

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) dated \_\_\_\_\_, 2019 (the “Effective Date”), is entered into by and between THE ALASKA MENTAL HEALTH TRUST AUTHORITY, a public corporation within the State of Alaska, Department of Revenue (AS 47.30.011 et seq.), acting through the State of Alaska, Department of Natural Resources, Trust Land Office (“TLO”), pursuant to AS 37.14.009, AS 38.05.801, and 11 AAC 99, whose mailing address is 2600 Cordova Street, Suite 100, Anchorage, Alaska 99503 (“Seller”) and \_\_\_\_\_, whose mailing address is \_\_\_\_\_ (“Purchaser”).

### RECITALS

WHEREAS the Seller owns certain real property located in Juneau, Alaska and more particularly described in **Exhibit A**;

WHEREAS on June 6, 2017 Seller adopted a Best Interest Decision regarding the sale of the real property that is the subject of this Agreement;

WHEREAS, on \_\_\_\_\_, 2019 Seller conducted an auction of the Property (as defined below);

WHEREAS on \_\_\_\_\_, 2019 Seller was selected as the high bidder in a said auction and Purchaser paid a non-refundable deposit (“Initial Deposit”) in the amount of One Hundred Thousand Dollars (\$100,000.00);

WHEREAS the Seller desires to sell the Property and Purchaser desires to purchase the Property upon the terms and conditions set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### **ARTICLE 1. SALE OF PROPERTY**

**1.1 Property to Be Sold.** Subject to the terms and provisions hereinafter set forth, Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, the following (all of which are hereinafter referred to collectively as the “Property”):

1.1.1 The undeveloped parcel of land situated in the Juneau Recording District, First Judicial District, State of Alaska, more particularly described in **Exhibit “A”**, together with all rights and appurtenances pertaining to such parcel, including any right, title and interest of Seller in and to adjacent streets, alleys or rights of way, riparian rights, easements, privileges, roads, strips, or gores (the “Land”);

1.1.2 Any and all improvements affixed to or located on the Land, and all of Seller's right, title and interest, if any, in all fixtures, systems and facilities located on the Land such as pavement, utility lines and the like (collectively, the "Improvements" and, together with the Land, the "Real Property"); and

1.1.3 Any and all of Seller's right, title and interest, if any, in and to the following (collectively, the "Intangible Property"): (i) all assignable existing warranties and guaranties (express or implied) issued to Seller relating to the Improvements, (ii) all assignable existing permits, licenses, approvals, and authorizations issued by any governmental authority in connection with the Real Property and (iii) all existing plans and specifications related to the Real Property or any aspect thereof.

**1.2 Purchase Price; Payment.** Subject to the terms of this Agreement, Seller agrees to sell and Purchaser agrees to purchase the Property for the aggregate purchase price of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the "Purchase Price"). The Purchase Price, plus or minus all adjustments or credits set forth herein, shall be paid in full to Seller by Purchaser on the Closing Date (as defined below) in cash by wire transfer of immediately available fund to an account designated by Seller in writing to Purchaser at or prior to Closing (as defined below).

**1.3 Deposit.** Upon execution of this Agreement by Purchaser and Seller, the Seller shall tender \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) which, when added to the Initial Deposit, is equal to ten percent (10%) of the Purchase Price. Purchaser shall also have the option to extend the Due Diligence Period (defined below) and, consequentially, the time to Closing by making additional payments prior to the expiration of the Due Diligence Period according to the following schedule:

Installment Deposit Amount	Duration of Due Diligence Period
10%	60 Days
25%	90 Days
50%	180 Days
75%	270 Days
90%	365 Days

Collectively, the Initial Deposit and the Deposit Installments shall be referred to as the "Deposit." The Deposit shall be held by the Seller in a non-interest bearing account and applied to the Purchase Price at Closing or, if the sale contemplated herein does not close, paid to Seller. The Deposit shall be nonrefundable to Purchaser unless Closing fails to occur due to Seller's breach or default under this Agreement or as otherwise provided for in this Agreement, and payment of the Deposit to the Seller shall constitute liquidated damages to Seller if Closing fails as a result of Purchaser's default under this Agreement.

## **ARTICLE 2. TITLE**

**2.1 Encumbrances Prior to Closing.** At all times after the Effective Date and prior to Closing, Seller shall not sell, mortgage, pledge, lease, encumber, hypothecate or otherwise

transfer or dispose of all or any part of the Property or any interest therein without the prior written consent of the Purchaser, which may be given or withheld in Purchaser's sole discretion.

**2.2 Conveyance of Title.** At Closing, Seller shall convey and transfer to Purchaser fee simple title to the Real Property, reserving to Seller the subsurface rights, by execution, recordation and delivery of the Deed (as defined below).

**2.3 Survey.** Purchaser may obtain any survey desired by Purchaser at Purchaser's sole cost and expense.

### **ARTICLE 3. INSPECTION & DUE DILLIGENCE PERIOD**

**3.1 Access.** From and after the Effective Date through the Closing, Purchaser, personally or through its authorized agent or representatives (including without limitation any prospective lender to Purchaser, or such prospective lender's agents or representatives), shall be entitled, upon no less than two (2) business days advance written notice to Seller, to enter upon the Property during normal business hours and shall have the right to make such investigations, including appraisals, engineering studies, soil tests, environmental studies and underwriting analyses, as Purchaser deems necessary or advisable. Purchaser shall have the right to conduct a Phase I environmental site assessment and, with Seller's prior written consent (which consent shall not be unreasonably withheld), a Phase II environmental site assessment (including soils borings, soil sampling and, if relevant, ground water testing with respect to the Property). All reports produced by these investigations (the "Investigation Reports") shall be made available to Seller, at Seller's written request, free of charge and may be used for any purpose by Seller at Seller's sole discretion thereafter. Purchaser further agrees to keep the Property free from all mechanic's lien claims associated with the foregoing. Purchaser shall, at Purchaser's sole cost, repair any damage to the Property resulting from the inspections, and, to the extent Purchaser or Purchaser's contractors alter, modify, disturb or change the condition of the Property as part of the inspections or otherwise, Purchaser shall, at Purchaser's sole cost, restore the Property to the condition in which the same were found before such alteration, modification, disturbance or change. Purchaser hereby agrees to indemnify and hold Seller (and Seller's agents, attorneys, consultants, employees, trustees, and advisors) harmless from any physical damages arising out of all inspections and investigations by Purchaser or its agents or independent contractors. Notwithstanding any other provision in this Agreement to the contrary, this indemnification shall survive the termination of this Agreement or Closing under this Agreement.

Prior to entry upon the Real Property and before conducting any activity on the Real Property, Purchaser or Purchaser's contractor shall provide Seller with an insurance certificate in a form and substance satisfactory to Seller evidencing that Purchaser and/or any consultant or contractor hired by Purchaser to perform the investigations identified in this Section 3.1 maintains the following insurance:

3.1.1 Commercial general liability insurance including, but not limited to, coverage for products/completed operations, premises/operations, contractual and personal/advertising injury liabilities with combined single limits of not less than \$2,000,000.00

per occurrence for bodily injury and property damage, containing an endorsement insuring against damage to the Property and to or from underground utilities, naming Seller as a named insured.

3.1.2 Any contractor hired to perform environmental tests to the Property shall maintain errors and omissions or professional liability insurance covering injury or damage arising out of the rendering or failing to render professional services with limits of at least \$2,000,000.00 per claim.

3.1.3 All insurance maintained under this Section 3.1 shall be procured from insurance companies reasonably satisfactory to Seller and rated "A-VII" or better by the current edition of Bests Insurance Reports published by the A.M. Best Company.

**3.2 Due Diligence Period.** Purchaser shall have up to twelve (12) months following the Effective Date (the "Due Diligence Period"), subject to the term and payment of the Deposit Installments described in Section 1.3, to physically inspect the Property, conduct appraisals, perform examinations of the physical condition of the Improvements, examine the Property for the presence of Hazardous Materials (as defined below), secure financing and to otherwise conduct such due diligence review of the Property and all records and other materials related thereto as Purchaser deems appropriate.

**3.3 Additional Authorizations.** During the term of the Due Diligence Period Seller may authorize uses of the Property by third parties. Such authorized uses must be unilaterally terminable by the Seller upon 30 days' notice. All third party authorizations granted until this Section 3.3 shall be terminated prior to closing by Seller unless Purchaser agrees to accept the Property subject to the same, in which case the Seller's rights and obligations in the third party authorization shall be assigned to the Purchaser.

**3.4 No Items Provided by the Seller.** Seller shall have no obligation to deliver any information to the Purchaser regarding the Property ("Property Information"). Seller may provide certain Property Information, at its sole discretion, but makes no representation or warranty as to the accuracy, completeness or other reliability of any Property Information provided by Seller.

**3.5 Purchaser's Possible Early Termination.** Purchaser shall have the right to terminate this Agreement in Purchaser's sole and absolute discretion by delivering written notice of the same to the Seller ("Termination Notice"). Upon the giving of the Termination Notice, this Agreement shall automatically terminate and the provisions of Section 3.5 shall apply.

**3.6 Consequences of Purchaser's Early Termination.** Upon the giving of a Termination Notice, this Agreement shall immediately terminate, and the parties shall be released from all further obligations under this Agreement (except with respect to any provisions that by their terms survive a termination of this Agreement). In such case, the entire Deposit shall become the property of the Seller.

#### **Article 4.      REPRESENTATIONS & WARRANTIES**

**4.1 Purchaser's Representations.** Purchaser hereby makes the following representations and warranties to Seller as of the Effective Date, which representations and warranties shall be deemed to have been made again as of the Closing:

4.1.1 Purchaser is authorized to do business in the State of Alaska.

4.1.2 Purchaser has full right, power and authority and is duly authorized to enter into this Agreement and to perform each of the covenants on its part to be performed hereunder and to execute and deliver and to perform its obligations under all documents required to be executed and delivered by it pursuant to this Agreement.

4.1.3 This Agreement constitutes the valid and legally binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, and the person signing this Agreement on behalf of Purchaser is authorized to do so.

4.1.4 The execution and delivery of this Agreement has been duly authorized by all necessary action on the part of Purchaser, and all required consents and approvals have been duly obtained and will not result in a breach of any of the terms or provisions of, or constitute a default under any indenture, agreement or instrument to which Purchaser is a party. This Agreement has been duly executed and delivered by Purchaser.

4.1.5 No authorization, consent, or approval of any governmental authority (including any court) is required for the execution and delivery by Purchaser of this Agreement or the performance of its obligations hereunder.

4.1.6 There are no actions, suits or proceedings pending, or, to Purchaser's knowledge, threatened against Purchaser, which if determined adversely, would affect its ability to perform its obligations hereunder or would interfere with the consummation of the transaction contemplated by the Agreement.

4.1.7 Neither Purchaser nor any of its members (if any), all of whom are individuals as of the date hereof, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of OFAC (including those named on OFAC's Specially Designated Nationals and Blocked Persons List) or under any similar statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other similar governmental action.

4.1.8 The execution and delivery of this Agreement by Purchaser and the consummation by Purchaser of the transactions contemplated hereby will not: (i) violate any judgment, order, injunction, or decree to which Purchaser is subject, or (ii) conflict with, result in a breach of, or constitute a default under the organizational documents of Purchaser or any lease, mortgage, loan agreement, covenant, or other agreement or instrument to which Purchaser is a party or by which Purchaser is bound.

4.1.9 No bankruptcy, insolvency, reorganization, or similar action or proceeding, whether voluntary or involuntary, is pending, or, to Purchaser's knowledge, has been threatened in writing, against Purchaser.

**4.2 Inaccuracies and Changes to Purchaser's Representations.** In the event that Purchaser shall before Closing become aware or have reasonable grounds to believe that any representation or warranty of Purchaser set forth in Section 4.1 is inaccurate in any material respect, Purchaser shall deliver to Seller a certificate, dated as of the Closing Date and executed on behalf of Purchaser by a duly authorized representative thereof, explaining the state of facts giving rise to the change. Purchaser shall not be liable to Seller for, or be deemed to be in default hereunder by reason of, any breach of representation or warranty set forth in Section 4.1 which results from any change that occurs between the Effective Date and the Closing so long as such change is (i) expressly permitted under the terms of this Agreement, or (ii) beyond the reasonable control of Purchaser to prevent; provided, however, that if a change is beyond the reasonable control of Purchaser to prevent, such change shall, if materially adverse to Seller, nevertheless constitute the non-fulfillment of the condition set forth in Section 5.3. If, despite changes or other matters described in such certificate, the Closing occurs, Purchaser's representations and warranties set forth in this Agreement shall be deemed to have been modified by all statements made in such certificate.

**4.3 Survivability of Representations and Warranties.** The representations and warranties of Purchaser set forth in this Agreement are deemed remade as of the Closing Date and shall not be deemed to be merged into or waived by the instruments of Closing, but shall survive the Closing for a period of 365 days.

**4.4 Property Conveyed "As Is".** Purchaser acknowledges that Purchaser has had the opportunity to independently and personally inspect the Property and that Purchaser has entered into this Agreement based upon its ability to make such examination and inspection. The Property is to be sold to and accepted by Purchaser at Closing in its then present condition, "**AS IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED**" except as expressly set forth herein or in the documents executed and delivered by Seller at Closing and except as otherwise provided in this Agreement. **Notwithstanding anything contained herein to the contrary, it is understood and agreed that, except as expressly set forth in this Agreement or in the documents executed and delivered by Seller at Closing, Seller and Seller's agents or employees have not made and are not now making, and they specifically disclaim, any warranties, representations or guaranties of any kind or character, express or implied, oral or written, past, present or future, with respect to the Property, including, but not limited to, warranties, representations or guaranties as to 1) matters of title; 2) environmental matters of any kind relating to the Property or any portion thereof (including the condition of the soil or groundwater beneath the Property); 3) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water and earthquake faults and the resulting damage of past and/or future earthquakes; 4) whether, and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, flood prone area, flood plain, floodway or special flood hazard; 5) drainage; 6) soil conditions, including the existence of instability, past soil**

repairs, soil additions or conditions of soil fill, or susceptibility to landslides, or the sufficiency of any undershoring; 7) zoning to which the Property or any portion thereof may be subject; 8) the availability of any utilities to the Property or any portion thereof including, without limitation, water, wastewater, gas, cable, internet, telephone, and electric; 9) uses of adjoining property; 10) access to the Property or any portion thereof; 11) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title to, or physical or financial condition of the Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Property or any part thereof; 12) the presence of Hazardous Materials (defined below) in, on, under or in the vicinity of the Property; 13) the condition or use of the Property or compliance of the Property with any or all past, present or future federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances, codes or other similar laws; 14) the existence or non-existence of underground storage tanks; 15) any other matter affecting the stability or integrity of the Property; 16) the potential for further development of the Property; 17) the existence of vested land use, zoning or building entitlements affecting the Property; 18) the merchantability of the Property or fitness of the Property for any particular purpose (Purchaser affirming that Purchaser has not relied on Seller's or Seller's agents' or employees' skill or judgment to select or furnish the Property for any particular purpose, and that Seller makes no warranty that the Property is fit for any particular-purpose); or 19) tax consequences. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN THE DOCUMENTS EXECUTED AND DELIVERED BY SELLER AT CLOSING, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND TO PURCHASER, INCLUDING, WITHOUT LIMITATION, THE PHYSICAL CONDITION OF THE PROPERTY AND ANY IMPROVEMENTS LOCATED THEREON, OR THEIR SUITABILITY FOR ANY PARTICULAR PURPOSE OR OF MERCHANTABILITY. PURCHASER SHALL RELY ON ITS INVESTIGATIONS OF THE PROPERTY IN DETERMINING WHETHER TO ACQUIRE IT. THE PROVISIONS OF THIS SECTION ARE A MATERIAL PART OF THE CONSIDERATION FOR SELLER'S ENTERING INTO THIS AGREEMENT, AND SHALL SURVIVE CLOSING.

#### **4.5 Purchaser's Release of Seller.**

4.5.1 General Release Regarding Condition of Property Purchaser hereby FOREVER RELEASES AND DISCHARGES Seller (and Seller's agents, attorneys, consultants, employees, trustees, and advisors) from all responsibility or liability relating to the physical condition or legal compliance status of the Property, and any and all objections and complaints (including, but not limited to, federal, state and local statutory and common law based actions, and any private right of action under any federal, state or local laws, regulations or guidelines to which the Property is or may be subject) concerning the physical characteristics and any existing conditions of the Property or legal compliance status of the Property, whether arising before or after the Effective Date. Purchaser further hereby assumes the risk of changes in applicable laws and regulations relating to the physical condition or legal compliance status of the Property and the risk that adverse physical characteristics and conditions may not have been revealed by any investigation conducted by Purchaser pursuant to Article 3.

4.5.2 Environmental Release. In addition to and without limiting the above release, Purchaser hereby further FOREVER RELEASES AND DISCHARGES Seller from all responsibility and liability relating to the environmental condition of the Property, including any responsibility or liability in connection with any “Hazardous Material” or arising under or related to any “Environmental Law.” For purposes of this Section 4.5.2: (1) “Hazardous Material” means any radioactive materials, asbestos, asbestos-containing materials, urea formaldehyde, vermiculite, hydrocarbons, leachate, PCBs, PCB-containing equipment or materials, lead, petroleum products, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous substances, corrosive substances, toxic substances, special waste, hazardous waste, refuse, waste, pesticides, defoliant or any other substance, solid, liquid, gas or any combination of any of them, the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation, Release into, or presence in, the environment of which is prohibited, controlled or regulated under Environmental Laws; and (2) “Environmental Law” means any and all federal, state, provincial, municipal and local laws, statutes, by-laws, regulations, rules, orders, standards, policies, guidelines, protocols, codes and judgments of any governmental authority having the force of law (a) relating to Hazardous Material (or the cleanup thereof) or the protection of natural resources endangered or threatened species, human health or safety, or the environment (including soil, ambient air, surface water, sediments, subsurface strata, groundwater and drinking water supplies); or (b) concerning the presence of exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Material. Environmental Law includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (42 U.S.C. § 9601 et seq.); the Resource Conservation and Recovery Act as amended (42 U.S.C. § 6901 et seq.); the Alaska Hazardous Waste Cleanup Law (AS § 45.03.822); the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977 (33 U.S.C. §§ 1251 et seq.); the Toxic Substances Control Act of 1976, as amended (15 U.S.C. §§ 2601 et seq.); the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §§ 11001 et seq.); the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990 (42 U.S.C. §§ 7401 et seq.); and the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §§ 651 et seq.).

#### **4.6 Indemnification**

4.6.1 Purchaser’s Indemnity. Subject to the limitations set forth in this Agreement, Purchaser agrees to indemnify, defend and hold Seller (and Seller’s agents, attorneys, consultants, employees, trustees, and advisors) harmless from and against any and all liabilities, liens, claims, damages, costs, expenses, suits or judgments paid or incurred by any of Seller’s Indemnified Parties and all expenses related thereto, including, without limitation, court costs and reasonable attorneys’ fees arising out of or in any way connected or related to: (i) the ownership, maintenance, or operation of the Property and arising from events or conditions that occur entirely after the Closing, (ii) any breach or nonperformance by Purchaser of any provision or covenant contained in this Agreement or in any certificate or other instrument or document furnished (or to be furnished) by Purchaser with respect to the transactions contemplated hereunder, or (iii) the breach in any material respect of any representation, warranty or covenant of Purchaser contained in this Agreement and first discovered by Seller and asserted in writing by Seller to Purchaser during the twelve (12) month period that begins on the day following the Closing. The indemnities



set forth in this Section shall survive Closing without limitation; provided, however, that the indemnities set forth in this Section shall not apply to the extent of any item that specifically remains the obligation of or is non-actionable by Seller after the Closing pursuant to the terms and conditions of this Agreement.

## **Article 5.     CLOSING**

The transaction contemplated hereby (the “Closing”) shall be consummated at Juneau, Alaska, at such time and date acceptable to Seller and Purchaser, but no later than 10 days following the expiration of the Due Diligence Period. Closing shall be upon terms and conditions set forth in the Agreement or any escrow instructions acceptable to the parties and required by and providing, inter alia, as follows:

**5.1 Closing.** “Closing” means the date the Seller delivers the executed Deed in favor of the Purchaser in exchange for the Purchase Price, or balance thereof. “Closing Date” means the date the Deed is recorded in the records of the Juneau Recording District, First Judicial District, State of Alaska.

**5.2 Conditions Precedent to Obligations of Purchaser.** Purchaser’s obligations under this Agreement are subject to the timely fulfillment of the conditions set forth in this Agreement on or before the Closing Date, or such earlier date as is set forth in this Agreement for such condition to be fulfilled. Each such condition may be waived in whole or in part only by written notice of such waiver from Purchaser to Seller.

**5.3 Conditions Precedent to Obligations of Seller.** In addition to any other condition precedent to the obligations of Seller as may be expressly set forth elsewhere in this Agreement, Seller’s obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section on or before the Closing Date, or such earlier date as is set forth below. Each condition may be waived in whole or part only by written notice of such waiver from Seller to Purchaser.

5.3.1 Purchaser’s performance and compliance in all material respects with all of the terms of this Agreement to be performed and complied with by Purchaser prior to or at the Closing.

5.3.2 On the Closing Date, all of the representations of Purchaser set forth in this Agreement shall be materially true, accurate and complete in all material respects.

**5.4 Seller’s Deliverables.** At Closing, Seller shall deliver or cause to be delivered to Purchaser, at Seller’s sole expense, each of the following items:

5.4.1 A Quitclaim Deed (the “Deed”) in the form attached hereto as Exhibit “B,” duly executed and acknowledged by the Seller;

5.4.2 A non-foreign person affidavit sworn to by Seller as required by Section 1445 of the Internal Revenue Code;

5.4.3 Such evidence or documents as may reasonably be required by the Purchaser evidencing the power and authority of the Seller and the due authority of, and execution and delivery by, any person or persons who are executing any of the documents required in connection with the sale of the Property; and

5.4.4 Such other instruments as may be reasonably required to consummate the transactions contemplated by this Agreement.

**5.5 Purchaser's Deliverables.** At the Closing, Purchaser shall deliver to Seller through Escrow Agent the following items:

5.5.1 Such evidence or documents as may reasonably be required by the Seller evidencing the status and capacity of Purchaser and the authority of the person or persons who are executing the various documents on behalf of Purchaser in connection with the purchase of the Property;

5.5.2 and

5.5.3 Such other instruments as may be reasonably required to consummate the transactions contemplated by this Agreement.

**5.6 Costs, Prorations and Credits.**

5.6.1 Closing Costs. Purchaser and Seller shall each pay their own legal fees required to close the transaction contemplated hereby. Purchaser shall pay (i) all costs associated with its investigation of the Property, including the cost of appraisals, architectural, engineering, credit and environmental reports, (ii) all title insurance premiums and title examination costs required for or related to the issuance of a title policy in the Purchaser's favor, if any, (iii) all recording fees, All costs and expenses incident to this transaction and the Closing, and not specifically described above, shall be borne by Purchaser.

5.6.2 All income and expenses of the Property shall be apportioned as of 12:01 a.m. on the day of Closing, as if Purchaser were vested with title to the Property during the entire day upon which Closing occurs. Subject to the provisions of this Section 5.6, such prorated items shall include without limitation the following: (i) taxes and assessments levied against the Property (whether arising under any declaration of covenants affecting the Property, by action of any owners association with jurisdiction over the Property or otherwise), including regular or special assessments that have been fully paid and therefore do not continue to constitute a lien on the property but for which payments have been made with respect to periods after Closing; and (ii) any other operating expenses or other items pertaining to the Property which are customarily prorated between a purchaser and a seller in the Juneau Recording District.

**5.7 Distribution of Funds and Documents.** At Closing, funds and documents shall be distributed as follows:

5.7.1 Documents. Seller shall submit to Purchaser the Deed and Purchaser shall be responsible for recording the same.

5.7.2 Distribution of Funds. Purchaser shall deliver (i) to Seller the cash portion of the Purchase Price adjusted for credits, notably the Deposit, and debits provided for herein Such funds shall be delivered by wire transfer or cashier's check in accordance with instructions given by Seller.

**5.8 Possession.** Seller shall deliver possession of the Property to Purchaser as of the date of Closing.

## **Article 6.     TERMINATION AND DEFAULT**

**6.1 Purchaser's Default. IF THE SALE CONTEMPLATED HEREBY IS NOT CONSUMMATED BECAUSE OF A DEFAULT BY PURCHASER IN ITS OBLIGATION TO PURCHASE THE PROPERTY IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, THEN: (A) THIS AGREEMENT SHALL TERMINATE; (B) THE DEPOSIT SHALL BE RETAINED BY SELLER AS LIQUIDATED DAMAGES; AND (C) SELLER AND PURCHASER SHALL HAVE NO FURTHER OBLIGATIONS TO EACH OTHER EXCEPT THOSE WHICH SURVIVE THE TERMINATION OF THIS AGREEMENT. PURCHASER AND SELLER ACKNOWLEDGE THAT THE DAMAGES TO SELLER IN THE EVENT OF A BREACH OF THIS AGREEMENT BY PURCHASER WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT THE AMOUNT OF THE DEPOSIT REPRESENTS THE PARTIES' BEST AND MOST ACCURATE ESTIMATE OF THE DAMAGES THAT WOULD BE SUFFERED BY SELLER IF THE TRANSACTION SHOULD FAIL TO CLOSE AND THAT SUCH ESTIMATE IS REASONABLE UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS AGREEMENT AND UNDER THE CIRCUMSTANCES THAT SELLER AND PURCHASER REASONABLY ANTICIPATE WOULD EXIST AT THE TIME OF SUCH BREACH. PURCHASER AND SELLER AGREE THAT SELLER'S RIGHT TO RETAIN THE DEPOSIT TOGETHER WITH ANY INTEREST AND EARNINGS EARNED THEREON SHALL BE SELLER'S SOLE REMEDY, AT LAW AND IN EQUITY, FOR PURCHASER'S FAILURE TO PURCHASE THE PROPERTY IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. HOWEVER, NOTHING IN THIS SECTION SHALL (i) PREVENT OR PRECLUDE SELLER'S RECOVERY OF REASONABLE ATTORNEYS' FEES OR OTHER COSTS INCURRED BY SELLER OR (ii) IMPAIR OR LIMIT THE EFFECTIVENESS OR ENFORCEABILITY OF PURCHASER'S INDEMNIFICATION OBLIGATIONS CONTAINED IN THIS AGREEMENT. SELLER HEREBY WAIVES ANY RIGHT TO AN ACTION FOR SPECIFIC PERFORMANCE OF ANY PROVISIONS OF THIS AGREEMENT.**

**6.2 Seller's Default.** If the sale contemplated hereby is not consummated because of a default by Seller in its obligations under the terms of this Agreement, Purchaser shall have the right to exercise any or all of the following remedies:

6.2.1 Waive such failure and proceed to the Closing with no reduction in the Purchase Price; and

6.2.2 Terminate this Agreement by notice to Seller to that effect, to recover the full amount of the Deposit and all earnings thereon.

## **Article 7. CONDEMNATION**

**7.1 Condemnation.** In the event that, after the end of the Due Diligence Period, all or a material portion of the Property should be condemned by right of eminent domain prior to the Closing such that the reasonable estimate of the loss of value of the remaining Real Property exceeds twenty percent (20%) of the Purchase Price (any such event, a "Material Taking"), Purchaser may, at Purchaser's sole option, elect either to (i) terminate this Agreement and receive back the Deposit; or (ii) close the transaction contemplated by this Agreement. In all other cases, Purchaser shall purchase the Property in accordance with the terms hereof (without reduction in the Purchase Price) and Seller shall assign to Purchaser at Closing all condemnation proceeds payable as a result of such condemnation.

## **Article 8. REAL ESTATE COMMISSION**

**8.1 Commissions.** Purchaser and Seller each represent to the other that no brokerage or real estate commissions or other fees are or shall be due in respect to this transaction by reason of any agreement made or which may be alleged to have been made by Purchaser or Seller other than Purchaser's brokerage agreement with Debbie A. White (AK: RECB15265) of Southeast Alaska Real Estate, who shall receive a brokerage commission from the Purchaser independent of Closing. Each party agrees to indemnify and hold harmless the other from and against any and all claims, demands or the cost or expense thereof, including reasonable attorney's fees, arising out of any broker's commission, fee or other compensation due or alleged to be due in connection with the transactions contemplated by this Agreement based upon an agreement alleged to have been made or other action alleged to have been taken by the indemnifying party.

## **Article 9. MISCELLANEOUS**

**9.1 Amendments.** This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify, or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification, or discharge is sought.

**9.2 Assignment by Purchaser.** This Agreement may not be assigned by Purchaser without the prior written consent of the Seller, which consent may be withheld at Seller's sole

discretion, provided however, that any such assignment shall not relieve Purchaser of its liabilities and obligations hereunder.

**9.3 Attorneys' Fees.** In the event any dispute between Purchaser and Seller results in litigation, the prevailing party shall be entitled to recover reasonable costs and expenses including, without limitation, reasonable attorneys' fees and expenses, whether at the investigative, pretrial, trial or appellate level. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments or position prevailed.

**9.4 Captions.** The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection of this Agreement.

**9.5 Construction.** The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

**9.6 Counterparts and Facsimile Signatures.** This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall be deemed a single document. Signatures on this Agreement forwarded by facsimile are intended to be the equivalent of original signatures, with the original executed Agreement thereafter to be provided promptly to the other party.

**9.7 Entire Agreement; Modification.** This Agreement, together with any attachments and other documents referenced herein, sets forth the entire agreement and understanding of the parties with respect of the transactions contemplated under this Agreement, and supersedes all prior agreements, arrangements, understandings and negotiations. No modification of this Agreement shall be effective unless in writing and signed by authorized representatives of Seller and Purchaser.

**9.8 Further Assurances.** Each party agrees that it will execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate the transaction contemplated by this Agreement. The provisions of this Section shall survive Closing.

**9.9 Governing Law and Venue.** This Agreement shall be governed under the laws of the State of Alaska. Exclusive jurisdiction and venue for any action pertaining to this Agreement shall be in the State of Alaska Superior Court in the Third Judicial District at Anchorage, Alaska.

**9.10 No Third Party Beneficiaries.** The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

**9.11 Notices.** All notices required under the terms of the Agreement or by law shall be in writing and sent by certified mail, return receipt requested or email to the appropriate party or parties at the following address or addresses, unless changed by the party to be notified in writing:

Seller:

The Trust Land Office  
2600 Cordova Street, Suite 100  
Anchorage, Alaska 99503  
Attn: Aaron O'Quinn

Purchaser:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice is complete, if mailed, upon deposit, postage prepaid, in the United States mail in the case of certified mail, or confirmation of receipt by the recipient of email.

**9.12 Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect; provided that the invalidity or unenforceability of such provision does not materially adversely affect the benefits accruing to any party hereunder.

**9.13 Time of the Essence; Business Days.** TIME IS OF THE ESSENCE for performance by the parties under this Agreement. When used in this Agreement, the term "business day" means any day that is not a Saturday, Sunday, or a day on which banks are authorized to close in the city in which the Property is located.

**9.14 Waiver.** The excuse or waiver of the performance by a party of any obligation of the other party under this Agreement shall only be effective if evidenced by a written statement signed by the party so excusing or waiving. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Seller or Purchaser of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SELLER:

MENTAL HEALTH TRUST AUTHORITY,  
An Alaska public corporation,

By: The Trust Land Office

By: \_\_\_\_\_

Wyn Menefee

Its: Executive Director

PURCHASER:

\_\_\_\_\_  
\_\_\_\_\_ ,

By: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT A  
LEGAL DESCRIPTION

**Lot C1 of Trust Land Survey 2009-03, containing 2.9 acres, more or less, according to the survey plat filed in the Juneau Recording District on December 11, 2009 as Plat 2009-37.**

DRAFT



EXHIBIT B  
[ STATUTORY QUITCLAIM ]

**State of Alaska**  
**Alaska Mental Health Trust**  
**Authority**  
**Quitclaim Deed**

Record this document in the  
Juneau Recording District

**QCD 920**  
**TLO 2017-156**  
**MHT 9100XXX**

The GRANTOR, the ALASKA MENTAL HEALTH TRUST AUTHORITY, a public corporation within the Department of Revenue (AS 47.30.011 et seq.), by its agent pursuant to AS 37.14.009(a)(2), the Alaska Mental Health Trust Land Office, Department of Natural Resources, whose address is 2600 Cordova Street, Suite 100, Anchorage, Alaska 99503, pursuant to AS 38.05.801 and regulations promulgated thereunder, for TEN AND NO/100 DOLLARS and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby conveys and quitclaims to the GRANTEE, **TYPE FULL LEGAL NAME(S) HERE**, Choose an item., whose mailing address is type address here, City, State Zip, without warranty, all right, title and interest of the Grantor, if any, in the following described real property situated in Protracted Section 23, Township 41 South, Range 67 East, Copper River Meridian, Alaska, in the Juneau Recording District, First Judicial District, State of Alaska, and more particularly described as follows:

**Lot C1 of Trust Land Survey 2009-03, containing 2.9 acres, more or less, according to the survey plat filed in the Juneau Recording District on December 11, 2009 as Plat 2009-37.**

TOGETHER with all the tenements thereon, if any; and all rights of the Grantor to any and all hereditaments and appurtenances thereto belonging or in anyway appertaining.

SUBJECT to valid existing rights, including reservations, easements, and exceptions in the U.S. Patent or other state or federal conveyance, and in acts authorizing the issue thereof; easements, rights of way, covenants, conditions, reservations, notes on the plat, and restrictions of record, if any; and encumbrances or interests of record noted on the records maintained by the Department of Natural Resources, or otherwise existing on or before the date that the land was designated as Mental Health Trust Land pursuant to Section 40, Chapter 5 FSSLA 1994, as amended by Chapter 1, SSSLA 1994.

The Grantor hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or upon said land above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable material, geothermal resources and fossils. The Grantor also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said land, or any part of parts thereof, at any and all times for the purpose of opening, developing, drilling and working mines or wells on these or other land and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said land or any part thereof for the foregoing purposes and to occupy as much of said land as may be necessary or convenient for such purposes, hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Exhibit B – QUITCLAIM DEED

GRANTOR:  
**ALASKA MENTAL HEALTH TRUST AUTHORITY**

By: \_\_\_\_\_  
Wyn Menefee, Executive Director  
Alaska Mental Health Trust Land Office

STATE OF ALASKA                    )  
  ) ss.  
Third Judicial District            )

This is to certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, personally appeared ***Wyn Menefee***, the Executive Director of the Alaska Mental Health Trust Land Office, known to me to be the person who acknowledged that he executed the foregoing instrument, on behalf of the Alaska Mental Health Trust Land Office, as agent for the Alaska Mental Health Trust Authority, freely and voluntarily and for the purposes therein stated.

\_\_\_\_\_  
Notary Public for the State of Alaska  
My Commission expires with office.

MHT QCD 920  
TLO 2017-156  
MHT 9100XXX  
Parcel No. C20499

Location Index:  
Township 41 South, Range 67 East, Copper River Meridian, Alaska  
Section 23

AFTER RECORDING, RETURN DOCUMENTS TO:  
ORIGINAL TO GRANTEE:  
Full Legal Name  
Address  
City, State Zip

CERTIFIED COPY TO GRANTOR:  
Alaska Mental Health Trust Land Office  
2600 Cordova Street, Suite 100  
Anchorage, AK 99503

**Official State Business – NO CHARGE**