

City and Borough of Sitka, Alaska

PURCHASE AND SALE AGREEMENT

FOR

**4600 Sawmill Creek Road, legally described as
Lot 23, Block 4, Sawmill Cove Park Resubdivision No. 1, according to the plat
thereof filed November 20, 2008, as Plat No. 2008-27, Sitka Recording District,
First Judicial District, State of Alaska**

THIS AGREEMENT dated _____, 2018, by and between the CITY AND BOROUGH OF SITKA, ALASKA, an Alaska home rule municipality, whose mailing address is 100 Lincoln Street, Sitka, Alaska 99835 (Seller); and, _____, whose mailing address is _____ (Purchaser);

WHEREAS, the Seller owns that certain real property known as 4600 Sawmill Creek Rd in Sitka, Alaska, more particularly described as follows:

Lot 23, Block 4, Sawmill Cove Park Resubdivision No. , according to the plat thereof, filed November 20, 2008, as Plat No. 2008-27 Sitka Recording District, First Judicial District, State of Alaska.

Together with all improvements thereon and appurtenances thereto (Property);

WHEREAS, Seller desires to sell the Property and Purchaser desires to purchase the Property upon the terms and conditions set forth herein;

ACCORDINGLY, FOR VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1. Purchase and Sale of Real Property; Purchase Price.

Seller shall sell the Property to Purchaser, and Purchaser shall purchase the Property from Seller, for a purchase price of _____ DOLLARS (\$ _____), payable as follows:

2. Due Diligence.

(a) Purchaser and its employees, consultants, contractors and agents shall have reasonable access to the Property for the purpose of conducting due diligence investigations, and actions necessary or appropriate to complete its due diligence review.

3. Environmental Acknowledgements; Indemnification.

(a) Purchaser acknowledges it has had an opportunity to review Seller's files related to the Property. Seller does not intend to test for hazardous or contaminate substances.

(b) "Environmental Event," "Hazardous Substances" and "Release" are defined for the purposes of this Agreement as follows:

(i) "Environmental Event" is defined as, without limitation, any assertion or claim made against Seller or Purchaser by any government agency or third party, alleging the Release of Hazardous Substances or environmental contamination of any kind on or in connection with the Property or other affected property in the vicinity ("Affected Property"), as well as the personal injury or property loss to persons caused by:

- (a) the presence of Hazardous Substances in, on or under the Property or Affected Property, or the migration thereof to adjacent properties; or
- (b) the exposure to lead-based paint on the Property; or
- (c) the removal, handling, use, disposition, or other activity causing contact of any kind with asbestos on the Property.

(ii) "Hazardous Substance" shall include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," "pollutants," "contaminants," or "toxic substances" which are or become regulated under any federal, state or local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination or cleanup, including the Comprehensive Environmental Response and Liability Act of 1980 (CERCLA), 42 U.S.C. Section 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 *et seq.*; the Toxic Substance Control Act, 15 U.S.C. Section 2601 *et seq.*; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 *et seq.*; substances controlled by the laws of the State of Alaska as hazardous substances, petroleum products, waste or materials, including those defined in AS 46.03.826(5) and AS 46.03.900(9); asbestos containing materials; any petroleum products or derivatives; and in the rules and regulations adopted and guidelines promulgated pursuant to such provisions.

(iii) "Release" shall mean releasing, spilling, leaking, pumping, pouring, flooding, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping, whether directly onto the Property or flowing onto the Property from offsite sources.

(c) Purchaser shall defend, protect, hold harmless, and indemnify Seller from and against any and all losses, claims, damages, penalties, fines, investigations, assertions, liens, demands, and causes of action of every kind and character arising from an Environmental Event. Purchaser's obligations to defend and indemnify shall include, without limitation, the obligation to undertake all remediation, and to undertake the defense of any and all costs of removal action, remedial action, other "response costs" as that term is defined under applicable federal state and local law, reasonable attorney's fees, penalties, fines, damages, interest, and administrative/court costs incurred by Seller in response to and defense of such, regardless of the basis of liability alleged by or against any party, including strict liability under AS 46.03.822 or federal law. In the event Seller is required to undertake any actions to remedy any Release of Hazardous Substances, lead-based paint or asbestos on the Property or Affected Property, then Purchaser shall promptly reimburse and indemnify Seller for all costs and expenses incurred in doing so, including without

limitation its legal fees, costs to consultants and contractors, civil penalties, and other costs, together with interest thereon, incurred as a result of the remediation of or response to any action, proceeding or other claim related to the Property or Affected Property.

4. No Warranties.

Purchaser agrees that, except as expressly contained in this Agreement, no representations or warranties by or on behalf of Seller, express or implied, are or have been made to Purchaser as to the condition of the Property or improvements situated thereon, any restrictions related to development or use thereof, the applicability of any government requirements pertaining thereto, including but not limited to environmental requirements, the presence or absence of Hazardous Substances, presence of ground water, the suitability or fitness thereof for any purpose, the Property's compliance with federal, state and municipal laws, or any matter or thing affecting or related to the Property (including improvements), and Purchaser accepts the same **AS IS WITH ALL FAULTS**. Seller has agreed to sell the property on the terms specified herein in reliance upon the foregoing limitations of Seller's liabilities and would not have entered this Agreement without such limitations. Purchaser has been advised to investigate and determine regulations, restrictions and potential defects which would affect the use of the Property. Costs to remedy defects, to obtain site plan approvals, permits and variances and to replat shall be borne by Purchaser. **The Property is sold AS IS, WHERE IS.**

5. Closing.

Closing of this purchase and sale transaction (Closing) shall be at _____ Title Company in Sitka, Alaska no later than _____ 2018. Closing shall be upon terms and conditions set forth in escrow instructions acceptable to the parties and providing, *inter alia*, as follows:

(a) Purchaser shall:

- (i) Pay the purchase price to Seller; and
- (ii) Pay all closing costs, including for appraisal of the Property (if desired by Purchaser). Purchaser shall be responsible for any sales commissions, consulting fees or additional services.

(b) Seller shall:

- (i) Deliver a quit claim deed for the Property to Purchaser, SUBJECT TO all assessments, easements, covenants, conditions and restrictions of record.

6. Closing Costs.

Purchaser shall assume any pending or future taxes and assessments. All closing costs, including costs of title insurance (if desired by Purchaser), escrow fees, deed preparation, and recording fees shall be paid by Purchaser. Each party shall pay its own legal fees outside of escrow.

7. Possession.

Seller shall deliver possession of the Property to Purchaser as of the date of Closing.

8. Risk of Loss.

Risk of loss due to fire, earthquake, acts of God, or other calamity shall rest on Seller until Closing. In any such event, either Seller or Purchaser may, at their option, rescind this Agreement by notice to the other party.

9. Termination. In either event, this Agreement shall terminate and, except as provided above, all its terms and conditions become void and unenforceable, and each party waives all claims against the other for any damages or other relief, including specific performance, arising out of or related to this Agreement. Each party shall bear its own costs and attorney's fees.

10. Notices. All notices required under the terms of the Agreement or by law shall be in writing and sent by certified mail, return receipt requested, or facsimile to the appropriate party or parties at the following address or addresses and facsimile numbers, unless changed by the party to be notified in writing:

Seller:

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

Purchaser:

With a copy to:

Facsimile No.: _____

Title Company:

_____ main
_____ fax

Notice is complete, if mailed, upon deposit, postage prepaid, in the United States mail.

11. Costs and Attorney's Fees.

If Purchaser or Seller brings any action for any relief against the other, declaratory or otherwise, arising out of this Agreement, the losing party(ies) shall be responsible for the costs of the prevailing party(ies) and reasonable attorney's fees in such action, as determined by the court.

12. No Assignment.

This Agreement may not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

13. Time of the Essence.

TIME IS OF THE ESSENCE for performance by the parties under this Agreement.

14. Governing Law and Venue.

This Agreement shall be governed under the laws of the State of Alaska. Exclusive jurisdiction and venue for any action pertaining to this Agreement shall be in the State of Alaska Superior Court in the First Judicial District at Sitka, Alaska.

15. Entire Agreement; Modification.

This Agreement, together with any attachments and other documents referenced herein, sets forth the entire agreement and understanding of the parties with respect of the transactions contemplated under this Agreement, and supersedes all prior agreements, arrangements, understandings and negotiations. No modification of this Agreement shall be effective unless in writing and signed by authorized representatives of Seller and Purchaser.

16. Counterparts and Facsimile Signatures.

This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall be deemed a single document. Signatures on this Agreement forwarded by facsimile or electronic mail are intended to be the equivalent of original signatures, with the original executed Agreement thereafter to be provided promptly to the other party.

17. Successors.

All of the covenants, agreements, terms and conditions contained in this Agreement shall apply to and are binding upon Purchaser and Seller, and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first mentioned above.

CITY AND BOROUGH OF SITKA, ALASKA

Date

By: P. Keith Brady
Its: Municipal Administrator

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by P. Keith Brady, Municipal Administrator of the CITY AND BOROUGH OF SITKA, ALASKA, an Alaska home rule municipality, on behalf of the municipality.

Notary Public in and for the State of Alaska
My commission expires: _____

PURCHASER

Date

By:
Its:

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____.

Notary Public in and for the State of Alaska
My commission expires: _____