

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

ADL 109414

Private, Non-exclusive Easement

Roger Schnabel doing business as Highland's Estates, Incorporated

This easement is granted this _____ day of _____, 20____, by the State of Alaska, acting by and through the Department of Natural Resources, Division of Mining, Land and Water, whose address is PO Box 111020, Juneau, AK, 99811-1020, hereinafter referred to as the Grantor. This easement is granted to Roger Schnabel doing business as Highland's Estates, Incorporated, whose address is PO Box 1129 Haines, Alaska 99827, hereinafter referred to as the "Grantee".

In accordance with the provisions of AS 38.05.850, and the rules and regulations promulgated thereunder, a Private, Non-exclusive Easement is hereby granted from this _____ day of _____, 20____, until 11:59 PM on _____, _____, 20____, for the construction and maintenance of a right-of-way road between 5- and 5.5-Mile Haines Highway. This easement is located in Haines, Alaska, approximately 1.25-miles northwest of Haines Airport, over and across the following described state lands:

Within NW ¼ Section 19, Township 30 South, Range 59 East, Copper River Meridian, in the Haines Recording District. The easement is 1,000-feet in length and 40-feet in width for a total of 0.92 acres, more or less. The easement is depicted on _____, included as "Attachment A" to this document.

This easement is subject to the terms and conditions contained herein.

In the event that this easement shall in any manner conflict with or overlap a previously granted easement or right-of-way, the Grantee shall use this easement in a manner that will not interfere with the peaceful use and enjoyment of the previously issued easement or right-of-way. The Grantor reserves the right to set or modify stipulations governing the use of the conflicting or overlapping area.

Any lands included in this easement that are conveyed from state ownership shall be subject to this easement.

This easement shall terminate at the end of the stated term, if any, when the Grantor determines that the easement is no longer in use for the purpose(s) authorized, or the easement is revoked as a result of violation of the terms and conditions contained herein. The State of Alaska shall be forever wholly absolved from any liability for damages that might result if this easement is terminated for any reason.

Now therefore, in accordance with the conditions of this easement including all attachments and documents that are incorporated by reference, the Grantee is authorized to operate and maintain said easement over and across lands herein described. In witness whereof, the Grantor and the Grantee have affixed their signatures on the date(s) specified herein.

[SIGNATURE PAGES FOLLOW]

GRANTOR

Mason Auger, Natural Resource Manager II
Southeast Regional Land Office, 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 _____ known by me to be the person named in and who executed said document and acknowledged voluntarily signing the same.

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

Notary Public in and for the State of Alaska
My commission expires with office

GRANTEE

Roger Schnabel dba Highland's Estates, Inc.

STATE OF ALASKA)
) ss
____ Judicial District)

THIS IS TO CERTIFY THAT ON THIS ____ day of _____, 20____, before me personally appeared _____ known by me to be the person named in and who executed said document and acknowledged voluntarily signing the same.

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

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

WHEN RECORDED, RETURN DOCUMENT TO:
Department of Natural Resources
Division of Mining, Land and Water
P.O. Box 111020
Juneau, AK 99811-1020
[STATE BUSINESS – NO CHARGE]

Stipulations

1. **Authorized Officer:** The Authorized Officer (AO) for the State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), is the Regional Manager or designee.
2. **Change of Contact Information:** The Grantee shall maintain current contact information with the AO. Any change of contact information must be submitted in writing to the AO.
3. **Proper Location:** This authorization is for activities on state lands or interests managed by DMLW. It does not authorize any activities on private, federal, native, and municipal lands, or lands which are owned or solely managed by other offices and agencies of the State. The Grantee is responsible for proper location within the authorized area.
4. **Development Plan:** Development shall be limited to the authorized area, improvements, and maintenance activities specified in the approved development plan or subsequent modifications approved by the AO. The Grantee is responsible for accurately siting development and operations within the authorized area. Any proposed revisions to the development plan must be approved in writing by the AO before the change in use or development occurs.
5. **Directives:** Directives may be issued for corrective actions that are required to correct a deviation from design criteria, project specifications, stipulations, State statutes or regulations. Work at the area subject to the Directive may continue while implementing the corrective action. Corrective action may include halting or avoiding specific conduct, implementing alternative measures, repairing any damage to state resources that may have resulted from the conduct, or other action as determined by DNR.
6. **Violations:** This authorization may be revoked upon violation of any of its terms, conditions, stipulations, nonpayment of fees, or upon failure to comply with any other applicable laws, statutes and regulations. A revocation may not become effective until 60 days after the Grantee has been notified in writing of the violation during which time the Grantee has an opportunity to cure any such violation.

No public access easement may be terminated without the prior written approval of DMLW.

7. **Public Trust Doctrine:** The Public Trust Doctrine guarantees public access to, and the public right to use, navigable and public waters and the land beneath them for navigation, commerce, fishing, and other purposes. This authorization is subject to the principles of the Public Trust Doctrine regarding navigable or public waters. The AO reserves the right to grant other interests consistent with the Public Trust Doctrine.
8. **Valid Existing Rights:** This authorization is subject to all valid existing rights and reservations in and to the authorized area. The State makes no representations or warranties, whatsoever, either expressed or implied, as to the existence, number, or nature of such valid existing rights.

- 9. Site Maintenance:** The authorized area shall be maintained in a neat, clean, and safe condition, free of any solid waste, debris, or litter, except as specifically authorized herein. Nothing may be stored that would be an attractive nuisance to wildlife or create a potentially hazardous situation.
- 10. Maintenance of Improvements:** The Grantor is not responsible for maintenance of authorized improvements or liable for injuries or damages related to those improvements. No action or inaction of the Grantor is to be construed as assumption of responsibility.
- 11. Removal of Improvements and Site Restoration:** Upon termination of this authorization, whether by abandonment, revocation or any other means, the Grantee shall within 30 days remove all improvements from the area herein granted, except those owned by the State, and the site shall be restored to a condition acceptable to the AO. Should the Grantee fail or refuse to remove said structures or improvements within the time allotted, they shall revert to and become the property of the State; however, the Grantee shall not be relieved of the cost of the removal of the structures, improvements and/or the cost of restoring the area
- 12. Amendment or Modification:** The Grantee may request an amendment or modification of this authorization; the Grantee's request must be in writing. Any amendment or modification must be approved by the AO in advance and may require additional fees and changes to the terms of this authorization.
- 13. Concurrent Use:** 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.

- 14. Assignment:** This authorization may not be transferred or assigned without the prior written consent of the AO. The grantor reserves the right to modify and/or add stipulations for the authorization prior to approving the assignment.

Assignment: In the event the grantee desires to transfer their interest in this authorization to another party the grantee shall submit in writing to the AO a request for assignment. The grantor reserves the right to modify and/or add stipulations for the authorization prior to approving the assignment. The grantor reserves the right to require an assignment between the grantee and another party in the event of a change in corporate ownership, LLC/LLP membership or name change. Notwithstanding other requirements described in this authorization, assignments shall be restricted to those entities that are also eligible to obtain an authorization under the same statutory authority in which this authorization was issued.

- 15. Request for Information:** The AO, at any time, may require the Grantee to provide any information directly or indirectly related to this authorization, in a manner prescribed by the AO.

- 16. Inspections:** The AO shall have reasonable access to the authorized area for inspection, which may be conducted without prior notice. If the Grantee is found to be in noncompliance the authorized area may be subject to reinspection. The Grantee may be charged for actual expenses of any inspection.
- 17. Waste Disposal:** On-site refuse disposal is prohibited, unless specifically authorized. All waste generated during operation, maintenance, and termination activities under this authorization shall be removed and disposed of at an off-site DEC approved disposal facility. Waste, in this paragraph, means all discarded matter, including but not limited to human waste, trash, garbage, refuse, oil drums, petroleum products, ashes and discarded equipment.
- 18. Operation of Vehicles:** Vehicles shall be operated to minimize disturbance to the least possible quantity of substrate and underlying vegetation.
- 19. Batteries:** Batteries which contain hazardous liquids should be completely sealed valve regulated, spill proof, leak proof and mounted in steel containers. Batteries lacking the preceding properties must have a metal drip pan designed to hold 110% of the total liquids held by the battery/batteries. Batteries, new or used, may not be stored or warehoused. Any batteries that are not in use must be removed and disposed of in accordance with existing laws, regulations and ordinances.
- 20. Surface Drainage:** Adequate culverts shall be installed to maintain surface drainage and to prevent ponding and/or erosion.
- a. Right-of-way construction will include installation of culverts at locations where the roadway intersects with natural drainages to ensure water conveyance downstream to anadromous and resident fish habitat in Waterfall Creek and the Chilkat River.
- 21. Site Disturbance:**
- a. Construction of the right-of-way is prohibited between October 1st through March 1st.
 - b. 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.
 - c. 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.
 - d. Merchantable timber must be set aside for pick up by DNR – Division of Forestry and Fire Protection (DOF) and their contractors.
 - e. The Grantee shall conduct all operations in a manner which will prevent unwarranted pollution, erosion, and siltation. Any pollution, erosion, or siltation shall be repaired/remediated in a manner and time frame satisfactory to the AO at the Grantee's expense.
- 22. Ground Disturbance and Repair:** Grantee will refill holes, trenches and surface depressions resulting from development or maintenance activities with sand, gravel, native materials (talus rock), or a substitute approved by the AO. Surface areas will be recontoured to the satisfaction of the AO so that they do not pose a threat to human safety or wildlife transit.

- a. Grantee is prohibited from extracting and obtaining material from State-owned lands. Material extraction from State land within the Haines State Forest is strictly prohibited.
- b. Grantee shall contour a route prior to construction with self-survey posts to ensure the road is constructed within the proposed corridor.
- c. Grantee will adhere to all provisions set forth in the *Haines State Forest Management Plan* regarding the road building and right-of-way construction.

23. Destruction of Markers: The Grantee shall protect all survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, and unsurveyed corner posts 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.

24. Fuel and Hazardous Substances:

- a. 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.
- b. Any refueling or maintenance of construction equipment shall be done on Grantee's private property.

25. 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. Neither the construction of this project nor the use of the proposed right-of-way shall interfere with free public use of public roads, trails, waters or public access easements in the area of their activities.

- a. Grantee must allow access at Mile 5.5 through applicant's private Lot 4 for DOF and its contractors to obtain merchantable timber gained from the initial construction of the right-of-way.

26. Fees: The Grantee shall pay an easement annual use fee in the amount of \$480.00. This fee is subject to adjustment based on changes in DNR's fee regulations.

27. Returned Check Penalty: A returned check penalty of \$50.00 will be charged for any check on which the bank refuses payment. Late payment penalties shall continue to accrue.

28. Late Payment Penalty Charges: The Grantee shall pay a fee for any late payment. The amount is the greater of either \$50.00 or interest accrued daily at the rate of 10.5% per annum and will be assessed on each past-due payment until paid in full.

29. Performance Guaranty: The Grantee shall provide a surety bond or other form of security acceptable to the AO in the amount of \$8,000.00 payable solely to the State of Alaska, DNR. Such performance guaranty shall remain in effect for the term of this authorization and any subsequent authorizations under ADL 109414 to secure performance of the Grantee's obligations hereunder. The amount of the performance guaranty may be adjusted by the AO

upon approval of amendments to this authorization, changes in the development plan or changes in the activities conducted on the premises. The guaranty may be utilized by the Division of Mining, Land and Water, at the discretion of the AO, to cover costs incurred by the State of Alaska to pay for any necessary corrective actions in the event the Grantee does not comply with site utilization and restoration guidelines. The provisions of this authorization shall not prejudice the State's right to obtain remedy under any law or regulation. The performance guaranty may only be released in writing by the AO.

- 30. Insurance:** Consistent with 11 AAC 96.065 the Grantee shall secure or purchase at its own expense, and maintain in force at all times during the term of this permit, liability coverage and limits consistent with what is professionally recommended as adequate to protect the Grantee (the insured) and Grantor (the State, its officers, agents and employees) from the liability exposures of ALL the insured's operations on state land. Certificates of Insurance must be furnished to the AO prior to the issuance of this permit and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. The Grantee must provide for a 60-day prior notice to the State before they cancel, not renew or make material changes to conditions to the policy. Failure to furnish satisfactory evidence of insurance, or lapse of the policy, are material breaches of this permit and shall be grounds, at the option of the State, for termination of the permit. All insurance policies shall comply with, and be issued by, insurers licensed to transact the business of insurance under Alaska Statute, Title 21. The policy shall be written on an "occurrence" form and shall not be written as a "claims-made" form unless specifically reviewed and agreed to by the Division of Risk Management, Department of Administration. The State must be named as an additional named insured on the policy with respect to the operations of the Grantee on or in conjunction with the permitted premises, referred to as ADL 109414.
- 31. Survey:** The Grantee shall submit a Record of Survey format As-built acceptable to the standards of the Survey Section prior to the expiration of the Entry Authorization. Please contact the DMLW – Survey Section to obtain survey instructions within 30-days of the execution of the Entry Authorization. A survey instruction fee may be required in accordance with 11 AAC 05.010(a)(13). The Grantee is required to submit a preliminary draft As-built survey prior to the expiration of the Entry Authorization to allow adequate time for the State's review and approval of a final As-built survey. The final easement will not be issued until the survey has been approved by DMLW.
- 32. Incurred Expenses:** The Grantor shall in no way be held liable for expenses incurred by the Grantee connected with the activities directly or indirectly related to this authorization.
- 33. Indemnification:** Unless specified herein, Grantee assumes all responsibility, risk and liability for all activities of Grantee, its employees, agents, invitees, contractors, subcontractors, or licensees directly or indirectly conducted in connection with this authorization, including environmental and hazardous substance risks and liabilities, whether accruing during or after the term of this authorization as stated herein. Grantee shall defend, indemnify and hold harmless the State of Alaska, its employees and agents, 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 Grantee, its employees, agents, invitees, contractors, subcontractors, or licensees, unless the sole proximate cause of the injury or damage is the negligence or willful misconduct of the State or anyone acting on the State's behalf. Within 15 days Grantee shall accept any such cause or action or proceeding upon tender by the State. This indemnification shall survive the termination of the authorization.

- 34. Preference Right:** No preference right for subsequent authorizations is granted or implied by this authorization.
- 35. 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.
- 36. 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, archaeological or paleontological site without written approval from the DNR Commissioner. Should any sites be discovered, the Grantee shall cease any activities that may cause damage and immediately contact the AO and the Office of History and Archaeology in the Division of Parks and Recreation.
- 37. Compliance with Government Requirements:** The Grantee shall, at its expense, comply with all federal, state, and local laws, regulations, and ordinances directly or indirectly related to this authorization. The Grantee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees.
- 38. Waiver of Forbearance:** Any failure on the part of the AO to enforce the terms of this authorization, or the waiver of any right under this authorization by the Grantee, unless in writing, shall not discharge or invalidate the authorization of such terms. No forbearance or written waiver affects the right of the AO to enforce any terms in the event of any subsequent violations of terms of this authorization.
- 39. Severability Clause:** If any clause or provision of this authorization is, in a final judicial proceeding, determined illegal, invalid, or unenforceable under present or future laws, then the Grantor and the Grantee agree that the remainder of this authorization will not be affected, and in lieu of each clause or provision of this authorization that is illegal, invalid, or unenforceable, there will be added as a part of this authorization a clause or provision as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.
- 40. Fire Prevention, Protection and Liability:** The Grantee shall take all reasonable precautions to prevent and suppress forest, structure, brush and grass fires, and shall assume full liability for any damage to state land and structures resulting from the negligent use of fire. The State is not liable for damage to the Grantee's personal property and is not responsible for forest fire protection of the Grantee's activity. To report a wildfire, call 911 or 1-800-237-3633.

- a. If Grantee plans to burn brush on-site of project area, Grantee must obtain permit, and provide proof of correspondence with Haines Borough/Haines Volunteer Fire Department.

41. Notification of Discharge: The Grantee shall immediately notify the Department of Environmental Conservation (DEC) and AO of any unauthorized discharge of any amount of oil to water, a discharge of any amount of a hazardous substance (other than oil), and any discharge of oil greater than 55 gallons on land. All fires and explosions must also be reported immediately.

If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, the Grantee shall report the discharge within 48 hours. Any discharge of oil greater than one gallon up to 10 gallons, including a cumulative discharge, solely to land, must be reported in writing on a monthly basis.

Notification of discharge must be made to DEC online at ReportSpills.alaska.gov or by phone at 1-800-478-9300.

Notification of discharge must be made to the appropriate DNR Office, preferably by email: Anchorage email dnr.scro.spill@alaska.gov, (907)-269-8528; Fairbanks email dnr.nro.spill@alaska.gov, (907)-451-2739; Juneau email dnr.sero.spill@alaska.gov, (907)-465-3513. The Grantee shall supply the AO with all incident reports submitted to DEC.