

Prepared by

WEN  
1-13-15

City Attorney's Office  
300 Sixth Street  
Rapid City, SD 57701  
(605) 394-4140

**REAL PROPERTY PURCHASE AGREEMENT BETWEEN CITY OF RAPID CITY  
AND ELK VALE BUSINESS PARK, LLC FOR KATHRYN AVE PROPERTY**

This Agreement is made this 2 day of February, 2015, by and between the **CITY OF RAPID CITY**, a municipal corporation of the State of South Dakota (hereinafter the "City"), of 300 Sixth Street, Rapid City, South Dakota 57701, and **ELK VALE BUSINESS PARK, LLC**, a South Dakota limited liability company (hereinafter the "Elk Vale"), of PO Box 330, Rapid City, SD 57709.

WHEREAS, Elk Vale owns certain real property located on Kathryn Avenue near Haines Avenue in Rapid City, as more particularly described below; and

WHEREAS, the City wishes to acquire this property for purposes of constructing and operating a future fire station; and

WHEREAS, Elk Vale has agreed to sell the property to the City under certain terms and conditions which the City has agreed to accept; and

WHEREAS, the parties desire to enter into this Agreement to reduce their mutual agreements to writing.

NOW THEREFORE, the parties hereby agree as follows:

1. Incorporation of Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. Property. The property to be conveyed is described as follows:

**Lot A of Tract E-3R of McMahon Subdivision in the City of Rapid City,  
Pennington County, South Dakota, as shown on the plat filed in Book 35,  
Page 133.**

3. Consideration. As consideration for the Property, the City shall pay the sum of One Hundred Fifteen Thousand Dollars (\$115,000), which consideration shall be paid by check at closing.

4. Closing. The closing of this transaction shall take place at the office of First American Title Company at such time as mutually agreed on or before February 27, 2015.

5. Possession. The City may assume possession of the property on the date of closing.

6. Title. Elk Vale warrants that it has or will have at the time of closing good and merchantable title to all of the property described in Part 2 hereof according to the title standards adopted by the State of South Dakota, subject only to such easements, covenants, rights-of-way, restrictions and reservations as are acceptable to the City in its sole discretion.

Elk Vale shall request a Commitment for Title Insurance, which shall be delivered to City at least twenty-one (21) days prior to closing. City shall inform Elk Vale of any objections to the title of said property at least seven (7) days prior to closing. If City does not provide such notice of any objections to the Elk Vale, then it will be presumed that City will accept title to said property as provided in said Commitment for Title Insurance, subject to the satisfaction of any mortgages and other encumbrances and payment of taxes as provided herein, all to be accomplished at closing.

Elk Vale shall obtain a policy of title insurance in conformance with the title required herein in an amount equal to the purchase price agreed upon for the real property described in Part 2 hereof, and a copy of said policy shall be delivered to City for examination within thirty (30) days after the date of closing.

7. Warranty Deed. Elk Vale shall convey title to the City at closing in conformance with the requirements hereof by a good and sufficient Warranty Deed.

8. Taxes and Assessments. All taxes and other assessments for the year 2014 and prior years shall be paid by Elk Vale at or before closing. All of said taxes and other assessments for the year 2015 shall be prorated to the date of closing.

9. Transaction Costs and Fees. The costs and fees associated with this transaction shall be paid as follows:

- a. Closing costs and fees payable to First American Title Company for its services in closing this transaction shall be split equally between the parties.
- b. All transfer fees shall be paid by the Elk Vale.
- c. All recording fees for recording the Warranty Deed shall be paid by the City.
- d. Any recording fees for documents necessary to provide the title according to Part 6 hereof shall be paid by Elk Vale.
- e. All attorneys fees shall be paid by the party incurring the same.
- f. Costs and fees payable to financial institutions for documents or services related to mortgages and related instruments shall be paid by each institution's customer.

10. Representations of Seller. Seller represents and warrants as follows:

- a. The Property is in a condition appropriate for its contemplated use and that there are no hidden or undisclosed defects.
- b. Seller has no knowledge or notice of any violations of any laws or requirements of any governing body, nor of any action, proceeding, event, or occurrence which would materially affect Buyer's intended use and continued operation of the Property, including any levies or assessments.
- c. To the best of Seller's knowledge, there is no condition on the Property that may give rise to environmental liability at any time now or in the future.
- d. Seller has no knowledge of any pending or contemplated condemnation proceeding affecting the Property which is the subject hereof or any part thereof.
- e. No materialman's or mechanic's liens are filed of record affecting the Property. Seller covenants and agrees to provide at Closing any and all documentation, affidavits, or indemnity agreements deemed necessary by the title insurer chosen by Buyer for issuance of an owner's title insurance policy without exception for mechanic's and materialman's liens.
- f. As to Seller, no person, firm, or entity, except as set forth herein, has any rights in or to acquire the Property the subject hereof or any part thereof; and with the exception of the present Agreement and the Contract for Deed entered into thereunder with Buyer, there is no contract or agreement of any kind or nature affecting the subject Property or the operation thereof which will survive the Closing.
- g. There are no existing prior special assessments which are unpaid and Seller has no knowledge of any pending special assessments against the Property which is the subject thereof.
- h. At the Closing, Seller will do, make, execute, and deliver to Buyer all such additional and further acts, things, deeds, instruments, and documents as may be reasonably required to carry out the terms and conditions hereof.
- i. The Seller has not granted any right of first refusal or option to acquire fee title or any title interest to the Property or any portion thereof or interest therein other than to Buyer. All representations, warranties, and covenants of Seller contained in this Agreement, to the best of Seller's knowledge, information, and belief, shall be true and correct as of the date of this Agreement, as of Closing, and shall survive Closing.

11. Mineral, Timber and Water Rights. All mineral, timber and water rights possessed by Sellers appurtenant to the property shall be transferred to Buyers. Sellers make no warranties or representations as to the existence or extent of such rights.

12. Care of the Property. Sellers shall be responsible for keeping the property in good repair and in a neat and clean condition at least equal to its present condition through the date of closing.

13. Risk of Loss. All risk of loss prior to the date of closing designated herein shall be with Sellers, and Buyers shall assume all risk of loss thereafter.

14. Agents. No realtor, broker or agent was enlisted for the sale of this property, and no commission or fees are owing to any person or entity relative to this Agreement.

15. Default. In the event of the failure of either of the parties to close as contemplated herein or to perform the obligations they have agreed to perform in this contract, the other party shall have all of the rights and remedies available to them under the laws of the state of South Dakota.

16. Survey. The City shall have the option to have the property surveyed by the surveyor of its choice. Elk Vale shall also provide to the City copies of any and all surveys, plats and similar documents in their possession and relevant to the above-described property.

17. Integration. This Agreement and the agreements and documents referred to herein (including any exhibits) contain the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter hereof.

18. Amendments. The provisions of this Agreement may be modified only by written agreement signed by the parties.

19. Assignment. This Agreement and the rights, duties, and obligations hereunder may not be transferred or assigned by either of the parties, whether directly or indirectly by merger, consolidation, reorganization, dissolution, operation of law or otherwise, without the prior written consent of the other party. Such consent may not be unreasonably withheld. Any attempted transfer or assignment without consent in violation of the foregoing shall be void. Subject to the foregoing, this Agreement and the provisions hereof shall be binding on the parties and their respective permitted successors and assigns.

20. Recording. This Agreement may be recorded by any party hereto.

21. Survival. The terms of this Agreement shall survive closing of the transaction.

22. Waivers. No waiver of any term or provision of this Agreement shall be binding unless executed in writing by the party entitled to the benefit thereof.

23. Cumulative Remedies. The rights and remedies under this Agreement are in addition to and not exclusive of any other rights, remedies, powers and privileges, whether at law or in equity, under this Agreement or otherwise, that any party may have against another. No failure to exercise and no delay in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude the exercise of any other right, power or privilege. No waiver of any breach or default of any covenant or agreement hereunder shall be deemed a waiver of any preceding or subsequent breach or default of the same or any other covenant or agreement.

24. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period provided for in this Agreement.

25. Force Majeure. Neither party shall be liable for any delay or failure in performance due to any reason or unforeseen circumstance beyond the affected party's reasonable control, including shortages or delays in obtaining materials from suppliers that cannot reasonably be cured by obtaining the needed materials from another source, work stoppages not involving employees of either party that cannot reasonably be overcome, fires, riots, rebellions, wars, acts of terrorism, accidents, explosions, floods, storms, acts of God, and similar occurrences. The obligations and rights of the excused party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.

26. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

27. Further Action. The parties covenant and agree that each shall execute and deliver such further instruments or documents as shall be necessary or convenient to effectuate the purposes contemplated by this Agreement.

28. Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision. The parties agree that each party has reviewed this Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

29. Severability. The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement or the remainder of such section. 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.

30. Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the state of South Dakota, without regard for its choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the state of South Dakota, without regard for its choice-of-law principles.

31. Jurisdiction and Venue. The parties hereto explicitly agree to submit to the personal jurisdiction of South Dakota state courts, and any dispute relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall be decided solely and exclusively by the Circuit Court located in Rapid City, South Dakota.

**ELK VALE BUSINESS PARK, LLC**

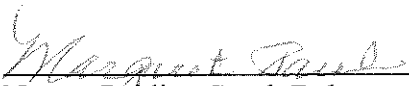
By   
Doyle Estes, Manager

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

On this the 14<sup>th</sup> day of January, 2015, before me, the undersigned officer, personally appeared Doyle Estes, who acknowledged himself to be the Manager of Elk Vale Business Park, LLC, a limited liability company, and that he as such Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by himself as Manager.

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

(SEAL

  
Notary Public - South Dakota  
My Commission Expires 6/30/2015

CITY OF RAPID CITY

Sam Kooiker  
Mayor

ATTEST

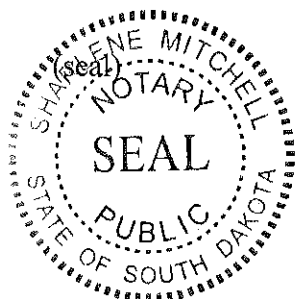
Pauline Sumption  
Finance Officer

(seal)

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

On this the 5 day of February, 2015, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

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



Shariene Mitchell  
Notary Public - South Dakota  
My Commission Expires 4-19-17