

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



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August 03, 2016 10:27 AM

Dorina M. Mayer
Pennington County, SD

\$30.00

Pgs. 6

PURCHASE AGREEMENT FOR WELL LOT BETWEEN TERRACOTTA ESTATES HOMEOWNERS ASSOCIATION AND CITY OF RAPID CITY

This Purchase Agreement ("Agreement") is entered into this 1st day of August, 2016, by and between **TERRACOTTA ESTATES HOMEOWNERS ASSOCIATION**, ("Terracotta") a South Dakota nonprofit corporation of 6655 Zamia St, Rapid City, SD 57703, and the **CITY OF RAPID CITY** ("City"), a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, SD 57701.

1. Purpose. The purpose of this Agreement is to set out the terms and conditions under which the City agrees to purchase from Terracotta the property described below.

2. Property. The property that is the subject of this Agreement is described as follows:

Lot 1, Block 7 Prairiefire Subdivision located in the NE¼ Section 26, T1N, R8E, BHM, Pennington County, South Dakota

3. Consideration: As consideration for the property described in Part 2 hereof, the City shall pay to the Pennington County Treasurer, on behalf of Terracotta, the sum of Forty-two Thousand, Three Hundred Ninety Dollars (\$42,390), which consideration shall be paid upon execution of this Agreement.

4. Redemption of Property. Terracotta has recently been notified of a third party's intention to take tax deed. It is agreed and understood that the payment of the Consideration by the City to the Pennington County Treasurer shall redeem Terracotta's interest in the Property in full.

5. Operation of Water System. Terracotta shall operate and maintain the water system serving the Prairiefire Subdivision until such time as the water system is acquired by the City or it is otherwise agreed. Terracotta warrants, covenants, and agrees that operation of its water system shall include the following:

- a. It shall not sell, bargain, give, convey or otherwise transfer its water system to any person, firm, or entity other than the City;
- b. It shall not allow any connections to or use of its water system by any other water supplier, sanitary district, or other water utility without the written consent of the City; and

- c. It shall not expand its service area to serve any property not currently served by the water system without the written consent of the City.

6. Closing. The closing of this transaction shall take place at the office of First American Title Company at such time as mutually agreed. The closing shall be scheduled by the parties following the transfer of the water system to the City, and it is anticipated that the Closing shall be on or before September 1, 2017.

7. Possession. The City may assume possession of the property described in Part 2 hereof on the date of closing.

8. Title. The Sellers warrant that they have or will have prior to the date of closing designated herein 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 of record as are acceptable to the City in its sole discretion.

Terracotta shall request a Commitment for Title Insurance, which shall be delivered to the City at least twenty-one (21) days prior to closing. The City shall inform Terracotta of any objections to the title of said property at least seven (7) days prior to closing. If the City does not provide such notice of any objections to Terracotta, then it will be presumed that the 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.

Terracotta 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 the City for examination within thirty (30) days after the date of closing. The City shall have fifteen (15) days thereafter to inform Terracotta in writing of any objections to title of said property.

9. Deed. Terracotta shall convey title to the City at closing in conformance with the requirements hereof by a good and sufficient warranty deed. The City shall pay the recording fees for the deed.

10. Taxes. All taxes and other assessments levied or assessed prior to the date of Closing shall be paid by Terracotta at or before closing.

11. Water Rights. All water rights possessed by Terracotta 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. Maintenance of Property. Terracotta 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 shall be with Terracotta, and the City 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. Except as specifically set forth in this Agreement, each party shall be responsible for their own attorney's fees incurred relative to this Agreement.

15. Default. In the event Terracotta fails to close the transaction, or in any other way defaults under this Agreement, the City shall give ten (10) days written notice of such default to Terracotta. If Terracotta does not cure such default within such ten (10) day period, the City 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 Terracotta's breach, including the right to specific performance.

16. Integration and Amendments. This Agreement 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. This Agreement may only be amended by a written document duly executed by all parties.

17. Third Parties. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein shall give or be construed to give any person or entity, other than the parties hereto, their respective successors, and permitted assigns, any legal or equitable rights hereunder.

18. Waivers. No waiver of any term or provision of this Agreement shall be binding unless executed in writing by the party waiving such term or provision.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. Survival. The covenants and warranties made herein shall survive closing of the transaction

26. 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.

27. 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.

[Signature pages follow]

Dated this 22 day of July, 2016.

TERRACOTTA ESTATES HOMEOWNERS ASSOC.

By Marlon J. N

Its President / CEO

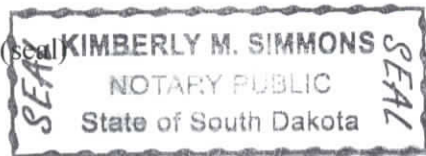
State of South Dakota)

) SS.

County of Pennington)

On this the 22 day of July, 2016, before me, the undersigned officer, personally appeared Mark L. Lencough who acknowledged him/herself to be the President of Terracotta Estates Homeowners Association, a corporation, and that he, as such President being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

In witness whereof I hereunto set my hand and official seal.



Notary Public – South Dakota

My Commission Expires October 2, 2021



Dated this 1st day of Aug, 2016.

CITY OF RAPID CITY

Steve Allender
Steve Allender, Mayor

Attest

Pauline Sumption
Pauline Sumption, Finance Officer

(seal)



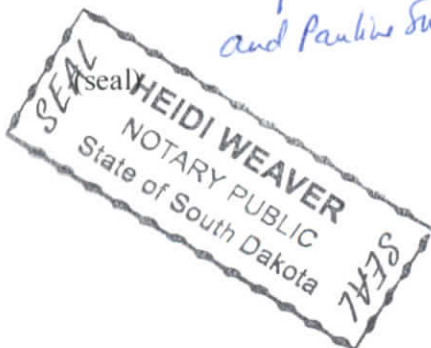
State of South Dakota)
) ss.
County of Pennington)

On this the 1 day of Aug, 2016, before me, the undersigned officer, personally appeared Steve Allender, who acknowledged him/herself to be the Mayor and Finance Officer of Terracotta Estates Homeowners Association, a corporation, and that he, 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 corporation by himself as City of Rapid City, by themselves, Mayor + Finance Officer.

In witness whereof I hereunto set my hand and official seal.

and Pauline Sumption

Heidi Weaver
Notary Public – South Dakota
My Commission Expires 6-4-21



of the City of Rapid City