

COUNTY COMMISSION

BALDWIN COUNTY
312 COURTHOUSE SQUARE, SUITE 12
BAY MINETTE, ALABAMA 36507
(251) 937-0264
FAX (251) 580-2500
www.baldwincountyal.gov

February 19, 2013

Mr. Tom Schlinkert
8401 Osprey Drive
Elberta, Alabama 36530

RE: Turnout/Maintenance of Bluewater Drive and Pine Drive in Elberta, Alabama

Dear Mr. Schlinkert:

The Baldwin County Commission, during its regularly scheduled meeting held on February 19, 2013, authorized me, as Chairman, to sign *License Agreement #13003*, permitting you to maintain the right-of-way of Bluewater Drive and Pine Drive and construct a turn out on Bluewater Drive for The Hammock-Phase 2 Subdivision and also install a stop sign at the intersection of Bluewater Drive and Yucatan Lane. Further, the Commission authorized me, as Chairman, to execute an *Addendum* waiving applicable insurance requirements. The *License Agreement* shall commence on the date of full execution of the *Agreement* and shall be for a term of one year subject to annual renewals.

Enclosed are the **original** *License Agreement #13003* and *First Addendum*. Please execute both documents and return them to this office to the attention of Anu Gary, Records Manager. **Fully executed copies** of *License Agreement #13003* and the *First Addendum* will be returned to you for your files.

If you have any questions or need further assistance, please do not hesitate to contact me at (251) 972-8502 or Cal Markert, County Engineer, at (251) 937-0371.

Sincerely,


TUCKER DORSEY, Chairman
Baldwin County Commission

*Finally - THANKS FOR YOUR
PATIENCE & COLLABORATION, TOM*

TD/met Item EI6

cc: Cal Markert

ENCLOSURE

LICENSE AGREEMENT

This LICENSE AGREEMENT (this "Agreement") between Baldwin County, Alabama, by and through its governing body, the Baldwin County Commission ("Licensor"), with an address at 312 Courthouse Square, Suite 12, Bay Minette, Alabama 36507 and Tom Schlinkert with an address at 8401 Osprey Dr., Elberta, AL 36530, (251)-987-1229 ("Licensee").

WITNESSETH:

WHEREAS, Licensor is the owner or holder of the real property, right-of-way or easement described as Bluewater Dr and Pine Dr and more particularly as shown on Attachment "A" - (2) Prepared by Highway Dept Right of Way Section and dated 6-20-2011 attached hereto and included as if fully set forth herein (the "Property").

WHEREAS, Licensee desires to obtain access to the Property for the purposes of : Maintaining the right of way of Bluewater Dr. and Pine Dr. and constructing a turn out on Bluewater Dr. for The Hammock-Phase 2 Subdivision and also installing a stop sign at the intersection of Bluewater Dr. and Yucatan Lane. and Licensor is willing to provide such access pursuant to this Agreement.

WHEREAS, pursuant this Agreement, Licensee agrees to indemnify and hold the Licensor harmless from any and all claims or demands for injuries or damage to persons or personal property and further agrees to assure the Licensor that he, nor any persons using said public access in conjunction with this License would claim any personal rights in the subject property or any rights of adverse possession.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Licensor, the parties agree as follows:

1. **Recitals.** The above recitals and statements are incorporated as part of this Agreement as if fully set forth herein.
2. **Grant of License.** Subject to the terms and conditions set forth herein, Licensor hereby grants to Licensee, Tom Schlinkert and the property and lot owners within the proposed subdivision, The Hammock-Phase 2, a revocable, non-exclusive, temporary license (the "License") to enter upon the Property as is reasonably required to maintain the right of way, construct a turn out on Bluewater Dr., and place a stop sign. Any other use of the Property requires the prior written consent of Licensor in each instance. This License is granted to Licensee and is limited and specifically restricted to Licensee and its employees ("Licensee Representatives"). Licensee shall comply with Licensor's safety and security policies deemed to be necessary by Licensor and with such reasonable rules and regulations as Licensor, or its agents may impose from time to time by notice to Licensee. (Prior to the recording of the subdivision plat for The Hammock-Phase 2 and/or the sale of any lots within said subdivision, the Licensor reserves the right to require the developer or owner of the lots within the subdivision and any proposed Property Owner's Association to execute a similar License Agreement evidencing their agreement to be bound by the terms of this Agreement and any restrictive covenants related to the maintenance of the Property.)
3. **Property.** The real property subject hereto is limited to and sufficiently described as: Blue Water Dr. and Pine Dr. Right of Way as depicted on Attachment "A"-(2). Any exhibits referenced and attached hereto shall be incorporated herein as if fully set forth.
4. **Grant of Non-Exclusive Authority.** The right to use the Property for the purposes herein set forth shall not be exclusive, and the Licensor reserves the right to grant the use of said rights-of-way to any person at any time and for any lawful purpose. This Agreement shall not be construed to create any rights beyond the terms, conditions and periods set forth in this Agreement, except as provided herein. The Licensor does not warrant any of the rights granted by this Agreement.
5. **Reservation of Regulatory and Police Powers.** The Licensor, by the granting of this License and approving this Agreement, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights now, or which may be hereafter, vested in the Licensor under the Constitution and the laws of the State of Alabama to regulate the use of the Property by the Licensee or any person or to charge reasonable compensation for such use,

and the Licensee, by its acceptance of this License and Agreement, agrees that all lawful powers and rights, regulatory power, police power or otherwise, that may be from time to time vested in or reserved to the Licensor, shall be in full force and effect and subject to the exercise thereof by the Licensor at any time. The Licensee is deemed to acknowledge that its rights are subject to the regulatory and police powers of the Licensor to adopt and enforce laws, ordinances, rules or regulations necessary for the safety and welfare of the public and agrees to comply with all applicable laws, ordinances, rules or regulations enacted by the Licensor or appropriate governmental authority pursuant to such powers. Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the Licensor's powers and authority shall be resolved in favor of the latter.

6. Term of License (Installation and Maintenance). The term of the License for Installation and Maintenance shall commence on the date of full execution of this Agreement and shall be for a term of one year and shall automatically renew for additional and successive one year terms, unless this Agreement is terminated by the Licensor, with or without cause or hearing, in its sole discretion.

7. Condition of License Area: Assumption of Risk. Licensee accepts the Property in its "WHERE IS", "AS IS", condition and acknowledges that Licensor has made no representation or warranty to Licensee as to, and has no obligation for the condition of, the Property. Licensee assumes the risk of any latent or patent defects or problems that are or may be on the Property or the improvements thereon. Licensee agrees that Licensor shall not be liable for any injury, loss or damage on account of any such defects or problems. Licensee for itself and the Licensee Representatives waives and releases Licensor from any and all claims for injury to persons or damage to the personal property of Licensee or any Licensee Representatives by reason of the condition of the Property or otherwise.

8. Compliance. Licensee and the Licensee Representatives shall comply, at Licensee's expense, with all applicable laws, regulations, rules and orders, whether federal, state or local, or any regulation of any governmental body having jurisdiction over the Property with respect to Licensee's work and activities at the Property, regardless of when they become effective. Licensee, at its cost, shall obtain any applicable licenses or permits required by applicable laws and regulations for the use of the Property. Licensee shall not use, nor permit the use, of the Property for any purpose in violation of such laws, regulations, rules or orders. Licensee agrees not to use said right-of-way in any fashion which will in any way damage or restrict the same for future use by the public in general for a public right-of-way. Furthermore, said usage as described herein, or the placement of said usage, shall not in any way alter the present or future rights of the Licensor to move, relocate, amend, or otherwise change said travel way to any other location whatsoever.

9. Public Property. Licensee acknowledges and consents that said property/right of way is public in nature and that the usage hereunder is permissive. Licensee shall not obstruct or otherwise interrupt any rights of the general public to the property. Licensee makes no claim of private ownership or other possessory interest in the property subject hereto, and any rights of the Licensee in the property will be limited to the same extent as that of the general public. Any work performed by Licensee, or any improvements made as a result of the Licensee's work, on the property is considered to be a benefit to the general public and the Licensee makes no claim that such work or improvements are privately owned and waives all right to claims that such work or improvements are private in nature.

10. Standards of Service.

10.1. Conditions of Use. All portions of the project or improvements installed or erected by the Licensee pursuant to this Agreement shall be located so as to cause minimum interference with the proper use of the rights-of-way and with the rights and reasonable convenience of property owners who own property that adjoins any of such rights-of-way.

10.2. Restoration of Rights-of-Way. If during the course of the Licensee's construction, operation or maintenance of the project or improvements there occurs a disturbance of any Property by the Licensee, it shall, at its expense, replace and restore such Property to a condition comparable to the condition of the Property existing immediately prior to such disturbance to the satisfaction of the Licensor. The work to be done under this Agreement, and the restoration of rights-of-way as required herein, must be completed within the dates specified in any permits authorizing the work. The Licensee shall perform the work according to the standards and with the materials specified or approved by the County Engineer.

10.3. Relocation at Request of the Licenser. Upon its receipt of reasonable notice, not to be less than five business days, the Licensee shall, at its own expense, protect, support, temporarily disconnect, relocate in the rights-of-way, or remove from the rights-of-way, any property of the Licensee when lawfully required by the Licenser by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, electrical or telecommunications lines, installation of facilities or equipment by other licensees or franchisees or any other type of structures or improvements approved by the Licenser.

10.4. Safety and Permit Requirements. Construction, installation, repair and maintenance of the project or improvements shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial compliance with applicable federal, state, and local laws, rules and regulations, including all permit requirements and laws, ordinances, rules and regulations adopted by the Licenser or appropriate governmental entity which are now in effect or are hereafter adopted. The project or improvements shall not unreasonably endanger or interfere with the safety of persons or property in the area.

10.5. Obstructions of Rights-of-Way. Except in the case of an emergency, or with the approval of the County Engineer, no rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work. The Licensee shall not so obstruct the Property so as to interfere with the natural, free and clear passage of water through gutters, drains, ditches or other waterways.

11. Indemnification. Licensee shall indemnify, defend and hold Licenser and its Commissioners, affiliates, employees, engineers, agents, representatives, contractors, subcontractors, licensees and invitees (collectively, "Licenser Representatives") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs, and expenses including, without limitation, attorneys' fees and costs, for any and all personal injury (including death) and property damage of any kind or nature whatsoever, incurred by or imposed upon Licenser or any Licenser Representative, as a result of any entry upon or activity conducted by, or any act or omission, by Licensee or any Licensee Representative pursuant to this Agreement or otherwise. The Licensee shall also assume the responsibility for any claims for damage done to property due to the exercise, usage and/or presence of the resulting work as a result of this License. This indemnification provision and the obligations set forth herein shall survive the expiration or termination of this Agreement.

12. No Alteration. Except as expressly permitted by this Agreement, Licensee shall not make nor permit any uses alterations or additions to the Property without Licenser's prior written consent.

13. Disclaimer of Warranties. The Licenser makes no representation or warranty regarding its rights to authorize the installation or operation of the project or improvements on the Property, and the burden and responsibility for making such determination in advance of the installation shall be upon the Licensee. This Agreement shall not be construed to deprive the Licenser of any rights or privileges which it now has, or may hereafter have, to regulate the use and control of its Property.

14. Priority of Use. This Agreement does not establish any priority for the use of the Property by the Licensee or any present or future licensees, franchisees or permit holders. In the event of any dispute as to the priority of use of the Property, the first priority shall be to the public generally, the second priority to the Licenser and its political subdivisions, the third priority to the State of Alabama in the performance of its various functions, and thereafter, as between licensees, franchisees and other permit holders, as determined by the Licenser in the exercise of its powers, including the police powers and other powers reserved to and conferred on it by the State of Alabama.

The Licensee acknowledges that it obtains no rights to or for the use of the Property other than those expressly granted herein. The Licensee acknowledges and accepts as its own risk that the Licenser may make use in the future of the Property in a manner inconsistent with the Licensee's use of the Property, and that in such event, the Licensee will not be entitled to compensation from the Licenser.

15. Removal and Completion Upon Termination. Upon the expiration or termination of this License, Licensee shall (a) peaceably deliver to Licenser the full possession of the Property; (b) remove all materials, equipment,

debris, waste, staged fill materials and improvements placed thereon by Licensee or Licensee Representatives (or resulting from work under this Agreement); and (c) repair any damage to the Property and restore the Property to its condition on the date of this Agreement. Should Licensee fail, within thirty (30) days after the date of the termination of this License, to make such removal, repair and restoration, Licenser may, at its option, remove said materials, equipment and improvements and complete said repair and restoration at the sole cost of Licensee. Licensee shall reimburse Licenser for such costs within thirty (30) days after request by Licenser.

16. Damage to Property. Licensee agrees to pay for any damage which may arise to buildings, fences, machinery, or other property of Licenser or any third party on or near the Property resulting from Licensee's operations or presence on the Property. Licensee shall reimburse any and all costs related to any and all corrections, changes or improvements deemed to be necessary by Licenser as a result of work performed pursuant to this Agreement or as a result thereof.

17. Termination for Breach. Licenser may terminate this License upon written notice should Licensee fail to fulfill any obligation of this Agreement and such failure is not cured within five (5) days after giving notice that Licensee is in breach.

18. Standard of Operation: Expenses. Licensee shall conduct all of its operations in a safe and workmanlike manner. All work and activities which Licensee performs at the Property shall be at Licensee's sole cost and expense.

19. Insurance. Prior to occupying or using the Property, Licensee shall carry, with insurers satisfactory to Licenser, throughout the term hereof, Auto Liability Insurance, including owned, hired and non-owned vehicles, with limits of not less than \$1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence. Commercial General Liability Insurance, including all contractual liability hereunder, with limits not less than \$1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; and Worker's Compensation Insurance, meeting the statutory limits of the state where the Property is located and Employer's Liability Insurance fully covering all employees and supervisors participating in the work at the Property with limits not less than \$1,000,000 each accident and \$1,000,000 each employee disease. All liability insurance shall name Licenser as an additional insured. Prior to commencing operations hereunder, a Certificate of Insurance evidencing such coverage, satisfactory to Licenser, shall be furnished to Licenser, which shall specifically state that such insurance shall provide for at least ten (10) days' notice to Licenser in the event of cancellation, termination or any change in such insurance policies. The workers compensation certificate shall bear an endorsement clearly evidencing a waiver of the right of subrogation against Licenser and Licenser Representatives. Should Licensee fail to furnish current evidence upon demand of any insurance required hereunder, or in the event of cancellation, termination or change in any such insurance, Licenser may, at its option, suspend this Agreement until insurance is obtained or terminate this Agreement immediately without further action.

20. Licenser not Responsible for Maintenance. The Licenser has not accepted, or undertaken to maintain, the Property or any streets, roadways or improvements constructed thereon, and the Licenser expressly states that it will not be responsible for the maintenance of the Property, or any streets, roadways or improvements constructed thereon. Furthermore, nothing set forth in this Agreement shall be construed or interpreted by any party as the Licenser accepting, or undertaking, to maintain the Property or any streets, roadways or improvements constructed thereon.

21. Responsibility. Licensee shall be responsible for compliance by Licensee Representatives with the terms of this Agreement and for all acts or omissions by Licensee Representatives on the Property.

22. No Assignment. Licensee shall not have the right to assign this Agreement or any rights or obligations hereunder without Licenser's prior written permission, in Licenser's sole discretion. Any attempted assignment shall be void. No assignment shall relieve Licensee of its liabilities and obligations herein.

23. Agency. It is neither the express nor the implied intent of the Parties to create an agency relationship pursuant to this License; therefore, any actions of the parties shall not be considered or implied to create such agency.

24. No Waiver. The failure of Licensor or Licensee to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

25. Termination. Notwithstanding anything in this Agreement to the contrary, it is expressly understood and agreed that Licensor, in its absolute discretion, with or without cause or hearing, may terminate the permission herein granted to Licensee and this Agreement. Termination of the permission herein granted and this Agreement may be accomplished in writing, or orally, and once notice of termination is given by Licensor to Licensee, the permission herein granted shall immediately and automatically terminate, and Licensee shall have no further right, permission or authority to utilize the Property.

26. Miscellaneous.

(a) No principals or agents of the Licensor or its successors or assigns shall be personally or individually liable under this Agreement or any instrument executed or delivered by any one of them pursuant to the terms and conditions of this Agreement.

(b) This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties. Both Licensor and Licensee have contributed substantially and materially to the preparation of this Agreement.

(c) This Agreement shall apply to and bind the successors and permitted assigns of the respective parties.

(d) This Agreement embodies the entire agreement and understanding of the parties, and there are no further or prior agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

(e) This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties or their respective successors or permitted assigns.

(f) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(g) This Agreement may be executed in any number or counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. This Agreement may be delivered by facsimile transmission.

(h) This Agreement shall be construed in accordance with and governed by the laws of the State of Alabama.

(i) Licensee's obligations under this Agreement shall survive expiration or termination of this Agreement.

27. Financial Terms/Conditions

The Licensee shall incur and absorb all financial responsibility that arises to complete the said described project and shall remain responsible for the duration of the Maintenance Agreement. The Licensor shall not incur any expense of the usage/maintenance described in this Agreement. These financial responsibilities shall lie solely with the Licensee.

28. Terms of Maintenance Agreement

Any damage to the existing Right-of-Way caused by periodic maintenance to the property or use of the same shall be the sole responsibility of the Licensee to repair at the Licensee's expense.

STATE OF ALABAMA)
COUNTY OF BALDWIN)

LA#13003

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of full execution by
Licensor below.

LICENSEE:

TOM SCHLINKERT

/Date

2/22/13

STATE OF ALABAMA

COUNTY OF BALDWIN

I, Audra E. Mize, a Notary Public in and for said County in said
State, hereby certify that TOM SCHLINKERT, whose name is signed to the foregoing instrument and who is known
to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the
same voluntarily on the day the same bears date.

Given under my hand and seal this the 22nd day of February, 2013.

Audra E. Mize
Notary Public, Baldwin County, Alabama

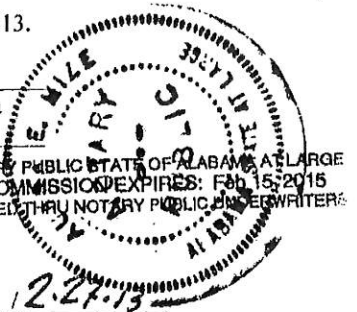
My Commission Expires: 2/15/15

LICENSOR:

BALDWIN COUNTY COMMISSION

BY: J. TUCKER DORSEY
AS ITS: CHAIRMAN

/DATE



ATTEST:

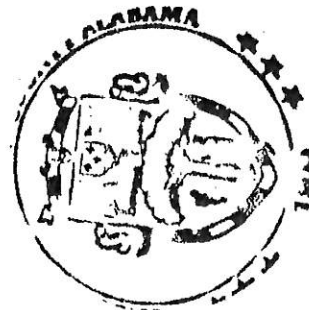
DAVID A. Z. BREWER
AS ITS: COUNTY ADMINISTRATOR

/DATE

2.27.2013

License Agreement

Page 6 of 7



STATE OF ALABAMA)
COUNTY OF BALDWIN)

LA#13003

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, Ken Green, a Notary Public, in and for said County in said State, hereby certify that J. TUCKER DORSEY and DAVID A. Z. BREWER, as Chairman and County Administrator of the Baldwin County Commission, respectively, and whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this date that, being informed of the contents of said Agreement, they executed the same voluntarily for and as an act of the Baldwin County Commission.

GIVEN under my hand and seal this the 27th day of February, 2013.

Ken Green
Notary Public Baldwin County, Alabama
My Commission Expires: _____

My Commission Expires 11/23/2015

Page 7 of 7

License Agreement



STATE OF ALABAMA

COUNTY OF BALDWIN

FIRST ADDENDUM

Baldwin County, Alabama, by and through its governing body, the Baldwin County Commission (hereinafter referred to as "Baldwin County" and/or "Licensor") and Tom Schlinkert (hereinafter referred to as "Licensee"), hereby enter into this First Addendum to that certain License Agreement between the parties, dated February 22, 2013, for the purpose of amending and modifying the terms of the aforementioned License Agreement as set forth below.

IN WITNESS WHEREOF, FOR AND IN CONSIDERATION of the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged, the Licensor and Licensee hereby agree to amend and modify the License Agreement as follows:

1. Paragraph 19 of the License Agreement, which section of the aforementioned agreement is entitled "Insurance", shall be deleted from the License Agreement, and the requirements contained in that section are hereby agreed to be waived by the parties. The provisions of said Paragraph 19 are specifically agreed by the parties to be of no further force and effect.

2. Except as expressly amended herein, all terms and provisions contained in the License Agreement executed between the parties shall remain in full force and effect.

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this First Addendum to the License Agreement on this the 27th day of February, 2013.

LICENSEE:

TOM SCHLINKERT

/Date

2/22/13

STATE OF ALABAMA

COUNTY OF BALDWIN

I, Audra E. Mize, a Notary Public in and for said County in said State, hereby certify that TOM SCHLINKERT, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 22nd day of February, 2013.

Audra E. Mize

Notary Public, Baldwin County, Alabama

My Commission Expires: 2/18/15

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Feb 18, 2015
BONDED THRU NOTARY PUBLIC UNDERWRITERS

LICENSOR:

BALDWIN COUNTY COMMISSION

BY: J. Tucker Dorsey

J. TUCKER DORSEY

AS ITS: CHAIRMAN

2.22.13

/Date

ATTEST:

DAVID A. Z. BREWER

AS ITS: COUNTY ADMINISTRATOR

2.27.13

/Date



STATE OF ALABAMA

COUNTY OF BALDWIN

I, Kei Green, a Notary Public, in and for said County in said State, hereby certify that J. TUCKER DORSEY and DAVID A. Z. BREWER, as Chairman and County Administrator of the Baldwin County Commission, respectively, and whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this date that, being informed of the contents of said instrument, they executed the same voluntarily for and as an act of the Baldwin County Commission.

Given under my hand and seal this the 27th day of February, 2013.

Kei Green

Notary Public, Baldwin County, Alabama

My Commission Expires: ~~_____~~ My Commission Expires 11/23/2015

