

Case No. 13-35759

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KONIAG, INC. and MICHAEL P. O'CONNELL,

Plaintiffs-Appellees,

v.

KURT KANAM and ORBIE MULLINS,

Defendants-Appellants.

Appeal from the United States District Court, District of Alaska,
District Court No. 3:12-cv-00077-SLG

**MOTION FOR RECONSIDERATION OF ORDER ISSUED BY
APPELLATE COMMISSIONER (Docket No. 8)**

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I. INTRODUCTION

Plaintiffs-Appellees Koniag, Inc. and Michael P. O’Connell (collectively “Koniag”) respectfully request reconsideration, pursuant to Ninth Circuit Rule 27-10, of the Appellate Commissioner’s January 24, 2014 Order at Docket Number 8 (the “Order”). On September 12, 2014, the Court issued a show cause order because the notice of appeal filed by Defendants-Appellants Kurt Kanam (“Kanam”) and Orbie Mullins (“Mullins”) did not challenge an appealable order. *See* Dkt. 3. Kanam and Mullins subsequently filed a “Notice of Amended Appeal” on September 26, 2013, challenging a district court order issued on July 29, 2013. In response, the Appellate Commissioner discharged the previously issued show cause order, and concluded that the September 26, 2013 Notice of Amended Appeal filed by Kanam and Mullins was timely because it was filed within the 60-day deadline provided in 28 U.S.C. § 2107(b) for cases where the United States government is a party. Order at 2. The Order was premised on the fact that Kanam filed a “Cross Complaint” in the underlying litigation listing the presiding district court judge and the Regional Director of the U.S. Fish and Wildlife Service as parties to the case. *Id.*; *see also* Dist. Ct. Dkt. 71 (“Cross Complaint” signed by Kanam).¹

¹ A copy of the “Cross Complaint” is attached as Exhibit A.

Because Kanam and Mullins' Notice of Amended Appeal was not filed until after the Court issued its September 12, 2014 show cause order, the Court did not identify the applicability of 28 U.S.C. § 2107(b) as an issue of concern. Consequently, no party addressed the applicability of that provision, and the Appellate Commissioner issued the Order without the benefit of briefing on the scope of 28 U.S.C. § 2107(b). Reconsideration of the Order is necessary and appropriate in this instance because the Order misunderstands the status of the United States in this litigation and overlooks controlling precedent in *United States ex rel. Eisenstein v. City of New York, New York*, 556 U.S. 928, 935 (2009), which explains that the 60-day period in 28 U.S.C. § 2107(b) applies "only when the United States is an actual 'party'" to the case.

As explained more fully below, no agency or employee of the United States is an actual "party" to this case. Federal Rule of Civil Procedure ("Civil Rule") 21 requires leave of the court to add an additional party during the course of litigation. As the district court explained, Kanam never sought leave to file his Cross Complaint, and the district court did not accept the Cross Complaint as a properly filed pleading. *See* Dist. Ct. Dkt. 78 n.1;² Dist. Ct. Dkt. 107 n.5.³ Accordingly, the federal employees listed in Kanam's Cross Complaint are not parties in this

² A copy of the district court's order is attached as Exhibit B.

³ A copy of the district court's order is attached as Exhibit C.

case and the 60-day time limit in 28 U.S.C. § 2107(b) has no application here. Reconsideration is therefore warranted.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. District Court Proceedings

Koniag initiated this lawsuit in federal district court in Alaska seeking injunctive and other prospective relief against Kanam, a tribal attorney for the Native Village of Karluk, and Mullins, a Village of Karluk Tribal Court Judge. *See* Dist. Ct. Dkt. 60 at 1. Specifically, Koniag sought a permanent injunction precluding the tribal court from exercising jurisdiction over it in certain matters. *Id.* at 2.

On June 3, 2013, Kanam filed a “Cross Complaint” in the district court without seeking leave to do so. Dist. Ct. Dkt. 71.⁴ The Cross Complaint states that “[t]his in an action to declare that the offices of [sic] Office of Sharon Gleason,” the presiding U.S. District Court Judge, and “the office of Geoffrey Haskett,” the Regional Director of the U.S. Fish and Wildlife Service, “have notice that Plaintiff Koniag is engaged in a violation of the False Claim Act [sic] by using a legally flawed and fraudulent [sic] merger agreement to cottect [sic] tax dollars with a mitigation agreemeent [sic] with [the] United States.” *Id.* at 1. The Cross Complaint proceeds to allege wrongdoing against Koniag, but not against the district court

⁴ *See* Exhibit A.

judge or the Regional Director. *Id.* The Cross Complaint then asks the district court to declare that the “Offices of Sharon Gleason and Office of Geoffrey Haskett have a duty to take action [to] protect the American people from a violation of the False Claim Act.” *Id.* at 3.

The district court did not accept the cross-complaint as a properly filed pleading because it was not accompanied by a motion for leave to amend the pleadings. *See* Dist. Ct. Dkt. 78 n.1; *see also* Dist. Ct. Dkt. 107 n.5.⁵ Kanam did not subsequently seek leave to amend his pleadings or to add parties to the case. There is also no evidence in the district court record that Kanam ever served the Cross Complaint. *See* Dist. Ct. Dkt. 72.

On July 3, 2012, the district court granted Koniag’s motion for a preliminary injunction, prohibiting Kanam and Mullins from retaining, exercising, or threatening to exercise jurisdiction in tribal court. Dist. Ct. Dkt. 31 at 15. Kanam and Mullins did not comply with the injunction, and continued to attempt to retain jurisdiction. Dist. Ct. Dkt. 66. On May 16, 2013, Koniag filed a motion for contempt and sanctions, and for a permanent injunction against Kanam and Mullins. *Id.* Kanam and Mullins did not file an opposition to the motion. *See* Dist. Ct. Dkt. 78 n.1.

⁵ *See* attached Exhibits B and C, respectively.

On July 29, 2013, the district court granted Koniag's request for a permanent injunction, explaining that "[n]o opposition to the motion has been filed" and that there was "no genuine question of material fact as to [Koniag's] claim against Defendants that under federal common law Defendants do not have the legal right to exercise, retain, or threaten tribal court jurisdiction over the Plaintiffs" in any of the identified actions. Dist. Ct. Dkt. 78 at 2. Further, the court found that Koniag had suffered and would suffer irreparable harm, and the balance of equities weighed in favor of a permanent injunction. *Id.* at 4.

The court then ordered Kanam and Mullins to dismiss the tribal court actions within 10 days. *Id.* Kanam and Mullins did not comply with that order either. The court also set a hearing on contempt and sanctions for August 26, 2013. Dist. Ct. Dkt. 77. On September 25, 2013, the district court issued an order finding Kanam and Mullins in civil contempt. Dist. Ct. Dkt. 100. Kanam and Mullins were again ordered to dismiss pending tribal actions against Koniag, and file proof of that dismissal within 21 days. *Id.* No such notice has yet been received in the docket, and Kanam and Mullins remain in contempt. *See* Dist. Ct. Dkt. 103.

B. Proceedings on Appeal

On August 19, 2013, Kanam and Mullins filed a notice of appeal in the district court. Dkt. 1. The notice was filed on behalf of a non-party (Alicia Reft)⁶ and did not identify a specific order. Instead the notice provides:

Notice is her[e]by given that Alicia Reft defendant in the above action is her[e]by affirming an order upholding the Jurisdiction and removal Act of 1874 and the Indian Self-Determination Act entered in this action on the 8 of August 2013.

Dist. Ct. Dkt. 86 at 1. The district court reviewed that notice of appeal and found it deficient on its face because the court's jurisdictional determination is not immediately appealable. Dist. Ct. Dkt. 89. Accordingly, the district court disregarded the notice of appeal and proceeded to adjudicate the case.

On September 12, 2013, this Court issued an order to show cause as to why this appeal should not be dismissed. As the Court explained, "the district court's July 29, 2013 order granting a permanent injunction would be immediately appealable," but the August 19, 2013 notice of appeal "does not challenge the district Court's July 29, 2013 order." Dkt. 3 at 1. Instead, the notice of appeal appeared to challenge a jurisdictional ruling that is not immediately appealable. *Id.* at 2.

In response to the order to show cause, Kanam and Mullins filed their "Notice of Amended Appeal and Answer to Show Cause" in this Court. No such

⁶ Reft is a defendant in a separate action, *Koniag, Inc. v. Reft*, 3:13-cv-00051-SLG.

Notice of Amended Appeal was filed in the district court. The Notice of Amended Appeal changed the order appealed – from some unidentified jurisdictional decision to the July 29, 2013 permanent injunction – and the party appealing – from Reft to Mullins and Kanam – as follows:

Notice is hereby given that Orbie Mullins and Kurt Kanam defendant[s] in above action is her[e]by appeal the district court order of July 29, 2013 Dct. #79. [sic]

Dkt. 5. The Notice of Amended Appeal provides no response to the jurisdictional issues identified in the show cause order.

Koniag responded to the show cause order (Dkt. 6) by providing the Court with a host of reasons why the Notice of Amended Appeal was deficient including: (1) Kanam and Mullins did not seek leave to amend their notice of appeal; (2) even if they had sought such leave, the test for allowing an amendment of a notice of appeal – whether the intent to appeal the specific judgment can be fairly inferred from the original appeal – is not met here; and (3) any such amendment would be futile because Kanam and Mullins filed no opposition to Koniag's summary judgment motion requesting a permanent injunction, and therefore they have waived all challenges to the July 29, 2013 order on appeal. *See USA Petroleum Co. v. Atl. Richfield Co.*, 13 F.3d 1276, 1280 (9th Cir. 1994) (failure to present evidence to oppose summary judgment waives issue on appeal).

On January 24, 2014, the Appellate Commissioner issued the Order that is the subject of this motion. The Order did not address any of the arguments presented by Koniag regarding the requirements for amending a notice of appeal. Instead, the Order concluded that amended notice of appeal was itself timely because it was filed within the 60-day deadline set forth in 28 U.S.C. § 2107(b) for appeals involving a federal party. This motion for reconsideration followed.

III. ARGUMENT

Under Ninth Circuit Rule 27-10, the Court may grant reconsideration on a showing that there are “points of law or fact which, in the opinion of the movant, the Court has overlooked or misunderstood.” The Order found jurisdiction over this appeal under 28 U.S.C. § 2107(b) “because appellants’ June 3, 2013 cross-complaint names a federal party to the underlying action.” Order at 2. Reconsideration is warranted here because (1) the Order overlooked the controlling standard set forth in *Eisenstein*, 556 U.S. at 935, explaining that 28 U.S.C. § 2107(b) applies “only when the United States is an actual ‘party’” and not merely a nominal party, and (2) the Order misunderstands procedural posture of the case and incorrectly presumed that the presiding district court judge and the Regional Director are actual parties in this case.

Starting with the legal standard, 28 U.S.C. § 2107(b) extends the appeal deadline from 30 days to 60 days provided:

one of the parties is -- (1) the United States; (2) a United States agency; (3) a United States officer or employee sued in an official capacity; or (4) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States.

Thus, in order for 28 U.S.C. § 2107(b) to apply at all, “one of the parties” to the case must be the United States, or an officer or employee.

The U.S. Supreme Court in *Eisenstein* addressed the meaning of “party” as set forth in 28 U.S.C. § 2107(b).⁷ In that case, the Court addressed whether the government was a party in a civil action brought by private plaintiffs on behalf of the federal government under the False Claims Act. The federal government was a nominal party in that case, and was in fact the “real party in interest” because the purpose of the False Claims Act is to recover damages for the United States. 556 U.S. at 934.

The Court concluded that, despite being the real party in interest, the federal government was not a “party” under 28 U.S.C. § 2107(b). *Id.* at 935. As the Court explained, “[a] person or entity can be named in the caption of a complaint without necessarily becoming a party to the action.” *Id.* (citing 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1321, at 388 (3d ed.

⁷ In 2011, Congress amended 28 U.S.C. § 2107(b) to provide greater clarity on the types of employees and former employees covered by the provision. In so doing, the nomenclature in the act shifted from “a party” to “one of the parties.” The Supreme Court’s decision in *Eisenstein* therefore refers to “party” rather than “parties.”

2004) (“[T]he caption is not determinative as to the identity of the parties to the action[.]”). Instead, “[a] ‘party’ to litigation is ‘[o]ne by or against whom a lawsuit is brought.’” *Id.* at 933 (quoting *Black’s Law Dictionary* 1154 (8th ed. 2004)). In addition, “[a]n individual may also become a ‘party’ to a lawsuit by intervening in the action.” *Id.* The Court held that the government was not the actual party bringing the action under the False Claims Act, did not choose to intervene in the case, and therefore was not an actual “party” to the case. *Id.*

Applying this standard, it is readily apparent that the presiding district court judge and the Regional Director are not parties in this case either. Civil Rule 21 provides that the district court may, “[o]n motion or on its own, . . . add or drop a party.” Rule 21 (emphasis added). As this Court has explained, “[w]hen a party is added in an on-going lawsuit, the approval of the court is required by Rule 21.” *Hoffman for & on Behalf of N.L.R.B. v. Beer Drivers & Salesmen’s Local Union No. 888, Int’l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am.*, 536 F.2d 1268, 1272 (9th Cir. 1976) (emphases added). Rule 21 thus governs the process for “adding new parties to an action and this can only be accomplished upon *motion* by any party and *order of the Court* or on the Court’s own initiative.” *Perry v. Snyder*, 33 F.R.D. 361, 362 (E.D. Pa. 1963). A pleading that is submitted purporting to add new parties without compliance with Rule 21’s motion and order

requirements “is ineffective insofar as it attempts to add additional parties.” *Spencer v. Dixon*, 290 F. Supp. 531, 535 (W.D. La. 1968).

Kanam did not seek leave to add either the presiding district court judge or the Regional Director as a “party” as required by Rule 21. Absent such a motion, the Cross Complaint was therefore legally “ineffective” as a means of adding additional parties. Moreover, the court below did not, on its own initiative, add those federal parties to the case, and to the contrary explained that it was taking no action with respect to Kanam’s Cross Complaint because he failed to seek leave of the court. *See* Dist. Ct. Dkt. 78 n.1; Dist. Ct. Dkt. 107 n.5.⁸ Therefore, pursuant to Rule 21, the presiding district court judge and Regional Director are not parties to the underlying case, and accordingly cannot be “parties” under 28 U.S.C. § 2107(b).

In any event, even if leave of the court were not required before a defendant unilaterally added another party to the case (and it is), a review of the complaint shows that the putative federal defendants are, at best, only nominal parties to the Cross Complaint. Although difficult to comprehend, the Cross Complaint appears to allege that Koniag violated the False Claims Act. *See* Dist. Ct. Dkt. 71 at 2.⁹ The Cross Complaint makes no allegations against the federal employees other than to state that they “have a duty to take action [to] protect the American people

⁸ *See* Exhibits B and C, respectively.

⁹ *See* Exhibit A.

from a violation of the False Claim Act.” Dist. Ct. Dkt. 71 at 2, 3. But the Supreme Court in *Eisenstein* has already made clear that the United States cannot be made a “party,” as contemplated in 28 U.S.C. § 2107(b), in an action under the False Claims Act “unless it has exercised its right to intervene in the case.” 556 U.S. at 931. That, of course, has not happened here, and Kanam and Mullins cannot circumvent that holding by filing an unauthorized pleading seeking a declaration that federal parties have a “duty” under the False Claims Act.

IV. CONCLUSION

For the foregoing reasons, and those previously discussed in Koniag’s brief (Dkt. 6), Koniag respectfully requests that the Court reconsider its Order, and dismiss this appeal as untimely.

DATED: February 7, 2014.

Respectfully submitted,

STOEL RIVES LLP

By: s/ James E. Torgerson
JAMES E. TORGERSON
(BAR NO. 8509120)
RENEA I. SAADE
(BAR NO. 0911060)

Attorneys for Plaintiffs-Appellees

CERTIFICATE OF SERVICE AND FILING

I hereby certify that on the 7th day of February, 2014, I electronically filed the foregoing **Motion For Reconsideration Of Order Issued By Appellate Commissioner** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that Defendants-Appellants were served on the same date via U.S. First Class Mail as follows:

Mr. Kurt Kanam
Tribal Attorney
Karluk Tribe
2103 Harrison Street, #143
Olympia, WA 98502

Honorable Orbie Mullins
Village of Karluk Tribal Judge
Native Village of Karluk
PO Box 237
Toledo, WA 98591

s/ James E. Torgerson
James E. Torgerson

75517449.2 0078125-00029

Kurt Kanam
2103 Harrison #143
Olympia WA 98502

RECEIVED
JUN 03 2013
CLERK, U.S. DISTRICT COURT
ANCHORAGE, A.K.

UNITED STATES DISTRICT COURT AT
FOR THE DISTRICT OF ALASKA

KONIAG

3:12 cv 00077 SLG
CROSS COMPLAINT

V
MULLINS &
KANAM

V

Office of Sharon Gleason
and the Office of Geoffrey Haskett
USFW Regional Director

INTRODUCTION

This is an action to declare that the offices of Office of Sharon Gleason and the Office of Geoffrey Haskett have notice that Plaintiff Koniag is engaged in a violation of the False Claim Act by using a legally flawed and fraudulent merger agreement to collect tax dollars with a mitigation agreement with United States.

PARTIES

Kurt Kanam 2103 Harrison #143 Olympia WA 98502

Office of Sharon Gleason U.S. District Court 222 W. 7th Avenue, #4
Anchorage, AK 99513

and the Office of Geoffrey Haskett

USFW Regional Director
1011 East Tudor Road, MS 171
Anchorage, Alaska 99503

ALLIGATION

1 In 1987 the Alaska Superior Court declared that the 1980 Koniag /Karluk Native Corporation merger was fraudulent/legally flawed. Attachment A.

2 Koniag Inc went on to enter a mitigation agreement with The Untied States Fish and wildlife agency and has since collect over \$5,000,000 in violation of the false claim act, and therefore stealing tax money from the American people. Attachment B

3 The Offices of Sharon Gleason and the Office of Geoffrey Haskett USFW Regional Director have a duty to take action protect the American people from a violation of the False Claim Act.

JURISDICTION

This action is under the Administrative Procedures and and declaratory Judgments Act.

REQUEST FOR RELIEF

Plaintiff request that this court declare the following:

1 In 1987 the Alaska Superior Court declared that the 1980 Koniag /Karluk Native Corporation merger was fraudulent/legally flawed. Attachment A.

2 Koniag Inc went on to enter a mitigation agreement with The United States Fish and wildlife agency and has since collect over \$5,000,000 in violation of the false claim act, and therefore stealing tax money from the American people. Attachment B

3 The Offices of Sharon Gleason and the Office of Geoffrey Haskett USFW Regional Director have a duty to take action protect the American people from a violation of the False Claim Act.

Date 9/29/13



Kurt Kanam

2103 Harrison #143

Olympia WA 98502

1-6-84
FILED IN OPEN COURT
8:00 PM

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

ARNOLD A. OLSEN, et al.,
Plaintiffs,
vs.
AFOGNAK NATIVE CORPORATION,
et al.,
Defendants.

Case No. 3AN-80-8227 CIV

NICHOLAS SHURAVLOFF, et al.,
Plaintiffs,
vs.
KONIAG, INC., et al.,
Defendants.

Case No. 3AN-81-8353 CIV

RALPH ELJUSKA, et al.,
Plaintiffs,
vs.
KONIAG, INC., et al.,
Defendants.

Case No. 3AN-82-4218 CIV

VICTOR PETERSON, et al.,
Plaintiffs,
vs.
KONIAG, INC., et al.,
Defendants.

Case No. 3AN-82-5673 CIV

SPECIAL VERDICT FORM

We, the jury in the above-entitled case, find the following on the questions submitted to us.

Part I

1. Do you find by a preponderance of the evidence that Defendant J. F. Morse is liable for violating the Alaska Securities Act, AS 45.55.220(c)? (Check "yes" or "no" below.)

Yes No

2. Do you find by a preponderance of the evidence

that Defendant J. F. Morse breached his fiduciary duties to Koniag, Inc. and/or its shareholders? (Check "yes" or "no" below.)

Yes _____ No

3. If you answered "yes" to question No. 2 above, do you find by a preponderance of the evidence that defendant Morse's breach of fiduciary duty was a proximate cause of damage to plaintiffs? (Check "yes" or "no" below.)

Yes _____ No

Part II

4. Do you find by a preponderance of the evidence that the attorney defendants, or any of them, aided and abetted in a securities law violation in this case?

(Check "yes" or "no" as to each of those listed below.)

Dan Hensley Yes No _____

Margie MacNeille Yes No _____

Ed Weinberg Yes No _____

The law firm of Duncan, Weinberg, Miller, et al. Yes No _____

5. a. Do you find by a preponderance of the evidence that the attorney defendants, or any of them, were negligent?

(Check "yes" or "no" as to each of those listed below.)

Dan Hensley Yes No _____

Margie MacNeille Yes No _____

Ed Weinberg Yes No _____

The law firm of Duncan, Weinberg, Miller, et al. Yes No _____

b. If you answered "yes" as to any one or more of the attorneys in answers to question No. 5a above, then you must answer the following question:

Do you find by a preponderance of the evidence that such negligence was a proximate cause of damage to any of the plaintiffs? (Check "yes" or "no" as to each of those

listed below.)

Dan Hensley	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Margie MacNeille	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Ed Weinberg	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
The law firm of Duncan, Weinberg, Miller, et al.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

6. Do you find by a preponderance of the evidence that the attorney defendants, or any of them, breached their fiduciary duties to any of their clients in this case?

(Check "yes" or "no" as to each of those listed below.)

Dan Hensley	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Margie MacNeille	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Ed Weinberg	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
The law firm of Duncan, Weinberg, Miller, et al.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

7. If you answered "yes" as to any one or more of the attorneys in answers to question No. 6 above, then you must answer the following question:

Do you find by a preponderance of the evidence that such breach of fiduciary duty was a proximate cause of damage to any of the plaintiffs? (check "yes" or "no" as to each of those listed below.)

Dan Hensley	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Margie MacNeille	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Ed Weinberg	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
The law firm of Duncan, Weinberg, Miller, et al.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

Part III

8. Do you find by a preponderance of the evidence that defendant Coopers & Lybrand aided and abetted a securities law violation in this case?

Yes No

9. Do you find by a preponderance of the evidence that defendant Coopers & Lybrand was negligent?

(Check "yes" or "no" below.)

Yes _____ No

10. If you answered "yes" to question No. 9 above, then you must answer the following question:

Do you find by a preponderance of the evidence that such negligence was a proximate cause of damage to any of the plaintiffs? (Check "yes" or "no" below.)

Yes _____ No _____

DATED: January 6, 1984.

Douglas B. Murray

Jury Foreperson

-4-

KRITUS
10/14/13

IN THE TRIAL COURTS FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

Arnald Olson, et al
Plaintiff,

vs.

Ofognak Marine Corp. et al
Defendant.

1-6-84
ide

Case No. *3/11-80-9227 Case*

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

BAILIFF'S OATH

I, *Alvinette Rae*, duly appointed as Bailiff by the Trial Court do hereby swear to keep and maintain this oath as follows:

- 1. I, having the jury under my charge, shall keep the jurors together and separate from others persons.
- 2. I shall not suffer any communication to be made to the jury nor make any myself except to ask the jury if they have agreed upon their verdict.
- 3. I will not, before the verdict is returned, communicate to any person the state of their deliberations or the verdict agreed upon.

SO HELP ME GOD.

DATED at Anchorage, Alaska, this *4th* day of *January*, 19*84*.

Alvinette C. Rae
Bailiff

SUBSCRIBED AND SWORN to before me this *4th* day of *January*, 19*84*.


Dell Kook
Deputy Clerk or Notary Public

APPOINTMENT OF BAILIFF

I, the undersigned Trial Court Judge, presiding in the above entitled matter, hereby appoint _____ as Bailiff and officer of the Court to keep and maintain the jury under his charge according to law.

DATED at Anchorage, Alaska, this *4th* day of *January*, 19*84*.

Dayton S. Soderberg
Trial Court Judge


2002-003445-0 *Clough*
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STATE BUSINESS - NO CHARGE


**MASTER AGREEMENT
 FOR PROTECTION OF CERTAIN
 LANDS AND RESOURCES
 BETWEEN KONIAG, INC.,
 THE UNITED STATES OF AMERICA,
 AND THE STATE OF ALASKA**

July 31, 2002



SUMMARY OF THE CONTENTS

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- Exhibit VII Termination and Release
- Exhibit VIII Quitclaim Deed
- Exhibit IX Subsistence Trails Map



**AGREEMENT FOR PROTECTION OF CERTAIN
LANDS AND RESOURCES BETWEEN
KONIAG, INC., THE UNITED STATES OF AMERICA,
AND THE STATE OF ALASKA**

THIS AGREEMENT FOR PROTECTION OF CERTAIN LANDS AND RESOURCES (hereinafter, "Agreement") is entered into by and between Koniag, Inc., (hereinafter, with its successors and assigns "Koniag"), a Native Regional Corporation authorized pursuant to the Alaska Native Claims Settlement Act (hereinafter "ANCSA"), as heretofore amended, 43 U.S.C. § 1601, *et seq.*, and duly organized under the business for profit laws of the State of Alaska; the United States of America (hereinafter "United States"); and the State of Alaska (hereinafter "State"). Koniag, the United States and the State are collectively referred to as "the Parties".

W I T N E S S E T H :

WHEREAS, in 1980, pursuant to that certain merger under the laws of the State of Alaska and in accordance with the provisions of ANCSA, 43 U.S.C. § 1627, the Karluk Native Corporation and Nu-Nachk Pit, Inc. were merged into Koniag. Accordingly, Koniag became the successor-in-interests to the rights and obligations of the Karluk Native Corporation and Nu-Nachk Pit, Inc., including, but not limited to, the ownership of those lands previously conveyed to each such Village Corporation pursuant to the provisions of ANCSA, as well as the rights of each such Village Corporation to receive title to such other lands which had been previously validly selected but not yet conveyed to them up to their remaining ANCSA entitlement (hereinafter, references to Koniag shall include Koniag as well as its predecessors in interest where appropriate).

WHEREAS, as the result of such merger, Koniag presently owns the surface estate of lands on Kodiak Island, including approximately 56,800 acres within the boundaries of the Kodiak National Wildlife Refuge ("KNWR") and which are the subject of this Agreement. The subsurface rights associated with these lands within KNWR are held by the United States.

WHEREAS, these lands are within the oil spill area as defined by the *Exxon Valdez* Oil Spill Trustee Council ("Trustee Council") in the Final Restoration Plan which was approved on November 2, 1994.

WHEREAS, Koniag and the United States have previously completed the acquisition in fee of those lands identified in their December 1995 purchase agreement.

Master Agreement Between Koniag, Inc.,
the United States of America, and
the State of Alaska



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WHEREAS, the Parties now desire to enter into a new, long-term agreement which will provide for the protection of certain additional Koniag lands and resources as part of the Trustee Council program to restore the natural resources and services that were injured by the *Exxon Valdez* Oil Spill ("EVOS").

WHEREAS, implementation of this Agreement fulfills the obligations and expectations of the parties to the December 1995 agreement as to a process for identifying and protecting additional lands owned by Koniag and not included in the prior sale to the United States.

WHEREAS, these lands include important habitat for various species of fish and wildlife for which significant injury resulting from the spill has been documented through the Trustee Council's habitat benefit analysis. This analysis has indicated that these lands generally have high value for the restoration of such injured natural resources as pink salmon, sockeye salmon, Dolly Varden, Pacific herring, black oystercatcher, harbor seal, harlequin duck, bald eagle, the intertidal/subtidal biota, marbled murrelet, pigeon guillemot, river otter, sea otter and cultural and archeological resources. This analysis has also indicated that these lands generally have high value for the restoration of injured services that rely on these natural resources, including commercial fishing, wilderness, recreation, tourism and subsistence. Restoration of the injured species will benefit from the conservation easements provided for herein and the resulting protection of this important habitat.

WHEREAS, these lands are located wholly within the boundaries of the KNWR and their protection will ensure the preservation of a significant portion of one of the nation's most productive and unique ecosystems.

WHEREAS, recently, on private lands within the KNWR, development and construction have included lodges, private residences and recreational cabins. Many of the sites are located near key water bodies. The development of these sites can have a significant impact, particularly on a cumulative basis, on water quality and the injured natural resources and services.

WHEREAS, the Department of the Interior ("Department") has determined that implementation of this Agreement will enhance the protection of the outstanding natural values of the areas as a part of KNWR and will further the purposes set forth in the Alaska National Interests Lands Conservation Act (hereinafter, "ANILCA"), 16 U.S.C. § 3101.

WHEREAS, the Department is authorized by statute to obligate and expend EVOS settlement funds for restoration purposes.

WHEREAS, the interests in lands subject to the terms of this Agreement were acquired by Koniag pursuant to the provisions of ANCSA and, except as noted otherwise in Departmental

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records, remain generally undeveloped and unchanged in character and condition from that which existed at conveyance to Koniag by the United States.


WHEREAS, the lands subject to this Agreement are of particular value to meet the restoration goals and objectives of the Trustee Council, as well as the conservation objectives established for the National Wildlife Refuge System.

NOW THEREFORE, in consideration of their mutual promises and other good and valuable consideration, the Parties covenant and agree as follows:

(1) General Overview of Agreement. The purpose of this Section is to facilitate understanding of the various transactions provided for in this Agreement. The provisions of the specific sections of this Agreement that follow and the various instruments attached as exhibits hereto, are controlling as to the requirements relating thereto.

Koniag will extend the expiration date for the existing Non-Development Easements and the State Access and Use Easement generally covering the Koriuk and Sturgeon River drainages from December 15, 2001, to October 15, 2002 (see the Seventh Amendment to the Non-Development Easements in the form set forth at attached Exhibit I). A payment by the United States of \$300,000 for this extension is due within 15 days after execution of the Seventh Amendment to the Non-Development Easements. These easements will be replaced upon the expiration of the foregoing extension on October 15, 2002, by a Conservation Easement in the form set forth at attached Exhibit II and with an initial term of ten years. The U.S. Fish and Wildlife Service (hereinafter "Service") and Koniag shall meet pursuant to the terms of the Conservation Easement. Also effective October 15, 2002, the Camp Island Limited Development Easement in the form set forth at attached Exhibit III will commence and run concurrently with the term of the Conservation Easement. Under this Agreement, Koniag, in its sole discretion and at its sole option, may sell to the United States, no earlier than December 15, 2012, the lands subject to the Conservation Easement. In return for these two easements and the option to sell, the United States will cause to be established as of October 15, 2002, a Special Account from which payments for these easements to Koniag will be made. The Special account will be funded by a deposit of \$29,800,000, unless Koniag elects to exchange with the Service certain lands along Uyak and Zachar Bays, in which event the deposit will be \$29,550,000, of the joint settlement funds and invested following consultation with Koniag. From this account, annual payments to Koniag will be made for these easements, as well as the payment of applicable investment fees. Should Koniag elect to exercise its option to sell to the United States the lands subject to the Conservation Easement, Koniag would transfer to the United States and/or the State, as applicable, the State Conservation Easement in the form set forth at attached Exhibit IV, the Limited Warranty Deed in the form set forth at attached Exhibit V, and the Permanent Camp Island Limited Development Easement in the form set forth at attached Exhibit VI and would receive the funds remaining in the Special Account. See Section 21 for the special

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obligations of Koniag with respect to resolving title issues concerning certain lands on or near the east shore of Uyak Bay.

(2) Koniag Selections. The Parties are uncertain whether Koniag, as successor to Karluk Native Corporation and Nu-Nachk Pit, Inc., has now received from the United States all of such Village Corporations' remaining ANCSA entitlement within the Kodiak NWR. Should a subsequent determination find that such entitlement within the Refuge remains unfulfilled, Koniag agrees to prioritize any future conveyances from the United States so it receives land outside the Refuge whenever legally permissible to do so. Should the conveyance of such remaining entitlement outside the Refuge not be legally permissible, Koniag agrees to execute the appropriate instruments in order that such lands will be treated in the same manner as are other Koniag lands under this Agreement.

(3) Closings.

(a) Subject to the terms and conditions set forth in this Agreement, the Initial Closing shall take place before August 1, 2002, at a location mutually agreeable to the parties and at which Initial Closing the parties shall execute and accept the Seventh Amendment to the Non-Development Easements;

(b) Subject to the terms and conditions set forth in this Agreement, a closing shall take place on such date that is on or prior to August 31, 2002, or such other date, and at a location, mutually agreeable to all parties. At such closing (hereinafter "3(b) Closing"), the following instruments shall be executed and delivered to the United States, and where applicable, the State of Alaska:

(i) Conservation Easement in the form set forth in attached Exhibit II; and

(ii) Camp Island Limited Development Easement in the form set forth in attached Exhibit III.

(c) The United States shall be responsible for promptly recording these instruments and the payment of costs customarily paid by the United States for the acquisition of lands and interests in lands.

(4) Elections of Koniag. The initial term of the Conservation Easement and the Camp Island Limited Development Easement are each ten (10) years. No later than July 15, 2012, Koniag shall notify the United States and the State in writing of its election, which election shall be in Koniag's sole discretion, whether it wishes to:

(a) convey the lands subject to the Conservation Easement in fee to the United States by the Limited Warranty Deed in the form set forth at attached Exhibit V, subject to

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the State Conservation Easement in the form set forth at attached Exhibit IV, to convey the Permanent Camp Island Limited Development Easement in the form set forth at attached Exhibit VI, and to issue the Quitclaim Deed in the form as set forth at attached Exhibit VIII, in return for those funds remaining at closing in the Special Account established pursuant to Section 5(b) of this Agreement;

(b) extend the Conservation Easement and the Camp Island Limited Development Easement for an additional ten year term in return for the payment schedule pertaining to years 11 through 20 set forth in Section 5(d) of this Agreement. During this extension period, Koniag may at any time make the same elections as are set forth in Subsection 4(a). If at the end of this ten year extension period, Koniag has not so elected to sell these lands in fee, the easements and this Agreement will terminate, unless the Parties mutually agree to extend them thereafter, and the Trustee Council, or its successor in function, has approved the use of funds remaining in the special account for this purpose; or

(c) allow the Conservation Easement and the Camp Island Limited Development Easement to expire at midnight on October 14, 2012.

(5) Establishment of Special Account and Payments to Koniag.

(a) In consideration for the Seventh Amendment to Non-Development Easements, the United States shall pay \$300,000 (Three hundred thousand and no/100 dollars) to Koniag within 15 days after the Initial Closing.

(b) Effective October 15, 2002, or following the 3(b) Closing, whichever occurs later, the United States, through the Trustee Council, will cause to be established and fund a special account in the amount of \$29,800,000 (Twenty-nine million, eight hundred thousand and no/100 dollars) ("Special Account"), unless Koniag elects to exchange certain lands with the Service as provided in Section 20 hereof, in which event the deposit shall be \$29,550,000 (Twenty-nine million five hundred and fifty thousand and no/100 dollars). The Special Account shall be established by the United States and the State, acting through the Trustee Council or its successors in function (the "Governments"), with the State of Alaska investment system in accordance with the authority provided by Congress in Section 350 of P.L. 106-113, 113 Stat. 1501 (1999) and the requirements of this Agreement. The Governments will manage the Special Account and are solely responsible for its investment. Notwithstanding the foregoing, the Governments shall (i) consult with Koniag concerning the investment strategy for the Special Account over the life of this Agreement and (ii) establish an initial investment target of a projected average annual return of 5.75% above inflation when considered over a ten year period, unless after consultation with Koniag, the Governments determine that such investment targets would be imprudent and would

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require an investment strategy relying on undue risk of principal of these joint governmental funds. The Governments shall provide Koniag a financial report on the Special Account at least quarterly, which report shall identify the investments held therein, their value and all transactions made with respect to the Special Account during the reporting period. Such reports shall be provided within thirty (30) days of the close of the reporting period.

(c) Investment management fees shall be paid from the Special Account in accordance with the provisions set forth below:

(i) If on October 15, 2005, or on any subsequent anniversary of the creation of the Special Account, the management fees then charged on an annual basis exceed the management fees in effect as of October 15, 2002, adjusted for the cumulative increases, if any, in the Consumer Price Index for all items for Anchorage, Alaska, which may have occurred since October 15, 2002, then Koniag, in its sole discretion, may elect to terminate this Agreement and the Easements granted pursuant hereto in the manner provided in Section 9(a) hereof. Any failure by Koniag to elect to terminate shall not preclude Koniag from electing to terminate in a subsequent year, if the foregoing conditions with respect to the amount of the management fees charged at that time are met at the time of its election, even if there has not been a change in the amount of the management fees during the interim period. Any increase in the management fees which is the result of a change in the composition or the management of the investment portfolio within the special Account from that which is in effect on October 15, 2002, which is made by the Trustee Council in conformity with a recommendation made by Koniag shall not be considered in determining whether the cumulative increase in the management fees is such as to give rise to Koniag's right to terminate as provided herein.

(ii) If the Special Account is held in an entity other than that of the State of Alaska, the fees to be charged shall be the actual fees assessed by, and commensurate with, the management fees charged for an account of this nature.

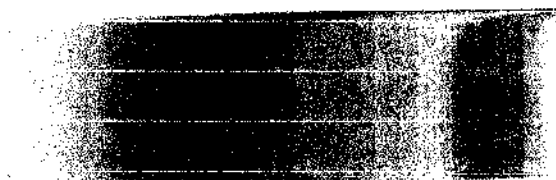
(d) For each entire year that the Conservation Easement is in effect, an annual payment from the special account shall be made to Koniag as follows:

Year 1	\$372,100, paid on October 15, 2003
Year 2	\$405,589, paid on October 15, 2004
Year 3	\$439,078, paid on October 15, 2005
Year 4	\$472,567, paid on October 15, 2006
Year 5	\$506,056, paid on October 15, 2007
Year 6	\$539,545, paid on October 15, 2008
Year 7	\$573,034, paid on October 15, 2009

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Year 8 \$606,523, paid on October 15, 2010
 Year 9 \$640,012, paid on October 15, 2011
 Year 10 \$673,501, paid on October 15, 2012
 Year 11 \$706,990, paid on October 15, 2013
 Year 12 \$744,200, paid on October 15, 2014
 Year 13 \$744,200, paid on October 15, 2015
 Year 14 \$744,200, paid on October 15, 2016
 Year 15 \$744,200, paid on October 15, 2017
 Year 16 \$744,200, paid on October 15, 2018
 Year 17 \$744,200, paid on October 15, 2019
 Year 18 \$744,200, paid on October 15, 2020
 Year 19 \$744,200, paid on October 15, 2021
 Year 20 \$744,200, paid on October 15, 2022

(e) If Koniag elects in accordance with Section 4 hereof not to sell the lands to the United States in fee, or otherwise allows the easements to terminate or elects to terminate this Agreement pursuant to Section 5(c)(i) hereof, Koniag shall cease to have any right or claim with respect to any amounts in the Special Account, and the balance thereof shall be available for use by the United States and the State of Alaska in accordance with the consent decrees applicable to the use of the proceeds from the EVOS settlement and other applicable law.

(f) So long as the Conservation Easement and the Camp Island Limited Development Easement are in effect, no funds in the Special Account may be withdrawn therefrom, unless such withdrawal is pursuant to subsections (5)(c) and (5)(d) hereof or related to the payment of third party costs incurred in the closing of a sale of the lands made pursuant to an election to sell under subsections 4(a) or 4(b) hereof (e.g., hazardous material surveys and closing costs). The funds in such Special Account may not otherwise be transferred to another account without the prior written consent of Koniag.

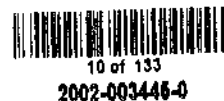
(6) Conditions Precedent.

(a) The following conditions shall be satisfied prior to the Initial Closing set forth in Section 3(a) hereof:

(i) receipt by the United States and the State of an opinion of counsel to Koniag confirming the authority of Koniag to enter into the transactions contemplated by the Agreement and satisfactory in form and substance to the United States and the State;

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(ii) receipt by the United States and the State of a certificate of corporate standing for Koniag and such other documents as may be necessary for the United States and the State to establish the authority of Koniag to grant the interests in land contemplated by this Agreement;

(iii) with respect to the interests in lands to be granted at the closing, the satisfactory completion for the Service of a title opinion satisfying the regulations promulgated by the U.S. Department of Justice (hereinafter "Justice") pursuant to 40 U.S.C. § 255 relating to federal land acquisitions. The Parties acknowledge that prior to execution of this Agreement, a waiver of certain provisions of such regulations has been requested from Justice in order to accommodate the provisions of this Agreement;

(iv) with respect to the interests in lands subject to the Master Agreement, title satisfactory to the Alaska Department of Law;

(v) completion by the United States of hazardous material surveys as required by Department regulations for land acquisitions, which surveys shall be promptly performed by the United States and which shall be satisfactory to the United States and the State; and

(vi) compliance by Koniag with its representations that since execution of this Agreement, no development has taken place on the lands covered by the Camp Island Limited Development Easement that is otherwise precluded under such easement.

(vii) a finding by the Department, in a form satisfactory to Koniag, that for purposes of Section 1307 of ANILCA (16 U.S.C. § 3197), that Koniag, the successor to Karluk Native Corporation and Nu-Nachk Pit, Inc., is entitled to receive the preference rights enumerated therein with respect to the award of revenue-producing visitor services for the Refuge;

(viii) preparation of the map depicting the trails existing as of January 10, 2001, and required for Section 7(d) of the Conservation Easement. Such map shall be prepared by the Parties following consultation by Koniag with the Villages of Larsen Bay and Karluk and such on the ground inspection by the Parties as may be required to identify any existing trails which qualify under the terms of Section 7(d) on the Conservation Property;

(ix) satisfaction of the terms and conditions set forth in the Resolution of the Trustee Council dated January 4, 2001, including but not limited to, the filing

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by the United States Department of Justice and the Alaska Department of Law of a notice, as required by the Third Amended Order for Deposit and Transfer of Settlement Proceeds, of the proposed expenditure with the United States District Court for the District of Alaska and with the Investment Fund established by the Trustee Council within the Alaska Department of Revenue, Division of Treasury ("Investment Fund"), and transfer of the necessary monies from the Investment Fund to the United States; and

(x) no federal court has prohibited the payment of any amounts due hereunder at the Initial Closing.

(b) The following conditions shall be satisfied prior to the 3(b) Closing:

(i) with respect to the interests in lands subject to the Master Agreement, the satisfactory completion for the Service of a title opinion satisfying the regulations promulgated by Justice pursuant to 40 U.S.C. § 255 relating to federal land acquisitions. A waiver of certain provisions of such regulations may be required from Justice in order to accommodate the provisions of this Agreement. If so, such waiver must be obtained prior to closing;

(ii) with respect to the interests in lands subject to the Master Agreement, title satisfactory to the Alaska Department of Law;

(iii) completion by the United States of hazardous material surveys as required by Department regulations for land acquisitions, which surveys shall be promptly performed by the United States and which shall be satisfactory to the United States and the State; and

(iv) compliance by Koniag with its representations that since execution of this Agreement, no development has taken place on the lands covered by the Camp Island Limited Development Easement that is otherwise precluded under such easement.

(v) reaching a satisfactory agreement between Koniag and the Alaska Department of Fish and Game on the location of sites whereby public users of the Karluk River may transit and use the Koniag lands outside the Refuge for up to one night following their departure from the Refuge; and

(vi) reaching a satisfactory agreement between Koniag and the Service that the terms of the Camp Island Limited Development Easement are in compliance with the requirements of Section 22(g) of ANCSA as provided in the newly

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adopted compatibility regulations found at 65 F.R. 62458, et seq. (October 18, 2000).

(c) The following conditions shall be satisfied prior to the closing set forth in Section 7 hereof for the purchase of the lands pursuant to the election of Koniag under Section 4(a) or 4(b) hereof:

(i) receipt by the United States and the State of an opinion of counsel to Koniag confirming the authority of Koniag to enter into the transactions contemplated by the Agreement and satisfactory in form and substance to the United States and the State;

(ii) receipt by the United States and the State of a certificate of corporate standing for Koniag and such other documents as may be necessary for the United States and the State to establish the authority of Koniag to grant the interests in land contemplated by this Agreement;

(iii) with respect to the interests in lands to be granted at the closing, the satisfactory completion for the Service of a title opinion satisfying the regulations promulgated by Justice pursuant to 40 U.S.C. § 255 relating to federal land acquisitions. A waiver of certain provisions of such regulations may be required from Justice in order to accommodate the provisions of this Agreement. If so, such waiver must be obtained prior to closing;

(iv) with respect to the interests in lands to be granted at the closing, title satisfactory to the Alaska Department of Law;

(v) completion by the United States of hazardous material surveys as required by Department regulations for land acquisitions, which surveys shall be promptly performed by the United States and which shall be satisfactory to the United States and the State;

(vi) satisfaction of the terms and conditions set forth in the Resolution of the Trustee Council dated January 4, 2001, including but not limited to, the filing by the United States Department of Justice and the Alaska Department of Law of a notice, as required by the Third Amended Order for Deposit and Transfer of Settlement Proceeds, of the proposed expenditure with the United States District Court for the District of Alaska and with the Investment Fund established by the Trustee Council within the Alaska Department of Revenue, Division of Treasury ("Investment Fund"), and transfer of the necessary monies from the Investment Fund to the United States; and

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(vii) No federal court has prohibited the payment of any amounts due hereunder at such closing.

(7) Section 4(a) Closing

(a) Should Koniag elect to exercise its rights under Section 4(a) or 4(b) to sell to the United States the Conservation Property as described in the Conservation Easement, then subject to the terms and conditions set forth in this Agreement, the closing of such sale shall take place on such date that is within ninety (90) days of the date of the receipt by the United States and the State of notice of Koniag's election to sell under Section 4(a) or 4(b), and at a location, both of which are mutually agreeable to the Parties. At the Section 4(a) Closing:

(i) Koniag shall convey to the State of Alaska, the State Conservation Easement in the form attached hereto as Exhibit IV;

(ii) Koniag shall sell and convey to the United States, in fee, by Limited Warranty Deed, in the form attached hereto as Exhibit V, and subject to the State Conservation Easement, those lands defined as the Conservation Property in the Conservation Easement; and

(iii) Koniag shall grant to the United States and the State of Alaska the Permanent Camp Island Limited Development Easement in the form attached hereto as Exhibit VI.

(iv) Koniag shall grant to the United States a Quitclaim Deed in the form attached hereto as Exhibit VIII.

(b) The United States shall be responsible for recording the Limited Warranty Deed, the State Conservation Easement, the Permanent Camp Island Limited Development Easement, and the Quitclaim Deed, and shall do so as expeditiously as possible but in any event within five (5) business days of the Section 5(a) closing, weather permitting. Within fifteen (15) days of the recording of the Limited Warranty Deed, the United States shall pay to Koniag all of the funds in the Special Account, less the costs incurred in such closing which have been agreed to by the Parties. Such funds shall be accompanied by a Statement of the Special Account reflecting its value and all transactions made with respect to it since the last statement was provided to Koniag.

(8) Warranties and Disclosures. Koniag represents and warrants to the United States and the State as follows:

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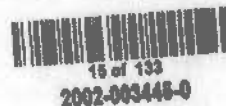
(a) Subject to the provisions of §§ 14(g) and 17(b) of ANCSA, 43 U.S.C. §§ 1613(g) and 1616(b), and the provisions of the Act of May 17, 1906, 34 Stat. 197, as amended, and Section 905 of ANILCA, 43 U.S.C. § 1634, to the extent applicable, the regulations promulgated thereunder, and the reservations, restrictions and limitations set forth in the conveyances from the United States to Koniag, as of the date of the respective closings, Koniag will be the sole legal owner of the surface estate of lands and interests in lands to be granted to the United States and the State at the applicable closing under this Agreement.

(b) Title to the lands and interests in lands to be granted to the United States and the State under this Agreement shall be, at closing, free and clear of all liens, charges, encumbrances, clouds and defects whatsoever, except, if applicable, for (i) liens, charges, encumbrances, clouds and defects of record which are acceptable to the United States and the State in their sole and absolute discretion; (ii) liens, charges, encumbrances, clouds and defects not of record which existed prior to the date(s) on which said lands were conveyed to Koniag pursuant to Section 14 of ANCSA, 43 U.S.C. § 1613; (iii) all restrictions, reservations, encumbrances and limitations set forth in the conveyances from the United States to Koniag arising under ANCSA and the rules and regulations promulgated thereunder; (iv) the reservation of the Easement for Subsistence Access and the Reservation of Archeological Rights; and (v) the State Conservation Easement.

(c) To the best of Koniag's knowledge and belief: (i) Koniag has not, nor has it allowed any other person, since the conveyance of lands to Koniag by the United States under ANCSA, to place, store, spill or dump in an unlawful manner any Hazardous Wastes, Hazardous Substances, hazardous materials, chemical waste, or any other toxic substance on the lands which are subject to the Conservation Easement and the Camp Island Limited Development Easement; (ii) such lands are not now, nor since their conveyance to Koniag, ever been used for industrial purposes; (iii) no third party has ever unlawfully placed, stored, spilled or dumped any Hazardous Wastes, Hazardous Substances, hazardous materials, chemical waste, or any other toxic substance on such lands during the time in which they were owned by Koniag; specifically excluded from this warranty is any spillage of such substances or wastes as may have occurred as a result of EVOS; (iv) Koniag has disclosed to the Service all information in its possession or knowledge which indicates that any of the foregoing activities, whether lawful or unlawful, took place on such lands prior to the conveyance of the lands to Koniag; and (v) Koniag has disclosed to the Service all information in its possession or knowledge concerning the location and activities thereon that took place on those areas subject to this Agreement which Koniag or a third party has used while they may have been in the lawful possession of such hazardous or toxic substances. The term "Hazardous Substances" as used herein shall

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mean any substances designated as hazardous by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended and supplemented, 42 U.S.C. 9601, *et seq.*, or the Clean Water Act, as amended and supplemented, 33 U.S.C. § 1251, *et seq.*, or both, or any regulations promulgated pursuant to either or both statutes or under any applicable state law. The term "Hazardous Wastes" as used herein shall mean any other substance, including oil and gas and byproducts and wastes thereof, designated as hazardous under any applicable federal or state laws or regulations or any combination thereof.

(9) Termination.

(a) In the event that the United States fails to make the payments as required by Section 5 hereof, or the increases in the management fees for the Special Account exceed the amount permitted under Section 5(c)(i), Koniag in its sole discretion may elect to terminate this Agreement. Such termination shall be effective thirty (30) days after written notice of such election is received from Koniag by the Regional Office of the Service.

(b) Should any Party hereto fail to perform any obligation under this Agreement, other than failure to close for non-payment which is encompassed within the provisions of Subsection 9(a) hereof, then the other Parties shall have the right, upon thirty (30) days-written notice to the other Party, to terminate this Agreement. Nothing in this Subsection shall limit any right of any Party to utilize remedies otherwise available to it under this Agreement.

(c) In the event that there is a termination for breach of the Seventh Amendment to the Non-Development Easements, the Conservation Easement or the Camp Island Limited Development Easement, any Party shall have the right upon thirty (30) days written notice to the other Parties to terminate this Agreement.

(d) In the event of the termination of this Agreement pursuant to this Section 9, no Party hereto shall have further obligations under this Agreement (other than those arising under Section 13 hereof), the Seventh Amendment to the Non-Development Easements, the Conservation Easement and the Camp Island Limited Development Easement.

(10) Training Program. Subject to the availability of appropriations and applicable laws, the Service shall make a good faith effort, within its refuge management program and programs to implement this agreement, to provide employment and training opportunities for residents of Karluk and Larsen Bay through the local hire provisions of ANILCA, Section 1308 and special emphasis recruitment and development programs to train and encourage residents to pursue

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careers in natural resource management. The Service may include other Koniag shareholders and their descendants in such programs by implementing a cooperative agreement with Koniag under which Koniag will pay for the program costs of such other participants.

(11) Claims Arising from EVOS. Nothing in this Agreement or any document executed pursuant thereto shall be deemed to constitute an assignment, waiver or release of any claim Koniag or its individual shareholders may have against Exxon Corporation and any other person or entity as a result of EVOS.

(12) Section 22(g). With the exception of the conveyances of certain interests in lands to the State of Alaska under the terms of this Agreement, consent for which is hereby provided, nothing in this Agreement shall be deemed to constitute a waiver by the United States of its right of first refusal pursuant to Section 22(g) of ANCSA.

(13) Recordation. A copy of this Agreement and any amendment hereto may be recorded by or on behalf of any Party following the execution thereof by the Parties. If this Agreement is subsequently terminated in accordance with the provisions of Section 9, then upon the request of Koniag, the United States and the State of Alaska shall execute a Release of Interests and/or other documentation satisfactory to the Parties and suitable for recording acknowledging the termination of this Agreement and any easement which may be granted pursuant hereto, and the release from their respective terms any Koniag lands. See forms at Exhibit VII.

(14) Effective Date. The effective date of this Agreement shall be the date of signature of the last Party hereto.

(15) Execution in Separate Counterparts. For purposes of expediting execution of this Agreement or any amendments hereto, this Agreement or any amendments hereto may be signed in separate counterparts by the Parties which, when all have so signed, shall be deemed a single Agreement or amendment hereto, respectively, and the effective date of any amendment shall be the date upon which the last of the subscribed Parties signs the amendment.

(16) Other Agreements and Actions. The Parties agree to take other action or enter into other agreements reasonably necessary to carry out the intent of this Agreement.

(17) Signature Authority. Each signatory to this Agreement represents that such signatory is authorized to enter into this Agreement.

(18) Unanticipated Events. The Parties acknowledge that there may exist circumstances beyond the reasonable control of a Party which interfere with the Parties' abilities to complete the transaction and to comply with the time constraints set forth in this Agreement. The Parties agree to use their good faith best efforts to complete the transactions contemplated within this

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Agreement as set forth herein. In the event that circumstances occur beyond the reasonable control of a Party which significantly impair or detract from the rights and benefits provided to any of the Parties, then all Parties will, in good faith, attempt to negotiate reasonable modifications of this Agreement so as to protect the rights, interests and duties of the Parties under this Agreement so as to carry out the intent of this Agreement. Nothing in this Section shall preclude the right of Koniag to terminate this Agreement pursuant to the provisions of Section 9 hereof for reason of the non-payment of money.

(19) Miscellaneous. The following general provisions shall apply to each of the provisions of the Agreement:

(a) All exhibits and appendices attached hereto are incorporated herein. The Parties mutually covenant and agree that this instrument and its exhibits and appendices embody the whole agreement of the Parties regarding the Agreement and that there are no promises, terms, conditions or obligations other than those contained or referred to in this Agreement. The Parties agree that any oral representations made by any Party during the negotiation of this Agreement which are not incorporated by writing into this Agreement are not binding.

(b) The commitments, representations and warranties contained in this Agreement shall survive the closings provided for hereunder.

(c) The United States and the State agree to perform their respective responsibilities set forth in the various easements provided for hereunder.

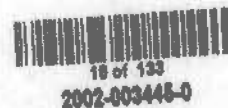
(d) No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

(e) The Parties agree that clerical and typographical errors contained herein may be corrected upon written notice to the other Parties. Unless such errors are deemed substantive or otherwise objected to by any Party within sixty (60) days by written notice, correction will be considered made without formal ratification by the Parties. The Party making such correction shall ensure that it is properly recorded if this Agreement has been recorded.

(f) Neither the Department nor the State represents or warrants the manner in which the transactions under this Agreement will be treated under federal or state income tax laws.

Master Agreement Between Koniag, Inc.,
the United States of America, and
the State of Alaska

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(g) This Agreement may be amended, modified or supplemented only by a written amendment signed by all parties hereto.

(h) Nothing herein shall be construed as obligating the expenditure by the United States or the State of Alaska, now or in the future, in excess or advance of appropriations authorized by law.

(i) The Sectional headings used in this Agreement are merely labels, inserted for convenience and without substantive import.

(j) All notices, requests, orders and other communications under this Agreement shall be in writing (unless expressly provided otherwise), and shall be deemed to have been duly given if delivered personally to the addressee or upon receipt if mailed by certified or registered mail, return receipt requested, with postage prepaid as follows:

(i) If to Koniag: President
Koniag, Inc.
4300 B Street, Suite 407
Anchorage, Alaska 99503

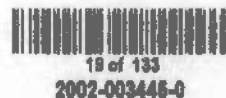
With a copy to: Middleton & Timme
421 West First Avenue, Suite 250
Anchorage, Alaska 99501

(ii) If to the United States: Regional Director
U.S. Fish and Wildlife Service
1011 East Tudor Road
Anchorage, Alaska 99503

With a copy to: Refuge Manager
Kodiak National Wildlife Refuge
1390 Buskin River Road
Kodiak, Alaska 99615

and U.S. Fish and Wildlife Service
Division of Realty
1011 E. Tudor Road
Anchorage, Alaska 99503

Master Agreement Between Koniag, Inc.,
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the State of Alaska



(iii) If to the State: Alaska Department of Natural Resources
Office of the Commissioner
550 West 7th Avenue, Suite 1400
Anchorage, Alaska 99501-3579

With a copy to: Alaska Department of Fish and Game
Office of the Commissioner
P.O. Box 25526
Juneau, Alaska 99802-5526

or to such other addresses as any Party may designate in writing.

(k) The Parties agree that the existing State Access and Use Easement, dated December 13, 1995, by operation of its terms, is automatically extended for the duration of the Seventh Amendment to the Non-Development Easements.

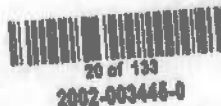
(l) The Parties reserve the right to make corrections in the legal descriptions contained in the exhibits or appendices attached hereto for typographical errors, inadvertent omissions, or to reflect changes resulting from surveys.

(20) Koniag Exchange Election. With respect to those certain lands adjacent to Uyak and Zachar Bays ("Uyak Bay Lands") which are subject to the Conservation Easement, Koniag, in its sole discretion may elect by December 1, 2001, to pursue and complete with the United States a land exchange, pursuant to which Koniag will exchange the surface estate of the Uyak Bay Lands for certain lands owned by the United States and under the jurisdiction of the Department which are located generally south of the community of Larsen Bay. Koniag will exchange all its lands on the east side of Uyak Bay and Zachar Bay within townships T. 30 S., R. 28 W.; T. 31 S., R. 28 W.; and T. 32 S., R. 28 W, and at its sole option those lands owned by it on the west side of Uyak Bay within T. 32 S., R. 28 W., and within T. 32 S., R. 29 W., Sections 13 and 24.

Koniag shall receive in exchange surface estate acreage of equal value to be selected by it from those within the Kodiak Refuge within T. 31 S., R. 29 W., Sections 4, 5 and 6; and T. 31 S., R. 30 W., Section 1, E½, or such other lands in the vicinity agreed to by Koniag and the United States. The lands selected by Koniag shall be compact and contiguous unless otherwise agreed to by FWS. Sections 4 and 5 within T. 31 S., R. 29 W. are subject to an existing State conservation easement.

Should such exchange be consummated, then the description of the Uyak Bay Lands shall be removed from the Limited Warranty Deed and the amount within the Special Account shall be reduced by Two Hundred Fifty Thousand Dollars (\$250,000.00). The determination of the value

Master Agreement Between Koniag, Inc.,
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the State of Alaska



of the Uyak Bay Lands to be made for the purpose of the exchange shall be made without consideration of any such adjustment to the Special Fund.

Any exchange so negotiated shall be subject to (1) the approval of the Board of Directors of Koniag, Inc. which may be withheld in its sole discretion, and (2) compliance by FWS with applicable legal requirements and notification to and review of the exchange by the appropriate committees of Congress. Should Koniag choose not to pursue this exchange by December 1, 2002, nothing in this Agreement shall preclude reinitiating this exchange at a later date. Should any such exchange include lands which were previously acquired using funds provided by the Trustee Council, other than those lands specifically identified in this Section, the inclusion of such lands is subject to the approval of the Trustee Council or its successors in interest. The closing of such an exchange of lands subject to a conservation easement held by the State may not occur prior to the execution by the United States and the State of a cooperative management agreement covering implementation of the State's enforcement rights under such easement. If Koniag elects to make this exchange, Koniag and the Department agree to complete this exchange with due diligence.

(21) Corrective Title Actions by Koniag. Koniag shall use all reasonable efforts to acquire title to or to confirm its title in the surface estate of the following described lands:

Seward Meridian, Alaska

T. 30 S., R. 28 W., (surveyed).

Sec. 19, that portion of lot 1 located in the S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 20, that portion of lot 5 located in the S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;

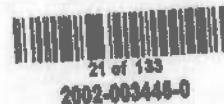
Sec. 29, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$;

Containing approximately 30 acres, more or less.

Upon the receipt of title or the confirmation of its title to such lands, Koniag shall provide the parties hereto with written notice of its receipt or confirmation of title to such lands and an acknowledgement by it that pursuant to the provisions of the Conservation Easement, its interests in such lands are subject to the terms of the Conservation Easement. A copy of such notice shall be recorded by Koniag.

In the event title to any of these parcels is not vested in Koniag at the time of the Closing of the sale of the Conservation Property pursuant to Section 7 hereof, then the amount paid to Koniag at such Closing will be reduced by an amount equal to the sum of (i) the product of the number of acres included in those above-described parcels, the title to which is not vested in Koniag, multiplied by the product of Two hundred sixty five and 36/100 dollars (\$265.36), per acre, and (ii) the interest earned on such product from the creation of the Special Account.

Master Agreement Between Koniag, Inc.,
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IN WITNESS WHEREOF, the Parties have set their hands and seals as of the date herein written.

Koniag, Inc.

Date: July 31, 2002

By: *Dennis Metrokin*
Dennis Metrokin, President

United States of America

Date: September 30, 2002

By: *Craig Manson*
Craig Manson, Assistant Secretary of the Interior
for Fish and Wildlife and Parks

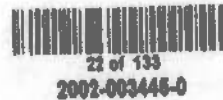
Date: 9/20/02

By: *Steve Williams*
Steve Williams, Director
U.S. Fish and Wildlife Service

Date: 10/4/02

By: *David B. Allen*
David B. Allen, Regional Director
U.S. Fish and Wildlife Service

Master Agreement Between Koniag, Inc.,
the United States of America, and
the State of Alaska



State of Alaska

Date: _____

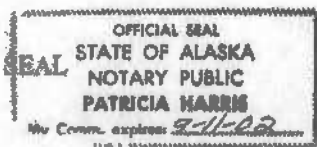
By: _____
Deputy Commissioner
Department of Natural Resources

ACKNOWLEDGMENT

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 31st day of July, 2002, before me, the undersigned a Notary Public in and for the State of Alaska, duly commissioned and sworn as such personally appeared Dennis Metrokin, President of Koniag, Inc., to me known and known to be the person he represented himself to be and the same identical person who executed the above and foregoing Master Agreement for Protection of Certain Lands and Resources Between Koniag, Inc., the United States of America, and the State of Alaska, on behalf of Koniag, Inc., and who acknowledged to me that he had full power and authority to and did execute the above and foregoing as a free and voluntary act and deed of said corporation for the uses and purposes therein mentioned.

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



Patricia Harris
NOTARY PUBLIC in and for the State of Alaska
My Commission expires: 9-11-02

ACKNOWLEDGMENT

DISTRICT OF COLUMBIA)
) ss:
)

THIS IS TO CERTIFY that on the 30th day of September, 2002, before me, the undersigned, a Notary Public in and for the District of Columbia, duly commissioned and sworn

Master Agreement Between Koniag, Inc.,
the United States of America, and
the State of Alaska



ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 4th day of October, 2002, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared David B. Allen known to me to be the Regional Director, U.S. Fish and Wildlife Service, Region 7, and he acknowledged to me that he signed as accepting the foregoing Master Agreement for Protection of Certain Lands and Resources Between Koniag, Inc., the United States of America, and the State of Alaska, and he acknowledged to me that he executed the foregoing instrument freely and voluntarily.

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



Christina A. Mullaney
Notary Public in and for the State of Alaska
My commission expires: 7/12/2003

ACKNOWLEDGMENT

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2002, by _____ who is known to me to be the Deputy Commissioner, Department of Natural Resources, State of Alaska.

(Signature)

(Printed or typed name of Notary)
NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

(SEAL)

Master Agreement Between Koniag, Inc.,
the United States of America, and
the State of Alaska



ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

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 David B. Allen known to me to be the Regional Director, U.S. Fish and Wildlife Service, Region 7, and he acknowledged to me that he signed as accepting the foregoing Master Agreement for Protection of Certain Lands and Resources Between Koniag, Inc., the United States of America, and the State of Alaska, and he acknowledged to me that he executed the foregoing instrument freely and voluntarily.

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

(SEAL)

Notary Public in and for the State of Alaska
My commission expires: _____

ACKNOWLEDGMENT

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 3 day of October, 2002, by Marty Rutherford who is known to me to be the Deputy Commissioner, Department of Natural Resources, State of Alaska.



Janice L. Harpel
(Signature)

JANICE L. HARPEL
(Printed or typed name of Notary)
NOTARY PUBLIC in and for Alaska
My Commission Expires: 5-12-2006

Master Agreement Between Koniag, Inc.,
the United States of America, and
the State of Alaska



EXHIBIT I

STATE BUSINESS - NO CHARGE

**SEVENTH AMENDMENT TO
NON-DEVELOPMENT EASEMENTS**

THIS SEVENTH AMENDMENT TO NON-DEVELOPMENT EASEMENTS ("Amendment") is made this ____ day of _____ 2002, by **Koniag, Inc.**, (hereinafter, with its successors and assigns "Koniag"), whose address is 4300 B Street, Suite 407, Anchorage, Alaska 99503 ("Grantor") and the **United States of America**, (hereinafter, with its assigns "United States"), acting through the Fish and Wildlife Service whose address is 1011 E. Tudor Road, Anchorage, Alaska 99503-6199 ("Grantee"), individually referred to hereafter as a Party, or collectively referred to hereafter as the Parties, under the authority of Section 1302(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. § 3192(a)), the National Wildlife Refuge Administration Act (16 U.S.C. § 668dd), and the Master Agreement for Protection of Certain Lands and Resources Between Koniag, Inc., the United States of America and the State of Alaska, dated July __, 2002 ("Master Agreement").

WHEREAS, the Parties entered into those certain Non-Development Easements dated December 13, 1995, and November 10, 1999 ("Easements"), recorded in Book 140 at Page 418, and Book 169 at Page 501, respectively, which were amended, extending the expiration date to August 1, 2002, by those documents dated November 30, 2001, January 28, 2002, March 28, 2002, April 29, 2002, May 22, 2002, and June 27, 2002, recorded in Book 186 at Page 218, in Book 188 at Page 172, in Book 190 at Page 275, in Book 191 at Page 37, as instrument number 2002-001737-0, and as instrument number _____, respectively, of the records of the Kodiak Recording District, Third Judicial District, State of Alaska;

WHEREAS, the Parties have entered into the Master Agreement which provides for the granting of the Conservation Easement on the Protected Property (as that term is defined in the Easement, and all other defined terms used herein shall have the same meaning as attributed to them in the Easement, unless specifically otherwise provided herein), which Conservation Easement will not commence until approximately ten months after the termination of the Easements; and,

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the State of Alaska

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WHEREAS, the Parties wish to provide for the extension of the term of the Easements until the commencement of the Conservation Easement and also to provide for the addition of certain lands to the lands subject to the terms of the Easements; and

WHEREAS, the Parties have reached an agreement as to the manner in which the Easement is to be amended and wish to memorialize their agreement;

NOW THEREFORE, pursuant to the laws of the State of Alaska, and in particular Alaska Statutes Sections 34.17.010 – 34.17.060, and with the consent of the Grantee, as hereinafter set out, and as of the Effective Date hereof (as herein after defined), the Grantor does hereby amend the Easements in the manner hereinafter provided:

1. Effective Date. This Amendment shall become effective as of 12:01 a.m. on August 1, 2002 ("Effective Date").

2. Amendments. As of the Effective Date, the following Sections of the Easements will be amended in the manner herein after set forth:

(a) Section 2 is deleted in its entirety and in its place the following new Section 2 is added:

Section 2. Term. This Easement shall expire upon the earlier of (I) 12:01 a.m., Alaska Daylight Savings Time on October 15, 2002; or (II) the effective date of the termination of this Easement pursuant to Section 10 hereof.

(b) Section 4(a) is deleted in its entirety and in its place the following new Section 4(a) is added:

(a) Grantee, acting through the employees and agents of the U.S. Fish and Wildlife Service (hereafter the "Service"), and the State of Alaska ("State"), acting through the employees and agents of the Alaska Department of Fish and Game (hereafter "ADF&G"), shall have unlimited access to the Protected Property for any purpose consistent with this Easement, including access to permit their respective personnel to conduct population surveys and research on fish and wildlife resources, document salmon escapement or any other activity related to the fish and wildlife of the Protected Property in accordance with the terms hereof.

(c) The following new Section 10 shall be added:

10. Termination. This Easement shall terminate upon thirty (30) days written notice from Grantor to Grantee following the occurrence of any of the following events:

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the United States of America, and
the State of Alaska

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(i) the failure of the United States to pay Grantor the sum of Three Hundred Thousand Dollars (\$300,000) within fifteen (15) days of the Effective Date of this Amendment;

(ii) the effective date of the termination of the Master Agreement for Protection of Certain Lands and Resources Between Koniag, Inc., the United States of America, and the State of Alaska, dated July ____, 2002 ("Master Agreement").

(d) The following new Section 11 shall be added:

11. Camp Island Lands.

(a) Land Description. Subject to conditions, and restrictions of record, the surface estate of the following described lands are hereinafter referred to as the "Camp Island Protected Property":

Seward Meridian, Alaska
T. 32 S., R. 30 W., (surveyed),
Sec. 25, lot 4; and
Sec. 36, lot 2.
Containing 37.87 acres.

(b) Restrictions on Grantor's Use. During the term of this Easement, Grantor will take no action with respect to the Camp Island Protected Property which action would violate the provisions of Section 3 of the Camp Island Limited Development Easement, recorded simultaneously herewith in the records of the Kodiak Recording District, Third Judicial District, State of Alaska.

(c) Rights of Grantee and State. The Grantee and the State shall have the same rights with respect to the Camp Island Protected Property as they have under Section 4 of this Easement as amended by the Seventh Amendment to Non-Development Easements.

3. Payment. Within fifteen (15) days of the Effective Date of this Amendment, the United States shall pay to Koniag the sum of THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) as consideration for the execution of this Amendment.

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the United States of America, and
the State of Alaska

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4. General Provisions.

(a) This Amendment is not intended, and shall not be construed, to create any other party beneficiary hereof and that nothing in this Amendment shall be construed as creating any rights of enforcement by any other person or entity.

(b) This Amendment shall be construed so as to effect the purpose for which it was granted. Any ambiguities shall be resolved in a manner that best accomplishes the purpose of this Amendment.

(c) Grantor is not relieved from liability by this Amendment for injuries occurring on, and resulting from, the condition of the Camp Island Protected Property for which it would otherwise ordinarily be liable; provided, however, should such liability arise from a pre-existing condition of the Camp Island Protected Property, then Grantor shall have the right to reasonably remedy such condition, notwithstanding any other provision herein. The Grantee and the State each shall be responsible for losses, damages, or liabilities arising out of any act or omission of its employees, or its agents to the extent each otherwise would be responsible for such losses, damages, or liabilities under applicable federal or State law.

(d) Grantor is not relieved from liability by this Amendment for the costs associated with the cleanup of hazardous substances on the Camp Island Protected Property under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and similar federal and State laws for which it would otherwise ordinarily be liable. Grantor shall be liable for and hold the Grantee and the State harmless from liability under said statutes, and pursuant to said statutes shall indemnify the Grantee and the State for all costs relating to cleanup, including attorneys fees, of hazardous substances that were released subsequent to the conveyance of the Camp Island Protected Property to Grantor and prior to the effective date of this Amendment, and for all releases caused by, or contributed to, by Grantor or its agents subsequent to the date of this Amendment, but not for costs for cleanup of hazardous substances that are released by the Grantee or the State or their respective agents, contractors and employees in the course of engaging in activities that are authorized by the Easement or this Amendment. This clause may be enforced by Grantor or the Grantee or the State in a court of law.

(e) The Parties agree that the covenants, terms, conditions, and restrictions of this Amendment shall run with the land and shall be binding upon the Parties. The Grantee and the State may not transfer their rights hereunder without the consent of the Grantor, which consent may be withheld or conditioned by the Grantor in its sole and absolute discretion. The terms of this Amendment may be waived or modified only by the written agreement of the Parties.

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the United States of America, and
the State of Alaska

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(f) If any material provision of this Amendment or any application thereof shall be invalid or unenforceable, then the Parties will negotiate in good faith such reasonable modifications of this Amendment as are necessary to protect the duties, rights and interests of the Parties and the State under this Amendment and to carry out the intent of this Amendment.

5. **Notices.** Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Grantor: Koniag, Inc.
4300 B Street, Suite 407
Anchorage, Alaska 99503
Attention: President

If to Grantee: Regional Director
Region 7
U.S. Fish and Wildlife Service
1011 E. Tudor Road
Anchorage, Alaska 99503-6199

With copies to: Refuge Manager
U. S. Fish and Wildlife Service
Kodiak National Wildlife Refuge
1390 Buskin River Road
Kodiak, Alaska 99615

Chief, Division of Realty
Region 7
U.S. Fish and Wildlife Service
1011 E. Tudor Road
Anchorage, Alaska 99503-6199

Commissioner
Department of Natural Resources
550 W. 7th Ave., Suite 1400
Anchorage, Alaska 99501-3579



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Alex Swiderski, Esquire
Assistant Attorney General
Alaska Department of Law
1031 W. 4th Ave., Suite 200
Anchorage, Alaska 99501

or to such other address as any Party from time to time shall designate by written notice to the others.

6. Effect of Amendment. Except as provided herein, the Easements shall remain in full force and effect and their provisions shall remain unchanged.

IN WITNESS WHEREOF, Grantor has set its hand on the day and year first above written.

KONIAG INC.

By: _____
Dennis Metrokin, President

Attest:

By: _____
Lavonda Beukers, Assistant Secretary
Koniag, Inc.

ACKNOWLEDGMENT

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of _____, 2002, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Dennis Metrokin, President of Koniag, Inc., to me known and known to be the person he represented himself to be, and the same identical person who executed the above and foregoing Fourth Amendment to Non-development Easements on behalf of Koniag, Inc., and who acknowledged to me that he signed the same as President of Koniag, Inc., in the name of and for and on behalf of said Corporation, freely and voluntarily and by authority of its Board of Directors for the use and purposes therein mentioned.

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the State of Alaska

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Seventh Amendment to
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IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ 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 Lavonda Beukers, known to me and known to be the Assistant Secretary of Koniag, Inc., a corporation organized and existing under the laws of the State of Alaska, and acknowledged to me that she attested to the execution of the foregoing Seventh Amendment to Non-development Easements freely and voluntarily for and on behalf of said corporation by authority of its Board of Directors for the uses and purposes therein mentioned.

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

SEAL

NOTARY PUBLIC in and for Alaska
My Commission expires: _____



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the State of Alaska

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ACCEPTANCE BY THE U.S. FISH AND WILDLIFE SERVICE

Pursuant to Section 1302 of the Act of December 2, 1980, Alaska National Interest Lands Conservation Act, (16 U.S.C. Section 3192), the National Wildlife Refuge Administration Act (16 U.S.C. § 668dd), and the Master Agreement for Protection of Certain Lands and Resources Between Koniag, Inc., the United States of America and the State of Alaska, dated July __, 2002, the Grantee hereby consents to the execution of this Seventh Amendment to Non-development Easements by Grantor and to the amendment to the Non-Development Easement as provided therein.

Dated this ____ day of _____, 2002.

Regional Director, Region 7
U.S. Fish and Wildlife Service

ACKNOWLEDGMENT

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the ____ 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 David B. Allen, known to be the Regional Director, Region 7 of the U.S. Fish and Wildlife Service, and he acknowledged to me that he signed the foregoing Seventh Amendment to Non-development Easements, conveying to the United States those interests in lands described therein, and he acknowledged that he executed the foregoing instrument freely and voluntarily.

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

SEAL

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

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the State of Alaska

Exhibit I
Seventh Amendment to
Non-Development Easements

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ACCEPTANCE BY THE STATE OF ALASKA

Pursuant to AS 38.05.035(a)(12), the State hereby consents to the execution of this Seventh Amendment to Non-development Easements by Grantor and to the amendment to the Non-Development Easement as provided therein.

By: _____
Deputy Commissioner
Department of Natural Resources

ACKNOWLEDGMENT

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2002, by _____ who is known to me to be the Deputy Commissioner, Department of Natural Resources, State of Alaska.

(Signature)

(Printed or typed name of Notary)
NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

(SEAL)

AFTER RECORDING RETURN TO:
U.S. Department of the Interior
Fish and Wildlife Service
Division of Realty
1011 E. Tudor Road
Anchorage, Alaska 99503

Location Index:
Seward Meridian, Alaska
T. 29 S., R. 29 W.
T. 30 S., R. 28, 30, 31, 33 W.
T. 31 S., R. 28, 29, 30, 31, 32, 33 W.
T. 32 S., R. 28, 29, 30, 32, 33, 34 W.

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Exhibit I
Seventh Amendment to
Non-Development Easements



EXHIBIT II

STATE BUSINESS - NO CHARGE

CONSERVATION EASEMENT

THIS Conservation Easement ("Easement") is made this _____ day of _____ 2002, by Koniag, Inc., (hereinafter, with its successors and assigns "Koniag"), whose address is 4300 B Street, Suite 407, Anchorage, Alaska 99503 ("Grantor"), the United States of America, (hereinafter, with its assigns "United States"), acting through the Fish and Wildlife Service, whose address is 1011 E. Tudor Road, Anchorage, Alaska 99503-6199 ("Grantee"), and the State of Alaska, (hereinafter, with its assigns "State"), acting through the Alaska Department of Natural Resources, whose address is 550 West 7th Avenue, Suite 1050A, Anchorage, Alaska 99501-3579, individually referred to hereafter as a Party, or collectively referred to hereafter as the Parties, under the authority of Section 1302(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. § 3192(a)), the National Wildlife Refuge Administration Act as amended by the Refuge Improvement Act of 1997 (16 U.S.C. § 668aa-ee), A.S. 38.05.035(a)(12) and A.S. 16.05.050(a)(2), and the Master Agreement for the Protection of Certain Lands and Resources Between Koniag, Inc., the United States of America, and the State of Alaska, dated July _____, 2002 ("Agreement").

WHEREAS, the Grantor is the owner in fee simple of the surface estate of certain real property located in the Kodiak National Wildlife Refuge ("Refuge"), State of Alaska, which is described below (the "Conservation Property"); and

WHEREAS, the Conservation Property is private property located within the boundaries of the Refuge; and

WHEREAS, the Conservation Property is a natural area that provides significant habitat for migratory birds, fish and other wildlife and plants, and has substantial value as a natural, scenic, educational and recreational resource (all such habitat, wildlife, plants and values hereinafter referred to as "Conservation Values"); and

WHEREAS, resource damage to the banks of the Karluk River and adjoining area is occurring from human use, limits on such use may need to be established; and

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WHEREAS, acquisition of this Easement in the Conservation Property will promote the recovery of the resources and services injured by the *Exxon Valdez* Oil Spill; and

WHEREAS, the Grantee is interested in acquiring, through subsequent purchase, fee title to the Conservation Property; and

WHEREAS, the Grantor does not wish at this time to convey the property in fee or to convey a conservation easement in perpetuity; and

WHEREAS, the Grantor wishes to derive from the Conservation Property annual income to benefit its shareholders and economic opportunities for the residents of Karluk and Larsen Bay who are shareholders of Grantor or the descendants of such shareholders;

NOW THEREFORE, pursuant to the laws of Alaska, in particular Alaska Statute § 34.17.010 - § 34.17.060, and the Agreement, the Grantor for itself, and as successor in interest to the rights of the merged corporations of Karluk Native Corporation and Nu-Nachk Pit, Inc., and in consideration of the amounts to be paid and the promises of Grantee as provided herein, does hereby grant, transfer and convey to the Grantee and to the extent provided herein, the State, with special warranties of title, subject to conditions, restrictions, easements and limitations of record, including, but not limited to, conditions, restrictions, easements and limitations contained in Interim Conveyance 1577 dated December 17, 1993, and recorded at page 001, book 126, Interim Conveyance 117 dated August 24, 1978, and recorded at page 875, book 41, Interim Conveyance 105 dated June 30, 1978, and recorded at page 750, book 43, and Interim Conveyance 723 dated September 29, 1983, and recorded at page 950, book 63, of the records of the Kodiak Recording District, Third Judicial District, State of Alaska, a conservation easement over the Conservation Property of the nature and character and to the extent and for the term hereinafter set forth as to the lands described as follows:

THE SURFACE ESTATE IN THE FOLLOWING:

United States Survey 9458, Alaska, situated on the right bank of the Karluk River, approximately 6 miles westerly of Larsen Bay, Alaska, containing 140.00 acres, as shown on the plat of survey officially filed September 28, 1992.

All those lands owned by Koniag, Inc., located in the following:

Seward Meridian, Alaska

T. 29 S., R. 29 W., (surveyed).
Sec. 24;

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Sec. 25, excluding Alaska Native Claims Settlement Act Section 14(c) Tract O,
 according to Plat 97-9, records of the Kodiak Recording District;
 Sec. 26, lots 1 and 2; and
 Sec. 36, excluding Alaska Native Claims Settlement Act Section 14(c) Tract N,
 according to Plat 97-9, records of the Kodiak Recording District;

Containing 1,124.74 acres.

T. 30 S., R. 28 W., (surveyed).

Sec. 17, lots 3 and 4;
 Sec. 18, that portion of lot 2 located in the NW¼, E½NE¼SW¼, NW¼NE¼SW¼,
 N¼NW¼SW¼, N¼NE¼SE¼SW¼, N¼S¼NE¼SE¼SW¼, W¼NW¼SE¼,
 NW¼SW¼SE¼;
 Sec. 19, that portion of lot 1 located in the SW¼NW¼NE¼, S¼NE¼SE¼NE¼,
 S¼N¼NE¼SE¼NE¼, SE¼SE¼NE¼, W¼SE¼NE¼, SW¼NE¼, E¼SE¼NW¼,
 SW¼SE¼NW¼, S¼SW¼NW¼, E¼W¼NW¼NE¼SW¼, E¼NW¼NE¼SW¼,
 E¼NE¼SW¼, SW¼SE¼SW¼, E¼SE¼SW¼;
 Sec. 20, that portion of lot 5 located in the S¼NW¼, NE¼SW¼, N¼NW¼SW¼,
 SW¼ NW¼ SW¼, W¼SW¼SW¼, SE¼SW¼SW¼, N¼SE¼, W¼SW¼SE¼,
 SE¼SW¼SE¼, SE¼SE¼;
 Sec. 28, that portion of lot 1 located in the SW¼NW¼NW¼, N¼SE¼NW¼,
 SW¼SE¼NW¼, NE¼SW¼, S¼NW¼SE¼;
 Sec. 30, that portion of lot 3 located in the N¼S¼, NE¼SE¼SE¼; and
 Sec. 32, that portion of lot 2 located in the NE¼NW¼, S¼NW¼NW¼, S¼NW¼.

Containing approximately 735.26 acres, more or less.

T. 30 S., R. 30 W., (surveyed).

Secs. 18 and 19;
 Sec. 29;
 Sec. 30, lots 1, 2, and 3;
 Sec. 31, lots 1 and 2;
 Sec. 32;
 Sec. 33, lot 1, W¼W¼SW¼.

Containing 3,707.41 acres.

T. 30 S., R. 31 W., (surveyed),

Sec. 11, lot 1;
 Sec. 12;
 Sec. 13, lots 1, 2, and 3;



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Sec. 14, lots 1 and 4;
 Sec. 23, lots 1 and 3;
 Sec. 24, lots 1, 2, and 3;
 Sec. 25, lots 1, 2, and 3; and
 Sec. 36.

Containing 3,781.91 acres.

T. 30 S., R. 33 W., (surveyed).

Sec. 25, that portion of lot 2 located in SE $\frac{1}{4}$ SW $\frac{1}{4}$, lot 3, and
 lot 8 of U.S. Survey 9386;
 Sec. 26, that portion of lot 2 within Kodiak NWR (PL 96-487);
 Sec. 34, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$;
 Sec. 35, lots 1 through 4; and
 Sec. 36, lots 1 and 2, and lots 6 and 8 of U.S. Survey 9386.

Containing approximately 220 acres, more or less.

T. 31 S., R. 28 W., (surveyed).

Sec. 5, those portions of lots 3 and 5 located in the E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$,
 N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ excluding the easterly 220 feet;
 Sec. 17, that portion of lot 2 located in the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 29, that portion of lot 1 located in the N $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$
 E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$,
 E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$; and
 Sec. 32, that portion of lot 1 located in the E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$,
 SE $\frac{1}{4}$ SW $\frac{1}{4}$.

Containing approximately 179.21 acres, more or less.

T. 31 S., R. 29 W., (surveyed).

Sec. 27, W $\frac{1}{2}$; and
 Sec. 34, W $\frac{1}{2}$.

Containing 640 acres.

T. 31 S., R. 30 W., (surveyed).

Sec. 2;
 Sec. 3, S $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, S $\frac{1}{2}$; and
 Sec. 4, E $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, S $\frac{1}{2}$;
 Sec. 5;

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Sec. 6, lots 1, 2, and 3;
 Sec. 7, lots 1, 2, and 3;
 Secs. 8 and 9;
 Secs. 16 and 17;
 Sec. 18, lots 1, 2, and 3;
 Sec. 19, lots 1 through 5;
 Secs. 20 and 21;
 Secs. 27, 28, and 29;
 Sec. 30, lots 1 through 11;
 Sec. 31, lots 1 through 5;
 Sec. 32, lots 1, 2, and 3;
 Sec. 33, lots 1 and 2; and
 Sec. 34.

Containing approximately 12,679.15 acres, more or less.

T. 31 S., R. 31 W., (surveyed),
 Secs. 1 and 2;
 Secs. 10 through 15;
 Secs. 24 and 25; and
 Sec. 36, E $\frac{1}{2}$ E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$ E $\frac{1}{2}$.

Containing approximately 6,640 acres, more or less.

T. 31 S., R. 32 W., (surveyed),
 Secs. 6 and 7;
 Secs. 18 and 19; and
 Secs. 30 and 31.

Containing 3,757.17 acres.

T. 31 S., R. 33 W., (surveyed),
 Sec. 1;
 Sec. 2;
 Sec. 11;
 Sec. 12;
 Secs. 13 and 14;
 Secs. 23 through 26;



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Sec. 35, lot 1; and
Sec. 36.

Containing 6,236.79 acres.

T. 32 S., R. 28 W., (surveyed).
Sec. 34, lot 2.

Containing approximately 17.66 acres, more or less.

T. 32 S., R. 29 W., (surveyed).
Sec. 3, W $\frac{1}{2}$; and
Secs. 30 through 32.

Containing 1,992.26 acres.

T. 32 S., R. 30 W., (surveyed),
Secs. 2 through 7;
Sec. 9;
Sec. 10, lots 1 and 2;
Sec. 11;
Secs. 13 through 16;
Secs. 22 through 24;
Sec. 25, lots 1 through 3;
Secs. 26 and 27;
Secs. 34 and 35;
Sec. 36, lots 1 and 3; and

Containing 7,946.03 acres, more or less.

T. 32 S., R. 32 W., (surveyed),
Secs. 5 through 9;
Sec. 11; and
Secs. 14 through 17.

Containing 6,384.96 acres, more or less.

T. 32 S., R. 33 W., (surveyed),
Sec. 1.

Containing 640 acres

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T. 32 S., R. 34 W., (surveyed),
Sec. 33, lot 3.

Containing 0.06 acres.

Aggregating approximately 56,822.61 acres, more or less.

Section 1. Purpose. Subject to the terms and conditions hereinafter set forth and during the term hereof, it is the purpose of this Easement:

- (a) to preserve the Conservation Property from sale or further development except to the extent specifically provided herein;
- (b) to maintain the Conservation Property predominately in its natural condition and to prevent any use of the Conservation Property, except to the extent specifically provided herein, that will significantly impair or interfere with its Conservation Values;
- (c) to confine the use of the Conservation Property to fish and wildlife management and conservation activities, subsistence gathering activities, archeological investigations, and recreational activities, including those for revenue producing visitor services as well as guided and unguided use. Wildlife and wildlands recreational activities are consistent with maintaining the Conservation Property predominately in its natural condition and will be held to a level of use which will not significantly impair or interfere with its Conservation Values;
- (d) to encourage and promote the participation of the communities of Larsen Bay and Karluk and of Koniag shareholders and their descendants who are residents of such communities, in the provision of the revenue producing visitor services which are permitted on the Conservation Property; and
- (e) to provide for establishment of a management group comprised of representatives of the Parties to consider issues related to the management of the Conservation Property.

Grantor reserves to itself, for the enjoyment of itself and its licensees, all legal rights and privileges that are not specifically granted to the United States, by and through this Easement.

Section 2. Term.

- (a) Primary Term. This Easement will commence on October 15, 2002, and shall expire on October 14, 2012, unless sooner terminated in accordance with its terms (hereinafter "Primary Term").

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(b) Secondary Term. At the option of Grantor and upon written notice to the Grantee and the State of its election to extend the term of this Easement, which notice shall be given at least six months prior to the expiration of the Primary Term, the term of this Easement shall be extended for an additional ten (10) year period. Such extended term shall expire upon the earlier of (i) October 14, 2022 or (ii) the closing of the sale of the Conservation Property in fee to the Grantee, unless sooner terminated in accordance with its terms.

(c) Further Extensions. Any amendment by the Parties to this Easement which would extend its term beyond October 14, 2022, may not be made without the prior approval of the Exxon Valdez Oil Spill Trustee Council ("Trustee Council") or its successor.

(d) Termination for Non-Payment. Notwithstanding any other provision hereof, should Grantee fail to make timely payments as required pursuant to Section 8 hereof, Grantor, upon sixty (60) days written notice to Grantee, may elect to terminate this Easement. Such right to terminate shall be in addition to all other rights and remedies at law or in equity which Grantee may have.

Section 3. Prohibited Uses by Grantor. During the term of this Easement and except as provided in Section 7 hereof, or with the prior written consent of Grantee, Grantor shall not:

- (a) sell or lease the Conservation Property to any person other than the Grantee. This prohibition includes the five existing cabins owned by the Grantor, and described as follows: four cabins located at the Portage site along the Karluk River and one cabin located at the outlet of Karluk Lake into the Karluk River; notwithstanding the foregoing, Grantor may lease such cabins for terms of less than twelve months, or grant a concession, the term of which concession may exceed twelve months, for their lease and management should Grantor choose to retain cabin management in accordance with Section 6 hereof;
- (b) except as specifically provided herein, construct any additional structures on the Conservation Property or materially modify the physical characteristics of the Conservation Property;
- (c) authorize seasonal camps except as permitted pursuant to Section 7;
- (d) fill, excavate, dredge, mine, drill or remove topsoil, sand, gravel, rock, minerals or other materials on the Conservation Property; or build roads or change the topography of the land in any manner, except as may be agreed pursuant to Section 3(g);
- (e) remove, destroy or cut native species of trees or plants (except as is necessary to construct and maintain foot trails as provided in Section 6(d) hereof or to construct and maintain cabin sites at those locations as provided in Sections 3 and 6 hereof), plant trees or

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plants (except those native species needed for appropriate landscaping at such cabin sites), spray with biocides, graze domestic animals, including reindeer, or disturb or change the natural habitat of the Conservation Property in any manner;

(f) dump trash, garbage, or other unsightly or offensive material, or change the topography through the placing of soil or other substance or material such as land fill or dredging spoils on the Conservation Property;

(g) manipulate or alter natural water courses, shores, marshes or other water bodies or engage in activities or uses detrimental to water purity on the Conservation Property except that by mutual agreement of the Parties, measures to protect habitat, e.g., bank stabilization, may be done; and

(h) utilize terrestrial motorized means of transportation except (i) as authorized by Grantee pursuant to Sections 4 and 5 hereof, (ii) as may be required for emergency transportation or (iii) as authorized pursuant to the terms of an easement reserved under Section 17(b) of ANCSA on which such means of transportation is allowed to be used.

Section 4. Grantee's Rights.

(a) Grantee, acting through the employees and agents of the U.S. Fish and Wildlife Service (hereafter the "Service"), and the State, acting through the employees and agents of the Alaska Department of Fish and Game (hereafter "ADF&G"), shall have unlimited access to the Conservation Property for any purpose consistent with this Easement, including access to permit their respective personnel to conduct population surveys and research on fish and wildlife resources, document salmon escapement or any other activity related to fish, wildlife and management of the Conservation Property in accordance with the terms hereof; provided however, nothing herein shall grant to Grantee or the State the right to use cabins on the Conservation Property should the management rights to such cabins be held by Grantor.

(b) Except as otherwise limited by the provisions of this Easement, Grantee shall have the right to authorize public access for uses otherwise permissible under 50 CFR Part 36, subject to applicable Alaska regulations for the taking of fish and wildlife promulgated by the Boards of Fisheries and Game. Any such uses must be compatible, within the meaning of the Refuge Improvement Act of 1997, with the purposes for which the Kodiak Refuge was established, and the purposes of this Easement. Grantee shall have the right to prescribe such stipulations as may be required in order to make such uses, whether guided or unguided, compatible.

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- (c) Except as otherwise limited by the provisions of this Easement, Grantee shall have the right to authorize compatible revenue producing visitor services related to hunting, fishing, access and other related activities on the Conservation Property. Grantee shall have the right to define the limits of these services, select the providers, and collect and retain fees in accordance with applicable laws.
- (d) Grantee shall have the right to require that Grantor, its licensees and permittees operate aircraft at altitudes and in flight paths that do not result in the herding, harassment, hazing or driving of wildlife. Except for takeoff and landing, weather or emergency situations, such aircraft shall maintain a minimum altitude of 1,200 feet above ground level. Grantee shall impose these same requirements on its licensees and permittees using aircraft to access the Conservation Property.
- (e) Grantee and the State shall have the right to access the Conservation Property for the purpose of verifying Grantor's compliance with the terms of the Easement. Grantor shall be provided a reasonable opportunity to have a designated representative accompany Grantee's and the State's representative on any such verification inspection which is a primary purpose of the trip.
- (f) In exercising their respective rights under this Section 4, and except as may be specifically provided in this Easement, neither Grantee nor the State shall take any of the following actions:
- (i) construct any additional permanent structures on the Conservation Property, or materially modify the physical characteristics of the Conservation Property, except as specifically provided herein;
 - (ii) authorize seasonal camps for purposes other than those set forth in Section 4(a) hereof, except, in the event that Grantor relinquishes its rights to grant concessions pursuant to Subsection 7(c) and Grantee grants such concessions, then Grantee may authorize such seasonal camps in conjunction with such concessions to the same extent that Grantor was permitted to authorize them pursuant to Subsection 7(c);
 - (iii) fill, excavate, dredge, mine, drill or remove topsoil, sand, gravel, rock, minerals or other materials on the Conservation Property; manipulate or alter natural water courses, shores, marshes or other water bodies or engage in activities or uses detrimental to water purity on the Conservation Property; or build roads or change the topography of the land in any manner; except to the extent authorized by the mutual agreement of the Parties in order to protect habitat, e.g., bank stabilization, hardening of campsites, etc., provided however that the agreement of the Parties may not be unreasonably withheld;

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(iv) remove, destroy or cut native species of trees or plants (except as is necessary to construct and maintain foot trails as provided in Section 6(d) hereof or to construct and maintain cabin sites when managed by the Grantee or its concessioner at those locations provided in Sections 3 and 6 hereof), plant trees or plants (except those native species needed for appropriate landscaping at such cabin sites), spray with biocides, graze domestic animals, including reindeer, or disturb or change the natural habitat of the Conservation Property in any manner; and

(v) dump trash, garbage, or other unsightly or offensive material, or change the topography through the placing of soil or other substance or material such as land fill or dredging spoils on the Conservation Property.

Section 5. Grantee's Responsibilities

(a) Except as provided otherwise in Subsection 5(b), Grantee shall be responsible, within authorized Refuge staffing levels, for providing, at approximately the same level as it provides on fee owned Refuge lands of comparable usage and character, enforcement of applicable laws and regulations and the terms of this Easement, and management of public use of the Conservation Property. Except to the extent application of the Kodiak NWR regulations is inconsistent with the rights explicitly reserved to the Grantor in this easement, the Parties intend that this instrument shall provide to the United States a property interest in the Conservation Property sufficient for it to apply and enforce on such Conservation Property all regulations pertaining to third-party use of the Kodiak NWR which are necessary for Grantee to perform its obligations hereunder. With respect to the above-referenced downstream lands, Grantor and Grantee shall enter into a cooperative management agreement pursuant to Section 304(f) of ANILCA (hereinafter, "Cooperative Management Agreement") prior to the issuance of visitor use permits by Grantee and any use of such downstream lands as provided by Section 5(d) hereof. The Cooperative Management Agreement shall provide for Grantee to enforce the terms of the visitor use permits issued hereunder which are applicable to such downstream lands, the limitations on the use of the downstream lands as provided herein and such other provisions as may be agreed to by Grantor and Grantee.

(b) As a condition of this Easement, Grantee shall establish, maintain and enforce a permit system, determined pursuant to Subsection 5(c), which imposes specific limits on the level and location of public use, excluding subsistence uses reserved in Section 7(d) hereof, permitted on the following portions of the Conservation Property: (i) lands within a one half mile band of land on either side of the Karluk River and (ii) lands within one half mile of the shoreline of Karluk Lake. Such limits shall be designed to reasonably minimize the impact of such public use on the fish, wildlife and habitat; ensure quality of the individual visitor experience; and provide for sustainable high quality fish, wildlife and

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wildlands recreation. In establishing such limits, Grantee shall consider whether the impact of public use may be reduced to satisfactory levels by the implementation of habitat protection measures such as hardened campsites and education of visitors in methods to reduce impacts on the habitat. If such measures would be effective, consistent with the habitat protection purposes of this Easement, and of reasonable cost and Grantee is able to secure the necessary funds, Grantee shall implement such measures prior to restricting public access. Private and revenue producing visitor service public use limits will be considered simultaneously and in the aggregate. When limits on public use are reached, Grantee shall balance the allocation between public use by guided and unguided parties in a manner which considers both the projected demand and the historical use patterns on the Conservation Property as well as on Refuge lands, and which achieves the purposes of this Easement. Notwithstanding the foregoing, (i) the allocation of use for guided parties shall not be reduced to less than 40 percent of the total number of user days authorized, except that if the number of applicants for permits for guided use is less than 40 percent of the total number of user days authorized, the unused days may be allocated to unguided users, and (ii) the allocation of use for unguided parties shall not be reduced to less than 40 percent of the total number of user days authorized, except that if the number of applicants for permits for unguided use is less than 40 percent of the total number of user days authorized, the unused days may be allocated to guided users. In establishing such limits and the allocation thereof, the Grantee shall consult with and give due consideration to the comments of the Grantor and ADF&G.

(c) By January 1, 2002, Grantee will commence a study to determine the level of use, qualifications for and operating standards of a permit system which meets the requirements of Subsection 5(b) and which will achieve the purposes of this Easement. Grantee will consult regularly with Grantor with respect to the development and conduct of the study.

(d) For the interim period from October 15, 2002, until completion and implementation of the study required in Subsection 5(c), visitor use (not including guides or administrative personnel), other than subsistence use reserved in Section 7(d), in the area identified in Section 5(b)(i) for the period June 10-July 15, shall be limited to a maximum of seventy (70) scheduled visitors on any day. An individual shall be a "scheduled visitor" only on those days during the period on which the individual is authorized to visit the area by the permit issued to him. Should an individual be prevented by weather conditions from visiting the area on the days authorized by the permit, then the individual may visit the area on other days during the period, provided that the sum of the days which the individual visits the area which are not authorized by the individual's permit does not exceed the number of authorized days which the individual was prevented from visiting by weather. The individual shall not be counted as a "scheduled visitor" on such weather caused make-up days or on days beyond that specified in the permit when the individual is unable to depart the permit area due to the weather. Limits outside the period June 10-July 15 are not

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prescribed herein during this interim period. Grantee may adjust visitor use numbers and prescribe limits and dates during other periods in consultation with Grantor and ADF&G to achieve the purpose of the Easement. Notwithstanding the foregoing, until the study is completed, Grantee may on an emergency basis impose additional use limits, not to exceed that particular season, or to make emergency closures of a portion of this area, on the same basis as on Refuge lands. Permits issued pursuant to this Section shall include the authorization for non-commercial users floating the Karluk River to camp for one night on Koniag lands downstream from the Refuge boundary at campsites designated by the Parties and allow use of Koniag lands immediately adjacent to the river by such users in route to the takeout as may be reasonably necessary to facilitate the recreation use of the river by such users, including, but not limited to, fishing from the bank. No right to hunt on the Koniag lands downstream of the Refuge is authorized pursuant to this provision.

(e) Permits for the revenue producing visitor service use of the Conservation Property within one half mile of the banks of the Sturgeon and Karluk Rivers and Karluk Lake issued by Grantor pursuant to Section 7, shall be administered by Grantor in accordance with the standards set pursuant to Subsections 5(c) and 5(d). Permits for the Conservation Property which are issued by Grantee shall also be administered in accordance with the standards established pursuant to Subsections 5(c) and 5(d).

(f) Notwithstanding any other provision of this Easement or of 50 CFR Part 36, Grantee, in selecting any person or entity to provide revenue producing visitor services of any nature whatsoever on the Conservation Property, including but not limited to, for purposes relating to hunting, fishing, access, cabin rental and management and other related services, shall grant a preference (i) to Koniag, Koniag shareholders, or their descendants, who are residents of Larsen Bay or Karluk, (ii) to the Native Village of Karluk acting through its IRA Council and (iii) to the Traditional Council of the Native Village of Larsen Bay (all such corporation, shareholders, descendants, villages and councils hereinafter as "Preferred Providers"). Nothing in this subsection is intended to preempt or modify applicable state licensing requirements. If an applicant who is not a Preferred Provider is evaluated through a competitive process or otherwise and is determined to be authorized to be the provider of revenue producing visitor services on the Conservation Property ("Winning Proposer"), then all Preferred Providers who submitted a proposal in response to the initial offering will be given the opportunity to provide such revenue producing visitor services on the same terms as the Winning Proposer. If one or more such Preferred Providers elect to match the terms of the Winning Proposer, then the Preferred Provider ranked highest in response to the initial offering will be awarded the authorization. If the Preferred Providers so selected elects not to match the terms, then the next highest ranked Preferred Provider will be given the opportunity to match the proposal. If the first and second highest ranked Preferred Providers who had submitted proposals or who were under consideration, decline to match the terms, Grantee is authorized hereunder to award the revenue producing visitor service to

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the Winning Proposer. Nothing herein shall preclude the Grantee from requiring minimum qualifications for any prospective provider. Grantee shall consult with Grantor prior to establishing or revising such minimum qualifications.

(g) Grantee shall, on a best efforts basis and subject to the availability of funds and personnel, (i) enforce the restrictions under the U. S. Bureau of Land Management (BLM) regulations, currently located at 43 C.F.R. § 2650.4, pertaining to use of the present Section 17(b) easement from Larsen Bay to the Portage in order to reduce the damage to the surrounding Conservation Property presently occurring as the result of usage outside the scope of such easement; and (ii) re-route such easements to provide equivalent access which is more environmentally protective of the Conservation Property if a satisfactory agreement can be reached between Grantor and the BLM, with appropriate consultation with the State, for the exchange of the existing 17(b) easement for such new routing, and/or make such improvements to the trail and postings that would eliminate or minimize the degradation of the surrounding lands.

(h) To the extent not prohibited by law or exempt from mandatory disclosure pursuant to Exemption 7 of the Freedom of Information Act, 5 U.S.C. § 552(b)(7), Grantee shall keep Grantor advised of its actions under this Easement by using its best efforts to provide Grantor with a copy of that portion of its proposed and final annual plans of operations which involves substantive reference to the Conservation Property, all monthly or other reports of operations conducted on the Conservation Property, and copies of all correspondence or reports which address any substantive activities on the Conservation Property, including but not limited to incident reports.

Section 6. Cabin Management.

(a) Grantor reserves the right to manage the five cabins identified in Section 3(a) hereof and any associated outbuildings. Grantor will remove or replace the two cabins on the east side of the Portage within twenty-four (24) months of the commencement date of this Easement. The two cabins may be replaced at either the existing location or mutually agreeable sites as long as they are upgraded to meet the standards set forth in this subsection. At Grantor's option and expense, the more northerly of the two cabins may be converted for storage use only, in which event and for so long as such structure is used solely for storage, such structure shall be an "out-building" and not included in the total number of cabins which may be maintained by Grantor under this Section. All costs for such removal, relocation, or replacement of the cabins are the sole responsibility of Grantor. All cabins shall be managed and maintained by Grantor in a clean, weather tight condition to a standard equal to that at which the public use cabins on the Kodiak National Wildlife Refuge are maintained. Grantor, in consultation with the Kodiak Refuge, will develop and implement a plan for the protection of habitat in the immediate vicinity of the

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cabins to minimize habitat impacts from cabin use. Such levels of protection shall be consistent with that provided at Refuge cabins. Upon completion of replacement, relocation or upon other mutual agreement, the two cabins on the east side of the Portage will be integrated into the Refuge cabin management program at the request of the Grantor in the same manner as provided in Subsections 6(c) and 6(d) for the management of the other cabins of Grantor. The parties acknowledge that Grantor also owns a cabin located in the Thumb River drainage, which cabin is not included in the five cabins identified in Section 3(a) hereof. Grantor will remove such cabin within twenty four (24) months of the commencement date of this Easement and will not permit its use pending its removal.

(b) At any time during the term of this Easement, Grantor may elect to relinquish for the remaining term of this Easement, including any extensions thereof, its right to manage pursuant to Subsection 6(a), some or all of the cabins. Grantor shall give Grantee written notice of its election to relinquish such management rights at least twelve months in advance of the date on which Grantor intends to cease managing such cabins. Such notice shall specify the date upon which Grantor shall cease to manage the cabins and the cabins which are subject to the notice.

(c) At the request of Grantor, Grantee will incorporate the two cabins on the west side of the Karluk River at the Portage and the cabin at the outlet of Karluk Lake into the Refuge cabin management program; provided, however, each such cabin shall then meet the standards for cabins set forth in Subsection 6(a). If incorporated into the Refuge cabin management program, such cabins shall be managed by the Grantee pursuant to a concession agreement to be awarded by the Grantee in the manner provided in Section 5(f). When these cabins are incorporated into the Refuge program, the Grantee will be responsible for their routine maintenance, but not for maintaining insurance coverage thereon, or for their repair or replacement if severely damaged by vandalism or any other cause of destruction. Routine maintenance may be performed directly by the Grantee, or through concession or other agreements. Other maintenance shall be performed or caused to be performed by Grantor. Any such severely damaged cabin shall not be included in the Refuge cabin management program until necessary repairs have been effected.

Any funds received by the Service as a result of its management of the cabins under this section shall be treated in the same manner as any other funds received by the Service derived from its cabin management program.

(d) Irrespective of whether any of the five cabins identified in Subsection 3(a) hereof and any associated out-buildings located upon the Conservation Property are included in the Refuge cabin management program, Grantor reserves the right to reconstruct, maintain and repair such cabins, associated out-buildings and footpaths, including the construction of either gravel footpaths or boardwalks, as are reasonably necessary for access to Grantor's

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facilities and consistent with the protection plan identified in Subsection 6(a). Reconstruction or relocation of any such cabin shall be limited to replacement structures of similar kind, the size of any of which replacement cabins shall not exceed 750 square feet for such replaced cabin and associated out-buildings and to the construction and maintenance of trails and footpaths for compatible fishing, hunting, ecotourism, recreation or similar purposes. New sites, including those for new trails and footpaths, shall be selected in consultation with the Refuge Manager, and new construction will take place only after the new site is determined by the Refuge Manager to be compatible with the purposes of this Easement. Any site(s) may be abandoned and alternate sites established provided that:

- (i) there shall never be more than five cabins for human occupancy maintained at any one time;
- (ii) the alternate site, including the trails and footpaths to be constructed, is determined by the Refuge Manager to be compatible with the purposes of this Easement; and
- (iii) any abandoned site is promptly restored by the Grantor to a natural state to the satisfaction of the Refuge Manager prior to any occupancy of the replacement cabin.

Section 7. Reserved Rights. In addition to any rights expressly reserved to Grantor in Sections 5 and 6, Grantor shall have the following reserved rights:

- (a) All other rights of management and control of the Conservation Property remain vested in Grantor. Nothing herein shall constitute a limitation on the rights of Grantor to inspect the operations of Grantee or the ADF&G on the Conservation Property to verify compliance with the terms of this Easement;
- (b) With respect to the Conservation Property, Grantor reserves the right to operate, or to grant a concession for the operation of, a bear viewing program only in the Thumb River drainage. A review of the program will be conducted by Grantor and the Refuge which will seek to reach a mutually agreeable plan of operations. The bear viewing program will be operated on the Conservation Property from the site within the Thumb River drainage, as such site and drainage are shown on the map attached hereto and incorporated herein by reference as Exhibit A. The site of such program may be changed only with the consent of the Refuge Manager. The number of persons who are allowed to be at the bear viewing site at one time will be twelve (12) visitors plus guide staff; provided however, that such number may be exceeded upon occasion in order to accommodate representatives of Grantor, Grantee, or ADF&G and their official guests accompanied by such representatives. Should the Refuge Manager make a finding based upon available

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information that such number of persons at the bear viewing site is causing significant harm to the bear population on the Conservation Property or adjacent Refuge lands, or should Grantor request an increase in the number of visitors permitted at one time to be at the viewing site, the Refuge Manager, in consultation with Grantor and ADF&G, shall conduct a study to determine the maximum number of persons that may be present at the viewing site at any one time. All findings made hereunder shall be in writing, shall identify with particularity the information relied upon, and shall provide the factual basis for their conclusions, and should there be a finding of significant harm, the finding shall specify with particularity the nature and extent of the harm.

Public access to the Conservation Property within the Thumb River drainage, except through Koniag or its authorized concessioners, is closed. Grantee shall also use its best efforts to reach an agreement with Grantor, in consultation with the State, to close access or otherwise restrict activities on adjacent lands which would significantly impact the Conservation Values;

(c) Grantor further reserves, to the extent it has the right to do so, the exclusive right to grant concessions for revenue producing visitor services to be conducted on any portion of the Conservation Property which is within one half mile on either bank of the Sturgeon River, Karluk River or within one half mile of the shoreline of Karluk Lake. Such concessions shall include the right to conduct revenue producing visitor services within that portion of the Conservation Property identified in the foregoing sentence, including but not limited to fishing, hunting, outfitting and river floating. The operation of such concessions shall be subject to the standards established pursuant to Subsections 5(c) and 5(d) hereof. At any time, Grantor may relinquish the right to grant concessions for some or all of the activities reserved hereunder, in which event Grantee may award, in the manner provided in Subsection 5(f) hereof, concessions for such relinquished activities.

The concessions which may be granted pursuant to this subsection may include the right to operate seasonal camps (defined as any camp in existence at a single location for more than 15 days) on the Conservation Property subject to the limitations contained in this Easement, provided that not more than two (2) such camps may be in operation at any one time under concessions granted by Grantor. In order to protect the surrounding habitat, proposals for the location of seasonal camps may include the use of tent platforms and similar temporary improvements. Temporary improvements must be approved by the Refuge Manager, which approval shall not be unreasonably withheld. In addition to the standards established pursuant to Subsections 5(c) and 5(d) hereof, such seasonal camps shall operate under the following prescription:

(i) Only one seasonal camp may be established within one-half mile of each of the Karluk and Sturgeon Rivers;

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(ii) Any seasonal camp established along the Karluk River shall be at least one mile from the western terminus of the 17(b) easement from Larsen Bay to the Portage on the Karluk River unless the camp utilizes one or more of the existing cabins;

(iii) The location of seasonal camps other than at the Portage is to be approved by the Refuge Manager based on the criteria to minimize wildlife and habitat disturbance and the viability of the site for commercial purposes. Such approval shall not be unreasonably withheld;

(iv) Helicopters are allowed only for establishment and removal of seasonal camps. They are expressly prohibited for the routine operation of the camps and the movement of clients and staff from the day before the first client arrives until the day after the last client leaves each year, except for medical emergencies. In the event Grantor relinquishes its right to grant concessions under this section, the Grantee is under no obligation to continue the authorized use of helicopters hereunder; and

(v) Not more than twelve (12) clients may be in either camp at any time, except for temporary camps established within one half mile of the mouth of the Sturgeon River, where the number of clients may be fifteen (15).

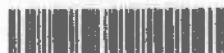
(d) Grantor reserves the right to permit residents of the villages of Karluk and Larsen Bay to enter upon, and travel by traditional means on, the Conservation Property for the purpose of engaging in lawful customary and traditional uses (hereinafter "subsistence uses") of wild, renewable resources for direct personal or family consumption as food or clothing; for making and selling handicraft articles out of non-edible by-products of fish and wildlife resources taken for personal or family consumption, for barter, or sharing for personal or family consumption, and for customary trade. For the purposes of this subsection, the phrase "travel by traditional means" refers to those means of transportation that were customarily used by the residents of Karluk and Larsen Bay as of September 1, 1995. However, routes of travel by motorized means to subsistence use areas are restricted to the trails existing as of January 10, 2001, and depicted on the map attached hereto as Exhibit IX, provided, however, nothing herein shall limit the use by motorized means of easements reserved pursuant to Section 17(b) of ANCSA where such use is authorized by the terms of such easement.

(e) The right to conduct operations on the Conservation Property to locate, protect, excavate and remove, all historic and prehistoric archeological and cultural artifacts, including but not limited to human remains, funerary objects, other artifacts located in, on or below the Conservation Property ("Artifacts"), for curation, and to visit, survey, excavate, stabilize, restore and protect culturally significant sites and the right to maintain semi-permanent seasonal camps to engage in such activities. The siting of such seasonal

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camps shall be subject to the approval of the Refuge Manager to minimize impacts on brown bears and other fish and wildlife. Such approval shall not be unreasonably withheld. If the approval of a site is withheld, the Refuge Manager shall identify at least two other sites in the vicinity of the rejected site, which other sites would be acceptable. Nothing in this Easement shall preclude the right of Grantor to receive compensation from persons conducting such activities.

Prior to commencing any excavation or construction activities at an archeological site, notice in writing of the location of the site and a description of the activities to be conducted at such site shall be provided to the Refuge Manager. Should the Refuge Manager find that such site is frequented by brown bears and that the proposed activities would materially alter brown bear habitat use in the area, then, for activities occurring at the site during that period commencing on June 16th and ending on October 15th, the Refuge Manager may limit the time during which the such primary archeological activities may occur. However, in no event shall such activities be prevented from occurring during the period commencing at 8:00 A.M. and ending at 6:00 P.M. without the prior written consent of Grantor which consent may be withheld in Grantor's sole discretion. Any such limitation which may be established by the Refuge Manager shall not apply to personnel being at the site primarily for the purpose of providing security for the site or upon notice to the Refuge Manager, in an emergency situation in order to protect the site or its artifacts from destruction. Any finding made by the Refuge Manager pursuant to this provision shall be made in writing and shall set out the factual basis for the finding;

(f) Any permit, license, concession or other authorization granted by Grantor to a third party to exercise any right reserved hereunder to Grantor shall be subject to the terms of this Easement and shall include a provision which shall include by reference in such permit, license, concession or authorization the terms of this Easement. Grantor shall use all reasonable efforts to assure compliance with the applicable terms of this Easement by such permittees, licensees and concessioners; and

(g) Notwithstanding the provisions of Sections 4 and 5 hereof, Grantor shall have the right to cross and to authorize the crossing of the Conservation Property by the employees, agents, guests, contractors and clients of Grantor or of its concessionaires, for the sole purpose of providing access to the other property of Grantor.

Section 8. Annual Payments. In consideration for the rights granted hereunder by Grantor, on or before the fifteenth day of October during each year of the term hereof, Grantee shall pay to Grantor the amount due as set forth in Paragraph 5(d) of the Agreement.

Section 9. Management Group. There shall be a management group comprised of one representative selected by each of the Grantor, Grantee, and the ADF&G. The Management

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Group will meet at least semi-annually to discuss issues related to the management of their respective interests in the Conservation Property under the terms of this Easement, including but not limited to the management of wildlife and fisheries. Such group shall also offer to the respective tribal councils to meet at least once a year in the villages of Karluk or Larsen Bay to receive the comments and concerns of the members of such communities. Such village meetings may be combined with other meetings between the Grantor and the village.

Section 10. Enforcement; Economic Review.

(a) **Enforcement.** In the event a Party becomes aware of an event or circumstance of non-compliance with the terms of this Easement, that Party shall give notice to the other Parties of such event or circumstance of noncompliance. Within thirty (30) days of the receipt of such notice, the Party which is alleged to be in non-compliance shall correct such event or circumstances of non-compliance or shall commence to correct such events of non-compliance and shall continue to prosecute with due diligence such corrective actions until the event or circumstance is corrected. Should the non-complying Party fail to correct or institute with due diligence an action to correct, then the Party making such notification is entitled to institute an action to enjoin any breach or enforce any covenant and require that the Conservation Property be restored promptly to substantially the same condition that existed prior to the event or circumstance of non-compliance.

Nothing in this Section shall limit any other legal rights or remedies available to any of the parties. Notwithstanding any other provision of this Section, no Party shall be precluded from taking action to enjoin an activity which is in violation of the provisions of this Easement.

(b) **Economic Review.** Following the end of the 2007 summer season, Grantor may review the economic consequences of the allocation of use permits between guided and unguided users on shareholder owned guiding and outfitting services. Should Grantor elect to perform such review and if prior to February 1, 2008, Grantor determines that there have been significant adverse economic consequences to such shareholder owned guiding and outfitting services which consequences are directly attributable to the allocation balance and not to other business decisions, then it shall provide a copy of its determination and supporting documentation to the Grantee and the State. Within thirty (30) days of the provision of such copies, Grantor shall meet with the Grantee and the State to review its determination and supporting documentation. Within sixty (60) days following such meeting, Grantor shall have the right to terminate this easement upon thirty (30) days written notice to Grantee and State. Should Grantor elect to terminate this Easement as provided herein, no fee will be owed to Grantor for the partial year in which such election occurs.



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Section 11. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee or the State to bring any action against Grantor for any injury to or change in the Conservation Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement; any action resulting from a trespasser's negligence; any action resulting from the negligence of a licensee or permittee of Grantor except to the extent that Grantor is also otherwise statutorily liable therefor; or prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Property resulting from such causes.

Section 12. Insurance. Nothing in this Easement shall be deemed to limit the right of Grantor to obtain liability insurance to hold itself harmless from injuries to third parties arising from the actions or inactions of the United States or the State under this Easement. Nothing in this Easement shall be construed to either limit or increase any liability of the United States or the State under applicable Federal or State law, including, but not limited to the Federal Tort Claims Act, or of the State under applicable State laws.

Section 13. Contaminants. The Parties and their agents shall not place in an unlawful manner, nor dispose, spill or release any contaminants or hazardous substances on the Conservation Property and shall be liable under applicable law for any such disposal, spillage or release of contaminants during the term of this Easement. Unguided permittees shall not be deemed to be agents of the Grantor.

Section 14. Obligation of Funds. Nothing in this Easement shall be construed as obligating the expenditure of funds by the United States or the State, now or in the future, in excess or advance of appropriations authorized by law.

Section 15. General Provisions.

- (a) This Easement is not intended, and shall not be construed, to create any other party beneficiary hereof and nothing in this Easement shall be construed as creating any rights of enforcement by any other person or entity.
- (b) This instrument shall be construed so as to effect the purpose for which it was granted. Any ambiguities shall be resolved in a manner that best accomplishes the purpose of this Easement.
- (c) Grantor is not relieved from liability by this Easement for injuries occurring on, and resulting from, the condition of the Conservation Property for which it would otherwise ordinarily be liable; provided, however, should such liability arise from a pre-existing condition of the Protected Property, then Grantor shall have the right to reasonably remedy such condition, notwithstanding any other provision herein. The Grantee and the State each

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shall be responsible for losses, damages, or liabilities arising out of any act or omission of their respective employees or agents to the extent each otherwise would be responsible for such losses, damages, or liabilities under applicable federal or State law.

(d) Grantor is not relieved from liability by this Easement for the costs associated with the cleanup of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and similar federal and State laws for which it would otherwise ordinarily be liable. Grantor shall be liable for and hold the Grantee and the State harmless from liability under said statutes, and pursuant to said statutes shall indemnify the Grantee and the State for all costs relating to cleanup, including attorneys fees, of hazardous substances that were released subsequent to the conveyance of the Conservation Property to Grantor and prior to the effective date of this Easement, and for all releases caused by, or contributed to, by Grantor or its agents subsequent to the date of this Easement, but not for costs for cleanup of hazardous substances that are released by the Grantee or the State or their respective agents, contractors and employees in the course of engaging in activities that are authorized by this Easement. This clause may be enforced by Grantor, Grantee, or the State in a court of law. To the extent any of the lands were oiled as a result of the EVOS, the Parties stipulate and agree that no violation of this clause shall be deemed to have occurred as a result of the EVOS.

(e) The Grantee and the State may not transfer their rights hereunder without the consent of the Grantor, which consent may be withheld or conditioned by the Grantor in its sole and absolute discretion. The terms of this Easement may be waived or modified only by the written agreement of the Parties.


(f) If any material provision of this Easement or any application thereof shall be invalid or unenforceable, then the Parties will negotiate in good faith such reasonable modifications of this Easement as are necessary to protect the duties, rights and interests of the Parties under this Easement and to carry out the intent of this Easement.

Section 16. Notices. Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Grantor: Koniag, Inc.
 4300 B Street, Suite 407
 Anchorage, Alaska 99503
 Attention: President

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If to Grantee: Regional Director
Region 7
U.S. Fish and Wildlife Service
1011 E. Tudor Road
Anchorage, AK 99503-6199

With a copy to: Refuge Manager
U. S. Fish and Wildlife Service
Kodiak National Wildlife Refuge
1390 Buskin River Road
Kodiak, Alaska 99615

and Division of Realty
U.S. Fish and Wildlife Service
1011 E. Tudor Road
Anchorage, Alaska 99503

If to the State: Alaska Department of Natural Resources
Office of the Commissioner
550 West 7th Avenue, Suite 1400
Anchorage, Alaska 99501-3579

With a copy to: Alaska Department of Fish and Game
Office of the Commissioner
P.O. Box 25526
Juneau, Alaska 99802-5526

or to such other address as any Party from time to time shall designate by written notice to the others.

Section 17. Release of Easement. Upon the termination of this Easement, whether by expiration of its terms or otherwise, the Grantee and the State shall execute an acknowledgment of the termination of this Easement and a release of all interest in the Conservation Property that the Grantee or the State may have held pursuant to its terms in the form attached to the Agreement as Exhibit VII.

Section 18. Addition of Certain Lands. At such time as the title to any of the following described lands is conveyed to or confirmed in Koniag, such land shall thereafter be Conservation Property and subject to the terms of this Easement:

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Seward Meridian, Alaska

T. 30 S., R. 28 W., (surveyed).

Sec. 19, that portion of lot 1 located in the S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 20, that portion of lot 5 located in the S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 29, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$;

Containing approximately 30 acres, more or less.

Upon the receipt or confirmation of title to such lands, Koniag shall record in a form acceptable to Grantee, an acknowledgement of its title and that such land is subject to the provisions of this Easement.

Section 19. Miscellaneous Nothing herein shall be deemed to validate or invalidate or otherwise in anyway affect any claim of title which may be asserted by the Grantor, Grantee or the State to the submerged lands within the boundaries of the Conservation Property. Nothing herein shall be deemed to limit the rights of the Grantor, the Grantee or State to assert its interests, if any, in such submerged lands, including but not limited to instituting such litigation as it may determine to be appropriate to protect its interests.

The covenants, terms, conditions, and restrictions of this Easement shall run with the lands for the duration of this Easement and shall be binding upon the Grantor, its successors and assigns.

The Grantor hereby covenants to and with the Grantee and the State, that the Grantor is lawfully seized in fee simple of the surface estate of the above described Conservation Property, has a good and lawful right and power to encumber the same, that the same is free and clear of encumbrances, except as shown above, and that the Grantor will warrant and defend this Easement and the quiet possession in accordance with this Easement, such warranty and defense being limited to that portion of the chain of title from the moment of conveyance by the United States to Grantor or its predecessors in interest pursuant to ANCSA, 43 U.S.C. §1601 et seq., to and including the moment at which this Easement is validly conveyed to the Grantee and the State, against the lawful claims and demands of all persons.

Nothing herein shall be deemed to cause a merger of the surface and subsurface estates, and nothing herein shall be deemed to pertain to, affect or in any way limit the rights of the subsurface owner to utilize that estate in accordance with applicable law. Further, nothing herein shall be deemed to pertain to, or otherwise increase or limit, the applicability of Section 22(g) of ANCSA to the Conservation Property.

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TO HAVE AND TO HOLD unto the Grantee and the State, their successors, and assigns for the term of this Easement.

IN WITNESS WHEREOF, Grantor has set its hand on the day and year first above written.

KONIAG INC.

By: _____
Dennis Metrokin, President

Attest:

By: _____
Lavonda Beukers, Assistant Secretary
Koniag, Inc.

ACKNOWLEDGMENT

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of _____, 2002, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Dennis Metrokin, President of Koniag, Inc., to me known and known to be the person he represented himself to be, and the same identical person who executed the above and foregoing CONSERVATION EASEMENT on behalf of Koniag, Inc., and who acknowledged to me that he signed the same as President of Koniag, Inc., in the name of and for and on behalf of said Corporation, freely and voluntarily and by authority of its Board of Directors for the use and purposes therein mentioned.

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

(SEAL)

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

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ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the ____ 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 Lavonda Beukers, known to me and known to be the Assistant Secretary of Koniag, Inc., a corporation organized and existing under the laws of the State of Alaska, and acknowledged to me that she attested to the execution of the foregoing CONSERVATION EASEMENT freely and voluntarily for and on behalf of said corporation by authority of its Board of Directors for the uses and purposes therein mentioned.

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

SEAL

NOTARY PUBLIC in and for Alaska
My Commission expires: _____

Master Agreement Between Koniag, Inc.,
the United States of America, and
the State of Alaska

Exhibit II
Conservation Easement

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ACCEPTANCE BY THE U.S. FISH AND WILDLIFE SERVICE

Pursuant to § 1302 of the Act of December 2, 1980, Alaska National Interest Lands Conservation Act, (16 U.S.C. § 3192), the National Wildlife Refuge Administration Act as amended by the Refuge Improvement Act of 1997 (16 U.S.C. § 668aa-ee), and the Master Agreement for Protection of Certain Lands and Resources Between Koniag, Inc., the United States of America, and the State of Alaska, dated July ____, 2002, the Grantee hereby accepts this CONSERVATION EASEMENT conveying to the United States and its assigns, those interests in lands described therein.

Dated this ____ day of _____, 2002.

Regional Director, Region 7
U.S. Fish and Wildlife Service

ACKNOWLEDGMENT

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the ____ 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 David B. Allen, known to be the Regional Director, Region 7, of the U.S. Fish and Wildlife Service, and he acknowledged to me that he signed the foregoing CONSERVATION EASEMENT, conveying to the United States those interests in lands described therein, and he acknowledged that he executed the foregoing instrument freely and voluntarily.

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

(SEAL)

NOTARY PUBLIC in and for Alaska
My Commission Expires: ~~12345X@P~~JL SET PAGEPR

Master Agreement Between Koniag, Inc.,
the United States of America, and
the State of Alaska

Exhibit II
Conservation Easement

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ACCEPTANCE BY THE STATE OF ALASKA

Pursuant to AS 38.05.035(a)(12), the State hereby accepts title to the above described interest in real property on behalf of the State of Alaska.

By:

Deputy Commissioner
Department of Natural Resources

ACKNOWLEDGMENT

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2002, by _____ who is known to me to be the person who has been lawfully delegated the authority of _____, Deputy Commissioner, Department of Natural Resources, State of Alaska.

(Signature)

(SEAL)

(Printed or typed name of Notary)
NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

AFTER RECORDING RETURN TO:
U.S. Department of the Interior
Fish and Wildlife Service
Division of Realty
1011 E. Tudor Road
Anchorage, Alaska 99503

Location Index:
Seward Meridian, Alaska
T. 29 S., R. 29 W.
T. 30 S., R. 28, 30, 31, 33 W.
T. 31 S., R. 28, 29, 30, 31, 32, 33 W.
T. 32 S., R. 28, 29, 30, 32, 33, 34 W.

Master Agreement Between Konig, Inc.,
the United States of America, and
the State of Alaska

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Exhibit II
Conservation Easement



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EXHIBIT III

STATE BUSINESS - NO CHARGE

CAMP ISLAND LIMITED DEVELOPMENT EASEMENT

THIS Limited Development Easement ("Easement") is made this ____ day of _____, 2002, by Koniag, Inc., (hereinafter, with its successors and assigns "Koniag"), whose address is 4300 B Street, Suite 407, Anchorage, Alaska 99503 ("Grantor") and the United States of America, (hereinafter, with its assigns "United States") ("Grantee"), acting through the Fish and Wildlife Service, whose address is 1011 E. Tudor Road, Anchorage, Alaska 99503-6199, and the State of Alaska, (hereinafter, with its assigns "State"), whose address is Department of Natural Resources, 550 W. 7th Avenue, Suite 1050A, Anchorage, Alaska 99501-3579, individually referred to hereafter as a Party, or collectively referred to hereafter as the Parties, under the authority of Section 1302(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. §3192(a)), the National Wildlife Refuge Administration Act as amended by the Refuge Improvement Act of 1997 (16 U.S.C. § 668aa-ee), A.S. 38.05.035(a)(12) and A.S. 16.05.050(a)(2), and the Master Agreement for the Protection of Certain Lands and Resources Between Koniag, Inc., the United States of America, and the State of Alaska, dated July ____, 2002 ("Agreement").

WHEREAS, the Grantor is the owner in fee simple of the surface estate of certain real property located on Camp Island in the Kodiak National Wildlife Refuge ("Refuge"), State of Alaska, which is described below (the "Protected Property"); and

WHEREAS, the Protected Property is private property located within the boundaries of the Refuge and adjacent to certain other lands which will be subject to a conservation easement ("Conservation Easement") in order to protect its conservation values ("Conservation Property"); and

WHEREAS, use of the Protected Property can have a significant impact on the resources within the Conservation Property which provides significant habitat for migratory birds, fish and other wildlife and plants, and has substantial value as a natural, scenic, educational and recreational resource (all such habitat, wildlife, plants and values hereinafter referred to as "Conservation Values"); and

Master Agreement Between Koniag, Inc.,
the United States of America, and
the State of Alaska

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Exhibit III
Camp Island
Limited Development Easement



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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

KONIAG, INC., an Alaska corporation,
and MICHAEL P. O'CONNELL, an
individual,

Plaintiffs,

v.

KURT KANAM, individually and as Tribal
Attorney for the Native Village of Karluk, and
ORBIE MULLINS, individually and as Village
of Karluk Tribal Court Judge for the Karluk
Tribal Court for the Native Village of Karluk,

Defendants.

Case No. 3:12-cv-00077-SLG

**ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT ON
PLAINTIFFS' PERMANENT INJUNCTION CLAIM**

THIS COURT, having reviewed Plaintiffs' Motion for Partial Summary Judgment (Dkt. 65) as to their federal common law claim concerning tribal court jurisdiction and request for permanent injunctive relief, Plaintiffs' memorandum and all other submissions in support of said motion, and all pleadings and other filings on record in this matter,¹ the Motion is GRANTED for the reasons set forth below.

"Before a court may issue a permanent injunction, a party must show (1) that is has suffered an irreparable injury; (2) that remedies available at law, such as monetary

¹ No opposition to the motion has been filed by the Defendants, and the time for filing an opposition has run. The Defendants did file a document entitled "Cross Complaint" at Docket 71, with numerous documents appended to it, that appears to allege that the United States Fish and Wildlife Agency has collected "over \$5,000,000 in violation of the false claim act" pursuant to a mitigation agreement between that agency and Koniag, Inc. These filings do not appear to respond to the Motion for Partial Summary Judgment. This Court will not take any action with respect to the "Cross Complaint." If a party seeks to file an amended pleading in the case, the party must file a motion for leave to amend as specified in Civil Rule 15.

damages, are inadequate to compensate for that injury; (3) that, considering the balance of the hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.”²

Plaintiffs have shown that there is no genuine question of material fact as to their claim against Defendants that under federal common law Defendants do not have the legal right to exercise, retain, or threaten tribal court jurisdiction over the Plaintiffs in connection with any of the Karluk Tribal Court actions now pending against the Plaintiffs. Further, Plaintiffs have shown that there is no genuine question of material fact that the Defendants unlawfully exercised, retained, and threatened to exercise tribal court jurisdiction over the Plaintiffs when:

(1) Defendants failed, and continue to fail, to dismiss with prejudice *The Native Village of Karluk v. Koniag Corporation*, Cause No. 3-19-12-1 (*Karluk v. Koniag I*) and instead, through the time of their January 2013 filing with the Karluk Tribal Court, continue to file motions to dismiss without actually dismissing their claims, which is an unlawful attempt to exercise tribal court jurisdiction over Plaintiff Koniag, Inc. (Koniag);

(2) Defendants failed, and continue to fail, to dismiss with prejudice *The Native Village of Karluk v. Michael P. O’Connell, Alaska Bar Association, California Bar Association, Washington Bar Association, Utah Bar Association, Idaho Bar Association, Minnesota Bar Association, Oregon Bar Association*, Cause No. 4-09-12-1 (*Karluk v. O’Connell*) and instead, through the time of their January 2013 filing with the Karluk

² *Western Watershed Project v. Abbey*, ___ F.3d ___, 2013 WL 2532617 at *15 (9th Cir. 2013)(citations omitted).

Tribal Court, continue to file motions to dismiss without actually dismissing their claims, which is an unlawful attempt to exercise tribal court jurisdiction over Plaintiff Michael O'Connell (O'Connell);

(3) on August 24, 2012, in a tribal court action styled *The Native Village of Karluk v. Koniag Corporation*, Cause No. 8-24-12-1 (*Karluk v. Koniag II*), Defendants retained, exercised, or threatened to retain or exercise jurisdiction over Koniag with respect to matters related to the same matters raised in prior tribal court litigation, *Karluk v. Koniag*, which is an unlawful attempt to exercise tribal court jurisdiction over Plaintiff Koniag;

(4) on November 6, 2012, in a tribal court action styled *The People of the United States EX REL Kurt Kanam v. Washington Bar Association* Cause No. 11-06-12-2 (*Kanam v. WSBA*), Defendants retained, exercised, or threatened to retain or exercise jurisdiction over O'Connell with respect to matters related to the tribal court documents filed and issued in the prior tribal court litigation, *Karluk v. Koniag* and *Karluk v. O'Connell*. Specifically, this action attempted to exercise tribal court jurisdiction over O'Connell with respect to the April 5, 2012 letter O'Connell sent – the sending of which Kanam and the Village of Karluk allege constituted an act of “judicial intimidation;” and

(5) on or about March 23, 2013, Defendant Kurt Kanam prepared and assisted Alicia Reft and/or Dean Andrew in filing a “Notice of Removal” and Defendant Orbie Mullins entered an “Order of Removal and Dismissal” in the Karluk Tribal Court purporting to “remove” certain claims Koniag pled against third-parties in the case *Koniag, Inv. v. Andrew Airways, Inc., et al.* (Case No. 3:12-cv-00051-SLG) to the Karluk Tribal Court and “dismissing” others. One or both of the Defendants also commenced

or assisted Alicia Reft and/or Dean Andrew in commencing a tribal court case captioned *Koniag, Inc. v. Dean Andrew, et al.* (Cause No. 3-22-13-1) in connection with their “removal” actions.

By being repeatedly subjected to these tribal court lawsuits, Plaintiffs have suffered irreparable injuries. Plaintiffs have further shown that the remedies available at law, such as monetary damages, are inadequate to compensate for these injuries.³ And, considering the balance of hardships between the parties, this Court again concludes that a remedy in equity is warranted.⁴ Further, the public interest will not be disserved Defendants are enjoined from seeking to improperly exercise tribal court jurisdiction. Thus, all four of the prerequisites for permanent injunctive relief have been demonstrated.

ACCORDINGLY, Defendants are HEREBY ORDERED to immediately, and no later than ten (10) calendar days from the date of this Order, take all steps necessary to obtain an immediate and final dismissal with prejudice of all tribal court actions against or related to Plaintiffs in Karluk Tribal Court, including, but not limited to: (1) *Karluk v. Koniag I*; (2) *Karluk v. O’Connell*; (3) *Karluk v. Koniag II*; (4) *Kanam v. WSBA*; and (5) *Koniag v. Andrew, et al.* Defendants must file in the docket of this action a copy of the Karluk Tribal Court orders dismissing each of these cases not later than ten (10) calendar days after issuance of those Karluk Tribal Court orders.

³ See Docket 31 at 13.

⁴ See Docket 31 at 13-14.

Defendants, their agents, servants, employees and all others acting in active concert or participation with Defendants are also HEREBY ORDERED ENJOINED and PROHIBITED from:

(a) directly or indirectly retaining, exercising or threatening to retain or exercise jurisdiction of or by the Karluk Tribal Court for the Native Village of Karluk over Plaintiffs in connection with, related to or arising from any matters described in paragraphs one through five of this order; and

(b) directly or indirectly retaining, exercising or threatening to retain or exercise jurisdiction of or by the Karluk Tribal Court for the Native Village of Karluk over Plaintiffs in connection with, related to or arising from any other matters that are unrelated to tribal membership determinations for the Native Village of Karluk, internal domestic relations matters of the Native Village of Karluk, or other internal tribal affairs.

To the extent not expressly modified hereby, the July 3, 2012 Injunction remains in full force and effect.

DATED at Anchorage, Alaska this 29th day of July, 2013.

/s/ Sharon L. Gleason
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

KONIAG, INC., an Alaska corporation,
and MICHAEL P. O'CONNELL, an
individual,

Plaintiffs,

v.

KURT KANAM, individually and as Tribal
Attorney for the Native Village of Karluk,
and ORBIE MULLINS, individually and as
Village of Karluk Tribal Court Judge for
the Karluk Tribal Court for the Native
Village of Karluk,

Defendants.

Case No. 3:12-cv-00077-SLG

REFERRAL OF MOTION TO CHIEF JUDGE BEISTLINE
(Motion for Disqualification)

On January 30, 2014, Defendants filed a document titled “Mandatory Judicial Notice with Affidavit in Support” at Docket 106. Several other documents were filed as attachments to this document.¹ One of the attachments is an “Affidavit of facts” signed under oath by Defendant Orbie Mullins. Mr. Mullins asserts that the undersigned judge has participated in Plaintiff Koniag, Inc.’s “ongoing security fraud” against the Native Village of Karluk. He also states that he “filed a cross complaint . . . listing Judge Gleason as a co Defendant” in this action in order to “prove [Judge Gleason’s] intent to support this securities fraud.”² Mr. Mullins maintains that his “affidavit is brought

¹ See Docket 106-1.

² Docket 106-1 at 33, 35–36.

forward in good faith and authorized in part by” 28 U.S.C. §§ 144 and 455.³ Additionally, three of the other attachments to the document at Docket 106 assert that “Federal Judge Sharon Gleason made her rulings after she was named as a defendant in a cross complaint” in this action and that she “must have a conflict of interest as a defendant to a case she is actively ruling in.”⁴

In light of these assertions, the Court will treat the filing at Docket 106 as a motion for disqualification under 28 U.S.C. § 144 and 28 U.S.C. § 455. Pursuant to the District Court of Alaska’s policy with respect to motions to disqualify, the motion for disqualification at Docket 106 is referred to the Honorable Chief Judge Ralph R. Beistline for determination.⁵

³ Docket 106-1 at 36.

⁴ Docket 106-1 at 5, 10, 20. One attachment also asserts that “Federal Judge Sharon Gleason failed to disclose to her court or to the Defendants that prior to her being appointed to Federal Judge Position, She represented a timber company who was actively doing logging activities on Koniag timber stolen from The Native Village Corporations.” Docket 106-1 at 23. This assertion is not accurate; however, this judge did preside over a matter involving a timber company and a Kodiak-based Native Corporation as a state court judge.

⁵ The following information may facilitate the Chief Judge’s review of the motion. Plaintiffs initiated this action on April 9, 2012. Defendants filed an Answer to the Third Amended Complaint at Docket 61. See also Docket 62 at 2. Thereafter, on June 3, 2013, Defendants filed a document titled “Cross Complaint,” which identified this judge as a defendant. The cross-complaint also identified a federal Fish and Wildlife official as a defendant. See Docket 71. There was no motion made to obtain the Court’s leave to file the cross complaint. Cf. Civil Rule of Procedure 14(a). On July 29, 2013, this Court issued an Order Granting Motion for Partial Summary Judgment on Plaintiffs’ Permanent Injunction Claim. See Docket 78. The Court stated in that Order that it would “not take any action with respect to the ‘Cross Complaint.’ If a party seeks to file an amended pleading in the case, the party must file a motion for leave to amend as specified in Civil Rule 15.” Docket 78 at 1 n.1. No such motion has been filed. On September 24, 2013, Chief Judge Beistline entered an order in this case denying a previous motion for disqualification. Docket 99. Around the same time, Defendants filed an appeal of this matter with the Ninth Circuit. On January 24, 2014, the Commissioner for the Ninth Circuit issued an order accepting Defendants’ amended notice of appeal as timely filed “because appellants’ June 3, 2013 cross-complaint names a federal party to the underlying action.” See Order at 1–2, No. 13-35759 (9th Cir. Jan. 24, 2014). The Ninth Circuit rules provide that the Commissioner “is an officer appointed by the Court to rule on and to review and make

DATED this 31st day of January, 2014, at Anchorage, Alaska.

/s/ Sharon L. Gleason
United States District Judge

recommendations on a variety of non-dispositive matters.” See U.S. Court of Appeals for the Ninth Circuit, *Federal Rules of Appellate Procedure, Ninth Circuit Rules, Circuit Advisory Committee Notes* xiii ¶ C(2) (Dec. 1, 2013), available at <http://cdn.ca9.uscourts.gov/datastore/uploads/rules/frap.pdf>. Under Ninth Circuit Rule 27-7, the Ninth Circuit may delegate to the Commissioner authority to decide motions, and “[o]rders issued pursuant to this section are subject to reconsideration pursuant to Circuit Rule 27-10.”

3:12-cv-00077-SLG, *Koniag, Inc. et al v. Kanam et al.*
Referral to Chief Judge Beistline
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