Title 7

ACQUISITION AND DISPOSAL OF BOROUGH PROPERTY

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Chapter 7.04

REAL PROPERTY ACQUISITION

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7.04.010 Acquisition and Ownership -- Authority. The Borough may acquire, own and hold real property within or outside the Borough boundaries by purchase, gift, devise, grant, dedication, exchange, redemption, purchase of equity of redemption, operation of law, tax or lien foreclosure, adverse possession, condemnation or declaration of taking, annexation or by any other lawful means or conveyances.

7.04.020 Real Property Defined. As used in this Chapter, "real property" includes any estate in land, easement, right-of-way, lease, permit, license, franchise, future interest, building, fixture, or any other right, title or interest in land or a building.

7.04.030 Acquisition -- Form.

A. The Borough may acquire, own and hold real property by warranty or quitclaim deed, easement, grant, permit, license, deed of trust, mortgage, contract of sale, plat dedication, lease, tax deed, will or any other lawful method or mode of conveyance or grant. Real property shall be held in the name of "The City and Borough of Yakutat." Any instrument requiring execution by the Borough shall be signed by the Mayor and attested by the Borough Clerk. The form of any conveyance shall be reviewed by the Borough Attorney.

B. All acquisitions not otherwise provided by law shall be by resolution approved by a majority vote of the Borough Assembly. The resolution shall set forth the terms, conditions and manner of acquisition. This Chapter does not

apply to property acquired by tax foreclosure or condemnation proceeding.

C. No Assembly approval is necessary to acquire any easement, right-of-way, permit, license or other interest in real property if necessary for a utility or public improvement where the utility or public improvement has been authorized and approved by the Assembly.

D. Prior to Assembly approval, the Mayor is to furnish the Assembly with an abstract of title, the value assessed by the Borough tax assessor or other appraisal of the real property, and a review of any problems in acquisition, but the failure to furnish the Assembly with any such material shall not affect the validity of any acquisition or purchase of real property by the Borough.

E. Unless otherwise provided by the Assembly, the Borough shall purchase marketable title in the real property. Unless otherwise provided by resolution, or upon Assembly approval of a purchase, the Mayor is authorized to obtain title insurance, to execute any instruments and to take all steps necessary to complete and close the purchase and acquisition of the real property.

7.04.040 Ownership -- Form. The Borough may acquire and hold real property as sole owner or as tenant in common or other lawful tenancy, with any other person or governmental body for any public purpose. The Borough may hold real property in trust for any public purpose.

7.04.050 Acquisition and Ownership -- Rights and Powers. The Borough shall have and may exercise all rights and powers in the acquisition, ownership and holding of real property as if the Borough were a private person.

7.04.060 Acquisition -- Dedication by Plat. The Borough may not acquire any real property by means of a dedication by plat unless the dedication of the real property is accepted in writing and signed by the Mayor.

7.04.070 Industrial Sites. The Borough may acquire, own and hold real property, either inside or outside the Borough boundaries, for sites available for new industries which will benefit the Borough.

7.04.080 Federal and State Aid. The Borough may apply for, contract, and do all things necessary to cooperate with the United States Government and the State of Alaska for

the acquisition, holding, improvement or development of real property within and outside the Borough boundaries.

7.04.090 Real Property as Security. The Assembly may pledge, mortgage or otherwise secure Borough real property for the payment of Borough bonded or other indebtedness when required, as authorized by law.

Chapter 7.08

EMINENT DOMAIN -- ADVERSE POSSESSION

Sections:

7.08.010 Eminent Domain.
7.08.020 Adverse Possession.

7.08.010 Eminent Domain. The Borough may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the Borough, in accordance with AS 09.55.240 through 09.55.460.

7.08.020 Adverse Possession. The Borough cannot be divested of title to real property by adverse possession.

Chapter 7.12

(Reserved)

Chapter 7.16

REAL PROPERTY SALES BY THE BOROUGH

Sections:

7.16.010 Power to Dispose of Real Property.
7.16.020 Sale or Disposal -- Form.
7.16.030 Sale or Disposal -- Rights and Powers.
7.16.040 Disposition Procedures.
7.16.050 Property Exchanges.
7.16.060 Grants for Federal and State Programs.
7.16.070 Sale or Disposal of Industrial Sites.
7.16.080 Change of Use.
7.16.090 Utilities.
7.16.100 Release of Easements.
7.16.110 Conditions of Disposal.
7.16.120 Purchase Agreement.
7.16.130 Sale -- Employment of Broker.
7.16.140 Reservation of Easements and Rights-of-Way.
7.16.150 Borough Manager Regulations.
7.16.160 Disposition by Lottery or Outcry Auction.
7.16.170 Easements Revocable at Will by the Borough.
7.16.180 Over the Counter Sales of Borough Real Property.

7.16.010 Power to Dispose of Real Property. The Borough may sell, convey, exchange, transfer, donate, dedicate, direct or assign to use, or otherwise dispose of Borough-owned real property by any lawful means or conveyances.

7.16.020 Sale or Disposal -- Form. The Borough may sell or dispose of real property by warranty or quitclaim deed, easement, grant, permit, license, deed of trust, mortgage, contract of sale, plat dedication, lease, tax deed or any other lawful method or mode of conveyance or grant. Any instrument requiring execution by the Borough shall be signed by the Mayor or the Borough Manager and attested by the Borough Clerk. The form of any instrument shall be reviewed by the Borough Attorney. Leases of Borough real property are additionally governed by the provisions of Chapter 7.20 of this Code.

7.16.030 Sale or Disposal -- Rights and Powers. The Borough shall have and may exercise all rights and powers in the sale or disposal of real property as if the Borough were a

private person. The Borough may sell or dispose of any real property, including property acquired or held for or devoted to a public use, when in the judgment of the Borough Assembly it is no longer required for municipal purposes.

7.16.040 Disposition Procedures. The Borough may dispose of an interest in any real property which is no longer necessary for municipal purposes as follows:

1. The Borough Assembly shall initiate any disposal of an interest in real property by resolution. This Chapter does not apply to property acquired by tax foreclosure or condemnation proceeding.

2. All disposals shall be made at current assessed value or at current appraised value unless otherwise determined by a resolution or ordinance of the Assembly. Exceptions may be made where the Assembly finds that a particular disposition will be in the public interest.

3. Except as provided by in Sections 7.16.060 through .080, all disposals of interests in real property shall be by sealed bid to the highest responsible bidder, provided however that the Borough Assembly may reject all bids within two weeks of the date of the bid opening.

4. A notice of the proposed disposal of any interest in real property shall be posted in at least three public places in the Borough not less than thirty days before the date of the bid opening or not less than thirty days before the date of the passage of the resolution authorizing the disposal. The published notice shall include a legal description of the property and shall describe the Borough's interest, the method of disposal, the value of the interest according to current assessment or current appraisal, the date of the proposed disposal and the time, place and manner in which the bids shall be submitted and opened, or the proposed disposal shall occur.

5. Sealed bids shall be received by the Borough Clerk within the time set in the published notice for submission of bids. All bids shall be opened publicly.

7.16.050 Property Exchanges. The Assembly may approve, after public notice, the conveyance and exchange of a parcel of Borough property for an equivalent parcel of property owned by another person, subject to such conditions as the Assembly may impose on the exchange, whenever in the judgment of the Assembly it is advantageous to the Borough to make the property exchange.

7.16.060 Grants for Federal and State Programs. Notwithstanding the provisions of 7.16.040, the Assembly may grant or devote real property no longer held for public purpose to the United States, the State of Alaska, a local subdivision or an agency of any of these governments for a consideration agreed upon between the Borough and the grantee without a bidding process if the grant or devotion is advantageous to the Borough. Any Assembly approval of a federal or state program providing for the participation or cooperation of the Borough by grant or devotion of the real property is a sale of that real property for the consideration stated in the program.

7.16.070 Sale or Disposal of Industrial Sites. Notwithstanding the provisions of 7.16.040, the Borough may sell, lease or dispose of sites acquired for new industries benefiting the Borough without a bidding process upon the terms and conditions as the Borough Assembly considers advantageous to the civic welfare of the Borough, to a person who agrees to install, maintain and operate a beneficial new industry.

7.16.080 Change of Use. Real property acquired or purchased for one Borough purpose may be appropriated, transferred, assigned or directed without public sale to another Borough purpose, whenever the Borough Assembly determines that the purpose for which the property was acquired or purchased no longer exists, or the property is no longer used or useful for the purpose. No formal conveyance is necessary to dispose of the real property to another Borough purpose, and the disposition may be made to another purpose with or without legal consideration for the disposition.

7.16.090 Utilities. The Borough may sell, convey or otherwise dispose of real property no longer used or useful in the operation of a Borough owned utility. Real property no longer needed for the purpose for which the real property was acquired or purchased, or utility property no longer used or useful in the operation of the Borough owned utility, is no longer property owned, held for or devoted to a public use, and may be sold or disposed of as provided in this Chapter if the Assembly determines the real property is not useful to the Borough for any other purpose.

7.16.100 Release of Easements. The Mayor or the Borough Manager, with prior approval of the Assembly, may at any time convey, quitclaim, release, cancel or otherwise relinquish any real property easement, right-of-way, permit or license the

Borough may have or hold for the purpose of installing, constructing, or maintaining a public improvement, whenever the interest is no longer used or useful for that purpose.

7.16.110 Conditions of Disposal. In the resolution authorizing the disposal of real property, the Assembly shall set forth the terms and conditions of the public sale. The Assembly reserves the right to reject any and all bids received at the public sale, if the highest bid is below the minimum acceptable offer and costs of sale or is not made by a responsible bidder. The ordinance or resolution shall provide if the sale is for cash, or cash deposit and a purchase agreement. If the sale is for a cash deposit and a purchase agreement, the Borough Manager shall prescribe the form of the purchase agreement. The Borough Assembly shall approve all public sales of real property, and shall approve any purchase agreement prior to its execution by the Borough. The approval of any public sale by the Assembly authorizes the Borough Manager to take all steps and execute all instruments to complete and close the sale. The Borough Manager or his designee shall conduct the sale, and shall give to the buyer a receipt of all moneys received by the Borough. A purchaser at a public sale who fails to make such other cash payments within the times required by the ordinance or resolution shall forfeit any cash deposit paid to the Borough.

7.16.120 Purchase Agreement. A purchaser of real property from the Borough may purchase the real property by purchase agreement if provided in the ordinance or resolution for the sale. Unless otherwise provided in the ordinance or resolution for the sale, a purchase agreement shall be in the form of a deed of trust. The purchase agreement shall be executed by the Mayor or the Borough Manager attested by the Borough Clerk and reviewed as to form by the Borough Attorney.

7.16.130 Sale -- Employment of Broker. The Borough may employ a broker for the sale of real property and may pay the broker a commission for the sale. The employment shall be in the resolution or ordinance for the sale of the real property and any contract of employment shall be first approved by the Borough Assembly, unless the Borough Assembly authorizes the Borough Manager to execute the contract without the approval.

7.16.140 Reservation of Easements and Rights-of-Way. The Borough may reserve any easement or right-of-way to be used for public improvements and purposes before selling or disposing

of Borough-owned real property. The Borough Assembly may make such restrictions, limitations, reservations, reversions or other covenants it may find advantageous to the Borough even if the appraised value of the property is affected. The effect of these
reservations may be considered in determining the appraised value of the property.

7.16.150 Borough Manager Regulations. The Borough Manager may provide by regulation for the procedures and forms as to applications, surveys, appraisals, auction, bidding, form of substance of purchase agreement or any other matter involving the sale or disposition of Borough property not inconsistent with, and to implement the intent and purpose of, this Title. The absence of a regulation or an inconsistent regulation shall not invalidate any public sale procedure or conveyance executed or to be executed by the Borough, where the requirements of this Chapter have been otherwise satisfied.

7.16.160 Disposition by Lottery or Outcry Auction. Notwithstanding any other provision of this Chapter, the Assembly may provide by ordinance for the disposition of real property by lottery or outcry auction rather than by sealed bid in cases where sealed bids would otherwise by required. Such disposition must be consistent with all other provisions of this Chapter, except that the action providing for disposition by lottery or outcry auction must be taken through enactment of an ordinance, rather than by resolution.

7.16.170 Easements Revocable at Will by the Borough. The disposition requirements and procedures of this Chapter shall not apply to easements across Borough land given to a grantee for use exclusively as a driveway to a residence or providing utilities to a residence, provided such easement is revocable at will in the discretion of the Borough.

7.16.180 Over the Counter Sales of Borough Real Property. Notwithstanding any other provision of this Chapter, surplus real property owned by the Borough may be disposed of by over the counter sales conducted upon the following terms and conditions:

(1) The property must have previously been included for sale in a land sale conducted by the Borough under section .040 (sealed bid) or section .160 (lottery or outcry auction) of this Chapter.

(2) The Assembly ordinance or resolution

authorizing the land disposal under section .040 or section .160 must specifically authorize over the counter sales for parcels not purchased at the land sale. Such authorization may include all unsold parcels or specific unsold parcels.

(3) The sale price of a parcel sold under this section shall be the required sale price (under a lottery) or the minimum bid price (under a sealed bid or outcry auction) set forth in the original resolution or ordinance authorizing the sale of the parcel, and the sale shall be made upon the same terms, conditions and restrictions as set forth in that original resolution or ordinance.

(4) A parcel shall be sold under this section to the first potential buyer who delivers in person to the Borough, at Municipal Hall during regular business hours, a contract of sale for the parcel signed by that buyer. The contract of sale shall be in the same form as the contract of sale utilized in the original land sale. If more than one signed contract of sale for a parcel is received by the Borough on the same business day and for the same sale price, then the contracts shall be deemed to have been received simultaneously and the buyer of the parcel shall be determined by lot, conducted by the Borough Manager, or his or her designee, on the following business day.

(5) Any contract of sale submitted by a potential buyer more than sixty days from the date of the original land sale authorized by resolution or ordinance must be submitted to the Assembly at its next regularly scheduled Assembly meeting. The Assembly may reject the submitted contract of sale if in the judgment of the Assembly 1) the sale price would result in the Borough receiving less than full and fair value for the parcel or 2) the parcel is then required for municipal purposes. The contract of sale shall be deemed accepted if not rejected by the Assembly at that meeting.

(6) Any contract of sale must be submitted by a potential buyer no later than one year from the date of the original land sale authorized by resolution or ordinance.

Chapter 7.20

LEASE OF BOROUGH LANDS

Sections:

7.20.010 Property Available for Leasing.
7.20.020 Term of Lease.
7.20.030 Lease Procedures.
7.20.040 Fair Rental Value.
7.20.050 Adjustment of Rental.
7.20.060 Transfer of Lessee's Interest.
7.20.070 Renewal of Lease.
7.20.080 Improvements and Chattels.
7.20.090 Inspection of Leased Premises.
7.20.100 Easements and Right-of-Way.
7.20.110 Condemnation of Premises -- Lease Termination.
7.20.120 Lease Rental Credit.
7.20.130 Conditional Lease.
7.20.140 Borough Manager Regulations.
7.20.150 Inapplicability of Chapter 7.20 and Section 7.16.040
7.20.160 Preference upon re-lease of Borough lands.
7.20.170 Land Use Permitting for Seasonal Setnet Fish Camps

7.20.010 Property Available for Leasing. All real property, including shore lands, which the Borough owns, in which the Borough has right, title or interest, or to which the Borough may become entitled may be leased as provided in this Chapter. The term "property" as used in this Chapter includes any and all interest in real property.

7.20.020 Term of Lease. No lease shall be for a term of more than twenty-one years unless the Assembly shall determine from the purpose, use of the premises, and nature of improvements which may be placed thereon that a longer term would benefit the Borough and would be consistent with Borough planning. A lease having a term of greater than five years shall first be approved by the Borough Assembly. Any renewal period or option to renew the lease period shall be included in the term of the lease in computing the five-year period of time.

7.20.030 Lease Procedures. The provisions of Section 7.16.040 shall apply to all leases of Borough land, except as

otherwise provided in sections 7.20.150 and 7.20.160 of this Chapter.

7.20.040 Fair Rental Value. Property shall be leased for a fair rental value. Fair rental value means the highest price described in terms of money for which the property would rent if exposed for rent for a reasonable time in the open market for the use permitted by the Borough. With approval by the Borough Assembly, the lease of property may be made for a rental less than the fair rental value to a state or federal agency, state political subdivision or nonprofit organization, as may be determined by the Borough Manager to be fair and proper considering the public interest and the nature of the public use or function of the leased premises. Fair rental value shall not be required where the property interest of the Borough is subject to any term or condition restricting or limiting the ability of the Borough to obtain the fair rental value of the property.

7.20.050 Adjustment of Rental. A lease having a term for more than two years shall provide for adjustment of rentals at specified intervals during the term of lease, and the intervals shall be every two years unless the lease provides for a longer interval, not to exceed six years. This section shall be incorporated in each lease by reference and enforceable as if fully set forth therein.

7.20.060 Transfer of Lessee's Interest. A lessee may sublease or assign the lease only upon approval of the transfer by the Borough in writing.

7.20.070 Renewal of Lease. The renewal or extension of the lease shall be considered as a new lease unless renewal or extension is provided for in the lease.

7.20.080 Improvements and Chattels. The lease shall provide the terms, conditions and limitations of the removal or reversion of improvements or chattels upon the lease premises after termination of the lease. The retiring lessee may, with the consent of the Assembly, sell the improvements to the succeeding lessee. If improvements or chattels are not removed within the time set forth in the lease, the improvements and chattels may, upon reasonable notice to the lessee, be sold at public sale to be provided by regulations of the Borough Manager. Proceeds of the sale shall be first applied to the Borough's costs and expenses of maintaining, removing and

selling the improvements and chattels and to rentals for the period of nonremoval. The Borough may bid at the sale and may be credited with the value of the Borough's costs, expenses and rentals due resulting from the nonremoval of the improvements or chattels. The Borough shall have all other rights, both legal and equitable, any other purchaser would have or acquire by reason of the sale.

7.20.090 Inspection of Leased Premises. The lessee shall allow an authorized representative of the Borough to enter the leased premises for inspection at any reasonable time.

7.20.100 Easements and Right-of-Way. The Borough expressly reserves the right, without compensation or adjustment in rentals to the lessee, to grant surface, underground or overhead utility easements or rights-of-way in or upon the leased property, if the exercise of the right will not unreasonably interfere with lessee's improvements placed upon the property and with lessee's use of the property.

7.20.110 Condemnation of Premises -- Lease Termination. Upon condemnation of the premises or any part thereof by the state or federal government or agency thereof, including inverse condemnation, the lease shall terminate without any liability to the Borough. The Borough shall not be liable in damages or pay any compensation to the lessee as a result of the condemnation terminating the lease.

7.20.120 Lease Rental Credit. When authorized in writing by the Borough Manager prior to the commencement of any work, the lessee may be granted credit against current or future lease rental, provided the work, accomplished on or off the leased premises, results in increased valuation of the leased premises or of other Borough-owned property. The authorization may stipulate the type of work, standards of construction and maximum allowable credit for the specific project.

7.20.130 Conditional Lease. The Borough may issue a conditional lease on property it reasonably expects it will own or will acquire title to, prior to the actual receipt of title. Leases issued on this conditional basis may be terminated in whole or in part in the event that the Borough is denied title to the property under lease. Prepaid lease rentals of property to which title is denied the Borough shall be refunded. The Borough shall not be liable for any claim of damages that may be done to the property by the lessee, or liable for any claims of

any third party or the lessee, or for any claims that may arise from ownership. In the event the Borough does receive title to the property under lease, the conditional lease shall then have the same standing, force and effect as a non-conditional lease issued under this Chapter.

7.20.140 Borough Manager Regulations. The Borough Manager may provide regulations for the procedures and form as to applications, surveys, appraisals, auction, bidding, form and substance of lease, termination, forfeiture or any other matter involving the leasing of Borough property to implement the intent or purpose of this Chapter. The absence of a regulation shall not invalidate any auction procedure or lease executed or to be executed by the Borough, where the requirements of the Chapter have been otherwise satisfied.

7.20.150 Inapplicability of Chapter 7.20 and Section 7.16.040. The provisions and requirements of Chapter 7.20 and Section 7.16.040 of this Code are not applicable to lease by the Borough of the properties known as the Ocean Cape Dock Complex (including the dock and staging area) and the Cold Storage Icehouse and Dock, or properties to be leased for use in providing telecommunications services within the Borough, including but not limited to placement of a cellular tower or related facilities. The Assembly may authorize direct negotiations with a potential lessee or may prescribe a different procedure for lease of the properties. Any lease(s) of the properties must be approved by resolution by the Assembly.

7.20.160 Preference upon re-lease of Borough lands. At the final expiration of any lease of Borough land, the lessee may, at the sole discretion of the Borough Assembly, be given a preference to re-lease that land, with no requirement of competitive bidding, under the following terms and conditions:

(1) The lessee shall, prior to final expiration of the expiring lease, file an Application to re-lease that Borough land, on forms provided by the Borough,. The Application shall contain a listing of all improvements located on the land, the value of those improvements, the purpose to which the lessee desires to put the land, and such other information and documentation as the Borough may require.

(2) The initial lease rate contained in any lease agreement approved under this section shall be based upon either:

(i) an appraisal of the leased property (obtained at the lessee’s expense);

(ii) a percentage of the gross receipts from the business(es) deriving income from the leased property or facilities located thereon;

(iii) a per client amount for the business(es) operating on or out of the leased property;

(iv) a combination of the methods set out in (i) through (iii); or

(v) any other methodology approved by the Borough Assembly to establish the fair rental value of the Borough property,

and shall, in no event, be less than the lease rate contained in the expiring lease. Information and documentation necessary for the Assembly to evaluate the potential lease rates set out above shall be delivered by the lessee to the Borough at the time of submittal of the Application.

(3) The amount of any performance guarantee posted by the lessee under the expiring lease shall be adjusted accordingly in a new lease agreement, to account for increased costs of removal and restoration. Borough staff shall investigate said costs, and report to the Assembly.

(4) The Application, and the additional information and documentation set out above, shall be delivered to the Assembly for its consideration. Any lease of Borough land under this section requires Assembly approval. If the potential lessee fails to execute a lease agreement offered by the Borough under this section within thirty days of tender of that agreement to the lessee, any preference opportunity shall be deemed forfeited, and any subsequent lease of the land will be subject to the Borough's competitive bidding requirements.

(5) The term of any lease agreement approved under this section shall be no longer than ten years.

(6) The standard terms and provisions of any lease agreement approved under this section shall be in a form previously approved by the Borough Assembly for lease of Borough lands.

7.20.170 Land Use Permitting for Seasonal Setnet Fish Camps.

A. Land owned or managed by the Borough, and located within subunits 1a5, 1a8, 1a9, 3a1, 3a2, or 3a3 of the April 1995 Yakataga Area Plan, may be permitted for use as a seasonal commercial fish camp to a holder of a current Yakutat Setnet permit. The provisions of Section 7.16.040 and Chapter 7.20 of this Code are otherwise inapplicable to a permit issued hereunder.

B. The following terms and conditions shall apply to any permit issued hereunder:

1. The permittee must be the holder of a current Yakutat Setnet permit, issued by the State of Alaska, Commercial Fisheries Entry Commission. Only one land use permit per setnet permit holder is authorized.

2. The permittee may use the permitted use area only for the purposes of operating a temporary, seasonal fish camp for the commercial setnet fishing of permittee's Yakutat Setnet permit.

3. The permitted use area may not exceed 5000 square feet in size.

4. No permanent structures or foundations may be placed, constructed or installed on the permitted use area. Temporary structures are permitted, but only those which can be readily disassembled and removed.

5. Up to three temporary structures may be placed on a permitted use area, consisting of one living shelter, one privy and one storage shed. All structures, cumulatively, cannot exceed 400 square feet in size. A privy is required and must be located a minimum of 20 feet from any other structure, and 100 feet from any body of water.

6. Use of and presence on the permitted use area will be authorized only during the period that the commercial fishing season is open, and a reasonable time, not to exceed 20 days, both before the season is open, and after the season is closed. Permittee's authorized temporary structures will be allowed to remain on site during the term of the permit.

7. Only the permittee, and those actively engaged in assisting permittee in commercial setnet fishing, are allowed to be on site.

8. The permittee will be required to a) keep the permitted use area in a safe and sanitary condition, b) comply with all applicable laws and regulations, c) conduct activities in the use area in a manner which minimizes disturbance of wildlife, soil and vegetation, drainage systems and other users of the area, or pollution into waterbodies, d) utilize a secondary containment system for fuel stored on the site, e) apply lime annually to a privy pit. and f) take precautions to prevent and suppress forest, brush and grass fires.

9. The permittee will be prohibited from a) storing or disposing of hazardous materials or waste on the permitted use area, b) cutting standing timber without Borough authorization, or removing or selling any rock, gravel, mineral or topsoil, from on or about the permitted use area, and c)

disposing of wastewater or solid waste on or into any public land or water.

C. Any permit issued hereunder constitutes a nonexclusive temporary authorization for use of land, and creates no property rights in the permittee. A permit may not be transferred or assigned, and shall be revocable by the Borough on thirty days notice, with or without cause. Public access shall not be restricted by the permittee. Authorized representatives of the Borough will have access to the site for any purpose, including inspection. Permittee is responsible for the reasonable costs of inspections.

D. The permit fee shall be $50.00 per year, payable in advance. Interest at the rate of 8% per annum, or $25, whichever is greater, shall accrue on any delinquent payment. The term of any permit issued hereunder shall not exceed five years.

E. Upon termination or expiration of any permit issued hereunder, the permittee will be required to 1) restore the permitted use area and timely remove all structures and personal property, failing which they will become the property of the Borough, at the Borough's discretion, and 2) backfill the privy pit to the original grade, covering it with a minimum of at least two feet of compacted soil.

F. A permittee will be required to release and indemnify the Borough from any liability in connection with the permit or any activity under the permit.

G. Application for a land use permit shall be made on forms provided by the Borough. The application must contain a proposed site development plan and a map showing the geographical location of the proposed use area. There is a $100 nonrefundable application fee.

Chapter 7.24

DISPOSITION OF BOROUGH-OWNED PERSONAL PROPERTY

Sections:

7.24.010 Disposal of Personal Property.
7.24.020 When Competitive Bidding is not Required for Sale of Surplus or Obsolete Goods.
7.24.030 Surplus Stock.
7.24.040 Declaration of Obsolescence.

7.24.010 Disposal of Personal Property.

A. Personal property, other than surplus stock, that is valued at less than five thousand dollars may be disposed of upon such notice and terms considered reasonable by the Borough purchasing agent, taking into consideration the value of the article, the reason for disposal, and the general preference of disposal by competitive bid. The purchasing agent shall report disposals to the Assembly if so requested.

B. Personal property valued at five thousand dollars or more shall be disposed of in the manner provided for land in Section 7.16.110 of this Code.

7.24.020 When Competitive Bidding is not Required for Sale of Surplus or Obsolete Goods. The purchasing agent may sell the following without giving an opportunity for competitive bidding:

A. Surplus or obsolete supplies, materials or equipment whose total value does not exceed five thousand dollars in a single transaction; and

B. Supplies, materials or equipment when sold at a price at least as great as that paid by the Borough for the same.

7.24.030 Surplus Stock.

A. All using agencies shall submit to the purchasing agent, at such times and in such form as he shall prescribe, reports showing stocks of all supplies which are no longer used or which have become obsolete, worn out or scrapped.

B. The purchasing agent shall have the authority to transfer surplus stock to other using agencies and provide for proper fiscal transfer of such.

C. The purchasing agent, with approval of the Assembly, shall have the authority to sell all supplies or equipment which have become unsuitable for public use, or to exchange the same for, or trade in the same on any new supplies or equipment.

1. Sales of surplus Borough supplies or equipment appraised at over five thousand dollars under this section shall be made to the highest responsible bidder.

2. The Borough Purchasing Agent shall conduct the sale and issue the certificate of sale to the purchaser of surplus supplies or equipment.

7.24.040 Declaration of Obsolescence. No surplus or obsolete supplies, materials or equipment of a value of more than five thousand dollars may be sold until the Assembly shall have declared them obsolete or surplus.

Chapter 7.28

(Reserved)

Chapter 7.32

BOROUGH TIDELANDS

Sections:

7.32.010 Short Title.
7.32.020 Declaration of Purposes and Intent.
7.32.030 Definitions and Classes of Preference Rights.
7.32.040 Approval and Acceptance of State Conveyance.
7.32.050 Approval and Adoption of Subdivision Plat.
7.32.060 Time and Places of Posting Plat.
7.32.070 Publication of Notice of Posting Plat and Passage of Ordinance.
7.32.080 Time in which Applications will be Accepted for Filing.
7.32.090 Procedure for Filing Applications.
7.32.100 Deposits for Costs Prerequisite to Filing.
7.32.110 Additional Costs in Certain Cases.
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7.32.010 Short Title. This Chapter shall be known as the "Yakutat Tidelands Ordinance."

7.32.020 Declaration of Purposes and Intent. The purpose is to carry out the duty of the Borough as expressed in the Alaska Land Act, Article III, Section 5(3)(h):

"h. Each municipal corporation receiving such conveyances (of tide and submerged land lying seaward of the Borough) shall by ordinance provide for reasonable regulations governing the filing and processing of applications, publication of notices and the adjudication of disputes between claimants by the governing body of the corporation. Any party aggrieved by its determination shall have a right of appeal to the Superior Court."

The intent of the Assembly in enacting this is:

A. To expedite granting conveyances to qualified occupants who are entitled to and who exercise their preference rights in accordance with the provisions of law and of this Chapter;

B. To provide due process and sufficient notice to all parties, who qualify as occupants of such lands and who are entitled to exercise preference rights, of applications filed, disputes and conflicting claims and of approved applications;

C. To provide simple procedures by which occupants may exercise their preference rights;

D. To equitably apportion the costs of administering and processing applications, hearing disputes, and appraisal transfer and survey among those who will benefit therefrom;

E. To limit the issues to be determined by the Assembly in adjudication of disputes to rights conferred by the Alaska Land Act and this Chapter;

F. To safeguard and protect the interests of the Borough and its citizens in tide and submerged lands conveyed to

the Borough not subject to preference rights, or where preference rights were or will not be exercised in the time allowed by law, by providing for rules and regulations for the administration of such lands in the best interests of all the taxpayers of the Borough.

7.32.030 Definitions and Classes of Preference Rights. For the purpose of this Chapter the terms defined herein shall have the meanings provided and rights defined unless the context requires otherwise:

A. "Agricultural lands" means tideland chiefly valuable for agricultural purposes;

B. "Alaska" means the State of Alaska;

C. "Assessor" means the assessor of the City and Borough of Yakutat, Alaska;

D. "Borough" means the City and Borough of Yakutat, Alaska;

E. "Borough engineer" means the official designated by the Borough Manager to perform the functions herein assigned to the Borough engineer;

F. "Class I preference right" means the right extended to persons who occupied or developed tide or submerged lands seaward of a surveyed townsite on and prior to September 7, 1957 after executing a waiver to the Borough and State of all rights such occupant may have had pursuant to Public Law 85-303. Upon execution of the waiver, such persons, or their successor in interest, have the right to acquire such occupied or developed tide or submerged lands from the Borough for consideration of the costs of survey and of transferring or conveying title;

G. "Class II preference right" means the right extended to Class I preference right claimants who refuse to execute a waiver to the Borough of any rights such occupants may have acquired pursuant to Public Law 85-303. It shall be mandatory for the Borough to expeditiously honor upon application from the occupant after the Secretary of the Army has submitted to the Secretary of the Interior and the Governor of the state maps showing the pierhead line established by the Corps of Engineers with respect to the tract so granted. The most expeditious method of securing the title to such lands is to execute the waiver of Class II rights and proceed to apply for title under a Class I preference right;

H. "Class III preference right" means the right extended to persons who occupied or developed tide or submerged lands after September 7, 1957, and who continued to occupy the

same on January 3, 1959. Such persons, or their successors, have the right to acquire such occupied or developed tide or submerged lands for a consideration not to exceed the cost of appraisal, administering and transferring including survey, together with the appraised fair market value thereof, exclusive of any value occurring from improvements or development, such as fill material, building or structures thereon;

I. "Clerk" shall mean the Clerk of the Borough;

J. "Commissioner" means the Commissioner of the Department of Natural Resources, State of Alaska;

K. "Assembly" means the Assembly of the Borough;

L. "Director" means Director of the Division of Lands, State of Alaska;

M. "Director's line" means a line seaward of the Borough, approved by the Director, with the concurrence of the Commissioner, seaward of all tide and submerged lands occupied or suitable for occupation and development without unreasonable interference with navigation, established prior to the pierhead or harbor lines;

N. "Fair market value" means the highest price, described in terms of money, which the property would bring if exposed for sale for a reasonable time in the open market, with a seller willing but not forced to sell, and a buyer willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used;

O. "Fill" shall mean earth, gravel, rock, sand or other similar materials placed upon tide or contiguous submerged lands to a height above the high water line for the purpose of elevating the lands for a specific useful purpose. Earth, gravel, rock, sand or other similar materials placed on tide or contiguous submerged land solely for the purpose of spoils disposal shall not be considered fill unless such fill was used for useful and beneficial purpose on and prior to January 3, 1959;

P. "Harbor line" means that line fixed by the Secretary of the Army which is the limit to which piers, wharfs, bulkheads or other work may be extended in navigable waters without further authorization (30 Stat. 1151; 33 U.S.C. 404);

Q. "Hearings officer" means that Borough official employed to hear disputes between claimants, summarize the testimony, attempt to reach stipulations of fact between the parties, assemble the record of the dispute and submit the same to the Assembly for determination;

R. "Improvements" means building, wharfs, piers, dry docks and other similar types of structures permanently fixed to the tide or contiguous submerged lands that were constructed

and/or maintained by the applicant for business, commercial, recreational, residential or other beneficial uses or purposes. Floats secured by guide piles used as floating wharfs, where access is provided to the shore, shall be improvements within the meaning of this Section. Fill material to the extent actually in place above the line of mean high tide on January 3, 1959, and actually utilized for beneficial purposes on January 3, 1959 by the applicant shall be considered a permanent improvement, but in no event shall fill be considered a permanent improvement when placed on the tidelands solely for the purpose of disposing of waste or spoils. Fill material not utilized for a beneficial purpose on and prior to January 3, 1959, shall not be the basis for an application, nor shall it be included in any application, for the exercise of preference rights hereunder;

S. "Industrial and commercial lands" means tidelands chiefly valuable for industrial, manufacturing or commercial purposes;

T. "Mayor" means the Mayor of the City and Borough of Yakutat, Alaska;

U. "Mean high tide" at any place subject to tidal influence shall be interpreted as the tidal datum plane derived from averaging all the high waters observed at that place over a period of nineteen years. Mean high tide water line shall be interpreted as the intersection of the datum plane of mean high water with the shore;

V. "Mean low tide" shall be interpreted to be mean lower low water which is the mean of the lower of the two lower waters of each day for a tidal cycle of nineteen years;

W. "Occupant" means any person as defined herein, or his successor in interest, who actually occupied for any business, residential or other beneficial purpose, tide or submerged lands within the conveyance of such by the State or the Borough, on or prior to January 3, 1959, with substantial permanent improvements. The holder of a permit of clearance in respect to interference of navigation, or of a special use permit from a government agency will not qualify as an "occupant" unless such entry on the land had, through the exercise of reasonable diligence, resulted in actual occupancy and substantial permanent improvements. No person shall be considered an occupant by reason of having (1) placed a fish trap in position for operation or storage upon the tide, shore or submerged land, (2) placed a set net or gill net therefor or any other device or facility for taking of fish, (3) placed pilings or dolphins for log storage or other moorage, (4) placed telephone, power or other transmission facilities, road, trails

or other improvements not requiring exclusive use or possession of tide or contiguous submerged lands, or (5) claimed the land by virtue of some form of constructive occupancy. Where land is occupied by a person other than the owner of the improvements thereon, the owner of the improvements shall for the purposes of this ordinance, be considered the occupant of such lands;

X. "Occupied or developed" means the actual use, control and occupancy but not necessarily residence, of the tide or submerged land by the establishment thereon of substantial permanent improvements;

Y. "Ordinance" means the Yakutat Tidelands Ordinance;

Z. "Park and recreation lands" means tidelands chiefly valuable for public park and recreation use, including scenic overlooks;

AA. "Person" means any person, firm, corporation, cooperative association, partnership or other entity legally capable of owning land or any interest therein;

BB. "Pierhead line" is a line fixed by the Corps of Engineers roughly parallel to the existing line of mean low tide at such distance offshore therefrom that said pierhead line shall encompass landward all stationary, man-made structures under the authority of Public Law 85-303 (48 U.S.C.A. 455-4556);

CC. "Preference right" subject to the classifications thereof herein established means the right of an occupant to acquire by grant, purchase or otherwise at the election of the occupant, except as otherwise limited or prescribed in this ordinance, any lot, piece, parcel or tract of tideland or submerged land occupied or developed by such occupant on and prior to January 3, 1959;

DD. "State" means State of Alaska;

EE. "Submerged lands" means land covered by tidal waters between the line of mean low water and seaward to a distance of three geographic miles, in their natural state, without being affected by man-made structures, fill and so forth;

FF. "Substantial permanent improvements" shall for the purposes of the ordinance have the same meaning as improvements as herein defined;

GG. "Tidelands" means lands periodically covered by tidal waters between the elevations of mean high and mean low tides, without regard to artificial interference with tidal flows caused by man-made structures, breakwaters, fill and the like. When used in this Chapter it shall also include submerged lands conveyed by the State to the Borough;

HH. "Tidelands subdivision plat" is that certain plat of subdivision of tidelands and submerged lands conveyed by the State to the Borough made by Tener & Nordling, registered engineers, approved August 30, 1962 entitled Tidelands Addition to the City and Borough of Yakutat, Subdivision of ATS No. 3, showing all structures and improvements thereon and the boundaries of each tract occupied or developed, together with the name of the owner or claimant thereof, including within the boundaries of each tract occupied or developed in the opinion of the Assembly for the use and enjoyment of the structures and improvements thereon by the owner or claimant, but shall not include any tide or submerged lands which if granted to such occupant would unjustly deprive any occupant of adjoining lands from his reasonable use and enjoyment thereof. Tide and submerged lands which are not occupied or developed by the establishment thereon of substantial permanent improvements as herein defined; but which are included within the boundaries of subdivided tracts as being reasonably necessary in the opinion of the Assembly for the use and enjoyment of the structures and improvements thereon by the owner or claimant were so included at the direction of the Assembly after public notice, hearing and due consideration.

II. "Yakutat" means the City and Borough of Yakutat, Alaska;

7.32.040 Approval and Acceptance of State Conveyance. The conveyance by the State to the Borough, dated February 7, 1962, of tidelands and submerged lands lying seaward of the Borough as hereby approved and accepted and the lands therein are hereby declared incorporated into the limits of the Borough.

7.32.050 Approval and Adoption of Subdivision Plat. The Tidelands Subdivision Plat, hereinafter called plat, being the preliminary plat as amended by the Assembly after public hearing thereon and due consideration thereof, is hereby approved and adopted as the official Tidelands Subdivision Plat of the City and Borough of Yakutat, Alaska, of tide and submerged lands conveyed by the State to the Borough, by conveyance dated February 7, 1962.

7.32.060 Time and Places of Posting Plat. Said plat shall be posted for a period of not less than sixty days, commencing with the date following the date of final passage of this ordinance, in two public places in the Borough, namely (1) in the office of the Clerk, Municipal Building, Borough and (2) in the Assembly chambers, Municipal Building, Borough.

7.32.070 Publication of Notice of Posting Plat and Passage of Ordinance. The Clerk shall cause to be issued and published once a week for four consecutive weeks, in a newspaper of general circulation in the Borough, commencing the day after the date of final passage of this ordinance, a notice of the posting of said plat containing the following statements:

A. Time and place of posting;

B. The date of final passage and the effective date of this ordinance which adopts the plat as the official Tidelands Subdivision Plat of the tide and submerged lands conveyed by the State to the Borough of February 7, 1962;

C. That any and all persons having or claiming preference rights provided by law and as herein defined to and part or parts of the subdivided land embraced within the boundaries of said plat, who fail to apply to exercise such rights under the provisions of this ordinance within two years from and after November 15, 1962, which is hereby declared to be the date upon which applications therefor will be first accepted by the Borough, shall have forfeited their preference rights provided by law and this ordinance;

D. That this ordinance was enacted to protect occupants having preference rights, to afford due process of law, and to provide procedures for applying for exercise of preference rights, for hearing and adjudicating adverse claims, and for conveying title to occupants holding preference rights defined by law and this ordinance; and

E. That copies of this ordinance are available at the office of the Clerk of the Borough.

7.32.080 Time in which Applications will be Accepted for Filing. Application forms, in substantially the form set forth in Section 7.32.230 will be accepted for filing on November 15, 1962, and ending two calendar years thereafter and at the close of business at 4:30 p.m. on November 14, 1964, after which no application forms will be furnished and after which no applications will be accepted for filing.

7.32.090 Procedure for Filing Applications. Applications shall be submitted and will be received for filing only for the purpose of claiming preference rights herein defined to the tidelands conveyed by the State to the Borough:

A. Application forms will be provided by the Clerk without charge at his office in the Municipal Building;

B. Applications must be submitted in triplicate;

C. Applications not clearly legible, not properly completed and certified by the applicant will not be accepted for filing. Since the facts alleged may be used in hearing of disputes, their truth must be certified. The facts alleged will also be the basis for the conveyance of valuable property. Willful and deliberate misstatements of fact will be equivalent to attempting to obtain property under false pretenses;

D. Applications may be delivered or mailed to the Clerk, Municipal Building, Yakutat, Alaska, with the proper deposit computed according to the nature of the application made. Applications property completed, accompanied with the proper deposit will be stamped with the time and date of filing and signed by the person accepting the deposit. The triplicate copy will then be delivered to the applicant, or mailed to him if a return envelope with postage is furnished;

E. Any application for a deed based on an asserted right other than a preference right shall be rejected;

F. Any applications not waiving the Class II preference right shall be filed by the Clerk together with all others of like nature to await the official promulgation of the pierhead line. Thereafter such application shall be processed as applications under the Class I rights;

G. No single application based on more than one class of preference rights, except an application for a single subdivided lot the claim of right to which is based on more than one class of preference right, nor any single application claiming title to two or more lots which are not contiguous, shall be accepted for filing. Such applications shall be rejected and delivered to the applicant, or mailed to him if a return envelope with postage affixed is furnished.

7.32.100 Deposits for Costs Prerequisite to Filing. The application form will assist the applicant in determining the proper costs to advance, which will depend upon the nature of the right claimed. In all cases a filing fee of $10.00 will be required. Survey costs depend upon the area claimed at the rate of $.0075 per square foot. If the area claimed is different from the lot as it appears on the plat, the applicant shall show the measurements of the additional or lesser area claimed and compute and pay the different survey cost accordingly. Transfer costs will be the same in all cases. They cover the cost of time estimated to be required to examine, process and approve the application, as well as to prepare and execute the deed, publish notice, give notice of additional costs, if any, and give notice to the applicant. In all cases transfer costs will be in the amount of $35.00. Deposit for

appraisal costs will be required in all cases of Class III preference rights, or where another asserted right is determined by the Assembly to be a Class III right. Appraisal costs will depend upon the area involved and the complexity of the appraisal sought. Where required as a deposit, the minimum amount is $25.00 but additional amounts not exceeding $25.00 may be required prior to delivery of deed.

7.32.110 Additional Costs in Certain Cases. Aside from deposits required at the time of filing applications, additional costs will be required to be paid prior to hearings where disputes require hearings, and for cost of land under a Class III right as well as appraisal thereof when a preference right sought to be exercised is determined to be a Class III right, as follows:

A. When the area claimed does not comply with the boundaries of the lot shown on the plat it is necessary to have a hearing to establish the validity of the right claimed and whether it is necessary for the plat to be changed to comply with the application. This may require notice to be given to adjacent occupants interested in the difference between the lands claimed and land as shown on the plat so that all parties in interest may be heard at the hearing;

B. When applications conflict with the same area or portions thereof it shall be necessary to conduct a hearing to determine the facts and the issue in question. Conflicting claims will be carefully scrutinized and each disputing party will bear the burden of proving facts sufficient to establish the validity of his claim;

C. The party filing an application conflicting with a claim previously filed shall be required to deposit hearing costs in the amount of $25.00. If the conflict is not known at the time of filing, the applicant shall be advised of the conflict as soon as it is known and of the need to deposit the hearing cost deposit;

D. The applicant who, after hearing and determination by the Assembly, is determined to have claimed the land of another shall be the party to bear the cost of the hearing. If such party did not deposit such costs, no deed shall be delivered to him until the cost is paid. Where the depositor is the prevailing party, the hearing cost deposited shall be refunded to him by the Borough;

E. When title by Class III preference right is claimed, the applicant shall be required to deposit the appraised purchase price after appraisal has been made and the purchase price has been so determined. The same procedure will

be applied when an application under another class of right is sought but it is determined that the only available right to the applicant is a Class III right;

F. When a preference right is sought to be exercised other than a Class III right and such right is determined to be a Class III right then the applicant shall be required to deposit the estimated cost of appraising the property claimed;

G. The applicant who receives the deed from the Borough shall, at his own cost, pay for documentary stamps and the cost of recording the deed.

7.32.120 Procedures for Processing Filed Applications. The Clerk shall cause the following procedures to be carried out:

A. All copies of applications accepted for filing shall be stamped with time and date of filing and an application number in chronological order of filing;

B. All original applications shall be filed in a permanent register and the names of the applicants entered in an alphabetical index which shall be a permanent part of such register;

C. The application register shall be available for public inspection during office hours of the Clerk except when in actual use for filing and indexing;

D. Certified copies of all applications shall be prepared for all persons upon request upon their paying fifty cents per page for copies of said applications and any attachments forming a part thereof;

E. Processing of duplicate applications. The third copy of the application will be returned to the applicant as his record and as receipt for deposit made, or mailed to the applicant if he has provided a return envelope. The second copy shall be the working file copy to be handled and processed as follows:

1. Applications to exercise Class I preference rights having waivers attached and which apply for lands which comply with the plat with respect to area and boundary locations shall be transmitted to the Borough engineer for handling as provided in Section 7.32.140(B). Applications to exercise Class I preference right which do not have waivers attached, irrespective of whether the lands applied for comply with the plat, shall be segregated for handling in the same manner as Class II preference right applications;

2. Applications to exercise Class I preference rights having waivers attached and which claim lands which do not comply with the plat with respect to area and boundary

locations shall be transmitted to the Borough engineer for handling as provided in Section 7.32.140(A) and further processing as provided in Section 7.32.170;

3. Applications to exercise Class II preference rights shall be segregated and kept with Class I preference right applications not having waivers attached. All such applications shall be held in abeyance by the Borough until such time as the pierhead line is established by the Corps of Engineers whereupon such applications shall be promptly honored and processed in the manner herein described for Class I preference right applications where waivers are attached;

4. Applications to exercise Class III preference rights, and all applications determined in whole or in part to be Class III, shall be transmitted to the assessor for appraisal as provided in Section 7.32.130;

5. No applications which combine Class I, Class II and Class III, or any combination of such preference rights, will be accepted for filing. Any such application presented for filing shall be returned to the applicant for revision into two or more applications, each of which will apply for land under one type of preference right;

6. Applications to exercise one class of preference right which in part comply with the plat with respect to area and boundary locations, but do not wholly comply with the plat in such respects, shall be treated as if no part of the application so complies with the plat and shall be processed for contest hearing.

7.32.130 Appraisal by Assessor -- Certificate Form. All applications for Class III preference rights shall be transmitted to the assessor for appraisal. His appraisal shall be made on a form prepared in duplicate, the original of which shall be attached to the application when appraised shall be transmitted to the Borough engineer for further processing.

7.32.140 Review by Borough Engineer. All applications being ready for processing shall be reviewed by the Borough engineer. Upon review and comparison with the plat he shall make his statement in duplicate as to whether or not the application seeks to exercise a preference right to land which is described on the plat and complies with it in respect to area and boundary locations, and the interest of the Borough, if any, in the lands applied for.

A. Applications which do not conform in whole lots on the plat or which seek to exercise a preference right to land in which the Borough has, or believes it has an interest, shall

be transmitted to the hearings officer for further proceedings under Section 7.32.180.

B. Applications which do comply with the plat with respect to area and boundaries and which do not seek to exercise a preference right to land in which the Borough has an interest, shall be considered approved and shall be returned to the Borough Clerk for further proceedings under Section 7.32.150.

7.32.150 Processing of Approved Applications by Clerk. All applications returned to the Clerk approved by the Borough engineer, and appraised by the assessor if required, shall be processed by the Clerk in the following manner: The Clerk shall ascertain if the deposit made by the applicant is sufficient to pay all known and estimated costs of survey, appraisal, transfer and purchase, if on Class III, and if not to advise the applicant that the remainder due shall be deposited with the Clerk before further processing. If or when the deposit is sufficient to pay all such costs, the Clerk shall cause to be published once a week for four weeks, in a newspaper of general circulation in the Borough, notice of the names of the applicants, the block and lot numbers of the property claimed according to plat designations, and if Class III, its appraised value, and that the Borough will issue to the applicant(s) its deed therefor within thirty days after the date of last publication, provided that before date of last publication no adverse application or claim has been filed with the Borough. During said period of publication, the applications therefor shall be returned to the Borough engineer who shall at the end of said period of publication note on the applications whether or not any adverse claims have been filed for the land in question. If adverse claims have been filed, the applications shall be further processed for hearing. If no adverse claims have been filed, the respective applications shall be returned to the Clerk.

7.32.160 Deeds - Permanent Register. The Clerk shall then cause to be prepared a deed conveying such land to the applicant(s) by the Borough and transmit the deed to the Mayor for execution. Notice shall then be sent to the applicant to take delivery of said deed at the office of the Clerk, who shall deliver the same to the applicant if all requirements have been met and all costs including purchase rights, if required, have been paid. Duplicate originals of all executed deeds shall be kept in the office of the Clerk in a permanent register entitled Yakutat Tidelands Deeds with permanent alphabetical index of grantees.

7.32.170 Special Proceedings for Disputed Claims -- Establishment of Office of Hearings Officer. There is hereby created, for the purpose of assisting the Assembly in performing its duties of adjudicating disputes between claimants of preference rights to tidelands, the office of hearings officer. He shall be appointed by the Assembly to serve without compensation other than an agreed part of the deposits made by claimants for hearing costs. His duty shall be to set disputes for hearing and hear the evidence under oath of the parties to the disputes. Proceedings shall be informally conducted and their object shall be to determine without delay the respective basis of the conflicting claims. Upon the submission of each dispute the officer shall prepare a short summary of the conflicting claims and the evidence submitted in support thereof, together with his findings of fact, and conclusions of law. This summary shall be transmitted to the Assembly for consideration and adjudication.

7.32.180 Proceedings for Determination by Assembly of all Disputes. Upon receipt of the working files in all cases of disputes, and the summary of the hearings officer, together with copies of notices of hearings served upon or mailed to all parties to the dispute, the Assembly shall set the dispute for hearings and determination, and cause notice to be served on all parties. Upon the Assembly having heard the dispute, it shall enter its ruling thereon as quickly as possible, but not later than ten days after the matter is submitted. Aggrieved persons shall have the right of appeal to the Superior Court within thirty days after the ruling of the Assembly is rendered.

7.32.190 Determination upon Stipulation of Facts. Wherever possible to reach agreement of the parties at hearings before the hearings officer, a stipulation of facts shall be prepared and agreed upon by the parties. Where this is done, the officer shall prepare and attach to his conclusions of law and submit the file to the Borough engineer to determine if the Borough's interests are affected by the stipulation, or if a boundary change in the plat is necessary. If a plat boundary change is required and no third party or Borough interests are affected adversely by the proposed change in boundaries of lots shown on the plat upon approval determined by the Borough engineer that the stipulation adversely affects the interest of the Borough or those of third parties the dispute shall be returned to the officer for further proceedings upon notice given.

7.32.200 Rejection of Protests other than by Applicant. No objections will be received to proposed issuance of deed by the Borough on publication of notice thereof, nor will any person be permitted to appear and be heard at any hearing of a dispute before the hearings officer or the Assembly, unless such objector or person is an applicant for preference rights of Class I, II or III and has filed an application therefor with the Clerk. The foregoing shall not prevent the appearance before the hearings officer or Assembly of witnesses appearing on behalf of the parties to a dispute.

7.32.210 Handling of Deposit and Purchase Funds. All funds received as deposits with applications for costs or purchase price for tidelands shall be deposited by the Clerk in the general fund. Such deposits will be credited by the Clerk as follows:

A. Survey costs. As a credit to disbursements made by the Borough for costs of preparing the Tidelands Subdivision Plat.

B. Transfer costs. To administrative costs as deeds are issued.

C. Appraisal costs. To administrative costs as earned or as credit to appraisal costs incurred.

D. Hearing costs. To administrative costs, hearings officer.

E. Purchase costs of Class III lands shall be credited to a separate account in the general fund to pay for improvements in tideland areas consisting of fill, sidewalk and sewer improvements.

7.32.220 Forfeiture of Preference Rights. Any occupant or owner or holder of preference rights as herein defined, who has not applied to the Borough for title thereto as herein provided, on or before two years after the date applications to exercise preference rights will be accepted for filing by the Borough under this ordinance, by a properly completed application duly filed with the Clerk and accompanied by the required deposit, shall have forfeited his right to assert his preference rights and acquire title to tidelands subject thereto from the Borough; and such tidelands and contiguous submerged lands subject to such unused preference rights shall thereafter be free and clear of all claims to preference rights and the Borough shall have no obligation to convey the same to any person or persons whomever, and said land shall then be and remain the property of the Borough and be

subject to such disposition as this ordinance hereinafter provided in Section 7.32.240 through 7.32.730.

7.32.230 Forms. The Clerk shall cause to be printed application forms and other forms for use in processing the same in substantially the following forms:

A. APPLICATION FORM
TIDELANDS PREFERENCE RIGHTS

Name: Application No. ___
Home Address:
Post Office Address:
Mark "X" to designate nature of preference right claimed:
Class I _____
Class II _____
Class III _____

If the tideland plat of 1960 correctly shows the land applied for, describe as follows: Lot _____ Block _____.

If the tideland plat does not correctly show land applied for describe it by metes and bounds and attach plat of land applied for (use attachment if more space is required):

All claimed improvements were first constructed and used (1) before September 7, 1957 _____? (2) between September 7, 1957 and January 3, 1959 _____? (3) after January 3, 1959 _____?

Is any part of your claim on improvements and/or fill constructed or placed after January 3, 1959? Yes ___ No ___. If answer is "Yes" describe area improved after January 3, 1959. (Use attachment if more space is needed.) State nature of improvement:

Have any of these improvements been extended or improved after (1) September 7, 1957, or (2) January 3, 1959? Describe:

To what beneficial purpose was fill used prior to (1) September 7, 1957 (2) January 3, 1959? Describe:

Was this beneficial use continued through January 3, 1959? Describe:

The plat is based on apparent use and improvements existing on January 3, 1959, recognized by the Alaska Land Act; state any reason known to you why your claim does not correspond with the plat: (Use attachment if more space is required.)

I offer cash _____ money _____ cashier's check _____ in the amount of $_____ as deposit for the following costs:

		USE BY CLERK
Filing Fee	$ 10.00	_____
Survey costs (at rate of $.0075 per sq. ft.)	_____	_____
Appraisal costs (Class III Applications)	$ 25.00	_____
Transfer costs ($35.00 per lot)	$ 35.00	_____
Hearing costs (If claim adverse to prior application a deposit of $25.00 for hearing and service notice is required)	_____	_____
Total deposit (Does not include purchase price of land in Class III applications)	_____	_____

Deposit received by Borough by _____

Date of application _____, 19__.

Date application received by Borough _____, 19__.

Time filed _____.

CERTIFICATION

I, _____, the above named applicant, or his agent, hereby certify that all the statements made in this application and incorporated attachments, if any, are true and correct.

_____
Print Name(s)

_____

Signature(s)

B. WAIVER OF CLASS II PREFERENCE RIGHTS
(ATTACH TO EACH CLASS I APPLICATION)

I, _____, the applicant, or his authorized agent, in the application for tidelands preference rights, application no. _____, to which this waiver is attached, do hereby waive any and all preference rights to acquire tide or submerged land lying seaward of the City and Borough of Yakutat, to which I am now or may hereafter become entitled by reason of the provisions of Public Law 85-303. Dated at Yakutat, Alaska this ____ day of _____, 19__.

_____
Print Name(s)

_____
Signature(s)

C. ASSESSOR'S APPRAISAL

The undersigned appraiser(s) do hereby certify that they have duly appraised the tide and/or submerged land described in the attached application no. _____ of _____ without including in the hereinafter stated value any value for valuable improvements constructed or placed thereon prior to January 3, 1959 at the fair market value.

Tideland _____ sq. ft. at $_____ per sq. ft. $_____.

Dated at Yakutat, Alaska, this ____ day of _____, 19__.

_____
Signature

_____
Signature

D. BOROUGH ENGINEER'S REPORT

This is to certify that the undersigned, Borough engineer for the City and Borough of Yakutat, Alaska, has examined the attached application no. _____ of _____ and compared the same to the Yakutat Tidelands Plat and under the provisions of ordinance no. _____ do report as follows:

1. The land claimed corresponds to the plat in area and boundaries Yes ____ No ____.
2. The land claimed does not so correspond in the following respects: _____.
3. The land claimed is contrary to the interest of the City and Borough of Yakutat _____.
4. The land claimed has already been claimed in application no. _____ of _____.

Recommendations:

E. DETERMINATION BY ASSEMBLY

Dispute No. _____
Adverse Claimants:
1.
2.
3.
4.

Description of land according to plat _____ block _____ lot _____. Other description:

Determination:

F. CITY AND BOROUGH OF YAKUTAT, ALASKA
TIDELAND DEED

This deed made in duplicate this ____ day of _____, 19__, by and between the City and Borough of Yakutat, Alaska, grantor, and _____, grantee(s);

WITNESSED

That the said grantor, for and in consideration of the sum of one ($1.00) dollar and other good and valuable consideration, to it in hand paid by the said grantee(s), pursuant to the provisions of the Alaska Land Act (Chapter 169, SLA 1959) and ordinance no. _____ enacted on _____ pursuant thereto, does hereby grant, bargain, sell, convey and confirm unto said grantee(s) as tenants by the entirety, with right of survivorship (strike if grantees are not husband and wife) and to his (their) heirs and assigns, (strike if grantee is a corporation) and to its successors and assigns (strike if grantee is not a corporation) the following described lot, piece, parcel and tract of tideland and contiguous submerged land situated within the corporate limits of the City and Borough of Yakutat, Alaska, and more particularly described as follows, to-wit: All of lot _____, block _____, according to the official Tidelands Subdivision Plat of the City and Borough of Yakutat, Alaska;

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining;

To have and to hold the same unto the said grantee(s), his or their heirs and assigns (or) to its successor and assigns forever.

IN WITNESS WHEREOF, the grantor has caused this deed to be executed the day and year hereinabove first written.

CITY AND BOROUGH OF YAKUTAT, ALASKA

(Corporate Seal) By: _____
Mayor

_____
Borough Clerk

7.32.240 Lands Available for Leasing. All tide and submerged lands within the limits of the Borough to which the Borough holds title may be leased as hereinafter provided, for surface use only.

7.32.250 Qualifications of Applicants or Bidders. An applicant or bidder for a lease is qualified if the applicant or bidder:

A. Is a citizen of the U.S. and is nineteen years of age or over; or

B. Has filed a declaration of intention to become a citizen and is at least nineteen years of age; or

C. Is a group, association or corporation which is authorized to conduct business under the laws of Alaska; or

D. Is acting as an agent for another and has qualified by filing with the Borough Clerk, prior to the time set for the auction, a proper power of attorney or a letter of authorization creating such agency. The agent shall represent only one principal, to the exclusion of himself.

7.32.260 Applications. All applications for lease of tidelands shall be filed with the Borough Clerk on forms provided by him and available at the municipal building. Only forms completed in full and accompanied by a ten dollar filing fee will be accepted for filing. Filing fees are not refundable. With every application, the applicant shall submit a development plan showing and stating:

A. The purpose of the proposed lease;

B. The use, value and nature of improvements to be constructed;

C. The type of construction;

D. The dates construction is estimated to commence and be completed;

E. Whether intended use complies with the zoning ordinance and comprehensive plan of the Borough.

7.32.270 Deposits for Costs. All applications filed with the Borough Clerk will be forwarded to the Borough engineer or other designated official to determine his estimate of costs required to handle the application, including but not limited to one or more of the following: survey, appraisal and advertising of the area under application. Upon determination, said official will notify applicant in writing of such costs and deposit shall be made therefor within thirty calendar days after notice is dated. Failure of applicant to pay deposit shall result in the application being cancelled. If the applicant does not accept a lease within thirty calendar days after it is offered to the applicant, all deposit money spent or encumbered for survey, appraisal or advertising shall be forfeited, and the balance, if any, shall be returned to the applicant. If the land applied for upon which deposit for costs is made is leased to another, the latter shall be required to pay actual costs of survey, appraisal and advertising, and the original deposit shall be returned to the depositor. Where the applicant becomes the lessee, he shall be required to pay any excess of cost over deposits, and where the deposit exceeds actual costs, the excess

shall be credited to present or future rents under the lease. All survey, appraisal and advertising shall be performed only under the authorization of the Borough, and any such work done without such authorization shall not qualify.

7.32.280 Rights Prior to Leasing. The filing of an application for a lease shall give the applicant no right to a lease or to the use of the land applied for. Any use not authorized by lease shall constitute a trespass against the Borough.

7.32.290 Classification Prior to Lease Required. (Repealed)

7.32.300 Public Use. The lease of any Borough tidelands may be made to any state or federal agency or political subdivision of the state for less than appraised value, as may be determined by the building official, with the approval of the Assembly, to be in the best interests of the public.

7.32.310 Review. No leased land may be changed in use, nor may any renewal lease be issued, until the proposed use or renewal has been reviewed by and approved by the Assembly.

7.32.320 Term of Lease. Leases may be issued for a period of fifty-five years. The term of any given lease shall depend upon the desirability of the proposed use, the amount of investment in improvements proposed and made, and the nature of improvement proposed with respect to durability and time required to amortize the proposed investment.

7.32.330 Appraisal. No tidelands shall be leased, or a renewal lease issued, unless the same has been appraised within ninety days prior to the date fixed for beginning of the term of the lease or renewal lease. No land shall be leased for less than the approved appraised annual rental. Appraisals shall reflect the number and value of Borough services rendered the land in question.

7.32.340 Annual Rental. Annual minimum rentals shall be computed from the approved appraised market value and shall be the lowest acceptable bid in the event of an auction. Unfilled tideland shall be appraised at not less than ten percent of the cost of improving the same with good compact fill suitable for beneficial use. While the value of the tideland as

a support for fill shall not include the cost of the fill, in cases where all or part of the fill has been placed by the Borough or other public authority the value of the tideland shall include the value of the fill so placed. The value of the tideland may reflect the value of its location, and such value may include a consideration of the financial value to be derived from its improvement.

7.32.350 Payment of Annual Rentals. Annual rentals of two hundred fifty dollars and less shall be paid annually in advance. Annual rentals of any amount between two hundred fifty-one dollars and five hundred dollars shall be paid in two equal installments every six months. Annual rentals of any amount between five hundred one dollars and one thousand dollars shall be paid in advance every calendar quarter. Annual rentals exceeding one thousand dollars shall be paid in advance each calendar month.

7.32.360 Leasing Procedure. Leases for a term of five years or less with computed annual rental of less than one hundred dollars may be negotiated or offered at public auction. All leases having a term of more than five years or have a computed annual minimum rental of more than one hundred dollars shall be offered at public auction. All public auctions of tidelands in the Borough shall be held in the Assembly chambers, Municipal Building. At the completion of the auction of each tract of land said official shall indicate the apparent high bidder. Holders of the preference rights provided in Section 7.32.580 of this Chapter may exercise their right to meet the bid of the apparent high bidder. Failure to do so at this time shall void and cancel their preference right. The apparent high bidder, or the preference right holder if his preference right is exercised, shall thereupon deposit with said official the portion of the annual rental then due together with the unpaid costs of survey, appraisal and advertising. All payments must be made in cash, money order, certified check or cashier's check, or any combination thereof.

7.32.370 Public Notice. When public notice of lease of land is required to be given under the provisions of this Chapter, thirty days notice shall be given by publishing notice thereof in a newspaper of general circulation published in the Borough once a week for three weeks. The notice must contain a brief description of the land, its area and general location, proposed use, term, computed annual minimum rental, limitations if any and time and place set for the lease auction.

7.32.380 Receipt of Bid. Upon deposit of required sum by apparent high bidder or preference right bidder, the building official shall thereupon issue to the successful bidder a receipt for the required sum containing a description of the land or interest leased, the price bid, and terms of the lease, the receipt whereof shall be acknowledged by the bidder in writing.

7.32.390 Building Official's Rejection. Prior to the signing of the formal lease by the Borough, the building official may, without cause, reject any and all bids for leases when the best interest of the Borough clearly justifies such action.

7.32.400 Appeal. An aggrieved bidder may appeal the building official's determination of the apparent high bidder or the preference right bidder to the Assembly, within five days (excluding Saturday and Sunday) following such determination. Such appeals must be in writing and contain a short statement of the grounds for the appeal and verified under oath. The Assembly shall within thirty days of receipt of a timely appeal, review the asserted grounds for appeal and rule thereon. The Assembly's decision shall be final, but without prejudice to any other right or rights of the aggrieved bidder may have.

7.32.410 Completion of Bid Requirements. Following the appeal period or the Assembly's ruling, the building official shall notify the successful bidder that the Borough is prepared to issue an appropriate lease. Upon receipt of the notice, the bidder is granted thirty calendar days in which to remit to the building official any bid balance or any other sums that may be due and in addition shall complete all necessary payments. Failure to do so shall result in forfeiture of any and all rights previously acquired in the proposed lease, and in addition, any moneys paid or deposited with the Borough shall be forfeited.

7.32.420 Issuance of Lease. After expiration of the five-day appeal period or after the ruling on determination appealed to the Assembly, the building official shall cause a lease to be issued and executed containing such terms as the Assembly by its determination shall establish.

7.32.430 Responsibility to Properly Locate on Leased Premises. It shall be the responsibility of the lessee to

properly locate himself and his improvements on the leased land. It shall be unlawful to encroach on other lands of the Borough or on lands owned or leased by another, and violation shall constitute a misdemeanor.

7.32.440 Lease Utilization. Leased tidelands shall be utilized for purposes within the scope of the application, the terms of the lease, and in conformity with the ordinances of the Borough, including the zoning ordinance, and in substantial conformity with its comprehensive plan. Utilization or development for other than the allowed uses shall constitute a violation of the lease and subject the lease to cancellation at any time. Failure to make substantial use of the land, consistent with the proposed use, within one year shall, at the discretion of the building official, with the approval of the Assembly, constitute grounds for cancellation.

7.32.450 Adjustment of Rental. All leases shall contain the agreement of the lessee to an adjustment of the annual rental payment by the building official every fifth year, except that no lease shall be so adjusted sooner than five years after date of the lease nor later than ten years after date of lease. Any changes or adjustments shall be based primarily upon the values of comparable land in the same or similar areas, exclusive of buildings, structures, appurtenances, equipment, land fill, except land fill wholly or partly placed by the Borough or other public authority, clearing, leveling, or roads owned by the lessee. Protest on adjustments shall be filed with the building official and, if denied wholly or in part, appeals may be taken to the Assembly.

7.32.460 Subleasing. Any lessee may sublease lands or any part thereof leased to him hereunder, provided that the proposed lessee first applies to the building official for a permit therefor, and further provided that the improvements on the leased lands are the substantial reason for the sublease. Leases not having improvements thereon shall not be sublet. Subleases shall be in writing and be subject to the terms and conditions of the original lease.

7.32.470 Assignments. Any lessee may assign the lands leased to him, provided that the proposed assignment shall be first approved by the building official. The assignee shall be subject to all of the provisions of the lease.

7.32.480 Modification. No lease may be modified orally or in any manner other than by an agreement in writing signed by all parties in interest or their successors in interest.

7.32.490 Cancellation -- Forfeiture.

A. Leases in good standing may be cancelled in whole or in part at any time upon mutual written agreement by lessee and the building official.

B. Any lease used for an unlawful purpose may be cancelled.

C. If the lessee shall default in the performance or observance of any of the lease terms or stipulations thereto, or of the regulations now or hereafter in force, or any of the ordinances of the Borough, and should said default continue for thirty calendar days after service of written notice by the Borough without remedy by lessee of the conditions warranting default, the Borough shall subject lessee to appropriate legal action, including, but not limited to, forfeiture of the lease. No improvements may be removed by lessee or other person during any time the lessee is in default.

7.32.500 Notice or Demand. Any notice or demand, which under the terms of a lease or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address of record. However, either party may designate in writing such new or other address to which such notice or demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed delivered when deposited in a U. S. general or branch post office enclosed in a registered or certified mail prepaid or enveloped addressed as hereinabove provided.

7.32.510 Rights of Mortgagee or Lienholder. In the event of cancellation or forfeiture of a lease for cause, the holder of a properly recorded mortgage, conditional assignment or collateral assignment will have the option to acquire the lease for the unexpired term thereof, subject to the same terms and conditions as in the original lease.

7.32.520 Entry and Re-Entry. In the event that the lease should be terminated as hereinbefore provided, or by summary proceedings or otherwise, or in the event that the demised lands, or any part thereof, should be abandoned by the lessee during the said term, the lessor or its agents, servants

or representative, may, immediately or any time thereafter, re-enter and resume possession of said lands or such part thereof, and remove all persons and property therefrom either by summary proceedings or by a suitable action or proceeding at law without being liable for any damages therefor. No re-entry by the lessor shall be deemed an acceptance of a surrender of the lease.

7.32.530 Re-Lease. In the event that a lease should be terminated as herein provided, or by summary proceedings, or otherwise, the building official may offer said lands for lease or other appropriate disposal pursuant to the provisions of this Chapter.

7.32.540 Forfeiture of Rental. In the event that the lease should be terminated because of any breach by the lessee as herein provided, the annual rental payment last made by the lessee shall be forfeited and retained by the lessor as partial or total liquidated damages for said breach.

7.32.550 Written Waiver. The receipt of rent by the lessor with knowledge of any breach of the lease by the lessee or of any default on the part of the lease, in observance or performance of any of the conditions or covenants of the lease, shall not be deemed to be a waiver of any provision of the lease. No failure on the part of the lessor to enforce any covenant or provision therein contained, nor any waiver of any right thereunder by the lessor unless in writing, shall discharge or invalidate such covenants or provisions or affect the right of the lessor to enforce the same in the event of any subsequent breach or default. The receipt, by the lessor, of any rent or any other sum of money after the termination, in any manner, of the term demised, or after the giving by the lessor of any notice thereunder to effect such termination, shall not reinstate, continue, or extend the resultant term therein demised, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given thereunder by the lessor to the lessee prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by the lessor.

7.32.560 Expiration of Lease. Unless the lease is renewed or sooner terminated as provided herein, the lessee shall peaceably and quietly leave, surrender and yield up into the lessor all of the leased land on the last day of the term of the lease.

7.32.570 Renewal of Lease. If, at the expiration of any lease of any lands hereunder, the lessee desires a renewal lease on the lands, properties or interest covered thereby, he shall not sooner than sixty calendar days prior to the expiration, and not later than thirty calendar days prior to the expiration, make application for a renewal lease in writing on forms provided entitled Application for Renewal of Lease, certifying under oath as to the character and value of all improvements existing on the lands, properties or interest herein, the purpose for which he desires a renewal lease and such other information as the building official may require. The applicant shall deposit with the said building official twenty-five dollars if the lease does not require public auction, or fifty dollars if the lease does require public auction, under the provisions of this Chapter. The building official may thereupon lease said lands in compliance with all sections of this Chapter with a preference being allowed the former lessee if all other pertinent factors are substantially equivalent. For the purposes of this Section, the date that the application for renewal of lease is required to the office of the building official, as evidenced by the date stamped thereon, whether delivered or forwarded by regular, certified or registered mail, shall be binding.

7.32.580 Preference Rights. A lessee under an existing lease shall, upon the expiration or the termination by mutual agreement of said lease, be allowed preference rights to re-lease those lands previously leased by him if all other factors are substantially equivalent. If the lease offered the preference right holder does not require public auction, the preference right holder shall exercise his right within thirty calendar days after said lease is offered by the building official. Failure to do so shall result in forfeiture and cancellation of the preference right. In the event the lease is offered at public auction, the preference right holder shall at the close of the bidding indicate if he wishes to exercise his preference right and meet the highest bid. If he does so choose, he shall meet all the requirements of this Chapter. If the preference right holder does not choose to exercise his preference right at this time, or if he does not fulfill the requirements of this ordinance, his preference right is then forfeited and cancelled. No preference right shall inure to a lessee whose lease has been cancelled or terminated for cause.

7.32.590 Removal or Reversion of Improvements upon Termination of Lease. Improvements owned by a lessee shall, within sixty calendar days after the termination of the lease, be removed by him; provided, such removal will not cause injury or damage to the lands; and further provided, that the building official may extend the time for removing such improvements in cases where hardship is proven. The retiring lessee may, with the consent of the building official, sell his improvements to the succeeding lessee. All periods of time granted lessees to remove improvements are subject to said lessees paying to the Borough pro-rata lease rentals for said period.

If any improvements and/or chattels having an appraised value in excess of five thousand dollars as determined by the building official are not removed within the time allowed, such improvements and/or chattels shall, upon due notice to the lessee, be sold at public sale under the direction of the building official. The proceeds of the sale shall inure to the lessee preceding if he placed such improvements and/or chattels on the lands, after deducting for the Borough all rents due and owing and expenses incurred in making such sale. In case there are no other bidders at any such sales, the building official is authorized to bid, in the name of the Borough, on such improvements and/or chattels. The bid money shall be taken from the fund to which said lands belong and the said fund shall receive all moneys or other value subsequently derived from the sale or leasing of such improvements and/or chattels. The Borough shall acquire all rights, both legal and equitable, that any other purchaser would acquire by reason of said purchase.

If any improvements and/or chattels having an appraised value of five thousand dollars or less, as determined by the building official, are not removed within the time allowed, such improvements and/or chattels shall revert to, and absolute title shall vest in, the Borough.

7.32.600 Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to the lessee or placed on the lease during the lessee's tenure with or without his permission and remaining upon the premises after the termination date of the lease shall entitle the lessor to charge a reasonable rent therefor.

7.32.610 Sanitation. The lessee shall comply with all regulations or ordinances of the Borough which are promulgated for the promotion of sanitation. The premises of the lease shall be kept in a neat, clean, sanitary condition and every effort shall be made to prevent the pollution of waters.

7.32.620 Building and Zoning Codes. Leased lands shall be utilized in accordance with the building and zoning ordinances and rules and regulations of said authority. Failure to do so shall constitute a violation of the lease.

7.32.630 Fire Protection. The lessee will take all reason able precaution to prevent, and take all necessary action, to suppress destructive or uncontrolled grass, brush or other fires on leased lands and comply with all laws, regulations and rules promulgated by the Borough for fire protection within the area wherein the leased premises are located.

7.32.640 Inspection. The lessee shall allow authorized representatives of the Borough to enter the leased land for inspection at any reasonable time.

7.32.650 Personal Use of Materials. All coal, oil, gas and other minerals and all deposits of stone or gravel valuable for extraction or utilization, and all material subject to Title II, Division 1, Chapters 4, 5 and 6 of the Alaska Administrative Code are excepted from the operation of a surface lease. Specifically, the lessee of the surface rights shall not sell or remove for use elsewhere any timber, stone, gravel, peatmoss, topsoil or any other material valuable for building or commercial purposes; provided, however, that material required for the development of the leasehold may be used, if its use is first approved by the building official.

7.32.660 Rights-of-Way. The lessor expressly reserves the right to grant easements or rights-of-way across leased land if it is determined in the best interest of the Borough to do so. The lessee whose lands such easements or rights-of-way shall cross shall be entitled to damages for all improvements or crops destroyed or damaged. Damages shall be limited to improvements and crops only, and loss shall be determined by fair market value. Annual rentals may be adjusted to compensate lessee for loss of use.

7.32.670 Restrictions and Reservations. The lease shall contain such restrictions and reservations as are necessary to protect the public interest.

7.32.680 Damages. Any person, firm or corporation who has since January 3, 1959 removed any gravel, rock or other

material comprising the tide and submerged land granted to the Borough by the State by the said conveyance dated February 7, 1962, and has used the same for the placement of fill on any of such tide and submerged lands shall be liable to the Borough for the fair value of such material.

7.32.690 Waste and Injury to Land. If any person shall commit waste or trespass or other injury upon Borough land, the person so offending, in addition to be civilly liable for any damages caused, shall be deemed guilty of a misdemeanor.

7.32.700 Warranty. The Borough does not warrant by its classification or leasing of land that the land is ideally suited for the use authorized under said classification or lease and no guaranty is given or implied that it shall be profitable to employ land to said use.

7.32.710 Lease Rental Credit. When authorized in writing by the building official prior to the commencement of any work, the lessee may be granted credit against current or future rent, provided, said work, accomplished on or off the leased area, results in increased valuation of other Borough owned lands. Said authorization may stipulate type of work, standards of construction and the maximum allowable credit for the specific project.

7.32.720 Approval of Other Authorities. The issuance by the Borough of deeds of leases under the provisions of this Chapter does not relieve the grantee or lessee of responsibility of obtaining licenses or permits as may be required by duly authorized state or federal agencies.

7.32.730 Sale of Certain Tide and Submerged Lands. When it is in the public interest, the Assembly may by resolution authorize the sale of small tracts of tidelands and submerged lands, provided that no such tract shall be greater in area than four hundred square feet, such tract is unsuitable for use as a public use area, and such tract cannot be leased. All sales of tidelands and submerged lands shall be public sales and shall be governed by the provisions of this Chapter, insofar as may be applicable. The assessed value of the property shall be stated in the notice required by Section 7.32.370 instead of the annual minimum rental. All sales shall be made for cash and the successful bidder must make payment in full at the time of the sale. The Assembly may provide additional requirements not inconsistent with this Chapter in the resolution authorizing

such sale. Anything herein to the contrary notwithstanding, all such sales shall be subject to Chapter provisions.

7.32.740 Removal of Material without Authorization a Misdemeanor. Any person, firm or corporation who, without written authority from the Borough, removes rock, gravel or other material from the tide and submerged lands conveyed by the State to the Borough shall be deemed guilty of a misdemeanor.

7.32.750 No Deed or Lease Grants Right to Remove Material. No deed or lease granted by the Borough to any person shall contain terms to be construed as granting any right to remove material from Borough tide and submerged lands after January 3, 1959.

7.32.760 Application to Remove Material for the Public Interest shall be Disposed of by Resolution of the Assembly. In recognition that conditions may exist from time to time whereby use of such tide and submerged lands and the material comprising the same may be beneficial to the public interest and promote the progress and development of the Borough, applications for the use thereof may be received and considered by the Mayor providing such applications fully disclose to the Borough all material facts and plans for the proposed use. Disposition of such applications shall be made by the Assembly and any disposition granting any right or interest to tide and submerged lands or material comprising the same shall be made by resolution of the Assembly after consideration and finding that such disposition shall be in the best interest of the general public.

7.32.770 Penalties. Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding one hundred dollars or be imprisoned in the Borough jail for a period of not to exceed thirty days or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

7.32.780 Severability Clause. If any section, subsection, sentence, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

7.32.790 Effective Date. This ordinance shall be published by number and title within ten days after its passage and shall become effective on September 30, 1962, thirty days after its passage and publication.

7.32.800 Lease or Disposal. The Borough may by ordinance provide for lease or disposal of the fuel dock, tide and submerged lands containing the fuel dock (located within unapproved ATS 1407 and ATS 787) and adjacent property without regard to the procedures contained in Chapter 7.32 of the Code.

Chapter 7.34

Yak-Tat Kwaan 14(c)(3) Conveyance to the Borough

Sections:

7.34.010-7.34.060

7.34.010. Pursuant to S 14(c)(3) of ANCSA, the City of Yakutat shall acquire from Yak-Tat Kwaan, Inc. properties as follows:

The general location of the following areas is shown on the attached map.

A. 80 acres for a municipal dump.

B. Sandy Beach Road: an easement for commercial truck traffic approximately the same width as the existing road.

C. Road to the Ankau: an easement for a 60 foot public road.

D. Road from the Ankau to Ocean Cape: an easement for a 60 foot public road from the Ankau Bridge to the Old Ocean Cape site.

E. Road from the Ankau to the cemetary: an easement for a 60 foot public road from the Ankau Bridge to the cemetary.

F. 8 acres plus or minus 2 acres for a cemetary.

G. plus or minus 2.5 acres for a public park.

H. Road from cemetary to park: an easement for a 60 foot public road from the cemetary to the park site.

7.34.020. In addition, the City of Yakutat shall acquire from Yak- Tat Kwaan, Inc. a sewer line easement and a water line easement across the parcel of property described in the special warranty deed filed in the Juneau Recording District June 22, 1977 at book 132, page 807-809. Each easement shall be 10 feet on each side of the centerline of the sewer line as it is presently located and of the water line as it is presently located; provided, Yak-Tat Kwaan, Inc. may require that these easements be moved in order for it to develop its land.

7.34.030. The City of Yakutat finds that the lands referred to in .010 above sufficient for the existing and foreseeable community needs as they pertain to the City of Yakutat's Comprehensive Development Plan.

7.34.040. The City finds that the lands referred to in .010 above are as much additional lands as is necessary for community expansion, appropriate rights-of-way for public use, and other foreseeable community needs.

7.34.050. The City of Yakutat releases any claim it may have pursuant to S 14(c)(3) of the ANCSA to any lands owned by Yak-Tat Kwaan, Inc. other than those referred to in .010 above.

7.34.060. The Mayor is authorized to enter into an agreement with Yak-Tat Kwaan, Inc. in accordance with this Chapter.