

PURCHASE AGREEMENT

This Agreement is made 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 Daniel A. Sterchi and Teresa M. Sterchi, husband and wife, whose address is 36525 Kalifornsky Beach Road, Kenai Alaska 99611, (hereinafter referred to as "BUYER").

WHEREAS, KPB has an ownership interest in that real Property located in the Kenai Recording District, Third Judicial District, State of Alaska, and more particularly described as follows:

North One-half Government Lot 13 Section 30 Township 5 North, Range 11 West, Seward Meridian, in the Kenai Recording District, Third Judicial District, State of Alaska

(hereinafter referred to as the Property)

WHEREAS, Buyer has offered to buy, and KPB is willing to sell the above-described Property as evidenced by KPB Ordinance 2014-32 (Substitute) enacted _____, by the Assembly of the Kenai Peninsula Borough.

NOW THEREFORE, 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. PURCHASE PRICE

The purchase price of the Property is X dollars and No cents (\$X.00) to be paid as follows:

A. Down Payment

Below 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.

Y dollars and No cents (\$.1X.00) representing ten percent (10%) of the purchase price.

B. Balance

Z dollars and No cents (\$.9X.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 Five and One Quarter percent (5.25%) per annum, payable in one hundred twenty (120) equal monthly installments.

2. 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.

Title shall be FURTHER SUBJECT TO a drainage easement reserved by KPB for use by the Kenai Peninsula Borough, the State of Alaska, or other governmental entity having jurisdiction to manage drainage of area waters. The easement area is depicted on "Attachment A". Said easement is for the construction, maintenance, and operation of drainage improvements on, over, under, through and across the easement area including but not limited to the right to clear, excavate, fill, ditch, embank, reinforce, armor; install structures, pipes, valves, outlets, outfalls, gauges and other improvements; receive, manage, and discharge waters; and to make such uses that may be necessary and convenient for drainage purposes with quiet enjoyment thereof. Said drainage easement shall be accompanied by a construction easement herein reserved more particularly described by "Attachment A". Said construction easement is for construction access, operation and staging of equipment and supplies as may be necessary and convenient for the improvement and major maintenance of drainage facilities and functions associated with the drainage easement. Said drainage easement shall also be accompanied by a vegetation protection easement herein reserved depicted on "Attachment A". Said vegetation protection easement is for maintenance of natural vegetation to provide protection against erosion. Grantee may make ancillary uses of the easement areas which do not conflict with Grantor's reserved rights and particularly provided that Grantee's uses do not impede drainage functions, operations, construction or maintenance and are removable from the easement areas by Grantee within a two week notice period for which Grantor shall have no duty to compensate for the loss, damage, or inconvenience thereof resulting from Grantor's exercise of its reserved rights.

NOTE: Legal descriptions of the Construction Easement, Drainage Easement, and Vegetative Preservation Easement will be inserted in the deed once grantee and grantor have met on the property to establish the boundaries of those easements.

Title shall be FURTHER SUBJECT TO a public access easement in accordance with AS 38.05.127 along the mean high water line (MHWL) of the Cook Inlet extending 50 feet upland of the MHWL which may also be accessed by the public along the south 50 feet of the reserved drainage easement.

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

3. 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.

4. CLOSING

Unless otherwise agreed in writing, closing will occur within 90 days of execution of the Purchase Agreement. At closing, BUYER will pay the balance of the purchase price for all cash sales, or the balance of the down payment for financed sales. Both parties will execute all documents required to complete the Purchase Agreement and, if applicable, establish an escrow account.

5. POSSESSION

Possession shall be delivered to BUYER at time of recording.

6. 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 submit or execute any and all documents and papers necessary in examination of BUYER's financial background, 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. 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.

7. 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.

8. REMOVAL OR REVERSION OF IMPROVEMENTS UPON CANCELLATION OF PURCHASE AGREEMENT OR LEASE.

- A. BUYER covenants that improvements owned by the BUYER on KPB Property 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 Property; 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 Property, 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 Property 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 Property 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.

9. RESALE.

In the event that a purchase agreement should be terminated, canceled, forfeited or abandoned, KPB may offer said Property for sale, lease or other appropriate disposal pursuant to provisions of KPB Chapter 17.10 or other applicable regulations.

10. 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 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 subcontractors 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.

11. HAZARDOUS MATERIAL

A. BUYER covenants and agrees that no hazardous substances or wastes shall be located on or stored on the Property or any adjacent property by Buyer, nor shall any such substance be owned, stored, used, or disposed of on the Property or any adjacent property by BUYER, its agents, employees, contractors, or invitee's, prior to BUYER's ownership, possession, or control of the Property.

B. BUYER covenants and agrees that if the presence of hazardous material on the Property is caused or permitted by BUYER, its agents, employees, contractors, or invitee's, or if contamination of the Property by hazardous material otherwise occurs on the Property, BUYER shall defend, indemnify, and hold harmless KPB from any and all claims, judgements, damages, penalties, fines, costs, liabilities, or losses (including, but not

limited to, sums paid in the settlement of claims, attorney's fees, consultant fees and expert fees) which may arise as a result of such contamination. This defense and indemnification includes, without limitations, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal, or restoration work required by any federal, state or local government on or under the Property. As used herein, the term "hazardous material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local government authority, the State of Alaska, or the United States Government.

12. ASSIGNMENTS

BUYER may assign the purchase agreement only if approved by the mayor or planning director when applicable. Applications for assignment shall be made in writing on a form provided by the Land Management Division. Assignment shall be approved if it is found that all interests of KPB are fully protected. 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. 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. 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; 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.
- D. Time. Time is of the essence in performance of this Agreement.
- E. 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.
- F. 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 Property 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.
- G. 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 on the contract. 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 an U.S. general or branch post office by the addressor.
- H. Responsibility of Location. It shall be the responsibility of the BUYER to properly locate himself and his improvements on the purchased, leased, or permitted Property.
- I. Rights-of-way. All trails or roads in existence at the time the Property 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 Property as deemed reasonable and necessary prior to the sale thereof.

- J. Sanitation. The BUYER shall comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for promotion of sanitation. Premises under purchase agreement shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution of waters and lands.
- K. Shore Land Public Access Easement. As established by AS 38.05, KPB Property 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.
- L. 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.
- M. 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.
- N. 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.

KENAI PENINSULA BOROUGH

BUYER(S)

Mike Navarre, Mayor

Daniel A. Sterchi

Teresa M. Sterchi

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Johni Blankenship,
Borough Clerk

Holly B. Montague,
Deputy Borough Attorney

(Borough Seal)

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____ 2015, by **Mike Navarre, 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 _____ 2015, by **Daniel A. Sterchi**.

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 _____ 2015, by **Teresa M. Sterchi**.

Notary Public in and for Alaska
My commission expires: _____

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