

**REAL PROPERTY PURCHASE AGREEMENT BETWEEN
THE CITY OF RAPID CITY AND WILMA COTTIER AND
THE ESTATE OF JAMES E. MCDOUGALD**

1. Parties. The parties to this Agreement are the **CITY OF RAPID CITY**, a South Dakota municipal corporation of 300 Sixth Street, Rapid City, SD 57701, (hereinafter “Buyer”), and **WILMA COTTIER** and **THE ESTATE OF JAMES E. MCDOUGALD** of Rapid City, South Dakota (hereinafter “Sellers”).

2. Purpose. The purpose of this Agreement is to fix the terms and conditions under which the Sellers agree to sell and the Buyer agrees to buy the property described in Part 3 hereof.

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

**The West Half (W1/2) of Lot 14 and all of Lot 15 of Block 17 of
Flormann Addition to the City of Rapid City, Pennington County,
South Dakota**

commonly known as 627 Saint Cloud Street, Rapid City, SD and referred to herein as the “Property.”

4. Consideration. As consideration for the conveyance of the Property, Buyer shall pay to Sellers the sum of Twenty-one Thousand Dollars and No Cents (\$21,000.00) (the “Purchase Price”).

5. Closing. The closing of this transaction (the “Closing”) shall take place at the office of First American Title Company, Rapid City, SD (the “Title Company”) at such time as mutually agreed, on or before June 15, 2018 (the “Closing Date”).

6. Transaction Costs and Fees. The Purchase Price is the Fair Market Value as determined by an appraisal of the Property (the “Appraisal”). Sellers have been provided with a copy of the Appraisal for review.

Sellers shall pay the following costs to close this transaction: (a) all outstanding bills and liens against the Property, including, but not limited to county liens and all accrued real estate taxes and special assessments, including the Rapid City Demolition assessment of \$7,242 and outstanding utility costs as more fully discussed in Section 11 below; (b) the cost of the title insurance for the Property; (c) one-half (1/2) of the closing fee charged by the Title Company; and (d) any attorney’s fees incurred by Sellers in connection with this transaction.

Buyer shall pay the following costs to close this transaction: (x) the cost of the appraisal; (y) any recording fees; and (z) one-half (1/2) of the closing fee charged by the Title Company.

This transaction is exempt from transfer fees pursuant to SDCL 43-4-22(2).

7. Possession. Buyer will assume possession of the Property upon Closing of the transaction.

8. Title. The Sellers warrant that they have or will have prior to Closing 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 as are acceptable to the Buyer in its sole discretion, but subject to the limitations of this Section 8.

Buyer will request a Commitment for Title Insurance (the "Title Commitment"). Buyer shall inform Sellers of any objections to the title of the 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 the Property as provided in the Title Commitment, subject to the satisfaction of any mortgages and other encumbrances and payment of taxes as provided herein, all to be accomplished at Closing.

9. Deed. Wilma Cottier shall convey her interest in the Property by Warranty Deed. The Estate of James E. McDougald its interest in the Property by Personal Representative's Deed.

10. Taxes. All taxes and assessments which are currently due and payable shall be paid by the Sellers at or before Closing. Taxes and assessments accrued but not yet due shall be credited to Buyer at Closing.

11. Utilities. Sellers agree to contact any and all utility providers regarding the Property and have all utilities discontinued/disconnected not less than 7 days prior to Closing. Sellers shall be responsible for paying any money owed for all utilities that ever served the Property including any and all costs associated with disconnecting the utilities up through the Closing Date. In regard to utilities for past water, sewer, and garbage services for the Property which are in the name of Robin Cottier, Sellers shall pay the City of Rapid City One Thousand Five Hundred Dollars (\$1,500), and upon payment, the City shall forgive the balance remaining.

12. Agents and Attorneys. This purchase was not accomplished through a real estate broker or listing service. Any commissions or fees owing to any person, agent or attorney relative to this transaction are to be paid by the party responsible for engaging or employing such person, agent or attorney.

13. Default. In the event Buyer fails to close for reasons which constitute default by the Buyer under this Agreement, and Sellers are not in default under this Agreement, Sellers 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, Sellers may terminate this Agreement by written notice to Buyer or exercise all legal and equitable rights available to is under the laws of the State of South Dakota for Buyer's breach, including the right to specific performance. In the event Sellers fail to close the transaction, or in any other way default under this Agreement, and provided Buyer is not in default, Buyer shall give ten (10) days written notice of such default to Sellers. If Sellers do 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 it under the laws of the State of South Dakota for Sellers' breach, including the right to specific performance. In

addition, any fees/costs associated with the cancellation of Closing shall be the sole responsibility of the party causing the cancellation. If a scheduled Closing Date is cancelled by mutual consent of the parties, the parties shall share equally the cost associated therewith, if any there be.

14. Notices. Any notice or other document required to be given under the terms of this Agreement shall be provided, in writing, to:

If to Buyer:

Kinsley Groote
City Attorney's Office
300 Sixth Street
Rapid City, SD 57701

If to Sellers:

Wilma Cottier
c/o Sebastian McDougald
1026 Silver Street
Rapid City, SD 57701

Estate of James E. McDougald
Attn: Sebastian McDougald, Personal Representative
1026 Silver Street
Rapid City, SD 57701

With a copy (which shall not constitute notice) to:

Nooney & Solay, LLP
Attn: Kurt E. Solay
PO Box 8030
Rapid City, SD 57709
(605) 721-5846

15. Environmental Warranties. Sellers warrant that they have not stored, released or discharged, nor do they 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, at Buyer's sole expense. If the results of the environmental assessment are not satisfactory to the Buyer, Buyer, in its sole discretion, shall have the right to rescind and cancel this Agreement. Any notice of such rescission shall be given to Seller no less than seven (7) days prior to Closing. The warranties in this paragraph shall survive the closing.

16. Care of the Property. Sellers shall be responsible for keeping the Property in a condition at least equal to its present condition through the Closing Date. Sellers agree to be solely

responsible for any and all expenses, liens or claims of any kind arising out of Sellers' use and possession of the Property up through the time of the transfer of title to the Property at Closing. Sellers further agree that any and all maintenance, repairs and improvements to the Property deemed necessary by Sellers during the aforementioned time period shall be the sole responsibility of Sellers. Sellers shall notify and obtain Buyer's written consent before any improvement is made to the Property.

17. Contingencies. This Agreement is expressly contingent upon the following:

- A. This Agreement is expressly contingent upon all liens against the Property being paid and removed at or prior to Closing and provision of a clear title to Property.
- B. All debris on Property, if any, will be removed by Sellers prior to the Closing.
- C. The City of Rapid City forgiving the balance of the outstanding amounts due for water, sewer, and garbage related to the Property and in the name of Robin Cottier, upon payment of \$1,500.

18. Integration. This Agreement contains the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter hereof.

19. Amendments. The provisions hereof may be modified only by written agreement signed by both parties.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. Choice of Law and Venue. The laws of the state of South Dakota will govern any dispute arising from or relating to this Agreement. Any litigation under this Agreement shall be resolved in the circuit court of Pennington County, State of South Dakota.

[Signature pages follow]

