




# CITY AND BOROUGH OF SITKA

A COAST GUARD CITY

## MEMORANDUM

**To:** Mayor Eisenbeisz and Assembly Members

**From:** John Leach, Municipal Administrator 

**Date:** September 29, 2023

**Subject:** Sayak Logistics LLC's Notification of Intent to Sell Property at 4690 Sawmill Creek Road

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### **Background**

On August 9, 2023, Sayak Logistics LLC ("Sayak") notified the City and Borough of Sitka (CBS) by letter (encl 1) of its intent to sell their property located at 4690 Sawmill Creek Road, or Block 4, Lot 4 of the Gary Paxton Industrial Park (GPIP) pursuant to the sales agreement with CBS and the "Quitclaim Deed and Affirmative Covenant of Right to Purchase," jointly executed with the CBS on August 15, 2022. (encl 2)

Block 4, Lot 4 is located directly adjacent to the proposed location of the GPIP Vessel Haul-Out. The property is a 26,031 SF waterfront parcel containing a 6,900 SF building.

### **Analysis**

On April 6th, 1999, the CBS Assembly approved Resolution #99-730 to accept the Alaska Pulp Corporation Mill Property, currently called the Gary Paxton Industrial Park (GPIP).

In 2000, The CBS and The Boat Company entered into a lease agreement for Block 4, Lot 4, and tidelands at the GPIP. The Boat Company intended to construct a building for operations and a boathouse on the tidelands for maintenance work. The Boat Company started construction of the operations building in 2001. The foundation and outer shell of a 6,900 SF building were completed before construction was halted in September 2001. The Boat Company abandoned their business plans for the site. The Boat Company continued to lease the site, with the building sitting empty until December 2009.

In 2009, the CBS agreed to terminate the lease with The Boat Company in exchange for the building being deeded to the CBS. The property was valued at \$484,000 in 2009.

In 2012, the CBS invested \$139,260 into the building for needed utilities and to add proper fire suppression equipment which previously prevented the CBS from allowing further rental of the building.

From 2012-2014, the CBS Electric Department used the property and building during the Blue Lake Dam construction project.

In 2016, The CBS entered into an agreement with Alaska & Pacific Packing (Northline Seafoods' previous name) in December 2016.

A lease for GPIIP Block 4, Lot 4, 26,031 SF of land and 6,900 SF of building was established between the CBS and Northline Seafoods, LLC on July 15, 2017, for five (5) years (lease end of July 15, 2022). The GPIIP board approved this lease on June 8, 2017, and it was later approved by the CBS Assembly on July 11, 2017.

On December 17, 2021, a Consent to Assignment of Lease between CBS, Northline Seafoods LLC, and Sayak was executed, thereby assigning the Lease with all rights, title, interest, obligations, and liabilities to Sayak. The reassignment was approved by the GPIIP board on December 6, 2021, and later approved by the CBS Assembly on December 14, 2021.

Section 1.2 of the lease stated, "Lessee is hereby granted an option to purchase the Subject Property at the end of the Term at the 2014 appraised value of \$554,000 so long as Lessee: (1) is not in continuing material default under this Lease, and (2) Lessee is employing four (4) positions at the Gary Paxton Industrial Park Facility for which gross wages are paid that are equal to or greater than \$36,000 per calendar year for each employee, as shown by Lessee's employment tax records."

Section 1.2 of the lease further clarified the timeline of the Purchase Option stating, "Lessee shall exercise its purchase option by giving written notice to Lessor no later than four (4) months before the end of the Term. Within thirty (30) days of written notice being given by Lessee of its intent to exercise its purchase option, the parties shall execute a purchase agreement and proceed to closing within sixty days of notice. As part of Lessee's purchase of the Subject Property, Lessor shall grant a permanent, nonexclusive easement to the Lessor for access to the adjacent waterfront and tidelands. Lessee shall prepare said easement, at its expense, in standard form and deliver to Lessor before closing."

Sayak gave written notice on March 11, 2022, of exercising the option to purchase and exercised their contractual right to purchase the building for \$554,000.

The CBS closed the sale of the subject property to Sayak on August 15, 2022, and a "Quitclaim Deed and Affirmative Covenant of Right to Purchase" was recorded in accordance with the terms of the sale.

On August 9, 2023, Sayak notified the CBS by letter of its intent to sell their property located at 4690 Sawmill Creek Road, or Block 4, Lot 4 of the GPIIP pursuant to the quitclaim deed.

The Assembly was informed of Sayak's intent letter at their August 22, 2023, meeting and directed the Administrator to move forward with the right to repurchase the 4690 Sawmill Creek Road property in accordance with the reservations in the quitclaim deed, with the understanding that any appropriations to fund the purchase will go back to the Assembly for approval.

Upon reviewing the quitclaim deed, staff determined the following action dates and

subsequent deadlines to proceed with the repurchase of the property in accordance with the reservations in the quitclaim deed:

1. Within 120 days of receipt of Sayak's Notice of Intent, the CBS must commission an appraisal of the property, obtain the appraisal, and submit it to Sayak. The deadline for this action is December 7, 2023.
2. Within 30 days after delivery of the appraisal, the CBS shall close the sale at the first appraised value through the office of Alaska Escrow & Title Insurance Agency, Inc. (AETIA), unless Sayak gives written notice, within 10 days after receipt of the first appraisal, to the CBS of their election to commission a second appraisal.
3. If Sayak gives written notice to the CBS of the election to obtain a second appraisal, Sayak shall submit the second appraisal to the CBS within 30 days thereafter.
4. In the event the second appraisal is commissioned, the purchase price of the subject property to be paid by the CBS shall be equal to the average of the two appraisals.

On August 25, 2022, the CBS hired Horan and CO. to complete the appraisal with a target completion date of September 22, 2023, after consultation with both Horan and Co. and Sayak. On August 17, 2023, Sayak informed Horan and Co. that they "have no problem if you complete the updated appraisal of our property at 4690 Sawmill Creek on behalf of the City & Borough of Sitka. You may use all previous work you completed on our behalf to facilitate the updated appraisal for the City." Given this communication, the CBS does not anticipate a request for a second appraisal from Sayak.

Horan and Co. completed the appraisal on September 21, 2023, and determined the subject property to have a fair market value (FMV) of \$1,300,000.

Based on the quitclaim deed, the purchase price of the subject property would be \$1,300,000, and the sale must be closed no later than 30 days after the official delivery of the appraisal to Sayak.

### **Fiscal Note**

The sale price of the Subject Property to Sayak was \$554,000, and in accordance with Charter Section 11.16(b), the net proceeds from the sale were deposited into the Sitka Permanent Fund.

Since 2000, the CBS has earned roughly \$455,000 in lease revenues and property taxes from the building.

In order to purchase the property located at 4690 Sawmill Creek Rd the following funding sources are proposed:

Source	Amount
Re-allocated from completed capital project	\$ 10,000
Internal Loan from Southeast Economic Development Fund	\$ 350,000
GPIP Contingency Fund	\$ 240,000
Raw (Bulk) Water Fund	\$ 700,000
<b>TOTAL</b>	<b>\$ 1,300,000</b>

\$10,000 is to be re-appropriated from an existing capital project (the bulk water line repair project) that is completed but has funding remaining. \$350,000 is to be funded from the Southeast Economic Development Fund as an internal loan with an interest rate of 3%, as allowed by section 4.44.030 of Sitka General Code (SGC). It is proposed that these funds be paid back beginning in FY25 once the vessel haul out is operational. \$240,000 would be transferred from the GPIP Contingency Fund and finally, \$700,000 would come from the Raw Water Fund, which per SGC section 4.06.104 indicates that funds may be allocated to "...ensure that the GPIP has adequate resources to market, manage and administer the assets of the park with the goal of maximizing economic returns to the community."

### **Recommendation**

Approve this appropriation and direct the Administrator to move forward with the repurchase of 4690 Sawmill Creek Road property in accordance with the reservations in the quitclaim deed. This property will be a crucial asset for the development and operation of the planned haul out and shipyard.

Encl: (1) Sayak Logistics LLC letter to CBS of August 9, 2023  
(2) Quitclaim Deed and Affirmative Covenant of Right to Purchase



August 9<sup>th</sup>, 2023

To: John Leach

City Administrator, City & Borough of Sitka

From: Benjamin Blakey

CEO, Sayak Logistics LLC, DBA Northline Seafoods

**Re: Notice of Intent to Sell – 4690 Sawmill Creek Road, Sitka, AK 99835**

John,

On behalf of Sayak Logistics LLC, and per the terms of our agreement “Quitclaim Deed and Affirmative Right to Purchase,” jointly executed on August 15<sup>th</sup>, 2022, I write to submit formal Notice of Intent to Sell our property located at 4690 Sawmill Creek Road, Sitka, AK 99835. Please record this submission as needed. Thank you, and please reach out to Dawn Johnson or myself with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ben Blakey', is written over a light blue horizontal line.

Ben Blakey

CEO, Sayak Logistics LLC

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**2022-000855-0**

Recording Dist: 103 - Sitka

8/15/2022 01:58 PM Pages: 1 of 5



AFTER RECORDING, RETURN TO:

Municipal Clerk  
City and Borough of Sitka  
100 Lincoln Street  
Sitka, Alaska 99835

**FOR RECORDATION IN THE SITKA RECORDING DISTRICT**

65046

**QUITCLAIM DEED  
AND AFFIRMATIVE COVENANT OF RIGHT TO PURCHASE**

Grantor, CITY AND BOROUGH OF SITKA (*Grantor* or **CBS**), of 100 Lincoln Street, Sitka, Alaska, 99835, for and in consideration of the sum of \$554,000, and such other valuable consideration, the receipt of which is hereby acknowledged, conveys and quitclaims to Grantee, SAYAK LOGISTICS LLC (*Grantee* or **Sayak**), of 4690 Sawmill Creek Road, Sitka, Alaska 99835, all the right, title, equity, interest, claim, and demand which said Grantor has in the real estate located at 4690 Sawmill Creek Road, Sitka, Alaska 99835, which is referred to herein as the **Subject Property** and is more particularly described as follows:

Lot Four (4) Block Four (4) of Sawmill Cove Industrial Park  
Subdivision No. 1, according to plat thereof filed November 20,  
2008, as Plat No. 2008-27, Sitka Recording District, First Judicial  
District, State of Alaska.

TO HAVE AND TO HOLD the same, with the appurtenances, unto said Grantee, and its successors and assigns forever.

SUBJECT to any and all existing easements, encumbrances, covenants, restrictions, reservations or conditions affecting the above described Subject Property whether or not the same appear of record and subject to and conditioned upon the option to repurchase granted hereunder, including but not limited to the "Affirmative Covenant of Right to Purchase," set forth hereinbelow which shall run with the land and bind the successors and assigns of the Grantee until such time as the Grantor should acquire fee interest to the Subject Property described above under the terms of the affirmative covenant set forth below; or, in writing, waive, release and discharged all of Grantor's rights and entitlements to repurchase the Subject Property as provided under the terms of the Lease Agreement and the affirmative covenant below.

**ARTICLE I  
CBS/SAYAK LEASE OF SUBJECT PROPERTY**

This instrument is subject to the Lease Agreement (*Lease*) between CBS, as Lessor, and

**QUITCLAIM DEED AND AFFIRMATIVE COVENANT OF RIGHT TO PURCHASE - Page 1 of 5**  
City and Borough of Sitka/Sayak Logistics LLC

Northline Seafoods LLC, as Lessee, approved by the CBS Assembly on July 11, 2017, made effective on August 1, 2017; and, later assigned by Northline Seafoods LLC to Sayak, which assignment was made effective December 17, 2021, after consent was first given by the CBS Assembly on December 14, 2021. Thereafter, Sayak timely exercised the option to purchase the Subject Property as provided in the Lease, with said purchase and sale to be in accordance with the terms of the Purchase and Sale Agreement Between City and Borough of Sitka and Sayak Logistics LLC, dated June 24, 2022 (**PSA**), in which Sayak agreed that the purchase of the Subject Property would be subject to the Grantor's disclaimer of representations and warranties stated in the Lease, that include but are not limited to the following:

## **ARTICLE II GRANTOR'S DISCLAIMER OF WARRANTIES AND REPRESENTATIONS**

Except as otherwise expressly set forth in this instrument, CBS makes no warranties, statements or representations concerning the condition of the Subject Property. On the contrary, except as expressly set forth in this instrument, CBS expressly disclaims all warranties, statements and representations regarding or concerning the condition of the Subject Property. CBS's disclaimer of warranties and representations shall include but not be limited to any warranty and representation with regard to: (a) the construction, workmanship and materials of the improvements situated thereon; (b) the suitability of the Subject Property for Sayak's intended use; (c) the profitability of any business enterprise or operations of, that Sayak may conduct on or with the Subject Property; (d) the environmental condition of the Subject Property; (e) any tax consequences, favorable or otherwise, resulting from Sayak's acquisition of the Subject Property; (f) any restrictions related to development or use thereof; (g) the applicability of any government requirements pertaining thereto, including but not limited to environmental requirements; (h) the presence or absence of hazardous substances on, over, or within the Subject Property; (i) presence of ground water; (j) the Subject Property's compliance with federal, state and municipal laws, including but not limited to environmental laws, statutes and regulations; or, (k) any matter or thing affecting or related to the Subject Property (including improvements) that could adversely impact and affect the Subject Property's value and marketability.

## **ARTICLE III SAYAK ACCEPTS CBS DISCLAIMER OF WARRANTIES**

Sayak accepts CBS's disclaimer of warranties and representations concerning the Subject Property by accepting delivery of this instrument and title and possession of the Subject Property on the basis of **AS IS WITH ALL FAULTS** with all faults and defects, latent or otherwise. Sayak further acknowledges that by deciding to purchase the Subject Property Sayak relied solely upon Sayak's own inspection, knowledge and familiarity of the Subject Property and with use of Sayak's own resources of information which Sayak acknowledges are independent of CBS, its agents, representatives, employees, attorneys and affiliates. Therefore, Sayak agrees and accepts the risk that there may be present latent and patent defects and faults with the condition of the Subject Property that despite the inspection made of the Subject Property by Sayak and persons on its behalf, could not have discovered until after the effective date of this instrument and the transfer of fee title of the Subject Property to Sayak. In the event latent or patent defects are later discovered that affect the condition of the Subject Property including but not limited to the marketability and structural integrity of the Subject Property and the improvements thereon, Sayak assumes the risk of loss and damage resulting from the discovery of a material defect or

**QUITCLAIM DEED AND AFFIRMATIVE COVENANT OF RIGHT TO PURCHASE - Page 2 of 5**  
City and Borough of Sitka/Sayak Logistics LLC



fault after closing, and expressly agrees herein that neither CBS nor any agents, employees, representatives or affiliates of CBS shall be liable to Sayak, its successors and assigns for loss and damage incurred by Sayak resulting from later discovered latent or patent defects and faults, and waives, releases and discharges any and all claims against CBS including but not limited to the equitable claims of promissory estoppel, collateral estoppel, equitable estoppel, rescission, implied in fact contract, unjust enrichment, quantum meruit, and any and all breach of contract claims; and, further agrees herein to indemnify, defend, and hold CBS harmless from any and all claims brought after recordation of this instrument that related directly or indirectly to the Subject Property.

#### ARTICLE IV AFFIRMATIVE COVENANT RE CBS RIGHT TO PURCHASE SUBJECT PROPERTY FROM SAYAK

The Subject Property is transferred and conveyed to Sayak subject to the affirmative covenant that Sayak shall not sell, assign, transfer, convey, lease the Subject Property for a term of more than ten (10) years, or otherwise alienate Sayak's title, interest and rights to all or a portion of the Subject Property without first offering CBS the right to purchase the Subject Property for fair market value (**FMV**) or any portion of the Subject Property which Sayak intends to transfer, sell, lease or otherwise alienate Sayak's interest therein.

Should Sayak decide to lease all or a portion of the Subject Property for a term of more than three (3) years, a copy of the proposed lease shall be first delivered to CBS prior to the effective date of the lease. Such lease of the Subject Property or any portion thereof shall be subject to CBS prior written consent, which consent shall not be unreasonably withheld. Sayak acknowledges and agrees that consent will be withheld by CBS to a lease having a term of more than ten (10) years and/or subject to a rent that is below the market rental value of the Subject Property. Should CBS withhold consent because the rent charged under the terms of a proposed lease is below market rental value, Sayak may commission an independent appraisal by a licensed Alaska appraiser to provide an opinion of the market rental value of the Subject Property. In such event, the opinion of value from the appraiser shall be final and binding, and Sayak shall be required to charge not less than the market rental value determined by the appraiser under the terms of the lease.

The affirmative covenant shall remain senior in priority to all other liens and encumbrances later recorded which shall be deemed junior to this instrument, including but not limited to the Deed of Trust and other security instruments to be executed by Sayak Logistics LLC in favor of Mark Working to secure payment of a \$558,000 loan to be executed and recorded after the recording date of this instrument.

Sayak shall deliver written notice to CBS of Sayak's intent (**Notice of Intent**) to sell, assign, transfer, convey, lease or otherwise alienate all or a portion of the Subject Property. CBS shall have one hundred and twenty (120) days after receipt of Sayak's Notice of Intent to commission an independent appraisal of the Subject Property by a qualified and licensed Alaska appraiser having knowledge and experience appraising real property and improvements similar to the Subject Property to determine the FMV of the Subject Property as that term is applied under the Uniform Standards of Professional Appraisal Practice (**USPAP**). The appraiser shall provide CBS with a self-contained appraisal report (**First Appraisal**) that provides a market analysis of

**QUITCLAIM DEED AND AFFIRMATIVE COVENANT OF RIGHT TO PURCHASE - Page 3 of 5**  
City and Borough of Sitka/Sayak Logistics LLC





the Subject Property applying the USPAP standards, and that states the appraiser's opinion of the FMV of the Subject Property. CBS shall deliver a copy of the First Appraisal to Sayak and the closing of the CBS purchase of the Subject Property shall close through the office of Alaska Escrow & Title Insurance Agency, Inc. (**AETIA**) within thirty (30) days after said delivery.

Should Sayak object to or otherwise contest the FMV of the Subject Property determined from the First Appraisal, Sayak shall have the right to commission a second appraiser, licensed by the State of Alaska and qualified and experienced to conduct a second appraisal (**Second Appraisal**) of the Subject Property. The Second Appraisal shall be subject to the same conditions required above for the First Appraisal, including but not limited to the condition that the Second Appraisal be conducted consistent with USPAP. CBS and Sayak shall be responsible for the cost and expense of the Appraisal commissioned by a party unless the FMV of the Second Appraisal is less than the FMV of the First Appraisal, in which event Sayak shall pay the cost of the CBS First Appraisal. Sayak must give CBS written notice within ten (10) days after receipt of the First Appraisal of Sayak's election to commission the Second Appraisal; and, Sayak shall commission the Second Appraiser within thirty (30) days thereafter. In the event the Second Appraisal is commissioned, the purchase price for the Subject Property to be paid by CBS shall be equal to the average of the two Appraisals. The average of the two Appraisals shall be calculated by adding the FMV determined in each Appraisal, then dividing the sum of the FMV by two (2):

$$\text{First Appraisal} + \text{Second Appraisal} / 2 = \text{Purchase Price}$$

Once the purchase price CBS will pay for the Subject Property is determined following the appraisal process provided above, CBS will prepare and deliver all closing documents of standard form to the closing agent, AETIA and Sayak, which documents will be prepared at CBS's expense. Sayak shall cooperate in all respects with the appraisal process, and the purchase and transfer of title of the Subject Property to CBS.

In the event CBS does not exercise the right to purchase the Subject Property following receipt of written notice, Sayak shall be entitled to sell, transfer, convey or otherwise alienate the Subject Property to a third-party free and clear of the affirmative covenant entitling CBS the right to purchase the Subject Property, and the affirmative covenant shall thereafter not constitute a legal, valid or enforceable obligation against Sayak.

IN WITNESS WHEREOF, Grantor and Grantee have hereunto executed this instrument the 15 day of August, 2022 at Sitka, Alaska.

**GRANTOR:**  
**CITY AND BOROUGH OF SITKA**

By: \_\_\_\_\_

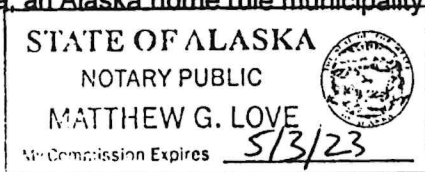
John Leach, Municipal Administrator

**QUITCLAIM DEED AND AFFIRMATIVE COVENANT OF RIGHT TO PURCHASE - Page 4 of 5**  
City and Borough of Sitka/Sayak Logistics LLC



STATE OF ALASKA                     )  
   ) ss.  
FIRST JUDICIAL DISTRICT         )

The foregoing instrument was acknowledged before me this 15 day of August, 2022, by John Leach, Municipal Administrator of the City and Borough of Sitka, ~~an Alaska home rule municipality~~, on behalf of the municipality.



Matthew G. Love  
Notary Public in and for the State of Alaska  
My commission expires: 5/3/23

**Sayak Acknowledgement of Affirmative Covenant and CBS Right to Purchase**

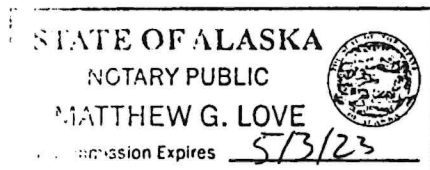
Grantee/Sayak acknowledges and agrees to the terms and conditions of this instrument, including but not limited to the affirmative covenant stated in Article IV, that Sayak is obligated to tender CBS the opportunity to purchase the Subject Property for FMV should Sayak elect to sell all or a portion of the Subject Property or otherwise alienate all or a portion of the Subject Property.

**GRANTEE:**  
**SAYAK LOGISTICS LLC**

By: [Signature]  
Benjamin Blakey, Member

STATE OF ALASKA                     )  
   ) ss.  
FIRST JUDICIAL DISTRICT         )

The foregoing instrument was acknowledged before me this 15 day of August, 2022, by Benjamin Blakey, Member of Sayak Logistics LLC, an Alaskan limited liability company, on behalf of the company.



Matthew G. Love  
Notary Public in and for the State of Alaska  
My commission expires: 5/3/23

**QUITCLAIM DEED AND AFFIRMATIVE COVENANT OF RIGHT TO PURCHASE - Page 5 of 5**  
**City and Borough of Sitka/Sayak Logistics LLC**

