant or Tenant's members, agents, volunteers, or guests.

6. **RESERVATION OF LANDLORD RIGHTS.** Landlord hereby reserves the right to lease the Leased Premises to one or more third parties for the purposes of livestock grazing, and Landlord shall be entitled to all rents received from such grazing lease. Tenant shall be responsible to construct any fencing or other barrier deemed necessary by Tenant to separate Tenant's improvements from the grazing livestock (i.e., Tenant has the obligation to "fence out" the grazing livestock). Neither Landlord nor the third party grazing tenant shall be liable for any damages to Tenant's improvements caused by grazing livestock. Landlord or Landlord's grazing tenant will maintain a reasonable noxious weed-spraying program, and Tenant will cooperate therewith. Landlord shall assure Landlord's grazing tenant holds harmless Tenant from any damages to such grazing tenant occurring during the term of this Lease.

In addition to the aforementioned grazing rights reservation, Landlord further reserves the right to utilize the Leased Premises for any other reasonable purpose which does not directly conflict with Tenant's use. If Landlord intends to so utilize the Leased Premises, Landlord shall provide reasonable notice to Tenant, which notice shall include a detailed description of the intended use. Tenant shall in good faith notify Landlord of any objections or concerns related to such noticed use, and Landlord shall in good faith consider the same.

7. **FENCING.** Tenant shall be responsible to construct any interior fencing (i.e., any fencing not currently running along the outer boundaries of the Leased Premises) deemed necessary and appropriate by Tenant, and shall repair and maintain the same, all at Tenant's sole cost. Landlord shall be responsible for repair and maintenance of any fencing currently running along the outer boundaries of the Leased Premises along with any fencing currently established in the interior of the Leased Premises which is utilized by Landlord for purposes related to pasturing grazing livestock.

8. **LIABILITY INSURANCE.** Tenant shall obtain and continuously maintain during the term of this Lease a policy of liability insurance with Landlord as an additional named insured and

loss payee. The policy shall be in the minimum amount of \$3,000,000.00 aggregate. If Tenant constructs improvements on the Leased Premises, Tenant shall also maintain builder's risk insurance coverage and/or require its contractors to maintain builder's risk insurance coverage, to include as applicable to the project general liability, worker's compensation, automobile liability, umbrella liability, and product completed operations, naming Tenant and Landlord as their interests appear as additional named insured parties during the construction project.

Further, at such times as the Leased Premises is open to the general public, Landlord may require and Tenant shall obtain additional types of insurance or increased coverage limits as recommended by Landlord's insurance carrier.

Updated copies of the Declarations Pages and any other documentation reasonably requested by Tenant shall be kept on file with at Landlord's Business Office.

9. **COMPLIANCE WITH LAWS/NO HAZARDOUS MATERIALS.** During the term of this Lease, Tenant will, at Tenant's sole cost and expense, comply promptly with all applicable statutes, laws, ordinances, regulations and requirements in effect during the term of this Lease applicable to the Leased Premises and Tenant's activities thereon. Tenant will not permit any hazardous materials to be brought onto, stored in, used in, or disposed of in, on, under or about the Leased Premises except in such quantities as are found in materials used in connection with the permitted uses on the Leased Premises and which comply with and are handled, used, and disposed of in compliance with the law. As used herein, "hazardous materials" means: a) any petroleum or petroleum products, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contains dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; b) any chemicals, materials, or substances defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, extremely hazardous wastes, restrictive hazardous wastes, toxic substances, toxic pollutants, contaminants, or pollutants, or words of similar import under applicable law; and c) any other chemical, material, or substance which is in any way regulated by applicable law.

10. **HOLD HARMLESS.** This Lease is governed by SDCL 13-24-20, which states as follows: "The school board may grant the use of school facilities, computers, motor vehicles, or land belonging to the school district for any purposes which it considers advisable as a community service for such compensation as it determines. The use may also include a contract with a vendor that sells soft drinks or other concessions on school property. The use may not interfere with school activities. Any person or persons or public body using such school facilities, computers, motor vehicles, or land is responsible to the school district for any and all damages that may be caused by reason of the use or occupancy. The school district is not liable for any damages which might arise as the result of such use or occupancy, including the use of school computers by students."

Pursuant to SDCL 13-24-20, Tenant, as a material part of the consideration to Landlord, hereby agrees it is responsible to the Landlord for any and all damages that may be caused by reason of Tenant's use or occupancy of the Leased Premises, and Tenant assumes all risk of

damage to property or injuries to persons, in, upon or about the Leased Premises arising from any cause and hereby waives all claims in respect thereof against Landlord. Landlord shall not be liable for any injury or damage to any property thereon or person using, visiting, working upon or attending events held on the Leased Premises, and Tenant does hereby agree to hold Landlord harmless from any and all claims, demands and liabilities, including claims for property damage and personal injury, arising out of Tenant's use of the Leased Premises. Landlord does not, by this Lease, waive any immunity provided under applicable law.

11. **INDEMNIFICATION.** Tenant shall indemnify Landlord against all expenses, liabilities and claims of every kind and character, including reasonable attorney's fees, arising out of either (a) failure by Tenant to perform any of the terms and conditions of the Lease, (b) any injury or damage occurring on the Leased Premises resulting from Tenant's actions, (c) failure to comply with any law or governmental authority, or (d) any mechanic's lien or security interest filed against the Leased Premises or improvements. In the event any action or proceeding is brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, shall defend the same at Landlord's expense by counsel satisfactory to Landlord.

12. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota.

13. **DEFAULT.** Failure by Tenant to comply with any term or condition of this Lease, including the failure to continuously maintain liability insurance by Tenant as required herein, shall constitute a breach of this Lease. In the event of a breach of this Lease, each party shall have all remedies available to it under the laws of the State of South Dakota.

14. **NO ASSIGNMENT.** This Lease is not assignable or transferrable by Tenant, and Tenant shall not sublease the Leased Premises or any part thereof.

15. **NO LIENS OR CLAIMS; AS IS CONDITION.** Tenant agrees it shall not file, and shall not permit the filing of, any claims, liens (including but not limited to Mechanic's or Materialman's Liens) or encumbrances on the Leased Premises. Tenant accepts the Leased Premises and any use of the Leased Premises without warranty of any kind in an "AS IS," "WHERE IS," and "WITH ALL FAULTS" condition, and without limiting the intent of the foregoing, Tenant is aware the Leased Premises may be subject to restrictions, easements or other limitations arising out of floodplain or floodway designations.

16. **DISTRICT POLICY.** This Amended Lease is expressly subject to District Policy FBC.

17. **ALCOHOLIC BEVERAGES AND FIREARMS.** No alcoholic beverages or firearms may be possessed and no alcoholic beverages may be dispensed on the Leased Premises without the express prior written consent of the District's School Board.

Dated this \_\_\_ day of \_\_\_\_\_, 2021.

MEADE SCHOOL DISTRICT 46-1

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By: Joseph Urbaniak  
Its: School Board President

ATTEST:

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By: Business Manager

Dated this \_\_\_ day of \_\_\_\_\_, 2021.

BEAR BUTTE CREEK HISTORIC  
PRESERVATION COUNCIL

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By:  
Its: President