

Prepared by:  
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**GENERAL DEVELOPMENT AGREEMENT  
FOR  
DEER MOUNTAIN VILLAGE**

This Development Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, between the County of Lawrence, South Dakota (“County”), a political subdivision of the State of South Dakota and KR Deer Mountain Club 2021, LLC, a South Dakota limited liability company d/b/a Deer Mountain Village with its principal office at c/o Keating Resources, 107 South Main Street, PO Box 130, Atkinson, Nebraska 68713, (“KRDMC”).

**WITNESSETH**

WHEREAS, KRDMC is the owner of 100 % of the real estate which makes up 100% of the real property as shown on the Master Plan on file with the Lawrence County Planning & Zoning Office (Master Plan). This development shall become known as the “Deer Mountain Village; which includes the Mystic Miner Planned Unit Development (PUD) and the acreage described in COZ # 345 approved by Lawrence County in 2021 (collectively hereafter “PUD Property”);

WHEREAS, KRDMC has submitted a Master Plan proposing an amendment of the existing Mystic Mountain PUD (COZ #287) which consists of approximately 475 acres, and now including an additional 50.6 acres (approximately) pursuant to COZ #345 with a mixture of Highway Service Commercial, Recreation Commercial, Multifamily Residential, Single Family Residential, and Right of Way;

WHEREAS, KRDMC’s proposal consists primarily of a mixture of single family home sites on lots ranging from one acre to 10+ acres; multifamily home sites and commercial sites (shops and services at the Village Area);

WHEREAS, The parties recognize the Master Plan, when implemented, will provide for services traditionally provided by government, i.e. water, sewer and roads;

WHEREAS, The County, in the interest of maintaining public health, safety, and welfare, desires to assure that Deer Mountain Village is developed in accordance with the approved Master Plan;

WHEREAS, KRDMC is willing to commit itself to the development of the PUD Property in accordance with an approved Master Plan, the Lawrence County Subdivision Ordinance, and this Agreement.; and

WHEREAS, The County and KRDMC desire to set forth in this Agreement their respective understandings and agreements with respect to certain aspects of the development of the PUD Property.

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

**SECTION 1.  
CHANGE OF ZONING**

Following Lawrence County’s approval of an amendment to the existing Mystic Miner COZ #287 PUD and the approval of COZ #345 (collectively, the “PUD”, “PUD Property” or “Deer Mountain Village”), development of the PUD Property shall be subject to the terms of this Agreement and compliance with the Master Plan and the Lawrence County Subdivision Ordinance.

**SECTION 2.  
MASTER PLAN**

A. Master Plan. KRDMC has provided the County with the “Deer Mountain Village Master Plan” . The Master Plan is incorporated herein by reference. KRDMC shall comply with all applicable Lawrence County ordinances and building codes, unless a variance or exception is approved by the appropriate Lawrence County official, board, or commission, as provided in this Agreement.

**SECTION 3.  
LEGAL DESCRIPTION OF THE PUD PROPERTY**

A legal description of the PUD Property and the names of the legal and equitable owners is set forth on the attached Ex. A and incorporated herein. Amendments to the legal description of the PUD Property may be made during the Change of Zoning process, but is subject to agreement between the parties hereto.

**SECTION 4.  
DURATION OF AGREEMENT**

This Agreement, as the same may be amended from time to time, shall remain in force until the earlier of the dissolution of the PUD or the execution of a dissolution agreement signed by the parties hereto or their successors or assigns.

**SECTION 5.  
GENERAL DESCRIPTION OF THE DEVELOPMENT**

A general description of the development, the development uses permitted on the land including proposed densities and building intensities and height, and a description of the impacts and benefits of the development are set forth in the Master Plan on file with the Lawrence County Planning and Zoning Office and is incorporated herein by this reference.

**SECTION 6.  
DESCRIPTION OF PUBLIC FACILITIES**

- A. Potable water service to the developed portions of the PUD shall be distributed through underground service lines. Water to the development will be provided by Deer Mountain Sanitary District. The PUD Property will, pursuant to agreement with Deer Mountain Sanitary District, will be annexed into the Deer Mountain Sanitary District. All potable water systems shall meet the specific requirements of the South Dakota Department of Agriculture and Natural Resources (DANR).
- B. Waste water will be treated by individual wastewater systems (septic and drain field) that shall conform with Lawrence County Permit Requirements and SDCL 34A et seq which allows this type of treatment system on lots of at least 20,000 sq. ft. with public water systems. When commercial and multi-family lots are developed, group septic systems and drain fields will be submitted for approval to the County and DANR. ;
- C. Roads within the PUD shall be hard surfaced. Any new accesses or modifications of any existing accesses onto County roads or organized road districts shall only be constructed and located as approved by the County or the applicable road district.
- D. Prior to final plat approval of any lot proposed for development, all public facilities to be provided by KRDMC shall be constructed or bonded.
- E. The anticipated date of construction and completion of such new public facilities will be started in 2021 with an anticipated completion in 2023. Progress updates will be provided to the County as part of KRDMC's annual reporting as required pursuant to this Agreement;

**SECTION 7.  
COVENANTS AND HOMEOWNERS ASSOCIATION**

Prior to the approval of a final plat:

A. KRDMC shall cause to be filed in the Office of the Lawrence County Register of Deeds covenants, conditions and restrictions upon the PUD property. Such covenants, conditions and restrictions shall run with the land and be binding upon all successors and assigns of property in the PUD.

B. KRDMC shall incorporate a Home Owners Association (HOA) which shall be charged with the responsibility and authority to enforce covenants and restrictions placed upon the PUD Property by the terms of the covenants and compliance with the terms and conditions imposed by the County pursuant to the approval of the PUD. In addition, the HOA will be responsible to collect assessments for private road maintenance and shall enter into appropriate maintenance agreements for private roads in the development.

**SECTION 8.  
GENERAL PROVISIONS**

KRDMC shall demonstrate compliance with the following limitations and/or conditions:

1. Any multi-family or commercial areas within the PUD shall follow the approval process of the applicable Lawrence County Ordinances.
2. KRDMC shall, on an annual basis, report to the County Commission on the progress of the development in such detail as may be reasonably requested by the County.
3. All construction shall comply with the International Building Code and any other uniform codes as adopted from time to time by the County.
4. KRDMC shall require all contractors and subcontractors to be licensed by the County..
5. KRDMC shall maintain general liability insurance for the property it maintains.
6. KRDMC shall solicit input from the local departments providing fire protection services to the PUD. KRDMC shall cooperate with the local fire department for fire protection services.
7. Utilities (gas, electricity, telephone, cable television, sewer and water) within the PUD shall be placed underground, where economically feasible.

**SECTION 9.  
OPEN SPACE**

It is acknowledged by the parties that open space will be dedicated in the spirit of the Master Plan or revisions thereof.

**SECTION 10.  
ROADS**

All roads within the PUD will be private roads. All private roads shall conform to County standards, unless specific exceptions to such provisions are approved by the Lawrence County Commission or by the Lawrence County Highway Superintendent at the time of platting.

**SECTION 11.  
APPLICATION OF ZONING AND SUBDIVISION ORDINANCE**

This Agreement shall be subject to the provisions of the Lawrence County Zoning and Subdivision Ordinance in effect at the time of the execution of this Agreement. Notwithstanding the preceding, the provisions pertaining to and governing Building Permits, Appeals, Variances, Change of Zonings, Text Amendments, Conditional Use Permits, Extractive Industry Conditional Use Permits and fees shall be governed by the most current rules and regulations in effect at the time of the application for said permits or appeals. Notwithstanding the above exceptions, application fees shall be governed by the most current rules and regulations in effect at the time of the application for said permits.

In the event of a conflict between this Agreement and the Mystic Miner COZ #287 Development Agreement, the terms of this Agreement shall prevail. In all other respects the terms of the Mystic Miner COZ # 287 shall remain in full force and effect.

**SECTION 12.  
ANNUAL REPORT**

KRDMC shall on an annual basis, report to the County Commission on the progress of the development in such detail as may be reasonably requested by the County.

**SECTION 13.  
AGREEMENT BINDING UPON SUCCESSORS AND ASSIGNS**

The provisions of this Agreement shall be equally binding upon any successors or assigns of KRDMC's interest in the subject property. The provisions of this Agreement shall run with the land in favor of and for the benefit of the County and shall be binding upon the present and all successors, assignees, representatives, or agents of the owners of the real estate described in Exhibit A or any portion thereof.

**SECTION 14.  
PROJECT IS PRIVATE UNDERTAKING**

It is specifically understood and agreed to by and between the parties hereto that:

- A. The subject development is a private development,
- B. KRDMC shall have full power over and exclusive control of the real property herein described subject only to the limitations and obligations set forth in this Agreement, and
- C. The contractual relationship between the County and KRDMC is such that KRDMC is an independent contractor and not an agent of the County.

**SECTION 15.  
WAIVER**

Failure or delaying giving notice to either party of a default pursuant to this Agreement shall not constitute a waiver of such default. Except as otherwise expressly provided in this Agreement, any failure or delay by the other party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**SECTION 16.  
MODIFICATIONS AND AMENDMENTS**

Any changes, modifications or amendments of the terms of this Agreement shall not be effective until such change, modification or amendment is reduced to writing and signed by the respective parties and approved by the Lawrence County Commission after any required public hearing.

**SECTION 17.  
REGULATIONS UNAFFECTED**

Any County ordinance not specifically identified within this Agreement will not be affected by the terms of the Agreement, and will be subject to enforcement and change under the same criteria that would apply if no Agreement were in effect.

**SECTION 18.  
APPLICABLE LAW**

This Agreement shall be construed and enforced in accordance with the laws of the state of South Dakota. Should any action be brought in any court of competent jurisdiction, the prevailing party in such action shall be entitled to recover all attorney's fees, court costs and necessary disbursements in connection with such litigation.

IN WITNESS WHEREOF, the undersigned have executed this Development Agreement the day and year first written above.

COUNTY OF LAWRENCE

KR DEER MOUNTAIN CLUB 2021, LLC  
d/b/a Deer Mountain Village

_____ By: _____	_____ By: _____
_____ Its: _____	_____ Its: _____

State of South Dakota          )  
  ) ss.  
County of Lawrence             )

On this \_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged her/himself to be \_\_\_\_\_ of County of Lawrence, a political subdivision of the State of South Dakota, and that s/he, as such \_\_\_\_\_, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the County of Lawrence by her/himself as \_\_\_\_\_.

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

(SEAL)	_____ Notary Public My Comm. Expires: _____
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State of \_\_\_\_\_             )  
  ) ss.  
County of \_\_\_\_\_         )

On this \_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be \_\_\_\_\_ of KR Deer Mountain Club 2021, LLC, a South Dakota limited liability company, and that he, as such \_\_\_\_\_, being authorized to do so, executed the foregoing instrument

for the purposes therein contained, by signing the name of KR Deer Mountain Club 2021, LLC  
by himself as \_\_\_\_\_.

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

(SEAL)

\_\_\_\_\_  
Notary Public  
My Comm. Expires: \_\_\_\_\_