



Palmer Recording District

Return to: The Great Land Trust, Inc.
P.O. Box 101272
Anchorage, Alaska 99510-1272

MS 100954A

SETTLERS BAY COASTAL PARK CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT dated March 20, 2018 (the "Easement Date") is by and between The Matanuska-Susitna Borough ("Owner") whose mailing address is 350 E. Dahlia Avenue, Palmer, Alaska, 99645, and The Great Land Trust, Inc. ("Holder") an Alaska non-profit corporation qualified to do business in Alaska, whose mailing address is P.O. Box 101272, Anchorage, Alaska 99510-1272.

Article I. Background

1.01 Property

Owner is the sole owner in fee simple of the surface estate of the Property legally described in Exhibit "A" (the "Property").

Borough: Matanuska-Susitna
Tax ID #s: 7717000T00L-1D and 7492000T00B

State: Alaska
Recording District: Palmer

Owner owns the affirmative rights to identify, preserve, and protect in perpetuity the Property's significant relatively natural, scenic and open space features and values that are worthy of preservation ("Conservation Values," described in Section 1.03), and Owner desires and intends to transfer such rights to Holder by granting this Conservation Easement (as more fully defined in Section 2.01).

1.02 Easement Map

Attached as Exhibit "B" and incorporated herein by this reference, is a survey or other graphic depiction of the Property (the "Easement Map") showing, among other details, the location of one or more of the following areas – the Resource Protection Area, the Restricted Use Area, and the Limited Development Areas.

1.03 Conservation Values

The Property contains Conservation Values that are of great value to the residents of the Matanuska-Susitna Borough and the State of Alaska in general, and are worthy of preservation, including relatively natural habitat, scenic open space, and recreation and education. The Property is of sufficient size and character that its Conservation Values are likely to remain intact and become even more important as neighboring properties are developed.

(a) **Recreation and Education:** The Property provides numerous recreational and educational opportunities. The trails traversing the Property provide miles of hiking, scenic views, and access to a diversity of ecosystems. This Property is located in one of the fastest-growing regions of Alaska with little access to public recreation. The diversity of trails and the incredible views that can be seen from the Property make it particularly popular. The Property provides expansive views of the Knik Arm, Palmer Hay Flats State Game Refuge, Chugach State Park, Pioneer Peak, and the Chugach and Talkeetna mountains. The potential for more public trails and year-round use in the future is vast, and the landscapes visible from the trails provide excellent opportunities for educational activities. Estuarine, riparian, forested, riverine, and wetland habitats provide a microcosm of ecosystems found throughout the region where people can learn about the natural history, flora, and fauna of Alaska.

(b) **Relatively Natural Habitat:** The Property contains relatively natural habitat, including topographically-diverse terrain consisting of upland forest, estuarine, riparian, riverine, and wetland habitat that directly contribute to the health of the ecosystems in the region. The forest promotes biological diversity allowing for the growth of a healthy and unfragmented forest that supports habitat for mammals and birds. In conjunction with riparian habitat, the forest also connects coastal and estuarine habitat with freshwater habitat such as lakes and wetlands upstream. The Property contains a mosaic of native vegetation communities, including trees, shrubs, wildflowers, and grasses, which provide locations for breeding and nesting as well as corridors for bird and wildlife migration.

(i) **Wildlife Resources.** The Property contains and is adjacent to large, intact areas of wildlife habitat and patches of wildlife habitat. This Conservation Easement protects habitat within and adjacent to Crocker Creek, Lucy Creek, Cottonwood Creek, and Upper Knik Arm, as well as its upland buffer. The area within the Conservation Easement boundary provides suitable habitat for wildlife species including moose, bear, fox, beaver, and other Native Species. Beluga whales are often seen hunting at the mouth of Cottonwood Creek, a short distance from the Property. Numerous fish species, including coho and sockeye, also use the streams on the Property. The Property provides critical nesting, rearing, and migratory habitat for numerous bird species, including ducks, geese, and swans, and is within one-quarter mile of the Palmer Hay Flats Important Bird Area identified by the Audubon Society.

(ii) **Aquatic Resources.** The Property contains significant aquatic resources, primarily consisting of tidally-influenced wetlands and riparian wetlands associated with Crocker Creek, Cottonwood Creek, Lucy Creek, and the waters of Knik Arm. These wetlands provide anadromous fish, bird, and wildlife habitat; help protect water resources from sediment and non-point source pollution; and promote the infiltration, detention, and natural filtration of storm water.

(c) **Open Space.** The Property is situated on a unique, scenic corridor at the mouth of Crocker and Cottonwood creeks along Upper Knik Arm. The Property provides valuable open space that provides views to and can be seen from Palmer Hay Flats State Game Refuge, Chugach State Park, and the waters of Upper Knik Arm, as well as multiple conserved properties on the other side of Knik Arm.

1.04 Conservation Purposes

By this grant, the Owner imposes a conservation servitude (the "Conservation Easement") on the Property to protect in perpetuity its Conservation Values. This Conservation Easement provides different levels of protection for the Resource Protection Area, Restricted Use Area, and Limited Development Areas shown on the Easement Map so as to achieve the protection objectives and goals (collectively, the "Conservation Purposes") for the Property set forth below:

(a) Protection Objectives

- (i) **Recreation and Educational Uses.** This Conservation Easement preserves the Property for outdoor recreation by, and the education of, the general public. This Conservation Easement seeks to provide for public access across the Property.
- (ii) **Relatively Natural Habitat.** This Conservation Easement retains the Property predominantly in its existing condition as a "relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," (as that phrase is used in Code section 170(h)(4)(A)(ii), as amended and in regulations promulgated under this law). This Conservation Easement seeks to protect the quality



of relatively natural habitat on the Property, including specifically the following natural resources, which are more fully described in the Baseline Documentation Report:

Forest and Other Vegetative Resources. This Conservation Easement seeks to perpetuate and foster the growth of a healthy and unfragmented forest; to maintain a continuous canopy of vegetation with multi-tiered understory of trees, shrubs, wildflowers, and grasses; to maintain watershed functions and support healthy ecosystem processes; and to trap air pollution particulates for healthier air and sequester carbon in trees and soil in order to mitigate rising atmospheric carbon levels.

Wildlife Resources. This Conservation Easement seeks to maintain and improve the quality of wildlife habitat; to protect breeding sites; to promote biodiversity and Native Species; to preserve large intact areas of wildlife habitat, and to connect patches of wildlife habitat and secure migration corridors. Migration corridors enable birds, fish, and wildlife to move to meet nutritional and reproductive needs and facilitate the migration of species in response to changes in environmental condition. Large habitat patches typically support greater biodiversity than small patches.

Marine, Estuarine, Riparian, Wetland and Other Water Resources. This Conservation Easement seeks to maintain and improve the quality of marine, estuarine, riparian, wetland and other water resources within and around the Property. Protecting marine, estuarine, riparian, wetland and other water resources also helps preserve habitat for Native Species dependent on these resources.

- (iii) **Open Space.** This Conservation Easement will retain the Property forever in a predominantly open space condition for the scenic enjoyment of the public and to yield a significant public benefit. The Conservation Easement seeks to protect the following open space resources on the Property, which are more fully described in the Baseline Documentation Report:

Scenic Resources. This Conservation Easement seeks to preserve the relationship of scenic resources within the Property to natural and scenic resources in its surrounds and to protect scenic vistas visible from public rights-of-way and other public access points in the vicinity of the Property. The Property provides views of and can be seen from Palmer Hay Flats State Game Refuge, Chugach State Park, and the waters of Upper Knik Arm, as well as multiple conserved properties on the other side of Knik Arm.

- (iv) **Compatible Land Use and Development.** Certain areas have been sited within the Property to accommodate future development, taking into account the entirety of the natural potential of the Property as well as its scenic resources.

(b) Goals

- (i) **Resource Protection Area.** This Conservation Easement seeks to protect natural resources within the Resource Protection Area so as to keep them in an undisturbed state except as required to promote and maintain a diverse community of predominantly Native Species.
- (ii) **Restricted Use Area.** This Conservation Easement seeks to protect relatively natural habitat and scenic views of and across the Property by limiting development and uses within this area.
- (iii) **Limited Development Areas.** This Conservation Easement seeks to promote compatible land use and development within the Limited Development Areas so that they will be available for certain activities and uses and allow certain Improvements, subject to the minimal constraints necessary to achieve the Conservation Purposes outside the Limited Development Areas.

1.05 Qualified Holder

Holder is a private, non-profit organization, organized to protect and conserve natural areas, ecologically significant land, and forest, agricultural, and open space land for scientific, charitable and educational purposes, and is a "holder" under the Conservation Easement Act and is a "qualified organization" within the provisions of Section 170(h) of the Code, qualified to acquire and hold conservation easements and meeting the requirements of the Code as a Section 501(c)(3) exempt organization.



1.06 State Policy Concerning Conservation Easements

The State of Alaska has recognized the importance of private efforts toward the preservation of the identified Conservation Values in the State by enactment of the Conservation Easement Act.

1.07 Structure of Conservation Easement

This Conservation Easement is divided into nine Articles. Article II contains the grant of easement and items related to the establishment of the Conservation Easement. Articles III, IV, and V contain the restrictions on the use and development of the Property imposed by the Owner on the Property. In Article VI the Owner grants to Holder and holders of third party rights of enforcement (if any) certain rights to enforce the restrictions in perpetuity against all Owners of the Property ("Enforcement Rights"). Article VI also contains the procedure for Review applicable to those items permitted subject to Review under Articles III, IV, and V. Article VII details the procedures for exercise of Enforcement Rights. Article VIII contains provisions generally applicable to both Owner and Holder. The last Article, entitled "Glossary," contains definitions of capitalized terms used in this Conservation Easement and not defined in this Article I.

Article II. Grant; Items Related to Establishment of Conservation Easement

2.01 Grant

In consideration of the mutual covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, pursuant to the laws of the State of Alaska and in particular the Conservation Easement Act, the Owner hereby grants, transfers, and conveys to the Holder, its successors and assigns, a perpetual conservation easement (the "Conservation Easement") as to the Property. Owner also warrants that should it obtain any future interest in the Property (such as an interest in the subsurface estate of the Property), it will ensure that use of such interest does not damage the Conservation Values that this Conservation Easement serves to protect.

2.02 Items Related to Establishment of Conservation Easement

(a) Baseline Documentation Report

The Owner and Holder have signed an acknowledgement certifying that the report (the "Baseline") incorporated herein by this reference, is an accurate representation of the uses, natural resources and condition of the Property as of the Easement Date. A copy of this signed acknowledgement is attached as Exhibit C. There are two original, signed copies of the Baseline; one was provided by Holder to the Matanuska-Susitna Borough, and one is kept on file by Holder. The Baseline describes Existing Improvements; it identifies the Conservation Values of the Property described in the Conservation Purposes; and it includes, among other information, photographs depicting existing conditions of the Property as of the Easement Date. Owner understands that the Baseline will be used by Holder to assure that any future changes in the use of the Property will be consistent with the terms of this Conservation Easement.

(b) Public Benefit

The Owner has entered into this Conservation Easement to provide a significant public benefit. In addition to the public benefits described in the Conservation Purposes, the Baseline supports the significant public benefit of this Conservation Easement.

(c) No Representation of Tax Benefits

Owner represents, warrants and covenants to Holder that:

- (i) Owner has not relied upon any information or analyses furnished by Holder with respect to the availability, amount or effect of any deduction, credit or other benefit to Owner under the Code, the Regulations or other Applicable Law, or the value of this Conservation Easement or the Property.
- (ii) Owner has relied solely upon its own judgment and/or professional advice furnished by the appraiser and legal, financial and accounting professionals engaged by the Owner in entering into



this Conservation Easement. If any Person providing services in connection with this Conservation Easement or the Property was recommended by Holder, the Owner acknowledges that Holder is not responsible in any way for the performance of services by these Persons.

- (iii) The grant of this Conservation Easement is not conditioned upon the availability or amount of any deduction, credit or other benefit under the Code, Regulations or other Applicable Law.

Article III. Transfer; Subdivision

3.01 Transfer

(a) **Notice Required**

Not less than thirty (30) days prior to transfer of the Property or any Lot, Owner must notify Holder of the name(s) and address for notices of the Persons who will become an Owner following the transfer.

(b) **Prior to Transfer**

Owner authorizes Holder to (i) contact the Persons to whom the Property or Lot will be transferred, and other Persons representing Owner or the prospective transferees, to discuss with them this Conservation Easement and, if applicable, other pertinent documents; and (ii) enter the Property to assess compliance with this Conservation Easement.

(c) **Ending Continuing Liability**

An Owner who transfers title to the property shall be released from any continuing liability under this Conservation Easement if (i) Holder has received written notice of the pending transfer no less than 30 days prior to the transfer, and (ii) Holder inspects the Property and reports no violation observed during such inspection. An Owner who has transferred title to the Property in a circumstance under which one or both of the preceding conditions for release has not been met shall remain liable on a joint and several basis with the Owner to whom title was transferred for the correction of violations, discharges, or other obligations of Owner under this Conservation Easement; provided that the transferring Owner shall be released from any continuing liability under this Conservation Easement at such subsequent date on which Holder inspects the Property and reports no violations observed during such inspection. If Holder fails to inspect the Property and report the results of its inspection within thirty (30) days following receipt of notice of request to inspect in the context of a transfer (whether notice is given before or after the date of the transfer), Owner shall be released to the same extent as if the Holder had inspected the Property and reported no violation observed during the inspection.

3.02 General Prohibitions on Transfers, Subdivision and Other Changes to the Property

No transfer of a Lot independent of the remainder of the Property, no change in the boundary of any Lot, and no other Subdivision is permitted, except as set forth below.

3.03 Permitted Changes to the Property

The following changes to the Property are permitted. Under any of these circumstances, the terms of this Conservation Easement would still apply to the Property.

(a) **Lots within Property**

If the Property contains more than one Lot, Subdivision to (i) merge two or more Lots into one; or (ii) subject to Review, reconfigure any one or more of the boundaries of such Lots except a boundary of the Property as described in Exhibit "A."

(b) **Transfer to Qualified Organization**

Subject to Review, creation of a Lot or other interest for transfer to a Qualified Organization for park, nature preserve, public trail or other conservation purposes approved by Holder after Review.

(c) **Transfer of Rights of Possession or Use**

Subject to Review, transfer of possession or use (but not ownership) of one or more portions of the Property, including subsurface portions of the Property, for purposes permitted under, and subject to compliance with, the terms of this Conservation Easement. Leases of space within Improvements are not subject to Review.



3.04 Requirements Concerning Changes to the Property

(a) **Establishment of Lots; Allocations**

Prior to transfer of a Lot following a Subdivision, Owner must (i) furnish Holder with the plan of Subdivision approved under Applicable Law and legal description of each Lot created or reconfigured by the Subdivision; (ii) mark the boundaries of each Lot with permanent markers; and (iii) allocate in a document recorded in the Public Records those limitations applicable to more than one Lot under this Conservation Easement. This information will become part of the Baseline incorporated into this Conservation Easement.

(b) **Amendment**

Holder may require Owner to execute an Amendment of this grant to reflect any change to the description of the Property set forth in Exhibit "A" or any other changes and allocations resulting from Subdivision that are not established to the reasonable satisfaction of Holder by recordation in the Public Records of the plan of Subdivision approved under Applicable Law.

Article IV. Improvements

4.01 General Prohibition on Improvements

Improvements within the Property are prohibited except as permitted below in this Article. Except as noted below, all permitted Improvements may be maintained, repaired, and replaced within their designated areas.

4.02 Permitted Within Resource Protection Area

The following Improvements are permitted within the Resource Protection Area:

(a) **Existing Agreements**

Improvements that Owner is required to allow under Existing Agreements are permitted.

(b) **Existing Improvements**

Any Existing Improvement may be maintained, repaired or replaced in its existing location, so long as it is consistent with maintenance or attainment of the Conservation Purposes. Except as consistent with the Wet Gulch RS 2477 Trail, Improvements intended for recreational motorized use will not be considered consistent with the maintenance or attainment of the Conservation Purposes. While Settlers Bay Drive exists as of the Easement Date and may be maintained, repaired, or replaced as an Existing Improvement, it is not intended to be used by the general public as a means for motorized travel through the Property, except in emergency situations.

All Existing Improvements as of the Easement Date are shown on the Easement Map and described in the Baseline. Existing Improvements may be expanded, improved or relocated if the expanded, improved or relocated Improvement complies with requirements applicable to Additional Improvements of the same type.

(c) **Additional Improvements Not Subject to Review**

The following Additional Improvements are permitted, so long as they are consistent with the Conservation Purposes and are not intended to promote uses inconsistent with the Conservation Purposes:

(i) Regulatory Signs.

(ii) Any structures used to control access if allowed in Section 5.03 of this Conservation Easement.

(d) **Additional Improvements Subject to Review**

The following Additional Improvements are permitted subject to Review:

(i) Trails designed for non-motorized use and covered (if at all) by wood chips, gravel, or another highly porous surface. If trails cross Wet Areas, they should be constructed on boardwalk or another similar and appropriate construction. Footbridges, stream crossing structures, ramps, railings, stairs, and stream access structures are also permitted. Trails and all other related



Improvements allowed in 4.02(d)(i) should be limited in the Resource Protection Area to protect the particularly sensitive habitat and scenic views. While all Improvements in 4.02(d)(i) are subject to Review if constructed within the Resource Protection Area, they are not subject to Review if constructed in the Restricted Use Area or the Limited Development Area.

- (ii) Improvements associated with and appropriate to provide public access to and viewing of the Palmer Hay Flats State Game Refuge or other scenic, natural features. These Improvements should be limited in the Resource Protection Area to protect the particularly sensitive habitat and scenic views.
- (iii) Berms, landscape treatments, or other similar Improvements necessary for Restoration projects.
- (iv) Improvements designed to protect the Conservation Values of the Property.

4.03 Permitted Within Restricted Use Area

The following Improvements are permitted within the Restricted Use Area:

(a) Permitted under Preceding Sections

Any Improvement permitted under a preceding section of this Article is permitted in the Restricted Use Area in the same manner as permitted in the preceding section.

(b) Additional Improvements Not Subject to Review

The following Additional Improvements are permitted, so long as they are consistent with the Conservation Purposes and are not intended to promote uses inconsistent with the Conservation Purposes:

- (i) Educational Signs.
- (ii) Benches.
- (iii) Habitat enhancement devices such as bird houses or bat houses.

(c) Additional Improvements Subject to Review

The following Additional Improvements are permitted subject to Review:

- (i) Viewing overlooks, so long as they do not negatively impact the Conservation Values.
- (ii) Fences, walls, and gates, so long as they protect or benefit the Conservation Values. If possible, fences should be designed to allow for wildlife passage and so that the scenic views over and across the Property described in the Conservation Values are obscured to the smallest possible degree.
- (iii) Utility Improvements and Site Improvements servicing other areas of the Property, if not reasonably feasible to install entirely within one of the Limited Development Areas. These Improvements should be designed so that the scenic views over and across the Property described in the Conservation Values are obscured to the smallest possible degree. Improvements that obscure scenic views, such as towers or wind turbines, are not permitted.

4.04 Permitted Within Limited Development Areas

The following Improvements are permitted within the Limited Development Areas:

(a) Permitted under Preceding Sections

Any Improvement permitted under a preceding section of this Article is permitted in the Limited Development Areas in the same manner as permitted in the preceding section.

(b) Additional Improvements Not Subject to Review

The following Additional Improvements are permitted:

- (i) Improvements necessary or useful to promote or support recreational activities, including parking lots; Access Drives; restroom, trash, or other similar facilities; kiosks; picnic tables; bear or other wildlife-proof containers; playgrounds; disc golf or other recreational facilities; dog parks; pavilions, gazebos, or other similar structures; a park host or caretaker cabin and related Improvements; and any other similar Improvement.
- (ii) Trails designed with any type of surface, including paved trails.



- (iii) Utility Improvements, including for Renewable Energy, and Site Improvements servicing activities, uses or Improvements permitted within the Property. Improvements that obscure scenic views, such as wind turbines or telecommunications towers, are not permitted.

Article V. Activities; Uses; Disturbance of Resources

5.01 Prohibition

Activities and uses are limited to those permitted below in this Article and provided in any case that the intensity or frequency of the activity or use does not materially and adversely affect maintenance or attainment of the Conservation Purposes. All other activities and uses on the Property, including the intentional introduction of Invasive Species, are prohibited unless Holder, without any obligation to do so, approves such additional activities and uses upon Review.

5.02 Density Issues under Applicable Law

- (a) **Promoting Development outside the Property**
Owner shall not use the Property nor the grant of this Conservation Easement under Applicable Law to increase density or intensity of use or otherwise promote the development of lands outside the Property.
- (b) **Transferable Development Rights**
Owner shall not transfer for use outside the Property (whether or not for compensation) any development rights allocated to the Property under Applicable Law.

5.03 Control of Access to Property

Owner may control access to the Property (subject to the terms and conditions of this Conservation Easement) and attempt to prevent trespass on the Property. In so doing, Owner may make use of fences, road grating, gates, boulders, slash or other generally accepted management forms, barriers, structures or signage to control access to the Property, so long as such efforts minimize impacts to Conservation Values to the greatest extent practicable, such as by allowing passage for wildlife, and so long as any Improvements needed to do so are allowed in Article IV.

5.04 Permitted Within Resource Protection Area

The following activities and uses are permitted within the Resource Protection Area:

- (a) **Existing Agreements**
Activities, uses and Construction that Owner is required to allow under Existing Agreements (except where such Existing Agreements are subordinated by contemporaneous agreement to the terms and conditions provided in this Conservation Easement).
- (b) **Disturbance of Resources Not Subject to Review**
 - (i) Removal and disturbance of earthen materials and vegetative resources, including trees, where Improvements are permitted within the Resource Protection Area, or in the vicinity of such Improvements when necessary for the Construction thereof, but only to the extent reasonably necessary and with Restoration of disturbed areas as soon as reasonably feasible in accordance with Best Management Practices.
 - (ii) Disturbance of resources within the Resource Protection Area for purposes reasonably related to activities or uses permitted within the Resource Protection Area.
 - (iii) Vehicular use in cases of emergency. Owner must take such steps as are reasonable under the circumstances to consult with Holder prior to taking actions that, but for this provision, would not be permitted or would be permitted only after Review.
 - (iv) Removal of Invasive Species. Removal should be done using the method that has the least impact on Conservation Values and using non-mechanized tools, where possible.
 - (v) Resource management activities conducted in accordance with a Resource Management Plan approved by Holder through the Review process. Holder will not approve a plan that is inconsistent with maintenance or attainment of the Conservation Purposes.



- (vi) Cultural investigation and documentation activities, including necessary excavation of house pits, cache pits, or grave sites, so long as these activities are completed pursuant to Applicable Law and result in surface disturbance or not more than three feet in depth and eight feet in diameter and are limited in number such that they do not negatively impact Conservation Values. If activities exceed these dimensions or are otherwise expected to negatively impact Conservation Values, they must be subject to Review. All cultural investigations shall be conducted in a manner that limits the impact to the Conservation Values.
- (c) **Disturbance of Resources Subject to Review**
 - (i) Removal of vegetative resources, including trees, in the immediate vicinity of viewing overlooks to improve views from the overlooks, so long as the removal is limited to avoid erosion and to otherwise protect Conservation Values.
 - (ii) Any uses that protect Conservation Values, including Restoration activities.
- (d) **Other Activities Not Subject to Review**
 Activities that do not require Improvements beyond what is allowed pursuant to Article IV and do not materially and adversely affect maintenance or attainment of the Conservation Purposes such as the following: walking, sled-dog running, cross-country skiing, bird watching, nature study, berry picking, fishing, or educational or scientific activities consistent with and in furtherance of the Conservation Purposes.

5.05 Permitted Within Restricted Use Area

The following activities and uses are permitted within the Restrictive Use Area so long as no Invasive Species are introduced:

- (a) **Permitted under Preceding Sections**
 Activities and uses permitted under preceding sections of this Article are permitted within the Restricted Use Area.
- (b) **Disturbance of Resources Not Subject to Review**
 - (i) Planting a diversity of Native Species of trees, shrubs and herbaceous plant materials in accordance with Best Management Practices.
 - (ii) Non-recreational vehicular use in connection with activities or uses permitted within the Restricted Use Area, on roads, tracks and trails located on the Property as of the Effective Date and shown on the Easement Map and described in the Baseline.
 - (iii) To the extent reasonably prudent to remove, mitigate or warn against an unreasonable risk of harm to Persons, property or health of trees or Native Species on or about the Property, cutting trees, Construction or other disturbance of resources, including removal of Invasive Species. Owner must take such steps as are reasonable under the circumstances to consult with Holder prior to taking actions that, but for this provision, would not be permitted or would be permitted only after Review.
- (c) **Disturbance of Resources Subject to Review**
 - (i) Removal of vegetation to accommodate replanting with a diversity of Native Species of trees, shrubs and herbaceous plant materials.
 - (ii) Forest practice activities meant to protect the ecological health of the forest or protect against fire danger, including establishing defensible space.
 - (iii) Any uses that protect the Conservation Values.
- (d) **Release and Disposal Not Subject to Review**
 - (i) Piling of brush and other vegetation to the extent reasonably necessary to accommodate activities or uses permitted within the Restricted Use Area.

5.06 Permitted Within Limited Development Areas

The following activities and uses are permitted within the Limited Development Areas:

- (a) **Permitted under Preceding Sections**
 Activities and uses permitted under preceding sections of this Article are permitted within the Limited Development Areas.



- (b) Disturbance of Resources Not Subject to Review**
 - (i) Generation of Renewable Energy and transmission of such energy if and to the extent Improvements for that purpose are permitted under Article IV.
 - (ii) Disturbance of resources for purposes reasonably related to Improvements, activities, or uses permitted within the Limited Development Areas.
 - (iii) Cutting or removal of trees.
- (c) Release and Disposal Not Subject to Review**
 - (i) Disposal of sanitary sewage effluent in a manner consistent with Applicable Law from Improvements permitted within the Property.
 - (ii) Other piling of materials and non-containerized disposal of substances and materials but only if such disposal is permitted under Applicable Law; does not directly or indirectly create run-off or leaching outside the Limited Development Area; and does not adversely affect the Conservation Purposes applicable to the Limited Development Area including those pertaining to scenic views and protection of wildlife and their habitat.
- (d) Residential and Other Uses Not Subject to Review**
 - (i) Residential use associated with a park host or caretaker cabin.
 - (ii) Any occupation, activity or use is permitted if wholly contained within the park host or caretaker cabin. The phrase "wholly contained" means that neither the primary activity or use or any accessory uses such as parking or signage, are visible or discernable outside the Improvement.

5.07 Changes in Technology

Owner and Holder acknowledge that, as technologies evolve, activities undertaken by Owner in connection with and arising out of Owner's permitted uses under this Article V may emerge, the conduct of which would be suitable at or on the Property. It is not Holder's intent to prohibit such activities or uses under this Easement; rather, Owner may carry out such activities or uses, provided that they are set out in a written Amendment to this Conservation Easement and are otherwise consistent with the Conservation Purposes and do not have a material adverse impact on the Conservation Values of this Conservation Easement.

Article VI. Rights and Duties of Holder

6.01 Grant to Holder

(a) Grant in Perpetuity

By signing this Conservation Easement and unconditionally delivering it to Holder, the Owner, intending to be legally bound, grants and conveys to Holder a conservation easement over the Property in perpetuity for the purpose of administering and enforcing the restrictions and limitations set forth in this Conservation Easement in furtherance of the Conservation Purposes.

(b) Superior to all Liens

The Owner warrants to Holder that the Property is, as of the Easement Date, free and clear of all Liens.

6.02 Rights and Duties of Holder

The grant to Holder under the preceding section gives Holder the right and duty to perform the following tasks:

(a) Enforcement

To enforce the terms of this Conservation Easement in accordance with the provisions of Article VII including, in addition to other remedies, the right to enter the Property at any time reasonably deemed necessary by the Holder to investigate a suspected, alleged or threatened violation. Such entry rights shall not extend to the interior of any park host or caretaker cabin.



(b) Inspection

To enter and inspect the Property for compliance with the requirements of this Conservation Easement upon reasonable notice, in a reasonable manner and at reasonable times. Such entry rights shall not extend to the interior of any park host or caretaker cabin.

(c) Review

To exercise rights of Review in accordance with the requirements of this Article as and when required under applicable provisions of this Conservation Easement.

(d) Interpretation

To interpret the terms of this Conservation Easement, apply the terms of this Conservation Easement to factual conditions on or about the Property, respond to requests for information from Persons having an interest in this Conservation Easement or the Property (such as requests for a certification of compliance consistent with Section 3.01(c)), and apply the terms of this Conservation Easement to then-existing, proposed or reasonably foreseeable conditions within the Property.

6.03 Other Rights of Holder

Holder has the right to exercise the following, with its sole and absolute discretion:

(a) Amendment

To enter into an Amendment with Owner if Holder determines that the Amendment is consistent with and in furtherance of the Conservation Purposes and Holder's mission; will not affect the qualification of this Conservation Easement or the status of Holder under any Applicable Law, including the Conservation Easement Act; will result in either a positive or not less than neutral conservation outcome; will not result in any private benefit or private inurement prohibited under the Code; and otherwise conforms to Holder's policy with respect to Amendments as such policy is in effect from time to time. The grant of an Amendment in any instance does not imply that an Amendment will be granted in any other instance.

(b) Signs

To install one or more signs within the Property identifying the interest of Holder in this Conservation Easement. Holder's installation of signs does not limit Owner's ability to install signs under Article IV. Signs are to be of the size customarily installed by Holder and must be installed in locations readable from the public right-of-way and otherwise reasonably acceptable to Owner.

(c) Proceedings

To assert a claim, defend or intervene in, or appeal, any proceeding under Applicable Law that (i) pertains to the impairment of Conservation Purposes; or (ii) may result in a transfer, Improvement or use that violates the terms of this Conservation Easement.

(d) Protection

To identify, preserve and protect in perpetuity, the Conservation Values as set forth in Section 1.03 of this Conservation Easement and as more fully described in the Baseline and, if necessary, to Restore or cause the Restoration of those values on the Property.

(e) Resource Management Activities

To enter the Property to observe various species and habitats and to perform resource management activities in furtherance of Conservation Purposes. Resource management activities, other than cutting and removal of Invasive Species by mechanical means, are to be performed in accordance with a Resource Management Plan submitted to Owner.

(f) Carbon Sequestration and Ecosystem Services Rights

To retain, sell, trade or gift any or all of the rights to carbon credits or sequestration and ecosystem services, or any or all of the other similar rights that may exist now or in the future, that are inherent in the Property and that are not otherwise extinguished by the grant of this Conservation Easement.

6.04 Review

The following provisions are incorporated into any provision of this Conservation Easement that is subject to Review:



(a) Notice to Holder

At least forty-five (45) days before Owner begins or allows any Construction, Subdivision, activity or use that is subject to Review, Owner must notify Holder in writing, including with the notice such information as is reasonably sufficient to comply with Review Requirements and otherwise describe the Construction, Subdivision, activity or use and its potential impact on natural resources within the Property and on the Conservation Purposes.

(b) Notice to Owner

Within forty-five (45) days after receipt of Owner's notice, Holder must notify Owner of Holder's determination to (i) accept Owner's proposal in whole or in part; (ii) reject Owner's proposal in whole or in part; (iii) accept Owner's proposal conditioned upon compliance with conditions imposed by Holder; or (iv) reject Owner's notice for insufficiency of information on which to base a determination. If Holder gives conditional acceptance under clause (iii), commencement by Owner of the proposed Improvement, activity, use, Subdivision or Construction constitutes acceptance by Owner of all conditions set forth in Holder's notice.

(c) Failure to Notify

If Holder fails to notify Owner as required in the preceding subsection and Owner can confirm that Holder received the notice, the proposal set forth in Owner's notice is deemed accepted.

(d) Emergency Waiver

Notwithstanding the other provisions of this section, Owner may take any and all reasonably necessary measures to address any immediate fire, life, or safety hazard arising on or otherwise affecting the Property without providing advance notice to the Holder. If the actions taken by Owner would otherwise have required Review under the terms of this Conservation Easement, Owner shall notify Holder of the actions taken within forty-eight (48) hours. Notice provided pursuant to this subsection shall be for the purpose of updating Holder's records only; no acceptance or response from Holder shall be required.

(e) Standard of Review

(i) The phrase "unless Holder, without any obligation to do so," in relation to an approval or determination by Holder, means that, in that particular case, Holder's approval is wholly discretionary and may be given or withheld for any reason or no reason.

(ii) In all other cases, Holder's approval is not to be unreasonably withheld. It is not unreasonable for Holder to disapprove a proposal that may adversely affect natural resources described in the Conservation Purposes or that is otherwise inconsistent with maintenance or attainment of Conservation Purposes.

6.05 Stewardship and Reimbursement

(a) Stewardship Funding. Holder or Holder's designee will administer and draw upon the Stewardship Fund for reimbursement of expenses incurred for annual monitoring and enforcement of the Conservation Easement in the ordinary course.

(b) Reimbursement. At Holder's request, Owner must reimburse Holder for the costs and expenses Holder reasonably incurs in performing its duties related to this Conservation Easement other than conservation easement monitoring in the ordinary course. Reimbursable costs and expenses include, but are not limited to, any subject to Review request that requires more than eight hours of GLT staff time, or that requires the use of a consultant or other outside expert. Notwithstanding the reimbursement just described, as long as the Owner is the Matanuska-Susitna Borough, Owner is not responsible for reimbursing Holder for costs and expenses that exceed any legislative appropriation for the purpose of reimbursement under this agreement into the Land Management division of the Matanuska-Susitna Borough for the calendar year in question (with the Land Management division of the Matanuska-Susitna Borough using best efforts to obtain an appropriation of at least \$500 on a yearly basis to cover such costs and expenses, as adjusted for inflation). Owner is not responsible to reimburse Holder for costs and expenses arising from Holder's response to an inquiry or request by a Person other than Owner without Owner's approval in advance of Holder incurring the costs and expenses.



Notwithstanding the limitations in the paragraph above, 6.05(b), reimbursement of costs and expenses Holder reasonably incurs in the course of any enforcement action are governed by Article VII of this Conservation Easement.

6.06 Third Party Rights

This Conservation Easement does not confer any rights or remedies upon any Person other than Owner, Holder, and the National Oceanic and Atmospheric Association (NOAA) in the limited capacity as described below. No other Persons are vested with any rights, whether arising under this Conservation Easement or otherwise under Applicable Law.

(a) Limited Third Party Rights

This Conservation Easement has been acquired in part with federal funds provided to the Great Land Trust by the Alaska Department of Fish & Game (ADF&G). The federal funding was provided to ADF&G under federal financial assistance award NA15NMF4380231 through the National Oceanic and Atmospheric Association's (NOAA's) Pacific Coastal Salmon Recovery Fund (PCSRF). The rights conveyed by this Conservation Easement shall vest in Great Land Trust, subject to the conditions that the Property be managed for conservation purposes consistent with the purposes for which it was funded through the PCSRF. Great Land Trust is responsible for monitoring and enforcing the terms of this Conservation Easement and shall not exchange, reassign, extinguish or otherwise dispose of it, or modify the terms, without the approval of NOAA or its successor agencies.

Article VII. Violation; Remedies

7.01 Breach of Duty

If Holder fails to enforce this Conservation Easement, or ceases to qualify as a Qualified Organization, then the rights and duties of Holder under this Conservation Easement may be (i) exercised by a Qualified Organization designated as having third party enforcement rights in this Conservation Easement; and/or (ii) transferred to another Qualified Organization by a court of competent jurisdiction. The transferee must be a Qualified Organization and must commit to hold this Conservation Easement exclusively for the identified Conservation Purposes.

7.02 Violation of Conservation Easement

If Holder determines that this Conservation Easement is being or has been violated or that a violation is threatened or imminent, then the provisions of this Section will apply:

(a) Notice

Holder must notify Owner in writing of the violation. Holder's notice may include its recommendations of measures to be taken by Owner to cure the violation and restore features of the Property damaged or altered as a result of the violation.

(b) Opportunity to Cure

Owner's cure period expires thirty (30) days after the date of Holder's notice to Owner, subject to extension for the time reasonably necessary to cure, but only if all of the following conditions are satisfied:

- (i) Owner ceases the activity constituting the violation promptly upon receipt of Holder's notice;
- (ii) Owner and Holder agree, within the initial thirty (30) day period, upon the measures Owner will take to cure the violation;
- (iii) Owner commences to cure within the initial thirty (30) day period; and
- (iv) Owner continues thereafter to use best efforts and due diligence to complete the agreed upon cure.

(c) Imminent Harm

No notice or cure period is required if circumstances require prompt action to prevent or mitigate irreparable harm or alteration to any natural resource or other feature of the Property described in the



Conservation Purposes. In such case, Holder may choose the Remedies (described in Section 7.03) that are appropriate, in its discretion, to resolving the violation.

7.03 Remedies

Upon expiration of the cure period (if any) described in the preceding Section, Holder may do any one or more of the following "Remedies":

(a) Injunctive Relief

Seek injunctive relief to specifically enforce the terms of this Conservation Easement; to restrain present or future violations of this Conservation Easement; and/or to compel Restoration of resources destroyed or altered as a result of the violation.

(b) Civil Action

Recover from Owner or other Persons responsible for the violation all sums owing to Holder under applicable provisions of this Conservation Easement together with interest thereon from the date due at the Default Rate. These monetary obligations include, among others, Losses and Litigation Expenses as allowed by the Alaska Rules of Court.

(c) Third Party Violations

Owner is responsible for the acts and omissions of persons acting on its behalf, at its direction or with its permission, and Holder shall have the right to enforce this Conservation Easement against Owner for any use of or activities upon the Property that are a violation of this Conservation Easement and that result from such acts or omissions. However, as to the acts or omissions of third parties other than the those described in the preceding sentence (e.g. trespassers), Holder shall not have a right to enforce against Owner unless Owner directs or permits said acts or omissions, fails to reasonably cooperate with Holder in all respects to halt or abate the event or circumstance of non-compliance with these Conservation Easement terms resulting from such acts or omissions, or fails to report such acts or omissions to Holder within 30 days after the third party violation becomes known to Owner.

Holder shall have the right, but not the obligation, to pursue all legal and equitable remedies provided under this Section 7.03 against any third party responsible for any activity or use of the Property that is a violation of this Conservation Easement and Owner shall, at Holder's option, assign its right of action against such third party to Holder, join Holder in any suit or action against such third party, or appoint Holder its attorney in fact for the purpose of pursuing an enforcement suit or action against such third party.

7.04 Modification or Termination

If all or part of the Property is taken by eminent domain (condemnation), or if subsequent, unexpected circumstances arise in the future that render the purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be modified or terminated, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Holder shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such modification or termination, will be determined, unless otherwise provided by law at the time, in accordance with the provisions in Subsection (a) below. If this Conservation Easement is or is about to be modified or terminated by adjudication of a court of competent jurisdiction sought by a Person other than Holder for reasons other than as stated previously in this Section, the provisions in Subsections (b) and (c) below apply:

(a) Proceeds

Owner agrees that the conveyance of this Conservation Easement to Holder gives rise to a property right, immediately vested in Holder, with a Market Value that is equal to eighty percent (80%) of the value of the Property as a whole. The proportionate value of this Conservation Easement shall remain constant. Holder agrees to use its share of such proceeds in a manner consistent with the Conservation Purposes of this Conservation Easement.

(b) Compensatory Damages

Holder is entitled to collect from the Person seeking the modification or termination, compensatory damages in an amount equal to the increase in Market Value of the Property resulting from the modification or termination plus reimbursement of Litigation Expenses as if a violation had occurred.



(c) Restitution

Holder is entitled to recover from the Person seeking the modification or termination, (i) restitution of amounts paid for this Conservation Easement (if any) and any other sums invested in the Property for the benefit of the public as a result of rights granted under this Conservation Easement plus (ii) reimbursement of Litigation Expenses as if a violation had occurred.

7.05 Remedies Cumulative

The description of Holder's remedies in this Article does not preclude Holder from exercising any other legal or equitable right or remedy that may at any time be available to Holder under this Article or Applicable Law. If Holder chooses to exercise one remedy, Holder may nevertheless choose to exercise any one or more of the other rights or remedies available to Holder at the same time or at any other time.

7.06 No Waiver; Waiver of Defenses

If Holder does not exercise any or all of its Enforcement Rights upon the occurrence of an event constituting a violation of this Conservation Easement, that is not to be interpreted as an agreement to postpone or waive its rights to exercise its Enforcement Rights with respect to that occurrence or a future occurrence. Owner hereby waives the defenses of waiver, laches, prescription and the running of any applicable statute of limitations with respect to any violation of this Conservation Easement.

7.07 No Fault of Owner

Holder will waive its right to reimbursement under this Article as to Owner (but not other Persons who may be responsible for the violation) if Holder is reasonably satisfied that the violation was not the fault of Owner and could not have been anticipated or prevented by Owner by reasonable means.

7.08 Multiple Owners; Multiple Lots

If different Owners own Lots within the Property, only the Owner of the Lot in violation will be held responsible for the violation.

7.09 Multiple Owners; Single Lot

If more than one Owner owns the Lot that is in violation of this Conservation Easement, the Owner of the Lot in violation shall have the burden of demonstrating to Holder which individual Owner(s) are responsible for the violation; otherwise, the Owners of the Lot in violation shall be deemed to be jointly and severally liable for the violation regardless of the form of ownership of the Lot.

Article VIII. Miscellaneous

8.01 Notices

(a) Requirements

Each Person giving any notice pursuant to this Conservation Easement must give the notice in writing and must use one of the following methods of delivery: (i) personal delivery; (ii) certified mail, return receipt requested and postage prepaid; (iii) electronic delivery; or (iv) nationally-recognized overnight courier, with all fees prepaid. This method of delivery may be used in follow up to notification by other means, such as electronic mail and telefax.

(b) Address for Notices

Each Person giving a notice must address the notice to the appropriate Person at the receiving party at the address listed below or to another address designated by that Person by notice to the other Person:

If to Owner: Borough Manager
Matanuska-Susitna Borough
Community Development Department
350 E. Dahlia Avenue
Palmer, Alaska 99645
lmb@matsugov.us

If to Holder: Executive Director
The Great Land Trust, Inc.



P.O. Box 101272
Anchorage, Alaska 99510-1272
info@greatlandtrust.org

(c) Multiple Owners

In case of the multiple Owners of the Property, Owners shall appoint and notify Holder of the identity of one representative to act on their behalf when communicating with Holder regarding any term of this Conservation Easement; provided, however, that there may be one representative for each Lot within the Property.

8.02 Governing Law

The laws of the State of Alaska govern this Conservation Easement.

8.03 Assignment and Transfer

Neither Owner nor Holder may assign or otherwise transfer any of their respective rights or duties under this Conservation Easement voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner except as permitted below. Any purported assignment or transfer in violation of this Section is void.

(a) By Holder

Holder may assign its rights and duties under this Conservation Easement, either in whole or in part, but only to a Qualified Organization that executes and records in the Public Records a written agreement assuming the obligations of Holder under this Conservation Easement. The assigning Holder must deliver the Baseline to the assignee Holder as of the date of the assignment. Holder must assign its rights and duties under this Conservation Easement to another Qualified Organization if Holder becomes the Owner of the Property.

(b) By Owner

This Conservation Easement is a servitude running with the land binding upon the Owner and, upon recordation in the Public Records, any subsequent Owner of the Property or any portion of the Property, and any such subsequent Owner is bound by its terms whether or not the subsequent Owner had actual notice of this Conservation Easement and whether or not the deed of transfer specifically referred to the Property as being under and subject to this Conservation Easement.

(c) No Merger

In the event that Holder acquires the fee title to all or a portion of the Property, it is the intent of the Owner and Holder that no merger of title shall take place that would merge the restrictions of this Conservation Easement with fee title to the Property, notwithstanding any otherwise applicable legal doctrine under which such property interests would or might be merged. As the parties intend that no such merger take place, and in view of the public interest in the enforcement of this Conservation Easement, the restrictions on the use of the Property, as embodied in this Conservation Easement shall, in the event fee title becomes vested in Holder, become and remain permanent and perpetual restrictions on the use of the Property. Holder, as successor in title to Owner under the circumstances described in the foregoing sentence, shall observe and be bound by the obligations of Owners and the restrictions imposed on the Property by this Conservation Easement.

8.04 Burdens; Benefits; Exclusive to Holder

Subject to the restrictions on assignment and transfer set forth in the preceding Section, this Conservation Easement binds and benefits Owner and Holder and their respective personal representatives, successors and assigns. Only the Holder has the right to enforce the terms of this Conservation Easement and exercise rights of Review, Waiver, Amendment or other discretionary rights of Holder. Owners of Lots within the Property do not have the right to enforce the terms of this Conservation Easement against Owners of other Lots within the Property. Only the Owners of the Lot that is the subject of a request for Review, Waiver, Amendment, interpretation or other decision by Holder have any right to notice of, or other participation in, such decision. Owner has been represented by legal counsel of its selection (or had the opportunity to be so represented) and understands that it is permanently imposing restrictions on the future use and development of the Property that limit the full use and development otherwise available under Applicable Law.



8.05 Requirement of Writing

No Amendment, Waiver, approval after Review, interpretation or other decision by Holder is valid and effective unless it is in writing and signed by an authorized signatory for Holder. This requirement may not be changed by oral agreement. The grant of an Amendment or Waiver in any instance or with respect to any Lot does not imply that an Amendment or Waiver will be granted in any other instance.

8.06 Representations and Warranties

(a) Hazardous Materials

To the best of Owner's knowledge, Owner represents and warrants that the Property is free of any conditions that individually or in the aggregate: (i) constitute a present or potential threat to human health, safety, welfare, or the environment; or (ii) otherwise are considered a Hazardous Material. Owner represents and warrants that to the best of its knowledge there are no underground tanks located on the Property. Owner represents and warrants that Owner will comply with all environmental laws in using the Property and that Owners will keep the Property free of any material environmental defect, including, without limitation, contamination from Hazardous Materials.

(b) State of Title

Owner represents and warrants that Owner has good and marketable title to the Property (including all appurtenances).

(c) Compliance with Laws

Owner has not received notice of and has no knowledge of any material violation of any federal, state, county, or other governmental or quasi-governmental statute, ordinance, rule, regulation, law, or administrative or judicial order with respect to the Property.

(d) No Litigation

Owner represents and warrants that there is no action, suit, or proceeding that is pending or threatened against the Property or any portion thereof relating to or arising out of the ownership or use of the Property, or any portion thereof, in any court or before or by any federal, state, borough, or municipal department, commission, board, bureau, agency, or other governmental instrumentality.

(e) Authority to Execute Conservation Easement

The person or persons executing this Conservation Easement on behalf of Holder represent and warrant that the execution of this Conservation Easement has been duly authorized by the Holder. The person or persons executing this Easement on behalf of Owner represents and warrants that the execution of this Conservation Easement has been duly authorized by Owner.

8.07 Severability

If any provision of this Conservation Easement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining provisions of this Conservation Easement remain valid, binding and enforceable. To the extent permitted by Applicable Law, the parties waive any provision of Applicable Law that renders any provision of this Conservation Easement invalid, illegal or unenforceable in any respect.

8.08 Counterparts

This Conservation Easement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.

8.09 Indemnity

(a) Property Insurance

Owner shall carry and maintain standard liability insurance coverage including third party liability, which coverage shall name Holder as an additional insured if reasonably practicable to obtain, and, upon request, provide Holder proof of same.



(b) Indemnity

To the extent caused by Owner, Owner must indemnify and defend the Indemnified Parties against all Losses and Litigation Expenses arising out of or relating to (a) any breach or violation of this Conservation Easement or Applicable Law; and (b) damage to property or personal injury (including death) occurring on or about the Property other than claims to which Owner is entitled to immunity under Alaska's Recreational Use Statute, AS 09.65.200, as may be amended from time to time.

8.10 Guides to Interpretation

(a) Captions

Except for the identification of defined terms in the Glossary, the descriptive headings of the articles, sections and subsections of this Conservation Easement are for convenience only and do not constitute a part of this Conservation Easement.

(b) Glossary

If any term defined in the Glossary is not used in this Conservation Easement, the defined term is to be disregarded as surplus material.

(c) Other Terms

(i) The word "including" means "including but not limited to."

(ii) The words "must" and "shall" are obligatory; the word "may" is permissive and does not imply any obligation.

(d) Conservation Easement Act

This Conservation Easement is intended to be interpreted so as to convey to Holder all of the rights and privileges of a holder of a conservation easement under the Conservation Easement Act.

8.11 Entire Agreement

This is the entire agreement of Owner, Holder and parties holding third party rights of enforcement (if any) pertaining to the subject matter of this Conservation Easement. The terms of this Conservation Easement supersede in full all statements and writings between Owner, Holder and others pertaining to the transaction set forth in this Conservation Easement.

8.12 Incorporation by Reference

Each Exhibit attached to this Conservation Easement is incorporated into this Conservation Easement by this reference. The Baseline (whether or not attached to this Conservation Easement) is incorporated into this Conservation Easement by this reference. In the event of any inconsistency between the Baseline and this Conservation Easement, the language of this Conservation Easement shall govern.

8.13 Costs; Legal Requirements; Liabilities

Owner will be responsible for and will bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property and agrees that Holder will have no duty or responsibility for the operation or maintenance of the Property, the monitoring or remediation of hazardous conditions on the Property, or the protection of Owner, the public, or any third parties from risks relating to conditions on the Property. Notwithstanding any other provision of this Conservation Easement to the contrary, the parties do not intend, and this Conservation Easement shall not be construed, to create in Holder the obligations or liabilities of an "owner" or "operator" as those words are defined and used in any environmental law or regulation by any Federal, State or local governmental authority. Owner agrees to pay before delinquency any and all real property taxes and assessments levied on the Property. Owner is solely responsible for any costs related to the maintenance of general liability insurance covering Owner's acts on the Property. Owner remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use by Owner on the Property and permitted by this Conservation Easement, and any activity or use will be undertaken in accordance with all applicable federal, state, and local laws, rules, regulations, and requirements. If more than one person or entity constitutes Owner, the obligations of each and all of them under this Easement will be joint and several.

8.14 Change of Conditions

In granting this Conservation Easement, Owner has considered the possibility that uses prohibited by the terms of this Conservation Easement may become more economically valuable than permitted uses and that neighboring properties may be used entirely for such prohibited uses in the future. It is the intent of Owner



and the Holder that any such changes will not be deemed circumstances justifying the extinguishment of this Conservation Easement. In addition, the inability of Owner, or Owner's heirs, successors or assigns, to conduct or implement any or all of the uses permitted under this Conservation Easement, or the unprofitability of doing so, will not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment.

8.15 Acts beyond Owner's Control

Owner shall not be responsible for any injury to or change in the Property resulting from natural events beyond the control of the Owner. Such natural events include naturally-occurring erosion, fire, flood, storm, earthquake, tornado, landslide or Acts of God, or from any prudent action taken by Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. This Section shall not be construed to relieve the Owner of the obligation to clean up garbage or materials dumped on the Property by third parties, to take all reasonable actions to prevent violations of this Conservation Easement by third parties, or to otherwise maintain the Property in a condition consistent with the purposes of this Conservation Easement.

8.16 Recording

After notification to Owner, Holder is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Easement, and Owner agrees to execute any such instruments upon reasonable request.

8.17 Intent

It is the intent of this Conservation Easement to protect the Conservation Values in perpetuity by prohibiting and restricting specific uses of the Property, notwithstanding economic or other hardship or changes in circumstances or conditions. If any provision in this Conservation Easement is found to be ambiguous, an interpretation consistent with protection of the Conservation Values and Conservation Purposes is favored, regardless of any general rule of construction. In the event of any conflict between the provisions of this Conservation Easement and the provisions of any use and zoning restrictions of the State of Alaska, the borough in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions will apply.

Article IX. Glossary

9.01 Access Drive(s)

Roads or drives providing access to and from Improvements or Limited Development Areas and public rights-of-way.

9.02 Additional Improvements

Improvements not located on, above or under the Property as of the Easement Date.

9.03 Amendment

An amendment, modification or supplement to this Conservation Easement signed by Owner and Holder and recorded in the Public Records.

9.04 Applicable Law

Any federal, state or local laws, statutes, codes, ordinances, standards and regulations applicable to the Property or this Conservation Easement as amended through the applicable date of reference. If this Conservation Easement is intended to meet the requirements of a qualified conservation contribution, then applicable provisions of the Code and the Regulations are also included in the defined term.

9.05 Best Management Practices

A series of guidelines or minimum standards (sometimes referred to as BMP's) recommended by federal, state and/or county resource management agencies for proper application of farming and forestry operations, non-point pollution of water resources and other disturbances of soil, water and vegetative resources and to protect wildlife habitats. Examples of resource management agencies issuing pertinent BMP's as of the Easement Date are: the Natural Resource Conservation Service of the United States Department of Agriculture (with respect to soil resources); and the following sources of BMP's with respect to forest



management: the Alaska Department of Natural Resources, Division of Forestry; the Forest Stewardship Council principles and criteria, Sustainable Forestry Initiative standards, and American Tree Farm standards.

- 9.06 Code**
The Internal Revenue Code of 1986, as amended through the applicable date of reference.
- 9.07 Conservation Easement Act**
The Alaska Uniform Conservation Easement Act, AS 34.17, as amended through the applicable date of reference.
- 9.08 Construction**
Any demolition, construction, reconstruction, expansion, exterior alteration, installation or erection of temporary or permanent Improvements; and, whether or not in connection with any of the foregoing, any excavation, dredging, mining, filling or removal of gravel, soil, rock, sand, coal, petroleum or other minerals.
- 9.09 Default Rate**
An annual rate of interest equal at all times to two percent (2%) above the "prime rate" announced from time to time in *The Wall Street Journal*, or any successor publication.
- 9.10 Educational Signs**
Signs for educational or interpretive purposes. Educational Signs should be designed to reflect the landscape and other natural aspects of the Property and so that scenic views over and across the Property described in the Conservation Values are obscured to the smallest possible degree.
- 9.11 Existing Agreements**
Easements and other servitudes affecting the Property prior to the Easement Date and running to the benefit of utility service providers and other Persons that constitute legally binding servitudes prior in right to this Conservation Easement.
- 9.12 Existing Improvements**
Improvements located on, above or under the Property as of the Easement Date as identified in the Baseline.
- 9.13 Hazardous Materials**
For purposes of this Conservation Easement, Hazardous Materials shall be defined as: (a) any hazardous waste as defined by the Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC s. 6901 et seq.) as amended; (b) any hazardous substance as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (15 USC s. 9601 et seq.) as amended; (c) any substance regulated by the Toxic Substances Control Act (TSCA) (15 USC s 2601 et seq.) as amended; (d) any substance regulated by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 USC s. 136 et seq.) as amended; (e) any pollutant as defined by the Water Pollution Control Act (33 USC s. 1251 et seq.) as amended; (f) any air pollutant as defined by the Clean Air Act (42 USC s. 7401 et seq.) as amended; (g) friable asbestos or asbestos-containing material of any kind or character; (h) polychlorinated biphenyls; (i) any substances regulated under the provisions of Subtitle I of RCRA relating to underground storage tanks; (j) any other substance, pollutant or contaminant subject to any form of environmental law or regulation by any Federal, State or local governmental authority.
- 9.14 Improvement**
Something constructed or created and located either on or under the ground or attached to something fixed to the ground, such as a building, structure, or facility. Each Improvement is either an Existing Improvement or Additional Improvement.
- 9.15 Indemnified Parties**
Holder and its respective members, directors, officers, employees, volunteers, contractors and agents, as well as its heirs, personal representatives, successors and assigns.
- 9.16 Invasive Species**
A plant species that is (a) non-native (or alien) to the ecosystem under consideration; and (b) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. In cases of uncertainty, the parties shall refer to publications issued by agencies such as the Alaska Department of Fish & Game; U.S. Department of Agriculture, National Invasive Species Information Center; Alaska Department



of Natural Resources, Division of Agriculture; and the U.S. Department of Agriculture, Forest Service Alaska Region.

- 9.17 Lien**
Any mortgage, lien or other encumbrance against the Property securing the payment of a debt or satisfying an obligation.
- 9.18 Litigation Expense**
Any court filing fee, court cost, arbitration fee or cost, witness fee and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Conservation Easement including in each case, attorneys' fees, other professionals' fees and disbursements, all of the foregoing in the amounts as allowed by the Alaska Rules of Court.
- 9.19 Losses**
Any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge other than a Litigation Expense.
- 9.20 Lot**
A unit, lot or parcel of real property separated or transferable for separate ownership or lease under Applicable Law.
- 9.21 Market Value**
The fair value that a willing buyer, under no compulsion to buy, would pay to a willing seller, under no compulsion to sell as established by appraisal in accordance with the then-current edition of Uniform Standards of Professional Appraisal Practice issued by the Appraisal Foundation or, if applicable, a qualified appraisal in conformity with §1.170A-13 of the Regulations.
- 9.22 Native Species**
A plant or animal indigenous to the locality under consideration. In cases of uncertainty, publications of qualified agencies or organizations such as the Alaska Native Plant Society and the Alaska Natural Heritage Program of the University of Alaska (Anchorage) are to be used to establish whether or not a species is native.
- 9.23 Owner**
The undersigned owners of the Property, any subsequent owner or owners of the Property or any portion of the Property, and any other Person holding a possessory interest in the Property, but not including Holder.
- 9.24 Person**
An individual, organization, trust or other entity.
- 9.25 Public Records**
The public records of the office for the recording of deeds in and for the recording district in which the Property is located.
- 9.26 Qualified Organization**
A governmental or non-profit entity that (a) has a perpetual existence; (b) is established as a governmental unit or as a public charity established for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and other charitable, scientific and educational purposes; (c) meets the criteria of a Qualified Organization under the Regulations; and (d) is duly authorized to acquire and hold conservation easements under Applicable Law.
- 9.27 Regulations**
The provisions of C.F.R. §1.170A-14 as amended through the applicable date of reference.
- 9.28 Regulatory Signs**
Signs to control access to the Property, to state limitations on the use of the Property, or for informational or directional purposes.
- 9.29 Renewable Energy**
Energy that can be used without depleting its source, such as solar, geothermal or through movement of water (hydroelectric or tidal), except not including dams.



9.30 Resource Management Plan

A record of the decisions and intentions of Owner prepared by a qualified resource management professional for the purpose of protecting natural resources described in the Conservation Purposes during certain operations potentially affecting natural resources protected under this Conservation Easement. The Resource Management Plan (sometimes referred to as the "RMP") includes a resource assessment, identifies appropriate performance standards (based upon Best Management Practices where available and appropriate) and projects a multi-year description of planned activities for identified operations to be conducted in accordance with the plan.

9.31 Restore or Restoration

The practice of repairing degraded, damaged, or destroyed ecosystems and habitats in the environment by active human intervention and action, generally with the goal of restoring the natural resources and habitats back to their pre-disturbance condition.

9.32 Review

Review and decision to approve, deny, modify, or approve with conditions by Holder under the procedure described in Article VI.

9.33 Review Requirements

Collectively, any plans, specifications or information required for approval of the Subdivision, activity, use or Construction under Applicable Law (if any) plus (a) the information required under the Review Requirements incorporated into this Conservation Easement either as an exhibit or as part of the Baseline or (b) if the information described in clause (a) is inapplicable, unavailable or insufficient under the circumstances, the information required by guidelines for Review of submissions established by Holder as of the applicable date of reference.

9.34 Site Improvements

Unenclosed Improvements such as Access Drives, Utility Improvements, walkways, trails, boardwalks, storm water management facilities, bridges, lighting fixtures, signs, fences, walls, gates, berms, and landscaping treatments.

9.35 Subdivision

Any division of the Property or any Lot within the Property; and any creation of a unit, lot or parcel of real property, including subsurface portions of the Property, for separate use or ownership by any means including by lease or by implementing the condominium form of ownership.

9.36 Utility Improvements

Improvements for the reception, storage or transmission of potable water, storm water, sewage, telecommunications, electricity, and gas or other sources of power.

9.37 Waiver

A written commitment by which Holder, without any obligation to do so, agrees to refrain from exercising one or more of its rights and remedies for a specific period of time with respect to a specific set of circumstances if Holder is satisfied that the accommodation will have no material effect on the Conservation Values.

9.38 Wet Areas

Watercourses, springs, lakes, ponds, wetlands and non-impounded standing water.

{Signature pages to follow}



IN WITNESS WHEREOF, INTENDING TO BE LEGALLY BOUND, the Owner and Holder, by their respective duly authorized representatives, have signed and delivered this Conservation Easement as of the Easement Date.

Date: 03-28-2018

OWNER

By: 

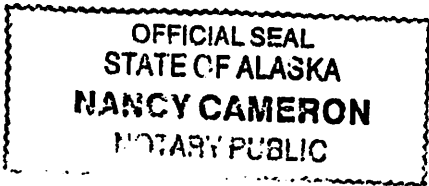
Name: JOHN M. MOOSEY

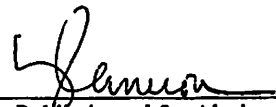
Its: BOROUGH MANAGER

STATE OF ALASKA)

Third JUDICIAL DISTRICT) ss)

The foregoing instrument was acknowledged before me this 28th day of March, 2018, by John Moosey, Borough Manager




Notary Public in and for Alaska
My Commission Expires: 9-10-19

THE GREAT LAND TRUST, INC.

Date: 3/28/18

By: 

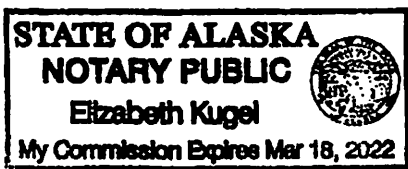
Name: GRETCHEN SPECHT


Its: BOARD MEMBER

STATE OF ALASKA)

Third JUDICIAL DISTRICT) ss)

The foregoing instrument was acknowledged before me this 28th day of March, 2018, by Gretchen Specht, its Treasurer of The Great Land Trust, Inc.




Notary Public in and for Alaska
My Commission Expires: March 16, 2022



**EXHIBIT A
PROPERTY LEGAL DESCRIPTION**

All of Tract B, Secluded Pointe Estates, according to Plat No. 2015-161, filed in the Palmer Recording District, Third Judicial District, State of Alaska, and Tract L-1D, Settlers Bay Unit No. 10, according to Plat No. 2017-147, filed in the Palmer Recording District, Third Judicial District, State of Alaska, EXCEPTING therefrom that portion of Tract L-1D described as a 60 foot public use easement located within flag pole portion of Tract L-1D created this plat.



EXHIBIT B
EASEMENT MAPS



GREAT LAND TRUST
SETTLERS BAY COASTAL PARK
CONSERVATION EASEMENT MAP

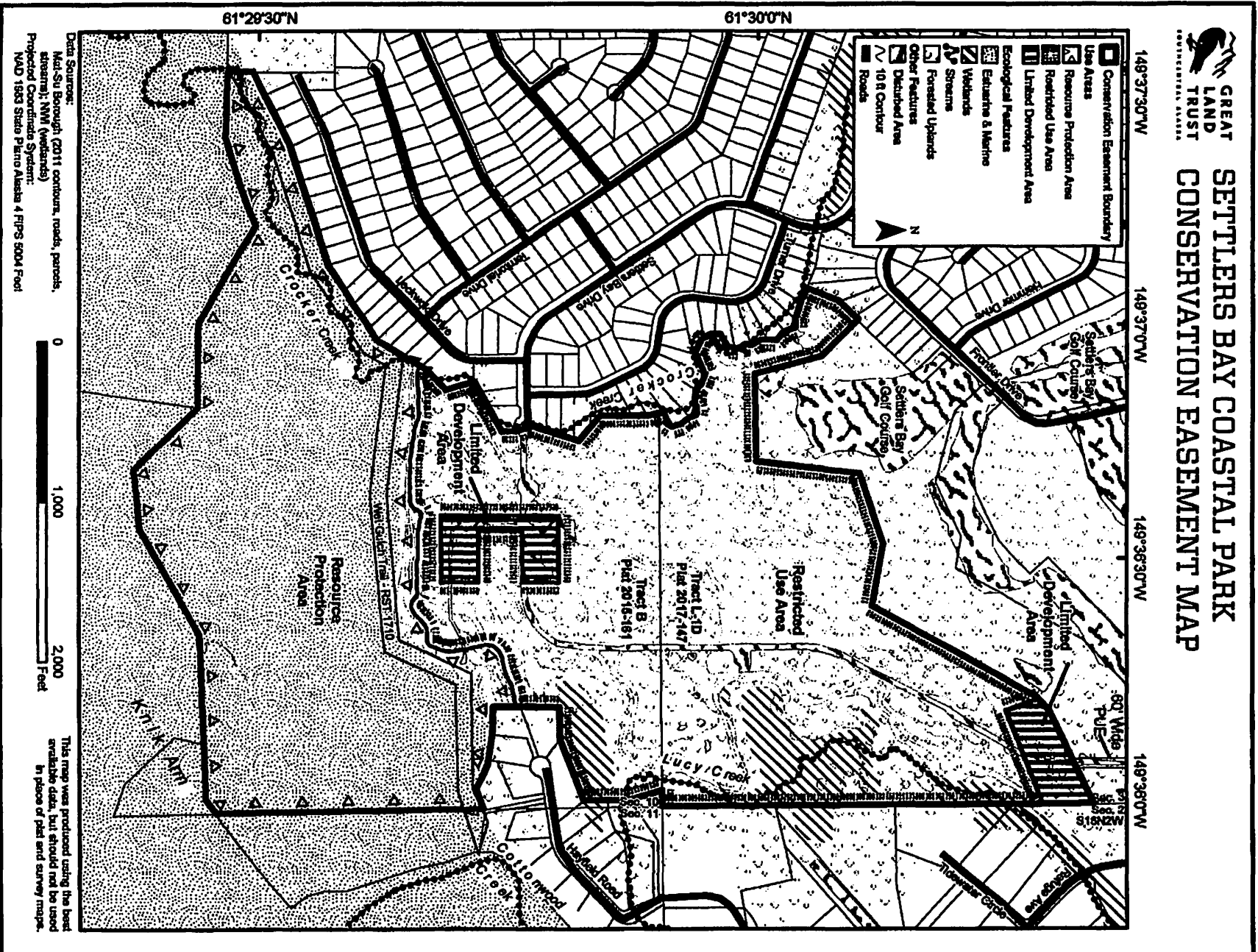
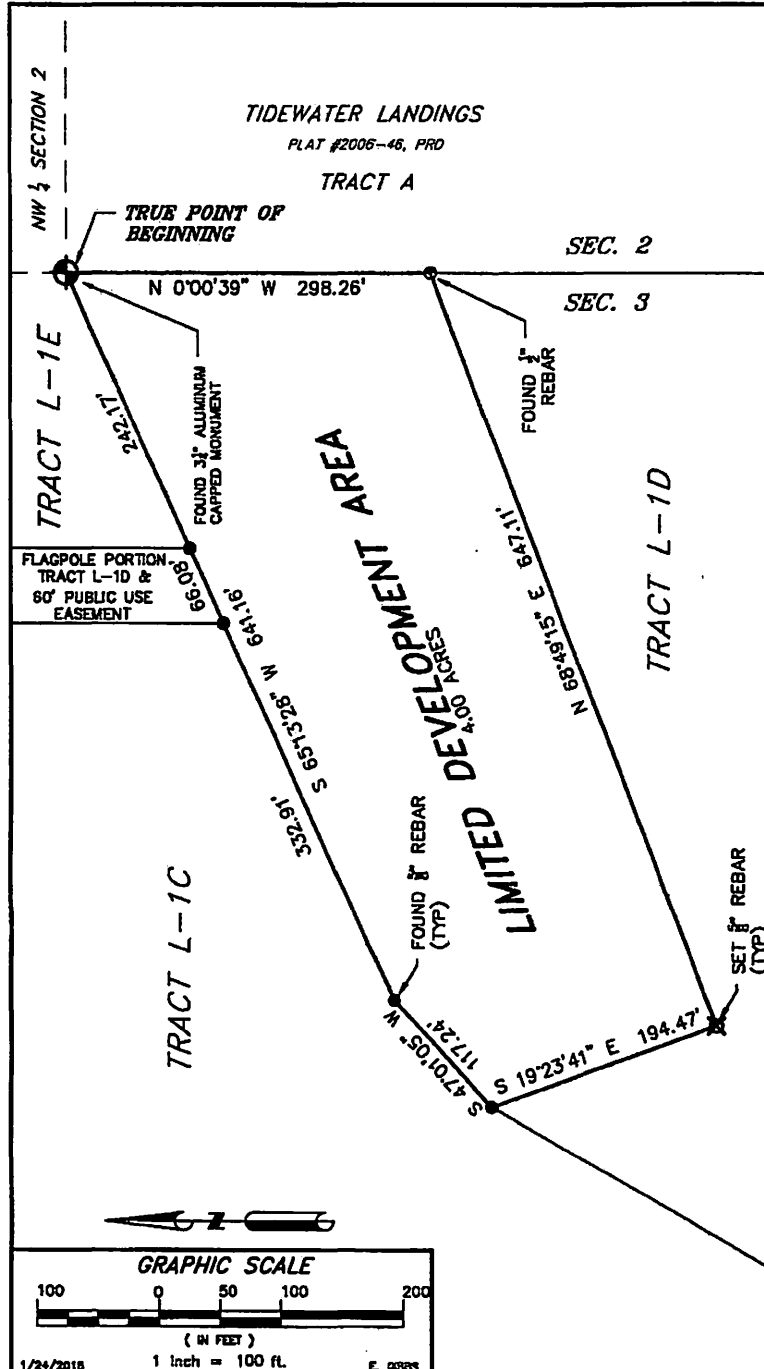


EXHIBIT B, CONTINUED

Limited Development Area within Tract L-1D, Settlers Bay Subdivision Unit No. 10, according to Plat No. 2017-147.

Commencing at a 3/4" aluminum capped monument for the quarter section corner of Sections 2 and 3, T16N, R2W, S.M., Alaska – also the *TRUE POINT OF BEGINNING*; thence S 65°13'28" W 641.16', marked by a 5/8" rebar; thence S 47°01'05" W 117.24', marked by a 5/8" rebar; thence S 19°23'41" E 194.47', marked by a 5/8" rebar; thence N 68°49'15" E 647.11', marked by a 1/2" rebar; thence N 0°00'39" W 298.26' to the *TRUE POINT OF BEGINNING* containing 4.00 acres, more or less.



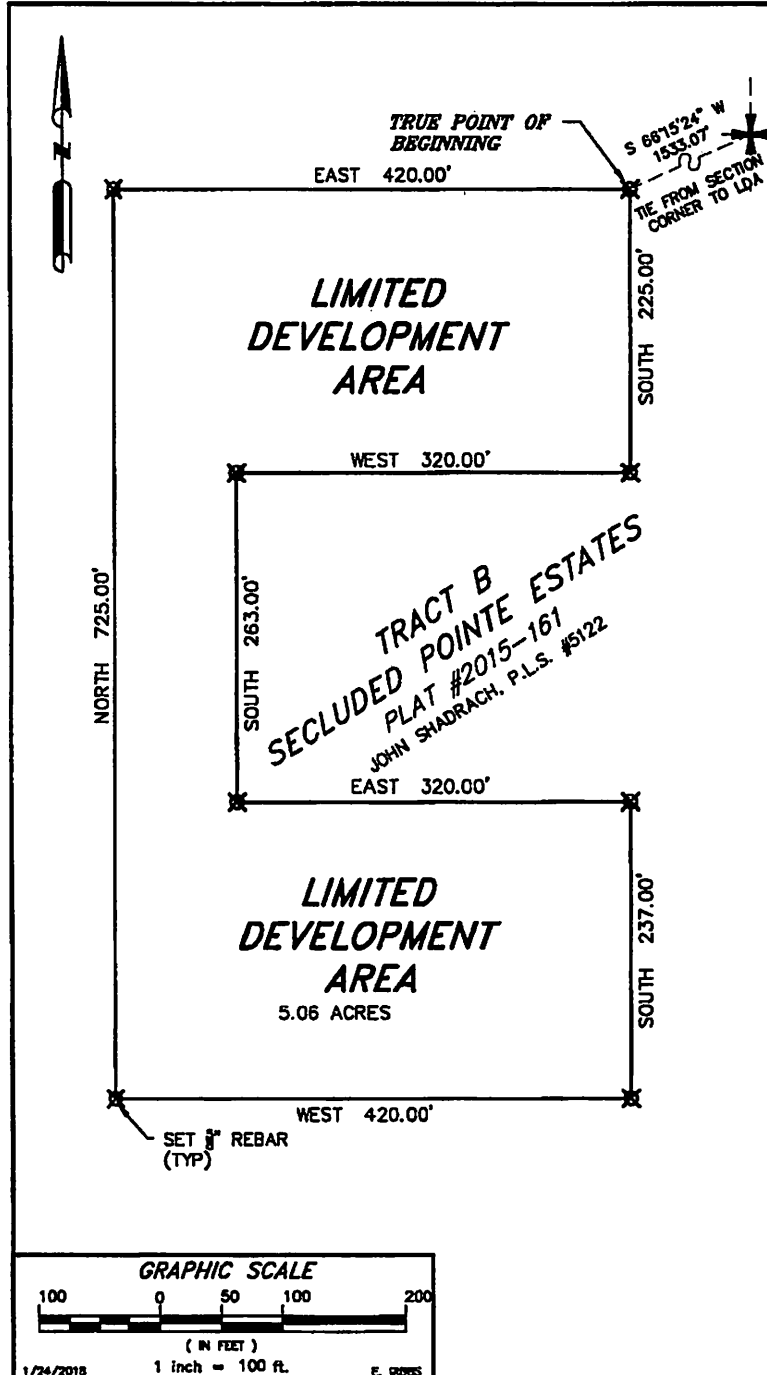
NOTE: BEARINGS ARE BASED ON GEODETIC NORTH AS MEASURED BY HIGH PRECISION LEICA VVA GNSS RECEIVERS ON 11/01/2017.



EXHIBIT B, CONTINUED

Limited Development Area within Tract B, Secluded Pointe Estates, according to Plat No. 2015-161.

Commencing at a 2-3/8" brass capped monument for the section corner of Sections 2, 3, 10, and 11, T16N, R2W, S.M., Alaska; thence S 66°15'24" W 1,533.07' to the *TRUE POINT OF BEGINNING*, marked by a 5/8" rebar; thence SOUTH 225.00', marked by a 5/8" rebar; thence WEST 320.00', marked by a 5/8" rebar; thence SOUTH 263.00', marked by a 5/8" rebar; thence EAST 320.00', marked by a 5/8" rebar; thence SOUTH 237.00', marked by a 5/8" rebar; thence WEST 420.00', marked by a 5/8" rebar; thence NORTH 725.00', marked by a 5/8" rebar; thence EAST 420.00' to the *TRUE POINT OF BEGINNING* containing 5.06 acres, more or less.



NOTE: BEARINGS ARE BASED ON GEODETIC NORTH AS MEASURED BY HIGH PRECISION LEICA VIVA GNSS RECEIVERS ON 11/01/2017.



EXHIBIT C
BASELINE DOCUMENTATION REPORT CERTIFICATION

Owner and Holder acknowledge that each has received and read the Baseline Documentation Report, dated March 2018, and that the report accurately reflects the condition of the Property subject to the Conservation Easement as of the Easement Date.

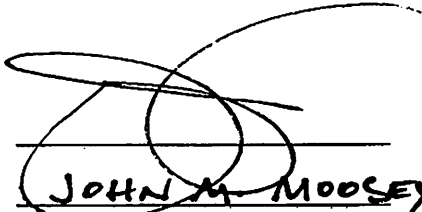
OWNER:

Date: 03-28-2018

By:

Name:

Its:

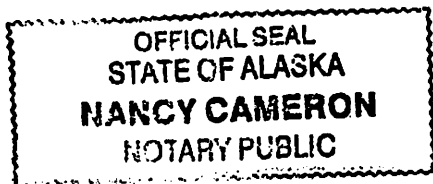

JOHN M. MOOSEY
BOROUGH MANAGER


STATE OF ALASKA

Third JUDICIAL DISTRICT

)
) ss
)

The foregoing instrument was acknowledged before me this 28th day of March, 2018 by John Moosey, Borough Manager.




Notary Public in and for Alaska
My Commission Expires: 9-10-19



HOLDER:

THE GREAT LAND TRUST, INC.

Date: 3/28/18

By: *G. Specht*

Name: GRETCHEN SPECHT

Its: BOARD MEMBER

STATE OF ALASKA)
Third JUDICIAL DISTRICT) ss
)

The foregoing instrument was acknowledged before me this 28th day of March, 2018, by Gretchen Specht, its Treasurer of The Great Land Trust, Inc.

Elizabeth Kugel
Notary Public in and for Alaska
My Commission Expires: March 18, 2022

