REAL PROPERTY PURCHASE AGREEMENT
BETWEEN CITY OF RAPID CITY AND BENNECO, LLC

This Agreement is made this ___ day of ______________, 2021, by and between the CITY OF RAPID CITY, a municipal corporation of the State of South Dakota, of 300 Sixth Street, Rapid City, South Dakota 57701 ("City" or "Buyer"), and BENNECO, LLC, a South Dakota limited liability company, of 801 Mount Rushmore Road #100 Rapid City, SD 57701 ("Seller").

1. 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 2.

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

Lots 22, 23, 24, 25 and 26 and Park Lots in Pine Heights in the City of Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 3, Page 166, TOGETHER with the vacated Upper Pines Drive, vacated and shown in Resolution of Vacation, recorded August 8, 1983, in Book 34 Page 8572.

referred to herein as the "Property."

3. Purchase of Property. As consideration for the Property, the City shall pay the sum of One Hundred Fifty Thousand Dollars and No Cents ($150,000.00).

4. Closing. The closing of this transaction ("Closing") shall take place on May 6, 2021 at the office of First American Title, Rapid City, SD. The parties may mutually agree to extend the closing date as needed for either party to fulfill its obligations herein.

5. Title. The Seller warrants that it has 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 as are acceptable to the Buyer in its sole discretion.

Seller shall request a Commitment for Title Insurance, which shall be delivered to Buyer at least fourteen (14) days prior to scheduled closing. 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.
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 Buyers for examination within thirty (30) days after the date of closing.

6. **Option to Purchase.** The parties acknowledge the Option to Purchase dated January 1, 2021 executed between Schad Corp and Seller that grants Schad Corp an option to purchase the Property, with the option expiring on January 27, 2023. *Exhibit A*. The parties also acknowledge the Release of the Option to Purchase signed by Cody Schad and Seller and dated March 25, 2021. *Exhibit B*. Seller warrants to Buyer that the Release of the Option to Purchase is valid and enforceable, that Seller’s transfer of the Property to City is free from encumbrances, and that Schad Corp. will not exercise its Option to Purchase. If Schad Corp. or any other entity seeks to exercise the Option to Purchase dated January 27, 2021, Seller agrees to indemnify the City for the purchase price and any and all City costs, including attorney fees, to secure and defend City’s ownership of the Property. The promises in this Section shall survive the expiration of this Purchase Agreement.

7. **Taxes and Assessments.** All taxes and other assessments for the year 2020 and prior years shall be paid by Seller at or before closing. Buyer shall be responsible for payment of any taxes and other assessments accrued but not yet due for the year 2021.

8. **Deed.** Upon receipt of the agreed upon consideration, Seller shall deliver to Buyer a warranty deed transferring any and all interest of Seller in said property to Buyer. Buyer shall prepare the warranty deed.

9. **Possession.** Buyer may assume possession of the property upon delivery of the deed.

10. **Transaction Costs and Fees.** Any costs and fees, including closing costs, shall be paid by Buyer, except as provided in Sections 5 and 7. Any recording fee shall be paid by Buyer. This transaction is exempt from transfer fees pursuant to SDCL § 43-4-22(2).

11. **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.

12. **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.

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

14. **Survival.** The terms of this Agreement shall survive closing of the transaction.
15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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.

21. **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.

22. **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. Any dispute relating to or arising out of this Agreement, or the breach of the terms thereof, shall be decided solely and exclusively by the Circuit Court located in Rapid City, South Dakota.

Dated this __ day of Apr., 2021.

BENNECO, LLC

By

Its

State of South Dakota )
County of Pennington ) ss.

On this the 8th day of Apr., 2021, before me, the undersigned officer, personally appeared Matt Banne, who acknowledged himself/herself to be the Member of BENNECO, LLC, and that he/she as its Member, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

(seal)

Notary Public - South Dakota
My Commission Expires 07/12/2023
Dated this ___ day of __________________, 2021.

CITY OF RAPID CITY

______________________________
Steve Allender, Mayor

ATTEST

______________________________
Finance Director

(seal)

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

On this the ____ day of __________________, 2021, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Director, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Director, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

(seal) ______________________________________________________________________
Notary Public - South Dakota
My Commission Expires __________________________