August 3, 2020

Mr. Glen Klinkhart, Interim Director
Department of Commerce, Community, and Economic Development
Alcohol & Marijuana Control Office
550 West 7th Avenue, Suite 1600
Anchorage, AK 99501

Re: Transfer of Package Store License (#1264) to The North West Company (International) Inc.

Dear Director Klinkhart, Chairman Brady, and
Members of the Alcohol Beverage Control Board:

The North West Company (International) Inc. ("NWCI") is seeking the approval of State of Alaska's Alcohol Beverage Control Board ("Board") to transfer Package Store License No. 1264 from Yakutat Adventures, LLC ("License") to NWCI. This matter was previously before the Board on June 9, 2020, before being rescheduled to the upcoming August 18, 2020 meeting. No substantive discussion occurred at that time and we look forward to answering any questions you may have for our management team at the upcoming meeting.

I. PROCEDURAL BACKGROUND

NWCI's transfer application was filed on January 3, 2020 and was first placed on the Board's Agenda June 9, 2020. As of the June meeting, the application was complete and all state agency requirements were satisfied. This remains the case as of the date of this letter and we expect that nothing will change prior to the August 18, 2020 meeting. NWCI is compliant in all other respects and its application is properly before the Board for consideration.

The purpose of this letter is to provide the Board with detailed information, in addition to that already provided in its application, regarding the proposed package store location and business operation model in advance of the meeting. Given the compressed nature of the typical meeting, NWCI would like the Board to have sufficient time to make a well-reasoned and fair determination regarding NWCI's transfer application. As the Board may know, this License transfer is being protested by the Borough Assembly of the City and Borough of Yakutat ("City") by way of its letter of protest, dated June 8, 2020 ("Protest"). This Protest was made pursuant to AS 04.11.480 and 3 AAC 304.145, whereby the local governing body has the opportunity to protest the license application, or recommend that a license be issued, renewed, relocated, or transferred with conditions.

As the Board may also know, NWCI currently operates numerous package store licenses throughout the state of Alaska and has a long and proud record of compliance within this governing body and local stewardship in the communities we serve. While the circumstances presented in Yakutat are unique, NWCI has successfully navigated unique challenges throughout the state on many prior occasions, which were made possible by this Board's determination that NWCI continues to be a responsible licensee. As such, NWCI is requesting that the Board deny the City's protest on the grounds that such a protest is arbitrary, capricious, and unreasonable under the circumstances.

II. DISCUSSION

Recognizing that this is an extraordinary request of the Board, NWCI appreciates the opportunity to address each of the four (4) points of protest raised by the City, which allegedly run afoul of the community's best interests. Suffice it to say, as the manager of Alaska Operations for NWCI, I can assure you that with a long history of operating package store licenses throughout rural areas of Alaska, NWCI can successfully mitigate and manage each of the City's concerns while also providing a benefit to the community as a whole. Despite what appears on its face as a conflict of financial interest in seeing its protest upheld, NWCI has nonetheless reached out to the City to offer a collaborative exchange of ideas on how best to mitigate and manage these concerns. As of the date of this letter, the City has refused to reciprocate this professional courtesy and no resolution to the Protest was reached.

As such, NWCI's transfer application of package store license #1264 is now properly before the Board for its consideration and approval pursuant to AS 04.11.040(a-c). The City's Protest is also before the Board for consideration pursuant to AS 04.11.480(a), which provides in pertinent part:

> "a local governing body may protest the issuance, renewal, relocation, or transfer to another person of a license..."
>
> ...
>
> "If an application or continued operation is protested, the board shall deny the application or continued operation <u>unless the board finds that the protest is arbitrary, capricious, and unreasonable</u>." (emphasis added).

As demonstrated herein, the City's protest is, in fact, arbitrary, capricious, and unreasonable and should, therefore, be denied by the Board.

A. City Concern No. 1 - Proximity to Town and Schools:

NWCI understands that the City is concerned with the proximity of its proposed store location to the town center, area schools and other sensitive community features. In this regard, AS 04.11.410 places a restriction upon the location of any package store license within a building that has a public entrance within 200 feet of a school ground or

a church, and measured by the shortest pedestrian route from the outer boundaries of the school ground or public entrance of the church building. Specifically, AS 04.11.410 states in pertinent part:

> A beverage dispensary or package store license may not be issued and the location of an existing license may not be transferred if the licensed premises would be located in a building the public entrance of which is within 200 feet of a school ground or a church building in which religious services are regularly conducted, measured by the shortest pedestrian route from the outer boundaries of the school ground or the public entrance of the church building.

The City's Protest states that the proposed store location will be within 350 yards of a daycare center and within 450 yards of an elementary/high school. In actuality, the distance between the store and the Daycare center is 370 yards or 1,110 feet. The school is over 1,350 feet away from the proposed entrance of the store. There is no question that the proposed location clearly satisfies the statutory requirements of being more than 200 feet from either of these two school locations. Further, there is no local ordinance or state statutory restriction on the proximity of the proposed store location to a senior center. As depicted in Figure 1 below, the proposed store location is the notated as "AC Store." The current package store license operated by the YCC, Inc. is notated as "Glass Door."

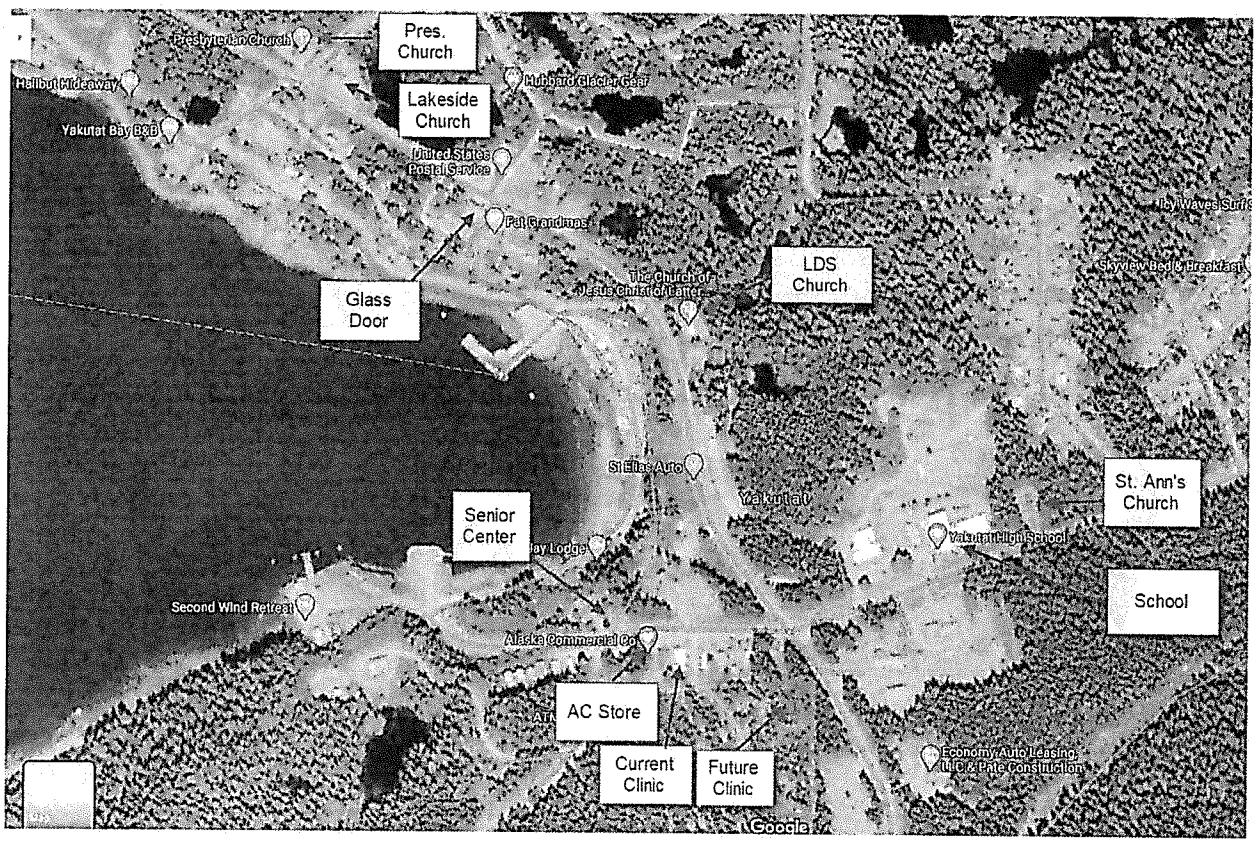

Figure 1.

This location was chosen by NWCI because it currently operates a local grocery store out of the same building as the proposed package store would be located. For obvious reasons, it makes sense that the package store would also operate out of this convenient and central location, while implementing all of the appropriate and necessary modifications to protect the community interests and comply with local and state laws. The City fails to specifically articulate, how this proposed location violates any local or state regulation. Rather than point to specific lawful arguments for why this location is inappropriate, the City is using its power of protest to thwart possible competition to a financially interested competitor. On these facts, there is no legitimate legal basis for the local governing body to protest the application making it an arbitrary, capricious and unreasonable decision. For this reason, the protest should be denied.

B. City Concern No. 2 - Proximity to Local Gathering Place:

NWCI recognizes that its proposed location for this package store license is within what is currently a central gathering point for the community, which currently provides various commercial goods and services. The City points to no local ordinance or state statute that will be violated or otherwise restricts NWCI from operating the License in this location.

In fact, NWCI has already applied for and received a Conditional Use Permit ("CUP") from the City on May 18, 2020, following a period of public comment held between March 6, 2020 and May 13, 2020.[1] The City's own Planning Commission considered these very same issues and ultimately determined that the location was compliant with all local and state laws. In reaching this decision, the City's Planning Commission imposed four very reasonable conditions on the CUP approval that NWCI agrees are appropriate and had already planned to implement as a matter of common-sense and legal obligation.

Again, this location was chosen because it is a building that is already owned by NWCI, which obviously makes sense from a business perspective. It is not uncommon that a grocer will also provide its patrons with access to alcoholic beverages within the same four corners of the business footprint, but with separate entrances and necessary restrictions put into place.

As a part of its transfer application, NWCI has provided the Board with the same design plans and layout of the proposed location that were considered by the City's Planning Commission. NWCI has also reached out to the City on several occasions to seek further input on what additional modifications to this design it would consider to better protect the community. The City has offered no further feedback in this regard; however, NWCI appreciates that the Board may impose further conditions as a part of the application approval process.

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1 See enclosed Conditional Use Permit dated May 18, 2020.

As a good corporate citizen and member of the community, NWCI is well aware that just because a decision makes good business sense, it does not mean that it makes good overall sense in the face of other community concerns. Here, the City's concerns regarding the normalization of alcohol consumption for children is certainly an issue that is worthy of discussion. NWCI considered these concerns in its proposed location layout and design which is why the package store entrance would be located upstairs, away from common pedestrian traffic and behind a nondescript entrance door. To the casual observer, a single door with frosted window covering would look innocuous and certainly not something that would trigger a curious young mind to associate with alcohol consumption. NWCI is eager to discuss any other common-sense measures that the Board or City believe can further insulate and protect that community's children and young families.

Notwithstanding other possible recommendations from the Board, the City's concerns have already been addressed and solutions imposed. Reframing the issue now as a Protest does not transform the City's prior approved CUP into a legally invalid determination. The City's attempt to do so now reveals just how arbitrary, capricious and unreasonable such a decision is and why it should be denied by the Board.

C. City Concern No. 3 - Restriction on Year-Round Operations:

If the proposed location is approved and the transfer application granted by the Board, it is true that NWCI intends to operate the package store as a retail business throughout the entire year, as opposed to just seasonal use. NWCI is fully compliant with all of the local and state regulations governing business operations. The City fails to articulate why year-round operation by NWCI is a basis for protest. In fact, there is absolutely no legal basis for the City to raise the concept of free-trade and supply and demand as a concern against the NWCI.

While the City may interpret this normal and customary use of a package license as a negative, such use does not violate any state or local laws. Rather, NWCI is providing a product to a community, demand for which will dictate whether or not year-round operation is appropriate. Not only is the City's Protest without factual support, the legal implications of such oppressive governmental actions against a local business are clearly being executed in an arbitrary, capricious and unreasonable manner and should be denied by this Board.

D. City Concern No. 4 - Business Competition:

Further to the point regarding limitations on free trade, the City's final point of protest seems to be a direct attack on the concept of supply and demand and free busines enterprise. The free market should be the metric by which supply and demand are gauged rather than the City's preconceived notion that "there is not enough business in the community for two licenses."

It is completely inappropriate, and legally perilous, for a governmental entity to limit a company's ability to engage in free trade simply because the City seeks to

protect a competing business interest with which it has close personal connections. There is no question that members of the City have direct conflicts of interest on this point, recognizing such during prior Borough Assembly meetings. These conflicts of interest do not simply disappear because one person (the Mayor) abstains from a vote. The undue influence of direct financial conflicts permeates the entire administrative process and has resulted in a Protest that is riddled with substantive due process violations.

It is abundantly clear that the City's entire basis for this Protest point, and its Protest in general, is rooted in a desire to preserve the ability of YCC, Inc. to give back to the community in the form of monetary donations. It is also clear that the City is using its statutory power of protest, pursuant to AS 04.11.480, to prevent a rival business from impacting these direct financial interests. In essence, the City is protesting NWCI's application in order to ensure that YCC, Inc. maintains a monopoly over alcohol sales in the community. NWCI strongly urges the Board to find such a blatant misuse of governmental powers the very essence of an arbitrary, capricious and unreasonable decision and to deny this Protest.

To the extent that the City views the presence of NWCI as negatively impacting community involvement and support, the Board needs to understand that NWCI considers itself a member of the local community in a number of important ways. First, NWCI provides local employment opportunities and training in retail sales, supply chain, operations and customer service. These opportunities provide for the members of the community directly, allowing for better employment stability and job security. Second, NWCI prides itself on being a strong corporate partner for the good of the community, working with community leaders to provide better services and products to meet the unique needs of rural Alaska. Finally, NWCI consistently works to improve the customer experience and to provide a safe and secure location where patrons are cared for and appreciated. NWCI has a long history of working with local and state authorities to ensure customer safety and to provide training on the importance of alcohol safety and proper regulatory compliance.

NWCI supports many rural Alaskan communities and is here to support the community of Yakutat as well.

III. CONCLUSION

NWCI appreciates the opportunity to provide the Board with a glimpse into its proposed operations and how approval of this transfer will provide for the betterment of the entire community. We stand ready to answer your additional questions during the upcoming meeting.

NWCI has long been a member of the local community and seeks to continue that relationship in a productive and meaningful way. We take the City's Protest concerns very seriously and strongly believe that all of the City's concerns, as stated, are capable of being addressed and mitigated, such that the businesses may move forward in complement to one another, rather than competition. While we understand

the City's Protest is rooted in a desire to protect the community, it is not factually or legally sufficient to carry the heavy burden of being a well-considered and appropriate governmental decision. Because the City's Protest is arbitrary, capricious and unreasonable, NWCI urges the Board to deny the Protest and grant the transfer application.

Regards,

Walter Pickett
Alaska Operations Manager