

**SALE AND EXCHANGE AGREEMENT**

This Agreement is made on this \_\_\_\_\_ of \_\_\_\_\_, 2009, 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 LEROY CABANA AND DORIS CABANA whose address is P.O. Box 975, Homer, AK 99603.

1. KPB PARCEL

Subject to other applicable provisions of this Agreement, and by KPB Ordinance 2009-\_\_\_ enacted March 3, 2009, the KPB will convey to Leroy Cabana and Doris Cabana, 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. LEROY CABANA AND DORIS CABANA 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**

The Kenai Peninsula Borough's interest in Lots 2 and 3, KPB-Cabana Subdivision substantially as shown on Preliminary Plat KPB File 2009-011, subject to finalization and recording of said plat

2. LEROY CABANA AND DORIS CABANA PARCEL

Subject to other applicable provisions of this Agreement, LEROY CABANA AND DORIS CABANA will convey to KPB the following described parcel of land ("CABANA Property").

**Property Description**

LEROY CABANA's AND DORIS CABANA's interest in Lot 1, KPB-Cabana Subdivision substantially as shown on Preliminary Plat KPB File 2009-011, subject to finalization and recording of said plat.

3. CONSIDERATION

For the purposes of accounting, consideration shall be as follows:

LEROY CABANA AND DORIS CABANA shall pay KPB the amount of twelve thousand five hundred dollars (\$12,500.00) in consideration of the 0.597 +/- acre portion of Lots 2 & 3 shown on Exhibit A as "Area to be purchased by Cabanas", attached hereto and incorporated by reference. Said purchase price is based on appraisal conducted by Derry and Associates dated \_\_\_\_\_

LEROY CABANA AND DORIS CABANA and KPB hereby agree that those portions of Lots 1, 2 & 3 shown on Exhibit A as "Cabana Transfer to KPB" and "KPB Transfer to Cabana" respectively are of equal area (0.137 +/- acres each) and have effectively equal value to each party; therefore, the parties agree that these lands shall be exchanged with no further consideration due either party.

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. CABANA Property

Title shall be delivered at time of closing by **quitclaim deed**. Title shall also be subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record. LEROY CABANA AND DORIS CABANA warrant and covenant that at the time of closing there shall be no liens or judgments recorded against LEROY CABANA AND DORIS CABANA in the same recording district in which the property subject to this purchase agreement is situated.

5. ESCROW AND CLOSING COSTS

Unless agreed otherwise, LEROY CABANA AND DORIS CABANA will be responsible for their respective costs under this Agreement. CABANA shall reimburse Four Thousand six hundred eighty-seven dollars and fifty cents (\$4,687.50) to KPB for one-half the base survey and platting cost for KPB-Cabana Subdivision, settlement for which shall occur no later than the date of closing. Each party shall pay their own property taxes due prior to recordation of the plat.

6. CLOSING

Unless otherwise agreed in writing, closing will occur within 90 days of execution of this Agreement. KPB and LEROY CABANA AND DORIS CABANA 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 LEROY CABANA AND DORIS CABANA 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, LEROY CABANA AND DORIS CABANA or KPB may terminate this agreement.

9. DEFENSE AND INDEMNIFICATION

LEROY CABANA AND DORIS CABANA 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 LEROY CABANA AND DORIS CABANA'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, LEROY CABANA AND DORIS CABANA 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. LEROY CABANA AND DORIS CABANA covenant and agree 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 LEROY CABANA AND DORIS CABANA, their agents, employees, contractors, or invitees, prior to LEROY CABANA AND DORIS CABANA'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 LEROY CABANA AND DORIS CABANA 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 LEROY CABANA AND DORIS CABANA 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 LEROY CABANA AND DORIS CABANA 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. LEROY CABANA AND DORIS CABANA 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 LEROY CABANA AND DORIS CABANA 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. LEROY CABANA AND DORIS CABANA 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:

LEROY CABANA AND DORIS CABANA:

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

\_\_\_\_\_  
LEROY CABANA

\_\_\_\_\_  
DORIS CABANA

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 \_\_\_\_\_, 2009, by David R. 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 \_\_\_\_ day of \_\_\_\_\_ 2009, by Leroy Cabana.

\_\_\_\_\_  
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 \_\_\_\_\_ 2009, by Doris Cabana.

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