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Recording Dist: 102 - Ketchikan
5/1/2006 8:46 AM Pages: 1 of 10



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EQUITABLE SERVITUDE AND EASEMENT

AS 34.17.010 – AS 34.17.060

This Equitable Servitude and Easement (hereinafter "Instrument") is made by and between the Ketchikan Gateway Borough, a second class Borough of the State of Alaska (whose address is 344 Front Street, Ketchikan, Alaska 99901), as grantor (hereinafter, with its successors and assigns, "Grantor"), and the State of Alaska (whose address is State of Alaska, Department of Natural Resources, Division of Mining, Land and Water, Realty Services Section, 550 West Seventh Avenue, Suite 1050A, Anchorage, Alaska 99501-3579), as grantee (hereinafter, with its assigns, "Grantee"), for good and valuable consideration.

WHEREAS, all of the real property referred to herein is located in, and all patents referred to as recorded are in the **Ketchikan Recording District**, First Judicial District, State of Alaska;

WHEREAS, Grantor is the owner of the following described parcel of real property, which is hereinafter referred to as the "Property":

TOWNSHIP 74 SOUTH, RANGE 90 EAST, COPPER RIVER MERIDIAN, ALASKA, Section 34: Lot 1, containing 3.09 acres more or less, according to the Survey Plat accepted by the United States Department of Interior, Bureau of Land Management in Anchorage, Alaska on January 28, 2003, and officially filed March 3, 2003;

WHEREAS, Grantor wishes to make the Property subject to this Instrument;

WHEREAS, the Property was formerly used by Ketchikan Pulp Company ("KPC") for storage of industrial materials, which resulted in its contamination with substances defined as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.* ("CERCLA"), and 18 AAC 75;

WHEREAS, on November 20, 2000, KPC, Gateway Forest Products ("GFP"), and the United States entered into a CERCLA consent decree in the case of *United States v. Gateway Forest Products, Inc.*, et al, No. A00-225 CV (D. Alaska) ("Consent Decree") to address hazardous substances contamination issues associated with KPC's historical operating areas at Ward Cove, including the Property;

WHEREAS, the Consent Decree required KPC and Gateway to implement appropriate institutional controls on certain portions of real property owned or controlled by KPC or GFP, as the case may be;

WHEREAS, the Consent Decree is binding upon KPC, GFP, the United States, and their respective heirs, successors, and assigns;

WHEREAS, KPC was granted permission to utilize the Property under a 1952 Amendment to Special Use Permit, and that Amendment extended to the Property, the terms of the 1951 Forest Service Special Use Permit that allowed KPC to build and operate the Connell Lake dam, and the pipeline for it that runs adjacent to the Property on U.S. Survey 3400;

WHEREAS, Grantor previously included areas adjacent to U.S. Survey 3400 in municipal entitlement lands that Grantor selected from the State of Alaska, and such lands selected by Grantor included the Property, but issuance of patent to the State of Alaska was delayed;

WHEREAS, investigation and remediation work undertaken by KPC and completed in 1998 identified the Property as an area where institutional controls would be required;

WHEREAS, KPC entered a services agreement with the U.S. Department of Interior, Bureau of Land Management ("BLM") in 2000 under which, when BLM undertook to survey surrounding municipal entitlement lands for patent to the State of Alaska, it would survey the Property as a separate parcel. This would allow the area to be made subject to institutional controls to be patented by BLM as a separate parcel;

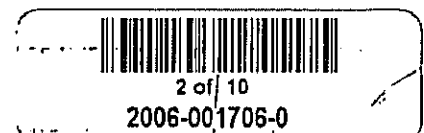
WHEREAS, the Patent to the State of Alaska with respect to the Property was issued by BLM on November 21, 2005 as Fed. Patent No. 50-2006-0058, recorded on the 30th day of November, 2005 as Document No. 2005-4744-0;

WHEREAS, the State of Alaska issued the Patent to Grantor with respect to the Property on the 25th day of April, 2006 as Patent No. 20179, recorded concurrently with this Instrument;

WHEREAS, GFP went into bankruptcy during 2001;

WHEREAS, on July 14, 2003, KPC, GFP, and Grantor entered into a settlement agreement ("Settlement Agreement") to resolve issues arising from or relating to the GFP bankruptcy. Under the Settlement Agreement, the Grantor undertook obligations relating to establishment of and compliance with institutional controls on property formerly owned by KPC and GFP, including the Property;

WHEREAS, the Alaska Department of Environmental Conservation ("ADEC") has determined that groundwater is not a current or potential future drinking water source on or around the Property;



WHEREAS, ADEC has determined, and Grantor has agreed, that the recording of this Instrument is necessary as an institutional control as part of the Consent Decree; and

WHEREAS, the requirements, rights, covenants, conditions, prohibitions, and restrictions of this Instrument (hereinafter "Provisions") are intended to protect human health, safety, and welfare and the environment and maintain and enhance water quality.

NOW, THEREFORE, pursuant to the laws of Alaska, including AS 34.17.010-AS 34.17.060, Grantor does hereby grant and convey to Grantee forever, with warranties of title, subject however to easements, rights, reservations, conditions, restrictions, and limitations of the United States, and third parties, if any, of record, an equitable servitude and easement, including the right of entry thereto, of the nature and character and to the extent set forth below.

1. Restrictions:

Unless otherwise specifically authorized in writing by ADEC or its successor in administrative function or assigns, the Property is subject to the following restrictions (hereinafter, "Restrictions"):

- a. Uses of the Property are limited to commercial or industrial use.
- b. The Property shall not, at any time, be used, in whole or in part, for human habitation, schooling of children, hospital care, child care, or any purpose necessitating around-the-clock residence by humans.
- c. Drilling of drinking water wells is prohibited.
- d. Controls specified in the "Management Plan for Arsenic and Rock and Soil," prepared by Exponent for KPC, dated July 1998, to limit concentrations of arsenic from crushed rock shall be complied with.
- e. No activities shall be allowed on the Property, without prior approval of ADEC in writing, that involve use of groundwater, or potential exposure of Waste Materials within the Property. Waste Materials shall mean (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) or AS 46.03.826(5); (ii) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (iii) any "solid waste" under Section 1004(27) of the Resource Conservation & Recovery Act ("RCRA"), 42 U.S.C. § 6903(27), AS 46.03.900(26), or the State of Alaska Solid Waste Management Regulations, 18 AAC 60.

2. Required Activities:

Grantor shall comply with the Restrictions in this Instrument and with the terms and conditions of any ADEC permit regulating activities on the Property.



3. Right-of-Entry:

During reasonable hours, after reasonable notice, and subject to reasonable security requirements, ADEC and its Authorized Representatives shall have the right to enter in, on, upon, over, and across any portion of the Property to determine whether the Provisions herein have been or are being complied with. This Right-of-Entry shall include a right of access for, but not be limited to, conducting the following activities:

- a. Verifying any data or information submitted to the United States or the State of Alaska.
- b. Conducting investigations relating to contamination located at or near the Property.
- c. Obtaining samples.
- d. Assessing the need for, planning, or implementing additional response actions at or near the Property.
- e. Implementing the activities required to be performed under the Consent Decree pursuant to the conditions set forth in Paragraph (101) of the Consent Decree.
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Grantor or its agents consistent with Section XXIV (Access to Information) of the Consent Decree.
- g. Monitoring and assessing compliance with the Consent Decree and any requirements or restrictions of this instrument.
- h. Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.

Violation of, or reasonable suspicion of the violation of, any of the Provisions herein shall give ADEC and its Authorized Representatives the right, privilege, and license to enter in, on, upon, over, and across any portion of the Property and to investigate, abate, mitigate, or cure such violation, at the expense of Grantor, provided written notice of the violation is given to Grantor, describing what activity is necessary to investigate or correct the violation, and Grantor fails to cure the violation within a time specified in such notice. Such activities include, but are not limited to, the right to store, move, and remove equipment and supplies; construct, operate, maintain, alter, repair, and remove devices for the monitoring, containment, and treatment of contamination in soil, air and water; investigate and collect samples; excavate and remove waste, pollutants, hazardous substances, contaminated soils, contaminated waste; deposit uncontaminated soil; and the performance of any other activity which may be reasonably necessary and incident to ADEC's investigation and response. Any such entry by ADEC or its Authorized Representatives shall not be deemed a trespass or any other wrongful entry or remaining on the Property, and Grantee shall not be subject to liability to Grantor for such entry



or any action taken to investigate, abate, mitigate, or cure a violation. ADEC and its Authorized Representatives shall be considered invitees on the Property, and the Grantor shall make every reasonable effort to inform ADEC and its Authorized Representatives of hazards or hazardous areas to prevent personal injury.

To enable them to carry out the activities contemplated under this Instrument, Grantor also grants and conveys to Grantee, for the use and benefit of ADEC and its Authorized Representatives, a right of access over and across those portions of the following-described real property: U. S. Survey 3400; Triangle, U. S. Survey 2923; and, that portion of U. S. Survey 1056 lying northerly of the northerly boundary line of North Tongass Highway, Ketchikan Recording District, First Judicial District, State of Alaska, being adjacent to U. S. Survey 2923 and comprised of 5.16 acres. The portions of these three parcels which shall be subject to this right of access shall consist of the areas thereof located between the Property and the adjacent public rights-of-way of North Tongass Highway and Revilla Road, and which are subject to the Easement by and between Ketchikan Pulp Company, as grantor, and the United States of America, acting by and through the Forest Service, Department Agriculture, recorded October 23, 2000, at Book 317, Page 595 ("the Easement"). In addition, to the extent the Property is adjacent to, but not abutting, the areas subject to the Easement, the right of entry hereby granted shall also extend to those areas of the foregoing parcels which are necessary or convenient to allow access to the Property. With respect to the areas subject to the Easement, this right of access is granted in accordance with, and subject to, the terms of the Easement. The right of access hereby granted is for purposes of allowing ADEC and its Authorized Representatives to conduct any and all activities contemplated by this Instrument.

4. Contaminants of Concern that May be Present on the Property:

During an investigation and remediation of the Property completed in 1998, contaminated soil and surface debris were removed from the Property by KPC. There are areas on the Property where contaminants may remain in the soil in concentrations potentially greater than cleanup levels established by ADEC or EPA. These contaminants include petroleum products, polychlorinated biphenyls, pentachlorophenol, lead, chromium, and arsenic. Most areas, where active remediation activities occurred, were filled to original grade with clean soil, covered with clean soil, and seeded with grass.

5. General Provisions:

a. This Instrument is for the benefit of Grantee and conveys the perpetual right to Grantee, acting through ADEC and contractors, employees, and authorized representatives acting on ADEC's behalf (herein, "Authorized Representatives"), to enforce and implement the Provisions herein. Nothing herein shall be deemed to create in any third party the right to enforce this Instrument.

b. No right of access or use by the general public to any portion of the Property is conveyed or authorized by this Instrument.



c. All real estate, lots, parcels, or portions thereof located within or on the Property, and any lease, conveyance, or transfer covering or describing any part thereof or interest therein, shall be subject to the Provisions herein. By acceptance of such conveyance or transfer, each lessee, transferee, or grantee and each of their heirs, successors, transferees, or assigns agrees with Grantor and each other to be bound by the Provisions herein.

d. Grantor hereby reserves unto itself, its successors, and assigns, any and all rights and privileges in and to the use of the Property, including the right of access to the Property, which are not contrary to the restrictions, rights, and easement granted herein.

e. The Provisions herein shall run with the land in perpetuity, and shall be binding upon Grantor, and each of Grantor's heirs, successors, grantees, lessees, transferees, and assigns and each of their heirs, successors, grantees, lessees, transferees, and assigns.

f. Nothing in this Instrument shall relieve Grantor from liability for injuries occurring on, or resulting from, its activities on the Property for which Grantor would otherwise ordinarily be liable. Grantor shall be liable for and shall indemnify and hold Grantee harmless from liability for injuries and damage which arise because of its status as Grantee. Grantor shall also indemnify Grantee for all costs, including attorneys' fees, which arise from its status as Grantee.

g. Grantor hereby covenants to and with Grantee that Grantor is lawfully seized of the surface estate, in fee simple, of the Property, has good and lawful right and power to sell and convey the same, that the same is free and clear of encumbrances, except as specified herein and as of record, and that Grantor will forever warrant and defend the equitable servitude and easement (including the right of entry) conveyed to Grantee by this Instrument against the claims and demands of all persons.

h. To the maximum extent permitted by law, the Provisions herein shall not be subject to waiver or abandonment due to non-enforcement or violation of this Instrument or any of the Provisions herein on all or any portion of the Property. No waiver of the breach of any of the Provisions herein shall constitute a waiver of a subsequent breach of the same Provision or any other Provision. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Instrument or for imposing any Provision which may be unenforceable.

i. This Instrument may be enforced by Grantors or Grantee in a court of law. The interpretation and performance of this Instrument shall be governed by the laws of Alaska.

j. Upon violation of any of the Provisions herein, Grantee may seek any available legal or equitable remedy to enforce this Instrument, and shall be entitled to recover damages for violations of the Provisions herein to the public or to the environment protected herein under applicable federal or state law.



k. Any notice, demand, request, consent, approval, or communication that a party desires or is required to give another shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Ketchikan Gateway Borough
Attn: Borough Attorney
344 Front Street
Ketchikan, AK 99901

To Grantee:

Department of Natural Resources
Director, Division of Mining, Land and Water
Realty Services Section
550 West Seventh Avenue, Suite 1050A
Anchorage, AK 99501-3579

With a copy to:

Program Manager, Contaminated Sites Program
Alaska Department of Environmental Conservation
Division of Spill Prevention and Response
410 Willoughby, Suite 303
Juneau, AK 99801-1795

l. The determination that any Provision herein, or its application to any person or circumstance, is invalid shall not affect any other Provision herein or its application, and the other Provisions herein shall remain in full force and effect.

m. Any general rule of construction to the contrary notwithstanding, this Instrument shall be construed so as to effect the purpose for which it was granted to Grantee. Any ambiguities shall be resolved in a manner that best accomplishes the purpose of this Instrument.

n. Grantor shall notify ADEC and Grantee at least ten (10) days before the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of Grantor's interest in the Property. Grantor shall include in any instrument conveying any interest in any portion of the Property, including, but not limited to, deeds, leases, and mortgages, a notice which is in substantially the following form:

NOTICE: The interest conveyed hereby is subject to an Equitable Servitude and Easement dated _____, 2__, recorded in the public land records on _____, 2__, in book _____, page _____, of the Ketchikan Recording District, First Judicial District, State of Alaska, in favor of, and enforceable by, the State of Alaska.



o. Grantor shall notify ADEC within ten (10) days prior to Grantor's petitioning for or filing of any document initiating a rezoning of the Property under the Ketchikan Gateway Borough zoning code or any successor code.

p. This Equitable Servitude and Easement does not impose liability on the State of Alaska nor does it make the State of Alaska a responsible party under the Comprehensive Environmental Response, Compensation and Liability Act or AS 46.03 or similar federal or state statutes, regulations or local ordinances.

6. Termination:

This Instrument shall be vacated and shall be of no further force and effect upon the recordation in the Ketchikan Recording District, First Judicial District, State of Alaska by ADEC of a Notice of Vacation of Equitable Servitude and Easement. ADEC shall execute and record a Notice of Vacation of Equitable Servitude and Easement at such time as it, in its sole discretion, determines that the prohibited and required activities and other provisions of this Instrument are no longer necessary for the protection of human health, safety, welfare, and the environment. The Notice of Vacation of Equitable Servitude and Easement shall be executed by ADEC and state that ADEC has determined that the prohibited and required activities and other provisions of the Equitable Servitude and Easement are no longer necessary for the protection of human health, safety, and welfare, and the environment and further state that the Equitable Servitude and Easement are hereby vacated. If Grantor requests a termination of this Instrument, any costs incurred by ADEC in reviewing a potential termination shall be paid by Grantor.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the dates written below. This Instrument is effective on the date of the last acknowledged signature.

[SIGNATURES CONTAINED ON THE FOLLOWING PAGE]



KETCHIKAN GATEWAY BOROUGH

By Roy A. Eckert
Roy A. Eckert
General Manager

GRANTOR'S ACKNOWLEDGMENT

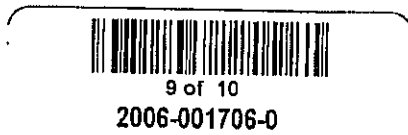
STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 24 day of April, 2006, before me, the undersigned, a Notary Public for the State of Alaska, duly commissioned and sworn as such, personally appeared Roy A. Eckert, to me known and known to be the ^{Borough} General Manager, and the person who executed the above and foregoing Equitable Servitude and Easement on behalf of the Ketchikan Gateway Borough, and who acknowledged to me that he signed the same as the ^{Borough} General Manager, in the name of and for and on behalf of the Ketchikan Gateway Borough, freely and voluntarily and by authority of the Ketchikan Gateway Borough Assembly and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.



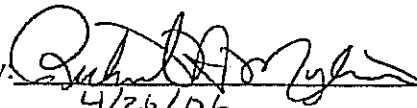
Notary Public for Alaska
Harriett J. Edwards
My commission expires: 1/27/2010



ACCEPTANCE

ON BEHALF OF the State of Alaska, pursuant to AS 38.05.035(a)(12), I do hereby accept this Equitable Servitude and Easement conveying to the State of Alaska, its successors in administrative function and assigns, the interests in the Property described therein as an Institutional Control, pursuant to 18 AAC 75.375 (as of 1/22/99), to be managed and enforced by the Department of Environmental Conservation or its successor, pursuant to the management right assignment issued as ADL 107454 for the portion of U.S. Survey 3400 described in this Instrument, to protect human health, safety, and welfare, and the environment and to enhance or maintain water quality.

STATE OF ALASKA, DEPARTMENT
OF NATURAL RESOURCES

By: 
4/26/06
Director
Division of Mining, Land and Water

Location Index:

Section 4,
Township 74 S., Range 90 E.,
Copper River Meridian, Alaska

Section 33,
Township 75 S., Range 90 E.,
Copper River Meridian, Alaska

AFTER RECORDING RETURN TO:

Ruth Hamilton Heese
Assistant Attorney General
State of Alaska
Department of Law
Environmental Section
P.O. Box 110300
Juneau, AK 99811

