

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made effective this \_\_\_\_ day of February, 2014, by and among 716 West Fourth Avenue, LLC, ("Landlord") the Legislative Affairs Agency ("LAA") and Alaska Housing Finance Corporation ("AHFC").

### RECITALS

1. Landlord and LAA have entered into a lease dated September 19, 2013, concerning the lease of an office building and parking structure as located on Lots 2 W 39.5' and Lot 3A, Block 40, of the Original Townsite of Anchorage, according to the official plat thereof, Anchorage Recording District, State of Alaska ("Original Lease"). The office building is currently under renovation by Landlord with a completion date of December 31, 2014.
2. LAA recognizes it may reduce its net cost of leasing under the terms of the Original Lease by having AHFC purchase the completed free standing office building, but excluding the land and parking structure (Office Building"), enter into a ground lease with Landlord for the land and parking structure (the "Ground Leased Premises") and sublease the Ground Leased Premises and lease the Office Building to LAA. Landlord is willing to accommodate this lease restructure so long as the net effect of the transaction will preserve its economic position under the Original Lease.
3. AHFC is an instrumentality of the State of Alaska and is willing to assist in the transaction by acquiring the improved office structure from the Landlord, entering into a ground lease with the Landlord for the ground and improved parking structure, and then entering into a long term lease ("Sublease") with LAA for its occupancy of the building and use of the parking structure.

To achieve the above goals, the parties enter into this Memorandum of Understanding to guide the development of the agreements and financial arrangements necessary to implement these understandings.

1. AHFC will negotiate the terms of a purchase and sale agreement ("Purchase Agreement") with Landlord for the acquisition of title to the completed Office Building, and subject to obtaining Legislative Approval, the Purchase Agreement will be executed by AHFC and Landlord on or before June 1, 2014, on these and other mutually agreeable terms and conditions:
  - a. Title will be to the Office Building (but excluding the Ground Leased Premises) subject to a Ground Lease as defined in Section 2.
  - b. The parties will negotiate a purchase price to be paid in immediately available funds on the closing date.
  - c. The closing date will be on or before December 31, 2014, or as extended for force majeure or as allowed under the Lease before the Landlord would be in default.

- d. Landlord will cooperate in providing such due diligence items as requested by AHFC as concerns the Office Building improvements.
  - e. Closing cost allocations will be made consistent with the allocations under the Original Lease between Landlord and LAA, with AHFC paying costs as would otherwise be borne by LAA under the Original Lease. Title insurance and escrow closing fees will be paid by AHFC.
  - f. At closing, the Original Lease will terminate concurrent with the execution of the Ground Lease and Sublease and Landlord will assign the Celco Lease to AHFC and AHFC will assume the obligations of Landlord under the Celco Lease from and after the date of closing. The Office Building will be transferred subject to conformance with the renovation obligations under the Original Lease and the construction plans, and otherwise in their "as is" condition in with only the warranty of title and confirmation that the amounts owed by the Landlord thereunder have been paid in full. The Landlord will assign its construction contract and all warranties at closing to AHFC.
  - g. The obligations of AHFC to proceed with closing is conditioned upon legislative approval as set forth in Section 4, entering into the Ground Lease, entering into a Sublease with LAA as set forth in Section 3, and completion of the Office Building, including but not limited to Landlord's delivery of a certificate of occupancy. If because of seasonal constraints, or to meet the December 31, 2014 closing date, the Office Building is not complete as demonstrated by Landlord only being capable of delivering a conditional certificate of occupancy, then such delivery shall be sufficient to close along with a deposit of sufficient funds into escrow as required to complete the remaining work. Further, AHFC may waive the delivery of the certificate of occupancy and proceed to closing with adequate reserves for completion of the Office Building as required under the Original Lease. The obligation of Landlord to close is conditioned upon its entering into the Ground Lease with AHFC as set forth in Section 2 and the absence of any unresolved disputes with LAA over the Original Lease.
2. AHFC and the Landlord will enter into a ground lease for the Ground Leased Premises ("Ground Lease") on the following general terms and conditions:
- a. The term shall be for twenty (20) years with the right to exercise two (2) options to extend the term for twenty (20) years for each option; provided, that prior to finalizing the Ground Lease the term may be modified if mutually agreeable to the parties. Upon AHFC's exercise of its option to extend the term, the rent shall change to the greater of: (i) existing rent as of the valuation date or (ii) fair market rent based upon fair market value as defined in section 2(d); and such rent adjustment to fair market rent will occur every five years of the option terms.
  - b. The parties will negotiate rent and terms of the Ground Lease to be paid monthly. The rent shall be fully triple net with AHFC paying and/or reimbursing Landlord for all costs of taxes, liability and casualty insurance, and all maintenance and repairs, regardless of whether such are considered capital expenditures or relate to any improvements, and AHFC shall assume all casualty risks and bear the obligation to rebuild the parking structure.
  - c. AHFC shall have the option, to be exercised in accordance with a procedure to be outlined in the Ground Lease, after the end of the initial twenty (20) year term and

- every five (5) years thereafter during any option term, to purchase fee title to the ground and the parking structure from Landlord. The purchase price shall be for fair market value as defined in section 2(d). The purchase closing terms shall be under the same terms and allocations as set forth for the Purchase Agreement.
- d. Fair market value as used both in Section 2(a) and 2(c) shall be determined in accordance with the highest and best use of the property leased under the Ground Lease under prevailing market conditions as of the date of valuation and the rent paid by AHFC and the Office Building shall not be considered in determining fair market rent as of the date of valuation and no allocation of leasehold advantage shall factor into the valuation for either party's advantage or detriment.
3. AHFC and the LAA will enter into a Sublease of the Office Building subject to the Purchase Agreement and the Ground Lease (the "Sublease") on the following terms and conditions:
- a. AHFC and LAA will agree to amend and restate the terms of the Original Lease into the Sublease. The intent is that the rent under the Sublease shall be enough to cover the Ground Lease rent, all obligations of AHFC as tenant under the Ground Lease, and if agreed, to pay any funds necessary due to any bond holders under any financing issued by AHFC to pay the purchase price at the closing of the Purchase Agreement
4. AHFC will proceed to obtain legislative approval, considering any applicable gubernatorial veto rights, to enter into the Purchase Agreement on or before June 1, 2014.
5. The parties agree to proceed diligently and in good faith to draft agreements consistent with the above provisions. However, this Memorandum of Agreement does not and shall not be construed to grant any party any enforceable rights hereunder, until properly executed agreements are entered into by the parties.

Signatures on the following page

**716 WEST FOURTH AVENUE, LLC**

**By its Manager:**



Mark E. Pfeffer

**STATE OF ALASKA LEGISLATIVE AFFAIRS  
AGENCY**

By:

 2.18.14

Representative Mike Hawker  
Chair, Alaska Legislative Council  
Procurement Officer

**ALASKA HOUSING FINANCE CORPORATION**

By:



Michael Buller  
Deputy Executive Director

Its: