

**WATER AND SEWER SERVICE AGREEMENT BETWEEN THE CITY OF
DEADWOOD
AND DEADWOOD RIDGE APARTMENTS, LLC**

THIS AGREEMENT is executed this ____ day of _____, 2025, by and between the CITY OF DEADWOOD ("City"), a municipal corporation organized under the laws of the State of South Dakota, 108 Sherman Street, Deadwood, SD 57732, and the Deadwood Ridge Apartments, LLC, a South Dakota limited liability company, of 2525 West Main Street #209, Rapid City, SD 57702 ("Deadwood Ridge").

RECITALS

WHEREAS, Deadwood Ridge is the owner of the following described real property located in The Ridge Development:

Lot 1 and 2, Block 1B of The Ridge Development, formerly a portion of Preacher Smith Tract located in Government Lots 10 and 12 of Section 11, Township 5 North, Range 3 East, Black Hills Meridian, City of Deadwood, Lawrence County, South Dakota, according to the Plat recorded as Document No. 2021-9162 in the Office of the Register of Deeds, Lawrence County, South Dakota (the "Deadwood Ridge Property"); and

WHEREAS, as of the date of this Agreement, Deadwood Ridge has constructed apartments (the "Apartments") upon a portion of the Deadwood Ridge Property; and

WHEREAS, Deadwood Ridge intends to construct, operate and maintain a private water system and a sewage collection system to serve the Apartments; and

WHEREAS, the City has constructed, operates and maintains a sewage disposal system for the purpose of collection, treatment and disposal of sewage; and

WHEREAS, the City has constructed, operates and maintains a water system for the purpose of the treatment and distribution of water, and

WHEREAS, Deadwood Ridge's water and sewer systems encompass an area located inside the corporate limits of the City which is so situated that it may be hooked up to the existing City water and sewer systems; and

WHEREAS, Deadwood Ridge desires to enter into a contract with the City to use the facilities of the City for the transmission, treatment and disposal of sewage of the Apartments, potential future improvements to be constructed upon the Deadwood Ridge Property, and certain additional property which will be served by Deadwood Ridge's water and sewer systems which is not owned by Deadwood Ridge (the "Service Area"); and

WHEREAS, Deadwood Ridge is in a position to enter into a contract with the City to use the facilities of the City for the transmission, treatment and distribution of water to the

Service Area; and

WHEREAS, the City and Deadwood Ridge desire to enter into a contract to allow Deadwood Ridge to use the water and sewage systems of the City, and to establish rights and obligations incident thereto.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and conditions contained herein, City and Deadwood Ridge agree as follows:

SECTION ONE USE OF WASTEWATER SYSTEM

The City hereby grants to Deadwood Ridge the right to discharge sewage into the City's wastewater system as described in Exhibit A, attached hereto and incorporated herein. The City agrees to transport such sewage from the point(s) of entry to the wastewater treatment works used by the City and such sewage will be treated and disposed of subject to the conditions herein. The metering and measuring of the sewage discharge from the Service Area to the City shall be as provided in Exhibit C. Deadwood Ridge shall pay any and all service charges and fees in accordance with a resolution set by the City Commissioners and shall be responsible for billing and collecting any amount desired from the users within the Service Area on terms acceptable to Deadwood Ridge.

Deadwood Ridge agrees that, for the life of this Agreement, it shall operate its wastewater treatment system in compliance with all applicable requirements and regulations imposed by the City of Deadwood, State of South Dakota and/or the United States Government, including any applicable licensure/certification requirements for wastewater operators.

SECTION TWO USE OF WATER SYSTEM

The City hereby grants to Deadwood Ridge the right to hook up to the City's water system as described in Exhibit A, attached hereto and incorporated herein, for the purpose of providing water and sewer service to those parties located within the Service Area. The current Service Area is described on the attached Exhibit B. Nothing in this Agreement shall be construed to require Deadwood Ridge to provide water or sewer services to the property identified in the Service Area. The City agrees to transport water from its storage facilities to the point(s) of entry to the water works of Deadwood Ridge. The metering and measuring of the water usage by Deadwood Ridge shall be as provided in Exhibit C. Deadwood Ridge shall pay any and all service charges and fees in accordance with a resolution set by the City Commissioners.

SECTION THREE SERVICE CHARGES

Water and service charges shall be charged based on unit rates and charges adopted by the City in ordinance or resolution and shall include both the water usage fees and any meter charges established by the City.

As the City amends its water and sewer rates and charges over the life of this Agreement, the City agrees it will make efforts to provide Deadwood Ridge with timely notice of any increase or decrease, to enable Deadwood Ridge to incorporate any rate increase or decrease into its' rate structure.

SECTION FOUR COMPLAINACE WITH STATE AND FEDERAL REGULATIONS AND DESIGN STANDARDS

Deadwood Ridge agrees that it shall comply with the regulations of the Federal Environmental Protection Agency and the governing regulatory bodies of the State of South Dakota.

SECTION SIX NO SUB-AGREEMENTS

Deadwood Ridge shall not allow the use of the City's water or wastewater collection system by anyone not within the Service Area, except by written agreement of the City. Deadwood Ridge shall not expand the boundaries of the Service Area except by mutual agreement between the City and Deadwood Ridge.

SECTION SEVEN TEMPORARY DISCONTINUANCE OF SERVICE

Should there be a problem within the City's water or wastewater system that impedes service to the Service Area, the City may temporarily discontinue service to the areas affected to make necessary corrective actions. Corrective actions will be made on a priority basis. No claims for damages for such discontinuance shall be made by Deadwood Ridge against the City, except in the event of the City's gross negligence.

SECTION-EIGHT TERM AND TERMINATION OF AGREEMENT

This Agreement shall be in full force and effect unless terminated herein. However, this Agreement may be terminated at any time upon mutual consent of both parties.

This Agreement shall supersede and terminate all prior agreements between the parties related to Deadwood Ridge's use of the City's water or wastewater system except for the developer's agreement between Deadwood Ridge and the City executed contemporaneously with this agreement. All other agreements between the parties shall remain in full force and effect.

SECTION NINE ENFORCEABILITY AND 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, 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.

SECTION TEN WAIVER

Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon adherence to that term, or any other term of the Agreement.

SECTION ELEVEN SEVERABILITY CLAUSE

If one or more provisions of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this Agreement if they can be given effect without the invalid section(s) or provisions. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible.

SECTION TWELVE AMBIGUITY CLAUSE

This Agreement shall be deemed to be prepared jointly by the parties hereto and neither shall be deemed to be its sole author. In the event of any claim of ambiguity, no provision shall thereby be construed against either party.

SECTION THIRTEEN CHOICE OF LAWS AND VENUE

This Agreement shall be construed and the parties' actions governed by the laws of the State of South Dakota. The Circuit Court of Lawrence County shall be the sole venue for any disputes arising under this Agreement.

SECTION FOURTEEN BREACH AND ENFORCEMENT OF AGREEMENT

Should Deadwood Ridge fail to pay the City or to perform any other non-payment obligation under this Agreement and the Developer's Agreement between Deadwood Ridge and the City executed contemporaneously with this Agreement, after notice and an opportunity to

cure, as described below, the City may terminate or suspend this Agreement and may discontinue providing water to or accepting sewage from the Apartments.

The parties acknowledge that, if Deadwood Ridge breaches the Agreement, the City may conclude that it is undesirable or impractical to disconnect Deadwood Ridge's system from the City's water and wastewater systems. The parties therefore agree that, upon Deadwood Ridge's breach of any of its obligations under this Agreement, the City may impose an additional one dollar (\$1) surcharge to each unit measured by the gallon, as described in Exhibits A and C, until such time as Deadwood Ridge has cured the breach. This additional charge is intended not as a penalty but as liquidated damages, understood by the parties to be compensation to City for costs incurred directly or indirectly by Deadwood Ridge's breach of its contractual obligations.

Prior to taking any action under this Section, the City will notify Deadwood Ridge in writing of the breach, and Deadwood Ridge shall have at least 30 days to cure the breach.

Should the City fail to fulfill any of its obligations under this Agreement, the Deadwood Ridge will notify the City in writing of the breach and provide the City at least 30 days to cure the breach. If the breach is such that Deadwood Ridge determines people will be placed in imminent harm or that public safety is at risk, Deadwood Ridge may immediately upon giving notification seek preliminary injunctive relief requiring the City to comply with the Agreement.

This Agreement shall also be specifically enforceable and both parties maintain all rights to seek enforcement including by injunction and recovery for damages arising out of the breach.

SECTION FIFTEEN SEPARATE MAINTENANCE OF PROPERTY

Deadwood Ridge shall maintain ownership of all water and wastewater lines from the connection point to the City's main water and sewer lines. Deadwood Ridge shall bear all costs associated with the maintenance of all components of the water and sewer systems necessary for the transfer of water and wastewater from the point of connection to the City's water and wastewater lines as established on Exhibits A & C.

SECTION SIXTEEN COMPLIANCE WITH MUNICIPAL ORDINANCES

Deadwood Ridge agrees that its wastewater and water systems shall comply with all Deadwood municipal ordinances, standards and requirements. Deadwood Ridge shall obtain all necessary permits and approvals from the City in order to ensure compliance prior to commencement of work.

SECTION SEVENTEEN ACKNOWLEDGEMENTS

This Agreement shall run with the land. The parties agree that a short form notice of agreement may be filed with the Lawrence County register of deeds.

**SECTION EIGHTEEN
RIGHT TO OBTAIN APARTMENT'S SYSTEMS**

At any time after the 5th anniversary of the completion of the system, should the City elect to do so it may take over the water and sewer lines owned by the Apartments in exchange for assumption of all costs associated with maintaining the lines and their components. This right shall be the exclusive right of the City which they may exercise at their discretion at any point during the term of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

**SECTION 19
AFFECT OF DE-ANNEXATION**

In the event all or any portion of the Service Area is de-annexed from the City, such de-annexation shall not serve to terminate this Agreement and the City shall remain obligated hereunder.

Dated this ____ day of _____, 2025.

CITY OF DEADWOOD

Mayor Charlie Struble Mook

ATTEST:

Finance Director

Dated this ____ day of _____, 2025.

DEADWOOD RIDGE APARTMENTS, LLC

By _____
Its _____

[illegible]

On this _____ day of _____, 2025, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of the Deadwood Ridge Apartments, LLC, and that he/she as such _____, being authorized to do so, executed the foregoing instrument for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, South Dakota
My Commission Expires:

(SEAL)