

KETCHIKAN GATEWAY BOROUGH
AGENDA STATEMENT

NO _____

MEETING OF June 17, 2002

<p>ITEM TITLE Consideration of approval of the agreement with Ketchikan Pulp Company and Gateway Forest Products regarding treatment of properties to be Received by the Borough SUBMITTED BY Scott A. Brandt-Erichsen CONTACT PERSON/TELEPHONE Scott A. Brandt</p>	<p>REVIEWED BY [] _____ PLANNING COMMISSION [] _____ COMMITTEE - * [X] _____ LEGAL [] _____ FINANCE [X] _____ OTHER _____ APPROVED FOR SUBMITTAL</p> <p>_____ BOROUGH MANAGER</p>
<p>-Erichsen 228-6635 NAME PHONE</p>	

SUMMARY STATEMENT

During the Gateway bankruptcy, the Borough and KPC engaged in extensive negotiations aimed at resolving a number of issues with respect to KPC's former Ward Cove properties. The parties, at that time, reached substantial agreement on the majority of the matters which were pending. Over the past couple of weeks, staff has negotiated with KPC to reach an

(Continued on page 2)

RECOMMENDED ACTION:

Because of the significance of this issue and the public interest in the redevelopment of Ward Cove, staff has made arrangements for a community forum from 5:00 - 7:00 p.m. at the Ted Ferry Civic Center on June 19, 2002, for the public to ask questions about the agreement and treatment of the property. Staff recommends that the Assembly recess the June 17, 2002 meeting to 7:00 p.m. on June 19, 2002, so that the Assembly can approve the agreement and authorize the Manager to execute it. If the Assembly desires it may approve or reject the agreement on June 17, 2002, or postpone it to a later meeting. Staff recommends addressing it on June 19th due to the short time remaining before Foothill's scheduled auction.

FISCAL NOTES [] N/A EXPENDITURE AMOUNT APPROPRIATION REQUIRED \$* BUDGETED ** REQUIRED **
EXHIBITS ATTACHED [] RESOLUTION [] ORDINANCE [X] AGREEMENT [] MINUTES [] PLAN/MAP [] REPORT [] LIST [X] OTHER Spreadsheet & Maps

RECOMMENDED MOTION:

"I move to approve an agreement in substantially the same form as negotiated by staff and authorize the Manager to execute the same."

Then

"I move to place this item last on the agenda."

Then

"I move to recess the June 17, 2002 meeting to June 19, 2002 at 7:00 p.m."

KETCHIKAN GATEWAY BOROUGH AGENDA STATEMENT
Meeting of June 17, 2002 Page 2

[X] Continue Summary Statement

[] Continue Recommended Action

agreement which would resolve conflicts affecting the title to and marketability of the properties; resolve KPC's objections to two subdivisions; and facilitate redevelopment going forward. More particularly, among the issues which are currently unresolved, but which would be resolved by the agreement, are the following:

- I. The applicability and validity of the Environmental Allocation Agreement and Easement (Exhibits F and F-1 to the Gateway/KPC Asset Purchase Agreement) to a substantial portion of the property in which the Borough has taken a security interest. While the Borough could attempt to have the Easement removed through litigation, not only would that effort be time consuming and expensive but there is no guarantee that it would be successful.

- II. Subdivision of portions of USS 1056, Lot 3 and ATS-1, Exhibit A, thereby facilitating sale of the veneer mill. In particular, the wood room area is located on USS 1056, Lot 3 and without its subdivision, the veneer mill would not be a viable operation. Moreover, resolution of KPC's current objections to the proposed subdivision will facilitate a sale prior to Foothill's auction of the equipment. In addition, the subdivision would create a separate lot which would be sold to Anderes Oil. If the wood room is not split off from the main portion of USS 1056, Lot 3, which contains the power plant, an entity coming in looking to operate the veneer facility would likely not wish to buy USS 1056, Lot 3 and would need to lease the wood room area. Such a lease would inject uncertainty and negatively impact the operation. The delays to resolve the subdivision issues would likely, in the absence of agreement, push the issue beyond the Foothill auction date, thus making it significantly less likely that a

buyer would be able to come in and purchase the veneer facility to operate it in its current location, increasing the risk that the veneer machinery would be sold for parts.

- III. Establishment of a regime to continue compliance with the federal and state governmental orders and controls which are in place with respect to the Ward Cove properties.
- IV. Formulation of a plan to abate the asbestos containing materials located in the power house and other structures on the former mill site, thereby permitting redevelopment and productive use of the Ward Cove industrial area. In the absence of an agreement, the power plant and other structures on the current USS 1056, Lot 3, would remain with asbestos in place and no particular plan for removal of asbestos and redevelopment.

With these as identified challenges, KPC and the Borough have worked towards negotiating an agreement based loosely on the terms under discussion in the bankruptcy. In explaining the agreement, the briefest method is to identify the essential treatment of the property, and then identify those factors or provisions which staff believes are noteworthy.

(Continued on page 3)

TREATMENT OF PROPERTY

- I. KPC would consent to the subdivisions creating the Anderes lot and dividing USS 1056, Lot 3, map (39), and the adjacent tidelands, map (48), (which contain the dock and run in front of the veneer plant) into six separate parcels. These parcels would isolate the dock as a separate parcel, isolate the Anderes site, and isolate the wood room, each separate from the power plant and warehouse structures.
- II. The Borough would exercise its foreclosure rights on the properties that are collateral for the \$7 million loan and the Ty-Matt Deed of Trust. As to the Debtor-in-Possession loan, the Borough would foreclose on portions of that collateral, including the dock, the wood room, and the Anderes parcel, and subsequently a parcel to be created for sludge operations. The proceeds from sale of the Anderes parcel and the wood room parcel would go into a restricted account to be used for cleanup and redevelopment of the former mill site.
- III. KPC would completely waive any claims to cross-parcel indemnification for those properties which the Borough would obtain. The

environmental easement, allowing access and staging as needed by KPC for future testing remediation, would be restricted to those parcels which are subject to institutional controls, generally those parcels on the waterside of North Tongass Highway.

- I. All restrictions from F and F-1 would be lifted as to the Pool and Perin sale properties allowing those sales to go forward with the proceeds going to the Borough. The restrictions would also be lifted as to parcels with map numbers 2, 4, 5, 7, 10, 13, 14, 15, 18, 20 and 21. F and F-1 would be modified as described in (3) as to parcels with map numbers 1, 3, 6, 8, 9, 11, 12, 19A, 19B, 19C, 38, 43, 53 and parts of 39 and 48.**
- II. The Borough would apply for transfer of the Mud Bay tidelands lease, map (22) within sixty days, and may apply for ownership of those tidelands as part of a general application for tideland ownership by the Borough.**
- III. KPC currently has the right to lease, rent-free, both the helicopter hangar facility through December 31, 2003 and certain space in its former administration building through December 31, 2034. Both properties are scheduled to become Borough assets. As contemplated by the agreement, KPC would forego its administration building premises, in return for which the hangar lease will be extended through December 31, 2005, on the same terms and conditions which currently exist, including payment of utilities. In the event the Borough obtained a buyer for the hangar property, it would give KPC suitable space in the administration building for the remainder of the amended term of the lease.**
- IV. As between KPC and the Borough, the Borough would take the property as is, releasing any claims against KPC, except for those relating to any environmental conditions of which KPC is aware and has failed to disclose. The Borough**

(Continued on page 4)

would put a similar waiver in any lease or sale documents binding future users of the property. In connection with this point, KPC has disclosed all relevant environmental information concerning these properties which is in its possession.

- I. KPC and the Borough would cooperate in seeking federal grant funds to assist in paying for the redevelopment of Ward Cove, including first, removal of asbestos from all facilities, and second, such**

demolition of structures or other redevelopment as is appropriate. The Borough and KPC would jointly administer the funds for redevelopment until such time as the asbestos is removed; after the asbestos is removed, the Borough would have exclusive control over the funds for redevelopment. The Borough would seek a replacement lien in the property for any funds expended on site remediation and seek to have such lien be first in priority ahead of other claims by Foothill or other entities.

- II. Once the asbestos is removed, assuming it can free the funds from an outstanding claim by Foothill, KPC will donate the sum of \$300,000 to the Ward Cove Development Fund.
- III. The water use site option and easement, currently held by KPC which interferes with the Anderes parcel, as proposed, would be relocated to avoid the conflicting area.
- IV. KPC would not object to the Borough subsequently re-subdividing USS 1706, the unsubdivided remainder of USS 1704, the filled portion of ATS 1, portion A, and portions of USS 1056 Lot 3 to place the sludge operations on a single lot.
- V. The Borough would not take any portion of the dam or pipeline, and would agree and acknowledge that KPC has exclusive rights to curtail providing any water from Connell Lake currently being provided to the former mill site; and to take such action with respect to the dam and pipeline as it deems appropriate.
- I. The Borough would also convey to KPC the three acre parcel along the pipeline which was remediated as part of KPC's environmental cleanup.

SIGNIFICANT POINTS

- I. Insofar as the remainder of the Ward Cove property in which the Borough holds a security interest (generally the seaward parcels), Exhibits F and F-1 would be substantially modified, through the new Borough Easement located at Appendix 3 of the Agreement. The only exception is USS 1056, Lot 3. However, once the asbestos abatement program is completed, a similar modified easement would be put in place. Exhibits F and F-1 also would remain in place with respect to the Ward Cove properties which the Borough is not currently scheduled to receive. However, if further acquisitions were made in the future, a similar easement

modification would occur.

(Continued on page 5)

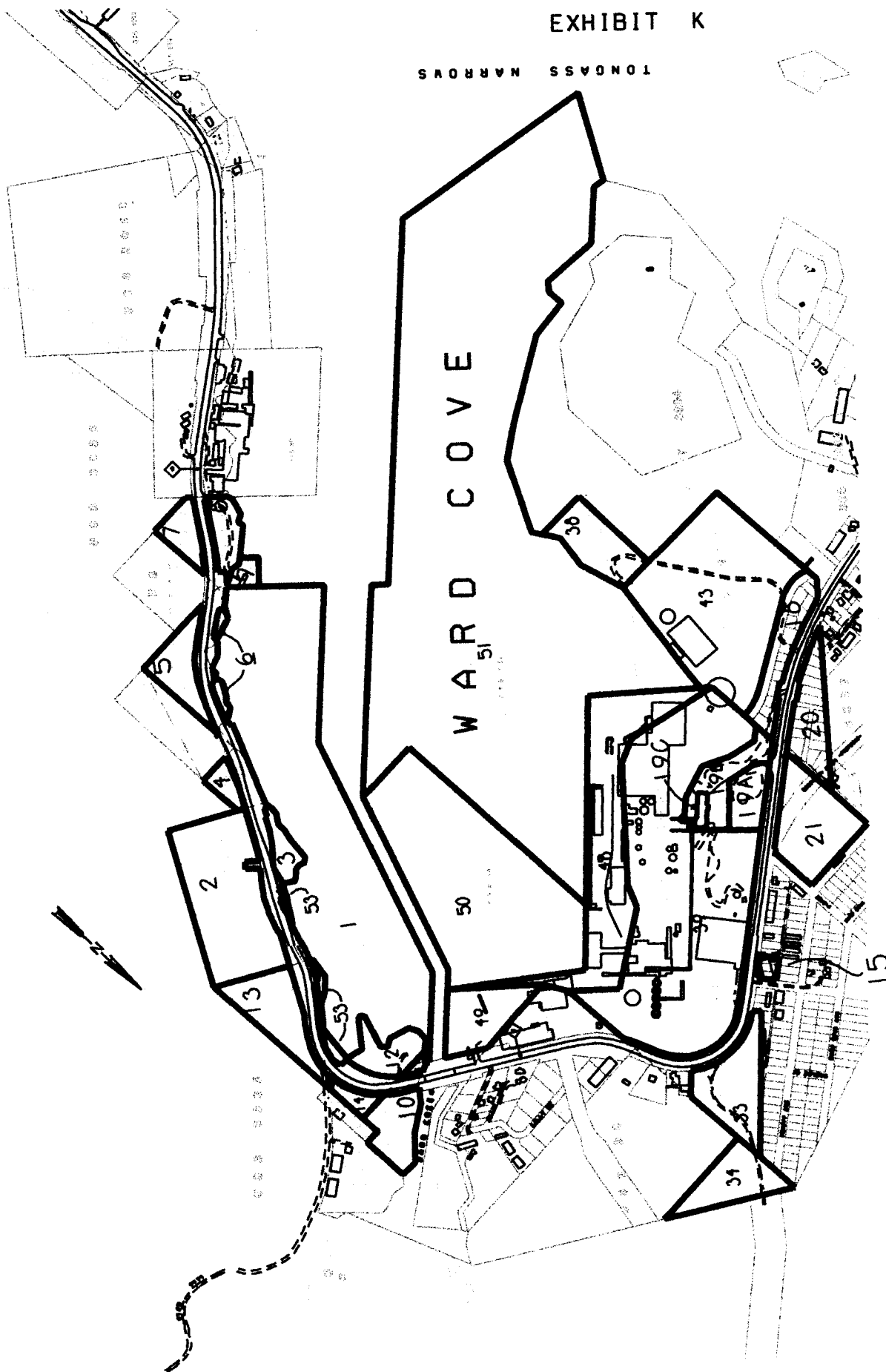
- I. The agreement would leave F and F-1 in place as to those portions of the mill site and the tidelands which the Borough is not currently scheduled to receive. If the Borough were to subsequently receive those parcels, it would be on roughly the same terms as the dock and other waterfront parcels. However, another party acquiring the site would still be subject to F and F-1, unless the Borough first acquired the property.
- II. The release of claims against KPC for conditions on the property would establish a situation where essentially KPC tells us what the condition of the property is and we, if we choose to take the property, accept it on an "as-is, where-is" basis, agreeing not to look to KPC for cleanup costs. This term is the same as the Borough and KPC had negotiated on this issue in the course of the bankruptcy. The management staff have reviewed the environmental disclosures, with the assistance of R&M Engineering, and have discovered nothing which would cause them to recommend against taking any of the parcels on this basis.
- III. The treatment of the sand cap in Ward Cove is such that, if the Borough or one of its tenants damages the cap, then the Borough and tenant would be responsible for any repairs required. If the cap is damaged by a third party not connected with the Borough, then the Borough is not in the chain of responsibility for repairing the cap if required.
- IV. If future institutional controls are required by EPA or DEC, the Borough would cooperate with KPC in determining what institutional controls would satisfy regulatory requirements and establishing those institutional controls.
- V. The Borough and KPC would share costs of the existing NPDES permit serving the property 70/30 with KPC paying 70%.
- VI. Agreement with Foothill will still be required to ensure the treatment of the powerplant, warehouses, and tidelands off the dock that is desired by the Borough. It is possible that Foothill concurrence would be required on some of the subdivisions as well.

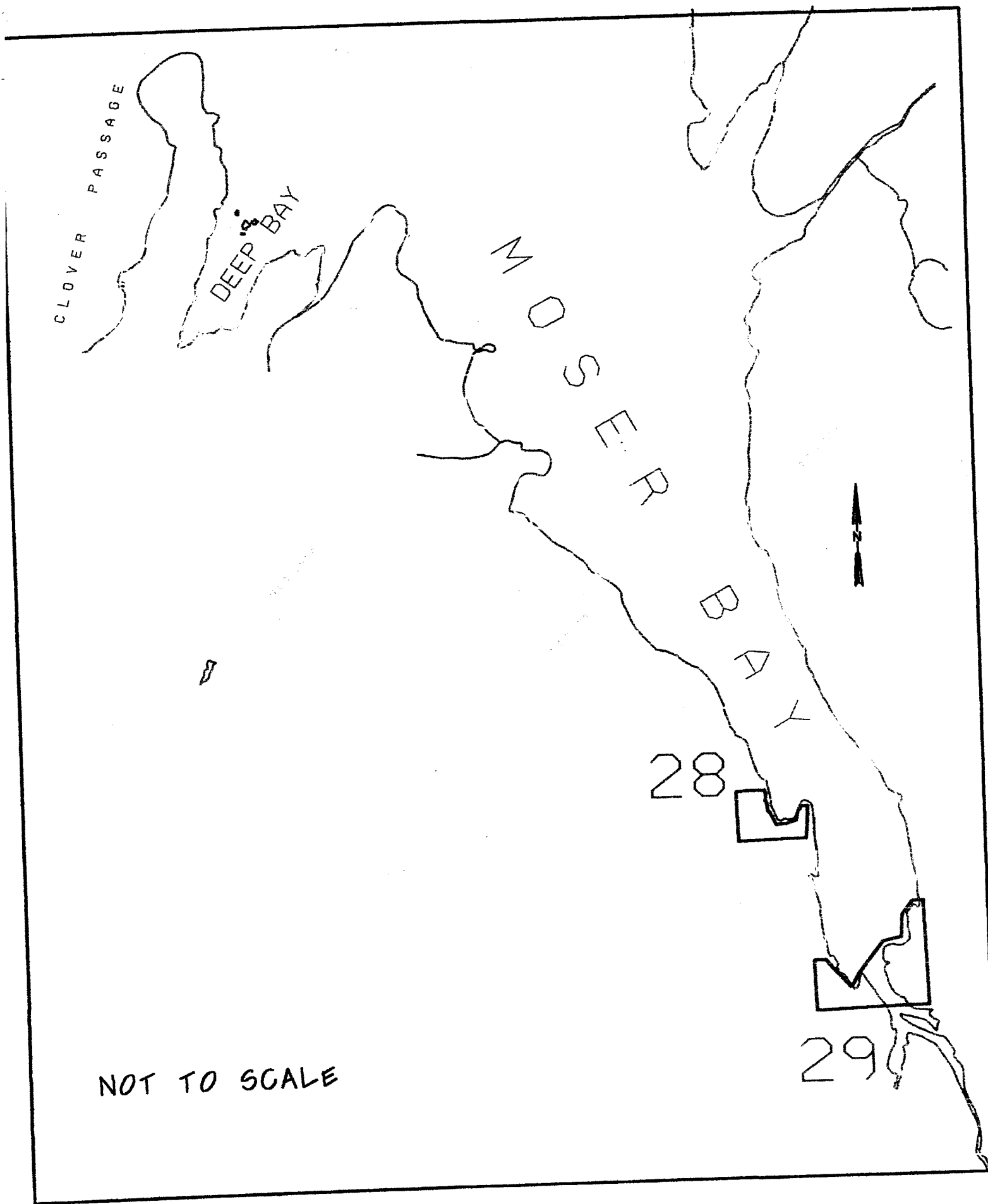
The attached spreadsheet gives, in summary version, the current status and treatment of the affected properties. The numbers on the spreadsheet correspond to numbers on the maps which the Assembly has been using. Copies

of these maps are attached as well.

EXHIBIT K

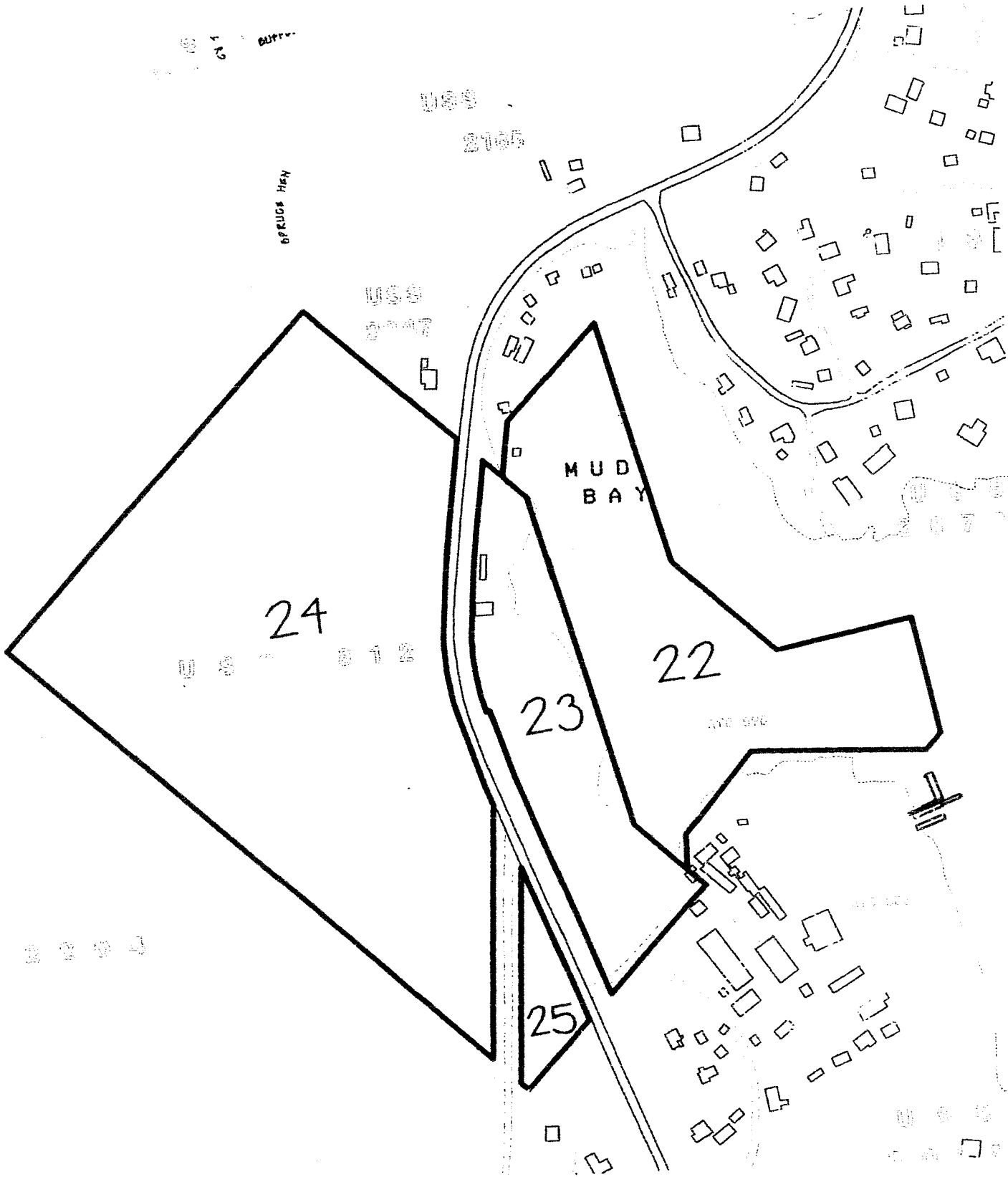
TOMASS NARROWS



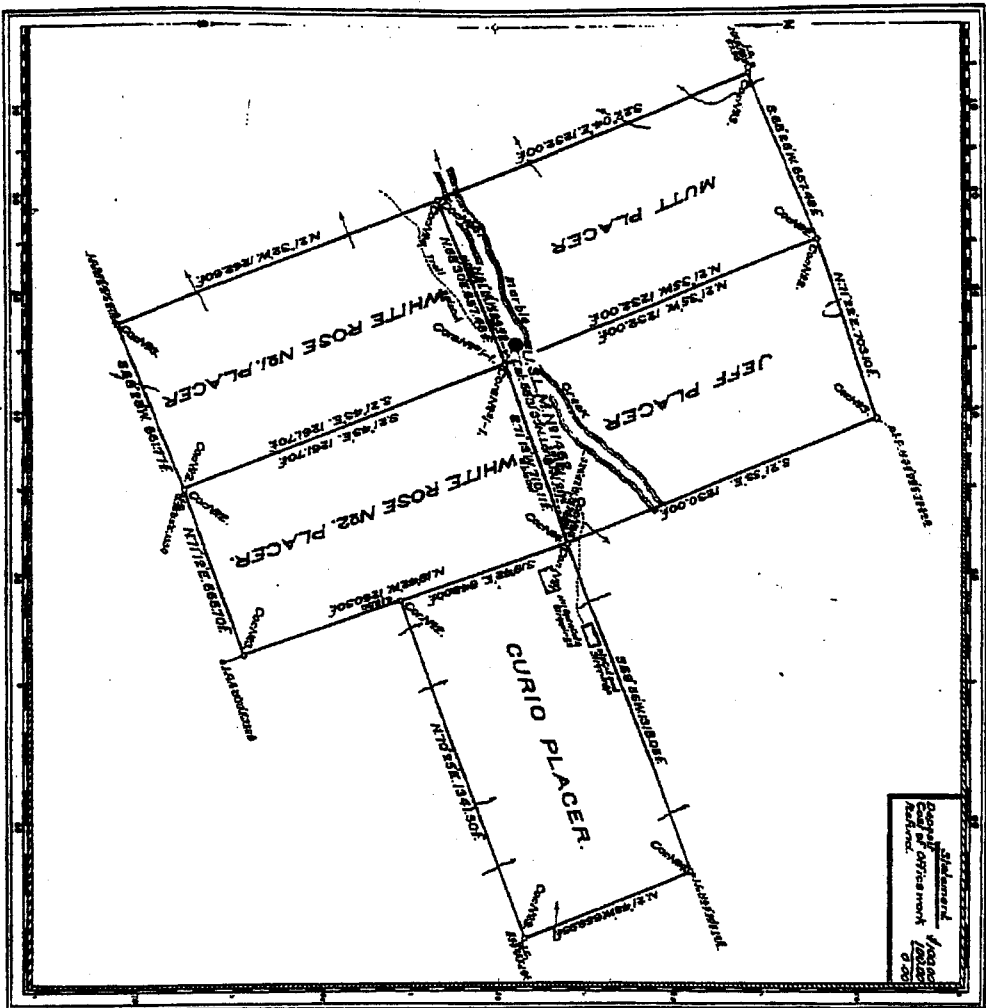


EYHIBIT K-1

EXHIBIT K-2



(4-8781)



Prepared
 by
 Surveyor
 J. H. DICKINSON
 1892
 County of Sierra
 State of California

Filed for Record
 1892
 County of Sierra
 State of California

Mineral Survey No. 1462.
 Land District.
PLAT
 OF THE CLAIM OF
 J. H. DICKINSON
 KNOWN AS THE
 Mutt, Jeff, White Rose No. 1, White Rose No. 2,
 and Curio Placers.

AT
 EXHIBIT
 Beginning on the
 27th day of
 1892
 at
 10 o'clock A.M.
 before me
 J. H. DICKINSON
 a Justice of the Peace
 in and for the County of
 Sierra, State of California

That the above named
 parties have been
 and are to be
 jointly and severally
 bound to pay to the
 State of California
 the sum of \$100.00
 for the purpose of
 securing the same
 for the benefit of
 the State of California
 and for the benefit
 of the people of
 the State of California
 and for the benefit
 of the people of
 the State of California

I, J. H. Dickinson, do hereby certify that the above
 is a true and correct copy of the original
 plat on file in my office as Surveyor for
 the County of Sierra, State of California.
 Witness my hand and seal of office
 this 27th day of August, 1892.
 J. H. Dickinson
 Surveyor for the County of Sierra,
 State of California

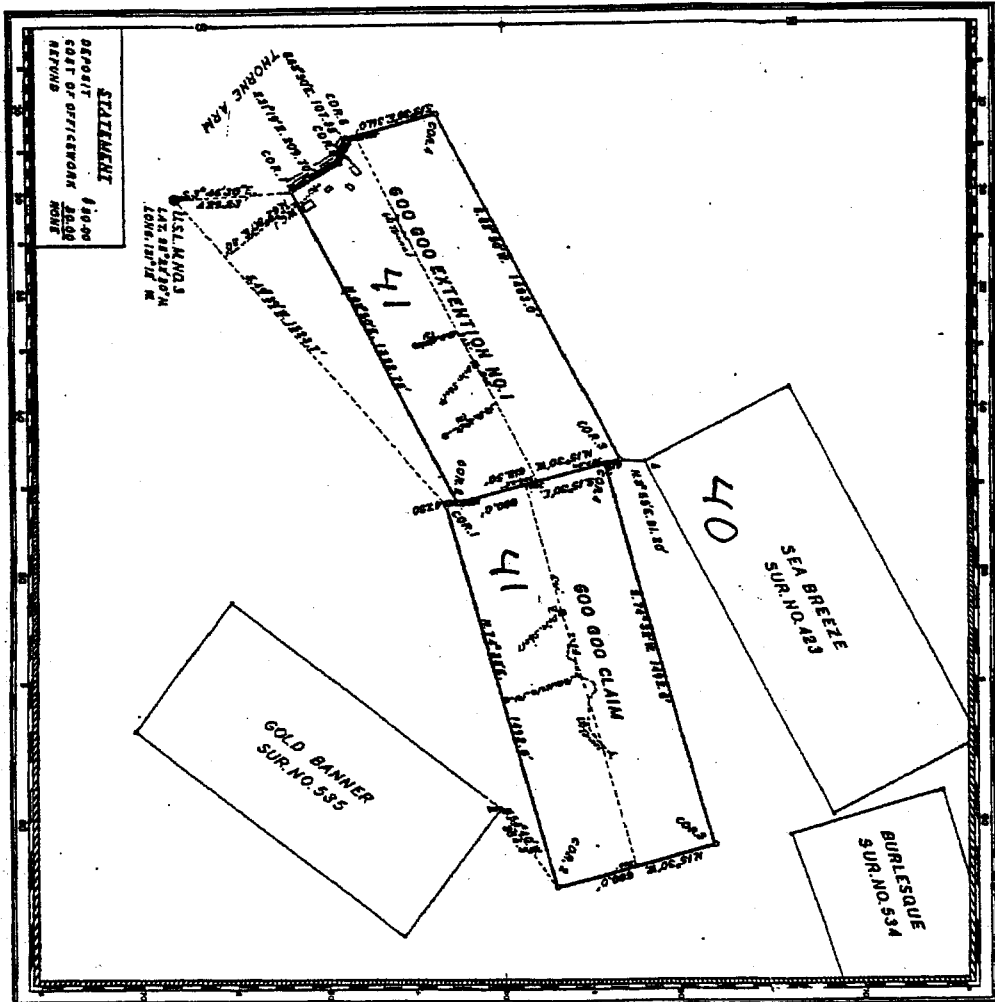
PARCEL #26

(26)

1462

732

732



PARCELS 40 & 41

(4-6761)

Manual Survey No. 1588

County of JUNEAU, State of Alaska

Richard Niccolle and Gunder Nygard

of the claim of

PLAT

GOLD BIRD CLAIM AND GOLD BIRD EXTENSION NO. 1 (1000)

KNOWN AS THE

600 600 EXTENSION NO. 1

Richard Niccolle and Gunder Nygard

Witness my hand and seal of office at Juneau, Alaska, this 15th day of March, 1911.

Notary Public

Witness my hand and seal of office at Juneau, Alaska, this 15th day of March, 1911.

Richard Niccolle and Gunder Nygard

Witness my hand and seal of office at Juneau, Alaska, this 15th day of March, 1911.

Richard Niccolle and Gunder Nygard

Witness my hand and seal of office at Juneau, Alaska, this 15th day of March, 1911.

Richard Niccolle and Gunder Nygard

Witness my hand and seal of office at Juneau, Alaska, this 15th day of March, 1911.

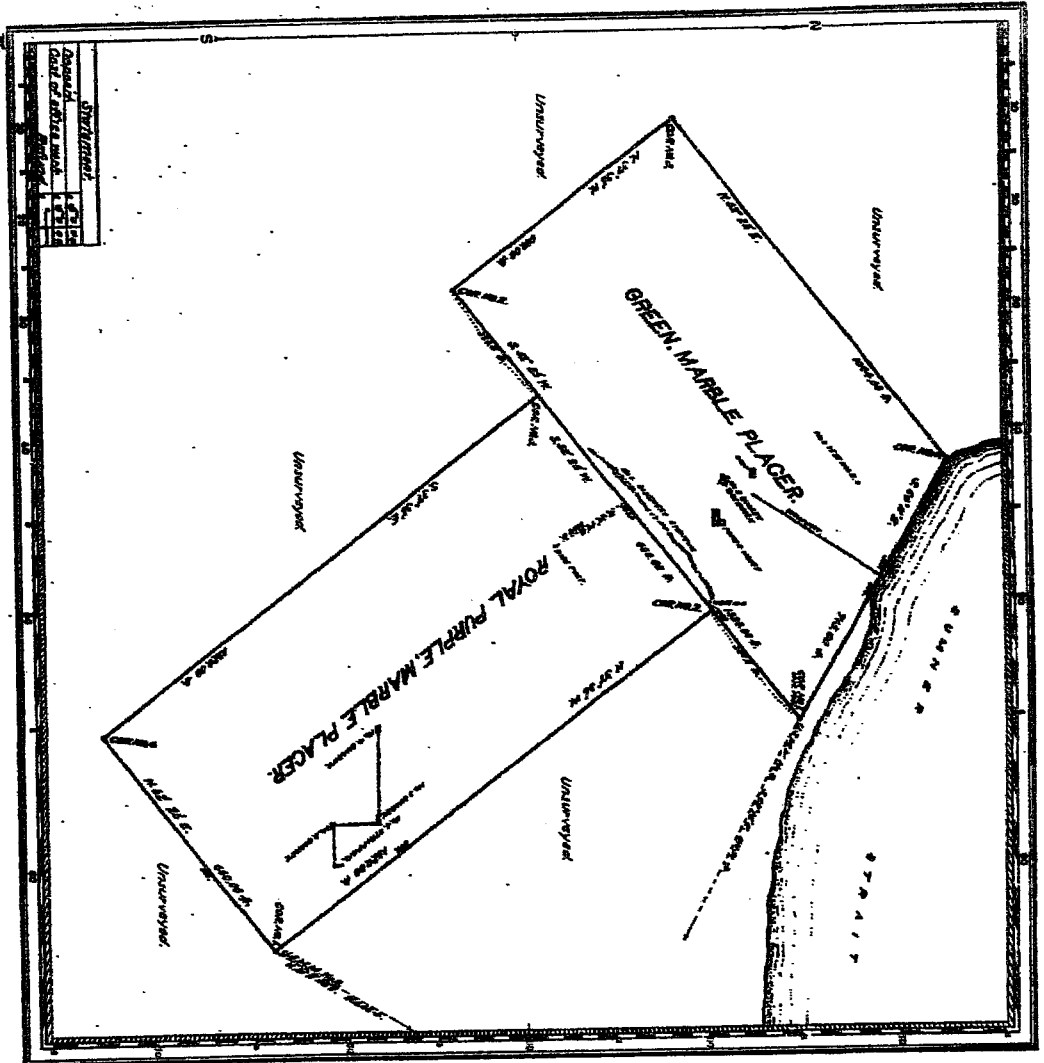
Richard Niccolle and Gunder Nygard

Witness my hand and seal of office at Juneau, Alaska, this 15th day of March, 1911.

Richard Niccolle and Gunder Nygard

Witness my hand and seal of office at Juneau, Alaska, this 15th day of March, 1911.

40 & 41



PARCEL #42

Deed-placed Map of SA 312 and SA 313 ...
 of the claim of
PLAT
 of the claim of
GREEN AND ROYAL PURPLE MARBLE PLACERS CLAIMS
 MADE BY
 JAMES DORRIS
 Heir of
 James Dorris
 Claiming title to
 said lands
 under the
 name of
 SA 312 and SA 313
 July 5, 1874
 BEING
 The original plat issue of the Mining Claims of
 Vermont Marble Company,
 Green and Royal Purple Marble Placers Claims,
 from which said plat has been made under the direction,
 have been examined and approved as to its contents by
 said Mining Commissioner and that said Mining Commissioner
 has certified that the Mining Claims are validly recorded
 in the office of the Mining Commissioner and that such
 records are available for public inspection and that
 the Mining Commissioner has no objection to the
 same being published for the information of the public.
 The Mining Commissioner is hereby notified that the
 Mining Claims are validly recorded in the office of the
 Mining Commissioner and that the Mining Commissioner
 has no objection to the same being published for the
 information of the public.

Witness my hand and seal this 5th day of July 1874.

Attorney General

[Signature]

Attorney General

[Signature]

(47)

	LEGAL	ASSESSOR NO.	KB'S SECURITY INTEREST	F	F-1	F & F-1 EITHER DON'T APPLY OR ARE COMPLETELY DROPPED	F & F-1 REPLACED WITH ACCESS EASEMENT & MODIFIED CONDITIONS	ACCESS ONLY	OTHER SUPERIOR CLAIMS	OTHER CLAIMS IN LINE	SUBJECT TO CONSENT DECREE OR RESTRICTIVE COVENANTS	BOROUGH WILL RECEIVE
1	ATS 1(C-2) E side	3310 064000ais1	\$7 M	YES	YES		YES		NONE	FOOTHILL	YES	YES
2	USS 1208 uplnd	3220 007000	\$7 M	YES	YES	YES			NONE	FOOTHILL	NO	YES
53 & 13	USS 1208 wft/fill	3220 008000	\$7 M	YES	YES		YES	√	NONE	FOOTHILL	YES	YES
4	USS 1655	3220 009000	\$7 M	YES	YES	YES		√	NONE	FOOTHILL	NO	YES
5	USS 1653	3220 012000	\$7 M	YES	YES	YES			NONE	FOOTHILL	NO	YES
6	USS 1653 wft	3220 013000	\$7 M	YES	YES		YES	√	NONE	FOOTHILL	NO	YES
7	USS 1656 uplnd	3220 015000	\$7 M	YES	YES	YES			NONE	FOOTHILL	NO	YES
8	USS 1656 wft	3220 016000	\$7 M	YES	YES		YES		NONE	FOOTHILL	NO	YES
9	ATS 439	3220 016000ais1	\$7 M	YES	YES		YES		NONE	FOOTHILL	NO	YES
10	USS 1659 uplnd	3220 003000	\$7 M	YES	YES	YES			NONE	FOOTHILL	NO	YES
11	USS 1659 UNS2, waterside	3220 003500	\$7 M	YES	YES		YES	√	NONE	FOOTHILL	NO	YES
12 & 53	USS 1508 wft	3220 006000	\$7 M	YES	YES		YES	√	NONE	FOOTHILL	YES	YES
13	USS 1508 unsubdivided 1	3220 005000	\$7 M	YES	YES	YES			NONE	FOOTHILL	NO	YES
14	USS 1508 unsubdivided 2	3220 004500	\$7 M	YES	YES	YES			NONE	FOOTHILL	NO	YES
15	USS1056-GW office+LD	3310 038000	\$7 M	YES	YES	YES			NONE	FOOTHILL	NO	YES
18	USS 1754 blk 4	3340 041000	\$7 M	YES	YES	YES			NONE	FOOTHILL	YES	YES
19A	USS1056 Lot1 plat 2000-41	3340 041600	\$7 M	YES	YES		YES		NONE	FOOTHILL	YES	YES
19B	USS1056 Lot2 plat 2000-41	3340 041500	\$7 M	YES	YES		YES		NONE	FOOTHILL	YES	YES
19C	USS 1056 ft 2 imp (admin bld)	(3340 042000 IMP)	\$7 M	YES	YES		YES		NONE	FOOTHILL	YES	YES
20	USS 1754 1, 2,83+ft	3340 013000	\$7 M	YES	YES	YES			NONE	FOOTHILL	NO	YES
21	USS 1056 por 2	3340 012000	\$7 M	YES	YES	YES			NONE	FOOTHILL	NO	YES
22	USS 698 TRB	3440 088000ais1	\$7 M	NO	NO	YES			NONE	FOOTHILL	NO	YES
23	USS 812	3440 088000	\$7 M	NO	NO	YES			NONE	FOOTHILL	NO	YES
23	USS 812 helo hanger	3440 088000	\$7 M	NO	NO	YES			NONE	FOOTHILL	NO	YES
24	USS 812 above NTG	3440 089000	\$7 M	NO	NO	YES			NONE	FOOTHILL	NO	YES
25	USS 812 UNS2	3440 088500	\$7 M	NO	NO	YES			NONE	FOOTHILL	NO	YES
26	USMS 1462 Carrol Inlet	9800 002000	\$7 M	NO	NO	YES			NONE	FOOTHILL	NO	YES
28	USS 297 Moser Bay	6730 003000	\$7 M	NO	NO	YES			NONE	FOOTHILL	NO	YES
29	USS 296 Moser Bay	6730 002000	\$7 M	NO	NO	YES			NONE	FOOTHILL	NO	YES
32	USS 2090 Lot B	3239 009000	-	YES	YES	YES					NO	NO
33	USS 1056 pln1	3310 032500	-	YES	YES							NO
34	USS 2923 Pln	3310 002000	-	YES	YES							NO
35	USS 1862 pln1	3310 016500	-	YES	YES							NO
36	7037 N Tongass Hwy	3310 016500 bld1	-	YES	YES							NO
37	7037 N Tongass Hwy	3310 016500bld2	-	YES	YES							NO
38	USS 1706	3340 040000	TY-MAAT	YES	YES		YES					YES
39	USS 1056 Lot 3	3340 042000	DIP	YES	YES							YES
39	USS 1056 003 IMPS	3340 042000 bld1	DIP	YES	YES							SOME

MAP NO.	LEGAL	ASSESSOR NUMBER	KB'S SECURITY INTEREST	F	F-1	F & F-1 EITHER DON'T APPLY OR ARE COMPLETELY DROPPED	F & F-1 REPLACED WITH ACCESS EASEMENT & MODIFIED CONDITIONS	ACCESS ONLY	OTHER SUPERIOR CLAIMS	OTHER CLAIMS IN LINE	SUBJECT TO CONSENT DECREE OR RESTRICTIVE COVENANTS	BOROUGH WILL RECEIVE
40	Sea Biz USMS 423	9800 004000	TY-MATT	NO	NO	YES			NONE		NO	YES
41	Go0 Go0	9800 003000	\$7 M	NO	NO	YES			NONE		NO	YES
41	Thorne Arm USMS 1598	9800 004000	TY-MATT	NO	NO	YES			NONE		NO	YES
42	USMS 1042	Out of Ketchikan B		NO	NO	N/A					NO	NO
43	USS 1754 unsubsdivided pln	3340 041000	TY-MATT	YES	YES		YES		NONE	FOOTHILL	YES	YES
48	ATSI near 1056(dock)	3310 064000 atsi1	DIP	YES	YES		YES		NONE	FOOTHILL	YES	YES
49	ATSI near 1862/sawmill	3310 064000 atsi1	-	YES	YES				MANY	MANY	YES	NO
50	ATSI exhibit A, less dock	3310 064000 atsi1	Part DIP	YES	YES				?	FOOTHILL	YES	YES
51	ATSI C-1	3310 064000 atsi1	-	YES	YES						YES	
-	UofA Madison Street	1214 001110*	\$7 M	NO	NO	YES			NONE		NO	YES

AGREEMENT

This Agreement is entered into effective the ____ day of _____, 2002, by and between the Ketchikan Gateway Borough ("Borough"), Gateway Forest Products, Inc. ("Gateway"), and Ketchikan Pulp Company ("KPC").

RECITALS

WHEREAS, KPC sold its former pulp mill site, substantially all of its operating assets, and other real properties in or near Ward Cove, Ketchikan, Alaska, to Gateway pursuant to the terms and conditions of an Asset Purchase Agreement ("APA") dated November 3, 1999;

WHEREAS, Gateway and KPC executed and delivered various Ancillary Agreements as part of the APA, the listing of which is more fully set forth in Appendix "1" hereto;

WHEREAS, the Environmental Allocation Agreement set forth the environmental liabilities retained by KPC and those being assumed by Gateway and its terms and conditions were incorporated by reference into the Environmental Allocation Easement;

WHEREAS, the Quitclaim Deed, recorded in the Ketchikan Recording District on November 5, 1999 at Book 306, Page 72, effectuating the transfer of assets and real property from KPC to Gateway as contemplated in the APA, specifically reserved and incorporated by reference the Environmental Allocation Easement;

WHEREAS, KPC assigned to Gateway its interest in the Alaska Tidelands Lease serialized by the State of Alaska, Department of Natural Resources, as Tidelands Lease ADL 34507, which is applicable to the property identified as ATS No. 698, Tract B (the "Mud Bight Tidelands Lease"), but Gateway did not complete the transfer, resulting in its retention by KPC;

WHEREAS, on June 14, 1999, KPC and the Borough entered into a loan agreement pursuant to which the Borough committed to loan KPC \$7.0 million for construction and operation of a veneer mill at Ward Cove;

WHEREAS, KPC and the Borough entered into an assignment of the veneer mill loan agreement to Gateway on June 14, 1999;

WHEREAS, the Borough was unaware of the terms of the APA between KPC and Gateway and neither the \$7.0 million promissory

note nor the deed of trust were executed by Gateway until December 13, 1999;

WHEREAS, Gateway unsuccessfully attempted to reorganize under Chapter 11 of the Bankruptcy Code and now is in default of its payment obligations to both KPC and the Borough;

WHEREAS, the parties contemplate that the former mill site will be subdivided; that the Borough will foreclose on some or all of the parcels created; and that the resulting lots encompassing the wood room area and fuel tank area will be sold by the Borough to third parties, with the proceeds therefrom being deposited in a fund established by this Agreement;

WHEREAS, the parties may disagree with respect to the validity and applicability of the Environmental Allocation Agreement and the Environmental Allocation Easement (Exhibits F and F-1), insofar as certain parcels of real property are concerned, the purpose of this Agreement is to fully and finally resolve any and all related disputes; to facilitate redevelopment of properties in the Ward Cove area; to remove asbestos from certain structures situated on USS 1056, Lot 3; and to provide for the orderly transfer to the Borough of certain properties currently owned by Gateway;

WHEREAS, the parties further desire to modify the terms of the Environmental Allocation Agreement and the Environmental Allocation Easement and to otherwise resolve certain issues outstanding between them; and

WHEREAS, capitalized terms shall be construed by reference to the definitions or explanations given in this Agreement, including the Recitals, the text, the Definitions section, and Appendices "1" and "2" hereto;

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. Parties and Scope.

(a) Except as otherwise specifically provided in this Agreement, the term "Borough" means and refers to the Ketchikan Gateway Borough, a municipal corporation organized pursuant to the laws of the State of Alaska. Where the term "Borough Entities" is utilized, it means and refers to the Borough, as well as its successors, heirs, and assigns, and also includes its employees,

agents, contractors, invitees, licensees, representatives, permittees, joint venturers, instrumentalities, port authorities, any third party contractually directly or indirectly related to the Borough, as well as their successors, heirs, and assigns.

(b) Except as otherwise specifically provided in this Agreement, the term "Gateway" means and refers to both Gateway Forest Products, Inc., an Alaska corporation, and Gateway's successors, heirs, and assigns. The term "Gateway" also includes its employees, agents, contractors, invitees, licensees, representatives, permittees, joint venturers, instrumentalities, any third party contractually directly or indirectly related to Gateway, as well as their successors, heirs, and assigns.

(c) Except as otherwise specifically provided in this Agreement, the term "KPC" means and refers to both Ketchikan Pulp Company, a Washington corporation, and KPC's successors, heirs, and assigns.

(d) Notwithstanding the foregoing, the respective successors, heirs, and assigns of the Ketchikan Gateway Borough, Gateway Forest Products, Inc., and Ketchikan Pulp Company, shall be relieved of their obligations to comply with this Agreement to the extent such party no longer holds any interest in the Borough Property; provided, however, that any such party's responsibility and liability for acts and omissions occurring during the period in which that party holds any ownership, leasehold, or other interest in the Borough Property (and any party's rights to payment, reimbursement, indemnification, release, or a defense regarding the same) shall survive such transfer. Nothing in this subsection shall diminish or relieve the obligations or liabilities of the Ketchikan Gateway Borough, Gateway Forest Products, Inc. or Ketchikan Pulp Company from the obligations of this Agreement.

2. Definitions.

The terms used in this Agreement shall have the following meanings, which are to be equally applicable to both the singular and plural forms of the terms defined:

- (a) "Borough Property" means the various parcels of property which are more particularly identified in Appendix "2" hereto.
- (b) "Costs" means, with respect to Remediation and Investigation activities, actual reasonable expenditures, including but not limited to, reasonable attorneys' fees and defense costs, contractor costs, consultant costs, governmental oversight costs and other necessary expenditures.

- (c) "Environmental Laws" means all State of Alaska, local, and federal laws, statutes, regulations, and ordinances of any kind relating to environmental protection or compliance as they currently exist and as they may come to be amended, including but not limited to, the federal Clean Water Act; Clean Air Act; Toxic Substances Control Act; Comprehensive Environmental Response, Compensation and Liability Act; Resource Conservation and Recovery Act; Federal Insecticide, Fungicide, and Rodenticide Act; Safe Drinking Water Act; Hazardous Materials Transportation Act; laws designated in Alaska Statutes Title 46; and common law including causes of action arising in tort.
- (d) "Hazardous Substances" means substances which constitute hazardous substances under either the Comprehensive Environmental Response, Compensation Liability Act or under AS 46.03.822.
- (e) "Institutional Controls" means the Environmental Protection Easement and Declaration of Restrictive Covenants in favor of the State of Alaska, Department of Natural Resources, recorded on October 28, 1999, at Book 305, page 772 in the Ketchikan Recording District and such other measures, controls, limitations, prohibitions, procedures, or protocols that the United States Environmental Protection Agency ("EPA"), the Alaska Department of Environmental Conservation ("DEC") or the Alaska Department of Natural Resources require ("DNR") in order to maintain the integrity of a remedial or removal action or prevent a release or threatened release of a Hazardous Substance.
- (f) "Investigation or Investigatory" means actions to assess the nature and extent of Hazardous Substances contamination, including sampling and other necessary activities.
- (g) "Losses" means all known and unknown claims, causes of action, liabilities, payment requests or demands, losses, costs, expenses (including, without limitation, reason able attorneys,' experts,' and other consultants' fees), penalties, fines, equitable relief, and damages.
- (h) "Remediation" means actions to remove, clean up, treat, or dispose of Hazardous Substances from the environment, including but not limited to, actions which may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment from a release or threatened release of a Hazardous

Substance.

- (i) "Ward Cove Consent Decree" means the consent decree with the EPA and the U.S. Department of Justice entered in the U.S. District Court for the District of Alaska: CERCLA Remedial Design/Remedial Action Consent Decree, United States v. Gateway Forest Products, Inc., Ketchikan Pulp Company, & Louisiana-Pacific Corporation, Case No. A00-225 CV (JKS).
- (j) "Ward Cove Landfills" means the industrial landfill which KPC owns and operates upon Lot 2, Tract 3004, Dawson Point Subdivision, according to the plat thereof filed November 28, 2000 as Plat 2000-73 and recorded in the Ketchikan Recording District.
- (k) "Ward Cove Marine Area" means the water body commonly known as Ward Cove, including marine waters to the ordinary high water mark and sediments underlying such waters.

All of the definitions provided in the Recitals and in Appendices "1" and "2" are incorporated herein by reference as though fully set forth, and all of the definitions provided anywhere in this Agreement, including the Recitals, the text, and Appendices "1" and "2" shall constitute binding terms of this Agreement.

3. Property Covered.

(a) This Agreement applies to the real property interests described in Appendix "2" hereto, which is incorporated herein by reference as though fully set forth. The real property interests listed in Appendix "2" are those which the Borough has or will receive, whether by foreclosure or otherwise, from Gateway. However, to the extent the Borough does not acquire any of the property interests, the terms of this Agreement shall not apply.

(b) The obligations of a future holder of any interest in a parcel or area of real property described in Appendix "2," or a portion thereof, shall be limited to the parcel, area, or portion held by such party and shall not be interpreted to create liability for other parcels or areas not held by such party.

4. Exhibits F and F-1 Superseded.

(a) This Agreement and the accompanying Environmental Easement and Covenants ("Borough Easement"), the form of which is attached hereto as Appendix "3" for reference purposes only and is not meant to be incorporated by reference into this Agreement, shall supersede and replace the Environmental Allocation Agreement

and Environmental Allocation Easement with respect to the Borough Property.

(b) This Agreement and the Borough Easement shall not affect the applicability of the terms and conditions of the Environmental Allocation Agreement or Environmental Allocation Easement ("Exhibits F and F-1") as to any real property other than the Borough Property.

(c) The Borough Easement shall be executed and recorded only after the Borough obtains title to the Borough Property, whether by foreclosure or otherwise, but shall be subject only to the Borough's title, including all reservations, easements and restrictions of record.

5. Applicability of the Borough Easement.

(a) Apart from USS 1056, Lot 3 which is addressed in subsection (c) hereof, the Borough Easement shall apply to all of the Industrial and Non-Industrial Properties, except the following:

- (i) USS 1056, Lots 1, 2, and 3, Block 2, New Wacker Townsite (Gateway Club);
- (ii) USS 1056, 6.39 acres adjacent to USS 1754 (South Coast lease);
- (iii) USS 1208 (portion upland of North Tongass Highway);
- (iv) USS 1508 (Pool sale);
- (v) USS 1653 (portion upland of North Tongass Highway);
- (vi) USS 1655 (portion upland of North Tongass Highway);
- (vii) USS 1656 (portion upland of North Tongass Highway);
- (viii) USS 1659 (Pool sale);
- (ix) USS 1754, Blocks 1, 2 and 3 (Perin sale); and
- (x) USS 1754, Block 4.

Insofar as the 6.39 acres of USS 1056 are concerned, the Borough expressly acknowledges that, when the parcel was conveyed by KPC to Gateway, it was an undeveloped lot, covered by virgin timber.

(b) All of the Non-Ward Cove properties shall be released from Exhibits F and F-1 and the Borough Easement will not apply to those parcels.

(c) USS 1056, Lot 3 (as now configured or as it may exist after subdivision), shall remain subject to both the Environmental Allocation Agreement and the Environmental Allocation Easement until the conditions set forth in Section 13 of this Agreement have been fulfilled.

(d) A form of Easement and Covenant Vacation with respect to the Parcels addressed in subsections (a) and (b) hereof is attached as Appendix "4."

(e) In the event that, subsequent to the execution of this Agreement, the Borough obtains title to other properties to which the provisions of the Environmental Allocation Agreement and the Environmental Allocation Easement apply, KPC shall cooperate in replacing them with an easement containing the same terms and conditions as set forth in Appendix "3" hereto.

6. Governmental Easement Unaffected.

This Agreement shall not be interpreted to diminish the rights of the State of Alaska or the United States under that certain *Environmental Protection Easement and Declaration of Restrictive Covenants* recorded in the Ketchikan Recording District on October 28, 1999 at Book 305, Page 772.

7. Access Easements.

(a) KPC and the Borough hereby acknowledge and agree that, upon the terms and conditions set forth in the Borough Easement, an easement interest in favor of KPC is hereby established in and to the Industrial Parcels consisting of a right of free access to and across the Industrial Parcels to allow KPC to undertake or observe any sampling and Investigatory activities, Remediation activities, and any reasonable actions necessary to support or implement Investigatory and Remediation activities at the Industrial Parcels. KPC's right of access shall also include, without limitation, the right to use the properties to the extent reasonably necessary for a staging area or otherwise to comply with Environmental Laws and the directives or orders of governmental agencies relating to the Industrial Parcels.

(b) KPC and the Borough further acknowledge and agree that, upon the terms and conditions set forth in the Borough Easement, if either the EPA, DEC or DNR requires KPC to conduct sampling, Investigation, Remediation, or other related activities on the Non-Industrial Parcels, KPC shall have a right of free access to and across them to the extent reasonably necessary for staging and to otherwise carry out the directives or orders of EPA, DEC, or DNR; provided, however, that KPC will forego its staging rights with respect to the following parcels when intended solely for the

purpose of supporting sampling, Investigation, Remediation or other related activities on adjacent properties:

- (i) USS 1208;
- (ii) USS 1508;
- (iii) USS 1653;
- (iv) USS 1655; and
- (v) USS 1659.

(c) KPC's right of access shall also include access through and across all access easements which have been or hereafter are established by or reflected in any plats of U.S. Survey 1056 or ATS-1, whether those access easements are designated as private access easements or otherwise.

(d) KPC's access rights, as described above, shall not prevent the Borough Entities from constructing any buildings or other improvements on the Borough Property. In that event, KPC will exercise its access and staging rights in a manner which will not interfere with the Borough Entities' uses or development of the properties.

8. Capping Materials.

(a) The Borough Entities covenant and agree that they shall not, through any activities or operations in Ward Cove or the Ward Cove area, damage any cap or capping materials that have been applied to sediments in the Ward Cove Marine Area under the Ward Cove Consent Decree. The Borough Entities further covenant and agree that they shall be liable for any such damage arising out of the acts or omissions of the Borough; provided, however, that the Borough Entities shall not be responsible or liable for damage to the cap or capping materials to the extent such damage results from the activities or operations of KPC.

(b) The Borough Entities further covenant and agree that, if damage occurs for which the Borough Entities are liable, the Borough Entities shall immediately report the relevant circumstances to EPA and KPC and restore the cap to a condition and to specifications as directed by EPA or by any governmental body having primary regulatory jurisdiction over the work undertaken by KPC under the Ward Cove Consent Decree; provided, however, that the Borough Entities shall be under no obligation to restore the cap or capping materials until directed to do so by the EPA or other governmental body having jurisdiction.

(c) The Borough agrees to impose appropriate contractual

requirements and port use regulatory provisions regarding the capping materials on parties that it does business with consistent with the requirements imposed herein.

(d) KPC agrees that this Agreement does not diminish, or shift to the Borough, KPC's responsibility to monitor, at KPC's cost, the Ward Cove Cap, as set forth in the Ward Cove Consent Decree and in the *Long Term Monitoring and Reporting Plan for Sediment Remediation in Ward Cove* prepared by Exponent.

9. Institutional Controls.

(a) The Borough Entities agree that they will adhere to and comply with, at their expense, any and all Institutional Controls which are or may become applicable to the Borough Property, the activities conducted thereon, or both. Provided, however, that for each parcel or area comprising the Borough Property, the Borough Entities shall only be obligated to comply with the existing or new Institutional Controls that are applicable to such parcel or area. The Borough Entities will not seek payment or damages from KPC for the cost of implementing these Institutional Controls or for any resulting diminution in value of any such parcels.

(b) KPC, the Borough, and Gateway will cooperate with each other and relevant agencies with respect to any imposition of Institutional Controls that may be required on the Borough Property.

(c) In the event that any governmental entity seeks to impose Institutional Controls on the Borough Property, KPC promptly will notify the Borough and cooperate with it. Under no circumstances, however, shall this section be interpreted to require the Borough or KPC to indemnify the other for any costs of Remediation.

(d) The Borough agrees to impose, upon the Borough Entities, appropriate contractual requirements regarding adhere to and compliance with, at their expense, any Institutional Controls which are or may become applicable to the Borough Property, consistent with the provisions contained in this Section.

10. Government Oversight Costs.

The parties agree that each shall be responsible for any government oversight costs that may be assessed by any government agency attributable to inquiries or operations that any of them may initiate or conduct. In the event of a disagreement between the parties as to whether a particular governmental oversight cost is properly attributable to KPC, the Borough, Gateway, or should be shared in some manner between them, the parties agree that they

shall jointly solicit the opinion of that governmental agency, and the opinion of the governmental agency shall be deemed presumptively correct. Any party seeking to allocate responsibility differently than the agency shall have the burden of proof on that issue. Under no circumstances, however, shall this section be interpreted to require the Borough or KPC to indemnify the other for any costs of Remediation.

11. Disclosure of Environmental Conditions by KPC to Borough.

(a) Ketchikan Pulp Company has conducted an inquiry concerning environmental conditions at the Borough Property. To the best of KPC's knowledge, as defined under AS 45.01.201(28), it has disclosed to the Borough all material information concerning the environmental conditions at the Borough Property.

(b) KPC has provided the Borough the following information concerning known environmental conditions with respect to the Borough Property:

- (i) Items set forth in a letter from Donna Willard to Cabot Christianson dated September 28, 2001, including the Schedule of Exceptions attached to the APA;
- (ii) Items provided by John Peterson as set forth in his letter to Cabot Christianson dated October 2, 2001;
- (iii) Four boxes of site characterization and other associated documents, a listing of which was included, developed by Exponent and PTI Environmental Services under the Ward Cove CERCLA process overseen by EPA and DEC, which were shipped via Alaska Airlines Goldstreak along with a cover letter from John Peterson to Cabot Christianson dated December 17, 2001, as well as two indices entitled "Uplands Operable Unit" and "Marine Operable Unit;" and
- (iv) A synopsis prepared by KPC, and set forth in a letter from John Peterson to Cabot Christianson dated January 4, 2002, of any untoward conditions, including any which might have arisen after the sale of the Ward Cove property to Gateway in November 1999, as well as the an enclosure entitled "Overview, Characterization Activities Associated with the Former Ketchikan Pulp Company Site," prepared by Exponent (December 2001).

(c) The Borough has had ample opportunity to review the information provided by KPC, as listed above, as well as to seek the advice of counsel. The Borough has also had sufficient time to inspect the Borough Property. The Borough is entering into this Agreement in reliance upon its own due diligence, in addition

to KPC's representations set forth herein.

(d) If KPC agrees, or a court finds, that KPC breached the representation in subsection (a) above by failing to disclose to the Borough material information concerning existing contamination at the Borough Property of which KPC had knowledge, as defined under AS 45.01.201(28), prior to entering into this Agreement, and if the Borough Entities are subject to a final agency directive or order that they are responsible for investigating or remediating such contamination, then KPC agrees that it will, at its option, either remediate or pay for the remediation of such contamination to the regulatory cleanup standards then in force and applicable to both the Industrial Parcels and the Non-Industrial Parcels. The Borough Entities agree that such remediation shall be the sole and exclusive remedy for KPC's failure to disclose and that the Borough Entities shall be precluded from seeking any other damages or equitable relief, including but not limited to compensatory damages, consequential damages, lost income, and any other expenses, costs, or losses. The limitation on the Borough Entities' remedies in the preceding sentence shall apply only if KPC diligently pursues the required investigation and remediation activities, and KPC does not unreasonably delay such activities or unreasonably interfere with the Borough Entities' use of the Borough Property.

12. Environmental/Real Property Release by the Borough and Subsequent Buyers.

(a) For purposes of this section only, Ketchikan Pulp Company shall mean and include the corporation and its agents, servants, employees, officers, directors, partners, principals, and shareholders, as well as all of their insurance companies and contractors ("KPC Releasees").

(b) Except as otherwise provided in this Agreement, the Borough hereby releases, forever discharges, and covenants not to sue the KPC Releasees with regard to any and all Losses, whether past, present, or future, arising out of or in any way related to the real property interests, together with any improvements situated thereon, which are identified in Appendix "2" hereto, including: (1) any and all known and unknown environmental claims, whether arising under CERCLA, RCRA, and AS 46.03.822, or otherwise; and (2) any and all other known and unknown claims and causes of action, whether arising under statute, contract, common law, tort, or any other law or legal theory (the "Release").

(c) The parties further covenant and agree that the provisions of this Agreement supersede and replace the environmental provisions contained in the loan agreement and the assignment and assumption agreement, both dated June 14, 1999, and that certain deed of trust dated December 13, 1999, recorded December 21, 1999 at Book 307, Page 629, Records of the Ketchikan

Recording District, First Judicial District. The Release also shall extend, without limitation, to all Losses, whether attributable to KPC, Gateway, or otherwise, arising out of, or in any manner related to, the Environmental Allocation Agreement, the Environmental Allocation Easement, or both, or to the environmental obligations set forth in any one or more of the following: (1) Agreement For Loan dated June 14, 1999; (2) Agreement For Assignment For Assignment, Assumption and Release dated June 14, 1999; and (3) the Deed of Trust dated December 13, 1999 and any amendments thereto.

(d) The Borough acknowledges and agrees that it is familiar with the decisions of the Alaska Supreme Court in *Witt v. Watkins*, 579 P.2d 1065 (Alaska 1978); *Schmidt v. Lashley*, 627 P.2d 201 (Alaska 1981); and *Mitchell v. Mitchell*, 655 P.2d 748 (Alaska 1982), and that it has contemplated the possibility that new facts may subsequently be discovered which may affect its rights to relief, and that, except as otherwise provided in this Agreement, it is nevertheless the Borough's intention to fully release and forever discharge the KPC Releasees and Gateway with regard to any and all known and unknown Losses arising out of or in any way related to the matters described herein.

(e) The Borough further acknowledges and agrees that it is familiar with the decision of the Alaska Supreme Court in *Young v. State*, 455 P.2d 889 (Alaska 1969), and that it nevertheless intends to fully release all individuals, firms or corporations who could at any future date be possible defendants in any action arising out of or in any way related to the matters set forth, as fully as though they were specifically listed and named herein.

(f) The Borough specifically renounces and releases any right it may now or hereafter have to reform, rescind, modify, or set aside this Release because of mutual or unilateral mistake. The risk of mistake is hereby assumed by the Borough. It is further acknowledged and agreed that no representation, promise, or inducement, other than those specifically expressed in this Agreement, has been made to secure this Release.

(g) The Borough acknowledges and agrees that it has had an adequate opportunity to consult with counsel of its own choosing and to review all of the terms and conditions herein, and that this Release is entered into without haste and without any disparity of bargaining power.

(h) The Borough agrees that it shall contractually require its successors, heirs, and assigns to release, forever discharge, and covenant not to sue the KPC Releasees with regard to the Borough Property. To that end, the Borough shall include the following language in any lease, sale, or conveyance of any interest in all or part of the Borough Property and shall contractually require any successor, heir, or assign to impose

such language in future leases, sales, and conveyances:

[Name of lessee, purchaser, or interest holder] hereby agrees that, through entering into this Agreement, it hereby forever releases and covenants not to sue Ketchikan Pulp Company, its agents, servants, employees, officers, directors, partners, principals, shareholders, or any of their insurance companies and contractors with regard to any and all causes of action, liabilities, payment requests or demands, losses, costs, expenses (including, without limitation, reasonable attorneys', experts', and other consultants' fees), penalties, fines, equitable relief, and damages, whether known or unknown, that are, or may be, associated with the property subject to this Agreement, including but not limited to environmental claims, whether arising under CERCLA, RCRA, AS 46.03.822, or otherwise.

The parties to this Agreement agree that Ketchikan Pulp Company is a third party beneficiary of this Agreement and any future agreements concerning the property.

[Name of lessee, purchaser, or interest holder] HEREBY AGREES THAT LANGUAGE IDENTICAL TO THE PREVIOUS TWO PARAGRAPHS SHALL BE INCORPORATED INTO ANY FUTURE LEASE, SALE, OR CONVEYANCE OF ANY INTEREST (INCLUDING DEEDS OF TRUST) IN ALL OR PART OF THIS PROPERTY.

13. Property Sales and Establishment of Development Fund.

(a) The parties agree to establishment of a development fund ("Ward Cove Development Fund"), controlled jointly by the Borough and KPC, the purposes for which are asbestos abatement, structure demolition, utilities relocation, site grading and other redevelopment activities.

(b) The sources for contributions to the Ward Cove Development Fund are:

- (i) Proceeds derived from fair market sales, to third parties, of any lots created as a result of subdividing USS 1056, Lot 3, and ATS-1, Exhibit A;
- (ii) Net income, after payment of all expenses, generated by rental or lease of any of the properties, other than those derived from the dock facilities and sludge treatment plant; and
- (iii) Acquisition of federal grants, appropriations and other funds which KPC and the Borough will cooperate in

seeking to obtain.

(c) For purposes of subsection (b)(i), the parties acknowledge that the Borough intends to acquire and retain a portion of current USS 1056, Lot 3 for purposes of constructing and operating a sludge treatment facility, as well as acquiring, retaining and operating the former KPC dock located on ATS-1, Exhibit A. Furthermore, pursuant to the provisions of this Agreement, KPC will be granted a new water use option site. It is not intended that revenues generated from any of these endeavors will be contributed to the Ward Cove Development Fund.

(d) No monies from the Ward Cove Development Fund will be expended for any purpose other than abatement of asbestos until all such work has been completed. Thereafter, KPC will relinquish any further right of control with respect to the Fund, which thereafter shall be under the sole direction and control of the Borough..

(e) In the event of any fair market sale prior to completion of all asbestos abatement, the Environmental Allocation Agreement and the Environmental Allocation Easement will be replaced with an easement containing the same terms and conditions as the Borough Easement. Similarly, once the asbestos on the property has been abated, the Borough Easement will be recorded in replacement of the Environmental Allocation Agreement and the Environmental Allocation Easement with respect to any remaining unsold property.

(f) After completion of the asbestos abatement, and assuming KPC reaches a settlement with Foothill Capital Corporation, as a result of which KPC is entitled to the retained equipment proceeds currently being held in trust, it will contribute the sum of \$300,000 to the Ward Cove Development Fund.

(g) With respect to monies contributed to the Ward Cove Development Fund, Gateway and the Borough agree that:

(i) Those contributed by the Borough from grants or proceeds from sales of property subject to the Borough's first priority security interest, which are expended either for removal of asbestos or for redevelopment, shall be secured by a deed of trust on the parcel to be created which encompasses the former KPC power house;

(ii) Gateway and the Borough will seek a waiver of any liens which might be superior to the lien hereby contemplated; and

(iii) Gateway will execute any documents necessary to perfect and record the Borough's security interest.

14. Water Use Site Easement and Subdivision of USS 1056, Lot 3 and ATS-1, Exhibit A.

(a) Because Lot 3-A of the No. 2 Subdivision, contemplated for sale to Anderes Oil, LLC, impinges upon KPC's Water Use Site Easement at which beneficial use of water transported from Connell Lake can be made, Gateway and the Borough will cooperate in an amendment to the Water Use Site Easement ("Water Use Site Easement Amendment") which will provide KPC with an alternate site, together with any necessary easements.

(b) Attached hereto as Appendix "5," and incorporated herein by reference, is a drawing which depicts an interim description of the alternate site and the necessary easements, including those related to transportation of water to the dock ("Use Site Premises"). It consists of a parcel of undeveloped property located adjacent to the former KPC filter plant which is comprised of approximately 28,900 square feet.

(c) The parties have commissioned a survey to be completed within 180 days of the execution of the Water Use Site Easement Amendment, which will provide a more detailed description of the Use Site Premises and related easements. KPC will prepare and record a more detailed survey thereof, including appropriate information and reference points. Upon recordation, the detailed location survey shall automatically be deemed to describe the Use Site Premises in lieu of the interim description in Appendix "5."

(d) KPC shall have the right to acquire title to the Water Use Site Easement, amended as set forth herein, upon the same terms and conditions as set forth in the Water Use Site Option Agreement, except that it shall be amended to provide that:

- (i) The Option Term set forth in Section 1.02 shall be for a period of ten years commencing on the effective date of this Agreement; and
- (ii) KPC shall be entitled to acquire the Use Site Premises at no cost, other than expenses related to subdividing and platting.

In all other respects, the Water Use Site Easement and the Water Use Site Option Agreement will remain in full force and effect.

(e) Upon execution of the foregoing amendments to the Water Use Site Option Agreement and recordation of the Water Use Site Easement Amendment, the Borough and KPC shall consent to the No. 2 and No. 3 Subdivisions of U.S. Survey 1056, Lot 3 and ATS-1, Exhibit A, as well as their recordation.

- (f) In any subsequent plat which is prepared and submitted for approval, the Borough shall ensure that KPC's prior recorded real property interests, including the following, will be depicted, described and accompanied by appropriate plat notes:

- (i) The Plant Systems Easement, as amended;
- (ii) The Water Use Site Easement, as amended;
- (iii) The Water Use Option Site, as amended; and
- (iv) All applicable environmental easements and covenants.

Any final plat approved by the Ketchikan Gateway Borough Planning & Zoning Commission shall include provision for approval by KPC prior to its recordation, as required by the Borough Code.

(g) After any plat subdividing the Borough Property is recorded, the parties shall execute all documents necessary to ensure that Exhibit F-1 and the Borough Easement continue to apply to any of the subdivided parcels to which either applies, as set forth in this Agreement and the Borough Easement.

(h) The Borough intends to seek subdivision of portions of the unsubdivided remainder of USS 1754, USS 1706, USS 1056, Lot 3, and ATS-1, in order to create a single parcel upon which to construct and operate a sludge treatment facility. So long as the requisites set forth in subsections (e), (f), and (g) of this section are met, KPC will not oppose any such subdivision.

15. NPDES Permits and Outfall Pipes.

(a) Gateway has agreed to maintain existing outfall pipe 001 and associated facilities in good working order and in a condition sufficient to accommodate existing and future wastewater discharges associated with the Ward Cove Landfills. Gateway, the Borough, and KPC have agreed to a cost sharing formula equitably allocating the associated expenses of the permit, which is set forth in Appendix "6" to this Agreement. This formula shall remain in force until KPC obtains its own NPDES permit and completes construction of its own outfall, at which time KPC's portion of the cost sharing shall terminate.

(b) KPC is in the process of obtaining a new NPDES permit after which a separate outfall for the Ward Cove Landfills will be constructed. An easement for that purpose was granted by Gateway and recorded on April 30, 2002 as Document 2002-001755-0. In conjunction therewith, Gateway and the Borough promptly will commence the process necessary to modify, amend, or have reissued the current NPDES permit governing outfall 001.

16. Office and Hangar Lease.

(a) KPC agrees to compromise its rights under the Office and Hangar Lease ("Lease") as follows: KPC will vacate the offices in its former administration building which it currently occupies and the Lease as to that facility only will be terminated. In return, KPC shall be granted the right to occupy the helicopter hangar premises through December 31, 2005. That occupancy shall be rent-free and otherwise on the same terms and conditions, including payment for utilities, set forth in the Office and Hangar Lease, at which point the Lease shall terminate.

(b) In the event that the Borough were to either sell the hangar property or acquire a long term paying tenant, KPC shall vacate the premises, provided that suitable alternate facilities, including telephone lines, electricity, water and data ports, are made available in the administration building. In that event, KPC would be entitled to utilize that space until December 31, 2005.

17. Electric Utilities.

To the extent that KPC utilizes power generated by Ketchikan Public Utilities in connection with the Connell Lake Dam and Pipeline, KPC agrees to pay its proportionate share of such expenses, estimated to be in the amount of \$500.00 per month. KPC nevertheless reserves the right, in accordance with an earlier agreement reached with Gateway, to establish an alternate power source at any time.

18. Mud Bight Tidelands Lease.

The Borough has elected to accept the Mud Bight Tidelands Lease and KPC will cooperate by executing appropriate documents, participating in meetings, and carrying out other steps reasonably necessary to effectuate the transfer. If the Borough fails to request a transfer or file the appropriate documents within sixty (60) days after execution of this Agreement, KPC shall be entitled to surrender the Mud Bight Tidelands Lease to the State of Alaska.

19. Dam, Pipeline and Associated Water Rights.

The Borough has elected to forego acquisition of the Connell Lake dam and pipeline through which water is delivered to the Ward Cove properties. As a result, the parties hereby acknowledge that KPC retains ownership of those assets, together with the associated water rights, and that KPC possesses the unfettered right to terminate water from Connell Lake to the Ward Cove properties.

20. Pipeline Access Road Parcel.

The three-acre parcel along the pipeline access road ("Pipeline Access Road Parcel") as more particularly described in Appendix "2," when conveyed to the Borough by the State, will be conveyed to KPC, without additional consideration, by Quitclaim Deed and Bill of Sale, as previously contemplated by the parties.

21. Reservation of Borough Rights.

Nothing in this Agreement shall be construed to limit in any manner the Borough's right to foreclose on any security interest which it holds with respect to the Borough Property, except that this Agreement shall remain effective notwithstanding the Borough's acquisition of subsequent ownership and title.

22. Notice, Cooperation, and Non-Interference.

(a) KPC and the Borough hereby covenant and agree to cooperate to avoid any unreasonable interference with KPC's and the Borough's respective activities and operations at the Borough Property.

(b) KPC and the Borough also covenant and agree to cooperate in any property sales made consistent with the terms of this Agreement, including the prospective sales to Anderes, Perin, and Pool, as well as disposition of the Veneer Mill properties, including the improvements situated thereon (USS 1862, a portion of ATS-1, Exhibit A, and proposed Lot 3-B of USS 1056).

(c) KPC, Gateway and the Borough further covenant and agree to give the other parties advance written notice of any material excavation, digging, or other similar activities on the Industrial Parcels of the Borough Property set forth in Appendix C.1. hereto.

23. Further Assurances.

(a) The parties agree to draft, execute, and record, as appropriate, and as soon as reasonably practicable after the Execution of this Agreement, such documents as may be necessary or appropriate to carry out the intent of this Agreement.

(b) The parties also agree to perform any further acts and to draft, execute and record any additional documents that may be necessary and appropriate in the future to carry out the terms of this Agreement.

24. Default and Remedies.

(a) Time is of the essence for this Agreement, and the parties hereto shall promptly perform all of the obligations set forth herein.

(b) A party shall be in material default ("Default") in the event that it fails to promptly perform any of its obligations under this Agreement.

(c) If a party Defaults in any way in the performance of any of its obligations under this Agreement, then the party or parties entitled to such performance shall be entitled to perform or secure performance of such obligation(s) and shall be entitled to recover any and all damages arising in any way from or caused by the Default. Recoverable damages shall include, but not be limited to, all expenses of performance, securing performance, or any combination thereof, and all incidental costs and damages incurred as a consequence of the Default, including fines, penalties and fees incurred, investigation and testing costs, if any, attorneys', experts', and other consultants' fees incurred, and any other damages suffered.

(d) The parties acknowledge and agree that the nature of many of the rights, obligations, and liabilities set forth in this Agreement are such that it would be impossible to measure and compensate, in money, the harm which will accrue by reason of a party's Default. As a result, any remedy at law for recovery of damages may be inadequate. The parties shall therefore be entitled, in their discretion, to enforce this Agreement in law or in equity, or both. If a party elects to seek equitable relief to enforce the provisions hereof, any party against whom such action or proceeding is brought hereby waives the claim or defense therein that the enforcing party has an adequate remedy at law, and such party shall not offer in any such action or proceeding the claim or defense that such remedy at law exists.

(e) The Borough agrees to indemnify and defend Ketchikan Pulp Company and hold it harmless from any Losses to Ketchikan Pulp Company arising out of or with respect to any Default relating to the Borough's obligation to ensure that its successors, heirs, and assigns execute valid and enforceable instruments releasing Ketchikan Pulp Company, as set forth in Section 12 above.

25. Notices.

All notices, requests, claims, demands and other communications given or made pursuant hereto shall be in writing (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by facsimile (with confirmation copy of

such faxed material delivered in person or by registered or certified mail, postage prepaid, return receipt requested) or by registered or certified mail (postage prepaid, return receipt requested) to the respective party at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this section):

(a) if to KPC:

Louisiana-Pacific Corporation
Legal Department
805 S.W. Broadway, Suite 700
Portland, Oregon 97205
Attention: Christopher M. (Kit) Keyes, Esq.
Facsimile: (503) 821-5323

and:

Ketchikan Pulp Company
c/o Louisiana-Pacific Corporation
805 S.W. Broadway, Suite 700
Portland, Oregon 97205
Attention: Chris Paulson
Facsimile: (503) 821-5431

with a copy to:

Ziegler Law Firm
307 Bawden Street
Ketchikan, Alaska 99901
Attention: John Peterson, Esq.
Facsimile: (907) 225-5513

(b) if to the Borough:

Ketchikan Gateway Borough
344 Front Street
Ketchikan, Alaska 99901
Attention: Borough Manager
Facsimile: (907) 247-6625

with a copy to:

Ketchikan Gateway Borough
344 Front Street
Ketchikan, Alaska 99901
Attention: Borough Clerk

Facsimile: (907) 247-8439

(c) if to Gateway:

Gateway Forest Products, Inc.
Post Office Box 779
Ward Cove, Alaska 99928
Attention: Jim Erickson
Facsimile: (907) 247-1646

26. No Third-Party Beneficiaries.

Except as otherwise set forth, this Agreement is for the sole benefit of the parties hereto and their respective successors, heirs, and assigns, and nothing herein, express or implied, is intended to or shall confer, upon any other person or entity, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

27. Governing Law.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alaska.

28. Jurisdiction; Venue; Service.

The parties each irrevocably consent to the exclusive venue and jurisdiction of any state or federal court located in the First or Third Judicial Districts, State of Alaska, for the purposes of any suit, action, or other proceeding of any type whatsoever arising out of this Agreement or the subject matter hereof; provided, however, that if jury trial is sought by any party, the proceeding will be instituted in a locale other than Ketchikan. To the maximum extent permitted by applicable law, each party waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding any claim that it is not personally subject to the jurisdiction of the above named courts; that the suit, action, or proceeding is brought in an inconvenient forum; that the venue of the suit, action, or proceeding is improper; or that this Agreement or the subject matter hereof may not be enforced in or by such court. Each party agrees that service of process may be made upon it wherever it can be located or by certified mail directed to its address for notices under this Agreement.

29. Liberal Construction.

Notwithstanding any general rule of construction to the contrary, this Agreement shall be liberally construed in favor of

effectuating the parties' intentions. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid or unenforceable.

30. Severability.

If any portion of this Agreement is deemed invalid, illegal, or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties shall negotiate in good faith to modify this Agreement, in a mutually acceptable manner, so as to effect the original intent of the parties as closely as possible.

31. Interpretation.

(a) When required by the context, the singular includes the plural and vice versa, and the masculine includes the feminine and neuter genders, and vice versa.

(b) Except as otherwise specifically indicated, all references in this Agreement to an "Appendix" or "Appendices" are to the corresponding Appendices to this Agreement, as the same may be amended from time to time in accordance with the terms hereof.

(c) Headings used in this Agreement have been included for convenience and ease of reference only and shall not in any manner influence the construction or interpretation of any provision of this Agreement.

(d) "Includes" or "including" means "including, without limitation."

32. Opportunity to Review and Consult Counsel.

The parties to this Agreement acknowledge and agree that they have had an adequate opportunity to consult with counsel of their own choosing and to review all of the terms and conditions herein. The parties further represent that they have participated in the drafting of this Agreement, and they acknowledge and agree that this Agreement shall not be construed as having been drafted by any particular party or parties.

33. Amendments and Waiver.

This Agreement may not be amended or modified except by an instrument in writing duly executed by Ketchikan Pulp Company, Gateway Forest Products, Inc. and the Ketchikan Gateway Borough or their respective successors, heirs, and assigns, if any, holding an interest in the property at issue. Waiver of any term or condition of this Agreement shall only be effective if in writing, duly executed by the party to be bound thereby, and shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition, nor as a waiver of any other term or condition.

35. Counterparts.

This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and date first written above.

KETCHIKAN GATEWAY BOROUGH

By: _____
Gary L. Paxton, Interim Manager

KETCHIKAN PULP COMPANY

By: _____
Chris Paulson, President

GATEWAY FOREST PRODUCTS, INC.

By: _____
James K. Erickson, President

APPENDIX 1

AGREEMENTS ANCILLARY TO AND PART OF THE ASSET PURCHASE AGREEMENT

The ancillary agreements entered between Gateway and KPC in conjunction with the Asset Purchase Agreement ("APA") included:

1. Allocation of Environmental Responsibilities Agreement (APA Exhibit F) ("Environmental Allocation Agreement");
2. Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities (APA Exhibit F-1) ("Environmental Allocation Easement");
3. Associated Real Property and Water Rights Agreement, recorded in the real estate records of the Ketchikan Recording District on November 5, 1999 at Book 306, Page 84 (APA Exhibit H) ("Water Rights Agreement");
4. Plant Systems Easement, recorded in the Ketchikan Recording District on November 5, 1999, at Book 306, Page 99 (APA Exhibit H-1), as amended by the following:

Amendment to Plant Systems Easement, recorded in the Ketchikan Recording District on December 15, 2000, at Book 319, Page 360.

Second Amendment to Plant Systems Easement, recorded in the Ketchikan Recording District on January 3, 2001, at Book 320, Page 421.

The Plant Systems Easement, as so amended, is referred to in this Agreement as the "Plant Systems Easement;"

5. Water Use Site Easement, recorded in the Ketchikan Recording District on November 5, 1999, at Book 306, Page 125 (APA Exhibit H-2), as amended by the following:

Amendment to Water Use Site Easement, recorded in the Ketchikan Recording District on December 12, 2000, at Book 319, Page 250.

The Water Use Site Easement, as so amended, is hereinafter referred to as the "Water Use Site Easement;"

6. Option Agreement to Purchase Excess Water, recorded in the Ketchikan Recording District on November 5, 1999, at Book 306, Page 160 (Exhibit H-3) ("Excess Water Option Agreement");

7. Option Agreement to Purchase Water Use Site, recorded in the Ketchikan Recording District on November 5, 1999, at Book 306, Page 149 (APA Exhibit H-4), as amended by the following:

Amendment to Option Agreement to Purchase Water Use Site, recorded in the Ketchikan Recording District on December 12, 2000, at Book 319, Page 258.

The Option Agreement to Purchase Water Use Site Easement, as so amended, is hereinafter referred to as the "Water Use Site Option Agreement;" and

8. Office and Hangar Lease Agreement, executed on November 3, 1999 and attached at Tab 5 to the APA ("Office and Hangar Lease"), and for which a memorandum of lease for the office space was recorded on November 15, 1999 at Book 306, Page 503 and a memorandum of lease for the hangar was recorded on November 12, 1999 at Book 306, Page 406, both in the Ketchikan Recording District.

APPENDIX 2

PROPERTY DESCRIPTIONS

A. GENERAL.

All of the properties which are subject to the terms of this Agreement are located in or near Ketchikan, Alaska, and all documents and plats referred to as filed, recorded, or both, are in the Ketchikan Recording District, First Judicial District, State of Alaska. All references to parcels and property in the Agreement and in this Appendix shall mean and include all fixtures, structures, facilities, and improvements upon and related to such parcels and property, as well as all water rights and other appurtenant rights.

B. SUBDIVISIONS.

Some portions of the Borough Property are the subject of either current subdivisions or ones to be recorded after the execution of this Agreement. The properties which are the subject of such subdivision may be referenced in this Agreement with the description thereof as it currently exists or as it will as a result of such subdivision. These subdivisions are referred to as follows:

1. The term "No. 1 Subdivision" means and refers to Gateway Subdivision No. 1, a subdivision of U.S. Survey 1056, which created USS 1056, Lots 1, 2, and 3, according to the plat thereof filed and recorded on the 14 day of August, 2000 as Plat No. 2000-41.
2. The term "No. 2 Subdivision" means and refers to Gateway Subdivision No. 2, a subdivision of Lot 3 within U.S. Survey 1056, which will create USS 1056, Lot 3-A, and re-name the remainder of USS 1056 as Tract A, approved by the Ketchikan Gateway Borough Planning & Zoning Commission on October 9, 2001.
3. The term "No. 3 Subdivision" means and refers to Gateway Subdivision No. 3, a subdivision of USS 1056, Tract A and ATS-1, Exhibit A, which will create USS 1056, Lot 3-B, and ATS-1, Lots A, B, C. and D, approved by the Ketchikan Gateway Borough Planning & Zoning Commission on February 12, 2002.

C. BOROUGH PROPERTY.

The term "Borough Property" means and refers to all of the following:

1. The "Industrial Parcels":

- (a) That portion of ATS-1, Exhibit A, at times referred to as "the unnamed portion of ATS-1" (and whatever form it takes by subdivision,);
- (b) ATS-1, Exhibit C-2, including the filled tidelands at USS 1208 and 1508;
- (c) ATS 439;
- (d) USS 1056, Lot 3 (and whatever form it takes by subdivision);
- (e) USS 1208 (portion seaward of the North Tongass Highway);
- (f) USS 1508 (portion seaward of the North Tongass Highway);
- (g) USS 1653 (portion seaward of the North Tongass Highway);
- (h) USS 1655 (portion seaward of the North Tongass Highway);
- (i) USS 1656 (portion seaward of the North Tongass Highway);
- (j) USS 1659 (portion seaward of the North Tongass Highway);
- (k) USS 1706; and
- (l) Unsubdivided Remainder of USS 1754.

2. The "Non-Industrial Parcels":

- (a) USS 1056, Lots 1, 2, and 3, Block 2, New Wacker Townsite (Gateway Club);
- (b) USS 1056, upland of North Tongass Highway (6.39 acres leased by South Coast, Inc);
- (c) USS 1056, Lots 1 and 2, according to the No. 1 Subdivision (Administration building and parking lots);

- (d) USS 1208 (portion upland of the North Tongass Highway);
- (e) USS 1508 (portion upland of the North Tongass Highway, to be purchased by Charles Pool);
- (f) USS 1653 (the 2 parcels upland of the North Tongass Highway);
- (g) USS 1655 (portion upland of the North Tongass Highway);
- (h) USS 1656 (portion upland of the North Tongass Highway);
- (i) USS 1659 (portion upland of the North Tongass Highway, to be purchased by Charles Pool);
- (j) USS 1754, Blocks 1 through 3 inclusive (to be purchased by Ray Perin); and
- (k) USS 1754, Block 4.

3. The "Non-Ward Cove Parcels":

- (a) USS 296 and USS 297 (Moser Bay);
- (b) USS 812 waterfront and uplands (Mud Bight);
- (c) USMS 1229 (College property);
- (d) USMS 1462 (Carroll Inlet);
- (e) USMS 1598 & 423 (Thorne Arm); and
- (f) The Alaska Tidelands Lease serialized by the State of Alaska, Department of Natural Resources as Tidelands Lease ADL 34507, which is applicable to the property identified as ATS No. 698, Tract B (the "Mud Bight Tidelands Lease").

4. The "Pipeline Access Road Parcel": The term "Pipeline Access Road Parcel" means and refers to Lot 1, Sec. 34, T. 74S., R.90E., C.R.M., a diagram of which is attached hereto as Exhibit "A."

APPENDIX 3

FORM OF ENVIRONMENTAL EASEMENT AND DECLARATION OF COVENANTS

This Environmental Easement and Declaration of Covenants ("Easement"), made and entered into this _____ day of _____, 2002 by and between, KETCHIKAN GATEWAY BOROUGH, a municipal corporation, 344 Front Street, Ketchikan, Alaska 99501 ("Borough"), KETCHIKAN PULP COMPANY, a Washington corporation, Post Office Box 6600, Ketchikan, Alaska 99901 ("KPC"), and GATEWAY FOREST PRODUCTS, INC., an Alaskan corporation, Post Office Box 779, Ward Cove, Alaska 99928 ("Gateway"), WITNESSETH:

RECITALS

WHEREAS, all real property referred to in this Easement is located in, and all documents and plats referred as filed or recorded, are filed or recorded in the Ketchikan Recording District, First Judicial District, State of Alaska;

WHEREAS, on November 3, 1999, KPC and Gateway entered into certain agreements including the Allocation of Environmental Responsibilities Agreement ("Exhibit F") and the Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities ("Exhibit F-1") which incorporated by reference Exhibit F, governing certain properties;

WHEREAS, Exhibit F-1 was specifically incorporated into that certain Quitclaim Deed executed by KPC in favor of Gateway, which was recorded on November 5, 1999 at Book 306, Page 72;

WHEREAS, the parties now desire to remove Exhibit F-1 from certain parcels of real property located at Ward Cove and to replace it with this Easement;

WHEREAS, the Borough, KPC and Gateway have ongoing interests, including but not limited to, operational and regulatory considerations, in the Ward Cove real property and desire to impose on the those properties certain terms and conditions as covenants that will run with the land for the purpose of making such terms and conditions applicable to the Borough, KPC and Gateway, as well as any of their successors and assigns holding an interest in the properties;

WHEREAS, the Borough, KPC and Gateway entered into an Agreement dated _____, 2002 governing the parties' respective rights and responsibilities ("Agreement"); and

WHEREAS, KPC has an ongoing interest in ensuring that it has access to the Ward Cove properties to accommodate the satisfaction of its continuing environmental obligations at the Ward Cove facility;

NOW, THEREFORE, In consideration of the promises and of the mutual agreements and covenants hereinafter set forth, the Borough, KPC and Gateway hereby agree as follows:

I. DEFINITIONS.

The terms used in this Easement shall have the following meanings which shall be equally applicable to both the singular and plural forms of the terms defined:

- A. "Borough" means and refers to the Ketchikan Gateway Borough, a municipal corporation organized pursuant to the laws of the State of Alaska, and the Borough's successors, heirs, and assigns.
- B. "Costs" means, with respect to Remediation and Investigation activities, actual reasonable expenditures, including but not limited to, reasonable attorneys' fees and defense costs, contractor costs, consultant costs, governmental oversight costs and other necessary expenditures.
- C. "Environmental Laws" means all State of Alaska, local, and federal laws, statutes, regulations, and ordinances of any kind relating to environmental protection or compliance as they currently exist and as they may come to be amended, including but not limited to, the federal Clean Water Act; Clean Air Act; Toxic Substances Control Act; Comprehensive Environmental Response, Compensation and Liability Act; Resource Conservation and Recovery Act; Federal Insecticide, Fungicide, and Rodenticide Act; Safe Drinking Water Act; Hazardous Materials Transportation Act; laws designated in Alaska Statutes Title 46; and common law including, but not limited to, causes of action arising in tort.
- D. "Gateway" means and refers to both Gateway Forest Products, Inc., an Alaska corporation, and Gateway's successors, heirs, and assigns. The term "Gateway" also includes its employees, agents, contractors, invitees, licensees, representatives, permittees, joint venturers, instrumentalities, any third party contractually directly or indirectly related to Gateway, as well as their successors, heirs, and assigns.

- E.** "Hazardous Substances" means substances which constitute hazardous substances under the Comprehensive Environmental Response, Compensation Liability Act or under AS 46.03.822.
- F.** "Institutional Controls" means the Environmental Protection Easement and Declaration of Restrictive Covenants in favor of the State of Alaska, Department of Natural Resources, recorded on October 28, 1999, at Book 305, page 772 in the Ketchikan Recording District and such other measures, controls, limitations, prohibitions, procedures, or protocols that the United States Environmental Protection Agency ("EPA"), the Alaska Department of Environmental Conservation ("DEC") or the Alaska Department of Natural Resources ("DNR") requires in order to maintain the integrity of a remedial or removal action or prevent a release or threatened release of a Hazardous Substance.
- G.** "Investigation or Investigatory" means actions to assess the nature and extent of Hazardous Substances contamination, including sampling and other necessary activities.
- H.** "KPC" means and refers broadly to both Ketchikan Pulp Company, a Washington corporation, and KPC's successors, heirs, and assigns.
- I.** "Remediation" means actions to remove, clean up, treat, or dispose of Hazardous Substances from the environment, including but not limited to, actions which may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment from a release or threatened release of a Hazardous Substance.
- J.** "Ward Cove Consent Decree" means the consent decree with the EPA and the U.S. Department of Justice entered in the U.S. District Court for the District of Alaska: CERCLA Remedial Design/Remedial Action Consent Decree, United States v. Gateway Forest Products, Inc., Ketchikan Pulp Company, & Louisiana-Pacific Corporation, Case No. A00-225 CV (JKS).
- K.** "Ward Cove Marine Area" means the water body commonly known as Ward Cove including marine waters to the ordinary high water mark and sediments underlying such waters.
- L.** "Ward Cove Uplands Area" means the surface and subsurface areas of those portions of U.S. Surveys 1056,

1208, 1508, 1653, 1656, 1659, 1706, 1754, and 1862 lying seaward of the North Tongass Highway, and the filled portions of ATS-1, including any structures or other improvements located thereon.

II. PARCELS WITH RESPECT TO WHICH EXHIBIT F-1 WILL BE EXTINGUISHED BUT TO WHICH THIS REPLACEMENT EASEMENT WILL APPLY.

The Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities ("Exhibit F-1") will be vacated and shall no longer apply to the following properties ("Ward Cove Property"). In its place and stead, the terms of this Easement shall govern with respect to the following described parcels [FINAL LIST WILL BE DEPENDENT UPON WHICH PARCELS THE BOROUGH ACQUIRES]:

PARCEL NO. 1:

That certain portion of ALASKA TIDELANDS SURVEY NO. 1 (CR 74S 90E), according to the unrecorded plat thereof, (mistakenly recorded in the Juneau Recording District as Plat No. 292), Ketchikan Recording District, First Judicial District, State of Alaska, being more particularly described as follows:

Beginning at U.S.L.M. No. 2, the true point of beginning of the portion herein described; thence South 45 degrees 12'40" East 606.69 feet to a corner marked C-2A; thence North 50 degrees 16' 31" West 892.18 feet to a corner identified as C-3A; thence following a course paralleling the dock South 48 degrees 25' 30" West 1,796.8 feet to a corner identified as C-4A; thence North 46 degrees 06' West 787.70 feet to Corner No. 2 M.C. of U.S. Survey 1056; thence following the original meander lines, South 75 degrees 06' East 613.14 feet; thence North 70 degrees 15' East 158.40 feet; thence North 45 degrees 30' East 798.60 feet; thence North 25 degrees 45' East 158.60 feet; thence North 60 degrees 00' East 547.80 feet; thence South 44 degrees 00' East 330.00 feet to M.C. 1; thence South 29 degrees 30' East 155.50 feet back to U.S.L.M. No. 2 and the point of beginning.

PARCEL NO. 2:

That certain portion of ALASKA TIDELANDS SURVEY NO. 1 (CR 74S 90E), more particularly described as Exhibit C-2.

PARCEL NO. 3:

ALASKA TIDELANDS SURVEY NO. 439, according to the plat thereof filed as Plat No. 76-31.

PARCEL NO. 4:

Lots 1 and 2, Gateway Subdivision, within U.S. Survey 1056 (H.E.S. 55) according to the plat thereof filed August 14, 2000.

PARCEL NO. 5:

That portion of U.S. Survey 1208, lying seaward of the North Tongass Highway.

PARCEL NO. 6:

That portion of U.S. Survey 1508, lying seaward of the North Tongass Highway.

PARCEL NO. 7:

That portion of U.S. Survey 1653, lying seaward of the North Tongass Highway.

PARCEL NO. 8:

That portion of U.S. Survey 1655, lying seaward of the North Tongass Highway.

PARCEL NO. 9:

That portion of U.S. Survey 1656, lying seaward of the North Tongass Highway.

PARCEL NO. 10:

That portion of U.S. Survey 1659, lying seaward of the North Tongass Highway.

PARCEL NO. 11:

U.S. Survey 1706.

PARCEL NO. 12:

The Unsubdivided Remainder, according to the subdivision plat of U.S. Survey 1754 recorded March 8, 1956 in Volume 1 of Plats at Packet 20.

III. PROPERTIES REMAINING SUBJECT TO EXHIBIT F-1.

The following parcels shall remain subject to the Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities ("Exhibit F-1"):

PARCEL NO. 1:

All of ALASKA TIDELANDS SURVEY NO. 1 (CR 74S 90E), according to the unrecorded plat thereof, (mistakenly recorded in the Juneau Recording District as Plat No. 292), Ketchikan Recording District, First Judicial District, with the exception of the following:

- (A) Beginning at U.S.L.M. No. 2, the true point of beginning of the portion herein described; thence South 45 degrees 12'40" East 606.69 feet to a corner marked C-2A; thence North 50 degrees 16' 31" West 892.18 feet to a corner identified as C-3A; thence following a course paralleling the dock South 48 degrees 25' 30" West 1,796.8 feet to a corner identified as C-4A; thence North 46 degrees 06' West 787.70 feet to Corner No. 2 M.C. of U.S. Survey 1056; thence following the original meander lines, South 75 degrees 06' East 613.14 feet; thence North 70 degrees 15' East 158.40 feet; thence North 45 degrees 30' East 798.60 feet; thence North 25 degrees 45' East 158.60 feet; thence North 60 degrees 00' East 547.80 feet; thence South 44 degrees 00' East 330.00 feet to M.C. 1; thence South 29 degrees 30' East 155.50 feet back to U.S.L.M. No. 2 and the point of beginning (at times referred to as the unnamed portion of ATS-1, Exhibit A); and
- (B) ATS-1, Exhibit C-2.

PARCEL NO. 2:

Lot 3, Gateway Subdivision, within U.S. Survey 1056 (H.E.S.) according to the plat thereof filed August 14, 2000 as Plat No. 2000-41.

PARCEL NO. 3:

That portion of U.S. Survey 1056, lying northerly of the northerly boundary of North Tongass Highway, being adjacent to U.S. Survey 2923 and comprised of 5.16 acres.

PARCEL NO. 4:

That portion of U.S. Survey 1862, Ketchikan Recording District, First Judicial District, State of Alaska, more particularly described as follows: Beginning at U.S. Land Mark No. 2; thence North 32 degrees 27 minutes West a distance of 155.5 feet to Corner No. 1 of U.S. Survey 1862 and the true point of beginning of the portion herein described; thence North 0 degrees 25 minutes West a distance of 515 feet, more or less, to a point on the South Right of Way line of North Tongass Highway, which point is 50 feet from the center line of said highway and at right angles to Engineers Station 299+50; thence along that portion of a spiral curve to the left whose chord bears South 24 degrees 30 minutes East a distance of 114.65 feet; thence along the arc of a 527.46 foot radius curve the long chord of which bears South 36 degrees 35 minutes East a distance of 126.14 feet; thence along a spiral curve whose chord bears South 51 degrees 21 minutes East a distance of 210.05 feet; thence South 55 degrees 27 minutes East a distance of 316.97 feet; thence South 34 degrees 33 minutes West a distance of 50 feet; thence South 55 degrees 27 minutes East a distance of 137.00 feet; thence South 88 degrees 00 minutes West a distance of 535 feet more or less along Meander Line No. 11 of U.S. survey 1862; thence North 29 degrees 30 minutes West a distance of 155.50 feet along Meander Line No. 12 of U.S. Survey 1862 to Corner No. 1, which is the point of beginning;

ALSO: That portion of U.S. Survey 1862 lying with the North Tongass Highway Right of Way as created by a deed dated April 1, 1949 and recorded in Volume "W" of Deeds at Page 362, Ketchikan Recording District, First Judicial District, State of Alaska, and as conveyed to Ketchikan Pulp Company by Quitclaim Deed recorded July 27, 1988 in Book 158 at Page 588.

PARCEL NO. 5:

U.S. Survey 2090, Ketchikan Recording District, First Judicial District, State of Alaska;

PARCEL NO. 6:

That certain portion of U.S. Survey 2923, Ketchikan Recording District, First Judicial District, State of Alaska, more particularly described as follows: Beginning at the northerly corner of the Crawford Tract, otherwise known as Corner No. 2 of U.S. Survey No. 2923; thence South 55 degrees 45 minutes East along the northeasterly boundary of the Crawford Tract a distance of 863.37 feet; thence South 89 degrees 33 minutes West a distance of 709.81 feet, more or less, to a point on the westerly boundary of the Crawford Tract; thence North 0

degrees 27 minutes West along the westerly boundary of the Crawford Tract a distance of 491.50 feet, more or less, to the point of beginning.

IV. COVENANTS.

The Borough, KPC and Gateway, for good and sufficient consideration received, do hereby covenant and declare that, with respect to the properties listed in Section II. hereof, the following provisions shall be covenants that run with and bind the Ward Cove Property and the parties, and each parties' respective personal representatives, heirs, successors and assigns as to the Ward Cove Property or any interest therein obtained through any mechanism, including but not limited to, conveyances, assignments, or foreclosures:

A. Touch and Concern.

The Ward Cove Covenants touch and concern the Ward Cove Property, in that each and all of the Covenants directly benefit the property and increase its market value, and are fully enforceable by the parties with respect to the Ward Cove Property or any interest therein. If a party refuses to acknowledge the applicability of the Ward Cove Covenants to such party, any other party shall be entitled to enforce the terms of this instrument in law and in equity.

B. Ward Cove Marine Area.

1. The Borough and Gateway covenant and agree that they shall comply with any Institutional Controls which are or may become applicable to the Ward Cove Property, through, or under the Ward Cove Consent Decree, or otherwise.

2. The Borough and Gateway covenant and agree that they shall not, through any activities or operations at or in the Ward Cove Marine Area or Ward Cove Uplands Area, materially damage any cap or capping materials that may be applied to sediments in the Ward Cove Marine Area under the Ward Cove Consent Decree. The Borough and Gateway further covenant and agree that if they damage such cap, they will immediately report the relevant circumstances to KPC and restore the cap to a condition and to specifications as directed by the EPA or by any governmental body having primary regulatory jurisdiction over the work undertaken by KPC under the Ward Cove Consent Decree, but the Borough and KPC will be under no obligation to restore the cap until directed to do so by the EPA or other governmental body having jurisdiction.

3. Nothing in this Easement shall be interpreted to prohibit KPC from exercising any legal rights it may have with respect to matters arising under the Ward Cove Consent Decree.

C. Ward Cove Uplands Area.

1. With respect to the Ward Cove Uplands Area, the Borough and Gateway covenant and agree to comply with any Institutional Controls which are or may become applicable to the property.

2. KPC, Gateway and the Borough agree to give the other parties advance written notice of any material excavation, digging or other similar activities relating to the Ward Cove Property.

D. Further Assurances.

1. The parties covenant and agree to cooperate with respect to the development and implementation of Institutional Controls, which shall include the development of an instrument or instruments to ensure that Institutional Controls arising under the Ward Cove Consent Decree, or otherwise, will run with the property and be enforceable against bona fide purchasers.

2. The parties covenant and agree that this Easement shall govern and be binding with respect to, the acts and omissions of each respective party's employees, agents, contractors, and any third party contractually related, whether directly or indirectly, to the respective party.

E. Term of Ward Cove Covenants.

Each and all of the Ward Cove Covenants, and all the burdens and benefits thereof, shall run with the Ward Cove Property and shall be binding on any person having any ownership interest in the Ward Cove Property under the terms and conditions set forth in the Ward Cove Covenants for a period of ninety-nine (99) years from the Effective Date, after which time the Ward Cove Covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument properly signed by each and all of the then owners of the Ward Cove Property, as well as KPC, has been recorded in the Ketchikan Recording District, First Judicial District, State of Alaska, agreeing to terminate the Ward Cove Covenants in whole or in part.

F. Termination of Rights and Obligations of Covenants Through Transfer of Ownership Interest.

A party is relieved of its obligations to comply with the Ward Cove Covenants imposed on the Ward Cove Property upon, and to the extent, that a party transfers or no longer holds an interest in the Ward Cove Property, except that liability or responsibility for acts or omissions occurring prior to transfer shall survive such transfer. Provided, however, that nothing in this Easement shall diminish or relieve the parties, or any successor or assign

of the parties from their respective obligations under the Agreement.

The Borough, KPC, and Gateway, together with each parties' respective successors and assigns, are hereinafter referred to as the "Parties."

V. EASEMENT.

A. Reservation of Easement.

1. The Parties acknowledge and agree that, upon the terms and conditions set forth in this Easement, the Borough grants to KPC an easement interest in and to the Ward Cove Property (the "Easement") to allow KPC and its successors and assigns to undertake any activity contemplated by the Section 7 of the Agreement.

2. The Parties covenant and agree that KPC hereby is granted an easement interest in and to the Ward Cove Property set forth in Section II hereof, consisting of a right of free access to and across the Ward Cove Property to allow KPC to undertake or observe any sampling and Investigatory activities, Remediation activities, and any reasonable actions necessary to support or implement Investigatory and Remediation activities at the Ward Cove Property. KPC's right of access shall also include, without limitation, the right to use the Ward Cove Property to the extent reasonably necessary for a staging area or otherwise to comply with Environmental Laws and the directives or orders of governmental agencies relating to the Ward Cove Property.

3. The Parties further acknowledge and agree that, if either the EPA, DEC or DNR requires KPC to conduct sampling, Investigation, Remediation, or other related activities on any of the properties set forth in Exhibit "A" hereto, which is incorporated herein by reference as though more fully set forth, KPC shall have a right of free access to and across them to the extent reasonably necessary for staging and to otherwise carry out the directives or orders of EPA, DEC or DNR; provided, however, that KPC will forego its staging rights with respect to the following parcels when intended solely for the purpose of supporting sampling, Investigation, Remediation or other related activities on adjacent properties:

- (a) USS 1208;
- (b) USS 1508;
- (c) USS 1653;
- (d) USS 1655; and

(e) USS 1659.

4. KPC's right of access shall also include access through and across all access easements which have been or hereafter are established by or reflected in any plats of U.S. Survey 1056 or ATS-1, whether those access easements are designated as private access easements or otherwise.

B. Term.

The Easement shall become effective on the Effective Date and shall have an initial term of ninety-nine (99) years from the Effective Date, after which time the Easement shall be automatically extended for successive periods of ten (10) years each, unless an instrument properly signed by each and all of the then owners of the Ward Cove Property, as well as KPC, has been recorded in the Ketchikan Recording District, First Judicial District, State of Alaska, agreeing to terminate the Easement in whole or in part.

VI. EFFECTIVE DATE.

This Easement shall become effective ("Effective Date") on the date of recordation.

VII. LIBERAL CONSTRUCTION.

Any general rule of construction to the contrary, this Easement shall be liberally construed in favor of effectuating the Parties' desire to establish the Easement in favor of KPC and to make the Ward Cove Covenants run with, and apply to, the Ward Cove Property and to make the Ward Cove Covenants binding upon any and all successors and assigns of the Parties. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid or unenforceable.

VIII. DISPUTES.

The parties each irrevocably consent to the exclusive venue and jurisdiction of any state or federal court located in the First or Third Judicial Districts, State of Alaska, for the purposes of any suit, action, or other proceeding of any type whatsoever arising out of this Agreement or the subject matter hereof; provided, however, that if jury trial is sought by any party, the proceeding will be instituted in a locale other than

Ketchikan. To the maximum extent permitted by applicable law, each party waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding any claim that it is not personally subject to the jurisdiction of the above named courts; that the suit, action, or proceeding is brought in an inconvenient forum; that the venue of the suit, action, or proceeding is improper; or that this Agreement or the subject matter hereof may not be enforced in or by such court. Each party agrees that service of process may be made upon it wherever it can be located or by certified mail directed to its address for notices under this Agreement.

IX. MISCELLANEOUS.

A. Notices.

All notices, requests, claims, demands and other communications given or made pursuant hereto shall be in writing (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by telecopy (with confirmation copy of such telecopied material delivered in person or by registered or certified mail, postage prepaid, return receipt requested) or by registered or certified mail (postage prepaid, return receipt requested) to the respective party at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section IX.A):

1. if to KPC:

Louisiana-Pacific Corporation
Legal Department
805 S.W#. Broadway, Suite 700
Portland, Oregon 97205
Attention: Christopher M. (Kit) Keyes, Esq.
Facsimile: (503) 821-5323

and:

Ketchikan Pulp Company
c/o Louisiana-Pacific Corporation
805 S.W. Broadway, Suite 700
Portland, Oregon 97205
Attention: Chris Paulson
Facsimile: (503) 821-5431

with a copy to:

Ziegler Law Firm
307 Bawden Street
Ketchikan, Alaska 99901
Attention: John Peterson, Esq.
Facsimile: (907) 225-5513

2. if to the Borough:

Ketchikan Gateway Borough
344 Front Street
Ketchikan, Alaska 99901
Attention: Borough Manager
Facsimile: (907) 247-6625

with a copy to:

Ketchikan Gateway Borough

344 Front Street
Ketchikan, Alaska 99901
Attention: Borough Clerk
Facsimile: (907) 247-8439

3. if to Gateway:

Gateway Forest Products, Inc.
Post Office Box 779
Ward Cove, Alaska 99928
Attention: Jim Erickson
Facsimile: (907) 247-1646

B. Headings.

The descriptive headings contained in this Easement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Easement.

C. Severability.

If any provision of this Easement, or the application of any provision to a person or circumstance, is found to be invalid, illegal, or incapable of being enforced by any rule of law or public policy, the remainder of the provisions of this Easement, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid or unenforceable, as the case may be, shall not be affected thereby.

D. No Third-Party Beneficiaries.

This Easement is for the sole benefit of the Parties and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Easement.

E. Amendment; Waiver.

This Easement may not be amended or modified except by an instrument in writing duly executed and recorded by the Parties. Waiver of any term or condition of this Agreement shall only be effective if in writing, duly executed by the Party to be bound thereby, and shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition, or a waiver of any other term or condition of this Easement.

F. Governing Law,

This Easement shall be governed by, and construed in accordance with, the laws of the State of Alaska, applicable to covenants and agreements affecting real property executed and to be performed in that State.

G. Jurisdiction; Venue; Service.

The parties each irrevocably consent to the exclusive venue and jurisdiction of any state or federal court located in the State of Alaska, for the purposes of any suit, action or other proceeding of any type whatsoever arising out of this Easement or the subject matter hereof or any of the transactions contemplated hereby. To the maximum extent permitted by applicable law, each party waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding any claim that it is not personally subject to the jurisdiction of the above named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Easement or the subject matter hereof may not be enforced in or by such court. Each party agrees that service of process may be made upon it wherever it can be located or by certified mail directed to its address for notices under this Easement.

NOTICE: THE INTERESTS CONVEYED HEREBY ARE SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS DATED OCTOBER 28, 1999, RECORDED IN THE KETCHIKAN RECORDING DISTRICT, FIRST JUDICIAL DISTRICT, STATE OF ALASKA, ON OCTOBER 28, 1999 AT BOOK 305, PAGE 772.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first written above.

GATEWAY FOREST PRODUCTS, INC.

B y

Richard D. Leary
Secretary

James K. Erickson
President

KETCHIKAN PULP COMPANY

B y

Chris Paulson

Christopher M. (Kit) Keyes
Secretary

President

KETCHIKAN GATEWAY BOROUGH

Susan L. Bethel
Clerk

By _____
Gary L. Paxton
Interim Manager

STATE OF ALASKA)
FIRST JUDICIAL DISTRICT) : ss.

THIS IS TO CERTIFY that on this ____ day of _____, 2002, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared **Gary L. Paxton** and **Susan L. Bethel**, to me known to be the Interim Manager and the Clerk of the Ketchikan Gateway Borough, a municipal corporation established pursuant to the laws of the State of Alaska which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the borough seal thereto on behalf of the Borough and that the seal affixed thereto is the borough seal thereof; and who acknowledged to me that the same was signed freely and voluntarily on behalf of the Borough for the uses and purposes therein mentioned.

WITNESS my hand and seal the day and year last above written.

Notary Public in and for Alaska
My Commission Expires:_____

STATE OF ALASKA)
FIRST JUDICIAL DISTRICT) ss:

THIS IS TO CERTIFY that on this ____ day of _____, 2002, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **James K. Erickson** and **Richard D. Leary**, to me known to be the

President and Secretary, respectively, of Gateway Forest Products, Inc., a corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the corporate seal thereto on behalf of said corporation and that the seal affixed thereto is the corporate seal thereof; who acknowledged to me that they signed and sealed 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 this certificate first above written.

Notary Public for Alaska
Commission expires: _____

STATE OF OREGON)
) ss:
COUNTY OF MULTNOMAH)

THIS IS TO CERTIFY that on this _____ day of _____, 2002, before me, the undersigned, a notary public in and for the State of Oregon, duly commissioned and sworn, personally appeared **Chris Paulson** and **Christopher M. (Kit) Keyes**, to me known to be the President and Secretary respectively of Ketchikan Pulp Company, a corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they was duly authorized to execute said instrument on behalf of said corporation and who acknowledged to me that he signed and sealed 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 this certificate first above written.

Notary Public for Oregon
Commission expires: _____

EXHIBIT "A"

PARCEL NO. 1:

That portion of U.S. Survey 1056, lying northerly of the northerly boundary line of North Tongass Highway, being adjacent to U.S Survey 1754 and comprised of 6.39 acres.

PARCEL NO. 2:

Lots 1, 2, and 3, Block 2, U.S. Survey 1056, New Wacker Townsite, according to the plat thereof recorded June 14, 1965 as Instrument No. 65-1317.

PARCEL NO. 3:

That portion of U.S. Survey 1208, lying upland of the North Tongass Highway,

PARCEL NO. 4:

That portion of U.S. Survey 1508, lying upland of the North Tongass Highway.

PARCEL NO. 5:

That portion of U.S. Survey 1653, lying upland of the North Tongass Highway.

PARCEL NO. 6:

That portion of U.S. Survey 1655, lying upland of the North Tongass Highway.

PARCEL NO. 7:

That portion of U.S. Survey 1656, lying upland of the North Tongass Highway.

PARCEL NO. 8:

That portion of U.S. Survey 1659, lying upland of the North

Tongass Highway.

PARCEL NO. 9:

Lots 1-7, inclusive, Block 1, Lots 1-6, inclusive, Block 2, Lots 1-4, inclusive, Block 3, Lots 1-16, inclusive, Block 4 according to the subdivision plat of U.S. Survey 1754 recorded March 8, 1956 in Volume 1 of Plats at Packet 20.

PARCEL NO. 10:

United States Survey 812.

APPENDIX 4

VACATION OF COVENANTS AND EASEMENT

This Vacation of Easement and Covenants, made and entered into this _____ day of _____, 2002 by and between, KETCHIKAN GATEWAY BOROUGH, a municipal corporation, 344 Front Street, Ketchikan, Alaska 99501 ("Borough"), KETCHIKAN PULP COMPANY, a Washington corporation, Post Office Box 6600, Ketchikan, Alaska 99901 ("KPC"), and GATEWAY FOREST PRODUCTS, INC., an Alaskan corporation, Post Office Box 779, Ward Cove, Alaska 99928 ("Gateway"), WITNESSETH:

RECITALS

WHEREAS, all real property referred to in this Easement is located in, and all documents and plats referred as filed or recorded, are filed or recorded in the Ketchikan Recording District, First Judicial District, State of Alaska.

WHEREAS, on November 3, 1999, KPC and Gateway entered into an Allocation of Environmental Responsibilities Agreement ("Exhibit F") setting forth the environmental liabilities retained by KPC and those being assumed by Gateway; and

WHEREAS, the terms of Exhibit F were incorporated by reference into the Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities ("Exhibit F-1"); and

WHEREAS, the Quitclaim Deed, recorded in the Ketchikan Recording District on November 5, 1999 at Book 306, Page 72, effectuating the transfer of certain assets and real property from KPC to Gateway, specifically reserved and incorporated by reference the Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities; and

WHEREAS, the Borough thereafter acquired security interests in certain of the affected parcels or real property; and

WHEREAS, KPC, Gateway and the Borough now desire to release certain of the parcels of real property from the constraints of Exhibit F-1,

NOW, THEREFORE, in consideration of the promises and of the mutual agreements and covenants hereinafter set forth, the Borough, KPC and GFP hereby agree as follows:

The Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities (Exhibit F-1), shall hereby be vacated and be of no further force or effect with

respect to the following described property:

PARCEL NO. 1:

That portion of U.S. Survey 1056, lying northerly of the northerly boundary line of North Tongass Highway, being adjacent to U.S Survey 1754 and comprised of 6.39 acres.

PARCEL NO. 2:

Lots 1, 2, and 3, Block 2, U.S. Survey 1056, New Wacker Townsite, according to the plat thereof recorded June 14, 1965 as Instrument No. 65-1317.

PARCEL NO. 3:

That portion of U.S. Survey 1208, lying upland of the North Tongass Highway,

PARCEL NO. 4:

That portion of U.S. Survey 1508, lying upland of the North Tongass Highway.

PARCEL NO. 5:

That portion of U.S. Survey 1653, lying upland of the North Tongass Highway.

PARCEL NO. 6:

That portion of U.S. Survey 1655, lying upland of the North Tongass Highway.

PARCEL NO. 7:

That portion of U.S. Survey 1656, lying upland of the North Tongass Highway.

PARCEL NO. 8:

That portion of U.S. Survey 1659, lying upland of the North Tongass Highway.

PARCEL NO. 9:

Lots 1-7, inclusive, Block 1, Lots 1-6, inclusive, Block 2, Lots 1-4, inclusive, Block 3, Lots 1-16, inclusive, Block 4 according to the subdivision plat of U.S. Survey 1754 recorded March 8, 1956 in Volume 1 of Plats at Packet 20.

PARCEL NO. 10:

United States Survey 812.

PARCEL NO. 11:

U.S. Mineral Survey 1462, consisting of the White Rose No. 1, White Rose No. 2, Mutt, Jeff and Curio Placer Marble Mining Claims.

PARCEL NO. 12:

All and entire U.S. Survey No. 296 and U.S. Survey No., 297.

PARCEL NO. 13:

Those patented lode mining claims known as the Goo Goo and Goo Goo Extension No. 1 Lode Mining Claims designated by the Survey General as U.S. Mineral Survey 1598.

PARCEL NO. 14:

U.S. Mineral Survey 423, known as Seabreeze Lode Claim, located within Township 75 South, Range 94 East, Copper River Meridian.

PARCEL NO. 15:

Reversionary interest in and to 48.3 acre parcel above Ketchikan High School, gifted to University of Alaska in 1967:

All that certain portion of U.S. Survey 1229, more particularly described as follows: Beginning at Corner No. 2, the northeast corner of said U.S. Survey 1229, thence South 1591.27 feet to the true point of beginning; thence West 1117.31 feet; thence South 300.00 feet; thence West 297.70 feet; thence South 856.12 feet; thence S. 89°48' E. 236.46 feet; thence S. 0°12' W. 100.00 feet; thence S. 89°48' E. 86.21 feet; thence North 200 feet; thence S. 89°48' E. 650 feet; thence North 1901.07 feet, to the true point of beginning, containing 48.3 acres more or less; subject to the easement

for road purposes reserved by Shull Construction, Inc.

PARCEL NO. 16:

That certain patented mining claims being known as Green Marble and Royal Purple Marble, being more particularly described in that certain patent from the United States of America to Vermont Marble Company, recorded January 26, 1923 in Volume J of Deeds at Page 346 as follows: U.S. Mineral Survey 1042.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

GATEWAY FOREST PRODUCTS, INC.

B y

Richard D. Leary
Secretary

James K. Erickson
President

KETCHIKAN PULP COMPANY

B y

Christopher M. (Kit) Keyes
Secretary

Chris Paulson
President

KETCHIKAN GATEWAY BOROUGH

B y

Susan L. Bethel, Clerk

Gary L. Paxton
Interim Manager

STATE OF ALASKA)

FIRST JUDICIAL DISTRICT) : ss.

THIS IS TO CERTIFY that on this ____ day of _____, 2002, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared **Gary L. Paxton** and **Susan L. Bethel**, to me known to be the Interim Manager and the Clerk of the Ketchikan Gateway Borough, a municipal corporation established pursuant to the laws of the State of Alaska which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the borough seal thereto on behalf of the Borough and that the seal affixed thereto is the borough seal thereof; and who acknowledged to me that the same was signed freely and voluntarily on behalf of the Borough for the uses and purposes therein mentioned.

WITNESS my hand and seal the day and year last above written.

Notary Public in and for Alaska
My Commission Expires:_____

STATE OF ALASKA)
FIRST JUDICIAL DISTRICT) ss:

THIS IS TO CERTIFY that on this ____ day of _____, 2002, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **James K. Erickson** and **Richard D. Leary**, to me known to be the President and Secretary, respectively, of Gateway Forest Products, Inc., a corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the corporate seal thereto on behalf of said corporation and that the seal affixed thereto is the corporate seal thereof; who acknowledged to me that they signed and sealed 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 this certificate first above written.

Notary Public for Alaska
Commission expires: _____

STATE OF OREGON)
) ss:
COUNTY OF MULTNOMAH)

THIS IS TO CERTIFY that on this _____ day of _____, 2002, before me, the undersigned, a notary public in and for the State of Oregon, duly commissioned and sworn, personally appeared **Chris Paulson** and **Christopher M. (Kit) Keyes**, to me known to be the President and Secretary respectively of Ketchikan Pulp Company, a corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they was duly authorized to execute said instrument on behalf of said corporation and who acknowledged to me that he signed and sealed 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 this certificate first above written.

Notary Public for Oregon
Commission expires: _____

APPENDIX 5

USE SITE PREMISES

DRAWING INDICATING LOCATION OF NEW WATER USE SITE AND ASSOCIATED
EASEMENTS--JOHN IS TRANSMITTING SEPARATELY.

Lot 3-A I.S.S. 1056

10.942 Acres N.41°34'25"W.

R: 20.00 ft.
Dahli: 307°00'00"

L: 10.47 ft.
T: 5.36 ft.
LC: 10.35 ft.

Bearing: N.33°25'35"E

See Plat, Book 304, Page 123 for
Plant System's Easement, Plant
System's Easement, Not Included
Description.

Plant described in "Notice of
Plant System's Easement" in Book 304,
Page 127, R.R.D.

Filter

Plant

(50.00 ft.)

S.48°23'32"W.
Curb/road subdivision

S.26°35'55"E
324.33 ft.

N.44°03'37"W., 590.77 ft.

Tract A, Gateway
Subdivision #2
Lot designation removed
by this plot

414
Water
Use
5.1 ft
170'
170'

N.55°
N.55°0'
N.56°38'
N.57°20'28"
N.58°32'28"
N.59°45'02"E, 13.46 ft.
N.61°16'16"E, 13.24 ft. (N.63°
N.62°57'04"E, 13.24 ft.
N.64°50'24"E, 13.24 ft.

Private, Joint Use
Access Easement
shown
on plot of Gateway
Subdivision #2

Private, Joint Use Access
Easement shown on plot of
Gateway Subdivision #2

N.48°25'35"E
90.82 ft.
90.82 ft.
Utility pole
encroaches
3.3 ft.

Utility pole
encroaches
3.3 ft.
Utility pole
encroaches
3.3 ft.
Utility pole
encroaches
3.3 ft.

R: 359.48 ft.
Dahli: B5°52'05"
L: 539.76 ft.
T: 354.45 ft.
LC: 489.74 ft.
Chord Bearing: 5.71°12'41"E

Corner 4
U.S.S. 1056

Lot 3-A
N.48°25'35"E, 3.63 ft.
Road

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

APPENDIX 5
DRAFT
AGREEMENT

APPENDIX 6

COST-SHARING AGREEMENT FOR OUTFALL 001 AND EXISTING NPDES PERMIT

This Cost-Sharing Agreement For Outfall 001 and Existing NPDES Permit, made and entered into this _____ day of _____, 2002, by and between KETCHIKAN GATEWAY BOROUGH, a municipal corporation, 344 Front Street, Ketchikan, Alaska 99501 ("Borough"), KETCHIKAN PULP COMPANY, a Washington corporation, Post Office Box 6600, Ketchikan, Alaska 99901 ("KPC"), and GATEWAY FOREST PRODUCTS, INC., an Alaskan corporation, Post Office Box 779, Ward Cove, Alaska 99928 ("Gateway"), WITNESSETH:

RECITALS

WHEREAS, KPC formerly owned a pulp mill complex ("Site") adjoining Ward Cove in Ketchikan, Alaska;

WHEREAS, in November 1999, KPC sold the Site, substantially all of its operating assets, and other real properties in or near Ward Cove to Gateway;

WHEREAS, the sale to Gateway was pursuant to the terms and conditions of an Asset Purchase Agreement ("APA") dated November 3, 1999, by and between Gateway, as purchaser, and KPC, as seller;

WHEREAS, the APA provided that KPC would retain ownership of the solid waste landfills ("Landfills") located adjacent to the Site;

WHEREAS, the Landfills effluent is routed through a pipeline to the Site where it is connected to Gateway's wastewater discharge system and discharged through an outfall ("Outfall 001") into the waters of Ward Cove;

WHEREAS, the Site has a number of wastewater streams including stormwater and sanitary streams (collectively, "Site Wastewater") which are discharged through Outfall 001 or other permitted outfalls;

WHEREAS, the Landfills and the Site Wastewater were historically permitted by KPC under National Pollutant Discharge Elimination System ("NPDES") permit No. AK-000092-2 ("Gateway NPDES Permit");

WHEREAS, NPDES permit AK-000092-2 was transferred from KPC to Gateway pursuant to the APA;

WHEREAS, KPC closed the Landfills during 2001 and has applied

for an NPDES permit ("KPC NPDES Permit") to discharge Landfills effluent through a new outfall separate from Gateway's wastewater system;

WHEREAS, the APA provided that KPC would have the right to discharge Landfill effluent through Gateway's Outfall 001, located at the Site, under the Gateway NPDES permit, until such time as KPC had constructed a new outfall pipe and secured authorization to discharge under the KPC NPDES Permit;

WHEREAS, the Borough obtained real property interests in parcels at the Site through loans to Gateway over the period 1999-2001;

WHEREAS, Gateway filed for bankruptcy, No. K-01-00157 in the United States Bankruptcy Court for the District of Alaska, on February 23, 2001;

WHEREAS, Gateway was unsuccessful in its attempt to reorganize under Chapter 11 and is now in default of its payment obligations to the Borough and to KPC;

WHEREAS, Gateway is unable to carry out its obligations under the Gateway NPDES Permit without financial assistance from third parties;

WHEREAS, KPC is presently providing financial assistance to Gateway under a separate agreement to facilitate Gateway's continuing effort to carry out the obligations under the Gateway NPDES Permit;

WHEREAS, the Borough desires to foreclose on, and make beneficial use of, its real property interests at the Site;

WHEREAS, KPC desires to secure the KPC NPDES Permit as soon as possible, construct a new outfall for Landfill effluent, and thereafter discontinue the discharge of Landfill effluent through Outfall 001;

WHEREAS, Gateway, KPC, and the Borough acknowledge that the Gateway NPDES Permit is necessary to allow for continued and future activities at the Site, and the parties desire to ensure the continuing compliance of the Site, as well as their respective activities and properties, with the Clean Water Act and are entering into this Agreement as a temporary vehicle to provide for equitable sharing of the necessary costs in order to facilitate Gateway's continuing compliance with its obligations under the Gateway NPDES permit;

WHEREAS, Gateway, KPC, and the Borough share a common interest in ensuring that all parties at the Site fairly

contribute to NPDES costs attributable to their activities;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. Responsibility for Compliance.

(a) The Gateway NPDES Permit will continue to reside with Gateway and it agrees to exercise best efforts to ensure compliance with its terms.

(b) Any contractors or third parties engaged to assist in Gateway NPDES Permit compliance activities shall take direction and oversight from Gateway and it shall be responsible for ensuring that their work conforms to the requirements of the Gateway NPDES Permit.

2. Scope.

(a) This Agreement shall apply to laboratory costs, the costs of independent contractors to carry out compliance activities, supplies and equipment to carry out compliance activities, and other expenditures that are necessary (collectively, "Costs") for Gateway to carry out obligations required by the Gateway NPDES Permit as of June 2002. Material, non-routine expenditures shall be discussed and approved by the parties prior to being incurred unless exigent circumstances require immediate action.

(b) This Agreement does not apply to the costs of Gateway employees or to the internal costs of KPC, the Borough, or their respective agents with respect to the Gateway NPDES Permit or activities covered or proposed to be covered thereunder.

(c) This Agreement does not apply to the costs incurred by KPC to secure the KPC NPDES Permit or to the costs incurred by the Borough to obtain regulatory authorizations for sludge treatment or any activities or operations at the Site not contemplated by the Gateway NPDES permit as of June 2002. It is understood that KPC shall not be responsible for any costs related in any manner to the re-issuance of the Gateway NPDES Permit covering discharges excluding the landfill effluent. KPC and the Borough shall bear fully their own costs and the incremental costs, if any, accruing to Gateway under the Gateway NPDES Permit which are attributable solely to the separate activities or operations of KPC or the Borough, as the case may be.

(d) This Agreement does not apply to any penalties, fines, attorney's fees, or other costs resulting from noncompliance associated with the Gateway NPDES Permit.

3. Cost-Sharing.

(a) KPC shall be responsible for providing funding for 70% of the Costs.

(b) The Borough shall be responsible for providing funding 30% of the Costs.

(c) The Borough, Gateway, and KPC shall use their best efforts to secure funding or in-kind services from existing and future owners, tenants, and other third parties having activities or operations at the Site based on: the nature of activities which lead to the generation of wastewater; the nature of pollutants generated at the Site and resultant or increased burden of sampling and laboratory costs; the size of the business (if relevant); the number of employees; and other pertinent factors. Additional funding or services shall not reduce the relative percentage (KPC 70%, Borough 30%) of KPC's and the Borough's funding obligations but shall reduce the overall Costs to which the percentages are applied by the amount of the third party contributions.

4. Term.

This Agreement shall remain in full force and effect until KPC obtains the KPC NPDES Permit and completes construction of its own outfall, at which time KPC's portion of the cost sharing shall terminate.

5. Payments.

KPC shall pay Costs directly and provide the Borough a monthly invoice setting forth an accounting of its costs. The Borough shall pay the invoice within thirty days of receipt.

6. No Third-Party Beneficiaries.

This Agreement is for the sole benefit of the parties hereto and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

7. Interpretation.

This Agreement is subject to the Agreement to which it is appended except to the extent matters are expressly addressed herein.

8. Reservations.

(a) Nothing herein provides KPC or the Borough with any operational interest in the Gateway NPDES Permit or with respect to the Site or activities or operations at the Site.

(b) Nothing herein affects the applicability of the APA and its ancillary agreements including Exhibits F and F-1 to the APA. to the extent they continue to apply. Furthermore nothing herein affects the applicability of the new Borough/KPC Agreement to the extent it applies.

(c) Nothing herein affects the applicability of the funding agreement executed by KPC and Gateway on April 30, 2002.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and date first written above.

KETCHIKAN GATEWAY BOROUGH

By: _____
Gary L. Paxton, Interim Manager

KETCHIKAN PULP COMPANY

By: _____
Chris Paulson, President

GATEWAY FOREST PRODUCTS, INC.

By: _____
James K. Erickson, President