

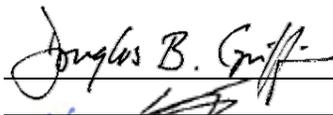
**CITY OF PALMER
ACTION MEMORANDUM NO. 12-015**

Subject: Approve the Base Form of Agreement for the Sale and Purchase of Real Estate to be Used by the City Manager and Real Estate Consultant in Negotiations for Purchase of the Mat-Maid Properties

Agenda of: February 14, 2012

Council Action: Approved

Approved for presentation by:

City Manager City Attorney City Clerk	  
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Certification of Funds:

Total amount of funds listed in legislation: _____

This legislation (√):

Has no negative fiscal impact

Funds are budgeted from this (these) line item(s):

Funds are not budgeted. Budget modification is required. Affected line item(s):

Unrestricted/undesignated fund balance (after budget modification) \$ _____

Director of Finance signature certifying funds:  _____

Attachment(s):

- Base form of Agreement for the Sale and Purchase of Real Estate

Summary statement: This Agreement will be the base form to be used by the City Manager and Real Estate Consultant in negotiations with the sellers of the individual Mat-Maid properties. The Agreement will be modified as necessary to address the specific details of each purchase transaction. The final Agreements, including purchase prices, will be presented to the City Council for approval at a later date.

Background: The City is continuing in its efforts to purchase the seven lots comprising the Mat-Maid Block. As of the date of this Action Memorandum, the City has contracted with a Real Estate Consultant, Commercial Real Estate Appraiser, and Environmental Consultant to assist and advise the City regarding the purchase of the Mat-Maid Block properties. The City has also met with the various property owners to assess each property owner's willingness to enter into purchase negotiations for the purchase of their respective property. All property owners have expressed their willingness to negotiate a sale with the City. The City is prepared to enter into negotiations with the property owners, and will use the attached form of "Agreement for the Sale and Purchase of Real Estate" to negotiate and document each sale transaction.

The base form of Agreement includes (i) an obligation on the part of the City to pay a non-refundable Initial Deposit of \$5,000 (which amount will be applied to the Purchase Price at closing); (ii) an obligation on the part of each seller to provide all property information in its possession to the City; (iii) a due diligence period of at least 180 days for the City to review and

analyze all aspects of the properties, including title, environmental conditions and historic preservation issues; and (iv) various conditions precedent to the City's obligation to close on the purchase the properties, including approval of due diligence issues, concurrent closings, coordination with the bond sale, and final approval of the closing by the City Council.

Administration recommendation: Approve action memorandum 12-015.

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Agreement
for the
Sale and Purchase
of
Real Estate

Mat-Maid Block Properties
Palmer, Alaska
Tract _____

The City of Palmer, Purchaser
and
_____, Seller

Effective Date _____, 2012

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Summary of Agreement Deadlines

<u>Agreement Requirement</u>	<u>Section</u>	<u>Agreement Deadline</u>	<u>Actual Due Date</u>
Effective Date	Preamble	Date of Execution by both parties	
Initial Deposit	Section 2(a)	20 days after Effective Date	
Seller's Information to City	Section 3	30 days after Effective Date	
Title Review Period Ends	Section 6(b)	45 days after Effective Date	
City's Title Objection Letter Due	Section 6(b)	Within 45-day Title Review Period	
Seller's Response to City's Title Objections letter	Section 6(d)	10 days after City letter received	
City's response to Seller's letter	Section 6(d)	10 days after Seller's letter received	
Seller's Deadline to remove Non-Monetary Title Objections	Section 6(c)	30 days after date of City's Title Objection letter	
Seller's Deadline to remove Monetary Title Objections	Section 6(c)	Closing Date	
Due Diligence Period	Section 7(b)	180 days after the Effective Date plus any 90-day extensions	
Closing Date	Section 11	15 days after execution of Notice of Satisfaction of Conditions Precedent by Title Company, City and Property Owners	

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AGREEMENT FOR THE SALE AND PURCHASE OF REAL ESTATE

**Mat-Maid Block Properties
Palmer, Alaska
Tract _____**

This Agreement for the Sale and Purchase of Real Estate shall supersede any and all previous offers and counter-offers, either oral or written. If this Agreement is not signed by both parties, it shall not represent a binding agreement between the parties, or an offer to buy or sell by either party.

THIS AGREEMENT FOR THE SALE AND PURCHASE OF REAL ESTATE (*"Agreement"*) is made and entered into by and between **THE CITY OF PALMER**, a home rule city (*"City"*), and _____, a _____ (*"Seller"*). For purposes of this Agreement, the effective date of this Agreement (*"Effective Date"*) shall be the last date of execution of this Agreement by the parties.

RECITALS

WHEREAS, on October 5, 2010, the voters of the City of Palmer approved a ballot proposition which authorizes the City to issue up to \$3 million in general obligation bonds (*"Bonds"*) to finance the acquisition of the Mat-Maid Properties for public purposes of the City;

WHEREAS, the Mat-Maid Block (*"Mat-Maid Properties"*) is 8.74 acres in size, and is comprised of seven separate parcels, with seven separate owners;

WHEREAS, the seven owners are: (i) *Jeffrey Johnson* (Tract B-1, Replat of Co-Op Garage Tract; 0.70 acres); (ii) *Palmer Arts Council* (Tract One, Matanuska Maid Power House Subdivision; 0.36 acres); (iii) *Crowley Petroleum Distribution, Inc.* (Tract A-1, Replat of the Co-Op Garage Tract; 1.11 acres); (iv) *State of Alaska, Division of Agriculture* (Tract A-1, Alaska State Land Survey No. 96-4; 3.03 acres); (v) *KLH, Inc.* (Tract B-1, Alaska State Land Survey No. 96-4; 0.85 acres); (vi) *William H. Ingaldson* (Tract B-2, Alaska State Land Survey No. 96-4; 2.51

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acres); and (vii) ***David & Sharon Ausdahl*** (portion of Section 33, Township 18N, Range 2E; 0.18 acres)(the foregoing parties hereinafter collectively referred to as the "***Property Owners***");

WHEREAS, the City and each of the Property Owners have negotiated and agreed to the sale of each Property Owner's parcel to the City;

WHEREAS, on February 14, 2012, the City Council approved the base form of Purchase Agreement, and authorized the City Manager to negotiate Purchase and Sale Agreements with the Property Owners;

WHEREAS, each Property Owner has agreed to the terms and conditions of the sale of its respective parcel to the City, and the City has agreed to purchase such parcel, under such terms and conditions as set forth in Agreements for the Sale and Purchase of Real Estate; and

WHEREAS, this Agreement sets forth the terms and conditions of the sale and purchase between this individual Seller and the City;

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

Section 1. The Property. Subject to the terms and conditions of this Agreement, Seller agrees to sell to the City, and the City agrees to purchase from Seller, the following:

A parcel of real property located in Palmer, Alaska, with an address of _____, and legally described as follows: _____, Palmer Recording District, Third Judicial District, State of Alaska. The parcel consists of _____ acres of real property, together with (i) all improvements, buildings and fixtures located thereon; (ii) all rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon; and (iii) all right, title and interest of Seller, if any, in and to any land lying in the bed of any street, road, or alley, open or proposed, adjoining such land ((i)-(iii) all collectively the "***Property***").

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Section 2. Purchase Price and Terms of Payment. The purchase price for the Property ("***Purchase Price***") shall be _____ ***DOLLARS AND NO/CENTS (\$_____, 000.00)***. The Purchase Price shall be paid as follows:

(a) An initial deposit in the amount of ***FIVE THOUSAND DOLLARS AND NO/CENTS (\$5,000.00)*** ("***Initial Deposit***"), to be paid in the form of a City of Palmer check, bank cashier's check or wire transfer, and to be deposited with and held in escrow by Mat-Su Title Insurance Agency, Inc. ("***Title Company***") ***no later than twenty (20) days after the Effective Date***. The Initial Deposit shall be non-refundable to the City except as otherwise provided in this Agreement, ***provided, that,*** in the event the City closes this transaction, the Initial Deposit shall be applied towards the Purchase Price at Closing. The Title Company shall serve as the escrow agent to close the sale and purchases through escrow ("***Escrow***"), and the parties hereby appoint the Title Company as escrow and closing agent.

(b) In the event the City elects to exercise any of the Due Diligence extension options provided in Section 7, the Second Deposit, Third Deposit, and Fourth Deposit, as the case may be, shall be paid in the form of a City of Palmer check, bank cashier's check or wire transfer and deposited into Escrow with the Title Company. In the event the Second Deposit, Third Deposit, or Fourth Deposit are deposited in Escrow, such deposits shall also be applied to the Purchase Price at Closing.

(c) The balance of the Purchase Price shall be paid by a bank cashier's check or wire transfer into Escrow with the Title Company at Closing. The Purchase Price shall be subject to prorations and adjustments as provided for in this Agreement.

(d) The parties acknowledge that there may need to be adjustments to the Purchase Price based on the findings by the City's as a result of the City's due diligence. Any adjustment to the Purchase Price shall be in writing, be in the form of an amendment to this Agreement, and must be mutually agreed to by the parties. Notwithstanding the foregoing, nothing in this subsection shall affect the City's right to terminate this Agreement as a result of the City's due diligence findings, as provided in Section 7.

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Section 3. Information to be Supplied to the City by Seller:

Within **thirty (30) days after the Effective Date**, Seller shall deliver to the City true and complete copies of the following, if the same is available and in Seller's possession or control:

(a) All documents and records of Seller related to the ownership, maintenance and repair of the Property, including without limitation, surveys, appraisals, environmental reports, engineering reports, geotechnical reports, historic preservation information, and title documents. Notwithstanding the foregoing, Seller shall not be required to share financial or other operating information on their business operations on the Property, except in the event the City notifies Seller that the City may be interested in assuming any Leases affecting the Property.

(b) All permits and licenses, including without limitation, applications for the issuance and any renewal of such permits and licenses, and correspondence to or from applicable governmental agencies with respect to the permits and licenses.

(c) Copies of all contracts, easements, licenses, access agreements, leases, subleases and similar use agreements (collectively "*Leases*") related to the Property. The Seller agrees that all Leases shall be terminated prior to Closing, unless otherwise agreed in writing by the City.

(d) Any environmental reports or studies related to the Property, including without limitation, Phase 1 and Phase 2 reports.

(e) All information and documents relating to the historical significance of the Property, including without limitation, any listing on the National Register of Historic Places, and compliance with state, Borough and City historic preservation requirements.

(f) All other documents in Seller's possession or control which are related to the Property which a purchaser of the Property would reasonably deem prudent to review as part of a due diligence review.

Section 4. Limited Representations, Warranties and Covenants of Seller: Seller represents, warrants and covenants to the City (which representations,

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warranties and covenants shall remain true at all times during this Agreement and shall survive Closing) as follows:

(a) Seller is the owner of fee simple title to the Property and has the full power, capacity and legal right to execute and deliver this Agreement and to sell the Property to the City, pursuant to the terms of this Agreement.

(b) Except for the Leases delivered to the City pursuant to Section 3(c), there are currently no leases, subleases or similar use agreements affecting the Property. From and after the Effective Date, Seller shall not sell, transfer, lease, allow any sublease or otherwise convey or allow use of all or any portion of the Property, or any interest therein, or grant or permit any easements, liens, mortgages, leases, use agreements, dumping or filling, encumbrances, or other interests or agreements with respect to the Property, without the City's prior written consent.

(c) There is no pending or threatened litigation, administrative action or examination, claim or demand, proceeding, judgment or order whatsoever relating to Seller or the Property which affects Seller's ability to convey the Property in accordance with the terms of this Agreement.

(d) Except for the information disclosed in the documents delivered pursuant to Section 3(d), to the best of Seller's knowledge, no party has spilled, discharged or released, or permitted the spill, discharge or release, from, at, on or under the Property, any petroleum, toxic, hazardous or regulated material, waste or substance, as such terms are or may be defined by any federal, state or local law ordinance or regulation ("*Hazardous Materials*"). Seller is not aware of nor has Seller received notice of any action, suit, proceeding or investigation pending or threatened for any violation of any federal, state or local law, ordinance or regulation pertaining to Hazardous Materials with respect to the Property.

(e) Seller has not received any notice of any violation or alleged violation of any legal requirement affecting the Property, including without limitation any violation or alleged violation of any local, state or federal environmental or zoning ordinance, code, regulation, rule or order, and specifically including without limitation, variances, conditional uses, or special permits affecting the Property.

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(f) To the best of Seller's knowledge, the execution and delivery of, and performance by Seller of its obligations under this Agreement does not contravene, or constitute a default under, any agreement, judgment, injunction, order, or decree binding upon Seller.

(g) To the best of Seller's knowledge, there is no action, suit, or proceeding against or affecting Seller in any court or before any governmental body which (i) affects the validity or enforceability of this Agreement, or (ii) could prohibit Seller from performing its obligations hereunder, or under any document to be delivered pursuant hereto.

(h) Seller has no real estate broker, agent or licensee representing Seller in this transaction, and no commission is due to any broker, agent, or licensee.

Section 5. Limited Representations and Warranties by the City.

The City hereby represents and warrants to Seller that (i) the City has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein; (ii) upon execution of this Agreement, the Agreement will be enforceable against the City in accordance with its terms; and (iii) the City has no real estate broker, agent or licensee, representing the City in this transaction, and no commission is due to any broker, agent, or licensee.

Section 6. Evidence of Title/Title Contingency.

(a) **Title Commitment.** The parties acknowledge that the City has ordered and received a preliminary commitment for title insurance ("***Title Commitment***") from the Title Company, which Title Commitment (i) reflects Seller as the owner of the Property; (ii) can be converted to either an ALTA Owner's Standard Coverage Policy or an ALTA Extended Owner's Policy, as determined by the City (although only the cost for the Standard Coverage Policy shall be paid for by Seller); and (iii) can include, at the City's sole discretion, and at the City's cost, such title endorsements as the City deems necessary and appropriate. Seller acknowledges that it has received, reviewed and understands, to Seller's satisfaction, a copy of the Title Commitment.

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(b) **Title Review Period.** The City shall have *forty-five (45) days after the Effective Date ("Title Review Period")* to review the state of title to the Property. Prior to the end of the Title Review Period, the City shall deliver written notice to Seller of any objections or defects to title noted in the Title Commitment to which the City objects ("***Title Objections***"). The City will be deemed to have waived the City's rights to object to any title objections or defects if the City fails to give Seller timely notice of such Title Objections. Any exceptions or defects to title which the City does not timely object during the Title Review Period shall be deemed to be "***Permitted Exceptions.***"

(c) **Removal of Title Objections.** With respect to monetary Title Objections ("***Monetary Title Objections***"), Seller shall have until the Closing to remove or otherwise render acceptable such Title Objections or to decline to correct such Title Objections. The Title Company shall provide that the funds to pay off such Monetary Title Exceptions shall be deducted from the Purchase Price, and shall reflect the payment amount on the appropriate Settlement Statements against Seller. With respect to non-monetary Title Objections ("***Non-Monetary Title Objections***"), Seller shall have *thirty (30) days* after the date of the City's Title Objections letter to remove such Title Objections.

(d) **Response Letters.** Upon receipt of the City's Title Objections letter, Seller shall notify the City in writing within *ten (10) days* after the receipt of the City's Title Objections letter which Title Objections Seller will remove. If Seller's notification indicates that Seller will not remove any, or remove only some, of the Title Objections, the City shall, within *ten (10) days* after Seller's letter, indicate to Seller in writing whether it agrees or disagrees with Seller's position. If The City disagrees with Seller's position, then the City shall in its letter of disagreement either (i) waive such uncured Title Objections and agree to accept title to the Property subject to such uncured Title Objections (which shall be deemed to be included as Permitted Exceptions at that point) without adjustment to the Purchase Price; (ii) negotiate an adjustment to the Purchase Price; or (ii) terminate this Agreement, and, in such event, neither the City nor Seller will thereafter have any further obligations or liabilities under this Agreement.

(e) **Failure to Remove Title Objections.** With respect to the Title Objections that Seller has agreed to remove, if Seller shall not correct or remove such Title Objections during the applicable period, then the City shall either (i) waive such

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uncured objections and accept title to the Property subject to such uncured Title Objections (which shall be deemed to be included as Permitted Exceptions at that point) without adjustment to the Purchase Price; (ii) negotiate necessary adjustments to the Purchase Price; (iii) sue for specific performance of this Agreement causing Seller to remove the agreed upon Title Objections; or (iv) terminate this Agreement by written notice to Seller, whereupon the all deposits except the Initial Deposit shall be promptly refunded to the City (without any further obligation on the parties to execute a rescission or similar agreement), and neither the City nor Seller will thereafter have any further obligations or liabilities under this Agreement.

(f) **Title Policy/Statutory Warranty Deed.** Seller acknowledges that the City may, at the City's sole discretion, elect to obtain an ALTA extended coverage owner's title policy as opposed to an ALTA standard coverage owner's policy, which requires an ALTA Survey. At Closing, Seller shall convey to the City fee simple and marketable title to the Property by Statutory Warranty Deed (in the form attached as *Exhibit A*), subject only to the Permitted Exceptions. The grantee on the Statutory Warranty Deed shall be shown as "*The City of Palmer.*" Seller shall also cause the Title Company to issue the ALTA policy of title insurance at Closing in a policy amount equal to the Purchase Price, subject to the Permitted Exceptions, and including the endorsements required by the City. The insured shall be shown as "*The City of Palmer.*" Seller shall pay the premium amount related to an ALTA standard owner's title policy, and the City shall pay the additional premium cost related to the ALTA extended owner's policy, 100% of the cost for the ALTA survey, and the title endorsements requested by the City.

(g) **Warranty Deed Exceptions.** The Statutory Warranty Deed to be delivered at Closing shall convey fee simple title, and shall include all Permitted Exceptions, but shall exclude the standard title exceptions typically in Schedule B-Section II of a preliminary commitment from the Title Company, which shall not be considered Permitted Exceptions. Further, existing deeds of trust, security agreements, mortgages, fixture filings and other monetary liens and encumbrances shall be deemed Title Objections which shall be removed by Seller during the Monetary Objection Removal Period, and such exceptions do not need to be identified as Title Objections in the City's Title Objection letter. The City shall (within *fifteen (15) days* of receipt by the City) provide to Seller a copy of any ALTA survey obtained by the City.

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Section 7. The City's Due Diligence.

(a) Scope of City's Due Diligence. In addition to any other contingencies and conditions precedent elsewhere in this Agreement, the City's obligation to consummate the transactions contemplated by this Agreement and to close on the purchase of the Property, is conditioned upon satisfaction, in the sole discretion of the City, of the following:

(i) The condition of and issues related to the Property meet with the approval of the City, in the City's sole discretion. The City and any authorized representative, including employees and contractors (and their subcontractors) (collectively "***Contractors***") of the City shall have the right to enter upon and inspect the Property, and are hereby granted access to do the same (including for purposes of the ALTA survey). Such inspections may include, but shall not be limited to, an inspection for evidence of Hazardous Materials and any environmental problems, inspections of the improvements (if any), historic preservation review, geotechnical review, planning and zoning review, surveying, engineering review, and architectural reviews. All such inspections shall be at the City's sole cost and expense. Such inspections by the City or the City's Contractors shall be conducted in such a manner as not to physically damage any part of the Property to the greatest extent possible. The City's inspections shall not unreasonably interfere with the operation of any businesses on the Property.

(ii) Any other issue (as determined by the City in its sole discretion) related to the Property, including without limitation, proposed uses of the Property by the City, are acceptable to the City, in the City's sole discretion.

(b) Initial Due Diligence Period. The City will have ***one hundred eighty (180) days to conduct the foregoing due diligence, which one hundred eighty (180) day*** period shall commence the ***day after the Effective Date, and end one hundred eighty (180) days thereafter at 5:30 p.m. Alaska time ("Due Diligence Period")***, and to make a final determination on all contingencies and other issues related to the Property, and to determine if, in the sole discretion of the City, the Property is acceptable to the City. If in the City's sole discretion the Property is not acceptable to the City, the City will so notify Seller of such negative determination (which notice need not specify any reason why the Property is not suitable but merely

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state that the Property is not acceptable to the City) in writing prior to the expiration of the Due Diligence Period (or any extension thereof), in which case this Agreement will become null and void (with no further obligation of the parties to execute a rescission agreement or similar document).

In the alternative, instead of terminating this Agreement, the parties acknowledge that there may need to be adjustments to the Purchase Price based on the findings by the City as a result of the City's due diligence. Any adjustment to the Purchase Price shall be in writing, be in the form of an amendment to this Agreement, and must be mutually agreed to by the parties. Notwithstanding the foregoing, nothing in this subsection shall affect the City's right to terminate this Agreement as a result of the City's due diligence findings, as provided in this Section 7.

If the City determines it would like to proceed and close the transaction, the City will so notify Seller of such determination in writing. In the absence of any such timely notification, the foregoing contingency provisions will be deemed to be favorably resolved. The City will have the right to waive any or all contingency provisions within the time provided and to then proceed with Closing.

(c) ***Optional Extensions of the Due Diligence Period.*** In addition to the initial ***one hundred eighty (180) day*** Due Diligence Period, the City shall have the option, in the City's sole discretion, to extend the Due Diligence Period by up to ***three (3) successive ninety (90) day*** periods. Such extension periods shall be identified as the ***"First Option Period," "Second Option Period," and "Third Option Period"*** respectively. If an option period is exercised, each option exercised shall be deemed to be part of the Due Diligence Period. The purpose of each option extension is to provide the City with an additional ***ninety (90) day*** period to undertake the City's due diligence and thus extending the Due Diligence Period.

(i) To exercise the option for the First Option Period, the City shall (i) notify Seller in writing at least ***ten (10) days*** before the expiration of the initial Due Diligence Period of the City's election to exercise the First Option; and (ii) deposit an additional deposit of ***Five Thousand Dollars (\$5,000.00)*** ("***Second Deposit***") in Escrow with the Title Company no later than ***ten (10) days*** after the beginning of the First Option Period, such amount to be paid by a City of Palmer check, bank cashier's check or wire transfer into the Escrow. The Second Deposit shall be non-refundable

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except as otherwise provided in this Agreement. As with the Initial Deposit, the Second Deposit shall be applied towards the Purchase Price at Closing.

(ii) To exercise the option for the Second Option Period, the City shall (i) notify Seller in writing at least ***ten (10) days*** before the expiration of the First Option Period of the City's election to exercise the Second Option; and (ii) deposit an additional deposit of ***Five Thousand Dollars (\$5,000.00)*** ("***Third Deposit***") in Escrow with the Title Company no later than ***ten (10) days*** after the beginning of the Second Option Period, such amount to be paid by a City of Palmer check, bank cashier's check or wire transfer into the Escrow. The Third Deposit shall be non-refundable except as otherwise provided in this Agreement. As with the Initial Deposit and the Second Deposit, the Third Deposit shall be applied towards the Purchase Price at Closing.

(iii) To exercise the option for the Third Option Period, the City shall (i) notify Seller in writing at least ***ten (10) days*** before the expiration of the Second Option Period of the City's election to exercise the Third Option; and (ii) deposit an additional deposit of ***Five Thousand Dollars (\$5,000.00)*** ("***Fourth Deposit***") in Escrow with the Title Company no later than ***ten (10) days*** after the beginning of the Third Option Period, such amount to be paid by a City of Palmer check, bank cashier's check or wire transfer into the Escrow. The Fourth Deposit shall be non-refundable except as otherwise provided in this Agreement. As with the Initial Deposit, Second Deposit and Third Deposit, the Fourth Deposit shall be applied towards the Purchase Price at Closing.

Section 8. Interim Responsibility of Seller. Seller agrees that during the period between the Effective Date and the Closing Date:

(a) The Property will be maintained in as good a condition and state of repair as that existing on the Effective Date, normal wear and tear excepted.

(b) Seller will not enter into any new Leases without the prior written approval of the City.

(c) Seller will cause to be paid all normal costs of operation and maintenance of the Property.

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(d) Seller shall not allow any waste or nuisance to be committed on the Property by any of Seller's agents or representatives.

(e) Seller will not allow any liens, encumbrances, deeds of trust, mortgages, or other monetary obligations which may be secured by the Property or placed against the Property, and if such occurs, Seller shall cause them to be removed during the Monetary Objection Removal Period.

(f) Seller will maintain liability and other necessary insurance on the Property.

(g) Seller will timely pay all taxes due with respect to the Property. Seller acknowledges and agrees that the City shall not be assuming any debts or liabilities of Seller, all of which shall remain the responsibility of Seller.

Section 9. Damage to Property. Seller agrees to give the City prompt written notice of any fire or other casualty affecting the Property. If prior to the Closing there is material damage to the Property caused by fire or other casualty, the City may, at the City's option:

(a) Terminate this Agreement by written notice to Seller within *ten (10) days* after the City has received the notice referred to above or at the Closing, whichever is earlier, whereupon the applicable deposit for the current due diligence period (but not any of the other deposit amounts) shall be promptly refunded to the City (without any obligation on the parties to execute a rescission or similar agreement) and neither the City nor Seller will have any further obligations or liabilities under this Agreement; or

(b) Proceed with Closing, in which case the City will be entitled to any insurance proceeds which may be payable on account of such occurrence, which shall be assigned to the City at Closing.

Section 10. Conditions Precedent to City's Obligation to Close. The obligation of the City to close the transactions contemplated by this Agreement is subject to all of the following conditions precedent being satisfied or waived by the City:

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(a) **Approval of Contingencies.** An affirmative decision to move forward to Closing by the City under the title contingency and due diligence contingencies in Sections 6 and 7 respectively.

(b) **Approval by City Attorney.** Approval by the City Attorney.

(c) **Approval by City Council.** The Palmer City Council has duly authorized, by an approved Resolution, the issuance of the Bonds, payment of the Purchase Price to each of the Property Owners, and the Closing on the purchase of all of the Mat-Maid Properties.

(d) **Closing with all Property Owners.** All of the other Property Owners close the sale (as part of the same Escrow which closes on all of the Mat-Maid Properties and coordinates the application of the Bond proceeds towards the Purchase Prices) on each of their respective property comprising part of the Mat-Maid Properties, unless the City, in its sole discretion, decides to split-up the closings on one or more of the Properties.

(e) **Bonds.** The Bonds have been issued, and the required funds have been transferred into the Escrow to pay the Purchase Prices and the Closing costs of the City as required by the settlement statements.

(f) **Appropriation of Funds.** The City Council has appropriated all funds necessary to pay the Purchase Price and all of the City's Closing costs.

(g) **Notice of Satisfaction of Conditions Precedent to be Signed by City, Title Company, and Property Owners.** The Title Company has notified the City in writing that (i) all the Property Owners are ready to close their respective sale; (ii) all necessary funds and documents are in Escrow pursuant to the approved Joint Closing Instructions provided to the Title Company; and (iii) the Title Company, City, and all Property Owners have signed (which may be done in counterparts and by facsimile signatures) the ***Notice of Satisfaction of Conditions Precedent***, the form of which is attached as ***Exhibit B***.

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Section 11. Time and Place for Closing. Subject to the satisfaction of the conditions precedent in Section 10, the closing ("**Closing**") of the transactions contemplated by this Agreement shall occur ***no later than fifteen (15) days*** after the latest date of execution of the Notice of Satisfaction of Conditions Precedent by the City, Title Company, and the Property Owners. Closing shall be on such date and time as agreed to by the parties. Closing shall take place at the office of the Title Company in Wasilla, Alaska. The actual date on which the Closing occurs is herein referred to as the "**Closing Date.**" The Closing Date may be extended by mutual written agreement by the parties. Seller shall surrender the Property to the City upon recording.

Section 12. Closing.

(a) At Closing, Seller shall:

(i) Execute and deliver to the City a Statutory Warranty Deed, in the form attached as ***Exhibit A***, conveying the Property to the City, subject only to the Permitted Exceptions.

(ii) Execute and deliver to the City, in such form and substance acceptable to the parties, an Assignment of those Leases to be assumed by the City.

(iii) Cause to be issued to the City by the Title Company the ALTA standard owner's title policy or ALTA extended owner's title policy referenced in Section 6, in an amount equal to the Purchase Price.

(iv) Provide the Title Company with any ALTA Lien Affidavits required in conjunction with any ALTA extended owner's title policy.

(v) Execute and deliver to the Title Company an IRS FIRPTA Certification.

(vi) Execute and deliver such other instruments and documents as may reasonably be required by the Title Company to close the transaction, including without limitation, settlement statements and escrow instructions.

(vii) Deliver to the City possession of the Property and all keys thereto.

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(b) At Closing, the City shall:

(i) Deliver to the Title Company such evidence of the authority and capacity as the Title Company may reasonably require.

(ii) Execute and deliver the Assignment referenced in Section (a)(ii) above.

(iii) Execute and deliver such other instruments and documents as may reasonably be required by the Title Company to close the transaction, including without limitation, settlement statements and escrow instructions.

(c) Seller shall pay:

(i) The cost of the standard owner's title policy.

(ii) Seller's attorney's fees.

(iii) One-half of the escrow closing fee of the Title Company and ½ of the recording fees.

(iv) Any other amounts identified as a Seller cost in the approved settlement statements.

(d) The City shall pay:

(i) Costs related to the additional policy premium amount for converting the standard owners title policy to the ALTA extended owners policy, 100% of the cost for the ALTA survey, and for any endorsements desired by the City.

(ii) The City's attorney's fees.

(iii) One-half of the escrow closing fee of the Title Company and ½ of the recording fees.

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(iv) All costs related to the Bonds and the City's financing for the purchase.

(v) All costs related to the appraisals, title review, and due diligence conducted by or for the City.

(vi) Deliver to the Title Company the balance of the Purchase Price (less all deposits) and any Closing costs required of the City under the settlement statements.

(vii) Any other amounts identified as a cost of the City in the approved settlement statements.

(e) Real property taxes shall be prorated as of the recording date. Utilities shall be changed into the name of the City as of the Closing Date, and the parties shall cooperate with the utility companies to accomplish the change-over.

Section 13. Termination, Defaults and Remedies.

(a) **Default by Seller.** Seller will be in default hereunder upon the occurrence of any of the following events:

(i) Seller fails to materially meet, comply with, or perform any covenant, agreement or obligation required on Seller's part within the time limits and in the manner required in this Agreement, for any reason other than a default by the City hereunder.

(ii) Seller fails to deliver at the Closing any items required of Seller in Sections 12(a) and (c) of this Agreement.

In the event of a default by Seller hereunder, the City may, at the City's option, terminate this Agreement by written notice delivered to Seller at or prior to the Closing and receive back the Initial Deposit and all other deposits paid by the City to that date (with no obligation of the parties to execute a rescission or similar agreement). In the alternative, the City may sue for specific performance of this Agreement by Seller.

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(b) **Default by the City.** The City will be in default hereunder upon the occurrence of any of the following events:

(i) The City fails to materially meet, comply with, or perform any covenant, agreement or obligation required on the City's part within the time limits and in the manner required in this Agreement, for any reason other than a default by Seller hereunder.

(ii) The City fails to deliver at the Closing any items required of the City in Sections 12(b) and (d) of this Agreement.

Seller and the City agree that Seller's economic detriment resulting from the removal of the Property from the market and the carrying and other costs incurred thereafter and associated therewith, including any costs to be incurred by Seller in order to satisfy the conditions of escrow set forth herein, are impracticable or extremely difficult to ascertain. Seller and the City agree that the retention of the Initial Deposit and all other deposits paid to that date is a reasonable estimate of such damages in the event of the City's failure to perform according to the provisions of this Agreement. Such payment is intended to be liquidated damages and not intended to be a forfeiture or penalty. The termination of this Agreement and retention of the Initial Deposit and all other deposits made to that date (by written notice from Seller to the City and the Title Company) shall be the sole remedy available to Seller for breach or default by the City, and the City will not be liable for damages or specific performance, and Seller hereby waives any and all rights to damages and specific performance.

Section 14. Notices. Any notice or communication which may be or is required to be given pursuant to the terms of this Agreement shall be in writing, and any such notice or communication will be deemed to have been given if and when delivered or mailed (or in the event the delivery or mailing is refused by the addressee) to any such party by courier, personal delivery, facsimile, e-mail, or certified mail, return receipt requested, addressed to such party at such party's address as provided below or such other address as either party may designate by notice similarly sent. Notice by mail is effective ***three (3) days*** after the date such notice is deposited in the mail. Notice given by courier or personal delivery is effective upon receipt. Notice given by facsimile is effective upon confirmation of successful transmission by the transmitting machine. Notice given by e-mail shall be successful upon transmission of

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the e-mail. Any party or additional notice party may change their notice address by providing notice to the other party as herein provided above.

If to Seller:

_____, Alaska 99____
Facsimile: (907) _____
E-Mail: _____

With a Copy to (which shall not constitute requisite notice):

_____, Alaska 99____
Facsimile: (907) _____
E-Mail: _____

If to the City:

Douglas Griffin, City Manager
City of Palmer
231 W. Evergreen Ave.
Palmer, Alaska 99645
Facsimile: (907) 745-0930
E-Mail: dgriffin@palmerak.org

With a Copy to (which shall not constitute requisite notice):

Glen Price, Esq.
Law Office of Glen Price
P.O. Box 4739
Palmer, Alaska 99645
Facsimile: (907) 746-5971
E-Mail: gplaw@mtaonline.net

Section 15. Miscellaneous Provisions.

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(a) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and there are no understandings, written or oral, which change, modify or enlarge this Agreement.

(b) **Waiver.** No provision of this Agreement may be waived except in writing signed by the party to be charged with such waiver. The failure of any party to insist upon strict performance of any term or condition of this Agreement shall not be deemed a waiver of any other rights or remedies that party may have and shall not be deemed a waiver of any subsequent breach or default of any such term, covenant, or condition.

(c) **Amendments.** Any amendment or modification to this Agreement must be executed in writing by both the City and Seller.

(d) **Construction.** This Agreement shall not be construed more strongly against one party than the other. Both parties waive the benefit of any rule of construction that an agreement shall be construed against its drafter. The captions in this Agreement are for the convenience of the parties only and shall contain no independent significance.

(e) **Governing Law.** This Agreement shall be interpreted under and construed in accordance with Alaska law. Venue for any lawsuit shall be in the Superior Court for the State of Alaska, at Palmer, Alaska. In the event suit or action is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, the prevailing party shall be entitled to recover from the other party such sums as the court may adjudge reasonable, including reasonable attorneys' fees.

(f) **Representation by Counsel.** Both the City and Seller acknowledge that they have had the opportunity, if each party so desired, for the assistance of counsel in the preparation and review of this Agreement. The parties acknowledge and agree that Glen Price, Law Office of Glen Price has solely represented the City in this transaction and has not provided any advice to Seller, and _____ has solely represented Seller in this transaction and has not provided any advice to The City.

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(g) **Successors**. The covenants herein will bind and inure to the benefit of the personal representatives, heirs, executors, administrators, devisees, other legal representatives, and successors of the respective parties.

(h) **No Partnership**. Nothing in this Agreement shall be intended or deemed to create a partnership, joint venture, association, or other similar relationship between the parties hereto.

(i) **No Third Party Beneficiaries**. Nothing in this Agreement shall be interpreted or construed as creating any rights or privileges whatsoever in persons or entities that are not parties to this Agreement.

(j) **No Merger**. The terms and provisions of this Agreement shall not merge in, but shall survive, the Closing of the transaction contemplated hereunder and the Closing documents to be delivered pursuant hereto.

(k) **Severability**. If any clause or term of this Agreement shall be deemed invalid by any court of law, the validity and enforcement of the other clauses and terms of the Agreement shall be unaffected.

(l) **No Assignment**. This Agreement may not be assigned, encumbered or otherwise transferred by either party, and any assignment, encumbrance or other transfer in violation hereof shall be null and void and of no force or effect.

(m) **Counterparts and Facsimile Signatures**. This Agreement may be executed in counterparts, including by facsimile signature, each of which shall be deemed an original, but all of which shall constitute but one and the same agreement, notwithstanding the fact that all parties are not signatories to the original or the same counterpart.

(n) **Time**. Time is of the essence under this Agreement. In the event any deadline or contingency termination falls on a Saturday, Sunday or City, state or federal holiday, the deadline or contingency shall be extended to the first business day following the Saturday, Sunday or state or federal holiday.

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(o) ***Recording.*** This Agreement may not be recorded by either party. At the option of the City, the City may record a Memorandum of Agreement, and, in the event the City exercises the option, Seller shall cooperate with the City and sign the Memorandum of Agreement.

Section 16. *Post-Closing Cooperation.* Subsequent to the Closing, the parties agree to cooperate with one another, and, if necessary, to execute further reasonable documents, to implement the terms of this Agreement.

DATED as of the Effective Date.

SELLER:

By: _____

Its: _____

Date: _____

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012 by _____.

Notary Public in and for Alaska
My commission expires:_____

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THE CITY OF PALMER

By: _____

Its: _____

Date: _____

STATE OF ALASKA)

)

THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, _____, The City of Palmer.

Notary Public in and for Alaska
My commission expires: _____

ATTESTED TO:

By: _____

Its: City Clerk