

1 **PURCHASE AND SALES CONTRACT, REGARDING BLOCK 4, LOT 11 BUILDING**
2 **AND PROPERTY OF THE GARY PAXTON INDUSTRIAL PARK,**
3 **BETWEEN CITY AND BOROUGH OF SITKA AND SILVER BAY SEAFOODS, LLC**
4

5 This PURCHASE AND SALES CONTRACT, REGARDING BLOCK 4, LOT 11
6 BUILDING AND PROPERTY, BETWEEN CITY AND BOROUGH OF SITKA AND SILVER
7 BAY SEAFOODS, LLC ("Agreement") is entered into between the CITY AND BOROUGH OF
8 SITKA ("Seller"), a home rule municipality and municipal corporation whose address is 100
9 Lincoln St., Sitka, Alaska 99835, and SILVER BAY SEAFOODS, LLC ("Purchaser"), an
10 Alaskan limited liability corporation whose address is 4400 Sawmill Creek Road, Sitka, Alaska,
11 collectively referred to as "Parties."

12
13 1. **PROPERTY.** Upon the terms, conditions and covenants set forth in this
14 Agreement, the Purchaser and Seller agree as follows regarding the property subject to purchase
15 under this Agreement:

16
17 Purchaser agrees to purchase and Seller agrees to sell to Purchaser the following Gary Paxton
18 Industrial Park ("GPIP") real property with related building (hereinafter referred to as the
19 "Property"):

20 GPIP Block 4, Lot 11 (Former Water Treatment Building and Property),
21 more particularly identified in EXHIBIT A, excluding all utility
22 easements, public use easements, and public easements, right of ways,
23 roads, public improvements, and utility improvements.

24
25 **Legal Description:** Lot 11, Block 4, Sawmill Cove Industrial Park Resubdivision No. 1,
26 according to the official plat thereof, filed under Plat No. 2008-27, Records of the Sitka
27 Recording District, First Judicial District, State of Alaska
28

29
30 2. **PURCHASE PRICE.** The purchase price for the Property ("Purchase Price") shall
31 be Three Hundred Nineteen Thousand DOLLARS (US \$319,000.00). The Purchase Price shall
32 be paid to Seller immediately at Closing.
33

34 3. **SELLER'S REPRESENTATIONS, WARRANTIES, AND COVENANTS.**
35

36 (a) Purchaser acknowledges and understands that Seller owns the Property
37 and intends that as a result of the transaction contemplated in this Agreement, Seller will have no
38 further responsibility or liability for the Property. Purchaser and Seller have specifically
39 negotiated this Agreement with the goal that after Closing of the transactions contemplated in
40 this Agreement that the Seller will have no responsibility or liability for the Property, for events
41 occurring after the Closing Date.
42

43 Notwithstanding anything to the contrary set forth in this Agreement, Purchaser is acquiring the
44 Property "AS IS", "WHERE IS," with all faults and defects. Purchaser acknowledges and agrees

45 that Seller (or any agent of Seller) has not made and does not make, and Seller specifically
46 disclaims, any representations, warranties, promises, covenants, agreements or guaranties of any
47 kind or character whatsoever, whether express or implied, oral or written, past, present or future,
48 of, as to, concerning or with respect to:

49
50 (i) the nature, quality or condition of the Property, including without
51 limitation, the water, soil and geology of, or the presence or absence of any pollutant, hazardous
52 waste, gas or substance or solid waste on or about, or deriving from the Property,

53
54 (ii) the income to be derived from the Property,

55
56 (ii) the suitability of the Property for any and all activities and uses
57 which Purchaser may intend to conduct thereon,

58
59 (iii) the compliance of or by the Property or its operations with any
60 laws, rules, ordinances or regulations of any government authority or body having jurisdiction
61 over the Property, including but not limited to environmental laws, such as CERCLA and RCRA,
62 zoning laws, platting laws and building codes,

63
64 (iv) the habitability, merchantability or fitness for a particular purpose
65 of the Property,

66
67 (v) any matter regarding tax consequences, the presence of asbestos,
68 utilities, valuation, governmental approvals, the truth, accuracy or completeness of the items
69 delivered, and

70
71 (vi) any other matter related to or concerning the Property, except as
72 expressly set forth in this Agreement or the Exhibits.

73
74 Purchaser shall not seek recourse (or seek any remedy, including rescission) against Seller on
75 account of any loss, cost or expenses suffered or incurred by Purchaser with regard to any of the
76 matters described in (i) through (vi) above.

77
78 4. SELLER'S DISCLAIMERS

79
80 Purchaser acknowledges that Purchaser, having been given the opportunity to inspect the
81 Property, is relying solely on its own investigation of the Property and not on any information
82 provided or to be provided by Seller. Purchaser further acknowledges that no independent
83 investigations or verifications have been or will be made by Seller with respect to any
84 information supplied by Seller concerning the Property, and that Seller makes no representation
85 as to the accuracy or completeness of such information. Purchaser will conduct prior to Closing,
86 such investigations of the Property, including but not limited to, the physical and environmental
87 conditions thereof, as Purchaser deems necessary to satisfy itself as to the condition of the
88 Property and the existence or nonexistence of curative action to be taken with respect to any
89 hazardous or toxic substances on or discharged from the Property, and except as expressly set

90 forth in this Agreement, will rely solely upon same and not upon any information provided by or
91 on behalf of Seller or its agents or employees with respect thereto. Upon Closing, Purchaser
92 shall accept the risk that adverse matters, including but not limited to, construction defects and
93 adverse physical and environmental conditions, may not have been revealed by Purchaser's
94 investigations, and except as expressly set forth in this Agreement, Purchaser upon Closing, shall
95 be deemed to have waived, relinquished and released Seller from and against any and all claims,
96 demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs
97 and expenses (including attorneys' fees and court costs) of any and every kind or character,
98 known or unknown, which Purchaser might have asserted or alleged against Seller at any time by
99 reason of or arising out of any of the subject areas listed in this Section 4 and violations of any
100 applicable laws (including any environmental laws) and any and all other acts, omissions, events,
101 circumstances or matters regarding the Property. Purchaser acknowledges that the purpose of
102 this section is for Purchaser, to the fullest extent possible at law, to waive, relinquish, release and
103 disclaim, any claim or liability of or against Seller as the result of any condition or state of facts
104 relating or pertaining to the Property on the Closing Date, except as expressly set forth in this
105 Agreement. Purchaser shall verify the accuracy and completeness of such information itself.

106

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

110

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

114

115 EXHIBIT A Legal description of the Property (GPIP Block 4, Lot 11)

116 EXHIBIT B - Prospective Purchaser Agreement between the State of Alaska and
117 the City-Borough of Sitka for the Former Alaska Pulp Corporation
118 Pulp Mill Property

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

121 EXHIBIT D - Management Requirements at Gary Paxton Industrial Park

122 EXHIBIT E - Quit Claim Deed

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

126

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

130
131 (e) The representations and warranties set forth above are made as of the
132 Execution Date and shall be deemed made also as of the Closing Date. If Purchaser knows prior
133 to Closing that any representation or warranty above is untrue, then Purchaser shall give Seller
134 written notice of such fact. If (a) such representation and warranty is not remedied by Seller
135 prior to Closing, or (b) the representation and warranty, as remedied, has an adverse affect on any
136 decision made by Purchaser to proceed with this transaction, or (c) any representation or
137 warranty made by Seller is untrue and such fact is not disclosed to Purchaser until Closing, and
138 same has a material and adverse affect on Purchaser's decision to purchase the Property, then
139 Purchaser may either (i) terminate this Agreement, and neither Party shall have any further
140 rights, duties or obligations pursuant to this Agreement except as expressly provided herein, or
141 (ii) waive its objections to any such untrue representation or warranty and this Agreement shall
142 remain in full force and effect. Purchaser shall have a period of one (1) year and one (1) day
143 from the Closing Date to bring any action against Seller for the breach of any such representation
144 or warranty.

145
146 (f) Notwithstanding Seller's disclaimers in this section 4, Seller warrants that
147 upon Purchaser's installation of a certified fire sprinkler system for the related building Property,
148 Seller or its authorized department will issue a Certificate of Occupancy.

149
150 (g) The provisions of this Section 4 survive the Closing or termination of this
151 Agreement.

152
153 5. PURCHASER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.

154 Purchaser represents, warrants, covenants, and agrees with Seller to the following as of the
155 Execution Date and as of the Closing Date:

156
157 (a) Purchaser has the full right, power, and authority to purchase the Property
158 from Seller as provided in this Agreement and to carry out Purchaser's obligations under this
159 Agreement; and all required action necessary to authorize Purchaser to enter into this Agreement
160 and to carry out Purchaser's obligations under this Agreement has been taken. The individual
161 executing this Agreement on behalf of Purchaser has the authority to do so.

162
163 (b) There are no pending, or to the knowledge of Purchaser threatened,
164 actions, suits, claims, proceedings or litigation against Purchaser that would prevent Purchaser
165 from entering into this Agreement, or adversely affect Purchaser's ability to perform under this
166 Agreement, or that would in any way result in any liability to Seller.

167
168 (c) There are no attachments, executions, assignments for the benefit of
169 creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy
170 or pursuant to any other debtor relief laws contemplated or filed by Purchaser or to the best
171 knowledge of Purchaser pending against Purchaser.

172
173 (d) The representations and warranties set forth above are made as of the
174 Execution Date and shall be deemed made also as of the Closing Date. It shall be a condition of

175 Seller's obligation to close that the representations and warranties made hereunder are true on the
176 Closing Date. In the event any representation or warranty made by Purchaser as of the Closing
177 Date is untrue, Seller must bring any action with respect to such breach of the representation and
178 warranty within two (2) years and (1) day of the Closing Date.
179

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

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

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

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

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

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

194 (i) The Purchase Price; and

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

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

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

202 (i) Survey and platting costs;

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

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

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

207 (i) Purchaser's due diligence;

208 (iii) Any fees and expenses incurred by Purchaser in connection with
209 Purchaser obtaining financing for its purchase of the Property;

- 220 (iv) Appraisal fee of \$850;
221
222 (iii) Recording fee; and
223
224 (iv) Purchaser's attorneys' fees.
225

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

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

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

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

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

246 To Purchaser: Richard A. Riggs
247 Silver Bay Seafoods, LLC
248 4400 SMC RD, STE B
249 Sitka, AK 99835
250 Telephone: (907) 747-7996
251 Telecopy/Fax: (907) 747-7998
252 E-mail: Richard.riggs@silverbayseafoods.com
253

254 To Seller: Administrator, Mark Gorman
255 City and Borough of Sitka
256 100 Lincoln Street
257 Sitka, Alaska 99835
258 Telephone: (907) 747-1808
259 Telecopy/Fax: (907) 747-7403
260

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

265 specified above, whichever is earlier; provided, however, notice given by facsimile transmittal
266 shall be effective upon actual receipt and telephonic confirmation that such notice has been
267 received in its entirety.
268

269 12. MODIFICATION OF AGREEMENT; WAIVER. This Agreement may not be
270 modified or amended except by a written instrument signed by Seller and Purchaser. Purchaser
271 and Seller may waive any of the conditions contained in this Agreement or any of the obligations
272 of the other party under this Agreement, but any such waiver shall be effective only if in writing
273 and signed by the party waiving such condition or obligation.
274

275 13. BINDING EFFECT. This Agreement shall be binding upon and inure to the
276 benefit of the Parties and their respective heirs, successors, legal representatives and, subject to
277 Section 11, assigns.
278

279 14. ENTIRE AGREEMENT. This Agreement, including any attached Exhibits,
280 constitutes the entire agreement and understanding between the Parties and supersedes all prior
281 and contemporaneous agreements and undertakings of the Parties in connection herewith. No
282 statements, agreements or understandings, representations, warranties or conditions not
283 expressed in this Agreement shall be binding upon the Parties, or shall be effective to interpret,
284 change or restrict the provisions of this Agreement unless such is in writing signed by both
285 Parties hereto and by reference made a part of this Agreement.
286

287 The terms of this Agreement are contractual and not a mere recital. The rule of construction that
288 a document is more strictly construed against the drafter shall not apply in the interpretation of
289 this Agreement. The purpose of this Agreement is to ensure the full, complete, and final
290 resolution of any disputes and claims between the Seller and Purchaser regarding the subjects
291 discussed in this Agreement, including but not limited to the purchase of the Property, Parties'
292 obligations and liabilities regarding the Property.
293

294 15. GOVERNING LAW. This Agreement shall be construed and interpreted in
295 accordance with the laws of the State of Alaska. Venue for any action regarding the interpretation
296 and enforcement of this Agreement shall be in the Superior Court for the State of Alaska at Sitka,
297 Alaska.
298

299 16. ATTORNEYS' FEES. In the event of a dispute or controversy concerning the
300 agreements that are the subject of this Agreement that results in litigation, the prevailing party in
301 such litigation shall be entitled to reasonable attorneys' fees and costs as determined by the
302 Court.
303

304 17. COUNTERPARTS; FACSIMILE SIGNATURES. This Agreement may be
305 executed in counterparts, each of which shall be deemed an original. Each Party agrees that its
306 signature page may be attached to an identical counterpart of this Agreement so that there are
307 signature pages of each such Party to such counterpart of this Agreement.
308

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

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

313

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

319

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

322

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

324

325 22. ASSEMBLY APPROVAL. This Agreement is subject to approval by the
326 Assembly for the City and Borough of Sitka regarding its being consistent with the terms and
327 conditions outlined and approved by the Assembly on January 27th, 2015. This Agreement,
328 together with any modifications, changes, or amendments to this Agreement, cannot be enforced
329 against the Seller unless the Assembly for the City and Borough of Sitka has approved this
330 Agreement and any modification, changes, or amendments to this Agreement.

331

332

333

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

336
337 CITY AND BOROUGH OF SITKA, SELLER

338
339 _____
340 Mark Gorman, Administrator

341
342 STATE OF ALASKA)
343) ss:
344 FIRST JUDICIAL DISTRICT)

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

351
352 _____
353 Notary Public for Alaska
354 My Commission Expires: _____

355
356
357 SILVER BAY SEAFOODS, LLC, Purchaser

358
359 _____
360 Richard Riggs, CEO

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

365
366 On this ____ day of _____, 2015, personally appeared before me
367 RICHARD RIGGS, whose identity is personally known to me or proved to me on the basis of
368 satisfactory evidence, and who states under oath by signing this document that he has the
369 authority as Chief Executive Officer of Silver Bay Seafoods, LLC to sign on its behalf, and does
370 so freely and voluntarily.

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