

DEED OF CONSERVATION EASEMENT<sup>1</sup>

THIS DEED OF CONSERVATION EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 199\_\_, by \_\_\_\_\_ [husband and wife], whose address is \_\_\_\_\_ ("Grantors") to Southeast Alaska Land Trust, an Alaska non-profit corporation, whose principal address is 119 Seward Street, Suite #9, Juneau, Alaska 99801 ("Trust").

**I. RECITALS**

- This section contains background information that provides the basis for the transaction.
- A. The Grantor[s] is the sole owner in fee simple of certain real property ("Property") in \_\_\_\_\_, Alaska, more particularly described in Exhibit A (attached) and incorporated into this Easement by this reference.
- B. Conservation Values. The Property possesses [natural, scenic, open space, historic, educational, and/or recreational values] ("conservation values") of great importance to the Grantor, the people of \_\_\_\_\_, Alaska and the State of Alaska. (\* This provision is required by IRS (Reg. § 1.170A-14)).
- C. Description of Property. The Property consists of . . . [Describe specific conservation values; explain why this property is important. **Examples:** unique ecosystem, location, species, natural habitat; outdoor recreation by, or education of, the general public; preserves a historically important land area or a certified historic structure; open space (if the open space provides a significant public benefit and either furthers a clear governmental policy or is for the scenic enjoyment of the public); physical access to other land/waters; visual access to other lands/waters; proximity to other protected or public properties. If the Property is in proximity or adjacent to other protected or public lands, include a description of the public land, the law protecting the land, and establish the connection between the Property and the land focusing on the public benefit or defined governmental plan. **Example:** The Property abuts the \_\_\_\_\_ National Wilderness. The principal mandate for the National Wilderness Preservation System is "to secure for the American people of present and future generations the benefits of an enduring resource of wilderness." 16 U.S.C. § 1131(a). Restrictions on uses of the Property would benefit the National Wilderness because the Property provides essential habitat to wildlife that also use the National Wilderness.] (\* This provision is required by IRS (Reg. § 1.170A-14)).
- D. Baseline Documentation. The specific conservation values of the Property are further documented in an inventory of relevant features of the Property, dated \_\_\_\_\_, 199\_\_, on file at the offices of the Trust and incorporated by this reference ("Baseline Documentation"). The Baseline Documentation consists of reports, maps, photographs, and other documentation that the parties collectively agree provide an accurate representation of the Property at the time of this grant and is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. [Optional Language 1: Grantor and the Trust further agree that within three months of

<sup>1</sup> This model conservation easement is intended only as a guide for drafting a conservation easement. Each easement must be individually drafted to fit the unique facts and circumstances presented by a given transaction. Bulleted passages in smaller print explain the purpose of each section and should be deleted in the final easement. Brackets signify either optional language or describes the type of material to be inserted.

[Optional Language 1: Grantor and the Trust further agree that within three months of the execution of this Easement, a collection of additional Baseline Documentation may be compiled by the Trust, and incorporated into the Easement by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability of this Easement or any of its provisions. **Optional Language 2:** The parties agree that in the event a controversy arises with respect to the nature and extent of the intent of this Easement, the parties shall not be foreclosed from using all other relevant or material documents, surveys, reports, and other information to assist in the resolution of the controversy.]

- E. Continuation of Existing Uses. Grantor intends that the conservation values of the Property be preserved and maintained by permitting the continuation of only those land uses on the Property that do not significantly impair or interfere with the conservation values. Such uses existing at the time of this grant include, without limitation, [residential, agricultural, timber management, recreational, etc.] uses consistent with this Easement.
- F. Conveyance of Right to Protect Conservation Values. Grantor, as owner of the Property, has the right to [identify], preserve, and protect the conservation values of the Property, and desires and intends to transfer such rights to the Trust in perpetuity.
- G. Qualifications of the Trust. The Trust is a non-profit corporation qualified under Internal Revenue Code Sections 501(c)(3) and 170(h) and Alaska Statute 34.17. The Trust is organized exclusively for scientific, charitable, and educational purposes and conserves lands in Alaska with significant natural and cultural values for the benefit of the general public. (\* This provision is required by IRS (Reg. § 1.170A-14)).

## II. Conveyance and Consideration

- This section is mandatory under IRS requirements (Reg. § 1.170A-14).

In consideration of the above and mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Alaska and the Alaska Uniform Conservation Act (34.17), Grantor hereby voluntarily grants and conveys to the Trust, its successor and assigns, a conservation easement ("Easement") in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.

## III. Purpose

- This section provides the basis for the "consistency" test - only uses consistent with protection of the conservation values of the property will be permitted.

The purpose of this Easement is to assure that the Property will be retained forever predominately in its [natural, scenic, open space, agricultural, forested and/or historical] condition [as a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem], and to prevent any use of, or activity on the Property that will [significantly] impair or interfere with the conservation values of the Property (the "Purpose"). Grantor intends that this Easement will confine the use of, or activity on, the Property to such uses and activities that are consistent with the purpose of this Easement.

#### IV. Rights of the Trust

- This section conveys the rights necessary for the Trust to accomplish the purpose of the easement.

To accomplish the purpose of this Easement, the Grantor conveys, in perpetuity, the following rights to the Trust, its successors and assigns:

- A. To [identify,] preserve, protect, and, if necessary, to restore the conservation values of the Property in such a manner as the Trust may deem necessary and appropriate;
- B. To enter the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement, provided that such entry shall be upon prior reasonable notice to Grantor, and the Trust shall not unreasonably interfere with any of Grantor's uses or quiet enjoyment of the Property;
- C. To prevent any activity or use of the Property that is inconsistent with the purposes of this Easement and to require [or undertake] restoration of the areas or features of the Property which may be damaged by any activity or use that is inconsistent with this Easement;
- D. To enjoin any activity or use of the Property that is inconsistent with this Easement [,including trespasses by members of the public,] and to enforce the restoration of such areas or features of the Property that may be damaged by such activities; and
- E. **[Optional language if access is a purpose of the easement:** To allow persons or groups to enter the Property for educational, scientific and biological purposes to observe and study on the Property, provided that any such person or groups first are approved by the Grantor, make prior arrangements with the Grantor, agree to provide the Grantor with copies of any data or reports resulting from such research, and agree to abide by any restrictions on access set forth by Grantor. **Optional language:** All persons or groups given permission to enter the Property shall sign a waiver intended to release the Grantor and the Trust from all liability to the extent allowed by law.]

#### V. Uses and Activities Consistent with the Purpose of the Easement

- This section explains the general rights and obligations reserved to the Grantor, other than the rights conveyed to the Trust in the easement. This section must be tailored to the land, the parties, the reasons for the easement, and the needs of the Grantor to enjoy the property.

- A. Grantor reserves for itself and its personal representatives, heirs, successors and assigns, all rights accruing from ownership of the Property, including the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Property that is not inconsistent with the Purpose of the Easement and that is not prohibited by this Easement.
- B. In addition to the general reservation of rights stated above, the following activities and uses are expressly reserved to the Grantor:

**Examples:**

1. Residential Use. The maintenance, renovation, expansion, or replacement of the existing buildings, structures, and improvements, in substantially their present location as shown on Exhibit \_\_\_\_ subject to the following limitations:
  - a. Prior written approval of the Trust is required for any remodeling or reconstruction of an existing structure which expands the structure beyond its current footprint or changes the building envelope.
  - b. Grantor may clear brush, and prune, trim and remove trees for residential purposes and to enhance the view, but no vegetation may be removed, or cut in [identify area of special ecological concern] without prior written approval of the Trust.
  - c. Grantor may construct \_\_\_\_ additional residential homesites and associated structures in the area designated on Exhibit \_\_\_\_, subject to the following conditions: [insert appropriate limitations].
  
2. Forest Management. The maintenance of existing forest management activities in the forest areas identified on Exhibit \_\_\_\_, provided that such activities are carried out in compliance with federal, state, and local regulations and do not impact the integrity of the watershed, water quality and quantity and the conservation values of the Property. The forest management activities are subject to the following limitations:
  - a. Timber harvest must be conducted using Best Management Practices, approved by the Alaska Department of Fish and Game, including stringent protections of soil and watershed values, riparian areas, and wildlife habitat.
  - b. The following actions are subject to prior written approval by the Trust:
    - (1) any timber harvesting exceeding \_\_\_\_ trees in a year;
    - (2) the harvesting of any tree with evident bird or mammal nest holes or dens;
    - (3) the harvesting or disturbance of any tree or vegetation within 300 feet of any raptor nest, currently known or later identified;
    - (4) the harvesting of any standing dead tree with a diameter at breast height exceeding eighteen inches; and
    - (5) the harvesting of any live tree with a diameter at breast height exceeding twelve inches.

3. Recreation. Passive recreational activities such as [hiking, bird watching, cross country skiing, fishing, hunting, etc.] on the Property, provided that such activities are conducted in a manner and intensity that does not adversely impact the conservation values of the Property. No motorized or mechanized recreational vehicles such as [all-terrain vehicles, motorcycles, etc] that could adversely impact the conservation values of the Property are allowed in [identify areas of special ecological concern].
4. Road Maintenance. The maintenance, renovation, expansion, or replacement of existing roads and trails necessary to further or maintain the conservation values of the Property [and to serve the residential areas]. The design and location of any renovation, expansion, or replacement shall be subject to the prior written approval of the Trust. Maintenance of the roads and trails may not adversely impact the conservation values of the Property. Only trails essential for monitoring, education and research are allowed in [identify areas of special ecological concern].
5. Fences. The construction and maintenance of fences within or around the residential area, provided that the design and location shall not interfere with the conservation values of the Property.

#### **VI. Uses and Activities Inconsistent with the Purpose of the Easement**

• This section contains the general provision regarding inconsistent uses and specifies uses that are inconsistent with the purposes of the Easement. This section must be tailored to the land, the parties, the reasons for the easement, and the needs of the Grantor to enjoy the property.

- A. Any use of, or activity on, the Property inconsistent with the Purpose of this Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity.
- B. Without limiting the generality of subsection A, the following uses of, or activities on, the Property, though not an exhaustive list, are inconsistent with the Purpose of this Easement and shall be prohibited, except as expressly provided for in Section V:

#### **Examples:**

1. The change, disturbance, alteration, or impairment of the significant relatively natural ecological features and values of the Property, or the destruction of other significant conservation interests on the Property.
2. Filling, excavating, dredging, mining, drilling, and the exploration for or extraction of minerals, hydrocarbons, soils, sand, gravel, rock, or other materials on or below the surface of the Property, except for purposes specifically permitted in this Easement.
3. Use of snowmobiles, all-terrain vehicles, motorcycles, or other motorized or mechanized vehicles off of roads or travel-ways, except for agricultural or property-maintenance purposes.

