

**SPECIAL MEETING AGENDA  
JENSEN-OLSON ARBORETUM ADVISORY BOARD  
Mendenhall Valley Library  
Tuesday, May 9<sup>th</sup>, 2017  
5:15 P.M.**

- I. Call to Order
  - II. Public Participation on Non-Agenda Items
  - III. New Business
    - a. Arboretum FY18 City Budget Reductions
  - IV. Adjournment
- 

**Packet Contents**

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Possible Program Elimination from PDB Process							
Line #	Department	Program Description	Filled FTE(s)	Direct Costs	Revenue Impact	Net Reductions	Impact
1	Library	Museum Operations & Public Education (Population served: 3,000 + tourists)	2.75	300,000	71,500	228,500	Close museum - Leaves the curator in place for a period of time to deal with distributing the collection. Subsequent FY savings increase to \$374,500
2	Parks & Rec	Mt. Jumbo Gym (Population served: 1200)	0.32	27,000	17,200	9,800	Close Facility. Will displace users, other facilities are available but may not be as convenient. Facility has significant deferred maintenance expenses.
3	Parks & Rec	Eagle Valley Center (Population served: 500)	0.27	37,600	26,900	10,700	Close facility. Consider either leasing out the facility or selling property.
4	Parks & Rec	Arboretum (Population served: 5,000)	1.68	164,200	89,300	74,900	Return Facility. MOAs in place govern process for unwinding CBJ's involvement with the arboretum.
<b>Subtotal -Program elimination from Priority Driven Budget Process</b>			<b>5.02</b>	<b>\$ 528,800</b>	<b>\$ 204,900</b>	<b>\$ 323,900</b>	

Possible Program Scaling from PDB Process							
Line #	Department	Program Description	Filled FTE(s)	Direct Costs	Revenue Impact	Net Reductions	Comments
5	Mayor & Assem	Assembly Grants - Others	0.00	474,800			JAHc - \$167,000 Festival Committee - \$31,300 Douglas 4th of July - \$3,500 Parents for Safe Grad - \$3,000 Sealaska Celebration - \$20,000 JCF Teacher Excellence - \$250,000
6	Parks & Rec	Treadwell - Public Use	0.51	19,100		19,100	Close facility during low use times.
7	Parks & Rec	Landscape - Flowers & Perennial beds (Population served: 32,000 plus visitors in downtown core)	1.26	62,000	41,900	20,100	Continue with portion of flowers that are paid for with non GF sources.
8	Parks & Rec	Landscape - Mowing & Trees (Population served: 32,000)	0.39	17,200		17,200	Scale mowing by 1/3 Eliminates one seasonal position. Impacts would be visible to the community.
<b>Subtotal -Program scaling from Priority Driven Budget Process</b>			<b>2.16</b>	<b>\$ 573,100</b>	<b>\$ 41,900</b>	<b>\$ 56,400</b>	

Identified Management Efficiencies & Program Scaling							
Line #	Department	Program Description	Filled FTE(s)	Direct Costs	Revenue Impact	Net Reductions	Comments
	CCFR	Revisions to Air pack Maintenance Process		3,500	-	3,500	scheduling work with a contract instead of staff will allow CCFR to reduce overtime costs. Savings will grow slightly overtime as air packs are replaced and service contracts negotiated.
	CCFR	Non-Emergency Services		15,000	-	15,000	Revamp Open Burning Investigations - efficiencies will result in reduced responses freeing up time for training and other activities that might otherwise be conducted on overtime.
	CDD	Planning Review	1.00	100,000	-	100,000	Leave position unfilled for the current fiscal year, leave FTE in place. There will be reductions in long range planning services.
	Engineering & Public Works	CIP Project Management	1.00	125,000			Eliminate position which will become vacant due to retirement prior to the beginning of FY18. No GF savings.

Engineering & Public Works	General Engineering	0.50	60,000		60,000	Continue reorganization begun with merger of Engineering & Public Works Departments.
JPD	Abandoned Vehicles		10,000	-	10,000	Procedural efficiencies. May require ordinance change.
JPD	Community Service Officer	1.00	104,000		104,000	Will reduce parking enforcement in the Valley and 1/2 the litter enforcement currently being conducted.
Parks & Rec	Areawide Rec	1.00	102,000	20,000	82,000	Eliminate Vacant Community Outreach position. Decreases ability to market programs which may have a long term impact on revenues.
Parks & Rec	Aquatics - AGB Hour reductions based on low use times	2.75			Approx. 80 - 90 K	Pool Board has these under consideration.
<b>Subtotal -Management / Staff Recommended Efficiencies</b>		<b>4.50</b>	<b>519,500</b>	<b>20,000</b>	<b>374,500</b>	<b>Does not include pool decrements</b>

<b>Total Potential Reductions</b>	<b>11.68</b>	<b>\$1,621,400</b>	<b>\$266,800</b>	<b>\$754,800</b>
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<b>Management Recommendations for Programs to Leave Whole Notwithstanding PDB Process</b>							
Line #	Department	Program Description	Filled FTE(s)	Direct Costs	Revenue Impact	Net Reductions	Comments
	CCFR	Non-Emergency Services (Population served: 32,000)	3.20	428,300	-	428,300	Cannot eliminate staff performing services without reducing ability to respond to emergencies.
	Library	Outreach & Youth Programming (Population served: 10,000)	2.75	162,000		162,000	Full reduction, would increase to \$215k second year.
	Parks & Rec	Aquatics - Groups and Private Rentals (Population 3200)	0.49	9,400	92,300		By the time indirect costs are backed out, the program pays for itself. Aquatics recommended other reductions. Aquatics board is reviewing to assure rental rates are recovering expenses.
	Parks & Rec	Ranger Program (Population served: 32,000)	1.01	87,600	2,300	85,300	Elimination of Thane Campground Maintenance, Supervision of volunteer trail crews, and Auke Lake enforcement.
	Parks & Rec	Treadwell Ice Arena - Special Arena Programs	0.10	4,100	3,600	500	Direct costs are low with a fairly high rate of overall return. Programs are designed to increase general use at the facility. Cutting this area will likely have an overall impact of reducing long term use of the facility.
	Parks & Rec	Area wide Rec Field scheduling & Registration services (population served 3,200)	1.00	138,100		138,100	Reduce staffing for registration and field scheduling. These functions cannot be reduced without impacting both adult and youth sports programs. Remaining adult programs offset the costs of the youth programs.
<b>Programs to Leave Whole from PDB Process</b>			<b>8.55</b>	<b>829,500</b>	<b>98,200</b>	<b>814,200</b>	

<b>Additional Potential Funding Sources</b>	
Tobacco Tax Fund	500,000
Hotel Tax Fund	500,000
Property Tax (per .10 mil)	420,000
<b>Total</b>	<b>\$ 1,420,000</b>

## Jensen Olson Arboretum

### Information Provided to Focus Groups

Division/ Unit	Program	Program Description	Department Name	Staffing (FTE)	Direct Cost	Revenues	Cost Recovery	Costs net Revenues	QP
Arboretum	Arboretum	Facility costs, operations, general admin, board, planting & maintaining grounds, educational programs.		1.68	\$ 164,200	\$ 100,500	61%	\$ 63,700	3

### Updated Direct Staffing, Direct Costs and Revenues

Division/ Unit	Program		Department Name	Staffing (FTE)	Direct Cost	Revenues	Cost Recovery	Costs net Revenues	Savings	QP
Arboretum	Arboretum	Sell Arboretum		0.00	\$ -	\$ -			\$ 74,900	
Arboretum	Arboretum	Run Arboretum with Volunteers		0.00	\$ 16,000	\$ 16,000	100%	\$ -	\$ 74,900	
Arboretum	Arboretum	Eliminate Part Time Staff		1.00	\$ 136,500	\$ 89,300	65%	\$ 47,200	\$ 27,700	

#### 1. Sell Arboretum **Savings \$74,900**

- a. **Fiscal Analysis:** New direct costs: \$0 New revenues: \$0 New FTEs: 0  
The current expenditure budget is \$164,200. \$89,300 is currently transferred to the General Fund from the Arboretum Endowment to offset expenses, for a net cost of \$74,900. All staff positions (total of 1.68 FTEs) would be eliminated.
- b. **Impact Analysis:**
  - i. There are Administrative Agreements in place (dated 9/30/1993 and 12/28/1998) that detail how the Arboretum is to be managed. Per these Agreements, we can sell the Arboretum, and any expenses incurred due to the sale would be offset by the amount of the sale. Any other profits must be donated to the organization that is specified in the Agreement. SEAL Trust has first right of refusal for the sale.
  - ii. Depending on who purchased the Arboretum, the new owners may choose to charge a fee to go to the Arboretum. Access to the grounds is currently free.
  - iii. There is also the potential increase in cost of rentals for weddings, special events, etc. to offset costs of managing the Arboretum.

**2. Run Arboretum with Volunteers      Savings \$74,900**

- a. **Fiscal Analysis:** New direct costs: \$16,000    New revenues: \$16,000    New FTEs: 0  
Costs are estimated based on expenditures to maintain grounds, vehicles, equipment and residence. All staff positions (total of 1.68 FTEs) would be eliminated. This is also assuming that we would continue to receive General Fund support from the Arboretum Endowment. We have not factored renting the residence into this equation, as any rental revenue would go to the Arboretum Endowment.
  
- b. **Impact Analysis:**
  - i. We would need to create an agreement with the Jensen Olson Arboretum Board for oversight, management and training of volunteers.
  - ii. The Arboretum board would have to take over management of the facility, which could potentially negatively impact retaining or recruiting board members.
  - iii. There may not be a sufficient number of volunteers in the community that are needed to maintain the Arboretum.
  - iv. CBJ and Arboretum Board would have to agree whether the presence of a caretaker is necessary for protection of the property. If yes, then the Arboretum Board would oversee that agreement.

**3. Eliminate Part Time Staff      Savings \$27,700**

- a. **Fiscal Analysis:** New direct costs: \$136,500    New revenue: \$89,300    New FTEs: 1.0  
We would retain the Arboretum Manager, but eliminate all other staff (total of 0.68 FTEs) and run the arboretum with volunteer assistance.
  
- b. **Impact Analysis:**
  - i. There may not be a sufficient number of volunteers in the community that are needed to maintain the Arboretum.
  - ii. More oversight and training would be required for the volunteer staff, which would add to the already full workload of the Arboretum manager.
  - iii. Due to the increase in workload of training volunteers and the uncertainty of not having dedicated part time staff, we may not be able to retain or hire a qualified manager.

ADMINISTRATIVE AGREEMENT  
CONCERNING  
JENSEN-OLSON ARBORETUM

This Agreement is made this 30 day of SEPTEMBER, 1993, by and between CAROLINE J. JENSEN, ("Donor"), and the CITY AND BOROUGH OF JUNEAU, ALASKA ("Donee").

WHEREAS, the Donor, CAROLINE J. JENSEN, presently contemplates making a testamentary gift to the CITY AND BOROUGH OF JUNEAU, ALASKA, of certain real property as described on Exhibit 1 hereto (the "Arboretum Property") for the purpose of establishing an arboretum/horticultural garden to be known as the Jensen-Olson Arboretum; and

WHEREAS, the Donee recognizes that the Donor retains the right to change the testamentary disposition of her estate at any time prior to her death; and

WHEREAS, the Donee is agreeable to indicate its willingness to manage and utilize the Arboretum Property in a manner consistent with Donor's intent if the gift is made and accepted by the governing body of the CITY AND BOROUGH OF JUNEAU; and

WHEREAS, the parties hereto desire to set forth in some detail the intended management, development and utilization, of the Arboretum Property,

NOW THEREFORE IT IS HEREBY AGREED by the parties as follows:

1. BINDING EFFECT. The parties hereto acknowledge and agree that while the Donor is currently contemplating gifting certain real and personal property to the CITY AND BOROUGH OF JUNEAU under

the terms of this Agreement, she is not legally bound to make such gifts. By entering into this Agreement the CITY AND BOROUGH OF JUNEAU and CAROLINE J. JENSEN are agreeing as to the manner in which Donor's gift would be used and managed should the Donor make such a gift and the CITY AND BOROUGH OF JUNEAU accept such gift. By entering into this Agreement the CITY AND BOROUGH OF JUNEAU indicates its agreement in concept, but is not contractually bound to accept the gift on the stated terms until such time as the gift is actually made and the CITY AND BOROUGH OF JUNEAU's governing body formally accepts the gift and approves the terms.

2. THE DONATION. The contemplated gift of property is to establish and support an arboretum in the CITY AND BOROUGH OF JUNEAU, ALASKA. The term "Arboretum" as used herein shall mean a collection of living plants; including, trees, shrubs, herbaceous and specimens, permanently maintained for the purpose of recreation, research and education. The donation to establish the Arboretum consists of: A) the developed real property legally described in Exhibit 1 attached hereto on which the Arboretum will be established ("Arboretum Property"), and B) additional real property and other assets which will be used to provide funds to establish and support the Arboretum ("Support Fund"). Both donations will be made through a living revocable trust established by the Donor. When the Trustee of the revocable trust ("Trustee") distributes the assets of the trust estate, the Arboretum Property will pass to the Donee to become property of the Donee to be

managed, subject to the restrictions described herein, for the public benefit. In addition, the Support Fund assets will pass to the Donee to be placed in a segregated trust fund, available to support the Arboretum Property. The funds shall be disbursed only for this purpose and shall not be available for other programs of the Donee nor available to Donee's creditors.

3. RESTRICTION ON SALE OF ARBORETUM PROPERTY. The Arboretum Property is uniquely situated and protected acreage with proper exposure for growing a broad range of species--its wooded areas, particularly along Glacier Road, serving as protection for the micro-climate along the waterfront. It is Donor's intent that this unique parcel of real property be kept intact to the maximum extent possible; the Arboretum is established in perpetuity. Thus, the Arboretum Property may not be sold in whole or in part except in the event of condemnation or taking by a public entity or to exchange with abutting property owners wishing to acquire road or power right of way, or to acquire additional property which may benefit the development of the Arboretum, and any such alterations to the Arboretum Property shall be done in the least intrusive manner to protect the integrity of the Arboretum. For example should the City and Borough of Juneau seek access to its lands abutting the Arboretum, access should be through the Northerly most end of the Arboretum to minimize the impact and to avoid division of the Arboretum property into non-contiguous parcels.



Should it be impractical for the Donee to accept Donor's gift, or once accepted no longer feasible to continue management of the Arboretum, the Arboretum Property shall be sold and the net proceeds (after expenses) along with the ancillary Support Fund relinquished by the Donee and distributed to the AMERICAN ASSOCIATION OF BOTANICAL GARDENS AND ARBORETA (Wayne, Pennsylvania) ("AABGA") to be used to support arboreta located in the United States with a Donor's preference for Juneau, Alaska, the State of Alaska, the Western United States or other states, in that order of preference, or if the AAGBA is unable to accept to other charitable beneficiaries qualified under Internal Revenue Code Section 2055(a) who will carry out Donor's intent to benefit gardens and arboreta.

4. OPERATION OF THE ARBORETUM.

4.1 Active Use. Preferably, the Arboretum shall be operated in a manner that allows for active use of the Arboretum Property. If this is not reasonably feasible, the Arboretum Property shall be maintained as a natural preserve. Active uses envisioned include recreation and public enjoyment (e.g. hiking trails, nature walks and other compatible recreational uses); academic and scientific activities (especially those associated with the University of Alaska Southeast ("UAS")) such as teaching, studying, research; and public education activities and programs including operation of a visitor center, courses, speakers, special exhibits, etc.

4.2 Commercial Activity. Commercial activity shall be permitted on the Arboretum Property but only as such purpose relates to the operation of the Arboretum (tourism, gift shops, plant sales, sale of scientific proceedings/papers, etc.). All net proceeds from such activities shall be placed into the Support Fund and used to support or expand the Arboretum.

5. FINANCIAL SUPPORT OF THE ARBORETUM. As described in Paragraph 2 herein, the Donor is donating certain real property and other assets to provide initial and ongoing support for the Arboretum. The sufficiency of the Support Fund (along with any other funds which may be available from the Donee's budget or donated by other contributors) will govern the rate of development and breadth and extensiveness of the Arboretum and its related programs. Guidelines as to the order of priority for allocation of available funds are set forth below.

5.1 Application of Support Funds. While it is Donor's intent that the Arboretum be further developed and improved over time, her first concern is preservation of the Arboretum Property, followed by maintenance of its developed horticultural areas. Accordingly, the Support Fund shall be applied first to preserve and protect the Arboretum Property, and then to maintain the developed horticultural areas of the Arboretum Property (including the residence and other structures located thereon and integral to the Arboretum). Expenditures to maintain the Arboretum may include expenditures to employ a professional horticulturist (i.e. master

gardener or degreed horticulturist), caretaker expense, travel, commodities, salaries, equipment and contractual services; Support Funds shall not be used for the maintenance or benefit of the railway or boathouse as neither is an essential part of the Arboretum, however Support Funds may be used to demolish and remove them from the Arboretum Property. The expenses of administration and maintenance of the Arboretum may be reimbursed from the Support Fund, including financial administration and the expenses of maintaining the records required by Section 6 of this agreement. The City may be reimbursed from the Support Fund to the extent that its personnel maintain and administer the Arboretum. Expenditures for capital improvements, including taxes for local improvement districts may be taken from the Support Fund, for the benefit of the property.

Expenditures from the Support Fund should be minimized during the early years, to the extent required and possible, without compromising the viability or condition of the Arboretum, to allow the Support Fund to grow to a level which insures permanent preservation and maintenance of the Arboretum. Any additions to, or income earned on the Support Fund, not required for the preservation and maintenance of the Arboretum Property, shall be accumulated and added to the Support Fund until it is of sufficient size to insure the survival and perpetual maintenance of the Arboretum.

Support Fund earnings, over and above the amounts necessary for preservation and maintenance, shall be applied in the following order of priority in managing the Arboretum:

- a) to improve the Arboretum Property for greater public enjoyment (i.e. hiking trails, nature walks, and compatible activities);
- b) to expand the developed horticultural areas of the Arboretum Property (developed acreage, variety of species, greenhouses); and
- c) to support educational and scientific programs/activities (especially those in conjunction with University of Alaska Southeast).

5.2 Solicitation of Additional Contributions. Once the Donee has accepted the Arboretum Property gift from the Donor, as occasions may arise the Donee shall bring to the attention of potential contributors the opportunity to support the Arboretum and its activities.

## 6. ADMINISTRATION OF THE PROGRAM.

6.1 The Support Fund is to be accounted for by the Donee as a restricted trust fund (or similarly restricted arrangement) available only for the support of the Arboretum. It is Donor's intent that principal of the fund remain inviolate and in perpetuity. Only earnings after expenses shall be available for expenditures.

6.2 Upon request accounting records pertaining to such restricted trust account shall be available to the Alaska Attorney General or his/her designee and/or representative of the agencies performing financial audit work of Alaskan charitable non-profit organizations.

6.3 An annual accounting of revenue and expenditures shall be made available to the public by the Donee.

6.4 Investment of the Support Funds shall be in accordance with investment policies of the CITY AND BOROUGH OF JUNEAU.

DONOR:

Caroline J. Jensen  
CAROLINE J. JENSEN

Date: Sept. 11, 1993

DONEE:

CITY AND BOROUGH OF JUNEAU, ALASKA

By Mark R. Galesh  
Its: CITY MANAGER

Date: 9/30/93

Approved as to Form  
Barbara R. Craven  
Asst. City Borough Attorney

## EXHIBIT 1

TO

## ADMINISTRATIVE AGREEMENT

Real property identified as follows:

Tract 3, U.S. Survey 1466, according to Plat 85-25 Juneau Recording District, First Judicial District, State of Alaska.

TOGETHER WITH: The north Lot "A" of the Pearl Harbor Group of Homesites, of the land embraced in U.S. Survey No. 2516, situated on north shore of Pearl Harbor, adjoining H.E.S. 167, Alaska, containing four acres, and eighty-seven hundredths of an acre, according to the official plat of the survey of the said land on file in the Bureau of Land Management; being the land described in U.S. Patent No. 1127079 dated August 28, 1949, from the United State of America to Carl Olson.

## Second Administrative Agreement Concerning Jensen-Olson Arboretum

This agreement is made by and between the Caroline J. Jensen Revocable Trust ("Jensen") and the City and Borough of Juneau, Alaska ("CBJ").

### RECITALS:

- 1) Jensen wishes to make a gift to the CBJ of certain real property as described in the deed attached hereto as Exhibit 1 (the "Arboretum Property") for the purpose of establishing an arboretum/horticultural garden to be known as the Jensen-Olson Arboretum; and
- 2) The parties previously entered into an Administrative Agreement dated September 30, 1993, which contemplated a testamentary gift of the Arboretum Property (the "Administrative Agreement"). The Administrative Agreement is incorporated by reference herein. This agreement is intended to supplement the Administrative Agreement and to modify it to the extent necessary to acknowledge that the gift is now intended to be made through an inter vivos deed to the CBJ, with a life estate reserved to Jensen rather than a testamentary gift, and that Jensen intends to convey a conservation easement on the Arboretum Property to the Southeast Alaska Land Trust (the "Conservation Easement"); and
- 3) Under CBJ Resolution No. 1927, adopted on April 20, 1998, the CBJ has authorized the city manager to accept the inter vivos donation of the Arboretum Property; and
- 4) It is Jensen's intention, through this inter vivos gift, to insure that the CBJ receives the Arboretum Property and to insure that Caroline Jensen retains the right to live on the Arboretum Property for so long as she wishes to do so.

NOW, THEREFORE, the parties agree as follows:

1. Jensen shall make an inter vivos conveyance of the Arboretum Property through a deed in the form attached as Exhibit 1. The conveyance shall constitute the gift contemplated in Section 1 of the Administrative Agreement, and execution of this agreement and recording of the deed shall constitute acceptance of the Arboretum Property and approval by both parties of the terms set forth in the Administrative Agreement.
2. The deed conveys fee simple to the Arboretum Property to the CBJ, reserving a life estate to Jensen. The life estate in the real property may be conveyed to the CBJ during the lifetime of Caroline J. Jensen. The CBJ will accept the

conveyance of any such life estate interest. If the life estate is conveyed to the CBJ during Jensen's lifetime, Jensen shall donate the Support Fund (as defined in the Administrative Agreement) to the CBJ at the same time as the conveyance of the life estate.

3. Jensen intends to convey a conservation easement on the Arboretum Property to the Southeast Alaska Land Trust ("SEAL Trust"), an organization qualified to accept conservation easements under Section 170(h) of the Internal Revenue Code of 1986. CBJ acknowledges that the Arboretum Property will be subject to the conservation easement and shall pay for the costs of an appraisal required in connection with the conservation easement. Said costs are estimated to be approximately \$10,000.
4. Pursuant to Resolution No. 1927, CBJ shall reimburse Jensen for the attorney fees and costs incurred by Jensen in preparing the conservation easement and in preparing the documents required for the donation of the Arboretum Property to the CBJ. Such costs are estimated to be approximately \$2,000.00.
5. After the conveyance of the Arboretum Property to the CBJ, the CBJ shall pay all property taxes and assessments imposed on the Arboretum Property, (including any taxes imposed on Jensen's retained life estate) for any tax year in which the Arboretum Property is conveyed to the CBJ, and all years thereafter.
6. The Conservation Easement runs with the land and burdens the title to the Arboretum Property, while granting certain enforcement powers over the easement to the SEAL Trust. Certain obligations are imposed on the "Grantor" as that term is defined in the Conservation Easement with respect to complying with the easement. As long as Jensen retains her life estate, she will fulfill the duties of the Grantor in dealing with the SEAL Trust and will be the primary contact for the SEAL Trust with respect to the obligations imposed on the Grantor by the Conservation Agreement.
7. Section 3 of the Administration Agreement is revised to read as follows:

3. RESTRICTION ON SALE OF ARBORETUM PROPERTY.

3.1 Held in Perpetuity. The Arboretum Property is uniquely situated and protected acreage with proper exposure for growing a broad range of species—its wooded areas, particularly along Glacier Highway, serving as protection for the micro-climate along the waterfront. It is Donor's intent that this unique parcel of real property be kept intact to the maximum extent possible; the Arboretum is established in perpetuity. Thus, the Arboretum Property may not be sold in whole or in part except in the



event of condemnation or taking by a public entity or to exchange with abutting property owners wishing to acquire road or power rights of way, or to acquire additional property which may benefit the development of the Arboretum, and any such alterations to the Arboretum Property shall be done in the least intrusive manner to protect the integrity of the Arboretum. For example, should the City and Borough of Juneau seek access to its lands abutting the Arboretum, access should be through the Northerly most end of the Arboretum to minimize the impact and to avoid division of the arboretum property into non-contiguous parcels. In any proposed sale transaction, the Donee shall comply with the provisions governing the right of first refusal held by the Southeast Alaska Land Trust ("SEAL Trust") under the Conservation Easement.

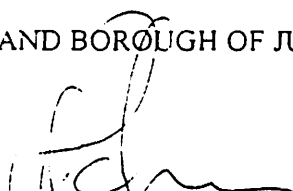
3.2 Impossibility of performance. If it becomes no longer feasible for any entity to continue management of the Arboretum Property as an arboretum, the Arboretum Property shall be sold and the net proceeds (after expenses) along with the ancillary Support Fund relinquished to the AMERICAN ASSOCIATION OF BOTANICAL GARDENS AND ARBORETA, Wayne, Pennsylvania ("AABGA") to be used to support arboreta located in the United States with Donor's preference for Juneau, Alaska, the State of Alaska, the Western United States or other states, in that order of preference, or if the AAGBA is unable to accept to other charitable beneficiaries qualified under Internal Revenue Code Section 2055(a) who will carry out Donor's intent to benefit gardens and arboreta.

8. Except as modified and supplemented by this agreement, the Administrative Agreement shall remain in full force and effect. The provisions of the Administrative Agreement that were contingent upon the gift of the Arboretum Property shall become effective and binding upon the execution of this agreement and the conveyance of the Arboretum Property.

The parties agree and sign this on the dates below.

CITY AND BOROUGH OF JUNEAU

By: \_\_\_\_\_

  
David R. Palmer  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT

[Signature]  
City-Borough Attorney

[Signature]  
CBJ Department

CAROLINE JENSEN REVOCABLE TRUST

By: [Signature]  
Caroline J. Jensen, Trustor

CITY ACKNOWLEDGMENT

STATE OF ALASKA )  
 ) ss:  
FIRST JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on the 28<sup>th</sup> day of December, 1998, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared DAVID R. PALMER, to me known to be the identical individual(s) described in and who executed the foregoing instrument as the CITY-BOROUGH MANAGER of the CITY AND BOROUGH OF JUNEAU, ALASKA, a municipal corporation which executed the above and foregoing instrument; who on oath stated that he was duly authorized to execute said instrument on behalf of said corporation; who acknowledged to me that he signed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in the certificate first above written.

[Signature]  
Notary Public for the State of Alaska  
My Commission Expires: 9-11-00

(seal)

JENSEN ACKNOWLEDGMENT

STATE OF ALASKA )  
 ) ss:  
FIRST JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on the 28<sup>th</sup> day of December, 1998, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared CAROLINE J. JENSEN, to me known to be the identical individual(s) described in and who executed the foregoing instrument as the TRUSTOR, who personally appeared on behalf of CAROLINE J. JENSEN REVOCABLE TRUST, and who executed the foregoing instrument, and acknowledged to me that she signed and sealed the same in the name of and for and on behalf of said Trust, freely and voluntarily for the uses and purposes therein mentioned.



(seal)

*S. A. Quinn*

Notary Public for the State of Alaska  
My Commission Expires: 8-27-2000

DEED OF GIFT WITH RESERVATION OF LIFE ESTATE

GRANTOR, the CAROLINE J. JENSEN REVOCABLE TRUST, whose address is 23035 Glacier Highway, Juneau, Alaska 99801 (the "Grantor"), as a gift and without consideration, conveys and quitclaims to the City and Borough of Juneau ("Grantee"), all interest which it has, if any, in the following described real estate:

1. Tract 3, U.S. Survey 1466, according to Plat 85-25, Juneau Recording District, First Judicial District, State of Alaska.
2. The North Lot "A" of the Pearl Harbor Group of Homesites, of the land embraced in U.S. Survey No. 2516, situated on the north shore of Pearl Harbor, adjoining H.E.S. 167, Alaska, containing four acres, and eight-seven hundredths of an acre, according to the official plat of the survey of the said land on file in the Bureau of Land Management; being the land described in U.S. Patent No. 1127079 dated August 22, 1949, from the United States of America to Carl Olson.

Reserving and excepting, however, to Grantor the full use, control and possession of the above-described property (the "Real Property") for and during the natural life of Caroline J. Jensen. All of the Real Property is located in the Juneau Recording District, First Judicial District, State of Alaska, and is subject to a conservation easement recorded in the office of the Juneau Recorder.

DATED this \_\_\_\_\_ day of December, 1998.

\_\_\_\_\_  
 Caroline J. Jensen,  
 Trustee of the  
 Caroline J. Jensen Revocable Trust

Accepted on behalf of the City and Borough of Juneau

Date: December \_\_\_\_, 1998

\_\_\_\_\_  
 City Manager

STATE OF ALASKA )  
 ) ss.  
FIRST JUDICIAL DISTRICT )

THIS CERTIFIES that on this \_\_\_\_ day of December, 1998, before me, a Notary Public in and for the State of Alaska, personally appeared Caroline J. Jensen, to me known and known to me to be the person whose name is subscribed to the foregoing instrument, and after being first duly sworn according to law she stated to me under oath that she is the Trustee of the Caroline J. Jensen Revocable Trust, and that she is authorized to execute the foregoing instrument on its behalf and she executed the same freely and voluntarily as the free act and deed of trust.

WITNESS my hand and official seal the day and year in this certificate above written.

\_\_\_\_\_  
Notary Public for Alaska.  
My Commission Expires: \_\_\_\_\_

CITY ACKNOWLEDGMENT

STATE OF ALASKA )  
 ) ss:  
FIRST JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on the \_\_\_\_ day of \_\_\_\_\_, 199\_\_, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared DAVID R. PALMER, to me known to be the identical individual(s) described in and who executed the foregoing instrument as the CITY-BOROUGH MANAGER of the CITY AND BOROUGH OF JUNEAU, ALASKA, a municipal corporation which executed the above and foregoing instrument; who on oath stated that he was duly authorized to execute said instrument on behalf of said corporation; who acknowledged to me that he signed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in the certificate first above written.

\_\_\_\_\_  
Notary Public for the State of Alaska  
My Commission Expires: \_\_\_\_\_

Return to:  
Eric A. Kueffner  
Faulkner Banfield, P.C.  
302 Gold Street  
Juneau, AK 99801

13924\cbj.dee

RECORDING DISTRICT

*1516*

REQUESTED BY

*Faulkner  
Banfield*

**DEED OF CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT is made this 28th day of December, 1998, by and between the Revocable Trust Agreement of Caroline J. Jensen, whose address is 23035 Glacier Highway, Juneau, Alaska 99801 (the "Grantor") and Southeast Alaska Land Trust, an Alaska non-profit corporation, whose principal address is 119 Seward Street, Suite #9, Juneau, Alaska 99801 (the "Trust").

Exhibits to this Deed of Conservation Easement include the following:

- Exhibit A - Legal Description of the Property
- Exhibit B - Easement Documentation Report
- Exhibit C - Acknowledgment of Easement Documentation Report
- Exhibit D - Administrative Agreement Concerning Jensen-Olson Arboretum dated September 30, 1993
- Exhibit E - Second Administrative Agreement Concerning Jensen-Olson Arboretum dated December 28, 1998

WITNESSETH THAT:

- A. Grantor is the owner of certain real property in the Juneau Recording District of Alaska, consisting of 13.9 acres, more or less, more particularly described and shown in *Exhibit A* attached hereto and incorporated herein by this reference (the "Property");
- B. The Property possesses natural, agricultural, scenic, educational, open space, and historical values, including, but not limited to, horticultural gardens, scenic shorelines identified as valuable in the Coastal Zone Management Act, wildlife habitat provided by timber stands for species protected by the Endangered Species Act, and a historic example of an Alaskan homestead (collectively referred to as "conservation values"). All of these values are of great value to Grantor, the people of Juneau and the State of Alaska in general, and are worthy of preservation.

- C. The Property is subject to an Administrative Agreement and a supplement thereto (both of which documents are referred to collectively as the "CBJ Agreement") with the City and Borough of Juneau ("CBJ") under which Grantor intends to gift the Property to the CBJ in order to establish an arboretum, preserve the arboretum property, and maintain the developed horticultural areas (Exhibits D and E). The Property is bordered by property designated as a natural area park by the CBJ. The land immediately across Glacier Highway from the Property is held by the Alaska Department of Fish and Game and the only steelhead salmon stream accessible from the CBJ road system is also in the vicinity of the Property. The Property is located on the shoreline of Lynn Canal and is part of the coastal zone of Alaska and the United States. The State of Alaska has established a coastal management program for the "the protection and management of significant historic, cultural, natural, and aesthetic values and natural systems or processes within the coastal area." AS 46.40.020(5). Congress has declared that "there is a national interest in the effective management, beneficial use, protection, and development of the coastal zone" and that the coastal zone "is rich in a variety of natural, commercial, recreational ecological, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation." 16 U.S.C. Sec. 1451(a) and (b). The restrictions imposed on the Property by this Easement are in accord with the national interest expressed in the Coastal Zone Management Act of 1972 and the state interests expressed in the Alaska Coastal Management Program because these restrictions would provide effective management, use and protection of the affected portion of the coastal zone. It is the intention of the Grantor, as expressed in the CBJ Agreement, to make a gift of the Property to the CBJ, reserving only a life interest, so that the CBJ may establish an arboretum for public use upon the cessation or relinquishment of the life estate. The arboretum will form an important component of the CBJ's park and land use program, as identified in the CBJ's comprehensive plan. The arboretum will provide scientific, educational and recreational benefits to the public consistent with the conservation values expressed in: a) the CBJ's comprehensive plan; b) the Alaska Coastal Management Program and c) the federal Coastal Zone Management Act of 1972.
- D. Grantor, as owner of the Property, owns the affirmative rights to identify, preserve, and protect in perpetuity its character and its significant relatively natural features and values that are worthy of preservation.



Grantor desires and intends to transfer such rights to the Trust;

- E. The State of Alaska has recognized the importance of private efforts toward the preservation of these values in the state by enactment of the Alaska Uniform Conservation Act, AS 34.17; and
- F. The Trust is a non-profit corporation organized to protect and conserve natural areas and ecologically significant land for scientific, charitable and educational purposes, and is a "holder" under the provisions of AS 34.17.060(2)(B) and is a "qualified organization" within the provisions of Section 170(h) of the Internal Revenue Code of 1986, as amended (the "IRS Code"), qualified to acquire and hold conservation easements and meets the requirements of the IRS Code as a Section 501(c)(3) exempt organization.

#### **TERMS AND CONDITIONS**

NOW, THEREFORE, in consideration of the mutual covenants contained herein, pursuant to the Alaska Uniform Conservation Act, AS 34.17, Grantor hereby conveys to the Trust, its successors and assigns, a perpetual Conservation Easement consisting of the rights and restrictions enumerated herein, over and across the Property (the "Easement").

1. **PURPOSES.** It is the specific purpose of this Easement to preserve and protect the plant communities and significant natural habitat now found on the Property, to preserve open space, and to preserve a historically important land area. The Property is uniquely situated and contains protected acreage with proper exposure for growing a broad range of species - its wooded areas, particularly along Glacier Highway, serve as protection for the micro-climate along the waterfront. It is further the purpose of the Easement to preserve and protect in perpetuity and, in the event of their degradation or destruction, to enhance and restore the significant natural features and values of the Property. In achieving these purposes, it is the intent of the Easement to permit the continuation of such uses of the Property as may be conducted consistent with the conservation values protected herein. It is further the intent of the Easement to permit and enhance the establishment of an arboretum on the Property. The terms of the Easement are intended to assist in the administration of the arboretum and to define the scope of activities that may take place within the arboretum. The CBJ Agreement should be interpreted in a way that is consistent with the terms of the Easement and the CBJ and the Trust are expected to work together in establishing specific policies for Arboretum administration. The Arboretum is to be maintained for light

impact public access by individuals and small educational non-commercial groups of visitors. It is not intended to be a destination for large-scale tourism.

2. **STATEMENT OF GRANT.** Grantor hereby unconditionally and absolutely grants and conveys unto the Trust, its successors and assigns, in perpetuity, an Easement in Gross and a Declaration of Restrictive Covenants with respect to the Property, as more particularly hereinafter set forth exclusively for the purposes of preserving and protecting the present scenic, historic, natural, agricultural, open space, educational and water resource values of the Property (the "conservation purposes"). The Trust hereby accepts the Easement and agrees to hold it exclusively for such conservation purposes.

Pursuant to the terms of the Alaska Uniform Conservation Act, AS 34.17, the Property preserved hereby as natural land may not be converted or directed to any uses other than those provided herein.

3. **EASEMENT DOCUMENTATION REPORT.** The specific conservation values of the Property are documented in the Easement Documentation Report, dated \_\_\_\_\_, 1998 (the "Report"). A copy of the Report is attached as **Exhibit B**, and is a material document defining the scope and intent of this Easement. The parties acknowledge that the Report is intended to establish the condition of the Property subject to the Easement as of the date written above and that both Grantor and the Trust has acknowledged in a signed statement, a copy of which is attached hereto as **Exhibit C**, that the Report accurately represents the condition of the Property at the time of conveyance. Grantor and the Trust further agree that within six months of the execution of this Easement, a collection of additional Baseline Documentation shall be compiled by Grantee, 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.

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.

4. RIGHTS OF THE TRUST. The rights conveyed to the Trust by the Easement are the following:

- A. To identify, preserve and protect in perpetuity, the conservation values to be preserved as set forth in the "Purposes" clause and the Report and, if necessary, to restore those values on the Property.
- B. To perform such activities on the Property as the Trust reasonably determines are necessary or convenient to carry out the rights granted by this Easement.
- C. To enter upon the Property to enforce the rights herein granted, to study and make educational and scientific observations of its ecosystems, and to determine that activities conducted by the Grantor, its assignees, and any other person or entity are in compliance with the terms of the Easement, all upon prior notice to Grantor and in a manner that does not unreasonably disturb the use of the Property by Grantor consistent with the Easement. The Trust shall also have the right of immediate entry to the Property if, in its sole judgment, such entry is necessary to prevent damage to or the destruction of the conservation values protected by the Easement.
- D. To enjoin any activity on or any use of the Property that is inconsistent with the Easement and to enforce the restoration of such areas or features of the Property as may be damaged by such activities.

5. CONSISTENT USES OF THE PROPERTY. The following uses and practices by Grantor, though not an exhaustive recital of consistent uses and practices, are consistent with the Easement. Certain of these consistent uses and practices are identified as being subject to specified conditions or to the requirement of and procedures for prior approval by the Trust; procedures for prior approval are provided below. The remainder of these consistent uses shall not be precluded, prevented, or limited by the Easement.

A. Permitted Improvements.

- 1) Existing Improvements. To repair, remodel, reconstruct, and maintain the following improvements now existing on the Property:
  - a. a single family home;
  - b. a garage and sheds and other accessory structures;

- c. gardens and related structures, including but not limited to barns, sheds, and greenhouses;
  - d. access roads, to provide access to the improvements permitted herein;
  - e. fences that are consistent with the aesthetics of the property and that allow movement of wildlife across the property; and
  - f. facilities normally used in connection with supplying utilities and removing effluent from the improvements permitted under the terms of this Easement.
- 2) Prior Approval for Existing Improvements. Prior written approval of the Trust is required for the following activities:
- a. remodeling or reconstruction of an existing structure which expands the structure beyond its current footprint or changes the building envelope;
  - b. expansion of any existing access road; and
  - c. expansion of existing facilities used for supplying utilities and removing effluent.
- 3) Arboretum Improvements.
- a. To construct, repair, remodel, and reconstruct such improvements as may be necessary to establish an arboretum and horticultural garden on the Property for public educational and non-motorized light impact recreational use. Establishment of the arboretum may include such activities as are described in the CBJ Agreement (attached hereto as Exhibits D and E) (the "CBJ Agreement"). The term "Arboretum" as used in this Easement shall have the same meaning as in the CBJ Agreement.
  - b. Boat House. The boat house may be torn down as it has no relation to the Arboretum.

c. Prior Approval for Arboretum Improvements. Prior written approval of the Trust is required for the following activities associated with establishment and maintenance of an arboretum:

- i) construction of new structures;
- ii) construction of new access roads or parking;
- iii) construction of hiking trails;
- iv) expansion of the developed horticulture areas;
- v) installation of any above-ground utilities; and
- vi) cutting down or removal of horticultural trees or shrubs

B. Timber Uses. Provided that the conditions below are met, the selective harvesting of timber only for the following purposes: controlling forest disease; protecting persons or property from the hazards of falling trees or branches or wildfire; providing firewood for domestic use on the Property; constructing the buildings and roads authorized in this Easement; maintaining existing fields and open pastures; and enhancing wildlife habitat. The conditions below apply to both living and standing dead trees.

- 1) Timber harvest must be conducted using Best Management Practices, approved by the Alaska Department of Fish & Game, including stringent protection of soil and watershed values, riparian areas, and wildlife habitat.
- 2) The following actions are subject to prior written approval by the Trust:
  - a. any timber harvesting exceeding five trees in a year must be approved by the Trust;
  - b. the harvesting of any tree with evident bird or mammal nest holes or dens;
  - c. the harvesting or disturbance of any tree or vegetation within 300 feet of any raptor nest, currently known or later identified;
  - d. the harvesting of any standing dead tree with a diameter at breast height exceeding eighteen inches; and

- e. the harvesting of any live tree with a diameter at breast height exceeding twelve inches.
- C. Establishment of Arboretum. Such uses as are consistent with and appropriate to the establishment of an arboretum and horticultural garden on the Property for public educational and non-motorized, light impact recreational use (such as walking, bird watching, and cross-country skiing, provided that such activities are conducted in a manner and intensity that does not adversely impact the conservation values of the Property), subject to the conditions listed in Section 5 (A) (3) (c) above.
- D. Construction of Roads. No construction of roads on the Property to access abutting property shall take place, except with the prior written approval of the Trust, except that the CBJ may have access to its adjacent property across that portion of the Property extending to the north from the driveway entrance.
6. INCONSISTENT USES OF THE PROPERTY. The following uses and practices on the Property shall be prohibited:
- A. The storage, dumping or other disposal of toxic and/or hazardous materials or of non-compostable refuse. Notwithstanding anything in this Easement to the contrary, this prohibition does not make the Trust an owner of the Property, nor does it permit the Trust to control any use of the Property by the Grantor which may result in the storage, dumping or disposal of hazardous or toxic materials; provided, however, that the Trust may bring an action to protect the conservation values of the Property, as described in this Easement. (This prohibition does not impose liability on the Trust, nor shall the Trust be construed as having liability as a "responsible party" under the Comprehensive Environmental Response, Compensation, and Liability act of 1980 42 U.S.C. Sec. 9601 et seq. ("CERCLA") or similar federal or state statutes.)
- B. 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.
- C. 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.

- D. Construction or placement of any buildings, temporary living quarters of any sort, mobile homes, signs, billboards or other advertising materials, or utility towers or other structures, except as necessary for the purposes of managing or operating the Arboretum (including signage for the Arboretum) and as are otherwise permitted in this Easement and except that so long as Caroline J. Jensen resides on the Property, vehicular campers owned by her or her guests may be parked on the Property as appropriate to accommodate normal visitation.
- E. Construction of roads, parking lots, or vehicle trails, except the access roads specifically permitted in this Easement (including an access road to CBJ property on the portion of the Property extending north from the driveway entrance), and except for parking outside the driveway and adjacent to Glacier Highway on portions of the Property extending to the north from the driveway entrance.
- F. 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.
- G. Dumping or other disposal of refuse, animal carcasses, or other unsightly, hazardous, or toxic materials, or any wildlife-attracting materials. Refuse shall be stored indoors or in bear-proof containers in such a way as to not present an attractive nuisance to bears and other wildlife.
- H. Cutting, removing, or destruction of native vegetation, except for yard, garden, and Arboretum maintenance, harvest of timber, herbicide application or building-related construction activities, except as specifically permitted in this Easement.
- I. Construction of ponds, riprapping, alteration of wetlands, stream banks, and waterways, except as necessary to enhance the conservation values of the Property; and any use or activity that would pollute or degrade or threaten to pollute or degrade the surface or subsurface waters on or underlying the Property.
- J. Changing the topography of the Property by placing on it any soil, dredging spoils, land fill, or other material, except as necessary to conduct authorized construction activities.

## K. Construction of the following:

- 1) a boat ramp or ramps or other facility for boat launching;
- 2) parking areas for any boat launching facility that may be located on adjacent property;
- 3) parking areas for boat trailers.

This provision is intended to prohibit the construction of certain structures and improvements, and so long as Caroline J. Jensen has the right to reside on the Property, she and her guests may use the Property for boats, boat trailers, and the parking of boats and boat trailers.

## L. Providing access for the purpose of mapping, surveying or planning any tidelands development or consenting to the use of the tidelands adjacent to the Property for any such development.

## M. Hunting or fishing.

## N. Use of the Property by any for-profit tour group, including any professional guides or tour groups for which the CBJ requires a commercial license. This prohibition is intended to prevent the Arboretum from becoming a large scale tourist attraction, while permitting access by individuals and small non-commercial and non-profit groups such as university or school groups.

## O. Subdivision of the Property.

7. PRIOR NOTICE AND APPROVAL

## A. Grantor shall not undertake or permit any activity requiring prior approval by the Trust without first having notified and received approval from the Trust as provided herein.

- 1) Prior to the commencement of any such activity, Grantor shall send the Trust written notice of its intention to undertake or permit such activity. The notice shall inform the Trust of all aspects of the proposed activity, including location, design, materials or equipment to be used, dates and duration, and any other relevant information, and shall be sent by registered or certified mail, return receipt requested, to Southeast Alaska Land Trust, 119 Seward Street, Suite #9, Juneau, Alaska



99801, or such other addresses as Grantor may from time to time be informed of in writing by the Trust.

- 2) The Trust shall have sixty (60) days from receipt of the notice, as indicated by the date of the return receipt, to review the proposed activity and to notify Grantor of any objections thereto; provided that the 60-day period shall not begin until such time as the Trust has received adequate information from Grantor to evaluate the proposed activity. In the event that the Trust requires additional information to evaluate the proposed activity, the Trust shall request the information from Grantor as soon as practicable and in any case not later than 30 days after the receipt of the notice of the proposed activity.
- 3) The Trust's decision to approve or disapprove the activity proposed by Grantor shall be sent by registered or certified mail, return receipt requested, to Grantor at the address first stated above, or to such other address as the Trust may from time to time be informed of in writing by Grantor.
- 4) A decision by the Trust to disapprove a proposed activity must be based on the Trust's determination that the proposed activity is inconsistent with the conservation purposes of the Easement. If in the Trust's judgment it is possible that the proposed activity can be modified to be consistent with the easement, the Trust's decision notice shall inform Grantor of such modification(s). Once modification is made to the satisfaction of the Trust or the Trust otherwise concurs with the matters set forth in Grantor's notice, the proposed activity may thereafter be conducted in a manner that is acceptable to the Trust.
- 5) Should the Trust fail to post its response to Grantor's notice within sixty (60) days of its receipt of notice or within sixty (60) days of the time that the Trust has received adequate information to evaluate the proposed activity, whichever is later, the proposed activity is automatically deemed consistent with the terms of the Easement, the Trust having no further right to object to the activity identified by such notice.

6) If Grantor must undertake emergency action to protect health or safety on the Property or must act by and subject to compulsion of any governmental agency, Grantor may proceed with such action without the Trust's approval only if Grantor notifies Trust prior to taking such action and Trust cannot provide its approval, with or without conditions, within such time as is reasonable under the circumstances.

B. **Right of First Refusal by Trust.** Notice shall be provided to the Trust as provided above when all or any portion of the Property is made available for sale and at least 30 days before any agreement to sell is reached and again within 10 days of reaching an agreement to sell. The Trust shall have the right to set aside any sale where this notice is not given. Prior to any sale of the Property, the Trust shall have thirty days within which to match the terms of purchase offered by any prospective purchaser and to purchase the Property. If the Trust does not exercise this right of first refusal, the Property may not be sold on terms less favorable than those offered by the prospective purchaser.

8. REMEDIES, BREACH AND RESTORATION.

A. Remedies.

- 1) The Grantor acknowledges that actual or threatened events of non-compliance with this Easement constitute immediate and irreparable harm, and the Trust is entitled to invoke the equitable jurisdiction of the court to enforce this Easement.
- 2) If the Trust determines that the Grantor is in violation of the terms of this Easement, or that a violation is threatened, the Trust shall give written notice to the Grantor of the violation and demand corrective action sufficient to cure the violation and, where the violation involves damage to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property damaged by the violation.
- 3) If the Grantor (a) fails to cure the violation within thirty (30) days after receipt of written notice from the Trust; or (b) under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty day period; or (c) fails to continue diligently to cure the

violation until finally cured, the Trust may (a) bring an action at law or in equity to enforce the terms of this Easement; (b) enjoin the violation (ex parte as necessary) by temporary or permanent injunction; (c) recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including damages for loss of scenic, aesthetic, or environmental values; and (d) require the restoration of the property to the condition that existed prior to any injury.

- 4) Without limiting Grantor's liability, the Trust, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- 5) If the Trust, in its discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, the Trust may pursue its remedies under this Section without prior notice to Grantor or without waiting for the period provided for cure to expire.
- 6) The Trust's rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that the Trust's remedies at law for any violation of the terms of this Easement are inadequate and that the Trust shall be entitled to the injunctive relief described in this Section, both prohibitive and mandatory, in addition to such other relief to which the Trust may be entitled, including specific performance of the terms of this Easement, without necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.
- 7) The Trust's remedies described in this Section are cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

B. Costs of Enforcement.

- 1) Any costs incurred by the Trust in judicially enforcing the terms of this Easement against Grantor, including, without limitation, costs of a legal action and reasonable attorney fees, and costs of restoration necessitated by the Grantor's violation of the terms of this Easement, shall be borne by Grantor.

- 2) If the Trust initiates litigation against the Grantor to enforce this Easement, and the court determines that the litigation was without reasonable cause or in bad faith, then the court may require the Trust to reimburse Grantor's reasonable costs and attorney fees in defending the action.

C. Trust's Discretion.

- 1) Enforcement of the terms of this Easement shall be at the sole discretion of the Trust. Any forbearance by the Trust to exercise its rights under this Easement in the event of any breach of any term of this Easement by the Grantor shall not be deemed or construed to be a waiver by the Trust of the term breached or of any subsequent breach of the same or any other term of this Easement or of any of the Trust's rights under this Easement.
- 2) No delay or omission by the Trust in the exercise of any right or remedy upon any breach by the Grantor shall impair the right or remedy or be construed as a waiver.

D. Waiver of Certain Defenses.

Grantor hereby waives any defense of laches, estoppel, or prescription, provided, however, that Grantor does not waive the protection of these defenses for activities that are deemed to be consistent with the provisions of this easement pursuant to Section 7 (A).

E. Acts Beyond the Grantor's Control; Force Majeure.

Nothing in this Easement shall be construed to entitle the Trust to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, without limitation, natural fires, flood, storm, earthquake, trespassers, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from causes beyond the Grantor's control.

9. LIMITATION OF GRANTOR LIABILITY. Grantor, and each subsequent owner of the Property shall have no personal liability for the observance or performance of the covenants and obligations of Grantor hereunder after such party has conveyed his, her, its or their interest in the Property, provided that the requirements of this Easement have been fulfilled and all obligations thereunder discharged.

10. **TAXES.** Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Property and to bear all costs of operation, upkeep, and maintenance of the Property, including maintenance of adequate comprehensive general liability insurance coverage, and does hereby indemnify the Trust therefor.
11. **ACCESS.** Nothing herein shall be construed as a grant to the general public, or to a person or persons other than the Trust, of the right to enter upon any part of the Property, except as may come about as a result of the implementation of the CBJ Agreement. Grantor reserves unto itself and its successors in title to the Property, all rights, privileges, powers, and immunities, including the right of exclusive possession and enjoyment, subject only to the terms and covenants of this Easement.
12. **HOLD HARMLESS.** Grantor shall hold harmless, indemnify, and defend the Trust and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors and assigns of each of them (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 (a) 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; (b) the obligations specified in this Easement; and (c) the existence or administration of this Easement.
13. **TRUSTOR.**
- A. **Assignment.** The Trust may assign the Easement without Grantor's consent; provided that:
- 1) The Trust requires, as a condition of such transfer, that the conservation purposes of the Easement continue to be carried out; and
  - 2) An assignment may be made only to a qualified organization within the meaning of Section 170(h)(3) of the Internal Revenue Code of 1986, as amended ("Code") and which is organized or operated primarily or substantially for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code, as amended.

- B. In the event the Trust shall cease to be an organization capable of enforcing this Easement and fails to transfer its rights as set forth in Section 13(A), its rights and duties hereunder shall become vested in and fall upon one of the following entities to the extent such entity shall evidence acceptance of and agree to fully enforce same:
- 1) Kachemak Heritage Land Trust, whose present address is P.O. Box 2400, Homer, Alaska; or
  - 2) Such organization(s) as may be designated under the doctrine of cy pres by a court of competent jurisdiction; provided, however, that at the time of such designation, such entity shall be an organization as described in Section 170(h)(3) of the Code.
14. CHANGE OF CONDITIONS. The fact that any use of the Property that is expressly prohibited by this Easement, or any other use as determined to be inconsistent with the purpose of this Easement, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to uses that are not permitted thereunder, has been considered by the Grantor in granting this Easement. It is Grantor's belief that any such changes will increase the benefit to the public of the continuation of this Easement, and it is the intent of both Grantor and the Trust that any changes should not be assumed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this Section. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment pursuant to this Section.
15. EXTINGUISHMENT, SUBSEQUENT SALE, EXCHANGE OR INVOLUNTARY CONVERSION.
- A. If circumstances arise in the future that render the purpose of this easement impossible to accomplish, this easement can only be terminated or extinguished, whether with respect to all or part of Grantor's land, by judicial proceeding in a court of competent jurisdiction. The amount of the proceeds to which the Trust shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Alaska law at the time, in accordance with Section 15 (B). The Trust shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

- B. Stipulated Value of Trust's Interest. Grantor acknowledges that this Easement constitutes a real property interest in the Easement immediately vested in the Trust, and that such interest has a fair market value. For purposes of allocating net proceeds in an extinguishment of all or part of this Easement pursuant to Section 15 (A), the share of the Trust's interest shall not be less than the percentage that the fair market value of the Conservation Easement Area on the date hereof bears to the fair market value of the Conservation Easement Area prior to considering the effects of this Easement (hereinafter called the "Easement Percentage").

The values for calculating the Easement Percentage shall be based upon a Qualified Appraisal obtained by Grantor for federal income tax purposes. Upon receipt of such Qualified Appraisal, Grantor shall provide a copy of the Qualified Appraisal to the Trust. In the event that Grantor does not claim a charitable gift deduction and, therefore, does not obtain a Qualified Appraisal, the Easement Percentage shall be thirty (30) percent.

- C. In the event that all or part of this Easement is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the conservation goals imposed by this Easement, the Trust shall be entitled to compensation in accordance with applicable law. Grantor and the Trust shall join in appropriate action at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All reasonable expenses incurred by Grantor and the Trust in an effort to prevent a taking or in an effort to recover the full value of taking shall be shared on an equal basis out of any recovered proceeds except in the event that (i) Grantor and the Trust agree in writing to an alternative means for sharing such expenses, or (ii) all or part of this Easement is extinguished as a result of a judicial proceeding brought by or on behalf of Grantor which, in that event, then all expenses shall be paid by Grantor.

16. AMENDMENT. If circumstances arise under which an amendment to or modification of the Easement would be appropriate, Grantor and the Trust may jointly amend the Easement; provided that no amendment shall be allowed that affects the qualification of the Easement under the IRS Code or AS 34.17.010 et seq. Any such amendment shall be consistent with the purposes of the Easement, shall not affect its perpetual duration, shall not permit additional development or improvements to be undertaken on the Property other than development or improvements currently permitted by the Easement and shall not impair any

of the significant conservation values of the Property. Any such amendment shall be recorded in the official records of the Juneau Recording District, Alaska.

17. INTERPRETATION. The provisions of this Easement shall be liberally construed to effectuate their purposes set forth in Section 1. No remedy or election given by any provision in this Easement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party and its counsel have reviewed and revised this Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Easement. In the event of any conflict between the provisions of this Easement and the provisions of any use and zoning restrictions of the State of Alaska, of the City and Borough of Juneau, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply. This Easement shall be interpreted in accordance with the laws of the State of Alaska.
18. SUBSEQUENT TRANSFERS. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which Grantor divests any interest in all or a portion of the Property, including, but without limitation, a leasehold interest. Grantor further agrees to give written notice to the Trust of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this Section shall not impair the validity of this Easement or limit its enforceability in any way.
19. MISCELLANEOUS.
- A. Definitions. The terms "Grantor" and "Trust" as used herein shall be deemed to include, respectively, as to the Grantor, the Grantor's heirs, successors, personal representatives, and assigns, and as to the Trust, its successors and assigns.
- B. Binding Effect. Grantor intends that the Easement shall run with and burden title to the Property in perpetuity, and shall bind Grantor, its heirs, successors, personal representatives, and assigns.
- C. Severability. If any provision of this Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions hereof and the application of such provision to persons or circumstances other than those to which it is found to be invalid, shall not be affected thereby.



D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 16.

20. NO WARRANTY. The Trust does not and has not made any warranty as to the tax and/or legal effects of the granting of this easement and Grantor acknowledges that Grantor has had the opportunity and has been advised to seek independent legal and/or accounting advice and recognizes and assumes the risk of proceeding without it.

21. RECORDING. Trust shall record this instrument, or a memorandum of easement describing the nature of this instrument, in the Office of the Recorder, Juneau Recording District, within two days of its execution. Failure to comply with this provision shall not invalidate the terms of this Easement.

TO HAVE AND TO HOLD the said Easement unto the said Trust, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor has hereunto set her hand this 28th day of December, 1998.

GRANTOR

REVOCABLE TRUST AGREEMENT OF  
CAROLINE J. JENSEN

By: Caroline J. Jensen  
Caroline J. Jensen, Trustee

STATE OF ALASKA )  
 )  
FIRST JUDICIAL DISTRICT ) SS:

THIS CERTIFIES that on this 28th day of December, 1998, before me, a Notary Public in and for the State of Alaska, personally appeared Caroline J. Jensen, to me known and known to me to be the person whose name is subscribed to the foregoing instrument, and after being first duly sworn according to law she stated to me under oath that she is the Trustee of the Revocable Trust Agreement of Caroline J. Jensen, that she has been authorized to execute the foregoing instrument on its behalf and she executed the same freely and voluntarily as the free act and deed of said trust.

WITNESS my hand and official seal the day and year in this certificate above written.

*E.A. Gray*

Notary Public for Alaska.  
My Commission Expires: 6-29-2000

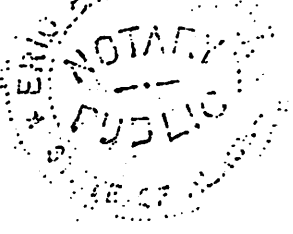
SOUTHEAST ALASKA LAND TRUST

By *Judy Sherburne*  
Its: *President*

STATE OF ALASKA )  
FIRST JUDICIAL DISTRICT ) SS:

THIS CERTIFIES that on this 23<sup>d</sup> day of December, 1998, before me, a Notary Public in and for the State of Alaska, personally appeared Judy Sherburne, to me known and known to me to be the person whose name is subscribed to the foregoing instrument, and after being first duly sworn according to law She stated to me under oath that she is the President of Southeast Alaska Land Trust, a corporation organized under the laws of Alaska, that she has been authorized by said corporation to execute the foregoing instrument on its behalf and she executed the same freely and voluntarily as the free act and deed of said corporation.

WITNESS my hand and official seal the day and year in this certificate above written.



*E.A. Gray*

Notary Public for Alaska.  
My Commission Expires: 6-29-2000

WHEN RECORDED, RETURN TO:  
Eric A. Kueffner  
Faulkner Banfield, P.C.  
302 Gold Street  
Juneau, AK 99801

## EXHIBIT A

## Property Description

All that certain real estate situated in the First Judicial District, Juneau Recording District, State of Alaska, more particularly described as follows:

Tract 3, U.S. Survey 1466, according to Plat 85-25 Juneau Recording District, First Judicial District State of Alaska;

together with the north Lot A of the Pearl Harbor Group of Homesites of the land embraced in U.S.S. 2516, situated on the north shore of Pearl Harbor, adjoining Homestead Entry Survey 167 Alaska, containing 4.87 acres, according to the official plat of the survey of the said land on file in the Bureau of Land Management, being the land described in U.S. Patent No. 1127079, dated August 28, 1949, from United States of America to Carl Olson.