

## PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is made by and between STONEY HOLDINGS, LLC, as seller, whose address is PO Box 1041, Talkeetna, AK 99676, ("Seller") and the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, as buyer, whose address is 144 North Binkley Street, Soldotna, Alaska 99669 ("KPB") (together, "the Parties").

WHEREAS, Seller is the owner of that real property located in the Kenai Recording District, Third Judicial District, State of Alaska, and more particularly described as follows:

THE N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ ; THE S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , AND THE N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ , ALL  
SITUATED IN SECTION 24, TOWNSHIP 1 NORTH, RANGE 1 WEST,  
SEWARD MERIDIAN, RECORDS OF THE SEWARD REORDING  
DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA.  
(PARCEL NO. 12535007) ("the Property"); and

WHEREAS, KPB has offered to buy, and Seller is willing to sell the Property as evidenced by this Agreement;

NOW THEREFORE, in consideration of the conditional promises herein contained, Seller hereby agrees to sell to KPB, and KPB hereby agrees to buy from Seller, the Property on the terms and conditions as set forth below:

1. PURCHASE PRICE

The purchase price of the Property is ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00). The purchase price must be paid by KPB at time of closing. The purchase of the Property and appropriation of funding for the purchase are subject to approval by the KPB Assembly.

2. EXPIRATION OF OFFER

Sellers must sign and return this Agreement to the Borough on or before **August 9, 2024, at 4:30pm**; otherwise, this offer shall terminate.

3. TITLE

Title must be delivered at time of closing by statutory warranty deed, which must be issued to KPB. Seller warrants and covenants that at the time of closing there will be no liens or judgments recorded against Seller in the same recording district in which the Property subject to this Agreement is situated. Title must be clear of liens and encumbrances except title is subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record as agreed to by KPB.

4. ESCROW AND CLOSING COSTS

KPB agrees to pay for all buyer-related closing costs not otherwise addressed in this Agreement to include buyer closing, and recording fees. Seller agrees to pay for seller-related closing costs, not otherwise addressed in this Agreement to include the ALTA Standard Owners Title Insurance policy, and seller closing and recording fees. Property taxes for the current year, if any, will be prorated to the date of closing. Seller is responsible for realtor's commission, if any; all unpaid taxes for prior years, if any; and all unpaid outstanding assessments, if any. All costs will be paid in full at the time of closing.

5. CLOSING

Unless otherwise agreed to in writing, closing will occur on or before **December 13<sup>th</sup>, 2024**, or as specifically agreed to by both Parties. At closing, KPB will pay the balance of the purchase price. Both Parties will execute all documents required to complete the Agreement and, if applicable, establish an escrow account.

6. POSSESSION

Possession will be delivered to KPB at time of recording unless otherwise agreed to in writing by the Parties.

7. KENAI PENINSULA BOROUGH ASSEMBLY APPROVAL

Purchase of the Property by KPB is subject to authorization by the KPB Assembly and appropriation of funds. If the KPB Assembly fails to authorize the purchase of the Property and appropriate funds, this Agreement will terminate without penalty.

8. EXCHANGE

If Seller intends for this transaction to be part of a Section 1031 like-kind exchange, KPB agrees to cooperate in the completion of the like-kind exchange provided KPB does not incur any additional liability or cost in doing so. If Seller intends for this transaction to be part of a Section 1031 like-kind exchange, Seller may assign its rights under this Agreement to a qualified intermediary or any entity expressly created for the purposes of completing a Section 1031 like-kind exchange.

9. DISCLOSURES

Seller hereby agrees to provide written property disclosures including any and all information regarding known defects, deficiencies, legal matters, environmental issues or hazards that may be personally known by the Seller. If said written disclosures present a matter unsatisfactory to KPB, KPB may terminate this Agreement without penalty.

9. CONTINGENT ON INSPECTION / REVIEW

Closing of the contemplated purchase is contingent upon the satisfactory completion of a feasibility study for road construction necessary to meet KPB road standards, and/or other inspections as deemed necessary by KPB to determine feasibility and future utility of the Property. The feasibility study provided for in this section must be completed prior to closing.

Copies of the work products resulting from this review will be made available to Seller at no cost, upon specific request. All inspections and reviews required by KPB under this Section will be conducted solely at KPB's expense.

#### 10. HAZARDOUS MATERIAL

Seller covenants to the best of Seller's knowledge that, as of the date of this Agreement, except as specifically identified herein, the Property is free of all contamination from petroleum products or any hazardous substance or hazardous waste, as defined by applicable state or federal law, and there are no underground storage tanks or associated piping on the Property. Seller agrees that no hazardous substances or wastes will be located on, nor stored on the Property or any adjacent property owned or leased by the Seller, owner or contractors, nor will any such substance be owned, stored, used, or disposed of on the Property or any adjacent property by Seller, its agents, employees, contractors, or invitees, prior to KPB's ownership, possession or control of the Property.

#### 11. ENVIRONMENTAL CONTINGENCY

If, during the course of KPB's due diligence inspection of the Property pursuant to Section 9, KPB discovers the presence of environmental hazards on or released from the Property in any quantity or concentration exceeding the limits allowed by applicable law, or that is deemed undesirable by KPB, KPB will have the right to give notice to Seller accompanied by a copy or copies of the third-party report(s) disclosing and confirming the presence of such hazardous materials. The notice and accompanying third-party report must be given no later than 60 days from receipt of said report. The notice under this Section must state:

- (i) that KPB is terminating this Agreement due to the presence of such hazardous materials on or adversely affecting the Property; OR
- (ii) provide Seller 30 days from notice to provide a mitigation plan outlining steps taken by Seller to remedy said hazards to KPB's satisfaction at Seller's expense.

Following the notice and report described in this Section, the Parties may negotiate other resolutions as may be agreeable to the Parties in writing to be included as a part of this Agreement. In the event the Parties cannot agree in writing on a resolution to remedy any environmental concerns within 90 days of the notice, this Agreement will automatically terminate.

It is expressly understood that by execution of this Agreement, Seller hereby indemnifies KPB for any and all CERCLA-related claims, liabilities or matters, unless otherwise provided for in this Agreement. Said indemnification will survive closing and termination of this Agreement. Upon successful close of escrow said indemnification will continue for a period of not less than 12 months, from the date of closing unless otherwise provided for in this Agreement.

If this Agreement is terminated pursuant to any report detailing environmental conditions that may or may not exist on the Property, such report(s) will remain confidential and proprietary.

The report(s) will be marked as confidential and will not be released to a private individual, entity, or non-profit without express agreement of the Parties. Notwithstanding, the report will be released pursuant to a valid court order and may be released to the State of Alaska upon request.

#### 12. ENTIRE AGREEMENT

This Agreement and the documents referred to herein contain the entire agreement of the Parties with respect to the subject matter hereof. Any changes, additions or deletions hereto must be made in writing and signed by both KPB and Seller or their respective successors in interest. Provisions of this Agreement, unless inapplicable on their face, will be covenants constituting terms and conditions of the sale, and will continue in full force and effect until the purchase price is paid in full or this Agreement is earlier terminated.

#### 13. BREACH REMEDY

Prior to closing of the sale, in the event that KPB or Seller fail to make any payment required, or fail to submit or execute any and all documents and papers necessary for closing and transfer of title within the time period specified in this Agreement, the Seller or KPB may terminate this Agreement.

#### 14. MISCELLANEOUS

- A. Time. Time is of the essence in performance of this Agreement.
- B. Cancellation. This Agreement, while in good standing, may be canceled in whole or in part, at any time, upon mutual written agreement by Seller and the KPB Mayor. This Agreement is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts. KPB may cancel this Agreement without penalty in the event additional contracts required of this project are not secured.
- C. Notice. Any notice or demand which, under the terms of this Agreement or under any statute must be given or made by the Parties, must be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand may thereafter be so given, made or mailed. A notice given hereunder will be deemed received when deposited in a U.S. general or branch post office by the addressor.
- D. Interpretation. This Agreement will be deemed to have been jointly drafted by the Parties. It will be construed according to the fair intent of the language as a whole, not for or against either Party. The interpretation and enforcement of this Agreement will be governed by the laws of the State of Alaska. Any lawsuit brought arising from this Agreement must be filed in the superior court of the Third Judicial District, State of Alaska, located in the City of Kenai, Alaska. The titles of sections in this Agreement are not to be construed as limitations of definitions but are for identification purposes only.
- E. Condition of Property.

Seller will deliver the Property in its as-is condition.

- F. Confidentiality. This Agreement will be considered proprietary to the Parties until closing occurs. Following closing, this Agreement may be considered a public record.
- G. Counterparts. This Agreement may be executed in counterpart, and may be executed by way of copy, facsimile or verified electronic signature in compliance with AS 09.80, and if so, each of which will be deemed an original but all of which together will constitute one and the same instrument

KENAI PENINSULA BOROUGH:

SELLERS: Stoney Holdings, LLC

Peter A. Micciche, Mayor (Date)

Mark S. Wildermuth 8/8/2024

Mark S. Wildermuth, Member (Date)

Laura L. Caillet 8/8/2024

Laura L. Caillet, Member (Date)

ATTEST:

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Michele Turner, CMC  
Borough Clerk

A. Walker Steinhage  
Deputy Borough Attorney

