

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

### PURCHASE AGREEMENT

1. PARTIES: The parties to this Agreement are BY-PASS DEVELOPMENT, LLC, of 35 S 4th Street, Custer, South Dakota, hereinafter called "Seller" and CITY OF RAPID CITY, of 300 Sixth Street, Rapid City, South Dakota, hereinafter called "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 purchase the property described in Part 3 hereof.
3. PROPERTY: The property to be conveyed, hereinafter "Property," is described as follows:

**Lot 1 of Block 2 of the I-90 Heartland Business Park, Rapid City, Pennington County, South Dakota, as shown on the plat recorded in the office of the Pennington County Register of Deeds in Plat Book 32, Page 153.**
4. CONSIDERATION: As consideration for the Property, Buyer shall pay to Seller the sum of Twenty-five Thousand, Four Hundred Ten Dollars (\$25,410), which consideration shall be paid in cash at closing.
5. 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 July 31, 2012.
6. CLOSING COSTS: The closing fees shall be paid by Buyer.
7. POSSESSION: Buyer may assume possession of the Property immediately following closing.
8. RECORDING: This Agreement may be recorded by either party.
9. TITLE: The Seller warrants that it has or will have prior to the date of closing designated herein good and merchantable title to the Property according to the title standards adopted by the State of South Dakota, subject only to such easements, covenants, rights-of-way, restrictions and reservations of record, and such encumbrances as are acceptable to the Buyer in its sole discretion.

Buyer shall request a Commitment for Title Insurance at least twenty-one (21) days prior to closing. Buyer shall inform Seller of any objections to the title of said property at least seven (7) 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 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.

Seller shall obtain, at Buyer's expense, a policy of title insurance in conformance with the title required herein in an amount equal to the purchase price agreed upon for the Property, and a copy of said policy shall be delivered to Buyer for examination within thirty (30) days after the date of closing. Buyer shall have fifteen (15) days thereafter to inform Seller in writing of any objections to title of said property.

10. WARRANTY DEED: Seller shall convey title to the Buyer at closing in conformance with the requirements hereof by a good and sufficient Warranty Deed. The conveyance is exempt from transfer fees. Buyer shall pay the recording fees for the deed.
11. TAXES: All taxes and other assessments for the year 2011 and prior years shall be paid by the Seller at or before closing. All of said taxes and other assessments for the year 2012 shall be prorated to the date of closing.
12. ENVIRONMENTAL WARRANTIES: Seller warrants that it has not stored, released or discharged, nor does it have any knowledge of the storage, release or discharge of any pollutants, contaminants or hazardous wastes on the Property. The Buyer shall have the option to complete an environmental assessment of the property prior to closing. If the results of the environmental assessment are not satisfactory to the Buyer, Buyer, in its sole discretion, shall have the right to rescind this Agreement. Any notice of such rescission shall be given to Seller prior to closing. The warranties in this paragraph shall survive the closing.
13. MINERAL, TIMBER AND WATER RIGHTS: All mineral, timber and water rights possessed by Seller appurtenant to the property shall be transferred to Buyer. Seller makes no warranties or representations as to the existence or extent of such rights.
14. 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.
15. AGENT: 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. Except as specifically set forth in this Agreement, each party shall be responsible for their own attorney's fees incurred relative to this Agreement.
16. BUYER'S DEFAULT: In the event Buyer fails to close for reasons other than those provided in this Agreement, and Seller is not in default, Seller shall give ten (10) days' written

notice of such default to Buyer. If Buyer does not cure the default as set forth in such notice within ten (10) days thereafter, Seller may terminate this Agreement by written notice to Buyers.

17. 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.

18. WAIVER: The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

22. TIME: Time is of the essence of this Agreement.

23. SEVERABILITY: The parties agree that if any provisions of this Agreement are held invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

24. BINDING EFFECT: This Agreement is binding upon the parties, their heirs, successors, administrators, executors and assigns.

25. INTEGRATION: This writing represents 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.

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

27. 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.

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

29. CONSTRUCTION AND VENUE. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the circuit court of Pennington County, State of South Dakota.

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



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 duly authorized to do so, executed the foregoing for the purposes therein contained by signing the name of the City of Rapid City by themselves as its Mayor and Finance Officer.

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

(seal)

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Notary Public - State of South Dakota  
My Commission Expires: \_\_\_\_\_