

By: Fred Wagner  
Introduced: February 6, 2017  
Public Hearing: March 6, 2017  
Action: Approved

**MATANUSKA-SUSITNA BOROUGH  
PLANNING COMMISSION RESOLUTION NO. 17-01**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION RECOMMENDING ASSEMBLY APPROVAL OF PROPOSED AMENDMENTS TO TITLE 43, SUBDIVISIONS, TO ADDRESS SUBSTANTIAL ITEMS OUTLINED IN THE PLANNING DEPARTMENT STAFF MEMORANDUM DATED MARCH 1, 2013.

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WHEREAS, on April 17, 2012 the Borough Assembly approved Ordinance 12-072, repealing MSB Title 27 and adopting MSB Title 43, Subdivisions. At the time of adoption, the assembly requested that staff work with the code for a period of time and bring any suggested changes back to the assembly for consideration; and

WHEREAS, on March 1, 2013, Platting Division staff prepared a report summarizing their review and breaking down proposed amendments into four areas: housekeeping, procedural, inconsistencies, and substantial; and

WHEREAS, amendments have been adopted dealing with housekeeping, procedural changes and inconsistencies in the report; and

WHEREAS, the platting board has been working with platting staff to address the substantial items outlined in the report; and

WHEREAS, on August 18, 2016 the platting board held a public hearing and adopted Resolution 16-54 recommending planning commission and assembly approval of an ordinance addressing

SUBSTANTIAL ITEMS outlined in the planning department staff memorandum dated March 1, 2013.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Planning Commission hereby recommends the assembly adopt an ordinance addressing SUBSTANTIAL ITEMS as outlined in the planning department staff memorandum dated March 1, 2013

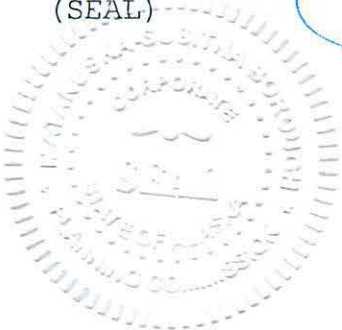
ADOPTED by the Matanuska-Susitna Borough Planning Commission this 6<sup>th</sup> day of March, 2017.

  
COLLEEN VAGUE, Chair

ATTEST

  
MARY BRODIGAN, Planning Clerk

(SEAL)



YES: *Vague, Anderson, Healy, and Rauchenstein*

NO:

**MATANUSKA-SUSITNA BOROUGH  
ORDINANCE SERIAL NO.**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING  
MSB 43, SUBDIVISIONS.

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BE IT ENACTED:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the Borough Code.

Section 2. Amendment of subsection. MSB 43.05.015(B), Purpose and Scope, is hereby amended as follows:

[(A) THIS TITLE IS TO PROMOTE THE COMMON GOOD AND WELFARE WITH REGARD TO PLATTING OF SUBDIVISIONS. THIS TITLE ESTABLISHES CONSISTENT MINIMUM GUIDELINES FOR THE REGULATION OF THE SUBDIVISION AND PLATTING OF LANDS WITHIN THE BOROUGH IN ACCORDANCE WITH STATE STATUTES.]

**(A) The purposes of this title are:**

**(1) to implement the Borough's areawide platting power under AS 29.40.070.**

**(2) To promote and protect the public health, safety and welfare; to provide for the proper arrangement of roads and streets in relation to existing or proposed roads and streets; to provide for adequate, useful and convenient open spaces; to provide for the efficient movement of vehicular, pedestrian and other modes of transportation; to assure adequate and properly**

placed utilities; to provide access for firefighting apparatus; to provide recreation, light and air, and to avoid population congestion, to facilitate the orderly and efficient layout and use of the land.

(B) The following list of documents are to be incorporated within MSB Title 43 as if fully set forth in this title:

- (1) BLM manual of survey instructions;
- (2) platting procedures pamphlet; [AND]
- (3) Subdivision Construction Manual[.];
- (4) MSB Title 11;**
- (5) MSB Title 15; and**
- (6) MSB Title 17.**

(C) Each manual, excepting for the BLM manual of survey instructions, may be modified by the platting board subject to review by the planning commission and adoption by the assembly.

Section 3. Amendment of subsection. MSB 43.10.060(A), Platting Authority Procedure, is hereby amended as follows:

(A) The platting board shall act on an application for preliminary plat, variance, public use easement, plat note amendment, **elimination or modification of platted utility, drainage, sanitation, slope, snow storage, buffer, and screening easements,** or vacation of

public interest only after holding a public hearing on the application. The platting board shall hear applications for vacations at the hearing on the preliminary plat to which they pertain if an application for plat approval has been filed or is required. The platting board shall consider any preliminary or final plat affected by the vacation of public interest.

Section 4. Amendment of section. MSB 43.15.005, General Administration, is hereby amended as follows:

(A) The platting board shall act upon applications for preliminary plats, variances, public use easements, plat note amendments, elimination or modification of platted utility, drainage, sanitation, slope, snow storage, buffer, and screening easements, and vacations of public interest within the procedures outlined by AS 29.40.110 and this title.

[(1) THE PLATTING BOARD SHALL NOT MAKE CONDITIONS OF PLAT APPROVAL BEYOND THE AUTHORITY AND SPECIFIC PROVISIONS OF THIS TITLE.]

(B) The platting officer shall act upon applications for abbreviated plats, waivers, 40-acre exemptions, and right-of-way acquisition plats[, AND ELIMINATION OR MODIFICATION OF UTILITY EASEMENTS AS DESCRIBED IN MSB 43.15.032].

(1) the platting officer shall determine whether agency, department, or public comments provided are within the regulatory authority of this chapter and whether they should apply to a platting action.

[(2) THE PLATTING OFFICER SHALL NOT RECOMMEND OR IMPOSE CONDITIONS OF APPROVAL FOR PLATTING ACTIONS THAT ARE NOT WITHIN THE SPECIFIC AUTHORITY OF THIS TITLE.]

[(3) THE PLATTING OFFICER SHALL DETERMINE WHETHER UTILITY EASEMENT REQUESTS ARE REASONABLE AND ONLY REQUIRE REASONABLE REQUESTS AS RECOMMENDATIONS TO THE BOARD OR AS CONDITIONS OF APPROVAL. THE PLATTING OFFICER SHALL PROVIDE FINAL APPROVAL ON THE ADEQUACY OF AN EASEMENT(S) PROVIDED FOR PLATTING ACTIONS ON FINAL PLATS AND PLATTING ACTIONS DELEGATED AS BY THIS TITLE, WITHIN 20 DAYS OF ACCEPTANCE OF SUBMISSION.]

(C) Leaseholds located within municipal airports are exempt from the requirement to plat.

(D) Commercial leases of ten years or greater are exempt from this title.

Section 5. Amendment of section. MSB 43.15.012, Forty-Acre Exemption, is hereby amended as follows:

(A) Purpose clause. The purpose of this section is to allow the land owner to divide or combine large parcels of land by document in an expedited manner.

(B) Exemptions. The platting officer shall exempt parcels from the provisions of this title where all the following conditions are met:

(1) The smallest parcel created is 40 acres in size, or is one-sixteenth of a section as defined by "aliquot part;"

(2) The parcel is to be conveyed by deed;

(3) The parcels or tracts created can be described by:

(a) aliquot part; or

(b) a metes and bounds description, provided the description is under the seal of a land surveyor;

(4) The document does not alter:

(a) an existing plat of record, including tracts on a cadastral plat; or

(b) parcels created via the waiver process;

(5) A certificate to plat shall be required, consistent with the requirements of MSB 43.15.053(E);

(6) Signatures of consent are provided on affidavits from all parties holding a legal or equitable interest in the property to be recorded with the document;

(7) No more than four parcels shall be created from the parent parcel(s); and

(8) The applicant demonstrates that legal access as defined by MSB 43.20.120 exists to all parcels or tracts created and is suitable for future borough standard road construction.

(a) The suitability of legal access for future road construction shall be documented by the applicant based on the following information available from existing records within the Matanuska-Susitna Borough:

(i) air photos;

(ii) USGS mapping;

(iii) topographic mapping; and

(iv) other available data.

(b) The platting officer shall review within ten working days the legal access documentation and its "suitability" for future road construction.



(c) [FOR THE PURPOSE OF THIS SUBSECTION, "SUITABILITY" IS DEFINED AS THE ABILITY OF THE LEGAL ACCESS TO CONTAIN A BOROUGH STANDARD ROAD.

(I)] Access for parcels located two miles beyond the limits of the core comprehensive planning area may be from a trail shown to be constructible to the trail standards listed in MSB 43.20.055(B)(5); however, no trail construction is required for 40-acre exemption approval.

(d) The applicant[BOROUGH SHALL NOT REQUIRE THE PETITIONER TO PROVIDE A DESIGNED ROAD OR TRAIL TO MEET THE REQUIREMENTS OF THIS SUBSECTION] shall be required to submit plan, profile, and cross-sections if existing grades along proposed route exceed 10%, or if existing utilities or other land/water features appear to create impediments to road design meeting Subdivision Construction Manual Standards.

(9) An as-built of all structures or improvements within the parcel boundaries is provided, or a letter from a land surveyor stating that no setback violations exist or will be created by this platting action;

(10) For parcels described by metes and bounds, all parcel corners shall be surveyed and

monumented and a record of survey or a detailed sealed drawing prepared by a land surveyor shall be recorded with the 40-acre exemption document. The survey shall be tied to at least two platted subdivision corners or two aliquot part corners set by the state or federal government, or land surveyor, or any combination of the preceding;

(C) Exemption document. The document exempting a parcel from the provisions of this title shall be reviewed by the platting officer. The platting officer shall approve the exemption document within ten working days once the exemption submittal meets the conditions of this subsection. Upon approval of the document, the platting officer shall execute the approved document, signed by the planning director, and it shall be affixed with the platting board seal. It is the responsibility of the applicant to pay all appropriate fees.

(1) The intent of this provision is to allow prompt approval of a 40-acre exemption.

(D) The decision of the platting officer in this matter is final unless appealed in accordance with MSB 43.35.

Section 6. Amendment of subsection. MSB 43.15.016(A), Preliminary Plat Submittal and Approval, is hereby amended as follows:

(A) An application for conceptual plat approval shall be submitted with plat copies as needed, with the following data and appropriate fees:

(1) maps of the proposed subdivision and the area, which adequately display surrounding development of the proposed subdivision boundaries (minimum of 50 feet from proposed boundary) to a scale of no less than one inch equals 100 feet, which includes the following information:

(a) the location of all property lines, utilizing the preliminary plat as base map;

(b) topographic contour intervals of five feet if the ground slope is less than 10 percent, and ten feet if the ground slope is greater than 10 percent;

(c) preliminary horizontal location of streets, water supply, sewage disposal systems, and other public improvement details, to indicate conformance with borough and state standards;

(d) the location of water bodies and drainage courses, including the location of FEMA mapped special flood hazard areas, and flood hazard information required under MSB

17.29.160, General standards for flood hazard reduction, when required;

(e) the location of existing facilities and structures within the proposed subdivision, such as roadways, driveways, buildings, [SEWAGE SYSTEMS, WELLS,] utility poles and lines, excavations, bridges, and culverts; [AND]

**(f) within 100 feet of property boundary provide location of existing sewage systems and wells; and**

(2) the subdivider shall submit supporting written information including all soils and engineering data as required by this title. Applications proposing community or municipal water supply systems or wastewater disposal systems or both shall submit a conceptual plan. Prior to final plat approval, State of Alaska Department of Environmental Conservation review and approval is required for community or municipal water supply systems and community or municipal wastewater disposal systems. Final plat approval will require as-builts or record drawings for any community or municipal water and wastewater disposal systems installed.

Section 7. Amendment of section. MSB 43.15.021, Public Use Easement Acceptance Procedure, is hereby amended as follows:

(A) Prior to acceptance by the borough and recordation, the offeror for a public use easement shall submit a legal description of the proposed easement

together with a drawing depicting the location of the proposed easement. If the proposed easement is in the form of a metes and bounds description, the description shall be submitted under the seal of a [REGISTERED] land surveyor. In lieu of a written legal description, a drawing showing the location and dimensions of the public use easement under the seal of a [REGISTERED] land surveyor shall be submitted.

(B) The legal description or drawing shall be reviewed for accuracy and completeness. If discrepancies are found, the offeror shall be notified of the discrepancies and shall resubmit the application for approval.

(C) The offeror shall prove that the public use easement is in a practical location where road construction is feasible in accordance with the Subdivision Construction Manual. The offeror [SHALL NOT] shall be required to submit [ROAD DESIGNS]plan, profile, and cross-sections if existing grades along proposed route exceed 10%, or if existing utilities or other land/water features appear to create impediments to road design meeting Subdivision Construction Manual Standards.

(D) If road construction is proposed, all permits and approvals from federal, state, or other municipal regulatory agencies applicable to the construction of the road shall be submitted to platting staff prior to final approval. [THE OFFEROR SHALL DEMONSTRATE THAT THE PHYSICAL ROAD IS FEASIBLE WITHIN THE PUBLIC USE EASEMENT AND THAT ALL APPROVALS REQUIRED FROM FEDERAL, STATE, BOROUGH, AND OTHER REGULATORY AGENCIES HAVE BEEN ISSUED OR FINAL RECORDING WILL BE CONTINGENT UPON OTHER PERMITS AND APPROVALS.]

(E) Public use easements shall be surveyed, monumented on the exterior, or the centerline if approved by the platting officer, and either shown on a record of survey, an associated plat, or a detailed sealed drawing prepared by a land surveyor which shall be recorded with the public use easement document.

(F) It is the responsibility of the offeror to pay all applicable fees.

(G) In acting on applications under this section the platting authority shall use the standards and procedures of MSB 43.10.060. Public noticing shall be in accordance with MSB 43.10.065.

[(E)](H) Upon compliance with subsections (A) through [(D)](G) of this section, a public use easement

form with the approved legal description, bearing acknowledgment of acceptance by the borough and being signed by all individuals holding a legal or equitable interest in the property involved, shall be recorded. This provision does not require the signatures of holders of subsurface estate interests in the land being dedicated.

[(F) IT IS THE RESPONSIBILITY OF THE OFFEROR TO PAY ALL APPLICABLE FEES.

(G) IN ACTING ON APPLICATIONS UNDER THIS SECTION THE PLATTING AUTHORITY SHALL USE THE STANDARDS AND PROCEDURES OF MSB 43.10.060. PUBLIC NOTICING SHALL BE IN ACCORDANCE WITH MSB 43.10.065.]

Section 8. Amendment of section. MSB 43.15.032, Elimination or Modification of Utility, Drainage, Sanitation, Slope, Snow Storage, Buffer, and Screening Easements, is hereby amended as follows:

(A) The platting [OFFICER]board shall review and act upon all petitions requesting elimination or modification of platted utility, drainage, sanitation, slope, snow storage, buffer, and screening easements; provided, that:

(1) the authority having jurisdiction over the easement consents;

(a) however, if the beneficiary of an easement refuses to authorize a vacation, the platting [OFFICER]board may approve the vacation if the following conditions are met:

(i) there are currently no existing improvements within the subject easement of the easement beneficiary or a portion of the easement will remain which includes the improvements;

(ii) if necessary a substitute easement is provided by document on the plat; and

(iii) findings of facts support granting the vacation;

(2) if the elimination or modification of easement is due to an encroachment, an as-built survey must be submitted with the original petition; and

(3) a vacation resolution is recorded along with a graphic representation showing the specific area eliminated and any alternate easements proposed.

(B) In acting on applications under this section the platting [OFFICER]board shall use the standards [AND THE PROCEDURES USED BY THE PLATTING BOARD IN ACTING ON APPLICATIONS] and procedures under MSB 43.10.060. The platting [OFFICER] board shall act upon the application within [30] 60 days of the acceptance for public hearing.



(C) Public noticing shall be in conformance with MSB 43.10.065. [NOTICE OF PLATTING AUTHORITY APPROVAL SHALL BE SENT TO THE PUBLIC BODY HAVING JURISDICTION IN ACCORDANCE WITH MSB 43.10.065.]

Section 9. Amendment of section. MSB 43.15.040, Section Line and State Recognized RS-2477 Easement Vacations, is hereby amended as follows:

(A) This title provides standards for the vacation of section line easements and state recognized RS-2477 easements, also referred to as rights-of-way acquired under former 43 U.S.C. 932.

(B) An application for vacation of a section line easement or RS-2477 easement shall contain the following:

(1) a preliminary finding [OR]of approval from the appropriate agency of the state of Alaska;

(2) documentation by a [REGISTERED] land surveyor establishing the existence of a valid section line easement or RS-2477 easement within the area to be vacated, stating the width of the section line easement or RS-2477 easement and verifying the existence and width of any adjoining section line easements or RS-2477 easements;

(3) legal description of the section line easement or RS-2477 easement proposed for vacation;

(4) reason for vacation request;

(5) plat copies, as needed, of a section line or RS-2477 vacation plat, drawn to the requirement of the state of Alaska;

(6) current Alaska State Department of Transportation and Public Facilities and Department of Natural Resources final approval required prior to recordation pursuant to A.S. 19.30.410;

(7) [Repealed by Ord. 16-018, § 17, 2016]

(8) demonstration that a reasonably comparable, established alternate right-of-way or means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses pursuant to A.S. 19.30.410. In making this determination, the platting board shall consider comments from utilities concerning the adequacy of alternative access to provide for utility facilities and services; and

(9) demonstration that the vacation shall meet the standards set forth under MSB 43.15.035.

(C) Public notice of the vacation shall follow the procedures of MSB 43.10.065. Notice of platting

authority approval shall be sent to the public body having jurisdiction in accordance with MSB 43.10.065.

Section 10. Amendment of section. MSB 43.15.049, Final Plat; General Provisions, is hereby amended as follows:

(A) Board review. The platting officer shall review all plats subdividing lands within the borough boundaries.

(B) Review for deficiencies. The platting officer shall review and check all final plats for deficiencies. Where deficiencies are found, the plat shall be returned to the subdivider for alteration or correction by the land surveyor responsible for the survey and the plat. The platting officer shall approve or disapprove the final plat within 20 days of submittal of the plat. If disapproved, the final plat shall be returned to the subdivider with specification of the deficiencies. The platting officer shall approve or disapprove the second final plat within ten days of resubmittal.

(C) Dedication and adoption. When a tract or parcel of land has been subdivided and the plat bears acknowledgement of the owner and the approval of the planning and land use director has been recorded in compliance with this title, all streets and other public

areas shown on the plat shall be dedicated to the public for the use and purpose specified in the plat.

(D) Duplication of names. Road and subdivision names may not duplicate existing road or subdivision names in spelling or sound to avoid confusion with existing names.

(E) Service area boundary requirements. [BECAUSE OF THE CONSTRAINTS OF STATE LAW, IT SHALL NOT BE A CONDITION OF SUBDIVISION APPROVAL THAT NO LOT, TRACT, OR PARCEL BE SPLIT BY A SERVICE AREA BOUNDARY. HOWEVER, IF POSSIBLE THE SUBDIVIDER SHOULD CONFIGURE A LOT, TRACT, OR PARCEL SUCH THAT IT WOULD NOT BE SPLIT BY A SERVICE AREA.] It shall be a condition of subdivision approval that no lot, tract, or parcel be split by a service area boundary. Proposals to create a lot, tract, or parcel that would be split by a service area boundary must realign the service area boundary prior to final plat approval.

(F) Utility easements.

(1) A snow storage easement if granted can be placed within a utility easement if there is no overriding surface conflict.

(2) A utility easement can be placed within a slope easement.

(G) Minor plat alterations.

(1) The purpose of this subsection is to resolve platting issues and/or improve the subdivision design and function without burdening staff, the petitioner, and the board with the additional time and costs to rehear the case.

(2) The platting officer is authorized to approve minor changes to an approved preliminary plat or master plan during review of the final plat for the following items. Any amendment or modification of the preliminary plat shall be limited to the following:

(a) The total number of lots may be reduced;

(b) The total number of lots may not be increased;

(c) Individual lot sizes may not be reduced by more than 20 percent per lot, and at no point to less than the minimum requirements that the preliminary plat was approved under. The aggregate of the proposed reductions shall not exceed one acre;

(d) Proposed rights-of-way or easements may be moved up to 25 feet if approved by the platting officer[, IF CHANGES MADE DO NOT AFFECT EXISTING PROPERTIES];

[ (E) [PROPOSED RIGHTS-OF-WAY OR EASEMENTS MAY BE MOVED BETWEEN 25 FEET AND 100 FEET WITH THE CONCURRENCE OF THE PLATTING OFFICER AND THE DIRECTOR OF THE MATANUSKA-SUSITNA BOROUGH DEPARTMENT OF PUBLIC WORKS, AS LONG AS CHANGES DO NOT INCREASE THE AVERAGE DAILY TRAFFIC COUNT BY MORE THAN 5 PERCENT OR NECESSITATE A HIGHER ROAD CLASSIFICATION;]

(F) Approved external accesses cannot be changed; and

(G) Amendments and modifications cannot create setback violations.

**(H) Prior to final plat approval, all permits and approvals from federal, state, or municipal regulatory agencies shall be submitted to platting staff.**

Section 11. Amendment of subsection. MSB 43.15.051(H), Final Plat; Submitted, is hereby amended as follows:

(H) All monuments to be of record shall be adequately described and clearly identified on the plat.  
[WHERE ADDITIONAL MONUMENTS SHALL BE SET AFTER THE PLAT IS RECORDED, THE LOCATION OF THE ADDITIONAL SUBORDINATE MONUMENTS SHALL BE SHOWN BY A DISTINCT SYMBOL NOTED ON THE PLAT AS REPRESENTING MONUMENTS SET THIS SURVEY.]

Section 12. Amendment of subsection. MSB 43.15.053(C), Final Plat; Certificates, is hereby amended as follows:

(C) Surveyor's certificate. A surveyor's certificate shall be substantially in one of the forms that follow, whichever is appropriate:

I, (surveyor's name and land surveyor number), hereby certify that I am a registered professional land surveyor in the state of Alaska and that this plat represents a survey made by me or under my direct supervision, and that the monuments shown on the plat actually exist as described, and that all dimensional and other details are true and correct to the best of my knowledge.

(SEAL)

I, (surveyor's name and land surveyor number), hereby certify that I am a registered professional land surveyor in the state of Alaska and that this plat was prepared by me or under my direct supervision using record dimensions from Plat #\_\_\_\_\_.

(SEAL)

[I, (SURVEYOR'S NAME AND LAND SURVEYOR NUMBER)  
HEREBY CERTIFY THAT I AM A REGISTERED PROFESSIONAL LAND  
SURVEYOR IN THE STATE OF ALASKA AND THAT THIS PLAT  
REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECT  
SUPERVISION, AND THAT THE MONUMENTS SHOWN ON THE PLAT  
SHALL BE SET ON OR BEFORE \_\_\_\_\_, AND THAT ALL

DIMENSIONAL AND OTHER DETAILS ARE TRUE AND CORRECT TO  
THE BEST OF MY KNOWLEDGE.

(SEAL)]

Section 13. Amendment of subsection. MSB 43.15.053(E), Final  
Plat, Certificates, is hereby amended as follows:

(E) Certificate to plat. Every final plat of a  
subdivision submitted for recording shall be accompanied  
by a certificate to plat or a preliminary commitment for  
title insurance, executed no more than [90]7 days prior  
to recording, by a title insurance company, confirming  
that the title of the land described and shown on the  
plat is in the name of the person signing the certificate  
of ownership as it is shown on the plat, or in the name  
of the corporation as shown in the certificate of  
ownership.

Section 14. Amendment of subsection. MSB 43.15.053(F),  
Final Plat; Certificates, is hereby amended as follows:

(F) Certificate of payment of taxes. Every final  
plat of a subdivision submitted for recording shall be  
accompanied by a certificate from the tax collecting  
official or city treasurer stating that all special  
assessments and borough real property taxes levied  
against the property are current. The certificate shall  
be as follows:



CERTIFICATION OF PAYMENT OF TAXES

I hereby certify that all current taxes and special assessments, through \_\_\_\_\_, 20\_\_\_\_, against the property, included in the subdivision or resubdivision, [HEREON] have been paid.

\_\_\_\_\_, 20\_\_\_\_

Tax Collection Official (Borough)

I hereby certify that all current taxes and special assessments through \_\_\_\_\_, 20\_\_\_\_, against the property, included in the subdivision or resubdivision, [HEREON] have been paid.

\_\_\_\_\_

Tax Collection Official (City)

Section 15. Repeal of subsection. MSB 43.15.054(D), Final Plat; Surveyor Requirements, is hereby repealed in its entirety:

[(D) MONUMENTS AND MARKERS SET AFTER RECORDING OF PLAT. ALL MONUMENTS OR MARKERS, OTHER THAN THE PERMANENT CONTROL MONUMENTS REQUIRED IN SUBSECTION (A) OF THIS SECTION, SHALL BE SET BEFORE THE RECORDING OF THE PLAT UNLESS THE LAND SURVEYOR INCLUDES IN THE SURVEYOR'S CERTIFICATION ON THE PLAT THAT THE ADDITIONAL MONUMENTS REQUIRED BY THIS TITLE SHALL BE SET ON OR BEFORE A SPECIFIED LATER DATE. THIS SUBSECTION SHALL ONLY BE USED WITH A SIGNED AND APPROVED SUBDIVISION AGREEMENT.]

Section 16. Amendment of section. MSB 43.20.020, Standards; General, is hereby amended as follows:

(A) This chapter establishes general design standards for subdivision development which, except as provided otherwise, govern all subdivisions in the borough.

(B) Construction of improvements within subdivision shall also comply with official construction standards for public improvements under the Subdivision Construction Manual.

**(C) All accesses to proposed subdivisions shall, if reasonably possible, take access toward road corridors delineated in the Long Range Transportation Plan, Official Streets and Highways Plan.**

Section 17. Amendment of section. MSB 43.20.060, Dedication to Public, is hereby amended as follows:

(A) All roads shall be dedicated to the public, except as provided in [SUBSECTION (D) OF THIS SECTION]**MSB 43.20.100(C)**; provided, that a subdivider shall be required only to provide the designated right-of-way width within the subdivision, and one-half of the designated right-of-way width of the street on the exterior boundary of the subdivision with the dedication

secured from the adjacent property owner before final plat approval.

(B) When accepting roadway dedication, the platting authority shall conduct a public hearing.

(C) Roads shall be dedicated for access to all lots within the subdivision and parcels of land adjacent to the subdivision except that access to adjoining lands does not have to be provided where legal and constructible alternative access is available. Dedications shall be a minimum of 60-foot-wide and sufficient to carry all traffic generated by the subdivision and to provide residential rights-of-way for projected traffic through the subdivision. Sixty-foot radius rights-of-way shall be dedicated at temporary and permanent cul-de-sacs.

(D) Subdivisions shall provide through connecting rights-of-way of residential collector standard minimum (as defined in the MSB Subdivision Construction Manual) to all adjoining stub rights-of-way and unsubdivided parcels, where feasible, to improve interconnectivity and/or public safety. If it is shown by the applicant to be unnecessary for future development and/or public safety, then a reduction to a lesser road right-of-way standard or an elimination of the requirement to provide

access shall be applied to all of (or a portion of) the right-of-way that is being considered for a reduced standard.

[(D)](E) The platting board may require the dedication or improvement, or dedication and improvement of rights-of-way, tracts, or easements no narrower than ten feet in width to accommodate the construction of walkways up to eight feet in width in any of the following circumstances:

(1) if a walkway is indicated as appropriate in the borough's comprehensive plan or other ordinance, i.e., special land use district (SPUD);

(2) if the walkway is reasonably necessary to provide safe and efficient pedestrian access to a school, playground, park, shopping center, public cemetery, transportation, or other community facility; or

(3) if the walkway is reasonably necessary to provide connectivity to a dedicated right-of-way in an adjoining subdivided or unsubdivided parcel.

(4) The above requirements for dedication of additional right-of-way for a walkway shall apply only where a walkway cannot be contained within the legal right-of-way reserved for a street;

(a) plats or master plans of 20 lots or less shall be exempt from requirements to construct a walkway, unless evidence is presented supporting the need for pedestrian safety or the walkway will provide connectivity to other pedestrian facilities.

Section 18. Amendment of section. MSB 43.20.100, Access Required, is hereby amended as follows:

(A) There shall be legal and physical road access provided to all subdivisions and to all lots within subdivisions, except as allowed by subsection (B) of this section and any other exemption within this title.

(B) Upon finding that no practical means of providing road access to a proposed subdivision exists and upon a showing that permanent public access by air, water, or railroad is both practical and feasible, the platting board shall waive the road requirements of subsection (A) of this section. If other than road access is approved, the mode of access shall be noted on the plat.

(C) Gated subdivisions and private roads shall be approved, provided they meet the following criteria:

(1) [ROADS ARE CONSTRUCTED TO THE REQUIRED BOROUGH STANDARDS]internal roads conform to the requirements of the Subdivision Construction Manual for

residential standards minimum except as allowed in MSB  
43.20.055;

(2) emergency services shall be provided access to deliver services within the private subdivision[. BOROUGH MAINTENANCE SHALL BE PROVIDED ACCESS TO GET THROUGH THE SUBDIVISION TO PROVIDE SERVICES BEYOND THE PRIVATE SUBDIVISION];

(3) there is no possibility or public necessity to provide for public through traffic because alternate legal access to adjoining properties is available and that access is constructible in accordance with Subdivision Construction Manual standards;[.]

(4) private road maintenance is guaranteed.

(a) the applicant shall submit a documented plan stating the following:

(i) what seasons road maintenance will be performed,

(ii) contact information for road maintenance,

(iii) length of the maintained roads in feet, and

(iv) surface type.

**(5) Existing lots created within subdivisions  
recorded with platted private roads may be subdivided  
using the private roads as the legal and physical access.**

[(D) A SUBDIVIDER PROPOSING TO CREATE ROADS SHALL ENSURE ACCESS TO ADJOINING PARCEL(S) BEYOND A PROPOSED SUBDIVISION AS FOLLOWS:

(1) LEGAL ACCESS SHALL BE PROVIDED ALONG A CONSTRUCTIBLE ALIGNMENT;

(A) GEOMETRICAL ALIGNMENT SHALL MEET A MINIMUM OF SUBCOLLECTOR STANDARDS UNLESS THE APPLICANT DEMONSTRATES THAT IT IS NOT NECESSARY;

(B) PROVIDED THAT CONSTRUCTING PHYSICAL ACCESS TO SAID ADJOINERS SHALL NOT BE A CONDITION OF PLAT APPROVAL.]

(E) A subdivision plat whose sole purpose is to separate/divide a home/headquarters site in a Matanuska-Susitna Borough agricultural rights parcel under former MSB Title 13 is exempt from the road construction standards of the MSB Subdivision Construction Manual; provided, that the following conditions are fulfilled:

(1) prior to preliminary plat submittal the agriculture rights property owner is to obtain assembly approval of the sale of the home/headquarters site

through an application made to the borough land and resource management division; and

(2) the maximum parcel size is five acres for the home/headquarters site; and

(3) only two parcels can be created from the farm unit parcel, the home/headquarters site and the remainder;

(4) the applicant demonstrates that legal access as defined in MSB 43.20.120, Legal Access, exists to all parcels or tracts created, and the suitability of the legal access for future residential road construction is documented by a [REGISTERED] land surveyor or civil engineer hired by the applicant;

(5) the property is to be surveyed and monumented and a plat submitted in conformance with MSB 43.15.016, Preliminary plat submittal and approval, 43.15.049, Final plat; general provisions, and 43.15.051, Final plat; submitted;

(6) a plat note declaring that the borough is not responsible for road construction or road maintenance; and

(7) a plat note restricting further subdivision of the parcels being created.



Section 19. Amendment of section. MSB 43.20.140, Physical Access, is hereby amended as follows:

(A) Roads used for access [OR]and internal circulation shall:

(1) conform to the existing requirements of the Subdivision Construction Manual; and [BE LOCATED ENTIRELY WITHIN DEDICATED OR LEGAL RIGHTS-OF-WAY]

(2) be located entirely within dedicated or legal rights-of-way [CONFORM TO EXISTING REQUIREMENTS OF THE SUBDIVISION CONSTRUCTION MANUAL.]; and

(a) Prior to recordation, a surveyor's sealed drawing shall be submitted showing traveled ways within existing or proposed rights-of-way and any slopes steeper than 2.5 to 1 that extend beyond the right-of-way limits.

(b) A centerline profile shall be provided for those sections of streets exceeding 6 percent grade.

Section 20. Amendment of subsection. MSB 43.20.281(A), Area, is hereby amended as follows:

(A) Unless designated otherwise by another authority having jurisdiction, minimum lot sizes shall be as follows:

(1) Except as allowed under subsections (A)(2), (3), and (4) of this section, all lots within this district shall contain at least 40,000 square feet of area with at least 10,000 square feet of usable building area and 10,000 square feet of contiguous usable septic area. Lots having 20,000 square feet or less of the total of usable building area and usable septic area shall have 10,000 square feet of contiguous usable septic area surrounded by a well exclusion area extending 100 feet from the perimeter, delineated and reserved on the plat at the discretion of the platting board.

(a) Usable septic area is that area where seasonal high water table is a minimum of eight feet below the surface. Where water is encountered at ten feet or less below the surface, the seasonal high subsurface water is to be determined between May 1st and October 30th, and:

(i) that area where slopes are less than 25 percent;

(ii) that area which is more than 100 feet from open water, surface waters, and wetlands;

(iii) that area which is located at least 50 feet from the top of a slope which is greater

than 25 percent and has more than ten feet of elevation change;

(iv) that area which is not within an area dedicated to public use;

(v) that area which is outside of utility or other easements that would affect the use of the areas for on-site septic installation;

(vi) that area which is outside of a protective well radius;

(vii) that area which is outside of any known debris burial site; and

(viii) This subsection (A)(1)(a) may be changed to a minimum of six feet below surface if all of the following criteria are met:

(aa) There are special considerations which would preclude reasonably creating usable area by placing suitable fill to provide eight feet water table clearance;

(bb) A standard design is provided which is certified to meet applicable ADEC requirements at the time of recording by a state of Alaska licensed professional engineer; and

(cc) A note is provided on the plat stating an engineer designed and certified

wastewater disposal system or packaged treatment plant meeting ADEC requirements will be required on subject lots (L#B#).

(b) Water table and ability of soils to accept effluent shall be determined by a number of borings or test holes sufficient to indicate subsurface conditions over the entire area of the subdivision. All of the borings and test holes shall be located within the perimeter of the proposed subdivision. Borings and test holes must have the following minimum depths below the ground surface:

(i) in areas known or suspected to contain permafrost, the lesser of:

(aa) twenty feet deep; or

(bb) a depth at which permafrost or an impermeable layer is encountered; and

(ii) the least depth associated with the following conditions, where they apply:

(aa) two feet below the depth where the water table is encountered;

(bb) twelve feet deep for shallow trench or bed systems;

(cc) sixteen feet deep for areas where deep trench or seepage pits will likely be used;

(dd) the depth to bedrock, clay, or other impermeable strata with an expected percolation rate slower than 120 minutes per inch; or

(ee) As determined by the engineer, a lesser depth as required to verify usable areas is acceptable for hand-dug excavations on parcels with limited or no access for heavy equipment.

(c) The minimum number of test holes shall be determined by the engineer.

(d) When the water table is encountered in the test holes, the depth to the seasonal high water table must be determined by:

(i) monitoring test holes or soil borings at times between May and October (inclusive);

(ii) soil mottling or staining analyses;

(iii) interpretation of levels of standing open water;

(iv) local knowledge and experience, if approved by the borough; or

(v) a combination of these methods.

(e) The depth to any seeps must be noted and may require subsequent monitoring.

(f) Soils in a usable wastewater disposal area must be:

(i) clearly shown to be visually classified as GW, GP, SW, or SP under the Unified Soils Classification System and expected to have a percolation rate of 15 minutes per inch or less (faster);

(ii) clearly shown to be GM or SM under the Unified Soils Classification System by a sieve analysis; or

(iii) shown by a percolation test conducted in accordance with (ADEC) Alaska State Department of Environmental Conservation regulations to have a percolation rate of 60 minutes per inch or less (faster).

(g) These borings or test holes shall be accomplished under the direct supervision of a state of Alaska registered civil engineer, who shall submit soil logs and other findings in writing to the Matanuska-Susitna Borough certifying 10,000 square feet of contiguous usable area for septic drain field use.

(h) Where lots, tracts, or parcels exceed five acres in size, the platting authority may accept a

reduced number of test holes or other supporting information, accomplished under the direct supervision of a state of Alaska registered engineer.

(i) The platting authority shall exempt the submission requirements of MSB 43.15.016(A)(2) for purposes of fulfilling usable area requirements for subdivisions of land where:

(i) the lot size is 400,000 square feet or greater and an engineer or land surveyor submits a detailed topographic narrative; or

(ii) the existing subdivision was previously approved by the Alaska State Department of Environmental Conservation or by the borough after July 1, 1996, and the proposed subdivision action is limited to moving one or more lot lines a distance of ten feet or less.

(2) Lots containing at least 20,000 square feet but less than 40,000 square feet must be serviced by an approved municipal or community water or municipal or community septic system. The platting authority may approve lots having at least 20,000 square feet, provided each lot is serviced by an approved municipal or community water system or municipal or community wastewater system. A community wastewater disposal

system shall include a common wastewater disposal site on separate lot(s) that serves the entire subdivision.

(a) Lots containing at least 20,000 square feet but less than 40,000 square feet not served by an approved municipal or community septic system must have a minimum 10,000 square feet of useable septic area and are exempt from the useable building area requirement.

(3) The platting authority may approve lots having less than 20,000 square feet but at least 7,200 square feet if served by a community or municipal water system and community or municipal sewage disposal facilities.

(4) For those areas not served by municipal sewer and water, lots less than 20,000 square feet must be approved by a planned unit development as authorized by MSB 17.36.

Section 21. Amendment of chapter. MSB 43.55, Subdivision Agreements, is hereby amended as follows:

43.55.010 SUBDIVISION AGREEMENT REQUIRED.

(A) Agreement. Where subdivision improvements are required under this title as a condition of plat approval the subdivider may enter into a subdivision agreement with the borough in accordance with this chapter. Road



access must be at least 85 percent complete; all lots within the plat being recorded having access. All signage must be installed. All drainage improvements must be installed providing functioning drainage throughout the subdivision prior to entering into a subdivision agreement; minor improvements are allowed to the functioning drainage system under the subdivision agreement.

(B) Application. Application for a subdivision agreement shall be made to the platting division. The application shall include a tentative schedule of all proposed construction of public improvements [AND UTILITIES] and the subdivider's estimate of the cost of each required public improvement, itemized materials list, plans, specifications, descriptions of work, the limits of the work area, the methods to be employed, Storm Water Pollution Prevention plans, and any other pertinent data and information necessary for the platting division to evaluate the proposed installation. The borough may require a showing of the subdivider's financial responsibility.

(C) Contents of agreement. The subdivision agreement shall include, but need not be limited to, the following provision:

(1) a designation of the public improvements required to be constructed;

(2) the construction and inspection requirements of the borough [OR UTILITY] for which the improvements are constructed;

(3) the time schedule for completing the improvements;

(4) the guarantee required by MSB 43.55.030;

[(5) A SCHEDULE FOR ANY PAYMENTS REQUIRED UNDER THIS CHAPTER;]

(6) the allocation of costs between the borough and the subdivider for required public improvements;

(7) the warranty required by MSB 43.55.037;

(8) the consent of the subdivider for the ownership of specified public improvements to vest with the municipality upon final acceptance by the borough;

(9) a warranty that the subdivider has title to the subdivision property and the authority to execute the subdivision agreement;

[(10) WHERE THE SUBDIVISION IS WITHIN THE REGULATORY FLOODWAY, A PROVISION REQUIRING THE SUBDIVIDER TO SUBMIT CERTIFICATION OF FLOODPROOFING, INFORMATION ON THE ELEVATION OF THE LOWEST HABITABLE

FLOOR, AND INFORMATION ON THE ELEVATION TO WHICH THE STRUCTURE IS FLOODPROOF FOR EACH BUILDING OR STRUCTURE TO BE CONSTRUCTED AS PART OF THE SUBDIVISION AGREEMENT;]

(11) a provision that all work shall be performed pursuant to Matanuska-Susitna Borough specifications for subdivision improvements or, where city specifications are applicable, city specifications for such improvements;

(12) a provision that work shall not commence until plans have been approved by the platting division and notice to proceed is given.

#### 43.55.015 ASSEMBLY APPROVAL REQUIRED.

(A) Approval by the assembly shall be required to enter into subdivision agreements where borough participation in the cost of the required public improvements is involved, and approval by the city within which the subdivision is located shall be required to enter into subdivision agreements where city participation in the cost of the required public improvements is involved.

#### 43.55.020 COMPLETION DATE.

(A) The improvements required under the terms of the subdivision agreement shall be fully completed for final acceptance within two years of the date of

execution of the agreement, unless upon a showing of good cause the subdivision agreement is extended by the platting division for an additional one-year period. The platting board may grant further extensions following the standards and procedures of MSB 43.10.060.

43.55.025 COST OF REQUIRED PUBLIC IMPROVEMENTS.

(A) Elements of cost. The cost of any public improvements includes the cost of design, engineering, contract administration, inspection, testing, and surveillance as well as the work, labor, and materials furnished for the construction of the improvement.

**Little Davis Bacon wages shall be used to estimate costs.**

(B) Apportionment. The subdivision agreement shall require the subdivider to pay all the costs as follows:

(1) all direct and indirect costs incurred by the borough in supplying and administering [ANY]**the** method of public improvement guarantee provided for in MSB 43.55.030;

(2) all costs for inspection for final acceptance and warranty repairs of any required public improvements. Surveillance shall be performed by the borough during the course of construction and up to the point of final acceptance of the completed project.

Inspection shall be performed by the borough during the warranty period;

(3) all direct and indirect costs of plan review, agreement review, and administration and attendant costs;

(4) all costs of all subdivision improvements required as a condition of plat approval, except those costs of an improvement the borough has agreed to pay that are attributable to oversizing;

(5) the manager may promulgate and amend a schedule of fees and charges to recover the costs set out in subsections (B)(1) through (4) of this section.

#### 43.55.030 GUARANTEE OF COMPLETION OF PUBLIC IMPROVEMENTS.

(A) Guarantee. To assure the installation of required public improvements which are not accepted at the time the final plat is filed, the subdivision agreement shall require the subdivider to guarantee the completion of all the improvements by [ONE OR MORE OF] the method[S] specified below. [THE MEANS OF A GUARANTEE MAY BE CHANGED DURING THE GUARANTEE PERIOD THROUGH A WRITTEN MODIFICATION OF THE AGREEMENT.] The amount of guarantee shall be determined on the basis of the borough's cost estimate and shall be adequate for the  
borough to complete construction of the public

improvements. The guarantee shall remain in effect until final acceptance of the public improvements and successful completion of the [POSTING AND ACCEPTANCE OF SECURITY FOR THE] warranty period.

(B) Cost estimates. The borough's estimate shall state the estimated cost of completion for each required public improvement, using Little Davis Bacon wages. Cost estimates for each required public improvement shall be approved by the borough engineer through the platting division. For purposes of establishing the amount necessary for the guarantee of completion of public improvements, a percentage of overrun allowance shall be added to the total estimated cost of public improvements as follows:

|                                     |                        |
|-------------------------------------|------------------------|
| Total Estimated Cost of Improvement |                        |
| Percent for Overrun Allowance       |                        |
| \$0 to \$500,000                    | [20] <u>25</u> percent |
| Over \$500,000                      | [10] <u>15</u> percent |

(C) Method[S] of public improvement guarantee. The subdivision agreement shall include [ONE OR MORE OF] the following method[S] to guarantee the construction of required public improvements:

[(1) PERFORMANCE BOND. THE SUBDIVIDER MAY

PROVIDE A SURETY BOND FROM A COMPANY AUTHORIZED TO DO

SUCH BUSINESS IN THE STATE OF ALASKA. THE BOND SHALL BE IN AN AMOUNT EQUAL TO THE ESTIMATED COST OF ALL REQUIRED PUBLIC IMPROVEMENTS PLUS AN OVERRUN ALLOWANCE AS PROVIDED IN SUBSECTION (B) OF THIS SECTION. THE BOND SHALL BE PAYABLE TO THE BOROUGH IN THE EVENT THAT ANY REQUIRED PUBLIC IMPROVEMENTS ARE NOT FINALLY ACCEPTED IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE AND SHALL BE POSTED BY NO PERSON OTHER THAN THE SUBDIVIDER.]

(2) Deposit in escrow. The subdivider [MAY ELECT TO] shall deposit a cash sum equal to the estimated cost of the remaining [ALL] required public improvements plus overrun allowances as provided above either with the borough or in escrow with the responsible financial institution authorized to do such business in the state of Alaska. In the case of an escrow account, the subdivider shall file with the borough an escrow agreement which includes the following terms:

(a) Funds of the escrow account shall be held in trust until released by the borough and may not be used or pledged by the subdivider as security in any matter during the period other than payment for the improvements. [THE FUNDS MAY BE RELEASED UPON AUTHORIZATION BY THE BOROUGH FOR PAYMENT OF IMPROVEMENTS AS MADE, EXCEPT THAT THE ESCROW HOLDER SHALL ALWAYS

WITHHOLD FROM DISBURSEMENT SO MUCH OF THE FUND AS IS ESTIMATED BY THE BOROUGH AS BEING NECESSARY TO COMPLETE THE CONSTRUCTION AND INSTALLATION OF THE IMPROVEMENTS, PLUS AN OVERRUN AT THE PERCENTAGE UNDER SUBSECTION (B) OF THIS SECTION THAT IS APPLICABLE TO THE COST OF THE REMAINING CONSTRUCTION.]

(b) In the case of a failure on the part of the subdivider to complete any improvement within the required time period, the institution shall immediately make all funds in the account available to the borough for use in the completion of those improvements.

[(3) LETTER OF CREDIT. THE SUBDIVIDER MAY ELECT TO PROVIDE FROM A BANK OR OTHER RESPONSIBLE FINANCIAL INSTITUTION AUTHORIZED TO DO SUCH BUSINESS IN THE STATE OF ALASKA AN IRREVOCABLE LETTER OF CREDIT THAT IS GOOD UNTIL A TIME AS THE BOROUGH AUTHORIZES ITS REVOCATION. THE LETTER SHALL BE FILED WITH THE BOROUGH AND SHALL CERTIFY THE FOLLOWING:

(A) THAT THE CREDITOR IRREVOCABLY GUARANTEES FUNDS IN AN AMOUNT EQUAL TO THE ESTIMATED COST OF ALL REQUIRED PUBLIC IMPROVEMENTS PLUS OVERRUN ALLOWANCES AS REQUIRED IN SUBSECTION (B) OF THIS SECTION FOR THE COMPLETION OF ALL SUCH IMPROVEMENTS;



(B) THAT IN THE CASE OF FAILURE ON THE PART OF THE SUBDIVIDER TO COMPLETE ANY SPECIFIED IMPROVEMENTS WITHIN THE REQUIRED TIME PERIOD, THE CREDITOR SHALL PAY TO THE BOROUGH IMMEDIATELY AND WITHOUT FURTHER ACTION THE FUNDS AS THE BOROUGH DETERMINES ARE NECESSARY TO FINANCE THE COMPLETION OF THOSE IMPROVEMENTS UP TO THE LIMIT OF CREDIT STATED IN THE LETTER.]

43.55.035 RELEASE OF GUARANTEE.

(A) The borough shall release the obligation for performance guarantees upon the final acceptance of the improvement and the [POSTING OF ADEQUATE SECURITY FOR] successful completion of the warranty period. [THE BOROUGH MAY REFUSE TO RELEASE THE GUARANTEE AND OBLIGATION FOR ANY PARTICULAR PUBLIC IMPROVEMENT IF THE SUBDIVIDER IS IN PRESENT OR IMMINENT DEFAULT IN WHOLE OR IN PART ON THE COMPLETION OF ANY OTHER PUBLIC IMPROVEMENT OR WARRANTY COVERED BY THE SUBDIVISION AGREEMENT.]

43.55.037 WARRANTY.

(A) Warranty of improvements. The subdivider shall warrant and guarantee that required public improvements constructed under the agreement have been constructed in accordance with the approved plans, shall remain in good condition and meet all applicable specification for one

year after final acceptance of all improvements required to be constructed. The warranty includes defects in design, workmanship, materials, and any damage to improvements caused by the subdivider, its agents, or others engaged in work to be performed under the subdivision agreement.

(B) Security for warranty. To secure the warranty, the guarantee of performance provided in MSB 43.55.030 shall remain in effect until[:

(1)] the end of the warranty period.[; OR

(2) THE SUBDIVIDER HAS FURNISHED THE BOROUGH WITH A CORPORATE SURETY BOND, CASH DEPOSIT, OR LETTER OF CREDIT IN AN AMOUNT EQUAL TO A PERCENT OF THE TOTAL CONSTRUCTION COSTS AS SET FORTH BELOW. THIS SECURITY SHALL GUARANTEE THE PAYMENT OF ANY RECONSTRUCTION OR REPAIR COSTS WHICH MAY BE UNDERTAKEN DUE TO FAILURE OCCURRING DURING THE WARRANTY PERIOD. RESPONSIBILITY FOR IDENTIFYING THE NECESSITY OF REPAIRS OR RECONSTRUCTION OF THE IMPROVEMENTS SHALL REST WITH THE BOROUGH.

TOTAL CONSTRUCTION COST

PERCENT TO SECURE WARRANTY

\$0 TO \$500,000 10 PERCENT

\$500,000 TO \$1,000,000 7.5 PERCENT

\$1,000,000 AND HIGHER 5 PERCENT]

43.55.040 WARRANTY; CORRECTION OF DEFICIENCIES.

(A) Within a reasonable time as allowed by the borough, the subdivider shall correct, to the satisfaction of the borough, all deficiencies occurring in required improvements during the warranty period. Notification shall be made by any reasonable method. If the subdivider fails to repair or reconstruct the deficiency within the time specified above, the borough shall make the repair at the subdivider's sole expense. The borough may then bill the subdivider for the cost of the repair or declare the guarantee [BOND, DEPOSIT, OR LETTER OF CREDIT] amount forfeited or demand payment of the note.

43.55.050 RELEASE OF WARRANTY.

(A) Inspection shall be made by the borough at the end of the warranty period and prior to the release of the guarantee[S]. All deficiencies shall be corrected prior to release of the guarantee [WARRANTY SECURITY]. Upon satisfactory correction of all deficiencies, the borough shall release the guarantee [SECURITY].

43.55.055 DEFAULT.

(A) Default on agreement or warranty. In the event the subdivider defaults on any obligation to construct required public improvements, to repair the improvements

under the warranty, or to pay the costs or fees to the borough as are due it, the borough may demand immediate payment [ON THE PERFORMANCE OR WARRANTY GUARANTEE. IN THE CASE OF A PERFORMANCE BOND, DEPOSITS IN ESCROW, OR LETTER OF CREDIT, THE BOROUGH MAY DEMAND IMMEDIATE PAYMENT OF A PORTION OF ALL SUMS OBLIGATED FOR THE PAYMENT] of costs and fees or for the construction or warranty of any improvements. All funds received by the borough shall be used for any construction, repair, or reconstruction necessary to ensure:

(1) that all required public improvements are built to specifications necessary to receive final acceptance; and

(2) the improvements remain in good condition for the completion of the warranty period.

(B) Use of proceeds. The borough may use guarantee funds for the construction, repair, or maintenance of required public improvements from the date of initial default until three years after the funds have become available to the borough for the use, except that no use shall be made of the funds later than [TWO] one year[S] after satisfactory completion and final acceptance of the work. The borough shall pay the subdivider all

guarantee funds which were not used or obligated for the completion of the improvements after either:

(1) the final acceptance of all public improvements and [POSTING]successful completion of the warranty period[SECURITY] or;

(2) [SUCCESSFUL COMPLETION OF THE WARRANTY PERIOD; OR

(3)] the three-year period provided for above.  
43.55.060 ENFORCEMENT.

(A) All provisions of this chapter are mandatory and may not be altered by the subdivision agreement. The obligations contained in this chapter may be enforced through an action to enforce the ordinance codified in this chapter as well as an action in contract.

43.55.065 OTHER MUNICIPALITIES AS BENEFICIARY.

(A) Where the public improvements are to become the property of a municipality within the borough, the borough may require that the municipality be a beneficiary of any undertaking of the subdivider, and of any guarantees and warranties to secure the performance of the subdivision agreement with respect to the improvements. The term "municipality" includes the borough and cities with the Matanuska-Susitna Borough.

(B) Where, by borough ordinance, a municipality is given authority to determine, accept, release, or take similar actions relating to subdivision improvement guarantees or warranties, or the ordinance provides for procedures or standards that are different from the provisions of this chapter, the ordinance governs to the extent of its coverage of the actions.