

Introduced by: Mayor
Date: 05/07/24
Hearing: 05/21/24
Action: Enacted
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2023-19-48**

AN ORDINANCE AUTHORIZING A LEASE AGREEMENT FOR MEDICAL OFFICE SPACE LOCATED AT 4251 HOHE STREET, APPROPRIATING FUNDS FOR ACQUISITION DUE DILIGENCE AND EARNEST MONEY, AND AUTHORIZING CONDITIONAL ACQUISITION FOR THREE COMMERCIAL PROPERTIES IN HOMER, ALASKA, ON BEHALF OF THE SOUTH KENAI PENINSULA HOSPITAL SERVICE AREA

WHEREAS, the Kenai Peninsula Borough ("KPB") owns and provides for the operation of South Peninsula Hospital and other medical facilities ("SPH") through the South Kenai Peninsula Hospital Service Area, ("Service Area"); and

WHEREAS, the Borough has entered into an operating agreement with South Peninsula Hospital, Inc. ("SPHI") for the lease and operation of the Hospital and other medical facilities, to operate these medical facilities on a nonprofit basis in order to ensure the continued availability of the medical services to the service area residents and visitors; and

WHEREAS, SPHI requires medical office space located at 4251 Hohe Street in Homer, Alaska for a new medical provider; and

WHEREAS, it is in the long term interests of the Service Area to acquire three commercial properties located at 4251 Hohe Street, 4251 Bartlett Street, 4201 Bartlett Street for hospital and medical service needs; and

WHEREAS, the cost to the Service Area to lease the properties will result in a higher cost over the long term as well as lost opportunity cost that will occur by not owning the properties in fee simple as public assets for SPH campus expansion and revitalization purposes; and

WHEREAS, the current principal owner of the properties has invested in the Homer area and has been working in good faith with KPB and SPHI administrations to reach mutually agreeable terms for a sale; and

WHEREAS, KPB must now perform site and title due diligence; and

WHEREAS, the subject property at 4251 Hohe Street, Homer, Alaska consists of a 0.22 acre lot and 3,238 sq. ft. medical office building; and

WHEREAS, the subject property at 4251 Bartlett Street, Homer, Alaska consists of a 0.39 acre lot and 960 sq. ft. medical office building; and

WHEREAS, the subject property at 4201 Bartlett Street, Homer, Alaska consists of a 1.20 acre lot and 11,000 sq ft medical office building; and

WHEREAS, subject to Assembly approval, and, if approved by Assembly, then Service Area voter approval, the intent will be to purchase these three properties using bond funds and to include a contingent option in the event voters do not approve the anticipated bond proposition; and

WHEREAS, upon purchase it will be appropriate to amend the Operating Agreement with SPHI to include these properties; and

WHEREAS, the SPHI Board of Directors at its April 24, 2024, regular meeting adopted Board Resolution 2024-11 recommending unanimous approval of the lease, appropriation for acquisition due diligence, and acquisition plan; and

WHEREAS, the South Kenai Peninsula Hospital Service Area Board, at its April 11, 2024, regular meet meeting, recommended approval of the lease, appropriation for acquisition due diligence, and acquisition plan;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Mayor is authorized to execute a lease for medical office space with Prodigy Development, LLC for the property located at 4251 Hohe Street, Homer, Alaska 99603

LOT SEVEN (7), BLOCK SEVEN (7), FAIRVIEW SUBDIVISION, ACCORDING TO PLAT NO. 56-2936, HOMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA (KPB PIN 175-05-307)

SECTION 2. That the Assembly finds that purchasing the following described real property pursuant to KPB 17.10.040 is in the best interests of KPB as it furthers the purposes of the South Kenai Peninsula Hospital Service Area to provide health care services:

4251 HOHE STREET PROPERTY

LOT SEVEN (7), BLOCK SEVEN (7), FAIRVIEW SUBDIVISION, ACCORDING TO PLAT NO. 56-2936, HOMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA (KPB PIN 175-05-307)

4251 BARTLETT STREET PROPERTY

LOT 2A, BLOCK 8, FAIRVIEW SUBDIVISION, HALPIN ADDITION, ACCORDING TO PLAT NO. 2009-43, HOMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA (KPB PIN 175-05-205)

4201 BARTLETT STREET PROPERTY

LOT 1-A, BLOCK 9, FAIRVIEW SUBDIVISION 2003 ADDITION, T 6S R 13W SEC. 18 SEWARD MERIDIAN HM 2004101, LOCATED IN THE HOMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA (KPB PIN-175-05-509)

SECTION 3. That the terms and conditions substantially in the form of the Purchase Agreement accompanying this ordinance are hereby approved. The purchase price shall be \$13,000,000, which is the negotiated fair market value of the properties based upon the expected long-term leasehold cost, and contingent on completion of acquisition due diligence to the satisfaction of KPB. The Assembly finds the purchase price is the fair market value for the properties.

SECTION 4. That this acquisition is for the purposes of hospital campus expansion.

SECTION 5. That the above described land is zoned “Medical” pursuant to City of Homer zoning code and therefore is not proposed to be further classified under KPB 17.10.080.

SECTION 6. That the mayor is authorized to execute any and all documents necessary to purchase the real property described in Section 1 in accordance with the terms and conditions contained in this ordinance and the accompanying Purchase Agreement, consistent with applicable provisions of KPB Chapter 17.10. Notwithstanding, prior to closing, acquisition funds must be appropriated by the Assembly.

SECTION 7. That \$145,000 is appropriated from the SPH Plant Replacement and Expansion Fund Account No. 491.20602 to Account No. 491.81210.SPHLE.49999 for acquisition due diligence and earnest money for the purchase of the real property described in Section 1 of this ordinance.

SECTION 8. That the appropriations made in this ordinance are of a project length nature and as such do not lapse at the end of any particular fiscal year.

SECTION 9. That this ordinance shall be effective immediately.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 21ST DAY OF MAY, 2024.

Brent Johnson

Brent Johnson, Assembly President

ATTEST:

Michele Turner

Michele Turner, CMC, Borough Clerk



Yes: Cooper, Cox, Ecklund, Elam, Hibbert, Ribbens, Tunseth, Tupper, Johnson

No: None

Absent: None

PURCHASE AGREEMENT

This Purchase Agreement (“Agreement”) is made by and between PRODIGY DEVELOPMENT, LLC, as seller, whose address is PO Box 2483, Homer, Alaska 99603, ("Sellers") 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 Homer Recording District, Third Judicial District, State of Alaska, and more particularly described as follows:

4251 HOHE STREET PROPERTY

LOT SEVEN (7), BLOCK SEVEN (7), FAIRVIEW SUBDIVISION, ACCORDING TO PLAT NO. 56-2936, HOMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA (KPB PIN 175-05-307); AND

4251 BARTLETT STREET PROPERTY

LOT 2A, BLOCK 8, FAIRVIEW SUBDIVISION, HALPIN ADDITION, ACCORDING TO PLAT NO. 2009-43, HOMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA (KPB PIN 175-05-205); AND

4201 BARTLETT STREET PROPERTY

LOT 1-A, BLOCK 9, FAIRVIEW SUBDIVISION 2003 ADDITION, T 6S R 13W SEC. 18 SEWARD MERIDIAN HM 2004101, LOCATED IN THE HOMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA (KPB PIN-175-05-509)

(Hereinafter referred to as “the Property”)

WHEREAS, the Borough 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 the Borough, and the Borough 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 THIRTEEN MILLION DOLLARS and NO cents (\$13,000,000.00), subject to the terms, provisions, conditions and contingencies contained in this agreement.

The total purchase price is allocated to the properties as follows:

4251 HOHE STREET – Allocated Value \$4,143,434.00
4251 BARTLETT STREET – Allocated Value \$8,156,390.00
4201 BARTLETT STREET – Allocated Value \$700,176.00

The purchase price must be paid in full, less any earnest money received, by the 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. EARNEST MONEY

Buyer shall deposit ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) with Stewart Title of The Kenai Peninsula (Closing Agent) within 90 days of the acceptance of this offer. Funds shall be applied as a credit to the buyer towards the purchase price at closing.

3. SELLER'S EXECUTION OF OFFER

In order for Buyer to know whether to continue to pursue legislation and necessary process for expenditure of public funds, Seller must sign and return this Agreement to the Borough on or before **June 1, 2024**; unless extended upon mutual agreement of the parties.

4. TITLE

Title must be conveyed at time of closing by statutory warranty deed, which must be issued to the Kenai Peninsula Borough for the South Kenai Peninsula Hospital Service Area. Seller shall warrant and covenant 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 buyer.

5. ESCROW AND CLOSING COSTS

Except as described in this Section, in addition to the purchase price, the Borough agrees to pay for buyer-related closing costs in connection with this Agreement, including any due-diligence, inspection, survey fees, and one half of the ALTA Standard Owners title insurance premium. Seller agrees to pay for seller-related closing costs, including one half of the ALTA Standard Owners title insurance premium. 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.

6. BOND FUNDING

It is the intent of the Borough to utilize Service Area bond funds for the acquisition of the identified properties, which are subject to voter approval. Ultimate funding source(s) to be confirmed by final appropriation and assembly approval.

7. CLOSING

Unless otherwise agreed to in writing, closing will occur on or before March 31, 2025, or as otherwise specifically agreed to by both Parties. At closing, the Borough will pay the balance of the purchase price. Both Parties will execute all documents required to complete the Agreement.

8. EXCHANGE

If Seller intends for this transaction to be part of a Section 1031 like-kind exchange, the Borough agrees to cooperate in the completion of the like-kind exchange provided the Borough 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 their 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. CONFIDENTIALITY

To the extent allowed under the law, all parties mutually agree to take any and all reasonable measures to keep in confidence all terms, provisions and conditions contained herein. This Agreement will be considered a confidential proprietary record until provided to a public body for consideration and necessary approvals.

10. POSSESSION

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

11. KENAI PENINSULA BOROUGH ASSEMBLY APPROVAL

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

12. DISCLOSURES

Seller hereby agrees to provide 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 in writing. If said disclosures present a matter unsatisfactory to the Borough, the Borough may terminate this Agreement without penalty.

13. CONTINGENT ON INSPECTION

This offer and Agreement are contingent upon the completion of a property inspection and survey as may be deemed necessary to the Borough for its use and at the Borough's expense. Seller may not unreasonably withhold access to the Property for inspection purposes to the Borough and its representatives. Any invasive inspection procedures require Seller express

permission and must be promptly repaired or replaced by the Borough in a workman-like manner. The Borough will have 60 days from the execution of this Agreement to complete inspections and determine its satisfaction unless otherwise provided in writing.

14. HAZARDOUS MATERIAL

Seller covenant to the best of Sellers' 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 or 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 Sellers, their agents, employees, contractors, or invitees, prior to the Borough's ownership, possession, or control of the Property.

15. ENVIRONMENTAL CONTINGENCY

If during the course of the Borough's due diligence inspection of the Property pursuant to Section 9, the Borough 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 are deemed undesirable by the Borough, the Borough will have the right to give notice to Sellers, 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 the Borough is terminating this Agreement due to the presence of such hazardous materials on or adversely affecting the Property; OR
- (ii) provide Sellers 30 days from notice to provide a mitigation plan outlining steps taken by seller to remedy said hazards to the Borough's satisfaction at Sellers' 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, Sellers hereby indemnify the Borough 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 hereto. Notwithstanding, the report will be released pursuant to a valid court order and may be released to the State of Alaska upon request.

16. 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 the Borough 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.

17. BUYER REMEDIES

(A) Unless extended by mutual agreement of the parties, if the Seller fails to accept the offer contained in this Agreement within the time period provided in Section 3, above, all earnest monies shall be returned to the Borough.

(B) If the Seller accepts the offer contained in this Agreement, but refuses or neglects to consummate the transaction anticipated by this Agreement within the time period provided in this Agreement, the Borough may:

(2) Demand that Seller specifically perform Seller's obligation under this Agreement;

18. SELLER REMEDIES

If the Seller accepts the offer contained in this Agreement and the Borough refuses or neglects to consummate the transaction anticipated by this Agreement within the time period provided in this Agreement, the Seller may:

(1) Declare the earnest money paid by Buyer be forfeited; OR

(2) Demand that Buyer specifically perform Buyer's duties and obligations under this Agreement;

19. BINDING EFFECT

The Agreement is binding upon the heirs, successors and assigns of each of the parties hereto.

20. 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 Sellers 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. The Borough 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 thereto, 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, at Homer, 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

This Agreement has been executed by the Parties on the day and year first above written.

BUYER:
KENAI PENINSULA BOROUGH

SELLER:
PRODIGY DEVELOPMENT, LLC

Peter A. Micciche, Mayor

Mark Halpin, Member

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Michele Turner, CMC
Borough Clerk

A. Walker Steinhage
Deputy Borough Attorney

DRAFT