



**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER**

ADL 108674

**Danny and Maxine Henderson
Private Non-exclusive Easement**

THIS EASEMENT is granted this 5th day of January, 2017 by and between the STATE OF ALASKA, acting by and through the **Department of Natural Resources, Division of Mining, Land and Water**, Southeast Regional Land Office hereinafter referred to as the Grantor, whose address is PO Box 111020, Juneau, Alaska 99811-1020 and **Danny and Maxine Henderson**, whose address is PO Box 1017, Ward Cove, Alaska 99928, is hereinafter referred to as the Grantee.

WHEREAS, it is understood and agreed that, as a condition to the granting of said easement, this easement shall be used for no purpose other than **utilities and an access road leading to private property** over and across portions of the following described state lands:

A parcel, approximately 100 feet in length with a width of 60 feet, within the **Copper River Meridian, Township 74 South, Range 90 East, Section 32**, containing approximately .13 acres, more or less.

This easement serves land described as:

Lot 3 of the Kiffer Subdivision, a subdivision of USS 2165, according to Plat No. 2009-30 filed on August 12, 2009 in the Ketchikan Recording District.

IN accordance with the provisions of AS 38.05.850, and the rules and regulations promulgated thereunder, the Grantor hereby reserves a Private Non-exclusive Easement over and across the above described state land within the **Ketchikan Recording District** as shown on the Survey identified as Attachment A revealing the easement location granted herein.

This easement shall terminate at the end of the stated term or when the Grantor determines that the easement is abandoned, is no longer necessary, is no longer in use for the purpose(s) authorized, or is revoked as a result of violations of the terms, conditions and stipulations of this easement.

The Grantee and entry persons who may exercise the rights and privileges granted by this document shall comply with all regulations now in effect or as hereafter established by the Division of Mining, Land & Water, all other federal, state or local laws, regulations or ordinances applicable to the area herein granted. In addition, the Grantee shall maintain the premise in a neat and orderly manner and shall adopt and apply such safety measures as shall be necessary, proper and prudent with respect to the use to which the land is subjected.

In the event that the easement granted shall in any manner conflict with or overlap a previously granted easement the Grantor recognizes that the easement granted herein shall be used in such a manner as not to interfere with the peaceful use and enjoyment of the previously issued easement or right-of-way.

The State of Alaska shall be forever wholly absolved from any liability for damages which might result from any claims, suits, loss, liability and expense for injury to or death of persons and damage to or loss of property arising out of or in connection with this easement.

NOW THEREFORE, in accordance with the provisions of AS 38.05.850 and the rules and regulations promulgated thereunder and in accordance with the conditions and stipulations of this easement including all documents that are incorporated by reference, the Grantee is authorized to operate and maintain said easement.

IN WITNESS WHEREOF, the Grantor has signed this easement on the day and year first above written.

[Signature Page Follows]

GRANTOR
STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

BENJAMIN M. WHITE
Division of Mining, Land and Water

STATE OF ALASKA)
) ss.
_____ Judicial District)

THIS IS TO CERTIFY THAT ON THIS _____ day of _____, 20,
before me personally appeared BENJAMIN M. WHITE, Southeast Regional Manager of the
Department of Natural Resources, Division of Mining Land and Water, known by me to be
the person named in and who executed said document and acknowledged voluntarily
signing the same.

Notary Public in and for the State of Alaska

My Commission expires: _____

**ADL 108674
Easement Stipulations**

- 1. Authorized Officer.** The Authorized Officer (AO) for the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW) is the Southeast Regional Manager or designee. The AO may be contacted at PO Box 111020, Juneau, Alaska 99811-1020 or (907) 465-3400.
- 2. Indemnification.** The Grantee assumes all responsibility, risk and liability for its activities and those of its employees, agents, contractors, subcontractors, licensees, or invitees, directly or indirectly related to this authorization, including environmental and hazardous substance risk and liability, whether accruing during or after the term of this authorization. Grantee shall defend, indemnify, and hold harmless the State of Alaska, its agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatever kind or nature, including all attorney's fees and litigation costs, arising out of, in connection with, or incident to any act or omission by the Grantee, its employees, agents, contractors, subcontractors, licensees, or invitees, unless the proximate cause of the injury or damage is the sole negligence or willful misconduct of the state or a person acting on the state's behalf. Within 15 days, the Grantee shall accept any such cause, action or proceeding upon tender by the state. This indemnification shall survive the termination of the authorization.
- 3. Authorized Use.** Improvements shall be consolidated within smallest practicable area, not to exceed the total acreage explicitly approved on Page 1 of this authorization. Only those uses and temporary improvements depicted on **Attachment A** are allowed, unless prior Division approval is obtained for additional improvements. Use of the site for any unapproved purpose is prohibited. The Grantee, its agents and employees are responsible for accurately siting authorized uses and structures within the authorization area. Any unauthorized use of state lands outside the authorization area, either by the Grantee or by its agents or employees, is strictly prohibited.

 - a. Site Improvements.** The state assumes no responsibility for maintenance of improvements constructed on state land or liability for injuries or damages attributable to that construction.
 - b. Amendment or Modification.** To amend or modify the uses allowed under this authorization, the Grantee shall submit a request in writing to the AO. Any amendment or modification must be approved by the AO and may require additional fees. Any purported amendment or modification has no legal effect until placed in writing and signed by both parties.
- 4. Assignment.** This authorization may not be transferred or assigned without the prior written consent of the AO.
- 5. Change of Address.** The Grantee shall maintain a current, valid, mailing address on file with the DMLW at all times. The latest mailing address on file with the division is the address that will be used for official communications, notifications, and service of legal

process. The Grantee must notify the AO in writing of a change of address.

6. **Fees.** The Grantee shall pay an annual rental fee of \$200. This fee is subject to adjustment based on changes in the DNR's fee regulations.
 - a. **Late Payment Penalty Charges.** The Grantee shall pay a fee for any late payment. The fee amount is the greater of either the fee specified in 11 AAC 05.010 or interest at the rate set by AS 45.45.010(a), and will be assessed on a past-due account until payment is received by the state.
 - b. **Returned Check Penalty.** A returned check fee as provided for in 11 AAC 05.010 will be assessed for any check for which the bank refuses payment. Late payment penalties shall continue to accumulate.
7. **Preference Right.** No preference right for use or conveyance of the land is granted or implied by this authorization.
8. **Destruction of Markers.** All survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, National Register of Historic Places plaques, interpretive panels and unsurveyed lease corner posts shall be protected against damage, destruction, or obliteration. The Grantee shall notify the AO of any damaged, destroyed, or obliterated markers and shall reestablish the markers at the Grantee's expense in accordance with accepted survey practices of the DMLW.
9. **Alaska Historic Preservation Act.** The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered within the authorization area, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation shall be notified immediately at (907) 269-8721.
10. **Public Trust Doctrine.** This authorization is issued subject to the Public Trust Doctrine, which guarantees public access to, and the public's right to use, all navigable and public waters and the land beneath them for navigation, commerce, fishing, and other purposes. The Division of Mining, Land and Water reserves the right to grant other interests consistent with the Public Trust Doctrine.
11. **Obstruction of Public Access.** The Grantee and all entrypersons shall not prevent public access in the authorization area through physical obstruction, signage, or other means. The ability of all users to access or use public access easements and rights-of-way shall not be restricted in any manner without the prior written approval of the AO.
12. **Limits of Access.** This authorization applies only to access within the project area, not access to the project area. No additional access trails or roads are allowed on state lands outside the authorized area without the express permission of the AO.
13. **Valid Existing Rights.** This authorization is subject to all valid existing rights in and to the land covered under this authorization. The State of Alaska makes no representations or warranties, whatsoever, either expressed or implied, as to the existence, number or nature

of such valid existing rights.

- 14. Reservation of Rights.** The DMLW reserves the right to grant additional authorizations to third parties for compatible uses on or adjacent to the land under this authorization. Authorized concurrent users of state land, their agents, employees, contractors, subcontractors, and licensees shall not interfere with the operation or maintenance activities of each user. The DMLW may require authorized concurrent users of state land to enter into an equitable agreement regarding concurrent use.
- 15. Fuel and Hazardous Substances.** No fuel or hazardous substances are to be stored on state land. Prior written approval from the AO is required for a change in this restriction and may include additional stipulations and/or a change in the amount required for the performance guaranty.
- 16. Spill Notification.** The Grantee or entryperson shall immediately notify the AO of any pollution or explosion in the project area.
- 17. Site Disturbance.** Site disturbance shall be kept to a minimum to protect local habitats. All activities at the site shall be conducted in a manner that will minimize the disturbance of soil and vegetation and changes in the character of natural drainage systems. Brush clearing is allowed, but shall be kept to the minimum necessary to conduct or complete the authorized activity. Removal or destruction of the vegetative mat outside of the authorized area is not allowed. Establishment of, or improvements to, tidal, submerged, shoreland or riparian landing areas (e.g.: leveling the ground, bank cutting or removing or modifying a substantial amount of vegetation) is prohibited without the prior written consent of the AO.
- 18. Waste Disposal.** No activities that generate solid waste and/or debris are authorized under this easement.
- 19. Inspections.** Authorized representatives of the State of Alaska shall have reasonable access to the subject parcel for purposes of inspection and may inspect the authorized area at any time without notice. The Grantee may be charged fees under 11 AAC 05.010(a)(7)(M) for routine inspections of the subject parcel, inspections concerning non-compliance, and a final close-out inspection.
- 20. Other Authorizations.** The issuance of this authorization does not alleviate the necessity of the Grantee to obtain all other required authorizations for this activity. Failure to obtain said authorizations shall constitute a violation of this authorization, subject to action as described herein.
- 21. Performance Guaranty.** The AO reserves the right to require a performance guaranty in the event the Grantee's compliance is less than satisfactory or as a condition of authorizing significant changes in the development plan or operations. If required, such performance guaranty shall remain in effect until released, in writing, by the AO and shall secure performance of the Grantee's obligation hereunder. The amount of the performance guaranty may be adjusted by the AO in the event of approved amendments to this authorization, changes in the development plan, or any change in the activities or operations conducted on the premises.

- 22. Removal of Improvements and Site Restoration.** Following termination of the proposed easement, whether by abandonment, revocation, or other means, the Grantee shall restore the site to a condition that is acceptable to the DMLW. The Grantee's planned site restoration activities, including either removal or abandonment of installed improvements, must be described in writing and present to the DMLW prior to termination of the easement. The DMLW may require the Grantee to comply with additional conditions specific to the site restoration effort that were not required for the construction, maintenance, or operation of described improvements. Should the Grantee fail or refuse to perform approved site-restoration activities within the time allotted by the DMLW, the improvements may become property of the DNR. However, the Grantee shall not be relieved on the cost of restoring the are to a condition that is acceptable to the DMLW.
- 23. Extensions.** This authorization may be considered for extension if additional time is necessary to meet the requirements of the authorization. The AO may review a written request to extend the authorization after payment of a \$100 application fee as required under 11 AAC 05.010. The written request must certify that there have been no changes to the approved development plan and be received at least 30 days before the authorization expiration date.
- 24. Violations.** Pursuant to 11 AAC 96.145, a person who violates a provision of this authorization is subject to any action available to the DNR for enforcement and remedies, including revocation of the authorization, civil action for forcible entry and detainer, ejectment, trespass, damages, and associated costs, or arrest and prosecution for criminal trespass in the second degree. The DNR may seek damages available under a civil action, including restoration damages, compensatory damages, and treble damages under AS 09.45.730 or AS 09.45.735 for violations involving injuring or removing trees or shrubs, gathering geotechnical data, or taking mineral resources.