

SUBJECT: INFORMING THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY OF THE MANAGER ENTERING INTO A COMMERCIAL USE PERMIT WITH COLASKA, INC., FOR THE USE OF BOROUGH-OWNED LAND AND IMPROVEMENTS WITHIN THE POINT MACKENZIE PORT DISTRICT, LOCATED WITHIN SECTION 22, TOWNSHIP 14 NORTH, RANGE 4 WEST, SEWARD MERIDIAN, ALASKA, FOR A TERM OF NOT MORE THAN 18 MONTHS (MSB007573).

AGENDA OF: May 19, 2020

ASSEMBLY ACTION:

Presented to the Assembly 5-19-20

MANAGER RECOMMENDATION: For information only.

APPROVED BY JOHN MOOSEY, BOROUGH MANAGER: John Moosey
Digitally signed by John Moosey
 Date: 2020.05.05 16:13:50
 -08'00'

Route To:	Department/Individual	Initials	Remarks
	Originator - T. McDaniel	Tracy K. McDaniel Digitally signed by Tracy K. McDaniel Date: 2020.05.04 12:31:36 -08'00'	5/4/20
	Community Development Director	Eric Phillips Digitally signed by Eric Phillips Date: 2020.05.04 13:57:12 -08'00'	
	Port Manager	Therese M Dolan Digitally signed by Therese M Dolan Date: 2020.05.05 08:57:35 -08'00'	
	Finance Director	Cheyenne Heindel Digitally signed by Cheyenne Heindel Date: 2020.05.05 09:26:30 -08'00'	
	Borough Attorney	Nicholas Spiropoulos Digitally signed by Nicholas Spiropoulos Date: 2020.05.05 14:55:50 -08'00'	
	Borough Clerk	<i>[Signature]</i>	<i>[Signature]</i>

ATTACHMENT(S): Land & Improvements, Commercial Use Permit,
 (26 pp)

SUMMARY STATEMENT:

As directed by Borough administration, this is to inform the Assembly of the Borough's intent to enter into a Land and Improvements, Commercial Use Permit, with Colaska, Inc., for the use of the former Alutiiq Building (22,500 SQ/FT) and 15.8 acres of Borough-owned land within the Point MacKenzie Port District.

This action is in accordance with MSB 18.02.010(B), MSB 23.10.100, and adopted Land and Resource Management Division, Policy & Procedures, Part 50-1. Wherein, MSB 18.02.010(B) states, "Land use permits without assembly approval for a period of time under 18 months are allowed in addition to leases with manager approval."

The use of the land and building is for a commercial operation to house heavy equipment and construction materials on, or within, the 15.8 acres of land and existing 22,500 square feet building.

The term of the permit begins May 20, 2020 and expires November 19, 2021 midnight (18-month term). During the first year of the permit term, the monthly rent is \$4,500 with an increase of 5 percent, equal to \$4,725, effective May 20, 2021 for the remainder of the permit term.



MATANUSKA-SUSITNA BOROUGH

Community Development Department

350 East Dahlia Avenue • Palmer, AK 99645

Phone (907) 861-7869

E-mail: lmb@matsugov.us

www.matsugov.us

LAND & IMPROVEMENTS

COMMERCIAL USE PERMIT

THIS PERMIT FOR THE USE OF BOROUGH-OWNED LAND AND IMPROVEMENTS (the "Permit") is made and entered into this _____ day of May 2020, by and between:

MATANUSKA-SUSITNA BOROUGH (hereinafter "Borough"), a municipal corporation formed under the laws of the State of Alaska, whose mailing address is 350 E. Dahlia Avenue, Palmer, Alaska 99645;

and

COLASKA, INC., (hereinafter "Permittee"), a corporation formed under the laws of the State of Alaska, whose mailing address is 4000 Old Seward Highway, Suite 101, Anchorage, Alaska 99503.

Section 1. Permit.

- 1.1 Permittee desires to use a parcel of Borough-owned land and improvements located within Township 14 North, Range 4 West, Section 22, Seward Meridian, Alaska, more specifically described and depicted on **Exhibit A (3 pages)**, attached to and for all purposes made a part of this Permit, for the commercial purpose of storing heavy equipment and construction materials.
- 1.2 The parties desire to adopt this Permit as a complete and final statement of all of the promises, covenants, terms, and conditions in effect and binding between them.
- 1.3 The Borough is entering into this Permit as land owner, exercising its power to manage its own lands under Alaska Statute 29.35.010(8), and the applicable provisions of the Matanuska-Susitna Borough Code ("MSB Code") 1.10.010(A)(9) and Title 23 and as amended. The Matanuska-Susitna Borough Community Development Department, Land and Resource Management Division, is responsible for management of Borough-owned real property, timber, and gravel resources including permit origination, management, oversight, and enforcement, pursuant to MSB Code and any other applicable federal, state, or local laws.

In so acting, the Borough is not waiving, and the Borough is explicitly reserving unto itself, all of its governmental authority, sovereignty, and power to enact and enforce laws and

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regulations governing land use and development, or the conduct of any business or activity, anywhere within the Borough. Nothing in this Permit shall waive or otherwise diminish the Borough's governmental authority, sovereignty and power with respect to Permitted land or Permittee's use or occupancy of it.

- 1.4. The Borough cannot, and does not through this Permit, make any representations, warranties, or guarantees as to the future results of any land use permits, applications, or proposals, which are governed by Borough Code.
- 1.5 This permit does not convey any interest in the property or existing improvements. The permit authorizes use of the property by the Permittee only for the authorized uses and is subject to the conditions set forth in this permit. The Permittee shall be held liable for meeting the conditions and obligations set forth in this permit.

Section 2. Permitted Premises.

- 2.1 Permitted Premises. The Borough, for and in consideration of the monthly fee, covenants, and conditions hereinafter specified to be paid, performed and observed by Permittee, Permits to Permittee, and Permittee Permits from the Borough, the use of 15.8 acres of Borough-owned land, the improvements, which include a 22,500 SQ/FT building, and any appurtenance attached to the Borough-owned land and building, located within Township 14 North, Range 4 West, Section 22, Seward Meridian, Alaska. The Permitted land and improvements are more particularly described and depicted in **Exhibit A**. The Permitted land and improvements, together with all rights, easements, privileges, and appurtenances attaching or belonging to the described land, but subject to the reservation contained in Section 2.2 below, is referred to hereafter as the "Permitted Premises."
- 2.2 Reservation of Minerals and Resources. All oil, gas, coal, other hydrocarbons, geothermal resources, rock, sand, gravel, peat, timber, and minerals of whatever nature on, in, or under the above-described land are excluded from the Permitted Premises and reserved to the Borough. Nevertheless, the Borough may grant Permittee a permit to make use of the timber, rock, sand, or gravel found on the Permitted Premises in Permittee's development of the Permitted Premises, which may require Permittee to obtain and pay for the required permit as is specified in Section 7 below. The Borough has not promised or obligated itself to providing any such permit to Permittee. If the Borough mines and/or extracts any of the reserved minerals or resources, the Borough agrees that the mining and/or extraction shall not interfere with Permittee's activities on the Permitted Premises or its access to the Permitted Premises.

Section 3. Term.

- 3.1 Permit Term. This Permit shall continue in full force and effect for a term of eighteen (18) months commencing as of May 20, 2020, the effective date of the Permit, and expiring at 11:59 p.m. on November 19, 2021, unless earlier terminated as provided in this Permit. A permit conveys no interest in the land. The permit is not renewable, but may be reissued upon application by the permit holder as described under MSB Policy and Procedure, Part 50, 2.4 and MSB 18.02.010(B).

Section 4. Use and Occupancy.

- 4.1 Use of Permitted Premises. Permittee specifically agrees that, for the Term, it shall have exclusive use of the Permitted Premises for a commercial operation to house heavy equipment and construction materials on or within the 15.8 acres of land and existing 22,500 SQ/FT building.
- 4.2 Quiet Enjoyment. Upon Permittee's timely payment of the Monthly Land Use Fees and other sums required to be paid by Permittee under this Permit, and upon Permittee's full and faithful observance and performance of all of its obligations contained in this Permit, and so long as such observance and performance continues, Permittee may use the Permitted Premises during the Term without hindrance or interruption by the Borough or anyone lawfully claiming by, through, or under the Borough.
- 4.3 Compliance with Laws. Permittee, at all times during the Term, at its own expense, and with all due diligence, shall observe and comply with all laws, ordinances, rules, and regulations that are now in effect or that may later be adopted by any governmental authority (including the Borough), and that may be applicable to the Permitted Premises or any improvements or associate appurtenances on or in it, or any use of it.
- 4.4 Signage. No electioneering or campaign signs of any kind shall be placed upon the Permitted Premises.
- 4.5 Utilities. Permittee shall pay for all utility services placed, consumed, or used on the Permitted Premises.
- 4.6 Waste and Wrongful Use. Permittee shall not commit any waste of the Permitted Premises or any unlawful, unsafe, improper, or offensive use thereof or any public or private nuisance thereon, or adversely affect the value, character, or utility of the Borough's surrounding property.
- 4.7 Setbacks and Easements. Permittee shall observe all waterbody setbacks and setback lines (MSB 17.55) applicable to the Permitted Premises and shall not construct or maintain any building or other structure whatever within any road or other specified rights-of-way boundary of the Permitted Premises and any setback along such boundary, except for fences or walls approved by the Borough. The Borough reserves the right to make use of, and to grant easements and other rights to third parties in the setback areas of the Permitted Premises.
- 4.8 Repair, Maintenance, and Inspection by the Borough. Permittee shall, at Permittee's expense and without notice from the Borough at all times during the Term, keep the Permitted Premises and all improvements and associated appurtenances now existing, or hereafter built, on the Permitted Premises (including but not limited to exterior building walls, windows, doors, fences, water system, septic system, outdoor privies, signs, landscaping, yard areas, refuse disposal equipment and facilities, exterior lighting, and drainage facilities), in good order, condition, maintenance, operability, and repair and a neat and clean appearance.

Permittee, at its own expense, shall repair, maintain, and make good all conditions required under the provisions of this Permit, permit requirements, and applicable laws. If Permittee refuses or neglects to provide reasonable and necessary repairs or maintenance of the Permitted Premises as required under the terms of the Permit to the reasonable satisfaction of the Borough after written demand, then the Borough, without prejudice to any other right or remedy it has under this Permit, may perform such reasonable and necessary maintenance work or make such repairs without liability to the Borough for any loss or damage that may accrue to Permittee's merchandise or other property or Permittee's business by reason thereof. Upon completion of any such repair or maintenance, and no later than thirty (30) days after presentation of an invoice therefore, Permittee shall pay as additional fee the Borough's reasonable cost for making such necessary repairs or performing such maintenance, plus fifteen percent (15%) of the repair costs to cover the Borough's overhead.

The Borough or its authorized agents may enter and inspect the Permitted Premises at any time during regular business hours, with or without the presence of Permittee or its authorized representative, after giving twenty-four (24) hours advance notice to Permittee of such inspection. The Borough is specifically authorized to enter the Permitted Premises for the purposes of posting notices of non-responsibility for any construction work Permittee undertakes. All inspections will be conducted in a manner that does not unreasonably interfere with Permittee's operations. In the event of an emergency, the Borough may enter and inspect the Permitted Premises on reasonable notice under the circumstances, including no notice to Permittee if the circumstances warrant.

All travel costs associated with site inspections performed by the Borough when the inspection is necessary due to a complaint or report that the Permittee is in violation of permit terms or conditions. The inspection fee will be a minimum of fifty dollars (\$50.00).

Notwithstanding anything other section in this Permit to the contrary, in the event the Permitted Premises or the building is so damaged or destroyed by earthquake, fire, or other casualty not the fault of Permittee such that Permittee will be unable to access and/or operate from the Permitted Premises for an extended period of time, Permittee shall have no obligation to repair the Permitted Premises or building and may elect to terminate the Permit effective upon fourteen (14) days written notice to the Borough. Any monthly land use fee or additional fee payable with respect to the Permitted Premises will be paid up to the time of such damage.

Section 5. Monthly Land Use Fee and Cash Bond.

- 5.1 Monthly Land Use Fee. Permittee shall pay a monthly nonrefundable land use fee in the amount of Four Thousand Five hundred and NO/100 (\$4,500.00) to the Borough, without deduction and without prior notice or demand and due each month on the day of the Permit's execution, with an increase of five percent (5%) equal to Four Thousand Seven Hundred Twenty-five and NO/100 (\$4,725.00) effective May 20, 2021, for the remainder of the Permit Term.

5.2 Cash Bond. A Cash Bond in the amount of Ten Thousand and NO/100 Dollars (\$10,000.00) in the favor of the Borough shall be deposited with the Borough prior to the effective date of the Permit. The bond warrants that the Permittee will faithfully observe the terms and conditions of the permit and defray any costs for restoration or rehabilitation of the property and improvements affected by the permitted use. The Borough will return the cash bond to the Permittee after the termination or expiration of the Permit and if the Borough determines that all conditions of the Permit have been met and the Permitted Premises is in satisfactory condition.

5.3 Place of Invoices. All monthly invoices shall be delivered to the following email address or address of business as shown on the front page of this Permit, unless the Permittee gives the Borough written notice of a different email or address for the Monthly invoices:

ZCampbell@COLASKA.com

Colaska, Inc.

4000 Old Seward Highway, Suite 101
Anchorage, Alaska 99503

5.4 Place of Payments. All payments of Monthly Land Use Fee shall be delivered to the following address, accompanied by a reference to the MSB Permit Number MSB007573, and as shown on the front page of this Permit, unless the Borough gives Permittee written notice of a different address for the Monthly Land Use Fee payments:

Matanuska-Susitna Borough
Land and Resource Management Division
350 East Dahlia Avenue
Palmer, Alaska 99645

Payments shall be effective on the date of the Borough's actual receipt.

5.5 Late Payment. Any payment of Monthly Land Use Fee not made within ten (10) days after the date it is due shall be assessed a late fee of \$50. The late fee is not a penalty but is intended to compensate the Borough for the additional costs the Borough will incur as a result of the late payment, the exact amount of such additional costs being extremely difficult and impracticable to ascertain.

Section 6. Condition of Permitted Premises.

6.1 Accepted in Present Condition. Permittee acknowledges that it has had an opportunity to inspect the Permitted Premises, conduct any studies, and performed Phase I and Phase II Environmental Site Assessments of the Permitted Premises prior to entering into this Permit at Permittee's sole expense. Permittee accepts the Permitted Premises "AS-IS" and "WITH ALL FAULTS." The Borough shall have no obligation to install, construct, maintain, remove, repair, or pay for any improvements of any kind or nature on the Permitted Premises for Permittee's benefit at or prior to the commencement of the Term.

6.2 No Representations or Warranties. The Borough is making no representation or warranty, express or implied, regarding the safety, suitability, or condition of the Permitted Premises

for Permittee's intended use. Without limiting the foregoing, Permittee specifically acknowledges that the Borough has not warranted or made any representation regarding the social, economic, or environmental aspects of the Permitted Premises, or the acreage, water or septic systems, groundwater, soil conditions, utility services, condition of improvements, water drainage, physical access, natural or artificial hazards that may or may not exist, or the merchantability, suitability, or profitability for any use or purpose.

- 6.3 No Liability. The Borough shall have no liability to Permittee, its agents or contractors, or to anyone claiming by, under, or through Permittee, regarding the physical condition of the Permitted Premises, including, but not limited to the building, or its function, utility, fixtures, or any appurtenances attached thereto, at any time during the Term. The Borough has no responsibility for any surface and subsurface conditions, whether known or unknown, natural or man-made, to Permittee, specifically including any adverse soil conditions and any washout, subsidence, avulsion, reliction, or settling that may occur to Permitted Premises. In no event shall Permittee be entitled to any damages whatsoever against the Borough with respect to the physical condition of the Permitted Premises, including, but not limited to, actual, special, consequential, lost-profits or wages, or any other category of damages.

Section 7. Governmental Authority Retained.

- 7.1 No Waiver of Governmental Power. Nothing in this Permit is intended to, or shall have the effect of, waiving or releasing any power or authority that the Borough has as a governmental body. The Borough has not promised or represented that it will exercise or not exercise its governmental power or authority in any way for the benefit of Permittee or Permittee's interests or the Permitted Premises. Permittee also specifically acknowledges that, regardless of the title or position that a person holds with the Borough, no person acting or purporting to on the Borough's behalf has the authority to waive the Borough's power or authority to act as a local government of the State of Alaska.
- 7.2 Permittee and Permitted Premises Subject to MSB Code. Permittee and Permittee's use and occupancy of the Permitted Premises shall at all times, be subject to the applicable provisions of the MSB Code, as the MSB Code may be amended from time to time. The Borough has not promised or represented that no new provisions will be added to the MSB Code, or that no existing provisions will be revised or repealed in any way. The Borough likewise has not promised or represented that any provisions of the MSB Code will be relaxed or not enforced for Permittee's benefit. Without limiting the foregoing, Permittee specifically acknowledges and agrees that:
- 7.2.1 The Permitted Premises are subject to all applicable land use provisions of the MSB Code and any additions to, or amendments of those provisions; and
- 7.2.2 The Permitted Premises and Permittee's use of the Permitted Premises are subject to all applicable federal, state, and local laws and building, fire, health, safety, and environmental provisions, including the MSB Code, as they presently exist or as may be hereafter adopted.

Section 8. Notice.

- 8.1 Notice. Any notice to Permittee or the Borough required or permitted under this Permit shall be given in writing, mailed by registered or certified mail, return receipt requested, only to the individuals below, except as provided in Section 4.8. In the alternative, any notice may be delivered personally to the individual below within the State of Alaska on behalf of the party. Notice shall be effective upon receipt.

The Borough's Authorized Representative for purposes of this Permit shall be only the following and no other unless the Borough notifies the Permittee in writing of an additional or substitute Authorized Representative:

MATANUSKA-SUSITNA BOROUGH

Community Development Director
350 East Dahlia Avenue
Palmer, AK 99645
(907) 861-8634

The Permittee's Authorized Representative for the purposes of this Permit agreement shall be only the following, and no others, unless the Permittee notifies the Borough in writing of an additional or substitute Authorized Representative:

Colaska, Inc.

Robert Dun, Director of Operations and Development
4000 Old Seward Highway, Suite 101
Anchorage, Alaska 99503
rdun@colaska.com / (907) 273-1000

In the alternative, any notice may be delivered personally within the State of Alaska to the party. Except as otherwise expressly provided in this Permit, any notice shall be conclusively deemed to have been given on the date of mailing or personal delivery. If at any time during the Term Permittee is more than one person or entity, any notice given by the Borough to any of them shall constitute notice to all of them, and any agreement or approval with or in favor of the Borough made or given by any of them shall bind all of them.

Section 9. Improvements. Permittee, at Permittee's expense, shall keep in good order, condition, and repair the foundations, exterior walls, roof, and structural integrity of the Permitted Premises buildings. Permittee shall also be obligated for any costs associated to maintain and repair the building and any appurtenances of the building, which include, but are not limited to, the plumbing, heating, ventilation, electrical, lighting fixtures, ceilings, windows, and doors. The Permittee may make no changes or modification to the Permitted Premises, except as specifically authorized in writing by the Borough. Permittee acknowledges the Borough has never occupied the building as a public facility and the utility of use for the building is unknown. The Permittee accepts the current condition of the Permitted Premises and the responsibility of any repairs or replacement costs for all improvements located on or in the Permitted Premises.

- 9.1 Right to Improve. Permittee, when not in default of its obligations under this Permit, shall have the following rights, during the Term, to the extent Permittee deems advisable, subject however to the satisfaction of the other requirements of this Permit and, when specified, subject to the condition that the Borough's prior written approval be obtained:
- 9.1.1 To construct, place, or install on the Permitted Premises, buildings, structures, fill, paving, landscaping, and other improvements.
 - 9.1.2 To apply for a Port MacKenzie Development Permit pursuant to MSB Code 17.23.150(B) and as amended (**Exhibit C**), if applicable, which is a process independent from this Permit. The issuance of a Port MacKenzie Development Permit has not been promised to Permittee and nothing in this Permit obligates the Borough to issue the permit.
 - 9.1.3 All new improvements that are attached to the Permitted Premises simply by resting on the surface of the ground by their own weight that Permittee constructs, places, or installs on the Permitted Premises shall remain Permittee's separate property for the duration of the Term of this Permit except as provided for in Section 15.2.
 - 9.1.4 In completing any project involving the construction of improvements on the Permitted Premises, Permittee shall provide to the Borough within 120 days, at Permittee's expense an as-built survey by a licensed surveyor of the completed project showing the improvement location(s). Permittee shall provide remediation of the construction area, including the removal of all construction debris. If required by the Borough, Permittee shall also provide site remediation and erosion control of the construction area.
- 9.2 Site Work and/or Improvements. Prior to the commencement of any site work and/or improvements on the Permitted Premises (including any gravel use, timber clearing, or grading), Permittee must:
- 9.2.1 At Permittee's expense, obtain the Borough's authorization and written acceptance prior to site work and construction, which shall include a current site plan showing the project location of the site work with photos of the area and a detailed description of the proposed site work and/or improvements.
 - 9.2.3 At Permittee's expense, obtain each required approval from the applicable federal, state, or local government agency.
- 9.3 Clearing and Site Materials. Natural resources to include timber cutting for on-site improvements, rock, sand, or gravel may only be extracted for on-site personal use within the Permitted Premises upon receiving the Borough prior written approval. Any removal or extraction of natural resources outside of the Permitted Premises shall not take place without receiving the Borough's prior written approval, which shall be at the Borough's sole discretion.
- 9.4 Utilities. To the extent Permittee desires to have utility services at the Permitted Premises that are not already available on the commencement date of the Term, Permittee shall pay

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for all the costs of bringing and installing utility services to and on the Permitted Premises (including electric, telephone, gas, cable, water, solid waste, and sewage disposal). Permittee shall obtain the Borough's prior written approval with respect to the location of any utility services on the Permitted Premises. Borough approval is required to grant or dedicate any utility easement prior to installation.

- 9.5 The Permitted Premises shall be kept in a clean and sanitary condition and every effort shall be made to prevent the pollution of water and land. Any outside toilet facilities, such as porta-potties shall be provided and maintained in accordance with Alaska Department of Environmental Conservation ("ADEC") regulations. Grey water discharge and burial of trash is strictly prohibited. Trash generated from the Permitted Premises shall be removed and disposed of properly at an approved landfill or transfer site. Trash shall not be allowed to accumulate and shall be stored in such a manner as not to create a nuisance or attract wildlife. On-site burning is prohibited.

Section 10. Use of Explosives, Firearms, Pesticides, Open Fires, and Vegetation.

- The use of explosives, including fireworks, is prohibited on the Permitted Premises.
- The discharge of firearms on the Permitted Premises is prohibited except for personal protection.
- The use of pesticides for mosquito abatement is prohibited on the Permitted Premises unless specifically approved by the Borough.
- Open fires are strictly prohibited on the Permitted Premises. The Permittee shall be prepared to control and suppress fires at all times. In the event of a fire on the Permitted Premises, Permittee must take immediate action and report it to the appropriate officials and the Borough.
- Permittee shall avoid damaging trees and natural vegetation.

Section 11. Hazardous Materials and Environmental Matters.

- 11.1 Observance of Environmental Laws. Permittee must, at its own expense, comply with all laws, ordinances, regulations and administrative agency or court orders relating to health, safety, noise, environmental protection, waste disposal, hazardous or toxic materials, and water and air quality. In the event any discharge, leakage, spillage, emission or pollution of any type occurs upon or from the Permitted Premises during the Term or any holdover thereafter, Permittee shall immediately notify the Borough and ADEC and shall, at Permittee's own expense, clean and restore the Permitted Premises to the satisfaction of the Borough and ADEC and any governmental body or court having jurisdiction of the matter. **Under no circumstance shall any hazardous material be improperly stored or disposed of on the Permitted Premises.**
- 11.2 Hazardous Materials on Permitted Premises. Permittee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Permitted Premises by Permittee, its agents, employees, contractors, or invitees without the prior written consent of the Borough, which the Borough shall not unreasonably withhold as long as Permittee demonstrates to the Borough's reasonable satisfaction that such Hazardous Material is necessary and useful to Permittee and will be used, kept, and stored, and

disposed of in a manner that complies with all laws regulating any such Hazardous Materials.

- 11.3 Environmental Control Measures. As a part of the development of the Permitted Premises, Permittee shall provide to the Borough, for the Borough's review and approval, a Hazardous Materials control plan for any hazardous materials in amounts greater than 55 gallons. The control plan shall specify any materials, equipment, and procedures that Permittee will utilize in handling Hazardous Materials and in seeking to prevent and respond to any spill, release, or discharge of Hazardous Materials. All containers on the Permitted Premises holding Hazardous Materials (e.g. tanks, drums, and supply sources for equipment) shall be marked with the contents and Permittee's name. For any storage containing over 55 gallons, Permittee shall install and maintain secondary containment or a surface liner under all container and vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fueling or other transfers of Hazardous Materials. For this purpose, "secondary containment" means an impermeable diked area or portable impermeable containment structure capable of containing one hundred ten percent (110%) of the volume of the largest container; and "surface liner" means any safe, non-permeable containment designed to catch and hold fluids for the purpose of preventing spills and sized to accommodate a worst-case spill risk. Permittee shall keep at hand during all transfers of Hazardous Materials appropriate spill response equipment to respond to a spill.
- 11.4 Environmental Indemnity. Permittee shall indemnify and defend the Borough against all liability, cost, and expense (including, without limitation, any fines, penalties, diminution in value of the Permitted Premises, assessment and clean-up costs, judgments, litigation costs, and attorneys' fees) incurred by or levied against the Borough as a result of Permittee's breach of this Section 11 or as a result of discharge, leakage, spillage, emission or pollution on or discharged from the Permitted Premises, as a result of Permittee's operations on the Leased Premises, without regard to whether such liability, cost or expense arises during or after the Term of this Permit; provided, however, that Permittee shall not be required to indemnify the Borough under this Section 11.4 if the parties agree or a court of competent jurisdiction determines that such liability, cost, or expense is caused directly and solely by the active negligence of the Borough. The foregoing indemnity shall survive the expiration or termination of this Permit.
- 11.5 "Hazardous Material" Defined. For purposes of this Permit, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste, including but not limited to: (1) oil, lubricants, petroleum products and byproducts, gasoline, diesel fuel, stove oil, kerosene, propane and other hydrocarbons; (2) those substances, materials and wastes listed in the U.S. Department of Transportation Hazardous Materials Table (49 CFR § 172.101) or by the U.S. Environmental Protection Agency as hazardous substances (40 CFR Part 302), and amendments thereto; (3) all materials the release of which must be reported under Title 46 of the Alaska Statutes; and (4) any such other substances, materials and wastes that are or become regulated under any applicable local, state, or federal law.
- 11.6 Environmental Assessments and Testing. Permittee shall be solely responsible for all costs and expenses associated with the performance of environmental testing of the Permitted Premises, which may be required at the Borough's sole discretion upon the expiration or

termination of this Permit, provided that any such testing shall only be required if the Borough knows, or has reasonable cause to believe that environmental impairment caused by Permittee's use and occupancy has occurred. The nature and extent of any required testing shall be commensurate with the nature and extent of the environmental impairment known or reasonably suspected. Such environmental testing, conducted by an engineering firm acceptable to the Borough, shall be the basis for determining the extent of any environmental impairment caused by the Permittee's use and occupancy of the Permitted Premises. The foregoing environmental assessment and testing shall survive the expiration or termination of this Permit.

- 11.7 Borough's Environmental Expenses. In the event the Borough shall make any expenditures or incur any obligations for the payment of money in connection with this Section 11 including, but not limited to, attorneys' fees for instituting, prosecuting, or defending any action or proceeding, such sums paid, obligations incurred and costs shall be deemed to be additional fees due under this Permit and shall be paid by Permittee to the Borough within ten (10) days of rendering an invoice to Permittee.

Section 12. Insurance.

- 12.1 Duration and Requirement. During the entire Term, Permittee shall keep in full force and effect a policy or policies of liability insurance that includes coverage acceptable to the Borough as are specified and attached on **Exhibit B** of this Permit with respect to the Permitted Premises.
- 12.2 Liability Insurance. Permittee shall keep in full force and effect a policy or policies of general liability insurance that includes bodily injury liability insurance and property damage liability insurance coverage acceptable to the Borough with respect to the Permitted Premises. The policy or policies purchased pursuant to this Section 12 shall name both the Permittee and the Borough as insureds.
- 12.3 Property Insurance. Permittee shall keep all its improvements and personal property now or hereafter erected or placed on the Permitted Premises insured against loss or damage on an all risk basis in an amount equal to the full replacement cost of all such improvements and shall pay all premiums thereon at the time and place the same are payable. Every policy shall be made payable in case of loss or damage to Permittee and the Borough jointly and shall be distributed according to their interest(s) in the improvements unless otherwise specified by this Section 12. All compensation, indemnity, or other monies paid on account of any loss or damage, other than rental value insurance, shall with all convenient speed be paid out in rebuilding, repairing, or otherwise reinstating the same improvements or in constructing different improvements.
- 12.4 Policy Provisions. Each policy of general liability or property insurance described in Section 12 of this Permit shall:
- 12.4.1 Provide that such policy requires a thirty (30) day notice to the Borough of any proposed cancellation, expiration, or change in material terms thereof and that such policy may not be canceled, whether or not requested by Permittee, unless the

insurer first gives not less than thirty (30) days' prior written notice thereof to the Borough; and

12.4.2 Contain a waiver by the insurer of any right of subrogation to proceed against the Borough or against any person claiming by, through, or under the Borough.

12.5 Proof of Insurance. Permittee shall deliver to the Borough certificates of insurance on or before the commencement date of the Initial Term of this Permit and at each renewal period. Additionally, Permittee shall deliver to the Borough photocopies of the policy or policies of insurance, certificates of insurance, or copies of endorsements as requested by the Borough from time to time.

Section 13. General Indemnification and Recovery of Costs.

13.1 Permittee's Indemnity Obligation. Permittee assumes all responsibility, risk, and liability for its activities and use of or contact with the Permit and its uses. Permittee shall indemnify, defend, and hold harmless the Borough, its elected and appointed officials and officers, agents, and employees from and against any and all claims, demands, suits, or liability of any nature, kind, or character, including costs, expenses, and attorney's fees arising from (1) Permittee, Permittee's guests, invitees, and/or licensee's use of the Permitted Premises, or from any activity, work or things done, permitted or suffered by Permittee in or about the Permitted Premises or elsewhere; (2) any breach or default in the performance of any obligation on Permittee's part to be performed under the terms of this Permit; (3) any negligence or intentional conduct of Permittee, or any of Permittee's guests, invitees, and/or licensee's use, or any person claiming by, through or under Permittee; and (4) any accident on or in connection with the Permitted Premises, or any fire thereon, or any nuisance made or suffered thereon. Permittee shall further indemnify, defend, and hold harmless the Borough from and against all costs, attorneys' fees, expenses, and liabilities incurred in the defense of any proceeding brought against the Borough by reason of any such claim. Permittee, upon notice from the Borough, shall defend any of the above-described claims at Permittee's expense by counsel satisfactory to the Borough. Permittee, as a material part of the consideration to the Borough, hereby assumes all risk of damage to or destruction of property or injury to or death of persons, in, upon, or about the Permitted Premises, arising from any cause and Permittee hereby waives all claims in respect thereof against the Borough. The provisions of this Section 13.1 shall not apply if the parties agree or a court of competent jurisdiction determines that such claims or liabilities are caused by the sole negligence of the Borough.

13.2 Costs and Expenses of the Borough. Permittee shall pay to the Borough all costs and expenses, including reasonable attorneys' fees, which are (1) paid or incurred by the Borough but are required to be paid by Permittee under any provision of this Permit; (2) paid or incurred by the Borough in enforcing any provision of Permittee contained in this Permit, in protecting itself against or remedying any breach thereof, in recovering possession of the Permitted Premises or any part thereof, or in collecting or causing to be paid any delinquent Monthly Land Use Fees, or rates; (3) incurred by the Borough in reviewing any matter for which the Borough's approval is sought and in processing such approval; or (4) incurred by the Borough in connection with any action in any respect

related to this Permit, the Permitted Premises, or Permittee's actions or omissions on the Permitted Premises, to and in which the Borough is made a party but not adjudicated to be at fault. The term "costs and expenses" as used in this Permit shall include but not be limited to all of the Borough's out-of-pocket expenditures attributable to the matter involved and reasonable attorneys' fees. Except as otherwise expressly provided in this Permit, all costs and expenses of the Borough shall be payable by Permittee to the Borough within ten (10) days after mailing or personal delivery of invoices. Such obligations shall constitute additional fees due and payable under this Permit.

- 13.3 Other Indemnity and Cost Provisions Not Affected. The provisions of Section 13.1 regarding indemnity and the provisions of Section 13.2 regarding costs are intended to supplement, not supersede, the other provisions of this Permit that concern Permittee's indemnity obligations and Permittee's obligations to pay for the Borough's costs. Permittee shall fulfill all the indemnity and cost payment obligations owed to the Borough under any of the provisions of this Permit.

Section 14. Termination.

- 14.1 Termination. The Borough or Permittee may terminate the Permit by giving thirty (30) days' written notice.
- 14.2 Termination for Cause. Violation of permit conditions, obligations, or a situation in which a continuance of the activity poses a threat to the public health, safety, or welfare" as a condition under which the Borough can seek immediate termination and permit cancellation and may result in a claim for damages by the Borough and other civil or criminal penalties as applicable under the law. Termination for cause will disqualify the Permittee from receiving a permit or other uses of Borough-owned land for five years (MSB 23.10.090). If the permit is terminated for cause, the Permittee shall have three (3) days, or 72 hours, to vacate the Permitted Premises.
- 14.3 Termination or Suspension Without Cause. This permit may be suspended or terminated by the Borough without cause. If the permit is terminated without cause, the Permittee shall have thirty (30) days, which may be extended by the Borough manager due to adverse weather conditions or any extenuating circumstances, to vacate the Permitted Premises.

Section 15. Duties at Termination or Expiration

- 15.1 Borough's Inspection. The Borough will conduct a final inspection of the property within twenty (20) days of expiration or termination of the Permit, which the time may be extended due to adverse weather conditions or any extenuating circumstances. The condition of the Permitted Premises at termination or expiration shall be in at least equal or better condition as at the beginning of this Permit term.
- 15.2 Borough's Improvements. Any improvements owned by the Borough at the commencement of the Permit Term, or added to the Permitted Premises by the Borough during the Permit Term, shall not be removed by Permittee.

- 15.3 Borough's Option. The Borough, at its option, may allow Permittee to leave some or all of Permittee's improvements and personal property on the Permitted Premises upon termination. If the Borough so elects, such improvements and personal property shall become the property of the Borough upon termination and the Borough shall have no obligation to compensate Permittee for the same.
- 15.4 Abandonment of Permittee's Improvements and Personal Property. Permittee shall remove all improvements and personal property that Permittee is not required or allowed to leave on the Permitted Premises under Section 15.3. All improvements and personal property that Permittee is not required or allowed to leave on the Permitted Premises shall, on the thirtieth (30th) day following termination, which may be extended by the Borough manager due to adverse weather conditions or any extenuating circumstances, be conclusively deemed abandoned. Abandoned improvements and personal property shall, at the election of the Borough, become the property of the Borough and may be destroyed or removed by the Borough with no further recourse of the Permittee.
- 15.5 Liability for Cleanup Expenses. Permittee shall be liable for all costs and expenses incurred by the Borough to remove or destroy abandoned personal property and improvements not required or allowed to leave on the Permitted Premises, and for the removal of trash or other debris left thereon. In addition, nothing in this Permit shall relieve Permittee of any obligation or liability for removal of Hazardous Materials or inappropriate fill material placed on the Permitted Premises during the term of the Permit, regardless of when such Hazardous Materials or inappropriate fill material is discovered.

Section 16. Remedies on Termination.

- 16.1 Recovery of Fees. The Borough shall be entitled, at the Borough's election, to each installment of the Monthly Fee or to any combination of installments for any period before termination plus late charges.
- 16.2 Permittee's Personal Property. The Borough may, at the Borough's election, use Permittee's personal property and/or fixtures on the Permitted Premises, or any of such property and fixtures, without compensation and without liability for use or damage, or store them for the account and at the cost of Permittee.
- 16.3 Damages. The Borough shall also be entitled, at the Borough's election, to the following damages in addition to all other damages provided by law or equity or other provisions of this Permit, which the Borough may seek cumulatively or in the alternative: (1) all amounts that would have fallen due as Monthly Land Use Fees at the time of termination; (2) all administrative, repair, cleaning and similar costs incurred by the Borough and necessary or useful to issue a new permit for the Permitted Premises or placing it in good and marketable condition; and (3) any costs associated with transportation for inspection to and from the Permitted Premises.

Section 17. General Provisions.

- 17.1 Disputes; Forum Selection; Attorneys' Fees. In the event of any dispute, the reconsideration procedure of MSB Code 23.05.090 shall be available. Any litigation arising out of this Permit or related to it shall only be brought in the Superior Court for the State of Alaska, Third Judicial District at Palmer, and not elsewhere. The Borough and Permittee consent to the jurisdiction of such court. The law of the State of Alaska shall govern the rights and obligations of the parties.
- 17.2 Non-Waiver. The failure of the Borough to enforce a provision of this Permit does not constitute a waiver of the provisions, nor affect the validity of this Permit or any part thereof, or the right of the Borough thereafter to enforce each and every protection hereof.
- 17.3 Compatible Uses. The Borough retains the absolute and unconditional right to permit other land use in/or near the Permitted Premises area, provided the Borough determines that such use will not unduly impair the purpose or conditions of the Permit.
- 17.4 No Transfer, Subdividing, or Encumber. This Permit may not be transferred or assigned. No rights to sublease, subdivide, or encumber the Permitted Premises are granted to the Permittee.
- 17.5 Integration and Amendments. This Permit, the exhibits to it, and the provisions of the permits and licenses incorporated under it, contain and state the complete and final understanding of every agreement and representation made by or on behalf of the Borough and Permittee with respect to the Permitted Premises. No implied covenant or prior oral or written agreement shall be held to vary or supplement the provisions of this Permit. Any modification of any provision of this Permit shall only be effective when it is made in a writing that specifically states it is an amendment of this Permit and that is signed by authorized representatives of both parties. Permittee acknowledges that no representative of the Borough is authorized to modify this Permit unless the provisions of the MSB Code are satisfied, including, where necessary, the approval of the Matanuska-Susitna Borough Assembly.
- 17.6 Severability. If a court of competent jurisdiction holds any section or clause of this Permit invalid, or is otherwise invalid under the law, the remainder of the Permit shall remain in full force and effect.
- 17.7 Execution and Counterparts. This Permit may be executed in two or more counterparts, each of which shall be an original, and all of which shall constitute one, and the same instrument.
- 17.8 Discriminatory Acts Prohibited. Permittee, in its use and occupancy of the Permitted Premises, shall not discriminate against any person or class of persons by reason of race, religion, sex, color, national origin, age, or disability and shall comply with all federal regulations and laws in regard to discrimination.
- 17.9 Section Headings. The section headings in this Permit are for conveniences only and have no other significance.

1M 20-098

- IN WITNESS WHEREOF**, the Borough and Permittee have duly executed and acknowledged this Permit for Borough property on the dates indicated below.

Date _____

1m 20-098

PERMITTEE – COLASKA, INC.

Jon Fuglestad, President

Date

ACKNOWLEDGEMENT OF PERMITTEE

STATE OF ALASKA)

)ss.

Third Judicial District)

THIS IS TO CERTIFY that on this _____ day of May 2020, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared, Jon Fuglestad, President of Colaska, Inc., a company known to me to be the identical individual who executed the foregoing instrument, and they acknowledged before me that they executed the Land & Improvement, Commercial Use Permit, as the free and voluntary act of said company, with full authority to do so, and with full knowledge of its contents, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

[NOTARY SEAL]

Notary Public for State of Alaska

My commission expires: _____

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EXHIBIT A

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The Permitted Premises is legally described as follows:

Tract 1, Lake Lorraine Subdivision, Plat No. 2013-5, recorded in the Palmer Recording District, Seward Meridian, Alaska, and more particularly described as:

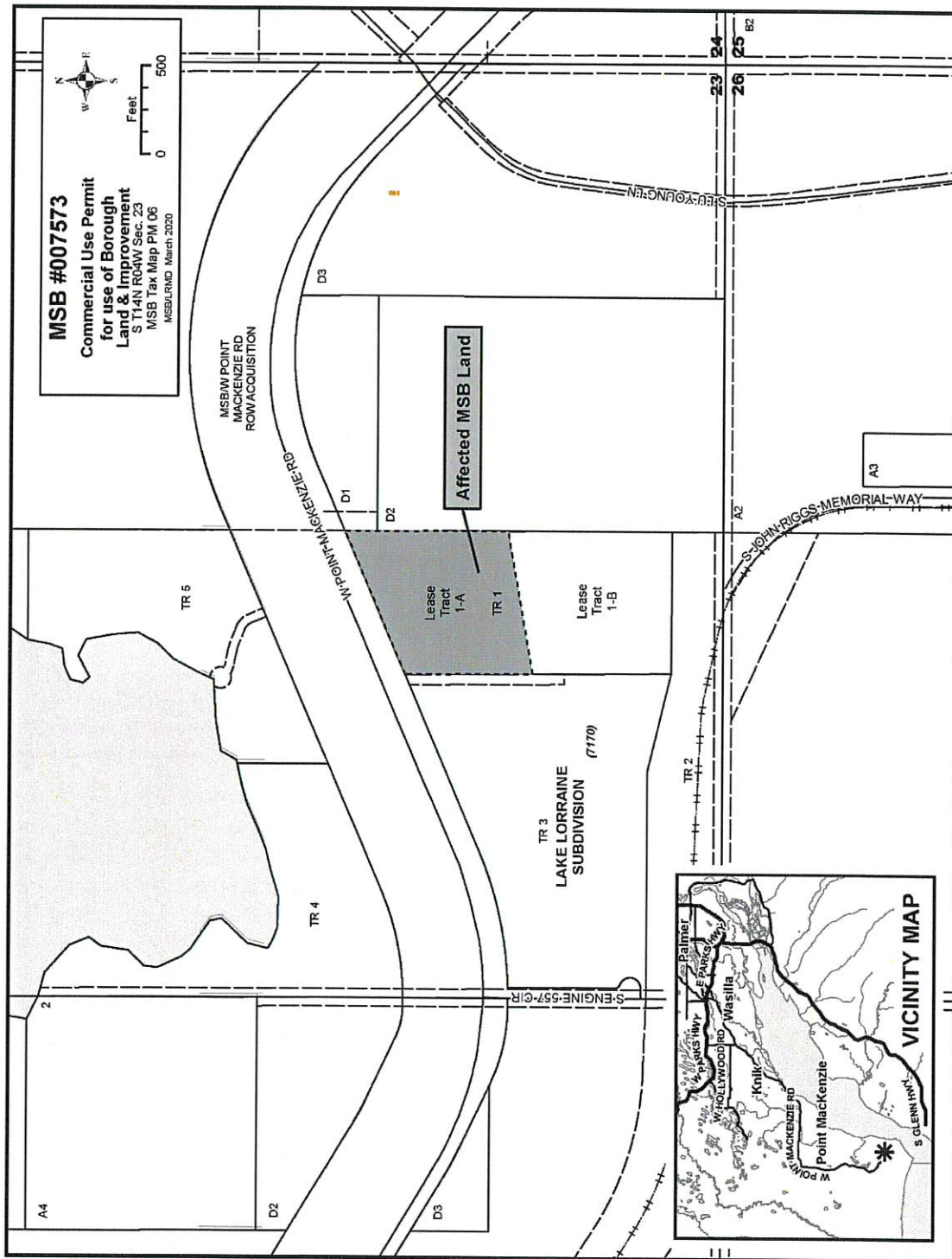
Tract 1-A, Record of Survey Plat No. 2014-51, recorded in the Palmer Recording District, Seward Meridian, Alaska, 15.8 acres more or less,

Which includes a 22,500 SQ/FT steel building.

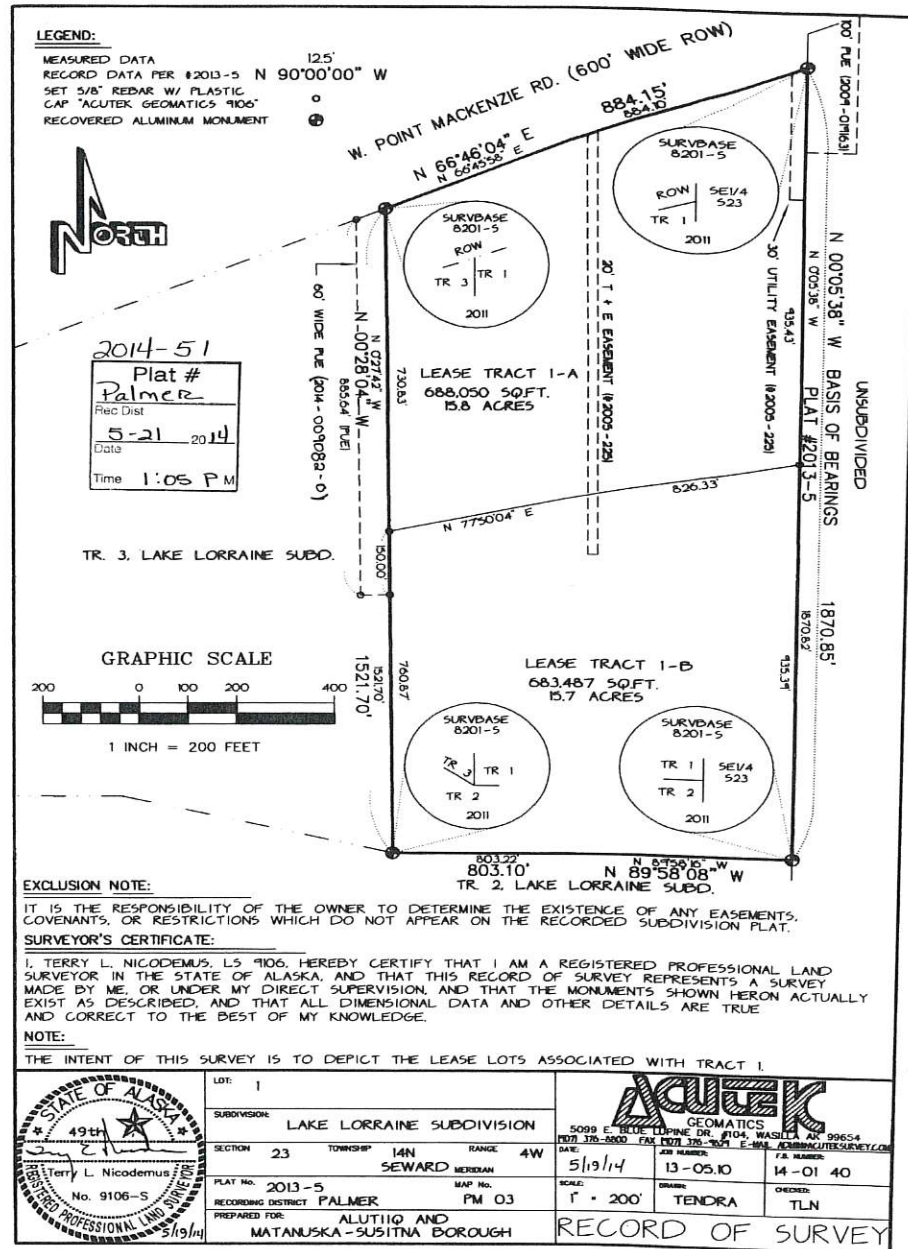
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EXHIBIT B

INSURANCE REQUIREMENTS

The parties herein to this Permit agreement specifically agree that the provisions of this agreement do not create in the public or any member thereof, a third party benefit hereunder, or authorize anyone not a party to this Permit to maintain a suit for personal injuries or property damage pursuant to the terms and provision of this Permit. It is highly recommended that Permittee confer with their respective insurance companies or brokers to determine if their insurance program complies with the Borough's Insurance requirements.

PERMITTEE shall procure and maintain the following insurance:

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services office form number CG 0001 (Edition 04/13) covering Commercial General Liability.
2. Insurance Services office form number CA 0001 (Edition 04/13) covering Automobile Liability, symbol 8 & 9 "hired and non-owned vehicles."
3. Workers' Compensation insurance as required by the State of Alaska and Employer's Liability Insurance.

B. Minimum Limits of Insurance

Permittee shall maintain limits no less than:

Property, Equipment, and Business Personal Property Insurance in limits sufficient to protect Permittee's improvements and ability to continue operations.

1. General Liability:

\$1,000,000 combined single limit per occurrence for bodily injury, property damage, personal injury, and advertising injury. The general aggregate limit shall be \$1,000,000.

General liability insurance shall be maintained in effect throughout the term of the Permit.

If the general liability insurance is written on a claim made form, then Permittee shall provide insurance for a period of two (2) years after termination or expiration of this Permit. The policy(s) shall evidence a retroactive date, no later than the beginning of this Permit.

2. Auto Liability:
Symbol 1 "Any Auto - \$500,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability:
Workers' Compensation shall be statutory as required by the State of Alaska.
4. Excess Liability:
In order to meet the required minimum limits of insurance it is permissible for Permittee to combine an excess liability or umbrella policy with the general liability, auto liability, or employer's liability. In the instance where Permittee purchases an excess liability or umbrella policy, the occurrence limit and the aggregate limit may be of the same amount.

C. Deductibles and Self-Insured Retention

Prior to work commencing, any deductible or self-insured retention must be declared and approved by the Borough. Permittee may be requested to demonstrate how the deductible or self-insured retention will be funded in the event of a claim. At the option of the Borough, Permittee shall reduce or eliminate such deductibles or self-insured retention as respects the Borough, its officers, officials, employees, and volunteers; or the Permittee shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability, Automobile Liability
 - a. The Borough, its Administrator, officers, officials, employees and volunteers shall be covered as additional insured as respects: liability arising out of activities performed by or on behalf of Permittee; products and completed operations of Permittee premises owned, occupied, or used by Permittee or automobiles owned, leased, hired, or borrowed by Permittee. The coverage shall contain no special limitation on the scope of protection afforded to the Borough, its Administrator, officers, officials, employees, and volunteers.
 - b. Permittee's insurance coverage shall be primary insurance and non-contributory as respects the Borough, its Administrator, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Borough, its Administrator, officers,

officials, employees, and volunteers shall be in excess of Permittee's insurance and shall not contribute to it.

- c. Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employer's Liability

The insurer shall agree to waive all rights of subrogation against the Borough, its Administrator, officers, officials, employees, and volunteers for losses arising from work performed by Permittee or any subcontractor of Permittee in relation to this Permit.

3. All Insurance

For each insurance policy required by this Agreement, coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits except after 30 days prior written notice for nonpayment of premium or fraud on the part of Permittee or after 60 days prior written notice for any other reason. Such written notice must be made by certified mail, return receipt requested to the Borough Manager and to Permittee.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A-VII.

F. Verification of Coverage

Permittee shall furnish the Borough with certificates of insurance and with certified copies of all endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms acceptable to the Borough. All certificates are to be received and approved by the Borough before work commences. The Borough reserves the rights to require complete, certified copies of all required insurance policies, at any time.

G. Subcontractors and Vendors

All subcontractors and vendors shall provide their own insurance. Permittee must maintain a list of all vendors and current certificates of insurance for each meeting limits approved by the Borough and name the Borough, its Administrator, officers, officials, employees, and volunteers as additional insureds. All coverage for subcontractors and vendors shall be subject to all requirements stated herein.

H. Lapse in Insurance Coverage

A lapse in insurance coverage, any change that restricts, reduces insurance provided, or changes name of insured without Borough approval is a material breach of this Agreement, which can result in immediate termination of the Agreement.

EXHIBIT C

17.23.150 DEVELOPMENT PERMIT REQUIRED.

(A) All development and use of land authorized within the special use district shall require prior authorization by issuance of a port district use permit from the borough manager or designee. Other permits or authorization may be required for specific uses or development.

(1) Maintenance activities are exempt from the requirement to obtain a port development permit.

(B) Port development permits shall be issued to the lessee or the lessee's authorized agent as prescribed by this chapter. At a minimum, permits will be required for the following:

(1) structures greater than 400 square feet in gross area on the ground level or more than 30 feet in height above average grade; or

(2) structures using permanent foundations such as pilings or footings; or

(3) expansion of a structure by more than 400 square feet or 25 percent of the structure's original footprint, whichever is less; or

(4) temporary units, including location of a mobile home; or

(5) excavation or fill of more than 50 cubic yards of material; or

(6) communication towers or antennas over 30 feet in height; or

(7) on-site utilities, including but not limited to, water, sewer, storm drain, electric, communications, natural gas, and other wire and pipelines; or

(8) construction of any type within rights-of-way, easements, buffer strips, utility corridors, etc., shall be consistent with MSB 11.30.040(B), (C), and (E) as shown on either a recorded plat or on an approved borough master plan.

(C) Applicants may contact the borough manager to schedule a pre-application conference. It shall be the responsibility of the applicant to become familiar and comply with the regulations, policies, and procedures of the borough.

(D) Applications for a port development permit shall be submitted on forms provided by the borough with attached supplemental material as appropriate.

(1) The applicant shall include all information with the application sufficient to describe the proposal and demonstrate compliance of the proposal with applicable borough codes. Applications shall include appropriate site plans and necessary textual descriptions to depict and describe the location, setbacks, dimensions, height, bulk, area, floor plans, layout, appearance, materials, use, standards of construction, operations, mitigation methods for negative impacts, schedules, and all other aspects of the proposal necessary to show the proposed construction needed to determine compliance with borough code.

(2) The application shall be accompanied by an application fee as required under MSB 17.99.

(E) Site plan and technical drawing requirements shall be signed and sealed by a professional land surveyor, civil engineer, or architect or landscape architect registered in Alaska as appropriate to the drawing.

(F) Proposals for development shall demonstrate that adequate street capacity will be provided and describe any traffic control measures proposed to mitigate negative traffic effects on public rights-of-way. Proposals must include:

(1) a statement describing anticipated vehicular traffic to and from the site including probable types/size of vehicles to be used by the business, and vehicle generation rate based on standard trip generation tables; and may require

(2) a traffic impact analysis (TIA) where applicant establishes that proposed development will generate more than 200 average daily traffic trips, or more than 100 truck trips per day.

(G) The manager or designee will notify surrounding property owners in accordance with MSB 17.03, Public Notification. Notice will also be given to the port commission. Any concerns raised will be considered in processing the application, as deemed appropriate by the manager or his designee, to protect the public health, safety, and general welfare. A complete port development permit application shall be acted upon within 45 calendar days of receipt by the department.