

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2013-35


AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AUTHORIZING THE SALE OF MUNICIPAL BENCHLAND PROPERTY IDENTIFIED AS TRACT A14-III IN WHITCOMB HEIGHTS III AND TRACTS A13, A12-III AND BLOCKS 8 AND 9 IN WHITCOMB HEIGHTS SUBDIVISION

1. **CLASSIFICATION.** This ordinance is not of a permanent nature and is not intended to become a part of the Sitka General Code ("SGC").
2. **SEVERABILITY.** If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and application to any person or circumstances shall not be affected.
3. **PURPOSE.** The purpose of this ordinance is to authorize the sale of certain municipal benchland property known as Whitcomb Heights III and Whitcomb Heights Subdivisions to make land available for new development for residents of the City and Borough of Sitka ("CBS"). The Assembly finds that it is in the best public interest to make this land available for new development in accordance with the proposal submitted by Sound Development LLC in response to the South Benchland Request for Proposal ("RFP") issued by CBS on December 4, 2012.
4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka:
  - A. The sale of Tracts A14-III and Tract A12-III in Whitcomb Heights III Subdivision and Tract A13 and Blocks 8 and 9 in Whitcomb Heights Subdivision is authorized for sale to Sound Development LLC;
  - B. The Assembly finds the above described property is of a value less than \$500,000, and that there is no requirement that the sale of such property be ratified by the voters;
  - C. The Assembly further finds that the lands to be disposed of are not required for other public purposes;
  - D. Finally, the Assembly finds that the lands exceed municipal needs; and
  - E. The Interim Municipal Administrator is authorized to execute the attached Purchase Agreement for Sale of Land and Warranty Deeds associated with this sale.
5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 10<sup>th</sup> of September, 2013.

  
Mim McConnell, Mayor

ATTEST:

  
Colleen Ingman, MMC  
Municipal Clerk

**PURCHASE AGREEMENT BETWEEN  
CITY AND BOROUGH OF SITKA  
AND SOUND DEVELOPMENT LLC**

This Purchase Agreement Between City and Borough of Sitka and Sound Development LLC ("Agreement") is made between the City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 ("CBS" or "Seller") and Sound Development LLC, PO Box 1401, Sitka, Alaska 99835 ("SDL" or "Buyer"). "Parties" refer to both the Buyer and the Seller.

**OFFER AND ACCEPTANCE:** CBS agrees to sell and SDL agrees to purchase the following real property (land), in fee simple together with all improvements, fixtures, and equipments, attached to or situated thereon, on the terms and subject to the conditions specified in this agreement and subject to any reservation, restriction and rights of way of record:

Parcels A, B, C & D (SDL response to Benchland Request for Proposal ("RFP") issued December 4, 2012):

- Parcel A - TR A14 - III, Whitcomb Heights III Subdivision, Plat 2011-15
- Parcel B - TRACT A 13, Whitcomb Heights Subdivision, Plat 83-17
- Parcel C - TRACT A 12-III, Whitcomb Heights III Subdivision, Plat 2011-15
- Parcel D - Block 8, Whitcomb Heights Subdivision, Plat 83-17
- Parcel D - Block 9, Whitcomb Heights Subdivision, Plat 83-17

1. **Purchase Price:** SDL agrees to pay a total purchase price of Three hundred forty-four thousand, three hundred one dollars and seventy eight cents (\$344,301.78), the money to be paid by cashier check.

2. **Possession:** Possession shall be given to buyers upon execution of this agreement.

3. **Buyer's Cost:** SDL agrees to pay the following costs:

- a. Any taxes and assessments on the property occurring after the date of this agreement;
- b. Any recording fees associated with the recording of this contract or the deed from CBS to SDL;
- c. Recording Fee; and
- d. Escrow Closing Fee.

4. **Binding On Successor:** The parties agree that the terms of this contract will apply to and bind their heirs, executors, administrators, assigns, or any successor in interest of the parties. If the buyer is more than one person, all obligations, promises, conditions, covenants and warranties are joint and several.

5. **Deed:** CBS shall convey to SDL a Warranty Deed in fee simple to the property described above upon the purchase described in paragraph one.

6. **Waiver:** Waiver by CBS of any default in the performance by SDL of any of the terms covenants, or conditions contained in this agreement, shall not be deemed a continuing

waiver of the same or any subsequent default. Any waiver of rights accruing under this agreement to the CBS or SDL shall be in writing.

7. **Notices:** Any notices which are required of this agreement, or which either CBS or SDL may serve upon the other, shall be in writing and shall be deemed served when delivered personally or when deposited in the United States mail, postage prepaid, return receipt requested addressed to SDL at P.O. Box 1401, Sitka, Alaska 99835 or addressed to CBS at 100 Lincoln Street, Sitka, AK 99835, attention Municipal Clerk.

8. **Utilities.** SDL is prohibited from selling any lots in Block 8 and 9 of Whitcomb Heights Subdivision prior to the installation of all electrical, sewer and water utilities and the acceptance of them by CBS. The Emmons and Cushing Street right of way shall also be constructed and accepted by CBS for maintenance prior to any sale. SDL may, with approval of CBS sell multiple lots, in aggregate, if a bond or any other financial guarantee is provided prior to the installation and acceptance of roads and utilities. CBS will not arbitrarily withhold acceptance of road and utilities for maintenance.

9. **Permits.** SDL accepts responsibility for complying with U.S. Army Corps of Engineers permit No. POA -2008-1351, Sitka Sound, issued May 27, 2009.

10. **Access Trail.** Parcels A and B contain a developed trail that is an access to the Sitka Cross Trail Network. The location of the trail can be relocated, as noted in the RFP of December 4, 2012 and as agreed to in the Response by Sound Development LLC, dated April 30, 2013, at the expense of SDL and with prior approval by CBS. CBS agrees to not arbitrarily withhold approval of such plan to relocate the access trail.

11. **Provision for Parcel C.** SDL commits to a work session with the Assembly prior to the submission of the conceptual subdivision plat for Parcel C to the Planning Commission.

12. **Time of Performance.** Per the RFP on December 4, 2012 and Response by SDL on April 30, 2013, development must occur in a timely manner with total build out of the project expected within 10 years from the date of purchase.

13. **Integrated Agreement:** This Agreement, in conjunction and reliance with the Proposal submitted by SDL, as signed by the parties constitutes the entire agreement between them. Any modification or alteration of this Agreement shall not be valid unless evidenced by a duly signed writing supported by consideration additional and independent from the consideration for this Agreement.

14. **No Warranties:** This property is sold "as-is" "where is" and SDL has fully inspected the property. SDL has been advised to investigate and inspect the parcels to determine regulations, restrictions and potential defects. Costs to remedy defects or comply with restrictions will be borne by SDL.

15. **Neutral Authorship of Document:** Each provision of this Agreement has been reviewed and negotiated, and represents the combined work product of both parties herein. No presumption or other rules of constructions which would interpret the provisions of this

Agreement in favor of or against the parties preparing this Agreement shall be applicable in connection with the interpretation of any provision. Both parties have had the opportunity to seek legal counsel before signing this Agreement.

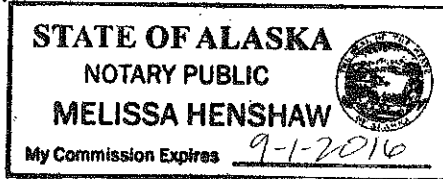
16. **Authorization:** This Agreement is entered into by CBS pursuant to authority granted by Ordinance 2013-35, passed and approved by the Assembly for the City and Borough of Sitka on the 11<sup>th</sup> day of September, 2013.

**BUYERS:  
SOUND DEVELOPMENT LLC.**

Jeremy Twaddle  
Jeremy Twaddle, Member

STATE OF ALASKA )  
 ) ss:  
FIRST JUDICIAL DISTRICT )

On this 11<sup>th</sup> day of September, 2013, personally appeared before me Jeremy Twaddle, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who states under oath by signing this document, he has the authority to sign this Agreement and does so freely and voluntarily.



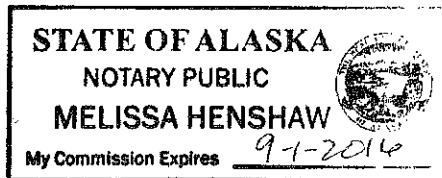
Melissa Henshaw  
Notary Public for Alaska  
My Commission Expires: 9/1/16

**SOUND DEVELOPMENT LLC.**

Todd Fleming  
Todd Fleming, Member

STATE OF ALASKA )  
 ) ss:  
FIRST JUDICIAL DISTRICT )

On this 11<sup>th</sup> day of September, 2013, personally appeared before me Todd Fleming, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who states under oath by signing this document, he has the authority to sign this Agreement and does so freely and voluntarily.



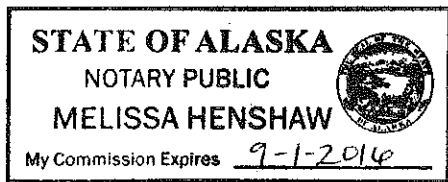
Melissa Henshaw  
Notary Public for Alaska  
My Commission Expires: 9/1/16

SOUND DEVELOPMENT LLC.

Brandi Fleming  
Brandi Fleming, Member

STATE OF ALASKA )  
 ) ss:  
FIRST JUDICIAL DISTRICT )

On this 11<sup>th</sup> day of September, 2013, personally appeared before me Brandi Fleming, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who states under oath by signing this document, she has the authority to sign this Agreement and does so freely and voluntarily.



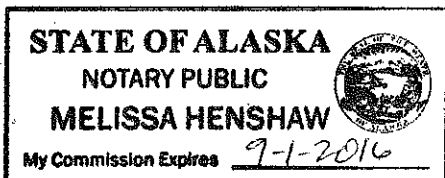
Melissa Henshaw  
Notary Public for Alaska  
My Commission Expires: 9/1/16

SOUND DEVELOPMENT LLC.

Diana Twaddle  
Diana Twaddle, Member

STATE OF ALASKA )  
 ) ss:  
FIRST JUDICIAL DISTRICT )

On this 11<sup>th</sup> day of September, 2013, personally appeared before me Diana Twaddle, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who states under oath by signing this document, she has the authority to sign this Agreement and does so freely and voluntarily.



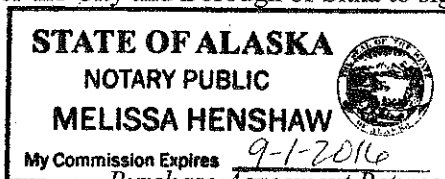
Melissa Henshaw  
Notary Public for Alaska  
My Commission Expires: 9-1-16

SELLER:  
CITY AND BOROUGH OF SITKA

John P. Sweeney, III  
John P. Sweeney, III  
Interim Municipal Administrator

STATE OF ALASKA )  
 ) ss:  
FIRST JUDICIAL DISTRICT )

On this 11<sup>th</sup> day of September, 2013, personally appeared before me John P. Sweeney, III, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who states under oath by signing this document that he has the authority as Interim Municipal Administrator for the City and Borough of Sitka to sign on its behalf, and does so freely and voluntarily.



Melissa Henshaw  
Notary Public for Alaska  
My Commission Expires: 9/1/16