

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

WEN
 7-15-10

**REAL ESTATE PURCHASE AGREEMENT BETWEEN
 THE CITY OF RAPID CITY AND JAMES D. KINNEY**

1. **PARTIES:** The parties to this Real Estate Sale Agreement (hereinafter "Agreement") are James D. Kinney, of 211 6th Ave., Newcastle, WY 82701, (hereinafter "Seller"), and the City of Rapid City, of 300 Sixth Street, Rapid City, SD 57701, (hereinafter "Buyer").
2. **PURPOSE:** The purpose of this Agreement is to fix the terms and conditions under which the Seller agrees to sell and the Buyer agrees to buy the property described in Section 3.
3. **PROPERTY:** The property which is the subject of this agreement is located in Rapid City, South Dakota and is legally described as follows:

**Tract H of the Northeast Quarter (NE1/4) of the Southwest (SW1/4),
 Township One North (T1N), Range Seven East (R7E), Section 8, of the Black
 Hills Meridian, Rapid City, Pennington County, South Dakota.**
4. **CONSIDERATION:** In addition to the mutual covenants contained herein, the purchase price of the real property described in this Agreement is Thirty Thousand Dollars (\$30,000.00). The Buyer will pay to the Seller the purchase price at the time of closing.
5. **TITLE:** The Seller warrants that he has or will have prior to the date of closing good and merchantable title to all of the property described in Part 3 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 Buyer.

Seller shall request a Commitment for Title Insurance, which shall be delivered to Buyer at least fourteen days prior to closing. Buyer shall inform Seller of any objections to the title of said property at least seven days prior to closing. If Buyer does not provide such notice of any objections to the Seller, then it will be presumed that Buyer will accept title to said property as provided in the 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.

Seller 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 3 hereof, and a copy of said policy shall be delivered to Buyer for examination within thirty days after the date of closing. Buyer shall have fifteen days thereafter to inform Seller in writing of any objections to title of said property.

6. **TITLE INSURANCE PREMIUM:** The Buyer agrees to pay the title insurance premium for the policy of title insurance required by Section 5 hereof.

7. **TAXES AND ASSESSMENTS:** All taxes and other assessments for the year 2009 and prior years shall be paid by the Seller at or before closing. All taxes and other assessments for the year 2010 shall be prorated to the date of closing. Seller warrants there are no unpaid assessments, recorded or unrecorded, on the property.

8. **WARRANTY DEED:** Seller shall convey title to the Buyer at closing in conformance with the requirements hereof by a good and sufficient Warranty Deed. Buyer shall pay the recording fees for the Deed.

9. **POSSESSION:** Buyer shall receive possession of the property at time of closing.

10. **CLOSING:** The closing of this transaction shall take place at the office of Pennington County Title Company at such time as mutually agreed, on or before September 30, 2010. The Buyer agrees to pay all closing costs.

11. **ENVIRONMENTAL WARRANTY:** Seller warrants that he has not stored, released or discharged, nor does he have any knowledge of the storage, release or discharge of any pollutants, contaminants or hazardous wastes on the property.

12. **AGENTS AND ATTORNEYS:** No realtor, broker or agent was enlisted for the sale of this property, and no commission or fees are owing to any person relative to this Agreement. Each party shall be responsible for their own attorney's fees incurred relative to this Agreement.

13. **SELLER'S DEFAULT:** In the event Seller fails to close the transaction, or in any other way defaults under this Agreement, and provided Buyer is not in default, Buyer shall give ten (10) days written notice of such default to Seller. If Seller does not cure such default within such ten (10) day period, Buyer shall have the right to maintain and exercise all legal and equitable rights available to them under the laws of the State of South Dakota for Seller's breach, including the right to specific performance.

14. **INTEGRATION:** This writing constitutes the entire Agreement between the parties and there are no other oral or collateral agreements or understandings of any kind or character except those contained herein.

15. **AMENDMENTS:** The provisions hereof may be modified only by written agreement signed by the parties.

16. **BINDING EFFECT:** This Agreement shall extend to and be binding upon the heirs, administrators, personal representatives, successors, and assigns of the parties hereto.

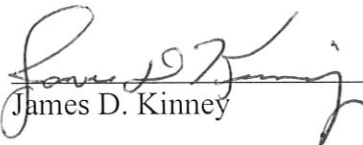
17. **HEADINGS:** The paragraph headings contained herein are inserted for convenience only and do not constitute a part of this Agreement.

18. **VENUE AND CHOICE OF LAWS:** The parties' rights and obligations under this Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this Agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

19. **SURVIVAL:** The terms of this Agreement shall survive closing of the transaction.

Dated this ____ day of _____, 2010.

SELLER:


James D. Kinney

BUYER:

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

Location Map Kinney Property

PW072710-08

