

CONTRACT FOR DEED

1. **PARTIES.** The parties to this Contract for Deed (hereafter called "Contract") are **ROBERT E. MOORE**, of 2019 Selkirk Place, Rapid City, South Dakota 57702 (hereafter called "Seller"), and **CITY OF RAPID CITY**, a municipal corporation, of 300 Sixth Street, Rapid City, South Dakota 57701, or its assigns (hereafter called "Buyer").

2. **PURPOSE.** The purpose of this Contract is to fix the terms and conditions under which Seller agrees to sell and Buyer agrees to buy the property described in Part 3 hereof.

3. **PROPERTY.** The parties agree and understand that the property to be covered by this Contract is certain real estate along Skyline Drive in Rapid City, South Dakota, consisting of 37.43 acres, more or less, and more particularly described as follows:

Lot 14R, as shown on the plat filed in Plat Book 25, Page 74; and
Lot 16R and Lot 17, as shown on the plat filed in Plat Book 25,
Page 86; all in Kepp Heights Subdivision No. 3 in the City of Rapid
City, Pennington County, South Dakota.

4. **PURCHASE PRICE.** As consideration for the property described in Part 3 hereof, Buyer agrees to pay to Seller the sum of Six Hundred Thousand Dollars (\$600,000), payable as follows:

A. An initial down payment of Three Hundred Twenty Thousand Dollars (\$320,000) on the closing date as set forth in Part 8 below.

B. The remaining balance of Two Hundred Eighty Thousand Dollars (\$280,000) shall be payable, without interest, in the following installments:

(1) The sum of Ninety Thousand Dollars (\$90,000) on or before
November 1, 2000;

(2) The sum of Ninety-five Thousand Dollars (\$95,000) on or before
November 1, 2001; and

(3) The sum of Ninety-five Thousand Dollars (\$95,000) on or before November 1, 2002.

Buyer reserves the right to prepay all or any portion of the installment payments due under Part IV B, above, without penalty, premium or fee.

5. **ESCROW AND PLACE OF PAYMENT.** Upon execution of this Contract, the parties agree to establish an escrow account at Old West Escrow, Rapid City, South Dakota, the initial expenses of which shall be divided equally between Buyer and Seller, with all subsequent expenses being the obligation of Seller. Buyer agrees to make all deferred payments required to the escrow agent for the account of Seller.

Upon the execution of this Contract, Seller agrees to deposit with the escrow agent a good and sufficient Warranty Deed and accompanying Certificate of Real Estate Value to the real estate described in Part 3 hereof and the original of this Contract for Deed. Said documents shall be retained by the escrow agent pending complete performance of all of the terms, covenants and conditions of this Contract to be performed by Buyer. When the last payment called for under this Contract is made, the escrow agent is authorized and directed to deliver the evidence of title and deed to Buyer. This sale is exempt from transfer fee pursuant to SDCL 43-4-22(2).

6. **TITLE.** Seller warrant that he has good and merchantable title to all of the property in Part 3 hereof, according to the title standards adopted by the State Bar of South Dakota, subject to the following:

- A. Current taxes not delinquent;
- B. Restrictions, covenants, easements, rights-of-way and mineral reservations of record as of the date of this Contract; and
- C. Existing zoning ordinances.

Seller warrants that, upon complete performance of all the terms, covenants and conditions of this Contract to be performed by Buyer, Seller will be possessed of merchantable title to the property described in Part 3 hereof, according to the title standards adopted by the State Bar of South Dakota, and will convey such title to Buyer at such time.

Upon execution of this Contract Seller agrees to deliver to Buyer a title insurance policy showing good and merchantable title to the real estate described in Part 3 hereof in Seller. In the event the title insurance policy shows other encumbrances or defects in title, Seller shall then have a reasonable time to cure such encumbrances and defects within the limitations of this Contract.

7. **TAXES.** Seller warrants that all real estate taxes and other real estate assessments which constitute a lien against the property described in Part 3 hereof assessed for the year 1999 and prior years have been paid. The 2000 taxes and assessments shall be prorated (based upon the 1999 levy) between Seller and Buyer up to the closing date. Buyer shall pay all real estate taxes, assessments, impositions, levies and liens filed upon the premises from the closing date forward before the same shall become delinquent.

8. **CLOSING AND POSSESSION.** Closing shall take place on _____, 2000, at the offices of First American Title Company of South Dakota, Rapid City, South Dakota. The closing fee of the title company shall be divided equally between the parties. The parties agree that Buyer may assume possession of the property described in Part 3 hereof on the closing date.

9. **EXTENSION OF FLORMAN STREET.** As additional consideration for payment of the purchase price set forth in Part 4 hereof, Seller agrees to proceed, at Seller's expense, to

construct an extension of Florman Street to Skyline Drive at the location shown on the attached Exhibit A; however, such extension shall not include sewer and water. Seller's construction of Florman Street to connect with Skyline Drive shall be in accordance with the City Street Criteria Manual. Such construction shall be completed on or before August 1, 2001. In the event such construction is not completed by August 1, 2001, then Buyer may withhold all further installment payments which would otherwise be due Seller under Part 4 B hereof until such time as the extension of Florman Street has been completed as herein provided. Upon completion of the construction of Florman Street in accordance herewith, any withheld payments shall be released to Seller and Seller shall have no claim against Buyer for interest payments or other loss or damage by reason of such withholding of payment.

10. **INSURANCE.** Buyer agrees to keep in force a policy of public liability insurance covering injury to persons or property on or about the described premises and naming Seller as an additional insured, with coverage limits of at least \$1,000,000 for bodily injury or death and \$500,000 for property damage.

11. **USE OF PROPERTY.** The parties understand and acknowledge that Buyer is purchasing the described property for the specific purpose of reconveying the property to a non-profit foundation which will own, operate, maintain and preserve the property for public use and public open space in perpetuity. The parties agree that, pending complete performance of this Contract by Buyer, no development or improvements will be made on the described property by Buyer or its assignees without Seller's approval.

12. **MECHANIC'S LIENS.** Buyer agrees that if any mechanic's liens are filed, they will be discharged within ninety (90) days after Buyer has notice of said filing or Buyer will pay

an amount equal to the sum or sums into Court, said amounts to remain until settlement of the disputes. The parties agree that a violation of the provisions of this part shall constitute a default hereunder.

13. **TIME**. The parties agree that time is of the essence of this Contract.

14. **HOLD HARMLESS**. Buyer agrees to hold Seller harmless from any liability of any kind or character arising out of the use and occupation of the property described in Part 3 hereof by Buyer or its assigns, or anyone claiming under it, to which Seller is made a party, and which arises out of the use and occupation of the property described in Part 3 hereof by Buyer or its assigns.

15. **RESTRICTIVE COVENANTS**. Contemporaneous with the execution of this Contract, Seller shall join Buyer in the execution and recording of such restrictive land covenants as in the opinion of Buyer are necessary to assure to Buyer that the described property shall not be developed for commercial or residential purposes and that the described property shall be preserved as open space for public use in perpetuity. The restrictive covenants shall run with the land and shall be binding upon the parties hereto and all subsequent parties that may hereafter in the future acquire any interest in and to the described property.

16. **CONSENT TO ASSIGNMENT**. Seller acknowledges that following execution of this Contract, Buyer intends to reconvey the described property and all interest of Buyer therein to such nonprofit organizations as Buyer determines are best suited to maintain and preserve Buyer's intended use of the property as open space for public use in perpetuity. Seller hereby consents to such assignment, transfer or conveyance and any subsequent assignment, transfer or conveyance for the same or similar purposes. Notwithstanding such assignment, Buyer shall

remain responsible to Seller for all payments due Seller under paragraph 4 hereof. Buyer shall require any assignee to maintain insurance naming both Buyer and Seller as additional insureds in accordance with the provisions of paragraph 10 hereof.

17. **DEFAULT.** In the case of the failure of Buyer to make payments of principal or interest as provided herein or in the case of a default of any other term or condition of this contract, then the whole of said payments and interest shall, at the election of Seller, become immediately due and payable and this contract shall, at the option of Seller, be forfeited and determined by giving Buyer ninety (90) days notice in writing of the intention of Seller to cancel and determine this contract and the time and place, when and where, payment can be made by Buyer. The parties agree that Buyer may cure the default at any time during the ninety (90) day notice period and continue to make payments as hereinabove provided.

It is mutually understood and agreed by and between the parties to this contract that ninety (90) days is a reasonable and sufficient notice to be given to Buyer in case of its failure to perform any of the covenants on its part hereby made and entered into and shall be sufficient to cancel all obligations hereunto on the part of Seller and fully reinvest Seller with all right, title and interest in all improvements on the premises whatsoever and payments made under the terms of this Contract shall be retained by Seller in full satisfaction and in liquidation of all damages by them sustained, and Seller shall have the right to reenter and take possession of the premises. Additionally, Seller shall have all other rights allowed sellers under the laws of the State of South Dakota, specifically including the right to bring suit for payment of the balance of the purchase price, together with interest on the delinquent unpaid balance at the rate of 10% per annum.

The parties agree that actual monetary damages that may be incurred by Seller in the event of default by Buyer are very difficult if not impossible to ascertain. Therefore, it is specifically agreed that in the event of default and in the event such default remains uncured for ninety (90) days and Seller elects to accelerate the contract balance and seek to retake possession of the premises by action or self-help, all payments therefore made by Buyer or on behalf of Buyer to Seller may be retained as liquidated damages. The parties have consciously attempted to fix fair compensation in the event Buyer's uncured default. The parties agree that their agreement for compensation as set forth herein bears a reasonable relation to probable damages and is not disproportionate to any actual damages reasonably to be anticipated.

Buyer shall be responsible for all of Seller's reasonable attorney fees, cost and expenses related to the giving of notice of default and all other formal actions which are proper and justified as a result of Buyer's default. Seller may recover the same from Buyer by separate action.

In the event Seller deems it necessary to initiate a proper action for specific performance or strict foreclosure, or any other proper action to compel Buyer's performance or protect Seller's rights, the parties hereby agree that the precise terms of this Contract shall prevail and there shall be no adjustments made by the Court, whether in equity or otherwise, contrary to the express provisions of this Contract for Deed. Both parties expressly agree that this Contract is equitable in all respects.

Failure of Seller to give notice of default or to strictly enforce these default provisions shall not be deemed a waiver of Seller's right to enforce these default provisions against Buyer.

18. NOTICES. The parties agree that any notices required or permitted hereunder shall be effective when deposited in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the parties to receive such notices at the following addresses:

Seller: Robert E. Moore
2019 Selkirk Place
Rapid City SD 57702

Buyer: City of Rapid City
300 Sixth Street
Rapid City SD 57701

19. BINDING ON HEIRS, SUCCESSORS, ETC. The parties agree that this Contract is binding upon them, their heirs, successors, administrators, executors and assigns.

20. RECORDATION. The parties agree that either this instrument or a Short Form Contract for Deed may be recorded in the office of the Register of Deeds of Pennington County, South Dakota.

21. INTEGRATION. The parties agree that this writing represents the entire agreement between them and that there are no other oral or collateral agreements or understandings of any kind or character except those contained herein.

DATED: June 5, 2000.

SELLER:

BUYER:

CITY OF RAPID CITY, a municipal corporation

Robert E. Moore By Jim Ha...
ROBERT E. MOORE Mayor

ATTEST:

Clara A. Schmidt
City Auditor/Finance Officer

State of South Dakota,)
) ss.
County of Pennington.)

ON THIS DAY, June 16, 2000, before me, the undersigned officer, personally appeared **ROBERT E. MOORE**, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same for the purposes therein contained.

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

(SEAL)

Jeri Lynn
Notary Public
My Comm. Expires: 9-3-2002

State of South Dakota,)
) ss.
County of Pennington.)

ON THIS DAY, June 5, 2000, before me, the undersigned officer, personally appeared Jim Shaw, who acknowledged himself to be Mayor of the **CITY OF RAPID CITY**, a municipal corporation, and that he, as such Mayor, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the **CITY OF RAPID CITY** by himself as Mayor.

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

(SEAL)

Jeri Lynn
Notary Public
My Comm. Expires: 9-3-2002

State of South Dakota,)
) ss.
County of Pennington.)

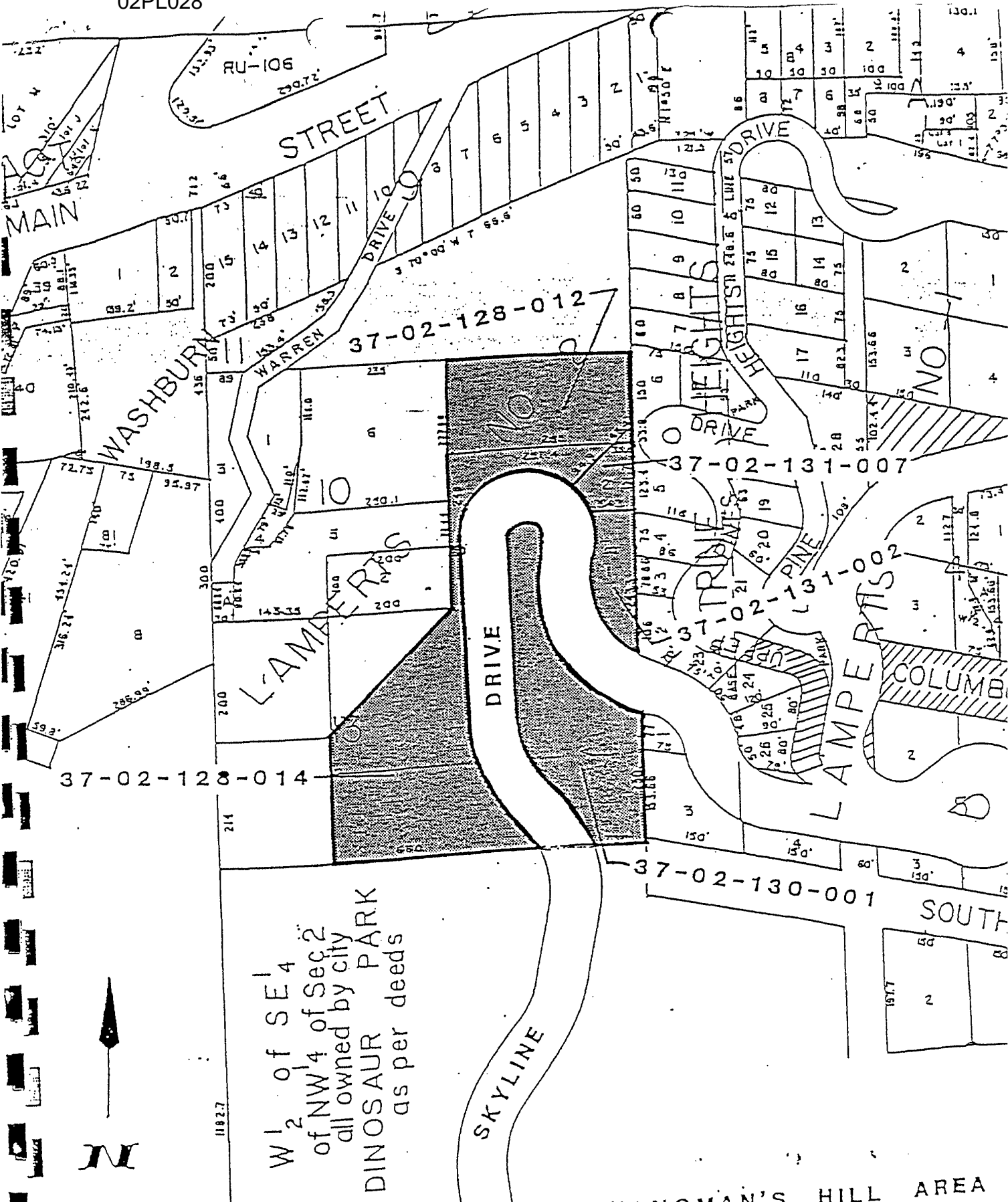
ON THIS DAY, June 5, 2000, before me, the undersigned officer, personally appeared ~~James F. Preston~~ ^{*James F. Preston*}, who acknowledged himself to be ~~City Auditor/Finance Officer~~ ^{*City Auditor/Finance Officer*} of the CITY OF RAPID CITY, a municipal corporation, and that he, as such City Auditor/Finance Officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the CITY OF RAPID CITY by himself as City Auditor/Finance Officer.

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

(SEAL)

Jeri Lynn
Notary Public
My Comm. Expires: 9-3-2002

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37-02-128-012

37-02-131-007

37-02-128-014

37-02-130-001

W 1/2 of SE 1/4
 of NW 1/4 of Sec 2
 all owned by city
 DINOSAUR PARK
 as per deeds



SCALE 1" = 200'

HANGMAN'S HILL AREA
 PROPOSED LAND ACQUISITION