

1 **PURCHASE AND SALES CONTRACT, REGARDING BLOCK 4, LOT 17 OF THE**
2 **GARY PAXTON INDUSTRIAL PARK,**
3 **BETWEEN CITY AND BOROUGH OF SITKA AND ED & CLARA GRAY D.B.A.**
4 **MONARCH TANNERY**

5
6 This PURCHASE AND SALES CONTRACT, REGARDING BLOCK 4, LOT 17
7 BUILDING AND PROPERTY, BETWEEN CITY AND BOROUGH OF SITKA AND ED &
8 CLARA GRAY D.B.A. MONARCH TANNERY (“Agreement”) is entered into between the
9 CITY AND BOROUGH OF SITKA (“Seller”), a home rule municipality and municipal
10 corporation whose address is 100 Lincoln St., Sitka, Alaska 99835, and ED & CLARA GRAY
11 D.B.A. MONARCH TANNERY, 137 Shelikof, Sitka, Alaska 99835 (“Purchaser”) collectively
12 referred to as “Parties.”

13
14 1. **PROPERTY.** Upon the terms, conditions and covenants set forth in this
15 Agreement, the Purchaser and Seller agree as follows regarding the property subject to purchase
16 under this Agreement:

17
18 Purchaser agrees to purchase and Seller agrees to sell to Purchaser the following Gary Paxton
19 Industrial Park (“GPIP”) real property with related building (hereinafter referred to as the
20 "Property"):

21 GPIP Block 4, LOT 17, being approximately 16,997 square feet of raw
22 land, more particularly identified in EXHIBIT A, excluding all utility
23 easements, public use easements, and public easements, right of ways,
24 roads, public improvements, and utility improvements.

25
26 NOTE: Block 4, LOT 17 has a fire water line running through the middle of
27 the property. Construction of a building over the water line, or disturbance of
28 the water line is prohibited.

29
30 **Legal Description:** Lot 17, Block 4, Sawmill Cove Industrial Park Resubdivision No. 1,
31 according to the official plat thereof, filed under Plat No. 2008-27, Records of the Sitka
32 Recording District, First Judicial District, State of Alaska.

33
34
35 2. **PURCHASE PRICE.** The purchase price for the Property ("Purchase Price") shall
36 be One Hundred Ten Thousand DOLLARS (US \$110,000.00). The Purchase Price shall be paid
37 to Seller immediately at Closing.

38
39 3. **SELLER’S REPRESENTATIONS, WARRANTIES, AND COVENANTS.**

40
41 (a) Purchaser acknowledges and understands that Seller owns the Property
42 and intends that as a result of the transaction contemplated in this Agreement, Seller will have no
43 further responsibility or liability for the Property. Purchaser and Seller have specifically

44 negotiated this Agreement with the goal that after Closing of the transactions contemplated in
45 this Agreement that the Seller will have no responsibility or liability for the Property, for events
46 occurring after the Closing Date.

47
48 Notwithstanding anything to the contrary set forth in this Agreement, Purchaser is acquiring the
49 Property "AS IS", "WHERE IS," with all faults and defects. Purchaser acknowledges and agrees
50 that Seller (or any agent of Seller) has not made and does not make, and Seller specifically
51 disclaims, any representations, warranties, promises, covenants, agreements or guaranties of any
52 kind or character whatsoever, whether express or implied, oral or written, past, present or future,
53 of, as to, concerning or with respect to:

54
55 (i) the nature, quality or condition of the Property, including without
56 limitation, the water, soil and geology of, or the presence or absence of any pollutant, hazardous
57 waste, gas of substance or solid waste on or about, or deriving from the Property,

58
59 (ii) the income to be derived from the Property,

60
61 (ii) the suitability of the Property for any and all activities and uses
62 which Purchaser may intend to conduct thereon,

63
64 (iii) the compliance of or by the Property or its operations with any
65 laws, rules, ordinances or regulations of any government authority or body having jurisdiction
66 over the Property, including but not limited to environmental laws, such as CERCLA and RCRA,
67 zoning laws, platting laws and building codes,

68
69 (iv) the habitability, merchantability or fitness for a particular purpose
70 of the Property,

71
72 (v) any matter regarding tax consequences, the presence of asbestos,
73 utilities, valuation, governmental approvals, the truth, accuracy or completeness of the items
74 delivered, and

75
76 (vi) any other matter related to or concerning the Property, except as
77 expressly set forth in this Agreement or the Exhibits.

78
79 Purchaser shall not seek recourse (or seek any remedy, including rescission) against Seller on
80 account of any loss, cost or expenses suffered or incurred by Purchaser with regard to any of the
81 matters described in (i) through (vi) above.

82
83 4. SELLER'S DISCLAIMERS

84
85 Purchaser acknowledges that Purchaser, having been given the opportunity to inspect the
86 Property, is relying solely on its own investigation of the Property and not on any information
87 provided or to be provided by Seller. Purchaser further acknowledges that no independent
88 investigations or verifications have been or will be made by Seller with respect to any

89 information supplied by Seller concerning the Property, and that Seller makes no representation
90 as to the accuracy or completeness of such information. Purchaser will conduct prior to Closing,
91 such investigations of the Property, including but not limited to, the physical and environmental
92 conditions thereof, as Purchaser deems necessary to satisfy itself as to the condition of the
93 Property and the existence or nonexistence of curative action to be taken with respect to any
94 hazardous or toxic substances on or discharged from the Property, and except as expressly set
95 forth in this Agreement, will rely solely upon same and not upon any information provided by or
96 on behalf of Seller or its agents or employees with respect thereto. Upon Closing, Purchaser
97 shall accept the risk that adverse matters, including but not limited to, construction defects and
98 adverse physical and environmental conditions, may not have been revealed by Purchaser's
99 investigations, and except as expressly set forth in this Agreement, Purchaser upon Closing, shall
100 be deemed to have waived, relinquished and released Seller from and against any and all claims,
101 demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs
102 and expenses (including attorneys' fees and court costs) of any and every kind or character,
103 known or unknown, which Purchaser might have asserted or alleged against Seller at any time by
104 reason of or arising out of any of the subject areas listed in this Section 4 and violations of any
105 applicable laws (including any environmental laws) and any and all other acts, omissions, events,
106 circumstances or matters regarding the Property. Purchaser acknowledges that the purpose of
107 this section is for Purchaser, to the fullest extent possible at law, to waive, relinquish, release and
108 disclaim, any claim or liability of or against Seller as the result of any condition or state of facts
109 relating or pertaining to the Property on the Closing Date, except as expressly set forth in this
110 Agreement. Purchaser shall verify the accuracy and completeness of such information itself.

111
112 Purchaser bears the risk of any costs or expenses suffered or incurred by Purchaser with regard to
113 any lack of information, incorrect information or inadequate information relating to any of the
114 matters described in (i) to (vi) above.

115
116 (b) Upon its purchase, the condition and use of the Property are still as
117 provided in and/or subject to the applicable provisions of EXHIBITS A, B, C, and D, which are
118 titled as follows and attached to this Agreement:

- 119
- 120 EXHIBIT A Legal description of the Property (GPIP Block 4, LOT 17)

- 121 EXHIBIT B - Prospective Purchaser Agreement between the State of Alaska and
122 the City-Borough of Sitka for the Former Alaska Pulp Corporation
123 Pulp Mill Property

- 124 EXHIBIT C - Agreement to Convey between Alaska Pulp Corporation and the
125 City and Borough of Sitka

- 126 EXHIBIT D - Management Requirements at Gary Paxton Industrial Park

- 127 EXHIBIT E - Quit Claim Deed

128 (c) Upon its purchase, the condition and use of the Property is provided in
129 and/or subject to all applicable federal, state, and municipal laws, including GPIP ordinances,
130 rules and regulations.

131
132 (d) All required action necessary to authorize Seller to enter into this
133 Agreement and to carry out Seller's obligations under this Agreement has been taken or will be
134 taken by the Closing Date.

135
136 (e) The representations and warranties set forth above are made as of the
137 Execution Date and shall be deemed made also as of the Closing Date. If Purchaser knows prior
138 to Closing that any representation or warranty above is untrue, then Purchaser shall give Seller
139 written notice of such fact. If (a) such representation and warranty is not remedied by Seller
140 prior to Closing, or (b) the representation and warranty, as remedied, has an adverse affect on any
141 decision made by Purchaser to proceed with this transaction, or (c) any representation or
142 warranty made by Seller is untrue and such fact is not disclosed to Purchaser until Closing, and
143 same has a material and adverse affect on Purchaser's decision to purchase the Property, then
144 Purchaser may either (i) terminate this Agreement, and neither Party shall have any further
145 rights, duties or obligations pursuant to this Agreement except as expressly provided herein, or
146 (ii) waive its objections to any such untrue representation or warranty and this Agreement shall
147 remain in full force and effect. Purchaser shall have a period of one (1) year and one (1) day
148 from the Closing Date to bring any action against Seller for the breach of any such representation
149 or warranty.

150
151 (f) The provisions of this Section 4 survive the Closing or termination of this
152 Agreement.

153
154 5. PURCHASER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.
155 Purchaser represents, warrants, covenants, and agrees with Seller to the following as of the
156 Execution Date and as of the Closing Date:

157
158 (a) Purchaser has the full right, power, and authority to purchase the Property
159 from Seller as provided in this Agreement and to carry out Purchaser's obligations under this
160 Agreement; and all required action necessary to authorize Purchaser to enter into this Agreement
161 and to carry out Purchaser's obligations under this Agreement has been taken. The individual
162 executing this Agreement on behalf of Purchaser has the authority to do so.

163
164 (b) There are no pending, or to the knowledge of Purchaser threatened,
165 actions, suits, claims, proceedings or litigation against Purchaser that would prevent Purchaser
166 from entering into this Agreement, or adversely affect Purchaser's ability to perform under this
167 Agreement, or that would in any way result in any liability to Seller.

168
169 (c) There are no attachments, executions, assignments for the benefit of
170 creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy
171 or pursuant to any other debtor relief laws contemplated or filed by Purchaser or to the best
172 knowledge of Purchaser pending against Purchaser.

173
174 (d) The representations and warranties set forth above are made as of the
175 Execution Date and shall be deemed made also as of the Closing Date. It shall be a condition of
176 Seller's obligation to close that the representations and warranties made hereunder are true on the
177 Closing Date. In the event any representation or warranty made by Purchaser as of the Closing
178 Date is untrue, Seller must bring any action with respect to such breach of the representation and
179 warranty within two (2) years and (1) day of the Closing Date.
180

181 6. CLOSING. The purchase and sale of the Property shall be closed ("Closing") in
182 the offices of the Seller or at such other place as is mutually agreed to in writing between Seller
183 and Purchaser. The "Closing Date" shall be within 30 calendar days of execution of this
184 Agreement, unless another date is agreed in writing between Seller and Purchaser prior to 30
185 calendar days after execution of this Agreement, which may not be more than a thirty (30)
186 calendar day extension, at a time to be agreed upon by Seller and Purchaser.
187

188 (a) At Closing, Seller, at Seller's expense, shall deliver to Purchaser:

189 (i) Executed Quit Claim Deed in the format attached as EXHIBIT E;

190 (ii) Owner's policy of title insurance for the property.

191 (iii) Any and all other documents reasonably required to be executed by
192 Purchaser to consummate this transaction,
193

194 (b) At Closing, Purchaser, at Purchaser's expense, shall deliver to Seller:

195 (i) The Purchase Price; and

196 (ii) Any and all other documents reasonably required to be executed by
197 Seller to consummate this transaction.
198

199 7. CLOSING COSTS. At Closing, closing costs and expenses of sale shall be borne
200 as follows:
201

202 (a) Seller shall be obligated for and shall pay:

203 (i) Survey and platting costs;

204 (ii) Owner's policy of title insurance, and

205 (iii) Seller's attorneys' fees.
206

207 (b) Purchaser shall be obligated for and shall pay:

208 (i) Purchaser's due diligence;
209
210
211
212
213
214
215
216
217

- 218
219 (iii) Any fees and expenses incurred by Purchaser in connection with
220 Purchaser obtaining financing for its purchase of the Property;
221
222 (iv) Appraisal fee of \$875;
223
224 (iii) Recording fee; and
225
226 (iv) Purchaser's attorneys' fees.
227

228 All other closing costs not mentioned herein and for which no provision is made in this
229 Agreement shall be paid equally by the Seller and Purchaser.
230

231 8. DEFAULT AND REMEDIES. In the event that this transaction is not
232 consummated by reason of Seller's or Purchaser's default, both Parties sole remedy shall be
233 termination of this Agreement.
234

235 9. INDEMNITY. Purchaser will hold harmless, indemnify and defend Seller, its
236 employees, elected and unelected officials from and against any and all losses, claims, actions,
237 demands, damages or other liabilities of any and every nature ("Claims") arising from the
238 Property after the Closing Date of this Agreement.
239

240 10. ASSIGNMENT OF AGREEMENT. This Agreement may not be assigned by
241 Purchaser, without Purchaser having to first obtain the consent of Seller.
242

243 11. NOTICES. Any notices to be given by either Party to this Agreement shall be
244 given in writing and may be effected by personal delivery, facsimile transmittal, delivery by
245 overnight Federal Express or similar courier service, or mailed through the United States Postal
246 Service, as follows:
247

248 To Purchaser: Ed & Clara Gray d.b.a. Monarch Tannery
249 137 Shelikof
250 Sitka, AK 99835
251

252 To Seller: Administrator, Mark Gorman
253 City and Borough of Sitka
254 100 Lincoln Street
255 Sitka, Alaska 99835
256 Telephone: (907) 747-1808
257 Telecopy/Fax: (907) 747-7403
258

259 The Parties hereto shall have the right from time to time to change their respective addresses, and
260 each shall have the right to specify as its address any other address by at least five (5) calendar
261 days prior written notice to the other Party as herein provided. Notice shall be effective and
262 deemed given upon actual receipt or upon the fifth (5th) business day after same is sent as
263 specified above, whichever is earlier; provided, however, notice given by facsimile transmittal

264 shall be effective upon actual receipt and telephonic confirmation that such notice has been
265 received in its entirety.

266
267 12. MODIFICATION OF AGREEMENT; WAIVER. This Agreement may not be
268 modified or amended except by a written instrument signed by Seller and Purchaser. Purchaser
269 and Seller may waive any of the conditions contained in this Agreement or any of the obligations
270 of the other party under this Agreement, but any such waiver shall be effective only if in writing
271 and signed by the party waiving such condition or obligation.

272
273 13. BINDING EFFECT. This Agreement shall be binding upon and inure to the
274 benefit of the Parties and their respective heirs, successors, legal representatives and, subject to
275 Section 11, assigns.

276
277 14. ENTIRE AGREEMENT. This Agreement, including any attached Exhibits,
278 constitutes the entire agreement and understanding between the Parties and supersedes all prior
279 and contemporaneous agreements and undertakings of the Parties in connection herewith. No
280 statements, agreements or understandings, representations, warranties or conditions not
281 expressed in this Agreement shall be binding upon the Parties, or shall be effective to interpret,
282 change or restrict the provisions of this Agreement unless such is in writing signed by both
283 Parties hereto and by reference made a part of this Agreement.

284
285 The terms of this Agreement are contractual and not a mere recital. The rule of construction that
286 a document is more strictly construed against the drafter shall not apply in the interpretation of
287 this Agreement. The purpose of this Agreement is to ensure the full, complete, and final
288 resolution of any disputes and claims between the Seller and Purchaser regarding the subjects
289 discussed in this Agreement, including but not limited to the purchase of the Property, Parties'
290 obligations and liabilities regarding the Property.

291
292 15. GOVERNING LAW. This Agreement shall be construed and interpreted in
293 accordance with the laws of the State of Alaska. Venue for any action regarding the interpretation
294 and enforcement of this Agreement shall be in the Superior Court for the State of Alaska at Sitka,
295 Alaska.

296
297 16. ATTORNEYS' FEES. In the event of a dispute or controversy concerning the
298 agreements that are the subject of this Agreement that results in litigation, the prevailing party in
299 such litigation shall be entitled to reasonable attorneys' fees and costs as determined by the
300 Court.

301
302 17. COUNTERPARTS; FACSIMILE SIGNATURES. This Agreement may be
303 executed in counterparts, each of which shall be deemed an original. Each Party agrees that its
304 signature page may be attached to an identical counterpart of this Agreement so that there are
305 signature pages of each such Party to such counterpart of this Agreement.

306
307 18. CAPTIONS. Captions and headings throughout this Agreement are for
308 convenience and reference only, and they shall not define, limit, modify or add to the

309 interpretation or meaning of any provisions of this Agreement or in any way affect the scope,
310 intent or effect of this Agreement.

311

312 19. SEVERABILITY. If any one or more of the provisions contained in this
313 Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such
314 invalidity, illegality or unenforceability shall not affect any other provision of this Agreement,
315 and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had
316 never been contained.

317

318 20. EXHIBITS. All exhibits attached to this Agreement are made a part of this
319 Agreement for all purposes whatsoever.

320

321 21. SURVIVAL. All provisions of this Agreement shall survive Closing.

322

323 22. ASSEMBLY APPROVAL. This Agreement is subject to approval by the
324 Assembly for the City and Borough of Sitka regarding its being consistent with the terms and
325 conditions outlined and approved by the Assembly on _____ 2015. This
326 Agreement, together with any modifications, changes, or amendments to this Agreement, cannot
327 be enforced against the Seller unless the Assembly for the City and Borough of Sitka has
328 approved this Agreement and any modification, changes, or amendments to this Agreement.

329

330

331

332 EXECUTED by the Parties as of the date set forth below the signature of each party, with
333 the Effective Date of this Agreement to be the date first listed in this Agreement.

334
335 CITY AND BOROUGH OF SITKA, SELLER

336
337 _____
338 Mark Gorman, Administrator

339
340 STATE OF ALASKA)
341) ss:
342 FIRST JUDICIAL DISTRICT)

343
344 On this ____ day of _____, 2015, personally appeared before me MARK
345 GORMAN, whose identity is personally known to me or proved to me on the basis of
346 satisfactory evidence, and who states under oath by signing this document that he has the
347 authority as Municipal Administrator for the City and Borough of Sitka to sign on its behalf, and
348 does so freely and voluntarily.

349
350 _____
351 Notary Public for Alaska
352 My Commission Expires: _____

353
354
355 ED and CLARA GRAY D.B.A. MONARCH TANNERY, Purchaser

356
357
358
359 _____
360 Ed Gray

361
362 STATE OF ALASKA)
363) ss:
364 FIRST JUDICIAL DISTRICT)

365
366 On this ____ day of _____, 2015, personally appeared before me ED
367 GRAY, whose identity is personally known to me or proved to me on the basis of satisfactory
368 evidence, and who states under oath by signing this document that he has the authority d.b.a.
369 Monarch Tannery to sign on its behalf, and does so freely and voluntarily.

370
371 _____
372 Notary Public for Alaska
373 My Commission Expires: _____