

EXCHANGE AGREEMENT

This Agreement is made on this _____ of _____, 2007, by and between the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter referred to as "KPB") and the FRANK S. AND DORIS M. LANE FAMILY TRUST, whose address is P.O. Box 1892, Soldotna, AK, 99669.

1. KPB PARCEL

Subject to other applicable provisions of this Agreement, and by KPB Ordinance 2007-_____ enacted _____, the KPB will convey to the FRANK S. AND DORIS M. LANE FAMILY TRUST, the following described parcel of land ("KPB Property"). The KPB makes no warranties, express or implied, nor assumes any liability whatsoever, regarding the social, economic, or environmental aspects of the KPB Property, including, without limitation, the soil conditions, water drainage, access, natural or artificial hazards that may exist, or the merchantability, profitability or fitness of the KPB Property for any particular purpose. The FRANK S. AND DORIS M. LANE FAMILY TRUST represents that it accepts title to KPB Property after having had a full opportunity to inspect the KPB Property and associated title records, and has determined them suitable for the purposes addressed by this Agreement.

Property Description

A rectangular parcel in the east 100-feet of the W1/2 SE1/4 Section 13, T5N, R11W, S.M. extending 220-feet north of the Ciechanski Road right-of-way containing 0.5 acres more or less, subject to subdivision by plat.

2. FRANK S. AND DORIS M. LANE FAMILY TRUST PARCEL

Subject to other applicable provisions of this Agreement, FRANK S. AND DORIS M. LANE FAMILY TRUST will convey to KPB, the following described parcel of land ("FRANK S. AND DORIS M. LANE FAMILY TRUST Property").

Property Description

A triangular parcel in the northwest corner of the SE1/4 SE1/4 Section 13, T5N, R11W, S.M. extending 150-foot east from the SE1/16 Corner and extending 300 feet south from said 1/16 corner, containing 0.5 acres more or less subject to subdivision plat

3. CONSIDERATION

KPB and FRANK S. AND DORIS M. LANE FAMILY TRUST agree that the property exchange serves to reconfigure each party's land holdings and thereby alters the value of the property owned by each party. Presently, the FRANK S. AND DORIS M. LANE FAMILY TRUST property lacks a sufficient building site to suit the purposes of the Trust, and KPB's property does not extend to the ridgeline of the Kenai River Valley. This exchange would provide a building site for the FRANK S. AND DORIS M. LANE FAMILY TRUST sufficient for its purposes and would provide land of value to KPB. Each party agrees this exchange is an equal area exchange and has been negotiated fairly with each party's interest in mind. Each party agrees that the land exchanged represents the entire compensation due each party for the respective land being conveyed, subject to the distribution of closing and surveying costs incurred under this exchange as provided in this agreement.

4. TITLE

A. KPB Property

Title shall be delivered at time of closing by **quitclaim deed**. KPB conveys only its interest in the property, if any, without warranty of any kind or nature whatsoever. Title shall also be subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record. KPB warrants and covenants that at the time of closing there shall be no liens or judgments recorded against KPB in the same recording district in which the property subject to this purchase agreement is situated.

B. FRANK S. AND DORIS M. LANE FAMILY TRUST Property

Title shall be delivered at time of closing by **warranty deed**. Title shall also be subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record. FRANK S. AND DORIS M. LANE FAMILY TRUST warrants and covenants that at the time of closing there shall be no liens or judgments recorded against FRANK S. AND DORIS M. LANE FAMILY TRUST in the same recording district in which the property subject to this purchase agreement is situated.

5. ESCROW AND CLOSING COSTS

Unless agreed otherwise, KPB and FRANK S. AND DORIS M. LANE FAMILY TRUST will be responsible for their respective costs under this Agreement. Survey and platting costs incurred to facilitate this agreement will be shared 50/50 by KPB and the FRANK S. AND DORIS M. LANE FAMILY TRUST, settlement for which shall occur no later than the date of closing.

6. CLOSING

Unless otherwise agreed in writing, closing will occur within 90 days of execution of this Agreement. KPB and FRANK S. AND DORIS M. LANE FAMILY TRUST will execute all documents required to complete the Agreement and, if applicable, establish an escrow account.

7. POSSESSION

Possession shall be delivered at time of recording.

8. BREACH REMEDY

Prior to closing of the sale, in the event that KPB or FRANK S. AND DORIS M. LANE FAMILY TRUST 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 FRANK S. AND DORIS M. LANE FAMILY TRUST or KPB may terminate this agreement.

9. DEFENSE AND INDEMNIFICATION

FRANK S. AND DORIS M. LANE FAMILY TRUST shall indemnify, defend, save and hold the KPB, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys fees resulting from FRANK S. AND DORIS M. LANE FAMILY TRUST's performance or failure to perform in accord with the terms of this Agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the KPB or its agents which are said to have contributed to the losses, failure, violations, or damage. However, FRANK S. AND DORIS M. LANE FAMILY TRUST shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the KPB, its agents, or employees.

10. HAZARDOUS MATERIAL

- A. FRANK S. AND DORIS M. LANE FAMILY TRUST covenants and agrees that no hazardous substances or wastes shall be located on or stored on the KPB property, or any adjacent property, nor shall any such substance be owned, stored, used, or disposed of on the KPB property or any adjacent property by the FRANK S. AND DORIS M. LANE FAMILY TRUST, their agents, employees, contractors, or invitee's, prior to FRANK S. AND DORIS M. LANE FAMILY TRUST's ownership, possession, or control of the property.

11. ASSIGNMENTS

This agreement may not be assigned without prior written approval by the KPB.

12. 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 FRANK S. AND DORIS M. LANE FAMILY TRUST or their respective successors in interest. Provisions of this agreement, unless inapplicable on their face, shall be covenants constituting terms and conditions of the exchange, and shall continue in full force and effect and will survive closing.

13. MISCELLANEOUS

- A. Covenants. KPB and FRANK S. AND DORIS M. LANE FAMILY TRUST agree to comply with any Declaration of Covenants, Conditions, and Restrictions of record, affecting the respective Property.
- B. Residential Real Property Transfers Act. The parties mutually agree that this transfer will not be covered by the Residential Real Property Transfers Act, AS 34.70.010 et seq.
- C. Development. KPB and FRANK S. AND DORIS M. LANE FAMILY TRUST agree to comply with all federal, state, and borough regulations regarding use and development of the property, which includes but is not limited to State of Alaska, Department of Environmental Conservation regulations regarding water and sewer installation, and, if applicable, regulations of the U.S. Army Corps of Engineers regarding filling or draining any area within the property designated as wetlands by the appropriate authority.
- D. Time. Time is of the essence in performance of this Agreement.

- E. Cancellation. This agreement, while in good standing, may be canceled in whole or in part, at any time, upon mutual written agreement. This exchange agreement is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.
- F. Entry or Re-entry. In the event that this agreement is terminated, canceled or forfeited, KPB or its agents, servants or representatives, may immediately or any time thereafter, enter or re-enter and resume possession of said lands or such part thereof, and remove all persons and property therefrom either by summary proceedings or by a suitable action or proceeding at law or equity without being liable for any damages therefor.
- G. Fire Protection. FRANK S. AND DORIS M. LANE FAMILY TRUST shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the land under agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the demised premises are located.
- H. 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 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.
- I. Responsibility of Location. It shall be the responsibility of the KPB and FRANK S. AND DORIS M. LANE FAMILY TRUST to properly locate improvements on the subject parcels.
- J. Rights of Mortgage or Lienholder. In the event of cancellation or forfeiture of a sale agreement for cause, the holder of a properly recorded mortgage, conditional assignment, or collateral assignment will have the option to acquire the agreement for the unexpired term thereof, subject to the same terms and conditions as in the original instrument
- K. Rights-of-way. All trails or roads in existence at the time the land is sold may be considered to be an easement for public use. Nothing herein contained shall prevent the mayor or planning director when applicable from specifically reserving such additional

easements and rights-of-way across KPB lands as deemed reasonable and necessary prior to the sale thereof.

- L. Sanitation. FRANK S. AND DORIS M. LANE FAMILY TRUST agrees to comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for promotion of sanitation. Premises under purchase agreement shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution of waters and lands.

- M. Construction. This Agreement shall be deemed to have been jointly drafted by both parties. It shall be constructed 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:

FRANK S. AND DORIS M. LANE FAMILY TRUST:

John J. Williams, Mayor

FRANK S. LANE

DORIS M. LANE

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Sherry Biggs,
Borough Clerk

Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by John J. Williams, 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)

