



**CITY OF KOTZEBUE  
RESOLUTION NO. 25-27**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KOTZEBUE  
ACCEPTING THE PLANNING COMMISSION RESOLUTION 25-07 AND  
DESIGNATING THE CITY-OWNED BUILDING AT 289 FIFTH AVENUE AS THE  
NEW LOCATION FOR THE “ARCTIC SPIRITS” PACKAGE STORE**

- WHEREAS,** the City of Kotzebue (“City”) purchased the real property located at Lot 9, Block 18, USS 2863 from Grain Capital Corporation on November 9, 2023, for the sum of five hundred ninety-five thousand dollars (\$595,000.00), as documented in the Grain Capital Corporation Sales Agreement (Exhibit A);
- WHEREAS,** the Kotzebue Municipal Code Section 17.36.090(D), as cited in Exhibit A, grants the Kotzebue Planning Commission the authority to evaluate and recommend uses for public buildings and land within the City;
- WHEREAS,** the Kotzebue Planning Commission had conducted due diligence, including the evaluation of multiple potential uses for the subject property through formal meetings and deliberation;
- WHEREAS,** the Kotzebue Planning Commission, based on its findings and expert input, including that of the Planning Director, has determined that the most practical and beneficial use of the building is to designate it as the new location for the City’s “Arctic Spirits” Package Store;
- WHEREAS,** the building is currently unoccupied and undeveloped for any specific use, and minimal modification is necessary for its adaptation to serve as a Package Store;
- WHEREAS,** this designation will support the operational needs of the City’s Package Store and ensure efficient use of City assets, with no anticipated significant negative impact on traffic, utilities, or neighborhood compatibility;
- WHEREAS,** the Kotzebue Planning Commission Resolution 25-07 formally recommends to the City Council that this property be designated for use as the “Arctic Spirits” Package Store;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Kotzebue formally accepts the Planning Commission Resolution 25-07 and approves the designation of the City-owned building located at 289 Fifth Avenue (Lot 9, Block 18, USS 2863) as the new location for the “Arctic Spirits” Package Store.

That the City Manager or their designee is hereby authorized and directed to take all necessary administrative steps to transition operations of the “Arctic Spirits” Package Store to the newly designated location.

That this resolution shall take effect immediately upon adoption and the building shall be designated for this use as of the date of this resolution.

**PASSED AND APPROVED** by a duly constituted quorum of the City Council of the City of Kotzebue, Alaska, this 5<sup>th</sup> day of June 2025.

**CITY OF KOTZEBUE**

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Derek Haviland-Lie    Mayor

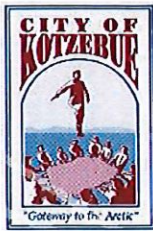
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ATTEST:

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Donald Jones                      City Clerk

Published/Posted: May 30, 2025

Introduction: June 5, 2025



**KOTZEBUE PLANNING COMMISSION  
RESOLUTION 25-07**

**A RESOLUTION OF THE CITY OF KOTZEBUE PLANNING COMMISSION RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF KOTZEBUE THE UTILIZATION OF THE BUILDING LOCATED AT 289 FIFTH AVENUE AS THE NEW LOCATION FOR THE CITY OF KOTZEBUE “ARCTIC SPIRITS” PACKAGE STORE.**

**WHEREAS,** the real property and building located at Lot 9, Block 18, USS 2863, Kotzebue Townsite, was purchased from the Grain Capital Corporation on November 9, 2023, for the amount of five hundred and ninety-five thousand dollars (\$595,000.00), as set forth in Exhibit “A” (Grain Capital Corp. Sales Agreement), without a predetermined use approved;

**WHEREAS,** the Kotzebue Municipal Code in KMC Chapter 17.36.090(D), *Planning Commission: Powers and Duties*, exhibit “B” sets forth the process for building use designation of any public building or land within the City;

**WHEREAS,** the Planning Commission has extensively evaluated and considered multiple potential uses for the building over multiple Planning Commission meetings. The Planning Commission finds that the most practical and beneficial use for the building is that of the new location for the “Arctic Spirits” Package Store;

**WHEREAS,** the City of Kotzebue Planning Director confirms that this would be a suitable use for the capabilities of the building and this building use would have no significant negative effect on traffic or utilities;

**WHEREAS,** minimal funding and resources are required for the building to be utilized as Package Store, as the building is suitable in its existing condition for this purpose;

**WHEREAS,** the building currently has no designated purpose or active use within the City, and utilizing the CAIN Building as the new location for the “Arctic Spirits” Package Store would provide an immediate, practical function for this City-owned building, supporting the operational needs of the Package Store;

**WHEREAS,** it is now the responsibility of the City Council to either accept or deny the Planning Commission's recommendation for the building's use as the “Arctic Spirits” Package Store new location. Should the Council approve, the building will be designated for this purpose immediately.

**NOW THEREFORE BE IT RESOLVED:** that the Kotzebue Planning Commission recommends to the City Council of the City of Kotzebue the utilization of the City-owned warehouse building located at 289 Fifth Avenue Lot 9, Block 18, USS 2863, as the new location for the “Arctic Spirits” Package Store.

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**PASSED AND APPROVED** by the Kotzebue Planning Commission on this 21<sup>st</sup> day of May, 2025.

**CITY OF KOTZEBUE  
Planning Commission**

  
Ernest Norton, Chairman

**ATTEST:**

  
Sam Camp, Planning Director

**Attachments:**

**Exhibit A-** Grain Capital Corporation Building Sales Agreement

**Exhibit B-** KMC Chapter 17.36.090(D), *Planning Commission: Powers and Duties*

### **17.36.090 Powers and duties.**

The planning commission shall have the following powers and duties:

- A. To review and act upon applications for zoning map amendments and variances, and appeals from decisions of the administrative official, in accordance with this chapter and AS 29.33;
- B. To act as the platting authority for the city in accordance with AS 29.33;
- C. Preparing plans, surveys and maps for the systematic development and betterment of the municipality as a place of residence and business;
- D. Studying and making recommendations regarding the advisability, location and design of any proposed public building, park, right-of-way or other public use of land within the city. Before any final action is taken on a proposed public capital improvement within the city, including state and federal capital improvements, plans, an ddrawing of the proposed improvement shall be submitted to the planning commission for its review and recommendation;
- E. Studying and making recommendation of the use, subdivision or method of disposition of all publicly owned land within the city. Before any publicly owned land (including state and federally owned lands) is sold, leased or otherwise transferred from public to private tenure, plans for the subdivision and use of such lands shall be submitted to the planning commission for its review.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.15.020(b)).

THIS AGREEMENT OF PURCHASE AND SALE (the "Contract") is made and entered into as of the date hereinafter set forth by and between Grain Capital Corp. ("Seller"), and the City of Kotzebue ("Purchaser").

WITNESSETH:

## **1. Sale and Purchase**

Subject to the terms and conditions and for the consideration herein set forth, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the following property (the "Property"), to wit:

### ***1.1. Legal Description***

A tract of land situated in the City of Kotzebue, State of Alaska, and being more particularly described as Lot 9, Block 18, Tract A, USS 2863, Kotzebue Townsite, as set forth in Exhibit "A" – Special Limited Warranty Deed, Document No. 2013-000400-0, dated December 16, 2013 and Quit Claim Deed, Document No. 2014-000106-0, dated April 1, 2014, both in Kotzebue Recording District-215 – attached hereto and incorporated herein, together with all and singular the rights, privileges, interests, easements, hereditaments and appurtenances thereunto in anywise incident, appertaining, or belonging to the land including, but not limited to: (i) all right, title, and interest in and to adjacent streets, alleys, rights-of-way, and any adjacent strips or gores of real estate; and (ii) all right, title, and interest in and to all oil, gas, and other minerals in, on, or that may be produced from the property, all mineral leases, royalty interests, and bonuses relating thereto, ad all agreements relating to the production, development, exploration, or exploitation thereof (the "Real Property"); and

### ***1.2. Improvements***

All improvements, structures, and fixtures situated on the Real Property including, but not limited to, those certain buildings, structures, fixtures, and other improvements of every kind and nature presently situated on, in, or under or hereafter erected, installed, or used on the Real Property (the "Improvements").

## **2. Earnest Money**

### ***2.1. Deposit of Earnest Money***

Upon the execution of this Contract by Seller and Purchaser, Purchaser shall deliver to the Title Company (as hereinafter defined) the sum of \$24,000.00 (the "Earnest Money") at the time of this AGREEMENT OF PURCHASE AND SALE is fully executed . If the sale contemplated by this Contract is consummated, the Earnest Money shall be applied against the Purchase Price (as

hereinafter defined). If the sale is not consummated, the Earnest Money shall be paid to Seller or refunded to Purchaser in accordance with the terms of this Contract.

## ***2.2. Dispute Between Parties***

It is agreed that the Earnest Money deposit is made for the accommodation of the parties hereto. In the event any litigation arises between the parties to this agreement concerning the deposit, then the parties hereto do severally and jointly agree to indemnify and save harmless the Title Company from payment of any cost or other expenses that may be involved in such litigation. In the event of a dispute, the Title Company's only obligation shall be to retain the deposit until a final determination has been issued to pay the deposit into a court of competent jurisdiction.

## ***2.3. Delivery of Earnest Money***

The Title Company shall deliver the Earnest Money to Seller or Purchaser, as the case may be, on the following conditions:

- (A) Deliver to Seller upon consummation of the closing;
- (B) Deliver to Seller upon receipt of demand therefore signed by Seller stating that Purchaser has defaulted in the performance of its obligations under this Contract; provided, however, that the Title Company shall not honor such demand until at least 30 days after the date on which the Title Company shall have mailed a copy of such demand to Purchaser; nor thereafter if the Title Company shall have received a notice of objection from Purchaser given in accordance with the provision of this Paragraph 2;
- (C) Deliver to Purchaser upon receipt of demand therefore signed by Purchaser stating that either Seller has defaulted in the performance of its obligations under this Contract or that Purchaser is otherwise entitled to the refund of the Earnest Money pursuant to the terms of this Contract; provided, however, that the Title Company shall not honor such demand until at least 30 days after the date on which the Title Company shall have mailed a copy of such demand to Seller, nor thereafter following such 30-day period if the Title Company shall have received a notice of objection from Seller given in accordance with the provisions of this Paragraph 2.

## ***2.4. Holding of Earnest Money Pending Resolution***

If the Title Company shall have received a notice of objection as provided for in this Paragraph 2 within the time herein prescribed, then the Title Company shall continue to hold the Earnest Money until the Title Company receives either: (i) a written notice signed by other parties directing the disbursement of the Earnest Money; or (ii) a final and non-appealable order by a court of competent jurisdiction, entered in a proceeding in which the parties and the Title Company are named as parties, directing the disbursements of the Earnest Money on accordance with such direction. The Title Company shall not be or become liable in any way or to any person for its

refusal to comply with any such claims and demands unless it has received such direction. Upon compliance with such direction, the Title Company shall be released of and from all liability hereunder.

### ***2.5. Affirmative Action of Title Company***

Notwithstanding the foregoing, the Title Company may, on notice to the parties, take such affirmative steps as it may, at its option, elect in order to terminate its duties hereunder, including, but not limited to, the deposit of the Earnest Money with a court of competent jurisdiction and the commencement of an action of interpleader, the costs of which shall be borne by whichever of the parties is the losing party. Upon the taking by the Title Company of the action described above, the Title Company shall be released of and from all liability hereunder.

### ***2.6. Reimbursement of Title Company***

Except as otherwise provided herein, the Purchaser shall reimburse the Title Company for all reasonable costs and expenses incurred in performing its duties hereunder, including, but not limited to, reasonable attorneys' fees and disbursements, either paid to retained attorneys or in an amount representing the fair value of legal services rendered to itself.

## **3. Installment Sale**

The purchase price is \$595,000.00. \$273,361.00 shall be paid into Escrow upon Title/Deed transfer by Seller. The purchaser agrees to pay the balance of \$300,000.00 [\$595,000.00 sale price – \$24,000.00 earnest deposit + \$1,611.00 title insurance fees payable by purchaser + \$750.00 escrow fee payable by purchaser – \$273,361.00 initial payment to into escrow = \$300,000.00 balance to be financed by Grain Capital Corp.] in monthly payments of \$13,774.35 each, beginning on or before December 15, 2023, and \$13,774.35 on or before the first day of each month thereafter to and including the first day of December 1, 2025 for a total of 24 monthly payments, with interest at the rate of 9.5% per year on the unpaid balance. The \$13,774.35 monthly payments are to be applied, first, to interest, and the balance on principal, until the balance of principal and interest has been paid in full, as set forth in Exhibit “B” attached hereto – three-page letter of August 16, 2023 from Seller to Purchaser.

## **4. Title Commitment, Survey, and Utility Verification**

### ***4.1. Title and Lien Documents***

Within 30 days after the date of this Contract, Seller, with the purchaser paying the title insurance fee of \$1,611.00, shall deliver or cause to be delivered to Purchaser the following:

- (A) A Commitment for Title Insurance (the “Title Commitment”) issued by Stewart Title Company, 714 Gaffney Road, Fairbanks, Alaska 99701 (hereinafter referred to as the “Title Company”)

setting forth the status of the title of the Real Property and Improvements and showing all liens, security interests, claims, encumbrances, easements, rights of way, encroachments, reservations, restrictions, and any other matters affecting the Real Property and Improvements (the "Encumbrances");

(B) True, complete, and legible copies of all documents referred to in the Title Commitment;

(C) Searches of the appropriate Uniform Commercial Code records showing title to the Personal Property to be free and clear of all security interest(s), liens, and encumbrances.

#### ***4.2. Delivery of Survey***

Within 30 days after the date of execution of this Contract, Seller, at the Purchaser's expense, shall deliver or cause to be delivered to Purchaser a survey (the "Survey") of the Real Property and Improvements, which survey shall: (i) reflect the actual dimensions of, and area within, the Real Property, the location of any easements, setback lines, encroachments, or overlaps thereon or thereover, and the outside boundary lines of all improvements; (ii) identify by recording reference all easements, setback lines, and other matters referred to on the Title Commitment; (iii) reflect that there is access to and from the Real Property from a publicly dedicated street or road; (iv) reflect any area within the Real Property that has been designated by the Federal Insurance Administration, the Army Corps of Engineers, or any other governmental agency or body as being subject to special, or increased, flooding hazards; (v) include a Surveyor's Certification, reasonably acceptable to Purchaser and sufficient to cause the Title Company to delete the survey exception, on the Owner's Title Policy (as hereinafter defined); and (vi) comply with the requirements of the McClintock Land Associates, Inc., 16942 North Eagle River Loop Road, Eagle River, Alaska 99577 for a Category 1A Condition I Survey. The Surveyor shall compile a metes and bounds description of the Real Property from the information contained within the Survey and this description shall be used in the documents executed at Closing and such field notes shall be incorporated herein by this reference upon their completion and approval by Purchaser.

#### ***4.3. Notice of Objections***

Within 10 days after the receipt of all of the items referred to in Sections 4.1 and 4.2 hereof, Purchaser shall give Seller written notice ("Purchaser's Objection Notice") of all Encumbrances of any overlaps, encroachments, easements, or encumbrances reflected on the survey that constitute, in Purchaser's sole opinion, objections to title (hereinafter referred to as the "Objectionable Encumbrances"). If Purchaser's Objection Notice is not timely delivered, then all of the items reflected on the Title Commitment and Survey shall be considered to be Permitted Encumbrances (as hereinafter defined).

#### ***4.4. Seller To Obtain Releases***

Seller covenants and agrees, at Seller's sole cost and expense, to obtain releases, at or prior to

Closing, for any and all liens affecting the Property as of the date of Closing. In addition, Seller covenants and agrees to use its best efforts, at Seller's sole cost and expense, to cure or remove all other Objectable Encumbrances. Within 10 days after the receipt of Purchaser's Objection Notice, Seller shall give Purchaser written notice ("Seller's Title Notice") specifying the Objectable Encumbrances that have been removed or cured, with evidence acceptable to Purchaser and the Title Company of such removal or cure.

#### ***4.5. Failure To Deliver Title Notice***

If Seller fails to deliver Seller's Title Notice or if Seller is unable to cure or remove the Objectable Encumbrances to the satisfaction of Purchaser within 10 days after Purchaser's Objection Notice was delivered, Purchaser shall have the right prior to Closing to terminate this Contract by giving Seller written notice thereof. Upon the receipt of such notice, the Earnest Money shall be refunded to Purchaser immediately and thereupon neither party shall have any further rights, duties, or obligations hereunder. In the event Purchaser elects not to terminate this Contract and to proceed with the Closing, then all Objectable Encumbrances that have not been cured or removed shall be deemed waived. All Encumbrances and all items reflected on the Survey to which no objection is made and all Objectable Encumbrances which are subsequently waived are hereinafter referred to as the "Permitted Encumbrances."

#### **5. Inspection**

Purchaser is granted the right to conduct a physical inspection ("Inspection") of the Real Property, Improvements, and all fixtures, mechanical equipment, and personal property being sold hereby. The Inspection shall include, without limitation, an inspection of the Real Property and Improvements for environmental matters, including an inspection for asbestos, an examination of any mud in the sheet rock, an examination of the glue used for tiling, and an inspection for any underground storage tanks located on the Real Property. Purchaser shall have 15 days from the Effective Date hereof to perform such inspection and, in this regard, Purchaser or its designated agents may enter upon the Property and Improvements for purposes of such analysis, or other tests and inspections which may be deemed necessary by Purchaser. If Purchaser determines, in its sole judgment, that the Real Property or Improvements are: (i) not suitable for any reason for Purchaser's intended use or purpose; (ii) are not in satisfactory condition; or (iii) have environmental risks that Purchaser does not want to assume, then Purchaser may, on written notice to Seller on or before 10 days from the Effective Date hereof, terminate this Contract, and it shall be null and void for all purposes and the Earnest Money shall be returned to Purchaser. If the written notice is not given to Seller within such period, this condition and any and all objections with respect to the Inspection shall be deemed to have been waived by Purchaser for all purposes. In the event this Contract shall not close through no fault of Seller, Purchaser shall provide Seller with a copy of the results of any inspection made by Purchaser. The inspection provided for in this Section 5 shall be at Purchaser's expense.

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## **6. Warranties and Representations of Seller**

To induce Purchaser to enter into this Contract, Seller makes the following warranties and representations, all of which (a) shall also be true and correct as of the date of Closing and (b) shall survive the Closing of this Contract:

### ***6.1. Good and Marketable Title to Property***

Seller now has and will have at Closing good and indefeasible title in fee simple to the Property and no party, except as herein set forth, has or shall have any right in, or to acquire, the Property;

### ***6.2. Free of Encumbrances***

At the Closing, the Property shall be free and clear of all encumbrances except Permitted Encumbrances;

### ***6.3. No Actions or Suits***

There are no actions, suits, claims, assessments, or proceedings pending or, to the knowledge of Seller, threatened that could materially adversely affect the ownership, operation, or maintenance of the Property or Seller's ability to perform hereunder;

### ***6.4. Authority of Seller***

Seller has full right, power, and authority to execute, deliver, and perform this Contract without obtaining any further consents or approvals from, or the taking of any other actions with respect to, any third parties and this Contract, when executed and delivered by Seller and Purchaser, will constitute the valid and binding agreement of Seller, enforceable against Seller in accordance with its terms;

### ***6.5. Existence of Security Interest***

No uncured breach or default, whether declared or not, including, without limitation, nonpayment of any sum or nonperformance of any obligation, exists under, or with regard to, any obligation of Seller that is secured by a lien on the Property;

### ***6.6. Compliance With Environmental Laws***

(A) Without limiting Section 6.6 above, Seller further represents that (i) the Property has never been used by Seller or, to the best of Seller's knowledge after due inquiry, by any previous owners, occupants or the current tenants, if any, to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Substances (as hereinafter defined), and no such Hazardous

Substances exist on the Property or in its soil or groundwater; (ii) to the best of Seller's knowledge after due inquiry, no portion of the Improvements has been constructed with asbestos, asbestos-containing materials, urea formaldehyde insulation or any other chemical or substance which has been determined to be a hazard to health and/or the environment; (iii) to the best of Seller's knowledge after due inquiry, there are no, nor have there been, electrical transformers or other equipment which have di-electric fluid-containing polychlorinated biphenyls (PCBs) located in, on or under the Property; (iv) to the best of Seller's knowledge after due inquiry, the Property has never contained any underground storage tanks; and (v) Seller has not received nor does it have any knowledge of any summons, citation, directive, letter or other communication, oral or written, from any local, state, or federal government agency concerning (a) the existence of Hazardous Substances on the Property or in the immediate vicinity, (b) the releasing, spilling, leaking, pumping, pouring emitting, emptying, or dumping of Hazardous Substances into the Property or into waters or other lands.

(B) The term "Hazardous Substances" as used in this Contract shall mean any hazardous or toxic material, substance, or waste, pollutant or contaminant which is regulated under any statute, law, regulation, rule or ordinance of any local, state, regional, or federal authority having jurisdiction over the Property, or its use, including, but not limited to, any material, substance or waste which is (i) defined as a hazardous substance under any Environmental Laws; (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products; (iii) polychlorinated biphenyls; (iv) lead; (v) urea formaldehyde; (vi) asbestos; (vii) flammable explosives; (viii) infectious materials; (ix) radioactive materials; or (x) defined or regulated as a hazardous substance under rules or regulations promulgated under any of the foregoing Environmental Laws.

(C) The term "Environmental Laws" as used in this Contract shall mean any international, federal, state, or local statute, law, regulation, order, consent, decree, judgment, permit, license, code, covenant, deed restriction, common law, treaty, convention, ordinance, or other requirement relating to public health, safety or the environment, including, without limitation, those relating to releases, discharges or emissions to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use and handling of polychlorinated biphenyls or asbestos, to the disposal, treatment, storage or management of hazardous or solid waste, or Hazardous Substances or crude oil, or any fraction thereof, or to exposure to toxic or hazardous materials, to the handling, transportation, discharge or release of gaseous or liquid Hazardous Substances and any regulation, order, notice or demand issued pursuant to such law, statute or ordinance, in each case applicable to the Property, including, without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Re-Authorization Act of 1986; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984; the Hazardous Materials Transportation Act, as amended; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1976; the Safe Drinking Water Act; the Clean Air Act, as amended; the Toxic Substances Control Act of 1976; the Occupational Safety and Health Act of 1977, as amended; the Emergency Planning and Community Right-to-Know Act of 1986; the National Environmental Policy Act of 1975; the Oil Pollution Act of 1990, and any similar or implementing state law, and any state statute and any further amendments to these laws providing

for financial responsibility for clean-up or other actions with respect to the release or threatened release of Hazardous Substances or crude oil, or any fraction thereof and all rules and regulations promulgated there under.

#### ***6.7. No Environmental Permits Required***

Seller has not obtained, and is not required to obtain, and Seller has no knowledge of any reason Purchaser or Seller will be required to obtain, any permits, licenses, or similar authorizations to construct, occupy, operate, or use any buildings, improvements, fixtures, and equipment forming a part of the Property by reason of any Environmental Laws;

#### ***6.8. No Special Assessments or Other Taxes***

There are, and will be, no special taxes or assessments for any improvements, made or installed on the Property prior to the Closing; to the best of Seller's knowledge, all storm and sanitary sewers; the paving of roads and streets; all curbs and gutters; all traffic signals; the widening of all roads and streets; and the installation of acceleration, deceleration, and stacking lanes, required by law at the time of the Closing have been installed and paid for; in the event that any such item has not been paid for or in the event that any special assessments are now or hereafter imposed, levied, or fixed by reason of the installation of the foregoing, same will be paid by Seller whether or not the same are a lien at the time of closing;

#### ***6.9. No Third-Party Contracts***

There will be no contracts for services or supplies on account of maintenance or repairs which expressly or impliedly will be binding upon the Purchaser or upon the Property;

#### ***6.10. Sewage Connections***

The Property is serviced by municipal water and either the municipal sewer system or the septic tanks, cesspools, and leaching fields, if any, are wholly contained within the boundaries of the Property;

#### ***6.11. Utility Connections***

All utility lines (including sanitary and storm sewers) enter the Property through public streets or through dedicated rights of way or equivalent servitudes;

#### ***6.12. No Zoning Violations***

Seller has no knowledge of any zoning or building violations or any action, suit, or proceeding pending or threatened against or affecting the Property or any portion thereof in any court or before or by any Federal, State, County, or Municipal department, commission board, bureau, or agency

or other governmental instrumentality;

#### ***6.13. No Liens***

Seller agrees to indemnify and hold Purchaser harmless in respect to any mechanic's and materialmen's liens against the Property arising out of any work performed or materials furnished by or on Seller's behalf or request on or with respect to the Property;

#### ***6.14. Highways and Roads***

The roads bounding the Property are public highways under the jurisdiction of the appropriate political subdivision;

#### ***6.15. No Organized Labor Force***

At the time of the Closing, there will be no collective bargaining or union contracts affecting the Property for which Seller is obligated and there will be no full-time employees of Seller at the Property;

#### ***6.16. No Condemnation***

To the best of Seller's knowledge, there is no condemnation threatened or pending against the Property, or any part thereof;

#### ***6.17. No Structural Deficiencies***

To the best of Seller's knowledge at the time of the Closing, there will be no material defects with regard to any of the structural components of the buildings on the Property, the roof and exterior walls are free of leaks, and the electrical, mechanical, plumbing, and HVAC systems are in good working order;

#### ***6.18. Viability of Insurance Coverage***

Seller has not received any notices from any insurance company of any defects or inadequacies in the Property or any part thereof which would materially and adversely affect the insurability of the Property or the premiums for the insurance thereof, and no notice has been given by any insurance company which has issued a policy with respect to any portion of the Premises or by any board of fire underwriters (or other body exercising similar functions) requesting the performance of any repairs, alterations, or other work which has not been complied with;

#### ***6.19. No Parties in Possession***

There are no parties in possession of any portion of the Property, whether as lessees, tenants at

sufferance, trespassers, or otherwise;

#### ***6.20. Property Not Flood-Prone***

The Improvements on the Property are not within any area determined to be flood-prone under the Federal Flood Protection Act of 1973;

#### ***6.21. No Material Change in Property***

Seller shall immediately notify Purchaser of any material change in respect to the Property or any information heretofore or hereafter furnished to Purchaser with respect to the Property.

### **7. Closing**

#### ***7.1. Time and Date of Closing***

The conveyance of the Property pursuant to his Contract shall be consummated (the "Closing") at the offices of the Title Company before 5:00pm on the first business day arising on or after the 40<sup>th</sup> day after the Effective Date of this Contract, or such earlier time as Purchaser shall designate (the "Closing Date"). Time shall be of the essence of this Contract.

#### ***7.2. Documents To Be Delivered by Seller***

Seller covenants and agrees to deliver to Purchaser at Closing the following instruments, properly executed and acknowledged:

- (A) An Alaska General Warranty Deed pursuant to Alaska Statute 34.15.030 properly executed and acknowledged in proper form for recording to convey to Purchaser good and indefeasible fee simple title in and to the Real Property and Improvements, subject only to the Permitted Encumbrances;
- (B) If applicable, a Bill of Sale and Assignment conveying to Purchaser good and indefeasible title in and to the Personal Property with covenants and warranties of title free and clear of all security interest, liens, and encumbrances;
- (C) An affidavit regarding Seller's identity for the purposes of I.R.C. § 1445;
- (D) Evidence satisfactory to Purchaser and the Title Company that the person or persons executing the documents at the Closing on behalf of Seller has the full right, power, and authority to do so;
- (E) An insurance certificate for the Property for the period immediately preceding the Closing; and

(F) Such other instruments as are necessary to effectuate the conveyance of the Property to Purchaser.

### ***7.3. Delivery of Title Insurance Policy***

Seller further covenants and agrees to deliver to Purchaser, at Closing, a form of Owner's Policy of Title Insurance ("Owner's Title Policy") issued by the Title Company, in the full amount of the Purchase Price, insuring Purchaser's indefeasible fee simple title to the Real Property, subject only to the Permitted Encumbrances and the printed exceptions contained in the standard form of Owner's Title Policy; provided, however, that:

- (A) The survey exception shall be deleted except for "shortages in area";
- (B) The exception as to restrictive covenants shall be endorsed "None of Record," except for any restriction included in the Permitted Encumbrances; and
- (C) The exception as to the lien for taxes shall be limited to the year 2023 and subsequent years and shall be endorsed "None Due and Payable" and subsequent assessments for prior years due to change in land usage or ownership.

### ***7.4. Purchaser's Payment Obligations***

At Closing, Purchaser shall pay for: (i) all charges for the recordation of the instruments conveying title to the Property; (ii) all of the escrow fees charged by the Title Company; and, (iii) survey costs.

### ***7.5. Documents To Be Satisfactory to Both Parties***

All documents to be executed at Closing shall be in a form reasonably acceptable to Purchaser and Seller.

## **8. Adjustments at Closing**

Ad valorem taxes and all other taxes and assessments, if any, affecting the Property for 2023 shall be prorated between Seller and Purchaser as of the date of Closing and Purchaser shall assume the payment thereof. If the actual amounts to be prorated are not known as of the date of Closing, the prorations shall be made on the basis of the best evidence then available, and thereafter when actual figures are received, a cash settlement will be made between Seller and Purchaser. Seller hereby warrants and represents to Purchaser that the Property has not heretofore been designated and assessed for a special use for ad valorem tax purposes, so that a change in the use of the land by Purchaser would cause the Property to become subject to additional state and local taxes for past years. This provision shall survive Closing.

## **9. Operation of Property**

### ***9.1. Seller's Obligations***

During the period between the date hereof and the Closing, Seller shall:

- (A) Keep the property in good repair and condition;
- (B) Comply with all state and municipal laws, ordinances, regulations, and orders relating to the Property;
- (C) Comply with all the terms, conditions, and provision of all leases, liens, mortgages, agreements, insurance policies, and other contractual arrangements relating to the Property, make all payments due there under, and suffer no default therein;
- (D) Without written approval of Purchaser, neither negotiate nor enter into any new contract or modify any existing contract affecting the use or operation of the Property which cannot be terminated without charge, cost, penalty, or premium on or before Closing;
- (E) Operate, manage, and maintain the Property in the usual and customary manner for similar property;
- (F) Promptly notify Purchaser in writing if any material change occurs in the occupancy or conditions affecting the Property; and,
- (G) Provide Purchaser and its representatives, employees, and agents full and complete access during normal business hours, to the Property.

### ***9.2. Purchaser's Payment of Taxes and Assessments During Term of Contract***

Purchaser agrees to pay all taxes and assessments of every kind and nature that are or that may be assessed and that may become due on the premises during the life of this agreement. Seller covenants and agrees that there are no assessments against the premises currently due and unpaid.

### ***9.3. Obligation of Purchaser for Insurance***

During the life of this contract and until full payment of the purchase price, purchaser shall secure, maintain, and pay the premiums for insurance covering the buildings and other

insurable improvements on the property together with the personal property on the premises, and replacements added. The insurance shall be written by sound and reputable insurance companies, in the full insurable value of all property to be insured.

All policies of insurance shall provide that losses shall be paid to the parties to this contract as their several interests may appear.

All premiums for the insurance shall be paid by purchaser when due, and prior to delinquency.

## **10. Casualty Loss**

As used herein, the term "Casualty Loss" shall mean any destruction by fire, storm, or other casualty or any taking or pending or threatened taking, in condemnation or under the right of eminent domain of the Property or portion thereof, in each case prior to Closing. Seller shall promptly give Purchaser written notice ("Casualty Notice") of any Casualty Loss of which Seller becomes aware. Purchaser shall have the option, which must be exercised within 10 days after its receipt of the Casualty Notice, to terminate this Contract or to proceed with the Closing. If Purchaser elects to terminate this Contract, all rights, duties, obligations, and liabilities created hereunder shall cease. If Purchaser elects to proceed with Closing, it shall acquire the Property in accordance with the terms hereof and Seller shall transfer to Purchaser all unpaid insurance proceeds, claims, awards, and other payments arising out of such Casualty Loss and pay to Purchaser all sums paid to Seller as insurance proceeds, awards, or other payments arising out of such Casualty Loss. Seller shall not voluntarily compromise, settle, or adjust any amounts payable by reason of any Casualty Loss without first obtaining the written consent of Purchaser.

## **11. Remedies**

### ***11.1. Breach by Purchaser***

If Purchaser fails to consummate the purchase of the Property pursuant to this Contract for any reason other than pursuant to a right of termination granted to Purchaser hereunder, and Seller has performed all of its obligations hereunder, Seller may, as its exclusive remedy, terminate this Contract by notifying Purchaser in writing thereof and thereupon the Earnest Money shall be paid to Seller;

### ***11.2. Breach by Seller***

If Seller refuses to consummate the sale of the Property pursuant to this Contract for any reason other than a default or breach hereunder by Purchaser, Purchaser may, as its exclusive remedy, either: (i) enforce specific performance of the obligations of Seller hereunder; or (ii) terminate this Contract by notifying Seller in writing thereof and the Earnest Money shall be refunded to Purchaser immediately.

## **12. Survival and Indemnification**

### ***12.1. Survival of Representations***

All representations, warranties, covenants, agreements, and indemnities of or by the parties shall survive the execution and delivery of the assignments contemplated hereby.

### ***12.2. Indemnification of Purchaser***

To the extent permitted by law, Seller, from and after Closing, shall indemnify and hold Purchaser harmless from and against any and all damage, loss, cost, expense, obligation, claim, or liability, including reasonable counsel fees and reasonable expenses of investigating, defending, and prosecuting litigation (collectively, the “Damages”), suffered by Purchaser as a result of: (A) any liability or obligation relating to or arising from the ownership or operation of the Property before the Closing Date; (B) any brokers' or finders' fees or commissions arising with respect to brokers or finders retained or engaged by any person other than the Purchaser and resulting from or relating to the transactions contemplated in the Contract; (C) the breach of any representation or warranty of Seller set forth in this Contract; and (D) the breach of, or failure to perform or satisfy, any of the covenants of Seller set forth in this Contract;

### ***12.3. Assumption of Obligations by Purchaser***

Purchaser, from and after Closing, shall assume the following: (i) any liability or obligation relating to or arising from the ownership or operation of the Property on and after the Closing Date (other than Damages resulting from a breach of any representations, warranties, or covenants of Seller contained in the Contract); and (ii) any brokers' or finders' fees or commissions arising with respect to brokers or finders retained or engaged by Purchaser and resulting from or relating to the transactions contemplated in this Contract.

## **13. Notices**

All notices, demands, or other communications of any type (herein collectively referred to as “Notices”) given by Seller to Purchaser or by Purchaser to Seller, whether required by this Contract or in any way related to the transaction contemplated herein, shall be void and of no effect unless given in accordance with the provisions of this section. All Notices shall be in writing and delivered to the person to whom the Notice is directed, by personal delivery or by United State Mail, as a Registered or Certified item, Return Receipt Requested. Notices personally delivered shall be effective upon receipt and notices mailed shall be effective when deposited in a post office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper with properly postage affixed, addressed, if to Purchaser, as follows:

Tessa Baldwin, City Manager, City of Kotzebue, P.O. Box 46, Kotzebue, Alaska 99752-0046

And if to Seller, as follows:

Michael Cain, Vice President, Grain Capital Corp., P.O. Box 583, Kotzebue, Alaska 99752-0583

Either party hereto may change the address for Notices specified above by giving the other party 10 days' advance written notice of such change of address.

#### **14. Assignment**

Neither Seller nor Purchaser may assign their respective rights or delegate their respective duties or obligations arising under this Contract without the prior written consent of the other party.

#### **15. Construction and Interpretation**

This Contract shall be construed and interpreted in accordance with the substantive laws of the State of Alaska, without reference to the principles of conflict of laws of such State.

#### **16. Waiver or Modification**

This Contract may be amended, modified, superseded, or canceled, and any of the terms, covenants, representations, warranties, or conditions hereof may be waived, only by a written instrument executed by a duly authorized officer of each of Purchaser and Seller, or, in the case of a waiver or consent, by or on behalf of the party or parties waiving compliance or giving such consent. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any covenant, agreement, representation, or warranty contained in this Contract, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such covenant, agreement, representation, or warranty.

#### **17. Attorney's Fees**

In the event it becomes necessary for either party hereto to file a suit to enforce this Contract or any provision contained herein, the party prevailing in such action shall be entitled to recover, in addition to all other remedies or damages, reasonable attorney's fees incurred in such suit and fixed by a court of competent jurisdiction under the laws and rules of procedure of the State of Alaska.

#### **18. Descriptive Headings**

The descriptive headings of the several articles and sections contained in this Contract are included for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

## **19. Entire Agreement**

This Contract, including the exhibits hereto, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No covenant, representation, or condition not expressed in this Contract shall be binding upon the parties hereto or shall affect or be effective to interpret, change, or restrict the provisions of this Contract.

## **20. Invalid Provisions**

If any provision of this Contract is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable, this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Contract.

## **21. Construction**

The parties acknowledge that each party has reviewed, commented on, and approved the Contract, and the rule of construction providing that ambiguities within the Contract are to be resolved against the drafting party shall not be employed in the interpretation of this Contract.

## **22. Multiple Counterparts**

This Contract may be executed in a number of identical counterparts, each of which, for all purposes, is to be deemed as original, and all of which constitute, collectively, one agreement; but in making proof of this Contract, it shall not be necessary to produce or account for more than one such counterpart.

## **23. Effective Date**

For all purposes hereof, this Contract shall be deemed effective ("Effective Date") on the date that it is executed by both Seller and Purchaser.

## **24. Late Payment Penalties**

If the Purchaser is more than five (5) calendar days late with any monthly payments required under Section 3.0 of this agreement, a late payment fee of \$500.00 USD will be assessed to the purchaser. A late notice and invoice for the late fee will be mailed to the address listed in Section 13 of this agreement.

## 25. Default

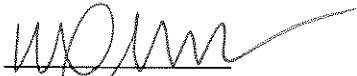
If the Purchaser misses two (2) or more monthly payments required under Section 3.0 of this agreement, the purchaser will be notified in writing by certified mail at the address listed in Section 13 of this agreement that they are in breach of its obligations under this agreement and will therefore forfeit the title and any rights of ownership to the property; these rights include all payments, deposits, improvements and any equity gained for the subject property.

## 26. Bankruptcy

If, during the 24-month finance period or before the balanced financed is paid in full and title is fully conveyed to the purchaser, the purchaser files for any type of bankruptcy or debt relief actions, the property, all payments collected to date, any improvements to and any equity shall become sole property of the Seller, rendering this agreement terminated as of one day before the date of filing for said action.

Date: 11/28/23

By: **City of Kotzebue**



**Saima Chase,**

**Mayor**

[Pursuant to City of  
Kotzebue Ordinance  
23-03]

Date: 11/29/23

By: **Grain Capital Corp.**



**Michael Cain**

**Vice President**

Attachments: (1) Deeds [four pages]

(2) GCC letter of August 16, 2023 [three pages]