

**SUBJECT:** INFORMING THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY OF THE MANAGER ENTERING INTO AN ALL CASH PURCHASE AGREEMENT WITH A LESSEE TO PURCHASE BY APPLICATION THE ALASKA DIVISION OF LANDS, LEASE NUMBER 63019, THE FEE SIMPLE ESTATE OF BOROUGH-OWNED LAND (MSB999306).

**AGENDA OF:** May 17, 2022

**ASSEMBLY ACTION:**

Presented to the Assembly 5-17-22  
(BMD)

**MANAGER RECOMMENDATION:** For information only.

**APPROVED BY MICHAEL BROWN, BOROUGH MANAGER:** MB

Route To:	Department/Individual	Initials	Remarks
	Originator	HLH	
	Community Development Director	EP	
	Finance Director	CV	
	Borough Attorney	AB	
	Borough Clerk	BGA for item	

**ATTACHMENT (S):** All Cash Purchase Agreement (7 pp)

**SUMMARY STATEMENT:**

This is to inform the Assembly of the Borough's intent to enter into an All Cash Purchase Agreement for \$42,000 as determined by third party appraisal (land only/.34 Acre), for the conveyance of the fee simple estate to the Lessee by application. This action is in accordance with MSB 23.10.020(D), MSB 23.10.060, and the adopted Land and Resource Management Division, Policy & Procedures, Part 60-6. Wherein, the manager has authorization, "to approve, in accordance with adopted policy and procedure and without additional assembly approval, the sale of borough-owned real property, ten acres in size or smaller, with a pre-existing Alaska Division of Lands (ADL) lease to the lessee at fair market value."

ALL CASH  
PURCHASE AGREEMENT

This Agreement is made on the \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the **Matanuska-Susitna Borough**, whose address is 350 East Dahlia Avenue, Palmer, Alaska 99645, (hereinafter referred to as "Seller") and **Robert Nibert, Michael Nibert and Troy Nibert**, whose address of record is Post Office Box 520713 (hereinafter referred to as "Buyer").

WHEREAS, Seller is the owner of that real Properties located in the Palmer Recording District, State of Alaska, and more particularly described as follows:

Lot 5, Unit No. 3 Flat Lake Island Subdivision, according to the official plat there, filed under Plat No. 71-21, in the records of the Palmer Recording District, Third Judicial District, State of Alaska (Tax I.D. 6401000L005)].

(hereinafter referred to as "Properties"); and

WHEREAS, Buyer has made application to buy, as evidenced by the application dated September 17, 2021, which allowed holders of prior existing leases issued by the State of Alaska to purchase the fee estate to their lease under specified conditions; and

WHEREAS, this agreement shall be deemed to have been jointly drafted by both parties. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The interpretation and enforcement of this agreement shall be governed by the laws of the state of Alaska. The titles of sections in this agreement are not to be construed as limitations or definitions but are for identification purposes only.

NOW THEREFORE, in consideration of the promises herein contained, Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to buy from Seller, the Property on the terms and conditions provided and as set forth in MSB Information Memorandum, Serial No. 22-120 issued in accordance with Matanuska-Susitna Borough code, including adopted policies and procedures, and more particularly set forth below.

1. PURCHASE PRICE

The purchase price of the Properties is the fair market value as of April 14, 2022, in the amount of **Forty-two Thousand and NO/100 Dollars (\$42,000)**, as established from an appraisal performed in accordance with Borough accepted appraisal policies. The purchase price shall set the Seller's Base Sale Price for said Properties and shall be paid as follows:

a. The annual lease payment of \$507.78, due or paid, shall be pro-rated on a **monthly** basis to the date of recording the documents. The subject lease payments are paid through November 1, 2022. In the event recording takes place before or after November 1, 2022, the Buyer's cash purchase price will be adjusted as a credit or debit of \$42.31 per month/\$1.40 daily.

b. Buyer shall pay Seller the total balance due of the purchase price in the form of cash at closing/recording.

## 2. TITLE

Buyer will provide an owner's title policy to Seller naming the Buyer as the insured. The condition of title delivered to the Buyer shall be subject to reservations, exceptions, easements, rights-of-way, covenants, conditions, and restrictions of record or created by operation of law; and also subject to additional reservations, exceptions, easements, rights-of-way, covenants, conditions, and restrictions indicated in the approval of sale of the subject parcel which will be created by the conveyance from the Seller to the Buyer; and further subject to governmental regulations including, but not limited to, setback, use classifications, zoning or special permit requirements and any matters including, but not limited to, existing trails or encroachments which would be disclosed by actual inspection or survey of the Properties. The Seller shall initiate the order for the title report from the Title Company selected by the Seller. Title shall be delivered at time of closing by quitclaim deed, with no warranties, which shall be issued to Buyer as:

**Robert G. Nibert and Michael J. Nibert, husband and wife with the right of survivorship, as to a one-half divided interest, and Troy G. Nibert, a married man, as to a one-half divided interest as Tenants in Common.**

Buyers acknowledge that utilization of any legal access available to the leased parcel is not represented by the Borough to be practical or feasible. Access to the parcel is available via the surface of Flat Lake (lake access only).

## 3. ESCROW AND CLOSING COSTS

Upon Seller's request, the Buyer will select a company to provide an escrow closing services. The Seller will initiate the closing and deliver documents necessary to the Escrow Company selected by the Buyer.

In addition to the purchase price, Buyer agrees to pay all closing costs associated with this Agreement, which may include but are not limited to: recording fees, document preparation fees and escrow closing fees.

## 4. CLOSING

Buyer and Seller agree that time is of the essence and within sixty (60) days from the date this Agreement is made: (a) both parties shall execute any and all documents necessary to close and transfer title; and (b) Buyer shall pay to Seller the entire balance of the purchase price and all escrow and closing costs; EXCEPT, in the event this transaction is not completed, all cost of cancellation will be paid by Buyer.

5. POSSESSION

Possession shall be delivered to Buyer at time of recording.

5. BREACH BY BUYER; REMEDIES OF SELLER

In the event that Buyer fails to make any payment required, or fails to execute any and all documents and papers necessary in connection with closing and transfer of title within the time periods specified in this Agreement, the application to purchase made by Buyer shall be terminated by Seller. All credits accrued by Buyer shall be forfeited and this agreement shall be terminated. The existing lease will continue in effect according to the terms and conditions therein. The Buyer shall be responsible for any cancellation fee due to third parties who have provided services under the terms and conditions of this Agreement.

6. DEFENSE AND INDEMNIFICATION

Buyer agrees that it shall defend, indemnify and hold harmless Seller from and against all claims, demands, judgements, costs, expenses and fines (including reasonable attorney's fees) which may arise, for any reason, from the use of or presence on the Properties by Buyer, its agents, contractors or invitees. This provision shall survive the termination of this purchase agreement.

Buyer acknowledges they accept the Property in an **"AS-IS, WHERE-IS"** condition.

7. HAZARDOUS MATERIAL

a. Buyer acknowledges having been in possession of the Properties as lessee since July of 1985, that they have personally inspected the above-described properties, and after due and diligent inquiry found no evidence of environmental contamination on or near the Properties; and that the Seller, to the best of its knowledge, is unaware of any environmental contamination on or near the Properties; and that the Buyer will maintain the Properties in such a manner as to prevent the occurrence of any environmental contamination; and the Seller makes no warranties express or implied with respect to the condition of the Properties, the existence or non-existence of environmental contamination, or the suitability for any purpose whatsoever.

b. Buyer agrees that if the presence of hazardous material on the Properties is caused or permitted by Buyer, its agents, employees, contractors, or invitees, or if contamination of the Properties by hazardous materials otherwise occurs on the Properties, Buyer shall defend, indemnify, and hold harmless Seller from any and all claims, judgements, damages, penalties, fines, costs, liabilities, or losses (including, but not limited to, sums paid in the settlement of claims, attorneys' fees, consultant fees and expert fees) which indemnification includes, without limitations, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal, restoration work required by any federal, state or local government on or under the Properties. As used herein, the term "hazardous material" means any hazardous or toxic

substance, material, or waste, which is or becomes regulated by any local government authority, the state of Alaska, or the United States government.

c. Nothing in this section shall be construed to release the Seller from liability arising as a result of its negligence or willful misconduct.

## 8. ASSIGNMENTS

This Agreement may not be assigned without the written agreement of Seller, which may be withheld for any reason. This Agreement shall be binding on and shall inure to the benefit of the parties and their heirs, successors and assigns.

## 9. ENTIRE AGREEMENT

This Agreement and the documents referred to herein contain the entire agreement of the parties with respect to the subject matter hereof. Any changes, additions, amendments, or deletions hereto must be made in writing and signed by both Seller and Buyer.

## 10. MISCELLANEOUS

a. Buyer agrees to comply with the Declaration of Covenants, Conditions, and Restrictions of record, if any, affecting the Properties.

b. Buyer acknowledges the properties will be conveyed subject to a public access easement, 50 feet in width, upland from the ordinary high water mark of Stephan Lake.

c. Buyer acknowledges its responsibility to inspect the properties and agrees the Seller assumes no liability for matters, which would have been disclosed to the Buyer by an inspection of the properties. Buyer further acknowledges that the Seller makes no warranties, either expressed or implied, nor assumes any liability whatsoever, regarding the social, economic, or environmental aspects of the Properties, to include, without limitation, the soil conditions, water drainage, physical access, availability of personal use wood supplies now or in the future, or natural or artificial hazards which may or may not exist, or merchantability, suitability, or profitability of the Properties for any use or purpose. All rights to dispute acreage are waived by Buyer.

c. Buyer agrees construction and maintenance of any improvements, roads, drainage systems and common areas shall be the responsibility of the Buyer. The Buyer further agrees to comply with all federal, state, and borough regulations regarding the use and development of the properties, which includes but is not limited to State of Alaska, Department of Conservation regulations regarding water and sewer installation; and if applicable, regulations of the U.S. Army Corp of Engineers regarding filling or draining of any area within the properties designated as wetlands by the appropriate authority.

d. Buyer and Seller agree that pursuant to AS 34.70.110, the provisions of AS 34.70.010-200, Disclosures in Residential Real Property Transfers, are hereby expressly waived and shall not apply to this sale.

e. Buyer waives obtaining an as-built survey by a licensed, Alaska surveyor for the land and improvements, if any exists, as acknowledged in Appendix A attached hereto.

f. Seller does not represent themselves as a professional account or attorney. The Purchasers is urged to seek their own tax advice and legal counsel regarding this transaction.

g. Time is of the essence in the performance of this Agreement.

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

BUYER:

SELLER:

\_\_\_\_\_  
Robert G. Nibert

\_\_\_\_\_  
Michael Brown, Borough Manager  
MATANUSKA-SUSITNA BOROUGH

BUYER:

\_\_\_\_\_  
Michael J. Nibert

BUYER:

\_\_\_\_\_  
Troy G. Nibert

APPENDIX A

ACKNOWLEDGEMENT AND UNDERSTANDING  
WAIVER OF AS-BUILT SURVEY

The undersigned, as the Lessees of the Alaska Division of Lands Lease, ADL No. 63019, MSB999306 (Lease) does hereby acknowledge and understand the waiver of the as-built survey by a licensed surveyor requirement as set forth therein.

WHEREAS, according to the original ADL lease agreement executed with the State of Alaska, as Lessor, thence transferred to the Matanuska-Susitna Borough, recorded at Book 1036 and Page 044, on September 22, 1999, in the Palmer Recording District, Seward Meridian, Alaska, the Lessees are responsible to properly locate improvements within the confines of the leasehold estate. Moreover, if the land lies within the jurisdiction of any authorized building or zoning authority, the land shall be utilized in accordance with the rules and regulations promulgated by said authority.

WHEREAS, Lessees' Purchase of the Fee Simple Estate for Lands 10 Acres in Size or Smaller, Alaska Division of Lands (ADL) Lease Purchase of the Fee Simple Estate is pursuant to the Land and Resource Management Division Policy and Procedure Manual Part 60-6, effective December 3, 2019, wherein Lessees' desires to waive the as-built survey by a licensed surveyor and purchase by that certain Purchase Agreement the following described land(s):

Lot 5, Unit No. 3 Flat Lake Island Subdivision, Plat No. 71-21, Palmer Recording District, Third Judicial District, State of Alaska (Tax I.D. 6401000L005)].

The Purchasers understand that waiving the as-built survey does not relieve or remedy any violations of federal, state, or borough codes or regulations that may exist on the Property and would be disclosed by an as-built survey, such as, but not limited to boundary, structures, and shoreline setbacks.

Now and forever, this Acknowledgement and Understanding of Waiver Of As-Built Survey shall survive the transfer of title by Quitclaim Deed from the Matanuska-Susitna Borough to the Purchasers.

PURCHASERS

\_\_\_\_\_  
Robert G. Nibert

\_\_\_\_\_  
Date

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Michael J. Nibert

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Date

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Troy G. Nibert

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Date