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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

Case No.: 3AN-15-05969CI

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY,

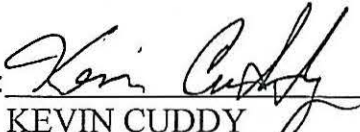
Defendants.

**DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR SUMMARY
JUDGMENT UNDER THE LACHES DOCTRINE**

Pursuant to Civil Rule 56 Defendant Legislative Affairs Agency, by and through its undersigned counsel moves for summary judgment against Plaintiff Alaska Building, Inc. This motion is supported by the Memorandum and Affidavits of Kevin M. Cuddy and Jessica Geary filed contemporaneously herewith.

DATED: October 21, 2015.

STOEL RIVES LLP

By: 
KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on October 21, 2015, a true and correct copy of the foregoing was served in the manner identified below on:

VIA HAND DELIVERY

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406 G Street, Suite 206
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VIA FIRST CLASS MAIL

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(Attorneys for Defendant 716 West Fourth Avenue, LLC)

I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).


Debby Allen, Practice Assistant

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
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ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

Case No.: 3AN-15-05969CI

**LEGISLATIVE AFFAIRS AGENCY'S MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT UNDER THE LACHES DOCTRINE**

I. INTRODUCTION

Pursuant to Civil Rule 56, Defendant Legislative Affairs Agency (the "LAA") asks the Court to grant summary judgment and dismiss Plaintiff's lawsuit in its entirety as barred by the doctrine of laches. Plaintiff claims that LAA's recent lease extension for the Legislative Information Office Building, which included a multi-million dollar renovation (the "LIO Project"), is inconsistent with the requirements of AS 36.30.083. Plaintiff admits that it has believed the LIO Project violated AS 36.30.083 since at least

October 2013, but waited more than 17 months to bring a lawsuit challenging its legality. In the meantime, both LAA and the landlord spent millions of dollars on an extensive renovation of the building as part of the LIO Project. Adding insult to injury, Plaintiff collected more than \$25,000 in professional fees and rent that were directly related to this construction project from the landlord and its contractor for the project. Nearly three months *after* the construction was finished and the renovated building opened for business (and after Plaintiff had pocketed tens of thousands of dollars relating to the construction), Plaintiff finally filed its Complaint. This delay was patently unreasonable and significantly harmed and prejudiced the defendants. The doctrine of laches applies with full force to preclude this improper legal challenge.

II. STATEMENT OF UNDISPUTED FACTS

A. **By mid-October 2013, Plaintiff was aware of the alleged illegality of the LIO Project and that tens of millions of dollars would be spent on the construction.**

On September 19, 2013, LAA entered into an agreement with 716 West to renovate and expand the Legislative Information Office.¹ Plaintiff was aware no later than October 3, 2013, that LAA had signed an agreement for the LIO Project and that the construction and renovations would cost tens of millions of dollars.² Sometime in either late September or early October 2013, Plaintiff became aware that the LIO Project was

¹ See Response to Defendant's (Legislative Affairs Agency) First Discovery Requests to Plaintiff Alaska Building, Inc., Request for Admission ("RFA") No. 2 (attached as Exhibit A).

² See *id.* RFA Nos. 4, 5; see also Deposition of James Gottstein (excerpts attached at Exhibit B) at 27:16-25, 28:1-7 (confirming Plaintiff's understanding that tens of millions of dollars were being spent on the LIO Project).

not the subject of a competitive procurement process.³ By mid-October 2013, Plaintiff had reviewed AS 36.30.083(a) and become aware that, in its view, the LIO Project was not consistent with that statute because it was not a lease extension and that the rent would be, in its view, above market value.⁴ Shortly before October 11, 2013, Plaintiff advised a lawyer for defendant 716 West Fourth Avenue, LLC ("716 West"), of its belief that the LIO Project lease was inconsistent with the statute and that it was contemplating filing for an injunction to stop the project on that basis.⁵ On or about October 28, 2013, Plaintiff met again with the same lawyer for 716 West and reiterated its belief that the LIO Project lease was inconsistent with AS 36.30.083(a).⁶ Plaintiff even went so far as to draft a letter to the Attorney General, dated October 30, 2013, in which Plaintiff states:

One of the exceptions [to competitive procurements] is AS 36.30.083, which does allow a lease extension for up to 10 years if there is a minimum cost savings of at least 10 percent below the market rental value. The contract is neither a lease extension, nor is it for at least 10 percent below market rent. It is not a close call on either.

....

The demolition of the old Empress Theatre [712 West 4th Avenue – most recently the Anchor Pub] is planned to begin November 15th, so [sic] please see to it that this illegal contract is cancelled before then.⁷

In this letter, Plaintiff recognized the importance of cancelling the allegedly improper lease *before* the demolition and construction work began in earnest. Plaintiff never sent

³ See Exh. A, Interrogatory No. 1.

⁴ See *id.*

⁵ See *id.*, Interrogatory No. 2.

⁶ See *id.*

⁷ Exhibit C, Draft Letter from Jim Gottstein as the owner of Alaska Building, Inc., to Attorney General Michael Geraghty (dated Oct. 30, 2013) (emphasis in original).

this letter, however, and never informed LAA of its concerns prior to filing the Complaint in March 2015.⁸

Instead, on or about October 30, 2013, Plaintiff entered into a License to Enter Indemnity and Insurance Agreement with Criterion General, Inc. ("Criterion") to allow Criterion to re-locate gas service in connection with the upcoming construction for the LIO Project.⁹ Plaintiff also entered into an Access, Indemnity, and Insurance Agreement with 716 West on December 6, 2013, in connection with the same construction.¹⁰ By that time, Plaintiff was aware that 716 West would be demolishing the old Empress Theater in connection with the LIO Project.¹¹ Plaintiff was aware of the construction no later than December 10, 2013, and its President, Mr. Gottstein, was in fact quoted in a news article on that date describing the construction.¹²

B. Plaintiff made tens of thousands of dollars from the LIO Project and facilitated the construction by renting space to the contractor.

Plaintiff was not merely aware of the construction in December 2013, but it was also actively profiting from it. Plaintiff accepted payment of \$15,000 from 716 West for professional fees it incurred to address preparation for the LIO Project.¹³ It also entered

⁸ See Exh. B at 20:4-24; *id.* at 26:24-25, 27:1-3 ("Q. When was the first time that you raised the issue of the purported illegality of the lease with anyone from Legislative Affairs Agency? A. I don't know that I did prior to bringing suit.").

⁹ See Exh. A, RFA No. 6. Criterion was the general contractor for the LIO Project.

¹⁰ See *id.* RFA No. 7.

¹¹ See *id.* RFA No. 8.

¹² See *id.* RFA No. 10.

¹³ See *id.* RFA 9.

into a space lease with Criterion in connection with the construction for the LIO Project and accepted more than \$10,000 in rent.¹⁴

C. Although Plaintiff knew by December 2013 that LAA was not going to voluntarily declare the lease extension void due to any alleged irregularity in the procurement process, it declined to bring suit for another 15 months – after construction was complete.

Critically, once construction began for the LIO Project in December 2013, Plaintiff recognized that there was no indication that LAA had any intention to voluntarily declare the lease extension void due to an alleged irregularity in the procurement process.¹⁵ In fact, Plaintiff's president testified that the LAA "seemed bound and determined" to proceed with the LIO Project in October 2013 and that "it seemed like it would be a futile gesture" to raise the issue of the alleged procurement irregularity with LAA.¹⁶

Plaintiff then sat back for the next year, collected rent checks from Criterion during the construction effort, and watched the renovation project proceed.¹⁷ In the meantime, millions of construction costs were spent on the LIO Project between October 2013 and January 9, 2015, when the renovated Legislative Information Office opened for

¹⁴ See *id.* RFA 12-14.

¹⁵ See *id.* RFA 25; see also Exh. B at 44:15-20. Plaintiff also admitted that it had failed to get 716 West "to abandon the project because it was [purportedly] illegal" in late 2013 and therefore Plaintiff required Criterion to be responsible for any property damage caused by the construction. See Exh. A, RFA 11.

¹⁶ See Exh. B at 18:7-25, 19:1-17.

¹⁷ Plaintiff has included numerous photographs of the progress of the construction effort with its filings in this case, including photographs of the construction from April and May 2014. See Memorandum in Support of Motion for Partial Summary Judgment re: Not Extension at 4-5 (filed June 12, 2015).

business.¹⁸ More than 18 months after the lease extension for the LIO Project was signed (which Plaintiff alleges was inconsistent with AS 36.30.083) and more than 15 months after construction began, Plaintiff finally elected to bring suit challenging the legality of the LIO Project on March 31, 2015.¹⁹ By then, of course, the construction was basically complete.²⁰

III. STANDARD OF REVIEW

Summary judgment should be granted in favor of the moving party if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show there is no genuine issue as to any material fact and that the party is entitled to judgment as a matter of law.²¹ The party opposing summary judgment must set forth specific facts – arising from admissible evidence – showing genuine issues and cannot rest on mere allegations.²²

IV. ARGUMENT

A. The laches doctrine bars Plaintiff's claim.

The equitable defense of laches applies to bar Plaintiff's claim if the defendant shows "(1) that the plaintiff has unreasonably delayed in bringing the action, and (2) that

¹⁸ See Exh. A, RFA nos. 17-18.

¹⁹ See *id.* RFA nos. 19-20, 22-23.

²⁰ See *id.* RFA no. 24.

²¹ See Civil Rule 56; *Anderson v. Alyeska Pipeline Svc. Co.*, 234 P.3d 1282, 1286 (Alaska ²⁰¹⁰).

²² See *Schug v. Moore*, 233 P.3d 1114, 1116 (Alaska 2010).

the unreasonable delay has caused undue harm or prejudice to the defendant.”²³ As Plaintiff has admitted in its discovery responses and in its deposition testimony, both elements of the test have clearly been satisfied here.

1. Plaintiff unreasonably delayed bringing its claim.

Plaintiff’s delay was unreasonable in bringing this action more than 17 months after determining that the LIO Project was allegedly illegal. If Plaintiff had brought this claim by mid-October of 2013, the parties could have litigated the legality of the LIO Project *before* the former Empress Theater was destroyed and millions of taxpayer dollars were spent on renovations. In fact, that is precisely what Plaintiff’s draft letter to the Attorney General in late October 2013 contemplated; Plaintiff noted that the demolition of the old Empress Theater was upcoming in a matter of weeks and asked that the lease extension be voided or cancelled before that work commenced.²⁴ Plaintiff never sent that letter, however, and also never notified the LAA of any concerns about the legality of the LIO Project until after the construction was already completed.

One of the key factors to be considered in measuring the reasonableness or unreasonableness of plaintiff’s delay is when it becomes no longer reasonable for the plaintiff to assume that the defendant(s) would comply with the law.²⁵ In particular, the court should “look to that point in time when there were positive steps taken by

²³ *City and Borough of Juneau v. Breck*, 706 P.2d 313, 315 (Alaska 1985); *see also Breck v. Ulmer*, 745 P.2d 66, 68 (Alaska 1987) (noting that the superior court held that laches barred the plaintiff from obtaining declaratory relief).

²⁴ *See* Exh. C at 2.

²⁵ *See Breck*, 706 P.2d at 315 (citing *Moore v. State*, 553 P.2d 8, 16 (Alaska 1976)).

defendants which made their course of conduct irrevocable, and would have galvanized reasonable plaintiffs into seeking a lawyer.”²⁶ Here, Plaintiff admits “there was no indication, once construction began in late 2013, the [LAA] had any intention to voluntarily declare the Lease Extension void due to an alleged irregularity in the procurement process.”²⁷ Plaintiff goes on to admit that it tried, and failed, to get 716 West to “abandon” the LIO Project in December 2013 due to its alleged illegality.²⁸ The beginning of the construction in December 2013 clearly constituted “positive steps” taken by the defendants that made the “course of conduct” under the LIO Project irrevocable.²⁹ LAA was not going to abandon the LIO Project voluntarily once construction began and the old Empress Theater was destroyed. Yet Plaintiff did not bring suit or seek to stop the construction. Nor did Plaintiff send its fully-drafted letter to the Attorney General to put the State on notice of its purported concerns. Instead, Plaintiff waited more than a year until essentially all of the construction work was completed before filing a Complaint.

Plaintiff’s lawsuit is a near-clone of *City and Borough of Juneau v. Breck*, 706 P.2d 313 (Alaska 1985), and the application of the laches doctrine should be similarly applied. In that case, Betty Breck believed that a multi-million dollar contract for

²⁶ *Id.* (quoting *Moore*, 553 P.2d at 17); see also *Lamoreux v. Langlots*, 757 P.2d 584, 586 (Alaska 1988).

²⁷ See Exh. A, RFA No. 25.

²⁸ See *id.* RFA No. 11.

²⁹ In Plaintiff’s words, LAA was “bound and determined” to proceed with the LIO Project as construction was getting underway and Plaintiff concluded it would be a “futile gesture” to raise any objection to the construction at that point. See *supra* at 5.

construction of a facility in Juneau was illegal because the contract should have been subject to a competitive bidding procedure.³⁰ Ms. Breck became aware of possible code violations concerning the contract in March of 1984 and she was aware that construction started in May of that year. She claimed that she did not realize until late June that she “would not get anywhere” in her complaints to the borough assembly about the illegality of the construction project, and then filed suit in late August. By then, approximately 50% of the project was completed. She had waited four months after the contract was signed before filing suit.³¹

The Alaska Supreme Court held that the laches doctrine applied because, once the contract was signed and construction commenced, a reasonable person would have realized that the borough assembly would not change its mind with respect to the project. The commencement of work under the contract “would have galvanized a reasonable plaintiff into seeking a lawyer.”³² Her delay in bringing a lawsuit at that point was unreasonable.

As with *Breck*, this was a multi-million dollar construction project that Plaintiff believed should have been subject to a competitive bidding procedure. Plaintiff admits that it was aware that the LIO Project was allegedly inconsistent with AS 36.30.083 roughly two months before construction started.³³ Plaintiff also admits that there was no indication once construction had begun that LAA had any intention to voluntarily void

³⁰ *Breck*, 706 P.2d at 313.

³¹ *See id.* at 314-15.

³² *Id.* at 316.

³³ Exh. A, Interrogatory No. 1.

the LIO Project lease.³⁴ A reasonable person would have been galvanized to seek a lawyer once construction began. As the Court is well aware, Plaintiff is represented in this lawsuit by its president, Jim Gottstein, Esq., so there was no need to seek any other legal counsel. Just as with *Breck*, Plaintiff's delay was unreasonable in waiting to bring a legal challenge to the LIO Project until long after construction had begun.

Plaintiff's delay is more egregious and unreasonable than Ms. Breck's for two reasons. First, Ms. Breck only waited until the Juneau facility was halfway completed before initiating her lawsuit. Plaintiff, on the other hand, waited until the construction on the LIO Project was essentially entirely completed and the Legislative Information Office building had already opened to the public before deciding to challenge a procurement decision that was made 18 months earlier. Second, Ms. Breck was delayed in part because she had to proceed *pro per* after spending weeks in the law library learning the relevant legal procedures to make her challenge. Plaintiff, on the other hand, had ready access to counsel before and during the construction, but rather than initiating a legal challenge in October 2013 – before construction began – Plaintiff instead negotiated for tens of thousands of dollars in rent and professional fees for its own personal gain during the construction before suddenly deciding to file suit in late March 2015. Plaintiff could

³⁴ *Id.* RFA No. 25 (“[T]here was no indication, once construction began in late 2013, that the [LAA] had any intention to voluntarily declare the Lease Extension void due to an alleged irregularity in the procurement process.”). Plaintiff's admission tracks, nearly word-for-word, the Alaska Supreme Court's assessment that it was inconceivable that the borough assembly would void the contract: “There is nothing in the record to suggest that, once construction began, the city had any intention to voluntarily change its position in any shape, manner or form.” *Breck*, 706 P.2d at 316 n.11.

have filed suit or put its draft October 30, 2013 letter to the Attorney General about the lease into the mail, but did not. Plaintiff's unreasonable delay in bringing this action gave itself the maximum financial benefit while potentially causing the greatest financial harm to the defendants, including the taxpayers.

2. Plaintiff's unreasonable delay caused undue harm to the defendants.

Plaintiff admits that it was aware that the LIO Project was purportedly inconsistent with the requirements of AS 36.30.083 by October of 2013. Despite this knowledge, Plaintiff allowed the construction to proceed for a year – at the cost of millions of dollars, including tens of thousands that went directly to Plaintiff – before belatedly filing its lawsuit in March of 2015 (17 months after concluding that the LIO Project was purportedly illegal).³⁵ This delay caused massive harm and prejudice to the defendants.

In connection with the LIO Project and the lease extension, LAA agreed to invest \$7.5 million in tenant improvements in the renovated building.³⁶ These tenant improvements were necessary and appropriate so that the renovated Legislative Information Office building would serve its intended purposes for the public. If Plaintiff had litigated its claim concerning the alleged illegality of the LIO Project in October 2013, LAA could potentially have avoided paying for millions of tenant improvements in

³⁵ Exh. A, RFA Nos. 5, 18, 21.

³⁶ “The Lessee shall pay up to \$7,500,000 in direct reimbursement payments to Lessor toward the cost of that portion of the renovation work that represents the tenant improvements to the Premises.” Extension of Lease and Lease Amendment No. 3, at 5 § 3 (“Lease”) (attached as Exhibit 1 to Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment (Not Extension) (filed June 12, 2015)).

this leased building (assuming *arguendo* that Plaintiff's claim had any merit, which LAA disputes). Indeed, Plaintiff's draft letter to the Attorney General in October 2013 proposed immediate action by the State precisely to avoid the onset of costly demolition and construction activities that were about to begin.³⁷ Plaintiff knew that costly construction work was imminent in October 2013, but decided to allow the defendants to incur millions in expenses rather than to challenge the LIO Project.

Beginning in November 2013, LAA began making payments for a wide variety of tenant improvements.³⁸ Between November 2013 and January 2015 (when the building opened for business), LAA was invoiced for \$7.5 million in tenant improvements. LAA has paid those invoices.³⁹ These payments increased as the construction progressed.

Inv #	Period	Amount
TI-1	09/16/13-10/31/13	\$ -
TI-2	11/01/13-11/30/13	\$ 105,383.00
TI-3	12/01/13-12/31/13	\$ 193,000.00
TI-4	01/01/14-01/31/14	\$ 116,000.00
TI-5	02/01/14-02/28/14	\$ 150,800.00
TI-6	03/01/14-03/31/14	\$ 433,200.00
TI-7	04/01/14-04/30/14	\$ 341,223.00
TI-7a	05/01/14-05/31/14	\$ 292,500.00
TI-8	06/01/14-06/30/14	\$ 559,600.00
TI-9	07/01/14-07/31/14	\$ 503,817.00
TI-10	08/01/14-08/31/14	\$ 521,700.00
TI-11	09/01/14-09/30/14	\$ 819,500.00
TI-12	10/01/14-10/31/14	\$ 1,068,000.00
TI-13	11/01/14-11/01/14	\$ 1,048,720.00
TI-14	12/01/14-12/31/14	\$ 1,286,057.00
TI-15	01/01/15-01/20/15	\$ 60,500.00
		\$ 7,500,000.00

³⁷ See Exh. C at 2.

³⁸ See Affidavit of Jessica Geary ¶¶ 4-5.

³⁹ See *id.* ¶¶ 6-7.

If Plaintiff had brought suit in October, this matter could have been litigated prior to the LAA paying for any tenant improvements. If Plaintiff had brought suit in late 2013, or even early 2014, LAA would only have spent a few hundred thousand dollars on tenant improvements before litigating the propriety of the lease extension. While the waste of hundreds of thousands of dollars still would constitute a significant prejudice to the taxpayers, it pales in comparison to the millions more that LAA incurred as the construction reached its final stages in late 2014. Every month of Plaintiff's unreasonable delay meant that more taxpayer dollars were spent on these tenant improvements (and that LAA was prejudiced that much more). By waiting until after construction was essentially completed, Plaintiff caused LAA to suffer the maximum prejudice from payments for these tenant improvements.

In its Second Amended Complaint, Plaintiff asks this Court to rule that the LIO Project lease is null, void, and invalidated.⁴⁰ If the lease is declared void, it appears that LAA may be forced to exit the building and abandon \$7.5 million in tenant improvements that it already paid for in the building. Functionally, Plaintiff's proposed relief would cost LAA and the taxpayers at least \$7.5 million in wasted tenant improvements for a building that LAA would no longer have any right to be a tenant. This prejudice to LAA and the taxpayers would be significant. "Prejudice to the taxpayers . . . is a relevant consideration in making a laches determination."⁴¹ Notably, in the *Breck* case, the Alaska Supreme Court found that a cost to the taxpayers of \$1.5

⁴⁰ See Second Amended Complaint at 3 (filed Aug. 25, 2015).

⁴¹ *Breck*, 706 P.2d at 316.

million or more constituted "undue prejudice" that triggered application of the laches doctrine.⁴² Plaintiff's delay would cause those damages five-fold.

LAA understands that defendant 716 West will provide additional information concerning any harm or prejudice it suffered as a result of Plaintiff's unreasonable delay in bringing this suit.

V. CONCLUSION

Plaintiff unreasonably delayed in bringing this lawsuit for 17 months after concluding that the lease extension purportedly was inconsistent with AS 36.30.083, and LAA was severely prejudiced as a result of that unreasonable delay. For the foregoing reasons, Legislative Affairs Agency's motion should be granted and Plaintiff's lawsuit should be dismissed with prejudice.

DATED: October 21, 2015

STOEL RIVES LLP

By: 

KEVIN CUDDY
(Alaska Bar #0810062)
Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

⁴² See *id.* at 316-17.

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on October 21, 2015, a true and correct copy of the foregoing was served in the manner identified below on:

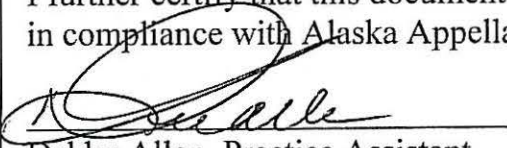
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I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).


Debby Allen, Practice Assistant

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, *et al.*

Defendants.

FILE

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OCT 06 2015

Stoel Rives LLP

Case No. 3AN-15-05969CI

**RESPONSE TO DEENDANT'S (LEGISLATIVE AFFAIRS
AGENCY) FIRST DISCOVERY REQUESTS TO PLAINTIFF
ALASKA BUILDING, INC.**

Admissions and Responses to Interrogatories herein do not constitute agreement that the requests and interrogatories, and responses thereto are relevant. Object to characterizations of the agreement as a lease extension and the project as a renovation.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Please admit that YOU were aware as of June 9, 2013 that the Legislative Council was negotiating a deal with Mark Pfeffer to revamp and expand the Legislative Information Office building, as publicly reported.

RESPONSE: Deny inasmuch as I don't remember. I don't think so.

REQUEST FOR ADMISSION NO. 2: Please admit that on September 19, 2013, 716 West Fourth Avenue, LLC entered into an agreement with the Legislative Affairs Agency to renovate and expand the Legislative Information Office (the "LIO Project").

LAW OFFICES OF
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RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 3: Please admit that YOU were aware on or about September 19, 2013, that 716 West Fourth Avenue, LLC had signed an agreement with the Legislative Affairs Agency to renovate and expand its leased office building.

RESPONSE: Deny because I don't recall and don't believe that I knew about the agreement that early.

REQUEST FOR ADMISSION NO. 4: Please admit that YOU were aware by October 3, 2013, that the Legislative Affairs Agency had signed a deal for the LIO Project, as publicly reported by the Alaska Dispatch News.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 5: Please admit that YOU were aware by October 3, 2013, that the construction and renovations for the LIO Project would cost tens of millions of dollars, as publicly reported by the Alaska Dispatch News.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 6: Please admit that YOU entered into a License to Enter Indemnity and Insurance Agreement with Criterion General, Inc., on or about October 30, 2013, to allow Criterion to re-locate gas service in connection with the construction for the LIO Project.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 7: Please admit that YOU entered into an Access, Indemnity, and Insurance Agreement with 716 West Fourth Avenue, LLC, on December 6, 2013 (the "Access Agreement").

*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

Page 2

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 8: Please admit that YOU became aware no later than December 6, 2013, that 716 West Fourth Avenue, LLC, would be demolishing the Empress Theater in connection with the LIO Project.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 9: Please admit that YOU accepted payment of \$15,000 from 716 West Fourth Avenue, LLC in December 2013 for professional fees that YOU incurred to address preparation for the LIO Project.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 10: Please admit that YOU were aware of the construction no later than December 10, 2013, as you were quoted in a news article describing the construction, <http://www.ktva.com/legislative-building-constructioncauses-the-closure-of-downtown-boutique/>

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 11: Please admit that YOU required the contractor for the LIO Project to provide you with a certificate of insurance prior to commencement of construction for the LIO Project.

RESPONSE: Admit to the following extent. After failing to get 716 West Fourth Avenue LLC (716 LLC) to abandon the project because it was illegal, we negotiated an agreement in which, at 716 LLC's insistence, the contractor agreed to be responsible for damage and provide insurance.

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*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

Page 3

REQUEST FOR ADMISSION NO. 12: Please admit that YOU entered into a space lease with Criterion General, Inc. ("Criterion"), the contractor for the LIO Project, on or about December 5, 2013 (the "Space Lease").

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 13: Please admit that YOU were aware that Criterion was leasing space from YOU under the Space Lease in connection with the construction for the LIO Project.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 14: Please admit that YOU accepted in excess of \$10,000 in rent from Criterion under the Space Lease.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 15: Please admit that you were aware no later than December 21, 2013, that the LIO Project arose from what the Alaska Dispatch News called a "no-bid deal," consistent with the article you quoted in your "open letter" to Governor Walker.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 16: Please admit that you were aware no later than December 21, 2013, that the Alaska Dispatch News stated that the renovated Legislative Information Office building would allegedly require the State to pay more than the going rate for downtown office space, consistent with the article you quoted in your "open letter" to Governor Walker.

RESPONSE: Admit.

*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

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REQUEST FOR ADMISSION NO. 17: Please admit that the renovated Anchorage Legislative Information Office building opened for business on or about January 9, 2015.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 18: Please admit that millions of construction costs were spent on the LIO Project between October 2013 and January 9, 2015.

RESPONSE: Admit; the Legislative Council agreed to pay for such construction costs, which were well in excess of what new construction would have cost, agreeing to pay rent in an amount over twice market rental value.

REQUEST FOR ADMISSION NO. 19: Please admit that YOU first brought this legal action challenging the legality of the Extension of Lease and Third Amendment of Lease (the "Lease Extension") on March 31, 2015.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 20: Please admit that YOU first brought this legal action challenging the legality of the Lease Extension more than 18 months after the Lease Extension was signed.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 21: Please admit that YOU first brought this legal action challenging the legality of the Lease Extension after you had already received tens of thousands of dollars in rent and other payments relating to the LIO Project from Criterion and 716 West Fourth Avenue, LLC.

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*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

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RESPONSE: Admit; In addition to rent from Criterion because the project constructively evicted the tenant of that space, the payments were for costs incurred as a result of the LIO Project.

REQUEST FOR ADMISSION NO. 22: Please admit that YOU first brought this legal action challenging the legality of the Lease Extension more than 18 months after you contend that the Legislative Affairs Agency violated the State Procurement Code.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 23: Please admit that YOU first brought this legal action challenging the legality of the Lease Extension more than 15 months after construction began on the LIO Project.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 24: Please admit that YOU first brought this legal action challenging the legality of the Lease Extension after the LIO Project was completed in all material respects.

RESPONSE: Admit to the extent that the legal action was brought after the new Legislative Information Office Building was substantially completed and had at least some occupancy. Object to the term "in all material respects," because there is over 9 years of performance left under the agreement.

REQUEST FOR ADMISSION NO. 25: Please admit that there was no indication, once construction began in late 2013, that the Legislative Affairs Agency had any intention to voluntarily declare the Lease Extension void due to an alleged irregularity in the procurement process.

*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

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RESPONSE: Admit; if the Legislative Affairs Agency had been willing to rectify its blatantly illegal action in entering into the LIO Project this action would not have been filed. It should still do so.

REQUEST FOR ADMISSION NO. 26: Please admit that the LIO Project did not demolish the entirety of the Legislative Information Office Building, but rather left certain key structural elements in place for a renovation project.

RESPONSE: Object to "key structural elements" characterization. Otherwise admit that the foundation and steel frame was left of the former Anchorage Legislative Information Office building, as was a portion of the exterior wall at the bottom south end of the west wall. While new floors were poured, some part of the floors may have also been left.

REQUEST FOR ADMISSION NO. 27: Please admit that the subject of the Lease Extension is a real property lease.

RESPONSE: Deny to the extent that the request does not acknowledge that the agreement provides for the construction of a new office building after the demolition of the existing building and the adjacent building, the newly constructed premises then being leased under the agreement. In other words, it is really a construction and lease-back agreement. Admit that LAA is currently leasing the building constructed under the agreement and to that extent it is a real property lease.

REQUEST FOR ADMISSION NO. 28: Please admit that the landlord both prior to and after the Lease Extension was executed remained the same.

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*Responses to Legislative Affairs Agency's
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RESPONSE: Admit that the landlord before and after the agreement is 716 West Fourth Avenue LLC, but deny to the extent that the ownership and management of the LLC changed substantially with the addition of Mark Pfeffer and an organization associated with Mark Pfeffer. Public records indicate that there has been a change of control and 716 West Fourth Avenue LLC has refused to produce requested documents pertaining to the ownership and operation of 716 West Fourth Avenue LLC. For this reason Alaska Building, Inc., cannot truthfully admit or deny whether the Landlord remained the same prior to and after the agreement other than that the legal entity both before and after the agreement is 716 West Fourth Avenue LLC.

REQUEST FOR ADMISSION NO. 29: Please admit that the address of the Legislative Information Office remained the same both prior to and after the Lease Extension was executed.

RESPONSE: Admit, except to the extent that 712 West 4th Avenue has been incorporated into the new building.

REQUEST FOR ADMISSION NO. 30: Please admit that, consistent with AS 36.30.083, a lessee may extend a real property lease with different terms and conditions than the original lease.

RESPONSE: Admit that certain terms and conditions, most obviously, the ending date of the lease may be different, but different terms and conditions may disqualify an agreement as extending a real property lease under AS 36.30.083(a). Calling an agreement a lease extension or reciting that it extends a real property lease does not make it a lease extension or that it extends a real property lease.

*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

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REQUEST FOR ADMISSION NO. 31: Please admit that the Lease Extension complied with AS 36.30.020 and the Alaska Legislative Procurement Procedures.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 32: Please admit that, consistent with AS 36.30.083, a lessee may extend a real property lease with different pricing terms than the original lease, provided that a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension is achieved.

RESPONSE: Admit that premised on landlords having already amortized (recovered) construction costs and therefore able to afford to extend leases at substantially less cost, AS 36.30.083(a) allows a lessee to extend a real property lease with different pricing terms than the original lease, provided that a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease. The statute also limits such extensions to 10 years.

INTERROGATORIES

INTERROGATORY NO. 1; Please describe WITH PARTICULARITY how and when YOU first became aware that the Lease Extension (1) was not the subject of a competitive procurement process, (2) was allegedly not an extension of the existing lease, and (3) did not allegedly yield cost savings of at least 10 percent below the market value of the rental property at the time of the extension.

RESPONSE: I don't remember exactly how and when I first became aware the project was not the subject of a competitive procurement process, but I don't think it was

*Responses to Legislative Affairs Agency's
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earlier than late September or later than October 3, 2013, when the Alaska Dispatch News (Dispatch) published an article. It was probably the Dispatch article that made me aware of it, but I can't be sure I was not aware of it before then. I also don't remember exactly when I first became aware the project was not a lease extension, but it was by the middle of October, 2013, after I had reviewed AS 36.30.083(a). The facts involved in tearing down the existing building to its steel frame and foundation, demolishing the adjacent old Empress Theatre, throwing the tenant out for over a year and building a new building made it obvious to me that it did not "extend" a real property lease. Similarly, I don't remember exactly when I became aware that the rent for the new Anchorage Legislative Information Office Building was well above market value, but it was by the middle of October, 2013. As a downtown landlord, in fact of the building adjacent to the new Anchorage Legislative Information Office Building, I was aware of market rents in the area.

INTERROGATORY NO. 2: Please describe WITH PARTICULARITY any and all actions you took in an effort to stop, question, dispute, or in any way challenge the Lease Extension or the procurement process that led to the execution of the Lease Extension - aside from filing this lawsuit on March 31, 2015.

RESPONSE: I had a discussion with Donald W. McClintock, attorney for 716 LLC, sometime shortly before October 11, 2013, about my concerns regarding damage to the Alaska Building and the lease being illegal. I indicated I was contemplating filing for an injunction to stop the project on that basis. I met with Mr. McClintock again on or around October 28, 2013, at which time I reiterated the project was illegal under AS 36.30.083(a).

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First Discovery Requests to Plaintiff*

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INTERROGATORY NO. 3: Please describe WITH PARTICULARITY any impediment that you claim prevented you from challenging the legality of the Lease Extension prior to March 31, 2015.

RESPONSE: The problem I was faced with was the Alaska Building was in great jeopardy from the construction project and I was very concerned that if I tried to obtain an injunction against the project moving forward and failed, there was a much higher likelihood of substantial damage, even to the point of the effective destruction of the Alaska Building. As it was, I had to hire an engineer to advocate for more protection of the Alaska Building. Mr. McClintock stated that he didn't think even I could afford the bond and while it is possible an injunction against commencement of the project was possible without posting a bond, I felt the risk of retaliatory damage to the Alaska Building was just too great to challenge the legality of the agreement at that time.

INTERROGATORY NO. 4: Please identify the "drastically different terms" contained in the Lease Extension, as alleged in page 6 of YOUR Memorandum in Support of Motion for Partial Summary Judgment: Not Extension, including but not limited to which of those "drastically different terms" causes the Lease Extension to not be an extension.

RESPONSE: Object because it is like asking what are the differences between a Yugo and a Lamborghini. Notwithstanding this objection, Plaintiff responds as follows:

Most of the sections of the lease have been replaced or drastically amended, to wit:

- Section 1 was replaced with a new section.
- Section 2 was replaced with a new section.
- Section 3 was replaced with a new section.

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First Discovery Requests to Plaintiff*

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- Section 4 was replaced with a new section.
- Section 5 was replaced with a new section.
- Section 6 was replaced with a new section.
- Section 7 was replaced with a new section.
- Section 8 was replaced with a new section.
- Section 9 was replaced with a new section.
- Section 10 was replaced with a new section.
- Section 11 was replaced with a new section.
- Section 12 was replaced with a new section.
- Section 13 was replaced with a new section.
- Section 14 was replaced with a new section.
- Section 15 was replaced with a new section.
- Section 16 was replaced with a new section.
- Section 17 was replaced with a new section.
- Section 18 was replaced with a new section.
- The last sentence of Section 19A was replaced with the following:
 "The Lessor shall be responsible for completing the Renovations described in Exhibit "N" prior to the Lessee accepting and taking occupancy of the Premises. After the Renovations have been completed and the Lessee has accepted and taken occupancy of the Premises, any subsequent alterations to the Premises agreed by the parties will be documented by separate agreement."
- Section 20 was deleted in its entirety.
- Section 21 was replaced with a new section.
- Section 22 was replaced with a new section.
- Section 23 was replaced with a new section.
- Section 24 was replaced with a new section.
- Section 25 was replaced with a new section.
- Section 30 was replaced with a new section.
- Section 31 was replaced with a new section.
- Section 33 was replaced with a new section.

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*Responses to Legislative Affairs Agency's
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- Section 34 was replaced with a new section.
- Section 35 was replaced with a new section.
- Section 36 was replaced with a new section.
- Section 37 was replaced with a new section.
- Section 39, as amended, was amended by deleting all content after the first paragraph.
- Section 41 was replaced with a new section.
- Section 42 was replaced with a new section.
- Section 43 was replaced with a new section.
- Section 46 was added.
- Section 47 was added.
- Section 48 was added.
- Section 49 was added.
- Section 50 was added.
- Section 51 was added.
- Section 52 was added.

The rent was drastically increased as was the per square foot rent.

The premises changed drastically, including the legal description with the inclusion of the adjoining property; the leased space going from 22,834 square feet net to 64,000 square feet gross.

The operating costs were drastically increased.

INTERROGATORY NO. 5: If you contend that the Lease Extension did not comply with either AS 36.30.020 or the Alaska Legislative Procurement Procedures, please describe **WITH PARTICULARITY** all facts supporting your contention.

RESPONSE: AS 36.30.020, requires that the procedures comply with AS 36.30.083(a) and the agreement does not in that it neither extends a real property lease nor

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*Responses to Legislative Affairs Agency's
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is it at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease.


Dated October 5, 2015.


James B. Gottstein, ABA # 7811100

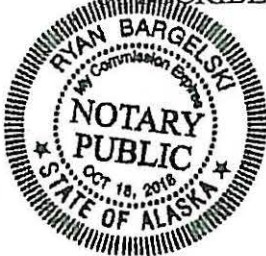
VERIFICATION


James B. Gottstein, being first duly sworn, deposes and states that I am the president of Alaska Building, Inc., the plaintiff in the above captioned litigation, I have read the above Responses to Interrogatories and believe to be true and complete based on the information available to Alaska Building, Inc., to the best of my knowledge and belief.

Dated October 5, 2015.


James B. Gottstein,
President, Alaska Building, Inc.

SUBSCRIBED AND SWORN TO before me this 5th day of October 2015.

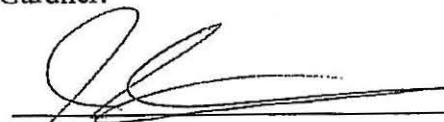



Notary Public in and for Alaska
My Commission Expires: 10.18.18

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated October 5, 2015.


Jim Gottstein

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*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

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In the Matter Of:

ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

JAMES GOTTSTEIN - VOLUME I

October 16, 2015

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1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3
4 ALASKA BUILDING, INC., an
5 Alaska corporation,

6 Plaintiff,

7 vs.

8 716 WEST FOURTH AVENUE LLC,
9 and LEGISLATIVE AFFAIRS
10 AGENCY,

11 Defendants.

12 _____
13 Case No. 3AN-15-05969 CI

14 DEPOSITION OF JAMES B. GOTTSTEIN
15 VOLUME I

16 Pages 1 - 58, inclusive
17 Friday, October 16, 2015
18 2:00 P.M.

19 Taken by Counsel for
20 Defendant 716 West Fourth Avenue LLC
21 at
22 ASHBURN & MASON
23 1227 West 9th Avenue, Suite 200
24 Anchorage, Alaska
25

CERTIFIED
TRANSCRIPT

1 A-P-P-E-A-R-A-N-C-E-S

2

For Plaintiff:

3

James B. Gottstein
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406 G Street, Suite 206
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6

7 For Defendant 716 West Fourth Avenue LLC:

8

Jeffrey W. Robinson
Eva Gardner
9 ASHBURN & MASON
1227 West 9th Avenue, Suite 200
10 Anchorage, Alaska 99501
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11

12 For Defendant Legislative Affairs Agency:

13

Kevin M. Cuddy
STOEL RIVES
14 510 L Street, Suite 500
Anchorage, Alaska 99501
15 907/277-1900

16

Court Reporter:

17

Gary Brooking, RPR
18 PACIFIC RIM REPORTING
711 M Street, Suite 4
19 Anchorage, Alaska 99501

20

21

22

23

24

25

1 Q. We'll see. We'll see. Is this a copy of
2 your discovery responses in this matter?

3 A. Looks like it.

4 Q. And are these true and accurate, to the
5 best of your knowledge?

6 A. Yes.

7 Q. In response to Request for Admission 11,
8 you indicate that you attempted but failed to get
9 716 West Fourth Avenue LLC to abandon the project
10 because you believed it was illegal. Is that right?

11 A. Yes.

12 Q. And when did you do so?

13 A. Shortly after I heard about it around
14 mid-October, I talked with Mr. McClintock about it.

15 Q. And did you also raise the issue with
16 Legislative Affairs Agency, or LLA -- LAA, at that
17 time?

18 A. No.

19 Q. Why not?

20 A. I didn't want to get into the politics of
21 it, basically. I mean, it had been all over the
22 papers that -- you know, about the "no bid" contract
23 and how exorbitant the price for the rental rate
24 was. And it seemed, I think, a -- it seemed like it
25 would be a futile gesture. I thought -- well, go

1 ahead.

2 Q. Well, what do you mean by that? What do
3 you mean when you say it would be a futile gesture
4 to notify LAA?

5 A. Because they -- it just seemed that they --
6 I mean, they were already under a lot of criticism,
7 and they were -- seemed bound and determined to go,
8 go ahead. I mean, that's kind of just speculation
9 on my part, I suppose.

10 Q. That's fine. And all I'm trying to get is
11 your understanding or your belief at the time. But
12 am I understanding your testimony correctly that you
13 believed that they were already set and determined
14 to proceed with this project as of October of 2013,
15 and so anything you had to say to them wasn't going
16 to change the direction of the project?

17 A. Yeah. And, again, I object to this whole
18 line of questioning, because I don't think that it's
19 relevant to whether -- whether or not the lease is
20 illegal.

21 Q. So I want to show you -- or mark, I guess,
22 as the next exhibit, Exhibit K.

23 MR. ROBINSON: Yeah, that should be.

24 MR. CUDDY: Thanks.

25 (Exhibit K marked.)

1 MR. CUDDY: Sorry.

2 MR. ROBINSON: Thank you.

3 BY MR. CUDDY:

4 Q. So I've handed you what's been marked as
5 Exhibit K. This is a letter on the letterhead of
6 Law Offices of James B. Gottstein, dated
7 October 30th, 2013, addressed to Michael Geraghty,
8 who was then the Attorney General for the State of
9 Alaska. Do you see that?

10 A. Yes.

11 Q. And I'll represent to you that this is a
12 document that was produced in discovery today from
13 Alaska Building, Inc. Do you recognize this
14 document?

15 A. Yes.

16 Q. Did you prepare this document?

17 A. Yes.

18 Q. And I note in the upper right-hand corner
19 of the first page there's a graphic that says
20 "Draft." Was this a draft of a letter to the
21 Attorney General?

22 A. Yes.

23 Q. And was this letter, in fact, ever sent?

24 A. I don't believe so, no.

25 Q. If I look at the substance of the letter,

1 claims would have to go through insurance, the
2 insurance.

3 And so, you know, from my perspective, that's
4 basically a crooked business, and insurance companies
5 always try to get out of paying what's due. And
6 that's not really a satisfactory remedy. It was --
7 which is proven by subsequent events. And so it was
8 the best I could get, but it was far from
9 satisfactory.

10 Q. When you spoke with Mr. McClintock in early
11 October of 2013, you already concluded, in your own
12 mind anyway, that the lease was illegal. Is that
13 right?

14 A. Yes.

15 Q. And you had reviewed the statute by that
16 point to reach that conclusion?

17 A. Yes. Again, you know, what -- when I knew
18 that was illegal, I think, is irrelevant to this
19 lawsuit, because it's brought on behalf -- you know,
20 as citizen taxpayers, and it's brought on behalf of
21 the people in the state of Alaska. So, you know,
22 what I knew, you know, what anybody else knew,
23 doesn't, I think, really impact that.

24 Q. When was the first time that you raised the
25 issue of the purported illegality of the lease with

1 anyone from Legislative Affairs Agency?

2 A. I don't know that I did prior to bringing
3 suit.

4 Q. So certainly not before the construction
5 began?

6 A. I think this has been asked and answered,
7 hasn't it?

8 Q. If the answer is correct, then I can move
9 on.

10 A. Yes.

11 Q. Okay. You took a number of photographs of
12 the construction during its course, at least a few
13 of which we have seen in some of the pleadings in
14 this case. Is that right?

15 A. Yes.

16 Q. Was this a significant project?

17 A. Yes. It was certainly in my mind. I
18 think --

19 Q. Was it your understanding that millions of
20 dollars were being spent on the renovation?

21 A. Yes.

22 Q. Even tens of millions?

23 A. But I object to the characterization of
24 "renovation," but, yes, on the project.

25 Q. Okay. We'll just call it the project. Is

1 it fair to say that tens of millions of dollars were
2 being spent on the project?

3 A. That seems likely. I mean -- yeah, I think
4 that's probably true. It's far more expensive to
5 have demolished the old building and the Empress
6 Theater and then build up from there than to build a
7 new building.

8 Q. Okay. And you were aware that that was the
9 plan, to do this demolition of the old Empress
10 Theater and at least some of the original building
11 in order to create what is now the LIO building?

12 A. Well, it was virtually all of the old
13 building. The only thing they left was the steel
14 frame and foundation and a little part of the
15 concrete skin on the west wall and the south -- the
16 bottom of the south corner.

17 Q. Okay. So using your description of it, you
18 were aware of that, that that was basically the
19 scope of the construction before it began?

20 A. I think so, yes.

21 Q. Okay. Were you also aware that the
22 Legislative Affairs Agency was contributing seven
23 and a half million dollars to the cost of the
24 project as payment for certain tenant improvements?

25 A. You know, I'm not really sure when I became

1 unsuccessful.

2 Q. So I'm going to switch gears.

3 MR. ROBINSON: Before you do that, Kevin, I'm
4 going to request a brief restroom break. Is that
5 okay?

6 MR. CUDDY: Sure. Yeah.

7 MR. ROBINSON: Just a couple minutes.

8 (Recess taken.)

9 MR. CUDDY: Okay. I am ready whenever you
10 are.

11 Q. Mr. Gottstein, just stepping back for a
12 minute, the construction in this project started in,
13 roughly, early December of 2013. Is that right?

14 A. Yes.

15 Q. And once construction started, you had no
16 reason to believe that the Legislative Affairs
17 Agency was going to abandon the lease due to any
18 alleged problem with the procurement process,
19 correct?

20 A. Yes.

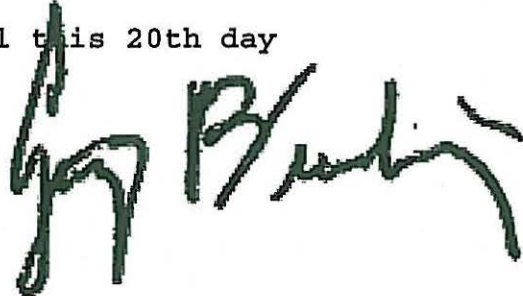
21 Q. And you were aware, once construction
22 started, that the defendants were going to be
23 committing millions of dollars to the project in
24 order to complete the construction?

25 A. It's been asked and answered, hasn't it?

CERTIFICATE

I, GARY BROOKING, Registered Professional
Reporter and Notary Public in and for the State of
Alaska, do hereby certify that the witness in the
foregoing proceedings was duly sworn; that the
proceedings were then taken before me at the time
and place herein set forth; that the testimony
and proceedings were reported stenographically by
me and later transcribed by computer transcription;
that the foregoing is a true record of the
testimony and proceedings taken at that time;
and that I am not a party to nor have I any
interest in the outcome of the action herein
contained.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed my seal this 20th day
of October, 2015.



GARY BROOKING, RPR
My Commission Expires 6/28/2016

GB4223

October 30, 2013

Michael C. Geraghty
Attorney General
P.O. Box 110300
Juneau, AK 99811

Re: Anchorage Legislative Information
Office Renovation Contract

Dear Attorney General Geraghty:

I represent Alaska Building, Inc.,¹ which owns the building adjacent to the Old Empress Theatre, most recently the Anchor Pub. The Alaska Building and the Old Empress Theatre share a party wall. Thus, my client was naturally concerned when plans were announced to demolish the Old Empress Theatre to make way for the renovations of the Anchorage Legislative Information Office. When the developer refused to provide adequate written assurances that Alaska Building, Inc., and its tenants would be compensated for any losses caused by the renovations, and that the Alaska Building would not be irreparably damaged, I looked into the so-called lease "extension" and have discovered that it is in violation of AS 36.30.083.²

As you know, in order to ensure that the State receives the best price for its purchases almost all contracts for a substantial amount of money require an open, public bidding process. Sole source contracts are extremely limited under state law. One of the exceptions is AS 36.30.083, which does allow a lease extension for up to 10 years if there is a minimum cost savings of at least 10 percent below the market rental value. The contract is neither a lease extension, nor is it for at least 10 percent below market rent. It is not a close call on either.

The putative lease extension calls for the LIO to vacate the building for over a year while the existing building is gutted and replaced, with the construction of new space on a different lot to be added. By no stretch of the imagination is this a lease extension. Just calling a contract a lease extension doesn't make it so.

¹ I am also the 100% owner of Alaska Building, Inc., through my revocable trust.

² The reviewed documents I reviewed are available at <http://gottsteinlaw.com/lio/>.

On its face the appraisal is for \$4.40 per square foot per month rent. It is not believed any building in Anchorage has ever been leased for that much, let alone the almost \$5.00 per square foot market rent that purports to be at least 10 percent less than. Worse, I have had an expert MAI appraiser review the deal and once one adds in all of the extras the State is paying for, deduct the space that one normally doesn't count as rented, and the other shenanigans in the appraisal, the State is actually paying an effective market full service rent in excess of \$7 per square foot per month for rentable office space. As even the appraisal used to support the contract indicates, comparable market rents are no higher than the \$3 per square foot per month range.

The demolition of the Old Empress Theatre is planned to begin November 15th, so please see to it that this illegal contract is cancelled before then.

Sincerely,

Jim Gottstein
President

cc: The Media
Don McClintock, Esq.
attorney.general@alaska.gov

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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

Case No.: 3AN-15-05969CI

AFFIDAVIT OF KEVIN M. CUDDY
(In Support of Defendant Legislative Affairs Agency's Motion for Summary Judgment (Laches))

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, KEVIN M. CUDDY, declare as follows:

1. I am over the age of eighteen and have personal knowledge of the statements contained in this declaration.

1. I am an attorney with the law firm of Stoel Rives, LLP, counsel for Defendant Legislative Affairs Agency ("Agency") in the above-captioned litigation and submit this affidavit in support of Defendant Legislative Affairs Agency's Motion for Summary Judgment Under the Laches Doctrine.

2. I have personal knowledge of all facts described herein and affirm all other facts based on my information and belief.

3. Attached as **Exhibit A** to Legislative Affairs Agency's Memorandum in Support of Motion for Summary Judgment (Laches) is a true and correct copy of Plaintiff's Response to Defendant's (Legislative Affairs Agency) First Discovery Requests to Plaintiff Alaska Building, Inc.

4. Attached as **Exhibit B** to Legislative Affairs Agency's Memorandum in Support of Motion for Summary Judgment (Laches) is a true and correct copy of excerpts from the October 16, 2015 deposition of James Gottstein.

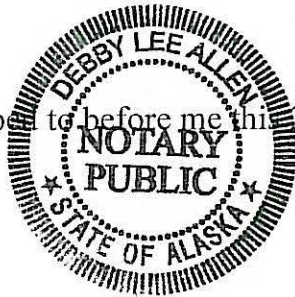
5. Attached as **Exhibit C** to Legislative Affairs Agency's Memorandum in Support of Motion for Summary Judgment (Laches) is a true and correct copy of a draft letter from Jim Gottstein as the owner of Alaska Building, Inc., to Attorney General Michael Geraghty (dated Oct. 30, 2013). This document was produced by Plaintiff on October 15, 2015, in response to discovery requests.

I declare under penalty of perjury that the foregoing is true and correct.


DATED this 21st of October, 2015.



KEVIN M. CUDDY



Subscribed to before me this 21st day of October 2015 in Anchorage, Alaska.



Notary in and for the State of Alaska
My Commission expires: 12/17/2016

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on October 21, 2015, a true and correct copy of the foregoing was served in the manner identified below on:

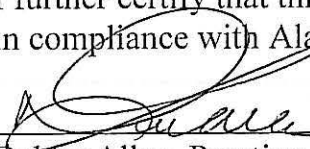
VIA HAND DELIVERY

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

VIA FIRST CLASS MAIL

Jeffrey W. Robinson
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)

I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).



Debby Allen, Practice Assistant
80415349.1 0081622-00003

AFF. OF KEVIN M. CUDDY ISO OF DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR SUMMARY JUDGMENT (Laches)

ALASKA BUILDING, INC. V. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI

Kevin Cuddy (Alaska Bar #0810062)
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: (907) 277-1900
Facsimile: (907) 277-1920



Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

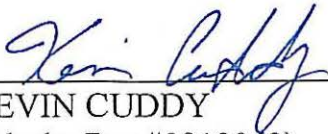
Case No.: 3AN-15-05969CI

**DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S NOTICE OF FILING
FACSIMILE COPY OF THE AFFIDAVIT OF JESSICA GEARY**

Defendant Legislative Affairs Agency hereby notifies this Court of filing a facsimile copy of the Affidavit of Jessica Geary submitted in support of Defendant Legislative Affairs Agency's Motion for Summary Judgment. The original signed affidavit will be filed with the Court promptly upon receipt.

DATED: October 21, 2015.

STOEL RIVES LLP

By: 
KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on October 21, 2015, a true and correct copy of the foregoing was served in the manner identified below on:

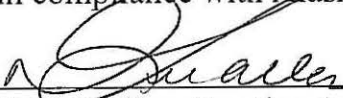
VIA HAND DELIVERY

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
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(Attorney for Plaintiff)

VIA FIRST CLASS MAIL

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Debby Allen, Practice Assistant

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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

Case No.: 3AN-15-05969CI

AFFIDAVIT OF JESSICA GEARY
(In Support of Defendant Legislative Affairs Agency's Motion for Summary Judgment)

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, JESSICA GEARY, declare as follows:

1. I am over the age of eighteen and have personal knowledge of the statements contained in this declaration.

2. I am the Finance Manager for the Legislative Affairs Agency ("LAA") and submit this affidavit in support of Defendant Legislative Affairs Agency's Motion for Summary Judgment.

3. I have personal knowledge of the payment requests and the payments made by LAA to the lessor described in paragraph 6 and affirm all other facts based on my information and belief.

4. In connection with the 2014 lease extension for the Legislative Information Office building, LAA paid for certain tenant improvements to the renovated building.

5. The first invoice that LAA received for these tenant improvements covered the period of November 1-30, 2013. It was in the amount of \$105,383.

6. LAA subsequently received invoices for each month's tenant improvements. The amount of those invoices were as follows:

Inv #	Period	Amount
TI-1	09/16/13-10/31/13	\$ -
TI-2	11/01/13-11/30/13	\$ 105,383.00
TI-3	12/01/13-12/31/13	\$ 193,000.00
TI-4	01/01/14-01/31/14	\$ 116,000.00
TI-5	02/01/14-02/28/14	\$ 150,800.00
TI-6	03/01/14-03/31/14	\$ 433,200.00
TI-7	04/01/14-04/30/14	\$ 341,223.00
TI-7a	05/01/14-05/31/14	\$ 292,500.00
TI-8	06/01/14-06/30/14	\$ 559,600.00
TI-9	07/01/14-07/31/14	\$ 503,817.00
TI-10	08/01/14-08/31/14	\$ 521,700.00
TI-11	09/01/14-09/30/14	\$ 819,500.00
TI-12	10/01/14-10/31/14	\$ 1,068,000.00
TI-13	11/01/14-11/30/14	\$ 1,048,720.00
TI-14	12/01/14-12/31/14	\$ 1,286,057.00
TI-15	01/01/15-01/20/15	\$ 60,500.00
		\$ 7,500,000.00

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

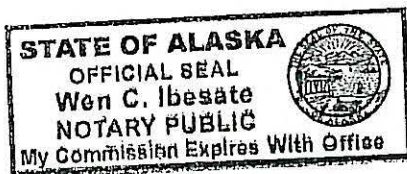
7. LAA paid all of these invoices for goods and services in connection with the tenant improvements.


I declare under penalty of perjury that the foregoing is true and correct.

DATED this 21st day of October, 2015.


JESSICA GEARY

Subscribed to before me this 21st day of October 2015 in Anchorage, Alaska.




Notary in and for the State of Alaska
My Commission expires: "With Office"

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on October 24 2015, a true and correct copy of the foregoing was served via ~~USPS Priority Mail~~ on: as identified on:

VIA HAND DELIVERY
James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

VIA FIRST CLASS MAIL
Jeffrey W. Robinson
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1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)

I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).


Debby Allen, Practice Assistant

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Kevin Cuddy (Alaska Bar #0810062)
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Telephone: (907) 277-1900
Facsimile: (907) 277-1920

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

Case No.: 3AN-15-05969CI

**[PROPOSED] ORDER GRANTING DEFENDANT LEGISLATIVE
AFFAIRS AGENCY'S MOTION FOR SUMMARY JUDGMENT**

THIS COURT, having reviewed Defendant Legislative Affairs Agency's Motion for Summary Judgment Under the Laches Doctrine, any opposition and/or responses thereto, and being duly advised in the premises, this Court ORDERS as follows:

Defendant Legislative Affairs Agency's Motion for Summary Judgment Under the Laches Doctrine is hereby GRANTED.

DATED this _____ day of _____, 2015.

Honorable Patrick McKay
Superior Court Judge

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on October 21, 2015, I caused a true and correct copy of the foregoing to be served in the manner identified on:


VIA HAND DELIVERY

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

VIA FIRST CLASS MAIL

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Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)

I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).


Debby Allen, Practice Assistant

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