

Introduced by:	Mayor
Date:	07/07/15
Hearing:	07/28/15
Action:	Introduced and Set for Public Hearing on 07/28/15
Date:	07/28/15
Action:	Enacted as Amended
Vote:	8 Yes, 1 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2015-19-04**

**AN ORDINANCE AUTHORIZING THE ACQUISITION OF REAL PROPERTY
LOCATED AT 254 N. BINKLEY STREET, SOLDOTNA ALASKA ON BEHALF OF
CENTRAL PENINSULA HOSPITAL, APPROPRIATING \$741,500 FROM THE CPGH,
INC. PLANT REPLACEMENT AND EXPANSION FUND FOR THE PURCHASE,
AND AUTHORIZING AN AMENDMENT TO THE CPGH, INC.
LEASE AND OPERATING AGREEMENT**

WHEREAS, the Kenai Peninsula Borough ("Borough") owns and provides for the operation of Central Peninsula Hospital ("Hospital"), and for other health services and medical facilities, through the Central Kenai Peninsula Hospital Service Area, ("Service Area"); and

WHEREAS, the Borough has entered into a Lease and Operating Agreement ("L&O") with Central Peninsula General Hospital, Inc. ("CPGH, Inc.") 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, CPGH, Inc. was approached by Jo Lynn Hawthorne, M.D. OB/GYN, the owner of a medical practice building at 254 N. Binkley, with an offer to sell the medical practice property at fair market value as she is leaving the community; and

WHEREAS, an independent fair market value appraisal was completed by Derry and Associates and found the property to be valued at \$735,000, and a purchase price of \$737,500 has been negotiated with the owner; and

WHEREAS, CPGH, Inc. has begun a search for a locum tenens obstetrician/gynecologist to provide immediate coverage for several patients who are scheduled to deliver their babies after Dr. Hawthorne's departure on August 1, 2015; and

WHEREAS, CPGH, Inc. has no space for a permanent replacement practitioner or locum tenens physician; and

WHEREAS, upon purchase it would be appropriate to amend the L&O Agreement with CPGH, Inc. to include this property; and

WHEREAS, the CPGH, Inc. Board of Directors at its May 28, 2015 meeting recommended approval of the purchase by unanimous consent; and

WHEREAS, the Central Kenai Peninsula Hospital Service Area Board, at its meeting of July 13, 2015 recommended approval by unanimous consent; and

WHEREAS, the Kenai Peninsula Borough Planning Commission, at its regular meeting of July 13, 2015 recommended approval by unanimous consent;

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

SECTION 1. That the Assembly finds that purchasing the following described real property pursuant to KPB 17.10.040 is in the best interest of the borough as it furthers the purposes of the Central Kenai Peninsula Hospital Service Area to provide health care services:

Lot Forty-Six (46), Aspen Flats Subdivision, Addition No. 3, according to Plat No. K-653, Kenai Recording District, Third Judicial District, State of Alaska, (Assessor Parcel No. 059-121-17)

SECTION 2. That the terms and conditions substantially in the form of the Purchase Agreement accompanying this ordinance are hereby approved. The purchase price shall be \$737,500 plus one half of the closing costs and prorated taxes.

SECTION 3. That this acquisition is for the purposes of providing medical office space for the continuance of necessary outpatient medical services to the community.

SECTION 4. That the above described land is zoned limited commercial pursuant to City of Soldotna zoning code and therefore is not proposed to be further classified under KPB 17.10.080.

SECTION 5. 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.

SECTION 6. That \$741,500 is appropriated from the CPH Plant Replacement and Expansion Fund to Account No. 490.81110.254BN.48620 for the purchase price, prorated taxes, and estimated closing costs.

SECTION 7. That the mayor is authorized to execute an amendment to the Central Peninsula Hospital Lease and Operating Agreement with CPGH, Inc. substantially in the form of the Eighth Amendment to the L&O attached hereto and incorporated herein by reference. This document amends Section 2 of the L&O Agreement to include the property described in Section 1 of this ordinance.

SECTION 8. That Sections 1 through 6 and 8 through 9 of this ordinance shall take effect immediately upon its enactment.

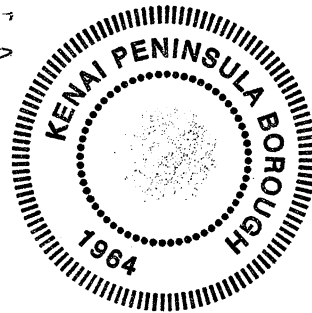
SECTION 9. That Section 7 of this ordinance shall take effect upon purchase of the property listed in Section 1 above.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 28TH DAY OF JULY, 2015.

Dale Bagley
Dale Bagley, Assembly President

ATTEST:

John Blankenship
John Blankenship, MMC, Borough Clerk



Yes: Cooper, Haggerty, Gilman, Johnson, McClure, Ogle, Wolf, Bagley
No: Welles
Absent: None

**EIGHTH AMENDMENT TO THE LEASE AND OPERATING AGREEMENT
FOR CENTRAL PENINSULA HOSPITAL, HERITAGE PLACE, KENAI
HEALTH CENTER, AND OTHER HEALTH FACILITIES**

This agreement is by and between Central Peninsula General Hospital, Inc., an Alaska nonprofit corporation, of 250 Hospital Place, Soldotna, Alaska 99669, hereinafter referred to as “CPGH, Inc.” and the Kenai Peninsula Borough (“KPB”), an Alaska municipal corporation of 144 N. Binkley, Soldotna, Alaska 99669, hereinafter referred to as “Borough,” collectively referred to as the parties.

WHEREAS, effective January 1, 2008, the parties entered into a lease and operating agreement for Central Peninsula Hospital, Heritage Place, Kenai Health Center and other health facilities; and

WHEREAS, the lease and operating agreement in Section 2 lists the leased facilities; and

WHEREAS, in Ordinance 2015-19-04 the Kenai Peninsula Borough assembly authorized the purchase of a medical office property at 254 N. Binkley St., Soldotna, Alaska, for hospital purposes and authorized the mayor to amend the lease and operating agreement to include this additional property; and

WHEREAS, it would be appropriate to list the above referenced acquired property in the lease and operating agreement to clarify that they are also leased to and will be operated by CPGH, Inc.; and

NOW THEREFORE, in consideration of the mutual covenants contained herein the parties agree as follows:

1. That Section 2 of the Lease and Operating Agreement is hereby amended to read as follows:
2. DESCRIPTION OF LEASED FACILITIES. Lessor leases the following described property to the Lessee/Operator (hereinafter the “Medical Facilities”) for the term of this agreement and any extension thereof:
 - a. The Central Peninsula Hospital and its grounds, located at 250 Hospital Place, Soldotna, Alaska, more particularly described as:

Lot 1, Central Peninsula General Hospital Subdivision, filed under Plat No. 2005-52, in the Kenai Recording District, Third Judicial District, State of Alaska.

Lot One (1), Block Two (2), ASPEN FLATS SUBDIVISION, ADDITION NO. 5, according to Plat K-1643, Kenai Recording District, Third Judicial District, State of Alaska.

Lot Two (2), Block Two (2), ASPEN FLATS SUBDIVISION, ADDITION NO. 5, according to Plat K-1643, Kenai Recording District, Third Judicial District, State of Alaska.

Lot Six (6), Block Two (2), ASPEN FLATS SUBDIVISION, ADDITION NO. 5, according to Plat K-1643, Kenai Recording District, Third Judicial District, State of Alaska.

and

Lot Six (6), Block One (1), Aspen Flats Subdivision, Addition No. 5, according to Plat No. K-1643, Kenai Recording District, Third Judicial District, State of Alaska

b. The Kenai Health Center and its grounds, located at 630 Barnacle Way, Kenai, Alaska, more particularly described as:

Lot 2, Block 1, according to the Amended Plat of Block One First Addition Etolin Subdivision, filed under Plat No. 73-14, in the Kenai Recording District, Third Judicial District, State of Alaska.

c. The Heritage Place and its grounds, located at 232 Rockwell Avenue, Soldotna, Alaska, more particularly described as:

Lot 2, Davidhizar Subdivision, according to the official plat thereof, filed under Plat Number 83-162, Records of the Kenai Recording District, Third Judicial District, State of Alaska.

and

Tract "A", GREEN ESTATES SUBDIVISION, 2009 ADDITION, according to Plat No. 2009-30, Kenai Recording District, Third Judicial District, State of Alaska.

d. The Serenity House and its grounds, located at 47480 Kristina Way, Kenai, Alaska, more particularly described as:

SW 1/ 4 SE 1/ 4 Section 23, Township 5 North, Range 11 West, Seward Meridian, Alaska, Kenai Peninsula Borough, Kenai Recording District, Third Judicial District, State of Alaska.

e. A two story medical office building commonly known as the Mundell Building and its grounds, located at 245 North Binkley Street, Soldotna, Alaska, more particularly described as:

Lot 4-A Peninsula Medical Center Subdivision No. 2, according to Plat No. 84-103, Kenai Recording District, Third Judicial District, State of Alaska.

AND as Successor Lessor to the existing lease between Earl and Alice Mundell, as Lessor, and Katy Sheridan, M. D. as Lessee, of Suite 201 in the Mundell Building, the Borough also assigns and transfers to the Lessee/Operator, as Substitute Successor Lessor, the existing lease of Suite 201 in the Mundell Building, with Katy Sheridan, M. D., as Lessee.

f. A single story medical office building commonly known as the Clinic and its grounds, located at 265 North Binkley Street, Soldotna, Alaska, more particularly described as:

Lot 3 Peninsula Medical Center Subdivision, according to Plat No. 83-79, Kenai Recording District, Third Judicial District, State of Alaska.

AND as Successor Lessor to the existing lease between Earl and Alice Mundell, as Lessor, and Simpkins as Lessee, of approximately 6% of the space in the Clinic, the Borough also assigns and transfers to the Lessee/Operator, as Substitute Successor Lessor, the existing lease of approximately 6% of the space in the Clinic, with Georgette Simpkins as Lessee.

AND as Successor Lessor to the existing lease between Earl and Alice Mundell, as Lessor, Marcus C. Deede, M.D. and J. Nels Anderson, M.D. as Lessee, of approximately 94% of the space in the Clinic, the Borough also assigns and transfers to the Lessee/Operator, as Substitute Successor Lessor, the existing lease of approximately 94% of the space in the Clinic, with Marcus C. Deede, M.D. and J. Nels Anderson, M.D. as Lessee.

g. A vacant lot located at Lot 2 Peninsula Medical Center Subdivision, according to Plat No. 83-79, Kenai Recording District, Third Judicial District, State of Alaska.

h. A single story medical office building and its grounds, located at 108 East Corral Street, Soldotna, Alaska, more particularly described as:

Lot 51A Binkley Street/Shady Lane ROW Dedication and Replat (Plat No. KN 88-40), Kenai Recording District, Third Judicial District, State of Alaska.

i. A single story medical office building and its grounds commonly known as Frontier Physical Therapy, located at 260 Caviar Street Kenai, Alaska, more particularly described as:

Lot 7 Aleyeska Subdivision Part 1 (Plat No. K-1442), Kenai Recording District, Third Judicial District, State of Alaska.

j. A single story medical office building and its grounds commonly known as Kenai Peninsula Urology Clinic, located at 262 N. Binkley Street Soldotna, Alaska, more particularly described as:

Lot Forty-five (45) Aspen Flats Subdivision, Addition No. 3, according to Plat No. K-653, Kenai Recording District, Third Judicial District, State of Alaska

k. A single story medical office building and its grounds, located at 254 N. Binkley Street Soldotna, Alaska, more particularly described as:

Lot Forty-six (46) Aspen Flats Subdivision, Addition No. 3, according to Plat No. K-653, Kenai Recording District, Third Judicial District, State of Alaska

l. Such other Borough facilities, if any, as are authorized for CPGH, Inc. to lease and operate pursuant to this agreement.

The Medical Facilities include all fixtures and appurtenances thereto as of the effective date of this agreement. The Borough warrants that it has good and marketable title to the Medical Facilities leased by the Borough pursuant to this agreement, subject only to encumbrances of record prior to the effective date of this agreement or the effective date of any amendment for any property added after the effective date of this agreement.

2. All remaining terms and conditions of the Lease and Operating Agreement shall remain in full force and effect.

KENAI PENINSULA BOROUGH

CENTRAL PENINSULA GENERAL
HOSPITAL, INC.

Mike Navarre

Trena Richardson

Borough Mayor

CPGH, Inc. Board President

Dated: _____

Dated: _____

ATTEST:

ATTEST:

Borough Clerk

Board Secretary

ACKNOWLEDGMENTS

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

ss.

The foregoing instrument was acknowledged before me this ___ day of _____, 2015 by Mike Navarre, Mayor of Kenai Peninsula Borough, an Alaska municipal corporation, on behalf of the corporation.

Notary Public in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

ss.

The foregoing instrument was acknowledged before me this ___ day of _____, 2015 by Trena Richardson, President, Central Peninsula General Hospital, Inc., an Alaska nonprofit corporation, on behalf of the corporation.

Notary Public in and for Alaska
My Commission Expires: _____

PURCHASE AGREEMENT

This Agreement is made on this ____ day of _____, 2015 by and between JO LYNN HAWTHORNE whose address is 254 N. Binkley Street, Soldotna, Alaska 99669, (hereinafter referred to as "SELLER") and the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter referred to as "KPB").

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:

Lot Forty-six (46) Aspen Flats Subdivision, Addition No. 3, as shown on Plat No. 653, Kenai Recording District, Third Judicial District, State of Alaska (Hereinafter "the Property") (Assessor Parcel No. 059-121-17)

WHEREAS, KPB has offered to buy, subject to assembly authorization and appropriation of funds, and SELLER is willing to sell the Property as evidenced by this Purchase Agreement;

NOW THEREFORE, in consideration of the 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 SEVEN HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED dollars and NO cents (\$737,500). The purchase price shall be paid by KPB at time of closing. The purchase of the Property and appropriation of funds for the purchase are subject to borough assembly approval.

2. EXPIRATION OF OFFER

SELLER shall sign and return this Purchase Agreement to KPB on or before July 20, 2015 otherwise this offer shall terminate.

3. TITLE

Title shall be delivered at time of closing by Statutory Warranty Deed, which shall be issued to KPB. SELLER warrants and covenants that at the time of closing there shall be no liens or judgments recorded against SELLER in the same recording district in which the Property subject to this purchase agreement is situated. Title shall be clear of liens and encumbrances except title is subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record.

4. ESCROW AND CLOSING COSTS

In addition to the purchase price, KPB agrees to pay for one-half of the closing costs in

connection with this Agreement, including without limitation all escrow fees, title insurance charges, recording fees and bank charges. Property taxes will be prorated. SELLER is responsible for Realtor's commission, if any. All costs will be paid in full at the time of closing.

5. CLOSING

Unless otherwise agreed in writing, closing will occur by August 10, 2015. At closing, KPB will pay the balance of the purchase price. Both parties will execute all documents required to complete the Purchase Agreement and, if applicable, establish an escrow account.

6. POSSESSION

Possession shall be delivered to KPB at time of recording.

7. KENAI PENINSULA BOROUGH ASSEMBLY APPROVAL

Purchase of the Property by the Kenai Peninsula Borough is subject to authorization by the Kenai Peninsula Borough Assembly and appropriation of funds. If the Kenai Peninsula Borough Assembly fails to authorize the purchase of the subject land and appropriate funds, this agreement shall be terminated without penalty.

8. 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 shall be located on or stored on the Property, or any adjacent property by seller, owner or contractors, nor shall any such substance be owned, stored, used, or disposed of on the Property or any adjacent property by SELLER, its agents, employees, contractors, or invitee's, prior to KPB'S ownership, possession, or control of the Property.

9. 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, shall be covenants constituting terms and conditions of the sale, and shall continue in full force and effect until the purchase price is paid in full or this agreement is earlier terminated.

10. BREACH REMEDY

Prior to closing of the sale, in the event that KPB or SELLER fails to make any payment required, or fails 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.

11. 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 Purchase Agreement is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.
- 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, 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 a U.S. general or branch post office by the addressor.
- D. Interpretation. This Agreement shall be deemed to have been jointly drafted by both parties. It shall be construed 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.
- E. Condition of Property.
SELLER shall deliver the property in its as-is condition.
- F. Property Inspection.
Offer is contingent upon inspection satisfactory to buyer at the buyer's expense.

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

KENAI PENINSULA BOROUGH:

SELLER:

Mike Navarre, Mayor

Jo Lynn Hawthorne

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Johni Blankenship,
Borough Clerk

Holly B Montague,
Deputy Borough Attorney

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 Jo Lynn Hawthorne.

Notary Public in and for Alaska
My commission expires: _____