

CITY OF DEADWOOD

102 SHERMAN STREET • Deadwood, South Dakota 57732

605-578-2082

DEVELOPER AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Deadwood, a South Dakota municipality (hereinafter City), and the Deadwood Ridge Apartments, LLC, a South Dakota Limited Liability Company, of 2525 West Main Street # 209, Rapid City, SD 57702 (hereinafter Deadwood Ridge).

WHEREAS the Deadwood Ridge desires to purchase water from the City, make water available to Deadwood Ridge's existing apartment complex, and enter into this Deadwood Ridge Agreement, as required by the Policies of the City, and City desires to sell water to Deadwood Ridge;

WHEREAS the Deadwood Ridge desires to construct sewer lines to connect to the existing sewer lines owned by the City to provide sewer services to its existing apartment complex and enter into this Deadwood Ridge Agreement, as required by the Policies of the City, and City desires to allow Deadwood Ridge to utilize its existing sewer lines;

NOW THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained, the receipt and sufficiency of which is hereby agreed to by both parties, it is hereby mutually agreed as follows:

1. **AGREEMENT TO FURNISH WATER.** The City shall furnish water and services to the point of connection to Deadwood Ridge's water and sewer system as set forth herein and as set forth in the water and sewer services agreement between Deadwood Ridge and the City executed contemporaneously with this agreement..

2. **PAYMENT.** The water and sewer rate paid by Deadwood Ridge shall be the amount set by the City by annual resolution. These rates may be established by the City in its absolute discretion

3. **TERM.** This Agreement shall be in effect as long as the Water Sewer Service Agreement entered into contemporaneously with this agreement remains in effect and may only be terminated upon the terms set forth in the Water Sewer Service Agreement.

4. **DEADWOOD RIDGE REQUIREMENTS.** Deadwood Ridge agrees to the following conditions required by the City in order to provide water and sewer services:

- A. Deadwood Ridge shall bear responsibility for maintaining and plowing all roads to both its existing apartment complex as well as all future development by Deadwood Ridge.
- B.
- C. Deadwood Ridge shall bear responsibility for all ditches and drainage for the property owned by Deadwood Ridge.

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- D. Deadwood Ridge shall maintain proper access as required by the City of Deadwood Volunteer Fire Department to all fire hydrants located to the property owned by Deadwood Ridge.
- E. Deadwood Ridge shall bear all responsibility for the construction and maintenance of the water and sewer lines used to service both the existing apartment complex as well as any future development by Deadwood Ridge within the Service Area (as defined in the Water and Sewer Service Agreement entered into between the parties this same date). In the event Deadwood Ridge allows any other party within the Service Area to connect to the system, Deadwood Ridge shall include in its agreement a requirement that such connecting party shall bear the cost of the construction and maintenance of their water and sewer lines and that they agree that the City does not maintain any liability for maintenance of the water and sewer lines installed by such party or maintained by Deadwood Ridge. At all times while the system is a private system, the City shall maintain no liability for the maintenance of the water and sewer lines and components installed by Deadwood Ridge or any other connecting party. Notwithstanding the preceding, pursuant to the Water and Sewer Service Agreement entered into between the parties this same date, the City shall have the option to take over the water and sewer lines owned by Deadwood Ridge any time after the 5th anniversary of the completion of the system, and thereafter, the City shall be responsible for all costs associated with maintaining the lines and their components.
- F. Deadwood Ridge agrees that all garbage/refuse collection shall be the responsibility of Deadwood Ridge.
- G. Deadwood Ridge acknowledges that the City will provide no municipal funding or financial incentives for the construction and maintenance of the water and sewer lines constructed by Deadwood Ridge.
- H. Deadwood Ridge agrees that the City will not be responsible for the construction of a turning lane if required by the South Dakota Department of Transportation and that it will bear all of the necessary costs of construction of any turning lane required as a result of Deadwood Ridge's development of its property. For the avoidance of doubt, if additional development by third parties is what causes a turning lane to be required, such third parties may be responsible for all or part of the costs of construction of such turning lane.
- I. Should Deadwood Ridge request that its property be excluded from the City pursuant to SDCL § 9-4-6 that it shall be responsible of all costs associated with a request for exclusion.
- J.

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5. **CITY REQUIREMENTS.** In the event Deadwood Ridge requests to be excluded from the City pursuant to SDCL § 9-4-6, the City will request the consent of all property owners that were annexed into the City in 2013 by Resolution 2013-02512 along with the property owned by Deadwood Ridge.

6. **ASSIGNMENT.** This Agreement is intended solely for the benefit of the parties hereto and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party. Except as otherwise provided for herein, the rights and obligations of the parties hereunder shall not be assigned or transferred by either party without the express written consent of the other. In the event of the sale of all or any portion of the Deadwood Ridge Property, Deadwood Ridge shall be permitted to assign its rights and obligations hereunder to the purchaser and upon the purchaser's acknowledgment in writing of the assumption of the rights and obligations hereunder. Upon execution by a purchaser of an agreement assuming all rights and obligations under this agreement, Deadwood Ridge shall be released from all further liabilities. Subject to that restriction, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

1. **MISCELLANEOUS.** This Agreement constitutes the entire agreement of the parties concerning its subject matter. Time is of the essence in the performance of the covenants, terms and conditions of this Agreement. This Agreement may only be amended by a written document, executed with the same formalities as this Agreement.

Dated this _____ day of _____, _____.

DEADWOOD RIDGE:

BY: _____

ITS: _____

DEADWOOD RIDGE APARTMENTS, LLC

(CORPORATE SEAL)

BY: _____

ITS: _____

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