

EXCHANGE AGREEMENT

WHEREAS, R. Daniel Green is owner of certain real property located adjacent to the Kenai Peninsula Borough's (KPB) Heritage Place Skilled Nursing Facility; and

WHEREAS, KPB is owner of certain real property adjacent to R. Daniel Green's primary residence which is owned by his wife, Mary L. Green; and

WHEREAS, KPB and R. Daniel Green desire to exchange properties at fair market value, and R. Daniel Green and Mary L. Green have elected to have the KPB convey its property into the name of Mary L. Green; and

WHEREAS, the subject properties have been independently appraised;

NOW, THEREFORE, this Agreement is made on this \_\_\_\_\_ of \_\_\_\_\_, 2008, 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"), pursuant to KPB Ordinance 2008-19-\_\_\_ enacted \_\_\_\_\_, and R. Daniel Green and Mary L. Green whose address is \_\_\_\_\_, Soldotna, AK 99669 (hereinafter referred to as "Greens").

1. KPB PARCEL

Subject to other applicable provisions of this Agreement, for good and valuable consideration, the KPB will convey the following described parcel of land ("KPB Property") to Mary L. Green. 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. Greens represent that they accept 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**

Lot 6-A Mackey Lake Station Subdivision according to plat no. 93-27 Kenai Recording District.

2. R. DANIEL GREEN PARCEL

Subject to other applicable provisions of this Agreement, R. Daniel Green will convey to KPB, the following described parcel of land ("Green Property").

**Property Description**

Lots 9-16 Block 1 Green Estates Subdivision, Plat No. 79-62, Kenai Recording District, Third Judicial District, State of Alaska, containing 2.3 acres more or less. This conveyance is contingent on the vacation of Brooks Circle right-of-way, resubdivision combining said lots 9-16 into 1 tract of land, and rezoning said property to "limited commercial" or "institutional" in accordance with the City of Soldotna's zoning code. It is hereby acknowledged that once platting and vacation actions have been completed, the property will have a new and different legal description.

3. CONSIDERATION

KPB and Greens agree that the property subject to this exchange has been independently appraised by Derry and Associates on June 26, 2008, and the respective sale/purchase prices agreed upon by KPB and Greens are the estimated market values concluded by Derry and Associates by said appraisal as follows:

KPB Property: \$24,500

GREEN Property: \$380,000

In consideration of the exchanged conveyances, KPB will pay R. Daniel Green the difference in value of the properties being the amount of Three Hundred Fifty-Five Thousand Five Hundred Dollars (\$355,500.00). Entire payment will be made at time of closing in the form of a check. It is acknowledged and agreed by R. Daniel Green that the conveyance of KPB Property to Mary L. Green is made in partial consideration of the conveyance of the Green Property.

4. TITLE

A. KPB PROPERTY

Title shall be delivered in the name of Mary L. Green 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. R. DANIEL GREEN PROPERTY

Title shall be delivered to KPB at time of closing by **warranty deed**. Title shall also be subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record. Greens warrant and covenant that at the time of closing there shall be no liens or judgments recorded against Greens 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 Greens will be responsible for their respective costs under this Agreement. R. Daniel Green will be responsible for surveying, platting, right-of-way vacation and rezoning costs. Settlement for costs shall occur no later than the date of closing. Property taxes shall be fully paid for each property by its current owner prior to closing.

6. CLOSING

Unless otherwise agreed in writing, closing will occur within 180 days of execution of this Agreement. KPB and Greens 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 Greens fail to make any payment required, or fail 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, Greens or KPB may terminate this agreement.

9. DEFENSE AND INDEMNIFICATION

Greens 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 Greens' 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, Greens 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

Greens covenant and agree that no hazardous substances or wastes shall be located on or stored on the KPB property or GREEN property, or any adjacent property, nor shall any such substance be owned, stored, used, or disposed of on the KPB property or GREEN property or any adjacent property by Greens, their agents, employees, contractors, or invitee's, prior to Mary L. Green's ownership, possession, or control of the KPB 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 KPB and Greens 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 Greens agree to comply with any Declaration of Covenants, Conditions, and Restrictions of record, affecting the respective Property. R. Daniel Green represents that Declaration of Covenants, Conditions, and Restrictions recorded at Bk 148 Pg 602 Kenai Recording District affecting the GREEN Property have been fully released by instrument recorded as serial # 2008-005983-0 Kenai Recording District.

- 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 Greens 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. Greens 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 Greens to properly locate improvements on the subject parcels.
- J. Rights of Mortgagee 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. Greens agree 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:

Greens:

\_\_\_\_\_  
John J. Williams, Mayor

\_\_\_\_\_  
R. Daniel Green

\_\_\_\_\_  
Mary L. Green

ATTEST:

APPROVED AS TO 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 \_\_\_\_\_, 2008, 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    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2008, by R. Daniel Green.

\_\_\_\_\_  
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 \_\_\_\_ day of \_\_\_\_\_ 2008, by Mary L. Green.

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