

REAL PROPERTY PURCHASE AGREEMENT

1. **Parties.** The parties to this Agreement are Fuller Brothers, LLP, A South Dakota Limited Liability Partnership, 11 Glendale Drive, Lead, SD 57754 ("Seller") and the City of Deadwood, a South Dakota Municipality, 108 Sherman Street, Deadwood, SD 57732 ("Buyer").
2. **Purpose.** The purpose of this Agreement is to fix the terms and conditions under which Seller agrees to sell and Buyer agrees to buy certain real property, described below. The Property shall be utilized by Buyer for the development of a non-motorized trail system for use by the general public.
3. **Property to be Purchased.** Seller shall sell to Buyer the following property:

School Lots 33, 34, 35, 36, 42, 43, 44, 45, 46, 47, 48 and 49 and the Waller Equator patented lode mining claims, M.S. 1562, located in the SW¹/₄, Section 22 and 27, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota.

together with any and all improvements thereon, subject to easements and restrictions of record ("Property").

4. **Closing.** The date of Closing of this Agreement shall be a mutually agreeable date on or within thirty (30) days from execution of this Agreement.
5. **Price and Terms.** The total purchase price shall be Six Hundred Seventy Five Thousand Dollars and 00/100 (\$675,000) in U.S. Dollars payable in full at closing as follows:

Seller agrees to provide Buyer with a donation to in the amount of One Hundred and Twenty Thousand Dollars and 00/100. (\$120,000) at closing in cash or certified funds for the development and construction of non-motorized trail system along with historic interpretation panels as deemed appropriate. Buyer agrees to the purchase price of the Property at its fair market value of Six Hundred and Seventy Five Thousand Dollars and 00/100 (\$675,000) which shall be due and payable in cash or certified funds at closing.
6. **Possession.** Buyer shall have possession of the Property conveyed to them herein on the date of the Closing of this Agreement.
7. **Title to Property and Deed.** Seller warrants that it is seized and possessed of good and merchantable title to the Property conveyed in this agreement, and the same is free and clear of liens and encumbrances. On or before Closing and upon Buyer's performance of the terms and conditions to be by it performed in this Agreement, Seller shall deliver to Buyer a Warranty Deed to the Property conveying good and merchantable title thereto, free and clear of liens and encumbrances, conveying all improvements and appurtenances thereto, subject to easement, rights-of-way, restrictions, and covenants of record.

8. **Taxes and Assessments.** Seller warrants that all taxes and special assessments which constitute a lien on the Property assessed for the year 2022, due and payable in 2023, shall be paid by Seller. The taxes and special assessments which constitute a lien on the Property assessed for the year 2023 due and payable in 2024, shall be prorated between the Buyer and Seller to the day of Closing with Buyer to pay all 2023 taxes when they become due and payable in 2024. All taxes and assessments from and after Closing shall be by Buyer.
9. **Title Insurance.** Upon the execution and signing of this Agreement, Seller shall procure a commitment for title insurance to be issued by Black Hills Title Company, Deadwood, South Dakota, which commits the title insurance company to issue to Buyer at the time of the delivery and recording of the Warranty Deed an ALTA owner's title insurance policy insuring the title in Buyer in the amount of its purchase price. Seller shall provide to Buyer a draft of such title insurance commitment as soon as it is available, prior to Closing.

The Seller shall have ten (10) days, to cure any defects in title. If Seller is unable to cure the title defect this Agreement shall be voidable at Buyer's discretion. On or before Closing, or as soon thereafter as possible, Seller shall deliver to Buyer an owner's title insurance policy.

10. **Representations of Buyer.** All representations, warranties, and covenants of Buyer contained in this Agreement, to the best of Buyer's knowledge, information, and belief, shall be true and correct as of the date of this Agreement, as of Closing, and shall survive Closing.

11. **Representations of Seller.** Seller represents and warrants to its best knowledge, information, and belief as follows:

a. Seller has not received and have no knowledge of any notice or request from any applicable governmental department, insurance company (or organizations exercising functions similar thereto) or mortgages or contract vendors requesting the performance of any work or alteration with respect to the Property which has not been complied with, and the Property is not in violation of and complied with all local, state, or federal pollution control or environmental laws. If any such notice is received, Seller shall comply with any requirements of such notice prior to Closing.

b. Seller is not now a party to any litigation affecting the property the subject hereof, or any part thereof, or Seller's right to sell the property the subject hereof, including, but not limited to, condemnation or eminent domain proceedings and Seller knows of no litigation or threatened litigation affecting said property or any part thereof; Seller covenants and agrees to give to Buyer prompt notice of the institution of any such litigation prior to closing.

c. Seller has good and marketable fee simple title to the Property, free and clear of any liens, charges, claims, actions, encumbrances, easements, rights of way, restrictions and title exceptions of any kind whatsoever. Seller warrants that in the event a third party challenges the title of the Property, brings any action, or files and claim of record that

purports to place a cloud on the marketable fee simple title being conveyed by the Seller herein, Seller will assume the responsibility of defending the title against such claims, and indemnify Buyer for any and all costs Buyer incurs including reasonably attorneys fees, to defend the title against such claims or to prove marketable fee simple title now conveyed to Buyer.

d. The Property is, and shall be on Closing, free and clear of all leases, licenses, tenancies, and other occupancies and all adverse claims, except as specifically set forth in this Agreement. There are no contracts relating to the Property except as specifically set forth in this Agreement.

e. The seller has not defaulted on any leases, contracts, or other obligations regarding the property.

f. There are no unrecorded liens, judgments, mortgages, or contracts for or against the property.

g. No materials or services have been provided to the property for which payment has not been made or lien waivers have not been secured.

h. The Seller warrants to the best of his knowledge that the property does not violate any local, state, or federal environmental law or regulations.

i. The Seller warrants that he has not received any notices of violation regarding the operation or condition of the property from any local, state, or federal governmental authorities.

j. There are no known boundary disputes, disagreements or encroachments by the Seller or any neighboring property owner.

k. There are no outstanding agreements for the development, exploration, harvest, or production of any minerals, oil, gas, coal, limestone, gravel, sand, or timber from their relinquished property or the installation of any pipeline or utility thereon.

All representations, warranties, and covenants of Seller contained in this Agreement, shall be true and correct as of the date of this Agreement, shall survive Closing, shall further survive the execution and delivery of the Warranty Deed, remaining fully in effect and operative and shall not be merged into the Warranty Deed.

12. Risk of Loss. Seller assumes all risk of loss due to fire or other casualty up to the time of Closing. In the event any such loss occurs prior to the date of Closing, Buyer shall have the right and option to terminate this Agreement on notice to Seller, and upon such termination, there shall be no further liability on the part of Seller or Buyer hereunder.

13. Property Disclaimer. Except as specifically set forth in this Agreement, no representations or warranties of any kind, express or implied, have been made or are made, and no responsibility has been or is assumed, by Seller or any partner, person, firm, or agent acting or purporting to act on behalf of Seller as to the condition or repair

of the Property, or the value, expense of operation or income potential thereof. Buyer, or their duly authorized agent, have examined the Property, are familiar with the physical condition thereof, and are accepting the Property in "as is" and "where is" condition.

14. Buyer's Costs. Buyer shall pay the following closing costs:

- One-half of Title Company closing fees;
- One-half of the cost of the Owner's Title insurance Policy;
- One-half of the Deed recording fees;
- One-half of any brokerage fees incurred by Seller including sales tax;
- One-half of the Transfer tax; and
- Buyer's Attorney fees.

15. Seller's Costs. Seller shall pay

- One-half of Title Company closing fees;
- One-half of the cost of the Owner's Title insurance Policy
- One-half of the Deed recording fees;
- One-half of any brokerage fees incurred by Seller including sales tax;
- One-half of the Transfer tax; and
- Sellers attorney fees.

16. Time. Time is of the essence for purpose of performance under this Agreement.

17. Severability. The parties agree that if any provisions of this Agreement are held invalid, such invalidity shall not affect the other provisions or application of the other provisions of this Agreement which can be given without the invalid provision, and to this end, the provisions of this Agreement are declared to be severable.

18. Effect of Agreement. This Agreement shall be binding in all respects upon and shall inure to the benefit of Seller and Buyer and their respective successors and assigns.

19. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the state of South Dakota. Any litigation will be venued in Lawrence County, South Dakota.

20. No Reliance. Buyer acknowledges that Buyer is not relying upon any representation or inducement, oral or written, that may have been made by Seller, Seller's agent, or representative or any third parties or employees, except as specifically set forth in this Agreement.

21. Integration. The parties agree that this writing constitutes the entire agreement between them and that here are no other oral or collateral Agreements or understandings of any kind of character.

22. Default. In the event of the failure of either of the parties to close as contemplated herein or to perform the obligations they have agreed to perform in this contract, the other party

shall have all the rights and remedies available to them under the laws of the State of South Dakota.

23. Construction. This agreement is the result of negotiations between the parties, none of whom have acted under duress. The parties waive the application of any rule of construction to the effect that ambiguous or conflicting terms of this agreement shall be interpreted against the party whose attorney prepared it. This agreement shall be construed as if all parties prepared it.

SIGNATURE PAGES TO FOLLOW

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 2023.

SELLER:

Fuller Brothers, LLP
By: John Ernest Brook Fuller
Its:

STATE OF _____)
)ss
COUNTY OF _____)

On this _____ day of _____, 2023, before me, the undersigned officer, personally appeared John Ernest Brook Fuller, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

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

(SEAL)

Notary Public
My Commission Expires:_____

BUYER:

City of Deadwood
By: David R. Ruth Jr.
Its: Mayor

STATE OF SOUTH DAKOTA)
)ss
COUNTY OF _____)

On this ____ day of _____, 2023, before me, the undersigned officer, personally appeared David R. Ruth Jr., known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

(SEAL)

Notary Public
My Commission Expires: _____

BUYER:

Deadwood Historic Preservation Commission
By: Beverly Beebe Posey
Its: Chairman

STATE OF SOUTH DAKOTA)
)ss
COUNTY OF _____)

On this ____ day of _____, 2023, before me, the undersigned officer, personally appeared Beverly Beebe Posey., known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

(SEAL)

Notary Public

My Commission Expires: _____