

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

STANFORD ADELSTEIN, and)
FLORMANN STREET PRESERVATION)
GROUP, LLC,)

Civil No. 01-776

Plaintiffs,)

vs.)

AMENDED COMPLAINT

ROBERT E. MOORE,)
)
Defendant.)

Comes now the above-named Plaintiffs, by and through their undersigned legal counsel, and for their Complaint against the above-named Defendant, hereby state and allege as follows:

1.

That the Plaintiff, Stanford Adelstein, is a citizen and resident of Pennington County, South Dakota.

2.

That Plaintiff, Flormann Street Preservation Group, LLC, is a limited liability company duly formed, organized, and certified pursuant to the laws of the state of South Dakota.

3.

That the Defendant is, and at all times material was, the fee owner of the real estate described as follows:

Lot 15, Kepp Heights No. 3 Subdivision, Rapid City, Pennington County, South Dakota.

4

That in 1998 the Defendant and the City of Rapid City, South Dakota, (hereinafter referred to as "City") began negotiating the terms of an agreement under which Defendant would sell a total of approximately 52.5 acres of real estate along Skyline Drive to the City. On December 16, 1999, the Defendant and the City entered into a written agreement under which the Defendant agreed to sell said property for a total purchase price of \$868,000.00. A true and correct copy of this agreement is attached at **Exhibit A** and incorporated herein by this reference.

5.

That pursuant to the terms of Exhibit A, Defendant agreed to sell 37.5 acres and agreed to grant a two-year option to purchase an additional 15 acres. In turn, the City agreed to pay Defendant \$600,000 for the first 37.5 acres which would be deeded to the City at closing. In addition, the parties agreed that the purchase price of the property under the option would be \$268,000.00 and that the City would rezone the option property to Limited Development Residential ("LDR").

6.

That on or about June 5, 2000, and in furtherance of their previous understanding as outlined in Exhibit A, the Defendant and the City of Rapid City entered into a written Contract for Deed on the 37.5 acres at a price of \$600,000.00. A true and accurate copy of said contract for deed is attached hereto as **Exhibit B** and incorporated herein by this reference.

7.

That on June 19, 2000, the Defendant signed a written option agreement under which he agreed to grant a two-year option to purchase the remaining 15 acres for the total purchase price

of \$268,000.00 to a “private group” to be formed by Plaintiff Adelstein for the express purpose of purchasing and owning said real property. See **Exhibit C**. By its terms, said option ran for two years from the date of closing under the Contract for Deed at Exhibit B.

8.

Prior to the execution of Exhibit C, Plaintiff Adelstein intended to resist Defendant’s efforts to rezone his property on Skyline Drive and intended to appear before the City Counsel to register his objection and resistance. However, based upon the promises made in Exhibit C, Plaintiff Adelstein agreed not to, and did not, resist said rezoning efforts and the Defendant’s property was thereafter rezoned without objection.

9.

That following the execution of Exhibit C and the Defendant’s promises and representations made therein, Plaintiff Adelstein formed Plaintiff Flormann Street Preservation Group, LLC, for the express purpose of acquiring, owning, managing, and preserving the realty to be acquired from the Defendant. Once formed, Defendant began raising monies through donations and otherwise for the purpose of funding the option to purchase granted by the Defendant.

10.

That Plaintiffs performed all conditions precedent required of them under the agreement(s) with the Defendant.

11.

That on or about March 21, 2001, Defendant unequivocally repudiated his agreement under Exhibit C and demanded substantial additional consideration before he would honor the option agreement.

COUNT TWO: DECLARATORY RELIEF

12.

Plaintiffs incorporate Paragraphs 1-11 as if fully set forth in this Count Three.

13.

That since Defendant has repudiated his agreement with Plaintiffs and has denied the legal validity of the option to purchase which was granted as set forth above, a legally justicable issue exists as to the validity and effect of said agreement and option to purchase Defendant's real property.

14.

That Plaintiffs seek this Court's judgment declaring that the aforesaid option to purchase which was granted by the Defendant under Exhibit C (and Exhibit A by reference) constitutes a legally binding option under the laws of the state of South Dakota and that Defendant is bound by the terms of the same.

COUNT TWO: QUASI CONTRACT/ESTOPPEL

15.

Plaintiffs incorporate Paragraphs 1-14 as if fully set forth in this Count One.

16.

That Defendant made promises and representations that he would grant an option to purchase real estate to Plaintiffs and intended that Plaintiff Adelstein would rely upon such representations and promises.

17.

That Plaintiff Adelstein reasonably and detrimentally relied upon the representations and promises made by the Defendant and Defendant has accepted the benefit flowing from Plaintiff Adelstein's agreement not to resist Defendant's rezoning efforts.

18.

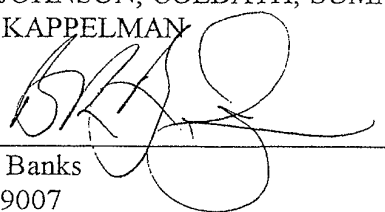
That as a result of the foregoing, the Defendant should be estopped from denying the validity and existence of the agreement and promises he made and should be bound by the terms of the same including the right of Plaintiff Adelstein to exercise the option granted by the Defendant and/or to assign such interest to Plaintiff Flormann Preservation Group, LLC, which was formed for the purpose of exercising the same.

WHEREFORE, Plaintiff respectfully demands Judgment as follows:

- (1) For this Court's Judgment and Decree under Counts One and Two of this Complaint declaring that the agreement(s) signed by Defendant constitute a valid and binding option to purchase real estate;
- (2) That Plaintiff be awarded its costs, disbursements, and reasonable attorneys' fees as may be allowed by law; and
- (3) For such other relief as the Court deems just and appropriate.

Dated this 29 day of April, 2002.

BANKS, JOHNSON, COLBATH, SUMNER,
& KAPPELMAN



Barton R. Banks
P.O. Box 9007
Rapid City, SD 57709-9007
(605) 341-2400

CERTIFICATE OF SERVICE

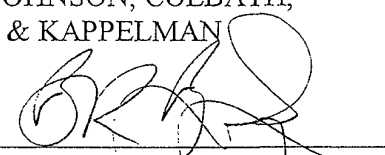
The undersigned hereby certifies that he served a copy of the foregoing "Amended Complaint" upon the person herein next designated, on the date below shown, by depositing a copy thereof in the United States mail at Rapid City, South Dakota, first class postage prepaid thereon, in an envelope addressed as follows, to-wit:

James L. Jeffries
816 6th Street
Rapid City, SD 57701

which address is the last address of the above-named person known to the subscriber.

Dated this 29 day of April, 2002.

BANKS, JOHNSON, COLBATH,
SUMNER & KAPPELMAN



By _____
Barton R. Banks, Attorneys for Plaintiffs
Stanford Adelstein and Flormann Street
Preservation Group, LLC

P. O. ADDRESS:

P. O. Box 9007
Rapid City, SD 57709-9007
(605) 341-2400

EXHIBIT A

\$868,000 is the total purchase price for all of Bob Moore's land on Skyline Drive.

Bob will be paid \$600,000 now for approx 37.5 acres.

Bob will be paid \$268,000 for the additional approx. 15 acres, which will be held by Bob Moore for two years from the time of closing on the 37.5 acres. Bob Moore will pay all taxes due during the two years, with that amount reimbursed to him when the option is executed. This land will be rezoned to LDR following closing on the 37.5 acres.

Bob will agree to pay his portion of the Florimann Street connection to Skyline Drive.

Tim Giac
12/16/99

Bob Moore
12/16/99

DRAFT

\$ 868,000.⁰⁰ TOTAL PURCHASE PRICE
FOR ALL OF BOB MOORE'S PROPERTIES

\$ 600,000 FOR 37.5 ACRES NOW.

\$ 268,000 FOR THE ADDITIONAL APPROX.
15 ACRES, ~~TO~~ TO BE HELD BY B.M.
FOR TWO YEARS, FROM THE TIME OF
CLOSING. THIS FUND WILL BE RETURNED
TO WOR STARTING

EXHIBIT B

RESTRICTIVE COVENANTS

The undersigned, ROBERT E. MOORE and the CITY OF RAPID CITY, a municipal corporation, for themselves, their successors in interest and assigns, covenant and agree as follows:

Recitals

WHEREAS, contemporaneously with the execution of these Restrictive Covenants, Robert E. Moore, as seller, and the City of Rapid City, as buyer, have entered into a Contract for Deed of even date herewith whereby Robert E. Moore has agreed to sell and the City of Rapid City has agreed to purchase, on the terms and conditions therein contained, the following described real property:

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;

and

WHEREAS, the City of Rapid City has purchased the above described property for the specific purpose of maintaining and preserving said property as an open space for public use and for no other use; and

WHEREAS, the City of Rapid City intends to reconvey the described property to a non-profit corporation which will own, hold, maintain and preserve the described property as open space for public use, and in the event the property will be used for any other purpose, the described property shall revert to the City of Rapid City; and

WHEREAS, the purpose of these restrictions are to ensure the use of the described property as open space for public and to prevent the use of the described property for residential or commercial development, or any other use inconsistent with its intended use as an open space for public use; and

WHEREAS, these Restrictive Covenants are intended to ensure that the parties hereto, for their parts and their successors and assigns, will forever faithfully observe and perform the restrictions, covenants and conditions herein set forth, and further to provide a means, at law or in equity, by which these Restrictive Covenants may be enforced;

Agreement

NOW, THEREFORE, the parties hereto, for themselves, their successors and assigns, agree as follows:

1. Open Space for Public Use. The property herein described shall be used and enjoyed and is hereby dedicated for public use as open space and no other use shall be permitted. Public use shall include, among other things, the following: nature and environmental interpretive facilities for public education and information, public recreation uses, and other public uses not inconsistent with the preservation purposes for which this property is being acquired by the City of Rapid City.
2. Restriction on Residential or Commercial Structures. No residential dwelling, commercial building or structure (except as specifically permitted by Section 3 below), or commercial advertising billboard, sign or display shall be constructed or located upon the described property.
3. Permitted Improvements. Structures and improvements for public education and information or environmental facilities for recreational use compatible with the public use of the property as open space and which shall not detract from natural surroundings, environmental and historical significance of the setting shall be permitted on the property, provided any such structure, improvements or facilities are public in character and shall otherwise comply with the covenants and restrictions herein contained. All permitted structures shall be of a color and constructed of materials compatible with the natural environment. The maximum height of all permitted structures located within 200 feet of the right-of-way established in Section 8 below shall not exceed 16 feet as measured on the wall located closest to Skyline Drive.
4. Access. Access to individual lots shall be provided from smaller local streets and cul-de-sacs, rather than Skyline Drive.
5. On-Site Septic Systems. No on-site septic systems shall be permitted.
6. Fire Resistive Construction Requirements. All structures as may be permitted on the property shall comply with the Fire Resistive Construction Requirements, attached as Exhibit A.
7. Fuel Management Plan. The property shall be held, managed and maintained in accordance with the Fuel Management Requirements, attached hereto as Exhibit B.
8. Minimum Right-of-Way. A right-of-way 80 feet in width (40 feet on either side of the centerline of Skyline Drive) shall be established along both sides of Skyline Drive.

9. Setbacks. A minimum setback of 100 feet from Skyline Drive for all permitted structures is hereby established.

10. View Protection Easements. View protection easements shall be retained at the locations identified on the attached Exhibit C.

11. Duration. These Restrictive Covenants are intended to last the maximum length of time as may be permitted by law, and at the end of any maximum term as may be permitted by law, if any, these restrictive covenants shall automatically renew and be extended for an additional maximum term as may be permitted by law unless the City of Rapid City, by resolution of its duly authorized governmental body, amends or modifies the same by written instrument as may be permitted pursuant to paragraph 14, below, and filed for record with the Pennington County Register of Deeds.

12. Effect of Partial Invalidity. It is expressly declared that if any covenant, condition or restriction herein set forth is invalid or void, such invalidity or voidness shall in no way affect any other covenant, condition or restriction.

13. Effect of Waiver. Each and all of the covenants, conditions and restrictions contained herein shall be deemed as continuing and any failure or delay in enforcing the same on any occasion or repeated occasions shall not impair or affect the covenants, conditions and restrictions so far as any future or other breach is concerned. It is understood and agreed that no waiver of any breach of any of the covenants, conditions and restrictions herein contained shall be construed to be a waiver of any other breach of the same, or other covenants, conditions or restrictions; nor shall failure to enforce any one of such restrictions, either by forfeiture or otherwise, be construed as a waiver of any other restriction or condition.

14. Modification. The conditions, covenants and restrictions herein created and established may be amended or modified by duly adopted resolution of the governing body of the City of Rapid City and filed for record with the Pennington County Register of Deeds; provided, however, that any such amendment or modification shall not be inconsistent with the perpetual use of the property as an open space for public use.

15. Enforcement. The conditions, covenants and restrictions herein created and established may be enforced by an appropriate action at law or in equity against the person or persons violating or threatening to violate the same to restrain a violation or a threatened violation and/or to recover damages, which action shall be brought in the name of or for the use of the City of Rapid City, by the City of Rapid City, or any other person, corporation or entity specifically authorized by resolution of the governing body of the City of Rapid City to commence and prosecute such action for or on behalf of the City of Rapid City.

16. Prior Covenants Superseded. These Restrictive Covenants shall operate to terminate, replace and supercede in all respects the Declaration of Restrictions and Covenants to Run With the Land, dated April 30, 1993, and recorded May 20, 1993, in Book 50, Page 198, of the Miscellaneous Records in the office of the Pennington County Register of Deeds.

17. Binding Effect. These Restrictive Covenants shall be deemed to be covenants running with the land herein described and shall be binding upon the parties hereto, their successors and assigns, and any party having or holding any interest whatsoever in and to the described property.

DATED: June 5, 2000.

SELLER:

BUYER:

CITY OF RAPID CITY, a municipal
corporation

Robert E. Moore

By Vincent J. [Signature]

ROBERT E. MOORE

Mayor

ATTEST:

Clara J. Schmidt

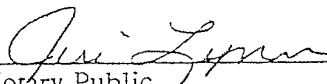
City Auditor/Finance Officer

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)



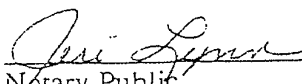
Notary Public
My Comm. Expires: 9-3-2002

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)



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, who acknowledged himself to be 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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Prepared By:	Curtis S. Jensen DEMERSSEMAN JENSEN, LLP
Address:	516 5th St., PO Box 1820 Rapid City, SD 57709-1820
Telephone:	(605) 342-2814

EXHIBIT C

STATEMENT OF NEED FOR PROPERTY AND EASEMENT ACQUISITION
IN THE SKYLINE DRIVE STUDY AREA

Skyline Drive is an important scenic drive traversing the hogback ridge that forms the outer ridge of the Black Hills. Skyline Drive provides panoramic views of the Hogback Ridge itself, Historic Downtown, the West Boulevard Historic District, Canyon Lake, Dark Canyon, Memorial Park, the western edge of the Badlands, the Black Hills and Harney Peak (highest point in North America east of the Rocky Mountains). Skyline Drive provides a dynamic introduction to Rapid City and the Black Hills to the thousands of visitor's that traverse it each tourist season.

The drive itself includes many historic features including hand built flagstone retaining walls, circa 1937, located along several curves and scenic overlooks. A prominent feature along the route is Historic Dinosaur Park, constructed between 1936 and 1938 by the Works Progress Administration (WPA). Thirty foot tall dinosaurs are featured along with picnic areas, a snack bar and gift shop. Hangman's Hill is located just north of Dinosaur Park. In 1877, two men and a teenager were found sleeping next to some stolen horses. The two men admitted stealing the horses, but proclaimed innocence for the teenager. That night, as the three "accused" horse thieves were being locked in a guarded cabin, a vigilante party stole them away and took them to the hill. All three men were hung from a large pine tree on that rock which in turn gave the rock its name.

In order to protect many of the scenic and historic aspects of this roadway as outlined above, the City of Rapid City shall seek to acquire through fee ownership (or easements where appropriate) the following properties:

- 1) The southern portion of Parcel #37-02-128-012;

This property should be acquired to protect the historic tree and rock outcrop referred to as Hangman's Hill. In addition acquisition of this property will protect the views of Rapid Creek, the greenway tracts and "The Gap" experienced by visitors as they proceed through the second hairpin turn on the roadway.

- 2) The eastern portion of Parcel #37-02-128-014;

This property should be acquired to provide vehicular and ADA access to Dinosaur Park. In addition, a buffer could be established between the park and the private residences to the west. Views of west Rapid City would also be protected.

- 3) All of Parcel #37-02-131-002;
- 4) All of Parcel #37-02-131-007;

These properties should be acquired to provide a buffer between the roadway and existing residential development along Upper Pines Drive. Residential construction in this area with individual driveways would create significant safety issues for traffic traveling the roadway due to the geometrics of the road and the limited site distance. In addition, views to the east of Downtown Rapid City would be protected.

5) All of Parcel #37-02-130-001;

This property should be acquired to preclude residential development in the narrow finger of property located on the inside of the second hairpin curve in the roadway. An informal turnout is located at the southern end of this property (just north of the park parking area) and acquisition of this site would allow maintenance of the turnout. Acquisition would protect views of Downtown Rapid City, provide a buffer for Dinosaur Park and preclude the location of driveways directly on to the roadway at this location.

6) Portion of Parcel #37-02-301-002;

A very small portion of this property may need to be acquired due to possible encroachments of the existing turnout (located on the west side of Skyline Drive) and historic retaining walls on private property. This turnout provides views of West Rapid City including the Baken Park area, Sioux Park area and views of the foothills to the west. Easements protecting the views to the west should also be acquired.

7) Portion of Parcel #37-02-352-001;

A small portion of this property should be acquired as the existing turnout (located on the east side of Skyline Drive) encroaches on private property. This turnout provides dramatic views of the eastern half of Rapid City including the Downtown area and extending eastward to Ellsworth Air Force Base and the plains beyond. Easements protecting these eastern views should also be acquired.

- 8) View Protection Easement on Parcel #37-11-151-003;
- 9) View Protection Easement on Parcel #37-11-151-004;
- 10) View Protection Easement on Parcel #37-11-152-003;

The existing turnout (located on the west side of Skyline Drive) appears to be located completely within the existing right-of-way. This turnout provides significant views to the west encompassing most of west Rapid City and extending to the Black Hills. The turnout is located in a saddle providing views to the east as well. View protection easements should be acquired to both the west and east.

9) Portion of Parcel 37-11-300-002;

A small portion of this property should be acquired as the existing turnout appears to encroach onto private property. This turnout provides a limited view to the west; however, significant views to the east of south Rapid City, the Badlands and the plains beyond should be protected with view protection easements.

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

ON THIS DAY, June 16, 2000, before me, the undersigned officer, personally appeared James F. Preston, who acknowledged himself to be 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: 4-3-2002

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Prepared By:	Curtis S. Jensen DEMERSSEMAN JENSEN, LLP
Address:	516 5th St., PO Box 1820 Rapid City, SD 57709-1820
Telephone:	(605) 342-2314

RATIFICATION OF AGREEMENT

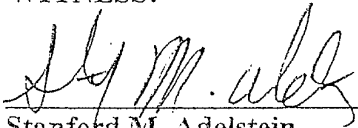
I, Bob Moore, of Rapid City, Pennington County, South Dakota, in consideration of a guarantee of a letter of credit, located at Dacotah Bank, of Stanford M. Adelstein, hereby reaffirm my agreement wherein the City of Rapid City will pay \$600,000 for approximately 37.5 acres, and a private group will have two (2) years to raise and pay an amount of \$268,000 for an additional approximate 15 acres, currently held by me.

Dated this 19 day of June 2000.

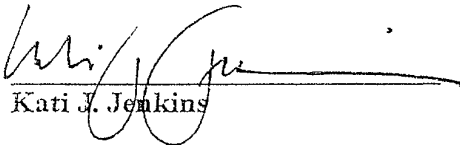


Bob Moore

WITNESS:



Stanford M. Adelstein



Kati J. Jenkins

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:



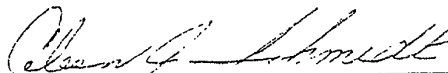
ROBERT E. MOORE

CITY OF RAPID CITY, a municipal corporation

By 

Mayor

ATTEST:



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

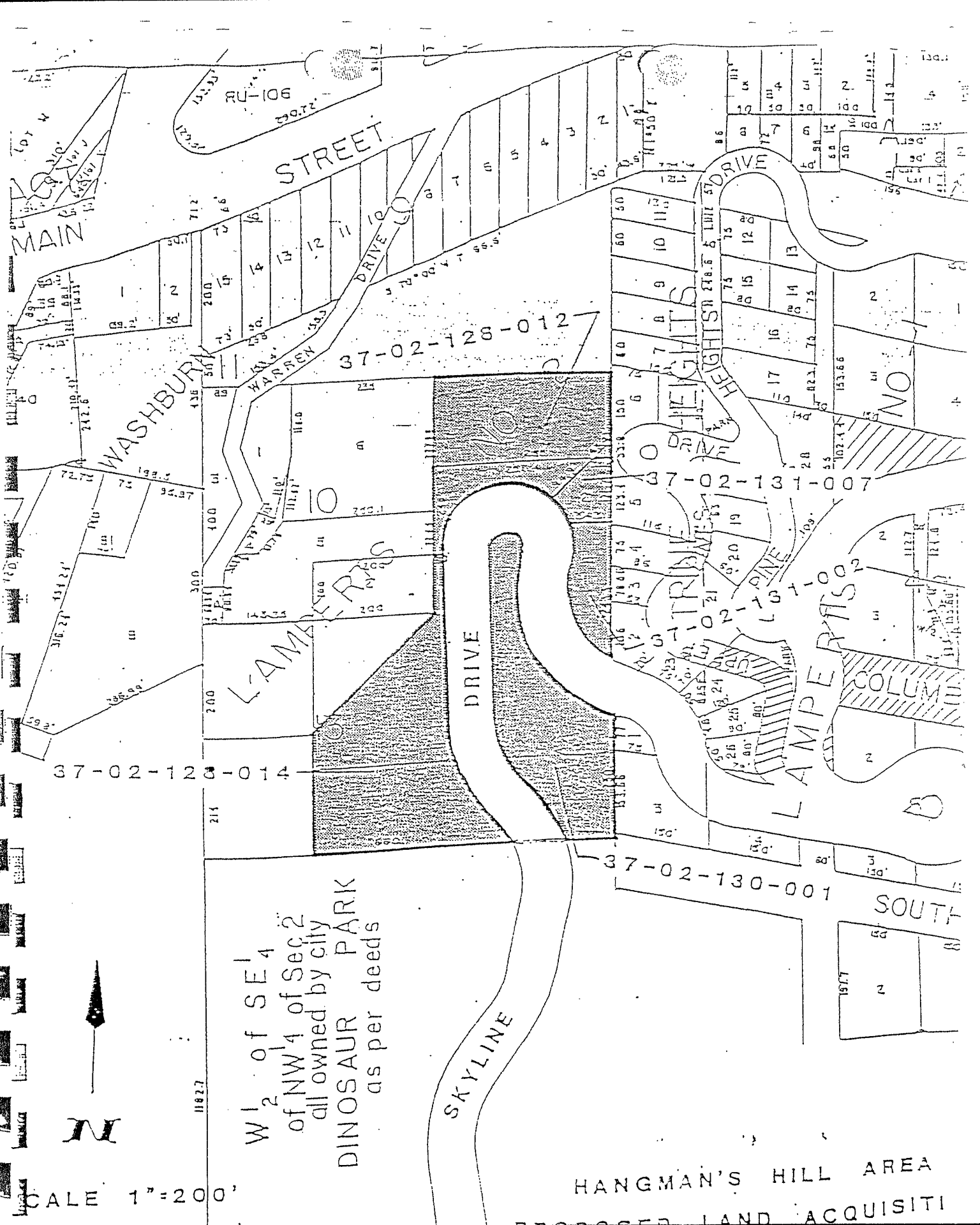
State of South Dakota,)
) ss.
County of Pennington.)

ON THIS DAY, June 5, 2000, before me, the undersigned officer, personally appeared ^{Coleen Schmidt} James F. Preston, who acknowledged himself to be, ^{Asst} 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)

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



MAIN

STREET

WASHBURN

LAMPERTS

DRIVE

HEIGHTS DRIVE

LAMPERTS

COLUM

SOUTH

SKYLINE

37-02-128-012

37-02-131-007

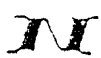
37-02-128-014

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

HANGMAN'S HILL AREA

PROPOSED LAND ACQUISITION



SCALE 1" = 200'



13

January 15, 1982

HGMAN'S HILL AREA

SEE DETAIL

37-11-300-002

37-11-151-003

37-11-151-004

37-11-152-003

37-02-301-002

PROPERTY AND EASEMENT ACQUISITION IN THE SKYLINE DRIVE STUDY AREA

SHORT FORM CONTRACT FOR DEED

PARTIES: The parties to this Contract for Deed (hereafter called "Contract") are ROBERT E. MOORE, of 1240 Jackson Boulevard, 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").

THE CONTRACT: For One Dollar (\$1) and other good and valuable consideration, and in consideration of the payments stipulated to be made in the Contract for Deed dated June 5, 2000, 2000, and in consideration of the mutual and reciprocal covenants between the parties therein, Seller has agreed to sell and Buyer has agreed to buy all of the following described real estate situated in Pennington County, South Dakota:

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.

All the terms and conditions of the contract for sale of the above described real estate are set forth in the Contract for Deed entered into on June 5, 2000, between the parties hereto and each of the parties has a true and correct copy thereof, and said Contract for Deed is incorporated herein by reference.

Because of the lengthy nature of said Contract for Deed, both parties hereby agree to record this Short Form Contract for Deed rather than the full length Contract for Deed.

DATED: June 5, 2000.

SELLER:

BUYER:

CITY OF RAPID CITY, a municipal corporation

Robert E. Moore By Jim Han

ROBERT E. MOORE

Mayor

ATTEST:

James F. Nestor
City Auditor/Finance Officer

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF PENNINGTON)

IN CIRCUIT COURT

SEVENTH JUDICIAL CIRCUIT

STANFORD ADELSTEIN, and)
FLORMANN STREET PRESERVATION,)
GROUP, LLC,)

FILE NO. CIV01-776

PLAINTIFFS,)

v.)

ANSWER TO AMENDED COMPLAINT

ROBERT E. MOORE,)

DEFENDANT.)

Comes now the Defendant, Robert E. Moore, by and through his attorney, James L. Jeffries, and for his answer to Plaintiff's Amended Complaint, replies as follows:

1. That Plaintiff's Amended Complaint fails to state a cause of action upon which relief can be granted.

2. Defendant denies each and every thing, matter, and allegation in Plaintiff's Amended Complaint except as are hereinafter admitted or qualifiedly admitted.

3. Defendant is without sufficient information to admit the allegations in Paragraphs 1 and 2 of it's Amended Complaint and remits Plaintiff to its strict burden of proof as to each.

4. Defendant admits the allegations contained in Paragraph 3 of Plaintiff's Amended Complaint.

5. Defendant admits that portion of Paragraph 6 of Plaintiff's Amended Complaint that states, "the Defendant and the City of Rapid City entered into a written Contract for Deed on the 37.5 acres at a price of \$600,000." Defendant also admits that the first ten pages of Exhibit "B" entitled CONTRACT FOR DEED appears

to be a true and correct copy of that contract for deed.

AFFIRMATIVE DEFENSES

DURESS

6. Defendant asserts the defense of duress to the allegation that his signature on Exhibit "C", RATIFICATION OF AGREEMENT, obligates him to sell the remaining 15 acres of his property on Skyline Drive for the amount of \$268,000.00.

7. Defendant asserts the affirmative defense of Statute of Frauds to the allegations contained in Paragraphs 7 through 18 of Plaintiff's Amended Complaint.

VIOLATION OF STATUTE

8. Defendant's third affirmative defense is that page 1 of Exhibit C, the "Ratification Agreement", fails to meet the requirements of SDCL §53-2-3 and as a matter of law cannot constitute a legally enforceable contract.

LACK OF STANDING

9. Plaintiff's fifth affirmative defense is that Plaintiffs lack standing to maintain this action.

FAILURE OF CONSIDERATION

10. Plaintiff's sixth affirmative defense is that if page 1 of Exhibit C of Plaintiff's Amended Complaint is found to constitute a contract, a contention Defendant expressly denies, the contract is unenforceable as a matter of law in that Plaintiff has failed to tender consideration to Defendant by providing him with the letter of credit as promised in that exhibit.

WHEREFORE, Defendant prays for the following relief:

1. That the Plaintiffs' Amended Complaint be dismissed and that they take nothing thereby;

2. That the Defendant be awarded his costs, disbursements and reasonable attorney's fees as may be allowed by law; and

3. For such other and further relief as the Court deems appropriate under the circumstances.

Dated this 10th day of May, 2002.

James L. Jeffries
Attorney for Defendant
816 6th Street
Rapid City SD 57709
(605) 348-2527

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing ANSWER TO AMENDED COMPLAINT was served upon the person herein next designated, on the date shown below, by hand delivering a copy thereof in a securely sealed envelope addressed to:

Ronald W. Banks
Attorney at Law
731 St. Joseph Street
Rapid City SD 57701

Dated this 10th day of May, 2002.

James L. Jeffries