

A NON CODE ORDINANCE OF THE HAINES BOROUGH APPROVING THE SALE TO HAINES BREWING COMPANY INC. OF LOT [TBD], PRIMARY SCHOOL SUBDIVISION PLAT NO. 2014-[TBD], HAINES RECORDING DISTRICT, FIRST JUDICIAL DISTRICT, STATE OF ALASKA.

LEGISLATIVE FINDINGS

WHEREAS, Lot [TBD], Primary School Subdivision Plat No. 2014-[TBD], Haines Recording District, First Judicial District, State of Alaska ("the Property") has previously been classified for sale by the Assembly with the advice of the Planning Commission; and

WHEREAS, the Assembly has previously directed the Borough Manager to commence negotiations for the sale of the Property; and

WHEREAS, negotiations have been substantially completed and an agreement on most terms regarding the sale of the Property has been drafted for review and approval by the Assembly and has been reviewed by the Planning Commission;

NOW, THEREFORE, BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is for the specific purpose of approving a sale of Lot [TBD], Primary School Subdivision, Plat No. 2014-[TBD] Haines Recording District, State of Alaska ("the Property") and shall not become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption.


Section 4. Purpose. This ordinance authorizes the sale of the Property to Haines Brewing Company Inc. upon the terms and conditions of a negotiated purchase and sale agreement.

Section 5. Authority. This ordinance is adopted under the authority granted the Assembly by HBC 14.20.010, HBC 14.20.020 and HBC 14.20.100 to approve the disposal of real property by negotiation.

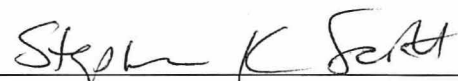
Section 6. Authorization and Approval. The Borough Manager is hereby authorized to complete the process of sale of the Property upon the terms and conditions set forth in the Agreement for Sale and Purchase of Real Estate attached hereto.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS 26th DAY OF AUGUST, 2014.

ATTEST:


Julie Cozzi, MMC, Borough Clerk




Stephanie Scott, Mayor

Date Introduced: 07/29/14
Date of First Public Hearing: 08/12/14
Date of Second Public Hearing: 08/26/14 - Adopted

AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

For good and valuable consideration the receipt whereof is hereby acknowledged, the Haines Borough, an Alaska municipal corporation (“**Haines**” or “**Borough**” or “**Seller**”) and Wheeler & Kitayama, LLC, (“**Buyer**”), an Alaskan company, hereby agree as follows:

1. Property to Be Sold.

(a) Seller hereby agrees to sell to Buyer and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, the following-described real property and improvements:

Lot 8B, Primary School Subdivision, Haines Recording District, First Judicial District, State of Alaska.

A 20,000 square feet area containing approximately 0.459 acres (the “**Property**”).

(b) At the Closing, Seller shall convey to Buyer all of the Property by Limited Warranty Deed in the form attached as Exhibit A subject to the following:

(i) Rights-of-way and easements of record acquired by any person or entity, public or private, including, but not limited to, public rights-of-way.

(ii) All restrictions, regulations, requirements, laws, ordinances, resolutions and orders of all boards, bureaus, commissions, departments and bodies of any municipal, state or federal authority.

(iii) Provisions and reservations as made applicable by terms of the U.S. Patent or by law.

(iv) A right for reversion whereby the Property will be reconveyed to Seller if the Improvements required by this Agreement have not been substantially completed within three (3) years of Closing.

(c) Buyer shall execute a Reverter Agreement as set forth in Exhibit B.

2. Price.

Property Purchase Price. Buyer shall pay Seller eighty-six thousand six hundred dollars (\$86,600) (“Purchase Price”). The Purchase Price shall be paid by Buyer at closing in cash, by a bank cashier’s check, or by wire transfer, in readily available funds into escrow with First American Title Company (The “Title Company”), 8251 Glacier Highway, Juneau, AK 99801. Within ten (10) days after the Effective Date of this Agreement, Buyer shall deposit with the Title Company the sum of eight thousand six hundred and sixty dollars (\$8,660) to be held as a nonrefundable earnest money payment (Earnest Money). At

Closing, this earnest money shall be disbursed to Seller and credited to the Buyer.

3. Title Insurance.

(a) Seller, at Buyer's cost, shall provide to Buyer within fourteen (14) days of mutual execution of this Agreement a Preliminary Commitment to Issue Title Insurance for the Property. In the event that Buyer gives notice of a valid Material Title Defect within seven (7) days of receipt of said Preliminary Commitment, this Agreement shall terminate without further obligation on the part of either party. "Material Title Defect" shall include any matter affecting title which a reasonable person would consider to be a serious defect.

(b) Nothing in this Agreement shall be construed to require Seller to expend funds to eliminate or clear any matter affecting title.

(c) Buyer may, at Buyer's sole option and expense, purchase Buyer's title insurance. Likewise if Seller wishes to purchase a Title Insurance policy for itself, it may do so at its own expense.

4. Conditions Precedent to Closing. The following matters shall be completed prior to or coincident with Closing or waived in writing by the parties ("Conditions Precedents to Closing"):

(a) At BUYER's expense, as required by HBC 14.20.100(D), a survey must be completed and a new plat created that subdivides the existing Lot 8 into two new lots and establishes a legal description for the parcel being purchased; and

(b) Seller and Buyer have complied with their respective obligations as set forth in Sections 5 and 6.

5. Seller's Obligations. Provided that (i) all Conditions Precedent to Closing set forth in Section 4 have been satisfied, (ii) this Agreement has not been cancelled, and (iii) Buyer has delivered (or will deliver) all items required to be delivered, then Seller shall deposit with Title Company at or before the Closing the following:

(a) The original Deed, duly executed by Seller, substantially in the form attached as Exhibit A;

(b) An original Reverter Agreement, duly executed by Seller, substantially in the form attached as Exhibit B; and

(c) Documents reasonably required by the Title Company such as an executed settlement statement or evidence of Seller's authority.

6. Buyer's Obligations. Provided that (i) all Conditions Precedent to Closing set forth in Section 4 have been satisfied, (ii) this Agreement has not been cancelled, and (iii) Seller has delivered (or will deliver) all items required to be delivered, then Buyer shall deposit with Title

Company prior to the Closing date:

- (a) The Purchase Price in cash or by wire transfer.
- (b) An original Reverter Agreement, duly executed by Buyer, substantially in the form attached as Exhibit B; and
- (c) Documents reasonably required by the Title Company such as an executed settlement statement or evidence of Buyer's authority.

7. Closing.

(a) The closing ("Closing") shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of First American Title Company at 8251 Glacier Highway, Juneau, AK 99801. The delivery of all sums due Seller pursuant to Section 2 above and the recording of documents by Title Company shall occur not later than October 6, 2014 (the "Closing Date"). All funds and documents shall be deemed simultaneously delivered on and as of the Closing Date. The Closing may occur on such earlier date as Buyer and Seller may agree but the Closing Date may not be extended without the written approval of both Seller and Buyer.

(b) In the event the Closing does not occur on or before the Closing Date, Title Company shall, unless it is notified in writing by both parties to the contrary within five (5) days after such date, return to the depositor thereof all items which may have been deposited with Title Company hereunder except the Earnest Money which shall be disbursed to Seller. Any such return shall not, however, relieve either party hereto of any liability it may have for its wrongful failure to close.

(c) Possession. Possession of the Property shall be delivered to Buyer on the Closing Date.

8. Remedies for Breach. Seller and Buyer shall have all remedies available by law and equity for any breach of this Agreement, including, but not limited to, the remedy of specific performance and the exercise of Seller's right of reverter.

9. Construction of Improvements. On or before three (3) years from the date of Closing, Buyer shall complete the construction of a Brewery on the Property ("the Improvements"). Upon completion of the Improvements Buyer shall promptly give Seller an appropriate notice of completion.

10. Hazardous Substances. Buyer acknowledges and agrees that there may be spilled, leaked or discharged Hazardous Substances (as defined below), or other substances on or in the groundwater or surface water of the Property which may contain oil, petroleum, hydrocarbons, asbestos, solvents, paints, thinners or other materials, substances or waste which are, or may, become regulated as hazardous or toxic under federal, state or local law, and the release or

discharge of which is, or may become, prohibited by law, that Buyer has knowingly and voluntarily determined that its obligations under this Agreement need not be contingent upon the results of any assessment or inspection of the Property for any such substances by an engineer, contractor or other consultant.

11. As Is, Where Is Sale, Release and Indemnification.

Seller sells and buyer buys the property hereunder “as is” and “where is.” Seller shall have no liability or responsibility to buyer whatsoever for any violations of any law, regulation, building code, ordinance or other legal requirement of any kind whatsoever applicable to the property as may be discovered at any time, including but not limited to material (or non-material) hazardous substances contamination, violations of building or safety codes, latent defects, deterioration or problems or liabilities of any kind. Buyer hereby releases seller from and shall indemnify, defend and hold seller harmless from any and all liabilities, costs, expenses or claims of any kind whatsoever arising out of or in connection with the property, including but not limited to any that may date to or originate during the time of ownership of all or any of the property by seller or its predecessors in interest; **provided, however**, that buyer does not hereby release seller from and shall have no responsibility to indemnify, defend and hold seller harmless from liabilities, costs, expenses or claims,

If any; (1) for damages to land other than the property sold hereunder as shall directly and entirely result from and be caused by acts of seller, its agents or employees which were performed on land other than the property sold hereunder. The intent of the parties is that buyer has had already and shall continue to have a thorough opportunity to inspect and study the property before the closing, but that once such closing occurs, seller walks away from the property so conveyed and from any and all legal liability or responsibility of any kind whatsoever arising out of or in connection with such property, except as expressly stated herein, and that seller shall have, after the closing, no further responsibility or liability to buyer or any other person or entity for any claims of any kind that may arise as to or in connection with the property.

Neither seller, nor any of its officers, directors, employees, agents, attorneys, or representatives have previously nor does under this agreement make any representations or warranties, and none of the persons or entities described above shall in any way be liable for or with respect to:

- (A) The condition of the property or the suitability of the property for buyer’s intended use, or for any use whatsoever;
- (B) The presence or existence of any hazardous substances, asbestos, oil or other petroleum product contamination or any other material as to which the discharge, leakage, spillage or presence on the property would be regulated by applicable state or federal law. Buyer purchases the property “as is” and “where is” and assumes the responsibility and risks of all defects and conditions of the property including the prior contamination (and releases and agrees to indemnify, defend

and hold seller harmless from the same), including but not limited to environmental hazards and deterioration from age, weather, disuse, limited maintenance or other causes. Buyer acknowledges that buyer has had the opportunity and will have the opportunity to inspect the property and will be relying entirely thereon.

Buyer acknowledges that notwithstanding any prior or contemporaneous oral or written representations, statements, documents or understandings, this agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, and supersedes all such prior or contemporaneous oral or written representations, statements, documents or written agreement and shall remain unaffected by any representations, statements or understandings subsequent to the date hereof which shall not be represented by a mutually executed amendment to this agreement.

The terms of this Paragraph shall survive the Closing.

12. Notices. All notices, waivers, elections, approvals and demands required or permitted to be given hereunder shall be in writing and shall be personally delivered, mailed by certified mail with postage prepaid, or transmitted by facsimile to the location for each party designated herein. Either party may, by proper notice to the other, designate a different address for the giving of notice. Any notice shall be effective when personally delivered, or, if mailed as provided herein, five (5) business days after deposit, postage pre-paid in the U.S. Mails, or in the case of facsimile notice when sent, if answer back or confirmation received:

SELLER:

Haines Borough
P.O. Box 1201
Haines, AK 99827

BUYER:

Wheeler & Kitayama, LLC
P.O. Box 911
Haines, AK 99827

With a courtesy copy to:

Brooks W. Chandler
Boyd, Chandler & Falconer, LLP 911 W. 8th Avenue, Suite 302
Anchorage, AK 99501 Facsimile No. 907/274-3698

13. Costs. Each party shall bear its own costs and attorney fees, except as expressly provided herein. Unless specifically made the responsibility of one party elsewhere in the Agreement, all other fees and closing costs in connection with the Closing shall be paid by Buyer as required by HBC 14.20.060(A). Any and all prepaid expenses or income of any kind and all taxes and assessments shall be prorated.

14. Brokers. Seller represents to Buyer that Seller has not dealt with any broker or real estate agent regarding the Property of this transaction. Buyer represents to Seller that Buyer has not dealt with any broker or real estate agent regarding the Property of this transaction. Each party shall be responsible to defend, indemnify and hold harmless the other as to any claim made by any person

or entity for a commission claimed due as a consequence of the indemnifying party's acts or conduct.

15. Access to Premises. At all times during normal business hours prior to the Closing, Buyer shall, upon reasonable notice to Seller, have reasonable access to the Property for the purpose of making such inspections, examinations, tests or surveys of the Property as Buyer may reasonably desire.

16. Survival of Terms and Waiver. The terms and condition of this Agreement shall survive the Closing and are expressly intended to bind the parties notwithstanding any statute of limitations.

17. Merger. This Agreement expresses and embodies all understandings and agreements between the parties and is entered into after full investigation, neither party relying upon any statements or representations not embodied in this Agreement.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, and may be modified only by a written instrument signed by both parties.

19. Relationship of the Parties. This Agreement shall not authorize either party to act as an agent for the other.

20. Law and Venue. This Agreement shall not be governed by and construed under the laws of the State of Alaska. Venue of any dispute shall be the Superior Court of the State of Alaska in Juneau, Alaska.

21. No Waiver. The failure of any party to insist upon the strict performance of any provision of this Agreement, or the failure to exercise any right, power or remedy available hereunder, shall not constitute a waiver by said party of any such provision as to any other breach or subsequent breach of the same or any other provision.

22. Warranties of Authority. Each party and each natural person who executes this Agreement on behalf of such party acknowledges, warrants, and represents for the benefit of the other party to this Agreement: (a) that such person is duly authorized and empowered to execute this Agreement on behalf of such party; (b) that such party has been duly formed and organized and is in good standing; (c) that all necessary and appropriate resolutions and actions by such party's managers or ordinances by such party's governing body authorizing such party to enter into, execute, and perform this Agreement and the transactions contemplated by this Agreement have been obtained; and (d) that all steps have been taken and acts performed that are conditions precedent to making this Agreement valid, enforceable, and binding against such party in accordance with its terms and conditions.

23. Counterparts. This Agreement may be executed in counterparts, each of which shall be

deemed an original and which, taken together, shall constitute a single Agreement. This Agreement shall not become binding upon any Party unless and until at least one counterpart of this Agreement shall have been fully executed by each party hereto. Facsimile signatures shall be valid so long as an original signature shall be promptly delivered to the other party.

DATED: 22 Sep 2014

SELLER:

HAINES BOROUGH

By: 
David B. Sosa

Its: Borough Manager

DATED: 22 Sep 2014

BUYER:

WHEELER & KITAYAMA, LLC

By: 
Paul Wheeler


Jeanne Kitayama

Its: Principals

STATE OF ALASKA)
)
ss. FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledge before me this 22nd day of September, 2014, by David Sosa, Borough Manager of the Haines Borough, a municipal corporation, on behalf of the municipality.

Kathryn Friedle
NOTARY PUBLIC FOR ALASKA
My Commission Expires: June 18, 2018

KATHRYN A. FRIEDLE
Notary Public, State of Alaska
Commission # 1406176
My Commission Expires
June 18, 2018

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledge before me this 22nd day of September, 2014, by Paul Wheeler and Jeanne Kitayama, the principals of Wheeler and Kitayama, LLC, an Alaskan limited liability company.

Kathryn Friedle
NOTARY PUBLIC FOR ALASKA
My Commission Expires: June 18, 2018

KATHRYN A. FRIEDLE
Notary Public, State of Alaska
Commission # 1406176
My Commission Expires
June 18, 2018

LIMITED WARRANTY DEED

The Grantor, the Haines Borough of P. O. Box 1209, Haines, AK 99827, for valuable consideration, conveys and warrants to Wheeler and Kitayama, LLC, of P.O. Box 911, Haines, AK 99827, all interests which it has in that certain real property in the Haines Recording District, First Judicial District, State of Alaska ("the Property"), described as follows:

Lot 8B, Primary School Subdivision, Haines Recording District.

Subject to:

1. Rights-of-way and easements of record acquired by any person or entity, public or private, including but not limited to public rights-of-way.
2. All restrictions, regulations, requirements, laws, ordinances, resolutions and orders of all boards, bureaus, commissions, departments and bodies of any municipal, state or federal authority.
3. Provisions and reservations as contained in the U.S. Patent or made applicable by law, including, but not limited to, rights or interests under the public trust doctrine.
4. The express condition that title to the property conveyed herein shall revert to the Grantor without necessity of reentry should Grantee fail to substantially complete construction of Improvements to the Property as described in the Agreement for Sale and Purchase of the Property by September 22, 2017.

DATED this 22nd day of September, 2014.

HAINES BOROUGH

By: *David B. Sosa*
David B. Sosa
Its: Borough Manager

STATE OF ALASKA)
FIRST JUDICIAL DISTRICT) ss.

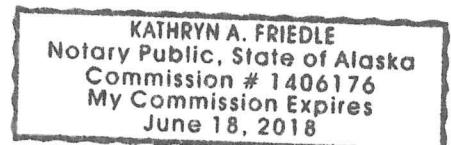
The foregoing instrument was acknowledged before me this 22nd day of September, 2014, by David B. Sosa, the Borough Manager of the Haines Borough, on behalf of the Borough.

Kathryn Friedle
NOTARY PUBLIC FOR ALASKA
My Commission Expires: June 18, 2018

RECORD IN HAINES RECORDING DISTRICT

AFTER RECORDING, RETURN TO:

Brooks W. Chandler
Boyd, Chandler & Falconer
911 W. 8th Ave., Suite 302
Anchorage, AK 99501



REVERTER AGREEMENT

This REVERTER AGREEMENT is dated as of this 22nd day of September, 2014, by and between the Haines Borough, having and address of P.O. Box 1209, Haines, AK 99827 (“Seller), and Wheeler and Kitayama, LLC, having an address of P.O. Box 911, Haines, AK 99827 (“Buyer”).

RECITALS

- A. The Seller has conveyed to the Buyer that certain real estate described on Exhibit “A” (the “Property”) pursuant to a Deed of even date herewith between the Seller and Buyer.
- B. Pursuant to paragraph nine (9) of that certain Agreement for Sale and Purchase of the Property, the Buyer has agreed to construct certain Improvements on the Property (the “Improvements”).
- C. The Deed provides that if the Buyer does not construct the Improvements then the Property shall revert to the Seller.

NOW THEREFORE, in consideration of the transfer of the Property to the Buyer and other consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

- 1. Buyer agrees at its sole cost and expense to complete the construction of the Improvements by no later than September 22, 2017 (the “Completion Date”).
- 2. In the event the Improvements are not completed by the Completion Date, the Property shall revert to and thereafter become fee simple real estate owned by the Seller. Upon the request of the Seller, the Grantor will provide a general warranty deed to the Property in form and substance acceptable to the Seller evidencing the reconveyance of the Property.
- 3. During the construction of the Improvements, Buyer will not place any additional liens or encumbrances on the Property except as consented to by the Seller. In that regard, the Seller agrees not to unreasonably withhold its consent to any construction loan financed

with a commercial bank or similar lender intended to fund the construction and development of the Improvements. In such an event, the Seller will enter into a Subordination Agreement in form and satisfactory to such lender. Upon completion of the Improvements satisfactory to the Seller, the Seller agrees to issue a letter acknowledging the release of the reverter rights described herein.

4. This Agreement shall be binding upon the parties hereto and shall be binding upon and inure to the benefit of their successors and assigns.
5. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Alaska.
6. This Agreement may only be modified or amended by a written agreement signed by authorized representatives of the parties hereto.

WITNESS the following signatures as of the year and date first above written.

DATED: 22 Sep 2014

SELLER:

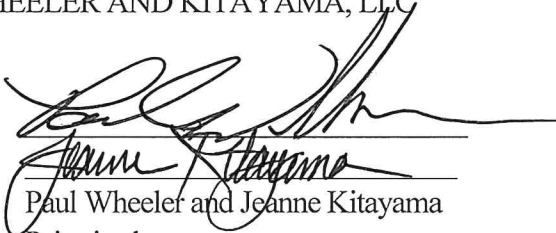
HAINES BOROUGH

By: 
David B. Sosa
Its: Borough Manager

DATED: 22 SEP 2014


BUYER:

WHEELER AND KITAYAMA, LLC

By: 
Paul Wheeler and Jeanne Kitayama
Its: Principals

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledge before me this 22nd day of September, 2014, by David Sosa, Borough Manager of the Haines Borough, a municipal corporation, on behalf of the municipality.




NOTARY PUBLIC FOR ALASKA
My Commission Expires: June 18, 2018

KATHRYN A. FRIEDLE
Notary Public, State of Alaska
Commission # 1406176
My Commission Expires
June 18, 2018

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledge before me this 22nd day of September, 2014, by Paul Wheeler and Jeanne Kitayama, the Principals of Wheeler and Kitayama, LLC, an Alaskan limited liability company, on behalf of the company.



NOTARY PUBLIC FOR ALASKA
My Commission Expires: June 18, 2018

KATHRYN A. FRIEDLE
Notary Public, State of Alaska
Commission # 1406176
My Commission Expires
June 18, 2018