

# DEVELOPER'S AGREEMENT

by and between Optima LLC, the City of Deadwood, and the Deadwood Historic Preservation Commission regarding relocation of historic resources from Lower Main Street to parcels near Deadwood Community Hospital

This Developer's Agreement ("Agreement") is entered into by and between **Optima LLC** ("Developer"), the **City of Deadwood, South Dakota** ("City"), and the **Deadwood Historic Preservation Commission** ("HPC"). The parties enter into this Agreement to establish the terms and conditions under which Developer will relocate four contributing historic resources and one non-contributing resource from Lower Main Street in Deadwood to one or more parcels located near Deadwood Community Hospital, together with all related site development, preservation, zoning, and long-term use restrictions.

## Recitals

**WHEREAS**, the Developer proposes to move four structures identified as contributing resources within the Deadwood historic context and one structure identified as a non-contributing resource from Lower Main Street to parcels near Deadwood Community Hospital; and

**WHEREAS**, the City and HPC desire to ensure that the relocation, site development, preservation treatment, and future use of such properties are completed in a manner consistent with applicable ordinances, zoning requirements, historic preservation standards, and the public interest; and

**WHEREAS**, the parties wish to set forth the required approvals, improvements, restrictions, and assurances that shall apply to the project before, during, and after relocation of the structures.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties agree as follows:

## 1. Project Description

The project subject to this Agreement includes: (a) the relocation of four contributing resources and one non-contributing resource from Lower Main Street to one or more receiving parcels located near Deadwood Community Hospital; (b) preparation of the receiving parcels for placement of the relocated structures; (c) construction of all required site, access, utility, drainage, and landscape improvements; (d) rezoning of the receiving parcels to R1-Residential zoning; and (e) imposition of preservation covenants and deed

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restrictions to ensure long-term residential and preservation-compliant use of the relocated resources and associated parcels.

## **2. Relocation of Resources**

Developer shall be solely responsible for coordinating, financing, and completing the physical move of the five identified resources. All relocation work shall be performed by qualified contractors and in compliance with all permits, approvals, and conditions imposed by the City, HPC, and any other governmental authority having jurisdiction. Prior to movement of any structure, Developer shall provide a relocation schedule, route plan, temporary protection measures, and evidence that the receiving parcels will be capable of accommodating the structures in accordance with the approved site and preservation plans.

## **3. Archaeological Survey and Monitoring**

Before any ground disturbance occurs on the receiving parcels or within areas affected by associated infrastructure improvements, Developer shall obtain and submit an archaeological survey prepared by a qualified professional acceptable to the City and HPC. Developer shall also provide for archaeological monitoring during excavation, grading, utility installation, foundation work, driveway construction, sidewalk installation, and any other subsurface disturbance as may be required by the City or HPC. If archaeological materials, features, or human remains are encountered, work in the affected area shall cease immediately and Developer shall comply with all applicable notice, protection, and treatment requirements before work resumes.

## **4. Final Site Plan**

Developer shall prepare and submit a final site plan for review and approval by the City and HPC before issuance of any final authorization to proceed with relocation or site development. The final site plan shall show the location and orientation of each relocated structure, finished grades, foundation locations, setbacks, drainage patterns, utilities, parking or staging if any, landscape areas, sidewalks, driveway alignments, curbcuts, approaches, and all other site improvements required by this Agreement or applicable ordinances. No material deviation from the approved final site plan shall occur without prior written approval from the City and HPC.

## **5. Platting of Parcels and Access Easements**

Developer shall be responsible for completing all subdivision, replatting, parcel configuration, and survey work necessary to create legally compliant receiving parcels for

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the relocated resources. Developer shall also prepare, obtain approval for, and record all necessary ingress, egress, utility, drainage and shared access easements including any maintenance agreements needed to serve the parcels and improvements contemplated by this Agreement. No building placement or occupancy shall occur until all required plats and easements have been approved and recorded.

#### **6. Performance Bond or Financial Security**

As security for faithful performance of all obligations under this Agreement, Developer shall provide a bond, letter of credit or escrow to the City in an amount sufficient to guarantee completion of the relocation, site improvements, infrastructure, landscaping, and other required project components. The form, amount, duration, and release conditions of such financial security shall be mutually agreed upon and approved by the City. The City may draw upon the security, after notice and opportunity to cure as provided herein, to complete or cause completion of any unfinished or nonconforming work required by this Agreement.

#### **7. Landscape Plans**

Developer shall prepare and submit landscape plans for approval by the City and HPC. The landscape plans shall address grading transitions, screening where appropriate, planting areas, species or material selection, ground treatment, irrigation if proposed, and the relationship of landscaping to the historic setting of the relocated structures. All landscaping shall be installed in accordance with the approved plans, maintained in healthy condition, and replaced as necessary to preserve the intended appearance and function of the site.

#### **8. Shared Driveway, Sidewalks, Curbcuts, and Approaches**

Developer shall construct a shared paved or concrete driveway serving the receiving parcels, together with all sidewalks, curbcuts, street approaches, and related pedestrian and vehicular access improvements required by the City. The design, width, location, grades, drainage, and materials for such improvements shall be shown on the final site plan and shall comply with City engineering, public works, and safety requirements. Any shared driveway or access facility serving more than one parcel shall be supported by recorded cross-access easements and maintenance agreements in a form acceptable to the South Dakota Department of Transportation and the City.

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## **9. Rezoning to R1-Residential**

Developer acknowledges that the receiving parcels shall be rezoned to **R1-Residential** zoning and that the project is conditioned upon approval and completion of such rezoning in accordance with applicable law. Developer shall cooperate with the City in preparing applications, supporting materials, and any additional information reasonably required for the rezoning process. If rezoning is denied or materially conditioned in a manner that defeats the essential purpose of this Agreement, the parties shall confer regarding amendment, suspension, or termination of this Agreement.

## **10. Preservation Covenants**

As a condition of this Agreement and the approvals contemplated hereby, Developer shall execute and record preservation covenants, in form acceptable to the City and HPC, against all parcels and relocated structures included in the project. The preservation covenants shall run with the land and shall require ongoing maintenance, prohibit demolition absent lawful approval, require compliance with applicable Historic Preservation Commission review procedures, and preserve the historic character-defining features of the contributing resources to the maximum extent required by applicable standards and approvals.

## **11. Deed Restrictions**

Developer shall record deed restrictions, in form acceptable to the City and HPC, against all affected parcels and structures providing that the properties shall not be used for commercial purposes or short-term rental use. Such deed restrictions shall run with the land and be binding upon Developer and all successors, assigns, owners, and occupants. The restrictions may allow only those residential, accessory, and preservation-related uses expressly approved by the City and permitted under applicable zoning and recorded covenants.

## **12. Compliance with Approvals and Laws**

Developer shall comply with all conditions of approval issued by the City, HPC, planning and zoning authorities, building officials, public works officials, and any other agency with jurisdiction over the project. Nothing in this Agreement shall be construed to waive the requirement that Developer obtain all permits, certificates, and approvals otherwise required by law. In the event of any inconsistency between this Agreement and a later-issued condition of governmental approval, the more restrictive requirement shall control unless the City expressly determines otherwise in writing.

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**13. Default and Remedies**

If Developer fails to perform any obligation under this Agreement, the City may provide written notice specifying the default and a reasonable opportunity to cure, except in the event of an emergency or immediate threat to public safety or historic resources. If Developer fails to timely cure, the City and HPC may pursue any remedy available at law or in equity, including suspension of approvals, withholding of permits, drawing upon financial security, injunctive relief, or enforcement of recorded covenants and deed restrictions. Remedies shall be cumulative and not exclusive.

**14. Miscellaneous**

This Agreement may be amended only by a written instrument executed by the parties. If any provision of this Agreement is held invalid, the remaining provisions shall continue in full force and effect. This Agreement shall be governed by the laws of the State of South Dakota. This Agreement shall become effective upon execution by all parties. The individuals signing below represent that they are duly authorized to bind the respective party on whose behalf they sign.

Signatures

**OPTIMA LLC**

**CITY OF DEADWOOD**

By: 

By: \_\_\_\_\_

Name: PAUL J. BRAOSKY

Name: \_\_\_\_\_

Title: MANAGING MEMBER

Title: \_\_\_\_\_

Date: 06.17.26

Date: \_\_\_\_\_

**DEADWOOD HISTORIC PRESERVATION COMMISSION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

