



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiff,)

vs.)

) Case No.: 3AN-15-05969 CI

716 WEST FOURTH AVENUE LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)
Defendants.)

REPLY TO PLAINTIFF'S OPPOSITION TO LEGISLATIVE AFFAIRS
AGENCY'S MOTION FOR SUMMARY JUDGMENT UNDER THE LACHES
DOCTRINE

Alaska Building, Inc. ("ABI") has failed to demonstrate its 17 month delay in filing suit was reasonable. As 716 West Fourth Avenue LLC ("716") is prejudiced by this delay in filing suit and there are no material facts in dispute, this court should grant summary judgment.

ARGUMENT

I. Plaintiff's 17 month delay in filing suit is unreasonable.

ABI has conceded that it waited approximately 17 months from the date it came to believe that the lease was in violation of AS 36.30.083 before filing suit. The equitable defense of laches precludes unreasonable delay if that delay prejudices the

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

defendant.¹ Although Jim Gottstein, President of the Alaska Building, directly denied that anyone threatened him during the construction process,² Plaintiff nevertheless suggests that it held a subjective belief that *if* it had filed suit earlier and lost the hypothetical suit, 716 would have retaliated by intentionally damaging the Alaska Building. Plaintiff's suspicion of retaliatory damage is contrary to the undisputed facts already developed in this case. Even if Plaintiff actually believed its own retaliatory damage theory, Plaintiff's subjective belief does not render its 17 month delay in filing suit reasonable under the laches doctrine.

a) Relocation of the gas service

Plaintiff's first argument, that 716 threatened to cut off the gas to the Alaska Building to ensure ABI's cooperation during negotiations, is complete fiction. No such threats were made. Prior to relocation, the gas meter which serviced the Alaska Building was located on 716 property. Removal of the meter required that the gas lines that extended from the Anchor Pub to the meter located behind the Alaska Building be re-piped. Bob O'Neill, on behalf of 716, notified Mr. Gottstein on October 28, 2013 that the gas meter would need to be removed and relocated prior to commencement of construction activities.³ As owner of the property to which the gas meter was affixed, 716 was entitled to authorize Enstar to safely conduct the removal and relocation. Even

¹ *Bibo v. Jeffrey's Restaurant*, 770 P.2d 290, 293 (Alaska 1989).

² See 10-23-15 Deposition of Mr. Gottstein at 141: 22 - 142: 3. *Attached as Exhibit A.*

³ See Letter and corresponding email attached as Exhibit B. ((This exhibit was marked as Exhibit G during Mr. Gottstein's deposition.))

so, Mr. Gottstein was given the option to be indemnified by 716 and its contractors if they performed the work, or to retain his own mechanical contractor to perform the work and restart its gas fired equipment.⁴

Mr. Gottstein informed his tenants of the situation on October 29th, referencing Mr. O'Neill's October 28th letter.⁵ The next day, ABI entered into a "License to Enter Indemnity and Insurance Agreement" with Criterion General that addressed the relocation of gas meter service and gas lines, and "to the extent required for safety, to shut down and restart the boilers."⁶ As part of that Agreement, ABI was named as an Additional Insured under Criterion's liability policy and issued an insurance certificate.⁷ Plaintiff does not dispute that he entered into the indemnity agreement regarding relocation of the gas line and gas meter on October 30, 2013, *the same day* he was e-mailing Mr. McClintock threatening to "launch the grenade" (i.e. file for injunctive relief) and drafting letters to the Attorney General regarding the project.⁸ Mr. Gottstein therefore made the voluntary decision on October 30th to work with 716 rather than take

⁴ *Id.*

⁵ *See Exhibit B* (This exhibit was also marked as Exhibit G during Mr. Gottstein's deposition.)

⁶ *See Exhibit C.* (The indemnity agreement and insurance certificates were marked as Exhibit F in Mr. Gottstein's deposition.)

⁷ *See Id.*

⁸ *See Exhibit A* at 97: 7 – 98: 1.

affirmative steps to challenge the legality of the lease. Based on ABI's cooperation, the gas service work was performed on or about November 18, 2013.⁹

Mr. Gottstein admits that he has never complained that Criterion or any other entity involved in moving the gas was negligent.¹⁰ Rather, Mr. Gottstein claimed in his deposition that "the boiler went off a couple of times, and the rooftop units had some problems."¹¹ Mr. Gottstein remains unwilling to appreciate the fact that 716 was responsive to Mr. Gottstein's complaints, however minor, facilitated insurance coverage for ABI, and provided ABI a valuable service.¹²

In sum, ABI has presented no evidence that if it had filed suit to stop construction on the basis of the lease's purported illegality and lost, 716 would have retaliated by intentionally damaging the Alaska Building's gas lines.¹³ Plaintiff also fails to articulate why it waited an unreasonably long time—an additional sixteen months—**after** completion of the gas work to file suit.

b) Preservation of the Party Wall

⁹ As noted by Mr. Gottstein in a follow-up memo to his tenants, the work was estimated to disrupt the heating system for three to four **hours**, and 716 had scheduled the work for a day in which the temperature was predicted to be relatively warm. *See* Exhibit D. (This was marked as Exhibit L during Mr. Gottstein's deposition.)

¹⁰ *See* Exhibit A at 100: 20-25.

¹¹ *See* Exhibit A at 101: 1-6.

¹² Prior to any construction efforts taking place, 716 met with members of the public who could be affected by the construction process. Plaintiff wrote off these meetings as "public relations." *See* Exhibit A at 101-102.

¹³ It also belabors common sense to believe that Mr. Gottstein, a lawyer intimately familiar with the process of filing suit, would not rely on the legal process to thwart property damage to his own building before any work was actually done.

Plaintiff's second argument, that fear of 716 taking retaliatory action against the party wall warranted delay in litigation, is equally indefensible.¹⁴ Plaintiff once again misstates the history of the various agreements it willingly entered into as the LIO Project unfolded. As discussed in previous briefings, Plaintiff and 716 entered into an Access, Indemnity, and Insurance Agreement on December 6, 2013, regarding the party wall.¹⁵ "Party Wall" was defined as part of the Agreement¹⁶ and the parties agreed that:

716 shall exercise due care consistent with its obligations under the Party Wall Agreement and common law to preserve the Party Wall during the Project. The Party Wall will remain governed by the Party Wall Agreement. *Portions of the eastern wall of the Empress Theater not shared by the Empress Theater and the Alaska Building and not included within the scope of the Party Wall Agreement may be removed during the Project in 716's discretion.*¹⁷

The Agreement expressly made 716 potentially liable for any failure to use due care with respect to work performed on the Party Wall. That obligation would have existed regardless of ABI challenging the legality of the lease. Moreover, ABI was insured against damage to the party wall under the indemnification portion of the Agreement. Rather than challenge the legality of the lease, however, Mr. Gottstein chose to discuss hypothetical damage liability with 716's counsel,¹⁸ no doubt preparing

¹⁴ See Plaintiff's Opposition to LAA's Laches Motion at 3.

¹⁵ See Exhibit E at 1.

¹⁶ See Exhibit F.

¹⁷ See Exhibit E at paragraph 7, pg. 4.

¹⁸ Notably, the letters attached to Plaintiff's Opposition between Mr. Gottstein and 716 discussing the parties' differing interpretations of the scope of the December 6, 2013 Agreement as it pertained to the party wall, are **after** the Agreement was executed. See Plaintiff's Opposition to LAA's Laches Motion, Exhibit 3.

for the litigation claims in the severed construction suit.¹⁹ This assertion is supported by Mr. Gottstein's own statements during his October 23rd deposition, in which he admitted that he only challenged the legality of the lease when he was not compensated \$250,000 for what he believed to be damage to his building **after** construction had ended.²⁰ In sum, Plaintiff has produced no evidence supporting its inflammatory contention that the filing delay was justified by threats to the Alaska Building.

c) Plaintiff had sufficient notice to file suit.

Plaintiff's last argument in defense of the delay, is that it "was not feasible" to file suit in the period in which it learned about the lease and the anticipated demolition of the Anchor Pub. The Alaska Supreme Court rejected an identical argument in *City of Juneau v. Breck*, where the plaintiff learned of an alleged procurement code violation two months prior to construction beginning, and then actually filed suit three months into the construction process and at a time when construction was nearly 50% complete.²¹ In the present case, Plaintiff admitted it learned of the contemplated renovation "by mid-September, 2013."²² Construction actually began approximately four months later in December 2013. Thus, Plaintiff had at least three months to file suit prior to construction and at least an additional 13 months to file during construction. Plaintiff's failure to do so is unreasonable.

¹⁹ 3AN-15-09785CI.

²⁰ See Exhibit A: 124: 5-18.

²¹ 706 P.2d 313 (Alaska 1985).

²² See Plaintiff's Response to 716 Interrogatory No. 1.

As previously articulated in 716's Opposition to Plaintiff's Motion for Preliminary Injunction, which was incorporated in the Joinder motion it filed in this instant matter, it is undisputed that it *was* feasible for Plaintiff, in the months preceding construction, to: meet with Mark Pfeffer (October 2, 2013); meet with Project personnel (October 3, 2015), coordinate with its own engineer (October 10, 2013), discuss filing for an injunction with its business associate Dave LeClair (October 11, 2013); threaten to file an injunction (October 11, 2013); request a mind boggling \$10,000,000 purchase obligation as part of any indemnification agreement (October 25, 2013); meet with 716 again (October 28, 2013); negotiate multiple drafts of indemnification agreements regarding the gas service issue (October 30, 2015); threaten to "launch the grenade" by filing suit (October 30); draft at least two (unsent) letters to the Attorney General raising concerns about the Project and the lease (October 30); and finally negotiate over a one month period the Access, Insurance, and Indemnification Agreement with 716 (November-December 6, 2015).

It is worth emphasizing, that under the terms of the Agreement, Mr. Gottstein **was personally paid in excess of \$40,000.** By entering into the Agreement and accepting payment, while purportedly maintaining the position that the lease was illegal, Plaintiff acquiesced to the alleged wrong, a factor the court is obligated to consider in

laches analysis.²³ What is particularly disturbing is that Mr. Gottstein's payment of \$10,000 for "professional services" as part of the December 6, 2013 Agreement included its invoice of \$6,344.00 for time spent on the Project from **September 24, 2013- October 24, 2013**²⁴. This invoice alone contained 19 separate entries in which Mr. Gottstein billed his time at a rate of \$325.00 per hour. On October 17, 2013, for example, Mr. Gottstein billed two hours of time for review of AS 36.30.083 and associated follow up. Plaintiff's active knowledge of the purported illegal lease and his direct involvement in the Project show his acquiescence to the alleged wrong. Plaintiff's lack of diligence in seeking a remedy under these circumstances is telling. Had plaintiff sincerely wanted to file suit, there was no obstacle whatsoever to him doing so.²⁵

Plaintiff's failure to provide any actual evidence of threatening conduct, other than his newly articulated subjectively held beliefs, is consistent with logic and common sense: ABI was fully indemnified for any negligent damage caused by the construction; it would be fundamentally illogical for 716 to retaliate against ABI by damaging the Alaska Building. None of Plaintiff's explanations for its delay in filing suit for 17

²³ See *Schaub v. Schaub*, 305 P.3d 337, 343 (Alaska 2013)(citing *Wolf v. Arctic Bowl, Inc.* 560 P.2d 758, 767 (Alaska 1977))("The essence of laches is not merely the lapse of time, but also a lack of diligence in seeking a remedy, or acquiescence in the alleged wrong and prejudice to the defendant.")

²⁴ Attached as Exhibit G. (This exhibit was introduced at Mr. Gottstein's deposition as Exhibit C.)

²⁵ Plaintiff's initial Complaint contains only 5 sentences on the lease's alleged illegality. Plaintiff did not even directly name 716. See March 31, 2015 Complaint

months are representative of the undisputed facts of the case or are objectively reasonable under the laches doctrine. Simply put, Plaintiff's delay in filing suit was unreasonable.

II. ABI's Unreasonable Delay Prejudices 716.

Plaintiff fails to address in any way how its unreasonable delay in filing suit fails to prejudice 716. Instead, it perplexingly claims that 716 has admitted that the lease rate is not at least 10% below market under AS 36.30.083(a) – an argument contrary to every position 716 has taken in this suit.²⁶

When raising the defense of laches, prejudice is measured where “money or valuable services will be wasted as a result of the unreasonable delay[.]”²⁷ Pursuant to the terms of the lease extension, 716's construction efforts were specifically designed to “meet the needs of the Lessee.”²⁸ As the Landlord of the LIO for over 20 years, 716 was intimately familiar with the logistical and professional needs required for legislative offices in Anchorage. As part of the instant Project, the Agency required up to approximately 64,000 gross square feet of office space (and dedicated on-site parking) “in order to adequately house the offices of the legislature and legislative staff and

²⁶ Plaintiff's baseless claim that 716 “knew that the lease was illegal and secretly worked with the chair of the Legislative Council to put pressure on the key Legislative Affairs Agency staff to accept the illegal agreement” is being concurrently addressed in 716's reply to Plaintiff's motion to dismiss Plaintiff's *qui tam* and punitive damages claim.

²⁷ *Bibo v. Jeffrey's Restaurant*, 770 P.2d 290, 293 (Alaska 1989).

²⁸ See Extension of Lease and Lease Amendment No. 3, dated 9/19/13, at 1. Attached as Exhibit H.

properly accommodate the public.”²⁹ In order to meet the Agency’s needs, it was thus necessary to add the Anchor Pub, located at 712 West 4th Avenue, to the existing Premises in contemplation of the renovation and expansion project.³⁰ In short, Plaintiff is prejudiced by any proposed judicial action that would force the Agency to abandon a lease in a building precisely designed to meet the Legislature’s specific needs. It would be extremely unlikely that any other tenant could or would occupy the space as currently designed. 716 would thus bear an enormous economic loss, as well as suffer damage to its professional reputation and standing with numerous lending institutions involved in financing the Project.

As 716 has already articulated, it spent approximately \$44,500,000 in construction efforts related to the LIO Project.³¹ The amount of time and services provided in construction alone was additionally significant: over the course of 17 months, 716 supplied project management support; incurred surveying expenses, bank fees, office relocation costs; and made significant payments to ABI, its tenants, and Mr. Gottstein personally.³² Plaintiff now wishes to stop performance of the contract even though, over the course of its 17 month delay in bringing suit, it **knew** that 716 was

²⁹ See Id.

³⁰ Id.


³¹ See ¶ 5 Affidavit of Mark Pfeffer in Support of 716’s Opposition to Plaintiff’s Motion for Preliminary Injunction. Attached as Exhibit G. 716 was reimbursed \$7.5 million by the Agency for the tenant improvement costs. This amount included a construction contract in excess of \$30,000 to Criterion General. See Exhibit G at ¶5.

³² See Id.

spending large amounts of time and money on the Project.³³ Plaintiff's unreasonable delay has caused undue harm or prejudice to 716. Accordingly, the Court should dismiss Plaintiff's lawsuit with prejudice.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 11-10-15

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

ASHBURN & MASON INC.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

³³ See *Laverty v. Alaska Railroad Corporation*, 13 P.3d 725, 729 (Alaska 2000)(relying on *Breck* to uphold a superior court ruling that laches barred Plaintiff's request for an injunction against performance of a gravel extraction contract because Plaintiff knew, over the course of the one-year delay in filing suit, that the gravel company spent large amounts of time and money on geotechnical studies to support its land use permit and applications.)

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served ☐ electronically ☐ messenger
☐ facsimile ☒ U.S. Mail on the 20 day of ~~October~~ November 2015, on:

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501

Kevin Cuddy
Stoel Rives, LLP
510 L Street, Suite 500
Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

ASHBURN & MASON INC.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

In the Matter Of:

ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

JAMES GOTTSTEIN - VOL. II

October 23, 2015

PACIFIC RIM REPORTING

STENOGRAPHIC COURT REPORTERS

711 M STREET, SUITE 4

ANCHORAGE, ALASKA 99501

907-272-4383

www.courtreportersalaska.com

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 II

16 Pages 59 - 147, inclusive

17 Friday, October 23, 2015
18 9:00 A.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	I-N-D-E-X	
2	EXAMINATION BY	PAGE
3	Mr. Robinson	64
4	Mr. Cuddy	138
5	EXHIBITS	
6	Exh A	E-mail String ending with E-mail dated
7		October 11, 2013, to Dave LeClair from
8		Jim Gottstein, re Numbers! (2 pages)
80		
9	Exh B	E-mail String ending with E-mail dated
10		October 11, 2013, to Jim Gottstein
		from Donald McClintock, re LIO Renovation
		(3 pages)
81		
11	Exh C	E-mail String ending with E-mail dated
12		October 25, 2013, to Donald McClintock
13		from James Gottstein, re Revised
		Agreement; Bill, with Invoice Attached
		(5 pages)
85		
14	Exh D	E-mail String ending with E-mail dated
15		October 30, 2013, to James Gottstein from
16		Donald McClintock, re Larger Issues
		(2 pages)
93		
17	Exh E	Letter (Draft) dated October 31, 2013,
18		to Michael Geraghty from Jim Gottstein,
		re Anchorage Legislative Information
		Office Fraudulent Lease Extension (1 page)
95		
19	Exh F	License to Enter Indemnity and Insurance
20		Agreement, with Attachment (6 pages)
97		
21	Exh G	Memo dated October 29, 2013, to Alaska
22		Building Tenants from Jim Gottstein, re
		Legislative Information Office
		Renovations, with Attachment (2 pages)
99		
23	Exh H	E-mail dated November 12, 2013, to
24		Christopher Shutte, et al., from Amy
25		Slinker, re Informal Neighborhood
		Meeting: Legislative Information Office
		Building Remodel (1 page)
102		

1 General on or about October 30th? Did you take any
2 steps after that date to continue in that direction
3 with another letter for the research, anything at
4 all between, say, October 31st and March of 2015?

5 A. Well, I didn't take any, you know, steps to
6 advise, you know, people, I mean, the Attorney
7 General anyway. I don't know what further
8 research -- I may have done more research.
9 Certainly, I did -- you know, probably at least
10 relooked at it before I filed the lawsuit.

11 Q. Okay. You dropped this idea of sending a
12 letter to the Attorney General basically at the same
13 time that you received the license to enter
14 indemnity and insurance agreement. Is that right?

15 A. No. I mean, basically, I dropped it. I
16 mean, which -- if you're talking -- the gas piping
17 one was -- I mean, that was just kind of coincidence
18 that it was the same time. But I -- I dropped
19 pursuing that because of the concern over the
20 retaliatory damage to the Alaska Building, so which
21 ultimate- -- go ahead.

22 Q. Well, did anyone threaten you,
23 Mr. Gottstein?

24 A. No.

25 Q. Did Mr. McClintock suggest to you that you

1 may be subject to some sort of retaliatory damage
2 if --

3 A. No.

4 Q. -- you didn't sign on?

5 A. No. But -- no. But I -- I certainly
6 thought it was a real concern. I mean, we had to
7 really press for measures to protect the Alaska
8 Building. And -- no. And it was not entirely
9 successful, both in terms of not getting what was
10 asked for and also in terms of damage resulting to
11 Alaska Building.

12 Q. Okay. And one of those measures, if I can
13 find it, was this Exhibit F, the license to enter
14 indemnity and insurance agreement, which was signed
15 on October 30th, 2013.

16 A. No. That was just for the gas piping,
17 wasn't it?

18 Q. Okay.

19 A. On that date, yeah. That -- yeah. No,
20 that was just to move the gas service.

21 Q. It was an indemnity agreement, right?

22 A. What?

23 Q. It was an indemnity agreement?

24 A. Yeah. But it was just for the gas piping.
25 The main agreement was signed on December 6th.

1 A. Yeah. But I didn't send it.

2 Q. Sure. I'm just asking you if you copied
3 it -- if you had sent it, if you had gone forth and
4 sent the letter, you intended --

5 A. You know, it speaks for itself, but as --
6 the media is listed as a CC.

7 Q. Okay. On the 30th of October, while you're
8 e-mailing Mr. McClintock, threatening to launch the
9 grenade, and drafting letters to the Attorney
10 General that you never sent, you actually entered
11 into an indemnity agreement regarding relocation of
12 the gas line and gas meter, correct?

13 A. I don't recall what day. Was it the same
14 day?

15 Q. Yeah. I'm going to provide you with
16 Exhibit F.

17 A. Yeah. One of the things that was going on
18 was Pfeffer had said they were just going to cut off
19 the gas to my building.

20 (Exhibit F marked.)

21 BY MR. ROBINSON:

22 Q. So we're on Exhibit F. Page 2, is that
23 your signature Mr. Gottstein, on page 2?

24 A. Yes. It's an electronic signature.

25 Q. And the date, please?

1 A. October 30th, 2013.

2 Q. Were you provided also with the certificate
3 of insurance, certificate of liability insurance?
4 And we're on page 4 here.

5 A. Yeah, it looks like it. Yeah, I believe
6 so.

7 Q. And you were the certificate holder,
8 correct, or the Alaska Building was the certificate
9 holder, correct?

10 A. Do you want to point me to where Alaska
11 Building is referenced?

12 Q. Sure. On the first page of the
13 certificate, the bottom left corner.

14 A. Oh, okay.

15 Q. In fact, on the 29th, did you, throughout
16 this process, inform your tenants what was happening
17 with respect to construction efforts?

18 A. I tried to keep them informed.

19 Q. Did you specifically share with them, and
20 if so, when, that the lease was illegal and
21 construction shouldn't go forward?

22 A. I don't recall.

23 Q. Did you hold a meeting at any point with
24 any of your tenants saying that you reviewed the
25 statute, you understood that the lease was illegal,

1 middle of winter.

2 Q. So you wanted the developer to provide
3 written assurances that any costs or damages caused
4 to Alaska Building and its tenants would be
5 reimbursed by the project, correct?

6 A. Yeah.

7 Q. And that the project wouldn't irreparably
8 damage the building, right?

9 A. Yes.

10 Q. And this one specifically dealt with the
11 "gas meter removal" issue, right? And that's
12 reflected in the last paragraph?

13 A. Well, the document speaks for itself.

14 Q. Would you agree with me that you received
15 those assurances when you entered into the indemnity
16 agreement on the 30th?

17 A. No.

18 Q. And that was your signature on the
19 10/30 document?

20 A. Well, yeah. This was specifically about
21 moving the gas -- the gas line. It had nothing to
22 do with the larger issues.

23 Q. Right. But to be clear, you've never
24 raised an issue that there was somehow negligence or
25 whatever in the removal of the gas line?

1 A. Well, there were problems that resulted
2 from it. I mean, my -- the boiler went off a couple
3 times, and the rooftop units had some problems.

4 Q. As part of this lawsuit, that claim has
5 never been raised, right?

6 A. No.

7 Q. Would you agree with me that 716, or the
8 developer, was making good faith efforts to discuss
9 the construction project with you and the other
10 neighbors of the building?

11 A. I wouldn't necessarily characterize it as
12 good faith.

13 Q. What would you characterize it as?

14 A. Public relations.

15 Q. Willing to meet with people who possibly
16 could be affected by the construction, right?

17 A. Yeah. I mean, they would, you know, invite
18 people and give them pizza. So, yeah, they had
19 meetings with people to -- as part of their public
20 relations effort.

21 MR. ROBINSON: I'm going to just provide an
22 example of that. And I think we cut -- are we at H, I
23 and J there?

24 THE WITNESS: I have got G.

25 THE REPORTER: I, J and K.

1 THE WITNESS: So I'm going to do H. The next
2 exhibit is Exhibit H.

3 (Exhibit H marked.)

4 THE WITNESS: This is H?

5 BY MR. ROBINSON:

6 Q. Yes. And what we're looking at,
7 Mr. Gottstein, fair to say, is an e-mail from Amy
8 Slinker, from Pfeffer Development, to you and to
9 others requesting sort of a "meet and greet"
10 question/answer session regarding the LIO project,
11 right?

12 A. Well, I wouldn't characterize it that way,
13 but the document speaks for itself.

14 Q. You would agree with me that you were
15 invited to that meeting, correct, and the meeting
16 was to take place on November 15th, 2013?

17 A. The document speaks for itself. I mean,
18 I -- yeah, I suppose it could be read -- I suppose
19 it's an invitation.

20 Q. I want to move back a little bit.

21 We're going to do the next exhibit L. I will
22 pass it out.

23 (Exhibit L marked.)

24 BY MR. ROBINSON:

25 Q. Okay. So are you familiar with this,

1 only reason you brought the lease claim was so that
2 you could be paid for property damage?

3 A. I don't think that's accurate.

4 Q. Okay. What's accurate?

5 A. I think that I -- well, that I wouldn't
6 have brought the illegal lease claim if I had been
7 compensated, but I don't recall saying that that's
8 the only reason why I brought the illegal lease
9 claim.

10 Q. So just to be very clear, had you been
11 compensated \$250,000 by March 31st, you never would
12 have raised the illegality of the lease claim in a
13 filing, in a lawsuit?

14 A. I think that's right. In fact, I -- I
15 gave -- sent Ms. Windt a copy of the copy of the
16 draft complaint, that included the illegality of the
17 lease, and pointed out that that was in there. So
18 yes.



ALASKA BUILDING, INC.

406 G Street, Suite 206, Anchorage, Alaska 99501
(907) 274-7686 Phone - (907) 274-9493 Fax

UPDATE

(Legislative Information Office Renovation)

To: Alaska Building Tenants
From: Jim Gottstein
Re: Legislative Information Office Renovations
Date October 29, 2013

This is to update you on my October 10, 2013,¹ Memo on the Legislative Information Office renovations (Project).

In short, things are a mess. I asked the developer to provide adequate written assurances that

- (1) any costs or damages the Project causes Alaska Building, Inc., and its tenants would be reimbursed by the Project, and
- (2) the Project won't irreparably damage the Alaska Building,

and he refused. The developer has never explained why you or Alaska Building, Inc., should bear any costs caused by their project. I am unwilling to cooperate on that basis and intend to try and stop the Project absent such assurances.

As a result, the Developer is threatening to shut off the gas to the building on November 11th because it is being served from a meter behind what was the Anchor Bar. See, letter on the reverse side of this. There has been some progress on this issue and in any event, it seems unlikely Enstar will allow gas to be shut off to the building in the middle of (what should be by then) winter. Even if agreement is reached, there will be some, hopefully short, period of time when it will be out of service.

¹ incorrectly dated August 21st



716 West Fourth Avenue LLC

425 G Street suite 210

Anchorage, AK 99501

James B. Gottstein

Law Offices of James B. Gottstein

406 G Street, Suite 206

Anchorage, AK 99501

RE: Notice of Removal of Enstar Gas Meter on Anchor Pub Building on November 11

Dear Jim,

The letter is to notify you that the gas meter currently serving your building is being removed from the Anchor Pub. As we have previously discussed, this meter is located on a building scheduled for demolition in Mid-November. The removal of this meter requires that you re-pipe your gas lines from the Anchor Pub to the meter located behind your building on the alley.

If you elect to indemnify us and our contractors, we are happy to perform the work. If you do not feel this is in your best interest you are free to retain a mechanical contractor to perform the work and restart your gas fired equipment.

The removal of the meter is scheduled for November 11.

Feel free to contact us if you have any questions. I can be reached at 907-317-1692 or by email at boneill@pfefferdevelopment.com

Thank You,



Bob O'Neill, PE

For 716 West Forth Avenue, LLC

License to Enter
Indemnity and Insurance Agreement

1. License:

Owner grants to Contractor a limited license to enter upon the Property (the buildings located on a portion of Lot 2 and Lot 1, Block 40 Original Townsite of Anchorage) for the purpose of relocating the meter gas service and gas lines to the Property, and to the extent required for safety, to shut down and restart the boilers. Such license shall expire on November 22, 2013 unless extended by Owner.

2. Indemnity:

The Contractor, Criterion General, Inc. located at 2820 Commercial Drive Anchorage, Alaska 99501, shall defend, indemnify and hold harmless the Owner, Alaska Building, Inc. and their agents and employees from and against all claims, damages, losses and expenses including interest, costs and attorneys' fees arising out of or resulting from the performance of the project to re-locate the gas service from the service behind the property owned by 716 West Fourth Avenue, LLC, adjacent to the property owned by Alaska Building, Inc., to a new meter to be installed behind the property owned by Alaska Building, Inc., provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The Contractor need not indemnify Owner for the Owner's sole negligence; however, this indemnification shall apply to circumstances of combined fault.

In any and all claims against the Owner, Alaska Building, Inc. or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

Contractor will maintain the insurance coverages as attached.

3. Use of Hazardous Materials on the Project:

{10708-050-00157724;3}



Compliance with Environmental Laws: Contractor covenants full compliance with any applicable federal, state, or local environmental statute, regulation, or ordinance presently in effect or that may be amended or effective in the future regarding the handling of hazardous materials.

Contractor shall not cause or permit any hazardous material to be brought upon, kept, or used in or about the project by Contractor, or its authorized representatives or invitees, except for such hazardous material as is necessary or useful to Contractor's work on the project.

Any hazardous material permitted on the Project as provided in this paragraph, and all containers therefore, shall be used, kept, stored, and disposed of in a manner that complies with all laws or regulations applicable to any such hazardous material.

Contractor shall not discharge, leak or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water if such material (as reasonably determined by Owner or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (1) the health, welfare, or safety of persons, whether located on the project or elsewhere, or (2) the condition, use, or enjoyment of the project or any other real or personal property.

Contractor specifically agrees to report all releases, threatened releases, discharges, spills, or disposal of hazardous substances, in whatever quantity, immediately to the appropriate regulatory authorities and simultaneously to Owner, and to keep Owner fully informed of any communication between Contractor and any person or agency concerning potential environmental contamination and hazardous substances.

Contractor hereby agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of hazardous material kept on the project by Contractor, or its authorized representatives and invitees.

AGREED TO THE FOREGOING THIS 30 DAY OF October 2013.

James B. Gottstein
ALASKA BUILDING, INC.
Digitally signed by James B. Gottstein
DN: cn=James B. Gottstein, o=Alaska Building, Inc., ou=
email=jg@touchng.com, c=US
Date: 2013.10.30 16:03:07 -08'00'

David Schubert
Criterion General, Inc.
CONTRACTOR

Vice President
TITLE
October 30, 2013
DATE

{10708-050-00157724;3}

Attachment to License to Enter and Indemnity and Insurance Agreement

Insurance & License Requirements

1. The CONTRACTOR is to provide the Alaska Building with a certificate of insurance prior to commencement of construction. All insurance policies shall contain a provision that the coverages afforded thereunder shall not be cancelled or not renewed, nor restrictive modifications added, until at least thirty (30) calendar days' prior written notice has been given to the Certificate Holder. The certificate shall include items A-F as noted below.

- A. General Liability

General Aggregate	\$2,000,000
Products/Completed Operations	\$1,000,000
Personal/Advertising	\$1,000,000
Each Occurrence	\$1,000,000
Damage to Owner's Premises	\$100,000
Medical Expense	\$5,000

- B. Automobile

Combined Single Limit	\$1,000,000
-----------------------	-------------

- C. Workers' Compensation

Workers' Compensation	Statutory
EL - Each Accident	\$500,000
EL - Disease, Policy Limit	\$500,000
EL - Disease, each Employee	\$500,000

- D. Alaska Building, Inc. shall be added as an additional insured under the insurance (except Workers' Compensation) and all named as certificate holders.

- E. Provide a Waiver of Subrogation provision on the Workers' Compensation. (If applicable)

- F. Auto insurance should apply to owned, non-owned and hired auto exposure of the contractor and subcontractors working on the project.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/30/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Alaska USA Insurance Brokers
P.O. Box 196530

CONTACT NAME: Brenda Nolin, CIC, CISR
PHONE (A/C, No. Ext.): (907) 561-1250 FAX (A/C, No.): (907) 561-4315
E-MAIL: b.nolin@alaskausainsurance.com
ADDRESS:
PRODUCER ID #: 00052773

Anchorage AK 99519

INSURED

Criterion General, Inc.
2820 Commercial Drive

INSURER(S) AFFORDING COVERAGE NAIC #
INSURER A Navigators Specialty Insurance 36056
INSURER B American Fire & Casualty
INSURER C Liberty Northwest
INSURER D Colony Insurance Company 39993
INSURER E:
INSURER F:

Anchorage AK 99501-3015

COVERAGES

CERTIFICATE NUMBER: 13-14 Master COI

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
GENERAL LIABILITY						
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		LA13CGI01914500	1/1/2013	1/1/2014	DAMAGE TO RENTED PREMISES (Per occurrence) \$ 100,000
	<input checked="" type="checkbox"/> Surplus Lines Policy					MED EXP (Any one person) \$ EXCLUDED
						PERSONAL & ADV INJURY \$ 1,000,000
	GENL AGGREGATE LIMIT APPLIES PER:		Worldwide Facilities Inc.			GENERAL AGGREGATE \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					PRODUCTS - COM/PROP AGG \$ 2,000,000
AUTOMOBILE LIABILITY						
B	<input checked="" type="checkbox"/> ANY AUTO					COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ALL OWNED AUTOS		BAA1455340530	1/1/2013	1/1/2014	BODILY INJURY (Per person) \$
	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS					PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> NON-OWNED AUTOS					Medical payments \$ 5,000
						Uninsured motorist combined \$ 1,000,000
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR		Surplus Lines Policy			EACH OCCURRENCE \$ 4,000,000
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE		Worldwide Facilities Inc.			AGGREGATE \$ 4,000,000
	<input type="checkbox"/> DEDUCTIBLE					Products-Comp Ops Aggregate \$ 4,000,000
	<input type="checkbox"/> RETENTION \$		CH13EXC768845IC	1/1/2013	1/1/2014	\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					<input checked="" type="checkbox"/> WC STATUS <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N/A	WC41NC014537013	1/1/2013	1/1/2014	E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Pollution Liability		PKC300494	1/1/2013	1/1/2014	\$1M Ea Occ Pol/\$2M Aggregate Ded:\$50,000
	Professional Liability		Surplus Lines Policy-WWF			\$1M Ea Cln Pro/\$2M Aggregate Ded:\$50,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Re: 716 W 4th Avenue, Anchorage, AK
Alaska Building, Inc. is an Additional Insured on all referenced policies excluding Workers' Compensation, but only with respect to work done by or on behalf of the Named Insured for the project referenced. Subject to policy terms, conditions & exclusions. Alaska Building, Inc. is granted Waiver of Subrogation on the Workers' Compensation policy

CERTIFICATE HOLDER

CANCELLATION

jg@touchngo.com

Alaska Building, Inc.
Home of the AlaskaCam (r)
Jim Gottstein, President
406 G Street, Suite 206
Anchorage, AK 99501

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

B Nolin, CIC, CISR/BR *Brenda Nolin*

ACORD 25 (2009/09)
INS025 (200909)

© 1988-2009 ACORD CORPORATION. All rights reserved.
The ACORD name and logo are registered marks of ACORD

COMMENTS/REMARKS

as respects the referenced project subject to the policy terms, conditions and exclusions.

CANCELLATION AS PER ALASKA STATUTE AS 21.36.220

At least 10 days' notice of cancellation is required if cancellation is for conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against, or for discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the insurance or by the insured in pursuing a claim under the policy.

At least 20 days' notice is required for nonpayment of premium or for failure or refusal of the insured to provide the information necessary to confirm exposure or necessary to determine the policy premium.

At least 60 days' notice is required if cancellation is for any reason except as previously noted.

Advance Notice Required for Nonrenewal

Except in case of nonpayment of premium for the expiring policy, or if the insured fails to pay the premium as required by the insurer for renewal, an insurer may not fail to renew a policy unless a written notice of nonrenewal is mailed at least 45 days before the expiration date of the policy or of the anniversary date of a policy written for a term longer than 1 year or with no fixed expiration date.

If notice of nonrenewal is not given as required, the existing policy shall continue until the insurer provides notice for the time period required by this section for that policy. This section does not apply if the insurer has in good faith manifested its willingness to renew.

[AS 21.36.240]

Advance Notice Required for Premium or Coverage Changes

Written notice shall be mailed to the insured and to the agent or broker of record at least 45 days before expiration:

- *if renewal premium is increased more than 10 percent for a reason other than an increase in coverage or exposure base, or
- *if after renewal there will be a material restriction or reduction in coverage not specifically requested by the insured.

If notice before expiration of the policy is not given as required by this section, the existing policy shall continue until the insurer provides notice for the time period required for that policy. This section does not apply to workers compensation insurance.

OFREMARK

COPYRIGHT 2000, AMS SERVICES INC.

COMMENTS/REMARKS

ALASKA SURPLUS LINES WORDING APPLIES TO GENERAL LIABILITY, EXCESS LIABILITY, CONTRACTORS POLLUTION AND PROFESSIONAL LIABILITY POLICIES:

"This is evidence of insurance procured and developed under the Alaska Surplus Lines Law AS21.34. It is not covered by the Alaska Insurance Guarantee Association Act, AS21.80. This insurer does not hold a certificate of authority with Alaska, and is not subject to supervision by the Alaska Department of Insurance"

Worldwide Facilities, Inc. - License #9718

OFREMARK

COPYRIGHT 2000, AMS SERVICES INC.



ALASKA BUILDING, INC.

406 G Street, Suite 206, Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

LIO RENOVATIONS UPDATE (Gas Re-Piping/Schedule?)

To: Alaska Building Tenants
From: Jim Gottstein
Re: Legislative Information Office Renovations
Date November 8, 2013

The gas service to the main part of the Alaska Building comes from behind the Anchor bar and runs along the party wall, so it has to be re-routed for the Legislative Information Office renovation project. Therefore, this Saturday they plan to install the new piping and then on Wednesday, November 13, starting at 11:00 am, to disconnect the old service and reconnect the new service. They estimate this will take between 3 & 4 hours and we won't have heat during that time. This doesn't apply to G Street Fox, which has its own gas meter. They scheduled it for Wednesday because the temperature is predicted to be in the mid-30's.

I am scheduled to be out of town from Saturday night until late Thursday afternoon, but I may come back early and make it in time. In any event Dennis Berry at the engineering firm of BBFM is generally watching over what they are doing for the Alaska building and Forrest Braun will be on this particular

My current information is they will start with the demolition of the Anchor Bar on November 18th, but this will just be hazardous materials removal. My understanding is they are planning to make a larger opening in the front to accommodate this.

The major demolition is supposed to start around December 1st.

All of these dates seem to slip slide around.



Access, Indemnity, and Insurance Agreement

This Access, Indemnity, and Insurance Agreement (the "Agreement") is made as of the date of the last signature hereto, by and between 716 West Fourth Avenue, LLC ("716"), an Alaska limited liability company, whose address is 737 W. 5th Ave., Anchorage, Alaska 99501, and Alaska Building, Inc. ("ABI"), an Alaska corporation, whose address is 406 G Street, Suite 206, Anchorage, Alaska (each a "Party" and, together, the "Parties").

RECITALS

WHEREAS ABI owns certain real property located at the intersection of 4th Avenue and G Street in Anchorage, fully described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "ABI Property")

and the building constructed on such property (herein, the "Alaska Building"); and

WHEREAS 716 owns certain real property located adjacent to the Alaska Building on 4th Avenue in Anchorage, fully described as:

The West 39 and 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "716 Property")

and the building constructed on such property (herein, the "Empress Theater"); and

WHEREAS the Alaska Building and the Empress Theater were constructed sharing a party wall, described and pursuant to the terms of certain documents recorded at Book 3, Page 293 on January 22, 1917, at Book 5, Page 300, on August 21, 1918, and at Book 10, Page 83 on July 13, 1923, all in the Anchorage Precinct, Territory of Alaska (such wall, the "Party Wall," and such documents, the "Party Wall Agreement"); and

WHEREAS 716 intends to demolish the Empress Theater and to construct a new building on the 716 Property (such construction, the "Project" and such new structure, the "New Building"); and

WHEREAS pursuant to the Party Wall Agreement and common law regarding party walls 716 and ABI each have the shared duty to repair and preserve the Party Wall, during the demolition of the Empress Theater and otherwise; and

WHEREAS the owners of ABI have a large amount of family history associated with the Alaska Building and are committed to preserving the building as long as possible, acknowledging that the Alaska Building is one of the oldest structures in Anchorage, being first constructed on or around 1917, and of historical importance; and

WHEREAS ABI has hired BBFM Engineers, Inc. ("BBFM") to be its representative regarding engineering questions and issues during the Project; and

WHEREAS as a precautionary measure, ABI is arranging to have its computer servers "mirrored" off-site;

WHEREAS ABI and 716 share a commitment to ensure that the Project is completed safely and without impairment of the party wall; and

WHEREAS 716 acknowledges that the Project may impact the use and enjoyment of the Alaska Building by its tenants and occupants during certain stages of the Project and although such impacts may not be actionable, 716 stands ready to make the following commitments to ameliorate such impact and ABI is willing to accept such commitments as a reasonable accommodation of its concerns; and

WHEREAS the Parties desire to make certain specific mutual commitments regarding the Project, to avoid conflict during the Project.

NOW THEREFORE in consideration for the mutual commitments contained herein, the Parties agree as follows:

1. Reimbursement for Professional Fees:

In consideration for the professional time required to address preparation for the Project, within five (5) business days of execution of this Agreement 716 shall remit a one-time, lump sum payment in the amount of Fifteen Thousand and 00/100 Dollars (\$15,000.00) to ABI. This payment shall be in full satisfaction of any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, for professional fees related to the Project, including but not limited to legal fees, appraisal fees, fees for other representation, and engineering fees, with the exception of such fees incurred in addressing a Catastrophic Event, as such term is defined below. 716 shall not reimburse or otherwise pay for professional fees incurred by ABI or its affiliates, including but not limited to BBFM, during the course of the Project or related to the Project, except as awarded by a court of competent jurisdiction.

2. Reimbursement for Server Mirroring:

In consideration for the back-up server mirroring work which will be completed to assure the availability and safety of electronic information for ABI and Alaska Building tenants during the Project, 716 agrees to reimburse in full the costs of such work as invoiced to ABI by a consultant of ABI's choosing, up to a maximum reimbursement amount of Ten Thousand and 00/100 Dollars (\$10,000.00). This payment shall be in full satisfaction of any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to issues with ABI's computer servers or electronic information during or otherwise related to the Project. ABI represents and warrants that this waiver shall extend to any and all entities with an interest in the server in the Alaska Building, including but not limited to Touch N' Go Systems, Inc., and ABI shall save and indemnify 716 from any and all complaints or claims by such entities.

3. Reimbursement for Rent Abatement:

In consideration for the potential disruption to tenant activity in the Alaska Building during the Project, and for the waiver of any future claims related to such disruption, as set forth herein, within five (5) business days of execution of waiver agreements by the tenants as set forth herein 716 shall offer to remit to ABI's tenants one-time, lump sum rent abatement payments in the following amounts: Two Thousand Dollars and 00/100 (\$2,000.00) for Jim Gottstein, Two Thousand Nine Hundred and Fifty and 00/100 Dollars (\$2,950.00) for Alaska Center for the Environment, One Thousand Three Hundred Seventy Five and 00/100 Dollars (\$1,375.00) for Partners for Progress, and One Thousand Two Hundred and 00/100 Dollars (\$1,200.00) for Blu Menswear. Should the tenant(s) accept, this payment shall be in full satisfaction of any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to disruption of tenant activity in the Alaska Building during the duration of the Project for such tenant(s), both by ABI and by any and all tenants leasing space in the Alaska Building; and each tenant shall execute a waiver in the form attached as Attachment C prior to receipt of a rent abatement payment. Upon execution of this Agreement ABI shall notify the tenants of this rent abatement offer, which shall remain open to each tenant until January 5, 2014. Interested tenants shall contact Shea Simasko (646-4644; SSimasko@PfefferDevelopment.com) directly to arrange the transaction details of their abatement payment.

4. Lease of Blu Menswear Space:

Commencing on January 1, 2014, the Parties agree that Criterion General shall lease the ground floor space in the Alaska Building currently occupied by Blu Menswear, with a street address of 706 W. 4th Avenue, for a project office for a term of one (1) year at \$1,200 per month. Such lease shall be in the form attached to this Agreement as Attachment B.

5. Access; Reimbursement for Use of Parking:

716 shall maintain safe, secure, and clean pedestrian access to the Alaska Building at all times during the Project. ABI leases its alley parking spaces located adjacent to the Alaska Building for any purpose related to the Project in return for a monthly rental of Three Hundred Dollars and 00/100 (\$300.00) per month for each month until the end of the month following the month 716 gives notice that it no longer needs such spaces and that they are available for use and open for access by ABI. This payment shall be in full satisfaction of any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to 716's use of these parking spaces.

6. License:

Subject to the terms of this Agreement, ABI grants to 716 and its agents, employees, contractors, and subcontractors a limited license to all reasonably required access to the ABI Property and the Alaska Building, with reasonable notice to ABI and at reasonable times, for the purpose of planning and implementing the Project, and of minimizing any impacts of the Project on the Alaska Building.

7. Party Wall:

Upon execution of this Agreement, 716 shall arrange for the installation of survey points on the Party Wall for the purpose of monitoring any movement of the Party Wall during the Project as set forth in Attachment D. 716 shall arrange for monitoring of these survey points on a weekly basis for the duration of the Project. All monitoring information shall be equally available to and accessible by representatives of 716 and ABI, including but not limited to BBFM.

716 shall exercise due care consistent with its obligations under the Party Wall Agreement and common law to preserve the Party Wall during the Project. The Party Wall will remain governed by the Party Wall Agreement. Portions of the eastern wall of the Empress Theater not shared by the Empress Theater and the Alaska Building and not included within the scope of the Party Wall Agreement may be removed during the Project in 716's discretion.

8. Walkway and Generator Easements:

The walkway and generator easement as recorded at Book 10, Page 83, on July 13, 1923, and at Book 42, Page 66, on July 28, 1944 shall not be affected by this Agreement.

9. Coordination with BBFM:

Throughout the duration of the Project, 716 shall apprise BBFM of planned elements of the Project which will impact the Party Wall. 716 shall endeavor to give BBFM reasonable advance notice of any and all such work and shall provide BBFM with the opportunity to observe such work as requested.

10. Indemnity:

The contractor employed by 716 to complete the Project, Criterion General, Inc. located at 2820 Commercial Drive Anchorage, Alaska 99501 (the "Contractor"), shall defend, indemnify and hold harmless ABI and its, tenants, agents and employees from and against all claims, damages, losses and expenses including interest, costs and attorneys' fees arising out of or resulting from the performance of any work on the ABI Property or on the Party Wall, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The contractor need not indemnify ABI for ABI's sole negligence; however, this indemnification shall apply to circumstances of combined fault.

In any and all claims against ABI or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

Contractor will maintain the insurance coverages as attached in Attachment A.

11. Use of Hazardous Materials on the Project:

Compliance with Environmental Laws: Contractor covenants full compliance with any applicable federal, state, or local environmental statute, regulation, or ordinance presently in effect or that may be amended or effective in the future regarding the handling of hazardous materials.

Contractor shall not cause or permit any hazardous material to be brought upon, kept, or used in or about the 716 Property or the ABI Property (collectively, the "Properties") by Contractor, or its authorized representatives or invitees, except for such hazardous material as is necessary or useful to Contractor's work on the Project and handled in accordance with applicable law..

Any hazardous material permitted on the Properties as provided in this paragraph, and all containers therefore, shall be used, kept, stored, and disposed of in a

manner that complies with all laws or regulations applicable to any such hazardous material.

Contractor shall not discharge, leak or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water if such material (as reasonably determined by the Parties or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (1) the health, welfare, or safety of persons, whether located on the project or elsewhere, or (2) the condition, use, or enjoyment of the Properties or any other real or personal property.

Contractor specifically agrees to report all releases, threatened releases, discharges, spills, or disposal of hazardous substances, in whatever quantity, immediately to the appropriate regulatory authorities and simultaneously to the Parties, and to keep the Parties fully informed of any communication between Contractor and any person or agency concerning potential environmental contamination and hazardous substances.

Contractor hereby agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of hazardous material kept on the Properties by Contractor, or its authorized representatives and invitees.

12. Catastrophic Event(s):

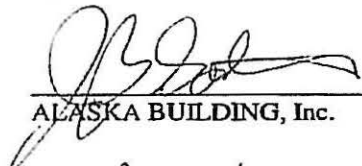
A "Catastrophic Event" shall be any of the following: (i) an event of structural or physical damage to the Alaska Building, alleged to be caused in part or entirely by the actions and or omissions of 716, its contractors, employees or agents during the Project or as a result of acts or omissions that took place during the Project but manifested themselves after the Project; (ii) impacts to the use or occupancy of the Alaska Building as a result of any structural or physical damage to the Alaska Building; or (iii) any claim which would be covered by insurance carried by 716, its contractors, employees and agents.

13. General Provisions:

Time is of the essence with regard to each and every provision hereof. The captions to the sections of this Agreement are solely for convenience of reference and shall not in any way limit, amplify, or modify the provisions hereof. The invalidity or un-enforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and such provision shall be construed to most closely match the intent of such provision that is valid and enforceable. Each Party has had the opportunity to have this Agreement reviewed by counsel and the rule of construction or interpretation that ambiguities, if any, in a writing be construed against the drafter shall not apply to this Agreement. This is the entire agreement of the Parties pertaining to the subject matter hereof and

supersedes all or any other prior agreements and understandings between the Parties. No change or modification of this Agreement shall be valid unless the same be in writing and signed by both Parties.


AGREED TO THE FOREGOING THIS 6th DAY OF DECEMBER, 2013.



ALASKA BUILDING, Inc.
President

TITLE
12/4/2013

DATE

716 WEST FOURTH AVENUE, LLC


TITLE
12/5/13

DATE

Attachment A

Insurance

1. The CONTRACTOR is to provide the Alaska Building with a certificate of insurance **prior** to commencement of construction. *All insurance policies shall contain a provision that the coverages afforded thereunder shall not be cancelled or not renewed, nor restrictive modifications added, until at least thirty (30) calendar days' prior written notice has been given to the Certificate Holder.* The certificate shall include items A-F as noted below.

- A. General Liability
- | | |
|-------------------------------|-------------|
| General Aggregate | \$2,000,000 |
| Products/Completed Operations | \$1,000,000 |
| Personal/Advertising | \$1,000,000 |
| Each Occurrence | \$1,000,000 |
| Damage to Owner's Premises | \$100,000 |
| Medical Expense | \$5,000 |
| Umbrella Coverage | \$3,000,000 |
- B. Automobile
- | | |
|-----------------------|-------------|
| Combined Single Limit | \$1,000,000 |
|-----------------------|-------------|
- C. Workers' Compensation
- | | |
|-----------------------------|-----------|
| Workers' Compensation | Statutory |
| EL - Each Accident | \$500,000 |
| EL - Disease, Policy Limit | \$500,000 |
| EL - Disease, each Employee | \$500,000 |
- D. Alaska Building, Inc. shall be added as an additional insured under the insurance (except Workers' Compensation) and all named as certificate holders.
- E. Provide a Waiver of Subrogation provision on the Workers' Compensation. (If applicable)
- F. Auto insurance should apply to owned, non-owned and hired auto exposure of the contractor and subcontractors working on the project.

Attachment C

Tenant Acknowledgement and Waiver

This Acknowledgement and Waiver (the "Agreement") is made effective this 16th day of December, 2013 by Law Offices of Joseph B. Miller, a sole proprietorship ("Tenant") in favor of 716 West Fourth Avenue, LLC ("716"), an Alaska limited liability company, whose address is 737 W. 5th Ave., Anchorage, Alaska 99501.

RECITALS

WHEREAS Tenant leases certain space (the "Space") designated space # 206 in the building commonly referred to as the "Alaska Building," located at the intersection of 4th Avenue and G Street in Anchorage, on the property fully described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "ABI Property"); and

WHEREAS 716 West Fourth Avenue, LLC ("716") is the owner of that property located adjacent to the Alaska Building on 4th Avenue in Anchorage, and fully described as:

The West 39 and 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "716 Property"); and

WHEREAS 716 will undertake a comprehensive reconstruction of the structure on the 716 Property, with such work slated to commence in November, 2013 (such reconstruction work, the "Project"); and

WHEREAS 716 has agreed to provide funds for preemptive rent abatement to Tenant, regardless of the actual degree of disturbance Tenant experiences during the Project; and

WHEREAS in consideration for this preemptive rent abatement, Tenant desires to grant certain waivers to 716.

NOW THEREFORE Tenant agrees as follows:

Tenant hereby waives any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to disruption of Tenant activity in the Alaska Building during the duration of the Project as against 716, with the exception of any such claim arising out of a Catastrophic Event directly impacting the Tenant's leased space within the Alaska Building. A "Catastrophic Event" shall be any of the following: (i) an event of structural or physical damage to the Alaska Building, alleged to be caused in part or entirely by the actions and or omissions of 716, its contractors, employees or agents during the Project or as a result of acts or omissions that took place during the Project but manifested itself after the Project; (ii) impacts to the use or occupancy of the Alaska Building as a result of any structural or physical damage to the Alaska Building; or (iii) any claim which would be covered by insurance carried by 716, its contractors, employees and agents.

AGREED TO THE FOREGOING THIS ____ DAY OF DECEMBER, 2013.



[TENANT]

Owner

TITLE

12/6/2013

DATE

Attachment C

Tenant Acknowledgement and Waiver

This Acknowledgement and Waiver (the "Agreement") is made effective this ²⁰¹⁴ 6th day of January 2013 by Partners for Progress a non-profit corporation ("Tenant") in favor of 716 West Fourth Avenue, LLC ("716"), an Alaska limited liability company, whose address is 737 W. 5th Ave., Anchorage, Alaska 99501.

RECITALS

WHEREAS Tenant leases certain space (the "Space") designated space # Ste. 302 in the building commonly referred to as the "Alaska Building," located at the intersection of 4th Avenue and G Street in Anchorage, on the property fully described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "ABI Property"); and

WHEREAS 716 West Fourth Avenue, LLC ("716") is the owner of that property located adjacent to the Alaska Building on 4th Avenue in Anchorage, and fully described as:

The West 39 and 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "716 Property"); and

WHEREAS 716 will undertake a comprehensive reconstruction of the structure on the 716 Property, with such work slated to commence in November, 2013 (such reconstruction work, the "Project"); and

WHEREAS 716 has agreed to provide funds for preemptive rent abatement to Tenant, regardless of the actual degree of disturbance Tenant experiences during the Project; and

WHEREAS in consideration for this preemptive rent abatement, Tenant desires to grant certain waivers to 716.

NOW THEREFORE Tenant agrees as follows:

Tenant hereby waives any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to disruption of Tenant activity in the Alaska Building during the duration of the Project as against 716, with the exception of any such claim arising out of a Catastrophic Event directly impacting the Tenant's leased space within the Alaska Building. A "Catastrophic Event" shall be any of the following: (i) an event of structural or physical damage to the Alaska Building, alleged to be caused in part or entirely by the actions and or omissions of 716, its contractors, employees or agents during the Project or as a result of acts or omissions that took place during the Project but manifested itself after the Project; (ii) impacts to the use or occupancy of the Alaska Building as a result of any structural or physical damage to the Alaska Building; or (iii) any claim which would be covered by insurance carried by 716, its contractors, employees and agents.

AGREED TO THE FOREGOING THIS ^{JANUARY 2014} ~~6th~~ DAY OF DECEMBER, 2013.

PARTNERS FOR PROGRESS, Glenn J. Waddoup
[TENANT]

CLARE WADDUP, EXEC. DIRECTOR.
TITLE

1/6/2014.
DATE

716 WEST FOURTH AVENUE, LLC425 G ST. STE 210
ANCHORAGE, AK 99501
(907)546-4644WELLS FARGO BANK, N.A.
ANCHORAGE, ALASKA
89-5-1252

1/9/2014

PAY TO THE
ORDER OF Partners for Progress**\$**1,375.00**

One Thousand Three Hundred Seventy-Five and 00/100***** DOLLARS

Partners for Progress
406 G Street #302
Anchorage AK 99501

MEMO

Rent Abatement

AUTHORIZED SIGNATURE

⑈001029⑈ ⑆125200057⑆5793249904⑈

716 WEST FOURTH AVENUE, LLC

1029

Date	Type	Reference	Original Amt.	Balance Due	1/9/2014 Discount	Payment
1/9/2014	Bill		1,375.00	1,375.00		1,375.00
					Check Amount	1,375.00

Wells Fargo 5793249 Rent Abatement

1,375.00

.6 WEST FOURTH AVENUE, LLC

1029

Date	Type	Reference	Original Amt.	Balance Due	1/9/2014 Discount	Payment
1/9/2014	Bill		1,375.00	1,375.00		1,375.00
					Check Amount	1,375.00

Wells Fargo 5793249 Rent Abatement

1,375.00

DELUXE CORP 1-800-328-0304 www.deluxeforms.com

0011

Attachment C

Tenant Acknowledgement and Waiver

This Acknowledgement and Waiver (the "Agreement") is made effective this 6 day of January, 2014 by Alaska Center for Environmental Nonprofit 501c3 ("Tenant") in favor of 716 West Fourth Avenue, LLC ("716"), an Alaska limited liability company, whose address is 737 W. 5th Ave., Anchorage, Alaska 99501.

RECITALS

WHEREAS Tenant leases certain space (the "Space") designated space # 212 in the building commonly referred to as the "Alaska Building," located at the intersection of 4th Avenue and G Street in Anchorage, on the property fully described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "ABI Property"); and

WHEREAS 716 West Fourth Avenue, LLC ("716") is the owner of that property located adjacent to the Alaska Building on 4th Avenue in Anchorage, and fully described as:

The West 39 and 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "716 Property"); and

WHEREAS 716 will undertake a comprehensive reconstruction of the structure on the 716 Property, with such work slated to commence in November, 2013 (such reconstruction work, the "Project"); and

WHEREAS 716 has agreed to provide funds for preemptive rent abatement to Tenant, regardless of the actual degree of disturbance Tenant experiences during the Project; and

WHEREAS in consideration for this preemptive rent abatement, Tenant desires to grant certain waivers to 716.

NOW THEREFORE Tenant agrees as follows:

Access, Indemnity, and Insurance Agreement
(10703-030-00159601;10)

10

Tenant hereby waives any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to disruption of Tenant activity in the Alaska Building during the duration of the Project as against 716, with the exception of any such claim arising out of a Catastrophic Event directly impacting the Tenant's leased space within the Alaska Building. A "Catastrophic Event" shall be any of the following: (i) an event of structural or physical damage to the Alaska Building, alleged to be caused in part or entirely by the actions and or omissions of 716, its contractors, employees or agents during the Project or as a result of acts or omissions that took place during the Project but manifested itself after the Project; (ii) impacts to the use or occupancy of the Alaska Building as a result of any structural or physical damage to the Alaska Building; or (iii) any claim which would be covered by insurance carried by 716, its contractors, employees and agents.

AGREED TO THE FOREGOING THIS 6 DAY OF DECEMBER, 2013.

January 2014

Pull a
[TENANT]

Executive Director, Alaska Center for the Environment
TITLE

1/7/14
DATE

Attachment C

Tenant Acknowledgement and Waiver

This Acknowledgement and Waiver (the "Agreement") is made effective this ²⁰¹⁴ 6th day of January 2013 by Partners for Progress a ~~non-profit corporation~~ ("Tenant") in favor of 716 West Fourth Avenue, LLC ("716"), an Alaska limited liability company, whose address is 737 W. 5th Ave., Anchorage, Alaska 99501.

RECITALS

WHEREAS Tenant leases certain space (the "Space") designated space # Ste. 302 in the building commonly referred to as the "Alaska Building," located at the intersection of 4th Avenue and G Street in Anchorage, on the property fully described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "ABI Property"); and

WHEREAS 716 West Fourth Avenue, LLC ("716") is the owner of that property located adjacent to the Alaska Building on 4th Avenue in Anchorage, and fully described as:

The West 39 and 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "716 Property"); and

WHEREAS 716 will undertake a comprehensive reconstruction of the structure on the 716 Property, with such work slated to commence in November, 2013 (such reconstruction work, the "Project"); and

WHEREAS 716 has agreed to provide funds for preemptive rent abatement to Tenant, regardless of the actual degree of disturbance Tenant experiences during the Project; and

WHEREAS in consideration for this preemptive rent abatement, Tenant desires to grant certain waivers to 716.

NOW THEREFORE Tenant agrees as follows:

Tenant hereby waives any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to disruption of Tenant activity in the Alaska Building during the duration of the Project as against 716, with the exception of any such claim arising out of a Catastrophic Event directly impacting the Tenant's leased space within the Alaska Building. A "Catastrophic Event" shall be any of the following: (i) an event of structural or physical damage to the Alaska Building, alleged to be caused in part or entirely by the actions and or omissions of 716, its contractors, employees or agents during the Project or as a result of acts or omissions that took place during the Project but manifested itself after the Project; (ii) impacts to the use or occupancy of the Alaska Building as a result of any structural or physical damage to the Alaska Building; or (iii) any claim which would be covered by insurance carried by 716, its contractors, employees and agents.

AGREED TO THE FOREGOING THIS ^{JANUARY 2014} ~~64~~ DAY OF DECEMBER, 2013.

Partners For Progress, Glenn Weddow
[TENANT]

Glenn Weddow, Exec Director
TITLE

1/6/2014
DATE

Attachment C

Tenant Acknowledgement and Waiver

This Acknowledgement and Waiver (the "Agreement") is made effective this 6 day of January, 2014 by Alaska Center for Environmental Non Profit 501c3 ("Tenant") in favor of 716 West Fourth Avenue, LLC ("716"), an Alaska limited liability company, whose address is 737 W. 5th Ave., Anchorage, Alaska 99501.

RECITALS

WHEREAS Tenant leases certain space (the "Space") designated space # 212 in the building commonly referred to as the "Alaska Building," located at the intersection of 4th Avenue and G Street in Anchorage, on the property fully described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "ABI Property"); and

WHEREAS 716 West Fourth Avenue, LLC ("716") is the owner of that property located adjacent to the Alaska Building on 4th Avenue in Anchorage, and fully described as:

The West 39 and 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "716 Property"); and

WHEREAS 716 will undertake a comprehensive reconstruction of the structure on the 716 Property, with such work slated to commence in November, 2013 (such reconstruction work, the "Project"); and

WHEREAS 716 has agreed to provide funds for preemptive rent abatement to Tenant, regardless of the actual degree of disturbance Tenant experiences during the Project; and

WHEREAS in consideration for this preemptive rent abatement, Tenant desires to grant certain waivers to 716.

NOW THEREFORE Tenant agrees as follows:

Access, Indemnity, and Insurance Agreement
(10708-050-00159601;10)

10

Tenant hereby waives any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to disruption of Tenant's activity in the Alaska Building during the duration of the Project as against 716, with the exception of any such claim arising out of a Catastrophic Event directly impacting the Tenant's leased space within the Alaska Building. A "Catastrophic Event" shall be any of the following: (i) an event of structural or physical damage to the Alaska Building, alleged to be caused in part or entirely by the actions and or omissions of 716, its contractors, employees or agents during the Project or as a result of acts or omissions that took place during the Project but manifested itself after the Project; (ii) impacts to the use or occupancy of the Alaska Building as a result of any structural or physical damage to the Alaska Building; or (iii) any claim which would be covered by insurance carried by 716, its contractors, employees and agents.

AGREED TO THE FOREGOING THIS 6 DAY OF DECEMBER, 2013.

January 2014

Pull a

[TENANT]

Executive Director, Alaska Center for the Environment

TITLE

1/7/14

DATE

1027

716 WEST FOURTH AVENUE, LLC425 G ST. STE 210
ANCHORAGE, AK 99501
(907)646-4644WELLS FARGO BANK, N.A.
ANCHORAGE, ALASKA
89-5-1252


1/9/2014

PAY TO THE
ORDER OF Alaska Center for Environment

\$**2,950.00

Two Thousand Nine Hundred Fifty and 00/100

DOLLARS

Alaska Center for Environment
921 W 6th Ave #200
Anchorage Ak 99501
AUTHORIZED SIGNATURE

MEMO

Rent Abatement

⑈001027⑈ ⑆625200057⑆5793249904⑈

716 WEST FOURTH AVENUE, LLC

1027

Alaska Center for Environment
Date Type Reference
1/9/2014 BillOriginal Amt.
2,950.00Balance Due
2,950.001/9/2014
DiscountPayment
2,950.00

Check Amount

2,950.00

Wells Fargo 5793249 Rent Abatement

2,950.00

6 WEST FOURTH AVENUE, LLC

1027

Alaska Center for Environment
Date Type Reference
1/9/2014 BillOriginal Amt.
2,950.00Balance Due
2,950.001/9/2014
DiscountPayment
2,950.00

Check Amount

2,950.00

Wells Fargo 5793249 Rent Abatement

2,950.00

DELUXE CORP 1-800-328-0304 www.deluxefarms.com

0009

A
L
A
S
K
A

2007-077937-0

Recording Dist: 301 - Anchorage
12/18/2007 10:56 AM Pages: 1 of 3



STWT 68997 DG

cc

DOCUMENT TITLE: Warranty Deed

DOCUMENT DATE: November 17, 2007

PROPERTY DESCRIPTION:

**The West 39 and ½ feet of Lot Two (2), Block Forty (40),
ORIGINAL TOWNSITE OF ANCHORAGE**

****This document is being re-recorded to add the stamp of
the second Notary.**

**THIS COVER SHEET HAS BEEN ADDED TO THIS
DOCUMENT TO PROVIDE SPACE FOR
RECORDING DATA. THIS COVER SHEET APPEARS
AS THE FIRST PAGE OF THE DOCUMENT IN THE
OFFICIAL PUBLIC RECORD AND IS TO BE
CONSIDERED PART OF THE OFFICIAL
DOCUMENT.**

DO NOT DETACH

A
L
A
S
K
A

2006-078621-0

Recording Dist: 301 - Anchorage
11/20/2006 2:11 PM Pages: 1 of 2

STEWART

68997

*STATUTORY WARRANTY DEED

002

The Grantors, TOM CHEN and MING TZE CHEN, husband and wife, of 706 W. 4th Ave, Anchorage, 99501, pursuant to *Sec. 34.15.030, Alaska Statutes, for and in consideration of the sum of Ten Dollars (\$10.00), lawful money of the United States of America, and other valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, do hereby grant, convey and warrant to Grantee, GRAHAM PROPERTIES, LLC, an Alaska Limited Liability Company, of 3780 Lincoln Elmworth Circle Anchorage, AK 99517, the following described real property, together with all tenements, hereditaments and appurtenances located in the Anchorage Recording District, Third Judicial District, State of Alaska:

The West 39 and 1/2 feet of Lot Two (2), Block Forty (40), ORIGINAL TOWNSITE OF ANCHORAGE, in the records of the Anchorage Recording District, Third Judicial District, State of Alaska, EXCEPTING THEREFROM the North 10 feet taken by the City of Anchorage for street and sidewalk purposes.

SUBJECT to reservations and exceptions as contained in U.S. Patent and/or in Acts authorizing the issuance thereof, recorded in Deed Book 206 at Page 236; real property taxes, if any due; easements of record; Agreement recorded July 13, 1982, in City Book 10 at Page 83; possible Party Wall Agreement with regard to the west line of the subject property and the east line of Lot 3A, Block 40, Anchorage Townsite (Plat 94-58) adjoining to the west; and Notice of Zoning Action, including the terms and provisions thereof, as executed by Municipality of Anchorage on behalf of the Zoning Board of Examiners and Appeals, recorded March 22, 1996, in Book 2902 at Page 402; and

FURTHER SUBJECT to that certain Resolution No. AR NO 88-234 (Anchorage, Alaska), levying assessments for the payment of Paving and Street Lighting Special Assessments District 2P87-Fourth Avenue Pedestrian Amenities - Phase III, recorded September 27, 1989, in Book 1950 at Page 527 (provides for a continuing obligation for possible future work), the obligations of which the Grantee

Page 1 of 2

FRANCIS, NOLAN, JR., A Professional Corporation
810 N Street, Suite 100, Anchorage, Alaska 99501
(907) 214-3400



2 of 3
2007-077837-0

herein expressly ASSUMES and AGREES to PAY
and perform according to its terms, when
levied.

DATED this 17th day of November, 2006.



Tom Chen
TOM CHEN

Ming Tze Chen
MING TZE CHEN

GRAHAM PROPERTIES, LLC

By Joseph E. Sh
Title _____

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me this 17th
day of November, 2006, by TOM CHEN and MING TZE CHEN.

Heather L. Randall
Notary Public in and for Alaska
My Commission expires: 08/28/2007

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me this 17
day of November, 2006, by Joseph E. Sh
Graham of GRAHAM PROPERTIES, LLC.



Heather L. Randall
Notary Public in and for Alaska
My Commission expires: 11/22/2008

AFTER RECORDING RETURN TO:
Joseph Graham
2780 Lincoln Blvd North CA
LA Brea AK 99577

Page 2 of 2



the Territory of Alaska, duly commissioned and sworn, personally came Otto Heim, who is to me known to be the identical individual described in and who executed the within instrument, and he acknowledged to me that he signed the same.

In testimony whereof, I have hereunto set my hand and official seal, the day and year in this certificate first above written.

(Seal)

Notary Public
for the Territory of Alaska, residing at
Anchorage. Commission expires
June 15th 1919.

The above instrument was filed for record at the request of Leon W. Hartley at 1:30 P. M. January 20th 1917.

Leon W. Hartley
District Recorder

Quit-Claim Deed.

THIS INSTRUMENT, made this 20th day of January, 1917, between AUSTIN E. LATHROP, party of the first part, and J. H. Smith, of Anchorage, party of the second part:

WITNESSETH: That for and in consideration of the sum of One Dollar (\$1.00) lawful money of the United States, in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, the party of the first part does hereby grant, sell, convey and forever quit-claim unto the party of the second part, his heirs and assigns, the following described property, to-wit:

An undivided, absolute and indefeasible interest in and to the following described portion of the East wall of that certain building known as the "EMPRESS THEATRE" situated on Lot Two (2) in Block Forty (40), plat of the Townsite of Anchorage, in Anchorage, Alaska; Beginning at the North Lower corner of said wall, and thence running South Fifty (50) feet, thence vertically a distance of 25 feet to the top of the building owned by the grantor herein, thence north along the top line of said building to the North end of said wall; thence vertically downward to the place of beginning; the purpose of this conveyance being to grant to said J. H. Smith a party interest in said wall for the use and support of his present building, and that only and for no other purpose.

TO HAVE AND TO HOLD, unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the party of the first part has hereunto affixed his signature this 20th day of January, 1917.

Witnessed by:

J. L. Waller
Mrs. Ethel Vint

Austin E. Lathrop (Seal)

TERRITORY OF ALASKA)

CHIEF JUDGE)

SS.

THIS IS TO CERTIFY, That on this 20th day of January, 1917, before me, the undersigned, a Notary Public personally appeared Austin E. Lathrop, to me known to be the person described in and who executed the above and foregoing deed, and he acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

294

3

WITNESS my hand and official seal this 20th day of January,
1917.

(Seal)

J. L. Waller
Notary Public, Territory of Alaska. My commission
expires Nov. 16, 1919.

The above instrument was filed for record at the request of
J. A. Miller at 2:15 P. M. January 22nd 1917.

[Signature]
District Recorder

300

5

(14)

QUIT CLAIM DEED.

This Indenture, Made this 5th day of May in the year of our Lord one thousand nine hundred and seventeen Between Homer T. Fowler, of Anchorage, Alaska, the party of the first part, and J. H. Smith of the same place, the party of the second part:

WITNESSETH: That the said party of the first part, for and in consideration of the sum of One Dollar, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever quitclaim unto the said party of the second part and to his heirs and assigns the following described tract, lot, or parcel of land, situate, lying and being in the townsite of Anchorage, Territory of Alaska, particularly bounded and described as follows, to-wit:

An undivided absolute and indefeasible interest in and to the following described portion of the west wall of that certain building known as the Alaska Building, situated on lot one (1), in block forty (40), plat of Anchorage, Alaska, beginning at the north corner of said wall, thence south 40 feet; and vertically to the top of said wall, a distance of about 25 feet, the purpose of this conveyance being to grant to said J. H. Smith, a party interest in said wall for the use and support of his building,

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances, unto said party of the second part, and to his heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered

in presence of:

Mrs. J. H. Smith
J. L. Waller.

Homer T. Fowler (Seal)

United States of America }
Territory of Alaska. } ss.

THIS IS TO CERTIFY, That on this 5th day of May, A. D. 1917, before me, the undersigned, a Notary Public in and for the Territory of Alaska, duly commissioned and sworn, personally came Homer T. Fowler, who is to me known to be the identical individual described in and who executed the within instrument, and he acknowledged to me that he signed the same.

Witness my hand and official seal the day and year in this certificate first above written.

(Seal)

J. L. Waller

Notary Public in and for the Territory of Alaska, residing at Anchorage.
My commission expires Nov. 18, 1918.

The above instrument filed for record on the 21st day of August 1918 at 9 A.M. by B. S. Bartholf.

District Recorder.

115

10

183

Defendants, and directed to me, the said United States Marshal for the Territory of Alaska, I did on the said 7th day of July, 1923, at the action of said Plaintiff attach the following described real property belonging to the Defendant, S. L. Bush to-wit:

All of Lot number eight (8) in Block number twenty-two (22) situate in the Town of Anchorage, Anchorage Recording Precinct, Territory of Alaska, Third Division, together with the improvements thereon.

IN WITNESS WHEREOF, I have hereunto set my hand this the 9th day of July, 1923.

H. P. Sullivan
U. S. Marshal
By H. I. Staser
Deputy

The foregoing instrument was filed for record July 11, 1923, at 2:50 o'clock P. M., at the request of Arthur Frame.

District Recorder

EASEMENT

WHEREAS, on the sixth day of December, 1916, a certain Warranty Deed was executed by Homer T. Fowler, of Everett, Washington, Grantor, to Austin E. Lathrop, of Anchorage, Alaska, Grantee, covering the following described lot or parcel of ground:

West thirty-nine and one-half (39½) feet of Lot two (2) Block forty (40) except a strip of five (5) feet wide, paralleling along Fourth Street, which is reserved for the widening of Fourth Street in the Town of Anchorage, Alaska;

AND WHEREAS, at the time of execution of said Warranty Deed, certain verbal agreements were made by and between Grantor and Grantee, which it is now their intent to put into writing, for entry upon the records of said Precinct and Recording District, Territory of Alaska,

NOW THEREFORE, the said Homer T. Fowler, Grantor, hereby grants unto the said Austin E. Lathrop, Grantee, the following EASEMENT, to-wit:

From the Southwest corner of Lot two (2) Block forty (40) thirty-nine and one-half (39½) feet East to the place of beginning; thence North thirty (30) feet along the line of property decided by this Grantor to said Grantee; thence East ten (10) feet; thence South thirty (30) feet; thence West ten (10) feet to the place of beginning;

FOR USE of said Grantee, his heirs and assigns forever, for

a perpetual underground power and lighting plant, and for a four foot stairway along the wall as entrance thereto, said power and lighting plant to be installed, a sufficient depth, and roof there of kept in repair to enable the Grantor, his heirs and assigns to pass over the premises with teams.

And Grantee is further granted EASEMENT for Sewer and Water pipes and wires, Telephone and Power wires, over or under the South eighty (80) feet of the Easterly ten and one-half (10 1/2) feet of said Lot two (2) Block forty (40) Town of Anchorage, as a perpetual easement, with liberty to make necessary repairs; it being understood that the same privilege is enjoyed by others.

It is mutually agreed between said Grantor and said Grantee that the East face of the East wall of the Express Theatre Building now located on Lot two (2) Block forty (40) Town of Anchorage, shall be and is considered the dividing line between the property of said Grantor and Grantee, their heirs, successors and assigns.

And the said Grantee hereby grants unto said Grantor, his heirs, successors and assigns, the right to use the east wall of said Express Theatre Building, as now in use by said Grantor.

Said Grantor and said Grantee each hereby acknowledge the receipt of one Dollar and other valuable considerations to him in hand paid by the other, as a consideration of the within agreement.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals, the 18th day of July, A. D., 1923.

Homer T. Fowler Grantor

Austin E. Lathrop Grantee

United States of America,)

Territory of Alaska.)

THIS IS TO CERTIFY That on this 18th day of July, 1923, before me, a Notary Public in and for Alaska, duly commissioned, and sworn, personally appeared Homer T. Fowler and Austin E. Lathrop to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal, the day and year first in this Certificate written.

(Notary Seal)

R. L. De Graff
Notary Public for Alaska.
My Commission expires Jan. 23, 1924.

The foregoing instrument was filed for record July 18, 1923, at 4:20 o'clock P. M., at the request of R. L. De Graff.

W. H. Rogers
District Recorder

Bk 10
Pg 83

depled

(#5)

WARRANT

WHEREAS, on the sixth day of November, 1911, a certain Warranty Deed was executed by Homer T. Fowler, of Everett, Washington, Grantor, to Martin E. Lathrop, of Anchorage, Alaska, Grantee, covering the following described lot or parcel of ground:

West thirty-nine and one-half (39½) feet of Lot two (2) Block Forty (40) except a strip of five (5) feet wide, paralleling along South Street, which is reserved for the widening of South Street in the Townsite of Anchorage, Alaska;

AND WHEREAS, at the time of execution of said Warranty Deed, certain verbal agreements were made up and between Grantor and Grantee, which it is now their intent to put into writing, for entry upon the records of said Precinct and Recording District, Territory of Alaska,

NOW THEREFORE, the said Homer T. Fowler, Grantor, hereby grants unto the said Martin E. Lathrop, Grantee, the following AGREEMENT, to-wit:

From the southwest corner of Lot two (2) Block Forty (40) thirty-nine and one-half (39½) feet East to the place of beginning; thence North thirty (30) feet along the line of property devised by this Grantor to said Grantee; thence East ten (10) feet; thence South thirty (30) feet; thence West ten (10) feet to the place of beginning;

FOR USE of said Grantee, his heirs and assigns forever, for

a perpetual underground power and lighting plant, and for a four foot stairway along the wall as entrance thereto, said power and lighting plant to be installed a sufficient depth, and roof thereof kept in repair to enable the grantor, his heirs and assigns to pass over the premises with ease.

And Grantee is further granted EASEMENT for Sewer and Water pipes and wires, Telephone and Power wires, over or under the South eighty (80) feet of the Westerly ten and one-half (10 1/2) feet of said lot two (2) Block forty (40) Town of Anchorage, as a perpetual easement, with liberty to make necessary repairs; it being understood that the same privilege is enjoyed by others.

It is mutually agreed between said Grantor and said Grantee that the East face of the East wall of the Express Theatre Building now located on Lot two (2) Block forty (40) Town of Anchorage, shall be and is considered the dividing line between the property of said Grantor and Grantee, their heirs, successors and assigns.

And the said Grantee hereby grants unto said Grantor, his heirs, successors and assigns, the right to use the east wall of said Express Theatre Building, as now in use by said Grantor.

Said Grantor and said Grantee does each hereby acknowledge the receipt of one dollar and other valuable considerations to him in hand paid by the other, as a consideration of the within agreement.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals, the 14th day of July, A. D., 1941.

Homer T. Fowler Grantor

Austin E. Lithroy Grantee

United States of America,)

Territory of Alaska.) ss.

THIS IS TO CERTIFY That on this 14th day of July, 1941, before me, a Notary Public in and for Alaska, duly commissioned and sworn, personally appeared Homer T. Fowler and Austin E. Lithroy to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal, the day and year first in this Certificate written.

(Notary Seal)

R. L. De Graff
Notary Public for Alaska.
My Commission expires Jan. 22, 1943.

The foregoing instrument was filed for record July 14, 1941, at 4:30 o'clock P. M., at the request of R. L. De Graff.

District Recorder

anels #5

BOOK 12

66

DEED

THIS INSTRUMENT made and entered into this 22nd day of July, 1944, by and between AUSTIN E. LATHROP, of Fairbanks, Alaska, hereinafter called the Grantor, and The Lathrop Co., an Alaska corporation with its principal place of business at Anchorage, Alaska, hereinafter called the Grantee, WITNESSETH:

That the said Grantor for and in consideration of the sum of one dollar (\$1.00) and other good and valuable considerations to him, in hand paid by the said Grantee, receipt whereof is hereby acknowledged, does hereby remise, release, and forever quitclaim unto the said Grantee, its successors and assigns forever, the following described real estate situated in the town of Anchorage, Third Judicial Division of the Territory of Alaska, to-wit:

The following Easement, to-wit: From the southwest corner of Lot Two (2) Block Forty (40) Anchorage, Alaska, thirty-nine and one-half feet (39½) East to the place of beginning; Running North thirty (30) feet along the line of West thirty-nine and one-half feet (39½) of said Lot Two (2), deeded by Homer T. Fowler to this Grantor; thence East ten (10) feet; thence south thirty (30) feet; thence West (10) feet to the place of beginning; For use of said Grantee, its successors, and assigns forever, for a perpetual underground power and lighting plant, and for a four foot stairway along the wall as entrance thereto. And Grantee is further granted Easement for sewer and water pipes and wires, telephone and power wires, over or under the South eighty (80) feet of the Easterly ten and one-half (10½) feet of said Lot Two (2) Block Forty (40) Town of Anchorage, as a perpetual easement, with liberty to make necessary repairs.

Being the same property and easements, conveyed to this Grantee by said Homer T. Fowler by deed, dated July 12, 1923, recorded July 13, 1923 in the office of the U.S. Commissioner and ex officio Recorder for the Anchorage Precinct, Third Judicial Division of the Territory of Alaska, at Anchorage, Alaska, in book 10 of city of records at page 83.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and assigns forever.

Witnesses:

/s/ Austin E. Lathrop (Seal)
AUSTIN E. LATHROP

Gladys Sama /s/
Edward F. Medley /s/

UNITED STATES OF AMERICA }
TERRITORY OF ALASKA } SS.

THIS IS TO CERTIFY, that on this 22nd day of July, 1944, before me, the undersigned, a Notary Public in and for the Territory of Alaska, duly commissioned and sworn, personally appeared AUSTIN E. LATHROP, to me known to be the individual described in, and who executed the foregoing instrument, and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal on the day and year in this certificate first above written.

(SEAL)

/s/ Gladys Sama
Notary Public for Alaska. My
commission expires May 5, 1948.

The foregoing instrument was filed for record at 1:50 o'clock P.M. July 28, 1944 at the request of Lathrop Company.

[Signature]
U.S. Commissioner

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Friday, October 25, 2013 6:38 PM
To: 'Donald W. McClintock'
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Revised Agreement; Bill

Hi Don,

It is your client whose ridiculous time frame is dictating the pace. I understand that you couldn't make time yesterday or today. I will not be sympathetic when you ask for more time on Monday. Realistically, I think with BBFM's and Eric's costs we are looking at \$10,000. You might give Mark a heads up for that amount. I will expect a check for that amount by the end of the day Monday or will have to assume Mark has no intention of covering my costs.

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
Tel: (907) 274-7686 Fax: (907) 274-9493
e-mail: James.B. Gottstein@GottsteinLaw.Com

From: Donald W. McClintock [mailto:dwm@anchortlaw.com]
Sent: Friday, October 25, 2013 6:14 PM
To: James B. Gottstein
Cc: Eric Follett; Rebecca A. Windt; Heidi A. Wyckoff; james.b.gottstein@gottsteinlaw.com
Subject: Re: Revised Agreement; Bill

Jim,

As much as I appreciate your company I would like to keep my weekend commitments to my family. I will see you Monday at 1030. I am happy to talk to Eric as we'll I just do not understand his role.

Sent from my iPhone

On Oct 25, 2013, at 5:31 PM, "James B. Gottstein" <james.b.gottstein@gottsteinlaw.com> wrote:

Hi Don,

I have two concerns. One is the integrity of the Alaska building and the other is that I not bear any costs as a result of Mark's Project. I was initially going to be very accommodating, but when Mark refused to acknowledge the impacts on my tenants whose space includes the party wall it became clear to me that he had no intention of doing right by me unless forced to.

Everything since then has reinforced that, as will your failure to bring the check. So, no, it is not a condition, but I am not sanguine.

I would prefer to meet before Monday, either tomorrow morning or Sunday morning. Failing that, let's make it 10:30 on Monday. My cell number is 538-4777.

1



Or, you could just talk to Eric. I really have no time for this.

You should send me a memo on what you think our respective duties are with respect to the party wall. I didn't find an Alaska statute or case, but I didn't look very hard.

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
Tel: (907) 274-7686 Fax: (907) 274-9493
e-mail: James.B. Gottstein@ GottsteinLaw.Com

From: Donald W. McClintock [<mailto:dwm@anchorlaw.com>]
Sent: Friday, October 25, 2013 4:14 PM
To: 'James B. Gottstein'
Cc: Eric Follett; Rebecca A. Windt; Heidi A. Wyckoff
Subject: RE: Revised Agreement; Bill

Jlm,

Is a check a condition for meeting, or can we just talk? I am open Monday any time except 11:30 to 1:30 and after 3:30. I would love to walk through the building and promise not to break anything. When we meet I can explain our side of what the relative obligations are regarding the party wall and why your reasonable cooperation will lead to a better end result for both of us.

By the way, as a prelude to the meeting. I think you and my client both own the wall. The issue is what duty each owner owes to the other co-owner. We can discuss that as well.

I understand that BBFM will meet with our crew on Tuesday. Maybe that meeting will help as well.

Don

Donald W. McClintock
Ashburn & Mason, P.C.
1227 W. 9th Ave. Ste. 200
Anchorage, AK 99501
(907) 276-4331 (voice)
(907) 277-8235 (fax)
www.anchorlaw.com

This transmission is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that any disclosure, distribution or copying of this information is strictly prohibited. If you have received this transmission in error, please notify us immediately by return e-mail and delete this message and destroy any printed copies. This communication is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. Your cooperation is appreciated.

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Friday, October 25, 2013 7:20 AM
To: Donald W. McClintock
Cc: james.b.gottstein@gottsteinlaw.com; Eric Follett
Subject: Revised Agreement; Bill

Hi Don,

I have (hopefully) attached a slightly revised agreement, with the only two changes being that blocking access to the parking spot will cost \$100 per day and payment of \$6,344 for my time spent through yesterday. An invoice for the \$6,344 is also (hopefully) attached.

You should bring the check for \$6,344 with you on Monday.

I see no reason why I should have to bear any expense because of Mark's project. At our initial meeting Mark said he had no budget to pay for the Alaska Building's lost rent. I view that as outrageous and a clear indication that Mark has no intention of treating me fairly without an ironclad agreement in place.

I thought we had an understanding that Mark was not going to move forward until BBFM had had a chance to review the plans, means and methods.

Yesterday, I received a copy of the following e-mail:

On 10/23/2013 4:24 PM, Shea C. Simasko wrote:
Hi Dennis,

I spoke with Criterion today. Latest update is they met with MOA yesterday to discuss the party wall and are in agreement the party wall will stay. With this information Redi, is working on the design plans and details with the wall in place. We plan to sit down and review with you once the plans near completion which will be very soon.

That the party wall is to stay in place should not have even been a topic of discussion.

To say the timeline for this is unreasonable is a gross understatement. I believe Mark is trying to accomplish a *fait accompli* by getting the Old Empress Theater torn down as soon as possible and the Project going to prevent anyone from stopping it.

Originally, I wasn't going to charge for my time or having to move my office. That is now off the table.

I don't have time for negotiations. I do think we need to pick the person who is going to decide what costs Mark refuses to pay have to be paid. I also think it would be a good idea to figure out a mechanism for determining in what event(s) the \$Ten million purchase obligation is triggered if we can.

I believe there is a well better than even chance that I can stop the project, maybe without even having to file a lawsuit, if we cannot reach an agreement in short order (Monday?). You can talk to Eric about the situation. He has a very good handle on it.

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
Tel: (907) 274-7686 Fax: (907) 274-9493
e-mail: James.B.Gottstein@GottsteinLaw.Com

Law Offices of James B. Gottstein

406 G Street, Suite 206
 Anchorage, AK 99501
 (907) 274-7686 Tel
 (907) 274-9493 Fax

Invoice

DATE	INVOICE #
10/25/2013	3386

BILL TO
Pfeffer Development, LLC Mark E. Pfeffer 425 G Street, Suite 210 Anchorage, Alaska 99501

				TERMS
DATE	WORK PERFORMED	HOURS	RATE	AMOUNT
9/24/2013	E-mail from/to A. Slinker (.05)	0.05	325.00	16.25
9/25/2013	E-mails from/to A. Slinker (.12)	0.12	325.00	39.00
10/2/2013	Conference with Pfeffer & minions, Walk-Through (1.5)	1.5	325.00	487.50
10/3/2013	Conference with Project personnel (1.5)	1.5	325.00	487.50
10/4/2013	Call from S. Simasko, e-mails from/to S. Simasko (.1)	0.1	325.00	32.50
10/5/2013	Walk-through with Simasko (1)	1	325.00	325.00
10/7/2013	Research & Review title documents (1.5)	1.5	325.00	487.50
10/8/2013	E-mail to D. Berry (.05)	0.05	325.00	16.25
10/10/2013	E-mail from/to D. Berry, e-mails from/to S. Simasko, e-mail from B. Nolin, call with Alaska USA Insurance Brokers, e-mails from Dave DeRoberts (.7)	0	325.00	0.00
10/11/2013	E-mails to/from S. Simasko, e-mails to/from D. McClintock, e-mail from/to B. O'Neill, Criterion Gas Loads check (1)	1	325.00	325.00
10/13/2013	E-mail FOIA Request to AHFC (.1), Access and Indemnification Agreement (3), e-mail to D. Berry and F. Braun, (.12)	3.22	325.00	1,046.50
10/14/2013	E-mail from D. Berry, Memo to tenants, conferences with tenants, e-mails from/to D. McClintock, e-mail from/to S. Johansson, e-mail from M. Pfeffer (1.5)	1.5	325.00	487.50
10/15/2013	E-mails from/to D. McClintock (.08)	0.08	325.00	26.00
			Total	

Law Offices of James B. Gottstein

406 G Street, Suite 206
Anchorage, AK 99501
(907) 274-7686 Tel
(907) 274-9493 Fax

Invoice

DATE	INVOICE #
10/25/2013	3386

BILL TO
Pfeffer Development, LLC Mark E. Pfeffer 425 G Street, Suite 210 Anchorage, Alaska 99501

				TERMS
DATE	WORK PERFORMED	HOURS	RATE	AMOUNT
10/16/2013	E-mail from/to D. McClintock (.05)	0.05	325.00	16.25
10/17/2013	E-mails from/to S. Johansson, review AS appraisal & lease "extension," review AS 36.30.083, call to E. Follett, e-mail to/from E. Follett, call with E. Follett (2)	2	325.00	650.00
10/21/2013	e-mail from D. Berry, call with D. Berry, e-mails to D. Berry, walk through with D. Berry (1.5)	1.5	325.00	487.50
10/22/2013	E-mail from D. Berry, e-mail to D. Berry, call with E. Follett (may not be this day), conference with C. Waldrup (May not be this day)(1)	1	325.00	325.00
10/23/2013	E-mail from/to D. Berry (.1)	0.1	325.00	32.50
10/24/2013	Agreement, conferences with ACS, call with D. Berry, call from D. Berry, e-mail from D. Berry, conference with C. Wier, e-mail to D. McClintock(3.2), e-mail from/to D. McClintock (.05)	3.25	325.00	1,056.25
			Total	\$6,344.00

EXTENSION OF LEASE AND LEASE AMENDMENT NO. 3

Extension of Lease Under AS 36.30.083; Amendment of Lease; Material Modification of Lease

THIS EXTENSION OF LEASE AND THIRD AMENDMENT OF LEASE is made and entered into on the date the Legislative Affairs Executive Director or her designee signs the Lease, is by and between 716 WEST FOURTH AVENUE, LLC, an Alaska limited liability company, whose address is P.O. Box 241826, Anchorage, Alaska 99524, hereinafter referred to as "Lessor," and the LEGISLATIVE AFFAIRS AGENCY, whose address is State Capitol, Room 3, Juneau, Alaska 99801-1182, hereinafter referred to as "Lessee," and hereby amends the Lease dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, as previously amended, and renewed through May 31, 2014 by Renewal of Lease No. 5, recorded May 23, 2013 in Book 2013-028824-0, Anchorage Recording District, Third Judicial District, State of Alaska, hereafter referred to as the "Lease".

WITNESSETH:

WHEREAS, the Lessor is currently leasing to the Lessee the following described Premises, hereinafter "Existing Premises," described as follows:

Approximately 22,834 square feet of office space, which consists of all net usable office space on the second through sixth floors and approximately 811 square feet of storage space in the basement, at the building located at 716 West 4th Avenue in Anchorage, Alaska at Lot 3A, Block 40, of the Original Townsite of Anchorage, according to the official plat thereof, Third Judicial District, State of Alaska, and eighty-six (86) reserved off-street parking places.

WHEREAS, on June 7, 2013, the Legislative Council (Lessee) authorized its chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a), and, to seek the assistance of Alaska Housing Finance Corporation (AHFC) if needed, and to negotiate material amendments to the Lease;

WHEREAS, the existing Premises are not adequate to meet the needs of the Lessee, and the Lessee requires up to approximately 64,000 gross square feet of office space and appropriate off-street parking spaces in order to adequately house the offices of the legislature and legislative staff and to properly accommodate the public;

WHEREAS, a property directly adjacent to the existing Premises, located at 712 West 4th Avenue, when added to the existing Premises, will be adequate to meet the needs of the Lessee and, subject to successful negotiation with the property owner, the property may be made available to Lessee;

WHEREAS, subject to the provisions of AS 36.30.083 and other applicable authority, the Lessee wishes to incorporate the existing Premises along with the property located at 712 West 4th Avenue into this Extension of Lease and Lease Amendment, and further, to reference the combined real property parcels as the "Premises" for the purposes of this Extension of Lease and Lease Amendment;

WHEREAS, the Premises must be renovated in order to meet the needs of the Lessee and, subject to successful negotiation between the parties, a renovation plan and renovation schedule will be documented as Exhibit "A" and Exhibit "B" of this Extension of Lease and Lease Agreement;

WHEREAS, Alaska Legislative Procurement Procedures designate the chairman of the Legislative Council as procurement officer with respect to contracts of the Legislative Affairs Agency, and the chairman has made a written determination under Procurement Procedures Section 040(d) (Exhibit C) that the Lease may be materially modified without procurement of a new Lease to include the property known as 712 West Fourth Avenue;

WHEREAS, the current lease term expires May 31, 2014 and it is the intention of the Lessor and Lessee to extend the Lease for 10 years under AS 36.30.083(a) effective June 1, 2014 through May 31, 2024;

WHEREAS, modifications and amendments to the Lease made under Legislative Procurement Procedure Section 040(d) are required prior to the extension of the lease term to proceed with renovations of the premises and therefore amendments to the Lease, with the exception of the lease term, are effective on the date the Legislative Affairs Director signs the Lease;

NOW, THEREFORE LESSOR AND LESSEE AGREE that the Lease is hereby extended for 10 years until May 31, 2024 pursuant to AS 36.30.083; and the Lease is hereby amended pursuant to Legislative Procurement Procedure Section 040(d) as follows:

Sec. 1 of the Lease is amended to read as follows:

1.1 DESCRIPTION OF PREMISES; LEASE TERM; MONTHLY LEASE RATES:

- a. The Lessor hereby leases to the Lessee and the Lessee hereby leases from the Lessor the Premises described below:

All space within the office building, all space within the parking garage, and all real property located at 716 West 4th Avenue in Anchorage, Alaska further described as Lot 3A, Block 40, of the Original Townsite of Anchorage, according to the official plat thereof, Third Judicial District, State of Alaska; and all space located within the building and all real property located at 712 West 4th Avenue in Anchorage, Alaska further described as Lot 2 W 39.5' Block 40 Original Townsite of Anchorage.

On the Effective Date as defined in Section 1(b) below, the Lease shall be for the Existing Premises. On the schedule as set forth in Exhibit "B-1" the Premises will be renovated and expanded as described in Exhibit "A" ("LIO Approval Plans") (hereinafter the "Renovations"). Following completion of the Renovations, the Premises will include approximately 64,048 gross square feet of building space and approximately 86 off-street parking spaces with the spaces striped as directed by Lessee.

- b. The term of the Lease is extended for ten (10) years from the termination of the original term on May 31, 2014 until May 31, 2024. The covenants and requirements set forth in this Extension of Lease and Lease Amendment are effective the date it is signed by both parties (the "Effective Date").
- c. Base Monthly Rental. This Lease will have three applicable rental rates.

1. On the Effective Date the Base Monthly Rental shall be \$56,863.05 which is the lease rate under current lease for the Existing Premises.
2. The Lessor will provide the Lessee with interim office space and parking (Interim Space) as defined in Exhibit "B-1" during Lessor's work on the Renovations ("Renovation Period"). Lessee shall move to interim office space ("Interim Space") on the dates set forth in Exhibit "B-1" after 10 days written notice by Lessor.

During the Renovation Period and while the Lessee is occupying the Interim Space, the Base Monthly Rental will be reduced to the lesser of the amounts that follow:

- i. To an amount equivalent to the actual costs the Lessor incurs in providing the Lessee with the Interim Space during the Renovation Period, including all costs of moving the Lessee to and from different space throughout the Renovation Period; or
 - ii. The Base Monthly Rental rate paid on November 1, 2013 per the provisions of Renewal of Lease Number 5.
 - iii. Notwithstanding Option #1 and Option #2 above; the Lessee shall not pay rent in any amount for the portion of the Premises located at either 712 W. 4th Avenue or 716 W. 4th Avenue if the Lessee is not occupying space in the respective building and the Monthly Base Rent shall be adjusted accordingly.
3. Upon final acceptance and occupancy of the renovated Premises, then the Base Monthly Rental will increase to \$281,638 per month.

d. Base Monthly Rental Adjustments

Unless otherwise amended in writing signed by both parties, the Base Monthly Rental set forth in 1.1(c)(3) above shall remain the same through May 31, 2024.

e. Monthly Lease Payments

The monthly lease payments are due and payable on the 1st day of each month. Payments will be made as agreed between the Lessee and Lessor. If the post Renovation Period occupancy date is a date other than the first day of the month, then the Base Monthly Rental shall be prorated and the increased rent paid with the payment of the first full month Base Monthly Rental payment due after the post Renovation occupancy.

1.2. **AS 36.30.083(a) COST SAVINGS:**

The Base Monthly Rental rate paid for the Premises to be paid upon final acceptance and occupancy of the renovated space has been determined to provide a minimum cost savings of at least 10 percent below the market rental value of the Premises. Supporting documentation is attached as Exhibit D (Executive Director's Cost Saving Calculation and Report to the Legislative Budget and Audit Committee per AS 36.30.083(b)).

Under AS 36.30.083(a), notwithstanding any other provision of AS 36.30.083, the Legislative Council may extend a real property lease that is entered into under AS 36.30 for up to 10 years if 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 market rental value must be established by a real estate broker's opinion of the rental value or by an appraisal of the rental value. Timothy Lowe, MAI, CRE, FRICS of the firm of Waronzo Associates, Inc. at 999 North Sepulveda Boulevard Suite 440 El Segundo, California has completed an independent analysis of the provisions of this lease extension and amendment and has concluded that the rent due under the terms and conditions of this lease extension and amendment is at least a 10 percent below the market rental value of the real property at the time of the extension for a ten year term.

Under AS 36.30.083(a), Legislative Council has approved the extension of this Lease as legally required. In addition to any other right of the Lessee under this Lease to terminate the Lease, if, in the judgment of the Legislative Affairs Agency Executive Director, sufficient funds are not appropriated in an amount adequate to pay the then annual lease payments and expenses, the Lease will be terminated by the Lessee as of the date appropriated funds are exhausted, or will be amended by mutual agreement of the Parties. To terminate under this section, the Lessee shall provide not less than 90 days advance written notice of the termination to the Lessor.

Sec. 2 of the Lease is amended to read as follows:

2. **ADA COMPLIANCE:** On the date of final acceptance and occupancy and throughout the entire occupancy of the Lease, the Lessor shall ensure that the Premises, and any improvements or alterations to the Premises, and all accessible routes shall meet the specifications of the ADA Accessibility Guidelines (ADAAG) for Public Buildings and Facilities per Title II of the Americans with Disabilities Act (ADA), as currently written and as they may be subsequently amended (hereafter referred to as ADA compliance).

Under the previous paragraph, the Premises, and any improvements or alterations to the Premises, and all accessible routes, must meet the ADA compliance requirements as they apply to a public entity.

The Lessee's acceptance of the Premises or of any improvements or alterations to the Premises, or any inspection of the Premises by the Lessee, do not relieve the Lessor of its responsibility for ADA compliance.

If these provisions on ADA compliance conflict with another provision in the Lease, the provisions of this section shall govern.

Prior to the date of final acceptance and occupancy, the Lessor, at its own expense, must furnish the Lessee with an ADA Facility Audit Report prepared by an architect registered to practice in the State of Alaska certifying that the Premises comply with all requirements of the current version of the ADA and this section.

Sec. 3 of the Lease is amended to read as follows:

3. **RENOVATION AND DELIVERY OF PREMISES:** The Lessor agrees to renovate the Premises consistent with the specifications as set forth in Exhibit "A", on the schedule as set forth in Exhibit "B", and in accordance with applicable law.

Exhibit "A" describes all terms and conditions of the renovations to be completed by the Lessor and incorporates the drawings, schematics, and deliverables for the same. Exhibit "B" sets forth the milestones for the renovation of the Premises as well as the final completion date. Exhibit B-1 sets forth the schedule for the interim occupancy during the renovation period.

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. All invoices submitted to Lessee by Lessor must be accompanied by appropriate documentation and in addition, must be approved by the Procurement Officer prior to payment. Invoices, unless disapproved, shall be due within 30 days of submission. An invoice may be disapproved by the Procurement Officer for lack of appropriate documentation or any other legitimate reason. In the event that it is disapproved by the Procurement Officer, the Lessor may challenge the decision of the Procurement Officer under the Legislative Procurement Procedures. The balance of the tenant improvement costs at occupancy, if any, shall be added to the Lessor's renovation costs and amortized over the term of the Lease.

The Lessee is responsible for the acquisition of and installation of its own furniture, fixtures and equipment and shall schedule the same in a manner that does not conflict with the progress of the renovation work.

Sec. 4 of the Lease is amended to read as follows:

4. The Lease shall be what is described as a "modified triple net lease"

a. **LESSOR'S RESPONSIBILITY AND COSTS:**

1. The installation and maintenance of all structural components, core components, roof membrane/surface, and building systems that are incorporated into the Premises, including but not limited to: HVAC, elevators, plumbing, electrical, and fire suppression systems.
2. Providing connections to city water and sewer, electric service, and other public utility service to the Premises.

3. Parking lot repair, striping, work required to maintain conformance with ADA or other accessibility issues.
4. Any/all work required to maintain conformance with ADA or other accessibility issues.
5. Extraordinary maintenance – replacing worn carpeting, painting interior walls, replacing damaged casework, every 10 years, or sooner if reasonably required.
6. Exterior light fixture repair/replacement.
7. Interior light fixture repair/replacement.
8. Plumbing fixture repair/replacement.
9. Elevator inspection/repair/replacement.
10. HVAC inspection/maintenance/repair/replacement.
11. Fire suppression system inspection/maintenance/replacement.
12. The payment of any/all pending or levied assessments.
13. Other services or maintenance as may be agreed by the parties.

b. **LESSEE'S RESPONSIBILITY AND COSTS:**

1. Building janitorial service and supplies.
2. Landscaping and grounds maintenance.
3. Interior and exterior window washing.
4. Parking lot sweeping, sanding and snow removal.
5. Interior and exterior light bulb replacement.
6. Hallway and entrance walk-off mats.
7. Carpet cleaning on a commercially reasonable regular schedule.
8. Professional property management services.
9. Real property taxes (reimburse Lessor).
10. Downtown business district assessments (reimburse Lessor).
11. Monthly utility service: water, gas, electric, sewer (either established in Lessee's name or reimburse Lessor).

12. Post renovation/following final acceptance and occupancy installation and maintenance of all data cables and systems. Initial installation is described in Exhibit "A" .
13. Post Renovation and following the final acceptance and occupancy installation and maintenance of internet service to the Premises. Initial installation is described in Exhibit "A".
14. Property casualty insurance coverage only (reimburse Lessor). All other insurance required under the Lease shall be at the sole expense of Lessor.
15. Security guards or other security services.
16. Post Renovation and following final acceptance and occupancy, the installation and maintenance of key-card or other access system. Initial installation is described in Exhibit "A".
17. Installation, maintenance, and use of a flagpole.

Sec. 5 of the Lease is amended to read as follows:

5. ELECTRICAL REQUIREMENTS:

- a. The electrical requirements of the Premises are described in Exhibit "A".
- b. The Lessor shall post a schematic at each circuit breaker panel with labeling to correspond to individual circuit breaker labels and shall keep the posted plan up to date.

Sec. 6 of the Lease is amended to read as follows:

6. PLUMBING REQUIREMENTS:

- a. The plumbing requirements of the Premises are described in Exhibit "A" .

Sec. 7 of the Lease is amended to read as follows:

7. HEATING, COOLING AND VENTILATION (HVAC) REQUIREMENTS:

- a. The HVAC installation requirements of the Premises are described in Exhibit "A" .
- b. Facilities shall be provided to maintain the temperature in all the offices and similar type space uniformly within 68 degrees F to 78 degrees F range.

If the temperature is not maintained within the 68 degrees F to 78 degrees F range for a period of more than two consecutive working days, the Lessor shall, upon receipt of a written complaint from the Lessee, provide suitable temporary auxiliary heating or cooling equipment, as appropriate, to maintain the temperature in the specified range. If such temporary auxiliary equipment is necessary to meet normal weather contingencies for more than 21 consecutive working days, the Lessor shall, not later than the 21st working day, initiate a continuing and diligently

applied effort to rectify the deficiency causing the failure in order to uniformly maintain the temperature range required. If after 42 consecutive working days the temporary auxiliary equipment is still necessary to meet normal weather contingencies, the Lessee shall be free to hold the Lessor in default, it being considered that the Lessee has proffered a reasonable amount of time for the Lessor to effect suitable modification or repair to the building in order to maintain the specified temperature range without resort to temporary auxiliary devices. "Working days" for the purpose of this section shall be defined as days normally scheduled by the Lessee as open for the conduct of its normal operations.

- c. Adequate ventilation shall be provided in accordance with the mechanical code adopted by the Department of Public Safety for the State or ventilation may be provided by windows with screens that open.

Sec. 8 of the Lease is amended to read as follows:

- 8. **WINDOW COVERING REQUIREMENTS:** Window covering requirements are described in Exhibit "A".

Sec. 9 of the Lease is amended to read as follows:

- 9. **FLOOR COVERING REQUIREMENTS:** Floor covering requirements are described in Exhibit "A". In addition, the Lessor is responsible for replacing floor coverings at least once every ten (10) years or sooner if reasonably required, provided the sooner replacement is not required due to extraordinary wear and tear or other fault of Lessee.

The Lessee shall use grating, runners, rubber finger mats or other aggressive methods at the front entrance to the building and the Premises to minimize tracking dirt, snow or ice into the space.

Sec. 10 of the Lease is amended to read as follows:

- 10. **ACOUSTICAL REQUIREMENTS:** Acoustical requirements are described in Exhibit "A".

Sec. 11 of the Lease is amended to read as follows:

- 11. **PARTITION REQUIREMENTS:** Partition requirements are described in Exhibit "A".

Sec. 12 of the Lease is amended to read as follows:

- 12. **PAINTING REQUIREMENTS:** Painting requirements related to the renovation are described in Exhibit "A". In addition, the Lessor is responsible for repainting at least once every ten (10) years or sooner if reasonably required, provided the sooner repaint is not required due to extraordinary wear and tear or other fault of Lessee. All surfaces which normally would be painted shall be finished with a minimum of two coats of interior latex paint on walls and suitable semi-gloss enamel on woodwork and bare metal. The Lessee reserves the right to select the colors for areas to be newly painted.

Sec. 13 of the Lease is amended to read as follows:

13. **DOOR HARDWARE REQUIREMENTS:** Door hardware requirements related to the renovation are described in Exhibit "A" . The Lessee is responsible for any subsequent (post-renovation - after final acceptance and occupancy) modification to door hardware that may be necessary to install additional components of a key card or other security system. The Lessee is responsible for the security and safekeeping of all keys to the Premises.

Sec. 14 of the Lease is amended to read as follows:

14. **VOICE AND DATA REQUIREMENTS:** Voice and data requirements are described in Exhibit "A" . The Lessee is responsible for the installation and maintenance of all voice, data, and internet service to the Premises post-renovation; following final acceptance and occupancy.

Sec. 15 of the Lease is amended to read as follows:

15. **PARKING REQUIREMENTS:** Parking requirements are described in Exhibit "A" .

If additional parking is constructed, it shall be of sufficient size to allow proper and easy parking, and have a hard and well-drained surface. All parking locations must be well lit and have good accessibility in and out of the parking area.

Lessee shall be responsible to maintain the parking areas and to provide that the above grade/surface parking lot is available to the public between the hours of 5:00pm and 6:00am Monday thru Friday and full time on Saturdays and Sundays. Any revenue rates for public parking shall be as determined by Lessee and any collected revenue for public parking shall be the property of the Lessee or its vendors as Lessee may so choose. Lessee shall direct the initial signage installation requirements for the parking areas which Lessor shall install as provided in Exhibit "A" . Thereafter the Lessee shall be responsible for signage installation, maintenance and changes.

Sec. 16 of the Lease is amended to read as follows:

16. **FIRE PREVENTION:** The Lessor shall ensure that the Premises are at all times compliant with local fire code or other authority and shall inspect and maintain all fire suppression equipment and systems as necessary. The Lessee shall maintain the premises in keeping with good housekeeping and fire prevention practices. The Lessor reserves the right at reasonable times to enter and make fire prevention and fire protection inspections of the Premises.

Sec. 17 of the Lease is amended to read as follows:

17. **HAZARDS:** Both the Lessor and Lessee shall endeavor to keep the Premises free from environmental and other hazards.

Sec. 18 of the Lease is amended to read as follows:

18. **JANITORIAL SERVICES:** The Lessee shall be responsible for janitorial services for the entire Premises including common areas, parking areas and exterior areas.

Sec. 19 of the Lease is NOT amended except for the addition of the following provisions:

The last sentence of section 19 A is amended to read:

The Lessor shall be responsible for completing the Renovations described in Exhibit "A" 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.

Sec. 20 of the Lease is deleted in its entirety.

Sec. 21 of the Lease is amended to read as follows:

21. **SIGNS:** The installation of signage as part of the renovation is described in Exhibit "A". After renovation is complete, Lessee reserves the right to erect or affix signs at the Premises, including the parking areas, so long as such installation does not cause damage to the roof, elevators or structural components of the buildings. The placement of signs at or upon the Premises shall be coordinated with the Lessor to avoid injury to the Premises and to comply with applicable law.

Sec. 22 of the Lease is amended to read as follows:

22. **ELEVATORS:** The Lessor shall ensure that all floors of the Premises under this Lease are served by elevators that comply with the current applicable editions of the rules, regulations and codes of the State and the Municipality of Anchorage. Prior to occupancy by the Lessee, the Lessor shall provide the Lessee with documentation from a licensed elevator maintenance organization stating that the elevator is in good working order and meets all the minimum standards.

Sec. 23 of the Lease is amended to read as follows:

23. **RENOVATION AFTER FINAL ACCEPTANCE OF PREMISES BY LESSEE:** After final acceptance and occupancy, at the reasonable request of the Lessee, the Lessor shall renovate the Premises at Lessee's expense by refinishing all damaged or worn walls, ceilings, floors, or built-in fixtures or replacing damaged or worn wall, floor, or window coverings and paint that are not the responsibility of Lessor. For any renovation, the Lessee reserves the right to make on-site inspections and to determine if and when the renovation is complete and satisfactory. The Lessee reserves the right to work with the Lessor on selecting colors and finishes. If the Lessor does not perform a renovation requested by the Lessee that is allowed by this Section 23 ("Renovation"), the failure to respond is a default under Section 32 ("Remedies on Default").

Sec. 24 of the Lease is amended to read as follows:

24. **WAGE-RELATED REQUIREMENTS:** If construction, alteration, repair, renovation, or redecorating work by the Lessor that is over \$25,000 is required in order for the Premises to be ready for occupancy or if work that is over \$25,000 is performed by Lessor, that directly relates to the Lessee's Premises, while the Lessee is occupying the Premises, the Lessor is advised that the Lease will be considered by the Lessee to be subject to the minimum wage and other requirements of AS 36.05.010 - 36.05.110; the current minimum wages for various classes of laborers, mechanics, and field surveyors (as these terms are defined in AS 36.95.010) and the rate of wages paid during the contract must be adjusted to the wage rate indicated under AS 36.05.010; the Lessor and Lessor's contractors must pay all employees unconditionally and not less than once a week; the scale of wages must be posted in a prominent and easily accessible place at the site of the work; the Lessee shall withhold as much of its payments under this Lease as necessary to pay to laborers, mechanics, and field surveyors employed by the Lessor or the Lessor's contractors the difference between (A) the rates of wages required by the contract to be paid laborers, mechanics, or field surveyors on the work, and (B) the rates of wages in fact received by the laborers, mechanics, or field surveyors that are less than the required wages. The Lessor is encouraged to contact the Department of Labor and Workforce Development for more information about these and other related requirements.

If it is found that a laborer, mechanic, or field surveyor employed by the Lessor or the Lessor's contractor has been or is being paid a rate of wages less than the rate of wages required by the Lease to be paid, the Lessee may, by written notice to the Lessor, terminate the Lessor's right to proceed with the work or the part of the work for which there is a failure to pay the required wages and to prosecute the work to completion by contract or otherwise, and the Lessor and the Lessor's sureties are liable to the Lessee for excess costs for completing the work.

Sec. 25 of the Lease is amended to read as follows:

25. **INGRESS AND EGRESS:** All space shall be available on a 24-hour day, seven days a week basis to the Lessee and its invitees. The Lessee shall have full access to and use of all common areas of the building including elevators, lobbies, stairwells, and restrooms. The Lessor shall install and the Lessee shall maintain a security camera system which covers all of the common areas of the building but not limited to hallways, stairwells, and elevators and the upper and lower parking areas, and provide monitors for the Lessee to operate and monitor.

Sec. 30 of the Lease is amended to read as follows:

30. **LESSEE-INSTALLED ITEMS:** All fixtures and/or equipment of whatever nature that are installed in the Premises by the Lessee, whether permanently affixed or otherwise, shall continue to be the property of the Lessee and may be removed by the Lessee at any time, provided however, that the Lessee shall, at its own expense, repair any injury to the Premises resulting from such removal. However any conduit or wiring installed by the Lessee shall remain. Notwithstanding the foregoing, Lessee may not raze and replace the improvements or make any alterations whose cost exceeds \$5,000 without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, conditioned, or delayed.

Sec. 31 of the Lease is amended to read as follows:

31. **RESTORATION LIABILITIES:** Lessee agrees to leave the Premises at the expiration or termination of this Lease in as good a condition as when first occupied under this Lease, except for reasonable wear and tear and loss or damage caused by fire, explosions, earthquakes, acts of God, or other casualty. At the termination of the Lease, the Lessee is not required to restore the Premises to their condition before the Lessor or Lessee made the improvements required for the Lessee to occupy the Premises under the Lease.

Sec. 33 of the Lease is amended to read as follows:

33. **REMEDIES ON DEFAULT:** If the Lessee shall at any time be in default in the payment of rent, or in the performance of any of the terms of the Lease and shall fail to remedy such default within thirty (30) days after written notice of the default from the Lessor, the Lessor may retake possession of the Premises by an unlawful detainer action or other lawful means, and the Lease will terminate, without prejudice, however, to the right of the Lessor to recover from the Lessee all rent due up to the time of such entry. In case of any default and entry by the Lessor, the Lessor shall relet the Premises for the remainder of the term for the highest rent obtainable and may recover from the Lessee any deficiency between the amount obtained by reletting and the rent specified by the Lease.

If the Lessor shall at any time be in default in the performance of any of the terms or obligations of the Lessor under this Lease, the Lessee may fix the problem involved and deduct the cost, including administrative costs, from the rent, if the Lessor fails to fix the problem after Lessee notifies the Lessor in writing of the default. Upon such notice, Lessor shall cure the default within a reasonable time as defined in Section 49, or if the default cannot reasonably be cured within a reasonable time, then Lessor shall commence the cure within such reasonable time and prosecute it diligently until completion. If Lessor fails to so act, then it shall be in default and Lessee may elect its remedies for default. If the Lessee chooses not to fix the problem or cannot fix the problem, the Lessee may deduct from the rent the Lessee's damages, which are to be determined by the Lessee's Supply Officer. When deducting damages under this sentence, "damages" means either (1) the costs (including administrative costs) of alleviating or adjusting to the problem, or (2) the diminution of the value of the Lease to the Lessee caused by the Lessor's default. Instead of pursuing the other remedies provided by this paragraph, if the Lessor fails to correct a default within the time set forth herein after receiving written notification of the default from the Lessee, the Lessee may terminate the Lease by giving 30 days written notice of the termination to the Lessor and may recover damages from the Lessor. This paragraph does not apply to a situation covered by Section 28 ("Untenantability") or to the termination allowed under Section 20 ("Wage-Related Requirements").

Sec. 34 of the Lease is amended to read as follows:

34. **INDEMNIFICATION:** The Lessor shall indemnify, save harmless, and defend the Lessee, and its officers, agents and employees from liability of any nature or kind, including costs, attorney fees, and other expenses, for or on account of any and all legal actions or claims of any character whatsoever resulting from injuries or damages sustained by any person or persons or property as a result of any error, omission, or negligence, of the Lessor that occurs on or about the rental Premises or that relates to the Lessor's performance of its lease obligations.

Sec. 35 of the Lease is amended to read as follows:

Without limiting Lessor's indemnification, it is agreed that Lessor will purchase at its own expense and maintain in force at all times during the Lease the following policies of insurance:

The requirements contained herein, as well as Lessee's review or acceptance of insurance maintained by Lessor is not intended to, and shall not in any manner, limit or qualify the liabilities or obligations assumed by Lessor under this Lease.

Insurance policies required to be maintained by Lessor will name Lessee as additional insured for all coverage except Workers' Compensation and Professional Liability/E&O insurance.

Lessor and its subcontractors agree to obtain a waiver, where applicable, of all subrogation rights against Lessee, its officers, officials, employees and volunteers for losses arising from work performed by the Lessor and its subcontractors for Lessee. However, this waiver shall be inoperative if its effect is to invalidate in any way the insurance coverage of either party.

Where specific limits are shown, it is understood that they will be the minimum acceptable limits. If the Lessor's policy contains higher limits, Lessee will be entitled to coverage to the extent of such higher limits. The coverages and/or limits required are intended to protect the primary interests of Lessee, and the Lessor agrees that in no way will the required coverages and/or limits be relied upon as a reflection of the appropriate types and limits of coverage to protect Lessor against any loss exposure whether a result of this Agreement or otherwise.

Failure to furnish satisfactory evidence of insurance or lapse of any required insurance policy is a material breach and grounds for termination of the Lease.

- a. **Property Insurance:** The Lessor will provide and maintain (with Lessee reimbursement as per Section 4(b)(14):
1. Property insurance in an amount of not less than 100% of the replacement cost of the building(s) and contents, including improvements made on behalf of Lessee. Coverage shall be written on an "all risk" replacement cost basis and include an endorsement for ordinance and law coverage.

2. If the property is located in a floodplain, flood insurance in an amount of not less than 100% of the replacement cost of the building(s) and contents, including improvements made on behalf of Lessee; or the maximum amount available from the National Flood Insurance Program, whichever is less.
- b. Workers' Compensation Insurance: The Lessor will provide and maintain, for all employees of the Lessor engaged in work under the Contract, Workers' Compensation Insurance as required by AS 23.30.045. The Lessor shall be responsible for ensuring that any subcontractor that directly or indirectly provides services under this Lease has Workers' Compensation Insurance for its employees. This coverage must include statutory coverage for all States in which employees are engaging in work and employer's liability protection for not less than \$100,000 per occurrence. Where applicable, coverage for all federal acts (i.e., USL & H and Jones Acts) must also be included.
- c. Commercial General Liability Insurance: The Lessor will provide and maintain Commercial General Liability Insurance with not less than \$1,000,000 per occurrence limit, and will include premises-operation, products/completed operation, broad form property damage, blanket contractual and personal injury coverage. Coverage shall not contain any endorsement(s) excluding or limiting contractual liability nor providing for cross liability.
- d. Automobile Liability Insurance: The Lessor will provide and maintain Automobile Liability Insurance covering all owned, hired and non-owned vehicles with coverage limits not less than \$1,000,000 per occurrence bodily injury and property damages. In the event Lessor does not own automobiles, Lessor agrees to maintain coverage for hired and non-owned liability which may be satisfied by endorsement to the CGL policy or by separate Business Auto Liability policy.
- e. Umbrella or Excess Liability: Lessor may satisfy the minimum liability limits required above for CGL and Business Auto under an umbrella or excess Liability policy. There is no minimum per occurrence limit under the umbrella or excess policy; however the annual aggregate limit shall not be less than the highest per occurrence limit stated above. Lessor agrees to endorse Lessee as an additional insured on the umbrella or excess policy unless the certificate of insurance states that the umbrella or excess policy provides coverage on a pure "true follow form" basis above the CGL and Business Auto policy.
- f. Professional Liability Insurance: The Lessor will provide and maintain Professional Liability Insurance covering all errors, omissions or negligent acts of the Lessor, its property managers, subcontractors or anyone directly or indirectly employed by them, made in the performance of this Lease which results in financial loss to the State. Limits required are \$500,000.
- g. Fidelity Bond: The Lessor will provide and maintain a Fidelity Bond in the amount of \$250,000 covering all acts of the Lessor, its property managers, or subcontractors who shall have access or perform work upon the Premises.

- h. Certificates of Insurance Lessor agrees to provide Lessee with certificates of insurance evidencing that all coverages, limits and endorsements as described above are in full force and effect and will remain in full force and effect as required by this Lease. Certificates shall include a minimum thirty (30) day notice to Lessee cancellation or non-renewal. The Certificate Holder address shall read:

Legislative Affairs Agency
State Capitol, Room 3
Juneau, Alaska 99801-1182
Fax (907) 465-2918

Sec. 36 of the Lease is amended to read as follows:

36. **DELAYS IN PERFORMANCE:** If the Lessor delays in providing the Premises to the Lessee in a condition the Lessee determines satisfactorily meets the descriptions provided in the attached Exhibit "A", by the deadline set forth in section 3 and Exhibit "B", the Lessor shall provide a written explanation for the delay in performance. The Lessor may be excused from performance due to unforeseeable causes beyond the control and without fault or neglect of the Lessor. Unforeseeable causes may include, but are not limited to: (1) acts of God, (2) public enemy, (3) acts of the state in its sovereign capacity, (4) acts of another contractor in the performance of a contract with the Lessee, (5) fires, (6) floods, (7) quarantine restrictions for epidemics, (8) strikes, (9) freight embargoes, (10) unusually severe weather conditions, and (11) delays unusual in nature by subcontractors or suppliers. Notification of such delays must be made to the Lessee's Procurement Officer in writing within ten (10) days of the commencement of the unforeseeable cause. The Procurement Officer shall ascertain the facts and the extent of delay and the extent of the time for completing the project. The Procurement Officer may approve up to four (4) thirty (30) day extensions if, in the Procurement Officer's judgement, the findings of fact justify an extension. The cause of the extension need not be unforeseeable to justify an extension. The Lessor shall provide written explanation for the delay in performance after the exhaustion of each extension. The Procurement Officer may terminate the Lease at any time after the four (4) thirty (30) day extensions if the Lessor has not provided the Premises to the Lessee in a condition the Lessee determines satisfactorily meets the descriptions provided in the attached Exhibit "A" by the deadline set in Exhibit "B". Pending final decision on an extension of time under this section, the Lessor shall proceed diligently with the performance of the Lease. Inability to comply with state or municipal construction or zoning laws or ordinances or restrictive covenants shall not be regarded as an unforeseeable cause. To terminate the Lease under this section, the Procurement Officer shall provide notice by e-mail or delivery of hard copy to the Lessor, whichever method is selected in the sole discretion of the Procurement Officer. The Procurement Officer shall provide thirty (30) days notice before terminating this Lease.

Sec. 37 of the Lease is amended to read as follows:

37. **HOLDING OVER:** At the Lessee's sole discretion, prior to the Lease expiration, the Lessee may provide a one hundred eighty (180) day written notice to the Lessor informing the Lessor that the Lessee wishes to hold over following the end of the Lease Term. Such election for a holdover shall be not less than six months in duration and not more than one year in duration following the end of the Lease Term. Base Monthly Rental for the Holdover Period shall be as was in effect at the end of the Lease Term plus the applicable Base Monthly Rental adjustment set forth in Section 1(d). Only one holdover election shall be allowed. All other terms and conditions specified by the Lease remain the same.

Sec. 39 of the lease (as amended by Lease Amendment #2 and Renewal # 1 (2009-2010) signed 3/11/2009) is amended as follows:

Delete all content beginning with the second paragraph which begins "The Lessor consents to the Lessee's assignment..."

Sec. 41 of the Lease is amended to read as follows:

41. **USE OF LOCAL FOREST PRODUCTS:** AS 36.15.010 requires that in a project financed by State money in which the use of timber, lumber, and manufactured lumber projects is required, only timber, lumber, and manufactured lumber products originating in this State from local forests shall be used wherever practicable. Therefore, if construction, repair, renovation, redecoration, or other alteration is to be performed by the Lessor to satisfy this Lease, the Lessor must use, wherever practical, timber, lumber, and manufactured lumber products originating in the State from local forests and only products manufactured, produced, or harvested in the state may be purchased if the supplies are competitively priced, available, and of like quality compared with products manufactured, produced, or harvested outside the state.

Sec. 42 of the Lease is amended to read as follows:

42. **LEASE AMENDMENTS:** In addition to any other amendment the parties may be allowed to make under the Lease, the terms of the Lease entered into may be amended by mutual agreement of the parties, if the Lessee determines that the amendment is in the best interests of the Lessee.

Sec. 43 of the Lease is amended to read as follows:

43. **AUTHORIZATION; CERTIFICATION:** Authority for the Chairman of Legislative Council to execute this Lease was authorized by a majority of the members of the Alaska Legislative Council at a meeting on June 7, 2013.

Funds are available in an appropriation to pay for the Lessee's monetary obligations under the Lease through June 30, 2015. The availability of funds to pay for the Lessee's monetary obligations under the Lease after June 30, 2015, is contingent upon appropriation of funds for the particular fiscal year involved. In addition to any other right of the Lessee under this Lease to terminate the Lease, if, in the judgment of the Legislative Affairs Agency Executive Director, sufficient funds are not appropriated by the

Legislature, the Lease will be terminated by the Lessee or amended. To terminate under this section, the Lessee shall provide written notice of the termination to the Lessor. The Executive Director will include a budget request to cover the obligations of Lessee in the proposed budget as presented to the Legislative Council for each lease year as a component of Lessee's normal annual budget request and approval process.

The Lease is amended by adding new sections to read as follows:

46. **HUMAN TRAFFICKING:** By the Lessor's signature on this Lease, the Lessor certifies that the Lessor is not headquartered in a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report.

In addition, if the Lessor conducts business in, but is not headquartered in, a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report, a certified copy of the Lessor's policy against human trafficking must be submitted to the Agency prior to contract award.

The most recent United States Department of State's Trafficking in Persons Report can be found at the following website: <http://www.state.gov/g/tip/rls/tiprpt>.

If the Lessor is or becomes headquartered in a Tier 3 country, or fails to comply with this Section 46 ("Human Trafficking"), the Lessee may terminate the Lease.

47. **OPTION TO EXTEND LEASE:** The Lessee may exercise an option under this section 47 to extend, as provided by AS 36.30.083, the Lease for up to 10 years following the end of the expiring lease term. To exercise this option, the Lessee shall give notice to the Lessor at least six (6) months before the end of the Lease of the Lessee's intent to negotiate with the Lessor to extend the Lease under AS 36.30.083. The Lessor shall respond within thirty (30) days to the Lessee stating whether the Lessor intends to negotiate an extension under AS 36.30.083 with the Lessee.

48. **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT (SNDA):**

- a. **Mortgages.** This Lease is subordinate to prior or subsequent mortgages covering the Premises. Lessor shall obtain from Lessor's mortgage lender for the Premises an agreement that in the event of a foreclosure by Lessor's lender, this Lease shall stay in effect and Lessee's quiet enjoyment shall not be disturbed so long as it is not in default.
- b. **Foreclosures.** If any mortgage is foreclosed, then:
 1. This Lease shall continue; and Lessee's quiet possession shall not be disturbed if Lessee is not in default;
 2. Lessee will attorn to and recognize the mortgagee or purchaser at a foreclosure sale ("Successor Lessor") as Lessee's lessor for the remaining Term; and

3. The Successor Lessor shall not be bound by:

- i. any payment of Rent or Additional Rent for more than one month in advance, except as specified in the Lease;
- ii. any amendment, modification, or ending of this Lease without Successor Lessor's consent after the Successor Lessor's name is given to Lessee unless the amendment, modification, or ending is specifically authorized by the original Lease and does not require Lessor's prior agreement or consent; and
- iii. any liability for any act or omission of a prior Lessor.

c. **Notice.** Lessee shall give notice to mortgagee of any claim of default under the Lease and allow mortgagee at least thirty (30) days to cure the default prior to terminating the Lease. Lessor and such mortgagee shall provide Lessee with a notice address for this purpose.

d. **Self-Operating.** These provisions are self-operating. However, Lessee shall promptly execute and deliver any documents needed to confirm this arrangement and such other commercially reasonable terms as required by a mortgagee provided such document also confirms Lessee's right of non-disturbance so long as it is not in default.

e. **Estoppel Certificate.**

1. **Obligation.** Either party ("**Answering Party**") shall from time to time, within ten (10) business days after receiving a written request by the other party (**Asking Party**), execute and deliver to the Asking Party a written statement. This written statement, which may be relied upon by the Asking Party and any third party with whom the Asking Party is dealing shall certify: (i) the accuracy of the Lease document; (ii) the Beginning and Ending Dates of the Lease; (iii) that the Lease is unmodified and in full effect or in full effect as modified, stating the date and nature of the modification; (iv) whether to the answering Party's knowledge the Asking Party is in default or whether the Answering Party has any claims or demands against the Asking Party and, if so, specifying the default, claim, or demand; and (v) to other correct and reasonably ascertainable facts that are covered by the Lease terms.

2. **Remedy.** The Answering Party's failure to comply with its obligation shall be a default. The cure period for this Default shall be ten (10) business days after the Answering Party receives notice of the default.

49. **DEFINITIONS:**

"commercially reasonable regular schedule" per Section 4 (a) 7 is defined as professional carpet cleaning performed at least once every six (6) months or sooner if the carpeting and walk-off mats show excessive soiling or staining.

"final acceptance and occupancy" is defined as the date that the Lessee takes occupancy of the renovated Premises. This date is related to the lease agreement only and shall not be confused with terms such as substantial completion, partial completion, or other terminology that is directly related to Exhibit "A" and Exhibit "B".

"reasonable time" per Section 33 is defined as follows with respect to the Lessor's obligations as described under Section 4 and more specifically, to the Lessor's responsibility to ensure uninterrupted service to the Premises:

- a. any interruption in a critical building service that immediately and substantially interferes with the Lessee's ability to use the Premises and that is under the control of Lessor including but not limited to items in Section 4 (a) 1 and 2 or any failure or interruption in HVAC, plumbing, water, sewer, electricity, elevators, or fire safety; the Lessor shall commence repairs/restoration as soon as notified and shall endeavor to restore services or temporary substitute services within a "reasonable time" of 24 hours.
- b. ordinary maintenance requests per Sections 4 (a) 3, 4, 6, 7, 8, 9, 10, and 11; the Lessor shall commence work as soon as possible and shall complete the work within a "reasonable time" of thirty (30) days.
- c. extraordinary maintenance requests per Section 4 (a) 5; the Lessor shall commence work within ninety (90) days and shall diligently pursue the work to completion.

"reasonably required" per Section 4 (a) 5, Section 9, and Section 12 – is defined as the time the carpeting or other floor coverings, paint, or casework is no longer in good condition or repair and in the Lessee's opinion is in need of repair or replacement.

50. **INCORPORATION:**

The following documents are incorporated by reference and form a material part of this into this Extension of Lease and Lease Amendment No. 3:

Exhibit "A" LIO Approval Plans (plans, drawings, technical specifications).

Exhibit "B" Project Schedule

Exhibit B-1 Interim Occupancy Schedule

Exhibit "C" Written determination by the Procurement Officer regarding the procurement process leading to this Extension of Lease and Lease Amendment No. 3.

Exhibit "D" Executive Director's Cost Saving Calculation and Report to the Legislative Budget and Audit Committee per AS 36.30.083(b).

51. **AGREEMENT IN ITS ENTIRETY:**

The Lease represents the entire understanding between the parties. No prior oral or written understandings shall have any force or effect with respect to any matter covered in the Lease or in interpreting the Lease. The Lease shall only be modified or amended in writing.

51. AGREEMENT IN ITS ENTIRETY:

The Lease represents the entire understanding between the parties. No prior oral or written understandings shall have any force or effect with respect to any matter covered in the Lease or in interpreting the Lease. The Lease shall only be modified or amended in writing.

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Lease on the day, month, and year indicated below.

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Manager:

Mark E. Pfeffer	Date
Manager	
Tax Identification No.: 46-3682212	
Business License No.: 423463	

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Member:

Robert B. Acree	Date
Member	

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Member:

Mark E. Pfeffer Alaska Trust UTA 12/28/07

Alana Williams date
Its: Trustee


LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY

Representative Mike Hawker Date _____
Chair, Alaska Legislative Council
Procurement Officer

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Lease on the day, month, and year indicated below.

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Manager:



Mark E. Pfeffer Date
Manager
Tax Identification No.: 46-3882212
Business License No.: 423463


LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Member:

Robert B. Acree Date
Member

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Member:
Mark E. Pfeffer Alaska Trust UTAD 12/28/07



Alana Williams Date
Its: Trustee

LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY

Representative Mike Hawker Date
Chair, Alaska Legislative Council
Procurement Officer

CERTIFYING AUTHORITY

Pamela A. Vami Date
Executive Director
Legislative Affairs Agency

APPROVED AS TO FORM:

Legal Counsel Date

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Lease on the day, month, and year indicated below.

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Manager:

Mark E. Pfeffer Date
Manager
Tax Identification No.: 46-3682212
Business License No.: 423463

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Member:

Robert B. Acree Date
Member

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Member:
Mark E. Pfeffer Alaska Trust UTAD 12/28/07

Alana Williams Date
Its: Trustee

LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY

Representative Mike Hawker Date 9.19.13
Chair, Alaska Legislative Council
Procurement Officer

CERTIFYING AUTHORITY

Pamela A. Varni Date
Executive Director
Legislative Affairs Agency

APPROVED AS TO FORM:

Legal Counsel Date

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, and
LEGISLATIVE AFFAIRS AGENCY,
Defendants.

Original Received

NOV 06 2015

Clerk of the Trial Courts

Case No.: 3AN-15-05969 CI

NOTICE OF FILING ORIGINAL AFFIDAVIT OF MARK PFEFFER

Defendant 716 West Fourth Avenue, LLC'S Opposition to Plaintiff's Motion for Preliminary Injunction was filed with an unsigned Affidavit of Mark Pfeffer. Attached to this notice is the original Affidavit.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 11-6-15

By: Jeffrey W. Robinson
Alaska Bar No. 0805038

ASHBURN & MASON P.C.

LAWYERS

1227 WEST 9TH AVENUE, SUITE 200

ANCHORAGE, ALASKA 99501

TEL 907.276.4331 • FAX 907.277.8235

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served ☐ electronically ☐ messenger
☐ facsimile ☒ U.S. Mail on the 5th day of ~~October~~ November 2015, on:

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501

Kevin Cuddy
Stoel Rives, LLP
510 L Street, Suite 500
Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

ASHBURN & MASON INC.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

NOTICE OF FILING ORIGINAL AFFIDAVIT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969 Civil
{10708-101-00301950;1}

Page 2 of 2

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, and
LEGISLATIVE AFFAIRS AGENCY,
Defendants.

Case No.: 3AN-15-05969 CI

**AFFIDAVIT OF MARK PFEFFER IN SUPPORT OF 716 WEST FOURTH
AVENUE, LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Mark Pfeffer being first duly sworn upon oath, depose and state:

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

2. I am the Manager of 716 West Fourth Avenue, LLC and submit this affidavit in support of 716 West Fourth Avenue, LLC's Opposition to Plaintiff's Motion for Preliminary Injunction.

3. 716 has been the Lessor of the Anchorage LIO for 23 years. I became a Member and Manager of 716 in September of 2013.

{10708-101-00300534;2}

Page 1 of 5

ASHBURN & MASON INC.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

4. I have personal knowledge of the payments made during the renovation and expansion (the "LIO Project") at issue and affirm all other facts based on my information and belief.

5. 716 spent approximately \$44,500,000 in construction efforts during the entirety of the process. Under the terms of the Construction Contract with Criterion General, dated 11-11-13, and already provided to Plaintiff, 716 stipulated to pay Criterion a contract sum of \$30,169,055. Criterion was in fact paid for the construction work. The Alaska Housing Finance Corporation evaluated and validated the cost estimate for the Project and total development budget. Plaintiff also has this document and has published it on its website. 716 spent millions of dollars on project management, surveying, design fees, bank fees, temporary offices and relocation costs and other costs related to construction, including payments to ABI, its tenants, and Mr. Gottstein personally.

6. As part of the negotiations involving the December 6, 2013 indemnity agreement, Mr. Gottstein attempted to negotiate for ABI a \$10,000,000 purchase obligation in the event his building was damaged. 716 declined that overture; however, Plaintiff did receive compensation pursuant to a negotiated agreement.

AFFIDAVIT OF MARK PFEFFER IN SUPPORT OF 716'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY
INJUNCTION
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969 Civil

{10708-101-00300534;2}

Page 2 of 5

7. As a component of the \$44,500,000 total Project budget, 716 paid \$7,500,000 for tenant improvements to the Premises. The Agency directly reimbursed these payments to 716. Of the remaining amount, approximately \$37,000,000, Members of 716 contributed \$9,000,000 of their own money into the Project. 716 did so as a good faith investment, and 716 is entitled to a rate of return on its investment.

8. Under its lease obligations to the Agency, 716 was liable for liquidated damages to the State if the project was not completed by the agreed upon completion date of December 31, 2014. As such, 716 pursued the construction and banking effort diligently and at no time was challenged by any outside entity to stop work.

9. Under the terms of the Lease Extension, which was executed on September 19, 2013, the Base Monthly Rental rate is \$281,638.¹ Over the course of the lease, 716 expects to be paid approximately \$3,300,000 per year. In signing the lease, the parties stated that it was the intention of both the Lessor and Lessee to extend the Lease for 10 years under AS 36.30.0 8(a) effective June 1, 2014 through May 31, 2024.



Mark Pfeffer

¹ Unless otherwise amended in writing and signed by both parties, the Base Monthly Rental shall remain the same through May 31, 2024.

ASHBURN & MASON^{PC}

LAWYERS

1227 WEST 9TH AVENUE, SUITE 200

ANCHORAGE, ALASKA 99501

TEL 907.276.4331 • FAX 907.277.8235

SUBSCRIBED AND SWORN to before me this 5th day of November, 2015.



Alana Williams

NOTARY PUBLIC in and for Alaska

My Commission Expires: 12/17/17

AFFIDAVIT OF MARK PFEFFER IN SUPPORT OF 716'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

*Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969*Civil

Page 4 of 5

{10708-101-00300534;2}

EXHIBIT I
Page 6 of 7

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served ☐ electronically ☐ messenger ☐
facsimile ☐ U.S. Mail on the _____ day of October 2015, on:

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501

Kevin Cuddy
Stoel Rives, LLP
510 L Street, Suite 500
Anchorage, Alaska 99501

ASHBURN & MASON

By: _____
Heidi Wyckoff

AFFIDAVIT OF MARK PFEFFER IN SUPPORT OF 716'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY
INJUNCTION
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969 Civil