For Recording in the Petersburg Recording District

After recording, Return to: Borough Clerk

Petersburg Borough

PO Box 329

Petersburg, Alaska 99833

SPECIAL USE PERMIT (PMC 19.76)

This Special Use Permit (hereinafter "this permit"), effective as of the date of the last signature below (hereinafter "the effective date"), is by and between the Petersburg Borough, PO Box 329, Petersburg, Alaska 99833 ("the Borough") and

John and Miriam Swanson PO Box 1546 Petersburg, AK 99833

hereinafter the "Permittee".

Under the terms and conditions set out herein, the Borough hereby grants to Permittee the revocable, nonexclusive use of the following described real property:

A parcel approximately 650 sq.ft. in size, located within the remaining Ramona Street Right-of-way, Plat No. 2025-03, Petersburg Recording District, First Judicial District, State of Alaska, as further demonstrated on attached Exhibit A

hereinafter, the "permitted area". Permittee is granted the right to use of the permitted area for the following permitted use(s) only:

Installation and use of a driveway to the residence located at 1400 North Nordic (Lot 1AA, Swanson Subdivision, Plat No. 2025-03, Petersburg Recording District, First Judicial District, State of Alaska.

All uses other than permitted uses are expressly prohibited. All deposits of minerals, stone, earth or gravel, and any standing timber, are reserved by the Borough and shall not be removed from the permitted area or sold without the written consent of the Borough Manager.

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General Terms and Conditions

- 1. In its use of, and activities or operations on, the permitted area, Permittee shall, at Permittee's sole cost and expense, use the permitted area in a safe and legal manner in compliance with all applicable federal, state, and local laws, ordinances and regulations, including without limitation environmental and safety requirements.
- 2. Permittee shall not use or deposit, or permit the use or deposit of, any hazardous material or waste on the permitted area. As used herein, the term "hazardous materials or waste" means any hazardous or toxic substances, material, or waste that is or hereafter becomes regulated by any municipal governmental authority, the State of Alaska, or the United States government.
- 3. Permittee shall properly locate Permittee's activities on and within the permitted area prior to commencement of use and throughout the term of this permit until termination.
- **4.** Use of the permitted area by Permittee is "AS IS, WHERE IS". The Borough does not warrant or represent, and expressly disclaims, that the permitted area is safe or suitable for any purpose whatsoever. Permittee is wholly and solely responsible for any necessary maintenance, repair and upkeep of the permitted area, and acknowledges that the Borough has no responsibility whatsoever for such necessary work without regard to the underlying cause of the work, including negligence by the Borough.
- 5. This permit is granted on the express condition that the Borough is free from any and all liability by reason of injury or death to persons or damage to or destruction of property from whatever cause arising out of or in any way related to Permittee's use of, or activities or operations on, the permitted area or exercise of rights hereunder. Permittee hereby assumes any risk involved in respect to the presence of Permittee, or Permittee's contractors, employees, officers, members, shareholders, agents, representatives, clients, invitees, and guests, or their personal property, equipment or other facilities, on the permitted area, and does hereby release and discharge the Borough from any and all liability for loss, damage, injury, or death incurred by Permittee, or Permittee's contractors, employees, officers, members, shareholders, agents, representatives, clients, invitees, and guests, arising out of their entry or presence on, or use of, the permitted area pursuant to this permit. Permittee shall proceed under this permit at Permittee's own and sole risk.
- **6.** Permittee shall indemnify, defend and hold harmless the Borough, and its employees, officials, agents, and representatives, from and against any and all obligations, liabilities, claims, demands, loss, damages, costs, penalties, expense, or causes of action whatsoever, including attorney fees, resulting from, arising out of, or in any way connected with or related to the occupation or use of, or activities or operations on, the permitted area by Permittee or Permittee's contractors, employees, officers, members, shareholders, agents, representatives, clients, invitees, and guests, or otherwise arising out of or in any way connected with or related to this permit.
- **7.** Permittee shall be responsible for any damage or disturbance to the Borough's real or personal property, or that of third parties, resulting from any exercise of rights herein granted. The Permittee shall promptly repair and restore to its original condition the permitted area or any of

the Borough's personal or real property, including any improvements, that may be damaged or disturbed in connection with Permittee's use of, or activities or operations on, the permitted area.

- **8.** Permittee shall keep the permitted area free and clear of any and all liens, charges, and encumbrances for labor performed or materials or services furnished to or at the permitted area at the instance or request of Permittee or anyone claiming under Permittee. Permittee shall indemnify the Borough against any such lien, charge, or encumbrance that may be established against the permitted area as a consequence, direct or indirect, of any act or omission of Permittee under this permit.
- **9.** Permittee shall be solely responsible for, and shall promptly pay and discharge, any and all taxes, charges or other fees levied, assessed or charged against the Permittee or the permitted area as a result of this permit or Permittee's use of, or activities or operations on, the permitted area.
- **10.** The Borough shall not be liable to Permittee if, for any reason whatsoever, Permittee's occupation or use of the permitted area shall be hindered, delayed, denied, or otherwise disturbed.
- **11.** This permit is subject to all covenants, conditions, restrictions, reservations, and rights of way pertaining to the permitted area, whether or not of record.
- **12.** Environmental and Water Quality Protection.
- a. If the Borough has cause to believe that environmental or water quality damage has occurred or is threatened on the permitted area, or as a result of Permittee's use of, or activities or operations on, the permitted area, the Borough may give Permittee twenty-four (24) hours notice of such damage or threatened damage, after which time, unless the Borough and Permittee mutually agree otherwise, the Borough shall have the right to require the Permittee to immediately cease use of or activities or operations on the permitted area and to take immediate action to correct or eliminate said damage or threat thereof. Failure of Permittee to comply with such requests will be treated as a material breach of this permit, entitling the Borough to terminate this permit. The Borough's rights under this provision shall not be construed as creating an obligation on the Borough's part to conduct or provide for any inspection as to environmental practices, it being agreed that compliance is the sole responsibility of Permittee.
- b. Liability for any environmental or water quality damage that is caused by Permittee or its employees, agents and representatives, or otherwise results from or is related or connected to use of or activities or operations on the permitted area by Permittee, shall be borne by and at the sole expense of Permittee. If Permittee fails or refuses to correct or repair said damage within a reasonable time, then after reasonable notice to Permittee, the Borough shall have the right, but not the obligation, to contract with any party to correct said condition and Permittee shall immediately reimburse the Borough upon demand for all actual costs of said correction or repair.
- c. As part of the Borough's right to indemnification as stated herein, Permittee shall indemnify and hold the Borough harmless for any and all civil or criminal liabilities or penalties, including costs of defense, resulting from Permittee's acts or omissions which cause, threaten, or permit, or are alleged to cause, threaten, or permit, environmental or water quality damage, or sanctions to be incurred because of environmental or water quality damage.

13. This permit shall commence upon the effective date and end upon termination. This permit and any and all rights granted hereunder may be terminated (a) by mutual agreement of the parties; or (b) by the Borough, in its sole and absolute discretion, (i) if, at any time after one (1) year of the effective date, Permittee has not commenced use of the permitted area, unless the Assembly grants an extension in accordance with Borough Code, (ii) if Permittee is in breach or default of any provision of this permit upon expiration of a thirty (30) day notice period, provided that the Borough may immediately suspend Permittee's activities on the permitted area if the breach results in a health or safety hazard or any violation of federal, state or local law or if Permittee has failed to maintain required insurance, (iii) upon sixty (60) days written notice, if the Borough determines that the permitted area is needed for a municipal purpose, or (iv) upon six (6) months written notice. Notice of termination shall be given in writing, and delivered by US Mail or hand-delivery to Permittee. If Permittee's use of the permitted area ceases for a continuous period of one (1) year, such disuse shall be considered an abandoned of the use and termination of this permit.

Additionally, the Borough may suspend or terminate a permit if the Assembly determines that the permit was issued in error, or on the basis of incorrect information provided, or in violation of any statute, ordinance, or regulation.

- 14. Upon expiration or earlier termination of this permit, Permittee shall remove any improvements or property located in or on the permitted area by Permittee or anyone claiming under Permittee, and restore and peaceably surrender the permitted area to the Borough in as good a condition as such area was at the time of issuance of this permit. If Permittee fails to make such removal or restoration, the Borough shall have the right, but not the obligation, to make such removal or restoration at Permittee's expense, the amount of which Permittee shall pay to the Borough on demand; if the Borough so elects, it shall also have the right to take possession of and appropriate to itself without payment therefore any or all property of Permittee, or anyone claiming under Permittee, remaining on the permitted area.
- 15. Permittee understands that this is a non-exclusive permit, and that the Borough may grant other permit(s) for or interest(s) in the permitted area to other parties that do not interfere with Permittee's use of the permitted area. If Permittee believes that other authorized users are improperly interfering with its use of the permitted area, it shall contact the Borough to report same, and shall not attempt to directly exclude other authorized users from the permitted area.
- 16. This permit shall be governed by, and construed and enforced in accordance with, the laws of the State of Alaska. Venue for any dispute arising under this permit shall be in the Superior Court for the State of Alaska, in Petersburg, Alaska. If the Borough shall commence a legal proceeding for any relief against the other, declaratory or otherwise, arising out of this permit, the prevailing party shall be awarded, in addition to any other relief, a reasonable sum as attorney fees.
- 17. This document and any attachments hereto set forth the entire understanding and agreement of the Borough and Permittee with respect to the transaction contemplated hereunder, and supersedes any and all prior negotiations, discussions, agreements, and understandings between the Borough and Permittee. This permit may not be modified or amended except by written agreement executed by the Borough and Permittee.

- **18.** Permittee's interest under this permit is as a permittee only and in no event shall this permit be construed as granting Permittee any interest in real property; Permittee shall claim no interest or estate of any kind or extent whatsoever in the permitted area by virtue of this permit or Permittee's occupancy or use of the permitted area.
- **19.** Permittee's use of the permitted area shall not interfere with the use of the area by others, including the Borough and members of the general public, and Permittee shall not store any equipment, vehicles or materials of any kind in or on the permitted area.
- **20.** This permit cannot be assigned or transferred, in whole or in part, or any interest therein conveyed, by Permittee, without the express written approval of the Borough.
- 21. The failure of the Borough to insist upon the performance of any of the terms and conditions of this permit, or the waiver of any breach of any of the terms and conditions of this permit, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
- **22.** Any notice provided for or concerning this permit shall be in writing and be deemed sufficiently given when hand-delivered or sent by US mail to the respective address of a party as set forth at the beginning of this permit. A party may change its address by giving notice hereunder.
- 23. The Permittee has had an opportunity for independent counsel to review and modify the permit. The rule of construction to the effect that any ambiguities are to be strictly construed against the drafter shall not apply to any interpretation of any provision of this permit.
- 24. This permit may be executed and delivered in counterparts, and may be delivered by facsimile or in electronic format by email. Each such counterpart hereof shall be deemed an original instrument, but both such counterparts together shall constitute one document.
- **25.** If any provision of this permit is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this permit shall nonetheless remain in full force and effect so long as the intent of the parties can be reasonably accomplished thereby.
- **26.** If the Borough shall commence a legal proceeding for any relief against Permittee, declaratory or otherwise, arising out of this permit, the Borough if the prevailing party, shall be awarded, in addition to any other relief, a reasonable sum as attorney fees.

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Additional Terms and Conditions

- **A.** Permittee may not commence use of, or undertake any change to or work on, the permitted area under this permit unless and until Permittee is notified in writing by the Borough Public Works Director that the pump station #4 construction and installation work being performed by the Borough is fully complete and Permittee's use may proceed.
- **B.** Notwithstanding the language of paragraph 19 above, Permittee may utilize the driveway for purposes of parking operable vehicles.

C. <u>Insurance</u>.

- 1. Notwithstanding Permittee's obligation of indemnification set out herein, Permittee shall maintain in full force and effect during the term of this permit, at Permittee's sole expense, the following policies of insurance:
 - i. Liability Insurance covering use of and activities occurring on the permitted area, written on an occurrence form and not a claims-made form, with a minimum coverage limit of no less than \$1,000,000;
 - ii Automobile Liability Insurance, with liability limits and coverages reasonably satisfactory to Borough;
 - iii. Property Insurance, insuring Permittee's property and Improvements, in adequate amounts to insure their full value; and
- 2. In order to maintain the same level of coverage that will exist at the commencement of this permit, the amounts and types of coverage called for herein shall be subject to review from time to time and, at the Borough's sole discretion, may be increased or extended to require the amounts and types of coverage deemed necessary by the Borough.
 - 3. All insurers shall agree to waive all rights of subrogation against the Borough.
- 4. A Certificate of Insurance evidencing such coverage shall be provided to the Borough upon the effective date and upon thereafter upon renewal of such policies. If Permittee fails to comply with these insurance requirements, the Borough may suspend Permittee's activities on the permitted area until Permittee fully complies with these requirements, and may terminate this permit in accordance with paragraph 13 hereof.

, | | | | | | IN WITNESS WHEREOF, the Petersburg Borough, acting through its Borough Manager, being dulyauthorized by action of the Borough Assembly, and Permittee, through duly authorized signature, have hereunto set their respective hands, agreeing to keep, observe and perform all the terms, conditions and provisions herein contained or attached.

Petersburg Borough	
By:Stephen Giesbrecht, Borough Manager	
Dated:	
STATE OF ALASKA)) ss. FIRST JUDICIAL DISTRICT)	
THIS IS TO CERTIFY that on this on a Notary Public in and for the State of Alaska, du Stephen Giesbrecht, to me known to be the Book executed the above and foregoing instrument, a	lay of, 20, before the undersigned, ly commissioned and sworn, personally appeared brough Manager of the Petersburg Borough, who and acknowledged to me said instrument to be the gh for the uses and purposes therein mentioned, cute said instrument.
WITNESS My Hand and Official Seal the	day and year in this certificate first above written.
	Notary Public for the State of Alaska My commission expires:
[Additional Signatures and No	otary Blocks on following page]

The following Permittee hereby agrees to the terms and conditions of this special use permit issued by the Petersburg Borough. Permittee further confirms and avers that all information submitted or otherwise delivered to the Borough during the application process for this permit is true and correct.

PERMITTEE:	
John Swanson	Miriam Swanson
Dated:	Dated:
STATE OF ALASKA)	
) ss. FIRST JUDICIAL DISTRICT)	
a Notary Public in and for the State of Alaska John Swanson, to me known, who exe	day of, 20, before the undersigned, duly commissioned and sworn, personally appeared cuted the above and foregoing instrument, and his free and voluntary act and deed for the uses and
WITNESS My Hand and Official Seal	the day and year in this certificate first above written.
	Notary Public for the State of Alaska My commission expires:
STATE OF ALASKA)	
) ss. FIRST JUDICIAL DISTRICT)	
a Notary Public in and for the State of Alaska Miriam Swanson, to me known, who ex	day of, 20, before the undersigned, duly commissioned and sworn, personally appeared ecuted the above and foregoing instrument, and her free and voluntary act and deed for the uses and
WITNESS My Hand and Official Seal	the day and year in this certificate first above written.
	Notary Public for the State of Alaska My commission expires:

EXHIBIT A

