

DENALI BOROUGH, ALASKA
ORDINANCE NO. 16-12
VERSION B

INTRODUCED BY: Mayor Clay Walker

AN ORDINANCE AMENDING DENALI BOROUGH CODE OF ORDINANCES TITLE 4,
REAL PROPERTY ACQUISITION, MANAGEMENT AND DISPOSAL

BE IT ENACTED by the Assembly of the Denali Borough, Alaska that:

Section 1 Classification. This ordinance is of a general and permanent nature.

Section 2 Purpose. The purpose of this ordinance is to amend in its entirety Denali Borough Code of Ordinances Title 4, Real Property Acquisition, Management and Disposal as follows:

Title 4

REAL PROPERTY ACQUISITION, MANAGEMENT AND DISPOSAL

Chapters:

- 4.01 General Provisions.**
- 4.05 Real Property Acquisition.**
- 4.10 Management of Borough Real Property.**
- 4.11 Borough Land Permits, Licenses, Easements and Rights of Way.**
- 4.16 Disposal of Borough Real Property.**
- 4.17 Leasing of Borough Real Property.**
- 4.18 Exchange of Borough Real Property.**

Chapter 4.01

GENERAL PROVISIONS

Sections:

- 4.01.005 Definitions.
- 4.01.010 Goals for borough real property.
- 4.01.015 Authority for management of borough real property.
- 4.01.018 The land management fund.
- 4.01.020 Procedural requirements for major land use decisions.
- 4.01.021 Process for real property actions other than major decisions.
- 4.01.025 Inventory and record keeping.
- 4.01.030 Public notice.
- 4.01.040 Generally allowed uses of borough real property.
- 4.01.050 Buffers & development setbacks.
- 4.01.060 Fees.
- 4.01.070 Best interest finding.
- 4.01.080 Bonding, indemnification, insurance.
- 4.01.090 Procedures for nominations, review and approvals.
- 4.01.100 Appraisal and fair market value.

4.01.005 Definitions.

- A. "Borough land" lands owned by the Denali Borough or under its management authority.
- B. "Denali Borough Code" code of ordinances adopted by the Denali Borough assembly, abbreviated DBC.
- C. "Major land use decisions" decisions with lasting and significant impacts on the use of borough land (see specific list in DBC 4.01.015(A)).
- D. "Management authority" land approved for conveyance to the borough by the State of Alaska prior to patent being issued.
- E. "Real property" "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.

4.01.010 Goals for borough real property.

Goals for the use of borough real property are the management, disposal, or acquisition of new borough lands for the purpose of enhancing the economy, protecting the quality of the borough's natural environment, generating revenue, and providing opportunities for citizens to make a life in the borough, while ensuring that the public shall be provided a full and fair opportunity to be involved in major land use decisions.

4.01.015 Authority for management of borough real property.

- A. The assembly is the managing authority for borough real property and the decision-making body on the following major land use decisions related to borough real property:
 - 1. Management plans including classification and re-classification.
 - 2. Revisions and/or expansions to DBC Title 4.
 - 3. Sale and leases of borough real property.
 - 4. Land exchanges involving borough real property.
 - 5. Resource extraction licenses and long term, large scale, land encumbrances (e.g., natural gas pipeline right of way).
 - 6. Appeals of decisions of administrative staff or planning commission acting as board of review per DBC 5.20.120.
- B. The managing authority shall manage all borough real property in accordance with this title and adopted management policies and goals.
- C. As part of the annual work plan described in DBC 4.10.020, the assembly shall review borough real property proposed to be offered for sale or lease and at that time may also give general approval for planned disposals, and other options for disposals as outlined in DBC 4.16, 4.17, and 4.18.
- D. The planning commission will review and make recommendations to the assembly on major land use decisions, including the following:
 - 1. Management plans including classification and re-classification.
 - 2. Revisions and/or expansions to DBC Title 4.
 - 3. Sale and leases of borough real property.
 - 4. Land exchanges involving borough real property.
 - 5. Resource extraction licenses (e.g., for commercial gravel extraction), and long term, large scale, land encumbrances (e.g., natural gas pipeline right of way).
 - 6. Annual work plan for borough real property.
- E. The planning commission is responsible for decisions on commercial use permits and smaller scale, local easements and rights-of-way.
- F. The mayor or designee is authorized to grant approval of the following actions related to borough real property, working within the framework of assembly-approved management plans:
 - 1. Resource extraction permits, including sales of sand or gravel not to exceed a maximum of 500 cubic yards per year.
 - 2. Temporary use permits.

4.01.018 The land management fund.

- A. The land management fund is established. The land management fund is the operating fund for all activities that concern the acquisition of real property, management, development, sale or administration of borough real property. Revenue derived from the sale, lease or use of borough real property, and from the sale of gravel or other resources taken or extracted from borough property,

shall be deposited in the land management fund. Money may be appropriated from the land management fund only for acquisition of real property, management, development, sale or administration of borough real property, or other purposes approved by the assembly.

1. A portion of the land management fund account may be appropriated annually for management of borough real property, to fulfill the purpose and mission of the fund as stated in this chapter. The assembly shall be responsible for establishing the annual operating budget.
 2. There is established a subaccount of the land management fund to be known as the land management capital fund. In addition to the use of the fund for the land management operating budget as provided in this section, revenue in the land management fund may be appropriated by the assembly to the land management capital fund only for the acquisition of real property for municipal use, and for improvements to borough real property. The planning commission shall receive at least thirty-days (30) prior notice of any proposed assembly action regarding any proposed appropriations from the fund.
 3. "Improvements to borough real property" for the purposes of this section means a valuable addition to borough property or an enhancement of its condition intended to increase its value or utility, or to adapt it for new or further purpose, including expenditures to extend the useful life of the property asset, to improve its performance, or for off-site mitigation necessary to improve borough real property.
 4. Land management fund money shall be spent or disbursed as appropriated by ordinance and shall be appropriated for the following purposes only:
 - i. Funding of the established subaccounts of the land management fund;
 - ii. Improvements to borough real property;
 - iii. Administration of borough real property selection and land management program, including survey, engineering, and other costs related to lease, sale, or disposal of such real property; and
 - iv. The maintenance of real property management records.
- B. Revenue from the land management fund not appropriated may be remitted to the general fund.

4.01.020 Procedural requirements for major land use decisions.

- A. The borough assembly, mayor or designee, planning commission, or the public may initiate proposals for major land use decisions. Details of this process specifically for disposals are presented in DBC 4.01.090.
- B. Prior to assembly action on major land use decisions, and in addition to formal public hearings required under "D" and "E" below, the mayor or designee shall conduct at least one meeting to gather public input. This meeting should be held

at an appropriate venue as near to the affected parcel as is practical. (see DBC 4.01.030 for public notice requirements)

- C. The mayor or designee shall make a recommendation regarding the proposed decision to the planning commission including:
 - 1. Parcel location and ownership, classification or other relevant borough real property management policies, known encumbrances or permits;
 - 2. To the degree information is available, property characteristics including topography, soils, access and availability of utilities;
 - 3. A summary of previous input from the public, planning commission or assembly, including reference to the annual work plan;
 - 4. Compatibility with the borough comprehensive plan or other real property use policy approved by the assembly; and
 - 5. If a proposed action is not compatible with an approved management plan or the borough comprehensive plan, a revision to the relevant plan is required before the action may be approved. These revisions may be presented for review and approval as part of the process for the review and approval of the major action.
- D. The planning commission shall review the proposed major land use decision at a public hearing, and provide the opportunity for public testimony and/or submission of written comments regarding the proposed action. The planning commission shall make a recommendation to the assembly, building from the steps above, and its own deliberations.
- E. The assembly shall review the proposed major land use decision at a public hearing, and provide the opportunity for public testimony and/or submission of written comments regarding the proposed action.
- F. The assembly shall consider the planning commission recommendations, the mayor's recommendations, and public comments prior to taking action.

4.01.021 Process for real property use actions other than major decisions.

The borough mayor or designee may elect to meet with the public, the planning commission and/or assembly on other real property management issues not explicitly identified in DBC 4.01.015.

4.01.025 Inventory and record keeping.

The borough mayor or designee shall develop and maintain an inventory of all real property in which the borough has, or has had, an interest. To the degree information is available, the inventory should contain information regarding parcel size and classification and any current borough authorized permits, easements or leases.

4.01.030 Public notice.

Public notice shall, at minimum, meet the public notice requirements of the Denali Borough Charter, Article 1, Section 1.05 unless otherwise specified in this title. Public notices shall include the date, time, location, and purpose of the notification.

4.01.040 Generally allowed uses of borough real property.

- A. No person shall place improvements or personal property upon, or make unauthorized use of borough real property, without permission from the borough mayor or designee acting in compliance with approved management plans and other provisions of this title.
- B. No person shall remove timber or other vegetation, gravel or other materials, or otherwise damage borough real property without written permission from the borough mayor or designee.
- C. Borough real property is open to incidental uses including walking, hiking, hunting, all-terrain vehicles (ATV's), snowmobiles, fishing, short term (14 days or less) camping or other low impact, public, non-commercial activities. These incidental uses may be restricted to provide for public safety or to avoid real property degradation or vandalism, if needed. Harvesting a small number of wild plants, mushrooms, berries, or other plant material for personal, non-commercial use is permitted.
- D. If the mayor or designee has knowledge of an unauthorized use, steps shall be taken to end this activity. Unless the mayor or designee provides otherwise, the unauthorized user shall restore the borough real property to the same condition it was prior to when the unauthorized use began, and pay all costs incurred by the borough as a result of this action.
- E. Failure to comply with borough, state and federal laws and regulations for any authorization issued under the authority of this title shall be terms for contract, permit or lease revocation, termination, or other action as deemed appropriate.
- F. Persons found in violation of this section will be prosecuted in accordance with state law and the Denali Borough Code.

4.01.050 Buffers & development setbacks.

Management plans will identify the need for any buffers and/or setbacks near waterbodies, such as rivers, streams, and lakes if there is not one already set by the state. The borough will also identify any trails in the management plans and whether they need buffers or setback and the potential maximum widths.

4.01.060 Fees.

The borough mayor or designee shall propose a schedule of fees for applications, permits and other uses of borough real property under this title. The borough assembly shall approve the fee schedule.

4.01.070 Best interest finding.

Real property disposals, leases, and exchanges require a best interest finding statement. A best interest finding statement shall be written by the mayor or designee and be included with every real property disposal ordinance. This written finding must include a description of the real property identified for disposal, a summary of the disposal process including public notices and public meetings,

known natural or cultural considerations, comments received regarding the real property disposal, a statement of consistency with approved borough plans, and a final statement that the real property disposal is or is not in the best interest of the borough including reference to the goals in section DBC 4.01.010 if appropriate.

4.01.080 Bonding, indemnification, insurance.

- A. Where the borough has authorized a use on borough real property, including commercial use, resource harvest or extractions, leases, management agreements, easements, or rights-of-way, the borough may require bonding, indemnification, and/or insurance to ensure compliance with established standards.
- B. Where the activity may alter the land surface, the borough may require a bond or damage deposit in order to ensure proper restoration after use of the real property has ended. The bond amount shall depend on the type of activity. The user's liability will be released and the real property use authorization processed for closure only after the real property has been restored or left in a condition suitable to the borough. This may be retroactive if the damage was caused by the same lessee or permit holder during a prior agreement.
- C. Persons holding a real property use authorization shall be required to indemnify, save harmless and defend the borough, assembly members, officers, agents and employees from all liability, including costs and expenses, for all actions or claims resulting from injuries or damages or economic loss sustained by any person or property arising directly or indirectly as a result of any error or omission arising from the person's use, occupancy or the performance under the authorization.

4.01.090 Procedures for nominations, review and approvals

- A. The public may nominate real property for sale, lease or exchange, as outlined below:
 - 1. Nominations from the public shall be submitted to the mayor or designee on a land nomination form provided by the borough and may require a processing fee according to the Denali Borough fee schedule.
- B. Once properties are nominated for disposal, lease or exchange, the process below shall be followed.
 - 1. The mayor or designee shall prepare the information below for each specific recommended disposal, lease or exchange action:
 - i. Conformity with management plan;
 - ii. Initial best interest finding;
 - iii. Intended offering type;
 - iv. Physical form of sale or lease – e.g., intended use, general number and size of lots, access, design standards; and
 - v. For leases, objectives for operations plan.

2. The Mayor or designee shall issue public notice of the proposed action as specified in DBC 4.01.030. A public meeting shall be held in a location proximate to the proposed action.
3. The mayor or designee shall present a finding of facts and a recommendation to the planning commission for review. The planning commission shall review these findings and take public testimony at a public hearing as part of a regularly scheduled meeting. The planning commission shall present a recommendation to the assembly for consideration.
4. The assembly, by ordinance, shall approve any specific disposal, lease or exchange, providing sufficient direction to allow the mayor or designee to move forward with specific actions.
5. The mayor or designee shall carry out the disposal, lease or exchange process as authorized by the assembly. Final terms and conveyance of agreements or contracts are governed by this Title.

4.01.100 Appraisal and Fair market value

- A. Parcels to be sold, leased or exchanged must have a current appraisal of fair market value performed by an Alaska State certified appraiser.
- B. The borough may provide for less than fair market land sales and leases in two circumstances:
 1. To established non-profit corporations and organizations when doing so would provide a public benefit and be in the best interest of the borough. The assembly may authorize the mayor or designee to sell or lease land for less than fair market value if the ordinance authorizing the action contains:
 - i. A finding that the sale for less than fair market value is in the best interest of the borough;
 - ii. A statement of the facts on which the finding is based; and
 - iii. The period of time during which the offer may be accepted.
 2. The borough may lease (but not sell) borough land at less than fair market value where, pursuant to the lease operating plan, a commercial or industrial facility or use will be established or maintained on the leased land, but only if the assembly first finds:
 - i. That without the rent reduction, development of the use or facility will not be financially feasible and will not be located or maintained within the borough.
 - ii. The operation will confer a net economic benefit to the borough or to the citizens of the borough.
 3. The below fair market lease rate shall not extend for more than 10 years. A lease entered into pursuant to this subsection may be renewed only for a fair market rental value.
 4. A lease providing for below a fair market value shall provide for an immediate rent adjustment to fair market value if the specified use or facility

is not established within a time specified in the lease and if the specified use or facility is not continuously maintained except for such periods as are set forth in the lease.

5. The borough may sell land determined to be unusable or inaccessible to an adjacent land owner through a direct disposal as described in DBC 4.16.120.

Chapter 4.05

REAL PROPERTY ACQUISITION

Sections:

- 4.05.005** Definitions.
- 4.05.010** Acquisition and ownership.
- 4.05.020** Procedural requirements.
- 4.05.030** Eminent domain.
- 4.05.040** Ownership and use.
- 4.05.050** Rights and powers of borough.
- 4.05.060** Federal and state aid.

4.05.005 Definitions.

- A. "Real property" "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.

4.05.010 Acquisition and ownership.

- A. The borough may acquire, own, and hold real property or limited property rights inside or outside the borough boundaries by purchase, gift, grant, dedication, exchange, redemption, purchase of equity of redemption, operation of law, tax or lien foreclosure, condemnation or declaration of taking, annexation, or by any other lawful means of conveyance. Real property shall be held in the name of "Denali Borough."
- B. Nominations to acquire property may be made by the public on a form provided by the Denali Borough.
- C. The assembly may approve and authorize the purchase of real property by contract of sale, a deed of trust, or mortgage.
- D. The borough may not acquire any real property by means of dedication by plat unless the dedication of real property is accepted in writing and signed by the mayor and approved by the assembly.
- E. Any real property acquisition instrument requiring execution by the borough, for example, a mortgage or deed of trust, shall be signed by the mayor or designee and attested by the clerk. The form of any conveyance shall be reviewed by the borough attorney.

4.05.020 Procedural requirements.

- A. A proposal to acquire property shall be reviewed by the planning commission. Review by the planning commission shall be limited to the property's suitability for the intended purpose and its consistency with surrounding real property use(s) and any applicable land use/land management plans. The planning commission

shall recommend to the borough assembly, by resolution, their findings and recommendations. The resolution shall address:

1. The purpose of the acquisition;
 2. The proposed use of the real property and associated land management plans; and
 3. A description of the real property or interests in lands or resources concerned.
- B. After receipt of the recommendations of the planning commission, the borough assembly may find that the real property being purchased is in the best interest of the borough. Acquisition of real property by the borough shall require an assembly ordinance specific to the particular acquisition, including general purpose, conditions and manner of acquisition.
- C. Prior to approval, the mayor or designee shall make available for assembly review an abstract of title, an appraisal of the real property, a contamination/liability assessment, and a review of any problem in acquisition. A contamination/liability assessment shall require the following:
1. The mayor or designee shall review maps, aerial photographs, plats, surveys, any historical land use records, and visit the site, to see if any issues of obvious concern may be found. If nothing is found the assessment may end and a report will be presented to the assembly by the mayor or designee stating these findings.
 2. If the initial inspection reveals possible contamination issues, further research and site inspections shall be conducted to determine the nature of the findings in the initial assessment.
- D. Upon authorization by ordinance, the mayor or designee shall carry out the specific steps required to acquire the real property according to the terms and conditions established by the ordinance. Upon assembly approval of a purchase, the mayor or designee 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.
- E. The assembly may authorize the mayor or designee to acquire real property for more than fair market value only if the ordinance authorizing the acquisition contains a statement of the facts on which the acquisition is justified.

4.05.030 Eminent domain.

The assembly may exercise the powers of eminent domain and declaration of taking in accordance with AS 29.35.030. Eminent domain shall be exercised only if the borough has made reasonable but unsuccessful efforts to negotiate a purchase or exchange. Eminent domain takings may only be used for public works or facilities, including road or trail access, when no other reasonable option is available, and may not be conveyed in any form to any private, corporate or nonprofit entity.

4.05.040 Ownership and use.

A. The borough may acquire and hold real property as sole owner or as tenant in common or other lawful tenancy with any person, corporation or government body for any public purpose. The borough may hold real property in trust for any public purpose, including:

1. Temporary activities;
2. Easements and rights-of-way;
3. Leasing or eventual disposal; or
4. Long term dedication for public purposes, including public facilities and public recreation.

4.05.050 Rights and powers of borough.

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 individual.

4.05.060 Federal and state aid.

The borough may apply for, contract with, 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 inside and outside the borough boundaries.

Chapter 4.10

MANAGEMENT OF BOROUGH REAL PROPERTY

Sections:

- 4.10.005 Definitions.**
- 4.10.010 Management plans.**
- 4.10.015 Classification requirement, categories, and definition.**
- 4.10.020 Annual work plan.**

4.10.005 Definitions.

- A. "Commercial Use" means any activity, goods or services that are offered for sale or rent.
- B. "Fair market value" means the most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.
- C. "Interest in property" means a right, claim, title, or legal share in that property. Refers to the bundle of rights which may be transferred or conveyed separately or in total. Methods of transfer include deed, lease, or easement.
- D. "Lease" means a contract granting use or occupation of property during a specified period in exchange for a specified rent.
- E. "Natural resources" to which the borough holds title may be sold pursuant to approval by the assembly including, but not limited to, gravel, sand, soil, rock, peat, timber, firewood and natural vegetation
- F. "Public interest" means the welfare of the general public (in contrast to the narrow interest of a person, group, or firm) in which the whole society has a stake and which warrants recognition, promotion, and protection by the government and its agencies, and includes both monetary and non-monetary values.

4.10.010 Management plans.

- A. The mayor or designee shall prepare a written management plan for borough real properties where required in this section. The planning commission shall review, and the assembly will provide final approval.
- B. A management plan is required before any real property management action may occur including, but not limited to, any disposal, lease, exchange, or any permit or license.
- C. Management plans provide a basis for well-informed decisions on the best use of borough real properties, particularly where larger blocks of borough

real property have the potential for a variety of uses. Specific objectives for management plans include:

1. Provide better understanding of current and potential uses.
2. Provide the opportunity for public involvement.
3. Develop broad goals for the affected real properties.
4. Identify appropriate land use classification(s), standards and guidelines.

D. A management plan shall contain two elements:

1. Information about the parcel, including:
 - i. Physical characteristics of the site, for example, elevations and slopes, vegetation, and water bodies.
 - ii. Current and potential access, including roads, trails, airstrips.
 - iii. Current and potential uses on-site and on surrounding properties; any potential public health, safety, or welfare issues.
 - iv. Improvements (e.g., buildings, infrastructure).
 - v. Easements, leases, and permits; utilities or other infrastructure serving or crossing the site.
2. Management policies, including:
 - i. Overall goals and objectives.
 - ii. Classification(s), including boundaries and management intent statement for each classification area.
 - iii. Plans for access and other needed infrastructure.
 - iv. Site-specific management standards and guidelines.
 - v. Implementation actions and schedule.
 - vi. Objectives for terms and conditions of use for real property intended for sale, lease, or permits shall be described.

4.10.015 Classification requirement, categories, and definition.

All borough real property must be classified through an assembly approved land management plan.

All borough real property shall be classified as one of the following:

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|------------------------------------|----------------------|
| 1. Agriculture and Forestry | 6. Material Site |
| 2. Amenity Value | 7. Multiple Use |
| 3. Commercial and Light Industrial | 8. Public Facilities |
| 4. Heavy Industrial | 9. Recreation |
| 5. Land Bank | 10. Residential |

Classification categories defined:

- A. *Agriculture and Forestry* – Real property intended for raising and harvesting crops, grazing, breeding and management of livestock, dairying, commercial timber harvest, or woodlot management. This includes activities such as processing, cleaning, packing, storing, and distribution of agriculture products grown on the real property.

- B. *Amenity Value* – Real property intended to be retained and kept in a natural state to maintain a sense of open space that may also protect wildlife habitat and support non-commercial recreational opportunities, scenic vistas, historic structures and landscapes, greenbelts, or other natural qualities.
- C. *Commercial and Light Industrial* – Real property intended primarily for uses related to trade and commerce, such as the sale, rental, or distribution of products and services, and/or for light industrial uses. Light industrial uses are those that do not create significant off-site impacts and are generally conducted inside closed buildings, for example warehousing, storage, and light manufacturing.
- D. *Heavy Industrial* – Real property intended for industrial and related uses that are best separated from most other uses, due to their potential for off-site impacts. Examples include landfills, large scale material or mineral extraction and processing, waste handling and storage, electric generation, large scale manufacturing, or other uses that involve significant noise, odors, bright lights, or other potential nuisances or safety risks that make them poor neighbors with most other real property uses. Parcels should be of a size that allows for sufficient buffer zones to reduce potential impacts of these types of use on adjoining properties.
- E. *Land Bank* – Real property which will remain in borough ownership. Following approval of a management plan, these areas will be reclassified to designate the specific intended uses. In the interim, the real property will be available for generally allowed uses per DBC 4.01.040.
- F. *Material Site- Natural resources* primarily used for construction of local roads, trails, easements, and building lots.
- G. *Multiple Use* - Real property in areas with potential to have multiple classifications.
- H. *Public Facilities* – Real property intended to be retained and reserved for public facilities including schools, clinics, day-care centers, government buildings, parks, and other public uses. Parcels are sized to meet the need, and allow for future expansion. Such lands will generally be retained in borough ownership, but could also be sold or leased to another public or non-profit entity that will retain real property for this purpose.
- I. *Recreation* – Real property intended to be retained where the primary use is public and/or commercial outdoor recreational areas and facilities. Recreational uses, include, but are not limited to, trails (non-motorized and motorized), ski areas, golf courses, day use facilities, campgrounds, and wilderness camps.
- J. *Residential* – is intended primarily for single- and multifamily dwellings. These areas may also include, as secondary uses, areas for greenbelts, playgrounds, schools, churches, libraries, and parks.

4.10.020 Annual work plan.

A. The mayor or designee shall prepare by March 1st of each year a work plan for borough real property specifying disposal, leasing and exchange plans for the coming year, and more general intentions for the subsequent three years. Following review by the planning commission, the annual work plan shall be submitted to the assembly.

Elements of the work plan shall include:

1. A summary of the previous year's actions, expenditures and revenues; a general overview of intentions for future real property management actions.
2. A current inventory of the location and status of borough real property.
3. Proposed actions concerning real property over the coming year:
 - i. Priority areas for management plans including real property classification.
 - ii. Priority areas for real property disposals, acquisition, and/or leases.
 - iii. Other land management priorities, including issuance and/or renewal of use permits or licenses.
4. Anticipated finances of real property activities, including:
 - i. Projections of revenue from sales, leases, permits or fund investments over the coming year.
 - ii. Anticipated expenditures including costs for staff, contractors, capital improvements or other activities.
5. Preliminary plans for borough real property over the following three years, including:
 - i. Likely locations of future management plans, disposals, leases, exchanges and larger scale permits or rights of way.
 - ii. Planned changes in management activity.

Chapter 4.11

Borough Land Permits, License, and Easements

Sections:

- 4.11.005 Definitions.
- 4.11.006 Conditions for use of resources on borough real property.
- 4.11.010 Extraction permit.
- 4.11.020 Extraction license.
- 4.11.030 Temporary use permit.
- 4.11.040 Commercial use permit.
- 4.11.050 Easements.

4.11.005 Definitions.

- A. "Access easement" means the right of a limited group or the general public to travel across a defined area.
- B. "Commercial Use" means any activity, goods or services that are offered for sale or rent.
- C. "Easement" means a nonpossessory interest in borough land that entitles the holder to a specified limited use of a defined area.
- D. "Fair market value" means the most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.
- E. "Hazardous use" means an unacceptable risk to human health and well-being.
- F. "Interest in property" means a right, claim, title, or legal share in that property. Refers to the bundle of rights which may be transferred or conveyed separately or in total. Methods of transfer include deed, lease, or easement.
- G. "Lease" means a contract granting use or occupation of property during a specified period in exchange for a specified rent.
- H. "Natural resources" to which the borough holds title may be sold pursuant to approval by the assembly including, but not limited to, gravel, sand, soil, rock, peat, timber, firewood and natural vegetation
- I. "Private easement" means the right by a limited group of people to use a defined area.
- J. "Public easement" means the right of the general public to use certain streets, roads, highways, paths, airspace or defined area.
- K. "Public interest" means the welfare of the general public (in contrast to the narrow interest of a person, group, or firm) in which the whole society has a stake and

which warrants recognition, promotion, and protection by the government and its agencies, and includes both monetary and non-monetary values.

- L. "Utility easement" means to allow a utility the right to use or access a defined area.

4.11.006 Conditions for use of borough real property, by permit or license

- A. The mayor or designee shall establish borough-wide and/or site specific conditions to guide use allowed by permit or license. Condition topics include, but are not limited to:
 - 1. Excavation and reclamation standards, slope standards;
 - 2. Water quality protection;
 - 3. Traffic impacts;
 - 4. Safety, including fencing and signage;
 - 5. Visual screening;
 - 6. Hours of operation;
 - 7. Detailed description of the intended use of the land;
 - 8. Desired lease, permit or license length;
 - 9. Timetable for development;
 - 10. Planned structures and fuel storage facilities accompanied by a scale drawing;
 - 11. Estimated value of the improvements;
 - 12. Delineated access, water, and power sources;
 - 13. Intended solid waste and wastewater disposal methods;
 - 14. If necessary, identify location points of passage for the general public; and
 - 15. Detailed description of how improvements will be removed at the end of the lease or permit.
- B. If the appropriate approval body determines a permit or license may cause damage to the borough land, the mayor or designee shall require the applicant to post a bond with the borough to ensure that the applicant restores the land to reasonably the same condition it was in at the time the license was executed. The mayor or designee shall not release the bond until the licensee has complied with all conditions of the license.
- C. The mayor or designee may inspect the borough land at any time to ensure compliance with permit or license conditions.
- D. The mayor or designee may, for cause, revoke a permit or license:
 - 1. Extraction Licenses -The mayor or designee shall give notice of the potential cause of the revocation and give the licensee reasonable amount of time, but not more than 60 days, to correct the problem. If the problem is not corrected and a permit or license has to be revoked, the licensee, within 45 days, shall restore the land to reasonably the same condition it was in at the time the permit or license was executed.

- 2. Permits - The mayor or designee may, for cause and without notice, immediately revoke a permit. The user of borough real property whose permit has been revoked shall, within the time specified in the permit, and if no time is specified, within seven days of the revocation of the permit, remove from the borough real property any temporary improvements placed on the borough real property pursuant to the permit. Any improvements not removed shall become the property of the borough or disposed of by the borough at the owner's expense.
- E. Nothing in this chapter grants a holder of a permit or license exemption from any tax burden associated with the removal of resources from Denali Borough lands.
- F. A holder of a permit or license assumes full responsibility for any damages to equipment either during use or if left unattended on borough property before, during or after the terms of the extraction license; including, but not limited to, loss, theft and vandalism.
- G. The Denali Borough assumes no responsibility for hazardous use, accident, injury, or death incurred during any borough real property use activity.

4.11.010 Extraction permit.

- A. Extraction permits provide for non-commercial personal use of specified quantities of resources on borough owned land.
- B. The mayor or designee is responsible for decisions regarding extraction permits, and for setting borough-wide and/or site specific guidelines for extraction activities.
- C. An applicant who wishes to obtain an extraction permit shall submit a non-refundable fee as set in the fee schedule. An extraction permit is not transferable and does not convey any interest in land. Approval must be consistent with a parcel's management plan.
- D. An extraction use permit is required for extraction of any quantity of gravel, firewood, timber or other resource from borough land.
- E. If the mayor or designee determines an extraction permit may substantially affect the surrounding area, public notice and description of the proposed use shall be published per DBC 4.01.030. If the mayor or designee determines substantial adverse public comment to the proposed use has been received, the mayor or designee shall hold a public hearing on the proposed use prior to making a decision regarding the permit.
- F. The mayor or designee may inspect the borough land at any time to ensure compliance with permit or license conditions.

4.11.020 Extraction license.

- A. An extraction license is required for any commercial extraction activity and for gravel extraction.

- B. An applicant who wishes to obtain an extraction license shall file with the borough an application packet for extraction license. The application packet is to include:
1. An application form prescribed by the borough, indicating the type and quantity of resource to be extracted.
 2. A site development plan:
 - a. Identification of surrounding property owners, existing land uses, wetlands and waterbodies within the notification area;
 - b. Planned location of permanent and semi-permanent structures for verification of setback requirements;
 - c. Proposed phases of mining activities;
 - d. Roads and access plan;
 - e. Visual screening measures;
 - f. Noise mitigation measures; and
 - g. Proposed lighting.
 3. A reclamation plan.
 4. Proof of bonding, indemnification or insurance as required under DBC 4.01.080.
 5. Registration for severance tax form as required per DBC 3.30.020.
- C. An applicant who wishes to obtain an extraction license shall submit a non-refundable extraction license application fee as set in the fee schedule. A successful applicant will be required to pay the fair market value of the extracted materials as set in the fee schedule. An extraction license is not transferable and does not convey any interest in land. Approval must be consistent with a parcel's management plan.
- D. The assembly may waive the application license fee and the fee for fair market value of the material used by a nonprofit organization or public agency if being used for a public purpose.
- E. Notice shall be published of the proposed license for extraction of borough natural resources per DBC 4.01.030. The notice will include a description of the proposed use and allow for public comment.
- F. The planning commission shall hold a public hearing and then make a recommendation to the assembly.
- G. The assembly is responsible for decisions on extraction licenses, for setting the terms for the license and the manner in which payment is made. After receiving a recommendation from the planning commission, the assembly shall by resolution approve or deny a proposed extraction license and set borough-wide and/or site specific conditions for extraction activities and non-compliance.
- H. The mayor or designee may revoke an extraction license, for cause, if the license holder fails to comply with the terms and conditions of the permit

- I. The mayor or designee may inspect the borough land at any time to ensure compliance with permit or license conditions.

4.11.030 Temporary use permit.

- A. Temporary use permits provide for non-extractive use of borough real property for a specific timeframe. Temporary use permits do not allow permanent structures or improvements, and allow only minimal disturbance to the property. A temporary use permit does not convey any other interest in the property and is not transferrable. Use must be consistent with the property's management plan. Unless otherwise agreed to in writing, the real property will be restored to its original condition upon expiration or revocation of the permit.
- B. The mayor or designee is responsible for decisions on temporary use permits for periods of one year or less, including setting borough-wide and/or site specific conditions.
- C. The planning commission is responsible for decisions on temporary use permits for time periods of greater than one year but no greater than five years.
- D. An applicant who wishes to obtain a temporary use permit shall submit a non-refundable application fee as set in the borough fee schedule. A successful applicant will be issued a permit detailing conditions and use fees per the fee schedule for the permitted activity.
- E. The assembly may reduce or waive permit use fees for a non-profit organization or public agency for a public purpose.
- F. The mayor or designee may inspect the borough land at any time to ensure compliance with permit or license conditions.

4.11.040 Commercial use permit.

- A. Commercial use permits provide for commercial non-extractive activity that occurs on borough real property or traverses borough real property within a specific timeframe. A commercial use permit does not convey any other interest in the property, is non-exclusive and not transferrable. Use must be consistent with the areas management plan.
- B. Commercial use permits are subject to an application process. A commercial use permit application shall include but is not limited to:
 - 1. A commercial use permit application form as prescribed by the borough;
 - 2. Non-refundable application fee;
 - 3. End of season report;
 - 4. Insurance, bond, damage deposit;
 - 5. Fees per user (user or client fee); and
 - 6. Business plan.
- C. The planning commission is responsible for decisions on commercial use permits.
- D. The assembly is responsible for permits for a period of up to five years and are renewable. The mayor or designee shall cause notice of a proposed commercial

use per DBC 04.01.030. The notice shall include a description of the proposed commercial use, the borough land where the activity is proposed, and the conditions and timeframe of the permit. The planning commission shall hold a public hearing on the proposed commercial use prior to taking action on the permit.

- E. A successful applicant will be issued a permit detailing specific terms, conditions, environmental protections and a description of the applicable fees for the permitted activity.
- F. The mayor or designee may revoke a permit, for cause, if the permit holder fails to comply with the terms and conditions of the permit
- G. The mayor or designee may inspect the borough land at any time to ensure compliance with permit or license conditions.

4.11.050 Easements.

- A. Depending on scale and impact, as specified below, the mayor, mayor designee or the assembly may negotiate the dedication of easements for roads, driveways, pipelines, electric transmission, telecommunication transmission, trails, pathways, or similar utilities.
 - 1. Actions of borough wide significance: greater than 1,000 feet in length must receive approval by assembly ordinance and an associated best interest finding.
 - 2. Actions of local significance; easements that serve a limited area, are 1000 feet or less in length, and have minimal environmental impact may be approved by the planning commission upon recommendation from the mayor or designee.
- B. Application and Fee: An easement applicant shall submit a completed application as prescribed by the borough. In addition to the completed application, an applicant must submit the application fee in accordance with the Denali Borough fee schedule and any other plans, reports, or narratives requested by the mayor or designee in order to provide enough information to properly evaluate the easement request. The application shall include, but is not limited to:
 - 1. Type of easement: public, private, access, utility, or other;
 - 2. Easement location information including legal location description and sketch;
 - 3. Easement use plan, including improvements within the easement;
 - 4. Operations plan when applicable;
 - 5. Easement timeframe; and
 - 6. Legal name, contact information, and signature of applicant.
- C. Within 45 calendar days of acceptance of a completed application for locally significant easements, or 90 days for borough wide significant actions, the planning commission or assembly shall by resolution grant preliminary approve,

reject, or notify the applicant of the discovery of additional requirements of any proposed easement or right-of-way.

- D. Upon preliminary approval by the planning commission or assembly, the borough will draft an easement agreement which includes, but not limited to the following:
 - 1. Bonding;
 - 2. Indemnification;
 - 3. Insurance;
 - 4. Restoration plan;
 - 5. Easement timeframe; and
 - 6. Easement price, terms and conditions.
- E. Easement price shall be established according to fair market value if applicable.
- F. Prior to the execution of the easement the borough attorney will review the easement agreement.
- G. In accordance with any state cooperative easement agreement, the mayor or designee shall submit the easement request to the State of Alaska, Department of Natural Resources for review and approval.
- H. Once the borough attorney has reviewed the easement agreement the successful applicant shall sign the easement agreement and can then begin construction of the easement.
- I. Construction of easement shall follow the terms and conditions set forth in the easement agreement. If the easement location changes from the application sketch, it should be discussed with the land planner before continuing construction.
- J. An as-build survey of the easement area must be submitted following the plat requirements per DBC 9.10 before final approval will be granted.
- K. Final approval is granted when the as-build survey is signed by the Denali Borough and recorded.
- L. No additional improvements or changes may be constructed or made within an easement unless approved, in writing, by the mayor or designee.
- M. Upon completion of any additional improvement within an easement, the easement holder shall provide the borough with an accurate and complete as-built drawing of the completed improvement
- N. An easement may be revoked if the easement holder abandons or ceases to use the easement.
- O. The mayor or designee may inspect the borough land at any time to ensure compliance with easement conditions.

Chapter 4.16

DISPOSAL OF BOROUGH REAL PROPERTY

- 4.16.005 Definitions.
- 4.16.010 Purpose.
- 4.16.020 Authority.
- 4.16.030 No warranty implied.
- 4.16.040 Procedures.
- 4.16.050 Requirements for disposal.
- 4.16.060 Terms for real property disposals.
- 4.16.070 Qualifications of applicants, bidders, proposers.
- 4.16.080 Public outcry auction.
- 4.16.090 Sealed bid public auction.
- 4.16.100 Lottery disposal.
- 4.16.110 Over-the-counter disposal.
- 4.16.120 Direct disposal.
- 4.16.130 Negotiated disposal.
- 4.16.140 Real property conveyance and future uses of conveyed real property.
- 4.16.150 Conveyance for public purpose.

4.16.005 Definitions.

- A. "Deed Restriction" a deed restriction is a clause in a deed that limits the use of land.
- B. "Disposal" means the sale, transfer, conveyance or exchange of the fee simple interest in land, and does not include the granting of an easement or right of way
- C. "Lot" a measured parcel of land having fixed boundaries and designated on a plot or survey.
- D. "Parcel" a tract or plot of land.
- E. "Real property" "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.
- F. "Restrictive Covenant" is a clause in a deed or lease to real property that limits what the owner of the land or lease can do with the property.

4.16.010 Purpose.

The purpose of borough real property disposal is to provide for the economic development of the borough in accordance with the borough comprehensive plan and DBC 4.01.010. Borough real property will be offered at fair market value, except as provided by DBC 4.01.100(B).

4.16.020 Authority.

The assembly shall by ordinance dispose of real property per DBC 4.01.015(A).

4.16.030 No warranty implied.

By selling or granting real property, the borough does not give or imply any warranty as to the real property's fitness, use, or suitability, or whether public utilities or services will be provided. It is the responsibility of the purchaser or grantee to determine whether the real property will meet their needs.

4.16.040 Procedures.

- A. The planning commission shall by resolution make a recommendation to the borough assembly regarding the proposed disposal. Planning commission review shall be limited to the property's suitability for the intended purpose and consistency with surrounding use(s) and management plans.
- B. The assembly shall by ordinance fix the general terms of all disposals of borough real property. The ordinance shall contain:
 - 1. The approximate date and the method of the disposal;
 - 2. The manner in which payment is to be made, the interest to be conveyed, the instrument of conveyance to be used, and any other terms the assembly deems necessary to provide the mayor or designee sufficient general direction to proceed with the disposal; and
 - 3. If any controls on future uses of real property are needed, they shall be set through deed restrictions or covenants per DBC 4.16.140(B) and DBC 4.16.150(B).
- C. The public has the option to nominate borough real property for future disposal per DBC 4.01.090.

4.16.050 Requirements for disposal.

- A. The borough may dispose of municipal property only when the affected real property has a management plan.
- B. Borough real property must be surveyed and platted per DBC 9.10 prior to disposal.
- C. All real property shall be sold at fair market value as determined by appraisal per DBC 4.01.100, except as allowed by DBC 4.01.100(B).

4.16.060 Terms for real property disposals.

- A. All applicants to purchase borough real property must be qualified per DBC 4.16.070.
- B. The assembly may authorize payment to be made through either full payment or financed over time. If financed over time:
 - 1. The down payment, payment schedule and rate of interest shall be set in the assembly ordinance.

2. For a disposal of real property with a value of more than \$5,000, the prospective purchaser shall pay to the borough a down payment not less than 10 percent of the minimum appraised value at the time of the sale or bid opening.
- C. The disposal of real property with a value of \$5,000 or less shall be paid at the time of the disposal or bid opening by check or money order by the prospective purchaser.
- D. A non-refundable application fee may be required.
- E. If the assembly requires a prospective buyer to pay the borough a down payment, bond or other deposit, and if the prospective buyer breaches a term of the sale, damages will be assessed. The borough shall retain as liquidated damages the prospective buyer's down payment, bond or other deposit.
- F. The assembly may by ordinance impose additional limits on the number of parcels a buyer may acquire at any disposal.

4.16.070 Qualifications of applicants, bidders, proposers.

- A. A bidder at auction, or an applicant to otherwise purchase, respond to a proposal, enter into a management agreement, or the use of borough real property must be:
 1. A legally competent person under the laws of the state of Alaska.
 2. At least 18 years old.
 3. A group, association, or corporation authorized to conduct business under the laws of Alaska; or
 4. A person acting as an agent for another person qualified under this section who has provided evidence of this status acceptable to the borough mayor or his designee, for example, by filing with the borough a power of attorney or letter of authorization.
- B. A person is not qualified if the person is currently in breach or default on any deposit or payment to the borough including tax transactions.

4.16.080 Public outcry auction.

In a public outcry auction, a suggested opening bid is announced and an auctioneer accepts increasingly higher bids from the floor, with the real property sold to the highest bidder. A bid deposit may be required. Any bid deposit submitted that is not successful shall be returned to the unsuccessful bidder immediately following the auction.

4.16.090 Sealed bid public auction.

In a sealed bid public auction, a minimum bid is defined and sealed bids are accepted on a form prescribed by the borough. Bids shall remain sealed until specified date and time of bid opening. All bid openings shall be public, with the sale to the highest bidder who performs all terms of the sale. A bid deposit may be required. Any bid

deposit submitted that is not successful shall be returned to the unsuccessful bidder immediately following the bid opening.

4.16.100 Lottery disposal.

In a lottery, qualified applicants complete an application form prescribed by the borough to register for a chance to be chosen at random to purchase borough real property. Applications shall be submitted to the borough office, and reviewed to determine qualification per DBC 4.16.070. Qualified applicant names will be entered into the lottery drawing. Applicants will be notified of their eligibility status. Lottery drawings shall be made in public. A single individual, business, corporation or other eligible entity may purchase by lottery only one parcel of borough land every three years. A deposit may be required per the Denali Borough fee schedule. Any deposit submitted that is not successful shall be returned to the unsuccessful applicant immediately following the lottery drawing.

4.16.110 Over-the-counter disposal.

- A. In an over the counter disposal, real property that has been offered but not disposed of by auction or lottery is available for purchase on a first-come, first-served basis at the borough office.
- B. The mayor or designee shall periodically review the terms of sale of all land offered for sale over the counter and shall:
 - 1. Adjust the annual interest rates to reflect the prevailing market conditions; provided, the interest rate shall not be more than six percentage points above the prevailing Federal Reserve discount rate to member banks.
 - 2. Adjustments in the price of any lot offered in the over-the-counter disposal shall be made by the assembly. Price adjustments may be made under the guidance of an independent fee appraiser.
- C. Lots unsold may be offered at a future real property disposal.
- D. Defaulted parcels may be offered for resale over the counter and/or at a future real property disposal.

4.16.120 Direct disposal.

- A. The assembly may by ordinance authorize the mayor or designee to dispose of borough real property directly to the landowner adjoining the borough real property if:
 - 1. The real property has no legal or physical access and the cost of developing access would be greater than the resulting value of the parcel with access;
 - 2. The cost of surveying, platting, or taking other action necessary to establish an acceptable legal description would exceed the value of the property;
 - 3. The real property is of such a size or shape as to be illegal or unfeasible to develop as an independent parcel under the applicable land use ordinance;or

4. The land is found not suitable for development and is placed in permanent conservation status.

4.16.130 Negotiated disposal.

A. The assembly may by ordinance authorize the mayor or designee to disposal of borough real property directly to an interested, eligible party under rare, specific circumstances when:

1. The disposal meets the broad goals for real property disposal specified in DBC 4.01.010 and the specific terms of the proposed sale do not fit well into the other methods outlined in this chapter.

4.16.140 Real property conveyance and future uses of conveyed real property.

A. After the buyer has paid to the borough the payments required by ordinance, the mayor or designee shall execute the instrument of conveyance authorized by ordinance that transfers the real property or the interest in real property to the buyer.

B. An instrument conveying real property may contain controls on future real property uses, for example deed restrictions, that set specific, borough-enforceable rules approved by the assembly that:

1. Define allowed and prohibited use.
2. Prohibit subdivision and/or set maximum residential densities.
3. Establish dimensional requirements, such as building setbacks or maximum building heights.
4. Establish other use controls necessary to comply with the goals for the disposal established in the management plan or other adopted borough real property use policy.

4.16 .150 Conveyance for public purpose.

The transfer of borough real property may be made to a state or federal agency, non-profit, or municipality within the borough, for public purposes for less than fair market value per DBC 4.01.100(B) if:

- A. Approved by the borough assembly;
- B. The mayor or his designee ensures, by regulation, deed restriction, covenant, or otherwise, that transfers of land under this section serve a public purpose and are in the public interest; and
- C. The borough retains a reversionary interest if the land is not used for the public purpose that was approved by the borough assembly on each conveyance or other land use authorization made under this section.

Chapter 4.17

LEASING OF BOROUGH REAL PROPERTY

Sections:

- 4.17.005 Definitions.
- 4.17.010 Purpose.
- 4.17.020 Authority.
- 4.17.030 No warranty implied.
- 4.17.040 Procedures.
- 4.17.050 Requirements for lease.
- 4.17.060 Qualifications of applicants or bidders
- 4.17.070 Term of lease.
- 4.17.080 Right of renewal.
- 4.17.090 Lease rate.
- 4.17.100 Attachment of special conditions.
- 4.17.110 Termination of lease.
- 4.17.120 Easements on leased land.

4.17.005 Definitions.

- A. "Animal Unit Month (AUM)" an AUM is the amount of forage needed to sustain one cow and her calf, one horse, or five sheep or goats for a month.
- B. "Lease" a contract or instrument conveying property to another for a specified period or for a period determinable at the will of either lessor or lessee in consideration of rent or other compensation.
- C. "Leasee" a person who holds the lease of a property; a tenant.

4.17.010 Purpose.

The purpose of leasing borough real property is to provide for the economic development of the borough in accordance with the borough comprehensive plan and DBC 4.01.010. Borough real property will be offered at fair market value, except as provided by DBC 4.01.100(B).

4.17.020 Authority.

The assembly shall by ordinance lease real property per DBC 4.01.015(A).

4.17.030 No warranty implied.

By leasing real property the borough does not give or imply any warranty as to the real property's fitness, use, or suitability, or whether public utilities or services will be provided. It is the responsibility of the lessee to determine whether the real property will meet their needs.

4.17.040 Procedures.

- A. Real property may be leased in response to the annual work plan; a request from an individual, business, or organization; or by public request.
- B. The planning commission by resolution shall make a recommendation to the assembly regarding a proposed lease per DBC 4.01.015(D).
- C. The assembly may by ordinance authorize the mayor or designee to lease real property per DBC 4.01.015(A).
- D. The assembly may provide for competitive bidding to lease borough real property that is classified and intended for commercial or industrial use. Competitive bidding shall be conducted in accordance with requirements established by the assembly.

4.17.050 Requirements for lease.

- A. The borough may lease real property only when the affected real property has a management plan and the proposed lease conforms with the existing classifications.
- B. Borough real property must be surveyed and platted per DBC 9.10 prior to lease.
- C. All real property shall be leased at fair market value as determined by appraisal per DBC 4.01.100, except as allowed by DBC 4.01.100(B).
- D. Applicants to lease borough real property shall submit a complete application form prescribed by the borough. A nonrefundable lease application fee may be required per the Denali Borough fee schedule.
- E. The lease applicant shall submit to the borough for review and approval a plan of operations as specified below. The lessee's plan of operations must be consistent with the broad goals of this title, the area management plan, other applicable land use plans, and provisions of borough code. The plan of operations shall include, at a minimum:
 - 1. Detailed description of the intended use of the real property.
 - 2. Desired lease length.
 - 3. Timetable for development.
 - 4. Planned structures and fuel storage facilities accompanied by a scale drawing.
 - 5. Estimated value of the improvements.
 - 6. Delineated access, water, and power sources.
 - 7. Intended solid waste and wastewater disposal methods.
 - 8. If a non-exclusive lease, identify location points of passage for the general public.
 - 9. Detailed description of how improvements will be removed at the end of the lease.

4.17.060 Qualifications of applicants or bidders

- A. A bidder at auction, or an applicant to otherwise lease, enter into a management agreement, or the use of borough real property must be:
 - 1. A legally competent person under the laws of the state of Alaska.
 - 2. At least 18 years old.
 - 3. A group, association, or corporation authorized to conduct business under the laws of Alaska; or
 - 4. A person acting as an agent for another person qualified under this section who has provided evidence of this status acceptable to the borough mayor or his designee, for example, by filing with the borough a power of attorney or letter of authorization.
- B. Under certain circumstances, the borough may require a sole proprietor, partnership, corporation or other entity to provide a credit application. All financial information supplied to the Denali Borough will be stamped Confidential and will not be released for public scrutiny under applicable Public Records statutes.
- C. A person is not qualified if they are currently in breach or default on any deposit or payment to the borough including tax transactions.

4.17.070 Term of lease.

- A. The term of the lease shall be based on the type of lease, the nature of the improvements to be made by the lessee and shall generally be long enough to allow for amortization of improvements made by the lessee.
 - 1. Leases shall have a maximum term of 35 years.
 - 2. A lease for a term in excess of 10 years shall be recorded at the state recorder's office.
 - 3. Lessee shall provide no less than 90 days' notice of a request to renew a lease.
- B. The lessee must comply with the operations plan.
- C. Proposed modifications to the operations plan requires submittal and approval of a request for plan amendment.
- D. Minor changes in the operations plan may be approved by the mayor or designee. Minor changes are defined as those that do not notably change the nature of the use, the footprint of any improvements, or the impact on surrounding uses. If changes are made without approval of the mayor or designee, the mayor or designee may require the changes to be reversed at the lessee's expense.
- E. Major changes to the operation plan shall be approved by the assembly. Major changes are defined as those that notably change the nature of the use, the footprint of any improvements, or the impact on surrounding uses.
- F. If changes are made without approval of either the mayor or designee or assembly, the mayor or designee may require the changes to be reversed at the lessee's expense.

4.17.080 Right of renewal.

The assembly may by ordinance grant the lessee a right of renewal upon expiration of the initial term, provided that the renewal, or any extension of the lease, shall be subject to all provisions of this code in effect at the time of the renewal, and that the lessee has complied with the approved operations plan.

4.17.090 Lease rate.

- A. The annual lease rate for a lease shall be established as the fair market value at the time the lease contract is approved, as determined by a qualified appraiser (see DBC 4.01.100) unless otherwise authorized by ordinance. If an existing appraisal is less than two-years old, a letter of opinion may be used.
- B. The rate for leases of borough land shall be calculated by multiplying the property's fair market value as established by an Alaska State certified appraiser with the rate multiplier of seven and one-half percent divided by 12 to determine the monthly base lease rate.
- C. Leases will be reviewed every five years and adjustments will be determined by adding the increase or decrease rate of the consumer price index (CPI) based on the annual month of March adjustment for the Anchorage metropolitan area market. The amount of the adjustment will be conveyed to the lessee by the lessor by June 1st of each year and the adjusted payment will start beginning with the following July lease payment.
- D. The appraised value or the adjusted value shall not include any improvements the lessee has made.
- E. Grazing leases will be based on the animal unit month (AUM) of livestock.

4.17.100 Attachment of special conditions.

The assembly, mayor or designee may attach special conditions to a lease in order to reduce risk to the borough, mitigate public concerns, or other purposes.

4.17.110 Termination of lease.

When the lease terminates, the lessee shall remove all improvements made pursuant to the plan of operations except those improvements that the lease specifies shall become the property of the borough, and the lessee shall restore the land to reasonably the same condition it was in at the time the lease was executed or, if stipulated, to the condition specified in the lease agreement. Improvements that are not removed by the lessee at the expiration of the lease shall be removed at the lessee's expense.

4.17.120 Easements on leased land.

Every lease of borough real property shall provide that the borough retains the right to designate or grant rights-of-way or utility easements across the leased premises without compensation, provided, that the lessee shall be compensated for the taking or destruction of any improvements and provided further that the lessee, at their

option, may request to terminate the lease and/or a rental adjustment to reflect any reduction in value of the leased premises.

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Chapter 4.18

EXCHANGE OF BOROUGH REAL PROPERTY

- 4.18.005 Definitions.**
- 4.18.010 Purpose.**
- 4.18.020 Authority.**
- 4.18.030 No warranty implied.**
- 4.18.040 Requirements for exchange.**
- 4.18.050 Value of real property exchanged.**
- 4.18.060 Execution of exchange.**

4.18.005 Definitions

4.18.010 Purpose.

Subject to the requirements of this title, the assembly may by ordinance authorize the exchange of borough real property. Exchanges may be for the purpose of consolidating land holdings, and for creating land ownership and use patterns which will permit more effective management. Exchanges shall be demonstrated to be in the best interest of the Denali Borough

4.18.020 Authority.

The assembly shall by ordinance exchange real property per DBC 4.01.015 and DBC 4.01.020.

4.18.030 No warranty implied.

By exchanging real property the borough does not give or imply any warranty as to the real property's fitness, use, or suitability, or whether public utilities or services will be provided. It is the responsibility of the party involved in the exchange to determine whether the real property will meet their needs.

4.18.040 Requirements for exchange.

- A. The borough may exchange borough real property only when the affected area has a management plan.
- B. Borough real property must be surveyed and platted per DBC 9.10 prior to exchange.

4.18.050 Value of real property exchanged.

- A. The borough may accept in exchange for borough real property any consideration of sufficient value not prohibited by law. Decisions on real property exchanges are "major land use decisions", as specified in DBC 4.01.015, and the assembly shall

review and approve or reject offers for exchange of municipal real property, following the same procedures as specified for real property disposals per DBC 4.16.040, including the requirement for a best interest finding per DBC 4.01.070.

- B. As is the case with disposals, exchanges shall provide for equal value, except where the assembly prepares an explicit written finding, that borough and public interests and the goals expressed in DBC 4.01.010 are best met through an exchange at less than equal value.

4.18.060 Execution of exchange.

The borough shall first, or simultaneously, receive the title conveyance for the real property the borough is to receive before the borough may convey the title to the real property the borough is to release through this exchange.

Section 3. Effective Date. This ordinance becomes effective upon adoption of the Denali Borough Assembly and signature of the Denali Borough Mayor.

DATE INTRODUCED: JULY 13, 2016
FIRST READING: JULY 13, 2016
PUBLIC HEARING: AUGUST 10, 2016

PASSED and APPROVED by the DENALI BOROUGH ASSEMBLY this ____ day of _____, 2016.

Mayor Clay Walker

ATTEST: _____
Gail Pieknik, Borough Clerk