

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND & WATER, SOUTHEAST REGION
400 Willoughby Ave., Suite 400
Juneau, Alaska 99801

PRIVATE NON-EXCLUSIVE EASEMENT

ADL 106

THIS AGREEMENT made and entered into this _____ day of _____, by and between the STATE OF ALASKA, acting by and through the Department of Natural Resources, Division of Mining, Land & Water, hereinafter referred to as the grantor and _____, hereinafter referred to as the grantee.

WITNESSETH, that in accordance with the provisions of Sec. 38.05.850, A.S. and the rules and regulations promulgated thereunder, the grantee having filed an application for a easement for: _____, with the Division together with a map showing the definite location thereon of the line of easement which the grantee has adopted and agrees to be the specific and definite location of the aforesaid easement, and

WHEREAS, it is understood and agreed by the grantee herein that, as a condition to the granting of the easement applied for, the land covered by said easement shall be used for no purpose other than the location, construction, operation and maintenance of the said easement over and across the following described State lands, to wit:

The easement area is depicted on the easement diagram for ADL _____, attached hereto as Attachment 'A'. The easement area is located in _____, within Section _____, Township _____ South, Range _____ East, Copper River Meridian.

The said easement shall extend _____ feet in length and _____ feet in width, containing _____ acres, more or less.

TO HAVE AND TO HOLD the same until the above described land shall no longer be used for the above-mentioned purpose and subject to conditions and reservations elsewhere set forth herein and any "Stipulations".

In the event that the easement herein granted shall in any manner conflict with or overlap a previously granted right-of-way or easement, the grantee herein shall use this easement in such a manner as not to interfere with the peaceful use and enjoyment of the previously issued right-of-way or easement and no improvements shall be constructed by the grantee herein upon the overlapping area unless the consent therefore has first been obtained from the grantee under the pre-existing right-of-way or easement.

The grantee in the exercise of the rights and privileges granted by this indenture shall comply with all regulations now in effect or as hereafter

established by the Division of Mining, Land & Water and all other federal, State or municipal laws, regulations or ordinances applicable to the area herein granted.

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STIPULATIONS

1. This Easement is issued for a period of ____ years and will be cancelable if the State has a higher and better use for the land. The cost of relocating any improvements shall be borne by the grantee. This easement shall expire on _____.
2. The use fee for this easement is \$.00 per year. The annual use fee is due on or before ____ each year. This fee is subject to adjustment by the grantor at the commencement of the sixth year of the term and every fifth year thereafter (the "adjustment date"). The adjustment shall be based on the Division's fee schedule. The compensation adjustment takes effect on the applicable adjustment date, regardless of whether the adjustment determination occurs before or after that date.
3. Penalty Charges: The grantee shall pay a fee for any late payment or returned check issued by the grantee as follows:
 - (a) Late Payment Penalty: The greater of either the fee specified in 11 AAC 04.010 or interest at the rate set by AS 45.45.010 (a) 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 in 11 AAC 04.010 will be assessed for any check on which the bank refuses payment.
4. This easement is private and non-exclusive. The grantor reserves the right to allow other like or compatible uses of the easement and the right to require such users to enter into an equitable maintenance agreement with the holder of this easement. The equitableness of any such agreement shall be determined by the grantor.
5. Public access shall not be precluded by activities or structures allowed by this easement. All operations must be conducted in a manner that will ensure minimum conflict with other users of the area. The grantee shall not close landing areas or trails or otherwise prevent overland access commonly used by the public. The interests served by the public trust doctrine, specifically the right of the public to use navigable waterways and the land beneath them for navigation, commerce, fishing, hunting, protection of the areas for ecological study, and other purposes, will be protected.
6. The grantor assumes no responsibility for maintenance of improvements constructed on State land nor liability for injuries or damages attributable to that construction. The State also makes no warranty that dedicated lands are suitable for the existing use.
7. 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 easement, including environmental and hazardous substance risks and liabilities, whether accruing during or after the term of this easement. 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 easement.

8. To ensure future use of public lands as well as tide and submerged lands, fuel use and storage shall occur in a manner that avoids toxic discharge and run-off. The grantee is responsible for preventing spillage and contamination of contiguous land and water as well as cleaning up any oil or other pollutants which result from activities associated with this easement.

The Grantee shall immediately notify the Department of Environmental Conservation (DEC) by telephone, and immediately afterwards send DEC a written notice by facsimile, hand delivery, or first class mail, informing DEC of: any unauthorized discharges of oil to water, any discharge of hazardous substances other than oil; and any discharge or cumulative discharge of oil greater than 55 gallons solely to land and outside an impermeable containment area. 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, and immediately afterwards send DEC a written notice by facsimile, hand delivery, or first class mail. Any discharge of oil, including a cumulative discharge, solely to land greater than one gallon up to 10 gallons must be reported in writing on a monthly basis. The posting of information requirements of 18 AAC75.305 shall be met. Scope and Duration of Initial Response Actions (18 AAC 75.310) and reporting requirements of 18 AAC 75, Article 3 also apply.

The Grantee shall supply DEC with all follow-up incident reports. Notification of a discharge must be made to the nearest DEC Area Response Team during working hours: Anchorage (907) 269-7500, fax (907) 269-7648; Fairbanks (907) 451-2121, fax (907) 451-2362; Juneau (907) 465-5340, fax (907) 465-2237. The DEC oil spill report number outside normal business hours is (800) 478-9300.

9. Authorized representatives of the State of Alaska shall at all times have the right to enter on official business and inspect the easement area, including the grantee's improvements.

Upon abandonment, termination, revocation or cancellation of this indenture, the grantee shall, within 90 days, remove all structures and improvements from the area herein granted, except those owned by the grantor, and shall restore the area to the same or similar condition as the same was upon the issuance of this easement. Should the grantee fail or refuse to remove the structures or improvements, within the time allotted, they shall revert to and become the property of the grantor. 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. Provided further, however, that the grantor, in his/her discretion, may alter or modify the requirements contained in this provision if it is to the best interest of the State of Alaska to do so.

The grantee shall utilize the lands herein granted consistent with the purposes of the proposed use, as revealed by the application therefore, and shall maintain the premises 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.

The grantee shall take all reasonable precaution to prevent and suppress brush and forest fires. No material shall be disposed of by burning in open fire during the closed season unless a permit therefore has first been obtained from the agency empowered by law to issue such permits.

Prior to any construction or development that will use, divert, obstruct, or pollute or utilize any of the waters of the State, the grantee shall first obtain approval therefore from the Commissioner of the Department of Fish and Game and file an image copy thereof with the grantor.

Any lands included in this easement which are sold under a contract to purchase shall be subject to this easement. Upon issuance of title to the purchaser, this easement shall remain in effect until its date of expiration.

In the event that the necessity for the easement shall no longer exist, or the grantee should abandon or fail to use the same, then this easement shall terminate.

The State of Alaska shall be forever wholly absolved from any liability for damages which might result to the grantee herein on account of this easement having been canceled, forfeited, or terminated prior to the expiration of the full term for which it was issued.

NOW THEREFORE, in accordance with the provisions of Sec. 38.05.850, A.S. and the rules and regulations promulgated there under and in accordance with the conditions heretofore set forth or attached hereto and made a part hereof, the grantee herein is hereby authorized to locate, construct, operate and maintain said easement over and across the lands herein described.

IN WITNESS WHEREOF, the said grantor has caused these presents to be signed in duplicate and the grantee herein has hereunto affixed his signature on the day and year first above written.

GRANTOR

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

By: _____
Director
Division of Mining, Land & Water

STATE OF ALASKA)
) ss
FIRST JUDICIAL DISTRICT)

This is to certify that on the ____ day of _____, 2004, before me, the undersigned Notary Public in and for the State of Alaska, personally appeared Ron Schonenbach known to me and known by me to be the Southeast Regional Manager of the **Division of Mining, Land & Water** of the Department of Natural Resources, and he acknowledged to me that he signed and executed the same freely and voluntarily for the uses and purposes stated therein.

Notary Public for the State of Alaska.
My Commission expires

GRANTEE: .

By: _____
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STATE OF ALASKA)
) ss
FIRST JUDICIAL DISTRICT)

This is to certify that on the ____ day of _____, 2001, before me the undersigned Notary Public in and for the State of Alaska, personally appeared _____, known to me to be the person named and who signed the foregoing easement and acknowledged doing so voluntarily and for the uses and purposes stated therein.

Notary Public for the State of Alaska.
My Commission expires

After recording in the _____ Recording District, return this document to the Division of Mining, Land and Water, 400 Willoughby Ave., Suite 400, Juneau, Alaska 99801.

Attachments: "A" SPECIAL STIPULATIONS, "B" EASEMENT DIAGRAM