

Introduced by: Mayor  
Date: 03/01/11  
Action: Adopted as Amended  
Vote: 5 Yes, 3 No, 1 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2011-016**

**A RESOLUTION AUTHORIZING THE ACQUISITION OF CERTAIN REAL  
PROPERTY DESCRIBED AS LOT 2 BLOCK 2 OLD MILL SUBDIVISION FROM  
FRED AND JANE MAROLF FOR FAIR MARKET VALUE UNDER THE  
EMERGENCY WATERSHED PROTECTION PROGRAM'S OLD MILL  
SUBDIVISION/LOST CREEK VOLUNTARY BUYOUT PROJECT**

**WHEREAS**, the Kenai Peninsula Borough, in partnership with the USDA Natural Resources Conservation Service Emergency Watershed Protection program and the State of Alaska Division of Homeland Security and Emergency Management is conducting the Old Mill Subdivision/Lost Creek Voluntary Buyout Project as authorized by Ordinance 2008-19-18 (Mayor) Substitute and Ordinance 2009-45; and

**WHEREAS**, property owners applied to be considered for participation in the program and properties were ranked based on Lost Creek flood history and flood susceptibility criteria; and

**WHEREAS**, highest ranking properties were reviewed under federal due diligence protocols and were independently appraised; and

**WHEREAS**, under the voluntary buyout program residential properties can be purchased at the appraised fair market value and subsequently the properties are to be returned to their natural floodplain function; and

**WHEREAS**, the subject property was appraised by Robert P. Olchin, Certified Residential Appraiser, on August 27, 2010 at \$220,000, and upon completion of an administrative review process the appraisal was accepted by the Kenai Peninsula Borough on December 30, 2010; and

**WHEREAS**, under the Old Mill Subdivision/Lost Creek Voluntary Buyout project the Kenai Peninsula Borough has offered to purchase the subject property for its appraised fair market value subject to assembly approval; and

**WHEREAS**, funds for this acquisition are available in account 271.94910.OMIL3.48610; and

**WHEREAS**, upon acquisition the borough intends to contract for the removal of all improvements on the land and to subsequently grant a conservation easement to the USDA Natural Resources Conservation Service as stipulated by the Emergency Watershed Protection program; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of February 28, 2011, recommended adoption by unanimous consent;

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

SECTION 1. That the purchase of the following described real property under the Old Mill Subdivision Lost Creek Voluntary Buyout Project is in the best interests of the borough:

Lot 2, Block 2, OLD MILL SUBDIVISION, according to the official plat thereof, filed under Plat Number S-93, Records of the Seward Recording District.  
(Assessor Parcel No. 125-370-10)

SECTION 2. That the terms and conditions substantially in the form of the Purchase Agreement accompanying this ordinance are hereby approved. The purchase price shall be \$220,000 plus closing costs not to exceed \$5,000.

SECTION 3. That this acquisition is for the purpose of mitigating future flood damage by returning the property to its natural floodplain function.

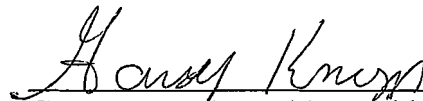
SECTION 4. That the proposed classification of this land is government.

SECTION 5. That the mayor is authorized to execute any and all documents necessary to purchase the real property described in Section 1 in accordance with the terms and conditions contained in this resolution and the accompanying Purchase Agreement and consistent with applicable provisions of KPB Chapter 17.10.

SECTION 6. That the cost of this acquisition shall be charged to Old Mill Subdivision/Lost Creek Voluntary Buyout Project Account 271.94910.OMIL3.48610.

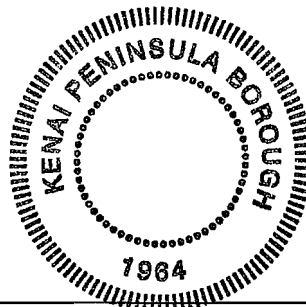
SECTION 7. That this resolution shall take effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 1ST DAY OF MARCH, 2011.

  
\_\_\_\_\_  
Gary Knopp, Assembly President

ATTEST:

  
\_\_\_\_\_  
Johni Blankenship, Borough Clerk



Yes: Johnson, McClure, Smalley, Smith, Tauriainen  
No: Haggerty, Pierce, Knopp  
Absent: Murphy

**EARNEST MONEY RECEIPT  
AND  
PURCHASE AGREEMENT**

This Agreement is made on this 3<sup>rd</sup> day of February, 2011, by and between Frederick Marolf, III and Jane C. Marolf, husband and wife whose address is 14745 Timber Lane Dr., Seward, AK 99664 (hereinafter referred to as "SELLER") and the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter referred to as "KPB").

WHEREAS, SELLER is the owner of that real property located in the Seward Recording District, Third Judicial District, State of Alaska, and more particularly described as follows:

Lot 2, Block 2, OLD MILL SUBDIVISION, according to the official plat thereof, filed under Plat Number S-93, Records of the Seward Recording District.

(Assessor Parcel No. 125-370-10)

Hereinafter "the Property"

WHEREAS, KPB has offered to buy, and SELLER is willing to sell the Property as evidenced by this Purchase Agreement;

NOW THEREFORE, in consideration of the promises herein contained, SELLER hereby agrees to sell to KPB, and KPB hereby agrees to buy from SELLER, the Property on the terms and conditions as set forth below:

**1. PURCHASE PRICE**

The purchase price of the Property is two hundred twenty thousand dollars and NO cents (\$220,000.00). The Purchase Price shall be paid by KPB at time of closing. The purchase of the property and appropriation for the purchase are subject to borough assembly approval.

**2. EARNEST MONEY RECEIPT**

A down payment of \$1,000 paid by KPB is being held in the trust account of First American Title Insurance Company, Seward, AK, to be applied towards the purchase price of the Property. The purchase of the Property is subject to the approval of the KPB assembly, and if the KPB assembly fails to authorize the sale or if the SELLER breaches any of the terms of this agreement, the \$1,000.00 shall be returned to the KPB.

3. TITLE

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

4. ESCROW AND CLOSING COSTS

In addition to the purchase price, KPB shall pay closing costs in connection with this Agreement, including without limitation all escrow fees, title insurance charges, recording fees and bank charges up to \$5,000. Property taxes and assessments will be prorated. All costs will be paid in full at the time of closing.

5. CLOSING

Unless otherwise agreed in writing, closing will occur not later than August 15, 2011. At closing, KPB will pay the balance of the purchase price. Both parties will execute all documents required to complete the Purchase Agreement and, if applicable, establish an escrow account.

6. POSSESSION

Possession shall be delivered to KPB at time of recording. The Property shall be delivered in a neat, safe, and "broom-clean" condition. All personal property and all items, if any, identified in Attachment A "List of Items to be Removed by Homeowner Prior to Sale" shall be removed and retained by SELLER.

7. KENAI PENINSULA BOROUGH ASSEMBLY APPROVAL

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

**8. HAZARDOUS MATERIAL**

**SELLER covenants to the best of SELLER'S knowledge, that as the date of this agreement, except as specifically identified herein, the Property is free of all contamination from petroleum products or any hazardous substance or hazardous waste, as defined by applicable state or federal law, and there are no underground storage tanks or associated piping on the Property. SELLER agrees that no hazardous substances or wastes shall be located on or stored on the Property, or any adjacent property by seller, owner or contractors, nor shall any such substance be owned, stored, used, or disposed of on the Property or any adjacent property by SELLER, its agents, employees, contractors, or invitee's, prior to KPB'S ownership, possession, or control of the Property.**

**9. ENTIRE AGREEMENT**

**This Agreement and the documents referred to herein contain the entire agreement of the parties with respect to the subject matter hereof. Any changes, additions or deletions hereto must be made in writing and signed by both KPB and SELLER or their respective successors in interest. Provisions of this Agreement, unless inapplicable on their face, shall be covenants constituting terms and conditions of the sale and of the agreement to finance the sale, and shall continue in full force and effect until the purchase price is paid in full or this agreement is earlier terminated.**

**10. BREACH REMEDY**

**Prior to closing of the sale, in the event that KPB or SELLER fails to make any payment required, or fails to submit or execute any and all documents and papers necessary for closing and transfer of title within the time period specified in this agreement, the SELLER or KPB may terminate this Agreement.**

**11. MISCELLANEOUS**

- A. Time. Time is of the essence in performance of this Agreement.**
- B. Cancellation. This Agreement, while in good standing may be canceled in whole or in part, at any time, upon mutual written agreement by SELLER and KPB. This Purchase Agreement is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.**
- C. Notice. Any notice or demand, which under the terms of this Agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed**

addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

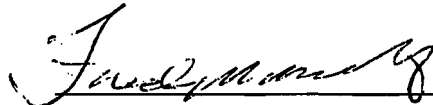
- D. Interpretation. This Agreement shall be deemed to have been jointly drafted by both parties. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The interpretation and enforcement of this Agreement shall be governed by the laws of the State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

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

KENAI PENINSULA BOROUGH:

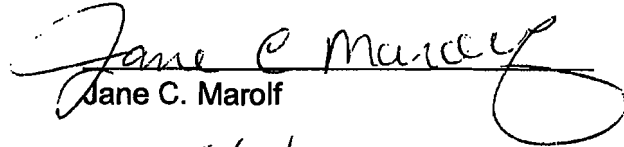
SELLERS:

\_\_\_\_\_  
David R. Carey, Mayor

  
\_\_\_\_\_  
Frederick Marolf, III

Dated: \_\_\_\_\_

Dated: 2/3/11

  
\_\_\_\_\_  
Jane C. Marolf

Dated: 2/3/11

ATTEST:

APPROVED AS TO LEGAL FORM  
AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Johni Blankenship,  
Borough Clerk

\_\_\_\_\_  
Holly B Montague,  
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA )  
 )ss  
THIRD JUDICIAL DISTRICT )

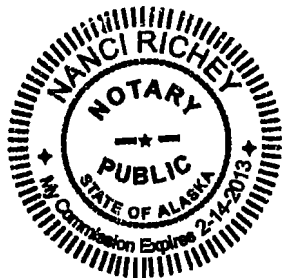
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by David Carey, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA )  
 ) ss  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of FEBRUARY, 2011, by Frederick Marolf, III.



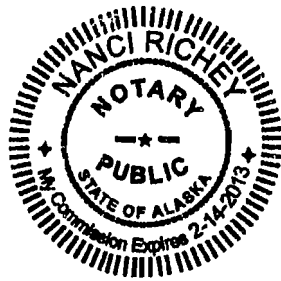
[Signature]  
Notary Public in and for Alaska  
My commission expires: 2-14-2013



NOTARY ACKNOWLEDGMENT

STATE OF ALASKA            )  
  ) ss  
THIRD JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of  
FEBRUARY, 2011, by Jane C. Marolf.



[Signature]  
Notary Public in and for Alaska  
My commission expires: 2-14-2013