

**RESCISSION AGREEMENT
REGARDING JUDGMENT ENTERED SEPTEMBER 24, 1998
AND
AMENDED MEMORANDUM OF UNDERSTANDING DATED MARCH 11, 1972.**

Comes now the University of Alaska, an instrumentality of the State of Alaska (“UA”) and Alaska Pacific University, an Alaska Corporation (“APU”) and enter into the following Rescission Agreement effective this _____ day of _____, 2013.

Recitals:

A. In 1958 and in 1964, APU then known as Alaska Methodist University, acquired federal land under several federal patents, (Patent 1188433 dated March 4, 1955, Patent 1150278 recorded at Book 183 Page 162, and Patents No. 50-64-0186 and No. 50-64-0187) issued under the Recreational and Public Purposes Act (43 USC sec. 869) (the “Patents”). The Federal Bureau of Land Management managed the land transactions and each patent contained a land use restriction that restricted APU’s ability to use or transfer the land for other than college purposes absent prior consent from the Secretary of Interior. Under Patent 1150278, this land use restriction was to last for twenty-five years and any violation could result in the reversion of the property to the United States, generally referred to as a reverter clause.

B. In the early 1970s, the University of Alaska and Alaska Pacific University began considering several joint transactions. One of these transactions resulted in the sale of approximately 197.5 acres from Alaska Pacific to the University of Alaska. This sale involved the lands that had been patented under Patent No. 50-64-0186 and 50-64-0187. These transactions lead to an Amended Memorandum of Understanding on March 11, 1972 (the “1972 Agreement”). Section 4 of the Agreement pertained to Alaska Pacific’s land received from the federal government but not transferred to the University of Alaska. Section 4 of the Agreement provides in relevant part:
~~This agreement provided in relevant part:~~

A[P]U shall dedicate in perpetuity the balance of its main Anchorage campus which it holds under the November 28, 1958 U.S. Patent No. 1150278, including both land and existing buildings and future buildings, to nonprofit education, health, recreation and conservation or related public purposes. The U of A has the right to enforce this dedication

C. On March 21, 1979, APU entered into an agreement with the United States Department of the Interior governing the 287.5 acres it had received by patent, which in part defined what “education and public purposes” the land could be used for and acknowledged the land could be pledged as collateral for financings so long as the financing recognized these restrictions as well. This Agreement was recorded at Book 389 Page 782, Anchorage Recording District, Third Judicial District, State of Alaska. (“BLM Agreement”) It established the reverter clause to 25 years from the date of that Agreement, and thus would have expired on or about March

20, 2003.

D. In 1997, in *University of Alaska vs. Alaska Pacific University* Case No. 97-7779 Civ., the parties litigated the issue of the scope of the restrictions imposed under the Patents and the 1972 Agreement. By *Agreement of the Parties and Final Judgment* ordered and entered by the court on September 24, 1998 and recorded at Book 3329 Page 443 as well as Book 3329 Page 447, Anchorage Recording District, Third Judicial District State of Alaska, (the “Final Judgment”) the parties described the 1972 Agreement as Alaska Pacific’s dedication “in perpetuity the above referenced land and existing and future buildings to nonprofit education, health, recreation and conservation or related public purposes.” The parties also agreed that UA “will not unreasonably challenge land usage by APU that is in keeping with the spirit of the Bureau of Land Management language in the Patents that originally conveyed the land to APU.”

~~the parties described the 1972 Agreement as stating a dedication “in perpetuity the above referenced land and existing and future buildings to nonprofit education, health, recreation and conservation or related public purposes; further, UA covenanted that it “will not unreasonably challenge land usage by APU that is in keeping with the spirit of the Bureau of Land Management language in the Patents that originally conveyed the land to APU.”~~

E. The land affected ~~as described~~ in the Final Judgment is described as follows:

The Northwest one-quarter (NW 1/4) of the Northeast one-quarter (NE 1/4) of the Northwest one-quarter (NW 1/4), the South one-half (S 1/2) of the Northeast one-quarter (NE 1/4) of the Northwest one-quarter (NW 1/4), the Northwest one-quarter (NW 1/4) of the Northwest one-quarter (NW 1/4), the South one-half (S 1/2) of the Northwest one-quarter (NW 1/4), and the North one-half of (N 1/2) of the Southwest one-quarter (SW 1/4); all within Section 27 of Township 13 North, Range 3 West, Seward Meridian, Alaska; and

The East one-half (E 1/2) of the East one-half (E 1/2) of the Southeast one-quarter (SE 1/4) of the Northeast one-quarter (NE 1/4), and that portion of the East one-half (E 1/2) of the East one-half (E 1/2) of the Northeast one-quarter (NE 1/4) of the Southeast one-quarter (SE 1/4) located east of the Bragaw Drive right-of-way; all within Section 28 of Township 13 North, Range 3 West, Seward Meridian, Alaska;

Portions of said property are included within Plats 83-309, 85-299, 88-1, 92-117, and 97-24, recorded at the Anchorage Recording District, Third Judicial District, State of Alaska.

(the “Property”)

~~F. Since the Final Judgment and 1972 Agreement, APU has continued to develop and lease improvements on its campus with UA approval and the parties have entered into joint agreements for the use and development of land as well.~~

G. The parties agree that the continuing restriction in perpetuity of APU's use of its land and building to the specific purposes spelled out in the Final Judgment and UA's enforcement powers are no longer useful and in many ways are counterproductive to the good relations between the two universities. It has been a long-term point of controversy and has restrained mutual agreement, mutual planning and mutual projects. The parties wish to proceed in the future without the encumbrances posed by the covenants as set forth in the 1972 Agreement and the Final Judgment. The parties wish to memorialize their new relationship going forward on the following terms as set forth in this Agreement.

For good and valuable consideration and upon these mutual covenants, the parties agree as follows:

1. ~~Section 4 of the~~ The 1972 Agreement and the Final Judgment, ~~as well as the implied covenants and agreements that can be inferred from the 1972 Agreement, the Final Judgment, the Patents and the BLM Agreement (all collectively referred to as the "Agreements")~~ are hereby rescinded and terminated and shall hereafter be of no further effect.
- ~~2. All past development undertaken by APU on the Property that fell under the purview of the Agreements are deemed by UA to have been complaint with the restrictions imposed by the Agreements, or to the extent they were inconsistent, such inconsistencies are waived by UA.~~
- ~~3.~~ 2. The parties shall instruct their counsel to file this Rescission Agreement with the court of competent jurisdiction with a joint motion to have the Final Judgment terminated.
- ~~4.~~ 3. Any party may record the order terminating the Final Judgment upon issuance by the court in the Anchorage Recording District and any other recorder's office as is necessary to give notice of the terms of this Rescission Agreement.
- ~~5. The parties agree to cooperate and execute such other agreements and consents as is reasonably necessary to effect the purpose and intent of this Rescission Agreement.~~
- ~~6.~~ 4. Each party warrants and represents: (i) that it is duly organized; (ii) it has full corporate power and authority to enter into this agreement. (iii) that the undersigned signatory is authorized to execute this agreement on behalf of such party; (iv) that no other consents or approvals are required for this agreement to be effective; (v) that entering into this agreement shall not violate any applicable laws, rules or ordinances; and (vi) this Rescission Agreement shall be enforceable against each party in accordance with its terms.
- ~~7.~~ 5. The language of this Rescission Agreement shall be construed simply according to its fair meaning and not strictly for or against any party. All words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The terms of this Rescission Agreement have been fully undertaken in consultation with counsel, and the wording of this Rescission

Agreement has been arrived at as a result of their mutual discussions. Accordingly, no provision of this Rescission Agreement shall not be construed against a particular party or in favor of another party merely because ~~of which~~ a party (or its representative) drafted or supplied the wording for such provision.

~~8.6.~~ 6. This Rescission Agreement has been negotiated and executed in the State of Alaska. This Rescission Agreement shall be governed by and interpreted in accordance with the laws of the State of Alaska, including all matters of construction, validity, performance and enforcement, but without giving effect to principles of conflict of laws. The parties hereby consent, in any dispute, action, litigation, or other proceeding concerning this Agreement to the jurisdiction of the courts of Alaska as located in Anchorage Alaska.

~~9.7.~~ 7. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by either party to the other with respect to the subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, covenants and warranties with respect to the subject matter of this Agreement are waived, merged in this Agreement and superseded by this Agreement. This is an integrated agreement.

~~10.8.~~ 8. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument. Facsimile signatures shall be effective as an original

Entered into at Anchorage Alaska at the dates as set forth below.

President Patrick K. Gamble
University of Alaska

Date: _____

President Don Bantz
Alaska Pacific University

Date: _____