

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

**REAL PROPERTY PURCHASE AGREEMENT BETWEEN  
THE CITY OF RAPID CITY AND FAY ELLEN BICE  
AS TRUSTEE OF THE FAY ELLEN BICE TRUST**

This Agreement is made by and between the **CITY OF RAPID CITY**, a municipal corporation of the State of South Dakota (hereinafter the "City" or "Buyer"), of 300 Sixth Street, Rapid City, South Dakota 57701, and **FAY ELLEN BICE as Trustee of the Fay Ellen Bice Trust dated the 12th day of February, 1993** (hereinafter "Seller"), of 931 Fox Run Drive, Apartment 103, Rapid City, SD 57701.

WHEREAS, Fay Ellen Bice as Trustee of the Fay Ellen Bice Trust dated the 12th day of February, 1993 owns certain real property located adjacent to Braeburn Park in Rapid City, as more particularly described below; and

WHEREAS, the City wishes to acquire this property adjacent to Braeburn Park for purposes of expansion of Braeburn Park; and

WHEREAS, Fay Ellen Bice as Trustee of the Fay Ellen Bice Trust has agreed to sell the property to the City under certain terms and conditions to be provided in this Agreement; 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 10 in Block 2 of Tract A, Braeburn Addition, Rapid City, Pennington County, South Dakota

(hereinafter “the Property”).

3. Consideration. As consideration for the conveyance of the Property, Buyer shall pay to Seller the sum of Five Thousand Dollars and no/100 Cents (\$5,000.00).

4. Closing. The closing of this transaction shall take place at the City Attorney’s Office at such time as mutually agreed, as soon as possible for Buyer and Seller. The projected date for such closing is early September 2018. However, this date is subject to change. The City will put the approval of costs of this Agreement on the City Council bill list for the September 4, 2018 City Council meeting, if feasible.

5. Possession. The City may assume possession of the Property upon closing of the transaction.

6. Title. Seller warrants that she has or will have at the time of 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 City in its sole discretion.

Buyer shall request a Commitment for Title Insurance. City shall inform Seller 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 Seller, 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.

City 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 Property. All costs for title insurance, including any costs for a Commitment to Title Insurance, will be paid by City.

7. Warranty Deed. Seller shall convey title of the Property to 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 2017-pay-2018 and prior years shall be paid by Seller at or before closing. City agrees to pay all taxes and other assessments due for the Property for 2018-pay-2019.

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

- a. All closing costs and fees, if any, shall be paid by Buyer.
- b. This transaction is exempt from transfer fees pursuant to SDCL § 43-4-22(2).
- c. All recording fees for recording the Warranty Deed shall be paid by City.

- d. Any recording fees for documents necessary to provide the title according to Part 7 hereof shall be paid by Seller.
- e. All attorneys' fees shall be paid by the party incurring the same.

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 that would materially affect City's intended use and continued operation of the Property, including any levies or assessments.
- c. No materialman's or mechanic's liens are filed of record affecting the Property.
- d. As to the Seller, no person or entity, except as set forth herein, has any rights in or to acquire the Property; and with the exception of the present Agreement and the Warranty Deed to be entered into thereunder with City, there is no contract or agreement of any kind or nature affecting the subject Property or the operation thereof which will survive the Closing.
- e. At the Closing, Seller will do, make, execute, and deliver to City all such additional and further acts, things, deeds, instruments, and documents as may be reasonably required to carry out the terms and conditions hereof.
- f. 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, and as of Closing, and shall survive Closing.

11. Mineral, Timber and Water Rights. All mineral, timber and water rights possessed by the Seller in and appurtenant to the Property shall be transferred to City. Seller makes no warranties or representations as to the existence or extent of such rights.

12. Care of the Property. Seller 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 Seller, and 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.

15. Default. In the event Buyers fail to close for reasons which constitute default by the Buyer under this Agreement, and Seller is not in default under this Agreement, 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 Buyer. 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 it under the laws of the State of South Dakota for Seller's 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.

16. Notices. Any notice or other document required to be given to Buyer under the terms of this Agreement shall be provided, in writing, to: Kinsley Groote, City Attorney's Office, 300 Sixth Street, Rapid City, SD 57701. Any notice or other document required to be given to Seller under the terms of this Agreement shall also be provided, in writing, to: Richard E. Huffman, DeMersseman Jensen Tellinghuisen & Huffman, LLP, 516 Fifth Street, Rapid City, SD 57701.

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

18. Environmental Warranties. Seller warrants 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 warranties in this paragraph shall survive the closing.

19. 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.

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

21. 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.

22. Recording. This Agreement may be recorded by any party hereto.
23. Survival. The terms of this Agreement shall survive closing of the transaction.
24. 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.
25. 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.
26. 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.
27. 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, 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.
28. 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.
29. 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.
30. 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



Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF RAPID CITY**

\_\_\_\_\_  
Steve Allender, Mayor

ATTEST

\_\_\_\_\_  
Pauline Sumption, Finance Officer

(seal)

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

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned officer, personally appeared Steve Allender 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.

(seal)

\_\_\_\_\_  
Notary Public - South Dakota  
My Commission Expires \_\_\_\_\_