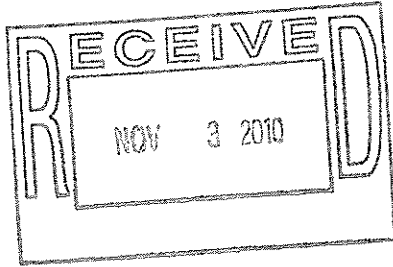


CA



ALASKA

2010-003220-0

Recording Dist: 309 - Homer
10/5/2010 10:13 AM Pages: 1 of 6



**STEWART STATE CONSERVATION EASEMENT
DIAMOND CREEK**

01029-80217

29782

THIS CONSERVATION EASEMENT ("Easement") is made by the City of Homer ("City" whose address is 491 East Pioneer Avenue, Homer, Alaska 99603 as grantor, and the State of Alaska (together with its successors and assigns, the "State"), whose address is Department of Natural Resources, 550 West Seventh Avenue, Suite 1050, Anchorage, Alaska, 99501-3579 as grantee.

WHEREAS, City is the owner in fee simple of certain property (hereinafter referred to as the "Property"), which is more particularly described as follows:

Section 9: N 1/2 of the SE 1/4 of the SE 1/4 ; the SE 1/4 of the SE 1/4 of the SE 1/4; and the E 1/2 of the SW 1/4 of the SE 1/4 of the SE 1/4.

Section 10: SE 1/4 and S 1/2 of the SW 1/4.

Subject to: A continuous public access easement fifty (50) feet upland of and along each side of the ordinary high water mark of Diamond Creek:

According to the GLO Survey Plat of Township 6 South, Range 14 West of the Seward Meridian, Alaska approved by the U.S. Surveyor General's Office in Juneau, Alaska on May 17, 1919, situated in the Homer Recording District, Third Judicial District, State of Alaska.

WHEREAS, the majority of the funds for the purchase of the Property have been provided from a grant ("Grant") to the State pursuant to the Forest Legacy Program (16 U.S.C. § 2013c) in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990, Public Law 101-624; 104 Stat 3359, as administered by the United States Department of Agriculture, Forest Service.

WHEREAS, the purposes for acquiring the herein described property include protecting environmentally important forest areas that are threatened by conversion to non-forest uses and for promoting forest land protection and other conservation opportunities as well as the protection of important scenic, cultural, fish, wildlife and recreational resources, riparian areas and other ecological values.

WHEREAS, title to the estate conveyed by this deed cannot be sold, exchanged, or otherwise disposed, unless the United States is reimbursed the market value of the interest in the land at the time of disposal.

WHEREAS, the Property must be used and maintained in accordance with the requirements of the Forest Legacy Program, other applicable federal laws and regulations and the Grant Agreement between the Forest Service and the State ("Grant Agreement") and in the event the Property is not so used and maintained the Forest Service may require the State to restore the Property;

NOW THEREFORE, pursuant to the laws of Alaska and the Alaska Uniform Conservation Easement Act, AS 34.17.010 et seq, City does hereby grant and convey to the State, and its successors and assigns, forever, with warranties of title, subject to conditions, restrictions and limitations of record, a conservation easement (the "Easement") in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.

I. Purpose of the Easement.

The purpose of this Easement is to assure that the Property will be used, maintained, and disposed of in accordance with the requirements of the Forest Legacy Program and other applicable federal laws and regulations and the Grant Agreement. It is further the purpose of the Easement to provide for reimbursement to the State by the City in the event that the Property is not used, maintained and disposed of in accordance with the requirements of the Forest Legacy Program and other applicable federal laws and regulations and the Grant Agreement.

II. Rights of the State.

The State shall be entitled to enforce the terms of the following restrictive covenants against the fee simple owner of the Property;

- a. To prohibit or enjoin any activity on the Property that is not permitted under the requirements of the Forest Legacy Program and other applicable federal laws and regulations and the Grant Agreement;
- b. To enter the Property at reasonable times in order to monitor City's compliance with and otherwise enforce the terms of the Easement;
- c. To require, enforce or undertake restoration of the areas or features of the Property which may be damaged by any activity or use not authorized by this Easement.



III. Costs and Liabilities.

- a. The City retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.
- b. The State shall have no liability or other obligation for costs, liabilities, taxes, or insurance of any kind related to the Property.
- c. The City shall hold harmless, indemnify, and defend the State and its employees, agents, and contractors (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Property, regardless of the cause, unless due solely to the negligence of the Indemnified Parties; (2) the obligations specified in this Easement; or (3) the existence or administration of this Easement.

IV. Disposition of the Property.

The City may not dispose of the Property, or encumber its title or other interest in the Property, without prior written permission from:

Commissioner
Department of Natural Resources
State of Alaska
550 West 7th Ave., Suite 1400
Anchorage, AK 99501

and

Forest Supervisor
United States Department of Agriculture, Forest Service
Chugach National Forest
3301 C Street, Suite 300
Anchorage, AK 99503

or their duly authorized designees.

In the event that City disposes of the Property, or encumbers its title or other interest in the Property, without the written permission of the State and the Forest Service as provided herein and the Forest Service requires that the State reimburse to the Service a portion or all of the Grant proceeds, City shall reimburse the State that same amount.



V. Use and Maintenance of the Property.

The Property shall be used or maintained in a manner consistent with the Grant, the requirements of the Forest Legacy Program, and other applicable federal laws and regulations and the Grant Agreement. In the event that the Property is not so used or maintained the City shall at the request of the State cease the violative activity and correct any adverse effects caused by the activity using nonfederal monies. In the event that the City refuses to correct the adverse effects and the State is required by the Forest Service to correct said effects, City shall reimburse the State its costs for correcting the adverse effects using nonfederal monies.

VI. General Provisions.

a. Nothing herein shall be deemed to create in any third party the right to enforce these covenants.

b. Nothing in this Easement shall relieve the fee simple owner of the Property from liability for injuries occurring on, and resulting from its activities on the Property, for which it would otherwise ordinarily be liable.

c. Notwithstanding any provision of this Easement to the contrary, the State is not an owner of the Property nor does the State hold an interest in the Property of the nature that would cause the State to be liable as a responsible party for the discharge or cleanup of hazardous materials under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 – 1975, or similar federal or state statutes or local ordinances or applicable regulations. This Easement does not permit the State to control any use of the Property by the fee simple owner of the Property which may result in the storage, dumping or disposal of hazardous materials or refuse; provided, however, that the State may bring an action to enforce the provisions of this Easement.

d. If any provision of this Easement, or the application of this Easement to any person or circumstances, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provisions to persons or circumstances other than those to which it is found invalid, shall not be affected.

e. City hereby covenants to and with the State and its assigns, that City is lawfully seized of the estate in fee simple of the Property, has good and lawful right and power to sell and convey the interests in land here granted, that the title and Easement here granted are free and clear of encumbrances, except as of record, and that City will forever warrant and defend the title thereto and the quiet possession thereof, against the lawful claims and demands of all persons.

f. This Easement shall run with the Property and shall be binding upon City, its successors and assigns.

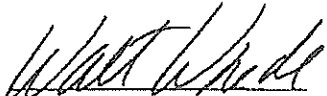
TO HAVE AND TO HOLD unto the State, its successors, and assigns forever.



IN WITNESS WHEREOF City and the State have set their hands on this day and year.

GRANTOR
City of Homer

By:

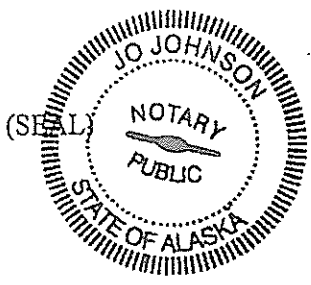

Walt Wrede
City Manager


ACKNOWLEDGMENT

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 24th day of September 2010, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioner and sworn as such, personally appeared Walt Wrede, to me known and known to be the City Manager of the City of Homer and the person who executed the above and foregoing STATE CONSERVATION EASEMENT on behalf of the City of Homer and who acknowledged to me that he signed in the name of, and for and on behalf of the City of Homer,, freely and voluntarily for the use and purposes therein mentioned.

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





Notary Public in and for Alaska
My commission expires: 12/19/11

ACCEPTANCE

Pursuant to AS 38.05,035(a)(11), the Grantee hereby accepts this State conservation Easement conveying to the State of Alaska and its assigns, those interests in lands described therein.

Dated this 29th day of Sept., 2010.

By: Marty Rutherford
Marty Rutherford
Deputy Commissioner
Alaska Department of Natural Resources

ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

The foregoing State Conservation Easement was acknowledged before me this 29 day of September 2010, by Marty Rutherford, Alaska Department of Natural Resources.

MARY KAY RYCKMAN
COMM. #113030
Notary Public - State of Alaska
My Comm. Expires "with office"
(SEAL)

Mary Kay Ryckman
Notary Public in and for Alaska
My commission expires: with office

STATE BUSINESS - NO CHARGE

AFTER RECORDING RETURN TO:
State of Alaska
Department of Natural Resources
Division of Mining, Land and Water/Realty Services Section
Attn: Deborah A. Knapp
550 West 7th Ave., Suite 1050
Anchorage, Alaska 99501

LOCATION INDEX: Sections 9 and 10, T. 6 S., R. 14 W., Seward Meridian

