

AGREEMENT TO SURVEY & PURCHASE PROPERTY

This Agreement is made on this _____ day of _____, 2020, by and between KENAI PENINSULA BOROUGH, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter referred to as "KPB") and JERRY D. & CHERYLE E. JAMES, husband and wife, whose address is P.O. Box 527, Cooper Landing, AK 99572, (hereinafter referred to as "BUYER").

WHEREAS, KPB owns that real property located in the Seward Recording District, Third Judicial District, State of Alaska, and more particularly described as follows:

Tract E, Alaska State Land Survey 2003-5, Plat No. 2006-21, Seward Recording District (hereinafter referred to as "Property")

WHEREAS, BUYER owns adjacent real property located in the Seward Recording District, Third Judicial District, State of Alaska, and more particularly described as follows:

T 5N R 3W SEC 28 SEWARD MERIDIAN SW 0002525 SNUG HARBOR GROUP U S SURVEY 2525 LOT 9 THE EAST 50 FT THEREOF (APN: 11909010)

T 5N R 3W SEC 28 SEWARD MERIDIAN SW 0002525 SNUG HARBOR GROUP U S SURVEY 2525 LOT 8 THE WEST 100 FT THEREOF (APN: 11909008)

T 5N R 3W SEC 28 SEWARD MERIDIAN SW 0002525 US SURVEY 2525 SNUG HARBOR GROUP LOT 8 EXCLUDING THE WEST 100 FT (APN: 11909009)

NOW THEREFORE, subject to the fulfillment of survey and platting requirements and in consideration of the promises herein contained, KPB hereby agrees to sell to BUYER, and BUYER hereby agrees to buy from KPB, the property on the terms and conditions as set forth below:

1. PLATTING AND SURVEY

BUYER will complete a subdivision plat which combines Tract E, Alaska State Land Survey 2003-5, Plat No. 2006-21, Seward Recording District, with their adjoining lots described above.

A. BUYER and KPB agree to allow access to their property for field surveying.

- B. The plat shall include a new 20-foot wide roadside public trail easement to be granted along that portion of the existing Tract E fronting the Snug Harbor Road right-of-way. Said easement may be used by the Alaska Department of Transportation for pedestrian improvements adjoining and parallel to Snug Harbor Road.
- C. Both BUYER and KPB must sign the final plat within 180 days of enactment of the ordinance authorizing the negotiated sale unless otherwise mutually agreed.

2. PURCHASE PRICE

The purchase price of the property, subject to survey and replatting, is Thirty-Two Thousand Four Hundred Dollars and No cents (\$32,400) to be paid as follows:

A. Down Payment

The following is herewith submitted to KPB and shall be held in escrow by KPB until closing or until this Agreement is otherwise terminated. This payment shall be credited towards the purchase price and costs unless this Agreement is otherwise terminated, in which case it shall be disbursed in accordance with the applicable provisions of this Agreement.

Three Thousand Two Hundred Forty Dollars and No cents (\$3,240.00) representing ten percent (10%) of the purchase price.

B. Balance

Twenty-Nine Thousand One Hundred Sixty Dollars and No Cents (\$29,160.00) representing the balance of the purchase price shall be paid pursuant to a Deed of Trust Note executed by BUYER in favor of KPB and secured by a Deed of Trust on the Property, with interest at the rate of (prime plus 2% on the date of ordinance) per annum, payable in one hundred twenty (120) equal monthly installments.

3. TITLE

Title to the parcel shall be delivered at time of closing by **quitclaim deed**, which shall be issued to BUYER. KPB sells only its interest in the property, if any, without warranty of any kind or nature whatsoever. Title shall also be subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record.

BUYER warrants and covenants that at the time of closing there shall be no liens or judgments recorded against BUYER.

4. SURVEY, ESCROW AND CLOSING COSTS

In addition to the purchase price, BUYER agrees to pay for all closing costs in connection with this Agreement, which may include, but are not limited to; escrow fees (set up and annual fee), document preparation fees, bank fees, recording fees, mortgagee's title insurance policy if sale is financed by KPB, an owner's policy of title insurance, if desired, or other fees associated with the process and financial option selected. All costs must be paid in full at the time of closing.

5. CLOSING

Closing is stipulated on the BUYER completing a subdivision plat which combines the property to be purchased with adjoining property currently owned by the BUYER. Closing will occur within 60 days after the new plat has been recorded.

At closing, BUYER will pay the balance of the purchase price with a certified check, money order, or personal check. Both parties will execute all documents required to complete this Agreement.

6. POSSESSION

Possession shall be delivered to BUYER at time of recording the prescribed deed.

7. BREACH BY BUYER; REMEDIES OF KPB

Prior to closing of the sale, in the event that BUYER fails to make any payment required, or fails to participate in closing and transfer of title within time periods specified in this Agreement, up to \$1,000.00 of BUYER's deposit shall be retained by KPB as liquidated damages. Additionally, other funds may be retained for out-of-pocket expenses incurred, and this Agreement shall be terminated.

If necessary to cure such breach, KPB may prepare and file a plat that reverts the land area of **Tract E, Alaska State Land Survey 2003-5, Plat No. 2006-21, Seward Recording District**, to its original configuration, of which BUYER will not withhold any necessary signature.

In addition to the foregoing, in the event of a default in the performance or observance of any of the agreement terms, conditions, covenants and stipulations thereto, either prior to or after the closing of the sale, and such default continues thirty days after written notice of the default, KPB may cancel the agreement or take any legal action for damages or recovery of the property. No improvements may be constructed, installed, or removed during the time which the contract is in default without written notice to KPB and the KPB's written approval.

8. NOTICE OF DEFAULT

Notice of default will be in writing as provided herein below. A copy of the notice will be forwarded to all lienholders or others who have properly recorded their interest in the purchase agreement with KPB.

9. REMOVAL OR REVERSION OF IMPROVEMENTS UPON CANCELLATION OF PURCHASE AGREEMENT

- A. BUYER covenants that improvements owned by the BUYER on KPB lands shall, within thirty calendar days after termination of the agreement, be removed by BUYER; provided, such removal will not cause injury or damage to the land; and further provided, that the mayor or planning director when applicable may extend time for removing such improvements in cases where hardship is proven. The retiring BUYER may, with consent of the mayor or planning director when applicable, dispose of BUYER'S improvements to the succeeding BUYER.
- B. If any improvements and/or chattels having an appraised value in excess of ten thousand dollars, as determined by a qualified appraiser, are not removed within the time allowed, such improvements and/or chattels shall, upon due notice to the BUYER, under the terminated or canceled contract, be sold at public sale under the direction of the mayor and in accordance with provisions of KPB Chapter 5. Proceeds of the sale shall inure to the former BUYER, lessee, or permittee who placed such improvements and/or chattels on the lands, or his successors in interest, after paying to KPB all monies due and owing and expenses incurred in making such a sale. In case there are no other bidders at any such sale, the mayor is authorized to bid, in the name of KPB, on such improvements and/or chattels. Bid money shall be taken from the fund to which said lands belong, and the fund shall receive all moneys or other value subsequently derived from the sale or leasing of such improvements and/or chattels. KPB shall acquire all rights, both legal and equitable, that any other BUYER could acquire by reason of the purchase.
- C. If any improvements and/or chattels having an appraised value of ten thousand dollars or less, as determined by the mayor, are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in KPB. Upon request, BUYER, lessee, or permittee shall convey said improvements and/or chattels by appropriate instrument to KPB.
- D. Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to the BUYER and placed on the land during BUYER'S tenure with or without BUYER'S permission and remaining upon

the premises after termination of the contract shall entitle KPB to charge a reasonable rent therefor.

10. RESALE.

In the event that a purchase agreement should be terminated, canceled, forfeited or abandoned, and if said land is not immediately disposed of, then said land shall return to the Land Bank.

11. DEFENSE AND INDEMNIFICATION

The BUYER shall indemnify, defend, save and hold KPB, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys' fees resulting from BUYER'S negligent performance or failure to perform in accord with the terms of this Agreement in any way whatsoever. The BUYER shall be responsible under this clause for any and all claims of any character resulting from BUYER or BUYER'S officers, agents, employees, partners, attorneys, suppliers, and subcontractor's negligent performance or failure to perform this Agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by KPB or its agents, which are said to have contributed to the losses, failure, violations, or damage. However, BUYER shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of the KPB, its agents, or employees.

12. ASSIGNMENTS

BUYER may assign the lands upon which BUYER has an agreement only in part to adjoining property owners through participation in a subdivision plat to achieve platting design standards, and will be deemed effective upon all parties signing the plat. Any parts so divided and assigned will be considered a cash sale under this agreement and any financed sale liens will apply wholly to the division of land held by the primary parties to this agreement. The assignment shall be subject to and governed by the applicable provisions of KPB Chapter 17.10 and the ordinance authorizing this purchase.

13. 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 must be made in writing and signed by both KPB and BUYER or their respective successors in interest. Provisions of this agreement, unless inapplicable on their face, shall be covenants constituting terms and conditions of the sale and of the agreement to finance the sale, and shall continue in full force and effect until the purchase price is paid in full, or this agreement is earlier terminated.

14. MISCELLANEOUS

- A. Covenants. BUYER agrees to comply with any Declaration of Covenants, Conditions and Restrictions of record, affecting the Property.
- B. No Warranty. BUYER acknowledges its responsibility to inspect the property. BUYER further agrees that KPB makes no warranties, either expressed or implied, nor assumes any liability whatsoever, regarding the social, economic or environmental aspects of the property, to include without limitation, soil conditions, water drainage, physical access, availability of personal use wood supplies now or in the future, or natural or artificial hazards which may or may not exist or merchantability, suitability, or profitability of the property for any use or purpose. The parties mutually agree that this transfer will not be covered by the Residential Real Property Transfers Act, AS 34.70.010 et. seq.
- C. No Warranty. BUYER acknowledges its responsibility to inspect the property. BUYER further agrees that KPB makes no warranties, either expressed or implied, nor assumes any liability whatsoever, regarding the social, economic or environmental aspects of the property, to include without limitation, soil conditions, water drainage, physical access, availability of personal use wood supplies now or in the future, or natural or artificial hazards which may or may not exist or merchantability, suitability, or profitability of the property for any use or purpose. The parties mutually agree that this transfer will not be covered by the Residential Real Property Transfers Act, AS 34.70.010 et. seq.
- D. Development. BUYER agrees that BUYER has no right to conduct activities on the property until title is transferred to BUYER. BUYER agrees the construction and maintenance of any improvements, roads, drainage systems and common areas shall be the responsibility of the BUYER, except as otherwise set forth in this purchase agreement including, but not limited to, due diligence activities and the surveying of the property. BUYER further agrees to comply with all federal, state, and KPB regulations regarding use and development of the property, which includes but is not limited to; State of Alaska, Department of Environmental Conservation regulations regarding water and sewer installation; Kenai Peninsula Borough Floodplain Development regulations; Alaska Department of Transportation Driveway Development authorizations; and if applicable, regulations of the U.S. Army Corps of Engineers regarding filling or draining any area within the property designated as wetlands by the appropriate authority.
- E. Time. Time is of the essence in performance of this Agreement.

- F. Cancellation. This agreement, while in good standing may be canceled in whole or in part, at any time, upon mutual written agreement by BUYER and the mayor or planning director when applicable. This purchase agreement is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.
- G. Fire Protection. The BUYER shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the land under agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the demised premises are located.
- H. Notice. Any notice or demand which under the terms of this agreement or under any statute must be given or made by the parties thereto, shall be in writing and be given or made by registered or certified mail, addressed to the other party at the address shown below:

BUYERS:
Jerry D. & Cheryle E. James
PO Box 527
Cooper Landing, AK 99572

KPB:
Kenai Peninsula Borough
Land Management Division
144 N. Binkley Street
Soldotna, AK 99669-7520

However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

- I. Responsibility of Location. It shall be the responsibility of the BUYER to properly locate himself and his improvements on the purchased, leased, or permitted lands.
- J. Rights-of-way. All trails or roads in existence at the time the land is sold may be considered to be an easement for public use. Nothing herein shall prevent the mayor or planning director when applicable from specifically reserving such additional easements and rights-of-way across KPB lands as deemed reasonable and necessary prior to the sale thereof.
- K. Sanitation. The BUYER, lessee, or permittee shall comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for promotion of sanitation. Premises under purchase or lease agreement, or permit shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution of waters and lands.

- L. Shore Land Public Access Easement. As established by AS 38.05, KPB lands sold or leased may be subject to a minimum 50-foot public access easement landward from the ordinary high water mark or mean high water mark.
- M. Violation. Violation of any provision of KPB Chapter 17.10 or of the terms of this purchase agreement may expose BUYER to appropriate legal action including forfeiture of purchase interest, termination, or cancellation of BUYER'S interest in accordance with state law.
- N. Written Waiver. Receipt of payment by KPB, regardless of knowledge of any breach of the purchase agreement by BUYER, or of any default on the part of BUYER, in observance or performance of any of the conditions or covenants of the agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of KPB to enforce any covenant or provision therein contained shall not discharge or invalidate such covenants or provision or affect the right of KPB to enforce the same in the event of any subsequent breach or default. Receipt by KPB of any payment of any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and payment fully satisfies the breach.
- O. Construction. This Agreement shall be deemed to have been jointly drafted by both parties. It shall be constructed according to the fair intent of the language as a whole, not for or against any party. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Alaska. The titles of sections in this Agreement are not to be construed as limitations of definitions but are for identification purposes only.
- P. Effective Date. This Agreement has been executed by the parties on the day and year first above written.

KENAI PENINSULA BOROUGH

BUYER(S)

Charlie Pierce, Mayor

Jerry D. James

Cheryle E. James

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Johni Blankenship,
Borough Clerk

Sean Kelley,
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Jerry D. James.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Cheryle E. James.

Notary Public in and for Alaska
My commission expires: _____