

S-16371

3AN-15-05969 CI

VOLUME 1

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

FILED
 STATE OF ALASKA
 2015 JUN 30 PM 3:46
 CLERK TRIAL COURT

FILED
 STATE OF ALASKA
 2015 JUN 30 PM
 CLERK TRIAL COURT

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 CI

716 WEST FOURTH AVENUE LLC,)
 KOONCE PFEFFER BETTIS, INC., d/b/a)
 KPB ARCHITECTS, PFEFFER)
 DEVELOPMENT, LLC, LEGISLATIVE)
 AFFAIRS AGENCY, and CRITERION)
 GENERAL, INC.,)

Defendants.

716 WEST FOURTH AVENUE, LLC'S MOTION TO EXTEND DEADLINE FOR RESPONDING TO MOTIONS

716 WEST FOURTH AVENUE, LLC ("716"), by and through its attorney of record, Jeffrey W. Robinson, Ashburn & Mason, P.C., hereby moves for an order extending the deadlines for its responses to motion briefs in this action. For the reasons described in the attached Affidavit, 716 requests that the time for its reply to Plaintiff's Opposition to Legislative Affairs Agency's Motion to Stay Proceedings be extended until July 22, 2015.

716 also requests that the time for 716's responses for any other motions that have been or may be filed in this action be extended until at least July 31, 2015.

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

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

DATED: 6/30/15

By: 
For Jeffrey W. Robinson
Alaska Bar No. 0805038

716 WEST FOURTH AVENUE, LLC'S MOTION TO EXTEND DEADLINE FOR RESPONDING TO
MOTIONS

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

{10708-101-00275408;1}

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 30 day of June 2015, on:

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

Mark P. Scheer
Scheer & Zehnder LLP
701 Pike Street, Suite 2200
Seattle, WA 98101

Kevin Cuddy
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Cynthia L. Ducey
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Dan Quinn
360 K Street, Suite 200
Anchorage, AK 99501

Blake Call
Call & Hanson P.C.
413 G Street
Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

716 WEST FOURTH AVENUE, LLC'S MOTION TO EXTEND DEADLINE FOR RESPONDING TO MOTIONS

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

{10708-101-00275408;1}

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

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THIRD DISTRICT
2015 JUN 30 PM 3
CLERK TRIAL COURT

THIRD JUDICIAL DISTRICT ANCHORAGE

ALASKA BUILDING, INC., an Alaska
corporation,)

Plaintiffs,)

vs.)

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

Case No.: 3AN-15-05969 Civil

**AFFIDAVIT OF EVA R. GARDNER IN SUPPORT OF MOTION FOR
EXPEDITED CONSIDERATION AND MOTION TO EXTEND DEADLINES**

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Eva R. Gardner, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case, and submit this affidavit in support of 716 West Fourth Avenue, LLC's Motion for Expedited Consideration and Motion to Extend Deadlines to Respond to Motions. I have personal knowledge of all facts described herein.

2. I have requested an extension on my client's deadline to reply to Plaintiff's Opposition to LIA's Motion to Stay Proceedings and other motions because

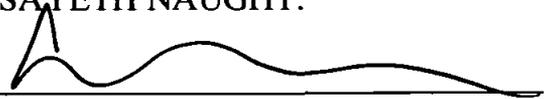
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Jeffrey Robinson, the primary attorney on this case, is out of the office on paternity leave until July 15. I am covering in his absence, but I am scheduled to be married on July 2 and expect to be out of the office from July 1 to July 8. These events will make it difficult to prepare a reply brief to LIA's Motion to Stay by the current deadline of July 8, and will similarly make it difficult to respond to other motions during the month of July.

3. A decision on the Motion to Extend Deadlines is needed by the close of business on July 6, so that if the Motion is denied, I will have time to rearrange my schedule to accommodate drafting the reply brief currently due July 8.

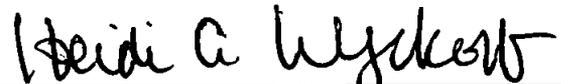
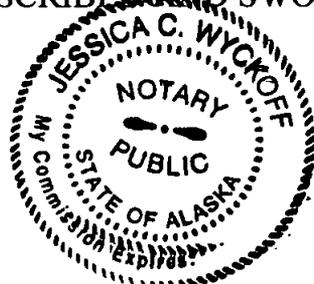
4. Jeffrey Robinson contacted Mr. Gottstein and made a good-faith attempt to reach agreement on this extension request. Mr. Gottstein would not agree to any extension, but indicated that so long as we provided the relevant e-mail correspondence to the Court, he would not oppose the request. Accordingly, attached to this motion as Exhibit A is a copy of the e-mail correspondence on this issue.

FURTHER YOUR AFFIANT SAYETH NAUGHT.



Eva R. Gardner

SUBSCRIBED AND SWORN to before me this 30 day of June, 2015.



NOTARY PUBLIC in and for Alaska
My Commission Expires: 11/1/2019

AFFIDAVIT IN SUPPORT OF MOTION FOR EXPEDITED CONSIDERATION AND MOTION TO EXTEND DEADLINES
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

ASHBURN & MASON P.C.
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 30 day of June 2015, on:

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

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ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

AFFIDAVIT IN SUPPORT OF MOTION FOR EXPEDITED CONSIDERATION AND MOTION TO EXTEND DEADLINES
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

ASHBURN & MASON P.C.
LAWYERS
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ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

From: Jeffrey W. Robinson
Sent: Thursday, June 25, 2015 12:34 PM
To: 'James B. Gottstein'
Subject: RE: Lease Not Recorded

No problem. Sorry to hear about your father. Take care,

1

EXHIBIT A
Page 1 of 4

000008

JWR

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Thursday, June 25, 2015 12:33 PM
To: Jeffrey W. Robinson
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Lease Not Recorded

I am at the hospital with my dad. I don't know if I can get back to you today.

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](mailto:James.B.Gottstein@GottsteinLaw.Com)

From: Jeffrey W. Robinson [<mailto:jeffrey@anchorlaw.com>]
Sent: Thursday, June 25, 2015 9:55 AM
To: James B. Gottstein
Subject: RE: Lease Not Recorded

Will do.

Also, I am paternity leave from 6/30-7/15 and would appreciate the opportunity to reply to any oppositions, or oppose any motions, until at least a week or so after my return. Is this agreeable?

JWR

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Thursday, June 25, 2015 8:47 AM
To: Jeffrey W. Robinson
Cc: james.b.gottstein@gottsteinlaw.com
Subject: Lease Not Recorded

Hi Jeff,

In going through your Rule 56(f) Request and see that in footnote 4 you state that the lease was publically recorded. I don't believe that is true. I believe there was only a Memorandum of Lease recorded, which is (hopefully) attached. Perhaps you should file an errata. Please let me know.

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](mailto:James.B.Gottstein@GottsteinLaw.Com)

From: James B. Gottstein [james.b.gottstein@gottsteinlaw.com]
Sent: Friday, June 26, 2015 12:17 PM
To: Jeffrey W. Robinson
Cc: Donald W. McClintock; james.b.gottstein@gottsteinlaw.com; Eva R. Gardner
Subject: RE: Blanket Extension Request

Hi Jeff,

It seemed to me that someone else in your office might be able to cover for you and that does seem best.

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: Jeffrey W. Robinson [mailto:jeffrey@anchorlaw.com]
Sent: Friday, June 26, 2015 11:57 AM
To: James B. Gottstein; Eva R. Gardner
Cc: Donald W. McClintock
Subject: RE: Blanket Extension Request

Thanks, Jim. I simply asked if you would agree to extend me the courtesy of replying to any oppositions or motions you file until a week after I return. I am not going to hash out in any way what you claim to be "undisputed facts." I am not going to reply to the questions you posed at the end of your message. You are entitled to oppose any motions we have filed or file whatever you deem to be in your best interest to file to protect your interests. If you do not agree to my request, please note that Eva Gardner from my firm will be covering the case for me in my absence. She is copied here. Please copy both of us on future correspondence. I hope you have a good weekend, and that your father's health has improved.

JWR

From: James B. Gottstein [mailto:james.b.gottstein@gottsteinlaw.com]
Sent: Friday, June 26, 2015 11:48 AM
To: Jeffrey W. Robinson
Cc: james.b.gottstein@gottsteinlaw.com; Donald W. McClintock
Subject: Blanket Extension Request

Hi Jeff,

Yesterday, you wrote, "I am paternity leave from 6/30-7/15 and would appreciate the opportunity to reply to any oppositions, or oppose any motions, until at least a week or so after my return. Is this agreeable?"

Normally, this wouldn't be a problem and in the final analysis I won't oppose allowing you until July 22nd for any responsive pleadings so long as you include this e-mail, but your client gains an extreme financial benefit from delay and has been doing everything possible to achieve such delay. Its Rule 56(f) Request to not even be required to present opposing evidence to Alaska Building's Motion for Partial Summary Judgment (Not

Extension) for ten months dramatically illustrates this. Especially since your client should have any such evidence at hand. The Motion for Partial Summary Judgment is purely a legal question based on what I believe are the following undisputed facts:

The New LIO Lease provides for:

1. demolition of the then existing Anchorage Legislative Information Office located at 716 West 4th Avenue in Anchorage, Alaska down to its foundation and steel frame,
2. demolition of the adjacent old Empress Theatre, located at 712 West 4th Avenue, occupied by the Anchor Pub at that time,
3. moving the existing Anchorage Legislative Information Office prior to the demolition of the old Legislative Information Office Building, and
4. construction of a new office building for lease as the new Anchorage Legislative Information Office.

Do you dispute any of these facts? If so, why can't you produce such evidence? Are there any other facts that you think are relevant? If so, what? And why can't you produce those? In other words, how is discovery going to have any impact on the Motion for Partial for Summary Judgment other than to allow your client to continue to collect rent from the illegal lease that will then likely not be recoverable.

So, I have some questions for you.

1. Will 716 West Fourth Avenue LLC agree to sequester all rent not needed for debt service and direct operating costs, including not paying any money to any of its members, directly or indirectly, and recover any such money previously paid until Count One is resolved?
2. Will 716 West Fourth Avenue LLC post a bond for repayment of any rent that the Court holds should be repaid?
3. If not, will 716 West Fourth Avenue LLC provide me with its accounting data to date and on a monthly basis notwithstanding the stay of discovery as to Count One?

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

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

I, KEVIN M. CUDDY, declare as follows:

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

2. I am an attorney with the law firm of Stoel Rives, LLP, counsel for Defendant Legislative Affairs Agency (“Agency”) in the above-captioned litigation and submit this affidavit in support of Defendant Legislative Affairs Agency’s Opposition to Plaintiff’s Motion for Partial Summary Judgment (Not Extension) and Request for Relief Under Civil Rule 56(f).

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

4. Plaintiff served the Agency with a motion for partial summary judgment as to Count I on June 12, 2015. The Agency’s response is due by June 29, 2015.

5. Plaintiff asserts that it is undisputed that this was a “new office building” rather than a renovation project, and that the terms of the lease contains terms that are too “drastically different” from the lease it purports to extend to qualify as a lease extension, but these are ultimately factual determinations for the trier of fact.

6. The Agency requires an opportunity to obtain discovery from the defendants before it should be forced to respond to this premature summary judgment motion.

7. Discovery is currently stayed with respect to Count 1 of the Complaint, and the Court should order a continuance pursuant to Civil Rule 56(f) so that the Agency can obtain the necessary information to respond to this motion.

8. The Agency respectfully requests a continuance pursuant to Civil Rule 56(f) so that it may obtain discovery that is required to respond to this motion.

9. The Agency has not been dilatory with discovery. The Amended Complaint was only filed recently (June 8, 2015) and the Agency has promptly filed a dispositive motion as to Count 1 (to which this motion applies) as well as a motion to stay discovery until that dispositive motion is addressed. The Court granted the motion to stay discovery on June 17, 2015, so that the parties and the Court could properly focus on the issue of standing.

10. If Count 1 is not dismissed due to Plaintiff's lack of standing, the Agency will need to obtain discovery from the other defendants concerning certain details of the construction activities, including the permits that were obtained, to challenge Plaintiff's assertion that this was a "new office building" rather than a renovation as contemplated by the Lease Extension.

11. The Agency will also need to obtain discovery concerning whether the lease extension is so "drastically different" from the original lease that it should not qualify as an extension.

12. The Agency is unable to obtain this discovery at this time due to the current order staying discovery.

13. In the event all of the above-mentioned motions are denied, Plaintiff's motion is still significantly premature. Discovery has barely begun and no depositions have been taken.

14. The Agency has had virtually no time to conduct meaningful discovery, including arranging depositions or retaining experts. According to the Court's Routine Pretrial order, the final date for the parties to serve written discovery is April 11, 2016. The final date to depose lay witnesses is May 23, 2016. At best, discovery is in the preliminary stages.

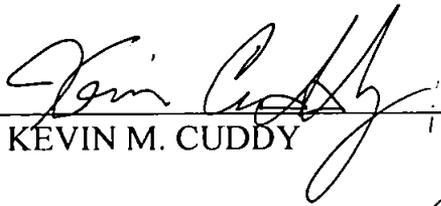
15. Attached hereto as **Exhibit A** is a true and correct copy of the Lease between the Legislative Affairs Agency and 716 West Fourth Avenue, LLC recorded in the Anchorage Recording District on April 9, 2004 at 2004-024411-0.

16. Attached hereto as **Exhibit B** is a true and correct copy of Lease Amendment No. 1 between the Legislative Affairs Agency and 716 West Fourth Avenue, LLC recorded in the Anchorage Recording District on September 18, 2006.

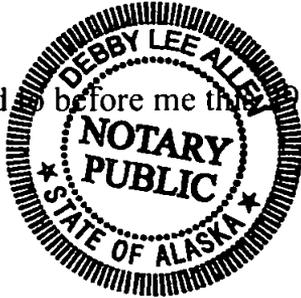
17. Attached hereto as **Exhibit C** is a true and correct copy of Lease Amendment No. 2 and Renewal of Lease between the Legislative Affairs Agency and 716 West Fourth Avenue, LLC recorded in the Anchorage Recording District on March 18, 2009.

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

DATED this 29th day of June, 2015.



KEVIN M. CUDDY



Subscribed to before me this 29th day of June 2015 in Anchorage, Alaska.



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

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on June 29, 2015, a true and correct copy of the foregoing was served via USPS Priority Mail on:

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

Mark P. Scheer
Scheer & Zehnder LLP
701 Pike Street, Suite 2200
Seattle, WA 98101
(Attorneys for Def/Criterion General, Inc.)

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

Daniel T. Quinn, Esq.
Richmond & Quinn
360 K Street, Suite 200
Anchorage, AK 99501-2038
(Attorneys for Defendant Koonce Pfeffer Bettis, inc. d/b/a KP&B Architects)

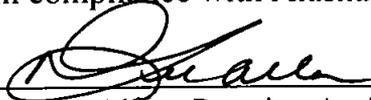
Cynthia L. Ducey, Esq.
Delaney Wiles, Inc.
1007 W. 3rd Avenue, Suite 400
Anchorage, AK 99501
(Attorneys for Defendant, Pfeffer Development, LLC)

Blake H. Call, Esq.
Call & Hanson, P.C.
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Anchorage, Alaska 99501
(Co-Attorneys for Def/Criterion General, Inc.)

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STOEL RIVES LLP
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Main (907) 277-1900 Fax (907) 277-1920

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



Debby Allen, Practice Assistant

79367999.1 0081622-00003

2004-024411-0

Recording List: 301 - Anchorage
4/9/2004 3:31 PM Pages: 1 of 18

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LEASE

LEASE AMOUNT FOR FIRST YEAR: \$597,000.00
(excluding CPI-U adjustment amount)

THIS LEASE, made and entered into on the date the Legislative Affairs Agency 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".

WITNESSETH:

1. **RENTAL PROPERTY AND RENTAL RATE:** The Lessor leases to the Lessee and the Lessee leases from the Lessor the premises, hereinafter "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 Ninety-Eight (98) reserved off-street parking places, for a term of five (5) years beginning June 1, 2004, and terminating at 11:59 p.m. on May 31, 2009, with the Lessee having five (5) one (1) year renewal options to be exercised by giving notice in writing to Lessor at the Lessor's above address at least thirty (30) days before the expiration of each term. The Base Monthly Rental is Fifty-Two Thousand and No/100 Dollars (\$52,000.00) each month; however for the period June 1, 2004, through May 31, 2005, the Base Monthly Rental will be reduced by \$2,250.00 each month by the Lessor to partially offset the costs incurred by the Lessee in purchasing and installing security camera equipment and any HVAC work that will have to be done as part of the Lessee's renovation.

The rent shall be adjusted the first of July of each year beginning in 2005 to reflect changes in the Lessor's variable costs. Variable costs are defined as all operational costs other than debt service and profit and further defined for the purpose of the Lease as thirty-five percent (35%) of the Base Monthly Rental Rate. The adjustment will be based on the percentage of change, between ~~2004~~ and the calendar year before the calendar year of the adjustment, in the U.S.

2003

Department of Labor Consumer Price Index for All Urban Consumers, Anchorage Area (CPI-U). The Annual Adjusted Monthly Rental Rate will be computed as follows:

PERCENTAGE OF CHANGE IN CPI-U

(Annual average CPI-U for the calendar year preceding the year of adjustment) - (Annual average CPI-U for the calendar year XX (XX)) = x

x/Annual average CPI-U for the calendar year XX (XX)% = y%

ADJUSTED MONTHLY RENTAL RATE

[(35% x Base Monthly Rental Rate) x % of change in CPI-U] + Base Monthly Rental Rate = Adjusted Monthly Rental Rate.

[(35% x Base Monthly Rental Rate) x y%] + Base Monthly Rental Rate = Adjusted Monthly Rental Rate.

Retroactive adjustments will not be allowed.

The monthly rental payments shall be due and payable on the first day of each month of the Lease and shall be sent by first class mail to the office of the Lessor whose address is listed above.

2. **ADA COMPLIANCE:** On the date of occupancy and throughout the entire occupancy of the Lessee, the Lessor shall ensure that the premises (including, but not limited to, restrooms), the reserved parking spaces, the common areas (including, but not limited to, restrooms and parking area), and any subsequent alterations to the premises shall meet the specifications of the ADA Accessibility Guidelines for Buildings and Facilities per the Americans with Disabilities Act (ADA) Appendix A to 28 CFR 36, as currently written and as they may be subsequently amended (hereafter referred to as ADA compliance).

Under the previous paragraph, the premises (including, but not limited to restrooms), the reserved parking spaces, the common areas (including, but not limited to, restrooms and parking area), and subsequent alterations must meet the ADA compliance requirements as they apply to a public entity. The Lessor must provide space that meets the same level of ADA compliance as if the leased space were in a newly constructed State-owned facility from which all program services are directly delivered to the public.

The Lessee's acceptance of the Lessor's space and alterations and any inspection by the Lessee do not relieve the Lessor of responsibility for ADA compliance. The Lessor further agrees to perform and pay the costs of any alterations needed to meet the above-prescribed ADA compliance.

The Lessor must furnish an ADA Facility Audit Report from an architect registered to practice in the State of Alaska, at no cost to the Lessee, after the completion of any new construction or any alteration, except for Lessee's and Lessor's improvements under section 3 of this Lease, of the existing space undertaken during the Lease. The ADA Facility Audit Report must indicate



2 of 18

2004-024411-0

that the offered space complies with all the requirements of the ADA compliance and this section.

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

3. **DELIVERY OF PREMISES; RENOVATIONS:** The Lessee is currently occupying the premises under the current lease, which terminates May 31, 2004. Except for Lessor's carpeting obligations in this section 3, the Lessor will not be reconfiguring or making other improvements to prepare the premises for this Lease, unless the improvements are required by another section of this Lease. The Lessor has agreed to allow the Lessee to perform renovations to the current premises before the Lease term begins on June 1, 2004. Although Lessor and Lessee are currently leasing most of the premises under the current lease, this Lease will apply to the renovations allowed under this section 3, and the current lease is amended to that extent. These renovations will be paid for by the Lessee and will include, but are not limited to, the following:

- 1) re-locating the Data Processing Staff to what is currently Suite 240A, constructing a separate entrance to the room to split up the suite from what is currently 240B, and installing appropriate electrical, data, and phone jacks;
- 2) re-locating the Network Room from the basement area to what is currently the Supply Room on the second floor of the premises, and installing appropriate electrical, data and phone jacks;
- 3) re-wiring all offices located on floors 2 – 6 with Cat 5e or Cat 6 wiring;
- 4) re-locating the Legislative Ethics Office to what is currently Suite 240B, constructing a separate entrance to the room to split up the suite from what is currently 240A, and installing appropriate electrical, data, and phone jacks if required;
- 5) expanding the current large teleconference room by taking down a wall of what is currently Suite 230 and making Suite 230 part of the large teleconference room;
- 6) constructing walls, adding a door, tearing down walls, and installing appropriate electrical, data and phone jacks to make 3 House offices out of what is currently Suite 380 and the Storage Room;
- 7) constructing walls, adding a door, tearing down walls, and installing appropriate electrical, data and phone jacks to make 3 House offices out of what is currently Suite 470 and 2 Storage Rooms;
- 8) constructing a new office in what is currently open space in the hallway by the Senate Conference Room and installing appropriate electrical, data, and phone jacks;
- 9) enlarging what is currently a Storage Room, Suite 680, into a larger House office by constructing walls, tearing down a wall in House Conference Room, Suite 670, adding a door, and installing appropriate electrical, data, and phone jacks;
- 10) re-balancing the HVAC system due to the above remodel.

The Lessor has agreed to provide, at no cost to the Lessee, up to an additional 540 square yards of new high quality commercial quality carpet that matches the existing carpet in the amount necessary to patch any carpet that had been re-carpeted in the fall of 2002 in the offices affected by the above renovations. In addition, the Lessor has also agreed to provide and install new carpeting and cove base in all offices that were not re-carpeted in the fall of 2002, at no cost to the Lessee. The Lessee will notify the Lessor when these offices will be



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ready to be carpeted, and the Lessor will complete the installation within one month after Lessee's notification.

4. **UTILITIES AND SERVICES:** The Lessor will provide at no additional cost beyond the rental payments all utilities, including heat, electricity, sewage, potable water, and trash removal from the premises, and janitorial services, except that the Lessee will pay its own telephone utility bills. The Lessor will also provide, at no additional cost beyond the rental payments, its building maintenance staff to promptly lower and raise the Alaska State Flag and the United States Flag, that are installed outside the building, whenever requested by the Lessee to do so.
5. **ELECTRICAL REQUIREMENTS:** The Lessor shall ensure that the requirements in this section 5 are met.
- A. **ELECTRICAL WIRING STANDARDS:** All electrical work performed and electrical systems shall comply with the current applicable editions of:
1. the National Electrical Code of National Board of Fire Underwriters;
 2. the rules, regulations, and codes of the State and applicable municipality;
 3. the standardized rules of the National Electrical Manufacturer's Association.

The above minimum requirements shall not preclude the use of higher-grade materials or better workmanship.

- B. **MAIN SERVICE FACILITIES:** The main service facilities and meter panel shall be adequate to provide the electrical load that will be required. This service shall be enclosed in a suitable enclosure which is readily accessible for inspection. Single phase, 60 cycle, 120/240 V service shall be supplied.
- C. **LIGHTING:** Lighting fixtures shall be provided which are capable of producing well diffused illumination at working levels of no less than 75 FT-C in office and clerical areas; and no less than 50 FT-C in lobbies, restrooms, parking areas and similar areas. Fixtures shall be provided with louvers or plastic diffusers. Bare lamp fixtures will not be acceptable.

Specified illumination levels must be at task surface height (generally 30 inches above floor) unless noted otherwise in this section 5. For types of spaces not listed in the previous paragraph, illumination levels must be in accordance with current IES recommendations.

All lamps shall be consistent throughout space with regard to color, temperature, quality, and type. A maintenance program shall be conducted throughout the duration of the Lease to maintain this consistency.

- D. **SWITCHING:** Individual switching shall be provided for each room or area. Switches shall be located inside the lighted space, adjacent to the entry, accessible with doors open or closed. In lieu of or in addition to the previous sentence, lighting may be controlled by a building control system. Motion detectors are acceptable in lieu of switches for all spaces except open offices. Three- or four-way switching, as



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appropriate, shall be provided in corridors and large rooms with more than one entry.

- E. **ELECTRICAL OUTLETS:** Existing outlets in the premises currently occupied by the Lessee are sufficient. If additional outlets are required, the Lessee shall be responsible for these costs; however, the Lessor shall be responsible for maintaining all outlets in good working order.

Legislative Information Office: A 120V, 20 amp dedicated outlet shall be provided in the copy room for the LIO copier.

Senate Space: A 120V, 60hz, 20 amp dedicated shall be provided in each of the two (2) copy rooms.

House Space: A 120V 20 amp dedicated shall be provided in each of the two (2) copy rooms.

In toilet rooms a minimum of one duplex receptacle (with ground fault protection) shall be provided above the counter (adjacent to sink or mirror) and a minimum of one general use receptacle shall be provided.

- F. **DOCUMENTATION:** The Lessor shall post a floor plan at each circuit breaker panel with labeling to correspond to individual circuit breaker labels, and keep the posted floor plan up to date.

6. **DRINKING WATER AND RESTROOM REQUIREMENTS:** The Lessor shall ensure that the drinking water and restroom facilities meet the requirements in this section 6.

- A. **DRINKING WATER:** Water suitable for drinking purposes shall be provided through drinking fountains or water coolers located at a central location in the main hallways on each floor. If water coolers are provided, the delivered bottled water with disposable paper cups shall be supplied by the Lessor at no additional cost to the Lessee.

- B. **RESTROOMS:** The Lessor shall provide separate adequate toilet and lavatory facilities for men and women in compliance with all applicable codes and the state's safety regulations, and section 2 of this Lease. Each toilet room shall have single entrance doors, with automatic door closers or other approved entrance arrangement. They shall be equipped or provided with stall partitions with doors. They shall also be provided with adequate mirrors, soap, tissue and paper towel dispensers, sanitary napkin dispensers in the women's restrooms, deodorizers, sanitary tissue seat cover dispensers, and ventilation. Each restroom shall have hot and cold running water. Public restrooms shall not be located within the Lessee's leased space. Access to the public restrooms may not be through the Lessee's leased space.

7. **HEATING, COOLING, AND VENTILATION REQUIREMENTS:** The Lessor shall ensure that the requirements of this section 7 are met.

- A. **HEATING AND COOLING:** Facilities shall be provided to maintain a temperature in all the offices and similar type space uniformly within 68 degrees F to 78 degrees F

The existing configuration of the thermostat control units and heating zones in the premises currently occupied by the Lessee are sufficient, however, the Lessor shall be responsible for maintaining such in good working order.

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range. The temperature to be maintained in this zone is the area two (2) feet above the floor to a height of five (5) feet above the floor.

If the temperature is not maintained within the 68 degrees F to 78 degrees F range, as required by the previous paragraph, for a period of more than one (1) working day, 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.

B. **VENTILATION:** All occupied areas of the building shall be provided with at least the minimum amount of outside (ventilation) air prescribed by ASHRAE Standard 62-89: "Ventilation for Acceptable Indoor Air Quality". This ventilation air shall be introduced by mechanical means. A minimum of six air changes per hour shall be provided in occupied spaces. Exhaust air systems serving toilet rooms and janitor's closets shall be sized to provide a minimum of 10 air changes per hour.

8. **WINDOW COVERING REQUIREMENTS:** The Lessor shall comply with this section 8. All outside windows shall be equipped with blinds, or other approved material and shall be installed, ready for use with all necessary hardware when the Lessee occupies the rental premises. Window coverings shall be of good quality and appearance matching the decor of the space and shall adequately reduce incoming heat and light to a comfortable level. The Lessee reserves the right to select the color of the window coverings, if new window coverings are to be installed.
9. **FLOOR COVERING REQUIREMENTS:** The Lessor shall comply with this section 9. Office floors shall be covered with a good quality of commercial grade carpeting. Other floors shall be covered with carpet, suitable linoleum, or tile of standard size which is free of defects. The Lessee reserves the right to select the color of the floor covering, if a new floor covering is to be installed. Carpeting shall be of a good quality commercial grade and shall not generate more than a minimal amount of static electricity under normal use. New floor coverings shall be installed in a skilled manner common to the trade.
10. **ACOUSTICAL REQUIREMENTS:** All offices and similar type space shall be equipped with acoustical ceiling tiles, panels, or other sound absorption material. The overall noise factor shall not exceed 90 decibel (dba) for an eight-hour workday at level A reading. Acoustical control must be sufficient to permit conferences, waiting room noise, and office work to progress simultaneously. It is the Lessor's responsibility to furnish the proper combination of sound



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absorptive material on ceilings, walls, and floors to achieve the specified preferred notice criteria level.

11. **PARTITION REQUIREMENTS:** Unless otherwise specified by Lessee, the Lessor shall ensure that all partitions are floor to ceiling, flush type, and of drywall construction, and that the finish is paint, paneling, or other Lessee-approved material.
12. **PAINTING REQUIREMENTS:** The Lessor shall ensure that all surfaces which normally would be painted are 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 (a) select the colors for areas to be newly painted; or (b) determine whether existing painted surfaces are satisfactory, if the Lessor wants to use the existing painted surfaces without painting them for the Lease.
13. **DOOR HARDWARE REQUIREMENTS:** The Lessor shall ensure that the requirements of this section 13 are met. All doors shall be equipped with all necessary hardware. Cylinder locks and door checks shall be furnished and installed on all doors which open into public corridors or space otherwise accessible to other than those persons to be employed in the premises. All locks shall be masterkeyed and duplicate individual keys shall be supplied as required. Outside door keys shall be supplied as required by the Lessee.
14. **VOICE AND DATA REQUIREMENTS:** The Lessor shall ensure that adequate telephone service is available and that all necessary conduit and other features necessary to satisfy the telephone company's requirements are included in the building. The Lessee will be responsible for the actual connection of telephone and communications equipment required by the Lessee and as stated in section 3 ("Delivery of Premises; Renovations"). Under section 3 of this Lease, the Lessee will be responsible for the re-wiring at the start of this Lease of all offices on floors 2 through 6 in the premises with Category 5e or Category 6 compliant wiring, including, but not limited to, the installation of any necessary conduit.
15. **PARKING REQUIREMENTS:** The Lessor shall ensure the requirements of this section 15 are met.

Reserved off-street parking shall be of sufficient size to allow proper and easy parking, and have a hard and well-drained surface. The area shall be marked "Reserved" to identify the private parking nature of each reserved space, and each space reserved by the Lessee within the area shall be at least 8-1/2 feet wide by 17 feet long and shall be marked to provide for proper parking and otherwise identified as private parking.

Ninety-Eight (98) reserved parking spaces shall be provided for the exclusive use of the Lessee. These ninety-eight (98) parking spaces must be provided at no additional cost to the Lessee.

Ninety (90) of the reserved ninety-eight (98) parking spaces provided for the exclusive use of the Lessee must be located in the parking lot adjacent to the west side of the 716 West 4th Avenue building. All parking locations must be well lit and have good accessibility in and out of the parking area.



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An additional eight (8) reserved public parking spaces must be provided for the exclusive use of the Lessee for the Lessee's invitees to the building. This parking must be located no more than two blocks walking distance from the office location and have good accessibility in and out of the parking area.

16. **FIRE PREVENTION:** The Lessor shall maintain the premises in keeping with good fire prevention practices. The Lessee reserves the right at reasonable times to enter and make fire prevention and fire protection inspections of the building and space occupied.
17. **HAZARDS:** The Lessor shall maintain the building free of structural or mechanical hazards.
18. **JANITORIAL SERVICES:** The Lessor shall be responsible for janitorial services as outlined below for the entire premises, common areas, and private parking areas. Janitorial services must be performed by competent employees of the Lessor or by a competent janitorial company and the Lessor must notify the Lessee of all names of who will be performing these janitorial services. The Lessor must give the janitorial employees or company a copy of the actual janitorial duties that are stated in the Lease. The Lessor must notify the Lessee of all janitorial employee or company changes relating to who will be performing the janitorial services. When the janitorial work is being performed, a person not performing the janitorial work may not enter or remain on the leased premises, except as otherwise authorized by Lessee.

Janitorial services shall be performed after office hours unless otherwise specified or as conveniently as possible to the occupying entities. The premises generally are occupied Monday through Friday except State holidays. In the event that various areas are occupied at times other than specified herein, the janitorial services shall be performed at other times as convenient. The Lessee prefers the following:

A. DAILY SERVICES:

1. Empty wastebaskets. Empty and wipe ashtrays and place contents in a metal container separate from other waste material. Collect all wastepaper and trash and dispose of it away from the premises.
2. Sweep halls and floors in the interior of the building. Tile floors are to be swept with a yarn broom or a dust mop treated with polyethylene glycol or similar non-injurious material. (If lobby area is tiled, B-1 will become a daily service.)
3. Vacuum all carpets in offices, conference rooms, workstations, hallways, aisles used for circulation within said premises, common areas, entryways, elevator lobbies and corridors.
4. Dust all visible surfaces of furniture, fixtures, and equipment to a height of six (6) feet.
5. Mop or scrub toilet room floors, wash all plumbing fixtures with warm water and soap. Disinfect urinals and water closets. Damp wipes all dispensers, tiled portion of toilet room walls and stall partitions.



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6. Provide and maintain adequate supplies of toilet paper, seat covers, deodorizers, sanitary napkins, towels and soap in toilet rooms. These supplies are to be of standard or better quality and are to be furnished by the Lessor. The Lessor shall also provide a closed disposal container for waste sanitary napkins.
7. Clean and disinfect any drinking fountains.
8. Police sidewalks by collecting and removing all trash and other discarded materials.
9. At the end of each workday, the janitorial supervisor must inspect the entire building to ensure that all work is complete and all necessary doors are locked.

B. WEEKLY SERVICES:

1. Damp mop all waxed floors and machine buff to remove traffic marks and restore luster of wax.
2. Remove all fingernails and smudges from walls, woodwork, and glass surfaces.

C. MONTHLY SERVICES: Vacuum fabric furniture.

D. EVERY SIX MONTHS SERVICES:

1. Dust or vacuum window coverings such as blinds, etc., as may be the case, overhead pipes, ventilation vents, or molding, etc., that must be reached by ladder.
2. Dust or wash light fixtures as appropriate for greatest light efficiency.
3. Wash windows and glass wind deflectors inside and out leaving no streaks or unwashed places. Wipe water spots from sills and frames. Use drop cloth as required to protect adjacent surfaces, fixtures, and furniture. Wash windows at equal intervals of time, weather and conditions permitting.
4. Wash all wastebaskets.
5. Wash walls in public halls and stairwells where wall covering permits. Wash pipes and rails in stairwells. Clean and wax all paneling.
6. Shampoo carpets in high traffic areas of the premises.

E. AS REQUIRED:

1. Replace burned out lamps (to be furnished by the Lessor).
2. Remove snow and ice from sidewalks, entrances, outside storage areas, parking areas, and other areas as applicable to an extent which will render the areas safe to pedestrian traffic and automobile operation.
3. Shampoo ALL carpeted areas of the premises.



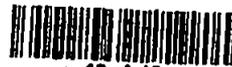
4. Remove spots and stains from carpets, tile and linoleum. Remove all foreign matter (gum, smudges, etc.) from floors, handrails and furniture.
5. Remove all wax from all floors by mopping or scrubbing with a synthetic detergent or wax remover, rinse thoroughly and apply good skid resistant wax of a type recommended by floor tile manufacturers. When wax is dry, machine buff to smooth sheen.
6. Clean or replace all entry rugs. Rugs are to be furnished by the Lessor at each building entrance and will be of sufficient size to preclude the tracking of dirt and mud into the building.

19. **COMPLIANCE WITH LAWS:** The Lessor shall comply with the requirements of this section 19.

- A. Except as otherwise provided elsewhere in this Lease, all improvements and new construction of existing structures, and all appurtenances, improvements, new construction, and existing structures shall conform to all applicable state, Federal and local laws, ordinances, codes, and regulations pertaining to them. In the absence of local or state regulations, national codes shall apply. Minimum requirements of the Lease shall not be construed as lowering the standard established by local regulations, and when local regulations and codes contain more stringent provisions, they shall govern. The Lessor shall be responsible for obtaining all required permits. The premises and the common areas must comply with Federal and state law relative to occupational health and safety regulations. The Lessor shall be responsible for the accomplishment and cost of any building alterations necessary to comply with these requirements.
- B. The Lessor must comply with all other applicable federal and state labor, wage/hour, safety and associated laws that have a bearing on this Lease and must have all licenses and permits required by the state and/or municipality for the performance of the work required by this Lease.

20. **MAINTENANCE AND REPAIR:** The Lessor shall at all times maintain the premises and common areas in a safe condition and in a good state of general repair, maintenance, and tenantable condition, including, but not limited to, the roof and the heating, electrical, ventilation, plumbing, sanitary, and any elevator or escalator facilities. The Lessor shall keep the roof free from roof leaks. The Lessor shall keep the common areas in a clean condition. The Lessor shall keep the building and the areas immediately surrounding and belonging to the building free from objectionable tenancy, odors, vermin, rodents, and other features that will in the opinion of the Lessee be detrimental to Lessee's operation. The term "repair" includes repairs of any type, including, but not limited to, exterior and interior, structural and nonstructural, routine or periodic, except in the case of damage arising from the negligence of the Lessee's agents or employees.

21. **SIGNS:** The Lessor shall provide and erect/affix adequate signage to identify the Lessee's presence and to easily direct the public to the Lessee's space. The Lessor shall provide and erect, at no cost to the Lessee, signage as follows: in all buildings, entrances, and common lobbies, hallways and elevators, and on all doors or walls at entrances to the Lessee's leased spaces.



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The Lessee reserves the right to erect or affix additional door or wall signs, at the Lessee's cost, within its leased space to further identify room names and/or numbers. The size and character of the signs shall be at the Lessee's discretion and shall not unreasonably detract from the aesthetics of the building.

22. **ELEVATORS:** The Lessor shall ensure that the premises under this Lease which are on the second floor and above are served by an elevator that, in addition to complying with section 2 of this Lease, complies with the current applicable editions of the rules, regulations, and codes of the State, and the applicable municipality. Documentation from a licensed elevator repairperson stating that the elevator is in good working order and meets all the minimum standards shall be provided by the Lessor, at no cost to Lessee, if requested by the Lessee.
23. **RENOVATION:** At least every five (5) years of occupancy or at the reasonable written request of the Lessee, the Lessor shall renovate the premises by refinishing all damaged or worn walls, ceilings, floors, or built-in fixtures or replacing damaged or worn wall, floor or window coverings or paint. If the Lessor does not respond to such reasonable renovation requests by the Lessee, the Lessee reserves the right to hire competent workers to accomplish such renovation(s) at the Lessor's expense, and may deduct the costs from the rent payments. 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 select the color(s) of the floor covering, if a new floor covering is to be installed, window coverings, if new window coverings are to be installed, and paint for areas to be newly painted.
24. **WAGE-RELATED REQUIREMENTS:** If the Lessor performs construction, alteration, repair, renovation, or redecoration work while the Lessee is occupying the premises, and if this work amounts to 20 percent or more of the entire term of this Lease (excluding optional renewals), 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 subcontractors 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 subcontractors 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 Wage and Hour Administration of the Department of Labor for more information.
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, but not limited to, elevators, lobbies, stairwells, and restrooms. The Lessor shall provide seven day a week security patrolling for the building and parking area at no cost to the Lessee. The Lessee will be responsible for purchasing and installing security cameras in the lower parking area, and for their operation and maintenance, including any monitoring.



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26. **ACCESS BY LESSOR:** The Lessor and its agents will have the right to enter the premises at any time during business hours and after reasonable notice to Lessee (in case of emergency, at any time and without notice) to examine and make the repairs, alterations, improvements, or additions that Lessor determines to be necessary or desirable, or to show the premises to actual or potential Lessees, purchasers, workers, or contractors. If the Lessee is not personally present to permit entry and an entry is necessary to make repairs, Lessor may enter the same by master key (or force if an emergency) without rendering the Lessor liable for the actual entry. The Lessor may not enter the premises for other reasons without the permission of the Lessee. Nothing contained in this section shall be construed to impose on the Lessor a duty of repair of the building except as provided for elsewhere in the Lease.
27. **USE OF PREMISES:** The Lessee will use the premises only for an office and in a careful and proper manner. Use for an office includes use for public meetings. The Lessee will not use or permit all or part of the premises to be used for another purpose without the prior written consent of the Lessor, which shall not be unreasonably withheld. The Lessee will not use or occupy the premises or permit them to be used or occupied for a purpose or business considered extra-hazardous on account of fire or other hazard, or in a manner which violates federal, state, or local laws or regulations.
28. **QUIET ENJOYMENT:** If the Lessee pays the rent as provided by the Lease and keeps, observes, and performs all of the other covenants of the Lease by it to be kept, performed and observed, the Lessee shall and may peaceably and quietly have, hold, and enjoy the premises for the term of such Lease.
29. **LESSEE ALTERATIONS:** Except as provided for in section 3 ("Delivery of Premises; Renovations") and section 33 ("Remedies on Default"), the Lessee may not make, or allow to be made, alterations of the premises without the written consent of Lessor, which shall not be unreasonably withheld. Alterations shall be performed in a professional and skilled manner. Lessee will not allow or permit a lien or other encumbrance to be placed against the premises.
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.
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, 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 current lease or before Lessee or Lessor made the improvements under section 3 of this Lease.
32. **UNTENANTABILITY:** During the term of this Lease, if the premises or any part is rendered untenable by public authority, or by fire, the elements, or other casualty, a proportionate part of the rent according to the extent of such untenability shall be abated and suspended until the premises are again made tenable and restored to their former condition by the Lessor;



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and if the premises or a substantial part of the premises is rendered untenable by public authority or casualty and remain untenable for a period of thirty (30) days, the Lessee may, at its option, terminate this Lease by written notice to the Lessor. The Lessee's decision shall be controlling as to whether or not the premises are fit or unfit for occupancy. This 30-day period shall not be so restrictively construed that the Lessee is bound to remain in the leased facility if the Lessee's business cannot be safely executed. If warranted due to unsafe conditions, the Lessee is free to move elsewhere. If the premises are made tenable again within this 30-day period, the Lessee will return to the facility for occupancy. The Lessee may also choose to recover from Lessor any excess costs, over the abated Lease payments, occasioned by relocation due to untenability.

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 sixty (60) 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, but not limited to, administrative costs, from the rent, if the Lessor fails to fix the problem within a reasonable time after Lessee notifies the Lessor in writing of the 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, but not limited to, 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 a reasonable time after receiving written notification of the default from the Lessee, the Lessee may terminate the Lease by giving 10 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 32 ("Untenantability").~~

34. **INDEMNIFICATION:** The Lessor shall indemnify, hold harmless, and defend the Lessee from and against any claim of, or liability for, error, omission, or negligent act of the Lessor under this Lease. The Lessor will not be required to indemnify the Lessee for a claim of, or liability for, the independent negligence of the Lessee. If there is a claim of, or liability for, the joint negligent error or omission of the Lessor and the independent negligence of the Lessee, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. In this section 34, "Lessor" and "Lessee" include the employees, agents, and other contractors who are directly responsible, respectively, to each. In this section 34, "Independent negligence" means negligence other than in the Lessee's selection, administration, monitoring, or controlling of the Lessor and in approving or accepting the Lessor's work.

35. **INSURANCE:** Without limiting the Lessor's Indemnification responsibilities under section 34 ("Indemnification"), it is agreed that the Lessor shall purchase at its own expense and maintain



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In force at all times during the Lease the following insurance, except as provided elsewhere in this section 35:

- A. workers' compensation insurance as required by AS 23.30.045(d) for all employees engaged in work under the contract and as required by any other applicable law;
- B. comprehensive general liability insurance covering all business premises of, and operations by or on behalf of, the Lessor in the performance of the contract, including, but not limited to, blanket contractual coverage, products coverage, premises and operations coverage, independent contractors coverage, broad form property damage endorsement, and personal injury endorsement; the policy must have minimum coverage limits of \$1,000,000 combined single limit per occurrence; unless waived by the Lessee, the insurance policy shall name the Lessee as an additional insured;
- C. commercial automobile liability insurance covering all vehicles used by the Lessor in the performance of the contract, with minimum coverage limits of \$500,000 combined single limit per occurrence.

The Lessor is an entity without employees and does not have the workers' compensation insurance required above. If at any time during the term of the Lease, including any renewals, the Lessor hires one or more employees, the Lessor will purchase at its own expense and maintain in force at all times workers' compensation insurance under A. of this section 35 for the employee or employees and submit proof of the workers' compensation insurance to the Lessee.

Upon request, the Lessor shall provide the Lessee with evidence satisfactory to the Lessee of the insurance identified in B. - C. above. Each of the required insurance policies must provide for the Lessee to receive a 30-day prior notice of any cancellation. Where specific limits are shown above, it is understood that they are the minimum acceptable limits. If a policy contains higher limits, the Lessee will be entitled to coverage to the extent of the higher limits. All insurance policies must comply with, and be issued by, insurers licensed to transact the business of insurance in Alaska or in another state.

In addition, the Lessor shall require any contractor or subcontractor to provide and maintain for its employees workers' compensation insurance.

36. **DELAYS IN PERFORMANCE:** Delays in performance by the Lessor due to unforeseeable causes beyond the control and without fault or neglect of the Lessor may be excused. 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 Supply Officer in writing within ten (10) days of the commencement of the unforeseeable cause. The Supply Officer shall ascertain the facts and the extent of delay and the extent of the time for completing the project. The Supply Officer may approve an extension when, in the Supply Officer's judgment, the findings of fact justify an extension. Pending final decision on an extension of time under this section, the Lessor shall proceed diligently with the



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2004-024411-0

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.

37. **EXTENSION:** Any holding over after the expiration date of this Lease or of a renewal of this Lease shall be construed to be a tenancy from month-to-month at the same monthly rental rate, and on the same terms and conditions as specified in this Lease.
38. **TIME:** Time is of the essence.
39. **ASSIGNMENT OR TRANSFER:** Assignment or other transfer of this Lease is subject to Section 160 of the Procurement Procedures of the Alaska State Legislature. The Lessee's interest in this Lease may not be assigned without Lessor's prior written consent and Lessor's consent will not be unreasonably withheld.
40. **BINDING ON SUCCESSORS:** Subject to section 39, this Lease and all the covenants, provisions and conditions contained in the Lease shall inure to the benefit of and be binding upon the successors and assigns of the Lessor and the Lessee.
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 products 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 during the Lease, the Lessor must use, wherever practical, timber, lumber, and manufactured lumber products originating in this state from local forests.
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 and if the amendment does not amount to a material modification of the Lease.
43. **AUTHORIZATION; CERTIFICATION:** Execution of this Lease was authorized by a majority of the members of the Alaska Legislative Council at a meeting on January 15, 2004.

Funds are available in an appropriation to pay for the Lessee's monetary obligations under the lease through June 30, 2005. The availability of funds to pay for the Lessee's monetary obligations under the Lease after June 30, 2005, 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, 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.

44. **VENUE AND CHOICE OF LAW:** In the event that the parties of the Lease find it necessary to litigate the terms of the Lease, venue shall be the State of Alaska, First Judicial District, at Juneau and the Lease shall be interpreted according to the laws of Alaska.



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2004-024411-0

45. **ENTIRE AGREEMENT:** This Lease sets forth the entire understanding of Lessor and Lessee, and no modification may be made to this Lease except by written addendum signed by all parties.

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



Robert B. Acree Date
Member
Tax Identification No.: 03-0443569
Business License No.: 423463

CERTIFYING AUTHORITY



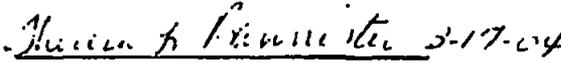
Pamela A. Varni Date
Executive Director
Legislative Affairs Agency

LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY



Senator Gene Therriault Date
Chair
Alaska Legislative Council
Procurement Officer

APPROVED AS TO FORM:



Heather A. Finerman Date
Legal Counsel



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2004-024411-0

~~OREGON~~
STATE OF ALASKA
Court of Mulholland) ss.
~~THIRD JUDICIAL DISTRICT~~)

THIS IS TO CERTIFY that on this 30 day of March, 2004, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Donna LeMaster
Notary Public in and for ~~Alaska~~ Oregon
My commission expires: July 10, 2005

STATE OF ALASKA)
FIRST JUDICIAL DISTRICT) ss.

THIS IS TO CERTIFY that on the 2nd day of April, 2004, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared SENATOR GENE THERRIAULT, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing instrument as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Jeannine M. Price
Notary Public In and for Alaska
My commission expires: 3/29/08

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2004-024411-0

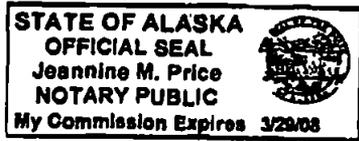
STATE OF ALASKA

FIRST JUDICIAL DISTRICT

)
) ss.
)

THIS IS TO CERTIFY that on the 10th day of April, 2004, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the EXECUTIVE DIRECTOR of the STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Jeannine M. Price
Notary Public in and for Alaska
My commission expires: 3/29/08

FOR RECORDING DISTRICT OFFICE USE ONLY:

No Charge - State Business

After recording return to:
Jan Price, Supply Officer
Legislative Affairs Agency
State Capitol
Juneau, AK 99801-1182



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2004-024411-0

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2006-063569-0

Recording Dist: 301 - Anchorage
9/18/2006 4:02 PM Pages: 1 of 5



LEASE AMENDMENT NO. 1

THIS LEASE AMENDMENT, made and entered into on the date the Legislative Affairs Agency Executive Director or her designee signs the lease amendment, 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", hereby amends the lease dated April 6, 2004, recorded in Book 2004-024411-O, Pages 1 - 18, Anchorage Recording District, Third Judicial District, State of Alaska,

WITNESSETH

WHEREAS, Lessor is leasing to Lessee the following described premises, hereinafter "premises",

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;

WHEREAS, there has been a dispute between Lessee and Lessor as to the size and number of the reserved parking spaces provided to Lessee under the Lease;

WHEREAS, during the dispute described in the previous whereas clause, Lessee has rented additional parking spaces from another person and deducted the rental amount for these spaces from the rent paid by Lessee under this Lease; and

WHEREAS, this Lease Amendment represents a settlement of the dispute described in the previous two whereas clauses.

NOW, THEREFORE, LESSOR AND LESSEE AMEND THE LEASE AS FOLLOWS:

1. Section 1, "Rental Property and Rental Rate," of the Lease is amended by amending the phrase, "and Ninety-Eight (98) reserved off-street parking places," to now read "and Eighty-Six (86) reserved off-street parking places,"

2. Beginning on June 1, 2006, the monthly rental rate will be decreased by \$1,000.00 each month to reflect the reduced number of parking spaces that the Lessor will be providing to the Lessee.
3. The Lessor will permit the Lessee's security guard to occupy space in the first floor lobby common area space across from the elevators at no additional cost to the Lessee until the first floor lobby common area space is needed by the Lessor to fulfill space requirements of other tenants in the building.
4. Section 15, "Parking Requirements," of the Lease is deleted and replaced with the following section:

15. **PARKING REQUIREMENTS:** The Lessor shall ensure the requirements of this section 15 are met.

- A. Lessor will provide at no additional cost to the Lessee 86 off-street parking spaces in the upper and lower parking lots adjacent to the west side of the 716 West 4th Avenue building for the use of the Lessee and Lessee's invitees to the building. These 86 spaces must be available to Lessee and Lessee's invitees 24 hours a day 7 days a week.
- B. Each parking space provided under A. of this sec. 15 shall be marked "Reserved" to identify the private parking nature of the space. The current striping of each parking space located in the upper and lower parking lots adjacent to the west side of the 716 West 4th Avenue building will remain in effect for the duration of the lease. In this subsection B, "current" means in existence on the date this lease amendment is entered into.
- C. Parking spaces provided under A. of this sec. 15 must be of sufficient size to allow proper and easy parking and must have a hard and well-drained surface. Each parking space must be marked to provide for proper parking. All parking locations must be well lit and have good accessibility in and out of the parking area.

5. Notwithstanding any other provision in the Lease, Lessor waives any and all claims that Lessor may have or allege against the Lessee for or arising out of the Lessee's withholding of rent from the Lessor during the dispute between the Lessor and the Lessee over the size and number of the reserved parking spaces provided by Lessor under the Lease.

6. **AUTHORIZATION; CERTIFICATION:**

Execution of this lease amendment was authorized by a majority of the members of the Alaska Legislative Council at a meeting on May 22, 2006.

Execution of this lease amendment by the Legislative Affairs Agency Executive Director or her designee hereby constitutes a certification that funds are available in an



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2006-063569-0

appropriation to pay for Lessee's monetary obligations under the Lease through June 30, 2006. Availability of funds to pay for Lessee's monetary obligations under the Lease after June 30, 2006, is contingent upon the 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, the Lease will be terminated by the Lessee or amended. To terminate under this section, the Lessee shall provide notice of the termination to the Lessor.

7. All other provisions of the Lease will remain the same.

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

LESSOR:

716 WEST FOURTH AVENUE, LLC

 8/23/06

Robert B. Acree Date
Member
Tax Identification No.: 03-0443589
Business License No.: 423463

CERTIFYING AUTHORITY

 9/12/06

Pamela A. Varni Date
Executive Director
Legislative Affairs Agency

LESSEE:

STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY


Representative Pete Kott
Chair
Alaska Legislative Council 9-11-06
Procurement Officer Date

APPROVED AS TO FORM:

 6-14-2006
Legal Counsel Date



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2008-083569-0

STATE OF ALASKA ^{Hawaii})
COUNTY OF HAWAII ^{Hawaii}) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 23rd day of August, 2006, before me the undersigned Notary Public in and for the State of ~~Alaska~~ ^{Hawaii}, duly commissioned and sworn as such, personally appeared ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing lease amendment on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing lease amendment as his free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Jaclyn R. Miller

Notary Public in and for Alaska ^{Hawaii}
My commission expires: _____



STATE OF ALASKA)
FIRST JUDICIAL DISTRICT) ss.

THIS IS TO CERTIFY that on the 11th day of September 2008, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared REPRESENTATIVE PETE KOTT, known to me and to me known to be the individual named in and who executed the above and foregoing lease amendment and renewal as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing instrument as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

STATE OF ALASKA
OFFICIAL SEAL
Wen C. Ibesate
NOTARY PUBLIC



Wen C. Ibesate
Notary Public in and for Alaska
My commission expires: 9/3/07



2006-063569-0

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 12th day of September 2006, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing lease amendment as the EXECUTIVE DIRECTOR of the STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

STATE OF ALASKA
OFFICIAL SEAL
Wen C. Ibesate
NOTARY PUBLIC



Wen C. Ibesate
Notary Public in and for Alaska
My commission expires: 9/3/07

FOR RECORDING DISTRICT OFFICE USE ONLY:

No Charge - State Business

After recording return to:
Jan Price, Supply Officer
Legislative Affairs Agency
State Capitol
Juneau, AK 99801-1182



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2006-063569-0

**AMENDMENT NO. 2 AND RENEWAL OF LEASE**

LEASE AMOUNT FOR FIRST YEAR OF RENEWAL: \$637,137.72
(excluding CPI-U adjustment amount)

THIS AMENDMENT AND RENEWAL OF LEASE, made and entered into on the date the Legislative Affairs Agency 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", hereby amends and renews the lease dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, and amended September 12, 2006.

WITNESSETH

WHEREAS, the Lessor is currently leasing to the Lessee the following described premises, hereinafter "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.

NOW, THEREFORE, LESSOR AND LESSEE, AGREE AS FOLLOWS:

1. That the Lease is renewed for a term of one (1) year beginning June 1, 2009, and terminating at 11:59 p.m. on May 31, 2010, with the Lessee having four (4) remaining one (1) year renewal options to be exercised by giving notice in writing to Lessor at the Lessor's above address at least thirty (30) days before the expiration of each term.
2. The monthly rental rate for this renewal term is Fifty-Three Thousand, Ninety Four, and 81/100 dollars (\$53,094.81). The rent will be adjusted the first of July in 2009 to reflect changes in the Lessor's variable costs. The adjustment will be based on the percentage of change, between 2003 and the calendar year before the calendar year of the adjustment, in the U.S. Department of Labor Consumer Price Index for All Urban

Consumers, Anchorage Area (CPI-U). The Annual Adjusted Monthly Rental Rate will be computed as follows:

PERCENTAGE OF CHANGE IN CPI-U

(Annual average CPI-U for the calendar year preceding the year of adjustment) -
(Annual average CPI-U for the calendar year 2003 (162.50) = x

$$X / 162.50\% = y\%$$

ADJUSTED MONTHLY RENTAL RATE

[(35% x Base Monthly Rental Rate) x % of change in CPI-U] + Base Monthly Rental Rate = Adjusted Monthly Rental Rate.

[(35% x Base Monthly Rental Rate) x y%] + Base Monthly Rental Rate = Adjusted Monthly Rental Rate.

2. Section 39, "Assignment or Transfer", of the Lease is amended to read:

39. **ASSIGNMENT OR TRANSFER:**

Assignment or other transfer of this Lease is subject to Section 160 of the Procurement Procedures of the Alaska State Legislature. The Lessee's interest in this Lease may not be assigned without Lessor's prior written consent and Lessor's consent will not be unreasonable withheld.

The Lessor consents to the Lessee's assignment to the Anchorage Community Development Authority (ACDA), an instrument of the Municipality of Anchorage, of a limited right to manage the Fifty-Two (52) parking spaces of the upper parking lot for off hours public parking based on the following terms:

(1) Legislative Affairs Agency (LAA) will assign to ACDA the limited right to manage the Fifty-Two (52) parking spaces of the upper parking lot located at 716 West Fourth Avenue for off hours public parking at the following times:

1. Twenty-four hours per day on weekends; and
2. On weekdays, between the hours of 5:30 p.m. through 7:00 a.m.

However, upon prior written notice from LAA, ACDA will suspend public parking during these off-hour periods should LAA need these parking spaces for special events, such as legislative hearings.



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- (2) At all times Thirty-Four (34) parking spaces on the lower level of the parking lot located at 716 West Fourth Avenue will be reserved for exclusive use of LAA.
- (3) At all times during which ACDA has the right to manage the parking on the upper level parking portion of the property for public parking, ACDA will maintain supervision of the property and all responsibility associated with it including, but not limited to, snow and ice removal. ACDA may provide for public parking upon such terms and conditions as it considers appropriate, in its sole judgement, including the use of signage, on-site or off-site patrons' security measures, and collection of any and all fees.
- (4) 716 West Fourth Avenue, LLC, will pay ACDA the costs it currently pays for maintaining the parking lots in a safe condition and good state of general repair including, but not limited to, snow and ice removal, at all times.
- (5) ACDA will select and install all revenue control equipment for the public parking spaces. The first \$25,000 in parking revenue shall be retained by ACDA to cover purchase of the revenue control equipment and for operations and maintenance costs.
- (6) Any parking revenue received by ACDA from operations above \$25,000 shall be split equally between LAA and ACDA.
- (7) ACDA shall provide enforcement for both the upper and lower levels of parking lots located at 716 West Fourth Avenue 24 hours per day / 7 days per week.
- (8) ACDA shall not issue citations to or remove any vehicles that park on the upper and lower levels of parking lots located at 716 West Fourth Avenue if the vehicles are displaying an LIO or LAA approved legislative parking sticker.
- (9) ACDA will hold LAA and 716 West Fourth Avenue, LLC harmless to the full extent provided by the law with respect to any claims arising out of the use of the parking areas during any period which ACDA has the right to manage and operate under this Agreement.

3. **AUTHORIZATION; CERTIFICATION:** Execution of this Lease Amendment and Renewal was authorized by a majority of the members of the Alaska Legislative Council at a meeting on January 27, 2009.



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2009-017284-0

Funds are available in an appropriation to pay for the Lessee's monetary obligations under the lease through June 30, 2009. The availability of funds to pay for the Lessee's monetary obligations under the Lease after June 30, 2009, 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, 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.

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

LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY

Robert B. Acree 2/25/09
Robert B. Acree Date
Member
Tax Identification No.: 03-0443589
Business License No.: 423463

John Harris 3-3-09
Representative John Harris Date
Chair
Alaska Legislative Council
Procurement Officer

CERTIFYING AUTHORITY:

APPROVED AS TO FORM:

Pamela A. Varni 3/11/09
Pamela A. Varni Date
Executive Director
Legislative Affairs Agency

B. J. Kane 2/17/09
Legal Counsel Date

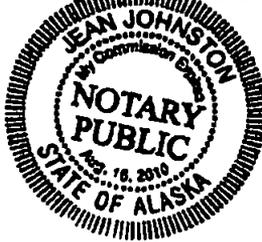


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2009-017284-0

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 25th day of February, 2009, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

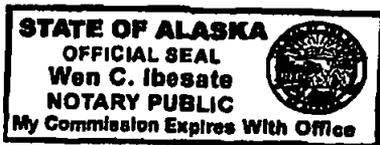


Jean Johnston
Notary Public in and for Alaska
My commission expires: 8/16/10

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 3rd day of March, 2009, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared Representative John Harris, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing instrument as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Wen C. Ibesate
Notary Public in and for Alaska
My commission expires: "with office"



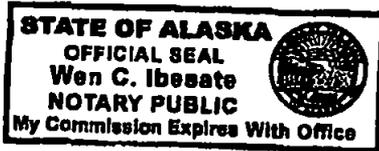
5 of 6
2009-017284-0

STATE OF ALASKA
FIRST JUDICIAL DISTRICT

)
) ss.
)

THIS IS TO CERTIFY that on the 11th day of March, 2009, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the EXECUTIVE DIRECTOR of the STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Wen C. Ibesate
Notary Public in and for Alaska
My commission expires: "With Office"

FOR RECORDING DISTRICT OFFICE USE ONLY:
No Charge - State Business

After recording return to:
Tina Strong, Supply Officer
Legislative Affairs Agency
State Capitol, Rm 3
Juneau, AK 99801-1182



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2009-017284-0

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

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

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

**LEGISLATIVE AFFAIRS AGENCY'S OPPOSITION TO PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION) AND
REQUEST FOR RELIEF UNDER CIVIL RULE 56(F)**

The Legislative Affairs Agency (the "Agency") opposes Plaintiff's motion for partial summary judgment because it is wrong on the facts and wrong on the law. The Court should deny Plaintiff's motion for partial summary judgment. In the alternative, the Court should decline to rule on Plaintiff's motion for partial summary judgment until

LAA'S OPP. TO PLAINTIFF'S MTN. FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)
ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI

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after the Agency is given a fair opportunity to obtain necessary discovery pursuant to Civil Rule 56(f). Plaintiff asserts that it is undisputed that this was a “new office building” rather than a renovation project, and that the terms of the lease contains terms that are too “drastically different” from the lease it purports to extend to qualify as a lease extension, but these are ultimately factual determinations for the trier of fact. The Agency requires an opportunity to obtain discovery from the defendants before it should be forced to respond to this premature summary judgment motion. Discovery is currently stayed with respect to Count 1 of the Complaint, and the Court should order a continuance pursuant to Civil Rule 56(f) so that the Agency can obtain the necessary information to respond to this motion.

I. PLAINTIFF’S “UNDISPUTED” FACTS ARE WRONG AND INCOMPLETE

Plaintiff attempts to summarize a 22-page Extension of Lease and Lease Amendment No. 3 (the “Lease Extension”) with a few paragraphs of an affidavit.¹

Plaintiff’s summary of the Lease Extension omits certain key facts, including:

- There was a lease for the premises at 716 West 4th Avenue, dated April 6, 2004 which was being extended and amended by the Lease Extension.²
- The April 6, 2004 lease had been previously amended and renewed on May 13, 2013.³

¹ See Affidavit in Support of Plaintiff’s Motion for Partial Summary Judgment (Not Extension) (“Plaintiff’s Aff.”) ¶¶ 1-2.

² See Exh. 1 at 1 (attached to Plaintiff’s Aff.).

- Pursuant to the Alaska Legislative Procurement Procedures, the chairman of the Legislative Council made a written determination that the lease may be materially modified without procurement of a new lease to incorporate the immediately adjacent property.⁴
- The Lease Extension extended the existing lease for 10 years from June 1, 2014, to May 31, 2024.⁵

Plaintiff states that the project entailed “[c]onstruction of a new office building for lease[.]”⁶ The Lease Extension, however, states that the premises are to be renovated and expanded – not that a new building was being constructed.⁷

II. THE LEASE EXTENSION DID EXTEND A REAL PROPERTY LEASE

A. The Lease Extension Relates to a Real Property Lease

Plaintiff claims that the Lease Extension did not “extend a real property lease” under AS 36.30.081.⁸ Plaintiff does not dispute, however, that the subject of the Lease Extension is a “real property lease.” The Lease Extension amends the original 2004 lease

(. . . continued)

³ *See id.*

⁴ *See id.* at 2, Exh. C.

⁵ *See id.* at 2.

⁶ Memorandum in Support of Plaintiff’s Motion for Partial Summary Judgment (Not Extension) (the “Motion”) at 3.

⁷ *See* Exh. 1 at 1; *see also id.* at 49 (“As part of this project . . . the 6-story office building [will be] remodeled and expanded.”).

⁸ *See* Motion at 7.

(recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, as previously amended). It relates to the leasing of certain real property rights from 716 West Fourth Avenue, LLC (the “Lessor”).

B. The Lease Extension Is an Extension of a Lease

The Agency first entered into a five-year lease for office space and parking spaces on 4th Avenue with the Lessor in 2004, and included five one-year renewal options.⁹ The lease was amended and extended at various times.

In 2006, the lease was amended to modify the amount of the property being rented – the number of reserved parking spaces was decreased from 98 to 86.¹⁰ The parties also agreed to a reduction in the rent to account for the change in the amount of rented property.¹¹

In 2009, the lease was amended again to modify the amount of property that was available exclusively to the Agency. The Agency assigned certain rights to manage roughly 60% of the reserved parking spaces to the Anchorage Community Development Authority for “off hours parking.”¹² The term was also extended by a year through the exercise of a renewal and the rent was modified to reflect changes in the Lessor’s

⁹ See Exh. A at 1.

¹⁰ See Exh. B at 1 ¶ 1.

¹¹ See *id.* at 2 ¶ 2.

¹² See Exh. C at 2-3 ¶ 2 [sic] (amending paragraph 39 of the original lease).

variable costs.¹³

Despite these regular modifications in the scope, price, and other terms of the lease since 2004, Plaintiff's argument is that the Agency did not "extend" a lease when it extended the duration of that lease because there were also modifications to some of the terms.¹⁴ Plaintiff's lead contention is that the Lease Extension is not a continuation of the same contract.¹⁵ This is demonstrably incorrect. The Lease Extension is precisely a continuation of the same contract. By its terms, the Lease Extension extended the May 23, 2013 Renewal of Lease No. 5, which in turn amended the Lease dated April 6, 2004.¹⁶ It amends, extends, and modifies the original lease, as did earlier amendments, *but it is still the continuation of the same contract.* The same parties (the Agency and 716 West Fourth Avenue, LLC) continued their longstanding contractual arrangement for the leasing of office space and parking spaces on the corner of 4th Avenue and G Streets in Anchorage. There have been fluctuations along the way over the past decade: the number of allotted parking spaces has changed¹⁷; the rent has changed (sometimes up, sometimes down)¹⁸; and the facilities have undergone renovations, including relocation

¹³ See *id.* at 1-2 ¶¶ 1-2.

¹⁴ See Motion at 6-7.

¹⁵ See *id.* at 6.

¹⁶ See Exh. 1 at 1.

¹⁷ See Exh. B.

¹⁸ See *id.* (decrease of rent); Exh. C (increase of rent).

of staff, tearing down walls, and creating offices.¹⁹ None of these changes to the leased space or the applicable rent means that any of these prior amendments were not “the same contract.” Modifications to leases are routine, but that does not render each modification a different contract.

Plaintiff relies on two Georgia cases for the proposition that an “extension” only occurs when there is a stipulation to lengthen the term of the contract on the same terms and conditions as stated in the original lease.²⁰ This Georgia case law is inapposite. That case law generally involves whether an old broker is entitled to additional commissions for an extension of the original lease it procured, as opposed to some renewal of a different agreement (for which the new broker would be entitled to the commissions).²¹ AS 36.30.083 has nothing to do with a broker’s entitlement to commissions or the triggering of certain rights by a lessee. On its face, the statute relates to the ability of the Agency, the court system, and other public entities to continue a leasing relationship with the existing lessor by extending the term of the existing relationship. There is no requirement that the terms remain exactly the same as the original lease. In fact, the Alaska Legislature made clear in the text of the statute that the substantive terms of the

¹⁹ See Exh. A.

²⁰ See *id.* at 6 (citing *Crystal Blue Granite Quarries, Inc. v. McLanahan*, 261 Ga. 267, 268 (Ga. 1991) and *Brannen/Goddard Co. v. Sheffield, Inc.*, 524 S.E.2d 534 (Georgia App. 1999)).

²¹ See *Brannen/Goddard Co.*, 524 S.E.2d at 535-36. *Crystal Blue Granite Quarries, Inc.* related to a lessee’s desire to compel the lessor to continue a leasing arrangement under existing favorable terms.

lease were expected – and likely required – to be different in any extension. In particular, the rent due under the lease was expected to be different than the original lease. It may be less than the original lease – because certain upfront costs no longer apply during the extended term, as emphasized by Plaintiff.²² Or it may be more than the original lease – because market rents in the area have gone up dramatically during the term of the original lease and the original lease rent is uneconomic and unrealistic. In either case, the rent is different. Further, the original lease involved different leased space because fewer parking spaces were available.

Plaintiff also fails to address the Agency’s adherence to the Alaska Legislative Procurement Procedures, as provided by AS 36.30.020. Consistent with those procedures, the Procurement Officer made a written determination that material modifications were appropriate as part of the Lease Extension for a host of fact-specific reasons.²³ To the extent that Plaintiff challenges any of those rationales for the modifications to the lease, those are disputed issues of material fact that require denial of Plaintiff’s motion for partial summary judgment. In any event, there can be no good-faith dispute that the Lease Extension was an extension of the original lease arrangement. Insofar as Plaintiff asserts that the terms of the Lease Extension are too “drastically different” from the original lease to qualify as an extension, that is a factual question that

²² See *id.* at 7.

²³ See Exh. 1 at 85-93.

must be addressed by the factfinder.²⁴

III. A CONTINUANCE IS REQUIRED UNDER CIVIL RULE 56(F)

To the extent that the Court does not deny Plaintiff's partial summary judgment for the reasons described above, the Agency respectfully requests a continuance pursuant to Civil Rule 56(f) so that it may obtain discovery that is required to respond to this motion. Requests pursuant to Civil Rule 56(f) should be freely granted as a safeguard against premature grants of summary judgment.²⁵

Summary judgment motions typically require that parties spend considerable time and effort discovery and developing facts necessary for a full presentation of any opposition.²⁶ This case is no exception. The Agency has not been dilatory with discovery. The Complaint was only filed recently and the Agency has promptly filed a dispositive motion as to Count 1 (to which this motion applies) as well as a motion to stay discovery until that dispositive motion is addressed. The Court granted the motion to stay discovery so that the parties and the Court could properly focus on the issue of standing. Accordingly, the Agency is unable to procure the necessary discovery to respond to this motion at this time. There has been no meaningful discovery taken to date.

If Count 1 is not dismissed due to Plaintiff's lack of standing, the Agency will

²⁴ See Motion at 6.

²⁵ See *Mitchell v. Teck Cominco Alaska, Inc.*, 193 P.3d 751, 758 (Alaska 2008).

²⁶ See *id.*

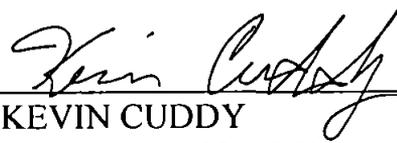
need to obtain discovery from the other defendants concerning certain details of the construction activities, including the permits that were obtained, to challenge Plaintiff's assertion that this was a "new office building" rather than a renovation as contemplated by the Lease Extension. The Agency will also need to obtain discovery concerning whether the terms of the lease extension were so "drastically different" from those in the original lease that it should not qualify as an extension. The Agency is unable to obtain this discovery at this time due to the current order staying discovery.²⁷

IV. CONCLUSION

For the foregoing reasons, the Court should deny Plaintiff's motion for partial summary judgment. In the alternative, the Court should order a continuance that postpones the Agency's obligation to respond to Plaintiff's motion for partial summary judgment pursuant to Civil Rule 56(f).

DATED: June 29, 2015.

STOEL RIVES LLP

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

²⁷ See Affidavit of Kevin Cuddy.

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on June 29, 2015, a true and correct copy of the foregoing was served via First Class Mail on:

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


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

FILED
 STATE OF ALASKA
 THIRD DISTRICT
 2015 JUN 25 PM 4: 14
 CLERK OF COURT

ALASKA BUILDING, INC., an Alaska corporation,)
)
)
 Plaintiffs,)
)
 vs.)
)
 716 WEST FOURTH AVENUE LLC,)
 KOONCE PFEFFER BETTIS, INC., d/b/a)
 KP B ARCHITECTS, PFEFFER)
 DEVELOPMENT, LLC, LEGISLATIVE)
 AFFAIRS AGENCY, and CRITERION)
 GENERAL, INC.,)
 Defendants.)

Case No.: 3AN-15-05969 CI

NOTICE OF ERRATA AND CORRECTION TO 716 WEST FOURTH AVENUE'S CIVIL RULE 56(F) REQUEST FOR ADDITIONAL TIME TO ANSWER PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)

TO THE HONORABLE COURT AND ALL PARTIES:

Please take notice that Defendant 716 West Fourth Avenue ("716") hereby provides notice of errata and correction as follows:

On June 23, 2015, 716 filed a Rule 56(f) Request for Additional Time to Answer Plaintiff's Motion for Partial Summary Judgment (Not Extension.) Plaintiff has pointed out that footnote 4 contained an error: the lease in question was not publically recorded; rather, the "Memorandum of Lease" was publically recorded.¹ Plaintiff emailed the undersigned and asked 716 to make the correction and file this notice. 716 has no objection to this request.

¹ 2013-058911-0

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P

As pointed out in the remainder of footnote 4, the lease is a publically available document. Plaintiff in fact obtained a copy of the lease from the Alaska Housing Finance Corporation pursuant to a Freedom of Information Act request, and actually attached a copy of the lease to his affidavit.²

Nevertheless, to clear up any of Plaintiff's concerns, 716 hereby submits a corrected version of Page 3 of its Rule 56(f) Request, attached hereto as Exhibit A. 716 respectfully requests that this Court substitute Exhibit A for page 3 of the Request. The second sentence of footnote 4 on page 3 shall now read "(The Memorandum of Lease was publically recorded.)" rather than ("The lease was publically recorded.)"³

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

DATED: 6-25-15

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

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² See Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment (Not Extension.).

³ 716 will submit a clean version of page 3 and one marked as Exhibit "A."

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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 25 day of June 2015, on:

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

{10708-101-00275012;1}

First, 716 is making an unambiguous request for Rule 56(f) relief in this motion. Second, 716 has not been dilatory with discovery.³ Plaintiff filed its original complaint on March 31, 2015, and amended the complaint on June 9, 2015. 716's deadline to answer Plaintiff's amended complaint arises today. The court issued its routine pretrial order on May 21, 2015. Trial has been scheduled approximately 14 months out, and the parties are in the very beginning stages of the discovery process.⁴ Plaintiff has served a few interrogatories and requests for production, but has not otherwise conducted depositions, requested admissions, or otherwise meaningfully engaged in the typical course of discovery practice.

Additionally, 716 filed a potentially dispositive motion to dismiss Count I for lack of standing concurrently with this motion, including a request to stay discovery until the motion is decided on its merits. 716 strongly believes that the court lacks subject matter jurisdiction to adjudicate plaintiff's claim with respect to Count I. 716 has also concurrently moved the court to stay proceedings until the court rules on the subject matter jurisdiction issue. If the court grants the motion to stay discovery and/or the motion to stay proceedings, discovery would likewise come to a halt.

³ See *Brock v. Weaver Bros.*, 640 P.2d 833, 837 (Alaska 1982)(concluding that the court did not abuse its discretion in denying Rule 56(f) relief because "approximately three years had elapsed since the accident...[and] no discovery...had been undertaken").

⁴ 716 has already provided Plaintiff with approximately 300 pages of discovery related to Count II, and pointed Plaintiff to publically available documents germane to the lease issue. (The Memorandum of Lease was publically recorded.) Plaintiff has attached some of the publically related documents in its Motion for Partial Summary Judgment (Not Extension).

CIVIL RULE 56(F) REQUEST FOR ADDITIONAL TIME TO ANSWER PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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

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Additionally, 716 filed a potentially dispositive motion to dismiss Count I for lack of standing concurrently with this motion, including a request to stay discovery until the motion is decided on its merits. 716 strongly believes that the court lacks subject matter jurisdiction to adjudicate plaintiff's claim with respect to Count I. 716 has also concurrently moved the court to stay proceedings until the court rules on the subject matter jurisdiction issue. If the court grants the motion to stay discovery and/or the motion to stay proceedings, discovery would likewise come to a halt.

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⁴ 716 has already provided Plaintiff with approximately 300 pages of discovery related to Count II, and pointed Plaintiff to publically available documents germane to the lease issue. (The Memorandum of Lease was publically recorded.) Plaintiff has attached some of the publically related documents in its Motion for Partial Summary Judgment (Not Extension).

CIVIL RULE 56(F) REQUEST FOR ADDITIONAL TIME TO ANSWER PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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

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

FILED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

2015 JUN 25 AM 11:10

CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969CI

**PLAINTIFF'S OPPOSITION TO
LEGISLATIVE AFFAIRS AGENCY'S MOTION
TO STAY PROCEEDINGS**

Plaintiff, Alaska Building, Inc. (ABI), opposes the Legislative Affairs Agency's Motion to Stay Proceedings (Motion to Stay Proceedings).

A. Procedural Setting

Count One of the Amended Complaint requests a declaration that the current lease for the new Anchorage Legislative Information Office (LIO Lease)¹ is illegal in that it does

¹ More particularly described as that certain contract, dated September 19, 2013, by and between defendant Legislative Affairs Agency and defendant 716 West Fourth Avenue LLC (716 LLC), titled "Extension of Lease and Lease Amendment No. 3, a true and correct copy of which is attached as Exhibit 1 to the June 12, 2015, Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment (Supporting Affidavit).

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not comply with the exception to the normal public bidding requirement for leases contained in AS 36.30.083(a). Under AS 26.30.083(a) a narrow exception to the public bidding requirement for leases allows a sole source lease extension for up to ten years if the rental rate is at least 10% below market. Count One applies to defendants Legislative Affairs Agency as tenant, and 716 West Fourth Avenue LLC as landlord (716 LLC). Count Two pertains to damage to the Alaska Building from the construction of the new Anchorage Legislative Information Office Building as a result of the illegal LIO Lease.

On May 27, 2015, the Legislative Affairs Agency filed (1) a motion to dismiss Count One for lack of standing, or, in the alternative, to sever Count One from Count Two (Motion to Dismiss or Sever), and (2) a motion to stay discovery with respect to Count One pending determination of the Motion to Dismiss or Sever (Motion to Stay Discovery).

On June 8, 2015, ABI, filed an opposition to the Motion to Stay Discovery to the extent the stay lasted more than a few weeks. On June 17, 2015, this Court granted a stay of discovery for 45 days or decision on the Motion to Dismiss or Sever, whichever is earlier.

On June 12, 2015, ABI filed (1) its opposition to the Motion to Dismiss or Sever, and (2) a Motion for Partial Summary Judgment (Not Extension) on the grounds that the LIO Lease does not comply with AS 36.30.083(a) in that it does not extend a real property lease.

In response, on June 15, 2015, the Legislative Affairs Agency filed its Motion to Stay Proceedings to which this is the opposition.

*Opposition to Motion
to Stay Proceedings*

On June 19, 2015, the Legislative Affairs Agency's filed its reply regarding the Motion to Dismiss or Sever (Dismiss or Sever Reply).

Also on June 19, 2015, ABI filed a request for oral argument on the Legislative Affairs Agency's Motion to Dismiss or Sever, which is non-discretionary under Civil Rule 77(e)(2).

On June 23, 2015, ABI filed a motion for leave to file a sur-reply to the Legislative Affairs Agency's Dismiss or Sever Reply² because the Legislative Affairs Agency so grossly mischaracterized *Ruckle v. Anchorage School District*, 85 P.3d 1030 (Alaska 2004).

Also on June 23, 2015, 716 LLC filed (1) its Joinder in the Legislative Affairs Agency's Motion to Stay Proceedings (716 Joinder), (2) a motion to dismiss for lack of standing (716 Motion to Dismiss), which is essentially duplicative of the Legislative Affairs' Agency's Motion to Dismiss or Sever, and (3) a Civil Rule 56(f) Request for Additional Time to Respond to ABI's Motion for Partial Summary Judgment (Rule 56(f) Request).

B. Argument

The Legislative Affairs Agency (joined by 716 LLC) asserts its Motion to Stay Proceedings as to Count One should be granted (1) because standing is a threshold issue that should be resolved before consideration of the merits, (2) for reasons of judicial economy, and (3) conservation of party resources, and (4) because the granting of a stay

² Incorrectly dated as June 25, 2015, rather than June 23, 2015. Counsel apologizes for the error.

will not prejudice ABI. As will be discussed in order, proper analysis of these factors weigh against granting the requested stay of proceedings.

(1) That Standing May Be A Threshold Issue Does Not Mean a Stay of Proceedings is Required

In Richardson v. Estate of Berthelot, 2013 WL 203271 (Alaska 2013)

(unpublished),³ the Alaska Supreme Court held, "A stay of proceedings is a matter of convenience and not a matter of right," citing *Beck v. Commc'ns Workers of Am.*, 468 F.Supp. 87, 91 (D.Md.1979); *Cutler Assocs. v. Merrill Trust Co.*, 395 A.2d 453, 456 (Me.1978) (holding that a stay is "not a matter of right but a matter of grace"); and *Clark's Fork Reclamation Dist. No.2069 v. Johns*, 259 Cal.App.2d 366, 66 Cal.Rptr. 370, 373 (Cal.Ct.App.1968).

Simply put, that there may be a pending motion to dismiss does not mean that a stay of proceedings should be granted. It is quite common for proceedings to continue while such motions are under consideration. In this case, absent ABI's Motion for Partial Summary Judgment, it is likely the Legislative Affairs Agency and 716 LLC, would file Civil Rule 12(b)(6) motions to dismiss if the motions to dismiss for lack of standing are not granted,⁴ arguing, for example, that Count One fails to state a claim upon which relief

³ Counsel cites to this unpublished decision because it is the only Alaska Supreme Court case counsel has found that directly addresses the point that a stay of proceedings is a matter of convenience and not a matter of right.

⁴ Such arguments should now be raised in opposition to ABI's Motion for Partial Summary Judgment.

may be granted.⁵ Filing motions such as the extant motions to dismiss for standing and a Civil Rule 12(b)(6) motion is in defendants' counsel's playbook and if filing such motions entitled defendants to stay proceedings, litigation would be unnecessarily prolonged. Clearly, more than just a motion to dismiss for lack of standing is required to justify staying the proceedings.

There is simply little reason not to queue up the Motion for Partial Summary Judgment in the event the Motion to Dismiss is not granted. Oppositions to the Motion for Partial for Summary Judgment are due on June 29, 2015, although 716 LLC has requested 10 months under Civil Rule 26(f), 20 days after the close of discovery, before responding (Rule 26(f) Request). If the Rule 26(f) Request is denied, which ABI believes it should, or a much shorter time allowed, briefing on ABI's Motion for Partial Judgment should be completed soon.

Moreover, the Motion for Partial Summary Judgment is relevant in establishing citizen-taxpayer standing⁶ because one reason for denying citizen-taxpayer standing is the "plaintiff appears to be incapable, for economic or other reasons, of competently

⁵ In fact, at note 12 of its Reply in Support of its Motion to Dismiss or Sever, the Legislative Affairs Agency indicates it will likely file a Civil Rule 12(b)(6) motion on the sufficiency of Count Two as it applies to the Legislative Affairs Agency. Similarly, in note 7 of 716 LLC's June 23, 2015, Motion to Dismiss Count One, 716 LLC "reserves the right to . . . move for dismissal on any additional grounds of Count I should the court rule in Plaintiff's favor."

⁶ In its opposition to the Legislative Affairs Agency's Motion to Dismiss or Sever, ABI asserts both interest-injury and citizen-taxpayer standing.

advocating the position it has asserted."⁷ The briefing and oral argument on ABI's Motion for Partial Summary Judgment should lay to rest that plaintiff is incapable of advocating for the position it has asserted.

It is respectfully suggested that allowing prompt consideration of the Legislative Affairs Agency's and 716 LLCs motions to dismiss for lack of standing and ABI's Motion for Partial Summary Judgment, all of which are potentially dispositive of different aspects of this action, is the more efficient way for this Court to proceed as will be discussed next.

(2) Allowing the Motion for Partial Summary Judgment to Go Forward Promotes Judicial Economy

The primary stated purpose of the Legislative Affairs' Motion to Stay Proceedings is judicial economy and conservation of party resources on the theory that its motion to dismiss for lack of standing will be granted.⁸ This is a very short-sighted view as to judicial resources. Even if the motion to dismiss for lack of standing is granted by this Court, which ABI vigorously disputes, since this is the type of issue that is likely to be reviewed by the Supreme Court, granting the stay could substantially prolong this matter and be an inefficient use of judicial resources. In addition, it is respectfully suggested the Motion for Partial Summary Judgment should be in a posture to be decided in the event that the motions to dismiss for lack of standing are not granted.

⁷ Trustees for Alaska v. State, Dep't of Natural Res., 736 P.2d 324, 329-30 (Alaska 1987).

⁸ One would suspect the most important reason, though, is that the LIO Lease so clearly does not extend a lease and therefore violates AS 36.30.083(a) that the Legislative Affairs Agency does not want to have this court consider this blatant violation of law.

At page 3 of its Motion for Stay of Proceedings, the Legislative Affairs Agency cites *Myers v. Robertson*, 891 P.2d 199, 203 (Alaska 1995), for the proposition that "Before this Court can proceed to address any of Plaintiffs claims, it should consider whether it even has subject matter jurisdiction to hear those claims." However, in *Myers* both the issue of standing and merits were heard by the Supreme Court at the same time. It is respectfully suggested this Court should allow the same. By being in a position to address both potentially dispositive motions, if either is granted, the Alaska Supreme Court would be in a position to consider the merits even if this Court grants the motion to dismiss on standing grounds.

**C. The Legislative Affairs Agency and 716 LLC Should
Have Considered Whether the LIO Lease Extended an
Existing Lease Prior to Entering Into the LIO Lease**

Another ground interposed by the Legislative Affairs Agency in support of its Motion to Stay Proceedings is that it will conserve party resources. The issue of party resources only applies to the Legislative Affairs Agency and 716 LLC because ABI is not concerned about its own applicable resource expenditure and the other parties are not involved in Count One. The stated concern of the Legislative Affairs Agency regarding conservation of its resources rings hollow when it is being overcharged through the LIO Lease to the tune of \$177,328 per month⁹ and as will be discussed below, every month of delay will likely result in a corresponding \$177,328 loss to the State of Alaska. Of course, 716 LLC has every reason to delay a reckoning on the illegal nature of the LIO Lease as it

⁹ See, page 3 of June 8, 2015, Plaintiff's Opposition to Legislative Affairs Agency's Motion to Stay Discovery.

receives some \$177,328 in excess of that allowed by law every month of delay it can achieve.

The LIO Lease is replete with references that it was entered into pursuant to AS 26.30.083(a).¹⁰ The Legislative Affairs Agency and 716 LLC should have undertaken the legal analysis to support the contention that the LIO lease "extends a real property lease" as required by AS 36.30.083(a) prior to entering into the LIO Lease and should not be heard to complain now that it has been challenged on the point that it is going to have to expend resources for a post hoc rationalization.

In the overall scheme of things, the amount of resources expended by the Legislative Affairs Agency (or 716 LLC for that matter) should not be very much. It is not expected that there will be any dispute that the New LIO Lease provides for:

- a. demolition of the then existing Anchorage Legislative Information Office located at 716 West 4th Avenue in Anchorage, Alaska down to its foundation and steel frame,
- b. demolition of the adjacent old Empress Theatre, located at 712 West 4th Avenue, occupied by the Anchor Pub at that time,
- c. moving the existing Anchorage Legislative Information Office prior to the demolition of the old Legislative Information Office Building, and
- d. construction of a new office building for lease as the new Anchorage Legislative Information Office.

Supporting Affidavit, Paragraph 2.¹¹

¹⁰ Such references are highlighted in yellow in Exhibit 1 to the Supporting Affidavit. *See*, e.g., pages 2, 4, 86, 88, 92, 93, and 94.

¹¹ ABI views 716's Rule 56(f) Request as a subterfuge as there it shouldn't need any discovery to address ABI's Motion for Partial Summary Judgment. This will be addressed in ABI's forthcoming opposition to the Rule 56(f) Request.

The question presented by ABI's Motion for Partial Summary Judgment is whether, given these undisputed facts, the LIO Lease extends a real property lease" as required by AS 36.30.083(a). This should not be an expenditure of a lot of resources in the overall scheme of things with the benefit of having a more complete picture before this Court and, potentially, the Supreme Court, greatly outweighing any savings.

**D. The State of Alaska Will Likely be Severely Prejudiced
by the Stay**

The final rationale presented by the Legislative Affairs Agency for staying proceedings is it will not prejudice ABI. ABI will be prejudiced by a delay of more than a few weeks, but more importantly, it is highly likely that the State of Alaska will be severely prejudiced because if this Court determines that the LIO Lease is illegal for violation of AS 36.30.083(a), 716 LLC is almost certainly not going to be able to pay back the money it received under the illegal lease, or even the approximately \$177,000 per month above the amount allowed under AS 36.30.083(a). As set forth in Exhibit A, there is a \$28,600,000 loan on the new LIO Building. The 45 day discovery stay with respect to Count One prevents ABI from discovering the terms of the loan and 716 LLC's capitalization, but even at a low interest rate of 5% per year for a 30 year loan, the monthly payments are over \$150,000 per month, while 10% under market rent is around \$104,000

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*Opposition to Motion
to Stay Proceedings*

Page 9

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per month. Thus, the allowable rent under AS 36.30.083(a) will not even cover the debt service on the building.¹²

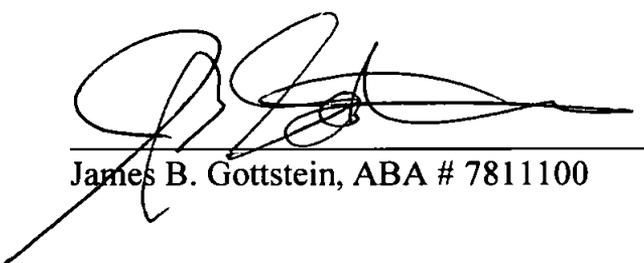
One of the purposes of utilizing the Limited Liability Company form of business, such as 716 LLC is almost always, if not always, to shield the owners (members) from liability.¹³ 716 LLC appears to be a single property LLC and as such it is very unlikely to have the assets to pay back much, if any, rent that is paid to it in excess of that allowable under AS 36.30.083(a), let alone should the remedy be that 716 LLC is liable for all of the rent paid to it under the illegal LIO Lease.¹⁴

Every month that goes by without a determination that the LIO Lease is illegal under AS 36.30.083(a) is extremely prejudicial.

E. Conclusion

For the foregoing reasons, the Legislative Affairs Agency's Motion to Stay Proceedings should be **DENIED**.

Dated June 25, 2015.


James B. Gottstein, ABA # 7811100

¹² It was far more expensive to demolish the old Anchorage Legislative Information Office Building and the Anchor Pub and then construct a new building on the site than it would have been to just construct a new building.

¹³ Under AS 10.50.265 limited liability company members are not liable for the debts of the limited liability company solely by reason of being a member.

¹⁴ Piercing the limited liability shield is a difficult, uncertain, endeavor and there is no reason to exacerbate the problem by allowing 716 LLC to delay its day of reckoning as it is attempting to do.

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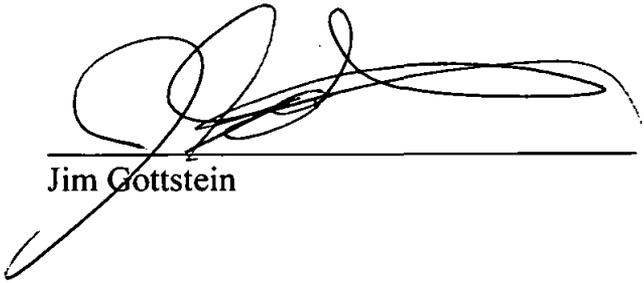
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*Opposition to Motion
to Stay Proceedings*

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Record Status: Active	Associated Doc: 2014-053333-0
Index: MX - DEED OF TRUST & SECURITY AGREEMENT	Amount: \$28,600,000.00
Desc: COMMERCIAL DEED OF TRUST SECURITY AGREEM	
Debtor - 716 WEST FOURTH AVENUE LLC	425 G STREET, SUITE 210 ANCHORAGE, AK 99501
Secured - EVERBANK	6464 185TH AVENUE NE, SUITE 200 REDMOND, WA 98052
Secured - FIDELITY TITLE AGENCY OF ALASKA LLC;TRUSTEE	
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

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CLERK TRIAL COURTS
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ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff
vs.
716 WEST FOURTH AVENUE LLC, *et al.*
Defendants.

Case No. 3AN-15-05969CI

**SUR-REPLY TO:
LEGISLATIVE AFFAIRS AGENCY'S REPLY IN SUPPORT OF
MOTION TO DISMISS OR IN THE ALTERNATIVE TO SEVER
CLAIMS FOR MISJOINDER**

The Legislative Affairs Agency's has so grossly mischaracterized *Ruckle v. Anchorage School District*, 85 P.3d 1030 (Alaska 2004) in its Reply In Support Of Motion To Dismiss Or In The Alternative To Sever Claims For Misjoinder (Reply) that Plaintiff Alaska Building, Inc. (ABI) has moved for leave to file this sur-reply. In addition, ABI draws this Court's attention to the fact that the Amended Complaint was filed within the time allowed for amendment without motion and it should not be summarily dismissed as urged by the Legislative Affairs Agency.

A. In *Ruckle* Another Plaintiff Had Brought Suit

At both pages 3 and 4 of its Reply, the Legislative Affairs Agency grossly mischaracterizes *Ruckle* as applying here because a disappointed bidder is a more

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appropriate plaintiff than ABI. This grossly mischaracterizes *Ruckle* because there the critical factor was that such a disappointed bidder had already filed suit.

Ruckle recites the requirements for citizen-taxpayer standing as follows:

Under Alaska law, to establish such standing a taxpayer or citizen need only show that the case in question is "one of public significance" and the plaintiff is "appropriate in several respects." This "[a]ppropriateness has three main facets: the plaintiff must not be a 'sham plaintiff' with no true adversity of interest; he or she must be capable of competently advocating his or her position; and he or she may still be denied standing if 'there is a plaintiff more directly affected by the challenged conduct in question who has or is likely to bring suit

85 P.3d at 1034-1035, footnotes omitted.

Ruckle also addresses the importance and purpose of the public bidding system:

In *McBirney & Associates v. State*,¹ this court explained that the purposes of the competitive public bidding system are:

to prevent fraud, collusion, favoritism, and improvidence in the administration of public business, as well as to insure that the [state] receives the best work or supplies at the most reasonable prices practicable.

... [T]he requirement of public bidding is for the benefit of property holders and taxpayers, and not for the benefit of the bidders; and such requirements should be construed with the primary purpose of best advancing the public interest.

85 P.3d at 1035, footnotes omitted.

In *Ruckle* the Supreme Court was clear that *Ruckle* would have had standing if no suit had already been filed by a disappointed bidder.

These cases do support the proposition that citizen-taxpayers have standing to challenge the results of public bidding systems. However, none of these cases involve a situation, such as the one at bar, where both the

¹ 753 P.2d 1132 (Alaska 1988).

bidder and a citizen-taxpayer have filed suit on the same issue, and three of the cases hail from jurisdictions where bidders are only permitted to challenge the bid procedures of municipalities in which they are also municipal taxpayers.

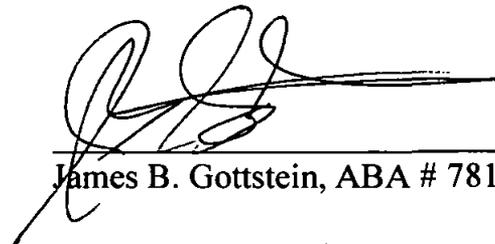
85 P.3d at 1035-1036, footnotes omitted. Here, no suit has been filed by a disappointed or potential bidder.

ABI has citizen-taxpayer standing under *Ruckle*.

B. The Amended Complaint Is Allowed Under the Routine Pretrial Order

Citing the 1984 case of *Fomby v. Whisenhunt*, 680 P.2d 787, 790 (Alaska 1984), the Legislative Affairs Agency also argues the Amended Complaint filed June 12, 2015, should not be allowed. This ignores that the Routine Pretrial Order in this case allows the parties to amend the pleadings without motion until June 30, 2015, a circumstance that was not present in *Fomby*. The Legislative Affairs Agency apparently recognizes that the proper mechanism to challenge the legal sufficiency of the complaint is not through its motion to dismiss for lack of standing, but through a Civil Rule 12(b)(6) motion. *See*, note 12.²

Dated June 25, 2015.


James B. Gottstein, ABA # 7811100

² Substantively, the Legislative Affairs Agency's legal analysis is wrong because the LIO Lease is in reality a contract to construct and then lease the new Anchorage Legislative Information Office Building and for all intents and purposes the Legislative Affairs Agency did contract for Pfeffer Development to be the Project Manager. Exhibit 1, pages 30-84 to June 12, 2015, Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment (Not Extension).

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

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CLERK TRIAL COURTS

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ALASKA BUILDING, INC., an Alaska
corporation,)
Plaintiff)
vs.)
716 WEST FOURTH AVENUE LLC, *et al.*)
Defendants.)

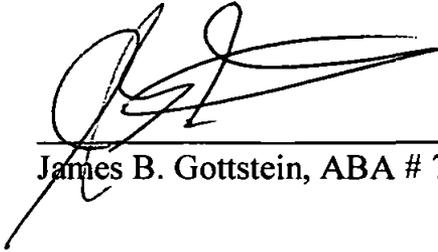
Case No. 3AN-15-05969CI

**MOTION AND MEMORANDUM FOR LEAVE TO FILE SUR-REPLY TO:
LEGISLATIVE AFFAIRS AGENCY'S REPLY IN SUPPORT OF MOTION TO
DISMISS OR IN THE ALTERNATIVE TO SEVER CLAIMS FOR MISJOINDER**

Plaintiff, Alaska Building, Inc. (ABI) moves to file the sur-reply to the Legislative Affairs Agency's Reply In Support Of Motion To Dismiss Or In The Alternative To Sever Claims For Misjoinder, which has been filed contemporaneously herewith.

The grounds for the motion are (1) the Legislative Affairs Agency's gross mischaracterization of *Ruckle v. Anchorage School District*, 85 P.3d 1030 (Alaska 2004), and (2) to address the newly raised contention that the Amended Complaint should be disallowed.

Dated June 25, 2015.



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ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, *et al.*,

Defendants.

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Case No. 3AN-15-05969CI

I hereby certify that on this date I mailed a copy of:

1. Motion And Memorandum for Leave to File Sur-Reply To Legislative Affairs Agency's Reply In Support Of Motion To Dismiss Or In The Alternative To Sever Claims For Misjoinder,
2. (Proposed) Order Granting Motion for Leave to File Sur-Reply To Legislative Affairs Agency's Reply In Support Of Motion To Dismiss Or In The Alternative To Sever Claims For Misjoinder,
3. Sur-Reply To Legislative Affairs Agency's Reply In Support Of Motion To Dismiss Or In The Alternative To Sever Claims For Misjoinder, and
4. this Certificate of Service, to:

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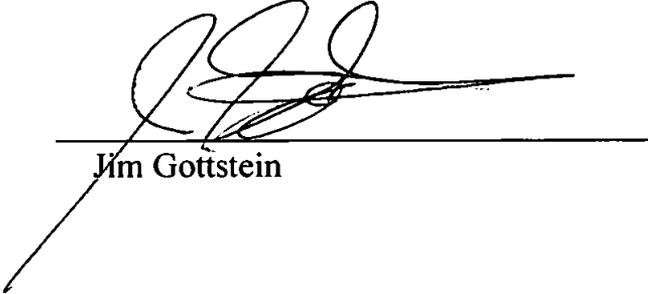
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Dated: June 23, 2015



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Case No. 3AN-15-05969

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

JOINDER IN MOTION TO STAY PROCEEDINGS

COMES NOW, Defendant 716 West Fourth Avenue, LLC ("716"), and hereby respectfully joins in Defendant Legislative Affairs Agency's (the "Agency's") motion to stay proceedings with respect to Count I until this Court resolves the parties' motions to dismiss on subject matter jurisdiction grounds.

Plaintiff filed a two-count Complaint on March 31, 2015. On May 27, 2015, pursuant to Civil Rule 12(b)(1), the Legislative Affairs Agency (the "Agency") moved this court to dismiss Count I for lack of subject matter jurisdiction.¹ Specifically, the Agency argued that Plaintiff lacks both interest-injury and citizen-taxpayer standing to challenge the legality of the Project. It was unclear from Plaintiff's original complaint whether 716 was named as a defendant with respect to Count I. The Agency's reading

¹ See Agency's Motion at 1.

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of Count I made clear that the Agency believed it was “the only defendant with respect to the first count of the Complaint.”² Plaintiff filed an amended complaint on June 8, 2015, but added no clarity as to what 716’s involvement was with respect to the alleged illegal procurement claim in Count I.

Plaintiff filed a motion in opposition to the Agency’s motion to dismiss on subject matter grounds on June 12, 2015, attempting to clarify for the first time 716’s involvement in the lease issue:

First, the Legislative Affairs Agency is not the only defendant for Count One. The invalidation or reformation of the illegal LIO lease is also directed at 716 LLC, the owner and lessor of the building. Punitive damages are sought against 716 for entering into the illegal LIO Lease.³

Although not properly named in the Complaint with respect to Count I and without waiving any future right to move to dismiss or raise an affirmative defense to Count I on any other ground, in an abundance of caution, 716 hereby asks the court for a stay pending disposition of the subject matter jurisdiction issue. The Court’s ruling on this issue will have a determinative effect on 1) whether Count I remains part of the lawsuit and (2) the legal issues that could be presented in motions to dismiss in the remaining action if the challenge is unsuccessful.

716 agrees with the Agency that a stay pending a motion to dismiss on standing grounds is particularly appropriate. Before this Court can proceed to address any of

² See Agency’s Motion to Dismiss at 3.

³ Plaintiff’s Opposition to Motion to Sever at 9.

Plaintiff's claims, including his motion for partial summary judgment on Count I, it should consider whether it even has subject matter jurisdiction to hear those claims.⁴ Accordingly, the undersigned Defendant hereby concurs in the arguments set forth in the Agency's motion to stay and adopts and incorporates them in full.

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

DATED: 6/23/15

By: JW
Jeffrey W. Robinson
Alaska Bar No. 0805038

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⁴ See *Myers v. Robertson*, 891 P.2d 19, 203 (Alaska 1995) (“In discussing the standing requirement, [the Supreme Court of Alaska] has stated that an Alaska court has no subject matter jurisdiction unless the lawsuit before it presents an actual controversy involving a genuine relationship of adversity between the parties.”)

JOINDER IN MOTION TO STAY PROCEEDINGS
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969 Civil

CERTIFICATE OF SERVICE

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ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

JOINDER IN MOTION TO STAY PROCEEDINGS
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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

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

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

MOTION TO STAY DISCOVERY OF COUNT I

COMES NOW, 716 West Fourth Avenue, LLC ("716"), and hereby moves the court to stay discovery with respect to Count I.

I. Background

On March 31, 2014, Plaintiff filed a Complaint against the above-captioned defendants. The plaintiff filed an Amended Complaint on June 8, 2015. Plaintiff is filing this motion to stay discovery concurrently with a motion to dismiss Count I for lack of subject matter jurisdiction.¹

¹ Defendant Legislative Affairs Agency ("the Agency") filed a Motion to Stay Discovery on May 27, 2015, the same date it filed a Motion to Dismiss Plaintiff's Complaint for lack of subject matter jurisdiction. The Court granted the Motion to Stay Discovery on June 17th. The Agency's Motion to Dismiss is currently pending before the Court. The Court's Order staying discovery is attached as Exhibit "A."

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II. Analysis

Alaska courts have inherent discretion to stay discovery pending the Court's resolution of a dispositive motion.² 716 has filed a dispositive motion seeking to dismiss Count I because of lack of subject matter jurisdiction.

Good cause exists for granting a stay for several reasons. First, if the motion to dismiss on subject matter jurisdiction grounds is granted, it would eliminate half of Plaintiff's complaint against 716, thereby eliminating the expense of discovery and the use of judicial resources resolving discovery disputes. Of note, 716 anticipates producing and receiving a fairly voluminous amount of discovery germane to Count II given the nature of the Plaintiff's claims and number of defendants named in the action.³ 716, which has apparently been named in both counts, is not requesting a stay of discovery in Count II.

Second, the motion to dismiss on subject matter jurisdiction grounds raises issue of law that do not require additional discovery. It is hard to conceive a scenario whereby Plaintiff would require discovery to establish either injury-interest or citizen-

² Karen L. v. State Dep't of Health & Soc. Servs., Div. of Family & Youth Servs., 953 P.2d 871, 879 (Alaska 1996); Gettings v. Bldg Laborers Local 310 Fringe Benefits Fund, 349 F.3d 300, 305 (6th Cir. 2003).

³ 716 has already discovered to the Plaintiff approximately 300 pages of material.

taxpayer standing. As the Alaska Supreme Court has held, “[w]hether a party has standing to sue is a question of law.”⁴

Finally, a stay of discovery will not unfairly prejudice either party. With trial anticipated to take place in August 15, 2016, all parties will have ample time to meet discovery deadlines and conduct discovery should the court deny the motion to dismiss. Accordingly, a stay of discovery is appropriate under the court’s inherent authority.

The request in this case mirrors the requests made by the Defendant, the State of Alaska, in *Law Project for Psychiatric Rights, Inc. v. State*, where the State argued that a stay of discovery was appropriate pending the dispositive motion for lack of standing because the “motion raise[d] pure questions of law which discovery [was] not needed to resolve.”⁵ The superior court stayed discovery pending its decision on the motion for judgment on the pleadings, ultimately finding that the Plaintiff failed to assert interest-injury standing and failed to establish citizen-taxpayer standing.⁶

III. Conclusion

For all the above reasons, 716 moves this court to grant its motion to stay discovery of Count I until the Court resolves its pending Motion to Dismiss Count I.

⁴ *Keller v. French*, 205 P.3d 299, 302 (Alaska 2009).

⁵ 239 P.3d 1252, 1254 (Alaska 2010)

⁶ *Id.*

MOTION TO STAY DISCOVERY OF COUNT I

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

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

DATED: 6/23/15

By: JWR
Jeffrey W. Robinson
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MOTION TO STAY DISCOVERY OF COUNT I
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

{10708-101-00273965;1}

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MOTION TO STAY DISCOVERY OF COUNT I
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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JUN 18 2015

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

ASHBURN & MASON

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Case No.: 3AN-15-05969CI

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEIFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
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MAY 27 2015

~~[PROPOSED]~~ ORDER GRANTING DEFENDANT LEGISLATIVE AFFAIRS
AGENCY'S MOTION TO STAY DISCOVERY

THIS COURT, having reviewed Defendant Legislative Affairs Agency's (the "Agency") Motion to Stay Discovery, any opposition and/or responses thereto, and being duly advised in the premises, this Court finds and ORDERS as follows:

[PROPOSED] ORDER GRANTING LEGISLATIVE AFFAIRS AGENCY'S MOTION TO STAY DISCOVERY
ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI
Page 1 of 3

Exhibit A
Page 1 of 2

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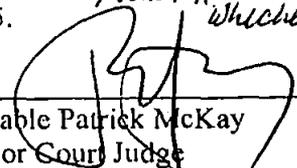
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On March 31, 2015, Plaintiff Alaska Building, Inc. ("Plaintiff"), filed a Complaint for Declaratory Judgment and Specific Performance (Complaint) against Defendants 716 West Fourth Avenue LLC, Koonce Pfeffer Bettis, Inc., d/b/a KPB Architects, the Agency, and Criterion General, Inc. On May 27, 2015, the Agency filed a Motion to Dismiss Plaintiff's Complaint for lack of interest injury and citizen-taxpayer standing. The motion is currently pending before this Court.

Good cause exists for granting a stay because (1) the motion, if granted, would dispose of the entire case against the Agency, thereby eliminating the expense of discovery and the use of judicial resources resolving discovery disputes; (2) the motion raises issues of law that do not require additional discovery; and (3) the motion was filed sufficiently in advance of current discovery deadlines such that a stay will not unfairly prejudice any party. Accordingly, a stay of discovery is appropriate under the court's inherent authority.

IT IS THEREFORE ORDERED that Defendant Legislative Affairs Agency Motion to Stay Discovery is GRANTED, *for no more than 45 DAYS FROM THIS ORDER, or until motion to Dismiss concludes whichever is earlier date.*

DATED this 17th day of June, 2015.


Honorable Patrick McKay
Superior Court Judge

I certify that on 6/17/15 a copy of the following was mailed/faxed/ hand-delivered to each of the following at their addresses of record: James Gottstein / Jeffrey Robinson
Daniel Quino / Blake Call / Mark Scheer
Kevin Cuddy / Cynthia Ducey
Administrative Assistant /k

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

2015 JUN 01 3:47

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

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 CI

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.)

MOTION TO DISMISS COUNT I

Defendant 716 West Fourth Avenue, LLC ("716"), by and through counsel Ashburn & Mason, P.C., hereby moves this court to dismiss Count I for lack of subject matter jurisdiction. The Plaintiff lacks both interest-injury standing and citizen-taxpayer standing.

I. PROCEDURAL BACKGROUND

On March 31, 2015, the Plaintiff filed a two count complaint against the above-listed defendants. Count I challenges the legality of the Legislative Information Office Project (the "Project") lease under Alaska Statute 36.30.83(a). Count II alleges damages caused to the Plaintiff's building during the construction process.

On May 27, 2015, the Legislative Affairs Agency (the "Agency") moved this court to dismiss Count I for lack of subject matter jurisdiction pursuant to Civil Rule

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12(b)(1).¹ The Agency argues Plaintiff lacks both interest-injury and citizen-taxpayer standing to challenge the legality of the Project under Count I. In the absence of a dismissal, the Agency argues severance of the counts is appropriate.²

Plaintiff filed an Amended Complaint on June 8, 2015, attempting to bolster its negligence claims under Count II and specifically listing all defendants as parties to Count II.³ The Plaintiff then filed an opposition to the Agency's motion to dismiss on June 12, 2015.

While unclear from the original and amended Complaints, according to the Plaintiff's Opposition, the Plaintiff has named 716 as a defendant for both Count I and Count II.⁴ Indeed, the Agency's Motion to Dismiss made clear that the Agency believed it was "the only defendant with respect to the first count of the Complaint."⁵ Only in the Opposition does the Plaintiff allege for the first time that it is seeking punitive damages "against 716 for entering into the illegal LIO Lease."⁶

This motion is filed in response to that clarification. In the event that Plaintiff has actually contemplated 716 as a properly named Defendant in Count I, Defendant

¹ See Agency's Motion at 1.

² *Id.* at 12. 716 takes no position on severance at this time.

³ See Plaintiff's Opposition to Motion to Dismiss or Sever.

⁴ *Id.* at 3-4, 9;

⁵ See Agency's Motion to Dismiss at 3.

⁶ Plaintiff's Opposition to Motion to Sever at 9; See Compl. ¶¶ 31 E.

MOTION TO DISMISS COUNT I

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

716 hereby moves the court to dismiss Count I for lack of subject matter jurisdiction pursuant to Civil Rule 12(b)(1) and 12(h)(3).⁷

II. STANDARD FOR DECISION

This Court does not have subject matter jurisdiction over Count I as the Plaintiff cannot establish standing. The “basic requirement for standing in Alaska is adversity.”⁸ Courts in Alaska recognize “two general types of standing sufficient to meet the adversity requirement—interest-injury standing and citizen-taxpayer standing.”⁹ The fundamental question raised by both forms of standing is “whether the litigant is a proper party to seek adjudication of a particular issue.”¹⁰ As the Plaintiff cannot establish either form of standing, dismissal of Count I is warranted.

III. ARGUMENT

a. Plaintiff has failed to establish interest-injury standing.

In order to establish interest-injury standing, a plaintiff must demonstrate a controversy exists, a “sufficient personal stake” in the outcome of that controversy, and “an interest which is adversely affected by the complained-of conduct.”¹¹ While the degree of injury need not be great—an “identifiable trifle” is sufficient—a showing of some injury is required.¹² The Alaska Supreme Court and the United States Supreme

⁷ Civil Rule 12(b)(1) & 12(h)(3). 716 reserves the right to raise any and all motions to dismiss Count II or move for dismissal on any additional grounds of Count I should the court rule in Plaintiff’s favor.

⁸ *Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987).

⁹ *Law Project for Psychiatric Rights, Inc. v. State*, 239 P.3d 1252, 1255 (Alaska 2010).

¹⁰ *Trs. for Alaska*, 736 P.2d at 327 (quoting *Moore v. State*, 553 P.2d 8, 23 n. 25 (Alaska 1976)).

¹¹ *Keller v. French*, 205 P.3d 299, 304 (Alaska 2009).

¹² *Id.* at 304-305.

MOTION TO DISMISS COUNT I

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

Court have “consistently held that a plaintiff raising only a generally available grievance about government . . . and seeking relief that no more directly and tangibly benefits him that it does the public at large – does not present a controversy.”¹³

A plaintiff must have sufficient personal stake in the outcome of the controversy to establish interest-injury standing.¹⁴ For instance, in *Larson v. State, Dept. of Corrections*, an inmate sought injunctive and declaratory relief on a claim that the prison's own revised visitor application policies relating to minors violated his state constitutional right to rehabilitation because it was more restrictive than administrative regulations governing visitation.¹⁵ The Alaska Supreme Court found that because Larson was an inmate with children who continued to be subject to the contested visitation policies, he demonstrated a sufficient personal stake in the outcome of the controversy to establish interest-injury standing.¹⁶

In addition to a showing of sufficient personal stake in the outcome of the controversy, a plaintiff must also demonstrate an actual injury. In *Keller v. French*, the Alaska Supreme Court held that State legislators did not have interest-injury standing to sue other legislators, a permanent legislative committee, and an independent investigator.¹⁷ The plaintiff legislators had sued alleging a state constitutional “fair and just treatment clause” violation based on the governor's dismissal of the Public Safety

¹³ *Lamb v. Obama*, No. S-15155, 2014 WL 1016308, at *1 (Alaska Mar. 12, 2014)(citing *Lamb v. Defenders of Wildlife*, 504 U.S. 555, 573-574 (1992)).

¹⁴ *Larson v. State, Dept. of Corrections*, 284 P.3d 1, 12 (Alaska 2012).

¹⁵ *Id.*

¹⁶ *Id.* at 12.

¹⁷ *Keller*, 205 P.3d at 299.

MOTION TO DISMISS COUNT I

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

Commissioner. The Court held the plaintiff legislators had failed to identify how the investigation was likely to cause them any sort of harm and therefore dismissed the claim for lack of injury.¹⁸

In the present matter, despite having filed three pleadings, the Plaintiff has not been able to articulate something beyond a generally available grievance about Alaska procurement law. With respect to Count I, Plaintiff alleges the Project is illegal “because it is neither a lease extension, nor at least 10% below market rent as required by AS 36.30.083(a).”¹⁹ Like the unsuccessful Plaintiffs in *Keller*, the Plaintiff has been unable to articulate a plausible injury to its own interests.²⁰

The Plaintiff claims entitlement to relief under Count I to “invalidate or reform the LIO Lease to 10% less than market rent and award [Plaintiff] 10% of any cost savings.”²¹ According to the Plaintiff, it is this claim for 10% of any cost savings that specifically gives it interest-injury standing.²² The mere fact that the Plaintiff has requested monetary damages for the act of raising this generalized grievance does not in itself create a “sufficient personal stake in the outcome of the controversy to ensure the requisite adversity.”²³ Plaintiff does not seek compensation because he has been injured; rather, Plaintiff seeks compensation simply for enrichment purposes. A finding that the Plaintiff “has interest-injury standing because of its claim for 10% of any cost

¹⁸ *Id.*

¹⁹ Plaintiff Opposition at 6.

²⁰ *Keller*, 205 P.3d at 305 (Alaska 2009).

²¹ *Id.*

²² *Id.*

²³ *Larson*, 284 P.3d at 12.

MOTION TO DISMISS COUNT I

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

savings” actually incentives plaintiffs to bring generalized grievances, which are exactly the types of claims the interest-injury standing requirement is intended to bar.

As the Plaintiff has failed to prove that it has sustained an injury or demonstrated a genuine controversy, the court should find that Plaintiff lacks interest-injury standing.²⁴

b. Plaintiff has failed to and cannot establish citizen-taxpayer standing.

In addition to lacking interest-injury standing, the Plaintiff lacks citizen-taxpayer standing to bring Claim I. “[T]axpayer-citizen standing cannot be claimed in all cases as a matter of right.”²⁵ In order for the Plaintiff to successfully rely on citizen-taxpayer standing, he must establish not only that the case is of public significance, but also that he is the appropriate plaintiff to bring suit.²⁶ The Supreme Court in *Keller* noted the following are inappropriate plaintiffs: a “sham plaintiff” with no true adversity of interest, a plaintiff incapable of competently advocating his or her position, and “when there was another potential plaintiff more directly affected by the challenged conduct who had sued or was likely to sue.”²⁷

The Supreme Court in *Keller* went on to state that is the more appropriate plaintiff’s *ability* to bring suit, rather than their *intention* to do so, that is the key

²⁴ *Keller*, 205 P.3d at 304.

²⁵ *Trustees for Alaska v. State*, 736 P.2d 324, 329 (Alaska 1987)

²⁶ *Id.*

²⁷ *Keller*, 205 P.3d at 302.

MOTION TO DISMISS COUNT I

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

inquiry.²⁸ The fact that “individuals who are more directly affected have chosen not to sue despite their ability to do so does not confer citizen-taxpayer standing on an inappropriate plaintiff.”²⁹

i) **The Plaintiff is akin to a “sham plaintiff.”**

In the present case, the Plaintiff’s motives in bringing Claim I appear to be wholly fueled by a desire to seek an arbitrary amount of damages for personal enrichment purposes.³⁰ While it is unclear why the Defendant believes himself entitled to 10% of any cost savings or punitive damages, as he has alleged against 716, there is nothing in the pleadings to indicate the Defendant would bring the suit but for these potential damages. Indeed, excluding the negligence claims contained in Count II, the Defendant has not shown any particularized interest that is adverse to the Project. Neither the location of Plaintiff’s building, nor the fact Plaintiff is alleging negligence damages related to the construction changes this analysis. The specific grievances alleged in Count I are not particularized to the Plaintiff any more than any other taxpayer.

The notion that the Plaintiff is motivated by personal enrichment is further supported by the addition of 716 to Count I. It would appear that the Plaintiff’s only

²⁸ *Id.* at 303.

²⁹ *Id.*

³⁰ *Compare to Trustees for Alaska*, 736 P.2d at 330.

MOTION TO DISMISS COUNT I

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

reason for naming 716, an entity which has nothing to do with the formation of Alaska Legislative Procurement procedures, to Count I is to seek “punitive damages.”³¹

ii) **The Plaintiff is incapable of competently advocating his positions.**

Even if this was an issue of public significance, this particular Plaintiff appears incapable of competently advocating his position. The Plaintiff has created a website regarding the lawsuit with a separate section devoted to “Media Coverage”³² with links to articles detailing Plaintiff’s questionable motivation for filing the lawsuit.³³ Included on the site is a self-serving “News Release” referencing an Open Letter that Plaintiff delivered to the Governor urging him to “investigate this blatant corruption that appears to be a crime.”³⁴ In this May 1, 2105 letter to the Governor, Plaintiff claims that a “[Class C felony] crime appears to have been committed[,]” but proceeds to state “I don’t know who is guilty of this crime.”³⁵ Plaintiff’s inability to determine who exactly he is opposing, as evidenced by his misguided inclusion of 716 in Count I, and what

³¹ Amended Complaint at p.6.

³² Available at <http://gottsteinlaw.com/AkBldgv716W4thAve/AkBldgv716W4thAveLLC.htm>.

³³ See “Lawsuit Challenges Expensive State Lease for Anchorage Legislative Building,” Alaska Dispatch News, March 31, 2015, available at <http://www.adn.com/article/20150331/lawsuit-challenges-expensive-state-lease-downtown-legislative-building>.

³⁴ See “Governor Walker Called on to Line Item Veto Anchorage Legislative Information Office Appropriation and Request a Criminal Investigation.” May 4, 2015, News Release, available at <http://www.adn.com/article/20150331/lawsuit-challenges-expensive-state-lease-downtown-legislative-building>

³⁵ See “Governor Walker Called on to Line Item Veto Anchorage Legislative Information Office Appropriation and Request a Criminal Investigation.” May 4, 2015, News Release, available at <http://www.adn.com/article/20150331/lawsuit-challenges-expensive-state-lease-downtown-legislative-building>

MOTION TO DISMISS COUNT I

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

crime he's alleging are two examples of this particular Plaintiff's inability to competently advocate this issue.

iii) **The decision of more appropriate potential plaintiffs not to sue does not give citizen-taxpayer standing to this Plaintiff.**

In *Ruckle v. Anchorage School District*, the Alaska Supreme Court affirmed the trial court's ruling that the plaintiff lacked citizen-taxpayer standing to dispute a public procurement determination and related regulations.³⁶ The Alaska Supreme Court concluded that a taxpayer who sought to challenge the school district's bidding process for transportation contracts was not the most appropriate plaintiff to bring suit. The Court found that the former provider of transportation for the school district, who unsuccessfully bid on the contract, and who filed a nearly identical suit prior to *Ruckle* was a more appropriate plaintiff to file suit challenging the State Procurement Code.³⁷

Even were this court to determine the Project should have been competitively bid on, Plaintiff has yet to establish that it would be an appropriate plaintiff to challenge the lease. The court in *Ruckle* expressly rejected the argument that members of the public are appropriate litigants for challenging the application of the State Procurement Code merely on the basis of being taxpayers.³⁸ The Plaintiff was not, and has never indicated it would be, a potential lessor of the Legislative Information Office. The Plaintiff is

³⁶ *Ruckle v. Anchorage Sch. Dist.*, 85 P.3d 1030, 1034 (Alaska 2004)

³⁷ *Id.*; See also *Lakloey, Inc. v. Univ. of Alaska*, 157 P.3d 1041, 1049 (Alaska 2007)(holding that an unsuccessful bidder on a state university contract for a deionization system was an interested party with standing to protest the university's award of the contract to lowest bidder, even though the unsuccessful bidder was not the next lowest bidder on the contract. The unsuccessful bidder was therefore entitled to an administrative hearing under the general procurement code and the University's own regulations.)

³⁸ *Ruckle*, 85 P.3d 1035.

MOTION TO DISMISS COUNT I

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

therefore without the “enormous economic incentive” to bring suit and raise State Procurement Code challenges if it had indeed lost out on a bid for the lease.³⁹ The fact that no such entity has decided to bring a challenge to the lease extension does not confer citizen-taxpayer standing on Plaintiff.⁴⁰

It is noteworthy that Plaintiff has yet to identify how it was in any way the appropriate plaintiff to bring suit against 716. Under AS 36.30.020, “[t]he **legislative council** adopts and publishes procedures to govern the procurement of supplies, services, professional services, and construction by the legislative branch.”⁴¹ The lease extension was authorized under AS 36.30.083, which foregoes a competitive re-procurement process as long as the criteria contained in the statute are met. As Plaintiff is aware, the Project was approved unanimously by the legislative council. Having thus determined that the lease was in its best interests, the legislative council’s decision then was ratified by the full legislature.⁴²

For the reasons stated above, this Plaintiff lacks citizen-taxpayer standing to pursue Claim I.

³⁹ *Id.* at 1037.

⁴⁰ See *Keller*, 205 P.3d at 303; *Law Project for Psychiatric Rights*, 239 P.3d at 1255-56.

⁴¹ See AS 36.30.020(emphasis supplied.)

⁴² See *Lamb v. Obama*, No. S-15155, 2014 WL 1016308, at *2 (Alaska Mar. 12, 2014)(holding that the Alaska Supreme Court lacked jurisdiction to hear Plaintiff’s claim regarding President Obama’s eligibility and qualifications for president. Voting procedures for presidential elections were already established in 3 U.S.C. §, et. seq. and the court was inclined to refrain from involving itself in “questions beyond its scope.”

MOTION TO DISMISS COUNT I

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

IV. CONCLUSION

Because Plaintiff lacks both interest-injury standing and citizen-taxpayer standing to challenge the legality of the Project, this Court should dismiss Count I against 716. This court should thus also find that Plaintiff's claim against 716 in Count I should be dismissed for lack of subject matter jurisdiction.

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

DATED: 6/23/15

By: JW
Jeffrey W. Robinson
Alaska Bar No. 0805038

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MOTION TO DISMISS COUNT I
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 23 day of June 2015, on:

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ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

MOTION TO DISMISS COUNT I
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska corporation,

Plaintiffs,

vs.

716 WEST FOURTH AVENUE LLC, KOONCE PFEFFER BETTIS, INC., d/b/a KP ARCHITECTS, PFEFFER DEVELOPMENT, LLC, LEGISLATIVE AFFAIRS AGENCY, and CRITERION GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969 Civil

AFFIDAVIT OF 716 WEST FOURTH AVENUE, LLC'S CIVIL RULE 56(f) REQUEST FOR ADDITIONAL TIME TO RESPOND TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case and submit this affidavit in support of 716 West Fourth Avenue, LLC's Request for Additional Time to Respond to Plaintiff's Motion for Partial Summary Judgment (not extension).

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

ASHBURN & MASON P.C. LAWYERS
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3. Plaintiff served 716 with a motion for partial summary judgment as to Count I on June 12, 2015. 716's response will be due by June 29, 2015.

4. 716 is filing a dispositive Motion to Dismiss Count I on subject matter jurisdiction grounds. This motion is accompanied by a motion to stay discovery, which if granted, would put a halt to discovery. If the court were to grant the motion to dismiss Count I, no further discovery obligations would remain with respect to Count I. If the court grants 716's motion to stay discovery while the subject matter jurisdiction motion is pending (as it has the Agency's), discovery would also come to a halt. Accordingly, 716 would be under no obligation to gather more information during planned discovery, which could then be considered by the court in response to Plaintiff's summary judgment motion.

5. 716 is also filing a joinder in Defendant Legislative Affairs Agency's motion to stay proceedings with respect to Count I. Before the Court can proceed to address any of Plaintiff's claims on Count I, including the "not extension" partial summary judgment claim, the court must consider whether it even has subject matter jurisdiction to hear that claim. If the court grants the stay, it will be unnecessary for 716 to respond to plaintiff's summary judgment motion with respect to Count I.

6. In the event all of the above-mentioned motions are denied, Plaintiff's motion is still significantly premature. Plaintiff has yet to provide 716 with any discovery related to the lease it has deemed "illegal," except what it attached as an

AFFIDAVIT IN SUPPORT OF CIVIL RULE 56(F) REQUEST FOR ADDITIONAL TIME TO RESPOND TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

affidavit to the summary judgment motion. (Plaintiff did not file a 12(b)(6) motion.) Plaintiff recently amended its complaint, a response which is due from 716 on 6/22/15. 716 has had virtually no time to conduct meaningful discovery, including arranging depositions or retaining experts. According to the Court's Routine Pretrial Order, the final date for parties to serve written discovery is April 11, 2016. The final date to depose lay witnesses is May 23, 2016. At best, discovery is in the preliminary stages.

7. 716 has been diligent in preparing discovery. 716 has already disclosed close to 300 pages of documents with respect to Count II to Plaintiff. Moreover, 716 has spent considerable time in working with counsel for other Defendants, communicating with insurers, and drafting case-related pleadings. Plaintiff did not clarify its actual theory on 716's inclusion in the complaint until Plaintiff opposed the Agency's Motion to Dismiss on June 12, 2015, simply stating "Punitive damages are sought against 716 LLC for entering into the illegal LIO Lease."

8. It is not feasible for 716 to respond to Plaintiff's motion for partial summary judgment at this time. First, as 716 has argued in its motion to dismiss, plaintiff lacks both interest-injury and citizen-taxpayer standing to bring suit with respect to Count I to begin with. The dispositive motion on subject matter jurisdiction should control the remaining litigation. Second, undersigned will be unavailable from June 29, 2015-July 14, 2015, and thus lacks time, as he prepares for leave, to

AFFIDAVIT IN SUPPORT OF CIVIL RULE 56(F) REQUEST FOR ADDITIONAL TIME TO RESPOND TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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sufficiently produce facts necessary to oppose summary judgment within the original time frame.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

90MP 6/25/15

SUBSCRIBED AND SWORN to before me this 23 day of June, 2015.



Heidi A. Wyckoff
NOTARY PUBLIC in and for Alaska
My Commission Expires: 1/11/2019

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AFFIDAVIT IN SUPPORT OF CIVIL RULE 56(F) REQUEST FOR ADDITIONAL TIME TO RESPOND TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 23 day of June 2015, on:

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Anchorage, AK 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

AFFIDAVIT IN SUPPORT OF CIVIL RULE 56(F) REQUEST FOR ADDITIONAL TIME TO RESPOND TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

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Plaintiffs,)

vs.)

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

Case No.: 3AN-15-05969 Civil

CIVIL RULE 56(F) REQUEST FOR ADDITIONAL TIME TO ANSWER PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)

COMES NOW, Defendant 716 West Fourth Avenue, LLC ("716"), and hereby respectfully moves the court to grant additional time to respond to Plaintiff's motion for partial summary judgment (not extension). This request is made pursuant to Civil Rule 56(f), which provides:

When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

ASHBURN & MASON P.C.
LAWYERS
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Typically, dismissal motions will be filed early in litigation because they are generally decided on the pleadings, whereas summary judgment motions may require that parties spend considerable time and effort discovering and developing facts necessary for a full presentation, and for this reason parties are provided “a reasonable opportunity” to respond.¹ Under Civil Rule 56(c), summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” Plaintiff’s motion, as described herein, is thus wildly premature under the fabric of the summary judgment rule.

The Alaska Supreme Court has “repeatedly held that ‘requests made under Rule 56(f) should be granted freely because Rule 56(f) provides a safeguard against premature grants of summary judgment.’”² In order to be granted Rule 56(f) relief, a party must 1) unambiguously request relief under Rule 56(f), although not necessarily mention Rule 56(f); (2) must not have been dilatory during discovery; and (3) must provide adequate reasons why additional time is required.

¹ *Mitchell v. Teck Cominco Alaska Inc.*, 193 P.3d 751, 758 (Alaska 2008).

² *Id.*(citing *Hymes v. DeRamus*, 119 P.3d 963, 965 (Alaska 2005).

CIVIL RULE 56(F) REQUEST FOR ADDITIONAL TIME TO ANSWER PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT

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

First, 716 is making an unambiguous request for Rule 56(f) relief in this motion. Second, 716 has not been dilatory with discovery.³ Plaintiff filed its original complaint on March 31, 2015, and amended the complaint on June 9, 2015. 716's deadline to answer Plaintiff's amended complaint arises today. The court issued its routine pretrial order on May 21, 2015. Trial has been scheduled approximately 14 months out, and the parties are in the very beginning stages of the discovery process.⁴ Plaintiff has served a few interrogatories and requests for production, but has not otherwise conducted depositions, requested admissions, or otherwise meaningfully engaged in the typical course of discovery practice.

Additionally, 716 filed a potentially dispositive motion to dismiss Count I for lack of standing concurrently with this motion, including a request to stay discovery until the motion is decided on its merits. 716 strongly believes that the court lacks subject matter jurisdiction to adjudicate plaintiff's claim with respect to Count I. 716 has also concurrently moved the court to stay proceedings until the court rules on the subject matter jurisdiction issue. If the court grants the motion to stay discovery and/or the motion to stay proceedings, discovery would likewise come to a halt.

³ See *Brock v. Weaver Bros.*, 640 P.2d 833, 837 (Alaska 1982)(concluding that the court did not abuse its discretion in denying Rule 56(f) relief because "approximately three years had elapsed since the accident...[and] no discovery...had been undertaken").

⁴ 716 has already provided Plaintiff with approximately 300 pages of discovery related to Count II, and pointed Plaintiff to publically available documents germane to the lease issue. (The lease was publically recorded.) Plaintiff has attached some of the publically related documents in its Motion for Partial Summary Judgment (Not Extension).

CIVIL RULE 56(F) REQUEST FOR ADDITIONAL TIME TO ANSWER PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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

Third, in the event that the court does not grant the dispositive motion to dismiss on subject matter jurisdiction grounds, a continuance is especially appropriate given that discovery has not closed (and, in fact, just begun) in this matter. For example, the parties have until April 11, 2016 to file written discovery. The parties have not deposed a single witness with respect to Count I, retained experts, or done anything else of significance in the early stages of discovery. 716 is not requesting an indefinite delay to submit evidence to rebut the movant's summary judgment claim.

Instead, 716 makes the reasonable request that in the event that 716's dispositive subject matter jurisdiction motion is disposed of in plaintiff's favor, the motion for summary judgment be held in abeyance **at least** until twenty days after the April 11, 2016 final date for the parties to serve written discovery. A continuance of this length would allow 716 to gather more information during planned discovery. A request for Rule 56(f) relief need not state what specific facts further discovery will produce; instead, the request will generally be granted if the party provides adequate reasons why the party cannot produce facts necessary to oppose summary judgment within the original time frame.⁵

In *Mitchell v. Teck Cominco Alaska Inc.*, the Alaska Supreme Court held that the superior court's failure to grant a request by an employee, as nonmovant for summary judgment, for a continuance in order to conduct additional discovery and respond to

⁵ *Gamble v. Northshore Partnership*, 907 P.2d 477 (Alaska 1995).

employer's summary judgment motion actually prejudiced the employee, and thus, the entry of summary judgment would be vacated and case would be remanded for further proceedings on that claim.⁶ The Court found that the employee's proposed order requesting a continuance expressly stated that the court would hold the summary judgment in abeyance pending completion of discovery and additional briefing, and set a briefing schedule twenty days after the close of discovery.⁷

For these reasons, and for the reasons explained in the attached affidavit of counsel, the court should grant 716 a continuance consistent with this motion and the attached affidavit of counsel.

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

DATED: 6/23/15

By: JWR
Jeffrey W. Robinson
Alaska Bar No. 0805038

⁶ 193 P.3d 751 (Alaska 2008).

⁷ *Id.* at 758.

CIVIL RULE 56(F) REQUEST FOR ADDITIONAL TIME TO ANSWER PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 23 day of June 2015, on:

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Anchorage, Alaska 99501

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Kevin Cuddy
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Dan Quinn
360 K Street, Suite 200
Anchorage, AK 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

CIVIL RULE 56(F) REQUEST FOR ADDITIONAL TIME TO ANSWER PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska corporation,

Plaintiffs,

vs.

716 WEST FOURTH AVENUE LLC, KOONCE PFEFFER BETTIS, INC., d/b/a KPB ARCHITECTS, PFEFFER DEVELOPMENT, LLC, LEGISLATIVE AFFAIRS AGENCY, and CRITERION GENERAL, INC.,

Defendants.

CLERK OF COURT BY: DEPUTY CLERK

Case No.: 3AN-15-05969 Civil

CERTIFICATE OF SERVICE

I, Heidi Wyckoff, hereby certify that on June 23, 2015 a copy of the following were served U.S. Mail on Blake Call of Call & Hanson, P.C., counsel for Criterion General, 413 G Street, Anchorage, Alaska 99501

- Motion to Dismiss Count I;
• [Proposed] Order Granting Motion to Dismiss Count I;
• Joinder in Motion to Stay Proceedings;
• [Proposed] Order Granting Motion to Stay Proceedings;
• Motion to Stay Count 1 of Discovery;
• [Proposed] Order Granting Motion to Stay Count I of Discovery;
• Civil Rule 56 (f) Request for Additional Time to Answer Plaintiff's Motion for Partial Summary Judgment (Not Extension);
• Affidavit of 716 West Fourth Avenue, LLC's Civil Rule 56 (f) Request for Additional Time to Answer Plaintiff's Motion for Partial Summary Judgment (Not Extension);
• [Proposed] Order Granting 716 West Fourth Avenue, LLC's Civil Rule 56 (f) Request for Additional Time to Answer Plaintiff's Motion for Partial Summary Judgment (Not Extension)

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

ASHBURN & MASON P.C.

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ASHBURN & MASON, P.C.

DATED: June 23, 2015

By: Heidi Wyckoff
Heidi Wyckoff

CERTIFICATE OF SERVICE

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

{10708-101-00274318;1}

Page 2 of 2

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

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STATE OF ALASKA
THIRD JUDICIAL DISTRICT
2015 JUN 19 PM 1:19

CLERK TRIAL COURTS
BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

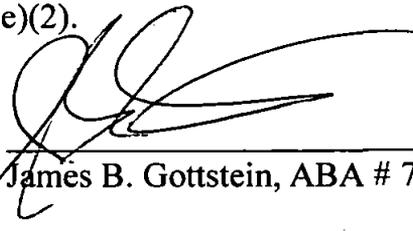
Defendants.

Case No. 3AN-15-05969CI

**REQUEST FOR ORAL ARGUMENT
(Motion to Dismiss or Sever)**

Plaintiff, Alaska Building, Inc., requests oral argument on the Legislative Affairs Agency's Motion to Dismiss or, in the Alternative, to Sever Claims, the granting of which is non-discretionary under Civil Rule 77(e)(2).

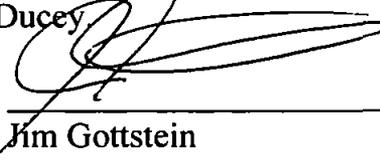
Dated June 19, 2015.


James B. Gottstein, ABA # 7811100

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof and accompanying proposed order to Kevin M. Cuddy, Jeffrey W. Robinson, Blake Call, Mark Scheer, Daniel T. Quinn and Cynthia L. Ducey

Dated June 19, 2015.


Jim Gottstein

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
FACSIMILE
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000116

Kevin Cuddy (Alaska Bar #0810062)
STOEL RIVES LLP
510 L Street, Suite 500
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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

FILED
STATE OF ALASKA
THIRD DISTRICT
2015 JUN 18 PM 4:51
CLERK TAYLOR
BY: DEPUTY CLERK

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR RECONSIDERATION
(of June 16, 2015 Order Denying Motion for Expedited Consideration of Defendant
Legislative Affairs Agency's Motion for Stay of Proceedings)

Pursuant to Civil Rule 77(k)(1)(ii), Defendant Legislative Affairs Agency (the
"Agency") requests that the Court reconsider its June 16, 2015 order denying Defendant
Legislative Affairs Agency's Motion for Expedited Consideration of its Motion for Stay

LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR RECONSIDERATION OF THIS COURT JUNE 16, 2015
ORDER DENYING THE AGENCY'S MOTION FOR EXPEDITED CONSIDERATION OF ITS MOTION TO
STAY PROCEEDINGS

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

of Proceedings. The Court based its denial on its belief that “LAA has not complied with ARCP 77(g) 4.” The Agency respectfully submits that the Court appears to have overlooked or misconceived the Agency’s compliance with Civil Rule 77(g)(4). In the alternative, the Agency submits an updated certification to clarify that Mr. Gottstein does not oppose expedited consideration of the motion to stay proceedings, but does oppose the Agency’s request to stay proceedings.

I. DISCUSSION

The Court denied the Agency’s motion because the Court believed that the Agency failed to comply with Rule 77(g)(4) by failing to certify that its counsel had conferred with opposing counsel regarding its motion for expedited consideration. Page 2 of the Agency’s motion for expedited consideration states:

Civil Rule 77(g)(4) Certification: The undersigned counsel certifies that he spoke with opposing counsel, Jim Gottstein, on June 12, 2015, about whether he would oppose the instant motion. Mr. Gottstein stated that he does not oppose this request for expedited consideration, as long as he could get expedited consideration of the Agency’s motion to dismiss or sever.

During the same conversation, as reflected in an email exchange on June 15 (attached as Exhibit A), Mr. Gottstein confirmed that he did oppose the substantive request for a stay of the proceedings. The parties were unable to resolve their dispute concerning the requested stay of the proceedings because Mr. Gottstein wished to keep the proceedings moving and was concerned that the requested stay would hinder that effort. The undersigned counsel certifies that the parties were unable to resolve the issues concerning

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the stay of proceedings, but that the request for expedited consideration is unopposed by Plaintiff.

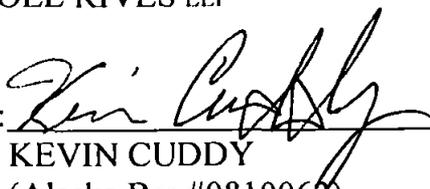
The Agency requested expedited consideration of its motion to stay proceedings in an effort to conserve the parties' and the Court's time and resources. The Agency has filed a potentially dispositive motion to dismiss Count 1 of the Complaint on standing grounds that will be fully briefed tomorrow. On June 12, 2015 Plaintiff Alaska Building, Inc. filed a motion for partial summary judgment with respect to Count 1 that may be rendered moot if the Agency's motion to dismiss is granted. In light of the fact that standing is a threshold issue, the Court should stay the proceedings as to Count 1 until such time that the Court has ruled on the Agency's Motion to Dismiss. The Court recently granted the Agency's motion to stay discovery as to Count 1, and the same reasons apply to the requested motion to stay proceedings as to Count 1.

II. CONCLUSION

For the foregoing reasons, the Agency respectfully requests that the Court reconsider its ruling denying the unopposed motion for expedited consideration.

DATED: June 18, 2015

STOEL RIVES LLP

By: 

KEVIN CUDDY

(Alaska Bar #0810062)

Attorney for Defendant

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR RECONSIDERATION OF THIS COURT JUNE 16, 2015
ORDER DENYING THE AGENCY'S MOTION FOR EXPEDITED CONSIDERATION OF ITS MOTION TO
STAY PROCEEDINGS

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

Page 3 of 4

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CERTIFICATE OF SERVICE AND OF FONT

This certifies that on June 18, 2015, a true and correct copy of the foregoing was served via First Class Mail on:

James B. Gottstein, Esq. **(and by hand)**
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406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

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(Attorneys for Defendant, Pfeffer Development, LLC)

Blake H. Call, Esq.
Call & Hanson, P.C.
413 G Street
Anchorage, Alaska 99501
(Co-Attorneys for Def/Criterion General, Inc.)

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



Debby Allen, Practice Assistant
79278347.1 0081622-00003

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

Cuddy, Kevin M.

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Monday, June 15, 2015 1:08 PM
To: Cuddy, Kevin M.
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Motion for Partial Summary Judgment

Hi Kevin,

I remember saying that if you file a motion for expedited consideration for the stay of proceedings motion, I might file a motion for expedited consideration of your motion to dismiss or sever. Would you oppose expedited consideration of your motion?

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e-mail: James.B. Gottstein@GottsteinLaw.Com

From: Cuddy, Kevin M. [<mailto:kevin.cuddy@stoel.com>]
Sent: Monday, June 15, 2015 10:11 AM
To: James B. Gottstein
Subject: RE: Motion for Partial Summary Judgment

Thanks, Jim.

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Monday, June 15, 2015 10:10 AM
To: Cuddy, Kevin M.
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Motion for Partial Summary Judgment

Hi Kevin,

I don't remember saying I didn't oppose expedited consideration, but if you say I did, I will accept that. Maybe it is that I have thought about it and it just doesn't seem like the sort of thing for which expedited consideration is warranted.

In any event, if you remember me saying I wouldn't oppose expedited consideration, Okay.

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e-mail: James.B. Gottstein@GottsteinLaw.Com

From: Cuddy, Kevin M. [<mailto:kevin.cuddy@stoel.com>]
Sent: Monday, June 15, 2015 10:02 AM
To: James B. Gottstein
Subject: RE: Motion for Partial Summary Judgment

Hi Jim,

Thanks. I'll take a look. As mentioned during our call on Friday, I plan to file a motion to stay proceedings later today and a motion for expedited consideration so that the issue is addressed before our opposition to your partial summary judgment motion would be due. My understanding is that you do not oppose the motion for expedited consideration, but that you do oppose the motion to stay the proceedings. If that's incorrect, please let me know ASAP. I'm going to ask the Court to rule on the motion to stay proceedings by June 22.

Please call me if you have any questions or concerns.

-Kevin

Kevin M. Cuddy
STOEL RIVES LLP | 510 "L" Street, Suite 500 | Anchorage, AK 99501
Direct: (907) 263-8410 | Fax: (907) 277-1920
kevin.cuddy@stoel.com | www.stoel.com

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From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Friday, June 12, 2015 4:35 PM
To: Cuddy, Kevin M.
Cc: james.b.gottstein@gottsteinlaw.com
Subject: Motion for Partial Summary Judgment

Hi Kevin,

I have this niggling feeling that I didn't get the right Exhibit for the Memorandum in Support of Plaintiffs Motion for Partial Summary Judgment (Not Extension), June 12, 2015. It is correct at the link.

BTW, I didn't really file today to ruin your weekend—I wanted to file so that mine wouldn't be. I won't object to a short extension(s); I just want to keep things moving.

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THIRD DISTRICT

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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

**LEGISLATIVE AFFAIRS AGENCY'S REPLY IN SUPPORT OF MOTION TO
DISMISS OR IN THE ALTERNATIVE SEVER CLAIMS FOR MISJOINDER**

Apparently recognizing its lack of standing, as alleged in its original Complaint, Plaintiff Alaska Building, Inc. ("Plaintiff") has filed an amended Complaint in an effort to salvage some claim against the Legislative Affairs Agency (the "Agency"). The amended Complaint fares no better. As to Count 1, Plaintiff has no interest-injury

standing because it does not claim to have been harmed by the lease at issue. Plaintiff has no citizen-taxpayer standing because it is not the appropriate plaintiff to litigate the legality of the lease. As to Count 2, the proposed amended Complaint seeks to add a new claim against the Agency, but the amendment is futile and should be dismissed outright. The Agency's action of entering into a lease agreement does not render it liable for any alleged damage purportedly caused by the lessor, a contractor, or any other third-party. Finally, if Count 1 is not dismissed due to Plaintiff's lack of standing, Count 1 should be severed from Count 2 and Plaintiff should be forced to proceed with that case separately.

I. PLAINTIFF LACKS INTEREST-INJURY STANDING FOR COUNT 1.

Plaintiff's entire argument in support of its claimed interest-injury standing is two sentences long.¹ Plaintiff claims that it has a personal stake in the outcome of the controversy because it is seeking a windfall of 10% of any savings the Agency obtains if the lease is invalidated or reformed.² That is not, however, the test for interest-injury standing. As held in *Keller v. French*, a plaintiff lacks interest-injury standing when it alleges no plausible injury to its own interests.³ In order to have standing, a Plaintiff must have "an interest which is adversely affected by the complained-of conduct."⁴ Plaintiff alleges no such adverse effect and no such injury. It does not claim to have been harmed at all by the alleged illegality of the lease. It seeks only a windfall here – not

¹ See Plaintiff's Opposition to Legislative Affairs Agency's Motion to Dismiss or, in the Alternative, to Sever Claims for Misjoinder ("Opp.") at 6.

² See *id.* Plaintiff fails to identify any cognizable theory supporting its requested windfall.

³ 205 P.3d 299, 305 (Alaska 2009).

⁴ *Id.* at 304 (quoting *Alaskans for a Common Language, Inc. v. Kritz*, 3 P.3d 906, 915 (Alaska 2000)).

compensation for any alleged injury. In the absence of an actual injury caused by the alleged illegality of the lease, Plaintiff does not have interest-injury standing to litigate Count 1.

II. PLAINTIFF LACKS CITIZEN-TAXPAYER STANDING FOR COUNT 1.

Plaintiff acknowledges that the Alaska Supreme Court's citizen-taxpayer jurisprudence requires that a plaintiff must establish there is no plaintiff more directly affected by the governmental action who could bring suit.⁵ Surprisingly, however, Plaintiff fails to address or even consider any such entity other than the State. Plaintiff simply declares that the State, acting through the Attorney General, is unable to bring suit against the Agency and therefore Plaintiff must be the appropriate litigant to challenge the lease. Not so. As held in *Ruckle v. Anchorage School District*, which was also a dispute involving public procurement determinations, a taxpayer is less directly affected than a contractor (or potential lessor, in this instance) who was purportedly deprived of a substantial contract by the procurement process.⁶ Plaintiff therefore lacks citizen-taxpayer standing to litigate Count 1 of the Complaint.

In its opening brief, the Agency explained that it complied with the Alaska Legislative Procurement Procedures when it entered into the lease.⁷ The Agency also explained that the Legislature had made a deliberate decision not to require a competitive re-procurement process, contrary to Plaintiff's stated preference. Plaintiff alleges in its

⁵ See Opp. at 7-8.

⁶ 85 P.3d 1030, 1036-37 (Alaska 2004).

⁷ Legislative Affairs Agency's Motion to Dismiss or, in the Alternative, to Sever Claims for Misjoinder ("Motion") at 9-12. Plaintiff does not dispute this.

Complaint that the lease violates the State Procurement Code because it failed to comply with the “normal competitive procurement process” and did not meet certain conditions that would excuse compliance with that process.⁸ Even assuming that Plaintiff is correct that a competitive procurement process was required here, which it is not, the resulting process would have no direct effect on Plaintiff. Instead, some other potential lessors – not Plaintiff – may have been able to secure the lease as part of the competitive re-procurement process. It is those potential lessors who would be more directly affected and may have standing to bring a claim (as in *Ruckle*). Plaintiff does not address these potential lessors at all, even though this was the principal argument in the Agency’s opening brief. As the Agency explained in its opening brief, there is no indication that there is anything limiting these potential lessors from bringing suit.⁹ Plaintiff does not dispute this. “That individuals who are more directly affected have chosen not to sue despite their ability to do so does not confer citizen-taxpayer standing on an inappropriate plaintiff.”¹⁰ Accordingly, Plaintiff is an “inappropriate plaintiff” and lacks citizen-taxpayer standing to bring Count 1 challenging the application of the State Procurement Code.

III. PLAINTIFF’S PROPOSED AMENDED COMPLAINT AGAINST THE AGENCY FOR COUNT 2 SHOULD BE DISMISSED AS FUTILE.

In an effort to avoid complete dismissal of its action, Plaintiff has now named the Agency as a defendant in Count 2 – its negligence claim – by alleging that “[b]y entering

⁸ Complaint ¶¶ 17-21. The proposed amended Complaint makes no change to these allegations.

⁹ See Motion at 12.

¹⁰ *Keller*, 205 P.3d at 303.

into the LIO Project, 716 LLC and [the Agency] caused the damage to the Alaska Building.”¹¹ This Court should reject Plaintiff’s amended complaint as a futile attempt to impose negligence liability on a lessee for the conduct of others.¹²

Plaintiff appears to allege that the Agency caused negligent construction damage to Plaintiff’s property simply by virtue of signing a lease with the lessor, even though Plaintiff does not allege that the Agency had any role in the construction. The Agency, as lessee, owes no duty to Plaintiff for damage allegedly caused by others who were hired by the lessor and owner of the building: 716 LLC.¹³ Plaintiff alleges that the damage to his property resulted from (1) the negligent design, (2) management, or (3) construction (or some combination thereof) of the project.¹⁴ Plaintiff does not, however, allege that the Agency did any of those things. Instead, Plaintiff alleges that defendant Koonce Pfeffer Bettis, Inc., was the architect for the project (i.e., the design).¹⁵ Plaintiff alleges that defendant Pfeffer Development, LLC, was the project manager for the project (i.e., the management).¹⁶ Plaintiff also alleges that defendant 716 LLC was the owner and lessor of the building, was obligated to maintain the party wall and not damage the

¹¹ Proposed amended Complaint ¶ 31.

¹² See *Fomby v. Whisenhunt*, 680 P.2d 787, 790 (Alaska 1984) (“That a dispositive motion has been filed, but not decided, should be grounds for denying amendment where the amendment is seen as a ‘futile gesture’ or as an attempt to plead around an obvious legal roadblock.” (internal footnote omitted)). The Agency reserves its right to seek dismissal of this amended Complaint pursuant to Civil Rule 12(b)(6) if the amendment is not dismissed outright.

¹³ Restatement (Second) of Torts § 362; Restatement (Second) of Torts §421 (lessor of land, who hires contractor to make repairs, is liable for independent contractor’s negligence).

¹⁴ Proposed amended Complaint ¶ 28.

¹⁵ *Id.* ¶ 24.

¹⁶ *Id.* ¶ 25.

Alaska Building through work impacting it, and that 716 LLC hired a general contractor, defendant Criterion General, Inc., to complete the project (i.e., the construction).¹⁷ Plaintiff cannot avoid dismissal of his claim simply by asserting that the Agency's willingness to enter into a lease somehow caused property damage when there are no allegations that the Agency played any role in any of the underlying activity.

Plaintiff does not, for example, allege that the Agency is vicariously liable for the actions of the other defendants because Plaintiff could not, consistent with the requirements of Civil Rule 11, assert that the Agency "retained control" of some independent contractor.¹⁸ Plaintiff does not allege that the Agency took any affirmative actions to hire, supervise, control or manage the contractor or any other party involved in the remodel. Plaintiff does not allege that the Agency so much as swung a hammer in connection with the remodel. In fact, Plaintiff quotes an Access, Indemnity, and Insurance Agreement stating that Criterion has a duty to indemnify and hold harmless the Plaintiff from all damages or losses resulting from the negligent performance of "the contractor, any subcontractor, [or] anyone directly or indirectly employed by any of them."¹⁹ Plaintiff does not allege that the Agency is Criterion's subcontractor or employee. The Agency, as a lessee, cannot be held liable for damage allegedly caused by

¹⁷ *Id.* ¶¶ 16, 23, 26, 29.

¹⁸ *Moloso v. State*, 644 P.2d 205, 210-11 (Alaska 1982).

¹⁹ Complaint at ¶16.

the other defendants when there are no allegations that the Agency hired, managed, or supervised any of them.²⁰

Not only does the Agency, as a lessee, not owe a duty to Plaintiff, but Plaintiff has failed to allege the requisite causal connection. Plaintiff does not allege that the Agency's signing of the lease agreement was negligent or that the Agency owed (or breached) any specific duty to Plaintiff. Plaintiff fails to allege that the Agency's alleged negligence was a legal cause of Plaintiff's harm.²¹ Under Alaska law, to make out a claim for relief based on negligence there must be a "reasonable close causal connection between the conduct and the resulting injury."²² Negligent conduct will be a "legal cause" of a plaintiff's injury if the negligent act was more likely than not a substantial factor in bringing about the injury.²³ Here, however, no negligent act by the Agency is alleged. Further, Plaintiff fails to allege that the mere act of signing a lease agreement was a substantial factor in bringing about the alleged injury, as opposed to the actual affirmative conduct that is alleged for the remaining defendants. There is no causal link between the Agency's contract and the alleged negligent conduct of any of the other defendants.

²⁰ See also e.g., *Guclu v. 900 Eighth Ave. Condominium, LLC*, 81 A.D. 3d 592, 593 (N. Y. 2011) (lessees were not liable for plaintiff's injuries where they did not hire the contractor, or supervise or control the work at the job site that caused the plaintiff's injuries); *Guzman v. L.M.P. Realty Corp.*, 262 A.D. 2d 99 (N.Y. 1999) (a lessee is liable under a labor law statute only where it can be shown that it was in control of the work site, and one test of such control is where the lessee actually hires the general contractor).

²¹ See Restatement (Second) of Torts § 430.

²² *Sharp v. Fairbanks North Star Borough*, 569 P.2d 178, 181 (Alaska 1977) (quoting *State v. Abbott*, 498 P.2d 712, 725 (Alaska 1972)).

²³ *Id.*

If Plaintiff's claim were allowed to stand, every tenant or lessee could be held liable for damage caused during a remodel since the remodel would not have occurred "but for" the tenant or lessee's commitment to rent or lease the premises. Plaintiff's attempt to add the Agency as a defendant to Count 2 is futile and should be disregarded.

IV. IN THE ALTERNATIVE, SEVERANCE IS APPROPRIATE HERE.

If this Court does not grant the Agency's motion to dismiss, Count 1 should be severed from the remainder of the case. Despite Plaintiff's claim that Count 1 is against the Agency and Defendant 716 LLC, the two portions of the proposed Amended Complaint do not arise out of the same transaction or occurrence and there are no common questions of law or fact.²⁴ Count 1 concerns the procurement of the lease, while Count 2 concerns construction work on the building. Count 1 is statutory in nature, while Count 2 is based on common law negligence. It is not enough simply to allege, as Plaintiff does, that both Counts relate to the LIO Project. These are fundamentally different transactions and occurrences – Count 1 focuses on the legality of a lease procurement while Count 2 relates to tort claims for some later work performed.

Moreover, Plaintiff's argument that it should not be required to file a separate case to proceed against the Agency after this Court severs Claims 1 and 2 fails. When a court severs a claim, it preserves the identity of an action, but requires a plaintiff to file a separate action to proceed with the severed claim.²⁵ Therefore, the Agency's Proposed

²⁴ Civil Rule 20(a).

²⁵ See e.g., *Mehlenbacher v. DeMont*, 103 Wn. App. 240, 245, 11 P.3d 871 (2000) (after holding that the claims arose from different transactions and occurrences and that there

Order is proper and this Court should sever Count 1 from Count 2 if the Court declines to dismiss Count 1 in its entirety.

DATED: June 19, 2015.

STOEL RIVES LLP

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

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(Attorneys for Def/Criterion General, Inc.)

were no common issues of law or fact, the trial court ordered the claim at issue to be severed and the plaintiffs to file a separate action to proceed with the severed claim).

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



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THIRD DISTRICT

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7 Attorney for Defendant Criterion General, Inc.

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

10 ALASKA BUILDING, INC., an Alaska
11 corporation,
12 Plaintiff,

13 v.

14 716 WEST FOURTH AVENUE LLC,
15 KOONCE PFEFFER BETTIS, INC., d/b/a
16 KPB ARCHITECTS, PFEFFER
17 DEFELOPMENT, LLC, LEGISLATIVE
18 AFFAIRS AGENCY, and CRITERION
19 GENERAL, INC.,
20 Defendants.

CASE NO. 3AN-15-05969CI

21 **DEFENDANT CRITERION GENERAL'S NON-OPPOSITION**
22 **TO DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S**
23 **MOTION TO SEVER CLAIMS FOR MISJOINDER**

24 Defendant Criterion General, Inc., does not oppose defendant Legislative Affairs
25 Agency's Motion to Sever Claims for Misjoinder.

26 //

//

d

1 DATED this 17th day of June, 2015.

2 SCHEER & ZEHNDER LLP

3
4 By *Blhe Call*

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13 **CERTIFICATE OF SERVICE**

14 I certify under penalty of perjury under the laws of the State of Alaska, that the
15 following is true and correct:

16 I am employed by the law firm of Call & Hanson, P.C.

17 At all times hereinafter mentioned, I was and am a citizen of the United States of
18 America, a resident of the State of Alaska, over the age of eighteen (18) years, not a party to
19 the above-entitled action, and competent to be a witness herein.

20 On the date set forth below I served the documents to which this is attached, in the
21 manner noted on the following persons:

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
<u>Counsel for Plaintiff</u> James B. Gottstein Law Offices of James B. Gottstein 406 G Street, Suite 206 Anchorage, AK 99501	<input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via E-Mail <input type="checkbox"/> Via Overnight Mail

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
<u>Counsel for Defendant</u> <u>716 West Fourth Avenue LLC</u> Jeffrey W. Robinson Ashburn & Mason P.C. 1227 W. 9th Avenue, Suite 200 Anchorage, Alaska 99501-5914	<input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via E-Mail <input type="checkbox"/> Via Overnight Mail
<u>Counsel for Defendant</u> <u>Pfeffer Development, LLC</u> Cynthia L. Ducey Delaney Wiles 1007 W. 3rd Avenue, Suite 400 Anchorage, AK 99501	<input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via E-Mail <input type="checkbox"/> Via Overnight Mail
<u>Counsel for Defendant</u> <u>Legislative Affairs Agency</u> Kevin M. Cuddy Stoel Rives LLP 510 L Street, Suite 500 Anchorage, AK 99501	<input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via E-Mail <input type="checkbox"/> Via Overnight Mail
<u>Counsel for Defendant</u> <u>Koonce Pfeffer Bettis, Inc. d/b/a</u> <u>KPB Architects</u> Daniel T. Quinn Richmond & Quinn 360 K Street, Suite 200 Anchorage, Alaska 99501	<input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via E-Mail <input type="checkbox"/> Via Overnight Mail

DATED this ¹⁷ 16th day of June, 2015, at Anchorage, Alaska.



 Mona Schultz, Legal Secretary

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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

~~[PROPOSED]~~ ORDER GRANTING DEFENDANT LEGISLATIVE AFFAIRS
AGENCY'S MOTION TO STAY DISCOVERY

THIS COURT, having reviewed Defendant Legislative Affairs Agency's (the "Agency") Motion to Stay Discovery, any opposition and/or responses thereto, and being duly advised in the premises, this Court finds and ORDERS as follows:

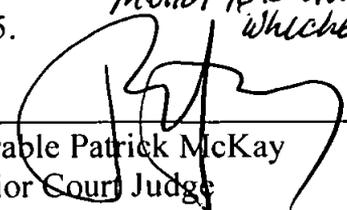
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On March 31, 2015, Plaintiff Alaska Building, Inc. ("Plaintiff"), filed a Complaint for Declaratory Judgment and Specific Performance (Complaint) against Defendants 716 West Fourth Avenue LLC, Koonce Pfeffer Bettis, Inc., d/b/a KPB Architects, the Agency, and Criterion General, Inc. On May 27, 2015, the Agency filed a Motion to Dismiss Plaintiff's Complaint for lack of interest injury and citizen-taxpayer standing. The motion is currently pending before this Court.

Good cause exists for granting a stay because (1) the motion, if granted, would dispose of the entire case against the Agency, thereby eliminating the expense of discovery and the use of judicial resources resolving discovery disputes; (2) the motion raises issues of law that do not require additional discovery; and (3) the motion was filed sufficiently in advance of current discovery deadlines such that a stay will not unfairly prejudice any party. Accordingly, a stay of discovery is appropriate under the court's inherent authority.

IT IS THEREFORE ORDERED that Defendant Legislative Affairs Agency Motion to Stay Discovery is GRANTED, *for no more than 45 DAYS FROM THIS ORDER, or until motion to dismiss concludes whichever is earlier date*

DATED this 17th day of June, 2015.


Honorable Patrick McKay
Superior Court Judge

I certify that on 6/17/15 a copy of the following was mailed faxed/ hand-delivered to each of the following at their addresses on record: James Gottstein / Jeffrey Robinson
Daniel Quinn / Blake Call / Mark Scheer
Kevin Cuddy / Cynthia Ducey
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I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).



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

ALASKA BUILDING, INC., an Alaskan
corporation,

Case No.: 3AN-15-05969CI

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

DENYING

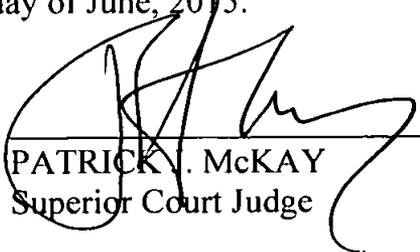
~~[PROPOSED]~~ ORDER ~~GRANTING~~ EXPEDITED CONSIDERATION
(of Defendant Legislative Affairs Agency's Motion for Stay of Proceedings)

The Defendant's Motion for Expedited Consideration of its Motion for Stay of Proceedings is hereby ~~GRANTED~~. *Denied. LAA has not complied with ARCP 77(g) 4. (B)*

~~IT IS FURTHER ORDERED~~ that any opposition to Defendant's Motion for Stay of Proceedings shall be filed and served on or before _____, 2015. Any replies will be due by _____, 2015.

JUN 15 2015

DATED at Anchorage, Alaska this 16th day of June, 2015.


PATRICK J. MCKAY
Superior Court Judge

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This certifies that on June 15, 2015, a true and correct copy of the foregoing was served via first class mail on:

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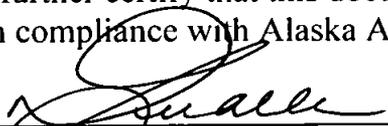
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I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).


Debby Allen, Practice Assistant

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

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**LEGISLATIVE AFFAIRS AGENCY'S REPLY BRIEF IN SUPPORT OF ITS
MOTION TO STAY DISCOVERY**

Plaintiff Alaska Building, Inc. ("Plaintiff") concedes that the Court has broad discretion to stay discovery until the pending motion to dismiss is adjudicated.¹ Plaintiff

¹ See Plaintiff's Opposition to Legislative Affairs Agency's Motion to Stay Discovery ("Opp.") at 1.

also does not dispute that a stay would prevent the wasting of the parties' and the Court's time and effort if the motion to dismiss is granted. Plaintiff also does not assert that any discovery is required to address the pending dispositive motion. Instead, Plaintiff raises three flawed arguments – with no legal support – for why discovery should not be stayed here. The Legislative Affairs Agency (“Agency”) addresses each in turn.

A. Plaintiff Prematurely Disputes the Merits of the Agency’s Motion to Dismiss.

Plaintiff argues that it expects to defeat the Agency’s motion to dismiss for lack of jurisdiction, and therefore no stay is required.² Plaintiff is wrong on the merits, but Plaintiff’s argument also misses the point. The only issue before the Court here is whether discovery should be stayed as against the Agency while this potentially dispositive pure legal issue is litigated. Plaintiff’s arguments here are essentially identical to the arguments rejected in *Law Project for Psychiatric Rights v. State*.³ There the plaintiff argued that the defendant’s standing argument was “unmeritorious” and therefore discovery should proceed.⁴ Here, Plaintiff argues that the Agency’s standing argument “lacks merit” and therefore discovery should proceed.⁵ Whether or not the Agency’s motion is meritorious will be determined shortly, but that issue is independent of the current motion to stay discovery. As with *Law Project for Psychiatric Rights*, this Court can avoid the wasting of the parties’ time and money (and the Court’s resources) in

² See Opp. at 4-5. The Agency vehemently disagrees with Plaintiff’s assertion that Plaintiff has standing, but that issue will be addressed in connection with the briefing on the Agency’s motion to dismiss.

³ 239 P.3d 1252 (Alaska 2010). Notably, Mr. Gottstein was also counsel for the plaintiff in that case and is raising the same discredited argument here.

⁴ *Id.* at 1256.

⁵ Opp. at 5.

addressing discovery issues that would be irrelevant if the Agency's motion to dismiss is granted. That is precisely what happened in *Law Project for Psychiatric Rights* when the motion to dismiss was granted, vindicating the decision to stay discovery there. The same rationale applies here and the same result should follow.

B. Plaintiff's Baseless Suspicion Does Not Justify Wasteful Discovery.

Plaintiff flatly states its unsupported belief that the lease at issue is the "result of corruption" and then insists that the "main purpose" of the motion to stay is to "conceal" this alleged "corruption."⁶ There are two problems with Plaintiff's argument: first, Plaintiff does not even attempt to offer any factual support for its hyperbole and conjecture; and second, it is wrong. Plaintiff's only "evidence" in support of its "corruption" claim is a letter that Plaintiff's counsel wrote to the Governor.⁷ In other words, Plaintiff asserts that there was corruption because Plaintiff said so. The reality is that the Agency is seeking this stay of discovery to avoid wasting the parties' time and money as well as the Court's resources on potentially unnecessary discovery. This is entirely standard when a dispositive motion is pending on a pure legal issue.⁸ As Plaintiff notes, the State is coping with budget difficulties and the Agency would prefer not to waste resources unnecessarily on discovery when the Agency's motion to dismiss may very well end the case as to the Agency. Plaintiff's unsupported conjecture is no reason to compel potentially wasteful and unnecessary discovery.

⁶ *Id.* The Agency categorically denies Plaintiff's fanciful allegations.

⁷ *See id.* at 5 and Exhibit C attached thereto.

⁸ *Law Project for Psychiatric Rights*, 239 P.3d at 1254; *Guerrero v. Alaska Hous. Fin. Corp.*, 6 P.3d 250, 253 (Alaska 2000); *Lythgoe v. Guinn*, 884 P.2d 1085, 1086 (Alaska 1994).

C. Plaintiff Will Not Be Prejudiced by a Stay of Discovery.

Plaintiff fails to articulate how or why it would be unfairly prejudiced by a stay of discovery as to Count 1 of the Complaint here. The case has barely begun. Trial is set for August 15, 2016 (roughly 14 months away). The final date to serve written discovery is April 11, 2016 (roughly 10 months away). Plaintiff speculates that it could potentially be prejudiced by a delay if it is required to take some action “at the last minute,” but it is difficult to imagine how that scenario could occur here where all relevant deadlines are many months away. There is plenty of time for the Court to address the Agency’s motion to dismiss and, if that motion is unsuccessful, for Plaintiff to secure whatever discovery it needs to prosecute its novel claim.

In addition, Plaintiff remains free to pursue discovery from the remaining four defendants as to Count 2 of the Complaint (regarding alleged physical damage to Plaintiff’s property), which further diminishes any claimed prejudice here. Plaintiff can focus its attention on the one claim where it actually claims to have suffered some injury. Avoiding the distraction of discovery concerning the unrelated claim Count 1 would likely benefit Plaintiff.

Finally, Plaintiff speculates that if the motion to dismiss on jurisdictional grounds is denied the Agency might file another motion to dismiss for failure to state a claim (and might seek to stay discovery). Plaintiff’s speculation is no reason to allow potentially wasteful discovery to proceed now. Among other things, the Court would always have the ability to deny any subsequent request for a stay if it believed that Plaintiff would suffer some unfair prejudice from that delay. Here, however, trial is more than a year

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away and the case is just getting started. Now is the appropriate time to determine whether Plaintiff's suit against the Agency can even proceed before the parties get mired in potentially wasteful discovery.

D. Conclusion

For the foregoing reasons and those described in the Agency's original motion, the Court should stay discovery as to Count 1 of the Complaint.

DATED: June 15, 2015

STOEL RIVES LLP

By: 

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

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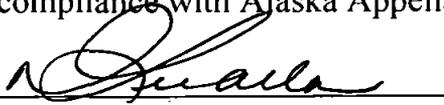
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

LEGISLATIVE AFFAIRS AGENCY'S MOTION TO STAY PROCEEDINGS

I. INTRODUCTION

Defendant Legislative Affairs Agency (the "Agency") moves, pursuant to Alaska Rule of Civil Procedure 77, to stay proceedings with respect to Count 1 until this Court resolves its pending Motion to Dismiss. A stay is warranted pending resolution of the

potentially dispositive standing issue presented by the Agency in its Motion to Dismiss. The Agency requests this stay because standing is a threshold issue that should be resolved before consideration of the claims' merits, for reasons of judicial economy and conservation of party resources, and because the granting of a stay will not prejudice Plaintiff Alaska Building, Inc. ("Plaintiff").

II. BACKGROUND

On March 31, 2015, Plaintiff filed a Complaint for Declaratory Judgment and Specific Performance (Complaint) against Defendants 716 West Fourth Avenue LLC, Koonce Pfeffer Bettis, Inc., d/b/a KPB Architects, the Agency, and Criterion General, Inc.¹ On May 27, 2015, the Agency filed a Motion to Dismiss Count 1 of Plaintiff's Complaint for lack of standing.² Along with its Motion to Dismiss, the Agency filed a motion to stay discovery as to Count 1 in light of the pending potentially dispositive motion to dismiss. The Agency noted that allowing discovery to proceed as to Count 1 could well be a waste of the parties' and the Court's time and resources if the Court determined that Plaintiff lacked standing to bring its claim in Count 1. Both motions are currently pending before this Court and will be ripe for decision shortly.

On June 12, Plaintiff filed its opposition to the Agency's Motion to Dismiss and simultaneously filed a motion for partial summary judgment as to Count 1 of the Complaint.

¹ See Complaint.

² In the alternative, the Motion asks this Court to sever Plaintiff's claims for misjoinder as the two portions of the Complaint relate to different parties and different claims that have no common set of facts.

III. ARGUMENT

This Court should stay proceedings until the Court addresses the standing issue raised by the Agency. The Court is authorized to stay proceedings as appropriate. “[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”³

A stay pending a motion to dismiss on standing grounds is especially appropriate. Standing is a “threshold matter” that courts must resolve before proceeding to the merits.⁴ “The requirement that jurisdiction be established as a threshold matter . . . is ‘inflexible and without exception.’”⁵ Before this Court can proceed to address any of Plaintiff’s claims, it should consider whether it even has subject matter jurisdiction to hear those claims.⁶ Because in the Agency’s view, significant obstacles exist as to Plaintiff’s

³ *Landis v. N. Am. Co.*, 299 U.S. 248, 254, 57 S. Ct. 163, 81 L. Ed. 153 (1936); *see also Stone v. Immigration and Naturalization Service*, 514 U.S. 386, 411, 115 S. Ct. 1537, 131 L. Ed. 2d 465 (1995) (“[W]e have long recognized that courts have inherent power to stay proceedings”).

⁴ *Neese v. Lithia Chrysler Jeep of Anchorage, Inc.*, 210 P.3d 1213, 1221-22 (Alaska 2009) (holding that the standing inquiry should always precede class certification); *Alaskans for a Common Language, Inc., v. Kritz*, 3 P.3d 906, 911 (Alaska 2000) (“Normally we review standing as a threshold issue.”); *Adams v. Pipeliners Union 798*, 699 P.2d 343, 346 (Alaska 1985) (“the threshold issue to Adam’s appeal is whether he has standing to bring it”).

⁵ *Ruhrgas Ag v. Marathon Oil Co.*, 526 U.S. 574, 577 (1999) (quoting *Steel Co., v. Citizens for a Better Env’t*, 523 U.S. 83, 94-95 (1998)); *see also Grupo Dataflux c. Atlas Global Group, L.P.*, 541 U.S. 567, 593 (2004) (“We have . . . urged counsel and district courts to treat subject matter jurisdiction as a threshold issue for resolution” (quoting *United Republic Ins. Co. v. Chase Manhattan Bank*, 315 F.3d 168, 170-71 (2d Cir. 2003))).

⁶ *Myers v. Robertson*, 891 P.2d 199, 203 (Alaska 1995) (“In discussing the standing requirement, [the Supreme Court of Alaska] has stated that an Alaska court has no

standing to challenge the Agency's actions, ample justification exists for this Court to stay proceedings as to Count 1 until it resolves the jurisdictional concern that Plaintiff does not have standing to bring its claim against the Agency.

Imposing a temporary stay as to Count 1 in the instant case conserves judicial and party resources and poses no burden to Plaintiff. When a court grants a stay, it must "weigh competing interests and maintain an even balance."⁷ Count 1 of this case can be resolved without considering the merits of Plaintiff's partial summary judgment motion against the Agency. The Motion to Dismiss is potentially dispositive of Count 1. The future Court and party resources that will be expended in litigating Count 1 will be entirely wasted if, as the Agency reasonably believes, the Motion to Dismiss is granted and Count 1 is dismissed in its entirety. A stay is appropriate to avoid this needless waste of the Court's and parties' time and efforts.

Moreover, Plaintiff will not be prejudiced by the requested stay. The stay is temporary in nature and would end with the Court's ruling on the Agency's Motion to Dismiss. The Agency filed its Motion to Dismiss at the very outset of these proceedings, and there is ample time for the Court to resolve the pending Motion to Dismiss without interfering with discovery and other deadlines, which are many months away. Thus, even if the Court decides that Plaintiff has standing to bring suit (and it should not), any delay in moving forward with the proceedings will have no unfair prejudice on Plaintiff.

subject matter jurisdiction unless the lawsuit before it presents an actual controversy involving a genuine relationship of adversity between the parties.").

⁷ *Landis*, 299 U.S. at 255; see *Dellinger v. Mitchell*, 442 F.2d 782, 786, n.7 (D.C. Cir. 1971) ("A court has inherent power to stay proceedings in control of its docket . . . after balancing the competing interests.").

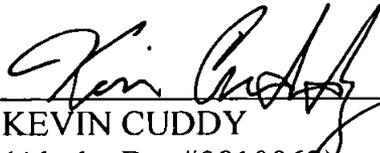
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IV. CONCLUSION

For all the above reasons, the Legislative Affairs Agency respectfully asks that the Court grant this motion and stay proceedings until the Court resolves its pending Motion to Dismiss. When weighed against the fact that a stay will allow the parties to avoid all costs of litigation as to Count 1 until this Court's disposition of the pending Motion to Dismiss, a temporary stay of proceedings is warranted.

DATED: June 15, 2015

STOEL RIVES LLP

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

CERTIFICATE OF SERVICE AND OF FONT

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



Debby Allen, Practice Assistant

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THIRD DISTRICT

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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

**LEGISLATIVE AFFAIRS AGENCY'S MEMORANDUM IN SUPPORT OF
MOTION FOR EXPEDITED CONSIDERATION PURSUANT TO RULE 77(g)(3)**

The Legislative Affairs Agency (the "Agency") requests expedited consideration of its motion to stay proceedings as to Count 1 because, unless that motion is ruled on promptly, the fundamental purpose of the motion to stay will be undermined. The Agency filed its motion to stay proceedings as to Count 1 (as well as its earlier motion to

stay discovery as to Count 1) in the interests of judicial economy and conservation of the parties' resources, since additional discovery or litigation with respect to the merits of Count 1 may be wasted effort if the Court determines that Plaintiff Alaska Building, Inc. ("Plaintiff") lacks standing to bring its claim.

On June 12, 2015, Plaintiff filed a motion for partial summary judgment, asking this Court to rule on the merits of Count 1 of the Complaint. In particular, Plaintiff asked this Court to declare that the Agency's contract with Defendant 716 West Fourth Avenue LLC does not comply with AS 36.30.083(a) and that it does not extend a real property lease.

The Agency filed both a motion to dismiss for lack of standing and a motion to stay discovery as to Count 1 on May 27, 2015. The Agency contends that Plaintiff does not have standing to bring the underlying claim and as a result, potentially unnecessary discovery should be stayed pending this Court's decision on the Agency's motion to dismiss for lack of standing. The same reasoning applies to the Agency's motion to stay proceedings. Plaintiff recently filed its opposition to the Agency's motion to stay discovery and motion to dismiss on June 9 and June 12, respectively. The Agency's replies are due shortly and then those motions will be ripe for decision.

Unless a stay of proceedings is granted as to Count 1, the Agency's response to Plaintiff's motion for partial summary judgment is due on June 29. It is highly likely, in the absence of a stay of proceedings, that the Agency's time for filing a response to the motion for partial summary judgment will run prior to a ruling on the motion to dismiss.

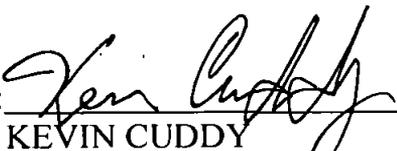
The parties will then have to devote substantial resources to addressing Plaintiff's motion

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for partial summary judgment (and any other pleadings or filings relating to Count 1) despite the fact that Count 1 may be dismissed as a threshold issue before the Court even reaches Plaintiff's other filings relating to Count 1. In order to preserve the utility and value of the motion to stay proceedings – and in furtherance of judicial economy and conservation of the parties' resources – the Court should decide the motion to stay proceedings in advance of the Agency's deadline for responding to Plaintiffs' partial summary judgment motion.

DATED: June 15, 2015

STOEL RIVES LLP

By: 

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

CERTIFICATE OF SERVICE AND OF FONT

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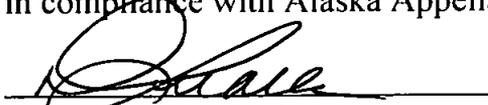
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I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).


Debby Allen, Practice Assistant

1. I am over the age of eighteen and have personal knowledge of the statements contained in this declaration.
2. I am an attorney with the law firm of Stoel Rives, LLP, counsel for Defendant Legislative Affairs Agency ("Agency") in the above-captioned litigation and submit this affidavit in support of Defendant Legislative Affairs Agency's Motion for Expedited Consideration of Defendant Legislative Affairs Agency's Motion for Stay of Proceedings.
3. I have personal knowledge of all facts described herein and affirm all other facts based on my information and belief.
4. Plaintiff served the Agency with a motion for partial summary judgment as to Count 1 on June 12, 2015.
5. The Agency's response to Plaintiff's motion for partial summary judgment will be due by June 29, 2015.
6. The Agency filed a potentially dispositive motion to dismiss Count 1 for lack of standing on May 27, 2015.
7. The briefing on the Agency's potentially dispositive motion is nearly complete.
8. If the Agency is forced to respond to Plaintiff's motion for partial summary judgment, it will likely require the expenditure of significant amounts of attorney time as well as consultations with the client. Plaintiff will then need to file a reply brief. This expenditure of effort and expense may prove to be unnecessary if the Court grants the

Agency's currently pending motion to dismiss Count 1 on the threshold issue of standing.

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

DATED this 15 day of June, 2015.



KEVIN M. CUDDY



Subscribed before me this 15th day of June 2015 in Anchorage, Alaska.



Notary in and for the State of Alaska
My Commission expires: 12/17/16

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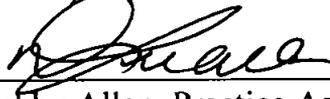
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Debby Allen, Practice Assistant

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THIRD DISTRICT
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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

Case No.: 3AN-15-05969CI

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

**LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR EXPEDITED
CONSIDERATION**

The Legislative Affairs Agency (the "Agency"), by and through their attorney,
Kevin Cuddy, and pursuant to Rule 77(g) of the Alaska Rules of Civil Procedure, hereby
move for an order shortening the time within which its accompanying "Motion for a Stay

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A

of Proceedings” may be heard, considered, and ruled upon, and for an order shortening time when any oppositions are to be filed and served.

The Agency makes this request for expedited consideration because the Agency filed a potentially dispositive Motion to Dismiss on standing grounds pursuant to Civil Rule 12(b)(1) on May 27 which this Court has not yet ruled on. That motion will be ripe for decision shortly. On June 12, Plaintiff Alaska Building, Inc. filed a motion for partial summary judgment with respect to Count 1 that may be rendered moot by the Agency’s Motion to Dismiss. In light of the fact that standing is a threshold issue, the Court should stay the proceedings as to Count 1 until such time that the Court has ruled on the Agency’s Motion to Dismiss. Otherwise, the parties and the Court may be forced to expend resources unnecessarily while addressing Plaintiff’s new motion (and potentially other filings).

This motion is supported by the accompanying Memorandum in Support of Motion for Expedited Consideration; the accompanying Certificate of Counsel; and all other pleadings and documents on file in the above-captioned action.

Civil Rule 77(g)(3) Certification: The date before which a decision is necessary:

June 22, 2015.

Civil Rule 77(g)(4) Certification: The undersigned counsel certifies that he spoke with opposing counsel, Jim Gottstein, on June 12, 2015, about whether he would oppose the instant motion. Mr. Gottstein stated that he does not oppose this request for expedited consideration, as long as he could get expedited consideration of the Agency’s motion to dismiss or sever.

DATED: June 15, 2015

STOEL RIVES LLP

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

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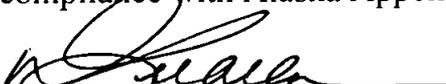
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT
2015 JUN 12 PM 3:40

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

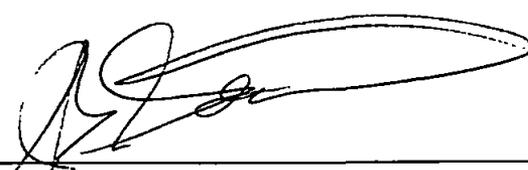
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Case No. 3AN-15-05969CI

**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
(NOT EXTENSION)**

Plaintiff, Alaska Building, Inc. (ABI), hereby moves for partial summary judgment declaring that that certain contract, dated September 19, 2013, by and between defendant Legislative Affairs Agency (LAA) and defendant 716 West Fourth Avenue LLC (716 LLC), titled "Extension of Lease and Lease Amendment No. 3" (LIO Lease), does not comply with AS 36.30.083(a) in that it does not extend a real property lease.

Dated June 12, 2015.


James B. Gottstein, ABA # 7811100

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

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THIRD DISTRICT
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CLERK TRIAL COURTS
BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969CI

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
(NOT EXTENSION)**

Plaintiff, Alaska Building, Inc. (ABI), has moved for partial summary judgment declaring that that certain contract, dated September 19, 2013, by and between defendant Legislative Affairs Agency (LAA) and defendant 716 West Fourth Avenue LLC (716 LLC), titled "Extension of Lease and Lease Amendment No. 3" (LIO Lease), does not comply with AS 36.30.083(a) in that it does not extend a real property lease.

A. Overview

This Motion for Partial Summary Judgment is made because deciding whether the LIO Lease "extends a real property lease," as required under AS 6.30.083(a) is strictly a question of law and should be decided promptly so that the focus can be on the appropriate

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remedy.¹ The reason why this should be decided promptly is the lessor, 716 LLC, is not likely to be able to pay back the rent it has improperly received. Thus, the longer it goes, the more money the State of Alaska will likely lose.

B. Summary Judgment Standard

Under Civil Rule 56(c), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law."

C. AS 36.30.083(a)

AS 36.30.083(a) provides:

(a) Notwithstanding any other provision of this chapter, the department, the Board of Regents of the University of Alaska, the legislative council, or the court system may extend a real property lease that is entered into under this chapter 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.

(Emphasis added).

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¹ AS 36.30.083(a) also requires that the rent be at least 10 percent below the market rental value, but that is a factual issue, unlikely to be resolvable on summary judgment.

D. Undisputed Facts

On September 19, 2013, defendant 716 West Fourth Avenue LLC (716 LLC) and defendant Legislative Affairs Agency (LAA) entered into an agreement on a sole source basis providing for:

- a. Demolition of the then existing Anchorage Legislative Information Office located at 716 West 4th Avenue in Anchorage, Alaska down to its foundation and steel frame,
- b. Demolition of the adjacent old Empress Theatre, located at 712 West 4th Avenue, occupied by the Anchor Pub at that time,
- c. Moving the existing Anchorage Legislative Information Office prior to the demolition of the old Legislative Information Office Building, and
- d. Construction of a new office building for lease as the new Anchorage Legislative Information Office.

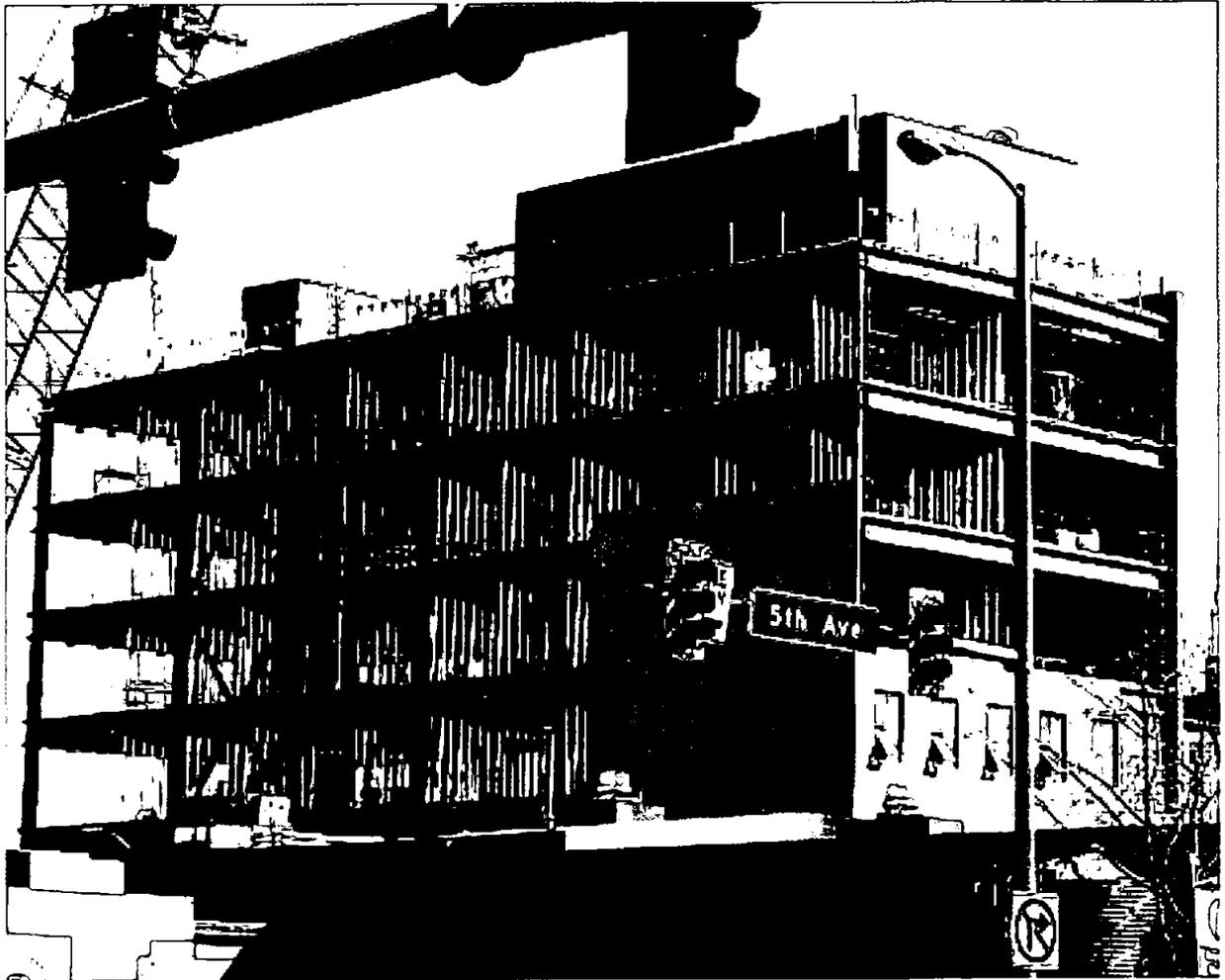
(LIO Lease).²

The Anchorage Legislative Information Office moved out of its space for at least 13 months while the buildings were demolished and the new Anchorage Legislative Information Office was constructed.³

² Paragraphs 1 & 2 of Affidavit In Support Of Plaintiff's Motion For Partial Summary Judgment Re: Not Extension (Supporting Affidavit) and Exhibit 1 thereto.

³ Paragraphs 4 & 5 of Supporting Affidavit and pages 3 and 83 of Exhibit 1, thereto.

The following is a picture of the new Anchorage Legislative Information Office while under construction on April 20, 2014:⁴



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⁴ Paragraph 3 of Supporting Affidavit.

Memorandum in Support of Motion for
Partial Summary Judgment Re: Not Extension

Page 4

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The following is a picture of the part of the new Anchorage Legislative Office building being constructed on the site of the Old Empress Theatre, produced by defendant Criterion General, Inc., in its Initial Disclosures:



E. Argument

The argument is simple. Demolishing two buildings and constructing a new building where the two separate buildings once stood, while the tenant moves out for over a year is not a lease extension.

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Memorandum in Support of Motion for
Partial Summary Judgment Re: Not Extension

Page 5

000169

The first definition of "extension" in Blacks' Law Dictionary, 7th Ed., is "The continuation of the same contract for a specified period." The LIO Lease is not a continuation of the same contract.

In *Crystal Blue Granite Quarries, Inc. v. McLanahan*, 261 Ga. 267, 268 (Georgia 1991) the Court held, "A stipulation intended merely to lengthen the time upon terms and conditions stated in the lease is an extension." The LIO does not merely lengthen the time upon terms and conditions stated in the earlier lease.⁵

In *Brannen/Goddard Co. v. Sheffield, Inc.*, 240 Ga.App. 667, 669 (Georgia App. 1999), where a real estate commission was due for a lease extension, the Court reiterated that "a stipulation intended merely to lengthen the time upon terms and conditions stated in the lease is an extension" and that where the new lease covered both additional and different space and included terms drastically different from those in the original lease was not an extension. The LIO Lease contains drastically different terms than the lease it purports to extend, including adding space.

It seems clear that the LIO Lease does not comply with the plain enough meaning of AS 36.30.083(a) in the context of this case. Alaska's jurisprudence on consulting legislative history was recently summarized as follows in *Heller v. State, Dept. of Revenue*, 314 P.3d 69, 74 (Alaska 2013):

"The objective of statutory construction is to give effect to the intent of the legislature, with due regard for the meaning that the statutory language conveys to others." We give unambiguous statutory language its ordinary and common

⁵ Under AS 36.30.083(a) the rent term must be at least 10% below market.

meaning, but the "plain meaning" rule is not an exclusionary rule; we will look to legislative history as a guide to construing a statute's words. "The plainer the meaning of the statute, the more persuasive any legislative history to the contrary must be."

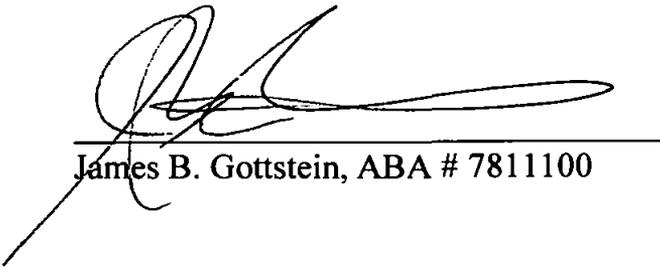
(footnotes omitted). In this case, the statutory language has a plain enough meaning, at least with respect to the facts in this case, and the legislative history seals the conclusion that the LIO Lease does not comply with AS 36.30.083(a).

Exhibit 1, is the legislative history that describes the rationale behind AS 36.30.083(a). The fundamental economic principle is that rental rates in new leases spread the costs of construction, including tenant improvements over the term of the lease (amortization) and that during a lease extension, the landlord does not have those costs and can and often will dramatically reduce the rent for an extension to reflect it having already recovered those costs. The LIO Lease does exactly the opposite. It does not extend the lease within the meaning of AS 36.30.083(a).

F. Conclusion

The LIO Lease does not "extend a real property lease" and therefore Plaintiff's Motion for Partial Summary Judgment to declare that the LIO Lease does not comply with AS 36.30.083(a) should be **GRANTED**.

Dated June 12, 2015.


James B. Gottstein, ABA # 7811100

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Memorandum in Support of Motion for
Partial Summary Judgment Re: Not Extension

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000171

Memorandum

Department of Administration
Office of the Commissioner

To: Representative Tom Anderson
Attention: Josh Applebee

Date: April 13, 2003

From: Kevin Jardell
Assistant Commissioner
Department of Administration

Phone: 465-2200

Subject: Lease Negotiations

Lease extensions under the current law (AS 36.30.083) require a minimum 15% discount from the current lease rate. DOA's proposed change would require a minimum 5% discount from a market rate.

In the past, DOA leases consisted of a constant rental rate throughout the life of the lease. This was unduly costly for the state, since initial construction and tenant improvements (TI) of office buildings are generally financed and amortized only over the initial lease period, not the optional renewal periods. The state was effectively paying multiple times for one-time costs.

Several years ago, DOA changed this practice by requiring lessors to identify up front construction and TI costs from ongoing rental rates and bid them separately. This generally results in declining costs in the option periods, because the rates for option periods no longer include amortized construction and TI costs. A net present value calculation is applied to ensure the state considers the time value of money when awarding leases.

Given this change, we can not expect to gain significant savings in the future under AS 36.30.083. For example:

A lease could be established at a market rate of \$2.20/sf (Class A, downtown Anchorage) for the initial 9 year period of a lease, dropping to \$0.98/sf for each of the two, five year renewal periods. It would be impossible to negotiate a 15% reduction to a lease rate of \$0.98/sf when the market rate for the space is \$2.20/sf.

As more and more older leases are replaced by those with the new cost model, the requirement of a minimum reduction of 15% below the current lease rate will effectively prevent us from achieving any negotiated savings.

KJ/aw

House Logo & Commerce HB 546 file 2004
Justice Judiciary
to be

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

April 14, 2004

3:28 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Carl Gatto, Vice Chair
Representative Nancy Dahlstrom
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 540

"An Act relating to workers' compensation insurance rates; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 545

"An Act relating to the extension under the State Procurement Code of terms for leases for real estate and certain terms for certain state contracts for goods and services; and providing for an effective date."

- HEARD AND HELD

CS FOR SENATE BILL NO. 102(L&C) am(efd fld)

"An Act increasing the amount of revenue received by the state from charitable gaming activities, and relating to taxes on pull-tabs."

- TABLED

PREVIOUS COMMITTEE ACTION

BILL: HB 540

SHORT TITLE: WORKERS' COMPENSATION INSURANCE RATES

SPONSOR(S): LABOR & COMMERCE

that the timelines are a step backwards in the rate approval process. This year the division diligently tried to have rate approvals in sufficient time for employers to access the impacts of rate changes. This year the division was able to provide approximately two months advance notice. Under the scenario in the current legislation, rate approval couldn't occur until December 1, which she didn't believe was sufficient notice for employers to plan. Ms. Hall related that she doesn't intend to stop the legislation. Although the process is fine, it needs to work for all the stakeholders.

MS. HALL informed the committee that the division has a proposal that maintains the spirit of HB 540 in that it allows the hearings. However, the division's proposal does change the timeframes. She requested that the committee provide her the time to work on the proposal so that with the sponsor and the division can develop legislation that will work for everyone.

Number 0288

CRAIG NOOTTVEDT, Alaska National Insurance Company, stated that he is amenable to the proposal by Ms. Hall, although he has some concerns. He noted his agreement that Ms. Hall's proposal attempts to meet the change in the system. The hope is to have a day to work on this with Ms. Hall in order to negotiate a quality piece of legislation.

CHAIR ANDERSON announced that HB 540 would be held over in order for the parties to work on a compromise.

HB 545-STATE REAL PROPERTY LEASE EXTENSIONS

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 545, "An Act relating to the extension under the State Procurement Code of terms for leases for real estate and certain terms for certain state contracts for goods and services; and providing for an effective date."

Number 0417

VERN JONES, Chief Procurement Officer, Division of General Services, Department of Administration, explained that currently the procurement code allows the [division] to negotiate extensions of office space leases for up to 10 years in exchange for rent reductions. This legislation would increase the state's ability to negotiate such by changing the current required threshold from a 10 to 15 percent reduction off the

existing lease rate to a 5 percent reduction from the current market rate for the area. Mr. Jones informed the committee that existing statutory restrictions on the negotiations have hampered [the division's] ability to negotiate lease extensions with the lessors. "The increase in the real estate market in Alaska combined with the way we structure our leases, often makes a 15 percent reduction from existing rental rates unattainable," he explained. Therefore, tying the reduced rate to a percentage of the current market is a more reasonable approach that he believes will allow the negotiation of reduced rates more frequently while avoiding the lengthy and expensive re-procurement process. (Such an approach will avoid the costs and disruption of moving state offices and large numbers of state employees.)

MR. JONES turned attention to a chart, which illustrated that lease costs consist of several elements, including lessor profit, ongoing lessor costs, and the upfront construction and tenant improvement costs. (He explained that the upfront construction and tenant improvement costs are generally financed and amortized over the initial firm term period of a lease.) (The lessor is afforded an opportunity to bid a different price during the option periods of a lease. Generally, there is a dramatic decrease in prices after the initial firm period is over.) A rate below the already-reduced option year cost is often unattainable [to the division] as opposed to a percentage below a market rate, which many more lessors are willing to negotiate. Mr. Jones said that the more often these submarket rates can be negotiated and avoid the costs of re-procurement and moving expenses the more the state saves. Mr. Jones mentioned that HB 545 would also allow extensions for other nonlease contracts.

Number 0652

REPRESENTATIVE ROKEBERG commented that the changes in the market have driven the need for some modification to this successful program. He inquired as to the methodology that would be used in order to establish the prevailing market rates.

MR. JONES answered that in the large metropolitan area of Anchorage there are independent third-party market watch services available. However, the difficulty is in regard to the rural areas for which the bill isn't specific. Mr. Jones related that the intent is to develop as many "comps" as available in order to determine what the market would be in that

area. In some cases, [the state] is the only lessor in an area, which means that [the state] may set the market.

REPRESENTATIVE ROKEBERG pointed out that in area such as Anchorage one can utilize a broker's opinion of value (BOV) as opposed to an appraisal done by a licensed real estate appraiser, which is the more costly of the two. However, he acknowledged that an appraisal by a licensed real estate appraiser lessens the ability for any mischief. Representative Rokeberg said that he was concerned with regard to accomplishing a baseline. A 5 percent reduction isn't a large margin, he noted. The existing statute is clear because there is a baseline of the existing rental rate. However, he recognized that the market conditions in an up market don't allow for "those types of things typically" unless the landlord has the "sunk" costs recovered or amortized costs of the tenant improvement allowances. "Presumably, there would be an incentive of an existing landlord to bargain for a reduced rate if he has recovered those costs. Is that not the case sometimes," he asked.

MR. JONES confirmed that is the case sometimes. However, in a market such as the current one 15 percent below an existing rate is often impossible because [the division and the lessors] feel the existing law is too restrictive.

Number 0868

REPRESENTATIVE ROKEBERG informed the committee that part of the reason for the aforementioned is the Little Davis-Bacon Act, which requires any refitting to be done under the prevailing wage laws. Therefore, the costs to the landlord are increased such that it's above the prevailing market rate. Representative Rokeberg asked whether the communications or "CAT 5" type wiring requirements have any impact on the space acquisition costs.

MR. JONES acknowledged that [the communications requirements] are a substantial cost. However, he opined that it seems to be turning into an industry standard.

REPRESENTATIVE ROKEBERG highlighted that recently the legislature renewed its lease at the Anchorage Legislative Information Office. In that case, the legislature agreed to capitalize and pay for the costs [for refitting]. He recalled that the original performer for the bid was about \$180,000, which, after going out to bid, was lowered to about \$125,000. The aforementioned was merely the cost for rewiring.

Representative Rokeberg reiterated his discomfort with the way in which the prevailing market rate is established when dynamics are present that provide the incumbent landlord a significant advantage.

MR. JONES, in response to Chair Anderson, said that he could work on addressing Representative Rokeberg's concerns.

REPRESENTATIVE ROKEBERG turned attention to Section 1(a)(2) of the legislation. He questioned why the [state] would want to extend a contract for goods or services up to a maximum of five years "if a minimum cost savings of at least 5 percent can be achieved on the price of goods or services established in the contract." He further questioned why the aforementioned would be chosen rather than go out in the market and re-bid it.

MR. JONES specified that the [language in Section 1(a)(2)] was included as an additional tool, and he didn't anticipate widespread use of it. Mr. Jones related that [the division] is in the process of brainstorming with regard to developing ideas to reduce the costs of goods and services as well as the leases. From a procurement standpoint, the first option is always to go out and obtain competition in the market place. The approach under discussion would probably only be used when it is felt that the open market would result in higher costs. Mr. Jones said that since [the division] doesn't have experience in the approach [laid out in Section 1(a)(2)], he could only relate that the ability to negotiate leases will be used much more often than the ability to negotiate procurement contracts.

REPRESENTATIVE ROKEBERG asked if the typical contract for goods or services is five years for procurement of materials and services.

MR. JONES said that often there are long-term contracts for items such as copiers and fax machines or office supplies. However, those are shorter contracts and less frequent than are the leasing contracts.

REPRESENTATIVE ROKEBERG said that he did agree with the department with regard to the lease premise. However, he maintained his concern with the other option that must show only a 5 percent cost savings because of the substantial opportunity for mischief.

MR. JONES said that it's not the intent to do mischief. Furthermore, 5 percent was utilized as a reasonable starting

point and [the division] isn't married to it. In fact, the contract for goods or services is the lesser part of this legislation. If the committee is uncomfortable with the 5 percent in Section 1(a)(2), the [division] is amenable to increasing the percentage or removing it altogether.

Number 1216

REPRESENTATIVE ROKEBERG, with regard to the leasing contract, inquired as to reallocation costs and other costs that would be incurred. He also asked if there are any examples that illustrate the 5 percent may have saved the [department] money.

MR. JONES informed the committee that moving costs are generally estimated at \$1 per foot. Tenant improvements and upfront construction are generally substantial for a large-size lease. There are also telephone relocations and CAT-5 cables are expensive. He said he could provide the committee with specific numbers later. Furthermore, the disruption of a relocation is difficult to quantify. He noted that there are other things, such as the changes required for letterhead, business cards, and signage, that generate costs. With regard to the 5 percent, Mr. Jones reiterated that it's just an idea and [the division] has no particular plans for it. In virtually every aspect of the business in General Services, the division has attempted to develop ways to cut costs.

Number 1350

REPRESENTATIVE ROKEBERG noted that HB 545 has a House Judiciary Standing Committee referral. Although there are some savings to be had with this legislation, he requested that the administration develop a tighter definition with regard to establishing the prevailing market rates. He further requested that the administration review the concept embodied in Section 1(a)(2) in order to develop a better argument for its need.

MR. JONES said that he would have the aforementioned done by Friday.

CHAIR ANDERSON announced that HB 545 would be held over.

SB 102-CHARITABLE GAMING REVENUE/TAXES

CHAIR ANDERSON announced that the final order of business would be CS FOR SENATE BILL NO. 102(L&C) am(efd fld), "An Act increasing the amount of revenue received by the state from

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE
April 16, 2004
3:40 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Carl Gatto, Vice Chair
Representative Nancy Dahlstrom
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Occupational Safety and Health Review Board

Thor R. Christianson - Sitka, Alaska

- CONFIRMATION(S) ADVANCED

Personnel Board

Laura Plenart - Ketchikan

- CONFIRMATION(S) ADVANCED

State Board of Registration for Architects, Engineers, and Land Surveyors

Clifford E. Baker - Kenai
Boyd J. Brownfield - Anchorage
Richard A. Hughes - Fairbanks
Kenneth D. Maynard - Anchorage

- CONFIRMATION(S) ADVANCED

Alaska Labor Relations Agency

Gary P. Bader - Anchorage

- CONFIRMATION(S) HELD

Dennis S. Niedermeyer - Eagle River

- CONFIRMATION(S) ADVANCED

James S. Spalding - Anchorage

- CONFIRMATION(S) HELD

HOUSE BILL NO. 539

"An Act exempting a person who allows a student of the University of Alaska to gain practical work experience with the person while participating in a practicum from vicarious liability as an employer, and exempting the student participating in a practicum from the Alaska Wage and Hour Act and workers' compensation coverage."

- MOVED CSHB 539(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 545

"An Act relating to the extension under the State Procurement Code of terms for leases for real estate and certain terms for certain state contracts for goods and services; and providing for an effective date."

- MOVED CSHB 545(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 540

"An Act relating to workers' compensation insurance rates; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 148

"An Act instructing the State Board of Registration for Architects, Engineers, and Land Surveyors to adopt minimum technical standards relating to the practice of surveying."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 539

SHORT TITLE: UNIV. STUDENT PRACTICUM LIABILITY/WAGES

REPRESENTATIVE GUTTENBERG said he wasn't sure of the effect of such a conceptual amendment. Therefore, he indicated his preference for [forwarding] the legislation without the conceptual amendment. He pointed out that students in practicum situations are often in high risk situations and should be afforded some coverage whether from the [host] employer or the practicum [program] itself.

REPRESENTATIVE ROKEBERG questioned why an employer would host a practicum student, if the employer would face an increased rate [in workers' compensation].

CHAIR ANDERSON inquired as to Mr. Kelly's preference in regard to forwarding the legislation to the next committee of referral or adopting the conceptual amendment.

MR. KELLY related that the university would prefer the [conceptual] amendment as described earlier. However, discussions had led to [Section 3 of the original legislation] being eliminated in Version D. He said he would rather return to discussions with organized labor before reinserting [Section 3 of the original legislation]. Mr. Kelly also agreed with Representative Rokeberg's earlier mention regarding time growing short. Mr. Kelly committed to the committee that he would get back with it regarding the language and if it's a problem, the university will have to go without the legislation this year.

Number 0950

REPRESENTATIVE DAHLSTROM moved to report CSHB 539, Version 23-LS1837\D, Craver, 4/16/04, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 539(L&C) was reported from the House Labor and Commerce Standing Committee.

HB 545-STATE REAL PROPERTY LEASE EXTENSIONS

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 545, "An Act relating to the extension under the State Procurement Code of terms for leases for real estate and certain terms for certain state contracts for goods and services; and providing for an effective date."

Number 0890

VERN JONES, Chief Procurement Officer, Division of General Services, Department of Administration, reminded the committee

that at the last hearing Representative Rokeberg mentioned some concerns, which have been addressed [in the proposed committee substitute (CS)]. The first concern was the vague nature of establishing a market rate for which to base a reduction in rent. The aforementioned concern is addressed on page 1, lines 10-12, which read: "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." With regard to the section addressing the extension of contracts for goods or services, (that) (section) (has) (been) (removed) (in) (the) (proposed) (CS) (and) (its) (title.) (Therefore,) (the) (proposed) (CS) (deals) (strictly) (with) (extensions) (of) (real) (estate) (or) (office) (space) (leases.)

Number 0815

REPRESENTATIVE ROKEBERG moved to adopt CSHB 545, Version 23-LSGH2150\D, Bannister, 4/15/04, as the working document. There being no objection, Version D was before the committee.

REPRESENTATIVE ROKEBERG noted that [Version D] no longer includes the "brother-in-law section". He also noted that Version D references the court system on page 1, line 7, which the drafter indicated may be a separation of powers issue [because] the legislature has granted to the judicial branch the ability to have its own procurement code. He related that he has checked with the judicial branch, which has related its support of this legislation and lack of concern with regard to the possible separation of powers issue.

REPRESENTATIVE ROKEBERG said he has only one remaining concern, which is the [cost savings] of 5 percent below the market rental value of the real property. The aforementioned is the trigger of the statute. Representative Rokeberg recalled that the original statute allows an extension [when there are cost savings of] 10 percent and [the lessor] agrees to make modifications to comply with the Americans with Disabilities Act of 1990 (ADA) or [when there are cost savings of] 15 percent below the current rate in the lease without ADA. He explained that the change [encompassed in Version D] reflects fundamentally higher market values and the prevailing rates at the time, and therefore has universal applicability. By going to the 5 percent at a higher barrier, it seems that it would be appropriate to have a 10 percent [barrier] in order to prevent potential mischief.

CHAIR ANDERSON passed the gavel to Vice Chair Gatto.

MR. JONES agreed, but noted that leases that aren't ADA compliant would be an exception. Therefore, it would generally be [a cost savings of] 15 percent, which he viewed as too high. He opined the importance of the rate being tied to a reduction of the market value rather than the existing rates paid. It was thought that 5 percent is reasonable. "But that in itself, isn't as critical as tying it to the market rate," he stated.

REPRESENTATIVE ROKEBERG agreed. He posed a situation, what he indicated to be a typical situation, in which there is a \$.02 per square foot rental rate. In such a situation, 5 percent would only be \$.10 per square foot. Representative Rokeberg asked if Mr. Jones felt that 10 percent along with the market rate barrier would be workable.

MR. JONES responded that 10 percent would be better than the current statute.

REPRESENTATIVE ROKEBERG pointed out that this would allow the department to move forward with a sole source type contract, and he expressed the need to avoid the appearance of any noncompetitive type of acquisition or continuation of lease.

MR. JONES said that 10 percent seems fully reasonable and achievable.

Number 0465

REPRESENTATIVE ROKEBERG moved that the committee adopt the following amendment:

Page 1, line 9;
Delete "five"
Insert "ten"

REPRESENTATIVE CRAWFORD objected for discussion purposes. Representative Crawford said that if the market continues as it is, it would seem to make sense. However, if the market becomes "over built" and demand falls to the level of the 1980s, he questioned what would happen with a 10-year lease. He asked if in such a situation, any negotiation could happen [when the market changes].

REPRESENTATIVE ROKEBERG pointed out that the legislation specifies "up to ten years", and therefore one could have a one-year lease and this would still work. He explained:

What we're doing here is going away from looking at the ... baseline number, currently is the current lease value. What we're doing is changing to the market value. So, that would allow you to go into the market For example, ... if you were renting space for \$1.00 a foot and the market was now \$2.00 a foot, under the current statute you couldn't stay there because the guy couldn't afford to lower your rent. That means you have to go out and rebid it so ... you know you're going to end up paying the \$2.00 and you couldn't extend where you were, even for \$1.10 because of the current statute. This would allow you to renew it at anywhere below that market rate, at least 10 percent below it and stay where you're at so that you could gain the savings. So it's a much better standard.

REPRESENTATIVE ROKEBERG, in further response to Representative Crawford, related that in a down market the differential would be "squeezed" because the prevailing rate would be declining. However, the percentage wouldn't go down with it. He opined that typically in commercial real estate quotations of valuations will occur rather than specifics. "It's actually going to require the department to get a specific, single quote now," he stated. "I think you need to have enough of a distinction to grant you the sole source capability," he opined.

Number 0229

REPRESENTATIVE CRAWFORD removed his objection. [The conceptual amendment was treated as adopted.]

VICE CHAIR GATTO asked if the "real estate broker's opinion of the rental value" and "an appraisal of the rental value" are considered of equal value.

REPRESENTATIVE ROKEBERG, speaking as a real estate broker, replied yes, and added that real estate brokers are a lot cheaper. In a major commercial building, to obtain a full appraisal could be extremely expensive and not necessarily appropriate. "Having a broker's opinion of value ... would be more consistent with testing and providing a defensible prevailing market rate for the purposes of the statute," he said.

REPRESENTATIVE LYNN, as an associate broker, agreed with Representative Rokeberg.

VICE CHAIR GATTO surmised that although the language [on page 1, lines 10-12] allows either, it seems there will be a conflict later regarding who will insist on the more expensive appraisal.

REPRESENTATIVE ROKEBERG remarked that with a 30,000 square foot facility with a five- to ten-year deal, it might warrant an appraisal due to the scope and dollar amount of the project. The intention of the CS, he opined, is to provide the department flexibility to call for a broker's opinion versus an appraisal depending upon the scope of the project.

VICE CHAIR GATTO surmised that whether the market goes up or down, the existing value will be relied upon when there is a lease extension.

REPRESENTATIVE ROKEBERG replied yes and likened it to the price of oil going up and down.

TAPE 04-44, SIDE A

VICE CHAIR GATTO further surmised that whether [the market] goes up or down, the ability to extend the lease is based on the existing value. He asked if this legislation guarantees the right to extend the lease.

REPRESENTATIVE ROKEBERG explained that the legislation allows the Department of Administration to enter into negotiations and an agreement for a lease extension with existing premises if a bargain can be made below the prevailing market rate. In further response to Vice Chair Gatto, Representative Rokeberg confirmed that he would like [the bargain] to be at least 10 percent [below the prevailing market rate] otherwise it would need to go out to market. He noted that (there is a danger with sole sourcing, and therefore the incentive needs to be sufficient enough to avoid it.)

(VICE CHAIR GATTO recalled from a prior hearing that moving expenses, rewiring, equipment replacement, and down time are all significant issues [to consider] for a lease extension.)

Number 0142

REPRESENTATIVE ROKEBERG related that under the current procurement provisions, unless the standard is met, [a lease extension] would have to go out to bid.

MR. JONES informed the committee that he just received a call from the director of Libraries informing him that the facility [lease] in Anchorage is due to expire. The current cost of \$1.25 is being offered under an extension while the prevailing market rate is around \$2.00 not to mention the costs encountered in a move.

Number 0199

REPRESENTATIVE DAHLSTROM moved to report CSHB 545, Version GH2150\D, Bannister, 4/15/04, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 545(L&C) was reported from the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:20 p.m.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

April 23, 2004
2:12 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson, Vice Chair
Representative Dan Ogg
Representative Ralph Samuels
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

Representative Jim Holm

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 309(JUD) am
"An Act relating to testing the blood of prisoners and those in
custody for bloodborne pathogens."

- MOVED HCS CSSB 309(JUD) OUT OF COMMITTEE

CONFIRMATION HEARING

Board of Governors of the Alaska Bar

Joseph N. Faulhaber - Fairbanks

- CONFIRMATION ADVANCED

HOUSE BILL NO. 551.

"An Act relating to the issuance of teacher certificates to and
revocation of teacher certificates of persons convicted of
felony drug offenses and to the issuance of limited teacher
certificates to persons convicted of certain crimes involving a
minor and felony drug offenses."

- MOVED CSHB 551(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 545

"An Act relating to the extension under the State Procurement
Code of terms for leases for real estate and certain terms for

certain state contracts for goods and services; and providing for an effective date."

- MOVED CSHB 545 (L&C) OUT OF COMMITTEE

SENATE BILL NO. 316

"An Act relating to motor vehicle safety belt violations."

- BILL HEARING POSTPONED

PREVIOUS COMMITTEE ACTION

BILL: SB 309

SHORT TITLE: BLOOD PATHOGENS TESTING OF PRISONERS

SPONSOR(S): SENATOR(S) WAGONER

02/09/04	(S)	READ THE FIRST TIME - REFERRALS
02/09/04	(S)	STA, JUD
03/04/04	(S)	STA AT 3:30 PM BELTZ 211
03/04/04	(S)	Moved SB 309 Out of Committee
03/04/04	(S)	MINUTE(STA)
03/05/04	(S)	STA RPT 3DP
03/05/04	(S)	DP: STEVENS G, COWDERY, STEDMAN
03/17/04	(S)	JUD RPT CS 4DP SAME TITLE
03/17/04	(S)	DP: SEEKINS, FRENCH, OGAN, THERRIALT
03/17/04	(S)	JUD AT 8:00 AM BUTROVICH 205
03/17/04	(S)	Moved CSSB 309(JUD) Out of Committee
03/17/04	(S)	MINUTE(JUD)
03/22/04	(S)	TRANSMITTED TO (H)
03/22/04	(S)	VERSION: CSSB 309(JUD) AM
03/24/04	(H)	READ THE FIRST TIME - REFERRALS
03/24/04	(H)	STA, JUD
04/08/04	(H)	STA AT 8:00 AM CAPITOL 102
04/08/04	(H)	Heard & Held
04/08/04	(H)	MINUTE(STA)
04/15/04	(H)	STA AT 8:00 AM CAPITOL 102
04/15/04	(H)	Moved HCS CSSB 309(STA) Out of Committee
04/15/04	(H)	MINUTE(STA)
04/19/04	(H)	STA RPT HCS(STA) 3DP 2NR
04/19/04	(H)	DP: SEATON, LYNN, HOLM; NR: COGHILL,
04/19/04	(H)	WEYHRAUCH
04/23/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 551

SHORT TITLE: DRUG FELONY DISQUALIFIES TEACHER

SPONSOR(S): JUDICIARY

MR. OLDAKER, in response to comments, clarified that the PTPC is considering adding felony possession of a controlled substance to the list of conduct that is considered moral turpitude.

REPRESENTATIVE GARA relayed that some members of the legislature are reluctant to make possession, even felony possession, cause for precluding someone from teaching later on in life.

MR. OLDAKER agreed to keep that in mind. At the request of Representative Gruenberg, on an unrelated topic, Mr. Oldaker mentioned some changes to the PTPC's rules of operation that he'd like to see instituted.

Number 1737

REPRESENTATIVE GRUENBERG moved to report HB 551, as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 551(JUD) was reported from the House Judiciary Standing Committee.

HB 545 - STATE LEASE AND CONTRACT EXTENSIONS

Number 1750

CHAIR MCGUIRE announced that the final order of business would be HOUSE BILL NO. 545, "An Act relating to the extension under the State Procurement Code of terms for leases for real estate and certain terms for certain state contracts for goods and services; and providing for an effective date." [Before the committee was CSHB 545(L&C).]

Number 1765

VERN JONES, Chief Procurement Officer, Division of General Services, Department of Administration (DOA), said that the state's procurement code currently allows the state to negotiate extensions of real estate leases for up to 10 years in exchange for rent reductions. House Bill 545 would increase the state's ability to negotiate lease extensions by changing the requirement threshold from a 10-15 percent reduction in existing lease rates to a 10 percent reduction in the current market rate. Existing statutory restrictions on these negotiations have hampered the state's ability to negotiate lease extensions, he opined, and relayed that the increase in the real estate market in Alaska combined with the way the state structures its

leases often makes it so that a 10-15 percent reduction in existing lease rates is unattainable.

MR. JONES posited that tying the reduced rates to a percentage below the current market is a more reasonable approach, adding, "we believe [it] will allow us to negotiate successfully more often, and the more frequently we're able to do that, the more we can avoid the lengthy, costly re-procurement process, not to mention the cost and disruption of moving large numbers of state offices and state employees as well as the disruption to the public." Referring to a chart, he said that a substantial part of lease costs are for tenant improvements and upfront construction. These costs are typically financed and amortized by lessors over the initial term of a lease, and oftentimes the lessor will offer the state dramatically lower priced lease rates for renewal periods.

MR. JONES said that in those cases, at the end of initial lease periods, there is already a reduced rate, and so attempting to negotiate an additional 15 percent reduction as is required by current law is often unachievable. He added that the DOA feels that this bill would remedy that situation, would change that requirement from a 10-15 percent reduction of the already reduced rate to a 10 percent reduction of market rate, and market rate, as defined in CSHB 545(L&C), would be established either by an assessment of value or a real estate appraisal of rental value.

MR. JONES, in response to a question, said that CSHB 545(L&C) now contains a definition of market rate, stipulates a minimum cost savings of 10 percent, and only applies to office space or real estate leases.

Number 1932

CHAIR McGUIRE, after ascertaining that no one else wished to testify, close public testimony on HB 545.

REPRESENTATIVE GARA remarked:

The bill is fine. It just seems to me, whenever you get in the procurement code, you end up having to write down rules of logic instead of letting people just exercise logic. And so the rule of logic we've come up with is, if the state thinks that they'd actually just save money by not moving, that's not good enough unless they would save 10 percent. Is

that the way the bill reads? I mean, [do] you actually have to save 10 percent or else you have to move?

MR. JONES replied, "You would need to achieve a rental rate of at least 10 percent below market value if you want to avoid moving." If the bill passes, the state could negotiate a rental rate that would be a guaranteed 10 percent below market value and the state could avoid costly moving expenses. If the bill doesn't pass, the state would have to pay moving expenses plus possibly have to pay market rate at a new location. He opined that passage of the bill is a tool that will make the state more efficient and allow it to reduce costs.

REPRESENTATIVE GARA offered his belief that even if the state can't achieve the minimum cost savings of 10 percent below market value, it could still save something by not having to move and go through the whole request for proposals (RFP) process; therefore, perhaps the state should not limit itself to a 10 percent minimum.

MR. JONES, in response, relayed that he agrees with Representative Gara's point, adding, "If I could, I'd use my discretion in every matter, but in the last committee it was decided that ... 5 percent really wasn't enough to avoid the open competitive process that would otherwise be there, so ... it was increased to 10 percent." He noted that moving costs are typically around "\$1 a foot" and are not included in calculating the minimum cost savings.

Number 2059

REPRESENTATIVE SAMUELS moved to report CSHB 545(L&C) out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 545(L&C) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 2062

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:30 p.m.

MINUTES
SENATE FINANCE COMMITTEE
May 07, 2004
8:44 AM

TAPES

SFC-04 # 110, Side A
SFC 04 # 110, Side B

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 8:44 AM.

PRESENT

Senator Gary Wilken, Co-Chair
Senator Con Bunde, Vice Chair
Senator Fred Dyson
Senator Ben Stevens
Senator Lyman Hoffman
Senator Donny Olson

Also Attending: REPRESENTATIVE BUD FATE; JAMES ARMSTRONG, Staff to Representative Bill Williams; TOMAS BOUTIN, Deputy Commissioner, Department of Revenue; GREG O'CLARAY, Commissioner, Department of Labor and Workforce Development; JIM POUND, Staff to Representative Bud Fate; SUSAN BURKE, Attorney representing Magazine Publishers of America; SUE STANCLIFF, Staff to Representative Pete Kott; DEBBIE BUMP, Division of Finance, Department of Administration; JOHN MAIN, Staff to Representative Pete Kott; PHELAN STRAUBE, Staff to Senator Ben Stevens; VERN JONES, Chief Procurement Officer, Department of Administration

Attending via Teleconference: From Offnet Sites: PAT LADNER, Alaska Aerospace Development Corporation; LINDA WILSON, Deputy Director, Public Defender Agency, Department of Administration; LINDA WILSON, Deputy Director, Alaska Public Defender Agency, Department of Administration

SUMMARY INFORMATION

HB 422-BUDGET RESERVE FUND INVESTMENT

The Committee heard from the sponsor, the Department of Revenue and the bill was held for further consideration.

SFC-04

(1)

05/07/04

HB 559-STEP PROGRAM CONTINUANCE

The Committee heard from the Department of Labor and Workforce Development and the bill was reported from Committee.

HB 15-SOLICITATIONS/CONSUMER PROTECTION

The Committee heard from the Sponsor, adopted one amendment, and reported the committee substitute from Committee.

HB 494-ELECTRONIC PAYMENT FOR STATE BUSINESS

The Committee heard from the bill's sponsor, adopted three amendments, and reported the bill from Committee.

HB 514-CHILD SUPPORT ENFORCEMENT/ CRIMES

The Committee heard from the sponsor and the Public Defender Agency. A committee substitute was adopted and reported from Committee.

SB 366-STATE SALES TAX

The Committee heard from the sponsor, adopted a committee substitute, and reported that bill from Committee.

HB 545-STATE REAL PROPERTY LEASE EXTENSIONS

The Committee heard from the Department of Administration and reported the bill from Committee.

SB 308-DOMESTIC VIOLENCE PROTECTIVE ORDERS

This bill was scheduled but not heard.

HB 56-UNFAIR TRADE PRACTICES ATTY FEES/COSTS

This bill was scheduled but not heard.

HB 341-DIVE FISHERY MANAGEMENT ASSESSMENT

This bill was scheduled but not heard.

HB 342-DRIVING UNDER INFLUENCE/ALCOHOL OFFENSES

This bill was scheduled but not heard.

(3) at least four percent but less than five percent, the department shall remit the amount that would have been collected in the municipality if the sales and use levy tax had been five percent.

(4) five percent or more, the department shall round up to the next whole number and remit the amount that would have been collected in the municipality if the sales and use tax levy had been that whole number; for example, if a municipality levied a sales and use tax at the rate of five percent, the department shall remit the amount that would have been collected under a six percent levy.

Senator B. Stevens stated that, "in reality, one-third of the revenue collected by the State would be returned back to the community." He noted that those communities that do not collect a sales tax would not receive a percentage.

Senator Olson asked whether exemptions might apply to the rental and sale of real estate as related to language in Section 29, subsection (d) on page ten, line 16 that reads as follows.

(d) The maximum tax on a single sale, lease, or rental is \$60.

Senator B. Stevens responded that the sale, rental, lease, or construction of real property are exempt from the sales tax in communities of less than 500 residents.

Senator Hoffman asked for further clarification of this matter by asking in regards to the taxes on a five-year home lease agreement.

Senator B. Stevens declared that it would be exempt from the tax.

Senator Bunde moved to report the committee substitute from Committee with individual recommendations and accompanying "pending" fiscal note.

There being no objection, CS SB 366 (FIN) was REPORTED from Committee with an indeterminate fiscal note, dated May 7, 2004, from the Department of Revenue.

#hb545

CS FOR HOUSE BILL NO. 545 (L&C)

"An Act relating to time extensions under the State Procurement Code for real property leases; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken stated that this bill, CS HB 545(L&C), Version 23-GH2150\H, is sponsored by the House Rules Committee by Request of the Governor, and would allow a State agency to negotiate a lease agreement for ten years provided that there be a minimum cost savings of ten percent below the market rental value.

VERN JONES, Chief Procurement Officer, Department of Administration, stated that the current State procurement code allows the State to negotiate extensions for real estate leases for up to ten years (in exchange for rent reductions). He noted that this bill "would increase the State's ability to negotiate lease extensions by changing the requiring threshold from a ten to fifteen percent reduction off of the existing lease rate, as the current law requires, to a ten percent reduction from the current market rate." He stated that the current statutory regulations have negatively impacted the Department's ability to negotiate lease extensions with landlords, as, he attested, the State's real estate market combined with the way the State's lease agreements are structured, often makes the 15 percent reduction from the current lease rates "unobtainable."

Mr. Jones stated "that tying the lease rate to a percentage of the current market rate would be a more reasonable approach" that would allow the State "to negotiate reduced rates more frequently and avoid the lengthy and expensive re-procurement process, not to mention the cost and disruption" of moving States offices and employees.

Mr. Jones detailed the current lease process, including improvement options, and concluded that this bill would allow the State to reduce its overall leasing expenses.

Co-Chair Wilken asked whether this legislation is a new approach or is modeled after that of other states.

Mr. Jones responded that this legislation "is just making a small adjustment to a tool" that is already in place. He noted that other states often exempt real estate leases from their procurement code similar to a business or brokerage model. He estimated that while approximately half of the states have similar lease procedures to the State, the proposed provision is unique.

Senator Dyson moved to report the bill from Committee with individual recommendations and accompanying fiscal notes.

There being no objection, CS HB 545(L&C) was REPORTED from Committee with zero fiscal note #1, dated February 25, 2004 from the Department of Administration.

RECESS TO THE CALL OF THE CHAIR 10:05 AM / 5:11 PM

#

ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 05:11 PM.

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,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Filed in the Trial Courts
STATE OF ALASKA, THIRD DISTRICT

JUN 12 2015

Clerk of the Trial Courts
By _____ Deputy

Case No. 3AN-15-05969CI

**AFFIDAVIT IN SUPPORT OF
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
(NOT EXTENSION)**

THIRD JUDICIAL DISTRICT)
)ss
STATE OF ALASKA)

JAMES B. GOTTSTEIN, being first sworn under oath hereby deposes and states as follows:

1. Attached hereto as Exhibit 1 is a true and correct copy of that certain document, titled Extension of Lease and Lease Amendment No. 3, dated September 19, 2013, pertaining to the leasing of the new Anchorage Legislative Information Office I received from the Alaska Housing Finance Corporation pursuant to a Freedom of Information Act request (New LIO Lease).

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

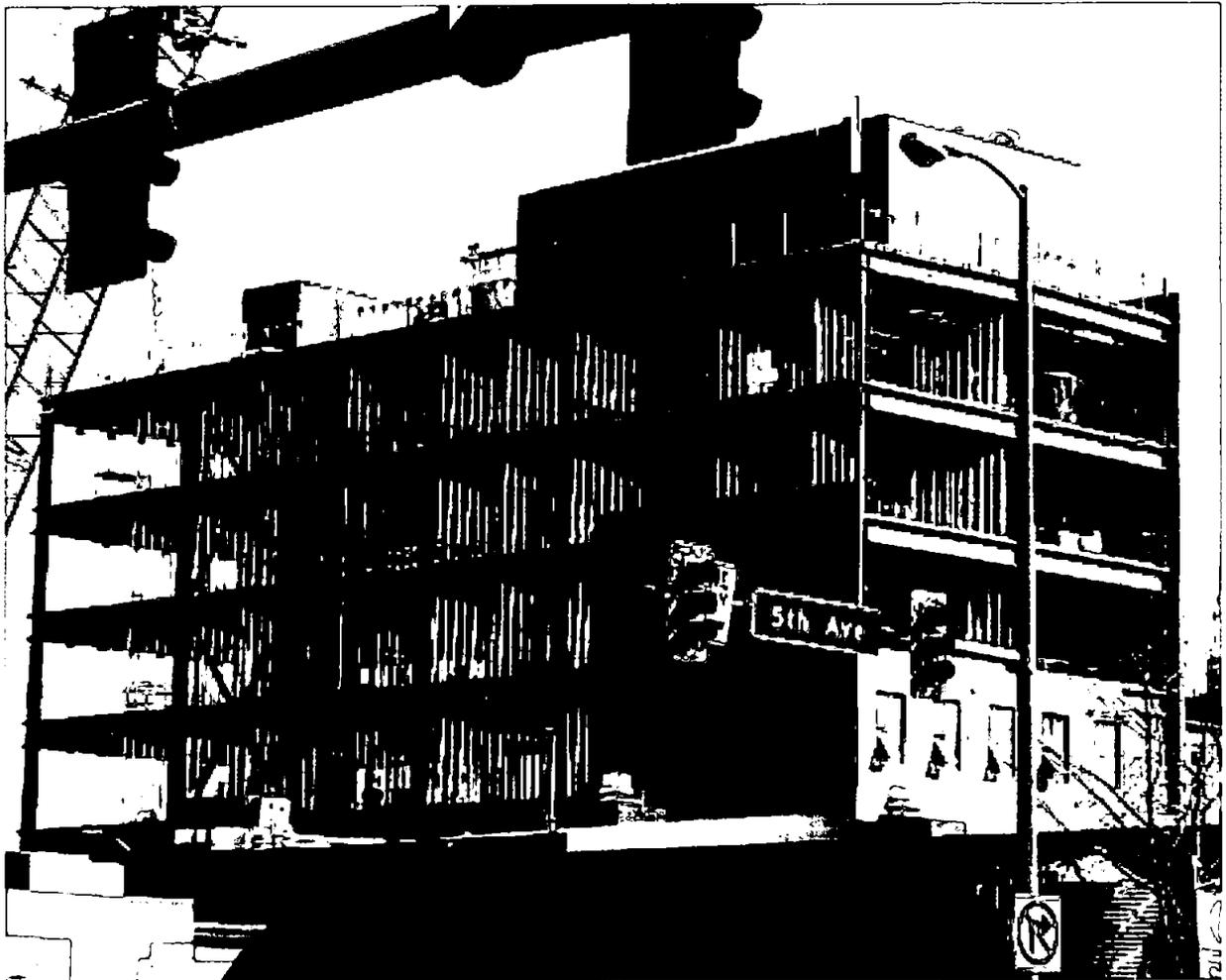
TELEPHONE
(907) 274-7886
FACSIMILE
(907) 274-9493

000197

2. The New LIO Lease provides for:

- a. demolition of the then existing Anchorage Legislative Information Office located at 716 West 4th Avenue in Anchorage, Alaska down to its foundation and steel frame,
- b. demolition of the adjacent old Empress Theatre, located at 712 West 4th Avenue, occupied by the Anchor Pub at that time,
- c. moving the existing Anchorage Legislative Information Office prior to the demolition of the old Legislative Information Office Building, and
- d. construction of a new office building for lease as the new Anchorage Legislative Information Office.

3. The following picture I took accurately depicts the new Anchorage Legislative Information Office while under construction on April 20, 2014:



LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 208
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7886
FACSIMILE
(907) 274-9493

Affidavit in Support of Motion for
Partial Summary Judgment (Not Extension)

Page 2

000198

4. The Anchorage Legislative Information Office moved out of the then existing Anchorage Legislative Information office sometime around December 1, 2013.

5. The Anchorage Legislative Information Office moved into the new Anchorage Legislative Information Office around January 2, 2015.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

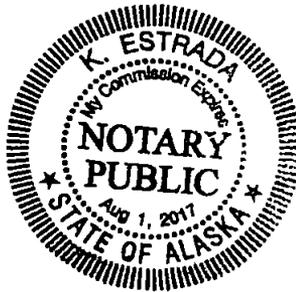
DATED this 12th day of June, 2015.



James B. Gottstein

SUBSCRIBED AND SWORN TO before me this 12 day of June 2015.



Notary Public in and for Alaska
My Commission Expires: 8/1/17

LAW OFFICES OF
JAMES B. GOTTSTEIN
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ANCHORAGE, ALASKA
99501

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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 Waronzoff 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.

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

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Manager:

By its Member:

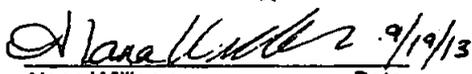


Mark E. Pfeffer 9/19/13 Date
Manager
Tax Identification No.: 46-3682212
Business License No.: 423463

Robert B. Acrea Date
Member

LESSOR:
716 WEST FOURTH AVENUE, LLC

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



Alana Williams 9/19/13 Date
Its: Trustee

LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY

Representative Mike Hawker Date
Chair, Alaska Legislative Council
Procurement Officer

CERTIFYING AUTHORITY

APPROVED AS TO FORM:

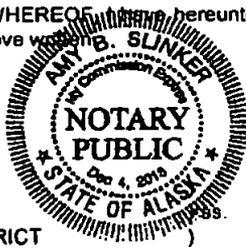
Pamela A. Varni Date
Executive Director
Legislative Affairs Agency

Legal Counsel Date

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 19th day of September, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, MARK E. PFEFFER, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that they had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Amy B. Slinker
Notary Public in and for Alaska
My commission expires: 12/4/13

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

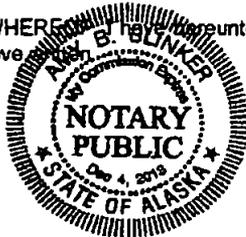
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 19th day of September, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ALANA WILLIAMS, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of MARK E. PFEFFER ALASKA TRUST UTAD 12/28/07, and who acknowledged to me that she had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Amy B. Slinker
Notary Public in and for Alaska
My commission expires: 12/4/13

Wyoming

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 19th day of September, 2013, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared REPRESENTATIVE MIKE HAWKER, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing Lease as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Shawna Traughber
Notary Public in and for ~~Alaska~~ Wyoming
My commission expires: 10/19/2015

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of _____, 2013, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the EXECUTIVE DIRECTOR OF THE STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

FOR RECORDING DISTRICT OFFICE USE ONLY:
No Charge - State Business

After recording return to:
Tina Strong, Supply Officer
Legislative Affairs Agency
State Capitol, RM 3
Juneau, AK 99801-1182

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of _____, 2013, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared REPRESENTATIVE MIKE HAWKER, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing Lease as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

STATE OF *Missouri*)
County of Jackson) ss.

THIS IS TO CERTIFY that on the 19 day of September 2013, before me, the undersigned Notary Public in and for ~~Missouri~~, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the EXECUTIVE DIRECTOR of the STATE OF ~~Alaska~~ LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Sherry F. Goucher

Notary Public in and for *Missouri*
My commission expires: 03-18-16

FOR RECORDING DISTRICT OFFICE USE ONLY:
No Charge - State Business

After recording return to:
Tina Strong, Supply Officer
Legislative Affairs Agency
State Capitol, RM 3
Juneau, AK 99801-1182

EXHIBIT A – LIO APPROVAL PLANS

DC 9/19/13

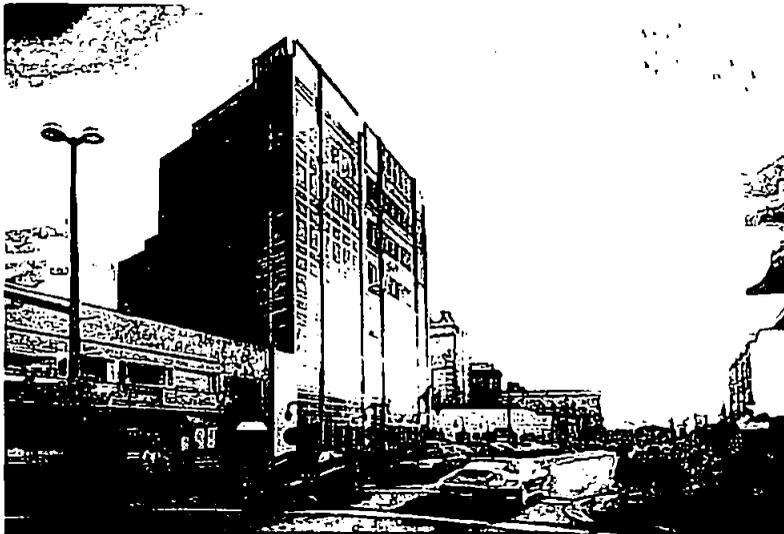
Exhibit A – LIO Architectural Plans

Joe 9/19/17

PFEFFER DEVELOPMENT 716 W 4TH AVE. Renovation

09.17.2013

ANCHORAGE, ALASKA



CIVIL ENGINEER

EBSC ENGINEERING
11301 OLIVE LANE
ANCHORAGE, ALASKA 99515
Ph: 907.222.1069 Fax: 907.222.6210

STRUCTURAL ENGINEER

REID MIDDLETON, INC.
4300 B STREET SUITE 302
ANCHORAGE, ALASKA 99503
Ph: 907.562.3439 Fax: 907.581.6319

MECHANICAL ENGINEER

RSA ENGINEERING, INC.
2522 ARCTIC BOULEVARD, SUITE 200
ANCHORAGE, ALASKA 99503
Ph: 907.278.0021 Fax: 907.278.1751

ELECTRICAL ENGINEER

EC ENGINEERS
6927 OLD SEWARD HWY
ANCHORAGE, ALASKA 99518
Ph: 907.349.9712 Fax: 907.349.9713

DEVELOPER

PFEFFER DEVELOPMENT, LLC
425 G STREET, SUITE 210
ANCHORAGE, ALASKA 99501
Ph: 907.648.4844 Fax: 907.648.4855

CONTRACTOR / TEAM LEAD

CRITERION GENERAL, INC.
2820 COMMERCIAL DRIVE
ANCHORAGE, ALASKA 99501
Ph: 907.277.3200 Fax: 907.277.8944

ARCHITECT

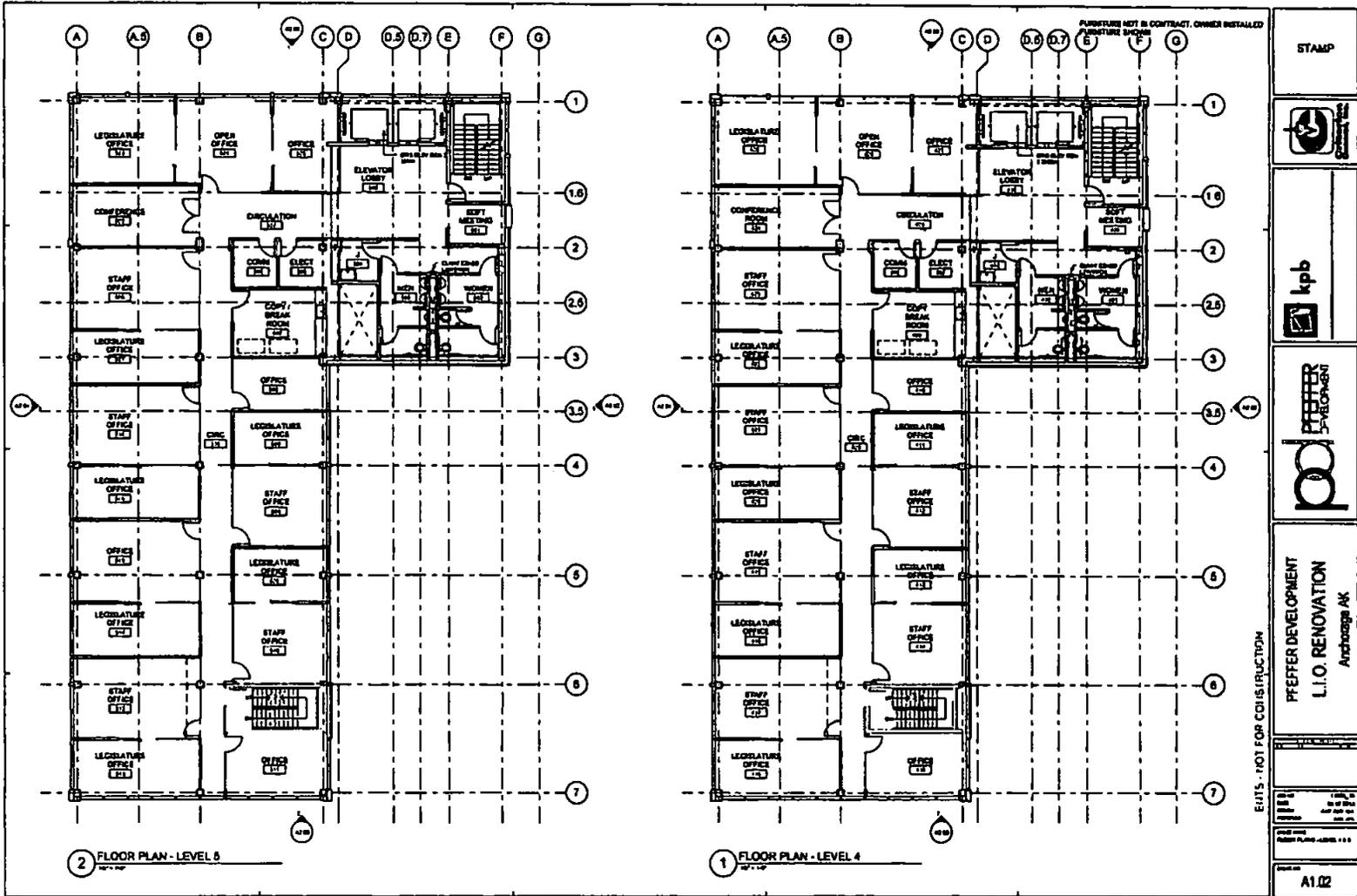
198 WOODS
425 G STREET, SUITE 800
ANCHORAGE, ALASKA 99501
Ph: 907.274.7442 Fax: 907.274.7487

Handwritten: CFC 9/19/13

New LIO Lease

Exhibit 1, page 31 of 104

000230

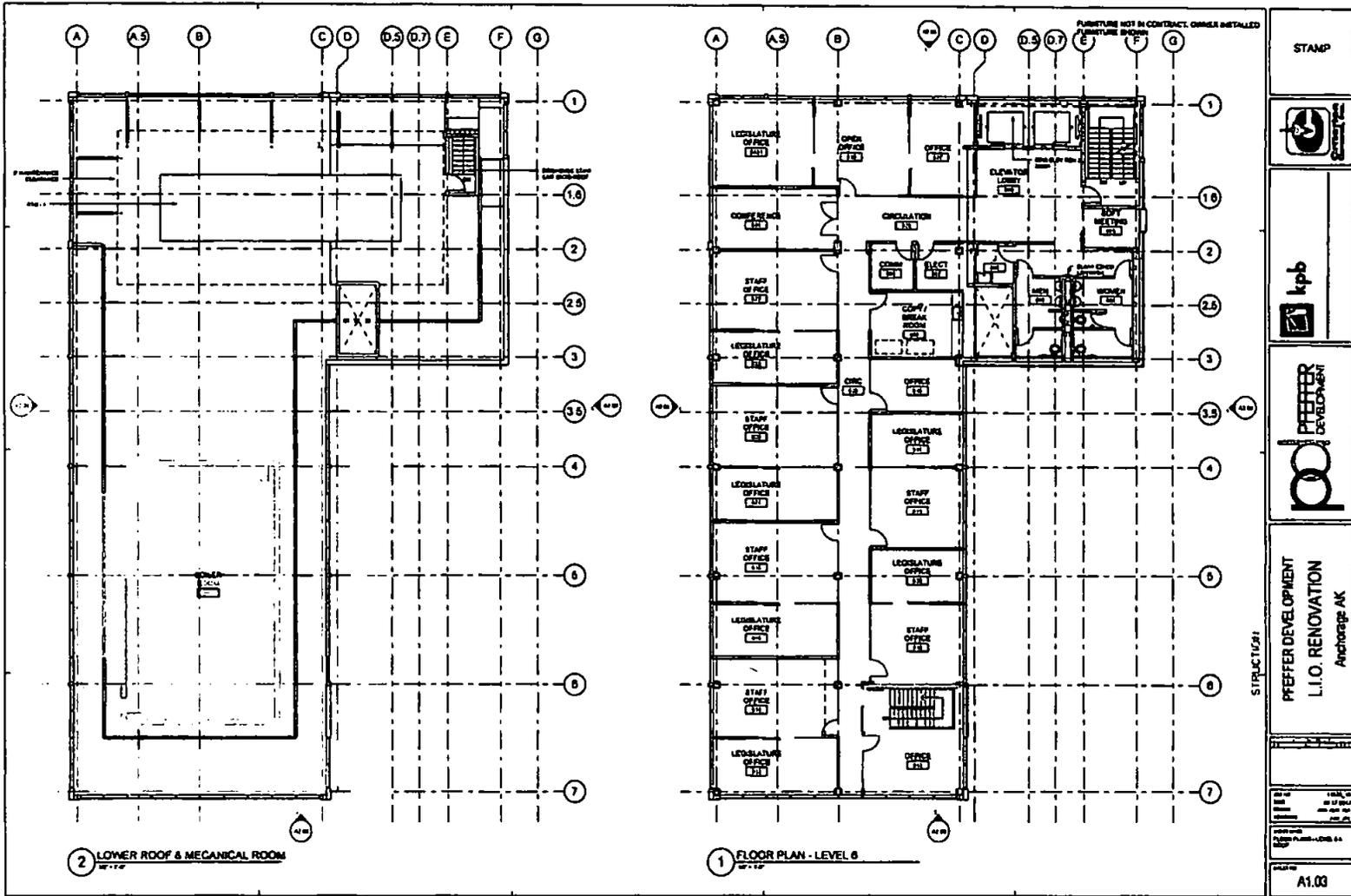


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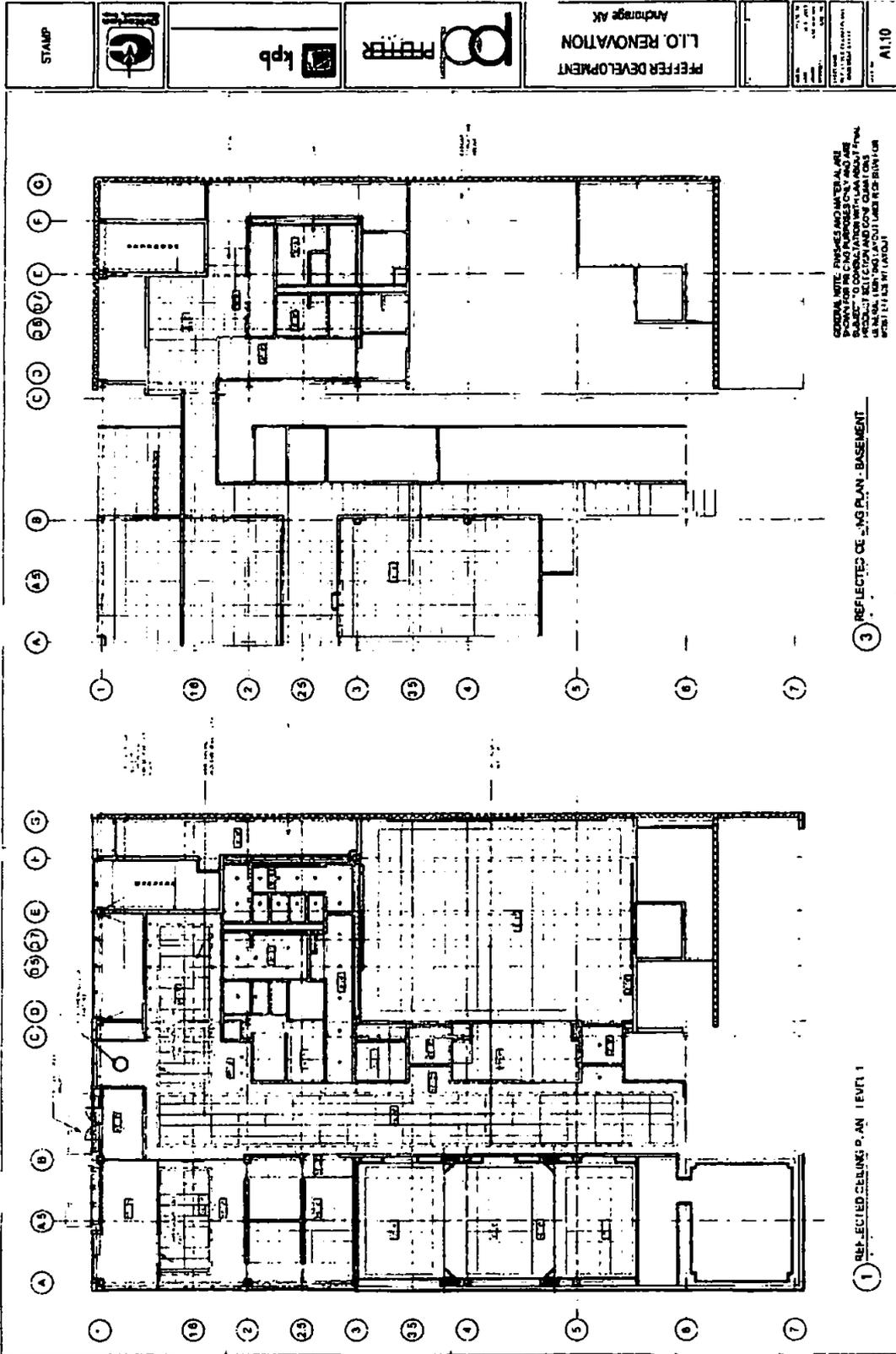
New LIO Lease

Exhibit 1, page 34 of 104

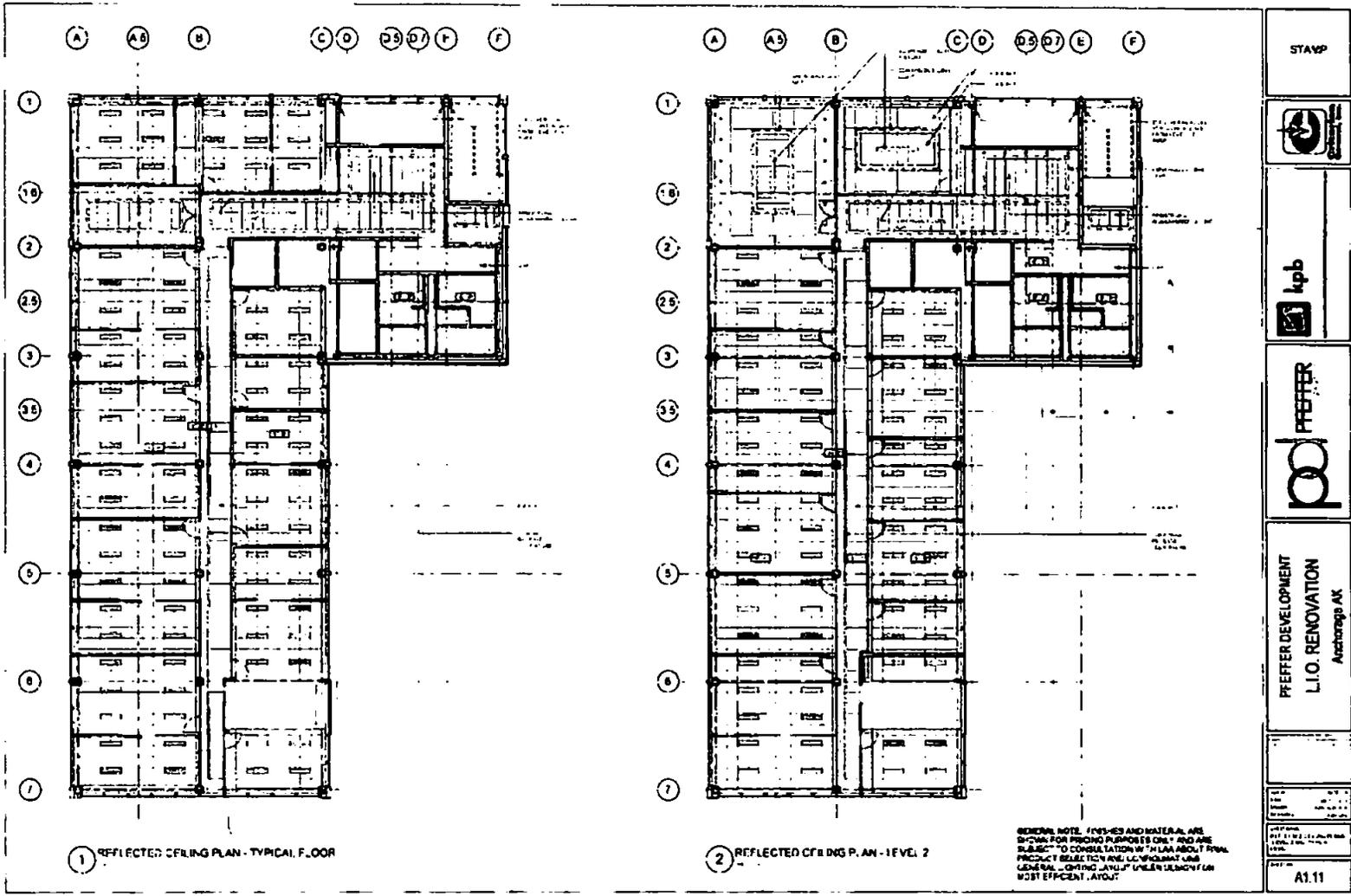
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10/11/10



Case 9/19/13

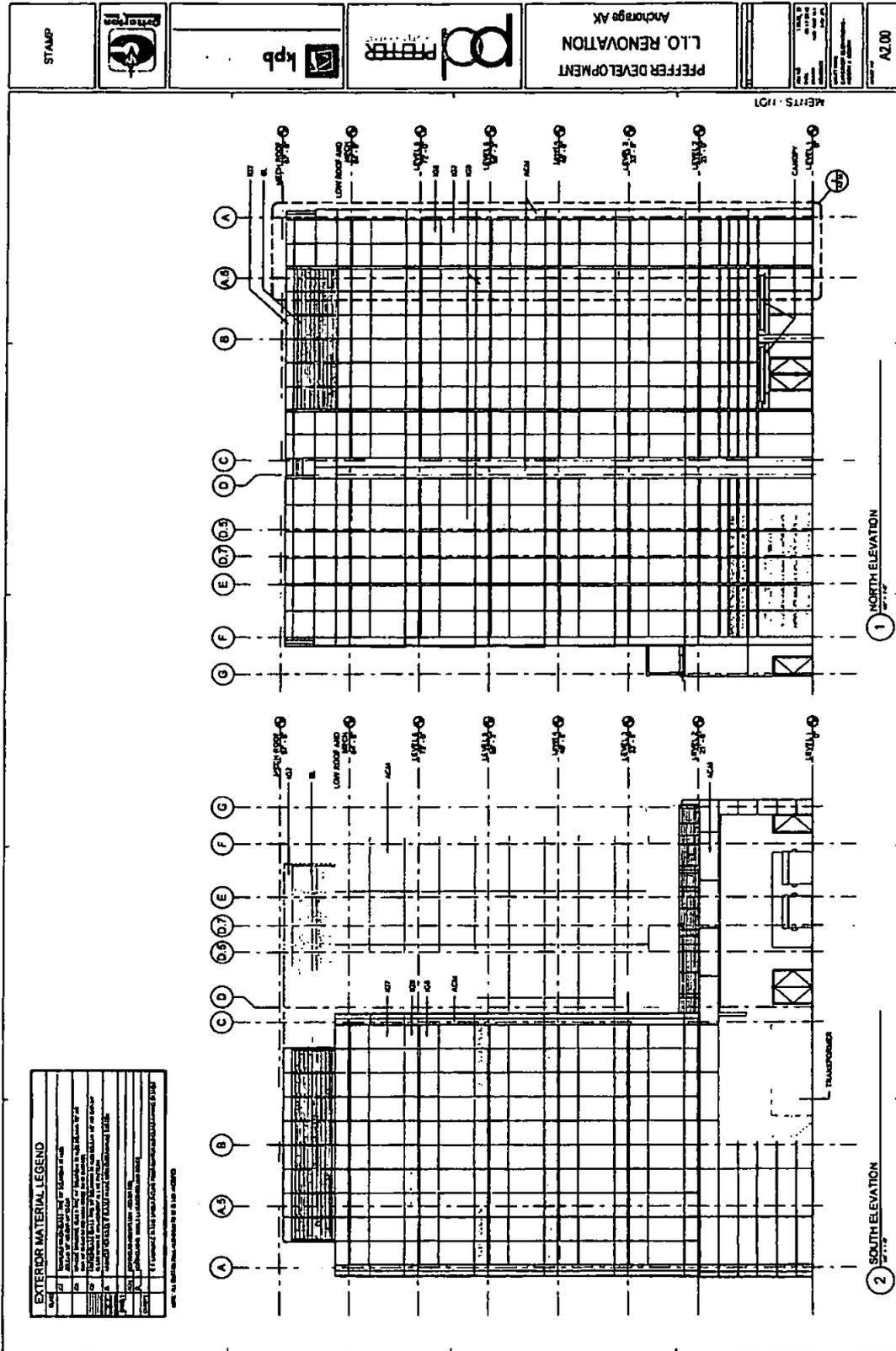


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9/11/11

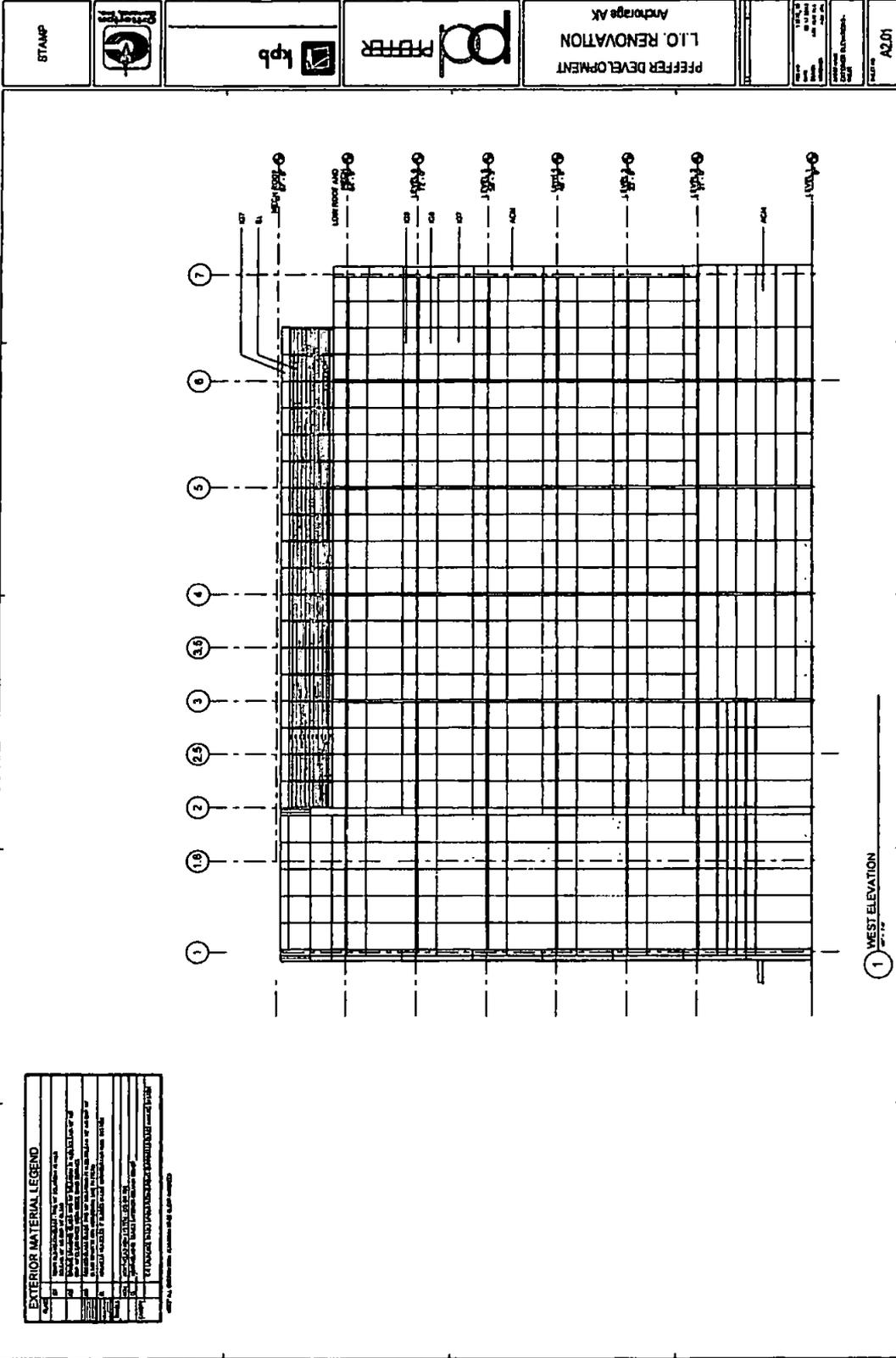
New LIO Lease

Exhibit 1, page 37 of 104

000236



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**LEGISLATIVE INFORMATION OFFICE RENOVATION
WEST 4TH AVENUE**

LEGAL

ORIGINAL TOWN SITE SUBDIVISION; LOTS: 2 AND 3A
LOT SIZES COMBINED: 0.71 ACRES
ZONE: B2B

BLOCK: 40 LOT 2 W39.5' (712 W. 4TH AVE.)
LOT SIZE: 5,135 SF
TAX CODE: 002-105-26-000
GRID NO: SW1230

BLOCK: 40 LOT 3A (716 W 4TH AVE)
LOT SIZE: 25,994 SF
TAX CODE: 002-105-49-000
GRID NO: SW1230

IBC 2009, IEBC 2009, IFC 2009

CHAPTER 3 - USE AND OCCUPANCY CLASSIFICATION

304.1 ASSEMBLY GROUP A-3, BUSINESS GROUP B, TENANT STORAGE ROOM GROUP S-1

CHAPTER 4 - SPECIAL DETAILED REQUIREMENTS BASED ON USE AND OCCUPANCY

405.3 AUTOMATIC SPRINKLER SYSTEM. THE HIGHEST LEVEL OF AN EXIT DISCHARGE SERVING THE UNDERGROUND PORTIONS OF THE BUILDING AND ALL LEVELS BELOW SHALL BE EQUIPPED WITH AN AUTOMATIC SPRINKLER SYSTEM INSTALLED IN ACCORDANCE WITH SECTION 903.3.1.1. WATER-FLOW SWITCHES AND CONTROL VALVES SHALL BE SUPERVISED IN ACCORDANCE WITH SECTION 903.4.

CHAPTER 5 - GENERAL BUILDING HEIGHTS AND AREAS

TABLE 503 ALLOWABLE BUILDING HEIGHTS AND AREAS

OCCUPANCY:	A-3/B/S-1
CONSTRUCTION TYPE:	TYPE II A
BUILDING HEIGHT:	5 STORIES <u>+ 1 PER HEIGHT INCREASE (504.2)</u> 6 STORIES ACTUAL BUILDING HEIGHT 6 TH LEVEL FLOOR 64'-6" <u>+ 20 FEET INCREASE (504.2)</u>
BUILDING AREA:	A-3/B/S-1 (GROSS) 11,140 SF BASEMENT 11,549 SF FIRST FLOOR

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7,968 SF FLOORS 2-6
1,659 SF MECHANICAL PENTHOUSE
64,188 SF ACTUAL GROSS

506.1 BUILDING AREA MODIFICATIONS

ALLOWABLE AREA=37,500+(37,500X.75)= 65,625 SF/FLOOR (OK)
LF={363.75/363.75-.025}X30/30=.75

TABLE 508.2.5 INCIDENTAL ACCESSORY OCCUPANCIES

MECHANICAL ROOM – 1 HOUR OR PROVIDE AUTOMATIC FIRE-EXTINGUISHING SYSTEM.

508.2.5.2 NONFIRE-RESISTANCE-RATED SEPARATION AND PROTECTION. WHERE TABLE 805.2.5 ALLOWS FOR AUTOMATIC FIRE-EXTINGUISHING SYSTEM IN LIEU OF 1-HOUR FIRE BARRIER INCIDENTAL ACCESSORY OCCUPANCIES SHALL BE SEPARATED FROM THE BUILDING BY CONSTRUCTION CAPABLE OF RESISTING THE PASSAGE OF SMOKE.

TABLE 508.4 REQUIRED SEPARATIONS OF OCCUPANCIES

NO FIRE BARRIER OR HORIZONTAL ASSEMBLY CONSTRUCTED IS REQUIRED BETWEEN: A-3, B AND S-1 OCCUPANCIES.

CHAPTER 6 - TYPES OF CONSTRUCTION

TABLE 601 FOR TYPE II A CONSTRUCTION

PRIMARY STRUCTURE:	1 HOUR
BEARING WALLS EXTERIOR:	1 HOUR
BEARING WALLS INTERIOR:	1 HOUR
NON-BEARING WALLS EXTERIOR:	1 HOUR AT GREATER THAN OR EQUAL TO 30 FEET (TABLE 602)
NON-BEARING WALLS INTERIOR:	0 HOUR
FLOOR CONSTRUCTION:	1 HOUR
ROOF CONSTRUCTION:	1 HOUR

CHAPTER 7 - FIRE AND SMOKE PROTECTION FEATURES

TABLE 705.8 MAXIMUM AREA OF OPENINGS

EAST WALL AT PROPERTY LINE:	NO OPENINGS PERMITTED
EAST WALL AT SETBACK:	25% GREATER THAN 5' TO 10'
WEST WALL:	UNLIMITED
NORTH WALL:	UNLIMITED
SOUTH WALL AT ALLEY:	UNLIMITED

708 SHAFT ENCLOSURES

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9/19/13

708.4 FIRE-RESISTANCE RATING
2 HOUR FIRE-RESISTANCE RATING (6 STORY BUILDING)

708.14.1 EXCEPTION 4. ENCLOSED ELEVATOR LOBBIES ARE NOT REQUIRED WHERE THE BUILDING IS PROTECTED BY AN AUTOMATIC SPRINKLER SYSTEM INSTALLED IN ACCORDANCE WITH SECTION 903.3.1.1 OR 903.3.1.2.

715 OPENING PROTECTIVES
TABLE 715.4 FIRE DOOR AND FIRE SHUTTER FIRE PROTECTION RATINGS:
FIRE PARTITION OR CORRIDOR WALLS:

1 HOUR ASSEMBLY RATING:	¾ HOUR MINIMUM
2 HOUR ASSEMBLY RATING:	1.5 HOUR MINIMUM
FIRE BARRIERS:	
1 HOUR ASSEMBLY RATING:	¾ HOUR MINIMUM
2 HOUR ASSEMBLY RATING :	1.5 HOUR MINIMUM

715.4.3.2 GLAZING IN DOOR ASSEMBLIES: IN A 20-MINUTE FIRE DOOR THE GLAZING MATERIAL IN THE DOOR ITSELF SHALL HAVE A MINIMUM FIRE-PROTECTION-RATED GLAZING OF 20 MINUTES. NFPA 257 OR UL 9.

TABLE 715.5 FIRE WINDOW ASSEMBLY FIRE PROTECTION RATINGS:

FIRE BARRIERS WITH GREATER THAN 1 HR.:	NP
FIRE BARRIERS WITH 1 HOUR RATING:	¾ HOUR MINIMUM
FIRE PARTITIONS WITH ¾ HOUR RATING:	1/3 HOUR MINIMUM
FIRE PARTITION WITH 1 HOUR RATING:	¾ HOUR MINIMUM
PARTY WALLS:	NP

716 DUCTS AND AIR TRANSFER OPENINGS

TABLE 716.3.2.1 FIRE DAMPER RATING: 1.5 HR. MINIMUM DAMPER RATING FOR PENETRATIONS OF 3 HR. OR LESS FIRE-RESISTANCE RATED ASSEMBLIES.

CHAPTER 9 - FIRE PROTECTION SYSTEMS

903 OCCUPANCY B/S-1: AN AUTOMATIC SPRINKLER SYSTEM INSTALLED IN ACCORDANCE WITH SECTION 903 SHALL BE PROVIDED.

905.3.1 REQUIRED INSTALLATION. CLASS I STANDPIPE SYSTEM WILL BE INSTALLED PER EXCEPTION 1.

202
9/19/13

906 PORTABLE FIRE EXTINGUISHERS

TABLE 906.3 MAXIMUM TRAVEL DISTANCE TO EXTINGUISHER = 75 FEET

907 FIRE ALARM AND DETECTION SYSTEMS

907.2.2 GROUP B/S-1. FIRE ALARM SYSTEMS AND SMOKE ALARMS SHALL BE PROVIDED.

907.2.9.1 MANUAL FIRE ALARM SYSTEM. IS PROVIDED ALONG WITH A AN AUTOMATIC SPRINKLER SYSTEM AND THE OCCUPANT NOTIFICATION APPLIANCES WILL AUTOMATICALLY ACTIVATE THROUGHOUT THE NOTIFICATION ZONES UPON A SPRINKLER WATER FLOW.

CHAPTER 10 - MEANS OF EGRESS

1004 OCCUPANT LOAD (USABLE)

BASEMENT: 9,806 SF	A-3	891 SF/15=60 OCCUPANTS (EGRESS WIDTH .2 X 60=12"
MINIMUM)		
	B	3,631 SF/100=36 OCCUPANTS (EGRESS WIDTH .2 X 36=7.2"
	MECH	1,393 SF/300=5 OCCUPANTS
	S-1	3,561 SF/300=12 OCCUPANTS
		MINIMUM)
LEVEL 1: 10,374 SF	A-3	3,227 SF/15=215 OCCUPANTS (EGRESS WIDTH .2 X 215=43"
MINIMUM)		
	B	6,179 SF/100=62 OCCUPANTS
	MECH	308 SF/300=1 OCCUPANT
	S-1	660 SF/300=7 OCCUPANTS
LEVEL 2-6:	B	6,964 SF /100=70 OCCUPANTS X 5=350 OCCUPANTS
		(EGRESS WIDTH .3 X 70=21" MINIMUM PER FLOOR)
ROOF:	PENT	1,442 SF/300=5 OCCUPANTS

TOTAL BUILDING OCCUPANT LOAD=753

TABLE 1016.1 EXIT ACCESS TRAVEL DISTANCE:

B/S-1	300 FT SPRINKLERED
A	250 FT

TABLE 1018.1 CORRIDOR FIRE-RESISTANCE RATING:

A/B/S-1:	0 SPRINKLERED
-----------------	----------------------

1018.4 DEAD END CORRIDOR:

B/S-1:	50 FT SPRINKLERED
A:	20 FT SPRINKLERED

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TABLE 1021.1 MINIMUM NUMBER OF EXITS. 2 REQUIRED

1022.1 ENCLOSURES REQUIRED EXIT STAIRWAYS ARE CONSTRUCTED IN ACCORDANCE WITH SECTION 707. THE FIRE-RESISTANCE RATINGS ARE 2 HOURS.

CHAPTER 11 – ACCESSIBILITY

DUE TO THE EXISTING CONDITIONS OF THIS 1969 BUILDING, NOT ALL ACCESSIBILITY COMPONENTS FOR NEW CONSTRUCTION CAN BE ACHIEVED.

1104.1 SITE ARRIVAL POINTS: THE BUILDING IS ACCESSIBLE FROM ARRIVAL POINTS ON THE EXISTING SITE.

1105.1 PUBLIC ENTRANCE: THE ENTRY POINTS ARE ACCESSIBLE.

1105.1 PUBLIC ENTRANCE: MODIFIED ACCESSIBLE ELEMENTS ARE PROVIDED ON EACH FLOOR. DUE TO EXISTING STRUCTURAL LIMITATION NOT ACCESSIBLE ROUTES AND CLEARANCES ARE ACHIEVABLE.

CHAPTER 29 – PLUMBING SYSTEMS

TABLE 2902.1

753/2=377 M&W

	MEN	WOMEN	REQUIRED	PROVIDED
<u>BUSINESS</u>				
WATER CLOSETS				
1 PER 25 FIRST 50	2	2		
1 PER 50 BALANCE	7	7		
TOTAL	9 *A (3)	9	3 M 9 W	9 M 17 W
URINALS (.67% OF WC'S)*A	6		6 M	9 M
LAVATORIES	5	5	5 M 5 W	15 M 16 W
DRINKING FOUNTAINS			8	7 (+ WATER SERVICE STATIONS)
SERVICE SINK			1	5

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200
9/19/13

LIO - Architectural Narrative

12/05/15

Subject to Elevator Lobby - Az 01, Az 02 and Az 03 for 2015 - 2016 annual

Conference Areas

12/05/15

12/05/15

12/05/15

Elevator Lobby - level one

12/05/15

Elevator Lobbies - typical floors

Office Suites

Handwritten signature and date
9/19/17

Toilet Rooms

Acoustical Requirements

Over-all Energy Efficiency

ACE
9/19/13

Exhibit A – LIO Civil Narrative

Dec 9/14/13

Legislative Information Office, Anchorage, AK
Concept Civil Narrative
07/03/2013

CIVIL NARRATIVE

The proposed project is located within Municipality of Anchorage Grid SW1230 and will occupy Lots 3A and Lot 2 W39.5', Block 40, Original Subdivision. The properties are zoned B2B by the MOA. The two lots combined are approximately 0.71 acres and are currently occupied by a restaurant/bar, 7-story building, and a two-level parking area. As part of this project, the two lots will be combined, the restaurant demolished, and the 6-story office building remodeled and expanded.

It is expected that construction of the new Legislative Information Office (LIO) will also include major sidewalk and alleyway improvements.

Site Demolition

Site preparation will include the following:

- Complete demolition of the existing Anchor Pub, with exception of the east wall.
- Approximately 1,800 sf existing sidewalk along 4th Avenue.
- 2,000 sf existing asphalt in alleyway.

Excavation and Backfill

The existing foundation material is suitable for foundation support. Excavation and backfill will follow the recommendations of the geotechnical report that is being prepared for this project by Northern Geotechnical Engineering – Terra Firma Testing.

Water Service

An 8" cast iron pipe (CIP) water main is located in the alley to the south of the properties, approximately 10-feet below the road surface. An existing 6" DIP water service extends into the alley behind the LIO. An existing 4" CIP water service connects the Anchor Pub to the 8" water main in the alley. Both existing services will be abandoned at the main.

A new 6" water service will be connected to the 8" service line entering the new addition. All water system components will be based on the Municipality of Anchorage Standard Specifications and Details.

Water system improvements required for this project will likely include the following:

- Abandon the existing water service connections to the main.
- Installation of 12 lf new 8" service connection to the 8" cast iron main.
- Installation of a new Private Fire Hydrant on property. NFPA requires that the FDC is located less than 100' from the nearest fire hydrant.
- Installation of 10.5 lf new 6" water service from the hydrant leg to the structure.

Sanitary Sewer Service

An existing 12" Vitrified Clay (VC) sanitary sewer main is located in the alley, at approximately 8 to 10-feet below grade. AWWU is planning to upgrade the existing sewer pipe in the fall of 2013 using a Cured In Place Pipe (CIPP) rehabilitation method. Coordination with AWWU will be required to inform them which connections will need to be reestablished. All wastewater from this area is treated at the John M. Asplund Wastewater Treatment Facility in Anchorage. All sanitary sewer system components will be based on the Municipality of Anchorage Standard Specifications and Details.

Sewer system improvements for this project will likely include the following:

- Install 4' diameter sewer control manhole on property in loading area.
- Install approximately 28 LF of 6" PVC sewer service.

Storm Water System

Currently, storm water is collected on the roofs of the existing structures and directed to the municipal storm drain system via roof drains.

Qbe 9/19/13

- Verify current roof drain location and size.
- If size and location is acceptable, connect new structure roof drains to existing roof drain.
- If the size and location of the existing roof drain piping is not acceptable, install an additional 125 lf 12" CPEP in the alleyway and a Type 1 Manhole near the south west corner of the LIO. Connect new roof drain to the new manhole.

Site Access

The property will be easily accessible to pedestrians, bicyclists, automobiles, and service/ emergency vehicles. The existing surface lot and underground parking are to remain. Sidewalk and alleyway improvements are planned along 4th Avenue and in the alley to the south of the properties. A loading area is planned on the south side of the building adjacent to the alley to accommodate truck loading, dumpsters and an emergency generator.

Site Access improvements for this project will likely include the following:

- 1,000 sf of heated sidewalk along 4th Avenue
- 2,000 sf asphalt replacement in alley

Geotechnical Considerations

A subsurface investigation of the project site by Northern Geotechnical Engineering – Terra Firma Testing is underway. Four borings are to be drilled and samples taken from various depths to classify the surrounding soils. A geotechnical report will be prepared which will include recommendations for the following:

- Excavation & Fill Placement
- Utilities
- Pavement
- Foundation Design

Required Development Permits

The following is a list of development permits that most likely will be required from the Municipality of Anchorage to construct the new LIO Development.

- Municipality of Anchorage (MOA) Right-of-Way Permit
- MOA Storm Water Site Plan Review
- MOA Grading, Excavation, and Fill Permit
- MOA Building Permit
- AWWU Private System Water & Sewer Service Permits

Parking

Existing onsite parking is available for up to 103 spaces. Upgrades to the existing garage consist of new lighting, paint and a secure basement level with access control.

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9/19/13

Exhibit A – LIO Mechanical Narrative

End 9/19/12

P R O J E C T N A R R A T I V E
LIO Anchorage State Legislative Office Building Renovation

Design Parameters:

The latest adopted version of the following codes and standards as amended by the Municipality of Anchorage are currently applicable for this project:

International Mechanical Code
International Fuel Gas Code
Uniform Plumbing Code
International Building Code
International Fire Code
NFPA 13
SMACNA – Sheet Metal Design Standards
National Electrical Code
Americans with Disabilities Act (ADA)
ASHRAE/IES Standard 90.1
International Energy Conservation Code

The design parameters listed in this document may be considered a working document as well. As the design progresses the parameters in this document may be revised as a result of changing technology, payback analysis and/or feedback from the owner.

Mechanical & Plumbing Demolition:

All existing mechanical and plumbing systems will be demolished from the building. Remodel work will provide all new plumbing systems from the main AWWU utilities in the alley; and will be installed completely new to support the new building addition and existing structure. All existing heating and ventilation systems will be completely demolished from the building and will be replaced with new efficient systems.

Fire Protection:

As this is a design build project the sprinkler contractor will work with a NICET licensed sprinkler designer to provide design and installation of the sprinkler system. It is anticipated that a standard wet-pipe sprinkler system complying with NFPA 13 will be provided throughout the facility. A dry-pipe sprinkler system may be necessary to protect canopies or overhangs if they are built of combustible construction.

C:\Users\KKakizaki\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\KLTXS4MA\L3141 LIO Mechanical Narrative-Final Without High Rise.docx

Doc 9/19/11

The building height of 110' to the mechanical penthouse level in combination with the available water pressure at the site is very close to needing a fire pump to supply adequate pressure to the sprinkler heads at the top of the building. The need for a fire pump will need to be analyzed by the sprinkler designer to determine if piping can be sized to meet site conditions. Static water pressure is approximately 60 PSI; available flow at the main is 2,438 GPM at 20 PSI residual.

A single sprinkler riser will be acceptable since the building is less than 52,000 square feet per floor. Dry standpipe risers will be located in the stairwell exit enclosure(s). One dry pipe will need to extend through the roof for fire department access.

A suitably sized fire department connection line will be routed from the sprinkler riser to near the building's main entry. Sprinkler piping will need to conform to the requirements of NFPA 13.

Plumbing:

The new water service and sprinkler riser will be located in the basement and first floor mechanical room adjacent to the South alley to support both domestic water and sprinkler systems. The requirement for a fire pump (if necessary) will drive space constraints and locations as the design moves forward.

It is anticipated that a 6" water service will be provided for the building. The domestic water system will be separated from the sprinkler system by a double check back flow prevention device in accordance with requirements of the UPC.

Due to the height of the building a domestic water pressurization pump package will be necessary to provide adequate pressure for plumbing fixtures in the upper floors. A variable speed controlled multiple pump package will be specified to service the upper floors. The basement and lower level floors will operate using city water pressure and will be piped separate from the domestic water booster pump. The domestic water service will also include a backflow preventer. All domestic water piping will be specified to be Copper, CPVC or PEX piping.

The new sanitary sewer service will enter the building from the South alley. The pipe will be 6" diameter and enter the building above the floor level of the basement. The basement plumbing fixtures will drain to a duplex lift station that will pump the sanitary waste up to the level of the incoming sanitary sewer line. The lift station will be located in a dedicated room that is ventilated continuously at 5 air changes per hour. Sanitary piping will be specified to be cast iron no-hub or copper, drain waste and vent (DWW). ABS and PVC can be considered for areas that do not have return air plenums, or noise concerns.

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Domestic hot water for the building will be provided using two separate water heaters. One water heater will be located in the first floor area and supply the lower floors that operate using city water pressure. The second water heater will be located in the mechanical penthouse and will serve the fixtures that operate using the domestic water pressure booster pump. Water heaters will be gas fired sealed combustion high efficiency equipment. A hot water recirculation system will be required to provide hot water to plumbing fixtures located on each floor. Water will be stored in the tank at 140 degrees and will be routed through a tempering valve prior to distribution to the rest of the building. The distribution temperature will be adjustable but we recommend a 115-degree temperature. Tempering valves with the appropriate ASSE listing will be utilized at public lavatories.

New plumbing fixtures will be installed throughout the facility. All the existing fixtures will be demolished. The new plumbing fixtures will be specified to include water and energy saving devices and will incorporate vandal resistant features to prevent tampering. New floor drains will be installed where required. All new floor drains will be equipped with trap primers as required by code. In addition to the new restroom groups, each legislative office floor will include a kitchen sink, dishwasher & hydration station and refrigerator. Single stall shower rooms will be provided in the basement for the small locker and exercise equipment areas.

New exterior, frost-proof hose bibbs will be provided for both the new addition and existing portion of the building. Hose bibbs will be installed around the exterior of the building at approximately 150' intervals or specifically where needed for clean-up or irrigation for planting. Hot water and cold water hose bibbs will be installed in the toilet rooms where Janitor rooms are not located adjacent to the toilet rooms.

New rainleader piping will be installed to support the new roof drains and overflow drains serving the facility. The roof drains and overflow drains will connect at the roof and tie into the primary storm drain lines inside the building; an overflow scupper will be installed where the building storm sewer leaves the building in accordance with Handout Number 39 of the Municipality of Anchorage Building Safety Division.

The existing gas meter bar has several gas meters that serve various buildings on the block. The final location of the gas meter(s) and service to the building(s) that are currently supplied from the South alley will need to be coordinated with Enstar and the various building owners.

Elevator sump pumps will be necessary; current code requires 50 GPM capacity per elevator car. The Municipality of Anchorage is currently preparing a policy that may allow 50 GPM capacity per elevator pit; this will be evaluated during the design process.

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Fuel Systems:

New natural gas piping will be provided to supply the boilers, water heater, and the rooftop HVAC unit on the roof. Due to the length of run from the meter location to the roof it is anticipated that a medium pressure gas piping system will be designed to limit the size of the gas piping. The location of the medium pressure gas piping will need to be coordinated with the architecture. Enstar has restrictions on the use of medium pressure gas piping within a building. The gas piping may have to be enclosed in a decorative chase or be routed exposed up the exterior of the building. The gas meter will be provided with a mechanical operated earthquake valve to shut off gas in the event of a significant seismic event.

In addition the gas meter and gas piping that was recently installed for the Verizon generator located on the roof of the building will need to be addressed in the remodel similar to that described above (for new gas piping to the boiler/HVAC system).

The packaged standby generator will be provided and specified by the electrical engineer. The generator will include a double wall subbase fuel storage tank with the unit for fuel storage.

Heating:

The new boiler system will be installed in the existing penthouse mechanical room. The heating system will include two (2) sealed combustion high efficiency-modulating boilers. Two in-line mounted circulating pumps with variable frequency drives will supply heating water to the building.

Depending upon the selected boilers; piping will be either a parallel pipe design, or a primary/secondary piping arrangement with a boiler pump. The hot water supply temperature will be reset based on outside air temperature. The outside air reset schedule will increase supply hot water temperatures during peak heating season operation and decrease hot water supply temperatures to minimum levels during shoulder and summer seasons.

The building will be heated with fintube radiation. The fintube will be located continuously along the perimeter of the building to provide warmth where the heat is lost through the exterior wall. Entryway terminal heat transfer equipment will be cabinet unit heaters; storage rooms and penthouse areas will utilize hydronic unit heaters. Perimeter fintube and the terminal heating units will provide heat to the building during unoccupied hours when the air-handling units are off. Hydronic heating coils will be installed in each of the VAV boxes to provide tempering of supply air and supplemental heating for occupant comfort. Fintube, terminal heating equipment, and heating coils will be oversized to

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operate with 140 degree F water to allow the high efficiency boilers to operate at condensing temperatures throughout the year.

A direct return heating system will supply the terminal heating equipment. The piping mains will be routed vertically in the ventilation shaft and tee off at each floor to serve fin tube, unit heaters, and VAV box coils. Heating coils and terminal heating equipment will be provided with 2-way valves to take advantage of the variable speed pumps. Isolation valves will be provided at each floor where piping exits the shaft for maintenance and isolation for remodel work.

The primary heating system will utilize water with inhibitors for corrosion protection and stabilization a chemical feed and test station will be incorporated into the design. Glycol water systems are not necessary for the building as the rooftop HVAC unit has gas heat and there will be no heating coils exposed to freezing conditions.

Ventilation:

The ventilation system for the building will consist of a new packaged, gas fired, electric cool, direct expansion HVAC rooftop unit. The air distribution system will be designed to conform to ASHRAE Standard 62.1 to ensure good indoor air quality. CO2 sensors and outside air intake volumetric measurement sensors will be employed to ensure adequate ventilation rates. A post construction, pre-occupancy ventilation purge of the building is planned to remove indoor air contaminants produced by off gassing of new construction materials.

The building ventilation system will be variable air volume (VAV). Medium pressure supply air ductwork will be routed from the rooftop HVAC unit to each floor using a ventilation shaft. A combination fire/smoke damper will be required where the supply duct penetrates the shaft wall. The ventilation shaft will also provide the path for return and relief air back to the rooftop HVAC unit. Return air openings complete with combination fire/smoke dampers and sound lined elbows will be provided above ceiling at each floor to allow return air to transfer into the shaft. The space above the T-Bar ceiling on each floor will be a return air plenum.

Sound control is important between legislative suits. As such the walls will go full height for each of the suites and the corridors. An air transfer opening with a sound lined transfer boot will be located above the ceiling at the entry door of each suite to allow return air to transfer to the space above the corridor ceiling and back to the ventilation shaft.

The VAV system will be sized to cool the building using 55 degree F supply air in the ductwork distribution system. The VAV system supply air temperature will be reset based upon the air temperature required to cool the hottest room. The air

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handling unit fan will modulate up or down as needed to meet the required demand load. The fin tube radiation will be controlled with the local VAV box and coil in sequence to maintain a comfortable space temperature.

Air distribution will include multiple types of inlet/outlets for the various building areas. Flow bar style diffusers are anticipated for the legislative offices and common areas supply air. A combination of flowbar and 4-way throw diffusers will supply air to the remainder of the spaces. A combination of eggcrate and bar grilles are anticipated for return and exhaust.

The packaged rooftop unit will include relief fans to ensure air turnover during economizer operation. The relief fans will include a variable frequency drive to allow capacity modulation to maintain a +0.05" (adjustable) pressure differential between the indoor and outdoor.

The main restrooms rooms, break rooms, janitor closets and other similar spaces in the facility will be served by a roof mounted variable speed domex exhaust fan. The exhaust fan will be scheduled to operate during the owner's occupied/unoccupied schedule. Ductwork will be slightly oversized to allow the addition of exhaust requirements in the future. This will allow exhaust modifications by simply rebalancing the system.

Communication closets and AV Room areas will be provided with a dedicated cooling exhaust air fan with transfer air duct to maintain space temperature. The exhaust fan will draw air from the occupied space and discharge the air into the return air plenum above the ceiling. A close on rise thermostat will start the exhaust fan when temperature rises above set point and shut off the fan when the set point is achieved. The dedicated exhaust fan will be capable of 24/7 operation allowing cooling of the communication closets when main building air handling units are shut off during unoccupied modes.

The lift station enclosure room located in the basement will include a dedicated exhaust fan that is extended to discharge to the exterior of the building. The fan will be sized to provide a minimum of 5 air changes per hour and will operate continuously.

IT Room Cooling:

The IT room will be provided with two completely redundant cooling systems. Each cooling system will be sized to meet 100% of the cooling load (plus some expansion) to allow back-up should one unit fail. This will also allow one unit to be taken down for service without affecting operation of the IT Room computer equipment.

Each cooling system will be specified to include humidification and dehumidification capability to maintain the space between 30% and 50% relative

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humidity. Condensate will be pumped (or drain by gravity if possible) to an indirect waste location in the facility.

Each cooling system will include a remote dry cooler and duplex pump package to provide free cooling when outside air temperatures are suitable. The dry coolers (or a single two circuit dry cooler) will be located in the adjacent parking garage. Glycol piping will extend between the dry cooler(s) and the cooling units in the IT Room to transfer rejected heat from the IT Room to the exterior. During winter operation a cooling coil in the unit provides cooling. During the summer the heat rejected from the operating compressors is rejected to the exterior using the drycooler.

The system will utilize a 50/50 mixture of propylene glycol and water and will include a glycol fill tank and expansion tank. (deleted "air separator." We don't typically install air separators on dry coolers)

Snowmelt:

The owner is providing snowmelt for three areas of the building: the front entry/sidewalk, the South rear entry/loading area and the parking garage ramp for safety and reduced snow removal and icemelt use. This will reduce maintenance of high traffic areas in the building. The first two areas can be combined and supplied from a single snowmelt boiler located in the first floor mechanical room located at the South end of the building. An alternate approach under consideration will be to provide a heat exchanger and snowmelt pump at each snowmelt location and provide the energy for melting snow from the main boiler system that supplies the building.

If a separate boiler is used it will be a gas fired sealed combustion high efficiency boiler. The boiler will supply heat into a snowmelt piping distribution loop that extends to each of the snowmelt areas. A snowmelt distribution manifold will supply tubing loops at each snowmelt location. Snowmelt tubing will typically be 5/8" diameter located 6" on center (over insulation) but embedded in the slab.

A stand alone Tekmar controller would operate the distribution pumps and enable the boiler in sequence to melt snow in the two locations. A snowmelt sensor located in each of the areas can be employed to automatically start/stop the system and control idle mode between snowfalls.

Insulation:

The building will be designed in accordance with LEED concepts. Insulation for piping, ductwork, and equipment will be in accordance with the International Energy Conservation Code (IECC). Supply air ductwork located in the return air plenum above the ceiling plenum will require insulation. Insulation will also be

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installed on the air separator, as well as valves/hydrionic specialties larger than 2" diameter.

Controls:

A microprocessor based direct digital control (DDC) system will be specified for the facility. The control system will be performance specified by the engineer to meet the sequence of operations listed in the contract documents. The control system will be specified to be a Trane Tracer Building Automation system.

The control system will include a full graphics package to allow point and click access for control of mechanical system.

The boiler system will be specified to include a package boiler controller. The boiler controller will communicate with the building DDC system to provide alarm information only.

The rooftop HVAC unit and VAV boxes can be provided complete with Trane Tracer controls to seamlessly integrate into the DDC network. The main building exhaust fan would also be controlled by the DDC system.

Remaining equipment such as unit heaters, cabinet unit heaters, communication closet exhaust fans, will be controlled with standalone electric/electronic controls that do not require connection to the DDC system.

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Exhibit A – LIO Electrical Narrative

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ELECTRICAL AND TELECOMMUNICATIONS DESIGN NARRATIVE
LIO ANCHORAGE STATE LEGISLATIVE OFFICE BUILDING RENOVATION

Scope of Work Basis of Design

Design and construction of the facilities will comply with the latest publications identified under the References section. In addition the apparatus, equipment, materials, and installation will conform to the standards of the National Electrical Manufacturers' Association (NEMA), Underwriters' Laboratories, Inc. (UL)*, the Institute of Electrical and Electronic Engineers (IEEE), the Illuminating Engineers Society (IES), and the Occupational Safety and Health Administration (OSHA). *All electrical devices and equipment will be listed by an acceptable certified testing laboratory.

The design will include calculations supporting the designed fault interrupting capacities, calculations supporting the total connected building load, panel loads and estimated building and panel feeder voltage drops.

The electrical design and construction will include, but is not limited to:

- Main distribution switchboards consisting of metering equipment and overcurrent protection for distribution and branch circuit panels.
- Feeders to distribution and branch circuit panels.
- Branch circuit panels for power, lighting, HVAC, etc.
- Branch circuit wiring systems for equipment, lighting, duplex receptacles, appliances, motors, motor starters, etc., as required.
- Wall switches, duplex receptacles and other wiring devices.
- All hangers, anchors, sleeves, chases, support for fixture, and electrical materials and equipment.
- Interior lighting fixtures, controls complete with all lamps.
- Wiring and connections to all equipment furnished by the owner.
- Exterior lighting and controls.
- Telecommunication system.
- Fire Alarm system with monitoring of sprinkler system.
- Door Access.
- CCTV System.
- Cable TV system.

References

The following electrical codes and standards will be applicable to the electrical design of the facility:

- International Building Code (IBC)
- International Residential Code (IRC)
- Illumination Engineers Society (IES) Lighting Handbook
- NFPA 101 Life Safety Code
- NFPA 70 - NEC National Electrical Code
- NFPA 72, National Fire Alarm Code
- TIA/EIA 568A, Commercial Building Telecommunications Cabling Standard
- TIA/EIA 568B, Commercial Building Telecommunications Wiring Standard
- TIA/EIA 569A, Commercial Building Telecommunications Pathways and Spaces
- TIA/EIA 600, The Administration Standard for the Telecommunications Infrastructure of Commercial Buildings
- TIA/EIA-606
- TIA/EIA 607, Commercial Building Grounding and Bonding Requirements for Telecommunications

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Design and construction of the facility will comply with the latest publications identified under the References section. In addition the apparatus, equipment, materials, and installation will conform to the standards of the National Electrical Manufacturers' Association (NEMA), Underwriters' Laboratories, Inc. (UL)*, the Institute of Electrical and Electronic Engineers (IEEE), the Illuminating Engineers Society (IES), and the Occupational Safety and Health Administration (OSHA).

*All electrical devices and equipment will be listed by an acceptable certified testing laboratory.

Power Distribution

Electrical Service

The current service is a 208V 3 Phase 1200 Amp. It is planned to replace the existing electrical service with a new 2500 Amp 208 Volt or a 1200 Amp 480V 3 phase service depending on which proves more cost effective. Verizon has existing equipment on the roof which must remain functional during the remodel. The load is 200 Amp 208V single phase and includes a natural gas fire generator.

Service Equipment - Main Distribution Switchboard

Service entrance equipment will be dead front construction, equipped with circuit breakers and sized to accommodate 125% of building load. The building loads will be metered at the service entrance equipment. Meter will be digital and equipped with communication port for future remote energy monitoring. The digital meter will provide as minimum voltage and amps each phase, KW/KWH demand, KVA and usage. Meter provided will be equipped with an output connection to transmit the signal to a remote location via telephone lines at a later date. Transient voltage surge suppressor will be provided at the service equipment. Surge suppressor will meet the requirements of IEEE C62.41 and be UL listed and labeled as having been tested in accordance with UL 1449.

Standby Power

A 150 KW standby power generator is planned to be installed on the alley side of the building. Generator to be installed in a weatherproof enclosure. An integral sub base fuel module will be provided in the unit.

A single 600 Amp 4 pole automatic transfer switch with distribution for the elevators, telecommunication equipment in each telecom room, heating equipment, partial lighting and misc power receptacles deemed critical.

Interior Electrical Power Distribution

Complete interior electrical distribution system will be provided as required by the National Electrical Code. Voltage drop will be in accordance to National Electrical recommendation. An electrical room will be provided on each floor. Each floor will be provided with a 480Y/277V lighting panel and two 208Y/120V power panel for receptacles etc. Outlets in all office suites will exceed code and will be placed on office suite demising walls perpendicular to exterior walls to accommodate at least four workstations per office.

Panelboards

All panels will be sized for the load served plus 25% spare capacity and 15% space. Only bolt-on circuit breakers will be used. All panels located in finished areas will be recessed and all panels and conduits located in unfinished areas will be surface mounted. Separate electrical rooms will be provided to the greatest extent possible and on each floor of multi-story buildings.

Conduit and Raceways

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All interior wiring in the building will be run in conduit. Raceways will be specified of the type suited for the applications and locations. Raceways installed for future systems will include pull wire. To the maximum extent practical, conduit will be installed concealed in all areas except utility spaces.

Conductors

Conductors will be copper. Conductor #12 or smaller will be solid. Conductor #10 or larger will be stranded. All building wiring (line-voltage between 100-600 volts) will have type THHN, or XHHW 75 ° C (167 ° F) insulation and be rated at 600 volts unless some other type is specifically required for a particular application. Power conductors will not be smaller than #12 AWG.

A separate insulated grounding conductor will have green color or marking insulated and be sized and installed per NEC requirements, in all secondary, distribution, feeder and branch circuit conduits.

Branch Circuits for Receptacle and Lighting Circuits

Lighting and convenience outlets will be run on separate circuits. Dedicated circuits for loads greater than 50% of the circuit capacity will be provided.

Circuits for computers and electronic devices will be designed to have a dedicated neutral and the panels and transformers rated accordingly.

Devices

All duplex receptacles will be 20 amp, 125 volt, three pole grounded type specification grade duplex receptacles NEMA 5-20R are acceptable unless type of equipment requires different configuration. Impact resistant plastic plates will be provided for boxes and devices. Ground fault interrupt (GFI) type duplex receptacles will be provided in locations as required by the NEC and provided with weatherproof device plate covers at exterior locations. At least one GFI receptacle will be provided in each restroom and janitor's closet. Arc-fault circuit interrupter protection will be provided in accordance with NEC.

Provide the minimum power outlets required by NEC but not less than a duplex outlet on each wall. In office and administration areas provide double-duplex receptacles at each location and near a data outlet.

Lighting

Exterior Lighting

General

All lighting shall comply with the recommendations of the Illumination Engineering Society of North America (IESNA). All exterior site and area lighting will be LED.

Interior Lighting

General

Illumination levels will be in accordance with the recommendations of the latest Illuminating Engineering Society (IES) Lighting Handbook.

The lighting systems will be designed to provide comfortable visibility conditions having adequate intensities for the safe and effective accomplishment of the tasks to be performed. The finish and color of room surfaces will be coordinated with the lighting system design to reduce glare, increase light utilization, and attain an acceptable brightness ratio recommended by Illuminating Engineering Society (IES) Lighting Handbook. Light sources and fixtures will be selected to provide the most efficient and economical system practicable. Lineal fluorescent and compact fluorescent lighting will be provided as the primary source of illumination. Lighting calculations will be based on the actual finish material reflectance or a maximum of

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80% for ceiling, 50% for the wall and 20% for floor whichever is lower. Light fixture schedules including lamp type, voltage, wattage, type of mounting, manufacturer name and catalog number will be provided.

All conference rooms will include 5% dimming ballast.

Refer to architectural reflected ceiling plans and catalog cuts for additional information.

Lighting Control

Control switches for general room lighting will be located at room entrances and other locations for control of lighting fixtures and systems. Typically, rooms with more than one door will have three or four-way switches as required.

Emergency Lighting System

Emergency lighting will be provided per NFPA 101. Emergency lighting will be designed as an integral part of the facility lighting system, and will be incorporated as part of the system lighting fixture. As a minimum, emergency lighting will be provided for building corridors, stairs and common areas.

Exit Signs

Exit signage will conform to NFPA 101. Exit signs will be glass green edge light emitting diode (LED).

Grounding

Provide a building grounding electrode system consisting of a ground ring, metal underground water pipe, building structural steel, concrete encased electrodes, and copper clad steel rod electrodes. A ring ground of #1/0 AWG bare copper buried within the building foundation interconnecting to a 3-meter minimum length ground rods and foundation every interior/exterior corner 2 meters from the building.

All line voltage circuit wiring will contain a separate bare or green insulated grounding conductor. Conduit raceways will not be utilized as the only grounding method. A min #6 AWG copper will be provided from service equipment ground to main telecommunication closet per TIA/EIA 607 requirements.

Other Requirements

Mechanical Connections

Mechanical connections for mechanical equipment. See mechanical narrative.
Provide option to provide power for fire pump as sized by mechanical engineer.

Conference Rooms

Conference rooms will include wall flat screens with network connections, laptop interface, video conferencing and power/telecom under the conference tables.

Lighting in conference room will be dimmable.

Seismic and Testing Requirements

Design, calculations, and testing of all seismic requirements for electrical and communications equipment shall be provided. All electrical equipment shall be tested in accordance with applicable specification for each type of equipment. Testing shall include any required factory testing, field testing, and operating testing. As a minimum, testing shall include, transformers, wiring, switches, light fixtures, circuit breakers, contactors, and head bolt outlets.

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Telecommunications (Voice and Data)

Cat 6 horizontal Telecommunication cabling system will be provided with all cables routed back to dedicated telecommunication room on each floor.

Vertical Telecommunication system will include 200 pair copper voice cable and 24 strand fiber optic riser.

Distribution will be design in compliance with ANSI/EIA/TIA standards. The telecommunications system will be complete and include the telephone/data and cable system backboards, punch down blocks, and all associated raceways, cable tray, j-hooks, outlets and cabling.

Equipment racks shall be floor mounted 19 inch wide. Provide minimum 50 foot-candle lighting level and minimum two dedicated 20-ampere 110 volt power branch circuits in the communications room. A wall-mounted telephone near the entry door of each main communications rooms will be provided.

Cable tray will be used for interior distribution of com systems.

Provide 24 port, rack mounted fiber optic patch panel with coupling plates and ST connector ports
Distribution of fiber optic cables throughout the new building will be by others.

Copper cable distribution shall be 4-pair 24 AWG, 100-ohm unshielded twisted pair (UTP) in 1 inch conduit. All copper pairs and fiber optic strands shall be terminated and tested. Copper connectors will be EIA/TIA Cat 6 8-pin/8-position insulation displacement terminations wired per T568B. Fiber optic connectors will be EIA/TIA "SC" type 568SC. A minimum of two 8-pin modular RJ45 type connectors will be provided in each outlet box. In finished areas standard outlet boxes will be 4-11/16 x 4-11/16 double gang electrical box with the faceplate flush with the wall surface. In unfinished areas the outlets shall be surface mounted.

One outlet in each main mechanical and electrical room of the buildings for official communications. Communications outlets will be provided in all private offices, platoon offices, conference rooms. Number of outlets will be per the requirements of the RFP in each area.

Cable TV (CATV) System

Cable television connection will be provided to all buildings. Service will be coordinated with GCI. Each office suite and conference rooms will include outlets.

Fire Alarm

The building will be equipped with an addressable fire alarm system with a fire alarm panel and dialer panel
A remote annunciator will be provided at the building entrance.

Access Control System

Door access control system will be required for approximately 20 doors. System to be compatible with existing State of Alaska systems at other facilities.

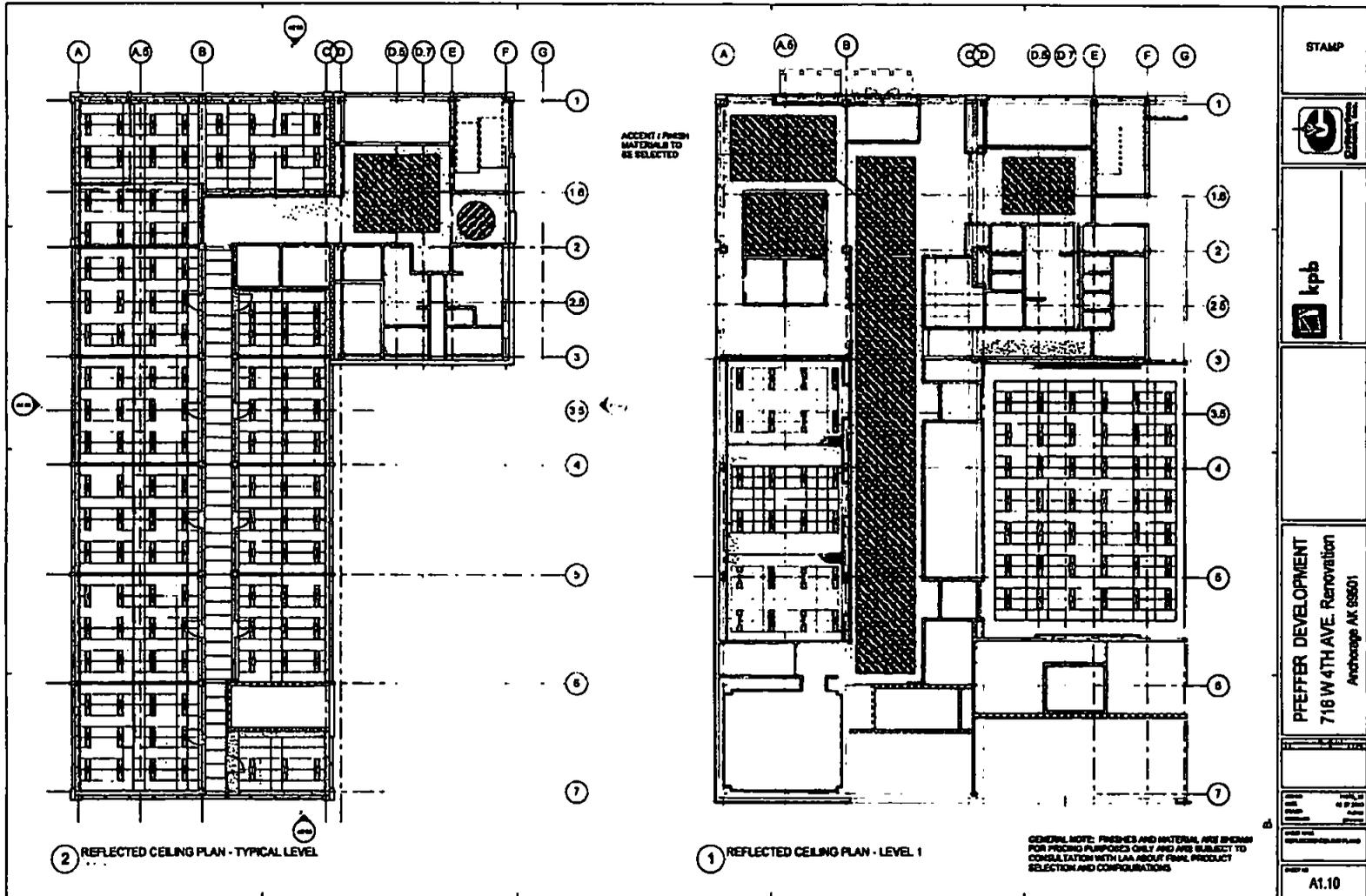
CCTV Security

A CCTV system will be required with an assumed 20 cameras with recording DVR's for a 2 week period.

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Exhibit A – LIO Reflected Ceiling Plans

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Exhibit A –
LIO Structural Plans Narrative

Doc 9/19/12

Legislative Information Office (LIO) Building Renovation

Structural Narrative

08-28-13

Existing Construction

The existing legislative information office building is a 7-story (6-story + 1-story basement) building located in downtown Anchorage, AK. No as-built or original construction drawings are available for this building. All the information below is based on data accumulated in the field and assumptions based on typical construction techniques.

The existing gravity-resisting system starts with concrete on metal deck floors, supported by steel bar-joists. The floor decks are typically 1.5-inch metal deck with concrete topping between 3.5 and 4.5 inches thick for a total average thickness of 5.5-inches. The roof uses the same deck and concrete as the floors. The typical floor and roof framing are steel bar joists spanning in the north-south direction between girders. The joists are 14 to 18-inches deep, spaced at 24-inches on-center, and span 20 to 27-feet. The girders and columns supporting the steel bar joists are steel wide-flange moment frames oriented in the east-west direction and are located in seven lines spaced over the length of the building. The girders are 24-inches deep (W24) and the columns are 14-inches wide (W14).

The exterior walls on the east and west sides are 8-inch thick cast-in-place concrete shear walls for the full height of the building. On the north side, the wall consists of a precast and glazing system. On the south wall, the exterior wall is a panelized exterior system similar to an exterior insulated finishing system (EIFS).

The basement floor is 12-feet below the first floor and is a concrete slab on grade that is 2-feet below the grade of the parking garage on the west side, and 3.5-feet below the basement of the Anchor Bar on the east side. Large grade beams run north-south along the sides of the building supporting the 8-inch concrete walls above and the columns along Grids A & C (east and west sides).

At the southwest corner of the first floor, a concrete vault (used by the previous bank tenant) anchors the corner of the building. The first floor is 21-feet tall, while the other stories are 12.75-feet tall. The roof has two penthouses on top; one toward the north end for the elevator; and one on the south side for the mechanical units. In addition, a cell-phone antenna has recently been added on the roof between the penthouses.

The existing lateral system is separated by direction. In the east-west direction, the lateral system is steel moment frames, with W14 columns and W24 beams at each numbered grid. The connections between the beams and columns are referred to as "Pre-Northridge Welded Unreinforced Flange, Welded Web" connections (Pre-Northridge WUF-W). These connections weld the top and bottom flange, as well as the web, of the beam to the column flange. These welds have exhibited low ductility behavior during past seismic events in California over the last 20 years. These types of connections have now been prohibited by the building code without specialized detailing to make them more ductile. Ductile behavior is

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important in buildings, because preventing collapse of buildings after an earthquake is a function of not just the building's strength, but also its ductility.

In the north-south direction, the lateral system is concrete shear walls on the east and west sides. When originally built, these walls were solid for their entire length. In a previous renovation, windows were cut in these walls to bring daylight into the building. No calculations are available for the renovation, so it is unclear whether any strengthening measures were undertaken to verify or enhance the capacity of the perforated shear walls.

Proposed Renovation

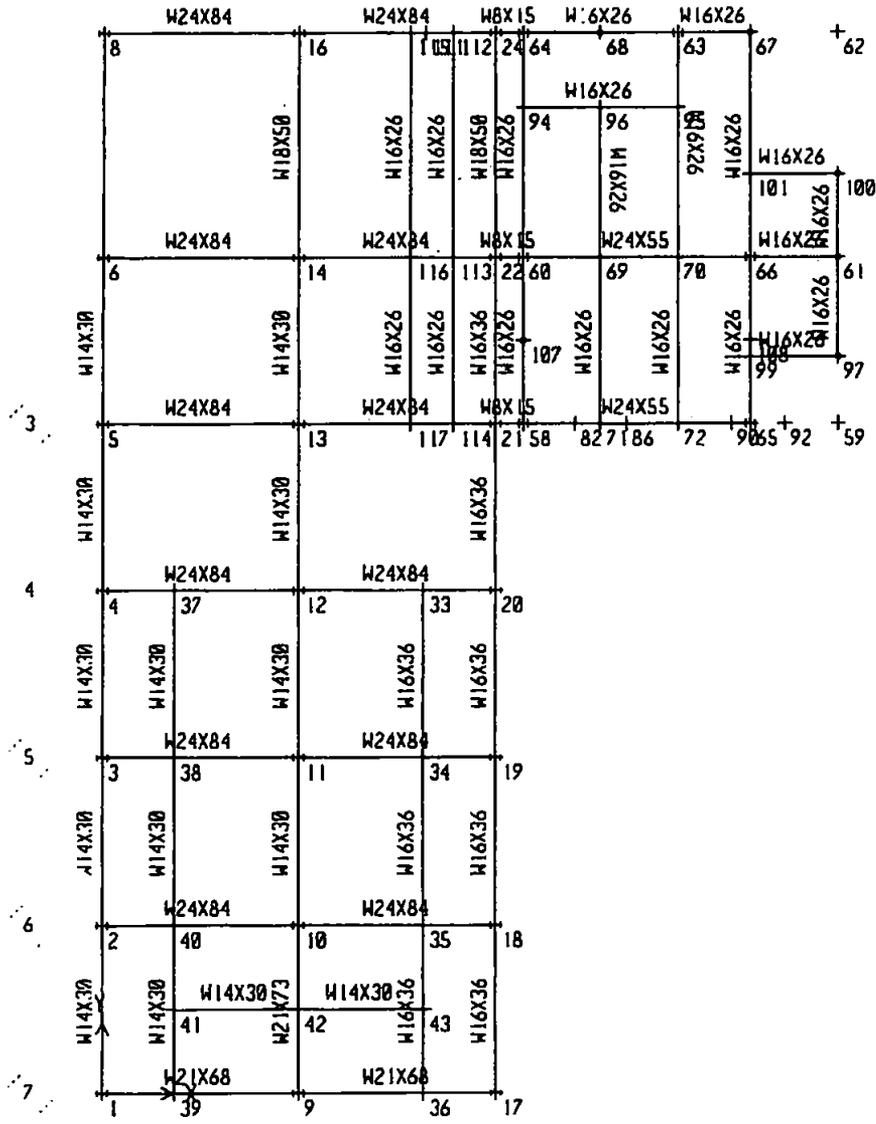
The proposed renovation consists of removing the Anchor Bar from the east side of the building, removing the east and west concrete walls from the existing building, and removing the existing north elevator and stair core (along with the northern penthouse). When these items are removed, the east side addition will be in-filled with a new meeting and hearing space on the basement and first floors, and a six story elevator and stair core on the north end.

During the demolition process, new shoring will be required along the northern edge of the Anchor Bar (along 4th Ave) and on the eastern side (adjacent to the existing building) to retain the basement and foundation excavation for the new building, which is expected to be 15 to 16 feet deep. This shoring will likely consist of steel piling with lagging between piling and will be permanent.

Since the usage and loads in the existing building are not changing, the gravity load resisting system in the existing building is adequate for the new gravity loads and only needs to be modified where the north core stairs and elevator are being removed. The gravity system in the new portion of the building will be tube-steel and wide-flange columns with wide-flange beams. The new floor and roof framing will be concrete on metal deck and supported by wide-flange beams. The foundation of the 6-story tower portion will be a thick concrete mat foundation (approximately 3-feet thick) and with the remainder of the new addition being founded on Isolated concrete footings.

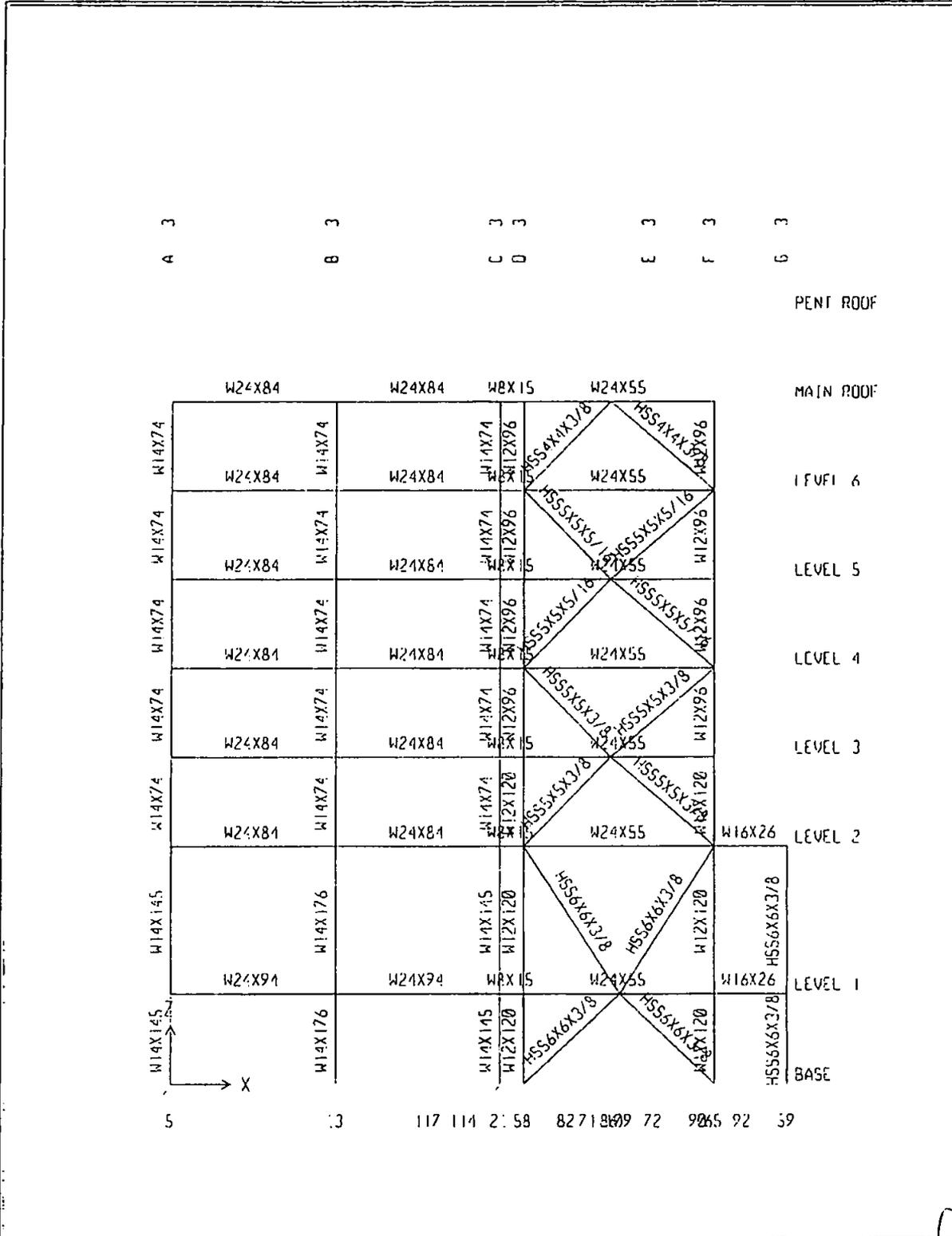
The lateral-load resisting system in the existing building is being completely revised in this renovation. The moment frame connections in the east-west direction are inadequate under current codes, and the concrete walls in the north-south direction are being removed to allow for new curtain wall. To replace the lateral system, new buckling restrained braced frames (BRBF) will be added in both the existing and new portions of the building. Since the entire system is being updated, the new and existing portions of the building will be combined and no seismic joint will be used. BRBF's are an advanced braced frame system that equalizes the braces capacity in both compression and tension, which creates a more balanced response to seismic forces and creates a significantly more ductile response. These braces will be welded and bolted to the existing and new steel frames in three bays in both the north-south and east-west directions.

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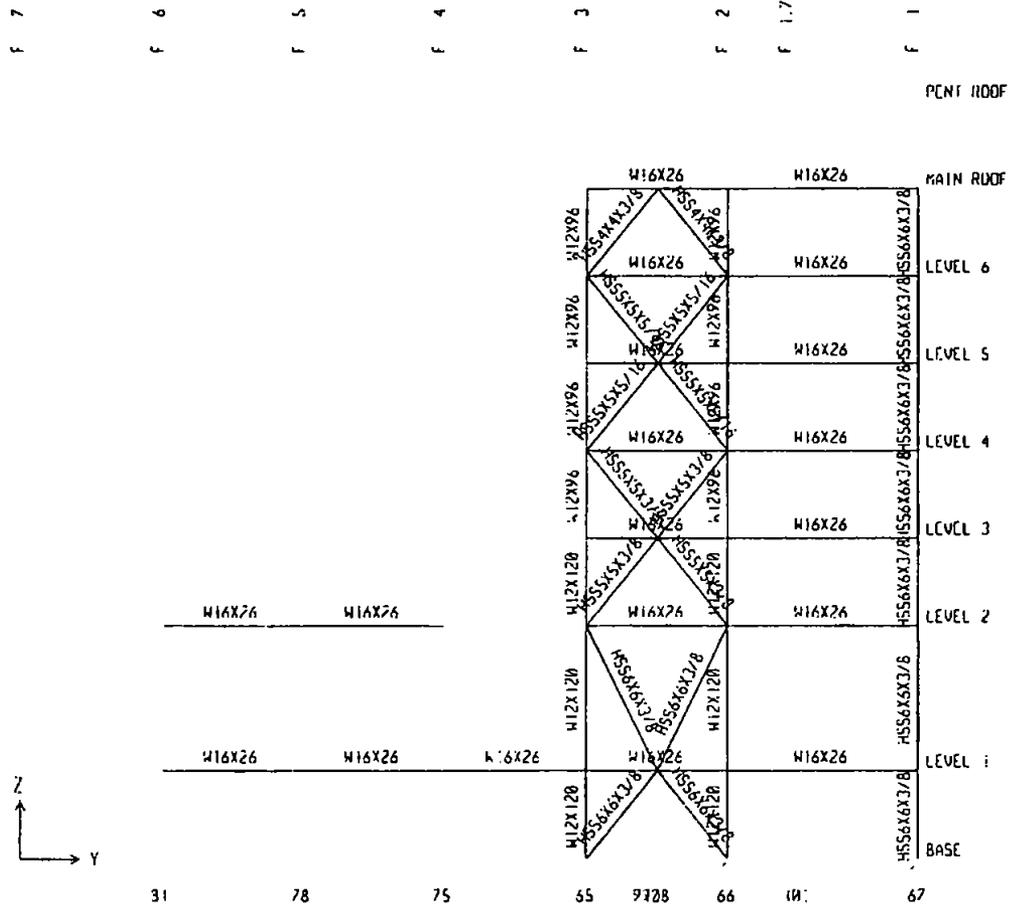
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 Plan View - MAIN ROOF - Elevation 1171 - Kip-In Units

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 Elevation View - 3 - Kip-in Units

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Elevation View - F - Kip-in Units

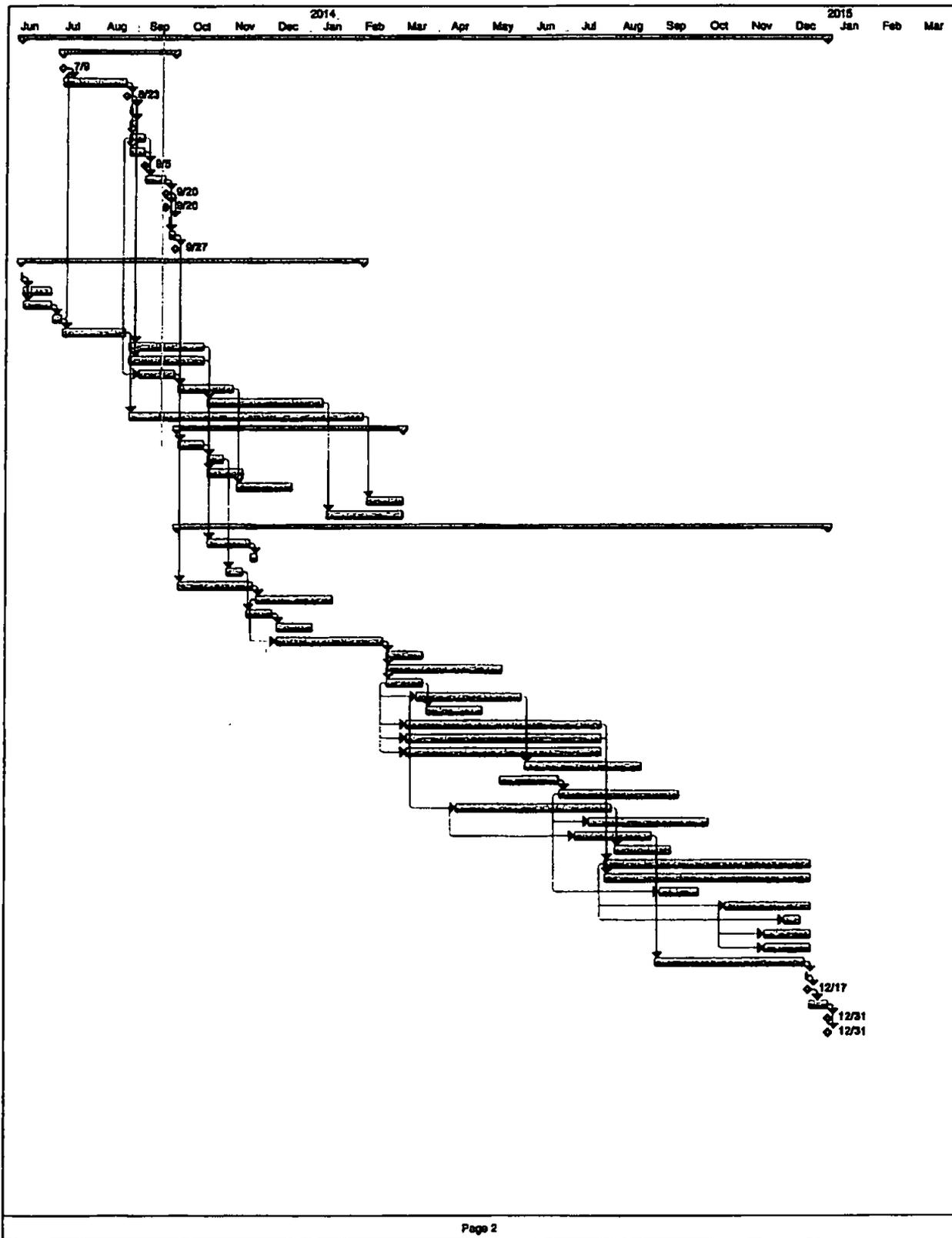
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EXHIBIT B

Dec 9/19/13

ID	Task Name	Duration	Start	Finish	Predecessors	Feb	Mar	Apr	May
1	LIO Building	407 days	Tue 6/11/13	Wed 12/31/14					
2	Financing	58 days	Tue 7/9/13	Fri 9/27/13					
3	Concept Design and Pricing to AHFC	0 days	Tue 7/9/13	Tue 7/9/13 21					
4	Lease Rate and Scope Discussions with Legislature	33 days	Wed 7/10/13	Fri 8/23/13 3					
5	NTP to Design Build Team to progress drawings	0 days	Fri 8/23/13	Fri 8/23/13 4					
6	Design and Schedule Exhibits to AHFC	2 days	Mon 8/26/13	Tue 8/27/13 5					
7	Added Garage Deck Proposal	5 days	Mon 8/26/13	Fri 8/30/13 5					
8	Deal Term discussion with Legislature	9 days	Mon 8/26/13	Thu 9/5/13 4					
9	Appraiser Meetings	9 days	Mon 8/26/13	Thu 9/5/13 4					
10	Finalize Deal Terms	0 days	Thu 9/5/13	Thu 9/5/13 8					
11	Final Appraisal	11 days	Fri 9/6/13	Fri 9/20/13 9					
12	Execute Lease amendment	0 days	Fri 9/20/13	Fri 9/20/13 11					
13	Close on Anchor Pub Financing	0 days	Fri 9/20/13	Fri 9/20/13 11					
14	Close on Anchor Pub acquisition	1 day	Mon 9/23/13	Mon 9/23/13 12					
15	Close on Construction Loan	5 days	Mon 9/23/13	Fri 9/27/13 11					
18	Final Construction NTP	0 days	Fri 9/27/13	Fri 9/27/13 13					
17	Design	174 days	Tue 6/11/13	Fri 2/7/14					
18	Design Kick-off meeting	1 day	Tue 6/11/13	Tue 6/11/13					
19	Geotechnical and Survey	15 days	Wed 6/12/13	Tue 7/2/13 18					
20	15% Design core and Shell and TI Scope	15 days	Wed 6/12/13	Tue 7/2/13 18					
21	Stop Sum Pricing	5 days	Wed 7/3/13	Tue 7/9/13 20					
22	Scope Adjustments	33 days	Wed 7/10/13	Fri 8/23/13 21					
23	100% Structural Building Design	40 days	Mon 8/26/13	Fri 10/18/13 6					
24	85% Design core and shell	40 days	Mon 8/26/13	Fri 10/18/13 5					
25	Temporary Relocation Space Design	20 days	Mon 9/2/13	Fri 9/27/13 8SS+5 days					
26	95% Design core and shell	30 days	Mon 9/30/13	Fri 11/8/13 25					
27	Added Garage Deck Design	60 days	Mon 10/21/13	Fri 1/10/14 24					
28	85% TI Design	120 days	Mon 8/26/13	Fri 2/7/14 22					
29	Permitting	115 days	Mon 9/30/13	Fri 3/7/14					
30	Temporary Space TI Permit	15 days	Mon 9/30/13	Fri 10/18/13 25					
31	Demolition Permit	10 days	Mon 10/21/13	Fri 11/1/13 24					
32	Structural Shell Permit (needed for LIO Demo)	20 days	Mon 10/21/13	Fri 11/15/13 23					
33	Core and Shell Permit	30 days	Mon 11/11/13	Fri 12/20/13 28					
34	TI Permit	20 days	Mon 2/10/14	Fri 3/7/14 28					
35	Garage Deck Permit	40 days	Mon 1/13/14	Fri 3/7/14 27					
36	Construction	328 days	Mon 9/30/13	Wed 12/31/14					
37	Build Out Temporary Space	23 days	Mon 10/21/13	Wed 11/20/13 30					
38	Relocate Legislature and LIO	3 days	Thu 11/21/13	Mon 11/25/13 37					
39	Bar Demolition	10 days	Mon 11/4/13	Fri 11/15/13 31					
40	Crane Mobilization	40 days	Mon 9/30/13	Fri 11/22/13 18					
41	LIO Building Demo	40 days	Mon 11/25/13	Fri 1/17/14 40					
42	Shoring on Bar Site	15 days	Mon 11/18/13	Fri 12/6/13 39					
43	Foundation construction	20 days	Mon 12/9/13	Fri 1/3/14 42					
44	Structural Steel/Seismic Refit	55 days	Mon 12/9/13	Fri 2/21/14 41SS+10 days					
45	Site Utility Work- Building foundation	20 days	Mon 2/24/14	Fri 3/21/14 44					
46	Exterior Siding/curtain wall	60 days	Mon 2/24/14	Fri 5/16/14 44					
47	Membrane Roofing/insulation	20 days	Mon 2/24/14	Fri 3/21/14 44					
48	Interior Framing	55 days	Mon 3/17/14	Fri 5/30/14 47SS+15 days					
49	Stair Construction	30 days	Mon 3/24/14	Fri 5/2/14 47					
50	Electrical Rough in	100 days	Mon 3/10/14	Fri 7/25/14 47SS+10 days					
51	Mechanical Rough in	100 days	Mon 3/10/14	Fri 7/25/14 47SS+10 days					
52	HVAC Rough in	100 days	Mon 3/10/14	Fri 7/25/14 47SS+10 days					
53	Elevator Installation	60 days	Mon 6/2/14	Fri 8/22/14 48					
54	Site utility Work - In ROW	30 days	Thu 5/15/14	Wed 6/25/14					
55	Garage Deck foundation and structural work	60 days	Thu 6/26/14	Wed 9/17/14 54					
56	Gypsum Wall board	60 days	Mon 4/14/14	Fri 6/1/14 48SS+20 days					
57	Garage Deck architectural, mechanical and electrical	60 days	Thu 7/17/14	Wed 10/8/14 53SS+15 days					
58	Interior Taping and Painting	40 days	Mon 7/7/14	Fri 8/29/14 56SS+60 days					
59	Grid/Gyp Ceilings	30 days	Mon 8/4/14	Fri 9/12/14 56					
60	Electrical Trim	105 days	Mon 7/28/14	Fri 12/19/14 50					
61	Mechanical Trim	105 days	Mon 7/28/14	Fri 12/19/14 51					
62	Alley Paving, Sidewalk concrete, Landscaping	20 days	Thu 9/4/14	Wed 10/1/14 55SS+50 days					
63	Flooring	45 days	Mon 10/20/14	Fri 12/19/14 60SS+60 days					
64	Elevator finishes	10 days	Mon 12/1/14	Fri 12/12/14 63SS+90 days					
65	Casework Install	25 days	Mon 11/17/14	Fri 12/19/14 63SS+20 days					
66	Doors and Hardware	25 days	Mon 11/17/14	Fri 12/19/14 63SS+20 days					
67	Finishes	76 days	Mon 9/1/14	Mon 12/15/14 58					
68	Final Cleaning	2 days	Tue 12/16/14	Wed 12/17/14 67					
69	Substantial completion/CCO	0 days	Wed 12/17/14	Wed 12/17/14 68					
70	Tenant FF&E	10 days	Thu 12/18/14	Wed 12/31/14 69					
71	Tenant Occupancy	0 days	Wed 12/31/14	Wed 12/31/14 70					
72	Final Completion/CO	0 days	Wed 12/31/14	Wed 12/31/14 70					

Due 9/19/15

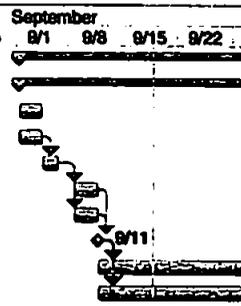


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EXHIBIT B-1

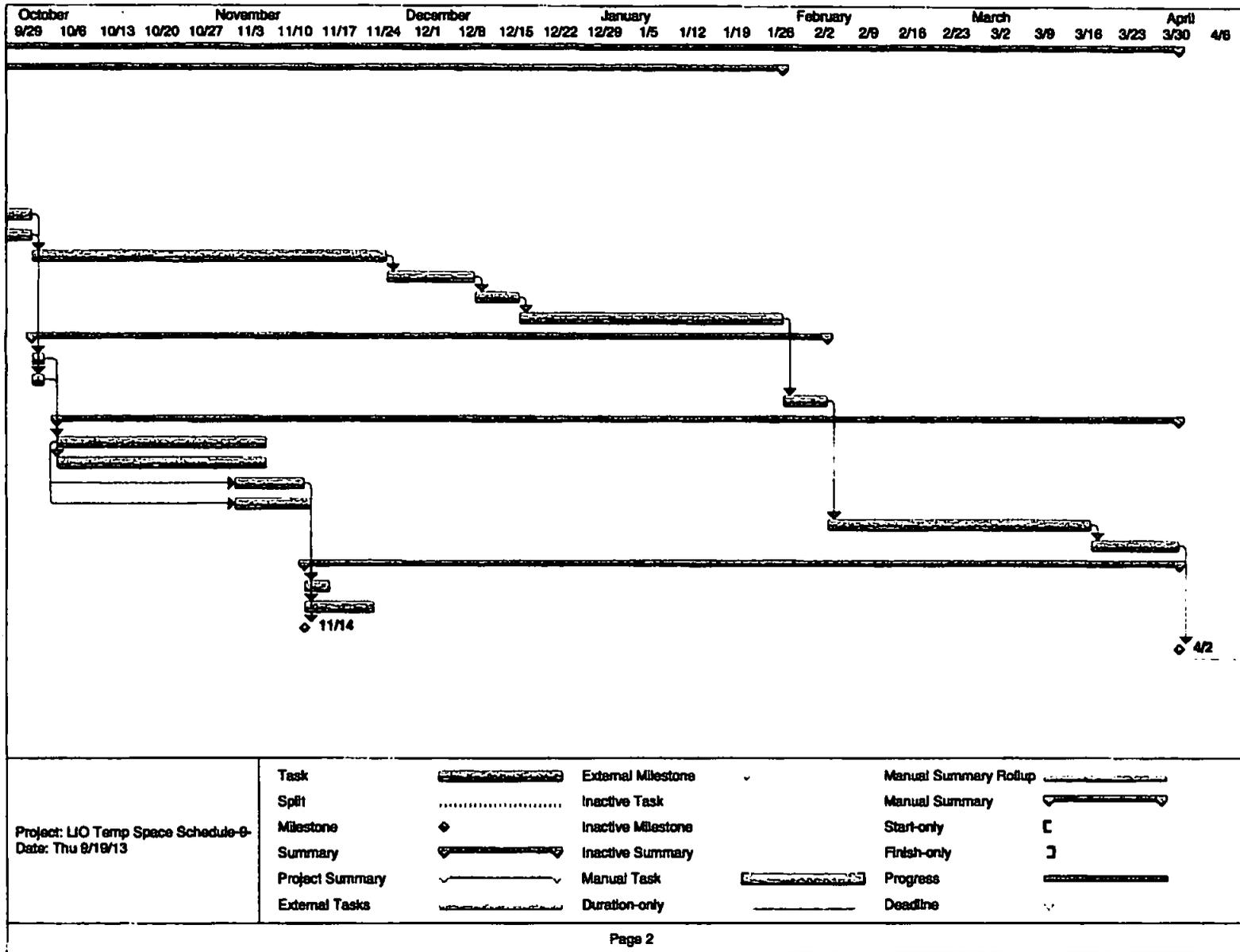
File 9/19/13

ID	Task Name	Duration	Start	Finish	8/18	8/25	September	8/1	8/8	8/15	8/22
1	LIO Interim Space Schedule	163 days	Mon 8/2/13	Wed 4/2/14							
2	Design	108 days	Mon 8/2/13	Wed 1/29/14							
3	Immediately available space programming - 733 W 4th	3 days	Mon 8/2/13	Wed 8/4/13							
4	Immediately available space programming 425 G Street 7th floor	3 days	Mon 8/2/13	Wed 8/4/13							
5	Meeting with LIO Staff to refine program	2 days	Thu 8/8/13	Fri 8/9/13							
6	Refine Draft layout of LIO Space	3 days	Mon 8/9/13	Wed 8/11/13							
7	Draft Layout of legislature office space	3 days	Mon 8/9/13	Wed 8/11/13							
8	Meeting with LIO Staff to Approve plan	0 days	Wed 8/11/13	Wed 8/11/13							
9	Permit Drawings - 733 W. 4th	15 days	Thu 8/12/13	Wed 10/2/13							
10	Permit Drawings 425 G Street	15 days	Thu 8/12/13	Wed 10/2/13							
11	Locate Other available spaces for legislative offices	40 days	Thu 10/3/13	Wed 11/27/13							
12	Draft Layout - other available spaces	10 days	Thu 11/28/13	Wed 12/11/13							
13	Review Layout with Committee	5 days	Thu 12/12/13	Wed 12/18/13							
14	Permit Drawings - other available spaces	30 days	Thu 12/19/13	Wed 1/29/14							
15	Permits	80 days	Thu 10/3/13	Wed 2/5/14							
16	TI Permit - 733 W. 4th	2 days	Thu 10/3/13	Fri 10/4/13							
17	TI Permit 425 G Street	2 days	Thu 10/3/13	Fri 10/4/13							
18	TI Permit - Other Available Spaces	5 days	Thu 1/30/14	Wed 2/5/14							
19	Construction	128 days	Mon 10/7/13	Wed 4/2/14							
20	LIO Temp Space Construction - 733 W. 4th	25 days	Mon 10/7/13	Fri 11/8/13							
21	Temp Space 425 G Street Construction	25 days	Mon 10/7/13	Fri 11/8/13							
22	IT Systems Set-up and Testing 733 W 4th and 425 G Street 7th floor	9 days	Mon 11/4/13	Thu 11/14/13							
23	IT Systems relocation from Current Facility	10 days	Mon 11/4/13	Fri 11/15/13							
24	Construction Legislature office space other location	30 days	Thu 2/6/14	Wed 3/19/14							
25	IT Systems set-up and testing - other location	10 days	Thu 3/20/14	Wed 4/2/14							
26	Moving	99 days	Thu 11/14/13	Wed 4/2/14							
27	Move LIO in to Interim Space	2 days	Fri 11/15/13	Mon 11/18/13							
28	Complete Vacation of existing LIO building	7 days	Fri 11/15/13	Mon 11/25/13							
29	Some Legislative Offices Available in 733 W. 4th	0 days	Thu 11/14/13	Thu 11/14/13							
30	Remainder of Legislature offices available	0 days	Wed 4/2/14	Wed 4/2/14							



Project: LIO Temp Space Schedule-8 Date: Thu 8/19/13	Task		External Milestone	<input checked="" type="checkbox"/>	Manual Summary Rollup	
	Split		Inactive Task	<input type="checkbox"/>	Manual Summary	
	Milestone		Inactive Milestone	<input type="checkbox"/>	Start-only	<input type="checkbox"/>
	Summary		Inactive Summary	<input type="checkbox"/>	Finish-only	<input type="checkbox"/>
	Project Summary		Manual Task	<input checked="" type="checkbox"/>	Progress	
	External Tasks		Duration-only	<input type="checkbox"/>	Deadline	<input checked="" type="checkbox"/>

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EXHIBIT C

PROCUREMENT OFFICER'S FINDINGS UNDER
LEGISLATIVE PROCUREMENT PROCEDURE 040(d)

Introduction

The purpose of this document is to provide a written determination, in compliance with Alaska Legislative Procurement Procedure 040(d), setting forth in detail the procurement officer's determination supporting material modifications of the Legislature's Lease of the Anchorage Legislative Information Office dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended March 3, 2009, renewed for the final one-year term on May 20, 2013, which was previously competitively bid under RFP 391 and publicly issued on July 17, 2003, (hereinafter "Lease"). The current Lease will expire on May 31, 2014.

The material modifications to the Lease that are the subject of this written determination were authorized by Legislative Council, and by mutual agreement with the Lessor. The material modifications to the Lease are amending the existing definition of "premises" within Section 1 of the Lease, titled "RENTAL PROPERTY AND RENTAL RATE," by adding the additional property commonly known as 712 West Fourth Avenue, which is immediately adjacent to the existing leased premises at 716 West Fourth Avenue, and amending other sections of the Lease as necessary to allow for the renovation and retrofit of the expanded premises, including but not limited to, a transition to a triple net leasing structure and changes necessary to accommodate renovation of the premises as described in Exhibits A and B of the Lease.

Background

A. Legislative Council's Authorization to Materially Modify Lease

On June 7, 2013, Legislative Council passed the following motions¹ related to the Legislature's Lease of the Anchorage Legislative Information Office dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended March 3, 2009, renewed for the final one-year term on May 20, 2013, and which will expire on May 31, 2014:

MOTION - AMEND PROCUREMENT PROCEDURE: I move that Legislative Council adopt proposed Amendment No. 12 to the Legislative Procurement Procedure 040 to provide the limited ability for the Legislative Affairs Agency, or a Legislative Committee, to materially modify an existing lease that was previously competitively procured.

MOTION - AUTHORIZE MATERIAL AMENDMENTS TO LEASE: I move that Legislative Council authorize the chairman to negotiate amendments to lease 2004-024411-0 by mutual agreement with the Lessor to remove the limitation of amending a lease that amounts to a material

¹ In addition to the motions set out in the text of these findings, two additional related motions were also passed by Legislative Council on June 7, 2013:

MOTION - LEASE EXTENSION: I move that Legislative Council authorize the chairman (to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a).)

MOTION - ENGAGE AHFC (Alaska Housing Finance Corporation) AS LESSEE'S REPRESENTATIVE: I move that Legislative Council authorize the chairman to enter into a contract for payment not to exceed \$50,000, for AHFC to act as the Lessee's representative in negotiating an extension to Lease 2004-024411-0, as amended to include 712 West 4th Avenue, and to assist in managing the Lessor's compliance with the terms and conditions of the Lessor's improvements, as described in the lease extension.

modification in paragraph 42; and to include 712 West Fourth Avenue, with other terms and conditions necessary to accommodate renovations, not to exceed the estimated cost of a similarly sized, located and apportioned newly constructed building as determined by the Alaska Housing Finance Corporation.

B. Requirements of Alaska Legislative Procurement Procedure 040(d)

Legislative Procurement Procedure 040, as amended by Amendment No. 12 and authorized by Legislative Council as set forth in the motion above, added subsection (d), which provides:

(d) A lease that was procured competitively may be materially modified by amendment, and the material modification of the lease does not require procurement of a new lease, if

(1) the reasons for the modification are legitimate;

(2) the reasons for the modification were unforeseen when the lease was entered into;

(3) it is not practicable to competitively procure a new lease;

(4) the modification is in the best interests of the agency or the committee;

(5) the procurement officer makes a written determination that the items in paragraphs (1) - (4) exist, the determination details the reasons for concluding why the items exist, and the determination is attached to the amended lease; and

(6) the use of this subsection is approved by the procurement officer and, in the case of an amendment for the lease of a legislative committee, by a majority of the committee members.

Procurement Officer's Determination Under Legislative Procurement Procedure 040(d)

040(d): Previously Competitively Bid Requirement

As previously discussed, the Legislature's Lease of the Anchorage Legislative Information Office dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended March 3, 2009, renewed for the final one-year term on May 20, 2013, was previously competitively bid under RFP 391, which was publicly issued on July 17, 2003. Accordingly, under Legislative Procurement Procedure 040(d), the Lease may be materially modified.

040(d)(1): Reasons for the Modification are Legitimate

The decision to modify the Lease is consistent with the purpose of the present Lease, which is to provide office space for the Legislature. These amendments do not alter the essential identity or main purpose of the contract, and do not constitute a new undertaking, and therefore are a legitimate modification of the Lease.

The property at 712 West Fourth Avenue is unique, since it is the only adjacent space to 716 West Fourth Avenue available to satisfy the Legislature's need for additional space, and meets the essential requirement of keeping all the present legislative offices in one building. The addition of 712 West Fourth Avenue allows the Legislature to extend its current Lease as provided under AS 36.30.083(a). Given the uniqueness of the property, and the fact that no other bidder would be able to provide space adjacent to 716 West Fourth Avenue, it would be a waste of private sector resources and legislative procurement resources to competitively bid for the only adjacent property.

The expanded premise will be renovated to meet the needs of the Lessee. In accordance with the expansion of the leased premises, the renovation, and the Lease Extension executed under AS 36.30.083(a), it is necessary to amend material terms of the Lease. Without the modifications, the Lease would not be functional to govern the premises. Given the uniqueness of the property and the ability of the Legislature to have input in the design and function of the renovated building, a competitively bid procurement would be impractical, inefficient, and ultimately, likely unsuccessful in providing premises as suited to the needs of the Legislature.

Accordingly, modifying the Lease by adding 712 West Fourth Avenue to the "premises" and by amending other lease terms to accommodate the expanded premises and the Lease Extension under AS 36.30.083(a) does not subvert the purposes of competitive bidding, and is a legitimate exercise of the Legislature's procurement authority.

040(d)(2): Reasons for Modification Unforeseen When Lease was Entered Into

When the Lease was entered into for 716 West Fourth Avenue in 2004, it was unforeseen that the Legislature would need significant additional space, or that the infrastructure problems with the building would worsen, e.g., the exhausted service life of the HVAC system and the water system, and the elevator failing to handle the demands of staff and public use.

In 2004, based on the Executive Director's Office's best assessment, there were approximately 54 legislative staff working in the building. Today, in 2013, there are approximately 72, which is an increase during the ten-year term of the Lease of approximately one-third. The result of this unforeseen increase in staffing demands on the space in the building is that the staff for some legislators work in shared space. Shared space fails to meet standards for confidential meetings with constituents, and other intra-office privacy concerns. The space has only worked because of the patience and cooperation of Anchorage legislative staff and legislators. However, after the current

Lease term expires the limited space will no longer be acceptable. In addition to the staff of different legislators sharing space, three Anchorage area legislators are sharing space with their staff, which is also not acceptable.

The Legislature requires office space beyond the needs of the Anchorage-area legislators and staff. Once the Lease is amended, the renovated facility will provide space for the Speaker of the House, and the Senate President, who are both out-of-Anchorage legislators, and for rural legislators who require space for conducting work and attending legislative meetings in Anchorage.

Further, the existing building is in need of substantial renovation and upgrade. The condition of the premises is no longer suitable for legislative use. Physical deficiencies include lack of potable water, limited restroom facilities, ineffective HVAC system, deteriorated and leaking plumbing, an unreliable and inadequate elevator, insecure and unsafe below-ground parking facilities, leaking windows, worn window coverings and carpeting, inadequate electrical service, unpleasant odors in the elevator, inefficient lighting, and hazardous materials used in the original construction of the building. All of these will be remediated in the renovation and upgrade.

Had each of these factors been taken individually, fluctuating space demands may have been foreseen at some level. However, the pressure on space in the building from the multiple impacts discussed above was not foreseen when the Lease was entered into in 2004.

040(d)(3): Not Practicable to Competitively Procure a New Lease

The Anchorage Legislative Information Office has been located in leased space at 716 West Fourth Avenue for approximately 20 years. Occupancy was initially under a 10 year lease which terminated in 2003, that was extended month-by-month through 2004, when the current lease was established following an RFP process. The Legislature

is now in its 10th year under the current Lease, having just exercised the final of five one-year renewal options allowed under the terms of the Lease.

Over the past five years the Legislature has explored and requested proposals on numerous occasions seeking alternative space. None of those efforts has resulted in a solution that was possible, practicable or acceptable. Given that the Lease has nearly expired, the Legislature recently provided notice to the public of a Request For Information ("RFI")² from parties interested in providing legislative office space in Anchorage. Two parties provided responses detailing the space they had available. Both spaces were located in areas that were not acceptable to Legislative Council for the needs of the Legislature. The available properties in the responses to the RFI failed to provide constituent access, access to other state and local centers of government, access to public transportation, and access to lodging and meeting spaces. In summary, based on the RFI responses, there are no facilities available for lease that are suitable for the Legislature's unique needs.

Because of the limited interest shown in the RFI and the lack of suitable legislative space available for lease, Legislative Council reconsidered the existing leased space at 716 West Fourth Avenue, and made the determination that the existing building, if renovated and with the addition of a suitable amount of additional space, could continue to serve the Legislature and public. The only available property adjacent to 716 West Fourth Avenue that would facilitate the needed renovations to 716 West Fourth Avenue, and provide additional space, is 712 West Fourth Avenue.

In addition to its efforts to formally identify potential lease space through the issue of an RFI, commercial real estate brokers and others were consulted in an attempt to determine if lease space suitable to meet the Legislature's needs might be available.

² The complete RFI is available at <http://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=168321>.

These inquiries delivered the same results as the RFI; there are no existing facilities available to meet the Legislature's needs,

Based on the foregoing discussion and factors, inclusive of the lack of suitable remaining time for any additional procurement efforts, as Procurement Officer, I find that it would not be practicable to competitively bid a lease for Anchorage legislative office space because of: (1) limited interest demonstrated by the response to the RFI; (2) no available property suitable for legislative needs offered in response to the RFI; (3) the decision by Legislative Council to exercise its option under AS 36.30.083(a) and extend its lease of 716 West Fourth Avenue, subject to renovations by the Lessor and a cost saving of 10 percent less than fair market value; and (4) the uniqueness of the location of 712 West Fourth Avenue to the Legislature's existing office space at 716 West Fourth Avenue.

040 (d)(4): The Modification is in the Best Interests of the Agency or the Committee

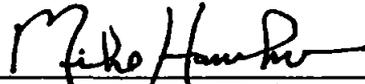
The existing leased space at 716 West Fourth Avenue, while at the end of the service life of the building systems, and despite chronic maintenance problems, has served the Legislature and constituent needs for approximately 20 years. The location on Fourth Avenue provides central access for legislators and constituents to meeting spaces, hotels, the courts, state and local government offices, public transportation, and other support facilities. The current lease includes parking, which is essential for public access to government by constituents, legislators, and staff.

Based on all factors considered above, the Legislative Council made the decision to exercise its option under AS 36.30.083(a) to enter into negotiations with the Lessor, to extend the Lease subject to the building being suitably improved with a modest addition of space, and (subject to the requirements in AS 36.30.083(a) that the cost to the Legislature be at least 10 percent below the market rental value of the real property at the time of the extension). The decision to amend the Lease as provided by Alaska

Final
Page 9

Legislative Procurement Procedure 040(d), is in Legislative Council's best interest, since
(it will) facilitate the extension of the Lease with the necessary improvements and with
additional needed space, at a cost-savings to the Legislature, as provided by
AS 36.30.083(a).

Lastly, in addition to the determination herein, as Chairman of Legislative Council and Procurement Officer, I have provided written notice to legislative leadership of the successful conclusion of negotiations and the intent to extend and amend the lease as provided herein.



Representative Mike Hawker
Chairman of Legislative Council and
Procurement Officer

9.16.13

Date

EXHIBIT D

Alaska State Legislature

Legislative Affairs Agency

Office of the Executive Director

Terry Miller Legislative Office Building, Room 217

Mailing Address: State Capitol, Rm. 3 Juneau, Alaska 99801-1182 Phone (907) 465-3800 Fax (907) 465-3234



2013 SEP 25 AM 9:49

September 19, 2013

Senator Anna Fairclough, Chair
Representative Mike Hawker, Vice-Chair
Legislative Budget & Audit Committee
State Capitol
Juneau, AK 99801-1182

RE: AS 36.30.083(b) Lease Reporting Requirement

Dear Senator Fairclough and Representative Hawker:

In accordance with the requirements of AS 36.30.083(b), the Legislative Affairs Agency would like to report to the Legislative Budget and Audit Committee that the Agency will be entering into a 10-year real property lease extension of the Anchorage Legislative Offices and Anchorage Legislative Information Office at 716 West 4th Avenue effective June 1, 2014, during the end of fiscal year 2014.

The lease will also be amended to accommodate an expansion and renovation of the premises. (As required by AS 36.30.083(a)) the market rental value of the renovated premises, including the parking garage, was appraised by real estate appraiser Tim Lowe, MAI, CRE, FRICS, of Waronzof and Associates, Inc. on September 18, 2013, and reviewed by the Alaska Housing Finance Corporation, to establish that the rent due under the lease is 10 percent below the market rental value of the real property. Mr. Lowe has assessed the rental value of the property, as of the effective date of the lease extension on June 1, 2014, at \$325,667 a month or \$3,908,000 annually. The annual rental payment will be \$281,638 a month or \$3,379,656 annually, exceeding the 10 percent reduction in market rental value required by AS 36.30.083(a). Our annual savings will be \$528,344.

Sincerely,

Handwritten signature of Pamela A. Varni in cursive.

Pamela A. Varni
Executive Director

cc: Tina Strong, Contracting Officer, LAA

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, MARK E. PFEFFER, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that they had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ALANA WILLIAMS, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of MARK E. PFEFFER ALASKA TRUST UTAD 12/28/07, and who acknowledged to me that she had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of _____, 2013, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared REPRESENTATIVE MIKE HAWKER, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing Lease as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

STATE OF Missouri)
County of Jackson) ss.

THIS IS TO CERTIFY that on the 19 day of September 2013, before me, the undersigned Notary Public in and for ~~Alaska~~ Missouri, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the EXECUTIVE DIRECTOR of the STATE OF ~~Alaska~~ LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Sherry F. Coucher
Notary Public in and for Missouri
My commission expires: 03-18-16

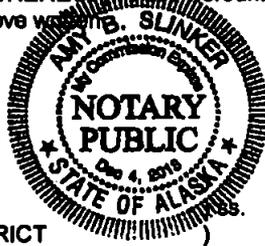
FOR RECORDING DISTRICT OFFICE USE ONLY:
No Charge - State Business

After recording return to:
Tina Strong, Supply Officer
Legislative Affairs Agency
State Capitol, RM 3
Juneau, AK 99801-1182

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 19th day of September, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, MARK E. PFEFFER, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that they had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Amy B. Slinker
Notary Public in and for Alaska
My commission expires: 12/4/13

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

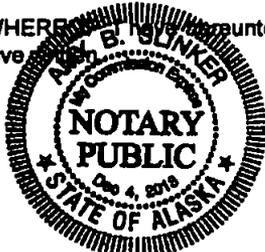
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 19th day of September, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ALANA WILLIAMS, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of MARK E. PFEFFER ALASKA TRUST UTAD 12/28/07, and who acknowledged to me that she had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Amy B. Slinker
Notary Public in and for Alaska
My commission expires: 12/4/13

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of _____, 2013, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared REPRESENTATIVE MIKE HAWKER, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing Lease as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of _____, 2013, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the EXECUTIVE DIRECTOR of the STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

FOR RECORDING DISTRICT OFFICE USE ONLY:
No Charge - State Business

After recording return to:
Tina Strong, Supply Officer
Legislative Affairs Agency
State Capitol, RM 3
Juneau, AK 99801-1182

ASHBURN & MASON P.C.

LAWYERS

DANI CROSBY · MATTHEW T. FINDLEY · MIRA MATTHEWS · DONALD W. MCCLINTOCK III
JACOB A. SONNEBORN · THOMAS V. WANG · REBECCA A. WINDT
OF COUNSEL MARK E. ASHBURN · JULIAN L. MASON III · A. WILLIAM SAUPE

September 23, 2013

Via Hand Delivery:

Michael Buller
Alaska Housing Finance Corporation
4300 Boniface Parkway
Anchorage, Alaska 99504

Re: the Extension of Lease and Lease Amendment No. 3 between 716 W.
Fourth Avenue, LLC and the Legislative Affairs Office.
Our File No.: 10708.050

Dear Mr. Buller:

Please find enclosed the original signature of Robert Acree on the Extension of Lease and Lease Amendment No. 3 between 716 W. Fourth Avenue, LLC and the Legislative Affairs Office.

Please contact our office should you have any questions.

Very truly yours,

ASHBURN & MASON, P.C.



Donald W. McClintock

Enc.

{10708-050-00152370;1}

1227 WEST 9TH AVENUE, SUITE 200, ANCHORAGE, AK 99501 · TEL 907.276.4331 · FAX 907.277.8235

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

FILED
JUN 12 PM 3:40
CLERK TRIAL COURTS
BY: DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, *et al.*,
Defendants.

CERTIFICATE OF SERVICE

Case No. 3AN-15-05969CI

I hereby certify that on this date I hand delivered a copy of:

1. Opposition to Legislative Affairs Agency's Motion to Dismiss or, In the Alternative, to Sever for Misjoinder
2. Plaintiff's Motion for Partial Summary Judgment (Not Extension);
3. Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment (Not Extension)
4. Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment (Not Extension);
5. (Proposed) Order Granting Plaintiff's Motion for Partial Summary Judgment (Not Extension);
6. this Certificate of Service to:

Jeffrey W. Robinson
Ashburn & Mason, PC
1227 W. 9th Ave., Ste. 200
Anchorage, AK 99501

Daniel T. Quinn
Richmond & Quinn
360 K St., Ste. 200
Anchorage, AK 99501

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 208
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

Kevin M. Cuddy
Stoel Rives LLP
510 L St., Ste. 500
Anchorage, AK 99501

Blake Call
Mark P. Scheer
Call & Hanson
413 G Street
Anchorage, AK 99501

Cynthia L. Ducey
Delaney Wiles, Inc.
1007 W 3rd Ave., Suite 400
Anchorage, Alaska 99501

Dated: June 12, 2015



Jim Gottstein

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JAMES B. GOTTSTEIN
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Certificate of Service
Case No. 3AN-15-05969

Page 2

000305

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

FILED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

2015 JUN 12 PM 3:40

CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969CI

**PLAINTIFF'S OPPOSITION TO
LEGISLATIVE AFFAIRS AGENCY'S MOTION
TO DISMISS OR, IN THE ALTERNATIVE, TO SEVER CLAIMS
FOR MISJOINDER**

Plaintiff, Alaska Building, Inc. (ABI), opposes the Legislative Affairs Agency's Motion to Dismiss or, in the Alternative, to Sever Claims For Misjoinder (Motion).

A. Background

On September 19, 2013, defendant 716 West Fourth Avenue LLC (716 LLC) entered into a sole source agreement with defendant Legislative Affairs Agency (LAA) to:

- (a) demolish (i) the existing Anchorage Legislative Information Office down to its steel frame and (ii) the Empress Theatre building, and

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(b) lease a newly constructed office building to LAA for the Anchorage Legislative Information Office on the two lots upon which the old LIO building and the Empress Theatre had been demolished

(LIO Lease).

This was purportedly authorized under AS 36.30.083(a), but AS 36.30.083(a) only allows sole source procurement of leased space to extend a real property lease 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. (emphasis added).

The LIO Lease is not an extension because (1) the existing building was demolished down to its steel frame (2) the adjacent old Empress Theatre, most recently the Anchor Pub, was completely demolished, (3) a brand new building was constructed on the combined sites of the old Legislative Information Office Building and the Old Empress Theatre, and (4) the premises were vacated for at least 13 months during the demolition and while the new building was constructed. This was a new construction project not a lease extension.

In addition, the cost is well over the market rental value of the real property. Comparing apples to apples, the LIO Lease rate is about \$7.15 per square foot per month, while the market rate is about \$3.00. Ten percent below market rate is about \$2.70/square foot per month, which works out to \$104,310 per month instead of the rate specified in the illegal LIO Lease of \$281,638. This is \$177,328 per month more than allowed under AS

Opposition to Motion
to Dismiss or Sever

Page 2

000307

36.30.083(a). Over the life of the LIO Lease this is \$21,279,360 more than allowed under AS 36.30.083(a).

The old Empress Theatre and the Alaska Building shared a wall (Party Wall) and the demolition of the old Empress Theatre and construction of the New Legislative Information Office Building caused substantial damage to the Alaska Building. This damage would not have occurred but for the LAA agreeing to the illegal LIO Lease. On June 8, 2015, an Amended Complaint was filed which makes this causation explicit.¹

Count One of the original and Amended Complaint is to declare the LIO Lease null and void or reform it to at least 10 percent below the market rental value of the real property, and in either event, award ABI 10% of the savings for bringing this action in the face of such pervasive corruption that this blatantly illegal contract has been allowed to proceed.²

Count Two is for damage to the Alaska Building. The Amended Complaint includes that the Legislative Affairs Agency is liable in Count Two because its action in entering into the illegal LIO Lease caused the damage to the Alaska Building.³ It also adds

¹ See, paragraph 31 of the Amended Complaint.

² Exhibit A is a copy of the e-mail transmitting a copy of the original complaint to the Legislative Affairs Agency and the Attorney General expressing the hope that either or both of them would support invalidation or reformation of the illegal LIO Lease as it appears the lease rate is at least \$2 million per year above market. While the Attorney General's Office usually represents state agencies, in this case, the Legislative Affairs Agency hired private counsel, authorizing \$100,000 in attorney's fees to defend the illegal LIO Lease. Exhibit B.

³ Paragraph 37 of the Amended Complaint.

allegations regarding the foreseeability of damage to the Alaska Building,⁴ that damage to the Alaska Building was in fact foreseen,⁵ and the owner of ABI attempted to convince 716 LLC to not proceed with the project because of (a) the all but certain damage to the Alaska Building that would result and (b) the illegality of the LIO Lease.⁶

B. Summary of Argument

First, the proposed order submitted by the Legislative Affairs Agency (LAA) with respect to severing this action goes far beyond what is supported by the Motion, or allowed by the rules, and is essentially an order for dismissal without prejudice. Should this Court decide to grant the motion to sever alternative, it should not use the proposed order.

With respect to standing, an Amended Complaint was filed on June 8, 2015, which makes explicit that by entering into the illegal lease, the Legislative Affairs Agency caused damage to the Alaska Building and requests compensation therefor. This is sufficient for interest injury standing with respect to Count Two, pertaining to the damage to the Alaska Building.

With respect to Count One, the illegality of the LIO Lease, ABI is seeking 10% of any savings and this is a sufficient interest for standing purposes. In addition, ABI believes it has citizen-taxpayer standing as well.

⁴ Paragraph 32 of the Amended Complaint.

⁵ Paragraphs 33 & 34 of the Amended Complaint.

⁶ Paragraph 35 of the Amended Complaint.

With respect to the motion to sever, LAA is simply incorrect when it asserts that the claims arise out of different transactions. All of the claims against all of the defendants arise out of the illegal LIO Lease.

C. Standing

(1) Standing Requirements

In *Larson v. State, Dept. of Corrections*, 284 P.3d 1, 11-12 (Alaska 2012), the Supreme Court recently stated:

[W]e have interpreted the concept of standing broadly, "favoring increased accessibility to judicial forums." We have identified two types of standing: interest-injury and taxpayer-citizen standing. To establish interest-injury standing, a party must demonstrate "a sufficient personal stake in the outcome of the controversy to ensure the requisite adversity." However, the degree of injury to interest need not be great: "an identifiable trifle is enough for standing to fight out a question of principle."⁷

The seminal case for "citizen-taxpayer" standing in Alaska is *Trustees for Alaska*, in which the Alaska Supreme Court laid out the requirements as follows:

First, the case in question must be one of public significance. . . . Second, the plaintiff must be appropriate in several respects. For example, standing may be denied if there is a plaintiff more directly affected by the challenged conduct in question who has or is likely to bring suit. The same is true if there is no true adversity of interest, such as a sham plaintiff whose intent is to lose the lawsuit and thus create judicial precedent upholding the challenged action. Further, standing may be denied if the plaintiff appears to be incapable, for economic or other reasons, of competently advocating the position it has asserted.⁸

⁷ Citing to *Bowers Office Prods., Inc. v. Univ. of Alaska*, 755 P.2d 1095, 1097 (Alaska 1988), *Trustees for Alaska v. State, Dep't of Natural Res.*, 736 P.2d 324, 327 (Alaska 1987), *Kleven v. Yukon-Koyukuk Sch. Dist.*, 853 P.2d 518, 526 (Alaska 1993), *Hoblit v. Comm'r of Natural Res.*, 678 P.2d 1337, 1340 (Alaska 1984).

⁸ (736 P.2d at 329-30 footnotes omitted).

Since *Trustees for Alaska*, the Supreme Court has identified situations in which citizen-taxpayer standing would be denied because of potentially better situated plaintiffs or when citizen-taxpayer standing would not substitute for third party-party standing. *Law Project for Psychiatric Rights v. State of Alaska*, 239 P.3d 1252, 1255 (Alaska 2009), *Keller v. French*, 205 P.3d 299, 302 (Alaska 2009), *Kleven v. Yukon-Koyukuk Sch. Dist.*, 853 P.2d 518, 526 (Alaska 1993). Thus, for example, in *Keller*, the Court did not allow legislators to sue when Governor Palin chose not to. In *Kleven*, the Court denied citizen-taxpayer standing when a grievant was no longer employed and the employees still affected had chosen not to sue. In *Law Project for Psychiatric Rights*, the Court did not find citizen-taxpayer standing to assert the constitutional rights of children when no parent had brought suit.

(2) Count One

Count One of the Complaint is over the illegality of the LIO Lease because it is neither a lease extension, nor at least 10% below market rent as required by AS 36.30.083(a). The claims for relief under Count One are to invalidate or reform the LIO Lease to 10% less than market rent and award ABI 10% of any cost savings.

(i) Interest-Injury Standing Exists Against the Legislative Affairs Agency

ABI has interest-injury standing because of its claim for 10% of any cost savings. In the words of *Larson*, ABI has "a sufficient personal stake in the outcome of the controversy to ensure the requisite adversity." The requested invalidation or reformation of the LIO Lease is a prerequisite for the 10% award so ABI has interest-injury standing with respect to it, as well.

Opposition to Motion
to Dismiss or Sever

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(ii) **Citizen-Taxpayer Standing Exists for the LIO Lease Invalidation or Reformation Claim**

ABI also has independent citizen-taxpayer standing with respect to the invalidation or reformation of the LIO Lease under the *Trustees for Alaska* criteria. The Legislative Affairs Agency does not dispute that it is a matter of public significance and it clearly is. ABI is an appropriate plaintiff in the required respects. There is no plaintiff more directly affected by the challenged conduct who has or is likely to bring suit. ABI is not a sham plaintiff and is capable of competently advocating its position.

Keller, Kleven, and Law Project for Psychiatric Rights seem to have made the "no plaintiff more directly affected who has or is likely to bring suit," requirement more stringent than articulated in *Trustees for Alaska* by denying standing if a plaintiff more directly affected and capable of bringing suit has decided not to do so.

Here, the State of Alaska, presumably acting through the Attorney General would be the party to do so. However, in this case, the defendant is an agency of the State of Alaska and cannot be both the defendant and a plaintiff. Normally the Attorney General's Office represents state agencies and when the Complaint was filed the Attorney General was requested to support invalidation or reformation of the LIO Lease:

[T]he Complaint alleges that the sole source lease entered into by the Legislative Affairs Agency is illegal under AS 36.30.83 because it is neither a lease extension nor 10 percent below the market rental value. The relief claimed is to invalidate or reform the lease so that it is at least 10% below market rental rates.

The lease clearly violates AS 36.30.83 and it is my hope the Legislative Affairs Agency and State of Alaska will support invalidation or reformation as it appears the lease rate is at least \$2 million per year above market.

Opposition to Motion
to Dismiss or Sever

Exhibit A. Instead, the Legislative Affairs Agency hired an outside law firm, authorizing up to \$100,000 in legal fees to defend the illegal LIO Lease.⁹ It thus appears the Attorney General is not in a position to bring suit, giving ABI citizen-taxpayer standing.

(3) Count Two

Count Two is a claim for damages to the Alaska Building arising out of the illegal LIO Lease. The Amended Complaint includes the Legislative Affairs Agency as a defendant with respect to this claim. The damage to the Alaska Building was caused by the Legislative Affairs Agency entering into the illegal LIO Lease. ABI has standing to assert this claim against the Legislative Affairs Agency.

D. Severance

As an alternative to dismissal, the Legislative Affairs Agency putatively asks this Court to sever Count One from Count Two pursuant to Civil Rule 21. In actuality, the proposed order submitted by the Legislative Affairs Agency is a dismissal without prejudice. This is specifically disallowed under Civil Rule 21.

Civil Rule 21 provides:

Rule 21. Misjoinder and Non-Joinder of Parties.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

The putative severance option of the Legislative Affairs Agency's proposed order provides:

⁹ Exhibit B.

IT IS THEREFORE ORDERED that Defendant Legislative Affairs Agency's Motion to Dismiss for lack of subject matter jurisdiction is DENIED, but the claims against the Legislative Affairs Agency contained in Count One of the Complaint are SEVERED from this case. If Plaintiff wishes to pursue the claims in Count One against the Legislative Affairs Agency, it must file a separate case.

The Legislative Affairs Agency does not provide any authority, support or analysis for requiring ABI to file a separate case, and as set forth above, it is specifically not allowed under Civil Rule 21.

The severance part of the Legislative Affairs Agency's motion is also based on a couple of erroneous premises. First, the Legislative Affairs Agency is not the only defendant for Count One. The invalidation or reformation of the illegal LIO Lease is also directed at 716 LLC, the owner and lessor of the building. Punitive damages are sought against 716 LLC for entering into the illegal LIO Lease. Thus, any severance would also include 716 LLC as a defendant.

The severance part of the Legislative Affairs Agency's motion is also based on the erroneous analysis that Count One and Two do not share any common facts or common questions of law. Both Count One and Count Two arise from the illegal LIO Lease.

In light of the Legislative Affairs Agency and 716 LLC being defendants in both counts and both counts arising from the illegal LIO Lease, it is respectfully suggested severance should not be granted.

E. Conclusion

For the foregoing reasons, the Legislative Affairs Agency's Legislative Affairs Agency's Motion to Dismiss or, in the Alternative, to Sever Claims For Misjoinder should be **DENIED**.

Dated June 12, 2015.



James B. Gottstein, ABA # 7811100

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Opposition to Motion
to Dismiss or Sever

James B. Gottstein

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Tuesday, March 31, 2015 12:25 PM
To: (attorney.general@alaska.gov, craig.richards@alaska.gov), pam.varni@akleg.gov
Cc: james.b.gottstein@gottsteinlaw.com
Subject: Complaint in 3AN-15-05969CI
Attachments: 150331ComplaintRcvdStampedWCCaseNo.pdf

Dear Mr. Richards and Ms. Varni:

Please find attached a copy of the just filed Complaint in *Alaska Building, Inc., v. 716 West Fourth Avenue, LLC; Koonce Pfeiffer Bettis, Inc., d/b/a KPB Architects; Pfeiffer Development LLC; Legislative Affairs Agency; and Criterion General, Inc.*, Case No 3AN-15-05969CI, State of Alaska, Third Judicial District in Anchorage.

In addition to claiming for substantial damage to the Alaska Building, which is adjacent to the new Anchorage Legislative Information Office and shares a party wall, the Complaint alleges that the sole source lease entered into by the Legislative Affairs Agency is illegal under AS 36.30.83 because it is neither a lease extension nor 10 percent below the market rental value. The relief claimed is to invalidate or reform the lease so that it is at least 10% below market rental rates.

The lease clearly violates AS 36.30.83 and it is my hope the Legislative Affairs Agency and State of Alaska will support invalidation or reformation as it appears the lease rate is at least \$2 million per year above market.

James B. Gottstein
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e-mail: James.B.Gottstein@GottsteinLaw.Com

ALASKA STATE LEGISLATURE

LEGISLATIVE COUNCIL

APRIL 9, 2015

5:05 PM

Approved May 26, 2015

MEMBERS PRESENT

Senator Gary Stevens, Chair
Representative Bob Herron, Vice Chair
Senator John Coghill
Senator Lyman Hoffman
Senator Charlie Huggins
Senator Anna MacKinnon
Senator Lesil McGuire, alternate
Senator Kevin Meyer
Senator Peter Micciche
Representative Mike Chenault
Representative Craig Johnson
Representative Sam Kito
Representative Charisse Millett
Representative Mark Neuman
Representative Steve Thompson, alternate

MEMBERS ABSENT

Representative Mike Hawker

OTHER MEMBERS PRESENT

Senators Egan, Stedman, Gardner, Giessel, Olson and Dunleavy; Representatives Ortiz, Kawasaki, Saddler, Claman, Drummond, Wilson, Tilton, Stutes, Guttenberg, Edgmon, Wool,

Josephson, Hughes, Seaton, Gattis, Vazquez, Tarr, Pruitt,
Tuck, Colver, LeDoux, Reinbold and Gara

AGENDA

EXECUTIVE SESSION

SPEAKER REGISTER

5:05:06 PM

I. **CHAIR GARY STEVENS** called the Legislative Council meeting to order at 5:05 p.m. in Room 519 (House Finance) of the State Capitol. Present at the call were Senators Meyer, Coghill, Huggins, Micciche, Stevens, and McGuire, alternate member; Representatives Johnson, Kito, Millett, Neuman, Herron, and Thompson, alternate member. Speaker Chenault joined the meeting right after the roll call; Senators Hoffman and MacKinnon joined the meeting during the motion to go into executive session. Representative Hawker was absent.

5:06:07 PM

VICE CHAIR HERRON moved that Legislative Council go into executive session under Uniform Rule 22 (b)(1) for the discussion of matters, the immediate knowledge of which would adversely affect the finances of a government unit. He asked that the following individuals remain in the room: Pam Varni, Executive Director of the Legislative Affairs Agency; Doug Gardner, Legal Services Director; Emily Nauman, Legal Services Staff Attorney; Katrina Matheny, staff to Chair Stevens; Linda Hay, staff to Vice Chair Herron; Serena Carlsen, Partner, Stoel Rives LLP; and Deven Mitchell, State Investment Officer, Alaska Department of

Revenue. He said that any Legislators not on Legislative Council are welcome to remain in the room.

Legislative Council went into executive session.

7:07:02 PM

Legislative Council came out of executive session.

VICE CHAIR HERRON moved that Legislative Council approve a
legal services contract for (\$100,000 for Stoel Rives LLP
with Doug Gardner as the Project Director to represent the

th

Legislature with any matters related to 716 W (4) Avenue
lease.

A roll call vote was taken.

YEAS: Meyer, Coghill, Huggins, McGuire, Johnson, Kito
Millet, Neuman, Thompson, Herron, Stevens

NAYS: None

The motion passed 11-0.

There being no further business before the committee, the Legislative Council meeting was adjourned at 7:08 p.m.

7:08:25 PM

Politics

Legislature hires law firm to defend lawsuit over its Anchorage offices

Nathaniel Herz | April 10, 2015



Tweet 0



Erik Hill / ADN

The committee that oversees the Legislature’s internal business has approved spending up to \$100,000 to defend against a lawsuit challenging the state’s lease for remodeled legislative office space in Anchorage.

The \$4 million annual lease was challenged last month by an Anchorage attorney, Jim Gottstein, whose building adjoins the Legislature's new offices. Gottstein says his building was damaged during the remodel and contends the state's lease for the legislative office space violates a law that requires payments to be below market rates.

The Legislative Council on Thursday night voted to pay the law firm Stoel Rives up to \$100,000 to work on matters related to the Anchorage offices. Sen. Gary Stevens, R-Kodiak, the council's chair, said afterward that the money would pay for work on Gottstein's lawsuit.

Stevens said a separate meeting of the council is likely to be scheduled for Monday, when it will recommend whether to abandon the lease for the Anchorage office space and move into a state-owned building elsewhere downtown.



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FILED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

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

2015 JUN -8 AM 11:19

CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969CI

**PLAINTIFF'S OPPOSITION TO
LEGISLATIVE AFFAIRS AGENCY'S MOTION
TO STAY DISCOVERY**

Plaintiff, Alaska Building, Inc. (ABI), opposes the Legislative Affairs Agency's Motion to Stay Discovery (Stay Motion). ABI agrees that it is within the Court's sound discretion to stay discovery, but respectfully suggests this Court should not grant the Stay Motion for the reasons that follow.¹

¹ As an initial matter, the Legislative Affairs Agency (LAA) has clarified that its Stay Motion only applies to Count One of the Complaint pertaining to the illegality of the lease for the Anchorage Legislative Information Office, not Count Two, the damage claim. Exhibit A.

LAW OFFICES OF JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 274-7686
FACSIMILE (907) 274-9493

A. Background

On September 19, 2013, defendant 716 West Fourth Avenue LLC (716 LLC) entered into a sole source agreement with defendant Legislative Affairs Agency (LAA) to:

- (a) demolish (i) the existing Anchorage Legislative Information Office down to its steel frame and (ii) the Empress Theatre building, and
- (b) lease a newly constructed office building to LAA for the Anchorage Legislative Information Office on the two lots upon which the old LIO building and the Empress Theatre had been demolished

(LIO Lease).

This was purportedly authorized under AS 36.30.083, but AS 36.30.083 only allows sole source procurement of leased space to extend a real property lease 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. (emphasis added).

The LIO Lease is not an extension because (1) the existing building was demolished down to its steel frame (2) the adjacent old Empress Theatre, most recently the Anchor Pub, was completely demolished, (3) a brand new building was constructed on the combined sites of the old Legislative Information Office Building and the Old Empress Theatre, and (4) the premises were vacated for at least 13 months during the demolition and while the new building was constructed. This was a new construction project not a lease extension.

In addition, the cost is well over the market rental value of the real property.

Comparing apples to apples, the LIO Lease rate is about \$7.15 per square foot per month, while the market rate is about \$3.00. Ten percent below market rate is about \$2.70/square foot per month, which works out to \$104,310 per month instead of the rate specified in the illegal LIO Lease of \$281,638. This is \$177,328 per month more than allowed under AS 36.30.083. Over the life of the LIO Lease this is \$21,279,360 more than allowed under AS 36.30.083.

The old Empress Theatre and the Alaska Building shared a wall (Party Wall) and the demolition of the old Empress Theatre and construction of the New Legislative Information Office Building caused substantial damage to the Alaska Building. This damage would not have occurred but for the LAA agreeing to the illegal LIO Lease. Filed contemporaneously herewith is an Amended Complaint, which makes this causation explicit.²

Count One of the original and Amended Complaint is to declare the LIO Lease null and void or reform it to at least 10 percent below the market rental value of the real property, and in either event, award ABI 10% of the savings for bringing this action in the face of such pervasive corruption that this blatantly illegal contract has been allowed to proceed.³

² See, paragraph 31 of the Amended Complaint.

³ Exhibit B is a copy of the e-mail transmitting a copy of the original complaint to the Legislative Affairs Agency and the Attorney General expressing the hope that either or both of them would support invalidation or reformation of the illegal LIO Lease as it appears the lease rate is at least \$2 million per year above market. While the Attorney

Count Two is for damage to the Alaska Building. The Amended Complaint includes that the Legislative Affairs Agency is liable in Count Two because its action in entering into the illegal LIO Lease caused the damage to the Alaska Building.⁴ It also adds allegations regarding the foreseeability of damage to the Alaska Building,⁵ that damage to the Alaska Building was in fact foreseen,⁶ and the owner of ABI attempted to convince 716 LLC to not proceed with the project because of (a) the all but certain damage to the Alaska Building that would result and (b) the illegality of the LIO Lease.⁷

B. ABI Has Standing

The issue of standing will be addressed in ABI's forthcoming Opposition to Legislative Affairs Agency's Motion to Dismiss or, in the Alternative, to Sever Claims for Misjoinder, which is due in a week, but it seems worthwhile to provide a thumbnail sketch here. First, the Amended Complaint added to Count Two that the Legislative Affairs Agency caused the damage to the Alaska Building by entering into the illegal lease and is liable therefor clearly establishes interest-injury standing against LAA with respect to Count Two. Second, with respect to Count One, ABI has interest-injury standing because it is seeking 10% of the cost savings. The request for a declaratory judgment that the LIO Lease is illegal, null and void is part of the 10% savings claims. Simply put, LAA's

General's Office usually represents state agencies, in this case, the Legislative Affairs Agency hired private counsel, authorizing \$100,000 in attorney's fees to defend the illegal LIO Lease.

⁴ Paragraph 37 of the Amended Complaint.

⁵ Paragraph 32 of the Amended Complaint.

⁶ Paragraphs 33 & 34 of the Amended Complaint.

⁷ Paragraph 35 of the Amended Complaint.

Opposition to Motion
to Stay Discovery

standing objection, particularly in light of the Amended complaint, lacks merit and its stated rationale for staying discovery does not exist.

C. The Stay Motion is Interposed to Conceal Corruption

It is apparent that the LIO Lease is the result of corruption. The effect and no doubt the main purpose of the Stay Motion is to keep the details of this corruption from being discovered. It would be against public policy for this Court to facilitate such a cover-up and the Stay Motion should also be denied for this reason.

Exhibit C is a letter to the Governor of Alaska detailing this apparent corruption, asking him to line item veto the appropriation for the LIO Lease rent, and noting that it is likely a crime was committed. The Attorney General was copied on this letter. Neither the Governor nor the Attorney General has responded. In light of the State of Alaska's extreme budget problems with the Legislature passing a budget that is unfunded by \$3 Billion that the Governor is trying to address with the Legislature, it is not surprising that he did not want to antagonize the powers that be in the Legislature by vetoing the rent appropriation for the New LIO Building even though the issue of the apparently corrupt LIO Lease was one of his campaign issues.

While politicians play politics, this Court should not. This Court should not facilitate a cover up of this apparent corruption by staying discovery.

D. Alaska Building, Inc., Will Be Prejudiced by a Stay of Discovery

The Legislative Affairs Agency asserts that a stay of discovery will not result in any unfair prejudice to ABI. This acknowledges that ABI will be prejudiced, but that such prejudice would not be unfair. ABI should not be subjected to any prejudice.

Assuming a prompt decision on its Motion to Dismiss or Sever,⁸ the Legislative Affairs Agency asserts that any discovery delay is likely to be short. First, there is no assurance that a decision on the Motion to Dismiss or Sever will be forthcoming soon. Any delay beyond a week or few will be prejudicial to ABI because its attorney is a sole practitioner with no staff who is not able to throw a lot of personnel at this case at the last minute, unlike the five separate law firms defending the five defendants.

In addition, should the Motion to Dismiss be denied, it seems likely the Legislative Affairs Agency will then file a motion to dismiss for failure to state a claim upon which relief may be granted under Civil Rule 12(b)(6) and make the same argument for a stay of discovery with respect to it. This would cause additional delay.

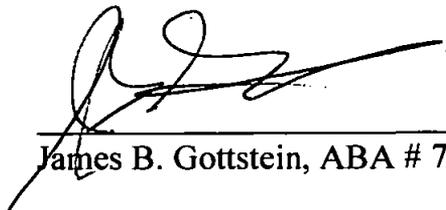
If the actions of defense counsel heretofore are any guide, discovery needs to proceed promptly in order for there to be an orderly lead up to the trial set for August of 2016. Granting the Motion for Stay would be very and unfairly prejudicial to ABI.

⁸ Severing this action should not be the occasion for a stay of discovery. The proposed order lodged by the Legislative Affairs Agency is essentially a dismissal without prejudice, not a severance. Nowhere in its motion does the Legislative Affairs Agency support such action and such action does not appear to be authorized by the rules.

E. Conclusion

For the foregoing reasons, the Legislative Affairs Agency's Motion to Stay
Discovery should be **DENIED**.

Dated June 8, 2015.



James B. Gottstein, ABA # 7811100

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James B. Gottstein

From: Cuddy, Kevin M. <kevin.cuddy@stoel.com>
Sent: Tuesday, June 02, 2015 4:48 PM
To: Jeffrey W. Robinson; James B. Gottstein; gthatcher@scheerlaw.com;
dquinn@richmondquinn.com; Mark Scheer
Cc: CLD@delaneywiles.com
Subject: Alaska Building litigation

All,

To the extent that there was any confusion, please allow me to clarify that the Legislative Affairs Agency's motion to stay discovery is limited to Count 1. That is why both the motion and the proposed order emphasize that a stay of discovery is appropriate because, if the motion to dismiss Count 1 is granted due to lack of standing, it would dispose of the entire case against the Agency. If anyone has any questions, feel free to give me a call.

-Kevin

Kevin M. Cuddy
STOEL RIVES LLP | 510 "L" Street, Suite 500 | Anchorage, AK 99501
Direct: (907) 263-8410 | Fax: (907) 277-1920
kevin.cuddy@stoel.com | www.stoel.com

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James B. Gottstein

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Tuesday, March 31, 2015 12:25 PM
To: attorney.general@alaska.gov; craig.richards@alaska.gov; pam.varni@akleg.gov
Cc: james.b.gottstein@gottsteinlaw.com
Subject: Complaint in 3AN-15-05969CI
Attachments: 150331ComplaintRcvdStampedWCASENo.pdf

Dear Mr. Richards and Ms. Varni:

Please find attached a copy of the just filed Complaint in *Alaska Building, Inc., v. 716 West Fourth Avenue, LLC; Koonce Pfeiffer Bettis, Inc., d/b/a KPB Architects; Pfeiffer Development LLC; Legislative Affairs Agency; and Criterion General, Inc.*, Case No 3AN-15-05969CI, State of Alaska, Third Judicial District in Anchorage.

In addition to claiming for substantial damage to the Alaska Building, which is adjacent to the new Anchorage Legislative Information Office and shares a party wall, the Complaint alleges that the sole source lease entered into by the Legislative Affairs Agency is illegal under AS 36.30.83 because it is neither a lease extension nor 10 percent below the market rental value. The relief claimed is to invalidate or reform the lease so that it is at least 10% below market rental rates.

The lease clearly violates AS 36.30.83 and it is my hope the Legislative Affairs Agency and State of Alaska will support invalidation or reformation as it appears the lease rate is at least \$2 million per year above market.

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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,
KOONCE PFEFFER BETTIS, INC., d/ba/
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,
Defendants.

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Clerk of the Trial Courts

Case No. 3AN-15- 05969CI

COMPLAINT

Plaintiff Alaska Building, Inc., an Alaska corporation, by and through its attorney, Law Offices of James B. Gottstein, for its claims against 716 West Fourth Avenue LLC, Koonce Pfeffer Bettis, Inc., d/b/a KPG Architects, Pfeffer Development, LLC, the Alaska Legislative Affairs Agency, and Criterion General, Inc., hereby alleges as follows.

I. Parties

1. Plaintiff Alaska Building, Inc., is an Alaska corporation (Alaska Building), has filed its biennial report and paid its corporate taxes last due, is in good standing, and is qualified in all respects to bring this action.

2. Defendant 716 West Fourth Avenue LLC is an Alaska Limited Liability Company, located in Anchorage, Alaska (716 LLC).

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3. Defendant Koonce, Pfeffer, Bettis, Inc., is an Alaska corporation, doing business as KPB Architects, located in Anchorage, Alaska (KPB).

4. Defendant Pfeffer Development, LLC, is an Alaska Limited Liability Company located in Anchorage, Alaska (Pfeffer).

5. Defendant Legislative Affairs Agency is a State of Alaska agency.

6. Defendant Criterion General, Inc., is an Alaska corporation located in Anchorage, Alaska (Criterion).

II. Alaska Building Background

7. Plaintiff owns a combination retail and office building located at 4th and G Streets in Anchorage, Alaska, more particularly 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.

(Alaska Building).

8. Constructed in 1916, the Alaska Building was, along with the adjacent Empress Theatre, the first of Anchorage's concrete buildings.

9. The Alaska Building and the Empress Theatre Building were constructed with a party wall for the north 50 feet of the Empress Theatre Building's east wall, meaning that both buildings shared the wall.

10. The Alaska Building has historical significance.

11. J.B. (Jake) Gottstein purchased the Alaska Building in 1926.

12. Jake's son, Barnard Jacob (B.J.) Gottstein acquired the Alaska Building from Anna J. Gottstein, his mother and Jake Gottstein's widow, in 1972.

13. Plaintiff, which is 100% owned by James B. (Jim) Gottstein, purchased the Alaska Building from Jim's father, B.J. Gottstein, in 1995, in order to preserve the Alaska Building as long as possible.

III. Legislative Information Office Project

14. On September 19, 2013, 716 LLC entered into an agreement with the Legislative Affairs Agency to (a) demolish the existing Anchorage Legislative Information Office down to its steel frame and the Empress Theatre building and (b) lease a newly constructed office building to the Legislative Affairs Agency for the Anchorage Legislative Information Office (LIO Project).

15. On September 23, 2013, 716 LLC completed its purchase of the Empress Theatre (then occupied by the Anchor Bar).

16. On December 6, 2013, 716 LLC and Alaska Building entered into that certain Access, Indemnity, and Insurance Agreement, Paragraph 10 of which provides in pertinent part:

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 [Alaska Building, Inc. (ABI)] . . . 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.

IV. Count One—Illegality of LIO Project

17. Under AS 36.30, leases by the Legislative Affairs Agency are normally subject to the competitive procurement process.

18. Under AS 36.30.83 an existing lease by the Legislative Affairs Agency may be extended for up to ten years without compliance with the normal competitive procurement process if there is a minimum cost savings of at least 10 percent below the market rental value of the real property at the time the extension.

19. The LIO Project is not a lease extension.

20. The rental rate of the LIO Project is not at least 10 percent below the market rental value of the real property at the time the extension.

21. In fact, the rental rate of the LIO Project is at least twice the market rental value.

22. The LIO Project is illegal because it does not comply with AS 36.30.

V. Count Two--LIO Project Damage To Alaska Building

23. 716 LLC is the owner and lessor of the building constructed by the LIO Project.

24. Upon information and belief, KPB was/is the architect for the LIO Project

25. Upon information and belief, Pfeffer was/is the project manager for the LIO Project.

26. Criterion was/is the general contractor for the LIO Project.

27. The LIO Project caused damage to the Alaska Building of at least \$250,000.

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28. The LIO Project was negligently designed, managed, or constructed, or any combination thereof, resulting in damage to the Alaska Building.

29. As one owner of the party wall, 716 LLC is obligated to maintain the party wall and not damage the Alaska Building through work on the party wall, and is liable to Alaska Building for any and all damage caused by the LIO Project as a result of its work on the party wall.

30. 716 LLC is otherwise obligated not to damage the Alaska Building and liable to Alaska Building for any damage to the Alaska Building.

31. 716 LLC, Pfeffer, KPB, and Criterion are liable to Alaska Building for all damage and costs to the Alaska Building caused by the LIO Project.

WHEREFORE, Plaintiff prays for the following relief:

- A. Judgment declaring the September 19, 2013, agreement between 716 West Fourth Avenue LLC and the Legislative Information Office pertaining to the LIO Project, illegal, null and void.
- B. A Judgement reforming the LIO Project lease to market value.
- C. A Judgment in favor of Alaska Building of 10% of the savings to the Legislative Affairs Agency for invalidation or reformation of the LIO Project Lease.
- D. Judgment against Pfeffer Development, LLC., 716 West Fourth Avenue LLC, and Criterion General, LLC, jointly and severally, for damage to the Alaska Building in the amount of \$250,000 or more as proved at trial.
- E. Punitive damages against 716 West Fourth Avenue LLC.
- F. Costs and attorney's fees.

G. Such other further and additional relief as the Court find just.

DATED March 31, 2015.

Law Offices of James B. Gottstein, attorney for
Plaintiff, Alaska Building, Inc.

By: 

James B. Gottstein
Alaska Bar No. 7811100

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ALASKA BUILDING, INC.

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

May 1, 2015

Governor Bill Walker
Suite 1700
550 West 7th Avenue
Anchorage, AK 99501

Hand Delivered

Open Letter

Re: Line Item Veto of Illegal Anchorage Legislative Information Office Lease

Dear Governor Walker:

This is to urge you to stand up against the corruption involved in the sole source lease of the Anchorage Legislative Information Office (LIO) by using your line item veto authority to eliminate its FY 2016 appropriation, or at least reduce it to 10% below the market rate.

As you may know, the Alaska Building was damaged by the demolition of the then existing LIO and Anchor Pub and the construction of the new LIO, and Alaska Building, Inc., had to file a lawsuit over it. Since the sole source lease was illegal I included in the lawsuit that the lease should be declared invalid or the rent reduced.¹ Frankly, I should not have to bear the risk of bringing this claim and believe that as the Governor of Alaska you should address this blatant corruption.

Since we are both lawyers, I will provide the legal analysis. First, the lease was purportedly allowable under AS 36.30.083, which provides:

(a) Notwithstanding any other provision of this chapter, the department, the Board of Regents of the University of Alaska, the legislative council, or the court system may extend a real property lease that is entered into under this chapter 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.

(emphasis added). In other words, there is a limited exception to the normal public bidding process required under state law to protect the public, allowing the legislature to extend a lease for up to 10 years, if the rental rate is at least 10 percent below market value.

First, tearing down the existing building to its steel frame and then constructing a brand new building, with no occupancy for 15 months, is not an extension.

¹ The Complaint and other documents pertaining to the lease have been uploaded to <http://gottsteinlaw.com/AkBldgv716W4thAve/AkBldgv716W4thAveLLC.htm> and will be updated as events occur.

Governor Bill Walker
May 1, 2015
Page 2

Second, it is common knowledge that the lease rate is over 2 times the market rate. For example, the December 21, 2013, Alaska Dispatch story, No-Bid Deal To Expand Legislative Offices Downtown Draws Criticism, states, "on a square-footage basis, the state will pay more than double the going rate for downtown office space, according to a check of leases and space available on Multiple Listing Service." More specifically, comparing apples to apples, the current LIO lease rate is about \$7.15 per square foot per month, while the market rate is about \$3.00. Ten percent below the market rate would be \$2.70/square foot per month, which works out to \$104,310 per month instead of the rate specified in the illegal lease of \$281,638.

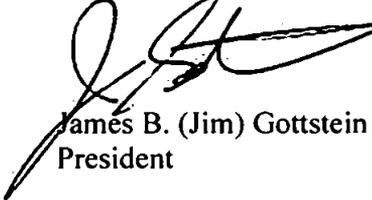
Finally, that this sole source lease was approved under these circumstances leads to the conclusion that it is the result of corruption. In this case, a crime appears to have been committed. AS 36.30.930(2) provides:

(2) a person who intentionally or knowingly contracts for or purchases supplies, equipment for the state fleet, services, professional services, or construction under a scheme or artifice to avoid the requirements of this chapter is guilty of a class C felony.

I don't know who is guilty of this crime, but it seems to me that in addition to using your line item veto authority, the Attorney General should be asked to investigate this corruption and take appropriate action.

Regardless of whether an investigation into and appropriate action taken with respect to this corruption occurs, I urge you to veto the FY 2016 appropriation for the Anchorage LIO entirely, or at least reduce it to \$104,310 per month.²

Yours truly,



James B. (Jim) Gottstein
President

cc: e-mail
Craig Richards (via e-mail)

² The so-called lease extension is clear that it is subject to the funds being appropriated, so this should not result in any liability to the state. In addition, that the lease is illegal is also a defense to any claim of breach.

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

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STATE OF ALASKA
DISTRICT
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CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, *et al.*,

Defendants.

CERTIFICATE OF SERVICE

Case No. 3AN-15-05969CI

I hereby certify that on this date I mailed a copy of:

1. Amended Complaint;
2. Plaintiff's Opposition To Legislative Affairs Agency's Motion To Stay Discovery, and
3. this Certificate of Service to:

Jeffrey W. Robinson
Ashburn & Mason, PC
1227 W. 9th Ave., Ste. 200
Anchorage, AK 99501

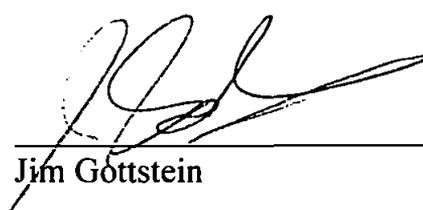
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Delaney Wiles, Inc.
1007 W 3rd Ave., Suite 400
Anchorage, Alaska 99501

Kevin M. Cuddy
Stoel Rives LLP
510 L St., Ste. 500
Anchorage, AK 99501

Dated: June 8, 2015



Jim Gottstein

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STATE OF ALASKA
THIRD DISTRICT

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CLERK TRIAL COURT

BY: _____
DEPUTY CLERK

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

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that from July 2, 2015 through July 19, 2015,
KEVIN M. CUDDY, attorney for Defendant Legislative Affairs Agency herein, will be
unavailable for any purposes whatsoever, including but not limited to, motions,

NOTICE OF UNAVAILABILITY OF COUNSEL, KEVIN M. CUDDY
ABI v. 716 WEST FOURTH AVENUE, et al, Case No. 3AN-15-05969CI

Page 1 of 2

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

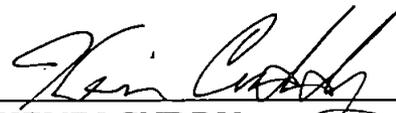
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discovery, responding to ex parte applications, process service, appearing in court and/or attending depositions.

DATED: ^{June} ~~May~~ 3, 2015

STOEL RIVES LLP

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

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on ^{June} ~~May~~ 3, 2015, a true and correct copy of the foregoing was served via First Class Mail on:

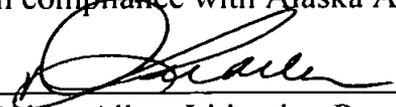
James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Mark P. Scheer
Scheer & Zehnder LLP
701 Pike Street, Suite 2200
Seattle, WA 98101
(Attorneys for Def/Criterion General, Inc.)

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

Daniel T. Quinn, Esq.
Richmond & Quinn
360 K Street, Suite 200
Anchorage, AK 99501-2038
(Attorneys for Defendant Koonce Pfeffer Bettis, Inc. d/b/a KPB Architects)

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


Debby Allen, Litigation Practice Assistant

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STATE OF ALASKA
THIRD DISTRICT

2015 MAY 27 PM 4:22

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BY: _____
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Kevin Cuddy (Alaska Bar #0810062)
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LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

LEGISLATIVE AFFAIRS AGENCY'S MOTION TO STAY DISCOVERY

I. INTRODUCTION

Defendant Legislative Affairs Agency (the "Agency") moves, pursuant to Alaska Rule of Civil Procedure 77, to stay discovery until this Court resolves its pending Motion

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to Dismiss. A stay is warranted to avoid costly and potentially unnecessary discovery in this matter, and it will not result in any unfair prejudice to Plaintiff.

II. BACKGROUND

On March 31, 2015, Plaintiff Alaska Building, Inc. (“Plaintiff”), filed a Complaint for Declaratory Judgment and Specific Performance (Complaint) against Defendants 716 West Fourth Avenue LLC, Koonce Pfeffer Bettis, Inc., d/b/a KPB Architects, the Agency, and Criterion General, Inc.¹ On May 27, 2015, the Agency filed a Motion to Dismiss Plaintiff’s Complaint for lack of interest injury and citizen-taxpayer standing. The motion is currently pending before this Court.

III. ARGUMENT

Alaska courts, as elsewhere, have inherent discretion to stay discovery pending the Court’s resolution of a dispositive motion.² Alaska courts routinely grant such motions with respect to pending motions to dismiss.³ The rationale behind such a stay is that where the pending motion may dispose of the case, a stay “is an eminently logical means

¹ See Complaint.

² *Karen L. v. State Dep’t of Health & Soc. Servs., Div. of Family & Youth Servs.*, 953 P.2d 871, 879 (Alaska 1998) (“The superior court did not abuse its discretion in granting the motions to stay discovery as to the individual State defendants.”); *see also Stone v. Int’l Marine Carriers*, 918 P.2d 551, 554 (Alaska 1996) (holding that a motion to stay discovery is reviewed for an abuse of discretion); *Gettings v. Bldg. Laborers Local 310 Fringe Benefits Fund*, 349 F.3d 300, 305 (6th Cir. 2003) (“Trial courts have broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined.”).

³ *See Law Project for Psychiatric Rights, Inc. v. State*, 239 P.3d 1252, 1254 (Alaska 2010) (upholding stay of discovery even where stay was contested by the plaintiff on the grounds that the pending motion for judgment on the pleadings lacked merit); *Guerrero v. Alaska Hous. Fin. Corp.*, 6 P.3d 250, 253 (Alaska 2000) (discussing superior court’s grant of stay pending motion to dismiss); *Lythgoe v. Guinn*, 884 P.2d 1085, 1086 (Alaska 1994) (same).

to prevent wasting the time and effort of all concerned, and to make the efficient use of judicial resources.”⁴ A stay of discovery is especially appropriate when “the pending dispositive motion can be decided absent additional discovery,”⁵ or where the plaintiffs will suffer no unfair prejudice from granting the stay.⁶

The Court should stay discovery pending resolution of the Agency’s Motion to Dismiss. The Motion to Dismiss is dispositive of all claims asserted by Plaintiff against the Agency. The Motion is grounded on a question of law requiring no discovery to resolve the issue of whether Plaintiff has interest injury or citizen-taxpayer standing.⁷ Moreover, this case is substantively identical to *Law Project for Psychiatric Rights, Inc. v. State*, where the court granted the State’s motion to stay discovery while the State’s motion to dismiss for lack of standing was pending.⁸ Despite the plaintiff’s assertion that the issue of taxpayer standing lacked merit, the Supreme Court of Alaska affirmed and held that it was not an abuse of discretion for the trial judge to grant the motion to stay discovery.⁹

A stay “is an eminently logical means to prevent wasting the time and effort of all concerned.”¹⁰ Absent a stay, the parties may invest significant resources responding to

⁴ See *Chavous v. Dist. Of Columbia Fin. Responsibility & Mgmt. Assistance*, 201 F.R.D. 1, 2 (D.D.C., 2001) (citing *Coastal States Gast Corp. v. Dep’t of Energy*, 84 F.R.D. 278, 282 (D. Del. 1979)).

⁵ *Pacific Lumber Co. v. Nat’l Union Fire Ins. Co.*, 220 F.R.D. 349, 351 (N.D. Cal. 2003).

⁶ *Chavous*, 201 F.R.D. at 3-4.

⁷ “Whether a party has standing to sue is a question of law.” *Keller v. French*, 205 P.3d 299, 302 (Alaska 2009).

⁸ *Law Project for Psychiatric Rights*, 239 P.3d at 1254.

⁹ *Id.* at 1256.

¹⁰ *Chavous*, 201 F.R.D. at 2.

discovery requests when it is inappropriate for Plaintiff to even bring this claim. Similarly, the Court may be called on to use its resources to resolve discovery disputes. Those resources will be entirely wasted if, as the Agency reasonably expects, the Court dismisses Plaintiff's case against the Agency. A stay is appropriate to avoid this needless waste of the Court's and parties' time and efforts.

In addition, a stay is appropriate here because Plaintiff will not be unfairly prejudiced by the requested stay. The Agency filed its Motion to Dismiss at the very outset of these proceedings, and there is ample time for the Court to resolve the pending Motion to Dismiss without interfering with discovery deadlines, none of which have been set yet. Thus, even if the Court denies the Motion to Dismiss (and it should not), any delay in conducting discovery will have no unfair prejudice on Plaintiff. Neither will a stay of discovery impact Plaintiff's ability to respond to the pending Motion to Dismiss, which is based upon a pure legal issue.

IV. CONCLUSION

For all the above reasons, the Legislative Affairs Agency respectfully asks that the Court grant this motion and stay discovery until the Court resolves its pending Motion to Dismiss. When weighed against the fact that a stay will allow the parties to avoid the burden of discovery that is likely to be rendered unnecessary by this Court's disposition of the pending Motion to Dismiss, a temporary delay of discovery is warranted.

DATED: May 27, 2015

STOEL RIVES LLP

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

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on May 27, 2015, a true and correct copy of the foregoing was served via First Class Mail on:

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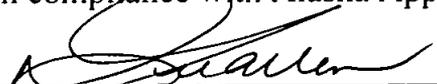
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THIRD DISTRICT

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

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-059 69CI

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**LEGISLATIVE AFFAIRS AGENCY'S MOTION TO DISMISS OR, IN THE
ALTERNATIVE, TO SEVER CLAIMS FOR MISJOINDER**

I. INTRODUCTION

Pursuant to Civil Rule 12(b)(1), Defendant Legislative Affairs Agency (the "Agency") moves to dismiss the sole cause of action alleged against it for lack of subject matter jurisdiction. Plaintiff lacks standing to bring its claim against the Agency. Alternatively, the Agency moves to sever the cause of action pursuant to Civil Rule 21

because of misjoinder. Plaintiff's claim against the Agency concerning the legality of a lease is unrelated to its separate property damage claim against the remaining defendants.

II. BACKGROUND

The Agency "was established by the Legislative Council, a permanent interim committee, to assist it in providing the legislature with research on and analysis of proposed legislation as well as other general administrative services."¹ The Agency executes policy from Legislative Council and carries out other statutory and rule assignments made by the legislature. For example, among other tasks, the Agency reviews contracts for legislators and provides non-partisan, independent, and objective analysis to legislators.

On March 31, 2015, Plaintiff Alaska Building, Inc. ("Plaintiff"), filed a two-count Complaint against 716 West Fourth Avenue LLC ("716"), Koonce Pfeffer Bettis, Inc., d/b/a KPBB Architects ("KPBB"), Pfeffer Development, LLC ("Pfeffer"), Criterion General, Inc. ("Criterion"), and the Agency.

In the first count of the Complaint, Plaintiff has brought a claim against the Agency based on the alleged illegality of the lease for the Legislative Information Office Project (the "Project"). Plaintiff claims that leases by the Agency are normally subject to a competitive procurement process, unless the Agency is extending an existing lease for up to ten years and at a cost savings of at least ten percent below the market rental value.² Plaintiff claims that the Agency's lease does not comply with Alaskan law and the

¹ *State v. Haley*, 687 P.2d 305, 309 (Alaska 1984).

² *See* Compl. ¶¶ 17-20.

Project is therefore illegal.³ Plaintiff seeks damages equal to 10% of the savings to the Agency for any invalidation or reformation of the lease.⁴ The Agency is the only defendant with respect to the first count of the Complaint.

In the second count of the Complaint, Plaintiff has brought a claim against 716, KPB, Pfeffer, and Criterion for property damage.⁵ Plaintiff alleges that certain damage was done to a shared wall between two buildings (the “party wall”) during a construction project, and that Plaintiff was damaged as a result.⁶ Plaintiff asserts that “716 LLC, Pfeffer, KPB, and Criterion are liable to Alaska Building for all damage and costs to the Alaska Building caused by the LIO Project.”⁷ In terms of damages, Plaintiff seeks “Judgment against Pfeffer Development, LLC., [sic] 716 West Fourth Avenue LLC, and Criterion General, LLC, jointly and severally, for damage to the Alaska Building in the amount of \$250,000 or more as proved at trial.”⁸ The Agency is not a defendant with respect to the second count of the Complaint and no relief is sought from the Agency for any property damage allegedly incurred by Plaintiff.

III. STANDARD FOR DECISION

Civil Rule 12(b)(1) allows a defendant to move for dismissal based on the Court’s lack of jurisdiction over the subject matter. “In discussing the standing requirement, [the Supreme Court of Alaska] has stated that an Alaska court has no subject matter

³ See *id.* ¶ 22.

⁴ See *id.* Prayer for Relief ¶ C.

⁵ See *id.* ¶¶ 23-31.

⁶ See *id.* ¶¶ 27-29.

⁷ *Id.* ¶ 31.

⁸ *Id.* Prayer for Relief ¶ D.

jurisdiction unless the lawsuit before it presents an actual controversy involving a genuine relationship of adversity between the parties.”⁹ The fundamental question regarding standing is “whether the litigant is a proper party to seek adjudication of a particular issue. Although we favor access to judicial forums, a basic requirement of standing is adversity of interests.”¹⁰

Civil Rule 21 allows a party to be dropped by order of the court on motion of any party or for a claim against a party to be severed and proceeded with separately on such terms as are just.

IV. ARGUMENT

A. Plaintiff Lacks Standing to Bring Its Claim Against the Agency

Standing in Alaska is not a constitutional doctrine, but “is a rule of judicial self-restraint based on the principle that courts should not resolve abstract questions or issue advisory opinions.”¹¹ There are two types of standing in Alaska: (i) interest-injury standing, and (ii) citizen-taxpayer standing.¹² Plaintiff does not have interest-injury standing or citizen-taxpayer standing to challenge the legality of the Project and, therefore, Plaintiff’s claims against the Agency should be dismissed.

⁹ *Myers v. Robertson*, 891 P.2d 199, 203 (Alaska 1995).

¹⁰ *Law Project for Psychiatric Rights, Inc. v. State*, 239 P.3d 1252, 1255 (2010); *Myers*, 891 P.2d at 203 (“[A]dversity constitutes the basic requirement for standing in Alaska.”).

¹¹ *Ruckle v. Anchorage School Dist.*, 85 P.3d 1030, 1034 (Alaska 2004) (quoting *Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987)).

¹² *Law Project for Psychiatric Rights*, 239 P.3d at 1255. For interest-injury standing, Alaska also recognizes third-party standing, which allows a litigant to raise the rights of a third person in special circumstances. *Id.* Third-party standing is not at issue here as Plaintiff does not assert a third party’s rights in this action.

i. Plaintiff Does Not Have Interest-Injury Standing

To establish interest-injury standing, plaintiffs “must demonstrate that they have a sufficient personal stake in the outcome of the controversy and an interest which is adversely affected by the complained-of conduct.”¹³ Here, Plaintiff alleges that the Project was illegal. Plaintiff has not alleged that it was adversely affected by the legality or illegality of the Project. In fact, Plaintiff does not assert that it has been injured at all by the Agency’s lease. To the contrary, Plaintiff’s prayer for relief requests a windfall of 10% of any savings that the Agency obtains as the result of Plaintiff’s requested invalidation or reformation of the lease – not as any compensation for Plaintiff’s alleged loss (which it never alleges), but rather as remuneration for Plaintiff’s decision to file this lawsuit. Absent an identifiable injury, there can be no interest-injury standing.

Both the U.S. Supreme Court and the Alaska Supreme Court have found that a plaintiff raising only a generally available grievance about government – claiming harm to the plaintiff’s interest in the proper application of the law, and seeking relief that no more directly benefits the plaintiff than it does the public at large – does not present a controversy for standing purposes.¹⁴ At most, Plaintiff has raised precisely this type of generally available grievance about the application of the law and therefore lacks interest-injury standing.

¹³ *Keller v. French*, 205 P.3d 299, 304 (Alaska 2009) (internal quotations and footnote omitted).

¹⁴ *See Lamb v. Obama*, 2014 WL 1016308, at *1 & n.4 (Alaska March 12, 2014) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573-74 (1992)).

ii. Plaintiff Does Not Have Citizen-Taxpayer Standing

Plaintiff is not the appropriate litigant to bring this claim. To establish citizen-taxpayer standing, a plaintiff must show that it is an appropriate plaintiff to challenge the governmental action at issue and that the case is of public significance.¹⁵ A taxpayer's belief that a law or even the constitution has been violated does not create standing.¹⁶ This Court should evaluate the appropriateness of a plaintiff on a case-by-case basis, considering the different factual issues at play.¹⁷ As explained below, even if Plaintiff's reading of the Procurement Code was correct (which it is not), a review of the facts in this case reveals that there are other potential plaintiffs who are more directly affected by the alleged illegality of the lease and who are more appropriate plaintiffs to challenge the lease and the procurement process. Plaintiff does not suddenly become an appropriate litigant simply because it finds the lease to be unpopular.¹⁸

Alaska courts have repeatedly dismissed complaints for lack of standing when the plaintiff was not the appropriate litigant to bring the claim. In *Keller v. French*, certain

¹⁵ *Neese v. Lithia Chrysler Jeep of Anchorage, Inc.*, 210 P.3d 1213, 1219 (Alaska 2009); *Keller*, 205 P.3d at 302. Because Plaintiff is not an appropriate party to bring this suit, the Agency does not address the "public significance" prong.

¹⁶ *See, e.g., Keller*, 205 P.3d at 304 (denying taxpayer standing despite alleged violation of constitutional rights); *Law Project for Psychiatric Rights*, 239 P.3d at 1255-56 (same).

¹⁷ *See Ruckle*, 85 P.3d at 1037.

¹⁸ Mr. Gottstein is the owner of Alaska Building, Inc., and was recently quoted in the Alaska Dispatch News as saying that he brought this claim because "everybody is complaining about this thing." *See "Lawsuit Challenges Expensive State Lease for Anchorage Legislative Building,"* Alaska Dispatch News, March 31, 2015, located at <http://www.adn.com/article/20150331/lawsuit-challenges-expensive-state-lease-anchorage-legislative-building>.

legislators brought suit to stop an investigation into Governor Sarah Palin.¹⁹ The plaintiffs contended that they had citizen-taxpayer standing to bring the claim because there were no other persons more directly affected who had sued or, more importantly for purposes of this analysis, were likely to sue.²⁰ While conceding that Governor Palin was more directly affected, the plaintiffs argued that she had not yet sued and appeared unlikely to do so while in the middle of a national campaign.²¹ The Alaska Supreme Court rejected this approach, noting that this “interpretation of the citizen-taxpayer standing test is too literal.”²² The court held that it was irrelevant whether or not the governor – a more appropriate plaintiff – actually intended to bring suit. The key inquiry was whether there was any indication that, if the governor felt her rights were being violated, she would be unable to bring suit.²³ Given that there was no impediment or restriction that limited the governor or other potential appropriate plaintiffs (e.g., other executive branch officials) from bringing suit, the legislators were found not to be appropriate plaintiffs and their suit was dismissed for lack of standing. “That individuals who are more directly affected have chosen not to sue despite their ability to do so does not confer citizen-taxpayer standing on an inappropriate plaintiff.”²⁴

Other cases are in accord. In *Law Project for Psychiatric Rights, Inc. v. State*, the Alaska Supreme Court affirmed the lower court’s ruling that the plaintiff did not have

¹⁹ *Keller*, 205 P.3d at 302-04.

²⁰ *See id.* at 303.

²¹ *See id.*

²² *Id.*

²³ *See id.*

²⁴ *Id.* at 303.

citizen-taxpayer standing to challenge the alleged violation of certain minors' constitutional rights.²⁵ The plaintiff did not purport to represent any of those minors or their families.²⁶ The court found that an individual or group that was directly affected by the alleged constitutional violation (e.g., the minors themselves) would be the appropriate litigant.²⁷ As the trial court found, there was no citizen-taxpayer standing when "there appears to be a more directly affected party here that would make a more appropriate plaintiff than the Law Project."²⁸ Quoting *Keller*, the Alaska Supreme Court held that the plaintiff lacked citizen-taxpayer standing because there were other more appropriate plaintiffs who had been more directly affected by the government action who could have brought suit.²⁹

Likewise, in *Ruckle v. Anchorage School District*, the Alaska Supreme Court affirmed the trial court's ruling that the plaintiff lacked citizen-taxpayer standing to dispute a public procurement determination and related regulations.³⁰ The trial court had found that the taxpayer lacked citizen-taxpayer standing because there was another party more directly affected by the challenged conduct in question who had or was likely to

²⁵ *Law Project for Psychiatric Rights*, 239 P.3d at 1255-56.

²⁶ *See id.* at 1254 (claiming that affected children and parents had not sued due in part to lack of resources).

²⁷ *Id.*; *see also Kleven v. Yukon-Koyukuk Sch. Dist.*, 853 P.2d 518, 526 (Alaska 1993) (holding that a former employee who filed a grievance but resigned before it was resolved did not have standing to challenge employer's grievance process because remaining employees were in a better position to raise the complaints).

²⁸ *Law Project for Psychiatric Rights v. State*, 3AN-08-10115CI (Decision on Record of Hon. J. Smith), attached as Exh. A. at 20.

²⁹ *Law Project for Psychiatric Rights*, 239 P.3d at 1256.

³⁰ 85 P.3d 1030 (Alaska 2004).

bring suit.³¹ The plaintiff argued that the public procurement process was intended to benefit taxpayers and therefore she was a more appropriate plaintiff to challenge alleged flaws in the procurement process than a competing bidder who lost out on the contract during the procurement process.³² The Alaska Supreme Court rejected these arguments, citing the defendant's "compelling" analysis that a taxpayer is less directly affected by a procurement award than a contractor who was deprived of a substantial contract by the procurement process.³³ Because the plaintiff was not the appropriate litigant, she lacked citizen-taxpayer standing to challenge the procurement process.

The holdings and analysis from *Keller*, *Law Project*, and *Ruckle* govern here. First, Plaintiff has not shown (and cannot show) how it was directly affected by the Agency's alleged actions or the lease. The mere claim that the Agency violated a statute, including the State Procurement Code, does not confer citizen-taxpayer standing on Plaintiff.³⁴ Plaintiff has no special stake in this issue, other than that "everybody is complaining" about the lease.³⁵ This type of generally available grievance does not give rise to citizen-taxpayer standing.

Second, while Plaintiff would have apparently preferred that the Project be the subject of a "competitive procurement process,"³⁶ that is not what the Legislature

³¹ See *id.* at 1035.

³² See *id.*

³³ See *id.* at 1036-37

³⁴ See, e.g., *Ruckle*, 85 P.3d at 1032-33, 1037 (dismissing plaintiff's claim for lack of citizen-taxpayer standing despite her allegation that the Anchorage School District was violating the State Procurement Code).

³⁵ See *supra* note 18.

³⁶ Compl. ¶ 17.

intended as set forth in AS 36.30.083 and the governing procurement procedures. Instead, the Legislature expressly contemplated that a real property lease like that of the Project could be extended without a competitive re-procurement process as long as certain criteria were met. Pursuant to AS 36.30.020, the Legislative Council adopted and published procedures for procurements by the legislative branch. The Project complies with the Alaska Legislative Procurement Procedures – which Plaintiff fails even to mention or address. Insofar as Plaintiff challenges the Agency’s compliance with the Alaska Legislative Procurement Procedures, Plaintiff is asking the Court to second-guess the Legislative Council’s determination that the lease is in its best interests. Plaintiff’s desire to second-guess legislators’ judgment calls that Plaintiff deems unpopular cannot be squared with the core precepts of judicial self-restraint that govern justiciability determinations.³⁷

More importantly, even if the “competitive procurement process” that Plaintiff prefers was required, which it is not, the result would still have no direct effect on Plaintiff. Plaintiff alleges the Agency should have been forced to proceed with a competitive procurement process, which may or may not have led to a different lessor securing the lease (which, in turn, may or may not have been more expensive than the

³⁷ Standing is a part of the doctrine of justiciability. See *Moore v. State*, 553 P.2d 8, 24 n.25 (Alaska 1976). The Agency’s focus here is solely to demonstrate that Plaintiff is not a proper party to bring a claim challenging this lease. The substantive claim, however, impacts separation of powers issues and policy considerations that may not be justiciable if the claim proceeds. See *id.*; *Malone v. Meekins*, 650 P.2d 351 (Alaska 1982).

existing lease).³⁸ Critically, Plaintiff does not and cannot allege that it would even have been a participant in that re-procurement process if it was carried out as Plaintiff would have preferred.³⁹ Even under the Plaintiff's preferred re-procurement process, the more appropriate plaintiff to allege a violation of the State Procurement Code would be an entity that purportedly lost out on the opportunity to lease space to the Agency – not the Plaintiff. As in *Ruckle*, that entity would be a more appropriate plaintiff because it has an “enormous economic incentive” to bring suit and would likely raise “similar, if not identical, claims” to that raised by Plaintiff.⁴⁰ The *Ruckle* court already rejected the argument that members of the public are more (or even equally) appropriate litigants for a challenge to the application of the State Procurement Code.⁴¹ As the *Keller* and *Law Project* courts held, more directly affected individuals are the appropriate litigants to

³⁸ While Plaintiff admits that the Legislative Information Office was located at 716 West Fourth Avenue in Anchorage prior to the renovation project and remains there today, and that the Agency was and is a lessor of that space, Plaintiff nevertheless claims that this was not a lease extension. See Compl. ¶¶ 2, 14, 19. The location of the Legislative Information Office is not subject to reasonable dispute and is generally known within the State. See Alaska R. Evid. 201(b). Plaintiff also asserts that the rental rate of the Project is not at least 10 percent below the market rental value of the real property at the time of the extension. See Compl. ¶ 20.

³⁹ Compl. ¶¶ 17-22.

⁴⁰ *Ruckle*, 85 P.3d at 1037. Plaintiff has alleged that the rental rate of the Project is at least twice the market rental value. See Compl. ¶ 21. While Plaintiff is incorrect, the allegation suggests that an entity that could have competed for the lease would have ample economic incentive to bring such a challenge.

⁴¹ *Ruckle*, 85 P.3d at 1035. The trial court in *Law Project* also commented that the State itself could be an appropriate litigant to address challenges to constitutional rights. See Exh. A at 20 (“As defendant argues, the affected children, their parents or guardians or even the state would make a more appropriate plaintiff if a legitimate grievance existed.”). The Alaska Supreme Court expressed no opinion on this comment. *Law Project for Psychiatric Rights, Inc.*, 239 P.3d at 1256 n.19. The State may also be a more appropriate litigant than the Plaintiff in this instance, given the State's interest in preserving State funds and ensuring that the Agency's lease complies with the law.

bring this claim – not individuals who have been less directly affected (or not affected at all).⁴²

Third, Plaintiff has not shown (and cannot show) that there is anything limiting any of these more appropriate plaintiffs from bringing suit.⁴³ The Project is not hidden from view; it has been the subject of substantial media coverage. If these more appropriate litigants wished to bring a challenge to the lease, nothing stood in their way.⁴⁴ The fact that no such entity has yet decided to bring such a claim does not confer citizen-taxpayer standing on Plaintiff.⁴⁵ Plaintiff's claim against the Agency should be dismissed for lack of citizen-taxpayer standing.

B. Alternatively, Plaintiff's Claim Against the Agency Should be Severed for Misjoinder Under Civil Rule 21

If the Court declines to dismiss Plaintiff's claim for lack of standing, count one of the Complaint should be severed from the remainder of the case. Under Civil Rule 21, "[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately." A court may sever the misjoined

⁴² See *Keller*, 205 P.3d 303-04; *Law Project for Psychiatric Rights, Inc.*, 239 P.3d at 1255-56.

⁴³ See *Keller*, 205 P.3d at 303.

⁴⁴ If these entities who would have participated in that re-procurement process believed that their rights were being violated or the State Procurement Code was being misused, there is no indication that they would be unable to bring a challenge. See *Keller*, 205 P.3d at 303. These entities likely have considerably more experience with the State Procurement Code than Plaintiff and a better understanding of the relevant market rates. Their decision not to bring suit at this time may reflect their judgment that Plaintiff's allegations lack merit.

⁴⁵ See *Keller*, 205 P.3d at 303; *Law Project for Psychiatric Rights*, 239 P.3d at 1255-56.

parties if the test for permissive joinder is not satisfied.⁴⁶ The rule for permissive joinder allows defendants to be joined in one action if the plaintiff asserts a right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences and there are common questions of law or fact.⁴⁷

Here, the two portions of the Complaint relate to different parties and different claims that have no common set of facts. Plaintiff's claim against the Agency in count one of the Complaint is based on the alleged illegality of the Project and alleges that the Agency did not follow required procurement procedures. Plaintiff asserts that it is entitled to declaratory relief and money damages based on anticipated savings if the lease is invalidated or reformed. Plaintiff's claim against the other defendants in count two of the Complaint is based on property damage to the Alaska Building and seeks punitive damages based on theories of negligence. There are no common questions of law or fact and the claims arise out of different transactions – the procurement of the lease as compared to the construction of the building. If this Court does not grant the Agency's Motion to Dismiss, then at a minimum the two different cases should be severed and litigated separately.⁴⁸ The Agency has nothing to do with the alleged negligence or

⁴⁶ *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997).

⁴⁷ Civil Rule 20(a) (“All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action.”).

⁴⁸ *See, e.g., Fowler v. UPMC Shadyside*, 578 F.3d 203, 209 n.5 (3d Cir. 2009) (noting that to remedy a misjoinder the trial court should either drop the misjoined parties “on such terms as are just” or sever the claims against the misjoined parties and proceed with those separately).

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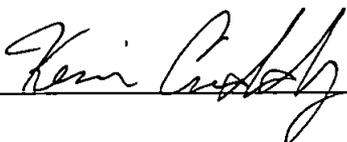
property damage claimed by Plaintiff with respect to its shared wall, and it is unclear how a general contractor like Criterion, for example, could have any involvement in the Agency's administration of the State Procurement Code. These two different matters should be litigated separately.

V. CONCLUSION

Plaintiff does not have interest-injury or citizen-taxpayer standing to bring this claim. The case should be dismissed outright. In the alternative, Plaintiff's claims against the Agency in count one of the Complaint should be severed from Plaintiff's claims against the other defendants in count two of the Complaint. For all the reasons set forth in this motion, Legislative Affairs Agency's motion should be granted.

DATED: May 27, 2015

STOEL RIVES LLP

By: 

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

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on May 27, 2015, a true and correct copy of the foregoing was served via First Class Mail on:

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

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(Attorneys for Defendant, Pfeffer Development, LLC)

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



Debby Allen, Practice Assistant

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

LAW PROJECT FOR PSYCHIATRIC)
RIGHTS,)
)
Plaintiff,)
)
vs.)
)
STATE OF ALASKA, et al.,)
)
Defendants.)
)

Case No. 3AN-08-10115CI

BEFORE THE HONORABLE J. SMITH
DECISION ON RECORD

Pages 1 - 22
Wednesday, May 27, 2009
11:15 A.M.
Anchorage, Alaska

1 ANCHORAGE, ALASKA; WEDNESDAY, MAY 27, 2009
 2 11:15 A.M.
 3 -o0o-
 4 THE COURT: All right. This is the time for
 5 the Court to place on record its decision in
 6 defendant's motion for judgment on the pleadings in
 7 case 3AN-08-10115CI, which is captioned Law Project
 8 for Psychiatric Rights, an Alaska Nonprofit
 9 Corporation, vs. The State of Alaska, Sarah Palin,
 10 Governor of the State of Alaska, the Alaska
 11 Department of Health and Social Services, William
 12 Hogan as Commissioner of the Department of Health and
 13 Social Services, Tammy Sandoval, the director of the
 14 Office of Children's Services, Steve McComb, Director
 15 of the Division of Juvenile Justice, Melissa
 16 Witzler-Stone, Director of the Division of Behavioral
 17 Health, Ron Adler, Director/CEO of the Alaska
 18 Psychiatric Institute, and William Streur, Deputy
 19 Commissioner and Director of the Division of Health
 20 Care Services, as defendants.
 21 Plaintiff, an Alaska nonprofit corporation,
 22 is a public interest law firm whose mission is
 23 described as mounting a strategic litigation campaign
 24 against forced psychiatric drugging and electroshock
 25 treatment of minor patients.

1 are not approved by the Food and Drug Administration
 2 or included in the American Hospital Formulary
 3 Service drug information, the United States
 4 Pharmacopoeia Drug Information or Drugdex Information
 5 System or both.
 6 And three, order that all children and
 7 youth in state custody currently being administered
 8 psychotropic drugs and all children and youth to whom
 9 the State of Alaska currently pays for the
 10 administration of psychotropic drugs be assessed in
 11 accordance with and brought into compliance with the
 12 specifications of CriticalThinkRX, which the Court
 13 will describe as the training program to educate
 14 individuals involved in prescribing and
 15 administering psychotropic medications about, quote,
 16 critical thinking, end quote, of alternatives,
 17 especially nonmedication action. And that training
 18 must be by a contractor knowledgeable of the
 19 CriticalThinkRX curriculum. And such other relief as
 20 the Court finds just in the premises.
 21 Plaintiff filed the action, the Complaint,
 22 on September 2nd, 2008. An Amended Complaint was
 23 filed on September 29, 2008. Defendant filed this
 24 motion for judgment on the pleadings on March 16,
 25 2009. Oral argument was not requested by either

1 Plaintiff filed a 54-page Complaint arguing
 2 that the current procedures employed by the state in
 3 authorizing psychiatric medication and treatment of
 4 juveniles violates the constitutional rights of
 5 Alaskan children and youth.
 6 Plaintiff seeks, one, a declaratory
 7 judgment that Alaskan children and youth have the
 8 constitutional and statutory right not to be
 9 administered psychotropic drugs unless and until
 10 evidence-based psychosocial interventions have been
 11 exhausted, rationally anticipated benefits of
 12 psychotropic drug treatment outweigh the risks, the
 13 person or entity authorizing administration of the
 14 drugs is fully informed of the risks and potential
 15 benefits, and close monitoring of and appropriate
 16 means of responding to treating-emergent effects are
 17 in place.
 18 Two, an injunction against the defendants
 19 and their successors from authorizing or paying for
 20 the administration of psychotropic drugs to Alaska
 21 children and youth without conformance with paragraph
 22 1 and approving or applying for Medicaid
 23 reimbursements to pay for outpatient psychotropic
 24 drug prescriptions to Alaskan children and youth that
 25 are not medically necessary or for indications that

1 party.
 2 The defendant argues in its motion that
 3 pursuant to Alaska Rules of Civil Procedure 12(c),
 4 that judgment on the pleadings is appropriate because
 5 plaintiff failed to meet the actual controversy
 6 requirement under the Declaratory Judgment Act
 7 because plaintiff lacked standing to sue.
 8 Defendant argues that AS 22.10.020,
 9 subparagraph G, explicitly requires the presence of
 10 an actual controversy before the Court may issue
 11 declaratory relief and that this matter does not meet
 12 the actual controversy requirement because plaintiff
 13 lacks standing to sue. Therefore, defendant argues
 14 the Court should dismiss the Complaint.
 15 Defendant recognizes that Alaska case law
 16 has broadly interpreted the concept of standing to
 17 promote liberal access to the courts. See Brause vs.
 18 State of Alaska, Brause is B-R-A-U-S-E, at 21 P3d
 19 357, an Alaska Supreme Court case from 2001.
 20 In fact, in Alaska a complaint seeking
 21 declaratory relief requires only a simple statement
 22 of facts demonstrating that the Superior Court has
 23 jurisdiction and that an actual justiciable case or
 24 controversy is presented. And again, that's from
 25 Brause.

1 To this end, Alaska courts recognize two
2 forms of standing, an interest injury standing, and
3 citizen taxpayer standing. That's from North Kenai
4 Peninsula Road Maintenance Service Area vs. Kenai
5 Peninsula Borough at 850 P2d 636, an Alaska Supreme
6 Court case from 1993.

7 However, Defendant argues that even under
8 Alaska's liberal requirements, Plaintiff satisfies
9 neither type of standing. Defendant argues that to
10 establish interest injury standing, a plaintiff must
11 have an interest adversely affected by the conduct
12 complained of.

13 Generally, a plaintiff may not assert
14 another's constitutional rights unless a special
15 relationship exists between the plaintiff and the
16 third party. See Gilbert v. State at 139 P3d 581,
17 another Alaska Supreme Court case from 2006.

18 Here plaintiff does not assert interest
19 injury standing or claim an adverse interest, nor
20 does plaintiff claim any sort of relationship at all
21 to any relevant individual. Therefore, defendant
22 argues plaintiff has not asserted standing under the
23 interest injury doctrine.

24 Finally, defendant argues plaintiff also
25 lacks citizen taxpayer standing. Defendant argues

1 for Alaska vs. State at 736 P2d 324, an Alaska
2 Supreme Court case from 1987, it has citizen taxpayer
3 standing to pursue these claims.

4 Plaintiff argues that this case raises
5 issues of public significance and that there is no
6 more directly affected plaintiff likely to bring this
7 suit, and plaintiff argues it has therefore satisfied
8 the adversity requirement. Plaintiff also argues it
9 is able to competently advocate the position
10 asserted.

11 Finally, plaintiff argues that the state,
12 represented by the attorney general, would not be a
13 proper plaintiff to pursue these claims. Contrary to
14 the defendant's assertion that representation of the
15 general public interest of children in state custody
16 rests with the attorney general, plaintiff argues the
17 state has ignored its responsibilities and refused to
18 take appropriate action.

19 Plaintiff argues the state has ignored its
20 responsibilities by not acting on the issues in this
21 case, and therefore the state would not be a more
22 appropriate plaintiff for bringing this suit.

23 Plaintiff argues there is every reason to
24 presume that no affected child, youth, parent or
25 guardian is likely to sue in this case because none

1 that while the criteria for citizen taxpayer standing
2 in Alaska are liberal, plaintiff has shown no true
3 adversity of interest.

4 Furthermore, there clearly exist parties
5 more affected by the challenged conduct who are
6 better suited to pursue these claims. Defendant
7 argues plaintiff is not a child in need of aid, does
8 not allege guardianship of such a child, and has not
9 purported to represent a child or class of children
10 subject to the department's duty of care.

11 Plaintiff is engaged in a campaign to change
12 the manner and procedure under which the department
13 operates without any alleged harm inflicted by the
14 department on plaintiff or anyone plaintiff
15 represents.

16 Defendant concludes that a policy agenda and
17 a sweeping critique of alleged state actions
18 perpetrated on no one in particular do not constitute
19 the true adversity of interest required to maintain
20 citizen taxpayer standing. Defendant asserts there
21 are more appropriate plaintiffs to raise such issues
22 and because of their true adversity would presumably
23 be able to do so in a more concrete manner.

24 Plaintiff, in opposition to the motion,
25 argues that under the standard espoused in Trustees

1 of these parties have yet to file a suit, and it is
2 likely they will never bring this claim. Plaintiff
3 argues these children and youth, as well as their
4 parents, lack the resources to file suit, and the
5 potential for being subjected to an award of
6 attorneys fees against them is a powerful
7 disincentive to bringing suit.

8 Plaintiff argues the Law Project for
9 Psychiatric Rights was founded in late 2002 in order
10 to mount a strategic litigation campaign against
11 forced psychiatric drugging and electroshock therapy
12 and notes that because it is the adults in their
13 lives rather than they who are making the decisions,
14 children are essentially forced to take psychiatric
15 drugs, and thus this lawsuit fits squarely within the
16 psych rights mission. Therefore, plaintiff claims it
17 has adversity.

18 Plaintiff also argues that the motion for
19 judgment on the pleadings is untimely, that Rule
20 12(c) requires that a motion for judgment on the
21 pleadings be brought within such time as to not delay
22 the trial and that the instant motion filed on March
23 12, 2009, some six months after the action was
24 commenced, is going to interfere with the trial,
25 which is set to commence on February 1, 2010.

1 In its reply, defendant reiterated that
 2 plaintiff lacks citizen taxpayer standing to pursue
 3 these claims. Defendant argues the parents and
 4 children themselves are the best suited to address
 5 these issues and questions on behalf of themselves.
 6 Defendant argues that Keller v. French, a
 7 slip opinion at 13296 from April 3rd, 2009, an Alaska
 8 Supreme Court case, supports granting its motion in
 9 this case.
 10 The Alaska Supreme Court in that case held
 11 that the plaintiffs did not have citizen taxpayer
 12 standing because there were other potential
 13 plaintiffs better suited to bring suit and plaintiffs
 14 were truly -- plaintiffs who were truly at risk from
 15 the actions at issue.
 16 As the Court stated in that case,
 17 individuals who are more directly affected have
 18 chosen not to sue despite their ability to do so, and
 19 that does not confer citizen taxpayer standing on an
 20 inappropriate plaintiff.
 21 Looking at the law surrounding this case,
 22 the Court would note the following. Under Alaska
 23 Civil Rule 12(c), a party will prevail on a motion
 24 for judgment on the pleadings if there are no
 25 allegations in the plaintiff's pleading that, if

1 Alaska -- or for Alaska versus the state that was
 2 cited previously.
 3 The basic requirement for standing in
 4 Alaska is adversity. Alaska case law has discussed
 5 two differing kinds of standing, interest injury
 6 standing and citizen taxpayer standing.
 7 Under the interest injury approach, a
 8 plaintiff must have an interest adversely affected by
 9 the conduct complained of. Plaintiff has not argued
 10 it has an interest injury standing in this case.
 11 However, in order to determine if a party has citizen
 12 taxpayer standing, the court must examine each case
 13 and decide if several criteria have been met.
 14 First, the case in question must be one of
 15 public significance. The plaintiff raising
 16 constitutional issues is likely to meet this first
 17 requirement. See Sonemann vs. State at 969 P2d
 18 632.
 19 Here it seems clear that plaintiff's
 20 Complaint raises questions of public significance.
 21 The asserted issue involves state and federal
 22 constitutional rights, state laws, municipal codes,
 23 and some unknown number of Alaska children and youth
 24 potentially impacted. Defendant indicates that the
 25 Complaint may in fact raise issues of public

1 proven, would permit recovery. Accordingly, a 12(c)
 2 motion only has utility when all material allegations
 3 of fact are admitted in the pleadings and only
 4 questions of law remain.
 5 One of the issues that needs to be decided
 6 is whether plaintiff has standing. In Alaska, it has
 7 been held that all that is required of a complaint
 8 seeking declaratory relief is a simple statement of
 9 facts demonstrating that the Superior Court has
 10 jurisdiction and that an actual justiciable case or
 11 controversy is presented. See Ruckle vs. Anchorage
 12 School District at 85 P3d 1030, an Alaska Supreme
 13 Court case from 2004, which was quoting Jefferson vs.
 14 Asplund at 458 P2d 995, a prior Supreme Court case
 15 from 1969.
 16 Under Alaska case law, the actual case or
 17 controversy language encompasses a number of more
 18 specific reasons for not deciding cases, including
 19 lack of standing, mootness and a lack of rightness.
 20 Standing in Alaska is not a constitutional
 21 doctrine. Rather, it is a rule of judicial
 22 self-restraint based on the principle that courts
 23 should not resolve abstract questions or issue
 24 advisory opinions.
 25 And again, see Trustees For State of

1 significance.
 2 Second, the plaintiff must be an
 3 appropriate party to bring the case. And again, see
 4 Trustees for Alaska vs. State.
 5 This appropriateness has three main facets.
 6 First, plaintiff must have a truly adverse interest.
 7 Second, plaintiff must be capable of competently
 8 advocating the position asserted. And third,
 9 plaintiff may still be denied standing if there is a
 10 plaintiff more directly affected by the challenged
 11 conduct in question who has or is likely to bring
 12 suit.
 13 Therefore, what needs to be determined is
 14 whether or not the plaintiff in this case is the
 15 appropriate party to bring this action.
 16 For the plaintiff to be the appropriate
 17 party as noted above, it must have an adverse
 18 interest, be capable of competently advocating its
 19 position, and there must not be a party more directly
 20 affected who has or is likely to bring suit.
 21 Let's stop for a second.
 22 (Off record.)
 23 THE COURT: Plaintiff's sincerity in
 24 opposing the alleged state's practice seems
 25 unquestioned. However, that adversity is based on

1 plaintiff's mission statement, which, if accepted,
2 would indicate any individual or group can create
3 adversity by simply creating a nonprofit and drafting
4 a mission statement opposing whatever issue they wish
5 to challenge.

6 Plaintiff's attorney, Mr. Gottstein, is
7 also its founder, president and CEO. Mr. Gottstein
8 has been practicing law in Alaska since 1978. From
9 1998 to 2004, Mr. Gottstein served on the Alaska
10 Mental Health Board. Without going into further
11 detail regarding the experience of plaintiff and its
12 counsel, it seems clear plaintiff is capable of
13 competently advocating the position asserted by
14 plaintiff.

15 But plaintiff apparently has no individual
16 client or group of clients or their custodians who
17 have actually had either psychotropic medications or
18 electroshock therapy administered against their
19 wishes.

20 Plaintiff starts with the premise that
21 children and juveniles are being forced to undergo
22 psychiatric medication and/or electroshock therapy,
23 that their parents, their guardians, the state and
24 the health care providers are allowing or doing this
25 without determining the best interests of the

1 plaintiff exists, and since that time, a line of
2 cases has denied citizen taxpayer standing where a
3 more appropriate plaintiff has or is likely to bring
4 suit. In Trustees, the Court reasoned that the
5 crucial inquiry is whether the more directly
6 concerned potential plaintiff has sued or seems
7 likely to sue in the foreseeable future.

8 In Clevin vs. Yukon-Koyukuk School District,
9 a former school administrator filed suit against the
10 school district, challenging his reassignment to a
11 position of lower pay and responsibility. That's at
12 853 P2d 518, Alaska Supreme Court case from 1993.

13 The Court finds -- this Court finds the
14 analysis in that case instructive. One of the main
15 issues before that court was whether an employee who
16 starts a grievance process and subsequently resigns
17 has standing to force the employer to continue with
18 the process and remedy problems presumably for the
19 benefit of those employees who remain.

20 Upon review, the Court determined that
21 Clevin lacks citizen taxpayer standing. The Court
22 stated, "Because the Yukon-Koyukuk School District's
23 remaining employees are certainly in a better
24 position to raise the grievances Clevin cites and
25 because we have no reason to believe that current

1 children or juveniles; and that they, as plaintiffs,
2 can ensure a more appropriate decision is made if
3 allowed to identify these children and juveniles.

4 Certainly plaintiff can espouse its
5 identified mission effectively, but approaching an
6 issue with the foregone conclusion that children and
7 juveniles are being forcefully medicated and treated
8 by their parents, guardians, health care providers
9 and/or the state raises concerns plaintiffs -- that
10 plaintiff has an inherent bias to use of medication
11 or therapies that may in fact be the most beneficial
12 to the recipient.

13 The last factor determining whether
14 plaintiff is an appropriate party is whether or not
15 there is a more directly affected plaintiff who has
16 or is likely to bring suit. The parties highly
17 contest this factor.

18 The Court in Trustees for Alaska vs. The
19 State stated that taxpayer citizen standing has never
20 been denied in any decision of this Court except on
21 the basis that the controversy was not of public
22 significance or on the basis that the plaintiff was
23 not a taxpayer.

24 But starting with that case, the Court set
25 out the requirement that no more appropriate

1 Yukon-Koyukuk School District employees would be
2 indisposed to press legitimate grievances, we agree
3 with the trial court that Clevin has failed to
4 establish citizen taxpayer standing."

5 The Court would note that plaintiffs in
6 this case have failed to establish any parent or
7 guardian with a legitimate grievance on behalf of
8 their juvenile or child has declined to sue.

9 In Fannon vs. Matanuska Susitna Borough at
10 192 P3d 982, another Supreme Court case from 2008
11 cited by the parties, the Court finds it's
12 distinguishable that the plaintiffs in this case have
13 not established any legitimate claim has gone
14 unpursued.

15 Finally, in a very recent decision, the
16 Supreme Court reviewed a case involving a claim that
17 a legislative investigation into the Governor's
18 dismissal of the public safety commissioner violated
19 the Alaska Constitution's fair-and-just-treatment
20 clause. See Keller v. French previously cited, but
21 it's at opinion No. 6352, April 3rd, 2009.

22 After the investigation began, the group of
23 five state legislators, the Keller plaintiffs filed a
24 complaint claiming the investigation was improper for
25 a number of reasons. Shortly thereafter, a different

1 group of state employees who had been subpoenaed to
2 appear before the senate judiciary committee
3 commenced a separate lawsuit. The Court referred to
4 them as the Kiesel plaintiffs.

5 Upon review, the Supreme Court held that
6 the five legislators did not have standing to claim
7 there was a violation of the fair-and-just-treatment
8 clause. The Court determined that the Keller
9 plaintiffs were truly adverse and capable of
10 competently advocating their position but that there
11 was nonetheless a substantial question here as to
12 whether other persons who are more directly affected
13 have sued or are likely to sue.

14 In deciding that the Keller plaintiffs
15 lacked standing, the Court stated that the Kiesel
16 plaintiffs were among the classes of persons in this
17 investigation most obviously protected by the
18 fair-and-just-treatment clause.

19 The Kiesel plaintiffs were more directly
20 affected by the investigation, and they had actually
21 sued some of the defendants. The Court reasoned that
22 the Kiesel plaintiffs did not allege any violation of
23 the fair-and-just-treatment clause, but had they
24 thought they were being mistreated, there would have
25 been far more appropriate plaintiffs to make that

1 clearly they are not the most appropriate plaintiff.

2 Let's stop for a second.

3 (Off record.)

4 THE COURT: As the Court concluded in
5 Keller, it appears the Keller plaintiffs are
6 attempting to assert the individual rights of
7 potential or imaginary third parties, and the Court
8 in that case indicated they had never before allowed
9 citizen taxpayer standings to be used in that way.

10 Comparing the present case with those
11 discussed above, it becomes clear that the facts of
12 this case support a finding of plaintiff lacks
13 standing.

14 There is no adversity of interest with
15 plaintiff except as they created with their mission
16 statement. And just like in Ruckle and Keller, there
17 appears to be a more directly affected party here
18 that would make a more appropriate plaintiff than the
19 Law Project.

20 As defendant argues, the affected children,
21 their parents or guardians or even the state would
22 make a more appropriate plaintiff if a legitimate
23 grievance existed.

24 The motion for judgment on the pleadings is
25 granted in this case. Parties will be given a copy

1 claim than the Keller plaintiffs, none of whom
2 self-identified as either a witness or a target of
3 the investigation.

4 In addition, the Supreme Court in that case
5 discussed the Governor's potentially more appropriate
6 plaintiffs, stating, quote: Even if the Governor did
7 not intend to sue, there is no indication that if she
8 thought her rights were being violated she would be
9 unable to do so. The Keller plaintiffs do not
10 contend that the Governor or any other potential
11 plaintiffs were somehow limited in their ability to
12 sue. That individuals who are more directly affected
13 have chosen not to sue despite their ability to do so
14 does not confer citizen taxpayer standing on an
15 inappropriate plaintiff. End quote.

16 In this case, plaintiff argues parents or
17 guardians are unlikely to sue, but that statement
18 reflects plaintiff's opinion that parents and
19 guardians are incapable of recognizing what
20 plaintiffs identify as, quote, forced, end quote,
21 medication and treatment.

22 Plaintiff seeks to be placed in the role of
23 decision maker for the children and juveniles
24 receiving psychotropic medication and electroshock
25 therapy in lieu of parents or guardians. Otherwise,

1 of the disk with the Court's decision, and this case
2 will be dismissed.

3 We'll be off record.

4 (Proceedings adjourned at 11:39 a.m.)

5 * * * * *

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CERTIFICATE

I, DIANE M. BONDESON, Registered Professional Reporter and Notary Public in and for the State of Alaska, do hereby certify that the foregoing pages numbered 1-21 are a true, accurate and complete transcript of proceedings in Case No. 3AN-08-10115CI, Law Project for Psychiatric Rights vs. State of Alaska, transcribed by me from a copy of the electronic sound recording to the best of my knowledge and ability;

And further, that I am not a party to nor have I any interest in the outcome of the action herein contained.

IN WITNESS WHEREOF, I have hereunto set my hand this SIXTH day of JUNE, 2009.

Diane M. Bondeson, RPR
My Commission Expires 9/6/10

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,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER DEVELOPMENT,
LLC, LEGISLATIVE AFFAIRS AGENCY, and
CRITERION GENERAL, INC.,

Defendants.

Case No. 3AN- 15-05969 CI

ROUTINE PRETRIAL ORDER

Pursuant to the Uniform Pretrial Order "UPO"; Administrative Order
3AO-03-04 this Court hereby issues the Routine Pretrial Order in this case.

Trial will commence the week of: August 15, 2016

Trial Length/Division

The trial will last 10 trial days, divided between the parties as follows:
Plaintiff 5.0 trial days and Defendant 5.0 trial days. The trial day
allocation includes each parties' jury selection, opening statement, witness
examination (including cross-examination of other parties' witnesses) and closing
statement.

Jury

A jury trial has been timely requested by a party.

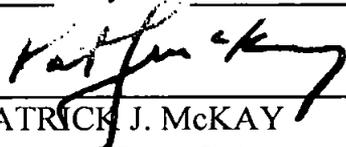
Summary of Pretrial Deadlines

The following is a summary of the deadlines imposed by the Routine Pretrial Order. The parties and their attorneys are responsible for reading and following the Alaska Civil Rules and the UPO, which contain the detailed requirements associated with these deadlines. The dates listed are based on the foregoing trial date. These dates remain the same even if the actual trial date changes, unless otherwise ordered by this Court.

Move to Amend RPO	<u>July 20, 2015</u>
Amend Pleadings and Join Parties without Motion	<u>June 30, 2015</u>
Preliminary Witness Lists	<u>March 14, 2016</u>
Specifically Identify Potentially Responsible Persons	<u>March 14, 2016</u>
Retained Expert ID	<u>March 14, 2016</u>
Supplemental Retained Expert ID	<u>March 28, 2016</u>
Final Date to Serve Written Discovery	<u>April 11, 2016</u>
Join Specifically Identified Potentially Responsible Persons and Determine whether a Sufficient Opportunity to Join is Lacking	<u>April 11, 2016</u>
Other Expert Opinion Testimony Summary	<u>April 18, 2016</u>
Retained Expert Reports	<u>April 25, 2016</u>
Final Date to Depose Lay Witnesses	<u>May 23, 2016</u>
Dispositive and Rule of Law Motions	<u>May 23, 2016</u>
Rebuttal Expert Reports	<u>June 11, 2016</u>

Motions Re Expert Opinion Evidence	<u>June 20, 2016</u>
Final Date to Depose Expert Witnesses	<u>June 20, 2016</u>
Discovery Motions	<u>June 20, 2016</u>
Deposition/Telephonic Designations	<u>July 4, 2016</u>
Deposition Objections/ Counter - Designations	<u>July 11, 2016</u>
Other Motions, including Motions in Limine	<u>July 11, 2016</u>
Deposition Counter - Designation Objections	<u>July 18, 2016</u>
Serve Jury Instructions/Exhibits	<u>July 18, 2016</u>
Meet Re Jury Instructions/Exhibits	<u>July 25, 2016</u>
Trial Briefs	<u>August 1, 2016</u>
Objections Re Jury Instructions/Exhibits	<u>August 1, 2016</u>
Plaintiff's Final Witness List	<u>August 1, 2016</u>
Defendant's Final Witness List	<u>August 5, 2016</u>
File Jury Instructions	<u>August 8, 2016</u>
Trial Call	<u>August 3, 2016 at 3:30 pm</u>
File Joint Exhibit List With Clerk	<u>August 15, 2016</u>

Dated at Anchorage, Alaska this 21st day of May, 2015.



 PATRICK J. MCKAY
 Superior Court Judge

I certify that on on 05/21/15 a copy
of the above order was mailed to each of the following
at their addresses of record:

James Gottstein
Jeffrey Robinson | Daniel Quinn
Kevin Cuddy | Mark Scheer

K. Nixon|Administrative Assistant
Routine Pretrial Order
Case No. 15-05969 CI

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

FILED
STATE OF ALASKA
THIRD DISTRICT

2015 MAY 18 AM 11:44

CLERK TRIAL COURT

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969CI

JOINT TRIAL DATES SUBMISSION

Pursuant to the May 5, 2015, Initial Pretrial Order all parties have agreed to submit
the following trial dates for a jury trial the parties approximate will take ten trial days:

- July 11-22, 2016
- July 18-29, 2016
- August 15-26, 2016

DATED May 18, 2015.

Law Offices of James B. Gottstein, attorneys
for Plaintiff, Alaska Building, Inc.

By: _____

James B. Gottstein,
Alaska Bar No. 7811100

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000372

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing was mailed to the following:

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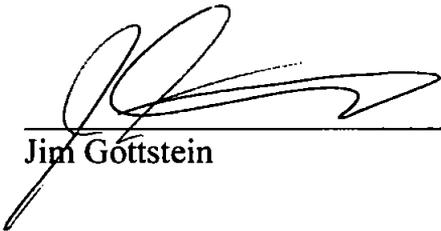
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Seattle, WA 98101

Cynthia L. Ducey
Delaney Wiles, Inc.
1007 W 3rd Ave., Suite 400
Anchorage, Alaska 99501

Dated: May 18, 2015.



Jim Gottstein

LAW OFFICES OF JAMES B. GOTTSTEIN

406 G STREET, SUITE 206
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 274-7686
FACSIMILE (907) 274-9493

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

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

**[PROPOSED] ORDER GRANTING UNOPPOSED MOTION TO EXTEND
DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S DEADLINE FOR
RESPONDING TO PLAINTIFF'S COMPLAINT**

THIS COURT, having reviewed Defendant Legislative Affairs Agency's
Unopposed Motion for an extension of time to file its response to Plaintiff's Complaint,

LEGISLATIVE AFFAIRS AGENCY'S UNOPPOSED MOTION TO EXTEND DEADLINE FOR RESPONDING
TO PLAINTIFF'S COMPLAINT

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

Page 1 of 2

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

MAY - 7 2015

000374

IT IS ORDERED that the Motion is GRANTED. Legislative Affairs Agency must file its response to Plaintiff's Complaint with this Court on or before the close of business on Wednesday, May 27, 2015.

DATED this 8th day of May, 2015.


Honorable Patrick McKay
Superior Court Judge

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on May 7, 2015, a true and correct copy of the foregoing was served via first class mail on:

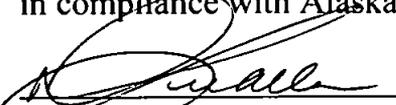
James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Mark P. Scheer
Scheer & Zehnder LLP
701 Pike Street, Suite 2200
Seattle, WA 98101
(Attorneys for Def/Criterion General, Inc.)

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

Daniel T. Quinn, Esq.
Richmond & Quinn
360 K Street, Suite 200
Anchorage, AK 99501-2038
(Attorneys for Defendant Koonce Pfeffer Bettis, inc. d/b/a KPB Architects)

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


Debby Allen, Practice Assistant

78961797.1 0081622-00003

I certify that on 5/13/15 a copy of the following was mailed/faxed/ hand-delivered to each of the following at their addresses of record. James Gottstein / Jeffrey Robinson / Daniel Quinn / Kevin Cuddy / Mark Scheer

Administrative Assistant

FILED
STATE OF ALASKA
THIRD DISTRICT

2015 MAY -7 PM 1:05

CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

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

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

Case No.: 3AN-15-05969CI

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

**UNOPPOSED MOTION TO EXTEND DEFENDANT LEGISLATIVE AFFAIRS
AGENCY'S DEADLINE FOR RESPONDING TO PLAINTIFF'S COMPLAINT**

Defendant Legislative Affairs Agency, by and through its undersigned counsel,
respectfully requests that its deadline for responding to Plaintiff's Complaint be extended
to May 27, 2015.

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

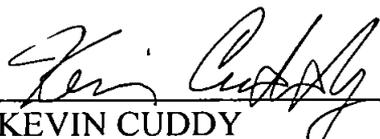
STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

Counsel for Defendant Legislative Affairs Agency has consulted with counsel for Plaintiff and is authorized to represent that Plaintiff does not oppose Defendant's request for an extension of time.

If this unopposed motion is granted, Defendant Legislative Affairs Agency's response to Plaintiff's complaint will now be due on or before the close of business Wednesday, May 27, 2015.

DATED: May 6, 2015

STOEL RIVES LLP

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

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on May 6, 2015, a true and correct copy of the foregoing was served via USPS Priority Mail on:

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

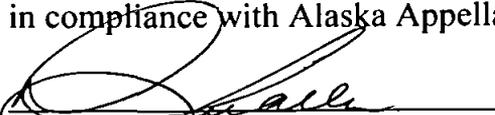
Mark P. Scheer
Scheer & Zehnder LLP
701 Pike Street, Suite 2200
Seattle, WA 98101
(Attorneys for Def/Criterion General, Inc.)

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

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

Daniel T. Quinn, Esq.
Richmond & Quinn
360 K Street, Suite 200
Anchorage, AK 99501-2038
(Attorneys for Defendant Koonce Pfeffer
Bettis, inc. d/b/a KPB Architects)

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


Debby Allen, Practice Assistant

78961603.2 0081622-00003

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

Alaska Building, Inc., an Alaska corporation,)
Plaintiff,)
v.)
716 West Fourth Avenue, LLC,)
Koonce Pfeffer Bettis, Inc., d/b/a)
KPB Architects, Pfeffer Development, LLC,)
Legislative Affairs Agency, and)
Criterion General, Inc.,)
Defendants.)
_____)

Case No. 3AN-15-05969 CI

INITIAL PRETRIAL ORDER

Pursuant to the Uniform Pretrial Order Administrative Order 3AO-03-04, this Court hereby issues the Initial Pretrial Order in this case.

Routine Pretrial Order

The parties shall discuss among themselves possible trial dates and the expected length of trial. Within **15 days** after distribution of the Initial Pretrial Order, the parties shall jointly submit a list of three trial dates that are each approximately 12 months from the date of the Initial Pretrial Order. The submission to the Court should also state the approximate number of trial days the parties believe will be required. A Routine Pretrial Order will be issued based on the parties' report in accordance with the Uniform Pretrial Order.

Initial Disclosures

Unless an earlier date is or has been agreed to by the parties, initial disclosures required under Alaska Civil Rule 26(a)(1) shall be served not later than **30 days** after distribution of the Initial Pretrial Order.

ENTERED this 5th day of May, 2015, at Anchorage, Alaska.


PATRICK J. MCKAY
Superior Court Judge

I certify that on 05/05/15 a copy of the above was mailed to each of the following:
James Gottstein | Jeffrey Robinson
Daniel Quinn | Kevin Cuddy
Mark Scheerer
KNixon/Admin. Assistant

FILED
STATE OF ALASKA
THIRD DISTRICT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
APR 30 PM 3:40

THIRD JUDICIAL DISTRICT AT ANCHORAGE
CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiff,)

v.)

716 WEST FOURTH AVENUE, LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.)

Case No. 3AN-15-05969 CI

DEMAND FOR TRIAL BY JURY

COMES NOW defendant, Koonce Pfeffer Bettis, Inc. d/b/a KPB Architects, by and through counsel, RICHMOND & QUINN, and hereby demands a trial by jury in this action regarding each issue so triable.

DATED this 30th day of April, 2015, at Anchorage, Alaska.

RICHMOND & QUINN
Attorneys for Defendant
Koonce Pfeffer Bettis, Inc. d/b/a KPB
Architects

By: _____

Daniel T. Quinn
Alaska Bar No. 8211141

LAW OFFICES
RICHMOND & QUINN
A PROFESSIONAL CORPORATION
360 K STREET, SUITE 200
ANCHORAGE, ALASKA 99501-2038
(907) 278-5727
FAX (907) 278-2953

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by mail this 20th day of April, 2015, on:

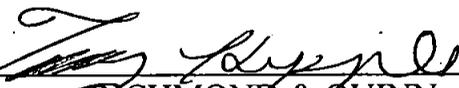
James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501

Cynthia L. Ducey
Delaney Wiles, Inc.
1007 W. 3rd Avenue, Suite 400
Anchorage, AK 99501

Kevin M. Cuddy
Stoel Rives LLP
510 L Street, Suite 500
Anchorage, AK 99501

Mark P. Scheer
Scheer & Zehnder, LLP
701 Pike Street, Suite 2200
Seattle, WA 98101

Jeffrey W. Robinson
Ashburn & Mason
1227 W. 9th Avenue, Suite 200
Anchorage, AK 99501


RICHMOND & QUINN

520.002\PLD\Demand for Jury Trial

LAW OFFICES
RICHMOND & QUINN
A PROFESSIONAL CORPORATION
360 K STREET, SUITE 200
ANCHORAGE, ALASKA 99501-2038
(907) 276-5727
FAX (907) 276-2953

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

FILED
CLERK TRIAL COURT

ALASKA BUILDING, INC., an Alaska corporation,

Plaintiffs,

vs.

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

CERTIFICATE OF SERVICE

I, Heidi A. Wyckoff, an employee of Ashburn & Mason, P.C., hereby certify that a copy of:

- Notice of Substitution of Counsel

was served on April 22, 2015 via U.S. Mail on:

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

Jeffrey Koonce
KPB Architects
500 L Street, Suite 400
Anchorage, Alaska 99501

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

Mark P. Scheer
Scheer & Zehnder LLP
701 Pike Street, Suite 2200
Seattle, WA 98101

Cynthia Ducey
Delaney Wiles, Inc.
1007 W. 3rd Avenue Suite 400
Anchorage, Alaska 99501

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

ASHBURN & MASON P.C.

LAWYERS

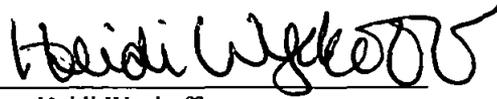
1227 WEST 9TH AVENUE, SUITE 200

ANCHORAGE, ALASKA 99501

TEL 907.276.4331 • FAX 907.277.8235

ASHBURN & MASON

By:



Heidi Wyckoff

CERTIFICATE OF SERVICE

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

{10708-101-00261455;1}

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

Alaska Building Inc.)

Plaintiff,)

vs.)

716 West Fourth Avenue, et al,)

Defendants.)

CASE NO: 3AN- 15-5969 CI

NOTICE OF JUDICIAL REASSIGNMENT DUE TO RECUSAL

Judge Catherine M. Easter hereby requests that the Presiding Judge reassign the above entitled case.

Reason: CANON 3(E)

4/13/15
Effective Date

Catherine M. Easter
Catherine M. Easter, Superior Court Judge

ORDER OF REASSIGNMENT

IT IS ORDERED that the above entitled case is reassigned to Judge Patrick McKay for all further proceedings.

14 April 2014
Effective Date

[Signature]
Presiding Judge
Third Judicial District

I certify that on 5/20/15 copy of this order was distributed to: Gottstein

Clerk: [Signature] Robinson
Schear
Judge Easter
Judge McKay

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

Alaska Building, Inc.
Plaintiff(s),
vs. 716 W 4th LLC, KPB Architects,
Pfeffer Development, Legislative Affairs
Agency & Criterion General
Defendant(s).

CASE NO. 3AN-15-5969 CI

SUMMONS AND
NOTICE TO BOTH PARTIES
OF JUDICIAL ASSIGNMENT

To Defendant: 716 West Fourth Avenue LLC

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 825 W. 4th Ave., Anchorage, Alaska 99501 within 20 days* after the day you receive this summons. In addition, a copy of your answer must be sent to the plaintiff's attorney or plaintiff (if unrepresented)

Jamal B. Goffe 14, whose address is: 4106 E St, Ste 206
Anchorage, AK 99501

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at www.courts.alaska.gov/forms.htm, to inform the court. - OR - If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

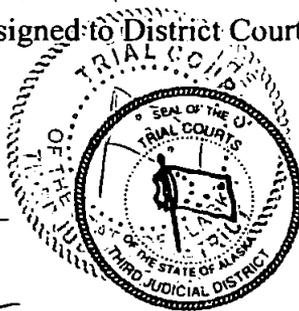
TO: Plaintiff and Defendant

You are hereby given notice that:

- This case has been assigned to Superior Court Judge Easter and to a magistrate judge.
- This case has been assigned to District Court Judge _____

CLERK OF COURT

3/31/15
Date



By: G Mills
Deputy Clerk

I certify that on 3/31/15 a copy of this Summons was mailed given to plaintiff plaintiff's counsel along with a copy of the Domestic Relations Procedural Order Civil Pre-Trial Order to serve on the defendant with the summons.

Deputy Clerk SM

* The State or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

Alaska Building, Inc
Plaintiff(s),

vs. 716 West Fourth Avenue LLC,
KPB Architects, Pfeiffer-Development LLC,
Legislative Affairs Agency, Criterion General, Inc
Defendant(s).

CASE NO. 3AN-15-5969 CD

SUMMONS AND
NOTICE TO BOTH PARTIES
OF JUDICIAL ASSIGNMENT

To Defendant: KPB Architects

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 825 W. 4th Ave., Anchorage, Alaska 99501 within 20 days* after the day you receive this summons. In addition, a copy of your answer must be sent to the plaintiff's attorney or plaintiff (if unrepresented)

James P. Gottlieb, whose address is: 406 G St, Ste 206
Anchorage, AK 99501

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at www.courts.alaska.gov/forms.htm, to inform the court. - OR - If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

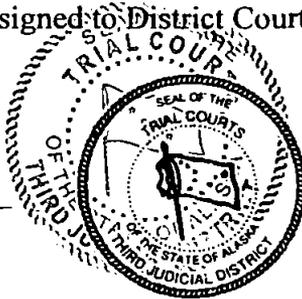
TO: Plaintiff and Defendant

You are hereby given notice that:

- This case has been assigned to Superior Court Judge Easter and to a magistrate judge.
- This case has been assigned to District Court Judge _____.

CLERK OF COURT

3/31/15
Date



By: G Mills
Deputy Clerk

I certify that on 3/31/15 a copy of this Summons was mailed given to plaintiff plaintiff's counsel along with a copy of the Domestic Relations Procedural Order Civil Pre-Trial Order to serve on the defendant with the summons.

Deputy Clerk gm

* The State or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

Alaska Building, Inc)
Plaintiff(s),)
vs. 716 West Fourth Avenue, LLC,)
KPP Architects, Pletter-Development LLC,)
Legislative Affairs Agency,)
Criticos General, Inc)
Defendant(s).)

CASE NO. 3AN-15-5909 CI

SUMMONS AND
NOTICE TO BOTH PARTIES
OF JUDICIAL ASSIGNMENT

To Defendant: Pletter Development LLC

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 825 W. 4th Ave., Anchorage, Alaska 99501 within 20 days* after the day you receive this summons. In addition, a copy of your answer must be sent to the plaintiff's attorney or plaintiff (if unrepresented)

James B. Gottstein, whose address is: 406 G St, Apt 206
Anchorage, AK 99501

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at www.courts.alaska.gov/forms.htm, to inform the court. - OR - If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

TO: Plaintiff and Defendant

You are hereby given notice that:

- This case has been assigned to Superior Court Judge Easter and to a magistrate judge.
- This case has been assigned to District Court Judge _____.

CLERK OF COURT

3/31/15
Date



By: G Mills
Deputy Clerk

I certify that on 3/31/15 a copy of this Summons was mailed given to plaintiff plaintiff's counsel along with a copy of the Domestic Relations Procedural Order Civil Pre-Trial Order to serve on the defendant with the summons.

Deputy Clerk [Signature]

* The State or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

Alaska Building, Inc)
Plaintiff(s),)
vs. 716 West Fourth Ave, LLC, KPB)
Architects, Pflaffer Development, LLC,)
Legislative Affairs Agency, Contractor)
General)
Defendant(s).)

CASE NO. 3AN- 15-5969 CI

SUMMONS AND
NOTICE TO BOTH PARTIES
OF JUDICIAL ASSIGNMENT

To Defendant: Legislative Affairs Agency

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 825 W. 4th Ave., Anchorage, Alaska 99501 within 20 days* after the day you receive this summons. In addition, a copy of your answer must be sent to the plaintiff's attorney or plaintiff (if unrepresented)

James P. Goffstein, whose address is: 406 6 St, Ste 206
Anchorage, AK 99501

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at www.courts.alaska.gov/forms.htm, to inform the court. - OR - If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

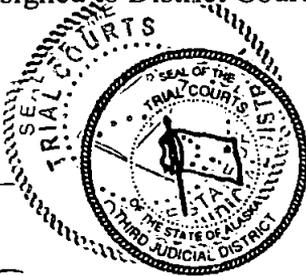
TO: Plaintiff and Defendant

You are hereby given notice that:

- This case has been assigned to Superior Court Judge Easter and to a magistrate judge.
- This case has been assigned to District Court Judge _____

CLERK OF COURT

3/31/15
Date



By: G Mills
Deputy Clerk

I certify that on 3/31/15 a copy of this Summons was mailed given to
 plaintiff plaintiff's counsel along with a copy of the
 Domestic Relations Procedural Order Civil Pre-Trial Order
to serve on the defendant with the summons.
Deputy Clerk SM

* The State or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

Alaska Building, Inc
Plaintiff(s),

vs. 716 West Ford Avenue, LLC, KPB
Architects, Pfeiffer Development, LLC,
Legislative Agency, Criterion
General, Inc
Defendant(s).

CASE NO. 3AN-15-5909CI

SUMMONS AND
NOTICE TO BOTH PARTIES
OF JUDICIAL ASSIGNMENT

To Defendant: Criterion General, Inc

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 825 W. 4th Ave., Anchorage, Alaska 99501 within 20 days* after the day you receive this summons. In addition, a copy of your answer must be sent to the plaintiff's attorney or plaintiff (if unrepresented)

James D. Gottstein, whose address is: 406 GST, Ste 206
Anchorage, AK 99501

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at www.courts.alaska.gov/forms.htm, to inform the court. - OR - If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

TO: Plaintiff and Defendant

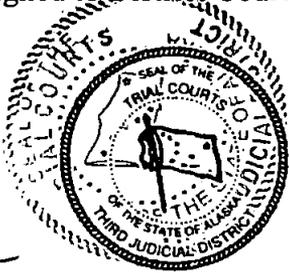
You are hereby given notice that:

This case has been assigned to Superior Court Judge Easter
and to a magistrate judge.

This case has been assigned to District Court Judge _____

CLERK OF COURT

3/31/15
Date



By: G Mills
Deputy Clerk

I certify that on 3/31/15 a copy of this Summons was mailed given to
 plaintiff plaintiff's counsel along with a copy of the
 Domestic Relations Procedural Order Civil Pre-Trial Order
to serve on the defendant with the summons.

Deputy Clerk SM

* The State or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

S-16371

3AN-15-05969 CI

VOLUME 2

2015 OCT 23
CLERK JUDICIAL
3:56
PII 3:56

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

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Case No.: 3AN-15-05969CI

Plaintiff,

v.

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

Defendants.

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

LEGISLATIVE AFFAIRS AGENCY'S REQUEST FOR ORAL ARGUMENT
(Motion to for Summary Judgment Under the Laches Doctrine)

COMES NOW Defendant Legislative Affairs Agency, Inc., by and through its undersigned counsel, and respectfully requests oral argument on its Motion for Summary Judgment (Laches) filed on October 21, 2015. Defendant Legislative Affairs Agency, Inc. brings this request for oral argument under Rule 77(e) of the Alaska Rules of Civil Procedure.

DATED: October 23, 2015.

STOEL RIVES LLP

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

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on October 23, 2015, a true and correct copy of the foregoing was served in the manner identified below on:

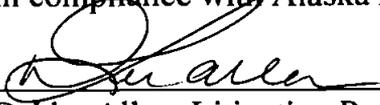
VIA HAND DELIVERY

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
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(Attorney for Plaintiff)

VIA FIRST CLASS MAIL

Jeffrey W. Robinson
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(Attorneys for Defendant 716 West Fourth Avenue, LLC)

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


Debby Allen, Litigation Practice Assistant

80436277.1 0081622-00003

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1. I am an attorney with the law firm of Stoel Rives, LLP, counsel for Defendant Legislative Affairs Agency ("Agency") in the above-captioned litigation and submit this affidavit in support of Defendant Legislative Affairs Agency's Non-Opposition to 716's Motion for Ruling of Law Precluding ABI's Claims for *Qui Tam* Damages.

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

3. Attached as **Exhibit A** to the Legislative Affairs Agency's Non-Opposition to 716's Motion for Ruling of Law Precluding ABI's Claims for *Qui Tam* Damages is a true and correct copy of excerpts from the October 16, 2015 deposition of James Gottstein.

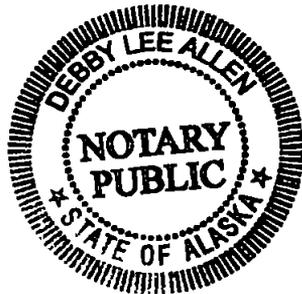
I declare under penalty of perjury that the foregoing is true and correct.

DATED this 21 of October, 2015.



KEVIN M. CUDDY

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





Notary in and for the State of Alaska
My Commission expires: 12/17/16

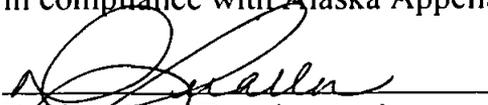
CERTIFICATE OF SERVICE AND OF FONT

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CLERK OF COURT

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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

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

Defendants.

Case No.: 3AN-15-05969CI

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
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**LEGISLATIVE AFFAIRS AGENCY'S NON-OPPOSITION TO 716'S MOTION
FOR RULING OF LAW PRECLUDING ABI'S CLAIMS FOR QUI TAM
DAMAGES**

I. INTRODUCTION

Defendant Legislative Affairs Agency ("LAA") agrees that this Court should preclude Plaintiff from pursuing its claim for *qui tam* damages because Plaintiff's claim, as Plaintiff's president admitted under oath, has no legal support. Plaintiff's requested *qui tam* damages could potentially deprive LAA and taxpayers of millions of dollars if Plaintiff is successful in voiding the lease for the Legislative Information Office building.

Accordingly, LAA does not oppose 716 West Fourth Avenue LLC's Motion for Ruling of Law Precluding ABI's Claim for *Qui Tam* Damages.¹

II. STATEMENT OF UNDISPUTED FACTS

On October 16, 2015, defendants deposed James Gottstein in his capacity as the president of Alaska Building, Inc. Mr. Gottstein's deposition testimony established the following facts:

- Plaintiff is seeking 10 percent of any savings achieved by LAA if the lease is voided.²
- Plaintiff claims that LAA could save roughly \$21 million over the life of the loan by voiding the current lease, and that Plaintiff would therefore be entitled to a payment of roughly \$2.1 million under its requested relief.³
- Mr. Gottstein has experience litigating *qui tam* cases.⁴
- A *qui tam* complaint must be filed under seal in the first instance, and this complaint was not filed under seal.⁵
- According to Mr. Gottstein, this lawsuit is "not really a *qui tam* case."⁶

¹ LAA takes no position on Plaintiff's request for punitive damages, since that request is not directed at LAA and does not appear to impact LAA. LAA notes that it is difficult to conceive how punitive damages could apply in this case.

² A copy of the relevant excerpts of Mr. Gottstein's deposition is attached as Exhibit A. See Exh. A at 31:24-25, 32:1-17.

³ See *id.* at 32:19-25, 33:1-25.

⁴ See *id.* at 34:1-7.

⁵ See *id.* at 41:3-8.

⁶ *Id.* at 41:8, 43:10-12.

- According to Mr. Gottstein, he is unaware of any statute that would authorize Plaintiff's request for 10 percent of any savings.⁷
- According to Mr. Gottstein, he is unaware of any common law that would allow Plaintiff to recover 10 percent of any savings.⁸

III. ARGUMENT

Under Plaintiff's theory, it would receive in excess of two million dollars for "savings" that the LAA would obtain due to the voiding of its lease with 716 West Fourth Avenue LLC. If awarded, however, all of these "savings" should go to the taxpayers and the LAA. Plaintiff is attempting to enrich itself through an unprecedented claim that it should receive a portion of any "savings" that otherwise would inure to the public's benefit. There is literally no legal support for this novel claim, as Plaintiff's president admitted under oath.

Consistent with Civil Rule 11(b)(2), it does not appear that Plaintiff's claim for 10 percent of any "savings" secured in this case is warranted by existing law or by a nonfrivolous argument for establishing new law. Plaintiff admits that this is not a *qui tam* case under the False Claims Act or any other statute. Congress enacted a comprehensive legislative scheme through the False Claims Act to punish persons who committed a fraud upon the government in violation of that statute, including the possibility that a qui

⁷ See *id.* at 43:6-9.

⁸ See *id.* at 43:13-18 ("Q. Is there any common law that you can point to to say that a savings of this type had been given to a private litigant? A. No. Well, not yet anyway. So, I mean, it's possible I'll come up with some, but I haven't found – I haven't seen any yet.").

tam plaintiff would receive a portion of any recovery.⁹ In that circumstance, there is no room for the creation of additional common law to supplement the statute.¹⁰ There are no common law *qui tam* actions.¹¹ Even if some *qui tam* theory was viable here, which it is not, a State agency like LAA is not subject to *qui tam* liability under the False Claims Act.¹² Plaintiff's claim for a portion of any "saving" should therefore be precluded.

IV. CONCLUSION

For the foregoing reasons, and the reasons described in 716 West Fourth Avenue LLC's original motion, this Court should preclude Plaintiff from receiving any portion of the "savings" that LAA obtains if the lease extension is declared null and void.

⁹ See *Mortgages, Inc. v. United States Dist. Court for the Dist. of Nevada (Las Vegas)*, 934 F.2d 209, 210, 212 (9th Cir. 1991).

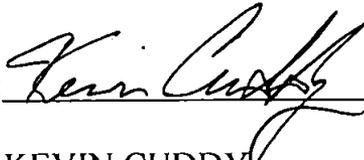
¹⁰ "Where, however, Congress has enacted a comprehensive legislative scheme, including integrated procedures for enforcement, there is a strong presumption that Congress did not intend the courts to supplement the remedies enacted. . . . The FCA [False Claims Act] allows no room for the creation of additional federal common law."

¹¹ See *Vt. Agency of Nat. Resources v. U.S. ex rel. Stevens*, 529 U.S. 765, 768 (2000) (noting that only a handful of statutes currently create a form of civil action known as *qui tam*), 775 (noting that common-law *qui tam* actions fell into disuse after the 14th century in England, but continued to remain technically available for several centuries), 776 (noting that there is no evidence that the Colonies ever allowed common-law *qui tam* actions).

¹² See *id.* at 787-88. Plaintiff's claim is all the more confusing because it appears to accuse the LAA – a State agency – of defrauding the State by entering into a lease to which Plaintiff objects. That is, the State is somehow defrauding itself.

DATED: October 21, 2015

STOEL RIVES LLP

By: 

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

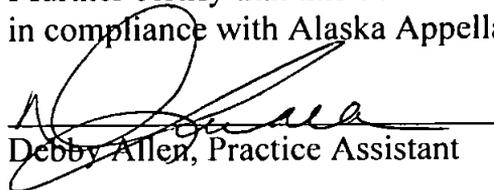
CERTIFICATE OF SERVICE AND OF FONT

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


Debby Allen, Practice Assistant

In the Matter Of:

ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

JAMES GOTTSTEIN - VOLUME I

October 16, 2015

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EXHIBIT A | Page 1 of 10

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

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

6 Plaintiff,

7 vs.

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

11 Defendants.

12 Case No. 3AN-15-05969 CI /

13 DEPOSITION OF JAMES B. GOTTSSTEIN

14 VOLUME I

15 Pages 1 - 58, inclusive

16 Friday, October 16, 2015
17 2:00 P.M.

18
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

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

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For Defendant Legislative Affairs Agency:

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Court Reporter:

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

1 the New Seward Highway.

2 So I -- the lawsuit is about declaring it
3 null and void. And the legislature -- anyway, there
4 can be --

5 Q. Okay.

6 A. That's -- I mean, I think that the lease is
7 illegal, and that's -- that's what the lawsuit asks
8 for declaratory judgment on.

9 Q. And so the lease should end, and then as to
10 whatever the parties do from that point on, it
11 should comply with the statute. Is that right?

12 A. Well, like I said, there are numerous
13 possible scenarios.

14 Q. But all of them require that the lease be
15 declared null and void and cease to exist so that
16 the parties can then proceed to comply with the
17 statute. Isn't that your position?

18 A. Well, it may not be these parties. Like I
19 said, there might be something else. The
20 Legislative Information Office might move somewhere
21 else. So I think -- so what's requested is that the
22 lease be declared -- I think what I say is illegal,
23 null and void.

~~24~~ Q. Okay. During the August 18 hearing on the
~~25~~ standing issue and motion to sever, you informed the

1 Court that you were looking for the Court to
2 establish Alaska Building, Inc.'s entitlement to
3 10 percent of any savings achieved. Do you recall
4 that?

5 A. It came up, yes.

6 Q. Alaska Building, Inc. does have a personal
7 stake in this case, does it not?

8 A. I'm not sure what you mean by "personal
9 stake."

10 Q. Monetary. You have a monetary stake in
11 this case.

12 A. Other than the 10 percent?

13 Q. No. The 10 percent will do just fine.

14 A. Oh, yeah.

15 Q. The 10 percent is a monetary interest in
16 the case --

17 A. Yes.

18 Q. -- correct?

19 Okay. And in some of the briefing in this
20 case, specifically the opposition to the motion to
21 dismiss or sever, Alaska Building, Inc. asserted that
22 the amount being paid over the life of the lease was
23 more than \$21 million more than what was allowed under
24 the statute. Is that right?

25 A. Yes.

1 Q. And so if you were -- you, Alaska Building,
2 Inc. was to receive 10 percent of the savings,
3 that's a minimum of \$2.1 million in savings,
4 correct? Well, 21 million in savings, but 2.1 is
5 this 10 percent. Is that right?

6 A. Right. There have been some slight changes
7 in those amounts with the affidavit of Larry Norene.
8 But, yes, I mean -- so the State would, you know,
9 say, end up with 19 million and Alaska Building,
10 Inc. would get two.)

11 Q. Okay. So that --

12 A. The judge expressed some skepticism about
13 that, and there's a pending motion on that issue.

14 Q. That there is. For today, though, I just
15 want to focus on this idea of monetary interest.

16 This 2 million or so that constitutes the
17 10 percent, does that go back to the taxpayers or
18 does that go to Alaska Building, Inc.?

19 A. It's -- it's for -- it's to go to Alaska
20 Building, Inc., because otherwise is -- if it's
21 successful, the State -- if it wasn't successful,
22 the State would get none of it, and so this would
23 be -- well, you could look at it different ways, but
24 the State would get 19 million and Alaska Building,
25 Inc. would get two.)

1 Q. You have experience litigating qui tam

2 cases, do you not?

3 A. Yes, some.

4 Q. And in particular, you led the charge in

5 the US ex rel. Law Project for Psychiatric Rights

6 versus Matsutani case?

7 A. Yes.

8 Q. The trial judge held in that case that the
9 public already knew about the alleged misconduct.

10 Is that right?

11 A. Well, there is -- I wouldn't say that
12 that's a fair characterization. Under the False
13 Claims Act, it's a very arcane process or set of
14 rules, and one of them is what's called the public
15 disclosure bar.

16 Q. Uh-huh.

17 A. And it's changed over the years, but
18 basically, if I can recall it, if the -- I forget
19 what it was, the transit -- but basically if the
20 facts were disclosed through certain enumerated
21 sources, including court cases, then -- then the
22 public disclosure bar would be triggered.

23 And so I filed -- or the Law Project for
24 Psychiatric Rights had filed a previous lawsuit in
25 which this was raised in state court, and -- and so

1 that. I would be -- I'd welcome any kind of any
2 indication of that.

3 Q. Under a qui tam case like you pursued in
4 the Matsutani case, the complaint is filed under
5 seal. Is that right?

6 A. Yes.)

7 Q. And that was not done here?

8 A. No. It's not really a qui tam case.)

9 Q. Okay.

10 A. And...

11 Q. So I think we can agree on that, that this
12 is not a qui tam case. What is the basis for
13 claiming an entitlement to 10 percent of the
14 savings?

15 A. I think that it's -- it's a way to make
16 real the citizen taxpayers' right to bring actions
17 on behalf of the government to stop government --
18 illegal government action.

19 What we had -- from about 1974 through 1998,
20 the Alaska Supreme Court had established what's called
21 a public interest exception to Civil Rule 82,
22 providing that public interest litigants that were
23 truly suing on behalf of the public were not subjected
24 to having attorneys' fees against them and would
25 have -- if they prevailed, would have -- be awarded

1 Q. So thank you for the answer. I'm going to
2 go back to my original question, which is: What is
3 the basis for your claim to an entitlement of
4 10 percent of the fees?

5 A. I just said it.

~~6 Q. I'm not sure that you have. You gave me a
7 history lesson about the public interest exception
8 for Rule 82. Is there a statute?~~

~~9 A. No.~~

~~10 Q. False Claims Act? This isn't a qui tam
11 case, right?~~

~~12 A. Correct.~~

~~13 Q. Is there any common law that you can point
14 to to say that a savings of this type had been given
15 a private litigant?~~

~~16 A. No. Well, not yet anyway. So, I mean,
17 it's possible I'll come up with some, but I haven't
18 found -- I haven't seen any yet.~~

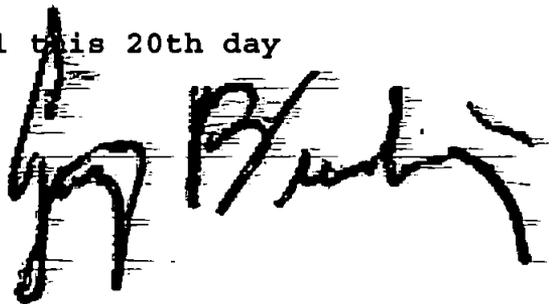
19 I mean, I think that the -- this is a very
20 important public issue, and the point is, is that if
21 this right of public -- the public citizens to sue
22 over illegal government action is to have any, you
23 know, reality at all, there needs to be some
24 countervailing element for the prospect of attorneys'
25 fees being awarded against a plaintiff if they're

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CERTIFICATE

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

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



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

GB4223

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Clerk of Court

BY: _____
Clerk of Court

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

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

Defendants.

Case No.: 3AN-15-05969CI

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510 L Street, Suite 500, Anchorage, AK 99501
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**LEGISLATIVE AFFAIRS AGENCY'S MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT UNDER THE LACHES DOCTRINE**

I. INTRODUCTION

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

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

II. STATEMENT OF UNDISPUTED FACTS

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

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

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

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

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

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

....

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

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

³ See Exh. A, Interrogatory No. 1.

⁴ See *id.*

⁵ See *id.*, Interrogatory No. 2.

⁶ See *id.*

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

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

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

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

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

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

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

¹⁰ See *id.* RFA No. 7.

¹¹ See *id.* RFA No. 8.

¹² See *id.* RFA No. 10.

¹³ See *id.* RFA 9.

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

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

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

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

¹⁴ See *id.* RFA 12-14.

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

¹⁶ See Exh. B at 18:7-25, 19:1-17.

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

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

III. STANDARD OF REVIEW

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

IV. ARGUMENT

A. The laches doctrine bars Plaintiff's claim.

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

¹⁸ See Exh. A, RFA nos. 17-18.

¹⁹ See *id.* RFA nos. 19-20, 22-23.

²⁰ See *id.* RFA no. 24.

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

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

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

1. Plaintiff unreasonably delayed bringing its claim.

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

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

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

²⁴ *See* Exh. C at 2.

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

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

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

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

²⁷ See Exh. A, RFA No. 25.

²⁸ See *id.* RFA No. 11.

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

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

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

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

³⁰ *Breck*, 706 P.2d at 313.

³¹ *See id.* at 314-15.

³² *Id.* at 316.

³³ Exh. A, Interrogatory No. 1.

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

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

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

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

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

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

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

³⁵ Exh. A, RFA Nos. 5, 18, 21.

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

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

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

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

³⁷ See Exh. C at 2.

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

³⁹ See *id.* ¶¶ 6-7.

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

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

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

⁴¹ *Breck*, 706 P.2d at 316.

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

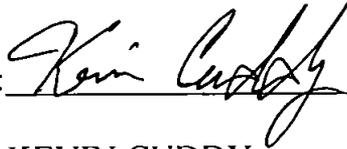
LAA understands that defendant 716 West will provide additional information concerning any harm or prejudice it suffered as a result of Plaintiff’s unreasonable delay in bringing this suit.

V. CONCLUSION

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

DATED: October 21, 2015

STOEL RIVES LLP

By:  _____

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

⁴² See *id.* at 316-17.

CERTIFICATE OF SERVICE AND OF FONT

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

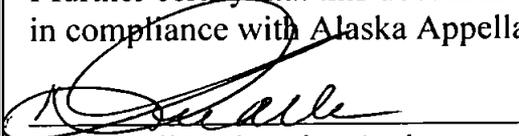
VIA HAND DELIVERY

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

VIA FIRST CLASS MAIL

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

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



Debby Allen, Practice Assistant

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

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, *et al.*

Defendants.

FILE

81622-3

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OCT 06 2015

Stoel Rives LLP

Case No. 3AN-15-05969CI

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

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

REQUESTS FOR ADMISSION

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

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

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

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RESPONSE: Admit.

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

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

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

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

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RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

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

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

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

RESPONSE: Admit.

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

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

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

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

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

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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First Discovery Requests to Plaintiff*

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

RESPONSE: Deny.

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

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

INTERROGATORIES

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

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

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First Discovery Requests to Plaintiff*

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

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

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

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

Page 10

LAW OFFICES OF
JAMES B. GOTTSTEIN
408 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7888
FACSIMILE
(907) 274-9493

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

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

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

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

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

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

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

Page 11

- Section 4 was replaced with a new section.
- Section 5 was replaced with a new section.
- Section 6 was replaced with a new section.
- Section 7 was replaced with a new section.
- Section 8 was replaced with a new section.
- Section 9 was replaced with a new section.
- Section 10 was replaced with a new section.
- Section 11 was replaced with a new section.
- Section 12 was replaced with a new section.
- Section 13 was replaced with a new section.
- Section 14 was replaced with a new section.
- Section 15 was replaced with a new section.
- Section 16 was replaced with a new section.
- Section 17 was replaced with a new section.
- Section 18 was replaced with a new section.
- The last sentence of Section 19A was replaced with the following:

"The Lessor shall be responsible for completing the Renovations described in Exhibit "N prior to the Lessee accepting and taking occupancy of the Premises. After the Renovations have been completed and the Lessee has accepted and taken occupancy of the Premises, any subsequent alterations to the Premises agreed by the parties will be documented by separate agreement."
- Section 20 was deleted in its entirety.
- Section 21 was replaced with a new section.
- Section 22 was replaced with a new section.
- Section 23 was replaced with a new section.
- Section 24 was replaced with a new section.
- Section 25 was replaced with a new section.
- Section 30 was replaced with a new section.
- Section 31 was replaced with a new section.
- Section 33 was replaced with a new section.

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 JAMES B. GOTTSTEIN
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*Responses to Legislative Affairs Agency's
 First Discovery Requests to Plaintiff*

Page 12

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

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

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

The operating costs were drastically increased.

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

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

LAW OFFICES OF
JAMES B. GUTSTEIN
408 G STREET, SUITE 208
ANCHORAGE, ALASKA
99501

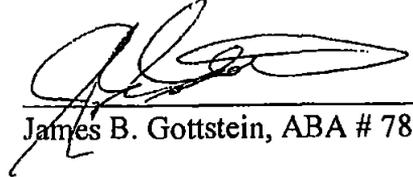
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*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

Page 13

is it at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease.

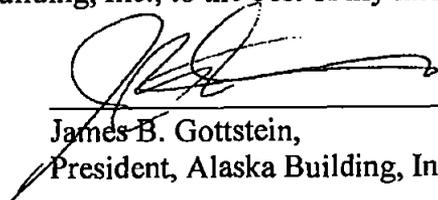
Dated October 5, 2015.


James B. Gottstein, ABA # 7811100

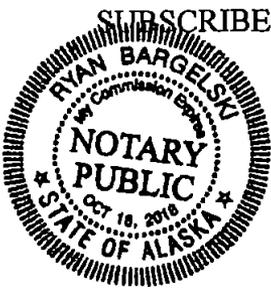
VERIFICATION

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

Dated October 5, 2015.


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

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

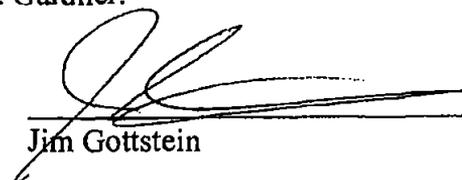



Notary Public in and for Alaska
My Commission Expires: 10-18-18

CERTIFICATE OF SERVICE

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

Dated October 5, 2015.


Jim Gottstein

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
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*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

Page 14

In the Matter Of:

ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

JAMES GOTTSTEIN - VOLUME I

October 16, 2015

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EXHIBIT B | Page 1 of 11

000440

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

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

6 Plaintiff,

7 vs.

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

11 Defendants.

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

14 DEPOSITION OF JAMES B. GOTTSTEIN

15 VOLUME I

16 Pages 1 - 58, inclusive

17 Friday, October 16, 2015
18 2:00 P.M.

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

**CERTIFIED
TRANSCRIPT**

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

For Plaintiff:

James B. Gottstein
LAW OFFICES OF JAMES B. GOTTSTEIN
406 G Street, Suite 206
Anchorage, Alaska 99501
907/274-7686

For Defendant 716 West Fourth Avenue LLC:

Jeffrey W. Robinson
Eva Gardner
ASHBURN & MASON
1227 West 9th Avenue, Suite 200
Anchorage, Alaska 99501
907/276-4331

For Defendant Legislative Affairs Agency:

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

Court Reporter:

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

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

3 A. Looks like it.

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

6 A. Yes.

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

11 A. Yes.

12 Q. And when did you do so?

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

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

18 A. No.

19 Q. Why not?

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

1 ahead.)

2 Q. Well, what do you mean by that? What do

3 you mean when you say it would be a futile gesture

4 to notify LAA?)

5 A. Because they -- it just seemed that they --

6 I mean, they were already under a lot of criticism,

7 and they were -- seemed bound and determined to go,

8 go ahead. I mean, that's kind of just speculation

9 on my part, I suppose.)

10 Q. That's fine. And all I'm trying to get is

11 your understanding or your belief at the time. But

12 am I understanding your testimony correctly that you

13 believed that they were already set and determined

14 to proceed with this project as of October of 2013,

15 and so anything you had to say to them wasn't going

16 to change the direction of the project?)

17 A. Yeah.) And, again, I object to this whole

18 line of questioning, because I don't think that it's

19 relevant to whether -- whether or not the lease is

20 illegal.

21 Q. So I want to show you -- or mark, I guess,

22 as the next exhibit, Exhibit K.

23 MR. ROBINSON: Yeah, that should be.

24 MR. CUDDY: Thanks.

25 (Exhibit K marked.)

1 MR. CUDDY: Sorry.

2 MR. ROBINSON: Thank you.

3 BY MR. CUDDY:

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

10 A. Yes.)

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

15 A. Yes.)

16 Q. Did you prepare this document?

17 A. Yes.)

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

22 A. Yes.)

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

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

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

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

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

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

14 A. Yes.

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

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

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

1 anyone from Legislative Affairs Agency?)

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

3 suit.)

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

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

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

10 A. Yes.

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

15 A. Yes.

16 Q. Was this a significant project?)

17 A. Yes. It was certainly in my mind. (I

18 think --)

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

21 A. Yes.)

22 Q. Even tens of millions?)

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

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

1 it fair to say that tens of millions of dollars were

2 being spent on the project?

3 A. That seems likely. I mean -- yeah, I think

4 that's probably true. It's far more expensive to

5 have demolished the old building and the Empress

6 Theater and then build up from there than to build a

7 new building.)

8 Q. Okay. And you were aware that that was the

9 plan, to do this demolition of the old Empress

10 Theater and at least some of the original building

11 in order to create what is now the LIO building?

12 A. Well, it was virtually all of the old

13 building. The only thing they left was the steel

14 frame and foundation and a little part of the

15 concrete skin on the west wall and the south -- the

16 bottom of the south corner.

17 Q. Okay. So using your description of it, you

18 were aware of that, that that was basically the

19 scope of the construction before it began?

20 A. I think so, yes.

21 Q. Okay. Were you also aware that the

22 Legislative Affairs Agency was contributing seven

23 and a half million dollars to the cost of the

24 project as payment for certain tenant improvements?

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

1 unsuccessful.

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

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

6 MR. CUDDY: Sure. Yeah.

7 MR. ROBINSON: Just a couple minutes.

8 (Recess taken.)

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

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

14 A. Yes.

15 Q. And once construction started, you had no

16 reason to believe that the Legislative Affairs

17 Agency was going to abandon the lease due to any

18 alleged problem with the procurement process,

19 correct?

20 A. Yes.)

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

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

1

CERTIFICATE

2

3

I, GARY BROOKING, Registered Professional

4

Reporter and Notary Public in and for the State of

5

Alaska, do hereby certify that the witness in the

6

foregoing proceedings was duly sworn; that the

7

proceedings were then taken before me at the time

8

and place herein set forth; that the testimony

9

and proceedings were reported stenographically by

10

me and later transcribed by computer transcription;

11

that the foregoing is a true record of the

12

testimony and proceedings taken at that time;

13

and that I am not a party to nor have I any

14

interest in the outcome of the action herein

15

contained.

16

IN WITNESS WHEREOF, I have hereunto set

17

my hand and affixed my seal this 20th day

18

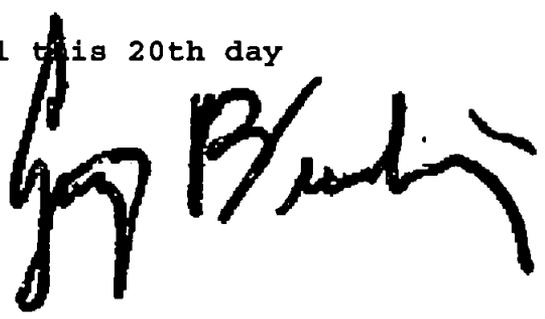
of October, 2015.

19

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21

22



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

23

24

25

GB4223

October 30, 2013

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

Re: Anchorage Legislative Information
Office Renovation Contract

Dear Attorney General Geraghty:

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

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

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

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

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

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

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

Sincerely,

Jim Gottstein
President

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

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

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

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

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

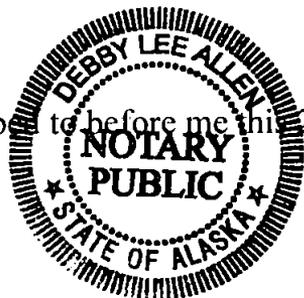
5. Attached as **Exhibit C** to Legislative Affairs Agency’s Memorandum in Support of Motion for Summary Judgment (Laches) is a true and correct copy of a draft letter from Jim Gottstein as the owner of Alaska Building, Inc., to Attorney General Michael Geraghty (dated Oct. 30, 2013). This document was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

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

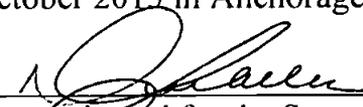
DATED this 21st of October, 2015.



KEVIN M. CUDDY



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



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

CERTIFICATE OF SERVICE AND OF FONT

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

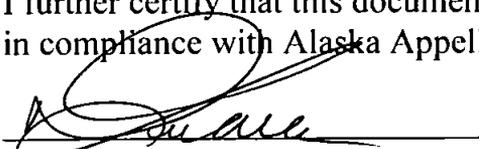
VIA HAND DELIVERY

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

VIA FIRST CLASS MAIL

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

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



Debby Allen, Practice Assistant

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2015 OCT 21 PM 4:29

CLERK OF COURT

BY: _____
DEPUTY CLERK

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

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

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

Defendants.

Case No.: 3AN-15-05969CI

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

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

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

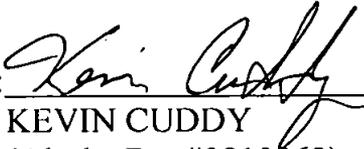
LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR SUMMARY JUDGMENT UNDER THE LACHES DOCTRINE

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

Page 1 of 2

DATED: October 21, 2015.

STOEL RIVES LLP

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

CERTIFICATE OF SERVICE AND OF FONT

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

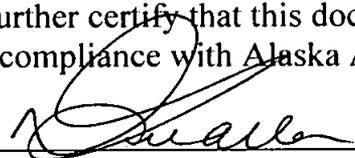
VIA HAND DELIVERY

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

VIA FIRST CLASS MAIL

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

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


Debby Allen, Practice Assistant

80416233_1.DOCX

FILED
STATE OF ALASKA
THIRD DISTRICT

2015 OCT 21 PM 6:28

CLERK OF COURT

BY: _____
DEPUTY CLERK

Kevin Cuddy (Alaska Bar #0810062)
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Anchorage, AK 99501
Telephone: (907) 277-1900
Facsimile: (907) 277-1920

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

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

Defendants.

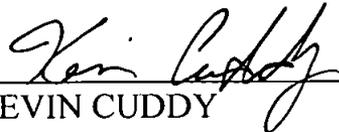
Case No.: 3AN-15-05969CI

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

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

DATED: October 21, 2015.

STOEL RIVES LLP

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

CERTIFICATE OF SERVICE AND OF FONT

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

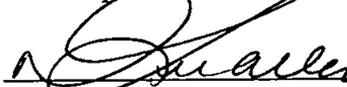
VIA HAND DELIVERY

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

VIA FIRST CLASS MAIL

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

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


Debby Allen, Practice Assistant

80430299_1

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

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

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

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

Defendants.

Case No.: 3AN-15-05969CI

AFFIDAVIT OF JESSICA GEARY

**(In Support of Defendant Legislative Affairs Agency's Motion for Summary
Judgment)**

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, JESSICA GEARY, declare as follows:

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

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

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

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

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

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

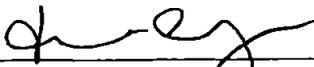
Inv #	Period	Amount
TI-1	09/16/13-10/31/13	\$ -
TI-2	11/01/13-11/30/13	\$ 105,383.00
TI-3	12/01/13-12/31/13	\$ 193,000.00
TI-4	01/01/14-01/31/14	\$ 116,000.00
TI-5	02/01/14-02/28/14	\$ 150,800.00
TI-6	03/01/14-03/31/14	\$ 433,200.00
TI-7	04/01/14-04/30/14	\$ 341,223.00
TI-7a	05/01/14-05/31/14	\$ 292,500.00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

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

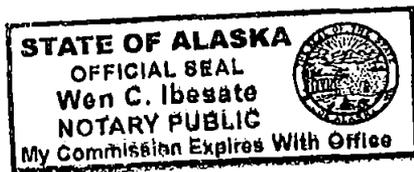
7. LAA paid all of these invoices for goods and services in connection with the tenant improvements.

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

DATED this 21st day of October, 2015.


JESSICA GEARY

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




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

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on October 21 2015, a true and correct copy of the foregoing was served ~~via USPS Priority Mail on~~ as identified on:

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

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

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


Debby Allen, Practice Assistant

80371281.2 0081622-00003

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiffs,)

vs.)

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

Defendants.)

Case No.: 3AN-15-05969 Civil

[PROPOSED] ORDER GRANTING THE UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR 716 TO OPPOSE PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

This Court, having reviewed 716 West Fourth Avenue LLC's Unopposed Motion to Extend Filing Deadline for 716 to Oppose Plaintiff's Motion for Preliminary Injunction, and being duly advised in the premises, enters the following ORDER:

716 may file an opposition by **October 27, 2015**.

DATED this 21st day of October, 2015.


HON. PATRICK J. MCKAY
Superior Court Judge

I certify that on 10/21/15 a copy of the following was mailed/ faxed/ hand-delivered to each of the following at their addresses of record: James Gottstein/Daniel Quinn
Blake Call/Jeffrey Robinson/Mark Scheer
Kevin Cuddy/Cynthia Ducey
Administrative Assistant K

ASHBURN & MASON INC. LAWYERS
1227 WEST 9TH AVENUE, SUITE 200 ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235
OCT 20 2015

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 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
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[PROPOSED] ORDER RE UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR 716 TO OPPOSE PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION

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

{10708-101-00299014;1}

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-15-05969CI

**7³ ORDER GRANTING
UNOPPOSED MOTION and MEMORANDUM TO
EXTEND TIME FOR OPPOSITION TO
716'S MOTION FOR RULING OF LAW PRECLUDING ABI'S
CLAIMS FOR QUI TAM AND PUNITIVE DAMAGES**

Alaska Building, Inc.'s, unopposed motion for an extension of time until October 27, 2015, to file its opposition to 716's Motion for Ruling of Law Precluding ABI's Claims for *Qui Tam* and Punitive Damages is hereby **GRANTED**.

Dated 10/21, 2015.


PATRICK J. MCKAY,
SUPERIOR COURT JUDGE

I certify that on 10/22/15 a copy of the following was mailed/ faxed/ hand-delivered to each of the following at their addresses of record: James Gottstein/ Daniel Quinn/ Blake Call/ Jeffrey Robinson/ Mark Scheer/ Kevin Cuddy/ Cynthia Ducey
Administrative Assistant Kn

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

000465

OCT 20 2015

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

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

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

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

Defendants.)

PROPOSED ORDER GRANTING THE UNOPPOSED MOTION TO
EXTEND FILING DEADLINE FOR 716 TO
OPPOSE PLAINTIFF'S MOTION TO COMPEL

This Court, having reviewed 716 West Fourth Avenue LLC's Unopposed Motion to Extend Filing Deadline for 716 to Oppose Plaintiff's Motion to Compel, and being duly advised in the premises, enters the following ORDER:

716 may file an opposition by **October 27, 2015.**

DATED this 21st day of October, 2015.


HON. PATRICK J. MCKAY
Superior Court Judge

I certify that on 10/22/15 a copy of the following was mailed to each of the following at their addresses of record: James Gottstein / Daniel Quinn / Blake Call / Jeffrey Robinson / Mark Schoer / Kevin Cuddy / Cynthia Ducey
Administrative Assistant K

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

OCT 20 2015

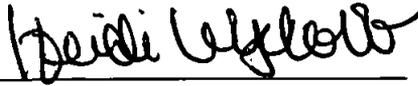
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 20 day of October 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

ASHBURN & MASON P.C.
LAWYERS
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ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

[PROPOSED] ORDER RE UNOPPOSED MOTION TO
EXTEND FILING DEADLINE FOR 716 TO OPPOSE PLAINTIFF'S MOTION TO COMPEL
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

{10708-101-00299022;1}

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

FILED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT
2015 OCT 20 AM 10:47

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

CLERK TRIAL COURTS

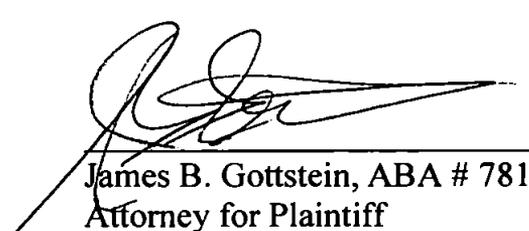
BY: _____
DEPUTY CLERK

Case No. 3AN-15-05969CI

**UNOPPOSED MOTION and MEMORANDUM TO
EXTEND TIME FOR OPPOSITION TO
716'S MOTION FOR RULING OF LAW PRECLUDING ABI'S
CLAIMS FOR QUI TAM AND PUNITIVE DAMAGES**

Plaintiff, Alaska Building, Inc., moves for an extension of time until October 27, 2015, to file its opposition to 716's Motion for Ruling of Law Precluding ABI's Claims for *Qui Tam* and Punitive Damages. The movant, Defendant 716 West Fourth Avenue LLC does not oppose this motion.

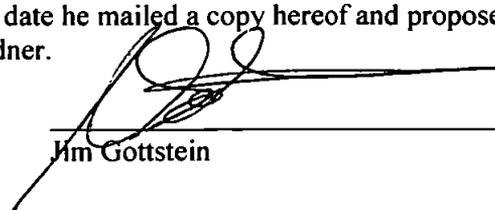
Dated October 20, 2015.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

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

Dated October 20, 2015.


Jim Gottstein

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

000468

FILED
STATE OF ALASKA
THIRD DISTRICT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

2015 OCT 20 PM 3:25

CLERK OF COURT

BY: _____
DEPUTY CLERK

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

Plaintiff,)

vs.)

Case No.: 3AN-15-05969 CI

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

**AFFIDAVIT OF JEFFREY W. ROBINSON IN SUPPORT OF UNOPPOSED
MOTION TO EXTEND FILING DEADLINE FOR
716 TO OPPOSE PLAINTIFF'S MOTION TO COMPEL**

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case, and submit this affidavit in support of 716 West Fourth Avenue, LLC's Unopposed Motion to Extend Filing Deadline for 716 to Oppose Plaintiff's Motion to Compel. I have personal knowledge of all facts described herein.

2. The deadline to oppose Plaintiff's motion is 10/20/15. Plaintiff has agreed to allow Defendant to file an opposition by October 27, 2015. This matter was discussed, and agreed to, by the parties at Mr. Gottstein's deposition, which was

ASHBURN & MASON P.C.
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TEL 907.276.4331 • FAX 907.277.8235

FILED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

2015 OCT 20 PM 3:26

CLERK OF COURT

BY: _____
DEPUTY CLERK

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

Plaintiff,)

vs.)

Case No.: 3AN-15-05969 CI

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

UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR
716 TO OPPOSE PLAINTIFF'S MOTION TO COMPEL

Defendant 716 West Fourth Avenue, LLC ("716"), by and through counsel Ashburn & Mason, P.C., hereby moves the court to extend the deadline by which it is to oppose Plaintiff's Motion to Compel. Plaintiff does not oppose this request. This motion is accompanied by the attached affidavit of counsel and proposed order.

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

DATED: 10-19-15

By: JWR
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 20 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
Heidi Wyckoff

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

UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR
716 TO OPPOSE PLAINTIFF'S MOTION TO COMPEL
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil
{10708-101-00299018;1}

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA DISTRICT

FILED
STATE OF ALASKA
DISTRICT

THIRD JUDICIAL DISTRICT AT ANCHORAGE 2015 OCT 20 PM 3:26

CLEAR TRAIL
BY: _____
DEPUTY CLERK

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

Plaintiff,)

vs.)

Case No.: 3AN-15-05969 CI

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

**AFFIDAVIT OF JEFFREY W. ROBINSON IN SUPPORT OF UNOPPOSED
MOTION TO EXTEND FILING DEADLINE FOR 716 TO OPPOSE
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case, and submit this affidavit in support of 716 West Fourth Avenue, LLC's Unopposed Motion to Extend Filing Deadline for 716 to Oppose Plaintiff's Motion for Preliminary Injunction. I have personal knowledge of all facts described herein.

2. The deadline to oppose Plaintiff's motion is 10/20/15. Plaintiff has agreed to allow Defendant to file an opposition by October 27, 2015. This matter was discussed, and agreed to, by the parties at Mr. Gottstein's deposition, which was

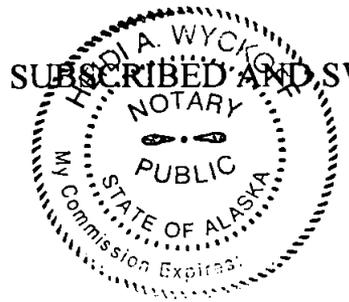
ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

conducted on 10/16/15 at Ashburn & Mason. The deposition has not yet concluded, and will commence again on October 23, 2015.

3. This motion is not made for purposes of undue harassment or delay.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Jeffrey W. Robinson
Jeffrey W. Robinson



SUBSCRIBED AND SWORN to before me this 20 day of October, 2015.

Heidi A. Wyckoff
NOTARY PUBLIC in and for Alaska
My Commission Expires: 1/1/2019

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 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

AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR 716 TO OPPOSE PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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

ANCHORAGE PH 3:26
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska)
corporation,)
)
Plaintiff,)
)
vs.)
)
716 WEST FOURTH AVENUE LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)
Defendants.)

DEPUTY CLERK
BY: _____
DEPUTY CLERK

Case No.: 3AN-15-05969 CI

P **UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR
716 TO OPPOSE PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION**

Defendant 716 West Fourth Avenue, LLC ("716"), by and through counsel Ashburn & Mason, P.C., hereby moves the court to extend the deadline by which it is to oppose Plaintiff's Motion for Preliminary Injunction. Plaintiff does not oppose this request. This motion is accompanied by the attached affidavit of counsel and proposed order.

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

DATED: 10-19-15

By: JWR
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

CERTIFICATE OF SERVICE

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 facsimile U.S. Mail on the 20 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
Heidi Wyckoff

ASHBURN & MASON P.C.
LAWYERS
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ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR
716 TO OPPOSE PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil
{10708-101-00299008;1}

FILED
2015 OCT 15 PM 1:31

2015 OCT 15 PM 1:31

CLERK TRIAL COURT

BY: _____
DEPUTY CLERK

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

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Case No.: 3AN-15-05969CI

Plaintiff,

v.

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

Defendants.

**DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S MOTION AND
MEMORANDUM IN SUPPORT OF REQUEST FOR ENTITLEMENT TO
ATTORNEYS' FEES AND COSTS**

Pursuant to Civil Rules 68, 79, and 82, Defendant Legislative Affairs Agency ("LAA"), requests a finding that it is the prevailing party with respect to the property damage claim raised against it by Plaintiff Alaska Building, Inc. ("ABI"). This Court severed the original lawsuit so that ABI would proceed separately on his property damage claim and his claim regarding the alleged illegality of the procurement process

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

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for the extension of the lease of the Legislative Information Office building (the “LIO Lease”). The latter issue remains pending with this Court. The property damage issue is now the subject of a separate lawsuit filed by ABI against other defendants. Because ABI abandoned its property damage claim against LAA, LAA is the prevailing party with respect to that severed claim and is entitled to “prevailing party” status.

I. FACTS

ABI filed this lawsuit on March 31, 2015. ABI challenged the legality of the LIO Lease in Count 1 and alleged that certain other defendants had caused property damage to a shared party wall in Count 2. On May 27, LAA moved to sever the two claims because they involved different parties and wholly different claims. In response, ABI filed an amended complaint on June 8, adding LAA as a defendant to the property damage claim in Count 2.

During briefing on the motion to sever (as well as LAA’s motion to dismiss for lack of standing), LAA argued that ABI’s amended complaint was a futile attempt to impose negligence liability on a lessee for the conduct of others.¹ On August 20, this Court granted LAA’s motion to sever the claims and ordered that the property damage claim must proceed, if at all, in a new lawsuit.

LAA recently learned that ABI has, in fact, filed a new lawsuit concerning its alleged property damage claim (which had previously been addressed in Count 2 of the amended complaint). That case is *Alaska Building, Inc. v. Pfeffer Development LLC*,

¹ See LAA’s Reply in Support of Motion to Dismiss or Sever Claims for Misjoinder at 4-8 (filed June 19, 2015).

3AN-15-09785CI, which is currently before Judge Guidi. LAA is not a named defendant in that case.²

II. ARGUMENT

ABI was required, under the Civil Rules, to bring his two-count claim as two separate actions, as held by this Court in its August 20 order. ABI amended its complaint to add a property damage claim against LAA and then, in the face of LAA's arguments explaining why LAA could not be liable for ABI's alleged property damage, ABI abandoned that claim. ABI functionally dismissed its property damage case against LAA by not including LAA as a defendant in the new lawsuit. LAA is the prevailing party with respect to the property damage lawsuit because ABI abandoned its claim against LAA.

Civil Rules 68 and 82(a) allow LAA to recover an award of attorneys' fees as the prevailing party in this case. LAA prevailed on the main issue of property damage in that action because LAA obtained the requested relief and obtained dismissal of ABI's claim in its entirety. *See Progressive Corp. v. Peter*, 195 P.3d 1083, 1092 (Alaska 2008) ("The prevailing party is the one who successfully prosecuted or defended against the action, the one who is successful on the 'main issue' of the action and in whose favor the

² Ordinarily LAA would seek its "prevailing party" fees in the lawsuit in which the claim was pending. But LAA was never a named defendant in the new lawsuit before Judge Guidi. In an effort to resolve this procedural limbo, LAA has filed its motion with this Court since the Court oversaw the amended claim that added LAA as a defendant for Count 2 and ordered the case severed. LAA sought the Court's guidance on this issue during the September 15 status hearing and understood that the Court would entertain a motion regarding "prevailing party" status once it was determined whether ABI was proceeding with its separate property damage lawsuit.

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decision or verdict is rendered and the judgment entered.” (internal quotation omitted)). LAA successfully defended against the action and prevailed on the main issue of the action.

Because of the odd procedural posture of this case, LAA currently only seeks an order finding that it is the prevailing party with respect to the separate property damage lawsuit. The ultimate question of how much LAA may be entitled to receive for attorneys’ fees and costs can await the final resolution of this case since there is likely to be a subsequent “prevailing party” finding on the separate LIO Lease issue. If LAA prevails with respect to that issue as well, then it will seek fees under Rules 68 or 82 as to both issues at the same time. If ABI prevails, then the two fee awards will offset one another to some extent.

III. CONCLUSION

For the foregoing reasons, LAA seeks a finding that it is the prevailing party with respect to the property damage claim (which was originally Count 2 in the first amended complaint).

DATED: October 15, 2015.

STOEL RIVES LLP

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

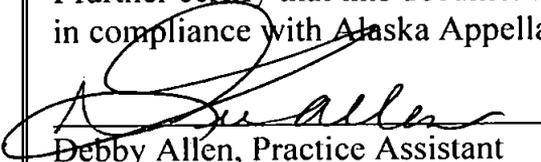
CERTIFICATE OF SERVICE AND OF FONT

This certifies that on October 15, 2015, a true and correct copy of the foregoing was served on:

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

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

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


Debby Allen, Practice Assistant

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

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

FILED
STATE OF ALASKA
THIRD DISTRICT

OCT -7 PM 1:33

CLERK TRIAL COURT

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

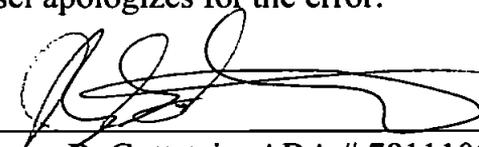
Defendants.

Case No. 3AN-15-05969CI

**ERRATA Re:
MOTION TO COMPEL RESPONSES TO PLAINTIFF'S
FIRST REQUESTS FOR PRODUCTION TO 716 WEST
FOURTH AVENUE LLC**

At footnote 1 of Alaska Building, Inc.'s Memorandum in Support of Motion to Compel Responses to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC, filed October 6, 2015, the citation of the Pacific Reporter for *Lee v. State* is incorrect. The correct citation is 141 P.3d 342. Counsel apologizes for the error.

Dated October 7, 2015.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

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

Dated October 7, 2015.


Jim Gottstein

LAW OFFICES OF
JAMES B. GOTTSTEIN
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000482

Filed in the Trial Courts
STATE OF ALASKA, THIRD DISTRICT
OCT 06 2015

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

Clerk of the Trial Courts
By _____ Deputy

ALASKA BUILDING, INC., an Alaska corporation,)
Plaintiff)
vs.)
716 WEST FOURTH AVENUE LLC, and LEGISLATIVE AFFAIRS AGENCY)
Defendants.)

Case No. 3AN-15-05969CI

CERTIFICATE OF SERVICE

I hereby certify that on this date I mailed a copy of:

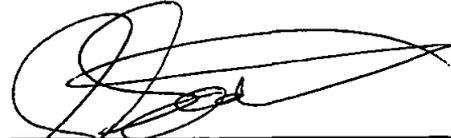
1. Notice of Absence,
2. Motion for Preliminary Injunction,
3. Memorandum in Support of Motion for Preliminary Injunction,
4. Affidavit of Larry Norene,
5. (Proposed) Order Granting Motion for Preliminary Injunction,
6. Motion to Compel Responses to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC,
7. Civil Rule 37(d) Certificate,
8. Memorandum in Support of Motion to Compel Responses to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC,
9. (Proposed) Order Granting Motion to Compel Responses to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC, and
10. this Certificate of Service, to:

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Kevin M. Cuddy
Stoel Rives LLP
510 L St., Ste. 500
Anchorage, AK 99501

Dated: October 6, 2015



Jim Gottstein

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Certificate of Service

Page 2

000484

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

Filed in the Trial Courts
STATE OF ALASKA, THIRD DISTRICT
OCT 06 2015
By _____
Clerk of the Trial Courts
Deputy

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

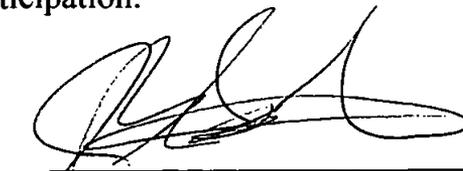
Defendants.

Case No. 3AN-15-05969CI

NOTICE OF ABSENCE
(November 19, 2015-December 7, 2015)

PLEASE TAKE NOTICE that from November 19, 2015, through December 7, 2015, James B. Gottstein, attorney for Plaintiff Alaska Building, Inc., will be out of state and unavailable for any purposes, including but not limited to motions, discovery, and appearing in court and/or attending depositions, with the possible exception of telephonic or videoconferencing (i.e., Skype) participation.

Dated October 6, 2015.



James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

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D

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

Filed in the Trial Courts
STATE OF ALASKA, THIRD DISTRICT
OCT 06 2015
By _____ Clerk of the Trial Courts
Deputy

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

Case No. 3AN-15-05969CI

**MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL RESPONSES TO PLAINTIFF'S
FIRST REQUESTS FOR PRODUCTION TO 716 WEST
FOURTH AVENUE LLC**

Plaintiff Alaska Building, Inc., has moved to compel responses to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC (Production Requests). Copies of the August 3, 2015, Production Requests and the September 3, 2015, responses by 716 West Fourth Avenue LLC (716 LLC) are attached hereto as Exhibits A & B respectively. Filed contemporaneously herewith is counsel's Civil Rule 37(d) Certificate, Exhibits 1 & 2 to which document the results of the parties conferring under Civil Rule 37(d).

A. Overview

Broadly speaking, 716 LLC's objections fall into three main categories:

1. The requested documents are confidential and/or proprietary.

2. The requested documents are protected by the attorney client privilege, work product doctrine.

3. The requested documents are not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

With respect to No. 1, it is not proper to withhold documents on the grounds that they are confidential or proprietary. *Lockwood v. Geico*, 323 P.3d 691, 699-700 (Alaska 2014). The proper procedure is to first try to negotiate a protective order under Civil Rule 26(c), and failing that, to move for an appropriate protective order. *Id.* Alaska Building, Inc., invited 716 LLC to negotiate a protective order, but 716 LLC did not take it up on the offer. See, Exhibit 1, page 1, and Exhibit 2 to Rule 37(d) Certificate.

With respect to No. 2, Civil Rule 26(b)(5), expressly requires 716 LLC to provide sufficient information with respect to documents withheld on privilege grounds to enable the plaintiff to challenge any claims of privilege:¹

(5) *Claims of Privilege or Protection of Trial Preparation Materials.* When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

716 LLC has failed to do so.

With respect to No. 3, in the main, the requested documents to which relevance objections apply pertain to the financial condition of LLC. As the Supreme Court

¹ See, *Lee v. State*, 141 P3d. 232, n1 of Appendix, adopted by reference, 141 P.3d. 351.

reiterated in *Lockwood*, "the 'relevancy standard is to be broadly construed at the discovery stage.'" ² The relevance is 716 LLC's ability to pay back money it receives under the LIO Lease in excess of what is allowed under AS 36.30.083(a). Filed contemporaneously herewith is a motion for preliminary injunction primarily intended to prevent 716 LLC's owners from taking money out of the company, making it unavailable for repayment. 716 LLC's financial condition is directly relevant to this pending motion.

Alaska Building, Inc., will now go through each Request for Production, including 716 LLC's objections, the current status and the relief requested under Civil Rule 37.

B. Individual Requests for Production

Request for Production No 1.

Request for Production No. 1, is as follows:

Please produce all loan applications and other documents relating to financing the New LIO Building, including without limitation, all projections and *pro formas* and personal financial statements. This includes, without limitation, both interim or construction financing, and permanent financing and loans that were consummated and loans that were not, if any.

Exhibit A, page 3

716 LLC objected to this request for production on the grounds that the information is confidential and proprietary, and they are protected by the attorney client privilege,³ work product doctrine, but produced 5 documents. Exhibit B, page 4-5. The produced documents did not include loan application(s), promissory note(s), guarantees, if any, projections or *pro formas*, or personal financial statements. 716 LLC did not describe the

² 323 P.3d at 699.

³ 716 LLC did not interpose a specific relevancy objection to this request.

nature of the documents not produced in a manner that would enable an assessment of the applicability of the claimed privilege(s).

Therefore, Alaska Building, Inc., is requesting this Court compel production of all documents and other material responsive to Request for Production No. 1 not already produced.⁴ With respect to claims of privilege, Alaska Building, Inc., requests 716 LLC be required to describe each document or other item withheld as follows:

- (a) The date of the document or other item;
- (b) The author or addressor of the document or other item;
- (c) The recipient or addressee of the document or other item;
- (d) The number of pages of the document;
- (e) The general subject matter of the document or other item;
- (f) Each person who sent, received and obtained copies of the document or other item;
- (g) A general description of the document or other item (i.e., letter, report, memoranda, audio or video recording); and
- (h) The basis of the privilege asserted with respect to the alleged grounds for non-production of the document or other item.

Request for Production No 2.

Request for Production No. 2, is as follows:

Please produce the financial records of 716 LLC, from January 1, 2012. If the electronic accounting/bookkeeping records are kept in QuickBooks, please provide the QuickBooks file or a backup of it and any applicable password. If not, it would be preferable for counsel to confer and agree on a reasonably useable form, such as whether exporting to Microsoft Excel or Access is a viable option. Otherwise, they should be produced in word searchable Acrobat (PDF) format, and include without limitation (a) all registers (accounts), (b) income statements and balance sheets on an annual basis to the end of 2014, and monthly thereafter, (c) check register, (d) general ledger, and (e) listing of all real property assets. Initially your response is to include the time period from January 1, 2012, through July 31,

⁴ Alaska Building, Inc., believes a protective order is probably appropriate with respect to personal financial information.

2015, and should be updated monthly by the 10th of each month for the prior month. This request does not include "backup" documentation, except as specifically requested in the following request.

Exhibit A, page 3-4.

716 LLC objected to this request for production on the grounds that the requested documents are confidential and proprietary and not relevant. No documents or other material was produced. Exhibit B, page 6.

As set forth above, that documents may be confidential or proprietary is not a proper objection and the requested documents are directly relevant to the pending motion for preliminary injunction. Therefore, Alaska Building, Inc., is requesting this Court compel production of all documents and other material responsive to Request for Production No. 2.

Request for Production No 3.

Request for Production No. 3, is as follows:

Please produce all documents relating to payments by 716 LLC to Robert Acree; Mount Trident, LLC; Mark Pfeffer; Mark E. Pfeffer Alaska Trust Utad 12/28/07; or Pfeffer Development, LLC; or any combination thereof.

Exhibit A, page 4.

716 LLC objected to this request for production on the grounds that the requested documents are confidential and proprietary and not relevant. No documents or other material was produced. Exhibit B, page 6.

As set forth above, that documents may be confidential or proprietary is not a proper objection. The amount of money paid as rent under the LIO Lease that has and is

continuing to be paid to Messrs. Acree and Pfeffer and Mr. Pfeffer's trust is directly relevant to the pending motion for preliminary injunction. Therefore, Alaska Building, Inc., is requesting this Court compel production of all documents and other material responsive to Request for Production No. 3.

Request for Production No 4.

Request for Production No. 4, is as follows:

Please produce all documents, including without limitation, e-mails, relating to 716 LLC leasing or potentially leasing space to the Legislative Affairs Agency for the Anchorage Legislative Information Office upon the expiration of the lease in effect on January 1, 2010 and thereafter. This includes all documents pertaining to the LIO Lease, including without limitation, negotiation.

Exhibit A, page 4-5

716 LLC first objected on the grounds that it calls for "privileged internal documents." Exhibit B, page 7. This is not a proper objection. There is no privilege for internal documents. To the extent this is really an objection that the documents are confidential or proprietary, as set forth above, it is also not a proper objection.

716 LLC next objected on the grounds that it is,

unreasonable, overbroad, and unduly burdensome in light of the work product doctrine, and other privileges, including attorney-client privilege, protecting such internal documents from discovery.

Id. It is important to note that this objection is not that the request is unreasonable, overbroad, and unduly burdensome *per se*, but instead that it is unreasonable, overbroad, and unduly burdensome in light of the various privileges claimed. This is thus a privilege objection subject to the rule on making a proper privilege objection.

*Memorandum In Support of Motion
to Compel 716 LLC Production*

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However, to the extent the objection is interpreted to be that the request is unreasonable, overbroad, and unduly burdensome, it is not a proper objection. Civil Rule 26(b)(2)(A)(i)-(ii) provides that Discovery may be limited by the court if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

716 LLC has not attempted to make any showing under (i) that the requested material is unreasonably cumulative or duplicative or obtainable from a more convenient, less burdensome, or less expensive source. Similarly, 716 LLC has made no showing that Alaska Building, Inc., has had ample opportunity by discovery in this action to obtain the information sought. It has also failed to make a showing that the burden or expense outweighs its likely benefit.

Alaska Building, Inc., does not believe any of the criteria for limiting discovery exist. With respect to both (i) & (ii), the Legislative Affairs Agency has provided certain material and Alaska Building, Inc., does not object to 716 LLC not providing duplicative discovery of this material.

With respect to 716 LLC's privilege objections to Request for Production No. 4, it should be required to provide the information required by Civil Rule 26(b)(5), as set forth above.

*Memorandum In Support of Motion
to Compel 716 LLC Production*

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716 LLC has promised to provide the requested e-mails by Friday, October 16, 2015, as well as the information required by Civil Rule 26(b)(5) for any claims of privilege, and Alaska Building, Inc., is requesting this be ordered by the Court. Otherwise, Alaska Building, Inc., is requesting this Court compel production of all documents and other material responsive to Request for Production No. 4.

Request for Production No 5.

Request for Production No. 5, is as follows:

Please produce the operating agreement for 716 LLC, including all amendments and any other agreements pertaining to the operation and/or management of 716 LLC.

Exhibit A, page 5.

716 LLC objected to this request for production on the grounds that it is confidential and proprietary, and that it is irrelevant and not likely to lead to admissible evidence. Exhibit B, page 8. As set forth above, that documents might be confidential and proprietary is not a proper basis to withhold discovery.

With respect to relevancy, it appears there has been a change in control of 716 LLC and this is relevant to whether or not the lessee is the same, which is relevant to the issue of whether the LIO Lease extends a real property lease as required by AS 36.30.083(a). In addition, there may be indemnity or other types of agreements that allocate financial responsibility for the illegality of the LIO Lease.

Therefore, Alaska Building, Inc., is requesting this Court compel production of all documents and other material responsive to Request for Production No. 5.

*Memorandum In Support of Motion
to Compel 716 LLC Production*

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Request for Production No 6.

Request for Production No. 6, is as follows:

Please produce all documents relating to the LIO Lease complying with the requirement in AS 36.30.083(a) that it extend a real property lease.

Exhibit A, page 5.

716 LLC Objected to this Request for Production as follows:

716 objects to this response because it is duplicative, and because any such documents would be in the possession and control of the LAA and not 716 and would thus impose obligations upon 716 greater than those set forth in the Alaska Rules of Civil Procedure. 716 further objects, because under AS 36.30.083, the legislative council, rather than the landlord, has sole authority to extend real property leases. Under AS 36.30.020, the legislative council adopts and publishes procedures to govern procurement. Therefore, 716 objects to any implicit legal characterization of the procurement process used to enter into this lease. Further, this request is also unduly burdensome to the extent it attempts to extend to 716 the scope of internal procurement documents that are exclusively within the possession, custody, or control of the LAA.

Exhibit B, page 9

First, Alaska Building, Inc., does not object to 716 LLC not producing duplicative discovery. Second, Alaska Building, Inc., is requesting material in 716 LLC's possession. If material is only in the Legislative Affairs Agency's possession, the request for production does not apply.

Interestingly, the Legislative Affairs Agency produced a legal memo from in-house counsel for Pfeffer Development stating that the LIO Lease should be approved by the entire Legislature because it did not appear either AS 36.30.080 or AS 36.30.083(a)

stretched far enough to encompass the LIO Lease. Exhibit C, pages 1, 2 & 5.⁵ Any other non-privileged material responsive to this request should be produced. Any objection to producing material because a privilege is claimed should include the information required by Civil Rule 26(b)(5) as set forth above.

Therefore, Alaska Building, Inc., is requesting this Court compel production of all documents and other material responsive to Request for Production No. 6.

Request for Production No 7.

Request for Production No. 7, is as follows:

Please produce all documents relating to opinions, estimates or determinations of the market rental value and/or value of the New LIO Building and/or leasing or purchasing space for the Anchorage Legislative Information Office from January 1, 2010, except for (a) that certain "Rental Value Appraisal Report Anchorage Legislative Information Office," by Waranzof Associates, submitted October 15, 2013, as of June 1, 2014, a copy of which can be accessed by going to <http://bit.ly/1MCkd93>, and (b) that certain October 10, 2013, Report by the Alaska Housing Finance Corporation on the LIO Building Anchorage, Alaska, titled "Evaluation of Cost Estimate for Downtown Development," a copy of which can be accessed by going to <http://bit.ly/1LV9MeW>. This request includes communications with any and all persons regarding the market rental value of the New LIO Building, including without limitation during the planning phase and whether or not any opinion regarding the market rental value of the New LIO Building was formed or provided. In essence, this request is for all documents relating to the value or market rental value relating to leasing space by the Legislative Affairs Agency for the Anchorage Legislative Information Office after the expiration of the then existing lease.

Exhibit A, page 6.

⁵ This memo was transmitted to the Legislative Affairs Agency, thus waiving the attorney-client privilege.

716 LLC objected on the grounds that the material was confidential and proprietary, but produced two appraisals that were circular in that the valuations were based on the income from the LIO Lease. Other valuations were not produced. Exhibit B, page 10.

As set forth above, that material is confidential and proprietary is not a proper ground to withhold discovery. Therefore, Alaska Building, Inc., is requesting this Court compel production of all documents and other material responsive to Request for Production No. 6.

Request for Production No 8.

Request for Production No. 8, is as follows:

Please produce all documents memorializing payments for costs under the LIO Lease for what is called renovations. In other words, this request is to obtain all cost records for construction of the space under the LIO Lease which the Legislative Affairs Agency occupied in January of 2015. This includes payments for project management to defendant Pfeffer Development LLC.

Exhibit A, page 7

716 LLC produced certain contractual documents, but objected to the balance as follows:

716 objects to this request because it seeks information that is confidential and proprietary and protected by attorney-client privilege, work product doctrine, or any other applicable privilege. 716 further objects because this request is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding. This request is also duplicative of the same request Plaintiff made to Pfeffer Development, LLC, the project manager of the LIO Project. It is also an objectionable request because it seeks the production of documents related to the business activities of third parties not named in Count One.

Exhibit B, page 11.

*Memorandum In Support of Motion
to Compel 716 LLC Production*

Page 11

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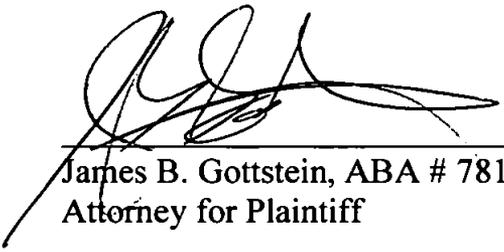
As set forth above, that material is confidential and proprietary is not a proper ground to withhold discovery. With respect to the claim of privilege, 716 LLC must include the information required by Civil Rule 26(b)(5) as set forth above. With respect to the argument that it is duplicative of the same request made to Pfeffer Development, LLC, attached hereto as Exhibit D, which is Pfeffer Development's responses to discovery wherein it did not produce any material on the grounds that the claims against it has been severed from this action.

Therefore, Alaska Building, Inc., is requesting this Court compel production of all non-produced documents and other material responsive to Request for Production No. 8, subject to proper claims of privilege.

C. Conclusion

For the foregoing reasons, Alaska Building, Inc., respectfully requests the Court to grant its motion to compel discovery from defendant 716 West Fourth Avenue LLC.

Dated October 6, 2015.



James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

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,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,
Defendants.

Case No. 3AN-15-05969CI

**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO
716 WEST FOURTH AVENUE LLC**

Pursuant to Civil Rule 34 Plaintiff Alaska Building, Inc., serves the following requests for production on the Defendant 716 West Fourth Avenue, LLC (716 LLC).

Electronic production of hard-copy documents as word searchable Acrobat (PDF) files is preferred. Reasonably useable forms or formats for electronically stored information include (i) word searchable Acrobat (PDF) for written documents, (ii) jpeg or tiff for photographs or other images or graphics, (iii) MP3 for audio files, (iv) MPEG or MP4 for video files, and (v). pst (Outlook) or word searchable Acrobat for E-mails.

I. DEFINITIONS

Unless the request conclusively indicates otherwise, the following definitions apply to the words used in these interrogatories:

A. LIO Lease: The words "LIO Lease" refers to that certain document titled "Extension of Lease and Lease Amendment No. 3 Extension of Lease," a copy of which is attached as Exhibit 1 to the June 12, 2015, Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment.

B. New LIO Building. The term "New LIO Building," means the completed building under the LIO Lease.

C. Document: The term "document" is defined to mean and include any and all graphic or physical representations, including without limitation all handwritten, typed or printed material, photographs, copies of all the foregoing, and electronically stored information within the meaning of Civil Rule 34(a), including e-mail.

D. Relate: The words "relate" or "relating to" mean referring to, pertaining to, concerning, alluding to, responding to, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, mentioning, reflecting, analyzing, constituting, evidencing, or pertaining to, directly or indirectly, in whole or in part.

II. CLAIMS OF PRIVILEGE:

If any document(s) or other item(s) identified or requested herein are withheld for any reasons under a claim of privilege or any other claim, the particular document or other item(s) withheld are to be described as follows:

- (1) The date of the document or other item;
- (2) The author or addressor of the document or other item;
- (3) The recipient or addressee of the document or other item;
- (4) The number of pages of the document;
- (5) The general subject matter of the document or other item;
- (6) Each person who sent, received and obtained copies of the document or other item;
- (7) A general description of the document or other item (i.e., letter, report, memoranda, audio or video recording); and

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Plaintiff's First Requests
for Production to 716 LLC

- (8) The basis of the privilege asserted with respect to the alleged grounds for non-production of the document or other item.

REQUEST FOR PRODUCTION NO. 1.

Please produce all loan applications and other documents relating to financing the New LIO Building, including without limitation, all projections and *pro formas* and personal financial statements. This includes, without limitation, both interim or construction financing, and permanent financing and loans that were consummated and loans that were not, if any.

RESPONSE

REQUEST FOR PRODUCTION NO. 2.

Please produce the financial records of 716 LLC, from January 1, 2012. If the electronic accounting/bookkeeping records are kept in QuickBooks, please provide the QuickBooks file or a backup of it and any applicable password. If not, it would be preferable for counsel to confer and agree on a reasonably useable form, such as whether exporting to Microsoft Excel or Access is a viable option. Otherwise, they should be produced in word searchable Acrobat (PDF) format, and include without limitation (a) all registers (accounts), (b) income statements and balance sheets on an annual basis to the

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Plaintiff's First Requests
for Production to 716 LLC

end of 2014, and monthly thereafter, (c) check register, (d) general ledger, and (e) listing of all real property assets. Initially your response is to include the time period from January 1, 2012, through July 31, 2015, and should be updated monthly by the 10th of each month for the prior month. This request does not include "backup" documentation, except as specifically requested in the following request.

RESPONSE

REQUEST FOR PRODUCTION NO. 3.

Please produce all documents relating to payments by 716 LLC to Robert Acree; Mount Trident, LLC; Mark Pfeffer; Mark E. Pfeffer Alaska Trust Utad 12/28/07; or Pfeffer Development, LLC; or any combination thereof.

RESPONSE

REQUEST FOR PRODUCTION NO. 4.

Please produce all documents, including without limitation, e-mails, relating to 716 LLC leasing or potentially leasing space to the Legislative Affairs Agency for the Anchorage Legislative Information Office upon the expiration of the lease in effect on

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Plaintiff's First Requests
for Production to 716 LLC

January 1, 2010 and thereafter. This includes all documents pertaining to the LIO Lease, including without limitation, negotiation.

RESPONSE

REQUEST FOR PRODUCTION NO. 5.

Please produce the operating agreement for 716 LLC, including all amendments and any other agreements pertaining to the operation and/or management of 716 LLC.

RESPONSE

REQUEST FOR PRODUCTION NO. 6.

Please produce all documents relating to the LIO Lease complying with the requirement in AS 36.30.083(a) that it extend a real property lease.

RESPONSE

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Plaintiff's First Requests
for Production to 716 LLC

REQUEST FOR PRODUCTION NO. 7.

Please produce all documents relating to opinions, estimates or determinations of the market rental value and/or value of the New LIO Building and/or leasing or purchasing space for the Anchorage Legislative Information Office from January 1, 2010, except for (a) that certain "Rental Value Appraisal Report Anchorage Legislative Information Office," by Waronzof Associates, submitted October 15, 2013, as of June 1, 2014, a copy of which can be accessed by going to <http://bit.ly/1MCkd93>, and (b) that certain October 10, 2013, Report by the Alaska Housing Finance Corporation on the LIO Building Anchorage, Alaska, titled "Evaluation of Cost Estimate for Downtown Development," a copy of which can be accessed by going to <http://bit.ly/1LV9MeW>. This request includes communications with any and all persons regarding the market rental value of the New LIO Building, including without limitation during the planning phase and whether or not any opinion regarding the market rental value of the New LIO Building was formed or provided. In essence, this request is for all documents relating to the value or market rental value relating to leasing space by the Legislative Affairs Agency for the Anchorage Legislative Information Office after the expiration of the then existing lease.

RESPONSE

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(907) 274-9493

Plaintiff's First Requests
for Production to 716 LLC

REQUEST FOR PRODUCTION NO. 8.

Please produce all documents memorializing payments for costs under the LIO Lease for what is called renovations. In other words, this request is to obtain all cost records for construction of the space under the LIO Lease which the Legislative Affairs Agency occupied in January of 2015. This includes payments for project management to defendant Pfeffer Development LLC.

RESPONSE

DATED: August 3, 2015.

Law Offices of James B. Gottstein

By:



James B. Gottstein, ABA # 7811100
Attorney for Alaska Building, Inc.

CERTIFICATE OF SERVICE

I certify that on August 3, 2015, I hand delivered a copy hereof to Kevin M. Cuddy, Jeffrey W. Robinson/Eva R. Gardner, Blake Call, Daniel T. Quinn, and Cynthia L. Ducey, and mailed a copy to Mark Scheer.



Jim Gottstein

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Plaintiff's First Requests
for Production to 716 LLC

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

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

Plaintiffs,)

vs.)

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.)

RECEIVED
SEP 8 2015
BY: _____

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE, LLC'S RESPONSES TO ALASKA BUILDING, INC.'S FIRST REQUEST FOR PRODUCTION

COMES NOW, Defendant, 716 West Fourth Avenue ("716 WEST" or "Defendant"), by and through counsel, Ashburn & Mason, P.C. and responds to Plaintiff's First Request for Production.

PRELIMINARY STATEMENT

Discovery in this case is not complete. As discovery proceeds, facts, information, evidence, documents, and things may be discovered which are not set forth in these responses, but which may be responsive to these discovery requests. The following responses are complete based on 716 WEST's current knowledge, information and belief. Furthermore, these responses were prepared based on 716

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WEST's good faith interpretation of the discovery requests and are subject to correction for inadvertent errors or omissions, if any.

716 WEST reserves the right to refer to, conduct discovery with reference to, or offer into evidence at the time of hearing, any and all facts, evidence, documents and things developed during the course of discovery and hearing preparation, notwithstanding references to facts, evidence, documents and things provided herein. These responses are given without prejudice to subsequent revision or supplementation, including objections, based on any information, evidence and documentation which hereinafter may be discovered.

GENERAL OBJECTIONS

716 WEST expressly incorporates the following general objections as if set forth fully in response to each of the following individual discovery requests addressed in the specific objections section below, and any response below is made subject to and without waiving these objections:

1. 716 WEST objects to the discovery requests to the extent they purport to impose requirements upon 716 WEST beyond those authorized by Alaska Rules of Civil Procedure 26, 33, and 34, and otherwise fail to comport with the Alaska rules.
2. 716 WEST objects to requests for the production of documents, calculations, and analyses that do not exist. Under Alaska Civil Rule 34, parties are required to produce documents within their "possession, custody, or control." A document is not within a party's "possession, custody, or control" if it does not exist.

3. 716 WEST objects to each and every discovery request insofar as they are vague, ambiguous, overly broad, unduly burdensome, or use terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these discovery requests.

4. 716 WEST objects to each and every discovery request insofar as they are not reasonably calculated to lead to the discovery of admissible evidence and are not relevant to the subject matter of this proceeding.

5. 716 WEST objects to providing information to the extent that it is already a matter of public record, or to the extent it is obtainable from other sources that are more convenient and less burdensome, or are equally available to the Plaintiff. Plaintiff is not entitled to require other parties to gather information that is equally available and accessible to it.

6. 716 WEST objects to each and every discovery request insofar as they seek documents or information protected by the attorney-client privilege or the work product privilege. Nothing contained in these responses is intended as, or shall in any way be deemed, a waiver of any such privilege or protection, or any other applicable privilege or doctrine.

7. 716 WEST objects to the instructions contained in Plaintiff's discovery requests. In responding to the requests, 716 WEST will follow the standard discovery rules and practices for civil litigation in the Alaska courts. 716 WEST will produce

non-privileged documents that are within its own possession, custody or control of its respective officers, employees, representatives and attorneys.

8. 716 WEST objects to production of any confidential documents or other information that could prejudice the business interests of 716 WEST or of any party that may have provided the confidential information to 716 WEST.

9. 716 WEST objects to the discovery requests insofar as certain requests are duplicative of other requests. 716 WEST will not undertake to produce more than one copy of any document that may be responsive to more than one request.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Please produce all loan applications and other documents relating to financing the New LIO Building, including without limitation, all projections and *pro formas* and personal financial statements. This includes, without limitation, both interim or construction financing, and permanent financing and loans that were consummated and loans that were not, if any.

RESPONSE: 716 objects to this request because it seeks information that is confidential and proprietary and seeks information and documents protected by the attorney client privilege, work product doctrine, or any other applicable privilege. Subject to and without waiver of the foregoing objections, including any and all general objections, 716 hereby produces the following documents in addition to other relevant documents produced in response to another Request:

716 WEST FOURTH AVENUE, LLC'S RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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000508

- Northrim Bank terms and conditions letter to Mark Pfeffer, dated 9-10-13, Bates-stamped 716-000264 thru 716-000266.
- 716 – Wells Fargo Commitment Letter, dated 11-29-13, Bates-stamped 716-000267 thru 716-000271.
- Everbank – Conditional Commitment Letter, dated 11-14-14, Bates-stamped 716-000272 thru 716-000278.
- Appraisal of 716 West 4th Avenue prepared by Theodore Jensen, MAI of Reliant Appraisal for Kim St. John of EverBank, dated December 12, 2014, Bates-stamped 716-000279 thru 716-000545.
- Appraisal of 716 West 4th Avenue prepared by Theodore Jensen, MAI of Reliant Appraisal for Ms. Deatrice Swazer of Northrim Bank dated October 28, 2013, Bates-stamped (note in two parts)-Part One 716-000546 thru 716-000715 and Part Two 716-000716 thru 716-000881.

REQUEST FOR PRODUCTION NO. 2:

Please produce the financial records of 716 LLC, from January 1, 2012. If the electronic accounting/bookkeeping records are kept in QuickBooks, please provide the QuickBooks file or a backup of it and any applicable password. If not, it would be preferable for counsel to confer and agree on a reasonably useable form, such as whether exporting to Microsoft Excel or Access is a viable option. Otherwise, they should be produced in word searchable Acrobat (PDF) format and include without limitation (a) all registers (accounts), (b) income statements and balance sheets on an

annual basis to the end of 2014, and monthly thereafter, (c) check register, (d) general ledger, and (e) listing of all real property assets. Initially your response is to include the time period from January 1, 2012 through July 31, 2015, and should be updated monthly by the 10th of each month for the prior month. This request does not include "backup" documentation, except as specifically requested in the following request.

RESPONSE: In addition to the general objections set forth above, 716 objects to this request because it seeks information that is confidential and proprietary. 716 further objects to this request because it calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence in the instant action.

REQUEST FOR PRODUCTION NO. 3:

Please produce all documents relating to payments by 716 LLC to Robert Acree; Mount Trident, LLC; Mark Pfeffer; Mark E. Pfeffer Alaska Trust 12/28/07; or Pfeffer Development, LLC; or any combination thereof.

RESPONSE: Incorporating all previous objections, 716 objects to this request because it seeks information that is confidential and proprietary. 716 further objects to this request because it calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 4:

Please produce all documents, including without limitation, e-mails, relating to 716 LLC leasing or potentially leasing space to the Legislative Affairs Agency for the

Anchorage Legislative Information Office upon the expiration of the lease in effect on January 1, 2010 and thereafter. This includes all documents pertaining to the LIO Lease, including without limitation, negotiation.

RESPONSE: 716 objects to this request to the extent that it calls for production of privileged internal documents. Furthermore, the request for “all documents” relating to the expiration of the lease in effect on January 2, 2010 and thereafter is unreasonable, overbroad, and unduly burdensome in light of the work product doctrine, and other privileges, including attorney-client privilege, protecting such internal documents from discovery. The request is also ambiguous as it suggest that the lease entered into occurred upon expiration and 716 objects to any legal characterization of the events and facts leading up to the execution of the Lease in dispute. Searches for internal e-mails not privileged are ongoing and this response will be duly supplemented. Subject to and without waiver of the foregoing objections, including any and all general objections, 716 hereby produces the following documents in addition to other relevant documents produced in response to another Request:

- 2010 Lease Renewal 2, dated 10-11-10, Bates-stamped 716-000882-716-000887.
- 2011 Lease Renewal 3, dated 4-13-11, Bates-stamped 716-000888 thru 716-000893.
- 2012-2013 Lease Renewal 4, dated 7-19-12, Bates-stamped 716-000894 thru 716-000899.

- Extension of Lease and Lease Amendment No.3, dated 9-19-13, Bates-stamped 716-000900 thru 716-001079.
- Memorandum of Lease – Recorded, dated 10-7-13, Bates-stamped 716-001080 thru 716-001083.
- Memorandum of Understanding between 716, the Legislative Affairs Agency (“LAA”), and Alaska Housing Finance Corporation (“AHFC”) dated 2/18/14, Bates-stamped 716-001084 thru 716-001087.
- LIO Presentation, Bates-stamped 716-001088 thru 716-001103.
- September 18, 2013 email from Mark Pfeffer to Timothy Lowe, Mike Buller and Doc Crouse with Final Budget attached, Bate Stamped 716-001256 thru 716-001258.

REQUEST FOR PRODUCTION NO. 5:

Please produce the operating agreement for 716 LLC, including all amendments and any other agreements pertaining to the operation and/or management of 716 LLC.

RESPONSE: Incorporating all previous objections, 716 objects to this request because it seeks information that is confidential and proprietary. 716 further objects to this request because it calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 6:

Please produce all documents relating to the LIO Lease complying with the requirement in AS 36.30.083(a) that it extend a real property lease.

RESPONSE: 716 objects to this response because it is duplicative, and because any such documents would be in the possession and control of the LAA and not 716 and would thus impose obligations upon 716 greater than those set forth in the Alaska Rules of Civil Procedure. 716 further objects, because under AS 36.30.083, the legislative council, rather than the landlord, has sole authority to extend real property leases. Under AS 36.30.020, the legislative council adopts and publishes procedures to govern procurement. Therefore, 716 objects to any implicit legal characterization of the procurement process used to enter into this lease. Further, this request is also unduly burdensome to the extent it attempts to extend to 716 the scope of internal procurement documents that are exclusively within the possession, custody, or control of the LAA.

REQUEST FOR PRODUCTION NO. 7:

Please produce all documents relating to opinions, estimates or determinations of the market rental value and/or value of the New LIO Building and/or leasing or purchasing space for the Anchorage Legislative Information Office from January 1, 2010, except for (a) that certain "Rental Value Appraisal Report Anchorage Legislative Information Office," by Waronzof Associates, submitted October 15, 2013, as of June 1, 2014, a copy of which can be accessed by going to <http://bit.ly/1MCkd93>, and (b) that certain October 10, 2013, Report by the Alaska Housing Finance Corporation on the LIO Building Anchorage, Alaska titled "Evaluation of Cost Estimate for Downtown Development," a copy of which can be accessed by going to <http://bit.ly/1LV9MeW>. This request includes communications with any and all persons regarding the market

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rent value of the New LIO Building, including without limitation during the planning phase and whether or not any opinion regarding the market rental value of the New LIO Building was formed or provided. In essence, this request is for all documents relating to the value or market rental value relating to leasing space by the Legislative Affairs Agency for the Anchorage Legislative Information Office after the expiration of the then existing lease.

RESPONSE: 716 objects to this request because it seeks information that is confidential and proprietary. Subject to and without waiver of the foregoing objections, including any and all general objections, 716 has already produced, in response to Request for Production No. 1, an appraisal of 716 West 4th Avenue prepared by Theodore Jensen, MAI of Reliant Appraisal for Kim St.John of EverBank, dated December 12, 2014, previously attached as Bates-stamped 716-000279 thru 716-0005454.

REQUEST FOR PRODUCTION NO. 8:

Please produce all document memorializing payments for costs under the LIO Lease for what is called renovations. In other words, this request is to obtain all cost records for construction of the space under the LIO Lease which the Legislative Affairs Agency occupied in January of 2015. This includes payments for project management to defendant Pfeffer Development, LLC.

RESPONSE:

716 objects to this request because it seeks information that is confidential and proprietary and protected by attorney-client privilege, work product doctrine, or any other applicable privilege. 716 further objects because this request is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding. This request is also duplicative of the same request Plaintiff made to Pfeffer Development, LLC., the project manager of the LIO Project. It is also an objectionable request because it seeks the production of documents related to the business activities of third parties not named in Count One.

Subject to and without waiver of the foregoing objections, including any and all general objections, 716 hereby produces the following documents in addition to other relevant documents produced in response to another Request:

- Construction contract between 716 and Criterion General, Inc., including construction cost estimate, dated 11-11-13; Bates-stamped 716-001104 thru 716-001156.
- Criterion General Business License, Bate Stamped 716-001157 thru 716-001159.
- Criterion Payment and Performance Bond, Bate Stamped 716-001160 thru 716-001168.
- Certificate of Liability Insurance, Bate Stamped 716-001169-716-1170;

- Certificate of Liability Insurance (Wells Fargo), Bate Stamped 716-001171.
- Certificate of Liability Insurance, Bate Stamped 716-001172 thru 716-1177.
- Criterion General Builders Risk, Bate Stamped 716-001178 thru 716-001179.
- Contractor Qualification Statement, Bate Stamped 716-001180 thru 716-001186.
- Change Order #1, Bate Stamped 716-001187 thru 716-001189.
- Change Order #2, Bate Stamped 716-001190 thru 716-001192.
- Change Order #3, Bate Stamped 716-001193 thru 716-001195.
- Change Order #4, Bate Stamped 716-001196 thru 716-001207.
- Certificate of Insurance, Bate Stamped 716-001208-716-001209.
- LIO Change Order dated 12/30/14, Bate Stamped 716-001210 thru 716-001221.
- Kpb Subcontract, Bate Stamped 716-001222 thru 716-001255.

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

DATED: 9/3/15

By: 
for Jeffrey W. Robinson
Alaska Bar No. 0805038

716 WEST FOURTH AVENUE, LLC'S RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

{10708-101-00281426;5}

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Exhibit B, page 13 of 14

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 3 day of September 2015, on:

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

Mark P. Scheer
Scheer & Zehnder LLP
701 Pike Street, Suite 2200
Seattle, WA 98101

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

Cynthia L. Ducey
Delaney Wilson, Inc.
1007 W. 3rd Avenue, Ste. 400
Anchorage, Alaska 99501

Dan Quinn
360 K Street, Suite 200
Anchorage, AK 99501

Blake Call
Call & Hanson, P.C.
413 G Street
Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

716 WEST FOURTH AVENUE, LLC'S RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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000518

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Juli Lucky

From: John L. Steiner <JSteiner@PfefferDevelopment.com>
Sent: Thursday, July 18, 2013 12:03 PM
To: LAA Legal
Cc: 'bob acree'; Mark Pfeffer; Heidi A. Wyckoff; Donald W. McClintock
Subject: RE: LAA leases
Attachments: LIO Project Procurement Analysis dated 7-13-2013.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Doug,

Based on your concern as to any possible procurement implications of our transactional plan for the Anchorage LIO lease amendments, I prepared a memo with my analysis of that issue. (I have been authorized to release it to you, as we thought it might be helpful to you, as well.)

I look forward to talking through whatever issues may yet need to be resolved.

John L. Steiner

Project Director and Counsel

Pfeffer Development, LLC
Commercial Real Estate Developers
425 G Street, Suite 210 | Anchorage, Alaska 99501
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d 907.770.4306 | c 907.382.2300

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From: Donald W. McClintock [mailto:dwm@anchorlaw.com]
Sent: Friday, July 12, 2013 12:53 PM
To: LAA Legal
Cc: 'bob acree'; Mark Pfeffer; John L. Steiner; Heidi A. Wyckoff
Subject: LAA leases

L2144

1

LAA_003417

Exhibit C, page 1 of 7

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Doug,

Per our conversation today, please find attached draft leases for 716 W. 4th extension and the material amendment to add 712 W. 4th and renovate.

I also attach the analysis on how the extension rent was set under the BOV delivered to Representative Hawker.

As noted, there are business issues that you need to confirm with your clients, but we also stand by to address the various boilerplate clauses. Note, we tried to anticipate from your existing lease structure some of the clauses you would expect to see and obviously are receptive to adding others we may have missed. A lot of the technical detail that are in your leases will be in the plans and specifications in this deal, which we will both have to see once the AHFC and architectural process is complete.

I look forward to working these through with you. Enjoy the weekend; we are enjoying a blue bird summer day in Anchorage.

Don

Donald W. McClintock

Ashburn & Mason, P.C.

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Anchorage, AK 99501

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Legislative Information Office Project Procurement Analysis

(John Steiner, Project Director and Counsel)

July 13, 2013

Executive Summary

I do not believe the proposed Anchorage Legislative Information Office (LIO) lease extension (and potential project plan is subject to any reasonable issue as to its compliance with applicable procurement rules.) Indeed, I believe the proposed plan to be the most legally defensible manner in which to implement the intent of the Legislative Council.

Outline of Lease Extension and Potential Project Plan

The plan is to first execute a ten-year extension of the existing lease for the existing leased space in its existing condition at a rate not more than 90% of market value as shown in a broker's opinion of value or appraisal. This extension would secure ongoing space after May 31, 2014 at a price statutorily deemed fair, but without committing the legislature to any major enlargement or cost increase.

Next, a material amendment to the extended lease (in the form of a restated lease document) will provide for enlargement, renovation and lease rate adjustment, but rather than the Legislative Council chair assuming that he and the Legislative Council possess the authority for that scope of change, it will be made expressly subject to legislative approval under AS 36.30.080.

Reflecting the Legislative Council chairman's confidence that the legislature will, indeed, approve the proposed enlargement and renovation, and to allow planning and design to proceed so work can be accomplished while the legislature is in Juneau for the up-coming legislative session, an independently and immediately valid provision of the lease restatement will authorize such planning and design to proceed pending legislative approval, with a lump sum cost approved by AHFC to be payable from funds previously appropriated for Legislative Council use.

Analysis of Legislative Council Authorization

The first step of the plan is to implement the lease extension authorized by the first motion at the June 7, 2013 meeting of the Legislative Council:

MOTION – LEASE EXTENSION: I move that Legislative Council authorize the chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a):

AS 36.30.083(a) provides in relevant part:

(a) Notwithstanding any other provision of this chapter, . . . the legislative council . . . may extend a real property lease that is entered into under this chapter 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.

The motion set out above authorizes exactly what AS 36.30.083(a) appears to contemplate: an extension of up to ten years of the existing lease for the existing leased space in its existing condition at a rate not more than 90% of market value as shown in a broker's opinion of value or appraisal. Nothing in the motion, or for that matter in AS 36.30.083(a), suggests an expectation, contemplation, or even authority for the Legislative Council to double the area leased or total lease cost immediately before or in conjunction with an extension under that statute. Accordingly, the "as-is" extension will comply precisely with the Legislative Council and statutory authorizations.

The second step of the plan is to conditionally execute the lease modification authorized by the third motion at the June 7, 2013 meeting of the Legislative Council:

MOTION – AUTHORIZE MATERIAL AMENDMENTS TO LEASE: I move that Legislative Council authorize the chairman to negotiate amendments to lease 2004-024411-0 by mutual agreement with the Lessor to remove the limitation of amending a lease that amounts to a material modification in paragraph 42; and to include 712 West Fourth Avenue, with other terms and conditions necessary to accommodate renovations, not to exceed the estimated cost of a similarly sized, located and apportioned newly constructed building as determined by the Alaska Housing Finance Corporation.

The restated lease document will accomplish everything authorized in the above motion. Although the Legislative Council gave broad authority to its chairman in this motion, the scope of proposed changes is so great that it seems imprudent to assume that the Legislative Council itself has the authority to authorize the modification without full legislative approval under AS 36.30.080.

That the plan is consistent with the actions taken by the Legislative Council is supported by the requirement that the renovations "not . . . exceed the estimated cost of a similarly sized, located and apportioned newly constructed building as determined by the Alaska Housing Finance Corporation." Not only does this language provide a test of reasonable cost for the renovations independent of the 90% of market value standard under AS 36.30.083(a), but if the latter standard were meant to apply to the lease rate for the renovated space, there would be no reason to include a renovation cost limit at all.

Procurement Analysis

The Legislative Council is not subject to any requirement for competitive lease procurement except to the extent it has imposed the restriction on itself. As such, the Legislative Council's change to its Procurement Procedures should be effective in opting to allow noncompetitive modification of a lease.

Under AS 36.30.850(5), the Alaska Procurement Code does not apply to "acquisitions or disposals of real property or interest in real property, except as provided in AS 36.30.080 and 36.30.085." (emphasis added). One may question whether a lease is an exempted interest in real property, but analysis of the Procurement Code eliminates all doubt. A lease is clearly an interest in real property, exempt from the Procurement Code except as stated in AS 36.30.850(5).

AS 36.30.080 and AS 36.30.085 deal *expressly* with leasing. Although the latter includes possible acquisition of title, the former does not. The logical and necessary import of inclusion of an exception for AS 36.30.080 in the general exclusion for "acquisitions or disposals of real property or interest in real property," is that the leasing activity covered by AS 36.30.080 *is* acquisition of an interest in real property.

Importantly, however, the exception under AS 36.30.850(5) does not state that Legislative Council leasing is generally subject to *all* provisions of the Procurement Code; rather Legislative Council enjoys the same exclusion for leasing as for any other acquisition of an interest in real property "except as provided in AS 36.30.080 and AS 36.30.085" (emphasis added). So only the specific requirements of those statutes apply.

AS 36.30.080(a) makes some leasing—by the Department of Administration for "the state or an agency"—"subject to compliance with the [competitive procurement] requirements of [the Procurement Code]." But the Legislative Council is not "the state or an agency" for which the Department of Administration leases space. Rather, under AS 36.30.990(1) "agency" "means a department, institution, board, commission, division, authority, public corporation, the Alaska Pioneers' Home, the Alaska Veterans' Home, or other administrative unit of the executive branch of state government." (emphasis added).

Clearly, neither the Legislature nor the Legislative Council is an administrative unit of the executive branch. The Legislative Council leases space for the Legislature under AS 36.30.080(c).

So although it is true that leasing space for state agency use generally falls subject to competition under the Procurement Code, that is not the case for leasing by the Legislative Council.

AS 36.30.080(c) applies to the Legislative Council, but it does *not* reincorporate the Procurement Code. Rather, it requires notice to the legislature, and legislative approval (which

may be satisfied by appropriation of the first year's rent) if the annual rent is expected to "exceed \$500,000, or with total lease payments that exceed \$2,500,000 for the full term of the lease, including any renewal options that are defined in the lease." It further expressly states that

"the legislative council . . . may not enter into or renew a lease of real property

(1) requiring notice under this subsection unless the proposed lease or renewal of a lease has been approved by the legislature by law; an appropriation for the rent payable during the initial period of the lease or the initial period of lease renewal constitutes approval of the proposed lease or renewal of a lease for purposes of this paragraph;

(2) under this subsection if the total of all optional renewal periods provided for in the lease exceeds the original term of the lease exclusive of the total period of all renewal options."

Thus, AS 36.30.080(c) does not re-inject a competition requirement for legislative leasing. The statutory expectation is legislative approval, not competition. The general principal is that just as no appropriation, direct legislative grant or other legislative action is required to be based upon a formal competitive process, the legislature is free to act on its own leasing by law without any other procurement process.

The reimbursement of planning and design work may appropriately be covered as a term of an exempt lease, as a material modification under Alaska Legislative Procurement Procedures Section 040(a) or (d), inasmuch as the Lessor is making that material modification of the lease a requirement to submit the larger modification (that includes a schedule for proposed renovations requiring the planning and design to proceed) for legislative approval.

Limits of AS 36.30.083(a) Authority

It is worth a brief additional note as to the risk of seeking to avoid legislative approval under AS 36.30.083(a) based on a renovated lease rate 10% below market rent, even if that were feasible as a business matter because of the enforced 10 year term. (For the Legislative Council to attempt to accomplish redevelopment and an associated change in rent (increasing both the space leased and the rent per square foot) under AS 36.30.083(a) would seem much more likely to be seen as an end-run around the statutory requirement for full legislative approval.) The current proposal as mapped by the Legislative Council motions to extend "as-is" and explicitly (present the restated lease for legislative approval) addresses the requirements of the Code more directly. (That way there can be no allegation that the amendment is beyond merely "material" but so changes the amount and nature of the space leased that for purposes of legislative approval it should be treated as a new and different lease and not just a lease extension allowable under AS 36.30.083(a).)

Alaska Legislative Procurement Procedures

One might inquire as to the implications of Alaska Legislative Procurement Procedures Section 033 (LIMITED COMPETITION PROCUREMENTS), which addresses procurement of "supplies" not exceeding \$50,000, and expressly "includes a space lease" for no more than \$50,000 or for no more than 3,000 square feet. The inclusion of leased space within the definition of "supplies" may derive from the Procurement Code's definition of "supplies" under AS 36.30.990(24), to include "privately owned real property leased for the use of agencies, such as office space, but does not include the acquisition or disposition of other interests in land" (emphasis added). As previously noted, because the legislature is not an "agency," its leases do not fall within the statutory definition of "supplies." Hence the Legislative Procurement Procedure that seems to consider a small lease a "supply" is not compelled by statute.

Similarly, the new material amendment language of Section 040(d) addresses lease extension in the context of a Procurement Procedure Section regarding exemption from standard procurement by formal solicitation and low bid. Thus, even though legislative leasing appears to be exempt from the Procurement Code as a matter of statute, the Legislative Council has arguably committed to competition in most cases under its own procedures.

But the new material amendment provision under Section 040(d) of the Legislative Procurement Procedures lifts whatever self-imposed issue there may be relating to competition under those Procedures. And the Legislative Council imposed no limitation on the terms that can be modified under Section 040(d) given legitimate findings by the chair of the Council. All that remains is any legislative approval that may be required by AS 36.30.080. Our plan calls for precisely such approval.

RECEIVED
SEP 3 2015
BY:

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

ALASKA BUILDING, INC., an)
Alaska Corporation,)
)
Plaintiff,)
)
v.)
)
716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC.,)
d/b/a KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)
)
Defendants.) Case No. 3AN-15-05969 CI

**RESPONSE TO PLAINTIFF'S FIRST REQUESTS FOR
PRODUCTION TO PFEFFER DEVELOPMENT, LLC**

Defendant PFEFFER DEVELOPMENT, LLC, by and through the law firm of Delaney Wiles, Inc., hereby responds to "Plaintiff's First Requests for Production to Pfeffer Development, LLC" as follows:

REQUEST FOR PRODUCTION NO. 1.

Please produce all documents, from January 1, 2008, forward, including without limitation, e-mails, relating to providing space to the Legislative Affairs Agency for the Anchorage Legislative Information Office when the Legislative Affairs Agency's then current lease terminated. This request

DELANEY WILES, INC.
SUITE 400
1007 WEST 3rd AVENUE
ANCHORAGE, ALASKA
99501
(907) 279-3581
FAX (907) 277-1331

encompasses all efforts relating to providing space for the Anchorage Legislative Information Office upon the expiration of the then existing lease. By way of illustration, this request includes without limitation all responsive documents related to the building at 9th and I Street in Anchorage that was ultimately renovated and occupied by NANA, Inc. This request includes all responsive documents relating to the LIO Lease, including without limitation, negotiations with the Legislative Affairs Agency and/or any agents or representatives thereof, specifically including Rep. Mike Hawker.

RESPONSE: Objection, not relevant nor reasonably calculated to lead to discoverable information. The court has severed all claims regarding the LIO from the property damage claim; therefore, none of the information sought in Request for Production No. 1 is relevant.

REQUEST FOR PRODUCTION NO. 2.

Please produce all documents relating to the LIO Lease complying with the requirement in AS 36.30.083(a) that it extend a real property lease.

RESPONSE: Objection, not relevant nor reasonably calculated to lead to discoverable information. The court has severed all claims regarding the LIO from the property damage claim;

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Alaska Building, Inc. v. 716 W. 4th Ave., LLC, et al. Case No. 3AN-15-05969 CI
Response to Plaintiff's 1st RFP to Pfeffer Development, LLC Page 2 of 6

therefore, none of the information sought in Request for Production No. 2 is relevant.

REQUEST FOR PRODUCTION NO. 3.

Please produce all documents relating to opinions, estimates or determinations of the market rental value and/or value of the New LIO Building and/or leasing or purchasing space by the Anchorage Legislative Information Office from January 1, 2010, except for (a) that certain "Rental Value Appraisal Report Anchorage Legislative Information Office," by Waronzof Associates, submitted October 15, 2013, as of June 1, 2014, a copy of which can be accessed by going to <http://bit.ly/1MCKd93>, and (b) that certain October 10, 2013, Report by the Alaska Housing Finance Corporation on the LIO Building Anchorage, Alaska, titled "Evaluation of Cost Estimate for Downtown Development," a copy of which can be accessed by going to <http://bit.ly/1LV9MeW>. This request includes communications with any and all persons regarding the market rental value of the New LIO Building, including without limitation during the planning phase and whether or not any opinion regarding the market rental value of the New LIO Building was formed or provided. In essence, this request is for all documents relating to the value or market rental value relating to by the Legislative Affairs Agency leasing or otherwise acquiring space for the Anchorage Alaska Building, Inc. v. 716 W. 4th Ave., LLC, et al. Case No. 3AN-15-05969 CI Response to Plaintiff's 1st RFP to Pfeffer Development, LLC

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Page 3 of 6

Legislative Information Office after the expiration of the then existing lease, including space other than under the LIO Lease.

RESPONSE: Objection, not relevant nor reasonably calculated to lead to discoverable information. The court has severed all claims regarding the LIO from the property damage claim; therefore, none of the information sought in Request for Production No. 3 is relevant.

REQUEST FOR PRODUCTION NO. 4.

Please produce all documents memorializing payments for costs under the LIO Lease for what is called renovations. In other words, this request is to obtain all cost records for demolition and construction of the space under the LIO Lease which the Legislative Affairs Agency occupied in January of 2015.

RESPONSE: Objection, not relevant nor reasonably calculated to lead to discoverable information. The court has severed all claims regarding the LIO from the property damage claim; therefore, none of the information sought in Request for Production No. 4 is relevant.

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Alaska Building, Inc. v. 716 W. 4th Ave., LLC, et al. Case No. 3AN-15-05969 CI
Response to Plaintiff's 1st RFP to Pfeffer Development, LLC Page 4 of 6

DATED this 2nd day of September, 2015, at Anchorage,
Alaska.

DELANEY WILES, INC.
Attorneys for Defendant
Pfeffer Development, LLC


for Cynthia L. Ducey
Alaska Bar Assoc. No. 8310161

CERTIFICATE OF SERVICE

This certifies that I am an authorized agent of Delaney Wiles, Inc., for service of papers pursuant to Civil Rule 5, and that on this 2nd day of September, 2015, a copy of the foregoing document was served by mail upon:

Attorney for Alaska Building, Inc.
James B. Gottstein
Law Offices of James B. Gottstein
406 G St Ste 206
Anchorage AK 99501

Attorney for 716 West Fourth Avenue, LLC
Jeffrey W. Robinson
Ashburn & Mason, PC
1227 W 9th Ave Ste 200
Anchorage AK 99501

Attorney for Koonce Pfeffer Bettis, Inc. d/b/a KPB Architects
Daniel T. Quinn
Richmond & Quinn
360 K St Ste 200
Anchorage AK 99501

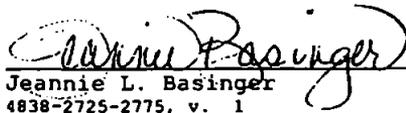
Attorney for Legislative Affairs Agency
Kevin M. Cuddy
Stoel Rives LLP
510 L St Ste 500
Anchorage AK 99501

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Alaska Building, Inc. v. 716 W. 4th Ave., LLC, et al. Case No. 3AN-15-05969 CI
Response to Plaintiff's 1st RFP to Pfeffer Development, LLC Page 5 of 6

Attorney for Criterion General, Inc.
Mark P. Scheer
Scheer & Zehnder, LLP
701 Pike St Ste 2200
Seattle WA 98101

Blake H. Call
Call & Hanson, P.C.
413 G St
Anchorage AK 99501-2126


Jeannie L. Basinger
4838-2725-2775, v. 1

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Alaska Building, Inc. v. 716 W. 4th Ave., LLC, et al. Case No. 3AN-15-05969 CI
Response to Plaintiff's 1st RFP to Pfeffer Development, LLC Page 6 of 6

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

Filed in the Trial Courts
STATE OF ALASKA, THIRD DISTRICT
OCT 06 2015
By _____ Clerk of the Trial Courts
Deputy

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff
vs.
716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY
Defendants.

Case No. 3AN-15-05969CI

CIVIL RULE 37(d) CERTIFICATE

Pursuant to Civil Rule 37(d), with respect to Plaintiff's Motion to Compel Responses to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC of even date, the undersigned hereby certifies he has taken the following actions to confer with defendant 716 Fourth Avenue LLC (716 LLC) in an effort to obtain responses without court action:

1. On Thursday, September 24, 2015, I e-mailed and mailed the letter attached hereto as Exhibit 1 to Mr. Jeffrey W. Robinson, counsel for 716 LLC.
2. On Wednesday, September 30, 2015, Mr. Robinson and I conferred, the results of which are documented in the exchange of e-mails attached hereto as Exhibit 2.

Dated October 6, 2015.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

LAW OFFICES OF
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TELEPHONE
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(907) 274-9493

Law offices of
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA 99501
(907) 274-7686
TELECOPIER (907) 274-9493

September 24, 2015

Jeffrey L. Robinson
Ashburn & Mason
1227 W. 9th Ave., Ste. 200
Anchorage, AK 99501

Re: 716 LLC's Responses to Alaska Building, Inc's First
Requests for Production; *Alaska Building, Inc., v. 716 West
Fourth Avenue LLC, et al.*, Anchorage Superior Court Case
No. 3AN-15-5969CI

Dear Mr. Robinson:

This is an attempt under Civil Rules 34(b) and 37(d) to resolve without court action your failure to provide certain requested documents under Civil Rule 34 in response to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC (Production Requests).

You have objected to producing documents on the following grounds:

1. They are confidential and/or proprietary.
2. They are protected by the attorney client privilege, work product doctrine.
3. They are not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

First, that documents are confidential and/or proprietary is no justification for withholding them. *Lockwood v. Geico*, 323 P.3d 691, 699-700 (Alaska 2014). The proper procedure is to first try to negotiate a protective order under Civil Rule 26(c), and failing that, to move for an appropriate protective order. *Id.*

Second, Civil Rule 26(b)(5), expressly requires you to provide sufficient information with respect to documents withheld on privilege grounds to enable the plaintiff to challenge any claims of privilege:¹

(5) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Third, your relevance objection is misplaced. As the Alaska Supreme Court reiterated in *Lockwood*, 323 P.3d at 699, the "relevancy standard is to be broadly construed at the discovery stage." In fact, in light of my previously informing you of the relevance of 716 LLC's financial information, it is disingenuous at best to claim lack of relevance. I have spoken with you in person about its relevance as well as written you. See, attached e-mails. In a nutshell, it is

¹ See, *Lee v. State*, 141 P3d. 232, n1 of Appendix, adopted by reference, 141 P.3d. 351.

Jeffrey L. Robinson
September 24, 2015
Page 2

probable to highly probable that at least Mr. Pfeffer is sucking out all funds in excess of that needed to operate the building, which will leave 716 LLC even more unable to pay any award. As you know, my client believes excess payment to 716 LLC is accumulating at over \$175,000 per month. You can expect a motion for a preliminary injunction to sequester funds along the lines of the attached e-mails.

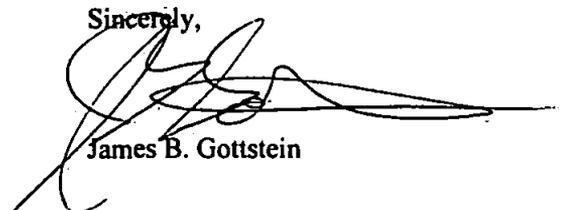
The relevance of the Operating Agreement also goes to the ability to pay back overpayments as well as whether 716 LLC is essentially a completely different entity other than having the same name. Publicly available documents show that Mr. Pfeffer is now the Manager, apparently in sole control. This is relevant to whether the contract between the Legislative Affairs Agency and 716 LLC is an extension. It is also possible Mr. Pfeffer has agreed to indemnify Mr. Acree for any costs associated with the agreement being illegal under AS 36.30.083(a).

You also objected to producing documents related to the LIO Lease complying with the requirement in AS 36.30.083(a) that it extend a real property lease (Request for Production No. 6) on the grounds that these documents "would be in the possession of the Legislative Affairs Agency," and related assertions. If your client has no such documents in its possession, it should just respond thusly. If, it does have such documents in its possession, it is required to produce them.

You also objected to providing documents relating to payments by the Legislative Affairs Agency for what is called renovations (Request for Production No. 8), on the grounds that (a) it is duplicative of requests made to Pfeffer Development LLC (Pfeffer Development), and (b) they relate to business activities of third parties not named in Count One. Neither of these objections are well taken, even leaving aside that Pfeffer Development is no longer in the case and has refused to respond to the requests for production served on it for that reason.

It is my hope that your client will comply with its discovery obligations as outlined herein without court action. I will also call to confer about this in an attempt to resolve this.

Sincerely,



James B. Gottstein

cc: *via* e-mail

Enc.

James B. Gottstein

From: Jeffrey W. Robinson <jeffrey@anchorlaw.com>
Sent: Friday, June 26, 2015 11:57 AM
To: James B. Gottstein; Eva R. Gardner
Cc: Donald W. McClintock
Subject: RE: Blanket Extension Request

Thanks, Jim. I simply asked if you would agree to extend me the courtesy of replying to any oppositions or motions you file until a week after I return. I am not going to hash out in any way what you claim to be "undisputed facts." I am not going to reply to the questions you posed at the end of your message. You are entitled to oppose any motions we have filed or file whatever you deem to be in your best interest to file to protect your interests. If you do not agree to my request, please note that Eva Gardner from my firm will be covering the case for me in my absence. She is copied here. Please copy both of us on future correspondence. I hope you have a good weekend, and that your father's health has improved.

JWR

From: James B. Gottstein [mailto:james.b.gottstein@gottsteinlaw.com]
Sent: Friday, June 26, 2015 11:48 AM
To: Jeffrey W. Robinson
Cc: james.b.gottstein@gottsteinlaw.com; Donald W. McClintock
Subject: Blanket Extension Request

Hi Jeff,

Yesterday, you wrote, "I am paternity leave from 6/30-7/15 and would appreciate the opportunity to reply to any oppositions, or oppose any motions, until at least a week or so after my return. Is this agreeable?"

Normally, this wouldn't be a problem and in the final analysis I won't oppose allowing you until July 22nd for any responsive pleadings so long as you include this e-mail, but your client gains an extreme financial benefit from delay and has been doing everything possible to achieve such delay. Its Rule 56(f) Request to not even be required to present opposing evidence to Alaska Building's Motion for Partial Summary Judgment (Not Extension) for ten months dramatically illustrates this. Especially since your client should have any such evidence at hand. The Motion for Partial Summary Judgment is purely a legal question based on what I believe are the following undisputed facts:

The New LIO Lease provides for:

1. demolition of the then existing Anchorage Legislative Information Office located at 716 West 4th Avenue in Anchorage, Alaska down to its foundation and steel frame,
2. demolition of the adjacent old Empress Theatre, located at 712 West 4th Avenue, occupied by the Anchor Pub at that time,
3. moving the existing Anchorage Legislative Information Office prior to the demolition of the old Legislative Information Office Building, and
4. construction of a new office building for lease as the new Anchorage Legislative Information Office.

Do you dispute any of these facts? If so, why can't you produce such evidence? Are there any other facts that you think are relevant? If so, what? And why can't you produce those? In other words, how is discovery going to have any impact on the Motion for Partial for Summary Judgment other than to allow your client to continue to collect rent from the illegal lease that will then likely not be recoverable.

So, I have some questions for you.

1. Will 716 West Fourth Avenue LLC agree to sequester all rent not needed for debt service and direct operating costs, including not paying any money to any of its members, directly or indirectly, and recover any such money previously paid until Count One is resolved?
2. Will 716 West Fourth Avenue LLC post a bond for repayment of any rent that the Court holds should be repaid?
3. If not, will 716 West Fourth Avenue LLC provide me with its accounting data to date and on a monthly basis notwithstanding the stay of discovery as to Count One?

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e-mail: James.B.Gottstein@GottsteinLaw.Com

James B. Gottstein

From: Jeffrey W. Robinson <jeffrey@anchorlaw.com>
Sent: Wednesday, August 26, 2015 2:44 PM
To: James B. Gottstein
Subject: RE: Schedule

Thanks, Jim. Is it now your theory that 716 is strictly liable for damage to the party wall? This is disappointing, and not in concert with the negligence-based allegations included in your previous two complaints. In light of the terms of your settlement with Criterion, I hope this is not an end-around to the preclusion of further damage claims you can make against 716 for damage to the Alaska Building. Furthermore, when I met with you on 8/19, you were wholly uninterested in settling.

At the conclusion of oral argument, the court encouraged all parties to engage in meaningful communication regarding a discovery timeline. I reached out for that purpose. (I do not believe that your offer for my clients to sequester funds or admit to personal liability was made in good faith, and therefore I will not address it further.) If you are interested in a perhaps more productive face-to-face meeting to address issues in the case as we move forward, please let me know.

JWR

From: James B. Gottstein [mailto:james.b.gottstein@gottsteinlaw.com]
Sent: Wednesday, August 26, 2015 2:28 PM
To: Jeffrey W. Robinson <jeffrey@anchorlaw.com>
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Schedule

Hi Jeff,

The Court ordered that I have to file a new action, which I intend to do. I don't know when, but I hope not a long time from now. While I doubt I will include the Legislative Affairs Agency, I am leaning towards including 716, as it is strictly liable for damage to the Alaska Building Party Wall. Of course, we could settle the damages claim before then.

(As to the schedule, as I informed you, I think delay is very prejudicial to the state because I don't think 716 will be able to pay much, if any, of the money back. Will 716 agree to sequestering funds not needed for direct operating expenses? Will Bob Acree agree to be responsible for any amounts that are ultimately decided are due, if any? Mark Pfeffer?)

It seems to me the accounting information should be available very easily. Also, you may have a two week trial starting in early September, but what about the three weeks since the requests for production were served? You certainly knew about your trial. What about Eva or other attorneys at Ashburn & Mason?

James B. Gottstein
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Tel: (907) 274-7686 Fax: (907) 274-9493
e-mail: James.B. Gottstein@GottsteinLaw.Com

From: Jeffrey W. Robinson [<mailto:jeffrey@anchorlaw.com>]
Sent: Wednesday, August 26, 2015 12:39 PM
To: James B. Gottstein
Subject: RE: Schedule

Hi Jim:

I left you a message. I start a two week civil trial in early September. I then hope to take a few days off. Please keep that in mind regarding my ability to provide discovery expeditiously. Also, can you please let me know if you are filing an amended complaint regarding Count Two or intend to dismiss? This will also make a difference in workloads as we prepare discovery.

Thank you,

JWR

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Tuesday, August 25, 2015 12:22 PM
To: 'Cuddy, Kevin M.' <kevin.cuddy@stoel.com>
Cc: james.b.gottstein@gottsteinlaw.com; Jeffrey W. Robinson <jeffrey@anchorlaw.com>
Subject: RE: Schedule

Hi Kevin,

You haven't conducted any discovery since August 3rd when the stay expired. As you know, I don't believe there are any facts you might discover or present that would affect Alaska Building's argument that the lease is not an extension. Alaska Building may not win on that argument, but I just don't believe there is any genuine dispute over any material fact. I think we should just get on with a determination and go from there. I can live with the normal reply time. I just think it is ironic for you to complain since you are trying to delay as much as possible.

It is conceivable that I will file the Amended Complaint today, but my calendar exploded on Sunday when I took on an involuntary commitment case, which have very short deadlines. I will be filing a separate action for Count Two, but I don't know if I will include the Legislative Affairs Agency as a defendant. Probably not, but I haven't made the final decision.

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Tel: (907) 274-7686 Fax: (907) 274-9493
e-mail: James.B.Gottstein@GottsteinLaw.Com

From: Cuddy, Kevin M. [<mailto:kevin.cuddy@stoel.com>]
Sent: Tuesday, August 25, 2015 11:56 AM
To: James B. Gottstein; 'Jeffrey W. Robinson'
Subject: RE: Schedule

Hi Jim,

My math may be faulty, but wouldn't that mean that all discovery requests would have to be served in the next 72 hours in order to get responses served by September 30 (assuming no extensions are required and no motion practice with respect to the discovery requests)? Functionally, it also would deprive the defendants of any opportunity to conduct depositions if necessary, since transcripts wouldn't be available by the proposed close of discovery. Also, why would you get more time than allotted under Rule 77 for your reply? Let me check with the client and get back to you with an alternative proposed schedule.

When will you be filing your amended complaint as to Count One? Have you decided whether to pursue a separate action for Count Two?

-Kevin

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Tuesday, August 25, 2015 11:12 AM
To: Cuddy, Kevin M.; 'Jeffrey W. Robinson'
Cc: james.b.gottstein@gottsteinlaw.com
Subject: Schedule

Hi Kevin and Jeffrey,

In thinking about the schedule for your Rule 56(f) requests, I propose that discovery for that end September 30, 2015, with 716 LLC's opposition and the Legislative Affairs Agency's supplemental opposition to the Motion for Partial Summary Judgment due October 15, 2015, and my reply October 28th.

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e-mail: [James.B. Gottstein@GottsteinLaw.Com](mailto:James.B.Gottstein@GottsteinLaw.Com)

James B. Gottstein

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Thursday, October 01, 2015 10:31 AM
To: 'Jeffrey W. Robinson'
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Alaska Building, Inc.'s Requests for Production

Hi Jeff,

Responses below.

From: Jeffrey W. Robinson [mailto:jeffrey@anchorlaw.com]
Sent: Wednesday, September 30, 2015 4:31 PM
To: James B. Gottstein
Subject: RE: Alaska Building, Inc.'s Requests for Production

Jim:

1. I indicated I would provide the e-mails within two weeks from today. If any emails are withheld on privilege grounds, I will describe the basis under Rule 26(b)(5). I do not need to be reminded of my procedural obligations, and I also am not going to be able to get you "all documents" withheld on privilege grounds, if they exist, within two weeks. Your request for expediting the case was essentially denied by McKay setting the 1/30 deadline for SJ on your "not extension" argument. Discovery is ongoing. You have discovery obligations as well. I am continuously doing my best to be responsive to all matters affiliated with both actions.

[Jim Gottstein] This has nothing to do with expediting the motion for partial summary judgment. I have expressed concern about your client's ability to pay back money over what is illegally allowed for months and the financial information is critical to determining that. You have given oral assurances that your client is fiscally sound, but refuse to provide any documentation. Since your client is being overpaid by over \$170,000 per month it is absolutely critical that funds be preserved as possible to pay a prospective judgment, including especially that Messrs. Acree and Pfeffer not such your client dry. As I indicated, in light of your failure to provide any such documentation that your client will be able to pay back amounts in excess of what is allowed by law I intend to file a motion for a preliminary injunction on this issue as soon as I can.

2. I dispute your sequence on this point. I thought my suggestion of McKay reviewing the OA was a healthy overture. If he found this document relevant and distributed it to you, you could then assess its relevance, and then determine if you wanted to pursue 716's financial records. You then made the unilateral decision that you were entitled to all of 716's financial information. Not only do I reiterate my objections, but please read the language of your RFP No. 5 and ask yourself if your decision to forego an *in camera* inspection is valid.

[Jim Gottstein] If you were willing to provide an in camera inspection of all of the financial information requested, that would be a different matter.

3. We spoke broadly regarding emails and not specifically regarding RFP 4 related emails. We provided significant material in response to RFP 4. As I previously indicated in 1 above, we will provide additional emails in two weeks.

[Jim Gottstein]

4. Your elaboration upon the basis of you RFP No 6. is a new RFP entirely from your original RFP No. 6. I will review the basis of your request and do my best to respond in due time.

[Jim Gottstein] I clarified RFP 6.

5. We provided the material germane to this request and maintain previously asserted objections.
6. Mischaracterization. We reviewed the items we documented in review of RFP No. 8. I indicated that if there were invoices affiliated with some of this material, I would provide that to you.

[Jim Gottstein] Please correct me if my interpretation is wrong that you are not going to provide documentation of all of the payments requested.

I hope this is helpful and that all parties can act in good faith, patiently, and with respect for due process before needlessly filing motions to compel.

Thanks,

JWR

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Wednesday, September 30, 2015 2:39 PM
To: Jeffrey W. Robinson <jeffrey@anchorlaw.com>
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Alaska Building, Inc.'s Requests for Production

Hi Jeff,

After conferring earlier today this is to confirm where we are at with respect to the September 3, 2015 responses by 716 West Fourth Avenue LLC (716 LLC) to Plaintiff's First Request for Production to 716 West Fourth Avenue LLC.

1. 716 LLC will comply with Civil Rule 26(b)(5) within two weeks with respect to all documents withheld on grounds of privilege
2. You indicated that you would provide documents responsive to Request for Production (RFP) No. 5 regarding the operating agreements, etc., to judge McKay *in camera* for him to determine if they should be provided to Alaska Building, Inc.; however this was contingent on Alaska Building, Inc., dropping the other requests pertaining to 716 LLC's financial status, i.e., RFP 1 pertaining to financing, RFP 2 pertaining to 716 LLC's financial records, and RFP 3 pertaining to payments to Mr. Acree and Mr. Pfeffer and his affiliates,. Since that was not acceptable to Alaska Building, Inc., you indicated you would not provide the documents *in camera*. This has left Alaska Building with having to move to compel with respect to RFPs 1-3, 5.
3. With respect to RFP 4, you will provide the e-mails within two weeks from today. Documents withheld on privilege grounds are subject to the agreement to comply with Civil Rule 26(b)(5) within two weeks. 716 LLC also objected to RFP 4 on the grounds it was unreasonable, overbroad and unduly burdensome in light of various privileges. This makes no sense to me in that I don't see how this is related to privileges. I don't think it is unreasonable, overbroad or unduly burdensome at all to ask for all documents relating to 716 LLC leasing or potentially leasing space for the Anchorage Legislative Information Office upon the expiration of the lease in effect on January 1, 2010 and thereafter. This leaves a motion to compel with respect to that objection unless you reconsider.
4. I said I would rework RFP 6 to clarify what is sought. What I am seeking is documents in 716 LLC's possession, custody or control, relating to the LIO Lease constituting a lease extension, or, in the words of the statute, "extend a real property lease." RFP No. 6, is not directed at the Legislative Affairs Agency's consideration of the issue *per se*, but all documents in 716 LLC's possession relating to the LIO Lease extending a real property lease. An example is LAA_001295, the May 7, 2013, letter from

Mr. Acree to Rep. Hawker proposing to completely renovate the building and renew the lease under AS 36.30.083(a). So, RFP No. 6 would include any documents, including e-mails, that could be considered "backup" or justification for the May 7, 2013, letter, to the extent it relates to the LIO Lease extending a real property lease.

5. With respect to RFP 7, I will move to compel any such valuations that you have withheld on the grounds that they are confidential and proprietary.
6. You said 716 LLC would provide the documents responsive to RFP No. 8, pertaining to payments under the LIO Lease, those being invoices and checks. This should include the \$7.5 million for tenant improvements.

If I have misstated or misinterpreted anything, please let me know.

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Tel: (907) 274-7686 Fax: (907) 274-9493
e-mail: James.B. Gottstein@GottsteinLaw.Com

From: Jeffrey W. Robinson [<mailto:jeffrey@anchorlaw.com>]
Sent: Wednesday, September 30, 2015 9:47 AM
To: James B. Gottstein
Subject: RE: E-mails

Jim:

I will have the emails to you in two weeks. Does that work? As you know, I had been in trial for several weeks. I am also working on Count II matters. What date do you anticipate responding to our RFP?

[Jim Gottstein] I expect to respond on or about the deadline.

Thank you,

JWR

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Wednesday, September 30, 2015 9:44 AM
To: Jeffrey W. Robinson <jeffrey@anchorlaw.com>
Cc: james.b.gottstein@gottsteinlaw.com
Subject: E-mails

Hi Jeff,

In addition to the items in my letter, please be prepared to say when the non-privileged e-mails requested will be produced. It has been almost a month since you responded, "Searches for internal e-mails not privileged are ongoing and this response will be duly supplemented." With respect to claims of privilege, of course, you must provide sufficient information to enable my client to challenge the privilege claims.

James B. Gottstein

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

Filed in the Trial Courts
STATE OF ALASKA, THIRD DISTRICT
OCT 06 2015
By _____ Clerk of the Trial Courts
Deputy

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

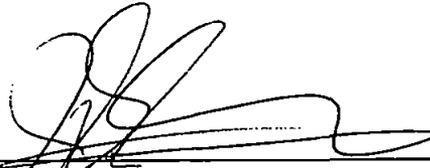
Defendants.

Case No. 3AN-15-05969CI

**MOTION TO COMPEL RESPONSES TO PLAINTIFF'S
FIRST REQUESTS FOR PRODUCTION TO 716 WEST
FOURTH AVENUE LLC**

Pursuant to Civil Rule 37(d), Plaintiff Alaska Building, Inc., moves to compel responses to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC.

Dated October 6, 2015.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

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9

000544

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

Filed in the Trial Courts
STATE OF ALASKA THIRD DISTRICT
OCT 06 2015
By _____ Clerk of the Trial Courts
Deputy

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

Case No. 3AN-15-05969CI

**MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff, Alaska Building, Inc., has moved for a preliminary injunction prohibiting Defendant 716 West Fourth Avenue LLC (716 LLC), from disbursing any funds received pursuant to that certain contract, dated September 19, 2013, by and between defendant Legislative Affairs Agency (LAA) and defendant 716 LLC, titled "Extension of Lease and Lease Amendment No. 3 (LIO Lease)," except for required debt service and the necessary direct operating costs of 716 LLC pertaining to the LIO Lease (Motion).

A. Overview

The LIO Lease was putatively entered into under AS 36.30.083(a), but it neither extends a real property lease nor is it at least 10 percent below market rental value as required under AS 36.30.083(a).

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The reason for this Motion is to prevent 716 LLC from disbursing money it has received under the LIO Lease in violation of AS 36.30.083(a) that it should have to pay back other than to pay for necessary direct operating expenses and debt service. Most particularly, the purpose is to prohibit 716 LLC from disbursing such funds to its owners and their affiliates and thus prevent them from sucking the limited liability company dry and unable to pay anything back.

716 LLC recently failed to properly respond to requests for production regarding its financial condition and disbursements of funds received under the LIO Lease.¹ If 716 LLC had produced documents proving that it would be able to pay back the money, this Motion would not have been filed. Filed contemporaneously herewith is a motion to compel responses to the requests for production, but it is respectfully suggested that prohibiting funds received under the LIO Lease from disbursement to 716 LLC's owners, or otherwise for anything other than necessary direct operating expenses and debt service pending resolution of this action, should not be deferred.

B. Preliminary Injunction Standard

In deciding whether to grant or deny a preliminary injunction, Alaska courts apply the "balance of hardships" test. Immediate injunctive relief is warranted when the following three factors are present: "(1) the plaintiff must be faced with irreparable harm; (2) the opposing party must be adequately protected; and (3) the plaintiff must raise 'serious' and substantial questions going to the merits of the case." Where the harm is not irreparable, or where the other party cannot be adequately protected, then the moving party must show probable success on the merits.

¹ Proper responses would have demonstrated, among other things, how much money, if any, has already been disbursed to 716 LLC's owners, Mark Pfeffer and Robert Acree and their affiliates.

Holmes v. Wolf, 243 P.3d 584, 589, 591, (Alaska 2010) adopting the Superior Court's Order, footnotes omitted. See, also, *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014); and *Messerli v. Department of Natural Resources*, 768 P.2d 1112, 1122 (Alaska 1989).

C. The Merits

On September 19, 2013, defendant 716 West Fourth Avenue LLC (716 LLC) entered into the LIO Lease with defendant Legislative Affairs Agency (LAA) to:

- (a) demolish (i) the existing Anchorage Legislative Information Office down to its steel frame and (ii) the Empress Theatre building, and
- (b) lease a newly constructed office building to LAA for the Anchorage Legislative Information Office on the two lots upon which the old LIO building and the Empress Theatre had been demolished

This was purportedly authorized under AS 36.30.083(a), but AS 36.30.083(a) only allows sole source procurement of leased space to extend a real property lease 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. (emphasis added).

The LIO Lease is not an extension because (1) the existing building was demolished down to its steel frame (2) the adjacent old Empress Theatre, most recently the Anchor Pub, was completely demolished, (3) a brand new building was constructed on the combined sites of the old Legislative Information Office Building and the Old Empress Theatre, and (4) the premises were vacated for at least 13 months during the demolition

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*Memorandum In Support of
Motion for Preliminary Injunction*

Page 3

000547

and while the new building was constructed. This was a new construction project and lease back, not a lease extension.

In addition, the cost is well over the market rental value of the real property. As set forth in the Affidavit of Larry Norene filed contemporaneously herewith, 90% of the market rental value is \$108,593 per month. This is the maximum allowed by AS 36.30.083(a). However, the LIO Lease carries rent in the amount of \$281,638, which is \$173,045 more per month than allowed under AS 36.30.083(a).

D. The State is Faced With Irreparable Harm

By all appearances, 716 LLC is a single asset limited liability company, consisting of the building whose sole tenant is the Legislative Affairs Agency under the LIO Lease. Attached hereto as Exhibit 1, is an e-mail from Mark Pfeffer to Tim Lowe, who appraised the LIO Lease and Michael Buller and "Doc" Crouse of the Alaska Housing Finance Corporation (AHFC) indicating that the debt service on the loans alone was going to be \$192,059 per month. This alone is \$83,466 more than allowed under AS 36.30.083(a).

However, the lease payments are \$281,638 per month,² leaving \$89,579 above the projected debt service. Only the necessary, direct operating expenses for the building should be paid from this. In particular, none of this money should be paid to Mr. Acree or Mr. Pfeffer, or any of their affiliates, during the pendency of this action. 716 LLC is

² Exhibit 1 shows the monthly rent as \$247,756, but by the next day, when the lease was signed, the monthly rent had increased to the \$281,638. See, Exhibit 1, Page 3, to June 12, 2015, Affidavit in Support of Motion for Partial Summary Judgment (Not Extension).

unlikely to be able to pay back rent money it has received in excess of that allowed by law³ and rent payments should simply not be disbursed for anything other than the necessary direct operating expenses and debt service pending final determination of this action.

716 LLC has steadfastly refused to provide discovery related to whether it will be able to pay back the money. Filed contemporaneously herewith is a motion to compel discovery with respect to such information. This issue of 716 LLC's inability to pay back the money it receives in excess of what is allowed by law was raised as early as June 12, 2015, at page 2 of Alaska Building, Inc.'s, Motion for Partial Summary Judgment (Not Extension) as the reason why that motion should be decided promptly. This Court's Civil Rule 56(f) extension of the time to oppose the motion for partial summary judgment until the end of January, 2016, should not be the occasion to harm the State in this way.

E. 716 LLC Is Adequately Protected

The requested preliminary injunction merely sequesters the enjoined funds. If it is determined that the LIO Lease complies with the law and 716 LLC is allowed to keep all of the rent payments under the LIO Lease it will still have all of the money. It is adequately protected.

³ It is possible that the limited liability shield could be pierced to reach Messrs. Acree and Pfeffer, but this is not certain and there is no reason to impose this additional burden, with uncertain prospects.

**F. While Needing Only To Raise Serious And Substantial Questions
Going To The Merits Of The Case, Alaska Building Inc., Has Shown
Probable Success On The Merits**

Since 716 LLC is adequately protected, Alaska Building, Inc., only need raise serious and substantial questions going to the merits. It is respectfully suggested that it has not only met that standard, but also probable success on the merits.

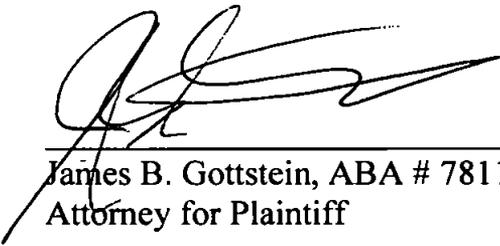
G. No Security Should Be Required Under Civil Rule 65(c)

Civil Rule 65(c) provides that no security is required of the State. This action is essentially brought on behalf of the State and therefore no security should be required in any event. Alaska Building, Inc., is not in a position to provide security for a preliminary injunction.

H. Conclusion

For the foregoing reasons, plaintiff Alaska Building, Inc., respectfully requests the Court to grant its Motion for Preliminary Injunction.

Dated October 6, 2015.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

From: Mark Pfeffer [<mailto:MPfeffer@PfefferDevelopment.com>]
Sent: Wednesday, September 18, 2013 11:50 AM
To: Timothy Lowe; Mike Buller; Doc Crouse
Subject: Final Budget/Lease calc per Tim's request

All,

Per Tim's request I revised what I sent yesterday to reflect Cost changes in the appropriate categories. So for example instead of taking hard construction costs and burdening it with fees, contingency, finance etc. and then adding it to the hard cost line item I instead have added hard construction cost to that line item and then spread the other markups to the respective line items.

The bottom line number is still the same.

NOTE that the file name now has today's date on it.

That work for you Tim?

Mark Pfeffer

PFEFFER DEVELOPMENT, LLC
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907 646 4644 | f 907.646.4655 |

Cell Phone 907 317 5030

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**Anchorage LIO Building
Development Budget
September 18, 2013**

64,048 Gross BF

Development Budget

Existing Property & Property Acquisition	\$ 7,890,000	Note 1
Soft Costs	\$ 515,000	Note 2
Construction & A/E Services	\$ 30,169,055	Note 3
Interim Office Space	\$ 1,000,000	Note 4
Contingency	\$ 771,722	Note 5
Construction Loan Interest	\$ 1,133,388	Note 6
Loan Fee	\$ 622,368	Note 7
Construction Management	\$ 905,433	Note 8
Development Fee	\$ 1,509,055	Note 9
Total	\$ 44,516,021	Note 10

- Note 1 Stipulated value for 716 W 4th + Acquisition cost of 712 W 4th
- Note 2 Legal, Title, Appraisal, Geotech, Survey, Taxes, Insurance Environmental
- Note 3 Stipulate Sum Proposal from Criterion Construction Date August 27th 2013 inclusive of A/E Fees with final design adjustments incorporated
- Note 4 Loss of rent during construction + Cost to construct Interim Improvements.
- Note 5 2.56% of Construction
- Note 6 Subtotal project cost of \$39.628m (less existing building value) @ 5.0% for 1 year x 65% average draw down.
- Note 7 1.5% of subtotal of cost
- Note 8 3% of stipulated sum amount
- Note 9 5% of stipulated sum amount
- Note 10 Total Cost

DRAFT

9/18/2013 11:32 AM

L27

LAA_001300

Lease Rate Calculation

Total Cost	\$ 44,516,021
Tenant TI Contribution @ \$120/GSF	<u>\$ 7,500,000</u>
Net Lessor Cost	\$ 37,016,021
25% Owner Equity Contribution	<u>\$ 9,254,005</u>
Net Loan Amount	\$ 27,762,016
AIDEA Loan amount	\$ 20,000,000
\$20.0m at 5.68%, 25 year amortization	\$ 124,976
\$7,762,016 at 6.375%, 15 year amortization	\$ 67,083
<u>Total Debt Service</u>	<u>(\$ 192,059)</u>
Debt Service Coverage	1.29
Lease Payment NNN	\$ 247,756
Return on Owners Equity	7.22%

3. I have also reviewed the Rental Value Appraisal Report, Anchorage Legislative Information Office, Prepared for Alaska Housing Finance Corporation, as of June 1, 2014, by Timothy R. Lowe pertaining to the LIO Lease (Lowe Appraisal) and offer my opinion of the maximum fair market rent as of that date.

4. This estimate is based on the high end of a possible range, using market comparison, using full floor net rentable area in accordance with the market, and using full service lease comparisons which require an adjustment to reflect the subject net net lease.

5. At that time, it is my opinion that the maximum rent attainable would be \$2.00/square foot/month for the basement, and \$3.25/square foot/month for the upper floors for a full service lease, as follows:

Market Rates	Square Feet	Monthly per sq/ft	Monthly	Annual	Over Lease Term
Basement	9,806	\$ 2.00	\$ 19,612	\$ 235,344	\$ 2,353,440
Upper Floors	45,194	\$ 3.25	\$ 146,881	\$ 1,762,566	\$17,625,660
Market Rent Totals			\$ 166,493	\$ 1,997,910	\$19,979,100

6. The LIO Lease is for a completely net lease, and deducting the operating costs as estimated in the Lowe Appraisal, estimated at \$10/square feet/year, the fair market rent for completely net lease is \$1,447,910/year, or \$120,659/month.

7. Then, taking 90% of that as being the maximum allowed under AS 36.30.083(a), the maximum allowable lease rate would be \$1,303,119 per year or \$108,593 per month.

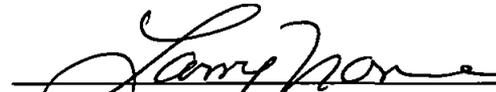
8. Thus, the LIO Lease charges \$2,076,537 per year over what is allowed under AS 36.30.083(a), or \$2,076,537 per month over what is allowed under AS 36.30.083(a).

9. Putting all of these and over the lease term figures in a matrix is as follows:

Market Rates	Square Feet	Monthly per sq/ft	Monthly	Annual	Over Lease Term
Basement	9,806	\$ 2.00	\$ 19,612	\$ 235,344	\$ 2,353,440
Upper Floors	45,194	\$ 3.25	\$ 146,881	\$ 1,762,566	\$17,625,660
Market Rent Totals			\$ 166,493	\$ 1,997,910	\$19,979,100
Deduct Operating Expenses for Triple Net			\$ (45,833)	\$ (550,000)	\$ (5,500,000)
Adjusted for Triple Net Lease			\$ 120,659	\$ 1,447,910	\$14,479,100
90% of Market Allowed By 36.30.083(a)			\$ 108,593	\$ 1,303,119	\$13,031,190
LIO Lease			\$ 281,638	\$ 3,379,656	\$33,796,560
Amount Over AS 36.30.083(a) Allowable			\$ 173,045	\$ 2,076,537	\$20,765,370

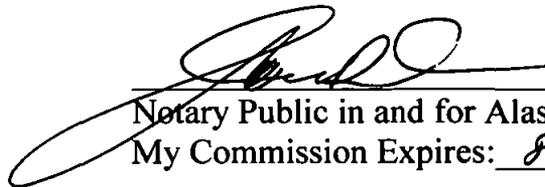
FURTHER YOUR AFFIANT SAYETH NAUGHT.

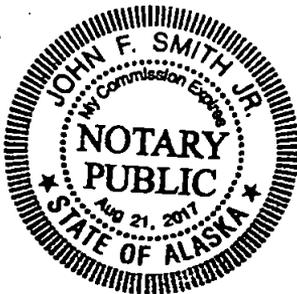
DATED this 2 day of Oct., 2015.


 Larry Norene

SUBSCRIBED AND SWORN TO before me this 2 day of OCTOBER

2015.


 Notary Public in and for Alaska
 My Commission Expires: 8-21-17



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

Filed in the Trial Courts
STATE OF ALASKA, THIRD DISTRICT

OCT 06 2015

By _____ Clerk of the Trial Courts
Deputy

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

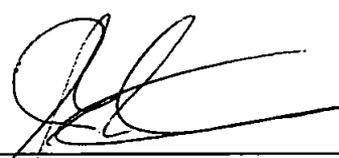
Defendants.

Case No. 3AN-15-05969CI

MOTION FOR PRELIMINARY INJUNCTION

Plaintiff, Alaska Building, Inc., moves for a preliminary injunction prohibiting Defendant 716 West Fourth Avenue LLC (716 LLC), from disbursing any funds received pursuant to that certain contract, dated September 19, 2013, by and between defendant Legislative Affairs Agency (LAA) and defendant 716 LLC, titled "Extension of Lease and Lease Amendment No. 3" (LIO Lease) except for required debt service and the necessary direct operating costs of 716 LLC pertaining to the LIO Lease.

Dated October 6, 2015.



James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

2015 OCT -6 PM 1:05

CLERK TRIAL COURT

BY: _____
DEPUTY CLERK

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

Plaintiff,)

vs.)

Case No.: 3AN-15-05969 CI

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

716'S MOTION FOR RULING OF LAW PRECLUDING ABI'S CLAIMS FOR QUI TAM AND PUNITIVE DAMAGES

Defendant 716 West Fourth Avenue, LLC ("716"), by and through counsel Ashburn & Mason, P.C., hereby moves this Court to enter an order precluding Plaintiff Alaska Building, Inc.'s ("ABI") from pursuing its claims for *qui tam* damages and punitive damages. As a matter of law, these types of damages are not available under the facts alleged in the Second Amended Complaint.

I. DAMAGES SOUGHT IN THE SECOND AMENDED COMPLAINT

On August 25, 2015, ABI filed its Second Amended Complaint against 716 and the Legislative Affairs Agency ("Agency"). The Second Amended Complaint alleges that the lease renewal ("LIO Lease") entered into between 716 and the Agency in September 2013 was in violation of AS 36.30. Based on this allegation, the Second Amended Complaint seeks a variety of remedies: declaratory judgment that the LIO Lease is invalid, "A Judgment in favor of Alaska Building, Inc., in the amount of 10%

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LAWYERS
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ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

of the savings to the Legislative Affairs Agency as a result of the invalidation of the LIO Project Lease[,]” punitive damages against 716, as well as costs and attorney’s fees.¹

II. DISCUSSION

A. ABI Should Be Precluded from Bringing an Unauthorized *Qui Tam* Claim.

ABI’s claim for “10% of the savings” to the Agency that would result from invalidation of the LIO Lease lacks any basis in law.² The Second Amended Complaint identifies no legal principle that entitles ABI to recover damages from 716 in the absence of any injury to ABI.³ Rather, the claim for 10% represents ABI’s attempt to bring a *qui tam* action, which is not allowed absent express statutory provision.

Black’s Law Dictionary defines a *qui tam* action as follows:

qui tam action (kee-tam or kwi tam) [Latin *qui tam pro domino rege quam pro se ipso in hac parte sequitur* “who as well for the king as for himself sues in this matter”] (18c) An action brought under a statute that allows a private person to sue for a penalty, part of which the government or some specified public institution will receive.⁴

¹ Second Amended Complaint at 3.

² For this reason, the Court previously found the 10% claim inadequate to confer standing. August 21, 2015 Order at 3 n.15 (noting that while “this rather novel claim” was not before the Court at that time, it did “not find enough credence in the claim to grant interest-injury standing.”).

³ Any direct injury allegedly suffered by ABI as a result of the LIO Project will be fully addressed in the context of ABI’s pending lawsuit on that subject in 3AN-15-9785 CI.

⁴ *Qui Tam Action*, Black’s Law Dictionary (10th ed. 2014).

716’S MOTION FOR RULING OF LAW PRECLUDING ABI’S CLAIMS FOR *QUI TAM* AND PUNITIVE DAMAGES

Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil
{10708-101-00290946;2}

This is exactly the type of action ABI seeks to bring here: ABI seeks to recover 10% for itself, with the remainder to the State.⁵ *Qui tam* actions are not permissible unless specifically authorized by statute.⁶ As the Alaska Legislature has not enacted any statute authorizing *qui tam* recovery under the circumstances alleged in the Second Amended Complaint, and as there is no basis in the common law for ABI's attempt to recover monetary damages in the absence of any injury, ABI's claim for 10% of the alleged savings to the Agency should be dismissed.

B. ABI Should Be Precluded from Seeking Punitive Damages.

The Second Amended Complaint asserts a vague claim for punitive damages against 716. As a matter of law, punitive damages are generally unavailable in the absence of a compensatory damages award.⁷ As ABI has asserted no cognizable claim for compensatory damages or other quantifiable injury, other than the unauthorized *qui tam* action discussed above, its punitive damages claim merits dismissal.

⁵ Cf. ABI's Opp. to 716's Mot. to Dismiss at 2 n.3 (“[T]he State will receive 90% of the savings if [ABI] is successful.”).

⁶ *Qui Tam Action*, Black's Law Dictionary, *supra* n.3 (“An action brought *under a statute . . .*”) (emphasis added); *Vermont Agency of Natural Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 768 (2000) (“[T]he False Claims Act (FCA) is the most frequently used of a handful of *extant laws creating* a form of civil action known as *qui tam*.”) (emphasis added); cf. *Madden v. Croan*, No. S-10134, 2002 WL 31492593, at *5 (Alaska Nov. 6, 2002) (unreported) (“As a result of alleged misconduct by the superior court judge, the guardian ad litem, and Susan and her attorney, Roger claims the right to over \$18 million in punitive damages. He also claims several more million dollars as the result of a “quitam action/whistle blowers 10% reward.” These claims are completely unsupported.”).

⁷ *Deland v. Old Republic Life Ins. Co.*, 758 F.2d 1331, 1339 n.4 (9th Cir. 1985) (“There can be no punitive damages where compensatory damages have not been awarded.”); *DeNardo v. GCI Commc'n Corp.*, 983 P.2d 1288, 1292 (Alaska 1999) (“A punitive damages claim cannot stand alone; because we reject DeNardo's underlying claim, we also necessarily affirm summary judgment on his punitive damages claim.”).

716'S MOTION FOR RULING OF LAW PRECLUDING ABI'S CLAIMS FOR *QUI TAM* AND PUNITIVE DAMAGES

Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil
{10708-101-00290946;2}

Even if ABI had asserted a claim for monetary damage in this action, punitive damages would still be unavailable because the Second Amended Complaint fails to allege any conduct by 716 that could support a punitive damage award. “Punitive damages are imposed to punish malicious wrongdoers and to deter future malicious wrongs.”⁸ For that reason, AS 09.17.020(b) clearly limits the circumstances under which punitive damages may be awarded:

(b) The fact finder may make an award of punitive damages only if the plaintiff proves by clear and convincing evidence that the defendant's conduct

- (1) was outrageous, including acts done with malice or bad motives;
- or
- (2) evidenced reckless indifference to the interest of another person.

The Second Amended Complaint alleges no conduct by 716 that could plausibly meet either of these standards. Indeed, the Second Amended Complaint contains only a single allegation relating to conduct by 716: it alleges that 716 entered into the LIO Lease. It does not allege any facts suggesting that 716's entrance into the LIO Lease was outrageous or done with any improper motive; nor does it allege any facts suggesting this action was recklessly indifferent to the interest of any other person.

In the context of this case, the legislative council was entitled to extend the real property lease at issue under AS 36.30.083(a). Their approval was in compliance with their own procurement procedures under AS 36.30.020. 716 had nothing to do with establishing procurement guidelines, and ABI has not alleged any such involvement by

⁸ *Alaska Hous. Fin. Corp. v. Salvucci*, 950 P.2d 1116, 1123 (Alaska 1997) (citation omitted).

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716. Thus, it defies logic to assert that 716's conduct in merely agreeing to the lease extension could satisfy the strict statutory standard for punitive damages. Certainly, the Second Amended Complaint alleges nothing to justify this novel award.

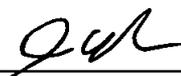
As there is no plausible basis in the Second Amended Complaint for a punitive damage award against 716, ABI should be precluded from seeking punitive damages in this action.

III. CONCLUSION

For the foregoing reasons, 716 respectfully requests that the Court enter an order precluding ABI from seeking (1) 10% of the purported savings to the Agency and (2) punitive damages.

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

DATED: 10-6-15

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

CERTIFICATE OF SERVICE

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716'S MOTION FOR RULING OF LAW PRECLUDING ABI'S CLAIMS FOR *QUI TAM* AND PUNITIVE DAMAGES
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil
{10708-101-00290946;2}

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LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

**[PROPOSED] ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT (NOT EXTENSION) AND REQUEST FOR RELIEF
UNDER CIVIL RULE 56(f)**

THIS COURT, having reviewed Plaintiffs' Motion for Partial Summary Judgment (Not Extension), Defendant GCI, Inc.'s opposition to Plaintiffs' Motion and Request for Relief Under Civil Rule 56(f), and any reply thereto, and being duly advised in the premises,

[PROPOSED] ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION) AND REQUEST FOR RELIEF UNDER CIVIL RULE 56(f)

ALASKA BUILDING, INC. V. 716 WEST FOURTH AVENUE, LLC, ET. AL., Case No. 3AN-15-05969ci

Page 1 of 3

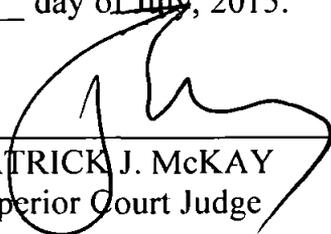
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PR

~~IT IS HEREBY ORDERED that Plaintiffs' Motion Partial Summary Judgment (Not Extension) is DENIED.~~

In the alternative, the Court hereby orders a continuance postponing the Defendant Legislative Affairs Agency's obligation to respond to Plaintiff's Motion Partial Summary Judgment (Not Extension) until 1/31/16.

DATED at Anchorage, Alaska this 15th day of September, 2015.


PATRICK J. McKAY
Superior Court Judge

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on July 29, 2015, a true and correct copy of the foregoing was served via first class mail on:

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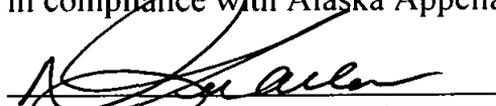
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I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).



Debby Allen, Practice Assistant

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

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

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

**[PROPOSED] ORDER DENYING CRITERION GENERAL, INC.'S MOTION
FOR ORDER OF DISMISSAL WITH PREJUDICE**

This Court, having reviewed Criterion General, Inc.'s Motion for Order of Dismissal with Prejudice, and any oppositions and replies thereto, and being duly advised in the premises, enters the following ORDER:

(i) The stipulation is lodged and the court accepts the resolution of claims between Plaintiff and Criterion General, Inc.

(ii) The dismissal of Criterion General, Inc. with prejudice is stayed until the resolution of a final order in this matter.

DATED this 15th day of September, 2015.

*No larger parties
to this case per
2d Amended Complaint.*

(PW)

[Signature]
HON. PATRICK J. MCKAY
Superior Court Judge

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ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

[PROPOSED] ORDER DENYING CRITERION'S MOTION FOR ORDER OF DISMISSAL
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

{10708-101-00288073;2}

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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,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969CI

JUN 12 2015

**ORDER GRANTING
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
(NOT EXTENSION)**

Upon due consideration of Plaintiff's motion for partial summary judgment and responses thereto, it is **HEREBY ORDERED** that the motion is **GRANTED**. It is **FURTHER ORDERED** that that certain contract, dated September 19, 2013, by and between defendant Legislative Affairs Agency and defendant 716 West Fourth Avenue LLC titled "Extension of Lease and Lease Amendment No. 3" (LIO Lease), does not comply with AS 36.30.083(a) in that it does not extend a real property lease.

Dated _____, 2015.

PATRICK J. MCKAY,
SUPERIOR COURT JUDGE

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NOT USED

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,
KOONCE PFEFFER BETTIS, INC.,
d/b/a KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

FILED
STATE OF ALASKA
THIRD DISTRICT
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CLERK JIMALEE
BY: DEPUTY CLERK

**CRITERION GENERAL, INC.'S REPLY IN SUPPORT OF MOTION FOR
ORDER OF DISMISSAL WITH PREJUDICE OF DEFENDANT CRITERION
GENERAL, INC.**

Defendant Criterion General, Inc. ("Criterion"), by and through its attorneys of record, hereby reply to 716 West Fourth Avenue, LLC's ("716") Partial Opposition to Criterion General, Inc.'s Motion for Order of Dismissal with Prejudice. Criterion's Motion for Order of Dismissal requests dismissal of all of Plaintiff Alaska Building, Inc.'s claims against Criterion with prejudice, under Alaska Rule of Civil Procedure 41(a)(2), in accordance with the release agreement. These are the only claims alleged against Criterion in the present action, as admitted by 716 in its Partial Opposition. With Plaintiff's claims dismissed there would be no claims remaining against Criterion.

CRITERION GENERAL, INC.'S REPLY IN SUPPORT OF MOTION FOR ORDER OF
DISMISSAL WITH PREJUDICE OF DEFENDANT CRITERION GENERAL, INC.

ABI v. Criterion et al., 3AN-15-05969CI

Page 1 of 4

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000570

716 does not oppose dismissal of Plaintiff's claims against Criterion. 716 requests that Criterion remain in this case as a sort of third-party participant, with no claims against it, for the possibility that 716 decides to bring a claim against Criterion in the future. Criterion should not be tied to this lawsuit by the mere threat of potential claims by 716.

ARUGMENT

The Motion for Order of Dismissal for Criterion is brought under ARCP 41(a) and the Court can grant a final judgment under ARCP 54(b). 716 has not opposed and could not oppose dismissal of Plaintiff's claims against Criterion, which Plaintiff has requested to be dismissed jointly with Criterion. Plaintiff and Criterion have reached a settlement agreement that extinguishes all of Plaintiff's claims against Criterion and anyone found to be vicarious liable for the actions of Criterion. Because Plaintiff is the only party who has brought any claims against Criterion, the Motion for Order of Dismissal should be granted.

716 seems to suggest that the Order of Dismissal would foreclose any potential future indemnity claims against Criterion. However, these indemnity claims are not currently at issue as they have not been pled, and are not even ripe, as they only are triggered if the indemnitee, 716, is found liable for damages. Hoffman Constr. Co. v. United States Fabrication, 32 P.3d 346, 352 (Alaska 2001). The proposed Order of Dismissal would not prejudice 716 in the way it suggests. A review of relevant indemnity cases in Alaska shows that virtually all of them are brought after the underlying

suit has concluded. e.g. Burgess Const. Co. v. State, 614 P.2d 1380
(Alaska 1980)

Further, 716's allegations relating to Navigators Specialty Insurance ("Navigators") are a red herring. Navigators is not a party to this action and dismissal of Plaintiff's claims against Criterion will not affect any rights 716 may or may not have against Navigators. It would be illogical for Criterion to remain in this case with no claims actually remaining against Criterion, just because 716 could potentially bring claims in the future against Criterion's insurer. Criterion satisfied its obligation under the contract to name 716 as an additional insured under its insurance, and its obligation as far as the insurance is concerned ends there. Any issues regarding tender of defense or indemnity with Navigators should be taken up directly with Navigators, and any allegations about potential claims are speculative.

CONCLUSION

There is no legal basis for denying dismissal based on a co-defendant speculating that it could bring separate claims in the future. For the reasons herein, Plaintiff and Criterion's joint Motion for Order of Dismissal should be granted.

DATED at Anchorage, Alaska, this 14th day of September, 2015.

CALL & HANSON, P.C.
Attorneys for Defendant Criterion
General, Inc.

By: Blake H. Call
Blake H. Call
ABA No.: 8911051

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CRITERION GENERAL, INC.'S REPLY IN SUPPORT OF MOTION FOR ORDER OF
DISMISSAL WITH PREJUDICE OF DEFENDANT CRITERION GENERAL, INC.

ABI v. Criterion et al., 3AN-15-05969CI

Page 4 of 4

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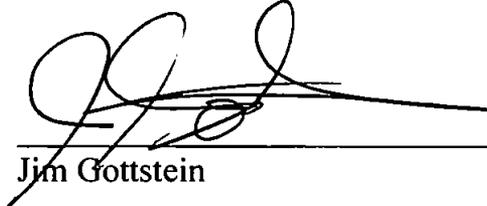
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The undersigned hereby certifies that (1) the foregoing document is in 13 point Times New Roman typeface and (2) a copy hereof was mailed to Kevin M. Cuddy, Jeffrey W. Robinson/Eva R. Gardner, Blake Call, Mark Scheer, Daniel T. Quinn, and Cynthia L. Ducey.

Dated September 14, 2015.



Jim Gottstein

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

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, *et al.*

Defendants.

Case No. 3AN-15-05969CI

11

ORDER GRANTING LEAVE TO FILE SUR-REPLY

Upon motion by plaintiff, Alaska Building, Inc., to file a sur-reply to the Legislative Affairs Agency's Reply In Support Of Motion To Dismiss Or In The Alternative To Sever Claims For Misjoinder, it is hereby **ORDERED** that the motion is **GRANTED**.

Dated 9/9, 2015.


PATRICK J. MCKAY
SUPERIOR COURT JUDGE

I certify that on 9/16/15 a copy
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JUN 23 2015

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

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

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

[PROPOSED] ORDER GRANTING MOTION FOR STAY OF DISCOVERY

THIS COURT, having reviewed 716 West Fourth Avenue, LLC's ("Defendant")
Motion to Stay Discovery, any opposition and/or responses thereto, and being duly
advised in the premises, hereby ORDERS that 716's Motion for a Stay of Discovery
with respect to Count I is hereby GRANTED. *moot*

DATED this ___ day of _____, 2015.

PATRICK J. McKAY
Superior Court Judge

ASHBURN & MASON P.C. JUN 23 2015

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ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

[PROPOSED] ORDER GRANTING MOTION TO STAY DISCOVERY
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

[PROPOSED] ORDER GRANTING DEFENDANT LEGISLATIVE AFFAIRS
AGENCY'S MOTION TO STAY PROCEEDINGS

THIS COURT, having reviewed Defendant Legislative Affairs Agency's (the
"Agency") Motion to Stay Proceedings, any opposition and/or responses thereto, and
being duly advised in the premises, this Court finds and ORDERS as follows:

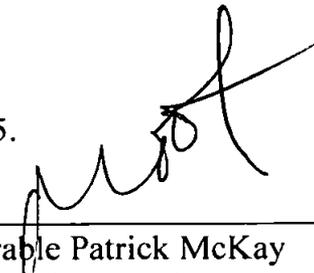
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On March 31, 2015, Plaintiff Alaska Building, Inc. ("Plaintiff"), filed a Complaint for Declaratory Judgment and Specific Performance (Complaint) against Defendants 716 West Fourth Avenue LLC, Koonce Pfeffer Bettis, Inc., d/b/a KPB Architects, the Agency, and Criterion General, Inc. On May 27, 2015, the Agency filed a Motion to Dismiss Plaintiff's Complaint for lack of interest injury and citizen-taxpayer standing. Also on May 27, 2015, the Agency filed a Motion to Stay Discovery. Both motions are currently pending before this Court.

Good cause exists for granting a stay because (1) standing is a threshold matter this Court must resolve before proceeding to the merits of Plaintiff's claim (2) the motion, if granted, would dispose of the entire case against the Agency, thereby eliminating the expense of litigation and the use of judicial resources; and (3) the Agency's Motions to Dismiss and Stay Discovery were filed sufficiently in advance of current deadlines such that a stay will not unfairly prejudice any party. Accordingly, a stay of proceedings is appropriate under the court's inherent authority.

IT IS THEREFORE ORDERED that Defendant Legislative Affairs Agency Motion to Stay Proceedings is GRANTED.

DATED this _____ day of _____, 2015.



Honorable Patrick McKay
Superior Court Judge

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on June __, 2015, a true and correct copy of the foregoing was served via first class mail on:

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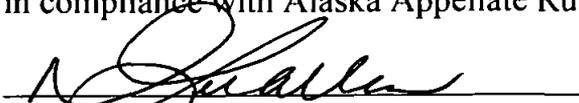
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I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).



Debby Allen, Litigation Practice Assistant

79173184.1 0081622-00003

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

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

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

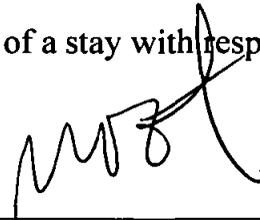
[PROPOSED] ORDER GRANTING MOTION TO STAY PROCEEDINGS

716 West Fourth Avenue, LLC's ("Defendant") Joinder in Motion to Stay

Proceedings is hereby GRANTED. This COURT, finds and ORDERS as follows:

Good cause exists for granting a stay with respect to Count I because (1) standing is a threshold matter this Court must resolve before proceeding to the merits of Plaintiff's claim; (2), the motion, if granted, would dispose of Count I against 716, thereby eliminating the expense of litigation and the use of judicial resources in attending to a claim totally unrelated in questions of law and fact to Count II, and (3) neither party will be prejudiced by the court's grant of a stay with respect to Count I.

DATED this ___ day of _____, 2015.



PATRICK J. MCKAY
Superior Court Judge

JUN 23 2015

ASHBURN & MASON P.C.
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 23 day of June 2015, on:

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ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

[PROPOSED] ORDER GRANTING MOTION TO STAY PROCEEDINGS
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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STATE OF ALASKA
THIRD DISTRICT

2015 SEP 14 ALASKA
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CLERK TRIAL
BY

DEPUTY CLERK

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

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

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

**716 WEST FOURTH AVENUE, LLC'S PARTIAL OPPOSITION TO
CRITERION GENERAL, INC.'S MOTION FOR ORDER OF DISMISSAL
WITH PREJUDICE**

Defendant 716 West Fourth Avenue, LLC, ("716") by and through its attorney, Jeffrey W. Robinson of Ashburn & Mason, P.C., hereby partially opposes Criterion General, Inc.'s ("Criterion") Motion for Order of Dismissal with Prejudice. 716 does not dispute that Criterion has resolved its claims with the Plaintiff. However, dismissal with prejudice is premature while Plaintiff's claims against 716 and other defendants are unresolved because 716 has derivative claims against Criterion for indemnity and a defense if Plaintiff proceeds against 716 on Count II.

I. Background

Plaintiff Alaska Building, Inc. ("ABI") filed its complaint on March 31, 2015, alleging in Count II, in addition to the procurement claim under Count I, that its

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building, the Alaska Building, was damaged due to the defendants' negligence during the "LIO Project."¹

Plaintiff filed an amended complaint on June 8, 2015, adding the Legislative Affairs Agency to Count II, claiming that "[b]y entering into the LIO Project, 716 LLC and LAA caused the damage to the Alaska Building." Oral argument was held on August 18, 2015 regarding Plaintiff's standing as to Count I and whether Count I and Count II should be severed. On August 20, 2015, the Court issued a written order requiring Count Two be severed from Count One. Plaintiff was directed to file a "separate action, if desired" on the allegations in Count II.² To date, Plaintiff has yet to re-file Count Two.

On August 19, 2015, prior to the written order, Criterion General, Inc. ("Criterion") moved to dismiss with prejudice "all claims against Criterion" under Alaska R. Civ. P. 41(a) (2) pursuant to a settlement it reached with Plaintiff.³ Specifically, Criterion asserted that "Plaintiff has agreed to dismiss with prejudice all of the claims it has asserted or could have asserted against Criterion in this case, as well as all claims against any other party arising from any alleged vicarious liability for any act

¹ Plaintiff named 716, the owner and lessor of the building, KKP Architects, the architect for the LIO Project, Pfeffer Development, LLC, the project manager, and Criterion General, Inc., in this count.

² Court's Order dated August 20, 2015. The court ruled that Plaintiff had citizen-taxpayer status to sue under Count One. 716 has filed a petition for review with the Alaska Supreme Court seeking reversal of this ruling.

³ Criterion's Motion for Order of Dismissal at 1.

committed by Criterion with respect to the subject matter of this case.”⁴ Criterion referenced the fact that no other party, to date, had brought claims against Criterion.⁵

Criterion’s request for dismissal with prejudice is a request for a final order. As an initial matter, the Motion should have been brought under Alaska R. Civ. P. 54(b). In actions involving multiple claims or multiple parties, entry of final judgment can only be made “upon an express determination that there is no just reason for delay...” That standard has not been addressed, and as set forth here, neither has it been satisfied.

716 partially opposes the court’s dismissal of Criterion because 716 reserves, and has always reserved, its right to bring a third-party claim against Criterion with respect to the allegations in Count II. It is premature at this time to know what the Plaintiff’s intentions are as to Count II, and certainly the language of Criterion and Plaintiff’s settlement, as described in Criterion’s proposed order, prohibits any further action by Plaintiff against 716 for any alleged building damage premised on vicarious liability. Accordingly, 716 does not object to Criterion’s motion to dismiss in the event 716 and the other defendants are also dismissed from Count II with prejudice.

II. ARGUMENT

a. Criterion is contractually liable to 716 for the vicarious claims raised in Count II.

⁴ *Id.*

⁵ *Id.*

716 is the owner and lessor of the LIO.⁶ Criterion was the general contractor hired by 716 to perform the work on the LIO Project.⁷ Prior to performance of the work, Criterion and 716 entered into a construction contract.⁸ The issue of liability for property damage was addressed in the indemnification provision of the construction contract. §A.3.17.1 provides:

[T]he Design-Builder (Criterion) shall indemnify and hold harmless the Owner [716]. . . from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to.....injury to or destruction of tangible property other than the Work itself, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder.

Article C.1 of the construction contract further provides that Criterion's liability insurance coverage will name Pfeffer Development, LLC and 716 as additional insureds and will be primary and noncontributing to any coverage carried by Pfeffer Development and 716. The insurance certificate in fact reflects that both Pfeffer Development and 716 are additional insureds under the coverage policy.⁹

The settlement terms agreed to by Plaintiff and Criterion preclude ABI from advancing any claims against "any other party arising from any alleged vicarious

⁶ See Amended Complaint, ¶ 23.

⁷ See Amended Complaint, ¶ 26.

⁸ Attached as Exhibit A.

⁹ Attached as Exhibit B.

liability for any act committed by Criterion with respect to the subject matter of this case.”¹⁰ As explained above, 716 is contractually protected both by insurance and indemnity clauses under its contract with Criterion for any vicarious liability arising from Criterion’s actions. Under the terms of the settlement agreement offered by Criterion, Plaintiff should be precluded from pursuing further action against 716 with respect to Count II (assuming Plaintiff re-files). However, Plaintiff has not acknowledged that fact yet and should be required to address this question prior to the court’s action on this Motion.

b. 716’s right to file a third-party suit against Criterion should not be prejudiced by a premature dismissal.

Dismissal of the action against Criterion is premature with Plaintiff’s intent on Count II unresolved. And while 716 has not yet brought a third-party suit against Criterion, it has vigorously pursued its right to indemnity with Criterion’s underwriter to date.

On February 9, 2015, after the complaint for \$250,000 in damages for the Alaska Building was filed by Plaintiff, counsel for 716 asked Criterion to confirm from its carrier, Navigators Specialty Insurance (“Navigators”), that it was adjusting the claim on behalf of 716 in addition to Criterion and providing a defense.¹¹

¹⁰ Criterion Motion For Dismissal at 1.

¹¹ See Exhibit C.

On February 10, 2015, Criterion responded that Navigators acknowledged the claim, and Criterion was assembling documents for Navigators to further investigate the claim. The response included a letter from Navigators indicating an adjuster named Sandra Heiden was assigned to the claim.¹²

716 wrote numerous follow up letters and emails to Ms. Heiden regarding the status of 716's additional insured tender. Ms. Heiden failed to respond, except in a letter dated May 4, 2015, in which she acknowledged that Navigators was still investigating the claim.¹³ Ms. Heiden also acknowledged that Navigators was obligated to provide coverage for "resultant damage from on-going operations."¹⁴ In other words, 716 would be covered if the damage occurred during construction, which is precisely when Plaintiff alleges the damage occurred in its claims against Criterion.¹⁵ 716 followed up with Ms. Heiden numerous times to confirm Navigators' coverage position. On June 4, 2015, Ms. Heiden responded by e-mail that she was still "in the process of obtaining formal approval."¹⁶ The matter remains unresolved.

The current allegations of damage to the Alaska Building concern events that happened during construction. If Plaintiff refuses to consent to dismissal against all defendants with prejudice under Count II but instead persists in its claims against the

¹² Letter from Criterion attached as Exhibit D, and letter from Navigators' attached as Exhibit E.

¹³ See Exhibit E.

¹⁴ Id.

¹⁵ See Amended Complaint ¶¶ 28, 29, 36.

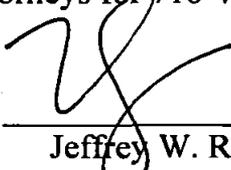
¹⁶ See Ex. F.

other parties, 716 is entitled to sue Criterion to enforce the terms of the above mentioned contracts.¹⁷ Such a suit may also involve bringing in Criterion's insurer as well.¹⁸

Accordingly, the Court should not dismiss Criterion from Count II with prejudice on the basis of its settlement with Plaintiff. Such an order is premature at this time before all of Plaintiff's claims against the other defendants are dismissed with prejudice. At this time, the settlement can be lodged but a final order of dismissal is premature.

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

DATED: 9/4/2015

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

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¹⁷ *Simmons v. Insurance Company of North America*, 17 P.3d 56, 59 (Alaska 2001) (recognizing the rights of additional insureds, even unnamed ones, to insurance contracts). Here, 716 believes it can look directly to Criterion for recovery of all post-tender legal fees and expenses in defending Count Two as well as full costs and actual attorney fees incurred in enforcing the tenders.

¹⁸ It also goes without saying that 716 is entitled, if it so chooses, to sue Navigators to enforce the contract under the terms of the insurance policy and the additional insured endorsement. Such an action could encompass a claim for bad faith. See *Ennen v. Integon Indem. Corp.*, 268 P.3d 277 (Alaska 2012) (holding that an additional insured may bring a cause of action for bad faith against the insurer.) See also *State Farm Fire & Cas. Co. v. Nicholson*, 777 P.2d 1152 (Alaska 1989) (Holding that an insured's action against its insurer for breach of the implied covenant of good faith and fair dealing sounded in tort.)

716 WEST FOURTH AVENUE, LLC'S PARTIAL OPPOSITION TO CRITERION'S MOTION FOR ORDER OF DISMISSAL
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 4th day of September 2015, on:

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

AIA Document A141™ – 2004

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the ^{14th} day of November in the year 2013
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

716 WEST FORTH AVENUE, LLC
425 G Street, Suite 210
Anchorage, AK 99501

and the Design-Builder:
(Name, legal status, address and other information)

Criterion General, INC.
2820 Commercial Drive
Anchorage, Alaska 99501

for the following Project:
(Name, location and detailed description)

LIO Building Remodel
716 West 4th Avenue
Anchorage, AK 99501

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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716-001104

TABLE OF ARTICLES

1	THE DESIGN-BUILD DOCUMENTS
2	WORK OF THIS AGREEMENT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	MISCELLANEOUS PROVISIONS
8	ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

TABLE OF EXHIBITS

A	TERMS AND CONDITIONS
B	DETERMINATION OF THE COST OF THE WORK
C	INSURANCE AND BONDS

ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; the Design-Builder's Proposal and written modifications to the Proposal accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

CLOSE OF FRANKING WITH WRITTEN NTP.

Intl.

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2

716-001105

If, prior to the commencement of Work, the Owner requires time to file mortgages, documents related to mechanic's liens and other security interests, the Owner's time requirement shall be as follows:
(Insert Owner's time requirements.)

| N/A

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work not later than _____ days from the date of commencement, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Design-Build Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

| December 17, 2014

Portion of Work	Substantial Completion Date
All	December 17, 2014

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

- | Stipulated Sum in accordance with Section 4.2 below;
| Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;
| Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)

§ 4.2 STIPULATED SUM

| § 4.2.1 The Stipulated Sum shall be Thirty Million One Hundred and Sixty-Nine thousand and Fifty-Five Dollars and no cents (\$30,169,055), subject to additions and deductions as provided in the Design-Build Documents.

§ 4.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

| N/A

§ 4.2.3 Unit prices, if any, are as follows:

Description	Units	Price (\$0.00)
N/A		

§ 4.2.4 Allowances, if any, are as follows:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both)

int.

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3

716-001106

Allowance	Amount (\$0.00)	Included Items
N/A		
§ 4.2.5 Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:		
Per Pricing Proposal dated August 27, 2013		
§ 4.3 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE		
§ 4.3.1 The Cost of the Work is as defined in Exhibit B.		
§ 4.3.2 The Design-Builder's Fee is: <i>(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)</i>		
N/A		
§ 4.4 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE		
§ 4.4.1 The Cost of the Work is as defined in Exhibit B, plus the Design-Builder's Fee.		
§ 4.4.2 The Design-Builder's Fee is: <i>(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)</i>		
N/A		
§ 4.4.3 GUARANTEED MAXIMUM PRICE		
§ 4.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed (\$), subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner. <i>(Insert specific provisions if the Design-Builder is to participate in any savings.)</i>		
N/A		
§ 4.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:		
N/A		
§ 4.4.3.3 Unit Prices, if any, are as follows:		
Description	Units	Price (\$0.00)
N/A		
§ 4.4.3.4 Allowances, if any, are as follows: <i>(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)</i>		
Allowance	Amount (\$0.00)	Included Items
N/A		
§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows: <i>(Identify the assumptions on which the Guaranteed Maximum Price is based.)</i>		
N/A		

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716-001107

§ 4.5 CHANGES IN THE WORK

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

§ 4.5.2 Where the Contract Sum is the Cost of the Work, with or without a Guaranteed Maximum Price, and no specific provision is made in Sections 4.3.2 or 4.4.2 for adjustment of the Design-Builder's Fee in the case of Changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment will cause substantial inequity to the Owner or Design-Builder, the Design-Builder's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Contract Sum shall be adjusted accordingly.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

N/A

§ 5.1.3 Provided that an Application for Payment is received not later than the 1st day of month, the Owner shall make payment to the Design-Builder not later than the 30 day of the same month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Owner receives the Application for Payment.

§ 5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or Invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 PROGRESS PAYMENTS - STIPULATED SUM

§ 5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

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§ 5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Zero percent (0 %) on the Work, other than services provided by design professionals and other consultants retained directly by the Design-Builder. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Zero percent (0 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Owner has withheld payment from or nullified an Application for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.2.3 The progress payment amount determined in accordance with Section 5.2.2 shall be further modified under the following circumstances:

- .1 add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section A.9.8.6 of Exhibit A, Terms and Conditions requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section A.9.10.3 of Exhibit A, Terms and Conditions.

§ 5.2.4 Reduction or limitation of retainage, if any, under Section 5.2.2 shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.2.2.1 and 5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert here provisions for such reduction or limitation.)

N/A

§ 5.3 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE

§ 5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ 5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Exhibit B;
- .2 Add the Design-Builder's Fee, less retainage of percent (%). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section 5.3.2.1 at the rate stated in Section 4.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the preceding section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner;
- .4 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .5 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate for Payment as provided in the Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.3.3 Retainage in addition to the retainage stated at Section 5.3.2.2, if any, shall be as follows:

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N/A

§ 5.3.4 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than percent (%). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

§ 5.4 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE

§ 5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- 1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
- 2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- 3 Add the Design-Builder's Fee, less retainage of percent (%). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- 4 Subtract the aggregate of previous payments made by the Owner;
- 5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- 6 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.4.3 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than percent (%). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

§ 5.5 FINAL PAYMENT

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Section A.9.10 of Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

ARTICLE 6 DISPUTE RESOLUTION

Disputes between Design Builder and Owner. In the event of any dispute arising between the Design/Builder and the Owner regarding any part of this Agreement or the Parties' obligations or performance hereunder, either Party may institute the

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dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

6.1 Initial Meeting to Resolve Disputes. Any party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the Owner's offices in Anchorage, Alaska within three (3) working days of written request therefore, which request shall specify in reasonable detail the nature of the dispute. The Design/Builder's Authorized Representative, Owner's Authorized Representative, and any other person who may be affected in any material respect by the resolution of such dispute shall attend the meeting. Such Authorized Representative shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute.

6.2 Mediation. If the dispute has not been resolved within five (5) working days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters shall be appointed. The Parties shall share the cost of the mediator. If the parties cannot agree on the selection of a mediator within ten days of the decision to proceed to mediation, then either party may request that the American Arbitration Association will select a mediator to serve as a mediator for the Parties. The mediator shall be a lawyer competent in the subject matter of the dispute. The mediator shall be given any written statements of the Parties and may review the Property and any relevant documents. The mediator shall call a meeting of the Parties within ten (10) working days after his/her appointment, which meeting shall be attended by the Design Builder's Authorized Representative, the Owner's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute. During such ten (10) day period, the mediator may meet with the Parties separately.

6.2.1 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within twenty (20) working days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

6.3 Court. In the event mediation fails, then any party may seek to resolve the dispute in a court of competent jurisdiction located in Anchorage, Alaska. The prevailing party in such action shall be entitled to payment of their reasonable attorney fees and court costs incurred in the court action itself and in any action

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necessary to enforce the judgment, as well as fees incurred prior to and after the action to the extent reasonably necessary to secure relief.

6.4 Other contracts. All contracts that the Design Builder or Owner enter into with third parties that implement design or construction of the Project shall be required to include as a term a dispute resolution procedure in substantial compliance with the terms of Article 6 of this Agreement.

6.5 Authorized Representative/Notice. Each Party agrees, within ten days of the delivery of a mutual executed copy of this Agreement, to notify the other party who its Authorized Representative is, including mailing address, phone numbers, fax numbers, and e-mail address.

6.5.1 Notice. All notices sent pursuant to this Agreement shall be in writing and sent by regular, registered or certified mail, postage prepaid, or by hand-delivery to the parties as follows below:

To Bob O'Neill, PE;

Pfeffer Development, LLC
425 G Street, Suite 210
Anchorage, AK 99501

With a copy to:

Ashburn and Mason

To Design/Builder;

Criterion General, Inc
2820 Commercial Drive
Anchorage, Alaska 99501
ATTN: Dave DeRoberts

Either party may change these persons or addresses by giving notice as provided above. Notice shall be considered given and received on the latest original delivery or attempted delivery date as indicated on the postage or service receipt(s) of all persons and addresses to which notice is to be given. In the event of notice by regular mail, notice shall be deemed received on the fourth business day after posting.

(Paragraphs deleted)

§ 6.2 If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:

(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)

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(Check one.)

- Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions
- Litigation in a court of competent jurisdiction
- Other (Specify)

N/A

§ 6.3 ARBITRATION

§ 6.3.1 If Arbitration is selected by the parties as the method of binding dispute resolution, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration as provided in Section A.4.4 of Exhibit A, Terms and Conditions.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:

(Insert name, address, license number, relationship to Design-Builder and other information.)

Name and Address	License Number	Relationship to Design-Builder	Other Information
Kpb Architects			

§ 7.2 Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:
(Insert name, address, license number, if applicable, and responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information
------------------	----------------	---------------------------	-------------------

§ 7.3 Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:
(Insert name, address, license number, if applicable, responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information
------------------	----------------	---------------------------	-------------------

N/A

§ 7.4 The Owner's Designated Representative is:
(Insert name, address and other information.)

Bob O'Neill, PE
425 G Street, suite 210
Anchorage, AK 99501
907-646-4644

§ 7.4.1 The Owner's Designated Representative identified above shall be authorized to act on the Owner's behalf with respect to the Project.

§ 7.5 The Design-Builder's Designated Representative is:
(Insert name, address and other information.)

Dave DeRoberts
2820 Commercial Drive
Anchorage, Alaska 99501
907-277-3200

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§ 7.5.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.6 Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

§ 7.7 Other provisions:

N/A

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

§ 7.7.2 Payments due and unpaid under the Design-Build Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

Prevaling Rate percent (%)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design-Builder's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

kpb drawings and narratives dated 7-1-2013

Document	Title	Pages
----------	-------	-------

§ 8.1.3 The Project Criteria, including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the Owner, consist of the following:

(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)

N/A

Title	Date
-------	------

§ 8.1.4 The Design-Builder's Proposal, dated August 27, 2013, consists of the following:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Attached

§ 8.1.5 Amendments to the Design-Builder's Proposal, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

N/A

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§ 8.1.6 The Addenda, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)
N/A

Number	Date	Pages
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§ 8.1.7 Exhibit A, Terms and Conditions.
(If the parties agree to substitute terms and conditions other than those contained in AIA Document A141-2004, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)

Exhibit A

§ 8.1.8 Exhibit B, Determination of the Cost of the Work, if applicable.
(If the parties agree to substitute a method to determine the cost of the Work other than that contained in AIA Document A141-2004, Exhibit B, Determination of the Cost of the Work, then identify such other method to determine the cost of the Work and attach to this Agreement as Exhibit B. If the Contract Sum is a Stipulated Sum, then Exhibit B is not applicable.) N/A

§ 8.1.9 Exhibit C, Insurance and Bonds, if applicable.
(Complete AIA Document A141-2004, Exhibit C, Insurance and Bonds or indicate "not applicable.")

Exhibit C

§ 8.1.10 Other documents, if any, forming part of the Design-Build Documents are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

N/A

This Agreement entered into as of the day and year first written above:


OWNER (Signature)

Mark Pfeffer, Managing Member
(Printed name and title)


DESIGN-BUILDER (Signature)

Dave DeRoberts, President
(Printed name and title)

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AIA Document A141™ – 2004 Exhibit A

Terms and Conditions

for the following PROJECT:
(Name and location or address)

LIO Building Remodel
716 West 4th Avenue
Anchorage, AK 99501

THE OWNER:
(Name, legal status and address)

716 WEST FOURTH AVENUE, LLC
425 G Street, Suite 210
Anchorage, AK 99501

THE DESIGN-BUILDER:
(Name, legal status and address)

Criterion General, INC.
2820 Commercial Drive
Anchorage, Alaska 99501

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE A.1 GENERAL PROVISIONS

§ A.1.1 BASIC DEFINITIONS

§ A.1.1.1 THE DESIGN-BUILD DOCUMENTS

The Design-Build Documents are identified in Section 1.1 of the Agreement.

§ A.1.1.2 PROJECT CRITERIA

The Project Criteria are identified in Section 8.1.3 of the Agreement and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

§ A.1.1.3 ARCHITECT

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ A.1.1.4 CONTRACTOR

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

§ A.1.1.5 SUBCONTRACTOR

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

§ A.1.1.6 THE WORK

The term "Work" means the design, construction and services required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

§ A.1.1.7 THE PROJECT

The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and which may include design and construction by the Owner or by separate contractors.

§ A.1.1.8 NEUTRAL

The Neutral is the individual appointed by the parties to decide Claims and disputes pursuant to Section A.4.2.1.

§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which they believe will violate any applicable law, ordinance, rule or regulation.

§ A.1.2.2 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, but not that such information complies with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner.

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§ A.1.3 CAPITALIZATION

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

§ A.1.4 INTERPRETATION

§ A.1.4.1 In the interest of brevity, the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS

§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§ A.1.6.1 Drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Design-Builder are Instruments of Service. The Design-Builder, Design-Builder's Architect and other providers of professional services individually shall retain all common law, statutory and other reserved rights, including copyright in those Instruments of Services furnished by them. Drawings, specifications, and other documents and materials and electronic data are furnished for use solely with respect to this Project.

§ A.1.6.2 Upon execution of the Design-Build Contract, the Design-Builder grants to the Owner a non-exclusive license to reproduce and use the Instruments of Service solely in connection with the Project, including the Project's further development by the Owner and others retained by the Owner for such purposes, provided that the Owner shall comply with all obligations, including prompt payment of sums when due, under the Design-Build Documents. Subject to the Owner's compliance with such obligations, such license shall extend to those parties retained by the Owner for such purposes, including other design professionals. The Design-Builder shall obtain similar non-exclusive licenses from its design professionals, including the Architect. The Owner shall not otherwise assign or transfer any license herein to another party without prior written agreement of the Design-Builder. Any unauthorized reproduction or use of the Instruments of Service by the Owner or others shall be at the Owner's sole risk and expense without liability to the Design-Builder and its design professionals. Except as provided in Section A.1.6.4, termination of this Agreement prior to completion of the Design-Builder's services to be performed under this Agreement shall terminate this license.

§ A.1.6.3 Prior to any electronic exchange by the parties of the Instruments of Service or any other documents or materials to be provided by one party to the other, the Owner and the Design-Builder shall agree in writing on the specific conditions governing the format thereof, including any special limitations or licenses not otherwise provided in the Design-Build Documents.

§ A.1.6.4 If this Agreement is terminated for any reason other than the default of the Owner, each of the Design-Builder's design professionals, including the Architect, shall be contractually required to convey to the Owner a non-exclusive license to use that design professional's Instruments of Service for the completion, use and maintenance of the Project, conditioned upon the Owner's written notice to that design professional of the Owner's assumption of the Design-Builder's contractual duties and obligations to that design professional and payment to that design professional of all amounts due to that design professional and its consultants. If the Owner does not assume the remaining duties and obligations of the Design-Builder to that design professional under this Agreement, then the Owner shall indemnify and hold harmless that design professional from all claims and any expense, including legal fees, which that design professional shall thereafter incur by reason of the Owner's use of such Instruments of Service. The Design-Builder shall incorporate the requirements of this Section A.1.6.4 in all agreements with its design professionals.

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§ A.1.6.5 Submission or distribution of the Design-Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section A.1.6.1.

ARTICLE A.2 OWNER

§ A.2.1 GENERAL

§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule submitted to the Owner.

§ A.2.1.2 The Owner shall furnish to the Design-Builder within 15 days after receipt of a written request information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services.

§ A.2.2.2 The Owner shall be responsible to provide surveys, if not required by the Design-Build Documents to be provided by the Design-Builder, describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ A.2.2.3 The Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Design-Builder under the Design-Build Documents.

§ A.2.2.6 The services, information, surveys and reports required to be provided by the Owner under Section A.2.2, shall be furnished at the Owner's expense, and the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof, except as otherwise specifically provided in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing.

§ A.2.2.7 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

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§ A.2.2.8 The Owner shall, at the request of the Design-Builder, prior to execution of the Design-Build Contract and promptly upon request thereafter, furnish to the Design-Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Design-Build Documents.

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 The Owner shall furnish the services of geotechnical engineers or other consultants, if not required by the Design-Build Documents to be provided by the Design-Builder, for subsoil, air and water conditions when such services are deemed reasonably necessary by the Design-Builder to properly carry out the design services provided by the Design-Builder and the Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ A.2.2.11 The Owner shall promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Owner's program.

§ A.2.3 OWNER REVIEW AND INSPECTION

§ A.2.3.1 The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.

§ A.2.3.2 Upon review of the design documents, construction documents, or other submittals required by the Design-Build Documents, the Owner shall take one of the following actions:

- .1 Determine that the documents or submittals are in conformance with the Design-Build Documents and approve them.
- .2 Determine that the documents or submittals are in conformance with the Design-Build Documents but request changes in the documents or submittals which shall be implemented by a Change in the Work.
- .3 Determine that the documents or submittals are not in conformity with the Design-Build Documents and reject them.
- .4 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them by implementing a Change in the Work.
- .5 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them and request changes in the documents or submittals which shall be implemented by a Change in the Work.

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding the Owner's responsibility under Section A.2.3.2, the Owner's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner or, b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check

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the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7.

§ A.2.3.6 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design-Builder agree to in writing.

§ A.2.3.9 The Owner shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

§ A.2.4 OWNER'S RIGHT TO STOP WORK

§ A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section A.6.1.3.

§ A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Design-Builder a second written notice to correct such deficiencies within a three-day period. If the Design-Builder within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE A3 DESIGN-BUILDER

§ A.3.1 GENERAL

§ A.3.1.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design-builder in the location where the Project is located. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their

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professions. The Owner understands and agrees that the services performed by the Design-Builder's Architect and the Design-Builder's other design professionals and consultants are undertaken and performed in the sole interest of and for the exclusive benefit of the Design-Builder.

§ A.3.2.2 The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's written request.

§ A.3.2.3 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.

§ A.3.2.6 Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved design documents;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

§ A.3.2.7 The Design-Builder shall meet with the Owner periodically to review progress of the design and construction documents.

§ A.3.2.8 Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ A.3.2.10 If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for review and negotiation at least 14 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

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§ A.3.3 CONSTRUCTION

§ A.3.3.1 The Design-Builder shall perform no construction Work prior to the Owner's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's approval thereof.

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

§ A.3.3.6 The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

§ A.3.3.8 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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§ A.3.4.2 When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the consent of the Owner and, if appropriate, in accordance with a Change Order.

§ A.3.4.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ A.3.5 WARRANTY

§ A.3.5.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ A.3.6 TAXES

§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

§ A.3.7 PERMITS, FEES AND NOTICES

§ A.3.7.1 The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Design-Build Contract and which were legally required on the date the Owner accepted the Design-Builder's proposal.

§ A.3.7.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ A.3.7.3 It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ A.3.8 ALLOWANCES

§ A.3.8.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to which the Design-Builder has reasonable objection.

§ A.3.8.2 Unless otherwise provided in the Design-Build Documents:

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section A.3.8.2.1 and (2) changes in Design-Builder's costs under Section A.3.8.2.2.

§ A.3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

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§ A.3.9 DESIGN-BUILDER'S SCHEDULE

§ A.3.9.1 The Design-Builder, promptly after execution of the Design-Build Contract, shall prepare and submit for the Owner's information the Design-Builder's schedule for the Work. The schedule shall not exceed time limits and shall be in such detail as required under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

§ A.3.9.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ A.3.10 DOCUMENTS AND SAMPLES AT THE SITE

§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Owner upon completion of the Work.

§ A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

§ A.3.12 USE OF SITE

§ A.3.12.1 The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ A.3.13 CUTTING AND PATCHING

§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

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§ A.3.13.2 The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ A.3.14 CLEANING UP

§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

§ A.3.14.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

§ A.3.15 ACCESS TO WORK

§ A.3.15.1 The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

§ A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS

§ A.3.16.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

§ A.3.17 INDEMNIFICATION

§ A.3.17.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property other than the Work itself, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section A.3.17.

§ A.3.17.2 In claims against any person or entity indemnified under this Section A.3.17 by an employee of the Design-Builder, the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A.3.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, the Architect or a Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE A.4 DISPUTE RESOLUTION

§ A.4.1 CLAIMS AND DISPUTES

§ A.4.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

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§ A.4.1.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party.

§ A.4.1.3 Continuing Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall negotiate with the Design-Builder an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Design-Build Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made within 21 days after the Owner has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Design-Builder cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall proceed pursuant to Section A.4.2.

§ A.4.1.5 Claims for Additional Cost. If the Design-Builder wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A.10.6.

§ A.4.1.6 If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Design-Build Contract by the Owner, (5) Owner's suspension or (6) other reasonable grounds, Claim shall be filed in accordance with this Section A.4.1.

§ A.4.1.7 Claims for Additional Time

§ A.4.1.7.1 If the Design-Builder wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ A.4.1.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ A.4.1.8 Injury or Damage to Person or Property. If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ A.4.1.9 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ A.4.1.10 Claims for Consequential Damages. Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes:

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- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A.14. Nothing contained in this Section A.4.1.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ A.4.1.11 If the enactment or revision of codes, laws or regulations or official interpretations which govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

§ A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

§ A.4.2.1 **Decision by Neutral.** If the parties have identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents, then Claims, excluding those arising under Sections A.10.3 through A.10.5, shall be referred initially to the Neutral for decision. An initial decision by the Neutral shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Neutral with no decision having been rendered by the Neutral. Unless the Neutral and all affected parties agree, the Neutral will not decide disputes between the Design-Builder and persons or entities other than the Owner.

§ A.4.2.2 **Decision by Owner.** If the parties have not identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents then, except for those claims arising under Sections A.10.3 and A.10.5, the Owner shall provide an initial decision. An initial decision by the Owner shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner.

§ A.4.2.3 The initial decision pursuant to Sections A.4.2.1 and A.4.2.2 shall be in writing, shall state the reasons therefor and shall notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject first to mediation under Section A.4.3 and thereafter to such other dispute resolution methods as provided in Section 6.2 of the Agreement or elsewhere in the Design-Build Documents.

§ A.4.2.4 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ A.4.2.5 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to initial resolution of the Claim.

§ A.4.3 MEDIATION

§ A.4.3.1 Any Claim arising out of or related to the Design-Build Contract, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, shall, after initial decision of the Claim or 30 days after submission of the Claim for initial decision, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party.

§ A.4.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or other binding dispute resolution proceedings but, in such

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event, mediation shall proceed in advance thereof or of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ A.4.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ A.4.4 ARBITRATION

§ A.4.4.1 Claims, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, for which initial decisions have not become final and binding, and which have not been resolved by mediation but which are subject to arbitration pursuant to Sections 6.2 and 6.3 of the Agreement or elsewhere in the Design-Build Documents, shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association.

§ A.4.4.2 A demand for arbitration may be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section A.13.6.

§ A.4.4.3 An arbitration pursuant to this Section A.4.4 may be joined with an arbitration involving common issues of law or fact between the Owner or Design-Builder and any person or entity with whom the Owner or Design-Builder has a contractual obligation to arbitrate disputes which does not prohibit consolidation or joinder. No other arbitration arising out of or relating to the Design-Build Contract shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to the Design-Build Contract or not a party to an agreement with the Owner or Design-Builder, except by written consent containing a specific reference to the Design-Build Contract signed by the Owner and Design-Builder and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to the Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ A.4.4.4 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ A.4.4.5 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE A.5 AWARD OF CONTRACTS

§ A.5.1 Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

§ A.5.2 The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

§ A.5.3 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected additional person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall

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be issued before commencement of the substitute person's or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ A.5.4 The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to such substitute.

§ A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ A.5.5.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

- 1 assignment is effective only after termination of the Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the contractor in writing; and
- 2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract.

§ A.5.5.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Contractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ A.6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ A.6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1.

§ A.6.1.2 The term "separate contractor" shall mean any contractor retained by the Owner pursuant to Section A.6.1.1.

§ A.6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ A.6.2 MUTUAL RESPONSIBILITY

§ A.6.2.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ A.6.2.2 If part of the Design-Builder's Work depends for proper execution or results upon design, construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Design-Builder so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ A.6.2.3 The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ A.6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

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§ A.6.3 OWNER'S RIGHT TO CLEAN UP

§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner shall allocate the cost among those responsible.

ARTICLE A.7 CHANGES IN THE WORK

§ A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

§ A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

§ A.7.2.2 If the Owner requests a proposal for a change in the Work from the Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

§ A.7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section A.7.3.3.

§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES

§ A.7.3.1 A Construction Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Design-Build Contract, order changes in the Work within the general scope of the Design-Build Documents consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ A.7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ A.7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following:

- .1 additional costs of professional services;
- .2 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 additional costs of supervision and field office personnel directly attributable to the change.

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Design-Builder to disagree and assert a Claim in accordance with Article A.4.

§ A.7.3.9 When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

ARTICLE A.8 TIME

§ A.8.1 DEFINITIONS

§ A.8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Design-Build Documents for Substantial Completion of the Work.

§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed in a notice to proceed issued by the Owner.

§ A.8.1.3 The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

§ A.8.1.4 The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

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§ A.8.2 PROGRESS AND COMPLETION

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ A.8.2.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control, or by delay authorized by the Owner pending resolution of disputes pursuant to the Design-Build Documents, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ A.8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section A.4.1.7.

§ A.8.3.3 This Section A.8.3 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE A.9 PAYMENTS AND COMPLETION

§ A.9.1 CONTRACT SUM

§ A.9.1.1 The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

§ A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 Before the first Application for Payment, where the Contract Sum is based upon a Stipulated Sum or the Cost of the Work plus Contractor's Fee with a Guaranteed Maximum Price, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

§ A.9.3 APPLICATIONS FOR PAYMENT

§ A.9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage if provided for in the Design-Build Documents:

§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

§ A.9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

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§ A.9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ A.9.3.3 The Design-Builder warrants that title to all Work other than Instruments of Service covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a written acknowledgement of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

§ A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of the following:

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Design-Build Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

§ A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the

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Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Contractor except as may otherwise be required by law.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 A progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ A.9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by Contractors and suppliers shall be held by the Design-Builder for those Contractors or suppliers who performed Work or furnished materials, or both, under contract with the Design-Builder for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not be commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use.

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete.

§ A.9.8.4 In the event of a dispute regarding whether the Design-Builder's Work is substantially complete, the dispute shall be resolved pursuant to Article A.4.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion.

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§ A.9.8.6 Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ A.9.9 PARTIAL OCCUPANCY OR USE

§ A.9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when the Owner finds the Work acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

§ A.9.10.3 If, after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Design-Build Documents and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or

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.3 terms of special warranties required by the Design-Build Documents.

§ A.9.10.5 Acceptance of final payment by the Design-Builder, a Contractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder shall be responsible for instituting and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract.

§ A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design-Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ A.10.2.2 The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.6 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner.

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§ A.10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder shall promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of the Owner and Design-Builder. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article A.7.

§ A.10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them from and against Claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance exists on site as of the date of the Agreement, is not disclosed in the Design-Build Documents and presents the risk of bodily injury or death as described in Section A.10.3.1 and has not been rendered harmless, provided that such Claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself) to the extent that such damage, loss or expense is not due to the negligence of the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them.

§ A.10.4 The Owner shall not be responsible under Section A.10.3 for materials and substances brought to the site by the Design-Builder unless such materials or substances were required by the Design-Build Documents.

§ A.10.5 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11.

§ A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Design-Builder from claims set forth below that may arise out of or result from the Design-Builder's operations under the Design-Build Contract and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder, by a Contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder's employees;
- .4 claims for damages insured by usual personal injury liability coverage;

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- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Design-Builder's obligations under Section A.3.17.

§ A.11.2.2 The insurance required by Section A.11.2.1 shall be written for not less than limits of liability specified in the Design-Build Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ A.11.2.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section A.11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section A.9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness in accordance with the Design-Builder's information and belief.

§ A.11.3 OWNER'S LIABILITY INSURANCE

§ A.11.3.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ A.11.4 PROPERTY INSURANCE

§ A.11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Design-Build Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section A.11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Project.

§ A.11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design-Builder's services and expenses required as a result of such insured loss.

§ A.11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Design-Build Contract and with all of the coverages in the amount described above, the Owner shall so inform the Design-Builder in writing prior to commencement of the Work. The Design-Builder may then effect insurance that will protect the interests of the Design-Builder, Contractors and Subcontractors in the Work, and, by appropriate Change Order, the cost thereof shall be charged to the Owner. If the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above without so notifying the Design-Builder in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ A.11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ A.11.4.1.4 This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit.

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§ A.11.4.1.5 Partial occupancy or use in accordance with Section A.9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use, by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ A.11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Design-Build Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ A.11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder, Architect, the Design-Builder's other design professionals, if any, Contractors and Subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

§ A.11.4.4 If the Design-Builder requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Design-Builder by appropriate Change Order.

§ A.11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section A.11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ A.11.4.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section A.11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire and that its limits will not be reduced until at least 30 days' prior written notice has been given to the Design-Builder.

§ A.11.4.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against each other and any of their consultants, separate contractors described in Section A.6.1, if any, Contractors, Subcontractors, agents and employees, each of the other, and any of their contractors, subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section A.6.1, if any, and the Contractors, Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, even though the person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ A.11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section A.11.4.10. The Design-Builder shall pay Contractors their just shares of insurance proceeds received by the Design-Builder, and, by appropriate agreements, written where legally required for validity, shall require Contractors to make payments to their Subcontractors in similar manner.

§ A.11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds

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received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Design-Build Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article A.7.

§ A.11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power.; The Owner as fiduciary shall, in the case of a decision or award, make settlement with insurers in accordance with directions of a decision or award. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§ A.11.5 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.5.1 The Owner shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract.

ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

§ A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents, correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

§ A.12.2 CORRECTION OF WORK

§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION.

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

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§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE A.13 MISCELLANEOUS PROVISIONS

§ A.13.1 GOVERNING LAW

§ A.13.1.1 The Design-Build Contract shall be governed by the law of the place where the Project is located.

§ A.13.2 SUCCESSORS AND ASSIGNS

§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Contract.

§ A.13.2.2 The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ A.13.3 WRITTEN NOTICE

§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice.

§ A.13.4 RIGHTS AND REMEDIES

§ A.13.4.1 Duties and obligations imposed by the Design-Build Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

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§ A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an Independent testing laboratory or entity acceptable to the Owner or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ A.13.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ A.13.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ A.13.6.1 As between the Owner and Design-Builder:

- .1 **Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 **Between Substantial Completion and Final Application for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Application for Payment; and
- .3 **After Final Application for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design-Builder pursuant to any Warranty provided under Section A.3.5, the date of any correction of the Work or failure to correct the Work by the Design-Builder under Section A.12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design-Builder or Owner, whichever occurs last.

ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT

§ A.14.1 TERMINATION BY THE DESIGN-BUILDER

§ A.14.1.1 The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

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- .3 the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents; or
- .4 the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section A.2.2.8.

§ A.14.1.2 The Design-Builder may terminate the Design-Build Contract if, through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner, as described in Section A.14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ A.14.1.3 If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ A.14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design-Builder because the Owner has persistently failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner as provided in Section A.14.1.3.

§ A.14.2 TERMINATION BY THE OWNER FOR CAUSE

§ A.14.2.1 The Owner may terminate the Design-Build Contract if the Design-Builder:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Design-Builder and the Architect and Contractors;
- .3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Design-Build Documents.

§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 accept assignment of contracts pursuant to Section A.5.5.1; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ A.14.2.3 When the Owner terminates the Design-Build Contract for one of the reasons stated in Section A.14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ A.14.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ A.14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

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- .1 that performance is, was or would have been so suspended, delayed or interrupted by an other cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

§ A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ A.14.4.1 The Owner may, at any time, terminate the Design-Build Contract for the Owner's convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and enter into no further contracts and purchase orders.

§ A.14.4.3 In the event of termination for the Owner's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services not completed. In case of termination for the Owner's convenience after commencement of construction, the Design-Builder shall be entitled to receive payment for Work executed and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

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 **AIA Document A141™ – 2004 Exhibit C**

Insurance and Bonds

for the following PROJECT:
(Name and location or address)

LIO Building Remodel
716 West 4th Avenue
Anchorage, AK 99501

THE OWNER:
(Name, legal status and address)

716 WEST FOURTH AVENUE, LLC
425 G Street, Suite 210
Anchorage, AK 99501

THE DESIGN-BUILDER:
(Name, legal status and address)

Criterion General, INC.
2820 Commercial Drive
Anchorage, Alaska 99501

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE C.1

The Owner and Design-Builder shall provide policies of liability insurance as required by the Design-Build Documents, or as follows:
(Specify changes, if any, to the requirements of the Design-Build Documents, and for each type of insurance identify applicable limits and deductible amounts.)

Design Builder will carry:

1. Commercial GL \$1.0M per occurrence, \$2.0M Aggregate Minimum;
2. Auto coverage \$1.0M per occurrence, \$2.0M Aggregate Minimum;
3. Umbrella Coverage \$4 Million;
4. 100% Builder's All Risk replacement coverage;
5. Professional Liability \$1.0M;
6. Workman's compensation and employer's liability in statutory amounts;

Deductibles shall not exceed \$10,000.

Design builder liability coverages will name Pfeffer Development, LLC and Owner as additional insureds and will be primary and non contributing to any coverage carried by Pfeffer Development, LLC and Owner.

ARTICLE C.2

The Design-Builder shall provide surety bonds as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
100%Performance and Payment Bond	

§ C.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

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EXHIBIT A
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 CRITERION GENERAL, INC. 2820 COMMERCIAL DRIVE, ANCHORAGE AK 99501-3015 907-277-3200 TELEPHONE; 907-272-8544 FACSIMILE
CONSTRUCTION CONSTRUCTION ESTIMATE
PROJECT TITLE: ALASKA LIO BUILDING 4TH AVENUE BUDGET PROPOSAL DATE: AUGUST 27, 2013 OWNER: PFEFFER DEVELOPMENT ARCHITECT: KP8 ARCHITECTS START DATE: NOVEMBER 2013 COMPLETE DATE: DECEMBER 2014 TOTAL AREA: 64,048 SF ESTIMATE BY: DEROBERTS
DEMO OLD ANCHOR BAR, CONSTRUCT NEW BUILDING WITH ELEVATOR/RESTROOM CORE), RENOVATE EXISTING LIO BUILDING.
ALL FINISHES ARE ALLOWANCES. FINAL SELECTIONS TO BE DETERMINED.

716-001150

ESTIMATE SUMMARY							
CODE	DESCRIPTION	HOURS	LABOR	MATERIAL	EQUIPMENT	SUB / OTHER	TOTAL
01000	GENERAL REQUIREMENTS	15414.5	1280238.12	247500.00	658000.00	1825000.00	\$3,811,738.12
02000	SITework	4882	1413775.75	141820.00	22350.00	3334450.00	\$3,912,385.75
03000	CONCRETE	8138.002	675977.85	542147.40	31155.00	138858.00	\$1,388,138.25
04000	MASONRY	NOT USED	0	0.00	0.00	0.00	\$0.00
05000	METALS	6188	514789.59	1289136.00	0.00	430148.00	\$2,234,033.59
06000	WOOD AND PLASTIC	1572.8	130810.95	229570.00	0.00	0.00	\$351,180.95
07000	THERMAL AND MOISTURE	4829.9	401143.22	570173.00	0.00	717562.00	\$1,688,500.22
08000	DOORS AND WINDOWS	1012	84050.79	269200.00	0.00	2215000.00	\$3,068,250.79
09000	FINISHES	11428.875	945057.84	451327.00	0.00	1512532.00	\$2,913,116.84
10000	SPECIALTIES	659.45	46484.84	178000.00	0.00	10000.00	\$732,454.84
11000	EQUIPMENT	NOT USED	0	0.00	0.00	0.00	\$0.00
12000	FURNISHINGS	300	24918.24	0.00	4500.00	0.00	\$29,418.24
13000	SPECIAL CONSTRUCTION	NOT USED	0	0.00	0.00	0.00	\$0.00
14000	CONVEYING SYSTEMS	280	23255.18	42300.00	0.00	50500.00	\$570,555.18
15000	MECHANICAL	80	6544.33	0.00	0.00	4192825.00	\$4,199,269.33
16000	ELECTRICAL	100	8305.41	0.00	0.00	3101124.00	\$3,109,429.41
SUBTOTAL COST		54894.427	4559209.71	3560366.40	716005.00	17783319.00	\$27,008,929.11
COMPOSITE HOURLY RATE		\$83.05	Estimator Note: Import this rate from the hourly rate calculator work sheet				
MARKUPS:							
4% PROFIT MARKUP			1,147,879				
4% GENERAL OVERHEAD MARKUP			1,147,879				
TOTAL MARKUPS			2,295,759				\$2,251,758.97
				Net markup on sale =	7.67%		
FEES & PREMIUMS:							
00810	LIABILITY INSURANCE		27,422.31				
00810	UMBRELLA PREMIUM		0.00	EXCLUDED			
00620	DEPARTMENT OF LABOR FEE		5,000.00				
00620	BUILDERS ALL-RISK INSURANCE		64,470.31				
00630	MOA BUILDING PERMIT & INSPECTION FEES		334,827.34	PERMIT FEE	PLAN REVIEW	FIRE REVIEW	
00650	AJWWU		15,000.00	142,054	581,477	529,710	
00650	PARKING RENTAL		20,000.00				
00650	ROAD CLOSURE & TRAFFIC PERMITS		100,000.00	day=44h			
00650	ENSTAR		5,000.00				
00650	MILAP FEES		40,000.00				
TOTAL FEES & PREMIUMS			631,519.86				\$631,519.86
TOTAL ESTIMATE							\$28,936,208
PERFORMANCE & PAYMENT BOND PREMIUM (cost code 00640) IF REQUIRED							\$222,847
TOTAL ESTIMATE WITH BOND							\$30,169,055

DIVISION 01000 - GENERAL REQUIREMENTS											
CODE	DESCRIPTION	COMPOSITE RATE: \$43.05 / HR	QUAN	UNIT	LABOR	TOTAL	MATERIAL	EQUIPMNT	SUB / OTHER	TOTAL	TOTALS
	JOB DURATION				UNIT	HRS	UNIT	TOTAL	UNIT	TOTAL	
01000	JOB ADMINISTRATION										
01310	Project design & engineering	1.0 ob	80	ob	80	6644.33	0	0.00	0	0.00	1342000
01310	Exploratory & as-built work	1.0 ob	0	ob	0	0.00	0	0.00	25000	25000.00	\$1,348,644.33
01310	Project manager	13.0 mo	80	mo	780	64782.23	400	5200.00	0	0.00	0
01320	Project supervision	55.3 wks	50	wks	2763	229437.08	0	0.00	0	0.00	0
01325	Safety program manager	13.0 mo	32	mo	416	34550.52	0	0.00	0	0.00	0
01330	Project engineer / subsurface / O&M's	13.0 mo	20	mo	260	21984.08	300	6500.00	0	0.00	0
01340	Project coordinator	13.0 mo	10	mo	130	10797.04	0	0.00	0	0.00	0
01350	Expediting / purchasing	13.0 mo	40	mo	520	43188.16	0	0.00	0	0.00	0
01400	O.C. / FIELD ENGR.										
01420	Construction staking & as-built plot plan	1.0 job	0	job	0	0.00	0	0.00	0	0.00	8000
01430	Inspections	1.0 job	0	job	0	0.00	0	0.00	0	0.00	80000
01500	TEMPORARY FACILITIES										
01501	Field office	13.0 mo	8	mo	104	8637.83	0	0.00	2000	26000.00	0
01501	Temp crew parking - Use garage	8.0 mo	0	mo	0	0.00	0	0.00	0	0.00	0
01502	Project signs	1.0 job	10	job	10	830.54	1000	1000.00	0	0.00	0
01503	Storage Containers	2.8 ea	0	ea	0	0.00	0	0.00	1500	3000.00	0
01503	Storage area / security fence	600.0 ll	0.05	sq	30	2491.82	0	0.00	0	4800.00	0
01504	Tempora. toilets	13.0 mo	0	mo	0	0.00	0	0.00	0	1050	13650.00
01505	Temp electric service	1.0 ob	100	ob	100	8305.41	0	0.00	0	20000	20000.00
01506	Electricity	13.0 mo	0	mo	0	0.00	0	0.00	0	3000	39000.00
01507	Temporary lights	13.0 mo	10	mo	130	10797.04	1000	13000.00	0	0.00	0
01508	Temporary heat	8.0 mo	40	mo	320	26577.33	15000	120000.00	1000	8000.00	0
01509	Telephones	13.0 mo	0	mo	0	0.00	0	0.00	100	1300.00	250
01510	Temp weather protection	8.0 mo	125	mo	760	62290.61	4000	24000.00	0	0.00	0
01510	Temp pedestrian walkways	1.0 ob	100	ob	100	8305.41	4000	4000.00	0	0.00	0
01511	Snow removal	5.0 mo	40	mo	200	16810.83	0	0.00	0	0.00	0
01512	Chainaw pascok	13.0 mo	140	mo	1820	151158.54	0	0.00	0	0.00	0
01513	Chainaw knut, inc. windows	1.0 ob	200	ob	200	16810.83	200	200.00	0	0.00	8000
01514	Safe supplies	1.0 ob	0	ob	0	0.00	8000	8000.00	0	0.00	0
01515	Material handling	13.0 mo	200	mo	2600	215940.78	0	0.00	0	0.00	0
01516	Trash haul. dumpsters	13.0 mo	24	mo	312	25912.88	0	0.00	600	7800.00	1200
01600	EQUIPMENT										
01610	Consumables	1.0 job	0	job	0	0.00	18000	18000.00	0	0.00	0
01620	Scaffolding / man lifts	12.0 mo	0	mo	0	0.00	0	0.00	1500	42000.00	0
01630	Job trucks (pickup, barbed)	13.0 mo	0	mo	0	0.00	0	0.00	1200	15600.00	0
01640	Boom Truck	8.0 mo	0	mo	0	0.00	0	0.00	3000	24000.00	0
01640	Forklift	10.0 mo	0	mo	0	0.00	0	0.00	3000	30000.00	0
01640	Aerial Boom Lift	12.8 mo	0	mo	0	0.00	0	0.00	8000	96000.00	0
01650	Misc rental	13.0 mo	0	mo	0	0.00	0	0.00	580	6500.00	0
01660	Fuel & maintenance	13.0 mo	30	mo	390	32391.12	800	10400.00	0	0.00	0
01670	Crane Service	11.0 mo	200	mo	2200	182719.12	3200	35200.00	30000	330000.00	0
01680	Man / equipment hoist	7.0 mo	180	mo	1120	93020.84	0	0.00	9000	63000.00	6500
01800	FREIGHT										
01820	General ocean freight-to jobsite	4.0 loads	0	loads	0	0.00	0	0.00	0	0.00	8500
01830	Mops / chemicals	1.0 job	80	job	80	6644.33	2000	2000.00	0	0.00	0
GENERAL REQUIREMENTS, TOTAL					15415	1280238.12	247500.00	638000.00	1626000.00	63,811,736.12	

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DIVISION 02000 - SITEWORK													
.CODE	DESCRIPTION	COMPOSITE RATE: \$43.05 / HR QUAN. UNIT	LABOR		MATERIAL		EQUIPMENT		SUB / OTHER		TOTALS		
			UNIT	HRS	UNIT	TOTAL	UNIT	TOTAL	UNIT	TOTAL			
02220	Additional Asbestos Abatement - ALLOWAN	1.0 job	0	0	0.00	0	0.00	0	0.00	300000	300000.00	\$300,000.00	
02221	Demolition subcontractor - AK DEMO	1.0 job	500	500	41527.07	0	0.00	0	0.00	1976200	1976200.00	\$2,017,727.07	
02221	Temporary shoring - building	1.0 job	400	400	33221.66	20000	20000.00	0	0.00	0	0.00	\$53,221.66	
02221	Temporary shoring - garage	1.0 job	500	500	41527.07	20000	20000.00	0	0.00	0	0.00	\$81,527.07	
02221	Additional demolition	6.0 hrs	100	600	49832.49	0	0.00	500	3000.00	0	0.00	\$52,832.49	
02221	Haul off in vac demo debris	20.0 hrs	4	80	6644.33	0	0.00	350	7000.00	650	13000.00	\$28,644.33	
02221	Remove floor adhesives	61000.0 sf	0	0073	458	37897.27	0	0.00	0.05	3050.00	0	0.00	\$41,047.27
02300	Traffic control plan	1.0 job	100	100	8303.41	20000	20000.00	0	0.00	8000	8000.00	\$38,303.41	
02300	Traffic control plan - flagger	8.0 mo	150	1280	106309.31	0	0.00	0	0.00	0	0.00	\$108,309.31	
02300	Site & utility subcontractor - BCX	1.0 job	40	40	3322.17	0	0.00	0	0.00	359300	359300.00	\$362,622.17	
02318	Trenching for M & E-entrance bldg	300.0 lf	0.05	25	2076.35	1	500.00	2.5	1250.00	0	0.00	\$3,826.35	
02370	SWPPP management / street sweeping	7.0 mo	60	420	34882.74	500	3500.00	1000	7000.00	0	0.00	\$45,382.74	
02455	H piling & lagging (beamrest shoring)	120.0 lf	2	240	19532.99	100	12000.00	0	0.00	4500	54000.00	\$77,832.99	
02740	Asphalt pavement @ Alley	4000.0 sf	0	0	0.00	0	0.00	0	0.00	5	20000.00	\$20,000.00	
02740	Asphalt pavement @ roads	4000.0 sf	0	0	0.00	0	0.00	0	0.00	5	20000.00	\$20,000.00	
02740	Asphalt seal coat parking garage	40300.0 sf	0	0	0.00	0	0.00	0	0.00	0.5	20150.00	\$20,150.00	
02760	Paint markings - garage	120.0 ea	0	0	0.00	0	0.00	0	0.00	35	4700.00	\$4,700.00	
02770	Cuts & gutter patches	120.0 lf	0	0	0.00	0	0.00	0	0.00	40	4800.00	\$4,800.00	
02775	Sidewalks & pads	3800.0 sf	0	0225	95	7830.14	5	19000.00	0	0.00	2	7800.00	\$34,630.14
02775	Patio deck	2100.0 sf	0	0225	53	4360.34	5	19200.00	0.5	1050.00	2	4200.00	\$20,110.34
02775	Ramp - garage	4000.0 sf	0	0225	100	8303.41	8	24000.00	0	0.00	3	12000.00	\$44,303.41
02820	Fences & gates-dumester enclosure	38.0 lf	1	38	2980.95	120	4320.00	0	0.00	0	0.00	\$7,300.95	
02820	Gates @ garage ramp	1.0 job	40	40	3322.17	0	0.00	0	0.00	25000	25000.00	\$28,322.17	
02900	Landscape planting	1.0 job	0	0	0.00	0	0.00	0	0.00	5000	5000.00	\$5,000.00	
02900	Landscape plantings @ patio	5.0 ea	0	0	0.00	0	0.00	0	0.00	3000	15000.00	\$15,000.00	
02900	Landscape furnishings (bike rack, benches)	8.0 ea	2	16	1328.87	1000	8000.00	0	0.00	0	0.00	\$8,328.87	
		0.0	0	0	0.00	0	0.00	0	0.00	0	0.00	\$0.00	
DIVISION 02 - TOTAL				4982	41375.75		141820.00		22350.00		3334450.00	\$3,912,365.75	

DIVISION 03000 - CONCRETE													
.CODE	DESCRIPTION	COMPOSITE RATE: \$43.05 / HR QUAN. UNIT	LABOR		MATERIAL		EQUIPMENT		SUB / OTHER		TOTALS		
			UNIT	HRS	UNIT	TOTAL	UNIT	TOTAL	UNIT	TOTAL			
03100	Formwork	23500.0 sbs	0	1	2350	163177.24	5	117500.00	0	0.00	0	0.00	\$313,677.24
03200	Reinforcing purchase	190000.0 lb	0	0	0.00	0.75	142500.00	0	0.00	0	0.00	\$142,500.00	
03200	Reinforcing place rebar	100.0 ton	0	0	0.00	0	0.00	0	0.00	600	9000.00	\$9,000.00	
03200	Reinforcing place W/WF	16472.0 sf	0	0025	87	5838.06	0.4	16668.80	0	0.00	0	0.00	\$16,206.86
03300	Place footing walls, grade beams	582.0 cy	0	7.75	436.50	\$6263.13	125	72750.00	15	8730.00	0	0.00	\$117,723.13
03300	Place concrete in/last SOG	590.0 cy	0	7.75	435.00	\$6128.55	125	72500.00	15	8700.00	0	0.00	\$117,328.55
03300	Place concrete on grade/beck/shells	362.0 cy	1	362.00	30085.80	125	45250.00	25	9850.00	0	0.00	\$84,365.60	
03300	Place & finish stairs & landings	30.0 cy	3	90.00	7474.87	125	3793.09	15	450.00	400	12000.00	\$23,674.87	
03300	Place horizontal/vertical pads	30.0 cy	3	90.00	7474.87	125	3793.09	15	450.00	0	0.00	\$11,674.87	
03300	Edge of deck in/0	3000.0 sf	0.1	300.00	24916.24	3	9000.00	1	3000.00	0	0.00	\$38,916.24	
03300	Place misc conc	50.0 cy	3	150.00	12458.12	125	6250.00	0	0.00	0	0.00	\$18,708.12	
03300	Garage - concrete	1.0 job	2000	2000.00	168108.28	30000	30000.00	0	0.00	0	0.00	\$198,108.28	
03350	Finish concrete slabs	24572.0 sf	0	0	0.00	0	0.00	0	0.00	1.5	36858.00	\$36,858.00	
03390	Curing / sealing	24572.0 sf	0	0001	25	2040.81	0	0.00	0	0.00	0	0.00	\$3,280.81
03600	Grout column bases	20.0 ea	1	20	1681.08	50	1000.00	0	0.00	0	0.00	\$2,681.08	
03151	Sawcut control joints	1550.0 lf	0	0032	54	4505.69	0	0.00	0.5	775.00	0	0.00	\$5,280.69
03050	Epoxy Bolts	1.0 job	1500	1500	12458.12	15000	15000.00	0	0.00	0	0.00	\$139,581.22	
03050	Embedded rods	1.0 job	200	200	16610.83	8000	8000.00	0	0.00	0	0.00	\$24,610.83	
03050	Anchor bolts & templates	120.0 ea	0.5	60	4983.25	25	3000.00	0	0.00	0	0.00	\$7,983.25	
DIVISION 03 - TOTAL				8138	67597.85		942147.40		31155.00		138850.00	\$1,308,136.25	

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DIVISION 04000, MASONRY												
CODE	DESCRIPTION	COMPOSITE RATE: QUAN. UNIT	UNIT	LABOR HRS	TOTAL	MATERIAL UNIT	TOTAL	EQUIPMT UNIT	TOTAL	SUB / OTHER UNIT	TOTAL	TOTALS
04200	Concrete masonry units	0.0 bhs	0	0	0.00	0	0.00	0	0.00	0	0.00	\$0.00
DIVISION 04, TOTAL					0	0.00	0.00	0.00	0.00	0.00	\$0.00	
DIVISION 05000, METALS												
CODE	DESCRIPTION	COMPOSITE RATE: QUAN. UNIT	UNIT	LABOR HRS	TOTAL	MATERIAL UNIT	TOTAL	EQUIPMT UNIT	TOTAL	SUB / OTHER UNIT	TOTAL	TOTALS
05090	Welding rod, gas, bolts, supplies	1.0 job	0	0	0.00	2500	2500.00	0	0.00	0	0.00	\$2,500.00
05100	Structural steel fabrication	433000 lbs	0	0	0.00	1.5	687500.00	0	0.00	0	0.00	\$687,500.00
05100	Buckling resistant braces	104 ea	8	632	69101.05	2500	260000.00	0	0.00	0	0.00	\$329,101.05
05100	Stairwells	1 ea	0	0	0.00	35000	35000.00	0	0.00	0	0.00	\$35,000.00
05100	Structural steel erection	27572 sf	0	0	0.00	0	0.00	0	0.00	8	248148.00	\$248,148.00
05100	Structural steel decking purchase	27572 sf	0	0	0.00	3	82718.00	0	0.00	0	0.00	\$82,718.00
05100	Structural steel upgrades	1 job	2200	2200	182719.12	100000	100000.00	0	0.00	0	0.00	\$282,719.12
05100	Shop structural steel	22 lbs	0	0	0.00	0	0.00	0	0.00	8500	143000.00	\$143,000.00
05200	Steel roof joists	5600 sf	0	0	0.00	8	33600.00	0	0.00	0	0.00	\$33,600.00
05200	Shop roof joist & deck	3 lbs	0	0	0.00	0	0.00	0	0.00	7800	33000.00	\$33,000.00
05400	Cold-formed metal framing	21800 lf	0.125	2725	228322.53	2.4	57320.00	0	0.00	0	0.00	\$278,642.53
05500	Welded rebar @ pour stop	700 ea	0.25	175	14534.48	5	3500.00	0	0.00	0	0.00	\$18,034.48
05500	Angles openings through deck	1 job	60	60	4983.25	3500	3500.00	0	0.00	0	0.00	\$8,483.25
05500	Angles at elevator pits	3 ea	4	12	998.65	300	300.00	0	0.00	0	0.00	\$1,298.65
05500	Miscellaneous fabricated metals	1 job	50	50	4152.71	5000	5000.00	0	0.00	0	0.00	\$9,152.71
05500	Handrails	600 lf	0.1	60	4963.25	30	1800.00	0	0.00	0	0.00	\$22,463.25
05500	Temporary guard rails	2400 lf	0.035	84	6976.55	4	9600.00	0	0.00	0	0.00	\$16,576.55
DIVISION 05, TOTAL				6198	514769.59	1289136.00	0.00	430148.00	\$2,234,053.59			
DIVISION 06000, WOOD AND PLASTIC												
CODE	DESCRIPTION	COMPOSITE RATE: QUAN. UNIT	UNIT	LABOR HRS	TOTAL	MATERIAL UNIT	TOTAL	EQUIPMT UNIT	TOTAL	SUB / OTHER UNIT	TOTAL	TOTALS
06100	Curbs curbs blocking	4000.0 bf	0.04	160	13288.66	3	12000.00	0	0.00	0	0.00	\$25,288.66
06180	Sheathing - cills boards	280.0 sf	0.025	7	581.36	1	280.00	0	0.00	0	0.00	\$861.36
06180	Sheathing - parades	1800.0 bf	0.025	45	3737.44	1.2	2160.00	0	0.00	0	0.00	\$5,897.44
06160	Sheathing	1700.0 sf	0.025	43	3629.60	1.4	2380.00	0	0.00	0	0.00	\$6,009.60
06200	Modular air wall	0.0 ea	10	0	0.00	5000	8.00	0	0.00	0	0.00	\$8.00
06200	Custom floor base	3000.0 lf	0.35	1050	67206.85	10	30000.00	0	0.00	0	0.00	\$117,206.85
06410	Custom casework - security desk	1.0 job	20	20	1661.06	20000	20000.00	0	0.00	0	0.00	\$21,661.06
06410	Custom casework - allowance	1.0 job	150	150	12458.12	125000	125000.00	0	0.00	0	0.00	\$137,458.12
06415	Solid surface @ restrooms	125.0 lf	0.45	56	4783.92	200	25000.00	0	0.00	0	0.00	\$30,383.92
06600	FRP panels - janitor closets	900.0 sf	0.045	41	3363.69	3.5	3150.00	0	0.00	0	0.00	\$6,513.69
DIVISION 06, TOTAL				1573	130810.85	220570.00	0.00	0.00	\$351,180.85			

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EXHIBIT A
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DIVISION 0700, THERMAL AND MOISTURE												
CODE	DESCRIPTION	COMPOSITE RATE	LABOR		MATERIAL		EQUIPMENT		SUB / OTHER		TOTALS	
			QUAN	UNIT	UNIT	HRS	UNIT	TOTAL	UNIT	TOTAL		
07110	Foundation membrane - E/P	0.0 sf	0	0	0.00	0	0.00	0	0.00	0	0.00	\$0.00
07110	Damp proofing - E/P	0.0 sf	0	0	0.00	0	0.00	0	0.00	0	0.00	\$0.00
07210	Foundation insulation - E/P	0.0 sf	0	0	0.00	0	0.00	0	0.00	0	0.00	\$0.00
07210	Garage ramp	4000.0 sf	0.0075	30	2491.62	1.8	6400.00	0	0.00	0	0.00	\$8,891.62
07210	Substrate insulation	2000.0 sf	0.0075	15	1245.81	1.8	3200.00	0	0.00	0	0.00	\$4,445.81
07210	Building insulation-core acoustical	28500.0 sf	0	0	0.00	0	0.00	0	0.00	1.5	57750.00	\$57,750.00
07260	Building insulation-exterior wall	32000.0 sf	0	0	0.00	0	0.00	0	0.00	2	64000.00	\$64,000.00
07260	Air barriers	15100.0 sf	0.0075	113	9425.88	0.85	12835.00	0	0.00	0	0.00	\$22,240.88
07420	Covered utility soft panels	1280.0 sf	0.08	102	8504.74	30	36400.00	0	0.00	0	0.00	\$44,904.74
07400	Metal siding panels	15100.0 sf	0.2	3020	252823.57	70	30200.00	0	0.00	0	0.00	\$552,823.57
07400	Mechanical room panels	3240.0 sf	0.2	648	53819.09	50	16200.00	0	0.00	0	0.00	\$70,019.09
07500	Membrane roofing ALLOWANCE - E/P	1.0 job	0	0	0.00	0	0.00	0	0.00	408.500	408500.00	\$408,500.00
07620	Flashing & sheet metal iron	4000.0 sf	0.03	120	9968.50	5	20000.00	0	0.00	0	0.00	\$29,968.50
07620	Fire stopping-casing @ penetrations	400.0 ea	0.5	200	16510.83	5	2000.00	0	0.00	0	0.00	\$18,510.83
07620	Fire stopping-concrete angles	3650.0 sf	0.125	461	38308.72	6	22140.00	0	0.00	0	0.00	\$60,448.72
07620	Spurry (sprouting - brackshaw)	69848.0 sf	0	0	0.00	0	0.00	0	0.00	2.75	189332.00	\$189,332.00
07900	Caulking & sealants - interiors	1.0 job	40	40	3322.17	400	400.00	0	0.00	0	0.00	\$3,722.17
07900	Caulking & sealants - exteriors	1.0 job	80	80	6844.33	800	800.00	0	0.00	0	0.00	\$7,444.33
DIVISION 07, TOTAL				4830	401143.22		570175.00		0.00		717582.00	\$1,688,900.22
DIVISION 0800, DOORS AND WINDOWS												
CODE	DESCRIPTION	COMPOSITE RATE	LABOR		MATERIAL		EQUIPMENT		SUB / OTHER		TOTALS	
			QUAN	UNIT	UNIT	HRS	UNIT	TOTAL	UNIT	TOTAL		
08100	HM frames & doors	95.0 ea	8	780	63121.15	1600	152000.00	0	0.00	0	0.00	\$215,121.15
08310	Access doors	20.0 ea	1	20	1881.08	35	700.00	0	0.00	0	0.00	\$2,381.08
08400	Frame and surface glass ALLOWANCE	1500.0 sf	0.1	150	12458.12	75	112500.00	0	0.00	0	0.00	\$124,958.12
08500	Glaze & Glazing	1.0 job	32	32	2857.73	4000	4000.00	0	0.00	0	0.00	\$6,857.73
08500	Extruded aluminum sills	0.0 ft	0.025	0	0.00	8	0.00	0	0.00	0	0.00	\$0.00
08500	Canopies	1.0 job	10	10	830.54	0	0.00	0	0.00	15000	15000.00	\$15,830.54
08500	Glazed curtain wall & entrance entrance	1.0 job	40	40	3322.17	0	0.00	0	0.00	2200000	2200000.00	\$2,203,322.17
DIVISION 08, TOTAL				1012	84050.79		259200.00		0.00		2215000.00	\$2,563,250.79

716-001155

DIVISION 09000, FINISHES										
CODE	DESCRIPTION	COMPOSITE RATE: \$83.05 / HR QUAN. UNIT	UNIT	LABOR HRS	TOTAL	MATERIAL UNIT TOTAL	EQUIPMENT UNIT TOTAL	SUB / OTHER UNIT TOTAL	TOTALS	
09100	Metal studs - framing interior	51486 lf	0.033	1802	149864.40	0.75	38814.50	0	0.00	\$188,278.90
09110	Metal studs - partition interior	111119 lf	0.035	3889	323011.27	1.1	122230.80	0	0.00	\$443,242.17
09120	Gyp ceiling suspension systems	18298 sf	0.05	915	75986.24	3	54894.60	0	0.00	\$130,880.84
09200	OWB - mesh & hang	26830 sf	0.01	2688	248190.70	0.5	149415.00	0	0.00	\$397,605.70
09220	Exterior Gyp	19100 sf	0.02	302	25282.36	0.63	8815.00	0	0.00	\$34,897.35
09280	Sheet rock	14000 sf	0.04	560	48510.32	4	66000.00	0	0.00	\$192,510.32
09290	Tie hanger	22240 sf	0.025	56	4817.81	1.15	2537.80	0	0.00	\$7,175.41
09300	Tie - ALLOWANCE	1.0 job		30	1681.08	0	0.00	200000	200000.00	\$201,681.08
09510	Callings ALLOWANCE	50000.0 sf	0.0025	125	10381.77	0	0.00	5	250000.00	\$260,381.77
09810	Floor prep	80000.0 sf	0.01	600	49632.49	0.05	3000.00	0	0.00	\$52,832.49
09880	Flooring - ALLOWANCE	80000.0 sf	0.001	60	4983.25	0	0.00	6.75	405000.00	\$409,983.25
09890	Entry floor system	1.0 job		40	3322.17	15000	15000.00	0	0.00	\$18,322.17
09900	Painting & taping	1.0 job		50	4152.71	0	0.00	4484.74	4484.74	\$452,628.71
09900	Painting - garage	1.0 job		20	1681.08	0	0.00	65068	65068.00	\$66,749.08
09950	Walkways - restroom ALLOWANCE	10780.0 sf	0	0	0.00	0	0.00	8	88240.00	\$88,240.00
09950	Walkways - rancy - ALLOWANCE	770.0 sf	0	0	0.00	0	0.00	75	57750.00	\$57,750.00
DIVISION 09, TOTAL				11427	948057.64	451527.00	0.00	1512532.00	\$2,913,116.84	

DIVISION 10000, SPECIALTIES										
CODE	DESCRIPTION	COMPOSITE RATE: \$83.05 / HR QUAN. UNIT	UNIT	LABOR HRS	TOTAL	MATERIAL UNIT TOTAL	EQUIPMENT UNIT TOTAL	SUB / OTHER UNIT TOTAL	TOTALS	
10200	Louvers & vents	32.0 ea	2	64	5315.47	100	3200.00	0	0.00	\$8,515.47
10300	Projector screens	3.0 ea	10	30	2491.82	9000	27000.00	0	0.00	\$29,491.82
10400	Interior Signage	120.0 ea	2	240	19832.99	140	16800.00	0	0.00	\$36,732.99
10400	Exterior Signage	1.0 ea	10	10	830.54	0	0.00	10000	10000.00	\$10,830.54
10520	Fire extinguishers	28.0 ea	2	56	4651.00	225	6300.00	0	0.00	\$10,951.00
10520	Knox box	1.0 ea	2	2	168.11	520	520.00	0	0.00	\$688.11
10631	Operable folding w/all	2.0 ea	20	40	3322.17	33000	70000.00	0	0.00	\$73,322.17
10600	Toilet & bath accessories	281.0 pcs	0.45	117	9754.71	200	52200.00	0	0.00	\$61,954.71
DIVISION 10, TOTAL				559	46464.84	178020.00	0.00	10000.00	\$232,484.84	

DIVISION 12000, FURNISHINGS										
CODE	DESCRIPTION	COMPOSITE RATE: \$8.00 / HR QUAN. UNIT	UNIT	LABOR HRS	TOTAL	MATERIAL UNIT TOTAL	EQUIPMENT UNIT TOTAL	SUB / OTHER UNIT TOTAL	TOTALS	
12400	Appliances - EXCLUDED	0.0 job	0	0	0.00	0	0.00	0	0.00	\$0.00
12400	Embed floor closer for KI	0.0 ea	2	0	0.00	50	0.00	0	0.00	\$0.00
12400	Stack KI walls	6.0 ea	30	300	24916.24	0	0.00	750	4500.00	\$29,416.24
DIVISION 12, TOTAL				300	24916.24	0.00	4500.00	0.00	\$29,416.24	

716-001156

EXHIBIT A
Page 53 of 53

<u>DIVISION 14000 - CONVEYING SYSTEMS</u>												
CODE	DESCRIPTION	COMPOSITE RATE: \$83.05 / HR QUAN. UNIT	LABOR		TOTAL	MATERIAL		EQUIPMENT		SUB / OTHER		TOTALS
			UNIT	HRS		UNIT	TOTAL	UNIT	TOTAL	UNIT	TOTAL	
14200	Elevators - passenger w/ glass back	2.0 ea	46	80	6644.33	15000	30000.00	0	0.00	215000	430000.00	\$466,644.33
14200	Elevators - passenger (basement)	1.0 job	46	40	3322.17	0	0.00	0	0.00	75000	75000.00	\$78,322.17
14600	Elevator hoist way beam	3.0 ea	12	36	2988.95	500	1500.00	0	0.00	0	0.00	\$4,489.95
14600	Elevator work platforms	3.0 ea	24	72	5979.60	1500	4500.00	0	0.00	0	0.00	\$10,479.60
14600	Elevator temporary guard rails	16.0 ea	3	48	3986.60	300	4800.00	0	0.00	0	0.00	\$8,786.60
14600	Pl ladder	2.0 ea	2	4	332.22	750	1500.00	0	0.00	0	0.00	\$1,832.22
0.0		0.0	0	0	0.00	0	0.00	0	0.00	0	0.00	\$0.00
DIVISION 14, TOTAL				280	23256.16		42300.00		0.00		505000.00	\$570,555.18
<u>DIVISION 15000 - MECHANICAL</u>												
CODE	DESCRIPTION	COMPOSITE RATE: \$83.05 / HR QUAN. UNIT	LABOR		TOTAL	MATERIAL		EQUIPMENT		SUB / OTHER		TOTALS
			UNIT	HRS		UNIT	TOTAL	UNIT	TOTAL	UNIT	TOTAL	
15000	Mechanical Design Build Allowance	1.0 job	60	60	4983.25	0	0.00	0	0.00	3497125	3497125.00	\$3,502,108.25
15000	Radiant patio heat	1.0 job	0	0	0.00	0	0.00	0	0.00	80000	80000.00	\$80,000.00
15000	Control wiring	1.0 job	0	0	0.00	0	0.00	0	0.00	100000	100000.00	\$100,000.00
15000	Snow melt	1.0 job	10	10	830.54	0	0.00	0	0.00	183000	183000.00	\$183,830.54
15300	Fire protection - Chnock	1.0 job	0	0	0.00	0	0.00	0	0.00	305500	305500.00	\$305,500.00
15300	FM 200 data room	1.0 job	10	10	830.54	0	0.00	0	0.00	25000	25000.00	\$25,830.54
15300	Fire tanks and pumps EXCLUDED	0.0 job	0	0	0.00	0	0.00	0	0.00	0	0.00	\$0.00
DIVISION 15, TOTAL				80	6644.33		0.00		0.00		4192625.00	\$4,199,269.33
<u>DIVISION 18000 - ELECTRICAL</u>												
CODE	DESCRIPTION	COMPOSITE RATE: \$83.05 / HR QUAN. UNIT	LABOR		TOTAL	MATERIAL		EQUIPMENT		SUB / OTHER		TOTALS
			UNIT	HRS		UNIT	TOTAL	UNIT	TOTAL	UNIT	TOTAL	
18000	Electrical Engineering & management	1.0 job	100	100	8305.41	0	0.00	0	0.00	311024	311024.00	\$319,328.41
18000	MDP/permits/issue duct/headers	1.0 job	0	0	0.00	0	0.00	0	0.00	350000	350000.00	\$350,000.00
18000	Power - (audience) ALLOWANCE	1.0 job	0	0	0.00	0	0.00	0	0.00	367200	367200.00	\$367,200.00
18000	Lighting (stage) m	1.0 job	0	0	0.00	0	0.00	0	0.00	275000	275000.00	\$275,000.00
18000	Light fixtures ALLOWANCE	1.0 job	0	0	0.00	0	0.00	0	0.00	750000	750000.00	\$750,000.00
18000	Data ALLOWANCE	1.0 job	0	0	0.00	0	0.00	0	0.00	250000	250000.00	\$250,000.00
18000	Fire alarm / secur	1.0 job	0	0	0.00	0	0.00	0	0.00	397400	397400.00	\$397,400.00
18000	Video conference -ALLOWANCE	1.0 job	0	0	0.00	0	0.00	0	0.00	45000	45000.00	\$45,000.00
18000	Generator	1.0 job	0	0	0.00	0	0.00	0	0.00	146000	146000.00	\$146,000.00
18000	Parking garage - ALLOWANCE	1.0 job	0	0	0.00	0	0.00	0	0.00	34500	34500.00	\$34,500.00
18000	Lighting control	1.0 job	0	0	0.00	0	0.00	0	0.00	120000	120000.00	\$120,000.00
18000	Pass lighting	1.0 job	0	0	0.00	0	0.00	0	0.00	5000	5000.00	\$5,000.00
18000	Coax cable	1.0 job	0	0	0.00	0	0.00	0	0.00	50000	50000.00	\$50,000.00
DIVISION 18, TOTAL				100	8305.41		0.00		0.00		3101124.00	\$3,109,429.41
END												

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

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EVIDENCE OF PROPERTY INSURANCE

DATE (MMDD/YYYY)
11/22/2013

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

AGENCY Alaska USA Insurance Brokers P.O. Box 196530 Anchorage AK 99519		COMPANY Travelers Casualty & Surety 98932 Collections Center Drive Chicago IL 60693	
PHONE (AGC No. Ext): (907) 561-1250 FAX (AGC No.): (907) 561-4315 E-MAIL ADDRESS: d.adams@alaskausainsurance.com CODE: 00052773 AGENCY CUSTOMER ID #: 00052773	BUS CODE:	LOAN NUMBER	POLICY NUMBER QT6607D780992TIL13
INSURED Criterion General, Inc. 2820 Commercial Drive Anchorage AK 99501-3015		EFFECTIVE DATE 11/26/2013	EXPIRATION DATE 12/31/2014
		<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED	
THIS REPLACES PRIOR EVIDENCE DATED:			

PROPERTY INFORMATION

LOCATION/DESCRIPTION
 Loc# 00001/Bldg# 00001
 716 West 4th Avenue
 Anchorage, AK 99501-3015

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 EVIDENCE OF PROPERTY INSURANCE 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.

COVERAGE INFORMATION

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Builders Risk New with Renovations to Existing Building	28,000,000	5,000
Temporary Storage	500,000	5,000
Transit	500,000	5,000
Fungus, Wet Rot and Dry Rot Annual Aggregate	25,000	

REMARKS (Including Special Conditions)

Extensive remodel of existing 43,000 sq ft building including new plumbing, HVAC & electrical systems and new construction of 21,000 sq ft 6 story adjacent building addition.

CANCELLATION

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

ADDITIONAL INTEREST

Pfeffer Development, LLC 425 G Street, Suite 201 Anchorage, AK 99501	MORTGAGEE	<input checked="" type="checkbox"/>	ADDITIONAL INSURED
	LOSS PAYEE	<input type="checkbox"/>	
LOAN #			
AUTHORIZED REPRESENTATIVE B Nolin, CIC, CISR/BRE <i>Brenda L. Nolin</i>			

Additional Named Insureds

Other Named Insureds

716 West Fourth Avenue LLC

Limited Liability Company, Additional Named Insured

ASHBURN & MASON P.C.

LAWYERS

MATTHEW T. FINDLEY • EVA R. GARDNER • DONALD W. MCCLINTOCK III • JEFFREY W. ROBINSON
JACOB A. SONNEBORN • THOMAS V. WANG • REBECCA A. WINDT PEARSON
OF COUNSEL JULIAN L. MASON III • A. WILLIAM SAUPE

February 9, 2015

VIA FAX AND U.S. MAIL

Dave DeRoberts
Criterion General, Inc.
2820 Commercial Drive
Anchorage, AK 99501
Fax No. 272-8544

Re: *Alaska Building, Inc. claim against Criterion General Inc.*
File No.: 10708.050

Dear Dave:

On January 23, 2015, Jim Gottstein, President of Alaska Building, Inc. filed a claim in the amount of \$250,000 against 716 West Fourth Avenue, LLC & Criterion Construction for alleged damage caused to the Alaska Building during the demolition and reconstruction of the Legislative Information Office. We understand and appreciate that you have tendered this claim to your carrier.

Please note that 716 W. 4th Avenue, LLC is indemnified under the terms of section 10 of the Access, Indemnity Insurance Agreement, and is also covered under indemnity clause A.3.17 of the construction contract.

We would appreciate confirmation from your carrier that it is adjusting the claim on behalf of 716 W. 4th Avenue, LLC as well.

1227 WEST 9TH AVENUE, SUITE 200, ANCHORAGE, AK 99501 • TEL 907.276.4331 • FAX 907.277.8235

Exhibit C
Page 1 of 2

000649

ASHBURN & MASON^{P.C.}

Dave DeRoberts
Page 2
February 9, 2015

Please feel free to contact me if you have any additional questions.

Sincerely,

ASHBURN & MASON, P.C.



Jeffrey W. Robinson

JWR:jew
cc: Client, David Adam

Feb-10-2015 12:16 PM Criterion General 907-277-3200

1/2



February 10, 2015

Sent via Fax and US Mail – (907) 277-8235

Jeffrey Robinson
Ashburn & Mason
1227 West 9th Avenue, Suite 200
Anchorage, AK 99501

In re: Alaska Building, Inc. claim against Criterion General, Inc.
Your File No. 10708.050

Dear Mr. Robinson:

Attached please find Navigators Specialty Insurance Companies' acknowledgment of the above referenced claim. We are currently putting together the documents that they have requested in order to move forward and investigate the claim.

Thank you and please let me know if you have any questions or need anything additional in the interim.

Respectfully,

Michaela "Coco" Duplesse
General Manager

/sjd
Enclosure

u:\egaf\2015 alaska building v. cog\ashburn kj to 2015-02-10.docx

2820 Commercial Drive
Anchorage AK 99501-3015
907-277-3200 telephone
907-272-8644 facsimile

Feb-10-2015 12:16 PM Criterion General 907-277-3200

2/2



1375 East Woodfield Road, Suite 720
Schaumburg, IL 60173

TEL: (949) 255-4852 FAX: (949) 255-4861

January 29, 2015

RECEIVED
FEB 09 2015
CRITERION GENERAL, INC.

CRITERION GENERAL, INC.
2820 COMMERCIAL DRIVE
ANCHORAGE, AK 99501-3015

INSURED: CRITERION GENERAL, INC.
CLAIMANT: ALASKA BUILDING, INC.
CLAIM #: CGL262968
POLICY #: LA13CGL01914500, CH13EXC768845IC, LA13CGL01914501,
SF14EXC768845IC
DATE OF LOSS: 01/01/2013, 01/01/2013, 01/01/2014, 01/01/2014
UNDERWRITING NAVIGATORS SPECIALTY INSURANCE COMPANY
COMPANY:

Dear Sir or Madam:

This is to acknowledge receipt of the above listed claim.

The handling of this matter has been assigned to Sandra Heiden who can be reached at 949-255-4852 or sheiden@nava.com

We are initiating our investigation into this matter and you will be contacted in the very near future. In the interim, should you have any questions feel free to contact the handling adjuster identified above.

Sincerely,

Claims Operations

CC:
CHERYL MOORE AT WORLDWIDE FACILITIES
cmoore@wwfi.com



1375 E. Woodfield Rd. Suite 720
 Schaumburg, IL 60173
 (949) 255-4852
 (415) 956-1718 FAX
 Sheiden@navg.com

REC'D
 MAY 08
 ASHBURN

May 4, 2015

Ashburn & Mason, PC
 Attn: Jeffrey W. Robinson
 1227 West 9th Avenue
 Suite 200
 Anchorage, AL 99501

Re: Case Name: Alaska Building
Venue: Anchorage, Alaska

Insurer: Navigators Specialty Insurance Company
Policy: LA13CGL019145-01 **Effective:** 01/01/14-01/01/15

Insurer: Navigators Specialty Insurance Company
Policy: SF14EXC768845IC **Effective:** 01/01/14-01/01/15

Insurer: Navigators Specialty Insurance Company
Policy: LA13CGL019145-01 **Effective:** 01/01/13-01/01/14

Insurer: Navigators Specialty Insurance Company
Policy: SF13EXC768845IC **Effective:** 01/01/13-01/01/14

Insured: Criterion General, Inc.
Navigators Claim: CGL262968

Dear Mr. Robinson:

As you know, Navigators Specialty Insurance Company ("Navigators") is in the process of investigating the above-referenced claim.

This serves to acknowledge your receipt email as to the above captioned matter and our requests for additional information. We acknowledge your points made but advise that we will be unable to make a final coverage decision as to the additional insured tender until we are provided the following:

- Coverage is for resultant damage from on-going operations only. Damage would have to occur to property other than the insured's work, during construction to trigger coverage. If and/or when available, kindly provide any evidence of damages being alleged as arising from our insured's ongoing operations during our policy terms as noted above;
- Any other information that you believe will assist us in our coverage investigation.

In the meantime, until this matter is fully concluded, the insurance company must continue to respectfully reserve all rights and defenses provided by the contract of insurance. No waiver or estoppel of any kind is intended nor should be inferred.

Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,



Sandra Klingbeil Heiden
Complex Claims Specialist
(949) 255-4852
Sheiden@navg.com

Jeffrey W. Robinson

From: Heiden, Sandra <SHeiden@navg.com>
Sent: Thursday, May 07, 2015 9:11 AM
To: Jeffrey W. Robinson
Subject: RE: ABI case

I'm working on it, will get back to you soon. Thanks.

From: Jeffrey W. Robinson [mailto:jeffrey@anchorlaw.com]
Sent: Thursday, May 07, 2015 10:10 AM
To: Heiden, Sandra
Subject: FW: ABI case

From: Jeffrey W. Robinson
Sent: Friday, May 01, 2015 1:31 PM
To: 'sheiden@navg.com'
Subject: FW: ABI case

Ms. Heiden:

Could you kindly follow up with me regarding the status of 716's tender? I have attached a history of our communications and a letter from Mark Scheer, Criterion's counsel in the ABI suit.

Thanks you,

JWR

Donald W. McClintock

From: Jeffrey W. Robinson
Sent: Thursday, June 04, 2015 8:32 AM
To: 'Heiden, Sandra'
Subject: RE: Correspondence from Navigators Insurance 10708.101 CGL262968

Thank you for the update.

From: Heiden, Sandra [mailto:SHeiden@navg.com]
Sent: Thursday, June 04, 2015 8:26 AM
To: Jeffrey W. Robinson
Cc: sfcimsfiling
Subject: RE: Correspondence from Navigators Insurance 10708.101 CGL262968

I am in the process of obtaining formal approval. Thank you for your patience.

From: Jeffrey W. Robinson [mailto:jeffrey@anchorlaw.com]
Sent: Tuesday, June 02, 2015 2:54 PM
To: Heiden, Sandra
Subject: FW: Correspondence from Navigators Insurance 10708.101

I await your coverage decision.

From: Jeffrey W. Robinson
Sent: Friday, May 22, 2015 4:02 PM
To: 'Heiden, Sandra'
Subject: RE: Correspondence from Navigators Insurance 10708.101

I await your update. Thank you,

JWR

From: Jeffrey W. Robinson
Sent: Monday, May 11, 2015 9:10 AM
To: 'Heiden, Sandra'
Subject: RE: Correspondence from Navigators Insurance 10708.101

Thanks. When is a decision expected? Who is making the decision? Can you supply me with the policies I requested.

JWR

From: Heiden, Sandra [mailto:SHeiden@navg.com]
Sent: Monday, May 11, 2015 9:08 AM
To: Jeffrey W. Robinson
Subject: RE: Correspondence from Navigators Insurance 10708.101

Please understand the final decision on this is not mine and things are in the works. Thank you.

From: Jeffrey W. Robinson [mailto:jeffrey@anchorlaw.com]
Sent: Monday, May 11, 2015 10:00 AM
To: Heiden, Sandra
Subject: FW: Correspondence from Navigators Insurance 10708.101

Ms. Heiden:

I hope that after you review the attached, you will conclude that damage arose from the ongoing operations while Criterion General was on the jobsite. Gottstein's major complaint is that there was serious damage to the party wall arising out of the demolition of the former building at the subject property and in the course of constructing footings for the foundation of the subject property. He alleges that there may have also been additional damage to The Alaska Building due to improperly attempting to tie-in the subject property to the party wall. He's arguing that due to the improper methods of construction and improper supervision of the construction work by Criterion, many portions of The Alaska Building settled as much as if not more than ½ to one inch. His complaints of damage arising from the ongoing operations are numerous. If you want to call me, I could walk you the specifics of his bullet points and photos, which shows the timing of alleged damages to events during construction of the project. If you need additional information, please let me know? Mr. Gottstein took a video of the Alaska Building prior to construction. I can get that to you as well.

This damage would have occurred and have arisen out of the ongoing operations of Criterion during Navigators policy period and, accordingly, 716 West Fourth Avenue LLC's Additional Insured status falls squarely into the coverage afforded by Navigators under such an endorsement. Here, the known facts provided to you via the attached, and through additional information you have reviewed, meet the requirements for Navigators to afford 716 West Fourth Ave LLC with Additional Insured status. As such, there should be no question that you should be defending 716 West Fourth Ave LLC as an Additional Insured pursuant to the terms of the contract. I am hopeful that you will prudently and timely follow up and do the right thing, and as I said, I would be happy to follow up over the phone.

Thanks,

JWR

From: Jeffrey W. Robinson
Sent: Friday, May 08, 2015 3:24 PM
To: 'Heiden, Sandra'
Subject: FW: Correspondence from Navigators Insurance 10708.101

Please see Gottstein's original claim letter, which I believe you may already have.

JWR

From: Jeffrey W. Robinson
Sent: Friday, May 08, 2015 2:40 PM
To: 'Heiden, Sandra'
Subject: FW: Correspondence from Navigators Insurance 10708.101

Ms. Heiden:

Can you please clarify what you mean by:

Coverage is for resultant damage from on-going operations only. Damage would have to occur to property other than the insured's work, during construction trigger coverage. If/and or when available, kindly provide any evidence of damages being alleged as arising from our insured's ongoing operations during our policy terms.

Also, please provide me with the policy terms you cited at the beginning of your letter.

Thank you,

JWR

From: Heidi A. Wyckoff
Sent: Friday, May 08, 2015 2:18 PM
To: Jeffrey W. Robinson
Subject: Correspondence from Navigators Insurance 10708.101

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

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NOTICE OF DEFICIENT FILING(S)

FROM:

Alaska Court System
Nesbett Courthouse
825 W 4th Ave
Anchorage, AK 99501

DATE: August 26, 2015

CASE NO: 3AN-15-05969CI

CASE Alaska Building Inc vs. 716 West

NAME: Fourth Avenue LLC et al

CLERK: Civil Legal Tech

PHONE: 264-0441

TO:

JAMES B. GOTTSTEIN
406 'G' STREET, SUITE 206
ANCHORAGE, AK 99501

Your documents are being returned to you.

The document(s) you submitted to the court is/are deficient. Please provide the following:

- OTHER: Your Second Amended Complaint that was filed on 8-25-2015 has been LODGED. Please file a motion to amend complaint for the second time.**

Deficiencies must be corrected within 20 calendar days from the date of this notice.

DISREGARD

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FILED
CLERK OF ALASKA
THIRD JUDICIAL DISTRICT

THIRD JUDICIAL DISTRICT AT ANCHORAGE

PH 3:42

ALASKA BUILDING, INC., an Alaska corporation,

Plaintiff,

Vs.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC.,
d/b/a KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

CLERK TRIAL COURTS

Case No.: 3AN-15-05969CI

**MOTION FOR ORDER OF DISMISSAL WITH PREJUDICE OF
DEFENDANT CRITERION GENERAL, INC.**

COMES NOW Defendant Criterion General, Inc. ("Criterion") and Plaintiff Alaska Building, Inc., through their respective undersigned counsel, and hereby move this court for an Order dismissing with prejudice all claims against Criterion pursuant to Alaska R. Civ. P. 41(a)(2).

Plaintiff and Criterion have reached a settlement as to all of plaintiff's claims against Criterion. Plaintiff has agreed to dismiss with prejudice all of the claims it has asserted or could have asserted against Criterion in this case, as well as all claims against any other party arising from any alleged vicarious liability for any act committed by Criterion with respect to the subject matter of this case. No other party has asserted any claims against Criterion.

MOTION TO DISMISS RE DEFENDANT CRITERION GENERAL, INC.

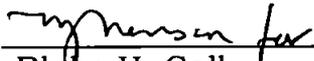
ABI v. Criterion et al., 3AN-15-05969CI

Page 1 of 3

Plaintiff and Criterion therefore request that this enter the attached Order dismissing with prejudice all claims against Criterion in this case, with each party to bear its own attorney's fees and costs.

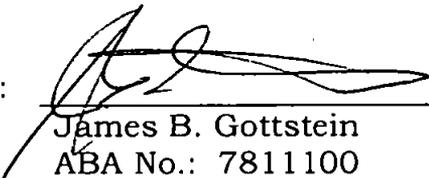
DATED at Anchorage, Alaska, this 13th day of August, 2015.

CALL & HANSON, P.C.
Attorneys for Defendant Criterion
General, Inc.

By: 
Blake H. Call
ABA No.: 8911051

DATED at Anchorage, Alaska, this 19th day of August, 2015.

LAW OFFICES OF JAMES B.
GOTTSTEIN
Attorneys for Plaintiff Alaska
Building, Inc.

By: 
James B. Gottstein
ABA No.: 7811100

CALL & HANSON, P.C.

413 G Street

Anchorage, Alaska 99501-2126

Phone (907) 258-8864 • Fax (907) 258-8865

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was

faxed hand delivered and/or
 mailed this 19th day of August, 2015 to:

James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501

Jeffrey W. Robinson
Asburn & Mason
1227 W. 9th Ave., Suite 200
Anchorage, AK 99501

Daniel T. Quinn
Richmond & Quinn
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Cynthia Ducey
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510 L Street, Suite 500
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Mark P. Scheer (emailed)
Scheer & Zehnder
701 Pike Street, Suite 2200
Seattle, WA 98101



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,
KOONCE PFEFFER BETTIS, INC.,
d/b/a KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

**ORDER DISMISSING WITH PREJUDICE ALL CLAIMS AGAINST
DEFENDANT CRITERION GENERAL, INC.**

This Court having considered the joint Motion for Order of Dismissal
With Prejudice of Defendant Criterion General, Inc. filed by plaintiff Alaska
Building, Inc. and defendant Criterion General, Inc. ("Criterion"), any
Oppositions and Replies with respect thereto, and being fully advised,

IT IS HEREBY ORDERED that the motion is GRANTED. In view of the
settlement between plaintiff and Criterion, and there being no just reason
for delay, all claims against Criterion are hereby DISMISSED WITH
PREJUDICE pursuant to Alaska R. Civ. P. 41(a)(2), and Criterion is hereby
dismissed as a party to this case, each party to bear its own attorney's fees
and costs.

ORDER DISMISSING WITH PREJUDICE ALL CLAIMS AGAINST DEFENDANT CRITERION
GENERAL, INC.

ABI v. Criterion et al., 3AN-15-05969CI

Page 1 of 2

CALL & HANSON, P.C.

413 G Street

Anchorage, Alaska 99501-2126

Phone (907) 258-8864 • Fax (907) 258-8865

AUG 19 2015

000663

DATED at Anchorage, Alaska this _____ day of _____, 2015.

NOT USED

PATRICK J. MCKAY
JUDGE OF THE SUPERIOR COURT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was
 faxed hand delivered and/or
 mailed this 19th day of August, 2015 to:

James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501

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Seattle, WA 98101



ORDER DISMISSING WITH PREJUDICE ALL CLAIMS AGAINST DEFENDANT CRITERION GENERAL, INC.

ABI v. Criterion et al., 3AN-15-05969CI

Page 2 of 2

CALL & HANSON, P.C.

413 G Street
Anchorage, Alaska 99501-2126
Phone (907) 258-8864 • Fax (907) 258-8865

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

ALASKA BUILDING, INC., an Alaskan)
corporation,)
Plaintiff,)
v.)
716 WEST FOURTH AVENUE, LLC,)
KOONCE PFEFFER BETTIS, INC.,) Case No. 3AN-15-05969 CI
D/B/A/ KP ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)
Defendants.)

ORDER

An oral argument was held August 18, 2015. At issue at were the following motions: Legislative Affairs Agency's Motion to Dismiss or, in the alternative, to Sever Claims for Misjoinder, filed by Legislative Affairs Agency "LAA" on May 27, 2015; and Motion to Dismiss Count I, filed by 716 West Fourth Avenue, LLC "716" on June 23, 2015.

ISSUES PRESENTED

1. Does Alaska Building, Inc., "ABI", lack standing to bring the claims presented in Count One?
2. Are Counts One and Count Two severable due to a misjoinder?

LEGAL STANDARD

Lack of jurisdiction over the subject matter is a complete defense to any claim in law or equity.¹ Unlike other defenses, it is not subject to waiver, but may instead be raised at any

¹ Civ. R. 12(b)(1).

time.² The rule states that “[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter[,] the court shall dismiss the action.”³

Misjoinder of parties is not ground for dismissal of an action.⁴ Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just.⁵ Any claim against a party may be severed and proceeded with separately.⁶

ANALYSIS

Standing:

Standing questions are limited to whether the litigant is a proper party to request an adjudication of a particular issue.⁷ Standing in our state courts is not a constitutional doctrine; rather, it is a rule of judicial self-restraint based on the principle that courts should not resolve abstract questions or issue advisory opinions.⁸ The basic requirement for standing in Alaska is adversity.⁹ The concept of standing has been interpreted broadly in Alaska.¹⁰ Alaska has departed from a restrictive interpretation of the standing requirement, adopting instead an approach favoring increased accessibility to judicial forums.¹¹ There are two different kinds of standing: interest-injury standing and taxpayer-citizen standing.

² Civ. R. 12(h)(3).

³ *Id.*

⁴ Civ. R. 21.

⁵ *Id.*

⁶ *Id.*

⁷ *Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987) (internal citations omitted).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Under the interest-injury approach, a plaintiff must have an interest adversely affected by the conduct complained of.¹² Such an interest may be economic, or it may be intangible, such as an aesthetic or environmental interest.¹³ The degree of injury to the interest need not be great; the basic idea is that an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation.¹⁴

ABI, despite arguing otherwise,¹⁵ clearly has no interest-injury standing for the claims contained within Count One. ABI is not a party to the lease and was not involved in the process of negotiation or formation of the lease. ABI does not have a personal interest adversely affected by the formation of the lease.

The Court next addresses taxpayer-citizen standing. The Supreme Court in *Trustees for Alaska v. State* stated:

In our view, taxpayer-citizen standing cannot be claimed in all cases as a matter of right. Rather, each case must be examined to determine if several criteria have been met. First, the case in question must be one of public significance. One measure of significance may be that specific constitutional limitations are at issue, as in *Carpenter and Lewis*. That is not an exclusive measure of significance, however, as statutory and common law questions may also be very important. Second, the plaintiff must be appropriate in several respects. For example, standing may be denied if there is a plaintiff more directly affected by the challenged conduct in question who has or is likely to bring suit. The same is true if there is no true adversity of interest, such as a sham plaintiff whose intent is to lose the lawsuit and thus create judicial precedent upholding the challenged action. Further, standing may be denied if the plaintiff appears to be incapable, for

¹² *Id.* See also *Kanuk ex rel. Kanuk v. State, Dep't of Natural Res.*, 335 P.3d 1088, 1092 (Alaska 2014) ("The plaintiffs here claim interest-injury standing, which means they must show a 'sufficient personal stake in the outcome of the controversy to ensure the requisite adversity.'").

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Plaintiff's Opposition to Legislative Affairs Agency's Motion to Dismiss or, in the alternative, to Sever Claims for Misjoinder, page 4 ¶3 (June 12, 2015) ("With respect to Count One, the illegality of the LIO Lease, ABI is seeking 10% of any savings and this is a sufficient interest for standing purposes."). This Court would note that this rather novel claim is not an issue presently before the Court, but the Court does not find enough credence in the claim to grant interest-injury standing.

economic or other reasons, of competently advocating the position it has asserted.¹⁶

The controlling inquiry in . . . all standing cases, is whether the plaintiff had a sufficient personal stake in the outcome of the controversy.¹⁷ An important consideration is the magnitude of the transaction and its potential economic impact on the State.¹⁸ This inquiry must turn on the facts of each case.¹⁹

The Supreme Court's decision in *Ruckle v. Anchorage School Dist.*²⁰ was particularly helpful in determining the appropriateness of a plaintiff. In that case, a taxpayer brought action for declaratory and injunctive relief against city school district and state Department of Education challenging the bidding process for school bus transportation contracts. While the plaintiff, brought claims seeking only declaratory and injunctive relief, another entity, Laidlaw, had previously brought suit for substantially the same issues but requesting monetary damages. The defendant in *Ruckle* held the position that the plaintiff could be an appropriate plaintiff and achieve standing based on taxpayer-citizen status, but *not at the same time* as a more appropriate plaintiff who maintained a separate suit.²¹ The Supreme Court found this analysis compelling.²² Furthermore, the Supreme Court stated that several "cases do support the proposition that taxpayer-citizens have standing to challenge the results of public bidding systems."²³

¹⁶ *Id.* (Internal citations omitted).

¹⁷ *Hoblitt v. Comm'r of Natural Res.*, 678 P.2d 1337, 1341 (Alaska 1984).

¹⁸ *Id.* Quoting *State v. Lewis*, 559 P.2d 630, 635 (Alaska 1977).

¹⁹ *Id.* Quoting *Flast v. Cohen*, 392 U.S. 83, 101 (1968).

²⁰ 85 P.3d 1030, 1036 (Alaska 2004).

²¹ *Id.* (Emphasis added).

²² *Id.* at 1037.

²³ *Id.* ("See, e.g., *Ewy v. Sturtevant*, 962 P.2d 991, 995 (Colo.App.1998) (stating that "[t]he public bidding process, however, is for the protection of the public, not the bidders" and as such "bidders [] have no standing to challenge the propriety of an award of a public contract to another bidder"); *Black Ash Servs., Inc. v. DuBois Area Sch. Dist.*, 764 A.2d 672, 674 (Pa.Comm. Ct.2000) (holding that "mere disappointed bidder to a public contract does not have standing to challenge its award" and requiring that "[t]o have standing, the bidder must be an aggrieved taxpayer of the municipality awarding the contract"); *On-Point Tech. Sys., Inc. v. Commonwealth*, 753 A.2d 911, 914 (Pa.Comm. Ct.2000) (distinguishing between action brought by disappointed bidder against state under Procurement Code and one filed by taxpayer in equity); *Sloan v. Sch. Dist.*, 342 S.C. 515, 537 S.E.2d 299, 303 (App.2000) (stating that "[t]he taxpayers of Greenville County have a

*Keller*²⁴ differs slightly from *Ruckle*, as it deals with plaintiffs bringing suit on behalf of another potential plaintiff. Five state legislators sued two other legislators, a permanent legislative committee, and the independent investigator, alleging a state constitutional “fair and just treatment clause” violation in a legislative investigation into governor's dismissal of Public Safety Commissioner. When, then in office, Governor Palin dismissed the Public Safety Commissioner an investigation was initiated to determine whether any abuse of power or improper actions had occurred. The lawsuit was brought, not by Gov. Palin, but by five legislators not involved. The case was merged with another case brought by seven other state employees who were challenging subpoenas issued under the investigation.²⁵

The Supreme Court found that the plaintiffs were not “sham” plaintiffs and that they were capable of competently advocating their positions.²⁶ Despite this, the Court focused on the substantial question as to whether other persons who are more directly affected have sued or are likely to sue.²⁷ In addition to the seven legislators who opted not to join in the appeal, the Court found that Gov. Palin was more directly affected than the plaintiffs by the investigation and she was capable of bringing suit.²⁸ The Court stated that they would not “allow the use of taxpayer-citizen standing as a substitute for third-party standing.”²⁹

Again, in *Law Project for Psychiatric Rights, Inc. v. State*,³⁰ a plaintiff attempted to bring suit on behalf of a violation of the rights of a third party. A non-profit public interest law firm filed suit in its own name against the State of Alaska seeking to establish constitutional

direct interest in the proper use and allocation of tax receipts by the District” and therefore may challenge “the District's failure to abide by the competitive sealed bidding requirements in its procurement code”). *Id.* at 1035 n. 19.

²⁴ *Keller v. French*, 2050 P.3d 299 (Alaska 2009).

²⁵ The seven plaintiffs challenging subpoenas did not join in the appeal after their complaint was dismissed as a non-justiciable political question. *Id.* at 301.

²⁶ *Id.* at 302. (The Court further assumed, “without deciding, that an alleged violation of the fair and just treatment clause is a matter of public significance.”).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 304. (The Court also stated there is no precedent in Alaska to allow plaintiffs to assert the individual rights of potential or ‘imaginary’ third parties.)

³⁰ 239 P.3d 1252 (Alaska 2010).

standards that must be met before compelling minors to take psychotropic medications. LPPR claimed administering psychotropic medication to children without their consent constitutes involuntary medicating and "infringes upon [the children's] fundamental constitutional rights."³¹ Before the Alaska Supreme Court, LPPR conceded that the constitutional right it sought to establish was an individual right.³² The Court noted that "*Keller* is indistinguishable from the situation here."³³ The Court concluded that "an individual (or group) directly affected by the State's administration of psychotropic drugs to minors would be the appropriate litigant."³⁴

In the current matter, the facts are more similar to *Ruckle* than to *Keller* or *Law Project*. The rights asserted to be violated are not individual rights but rather a citizen's right to challenge the potentially excessive state expenditures of public funds. There is no substitution of third party rights in this case.

Each instance of taxpayer-citizen standing must be evaluated on a case by case basis. First, the value of the lease at issue is significant, implicating millions of dollars in state funds over the course of many years. The first measure of taxpayer-citizen standing seems unambiguous. The same holds true of the final measure, as ABI seems to be completely capable of competently advocating the position it has asserted. Plaintiff is represented by competent counsel who has vociferously presented plaintiff's position.

The question of whether ABI is an appropriate plaintiff is the only measure of taxpayer-citizen standing that requires further analysis by the Court. The Court is not aware of any other plaintiff who has brought suit on the same issue or is likely to bring suit. However, the existence of such potential plaintiffs seems undisputed. Not only are the parties to the lease more appropriate, but even alternative parties that were excluded from the hypothetical bidding process would have a more direct claim to challenge the lease as opposed to ABI.

³¹ *Id.* at 1254. (It was noted before the Superior Court that "LPPR failed to 'identify a single individual who has been harmed by the alleged violations.'")

³² *Id.* at 1255.

³³ *Id.* ("LPPR seeks to establish a personal constitutional right on behalf of an unknown number of minors through citizen-taxpayer standing.")

³⁴ *Id.* at 1256.

However, just because a more appropriate plaintiff may exist does not require this Court to find that ABI is not an appropriate plaintiff.³⁵ To hold matters of public concern in abeyance until a perfect plaintiff appears is at odds with the standard elucidated in *Trustees for Alaska* favoring "increased accessibility to judicial forums."³⁶ ABI does not appear to be a "sham" plaintiff or an otherwise inappropriate plaintiff. This Court finds that ABI has an interest in this matter as a taxpayer-citizen.

Misjoinder:

Alaska Civil Rule 21 "allows a court to drop misjoined parties on motion of any party or of its own initiative at any stage of the action."³⁷ This provision is "used by our courts to ensure that the real contestants in interest are before it."³⁸ This provision can be used to dismiss a claim or sever it from the main action.³⁹

The 9th Circuit has stated that a court, in its discretion, may sever the parties if the test from permissive joinder is not satisfied, so long as no substantial right will be prejudiced by the severance.⁴⁰ Rule 20(a) of the Federal Rules of Civil Procedure "permits the joinder of plaintiffs in one action if: (1) the plaintiffs assert any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences; and (2) there are common questions of law or fact."⁴¹ This is substantially similar to the language contained in Alaska's Civil Rule 20(a).⁴²

³⁵ See *Trustees for Alaska*, 736 P.2d at 330. ("In our view, the mere possibility that the Attorney General may sue does not mean that appellants are inappropriate plaintiffs.")

³⁶ *Id.* at 327.

³⁷ *Varilek v. City of Houston*, 104 P.3d 849, 852 (Alaska 2004) (internal citations omitted).

³⁸ *The First Nat'l Bank of Anchorage v. Tom Zawodny.*, 602 P.2d 1254, 1254 (Alaska 1979); see also *KOS v. Williams*, 616 P.2d 868, 869 (Alaska 1980).

³⁹ See generally *Aleut v. Rogers*, 619 P.2d 472, 473-74 (Alaska 1980).

⁴⁰ *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997).

⁴¹ *Id.*

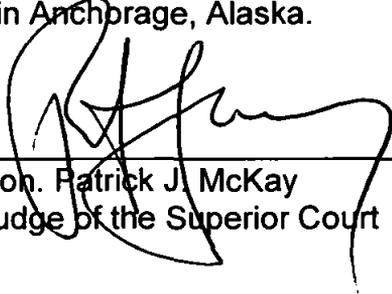
⁴² Alaska Civ. R. 20(a) states: "All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A

In the current matter, both ABI's Complaint⁴³ and Amended Complaint⁴⁴ fail to name any party other than LAA in Count One.⁴⁵ ABI also alleges that both Count One and Count Two, the claimed damage sustained by ABI's building, arise out of the lease signed by LAA and defendant 716.⁴⁶ It is not clear to this Court how the remaining defendants named in Count Two could be held liable for the claims in Count One. Thus, Count One should be severed from Count Two. Plaintiff shall file an amended complaint in this action as to the allegations in Count One. Plaintiff shall file a separate action, if desired, on the allegations in Count Two. The Court would waive the filing fee for the separate filing.

RULING

This Court finds that ABI has taxpayer-citizen standing required to bring the claims in Count One. Therefore, the Motions for Dismissal are DENIED. This Court further finds that the claims present in Count Two shall be SEVERED from the current matter and a new suit shall proceed separately.

ENTERED this 20th day of August, 2015, in Anchorage, Alaska.



Hon. Patrick J. McKay
Judge of the Superior Court

I certify that on 8/20/15
a copy of the above was mailed to each of
the following at their addresses of record:

J. Gattstein B. Call
J. Robinson M. Schaefer C. Lucey
D. Quinn B. Oudry
[Signature] Judicial Assistant

plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities."

⁴³ 17-22, March 31, 2015.

⁴⁴ 17-22, June 8, 2015.

⁴⁵ Plaintiff's Opposition, page 9, June 12, 2015, does state that damages against defendant 716 are sought as part of Count One as well.

⁴⁶ *Id.*

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

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

Plaintiffs,)
)
)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
 KOONCE PFEFFER BETTIS, INC., d/b/a)
 KPB ARCHITECTS, PFEFFER)
 DEVELOPMENT, LLC, LEGISLATIVE)
 AFFAIRS AGENCY, and CRITERION)
 GENERAL, INC.,)

Defendants. _____

[PROPOSED] ORDER GRANTING 716 WEST FOURTH AVENUE, LLC'S REQUEST FOR RULING, OR IN THE ALTERNATIVE REQUEST FOR CLARIFICATION

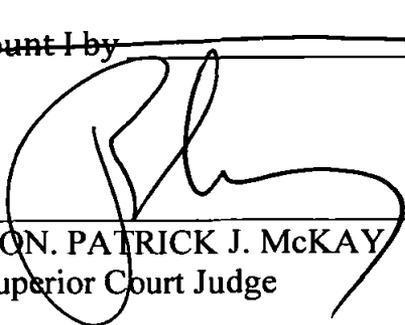
This Court, having reviewed 716 West Fourth Avenue, LLC's Request for Ruling, or in the Alternative Request for Clarification, and any oppositions and replies thereto, and being duly advised in the premises, hereby GRANTS the motion.

716 is joined as a party for oral argument on August 18, 2015 @ 2:30 p.m. regarding plaintiff's standing to sue under Count I. ~~Alternatively, the parties can expect a decision on 716's motion to dismiss Count I by~~

DATED this 17th day of August, 2015.

I hereby file on 8/17/15 a copy of this document with the clerk and deliver

J. Gottstein
G. Robinson
D. Quinn *K. Cuddy*
B. Call *C. Sweeney*
M. Schen


 HON. PATRICK J. McKAY
 Superior Court Judge

|| 28 2015

JUL 28 2015

ASHBURN & MASON P.C.
 LAWYERS

1227 WEST 9TH AVENUE, SUITE 200
 ANCHORAGE, ALASKA 99501
 TEL 907.276.4331 • FAX 907.277.8235

①



CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 28 day of July 2015, on:

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ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

[PROPOSED] ORDER GRANTING REQUEST FOR RULING, OR IN THE ALTERNATIVE REQUEST FOR CLARIFICATION

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

{10708-101-00280137;1}

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2015 JUL 28 PM 3:32

THIRD JUDICIAL DISTRICT AT ANCHORAGE

CLERK

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

Plaintiffs,)

vs.)

BY: _____
DEPUTY CLERK

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

716 WEST FOURTH AVENUE, LLC'S REQUEST FOR RULING, OR IN THE ALTERNATIVE, REQUEST FOR CLARIFICATION

COMES NOW, Defendant, 716 West Fourth Avenue, and hereby requests that the court rule on whether 716 West Fourth Avenue, LLC ("716") will be participating as a party in the August 18, 2015 oral argument.

Plaintiff requested oral argument on the Legislative Affairs Agency's Motion to Dismiss, or, in the Alternative, to Sever Claims. On June 24, 2015, the Court scheduled argument between these two parties for August 18, 2015.¹ 716 moved similarly moved to dismiss on standing grounds and briefing on this issue is now complete. To date neither party has requested oral argument on this motion. In an order issued on July 17, 2015, this Court granted 716's request for additional time to answer plaintiff's motion

¹ See Order dated 6/24/15.

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d

for partial summary judgment (not extension), indicating that plaintiff's motion on that issue shall be held in abeyance until "8/18/18 – the date of oral argument on motion to dismiss" while simultaneously ruling that 716 had no obligation to respond if Count I was disposed due to Plaintiff's lack of standing.² This ruling arguably infers that 716 shall also be heard on the standing issue at the August 18, 2015 hearing if the court has not disposed of the case by then.

In its sole discretion, and in the event that the Court does not intend to rule on the merits of 716's motion to dismiss prior to August 18, 2015, 716 formally requests under Civil Rule 77(e)(2) that it be afforded status to participate in the August 18, 2015 oral argument on standing.

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

DATED: 7-28-15

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

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² See order dated 7/17/15.

REQUEST FOR RULING, OR IN THE ALTERATIVE, REQUEST FOR CLARIFICATION
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
 facsimile U.S. Mail on the 28 day of July 2015, on:

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REQUEST FOR RULING, OR IN THE ALTERNATIVE, REQUEST FOR CLARIFICATION
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

{10708-101-00279913;1}

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

STATE OF ALASKA
THIRD DISTRICT
2015 JUN 25 PM 4:48
CLERK

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

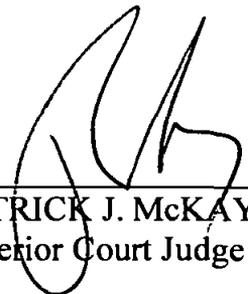
Defendants.

[PROPOSED] ORDER ACCEPTING CHANGE TO PAGE 3, FOOTNOTE 4 OF 716'S NOTICE OF ERRATA AND CORRECTION TO ITS REQUEST FOR ADDITIONAL TIME TO ANSWER PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)

Having considered 716 West Fourth Avenue, LLC's ("Defendant") Notice of Errata and Correction, and any opposition or reply thereto, This COURT, finds and ORDERS as follows:

The proposed change to footnote 4 of paragraph 3 shall be ACCEPTED, and "Exhibit A" shall replace the originally filed page.

DATED this 17th day of July, 2015.


PATRICK J. McKAY
Superior Court Judge

I certify that on 7/17/15 a copy of the following was mailed/ faxed/ hand-delivered to each of the following at their addresses of record.

James Gotsfeld / Jeffrey Robinson
Daniel Quinn / Blake Call / Mark Scheer
Kevin Cuddy / Cynthia Ducey
Administrative Assistant da

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ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

[PROPOSED] ORDER ACCEPTING CHANGE
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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

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

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

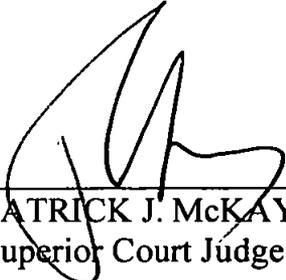
716 WEST FOURTH AVENUE LLC,)
 KOONCE PFEFFER BETTIS, INC., d/b/a)
 KP ARCHITECTS, PFEFFER)
 DEVELOPMENT, LLC, LEGISLATIVE)
 AFFAIRS AGENCY, and CRITERION)
 GENERAL, INC.,)

Defendants.

**[PROPOSED] ORDER GRANTING 716'S REQUEST FOR ADDITIONAL TIME
 TO ANSWER PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
 (NOT EXTENSION)**

716 West Fourth Avenue, LLC's ("Defendant") Request for Additional Time to Answer Plaintiff's Motion for Partial Summary Judgment (Not Extension) is GRANTED. Plaintiff's motion shall be held in abeyance until ^{8/18/15 - the} ~~at least 20 days after~~ *date of oral argument or motion to dismiss.* April 11, 2016 or until this Court otherwise deems appropriate. 716 shall be under no obligation to respond to Plaintiff's motion should the court dispose of Count I due to Plaintiff's lack of standing.

DATED this ^{17th} day of July, 2015.


 PATRICK J. MCKAY
 Superior Court Judge

I certify that on 7/17/15 a copy of the following was ~~mailed~~ filed/ faxed/ hand-delivered to each of the following at their addresses of record. James Gofstein/Jeffrey Robinson
Daniel Quinn/Blake Call/Mark Scherer
Kevin Cuddy/Cynthia Ducey
 Administrative Assistant KA

JUN 23 2015

ASHBURN & MASON P.C.

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CERTIFICATE OF SERVICE

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ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

[PROPOSED] ORDER GRANTING REQUEST FOR ADDITIONAL TIME
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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

FILED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT
2015 JUL -2 AM 11:14
CLERK TRIAL COURTS
BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, et al.,

Defendants.

Case No. 3AN-15-05969CI

**REQUEST FOR ORAL ARGUMENT
(Motion for Partial Summary Judgment)**

Plaintiff, Alaska Building, Inc., requests oral argument on Plaintiff's Motion for Partial Summary Judgment (Not Extension), filed June 12, 2015, the granting of which is non-discretionary under Civil Rule 77(e)(2).

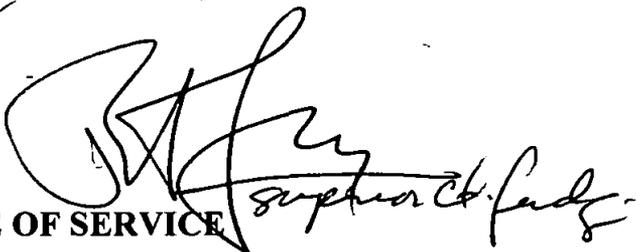
Dated July 2, 2015.

ORDER 

James B. Gottstein, ABA # 7811100

7/17/15

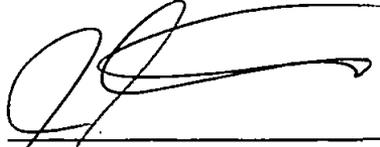
DENIED


Superior Ct. Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof to Kevin M. Cuddy, Jeffrey W. Robinson/Eva R. Gardner, Blake Call, Mark Scheer, Daniel T. Quinn, and Cynthia L. Ducey.

Dated July 2, 2015.



Jim Gottstein

I certify that on 7/17/15 a copy of the following was mailed/ faxed/ hand-delivered to each of the following at their addresses of record: James Gottstein / Jeffrey Robinson / Daniel Quinn / Blake Call / Mark Scheer / Kevin Cuddy / Cynthia Ducey
Administrative Assistant Ku

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2015 JUL 15 PM 1:13

THIRD JUDICIAL DISTRICT AT ANCHORAGE

CLERK TRIAL COURTS

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiffs,)

vs.)

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

BY: _____
DEPUTY CLERK

Case No.: 3AN-15-05969 Civil

**REPLY TO ABI'S OPPOSITION TO 716 WEST
FOURTH AVENUE, LLC'S MOTION TO DISMISS COUNT I**

716 West Fourth Avenue, LLC ("716") files this reply to Plaintiff's Opposition to 716's Motion to Dismiss Count I. As explained in 716's Motion to Dismiss and reiterated below, Plaintiff ("ABI") has no interest-injury standing because it has not been harmed by the lease at issue. Nor does ABI have citizen-taxpayer standing, as it is not the appropriate plaintiff to litigate the legality of the lease.

I. Plaintiff Does not have Interest-Injury Standing for Count I.

ABI argues its standing to sue under Count I arises from (1) its ability to sue for Count II related construction claims, and (2) ABI's "separate interest in its claim for 10% of any savings arising from a declaration that the LIO Lease is illegal under AS

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36.30.083(a).”¹ Neither claim has any merit.

As the Supreme Court of Alaska held in *Keller v. French*, a plaintiff lacks interest-injury standing when it alleges no plausible injury to its own interests.² In order to have standing, a Plaintiff must have “an interest which is adversely affected by the complained-of conduct.”³ ABI has thus far made generic arguments about “obvious corruption,”⁴ but has stated absolutely no plausible injury to *its own* interests by virtue of the lease agreement between 716 and the Agency.

First, the exhibit ABI attached to its opposition, an email (including attachments) dated January 23, 2015, evidences that ABI believes it was adversely affected not by the lease but rather by the “demolition and reconstruction project.”⁵ ABI complains of “substantial damage” including structural degradation to its building “as a result of [the demolition and reconstruction] project.”⁶ ABI cites an engineer who estimated that the physical damage to the Alaska building was approximately \$250,000.⁷ ABI’s exhibit also includes a summary of the alleged damage to the Alaska Building during the “Demolition and Reconstruction” project, as well as pictures demonstrating the alleged

¹ See Plaintiff’s Opposition to 716 LLC’s Motion to Dismiss Count 1 at 2.

² 205 P.3d 299, 305 (Alaska 2009).

³ *Id.* at 304 (quoting *Alaska for a Common Language, Inc. v. Kritz*, 3 P.3d 906, 915 (Alaska 2000)).

⁴ See Plaintiff’s Opposition to 716 LLC’s Motion to Dismiss Count 1 at 5.

⁵ See Plaintiff’s Opposition to 716 LLC’s Motion to Dismiss Count 1 Exhibit 1; 3-25.

⁶ *Id.*

⁷ *Id.*

damage.⁸

Any alleged damage to ABI's building would have been caused by the actual construction process; not from the *lease* between 716 and the Agency. Any argument advanced by ABI that the lease itself caused the alleged damage is nonsensical. Yet, ABI asks this court to bootstrap its ability to sue on construction related negligence claims in Count II into a cause of action to sue regarding the propriety of the lease in Count I. This is not allowed under Alaska law, as explained below.

Alaska uses the substantial factor test to determine causation in negligence actions.⁹ The test has been described as follows:

[T]he elements of proximate cause: [n]egligent conduct may be found to be the 'legal cause' of harm if the negligent act 'was more likely than not a substantial factor in bringing about [the] injury'

Normally, in order to satisfy the substantial factor test it must be shown *both* that the accident would not have happened 'but for' the defendant's negligence and that the negligent act was so important in bringing about the injury that reasonable men would regard it as a cause and attach responsibility to it.¹⁰

There is absolutely no causal link between the lease extension and the alleged negligent conduct in the Count II construction claims. Once again, ABI has neglected to articulate any recognizable harm from the alleged illegality of the lease. ABI's right to sue under Count II, where it has arguably alleged an

⁸ *Id.* at 3-25.

⁹ *Osborne v. Russell*, 669 P.2d 550, 555 (Alaska 1983).

¹⁰ *Gonzales v. Krueger*, 799 P.2d 1318, 1320 (Alaska 1990)(citations omitted); *see also* Alaska Civil Pattern Jury Instruction 3.07 (comments section).

REPLY TO OPPOSITION OF 716'S MOTION TO STAY DISCOVERY OF COUNT I
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

“identifiable trifle” with respect to the construction claim, does **not** entitle it to sue on another count under which it fails to state an actual injury.

ABI’s request for a windfall, which it describes as “10% of any savings” arising from the court’s declaration that the lease is “illegal,” is also not “a sufficient interest” to confer standing.¹¹ Standing is a “rule of judicial self-restraint”, and fundamentally requires adversity.¹² Count I is an undisguised attempt by ABI to engage this court in the judicial creation of a private whistle blower action with the goal of obtaining a large damages award. ABI has never alleged that it should be compensated for any alleged injury to *its interests* stemming from the lease, because there are no identifiable injuries to its interests. In the absence of an actual injury caused by the alleged illegality of the lease, Plaintiff does not have interest-injury standing to litigate Count I.

II. ABI does not have Citizen-Taxpayer Standing to litigate Count I.

ABI incorrectly asserts that 716 has conceded that this case presents a matter of public significance.¹³ In *Trustees for Alaska v. State*, the Alaska Supreme Court held that the case was one of public significance in that if the plaintiffs prevailed, the State would have to change its entire method of making state land available for mining.¹⁴ The plaintiffs, a coalition of environmental, Native, and fishing groups challenged the

¹¹ See Plaintiff’s Opposition to 716 LLC’s Motion to Dismiss Count 1 at 2.

¹² *Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987)(internal quotations omitted).

¹³ See Plaintiff’s Opposition to 716 LLC’s Motion to Dismiss Count 1.

¹⁴ *Trustees for Alaska v. State*, 736 P.2d 324 at 329.

REPLY TO OPPOSITION OF 716’S MOTION TO STAY DISCOVERY OF COUNT I
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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State's then-existing mineral leasing system, which potentially affected approximately 50,000 existing mining claims.¹⁵ Because the State was at risk of forfeiting extensive areas of state land to the federal government, it conceded public significance.¹⁶

Contrary to the plaintiffs in *Trustees*, here ABI has argued that the matter is of public significance because "corruption" motivated the execution of the lease:

That, as a result of corruption, the LIO Lease violates AS 36.30.083(a)'s requirements . . . addressing the corruption is a matter of public significance. The culture of corruption in state politics, represented by the participation in the corruption and acquiescence of those who should not have allowed it, is a matter of great public significance.¹⁷

ABI's inability to specify how 716 engaged in the unspecified acts of "corruption" it alleges were committed during the procurement process is fatal to its case against 716. ABI has failed to identify what it means by "corruption" and to specifically assert how 716 is in anyway involved in the Legislative Council's decisions to authorize the lease extension under AS 36.30.083. ABI has never suggested that 716 usurped the Legislature's authority to negotiate lease extensions, interfered with the lease process, or otherwise acted inappropriately in any way, shape or form. Instead, ABI's gripe is not against 716, the private landlord of the Legislative Information Office, but rather against unnamed "state officials" it believes are "ignoring the corruption."¹⁸ These accusations do not provide the Court with sufficient subject matter jurisdiction over

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 3.

¹⁸ See Plaintiff's Opposition to 716 LLC's Motion to Dismiss Count 1 at 5.

REPLY TO OPPOSITION OF 716'S MOTION TO STAY DISCOVERY OF COUNT I
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

ABI's claim.

Irrespective of whether the case is of public significance, ABI has failed to show itself to be an appropriate plaintiff to file suit, as required to establish citizen-taxpayer standing.¹⁹ ABI has not contended that an actual disappointed hypothetical bidder or any other potential plaintiff would be somehow limited in their ability to sue regarding the lease, but rather that “no other suit has been filed by anyone else.”²⁰ In *Keller v. French*, the Alaska Supreme Court rejected this exact argument: “[t]hat individuals who are more directly affected have chosen not to sue despite their ability to do so does not confer citizen-taxpayer standing on an inappropriate plaintiff.”²¹

The *Keller* Court compared other potential parties' claims with those of the actual *Keller* plaintiffs in order to establish “how indirectly, if at all” the investigation in question affected the *Keller* plaintiffs.²² There, the plaintiffs filed suit under the fair and just treatment clause in an action to enforce the constitution's protection.²³ The fair and just treatment clause of the state constitution was written to avoid certain excesses of abusive legislative and executive investigations, including “vilification, character assassination, and an intimation of guilt by association.”²⁴ The *Keller* Court identified possible appropriate plaintiffs, namely people who would be harmed by an investigation

¹⁹ *Keller v. French*, 205 P.3d 299, 303 (Alaska 2009).

²⁰ See Plaintiff's Opposition to 716 LLC's Motion to Dismiss Count 1 at 5.

²¹ *Keller v. French*, 205 P.3d at 303.

²² *Id.* at 303-304.

²³ *Id.* at 304.

²⁴ *Id.*

that was not “fair and just.” The Court then opined, “[b]ut there is no indication the Keller plaintiffs might personally be exposed to any such abuses of legislative power; they do not claim that they were potential witnesses or investigative targets, or that the investigation would somehow implicate them in Monegan's dismissal.”²⁵ Based on its analysis, the Court rejected the plaintiffs’ claim of citizen-taxpayer standing.

Like the *Keller* plaintiffs, ABI seeks to have the Court “confer citizen-taxpayer standing on an inappropriate plaintiff.”²⁶ Despite being given numerous opportunities to identify how *it* was affected by the Agency’s determination to extend its lease under AS 36.30.083, ABI has failed to do so. ABI has never indicated, because it would be untruthful for it to do so, that ABI would have competitively bid upon the lease had the Agency decided to open up the lease for competitive bidding. Nor has ABI identified what “obvious corruption” it perceives, how the procurement process affects its own interests, or a compelling rationale supporting why ABI is an appropriate plaintiff to bring suit on Claim I. ABI’s invitation to the Attorney General “or anyone else for that matter” to bring suit in exchange for dismissing its own claim does not cure ABI’s inappropriateness as a plaintiff. As repeatedly pointed out by 716, neither the proximity of the Anchorage Building to the LIO or ABI’s decision to bring forth unrelated construction claims (Count II) suffices to afford citizen-taxpayer status as to Count I.

²⁵ *Keller v. French*, 205 P.3d 299, 304 (Alaska 2009).

²⁶ *Id.* at 303.

III. Conclusion.

Count I should be dismissed in its entirety as ABI has failed to establish either interest-injury or citizen-taxpayer standing. Moreover, as explained *supra*, 716 had no involvement in the Agency's internal procurement procedure process and continues to remain wholly uninvolved with matters relating to AS 36.30.083(a). 716 therefore respectfully asks this Court dismiss Count I and vacate oral argument on this matter, rather than allow ABI yet another opportunity to repeat the same arguments over and over again.

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

DATED: _____

7-14-15

By: _____



Jeffrey W. Robinson
Alaska Bar No. 0805038

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REPLY TO OPPOSITION OF 716'S MOTION TO STAY DISCOVERY OF COUNT I
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

CERTIFICATE OF SERVICE

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ASHBURN & MASON

By: Annette R. Curtier, for
Heidi Wyckoff

REPLY TO OPPOSITION OF 716'S MOTION TO STAY DISCOVERY OF COUNT I
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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JUL 10 2015

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
By ALASKA Clerk of the Trial Courts Deputy

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.)

REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO STAY
PROCEEDINGS¹

716 West Fourth Avenue, LLC ("716") previously joined the Legislative Affairs Agency ("LAA") Motion to Stay Proceeding. Having reviewed LAA's Reply in support of Motion to Stay Proceedings, 716 agrees with the arguments set forth within that pleading and adopts and incorporates them in full to the extent they are not contrary to 716's Motion to Dismiss.²

A stay of proceedings while the Court addresses the threshold issue of standing will promote judicial economy and avoid the parties from engaging in needless litigation. As emphasized in 716's Motion to Stay Discovery and Rule 57(f) Request,

¹ 716 filed a request on June 30, 2015 to Extend Deadline for Responding to Motions. The Court denied expedited consideration on July 2, 2015, but the underlying extension request remains pending.

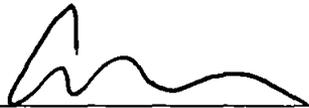
² See Reply in Support of Motion to Stay Proceedings at 4 (716 does challenge ABI's competency to bring forth its suit).

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ABI cannot show how a stay in proceedings pending resolution of the standing issue will cause it undue prejudice. The Court should grant a stay of proceedings in this matter until the issue of standing is decided.

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

DATED: 7/10/15

By: 
for Jeffrey W. Robinson
Alaska Bar No. 0805038

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REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO STAY PROCEEDINGS
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

{10708-101-00277359;1}

Page 2 of 3

000693

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via hand-delivery facsimile U.S. Mail on the 10th day of July 2015, on:

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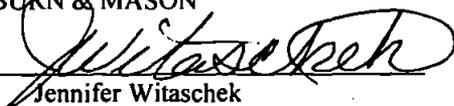
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{10708-101-00277359;1}

JUL 10 2015

By _____ Clerk of the Trial Courts
Deputy

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.)

REPLY TO PLAINTIFF'S OPPOSITION TO 716 WEST
FOURTH AVENUE, LLC'S MOTION TO STAY DISCOVERY OF COUNT I

ABI asserts that "716's Discovery Motion is confusing because on June 17, 2015, this Court granted a 45 day of discovery [sic] as to Count One pursuant to the motion of defendant Legislative Affairs Agency (Discovery Stay Order)."¹ The Court did grant a stay of discovery with respect to the *Legislative Affairs Agency's* ("LAA") motion. 716 was not a joined party to that motion. Therefore, this Court has never ruled on whether discovery relating to Count I of ABI's suit should be stayed with respect to 716.

ABI "objects to 716's Discovery Stay Motion on the same grounds as its June 8, 2015, Plaintiffs Opposition to Legislative Affairs Agency's Motion to Stay Discovery."² The Court already found ABI's reasoning to be unpersuasive, as exhibited by its June

¹ Plaintiff Opposition to 716's Motion to Stay Discovery of Count I at 1.

² *Id.* at 2.

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17 Order Granting Defendant Legislative Affairs Agency's Motion to Stay Discovery. 716's requested stay of discovery is even more compelling now, in light of the post-June 17th briefing surrounding ABI's lack of standing and LAA and 716's subsequent requests to stay proceedings.

716's previously stated reasons for staying discovery, as well as the reasons cited in the June 17th Order, including but not limited to, the pending dispositive standing disputes, the pending motion to stay proceeding, and the timeliness of this stay request all weigh in favor of granting 716 a stay of discovery as to Count I until the Motion to Dismiss Count I is decided.

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

DATED: 7/10/15

By: 
for Jeffrey W. Robinson
Alaska Bar No. 0805038

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REPLY TO PLAINTIFF'S OPPOSITION TO 716 WEST FOURTH AVENUE, LLC'S MOTION TO STAY
DISCOVERY OF COUNT I
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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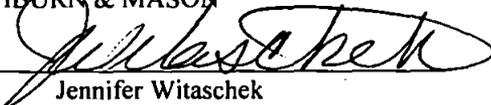
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DISCOVERY OF COUNT I
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE Filed in the Trial Courts
STATE OF ALASKA THIRD DISTRICT

JUL 10 2015

Clerk of the Trial Courts
By _____ Deputy

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

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

**REPLY TO PLAINTIFF'S OPPOSITION TO 716 WEST
FOURTH AVENUE, LLC'S CIVIL RULE 56(f) REQUEST FOR
ADDITIONAL TIME TO ANSWER PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT (NOT EXTENSION)**

Plaintiff Alaska Building, Inc. ("ABI") filed its Motion for Partial Summary Judgment a mere *four days* after its Amended Complaint was filed. As no meaningful discovery had yet occurred on the claims at issue, Defendant 716 West Fourth Avenue, LLC ("716") requested that this Court grant a routine Rule 56(f) continuance. ABI opposed 716's request on three grounds: (1) 716 allegedly failed to provide any reason justifying its Rule 56(f) request, (2) ABI believes 716 should be able to produce any facts related to the Motion for Partial Summary Judgment without a continuance, and (3) the State of Alaska would be prejudiced by an extension. Yet ABI's arguments suffer from a fatal flaw: they presume that ABI's preferred version of the facts—a

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version unsupported by any evidence, and which has not been verified in discovery—is correct. As explained below, many of ABI’s factual assumptions are already in dispute, and many more are subject to challenge through the discovery process. In light of this, entering judgment against 716 before formal discovery has even begun would be a violation of 716’s due process right to explore its claims and defenses in discovery.

I. DISCUSSION.

The Alaska Supreme Court has explained the purpose of Rule 56(f):

Our civil rules contemplate that dismissal motions will be filed early in litigation because they generally are decided on the pleadings; indeed, to expedite the resolution of litigation some dismissal motions may be filed before a pleading. Summary judgment motions, on the other hand, may require that parties spend considerable time and effort discovering and developing facts necessary for a full presentation[.]¹

For that reason, the Court has “repeatedly held that requests made under Rule 56(f) *should be granted freely* because Rule 56(f) provides a safeguard against premature grants of summary judgment.”²

ABI’s request for partial summary judgment is irredeemably premature. Not only has 716 filed dispositive motions on ABI’s lack of standing, with accompanying requests to stay proceedings and discovery, but 716 is diligently involved in the discovery process surrounding Count II, the construction count. The complexity of the legal and factual issues, the importance of the topic of litigation, and the numerous parties to this matter are all additional important reasons justifying a Rule 56(f) request.

¹ *Mitchell v. Teck Cominco Alaska Inc.*, 193 P.3d 751, 758 (Alaska 2008).

² *Id.* at 758 (emphasis added) (internal quotation marks and citations omitted).

REPLY TO OPPOSITION OF 716’S CIVIL RULE 56(f) REQUEST FOR ADDITIONAL TIME
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

Moreover, merely requesting a Rule 56(f) continuance does not require 716 to pre-litigate its opposition to any summary judgment motion, despite ABI's attempts to get the parties to do just that.³

A. 716 has articulated numerous adequate reasons justifying its Rule 56(f) request.

ABI argues 716 has not provided sufficient reasoning for why it is requesting relief under Rule 56(f). This is not the case. 716's Affidavit, filed with its initial motion, explains with specificity numerous reasons supporting its request. 716 once again addresses these points and responds to the additional points raised by ABI in its Opposition.

First, numerous material facts are clearly in dispute. ABI's Motion for Partial Summary Judgment is premised on the "legal conclusion that the lease for the new Anchorage Legislative Information Office (LIO Lease) does not extend a real property lease and is therefore illegal under AS 36.30.083(a)."⁴ ABI's argument is founded on four "facts" that it claims "cannot be genuinely disputed."⁵ However, these four "facts" are nothing more than ABI's interpretation of provisions cherry-picked from a lengthy, complex real property lease presented in isolation. To support them, ABI relies solely on the affidavit of James Gottstein. Under Alaska law, the self-serving affidavit testimony of a party to a contract, prepared during litigation, is not probative evidence

³ See *Munn v. Bristol Bay Housing Authority*, 777 P.2d 188, 193-4 (Alaska 1989)(Rule 56(f) affidavits not required to contain evidentiary facts going to merits of the case).

⁴ ABI's Opp. to 716's Rule 56(f) Request at 2-3.

⁵ *Id.* at 3.

of the meaning of contract terms; it follows that the self-serving affidavit testimony of a litigant who was *not* a party to the contract would be even less probative.⁶ Mr. Gottstein's conclusory affidavit testimony on the "undisputed facts" is not evidence that can be relied on by the Court on summary judgment.

Even if Mr. Gottstein's affidavit did constitute reliable evidence, it would not prevent ABI's "facts" from being very much in dispute. For example, ABI's assertion that the agreement called for a "new office building" rather than a remodel is contested by 716.⁷ 716's pleadings characterize the agreement as an expansion and renovation (or "remodel") of the LIO, in accordance with the terms of the lease at issue.⁸ ABI's Opposition is laden with other genuinely disputed factual issues connected to what it refers to as the "not extension" issue.⁹ Even ABI's own pleadings and briefing place some of its "undisputed facts" in dispute,¹⁰ and ABI has expressly admitted that factual

⁶ *Peterson v. Wirum*, 625 P.2d 866, 870 (Alaska 1981).

⁷ See ABI's Opp. to 716's Rule 56(f) Request at 3.

⁸ 716's Answer to Compl. at 3, ¶14; 716's Answer to Am. Compl. at 3, ¶14; see Aff. in Support of Pl.'s Mot. for Partial S.J. ("Plaintiff's Aff.") (Ex. 1 at 1 and 49).

⁹ See Opp. to 716 LLC Rule 56(f) Request at 6, FN 4. For instance, ABI claims that "[i]t was far more expensive to demolish the old Anchorage Legislative Information Office Building and the Anchor Pub and then construct a new building on the site than it would have been to just construct a new building," but offers no proof to back up such a claim. ABI likewise never establishes with specificity how the terms of the Lease Extension differ so drastically from the original lease as to prevent it from being an extension, as ABI asserts.

¹⁰ Plaintiff asks this court to find that the lease violates AS 36.30.083(a) because it "does not extend a real property lease," see Pl.'s Proposed Order Granting Mot. for Partial S.J., yet at the same time admits that whether rent paid by the Agency is proper under that statute "is a factual issue, unlikely to be resolvable on summary judgment." Plaintiff's Mem. in Support of Mot. for Partial S.J. at 2. Indeed, Plaintiff's claim that the rental rate "is at least twice the market rental value" is not only disputed, but wholly unfounded: to date, it has not been supported by any appraisal or other documentary evidence. See Amended Complaint ¶ 21

REPLY TO OPPOSITION OF 716'S CIVIL RULE 56(f) REQUEST FOR ADDITIONAL TIME
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

issues surround the lease agreement in this case.¹¹

The factual disagreements between the parties are both numerous and material, rendering summary judgment at this time inappropriate.

Second, summary judgment at this stage would be premature. ABI filed its Amended Complaint on June 8, 2015 and its partial summary judgment motion on June 12—a mere four days later. The purpose of discovery is to allow parties the opportunity to explore the strengths and weaknesses of their respective claims and defenses, and to enable the Court to render a decision on a full and fair record. Yet ABI is asking this Court to forego the entire discovery process and enter judgment based solely on the unproven allegations in ABI's complaint.

Although ABI asserts that 716's motion for Rule 56(f) relief "essentially seeks permission to be dilatory[,]” 716 has requested nothing of the sort.¹² 716 merely seeks to exercise its due process right—granted by the Civil Rules—to explore and challenge ABI's claims through the rule-mandated discovery process. The discovery period has only just begun; there are over *11 months* remaining before it closes.¹³ 716 is not aware of any rule or precedent that requires a party to complete discovery 11 months early, on penalty of having judgment entered against it. Rather, parties are entitled to use the full discovery period to explore their defenses and collect evidence.

¹¹ See Plaintiff's Mem. in Support of Mot. for Partial S.J. at 2.

¹² See Plaintiff's Opp. at 6, FN 3.

¹³ According to the Routine Pretrial Order, dated May 21, 2015, expert discovery is not set to conclude until June 20, 2016.

Third, extensive Alaska case law supports 716's request. Even ABI cites numerous cases that support 716's motion. In *Hymes v. Deramus*, a pro se litigant and his wife sued the Department of Corrections.¹⁴ The defendants moved for summary judgment six months later and included an affidavit from an expert. The trial court gave the plaintiffs a month to supplement their opposition with an expert medical affidavit. The Supreme Court found that this was not likely enough time given that the pro se litigant was incarcerated.¹⁵ In *Gamble v. Northshore Partnership*, the plaintiffs sued Northshore for reformation of a recorded easement in January of 1993.¹⁶ Northshore moved for summary judgment six days before the *close* of discovery and one and one-half months before trial.¹⁷ The Gambles were denied Rule 56(f) relief, and the Supreme Court reversed, concluding that the plaintiffs made an unambiguous request for a continuance with which to undertake additional discovery and that the request was warranted.¹⁸ Comparatively, ABI filed for summary judgment relief *four days* after filing the amended complaint and before discovery even formally began. 716, and evidently ABI, is unaware of any case where such a motion was granted.

Extensive material facts are in dispute; 716 has a due process right to conduct discovery before having judgment summarily entered against it; and Alaska law

¹⁴ *Hymes v. Deramus*, 119 P.3d 963 (Alaska 2005).

¹⁵ *Id.* at 967-68.

¹⁶ *Gamble v. Northshore Partnership*, 907 P.2d 477, 480 (Alaska 1985).

¹⁷ *Id.*

¹⁸ *Id.* at 486.

supports holding summary judgment motions in abeyance under Rule 56(f) while discovery runs its course. These reasons alone justify 716's motion.

B. 716 Does Not Have All Facts "Readily at Hand" and Intends to Pursue Substantial Discovery from the Agency.

716 cannot prepare a defense to ABI's Motion for Partial Summary Judgment without discovery. Without any supporting documentation or citation to evidence in the record, ABI asserts this Court should be "extremely skeptical" about a genuine material factual issue emerging.¹⁹ ABI's claims raise a multitude of issues ranging from the specific lease agreement at issue to the construction processes used to Alaska's procurement process. Every one of these issues requires discovery. Below, 716 details the scope and nature of some of the information that requires discovery, and which is material to the issues in ABI's summary judgment motion.

ABI continually asserts that the lease violated AS 36.30.083(a), but has, to date, ignored parts of the actual procurement process. In other pleadings, 716 has pointed out that the legislative council publishes its own procedures governing procurement.²⁰

ABI argues in its Opposition that 716 should be able to produce any facts related to the Motion for Partial Summary Judgment without a continuance. Unsurprisingly, information available to the Agency—a government entity—is not equally accessible to

¹⁹ Plaintiff's Opp. at 5. ABI's reliance on *Munn v. Bristol Bay Housing Authority* is misplaced: far from supporting ABI's position, that case expressly states that "Courts even have allowed parties *with no clear idea of what specific facts they hope to obtain* to overcome a summary judgment motion, at least temporarily," under Rule 56(f). *Munn*, 777 P.2d at 193 (emphasis added).

²⁰ See 716's Motion to Dismiss Count I at 10; see also AS 36.30.102.

716, a private landlord. Discovery is necessary for 716 to obtain relevant information regarding—among other facts—the Agency’s complex internal procurement process.²¹ If the court refuses to dismiss Count I of ABI’s suit on standing grounds, discovery on the Agency’s internal procurement process will be necessary. Presumably this information would include appraisals that were done in compliance with AS 36.30.080(a) or other relevant provisions of the Alaska Legislative Procurement Procedures. Certainly, the facts supporting the Agency’s written determination that the lease could be materially modified to incorporate the immediately adjacent property without procurement of a new lease are relevant discovery.²² Those facts are not available to 716 at this time.

As a matter of due process, 716 is entitled to conduct the discovery allowed by the Civil Rules, and under the timeframe provided by the Court’s scheduling order.

C. ABI’s Allegation Regarding Prejudice to the State Is a Red Herring.

ABI has been unable to say how it would be prejudiced by allowing the discovery period to run its course. Instead, it argues that any delay in considering the Motion for Partial Summary Judgment “will almost certainly prejudice the State of Alaska.”²³ This claim is apparently based on ABI’s unsupported assertion that “716, LLC is not likely to be able to pay back the rent it has improperly received.”²⁴ But, ABI

²¹ See Alaska Stat. Ann. § 36.30.020.

²² See LAA’s Opp. To Plaintiff’s Mtn. for Partial Summary Judgment (Not Extension) at 3.

²³ Plaintiff’s Opp. to 716 LLC Rule 56(f) Request at 6.

²⁴ See Mem. in Support of Mtn. for Partial S.J. (Not Extension).

is not an advocate for the State of Alaska. ABI has not been chosen to bring forward this claim on behalf of the State. The State has separate representation adverse to ABI. Once again, ABI is unable to articulate why it is an appropriate plaintiff to bring this suit or how its interests have been adversely affected by the lease.²⁵

II. CONCLUSION.

In light of the foregoing, 716 respectfully requests the Court grant its request for a Rule 56(f) continuance.²⁶

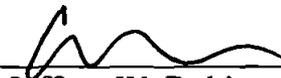
716 further respectfully submits that oral argument on the Motion for Partial Summary Judgment (as requested by ABI) would be a senseless exercise at this time. The evidentiary record is currently inadequate to support any ruling on the merits of that motion. The statements of counsel at oral argument will not be able to supplement the record, because the arguments of counsel are not evidence. As there is no conceivable utility to oral argument, 716 requests that oral argument on the underlying motion similarly be held in abeyance until the record is ripe for decision on the merits.

²⁵ Instead of describing any actual prejudice to its own interests, ABI makes wild speculations about 716's financial health, including the motivation for the formation of 716's corporate structure, and promulgates a new damages theory whereby 716 should now be held "liable for all of the rent paid to it under the LIO lease." *Id.* Again, it appears that ABI's sole purpose in participating in this litigation is to seek a personal windfall.

²⁶ In the alternative, to maintain an orderly docket, the Court could deny ABI's Motion for Partial Summary Judgment without prejudice to refile after the close of discovery. *See* Civil Rule 56(f) ("... the court may refuse the application for judgment or may order a continuance...").

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

DATED: 7/10/15

By: 
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Alaska Bar No. 0805038

CERTIFICATE OF SERVICE

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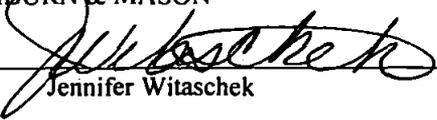
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REPLY TO OPPOSITION OF 716'S CIVIL RULE 56(f) REQUEST FOR ADDITIONAL TIME
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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

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Plaintiff,

v.

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KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

LEGISLATIVE AFFAIRS AGENCY'S REQUEST FOR ORAL ARGUMENT
(Motion to Stay Proceedings)

COMES NOW Defendant Legislative Affairs Agency, Inc., (the "Agency") by and through its undersigned counsel, and respectfully requests oral argument on its Motion to Stay Proceedings filed on June 15, 2015. The Agency brings this request for oral argument under Rule 77(e) of the Alaska Rules of Civil Procedure.

Currently, oral argument for the Agency's Motion to Dismiss or, in the Alternative, to Sever Claims, is scheduled for August 18, 2015, at 2:30 p.m. Argument is scheduled for one hour. Plaintiff Alaska Building, Inc., requested oral argument on its Motion for Summary Judgment, but no hearing has been set.

DATED: July 10, 2015.

STOEL RIVES LLP

By:  (0705011)

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

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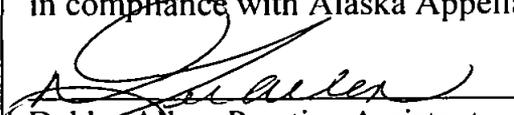
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THIRD DISTRICT
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RY: ~~REPUTY CLERK~~

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

**[PROPOSED] ORDER GRANTING REQUEST FOR ORAL ARGUMENT
(on Defendant Legislative Affairs Agency's Motion to Stay Proceedings)**

Upon request of Defendant Legislative Affairs Agency, Inc., (the "Agency") for oral argument on the Agency's Motion to Stay Proceedings and pursuant to Civil Rule 77(e), oral argument on the Agency's Motion to Stay Proceedings shall be held on

_____, 2015 at _____, __.m., in Courtroom 301, Nesbett
Courthouse, 825 W. 4th Avenue, Anchorage, Alaska.

DATED at Anchorage, Alaska this ___ day of July, 2015.

The Honorable PATRICK J. McKAY
Superior Court Judge

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on July 10, 2015, a true and correct copy of the foregoing was served via first class mail on:

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(Attorneys for Def/Criterion General, Inc.)

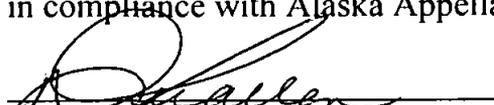
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I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).


Debby Allen, Practice Assistant

79497774.2 0081622-00003

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

2015 JUL 10 PM 3:44
CLERK TRIAL COURT

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska)
corporation,)
Plaintiff)
)
vs.)
)
716 WEST FOURTH AVENUE LLC, <i>et al.</i>)
)
Defendants.)

Case No. 3AN-15-05969CI

OPPOSITION TO 716 LLC'S MOTION TO DISMISS COUNT 1

Plaintiff Alaska Building, Inc., (ABI) opposes the Motion to Dismiss Count 1 filed by defendant 716 West Fourth Avenue LLC (716 Motion to Dismiss).

A. ABI Has Interest Injury Standing

There are two different bases for interest-injury standing with respect to Count One. One is based on injury to the Alaska Building, the second on the Alaska Building's interest in receiving 10% of any savings from a declaration that the LIO Lease¹ is illegal.

Under *Keller v. French*, 205P.3d 299, 304-305 (Alaska 2009):

To establish interest-injury standing plaintiffs must demonstrate that they have a "sufficient personal stake" in the outcome of the controversy and "an interest which is adversely affected by the complained-of conduct." The

¹ More particularly described as that certain contract, dated September 19, 2013, by and between defendant Legislative Affairs Agency and defendant 716 West Fourth Avenue LLC (716 LLC), titled "Extension of Lease and Lease Amendment No. 3, a true and correct copy of which is attached as Exhibit 1 to the June 12, 2015, Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment (Supporting Affidavit).

degree of the injury need not be great: an "identifiable trifle" is sufficient to establish standing "to fight out a question of principle."

(footnotes omitted).

Attached hereto as Exhibit 1 is the original² \$250,000 claim ABI made regarding the damage to the Alaska Building resulting from the demolition of the old Anchorage Legislative Information Office and old Empress Theatre and construction of the new Anchorage Legislative Information Office building under the LIO Lease. This injury resulted from the LIO Lease. Thus ABI has an interest which is adversely affected by the complained-of-conduct, as the Alaska Supreme Court put it in *Keller*. Also, as *Keller* put it, the degree of injury is more than an "identifiable trifle." This gives ABI standing "to fight out [the] question of principle" regarding the illegality of the LIO Lease.

Keller refers to injury-interest, but only addresses standing arising from injury. In this case there is also ABI's separate interest in its claim for 10% of any savings arising from a declaration that the LIO Lease is illegal under AS 26.30.083(a).³ Whether such a claim will ultimately be allowed is certainly an issue to be litigated, but for purposes of the 716 LLC Motion to Dismiss, it is a sufficient interest for standing.

² Additional damage has been identified and/or has occurred since the original claim was filed, but the original claim is sufficient for standing purposes.

³ 716 LLC complains that ABI seeks only enrichment in Count One, but ignores that that the State will receive 90% of the savings if it is successful.

B. ABI Has Citizen-Taxpayer Standing for Count One

The seminal case for citizen-taxpayer standing in Alaska is *Trustees for Alaska v. State, Dep't of Natural Res.*, 736 P.2d 324, 329-330 (Alaska 1987), which set out the following elements:

First, the case in question must be one of public significance. . . .
Second, the plaintiff must be appropriate in several respects. For example, standing may be denied if there is a plaintiff more directly affected by the challenged conduct in question who has or is likely to bring suit. The same is true if there is no true adversity of interest, such as a sham plaintiff whose intent is to lose the lawsuit and thus create judicial precedent upholding the challenged action. Further, standing may be denied if the plaintiff appears to be incapable, for economic or other reasons, of competently advocating the position it has asserted.

(Footnotes omitted). This formulation was confirmed in *Ruckle v. Anchorage School District*, 85 P.3d 1030, 1034-1035 (Alaska 2004). 716 LLC misstates the criteria when it states at page 6 of its brief that ABI must be "the" appropriate plaintiff. ABI only has to be an appropriate plaintiff and there must not be a plaintiff more directly affected who has or is likely to bring suit.

(1) The Illegality of the LIO Lease is a Matter of Public Significance

716 LLC essentially concedes this case presents a matter of public significance at pages 6 and 8 of its brief. Presumably this is because it is indisputable. That, as a result of corruption, the LIO Lease violates AS 36.30.083(a)'s requirements, resulting in being overcharged by more than \$20 million, is a matter of public significance on a couple of levels. First, and most importantly, addressing the corruption is a matter of public significance. The culture of corruption in state politics, represented by the participation in the corruption and acquiescence of those who should not have allowed it, is a matter of

great public significance.⁴ Second, the over \$20 million the State is being overcharged is of public significance, especially in this time of fiscal crisis for the state.

(2) There is No Plaintiff More Directly Affected by the LIO Lease Who Has or is Likely to Bring Suit

716 LLC flatly misstates *Ruckle* at page 9 of its brief when it states:

The court in *Ruckle* expressly rejected the argument that members of the public are appropriate litigants for challenging the application of the State Procurement Code merely on the basis of being taxpayers."

Ruckle held no such thing. .

In *Ruckle* the Alaska Supreme Court first addressed the importance and purpose of the public bidding system:

In *McBirney & Associates v. State*,⁵ this court explained that the purposes of the competitive public bidding system are:

to prevent fraud, collusion, favoritism, and improvidence in the administration of public business, as well as to insure that the [state] receives the best work or supplies at the most reasonable prices practicable.

... [T]he requirement of public bidding is for the benefit of property holders and taxpayers, and not for the benefit of the bidders; and such requirements should be construed with the primary purpose of best advancing the public interest.

85 P.3d at 1035, footnotes omitted.

Then the Alaska Supreme Court made clear that *Ruckle* would have had standing if no suit had already been filed by a disappointed bidder.

⁴ At page 10 of its brief, 716 LLC states that the Legislative Council's decision to enter into the LIO Lease was ratified by the full legislature, but cites to an unpublished Alaska Supreme Court decision that has nothing to do with ratification of the LIO Lease.

⁵ 753 P.2d 1132 (Alaska 1988).

These cases do support the proposition that citizen-taxpayers have standing to challenge the results of public bidding systems. However, none of these cases involve a situation, such as the one at bar, where both the bidder and a citizen-taxpayer have filed suit on the same issue, and three of the cases hail from jurisdictions where bidders are only permitted to challenge the bid procedures of municipalities in which they are also municipal taxpayers.

85 P.3d at 1035-1036, footnotes omitted. Here, no other suit has been filed by anyone else, whether a disappointed or potential bidder, or anyone else, such as the Attorney General.

In *Trustees for Alaska*, 236 P.2d at 330, the Alaska Supreme Court held the mere possibility that the Attorney General may sue does not mean that Trustees for Alaska and the other plaintiffs were inappropriate plaintiffs. ABI would welcome a suit by the Attorney General, or anyone else for that matter and, because of the Civil Rule 82 risk to itself, would probably dismiss Count One should such a suit be brought.⁶

ABI has citizen-taxpayer standing. Frankly, if there is no citizen-taxpayer standing here, where as a result of obvious corruption, the State of Alaska is being overcharged over \$20 million⁷ and the politics has resulted in state officials ignoring the corruption, it is hard to see when citizen-taxpayer standing could ever be established.

⁶ Exhibit 1 to Plaintiff's Opposition to Legislative Affairs Agency's Motion to Stay Discovery, dated June 8, 2015, is an e-mail transmitting the original complaint in this matter to Craig Richards, the Attorney General of the State of Alaska expressing the hope that he will support invalidation or reformation of the illegal LIO Lease.

⁷ See, page 3 of Plaintiff's Opposition to Legislative Affairs Agency's Motion to Stay Discovery, dated June 8, 2015.

(3) ABI Is Not A Sham Plaintiff or Akin to a Sham Plaintiff

At Section 3.b.i) of its brief, using the pejorative phrase, "seeking personal enrichment," 716 LLC argues that by seeking damages ABI is akin to a sham plaintiff. However, seeking damages is exactly the opposite of a sham plaintiff. It shows adversity. Again, whether such a claim will ultimately be allowed is certainly an issue to be litigated, but for purposes of the 716 LLC Motion to Dismiss, it defeats the notion that ABI is akin to a sham plaintiff.

One of the consequences of the LIO Lease, which ABI claims is illegal through Count One, is that the Alaska Building was substantially damaged. In addition to this establishing interest-injury standing, it is also the sort of adversity that precludes it from being a sham plaintiff, or akin to a sham plaintiff.

(4) Plaintiff is Capable of Advocating its Positions

At Section 3.b.ii), 716 LLC argues that by sending a letter to the Governor with a copy to the Attorney General, urging him to ask the Attorney General to investigate the corruption involved in the violation of AS 36.30.083(a) in entering into the LIO Lease, pointing out that it appears a crime was being committed, but it was unknown who is guilty of the crime, somehow makes ABI incompetent to bring this lawsuit.

First, what the Alaska Supreme Court actually held in *Trustees* is:

[S]tanding may be denied if the plaintiff appears to be incapable, for economic or other reasons, of competently advocating the position it has asserted.

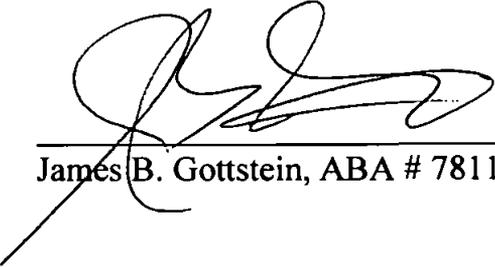
736 P.2d at 330. This Court can decide for itself if ABI is incapable of competently advocating the position it has asserted, in this lawsuit.

ABI is not in a position to conduct a criminal investigation of the corruption resulting in the LIO Lease, but it is respectfully suggested it can competently advocate the LIO Lease is illegal under AS 36.30.083(a).

C. Conclusion

For the foregoing reasons the Motion to Dismiss Count One by 716 West Fourth Avenue LLC should be **DENIED**.

Dated July 10, 2015.

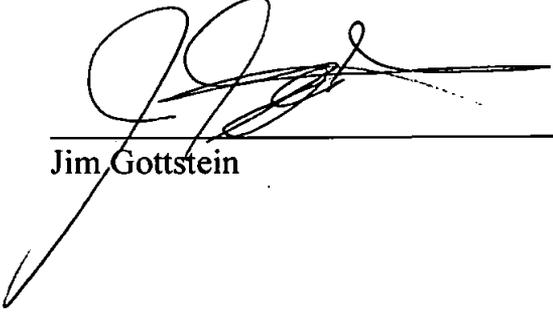


James B. Gottstein, ABA # 7811100

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof to Kevin M. Cuddy, Jeffrey W. Robinson/Eva R. Gardner, Blake Call, Mark Scheer, Daniel T. Quinn, and Cynthia L. Ducey.

Dated July 10, 2015.



Jim Gottstein

Jim Gottstein

From: Jim Gottstein <jbg@alaskabldg.com>
Sent: Friday, January 23, 2015 1:35 PM
To: DaveD@criteriongeneral.com; Bob O'Neill; Mark Pfeffer
Cc: jbg@alaskabldg.com; Dennis Berry
Subject: Alaska Building Claim
Attachments: 150123Claim.pdf

Dear Messrs. DeRoberts, O'Neill & Pfeffer:

Please find attached the claim for damage to the Alaska Building (Claim) as a result of your Legislative Information Office demolition and reconstruction project (Project).

As the Claim documents, there has been substantial damage to the Alaska Building as a result of your Project, including structural degradation. I have discussed this with Mr. Berry and he made the observation that the Alaska Building will continue to shift and move around to adapt to the displaced Party Wall for some time. He also indicates that in his opinion the \$250,000 claimed is reasonable.

From my perspective I don't see why the Alaska Building should bear any loss or damage as a result of your project. The offer represented by this Claim may be withdrawn at any time prior to acceptance by you.

Jim Gottstein, President
Alaska Building, Inc.
Home of the AlaskaCam (r)
406 G Street, Suite 206
Anchorage, AK 99501
Tel: (907) 274-7686
Fax: (907) 274-9493
<http://alaskabldg.com>
jbg@alaskabldg.com



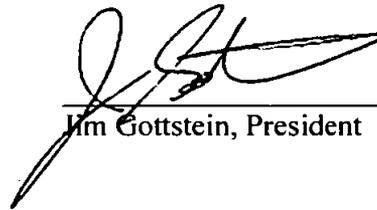
ALASKA BUILDING, INC.

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

Claim

To: 716 West Fourth Avenue, LLC & Criterion Construction
From: Alaska Building, Inc.
For: Damage from Legislative Information Office Building Reconstruction Project
Amount: \$250,000

Dated: January 23, 2015:



Jim Gottstein, President

**Known Damage to Alaska Building Caused by Old Empress Theater
Demolition & Construction of Elevator & Utility Tower for
Legislative Information Office Demolition and Reconstruction**

Chronology

- There was a tremendous amount shaking during the demolition phase of the project.
- When the Old Empress Theater was demolished, the flashing protecting preventing water running down the Alaska Building side of the Party wall was removed and the roof membrane protecting it left open, exposing it to the elements. This was later discovered to have allowed water under the roof and into the building.
- On February 9th there was so much shaking that items fell off the shelves in Octopus Ink and broke. Criterion settled with Octopus Ink only.
- On February 24, 2014, the slab adjoining the party wall failed due to excavation of the basement of the Old Empress Theater, exposing a large void underneath the slab. The void was immediately filled with cement/grout due to extreme safety concerns. A review of the post/beam connection and door to the server room at the top of the internal stairs points to about an inch of downward movement of the wall and floor at the top of the stairs.
- On April 1, 2014, Shara of Octopus Ink reported that things had shifted around so much that the locks are no longer lining up, including that she is not strong enough to open the lock to the alley. Criterion adjusted the doors so they would lock/unlock.
- On April 3, 2014, Dennis Berry noted that the North end of the Party Wall had moved about an inch and Jim Gottstein noted a crack in the slab he hadn't noticed before.
- On May 14, 2014, the pounding removal of the braces caused so much shaking that Jim Gottstein went up and stopped the workers. The braces, which had been placed when it was close to or below 0 degrees Fahrenheit, had apparently expanded, and the workers were pounding them out. An inspection of the stairwell to 4th Avenue reveals that the party wall had moved to the West with significant resultant damage to the Alaska Building.
- From 4th Avenue the extent of the damage/wall movement is even more evident with about an inch of westward movement of the party wall at the top of the stairwell door.
- On May 17, 2014, Jim Gottstein noted that the pounding of the steel beams during the erection of the tower was causing severe shaking.
- Also on May 17, 2014, it was discovered that leaving the membrane covering the Party Wall on the North end open to the elements had caused water to collect under the roof.
- On June 25, 2014, a leak appeared behind the door to Jim Gottstein's office.
- On July 7, 2014, Jim Gottstein noticed a crack in his 4th avenue wall within a few feet of the Party Wall.
- On July 11, 2014, Jim Gottstein was informed that water was running down the Alaska Building on the South side of the Party Wall and had been for weeks.
- On July 25, 2014, water again was running down the Alaska Building side of the Party Wall during a period of heavy rain.
- On August 6, 2014, it appeared that the bracing from the slab failure was failing, indicating further settlement of the slab.
- On August 18, 2014, Jim Gottstein noticed that a couple of ceiling tiles below where the water had accumulated below the roof membrane were stained. The tiles were not stained before the project.
- On January 23, 2015: flashing above the 4th Avenue Stairway door had still not been replaced.

Photographs

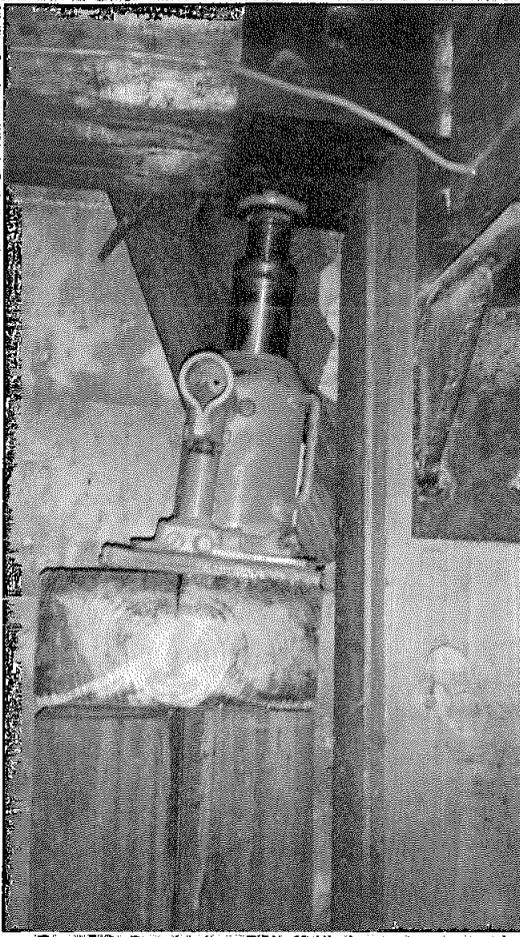
Slab Failure



February 24, 2014

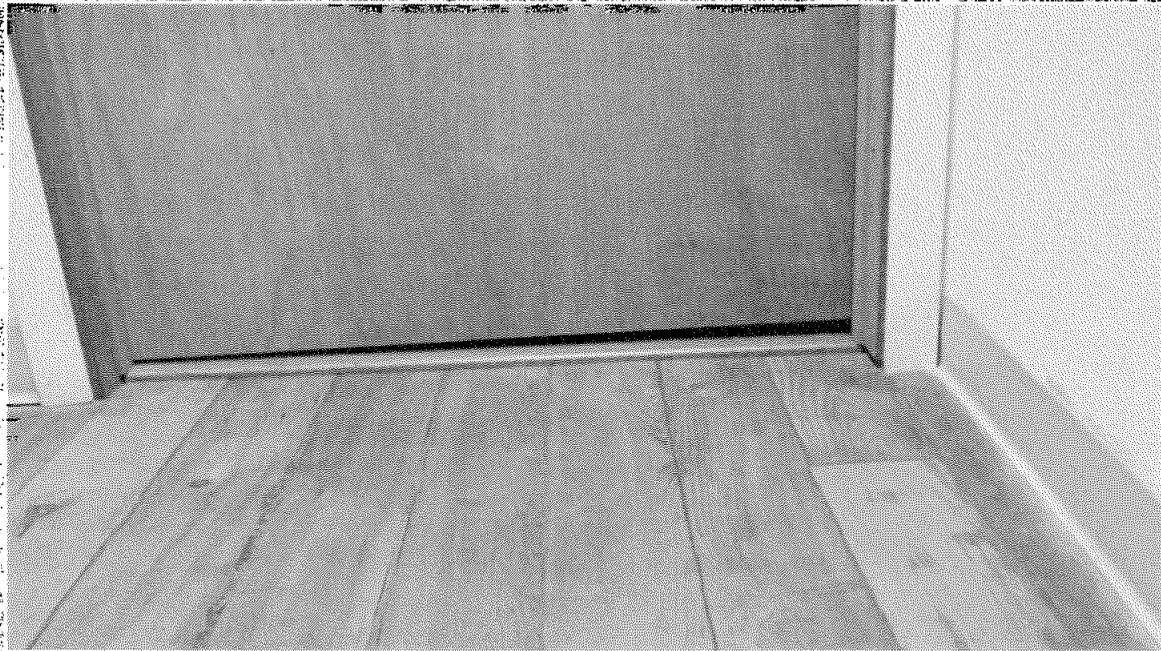


This shows where the post had dropped by what looks to be about an inch
February 24, 2014



August 6, 2014 (Bracing failing)

Server Room Door at top of Stairs from Party Wall- (Shows Almost 1 Inch Drop in Floor)



(January 20, 2015)

Roof



January 9, 2014



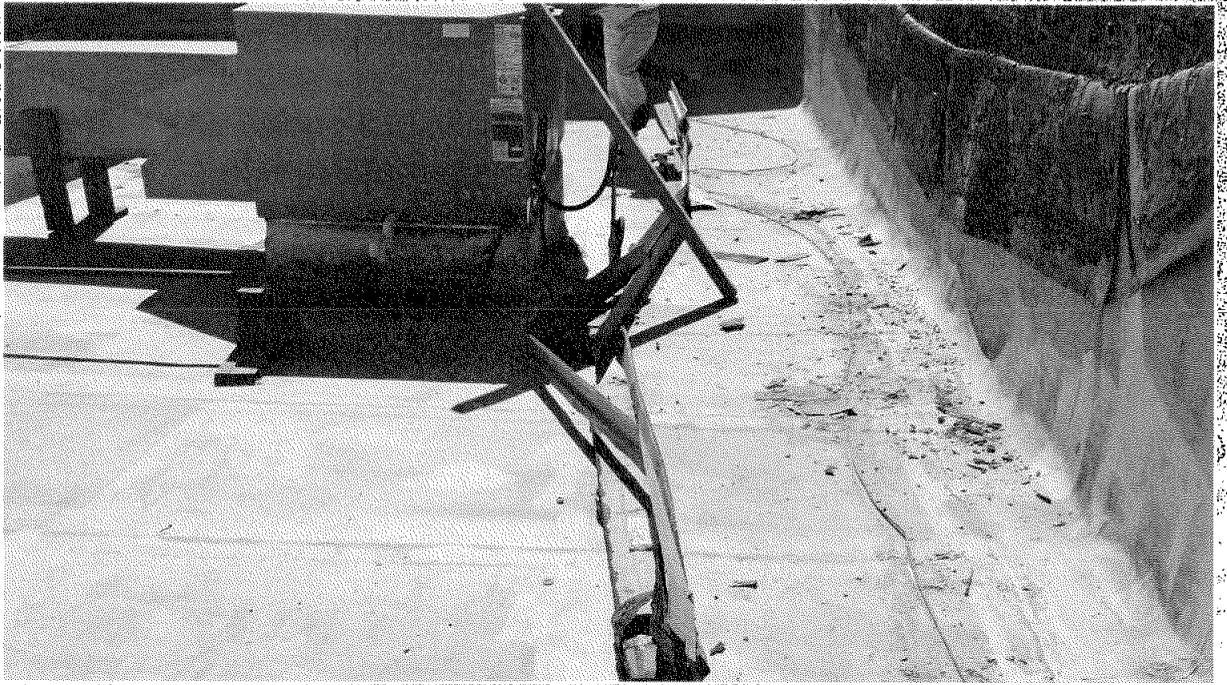
March 13, 2014



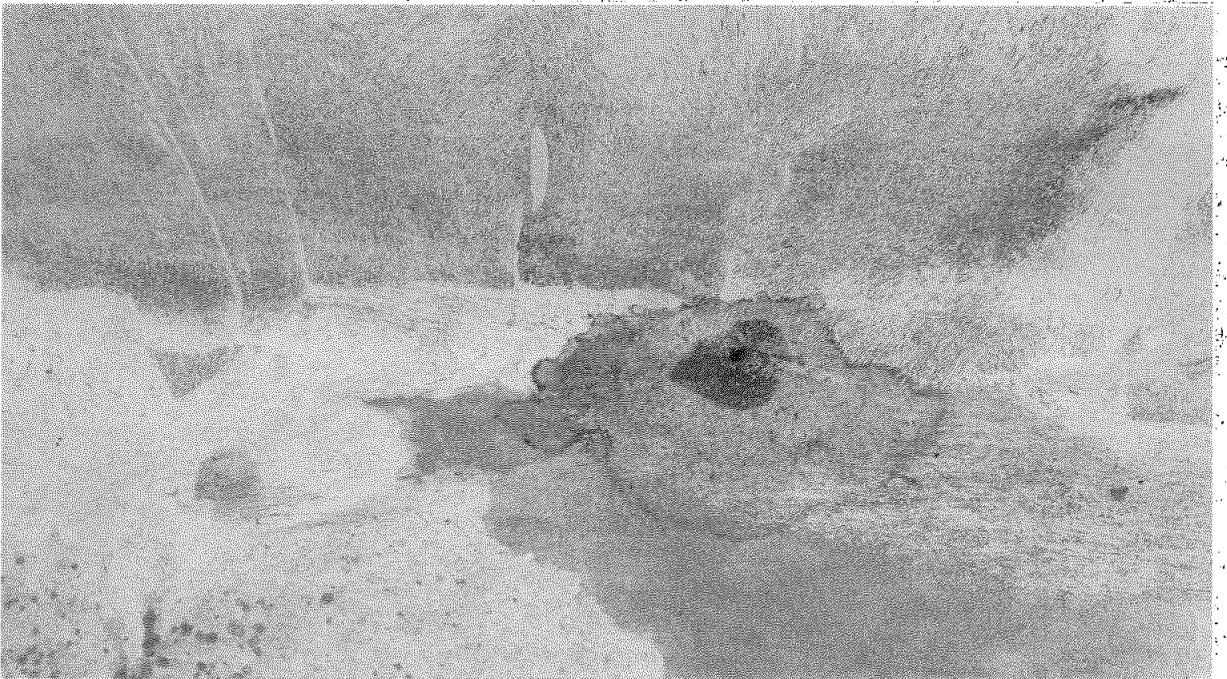
March 13, 2014



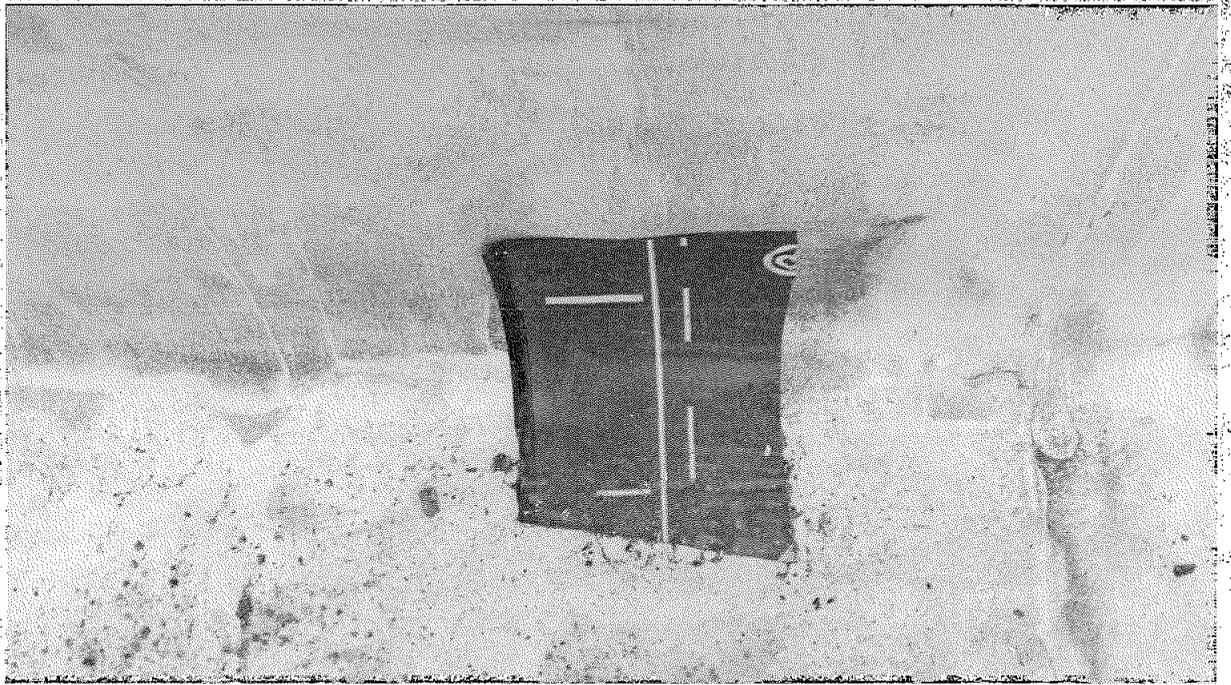
May 16, 2014



May 16, 2014



May 18, 2014



June 2, 2014



August 20, 2014

Ceiling Tile Stains/Water Damage



Unstained Ceiling Tiles: December 1, 2013

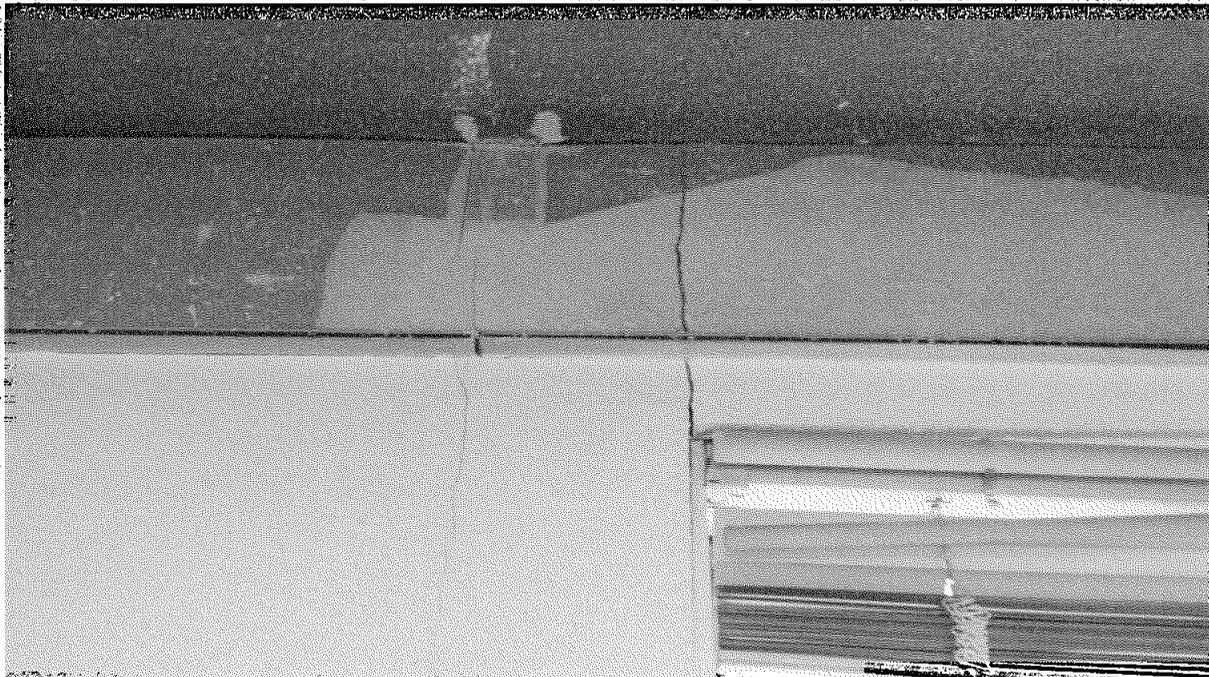


August 17, 2014

Cracks in 4th Avenue Wall

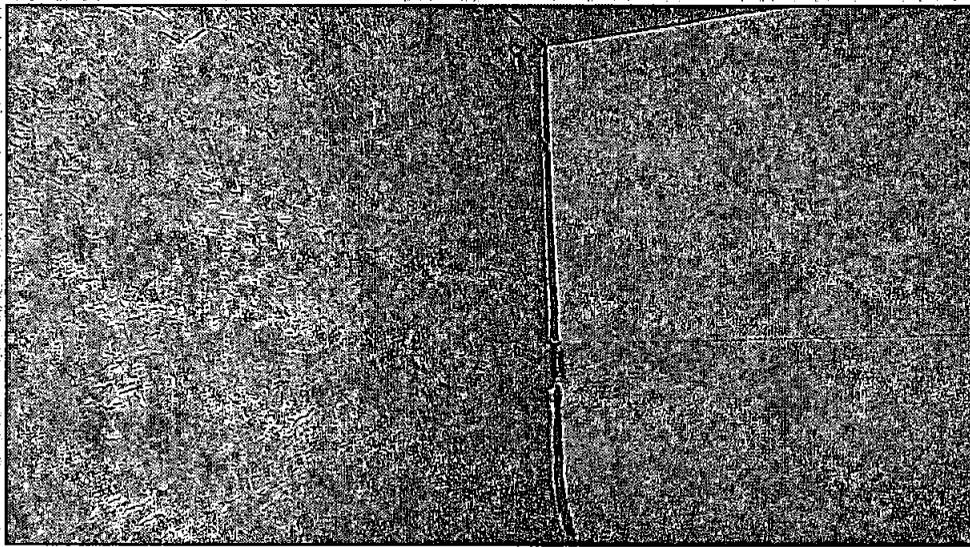


July 7, 2014



December 26, 2014

4th Avenue Stairwell (All Taken May 16, 2014)





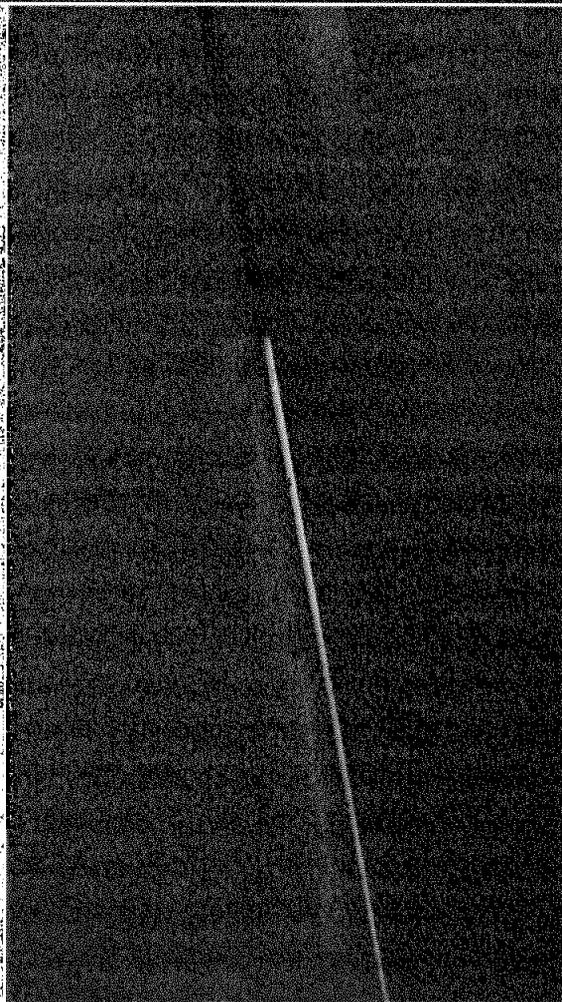


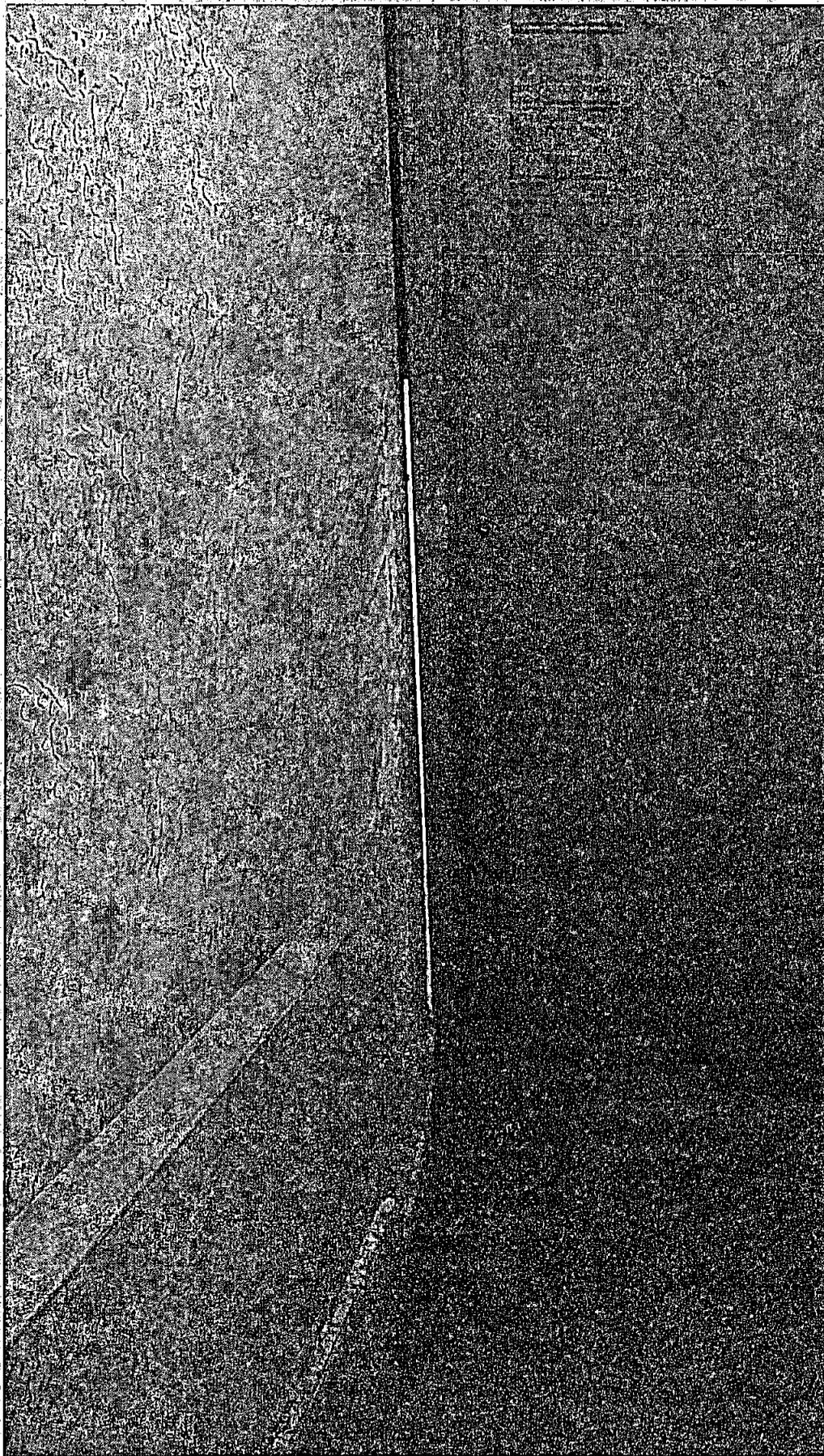
4th Ave Stairwell Door before Project





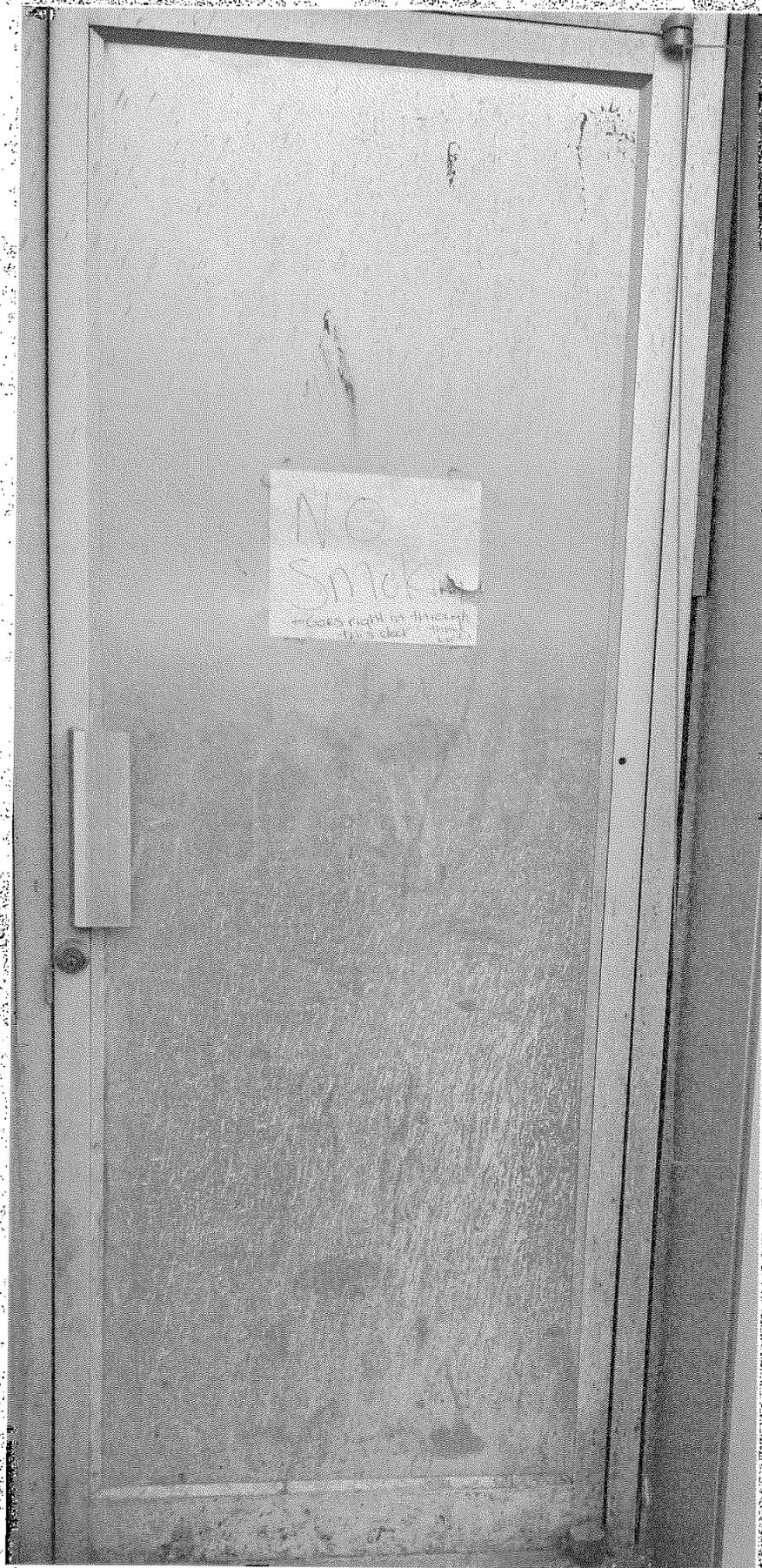
4th Avenue Stairwell Door after Project



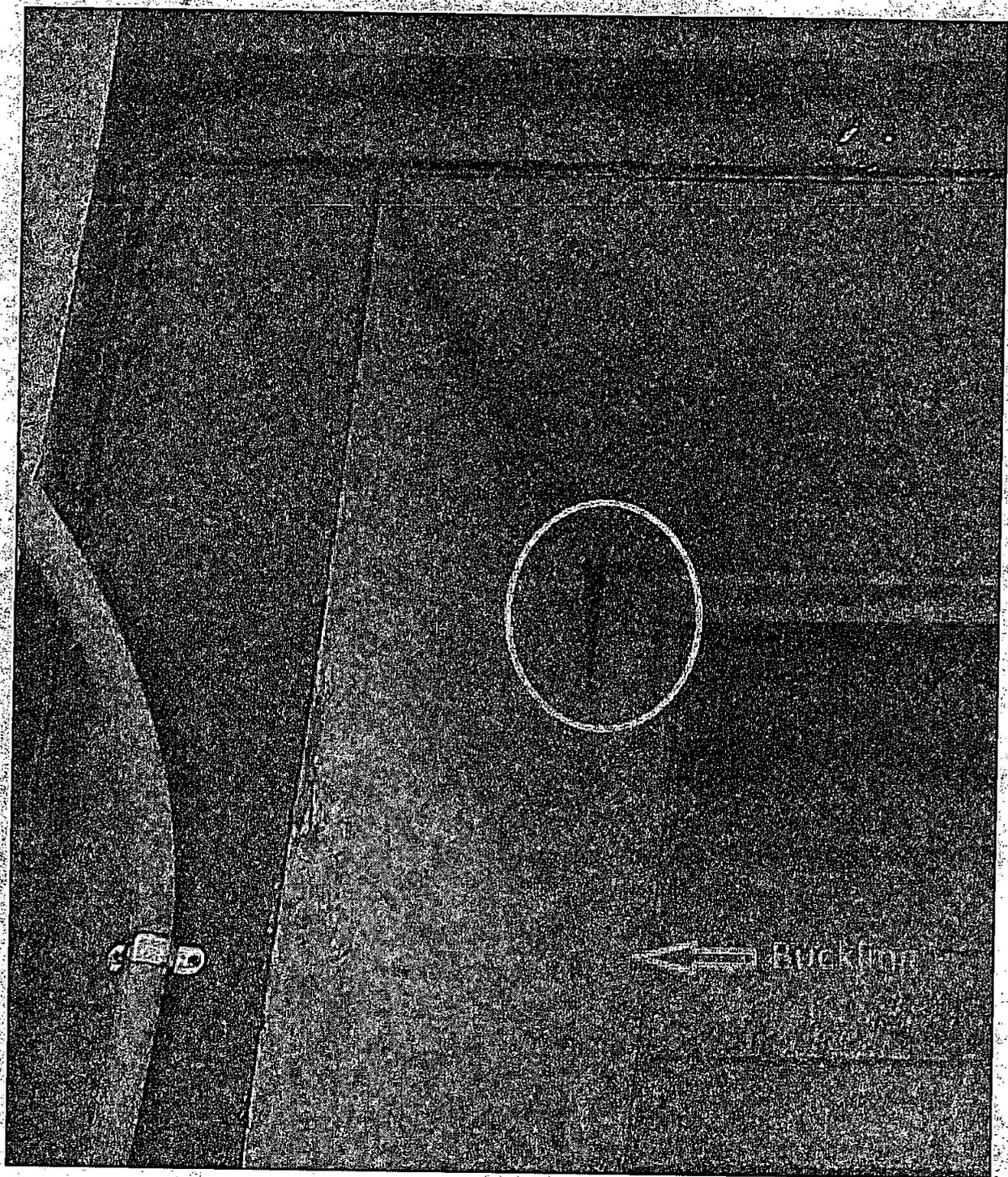


The 4th Avenue Side of the Stairwell Door (January 9, 2015)

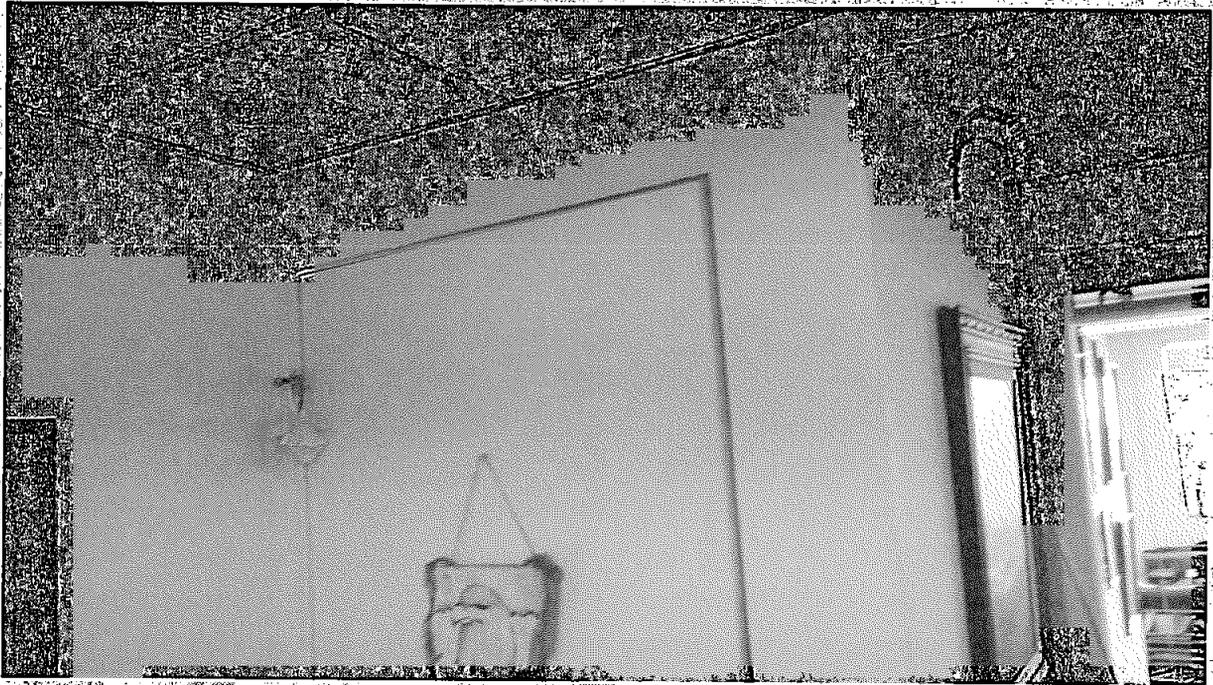




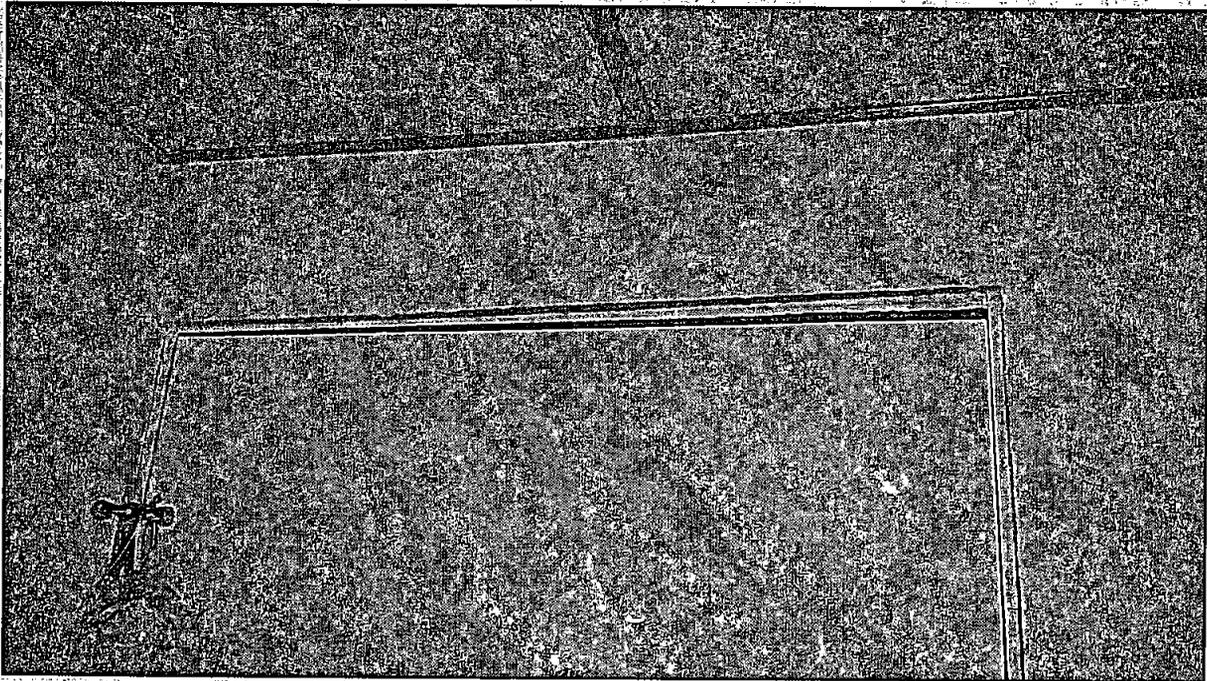
January 23, 2015



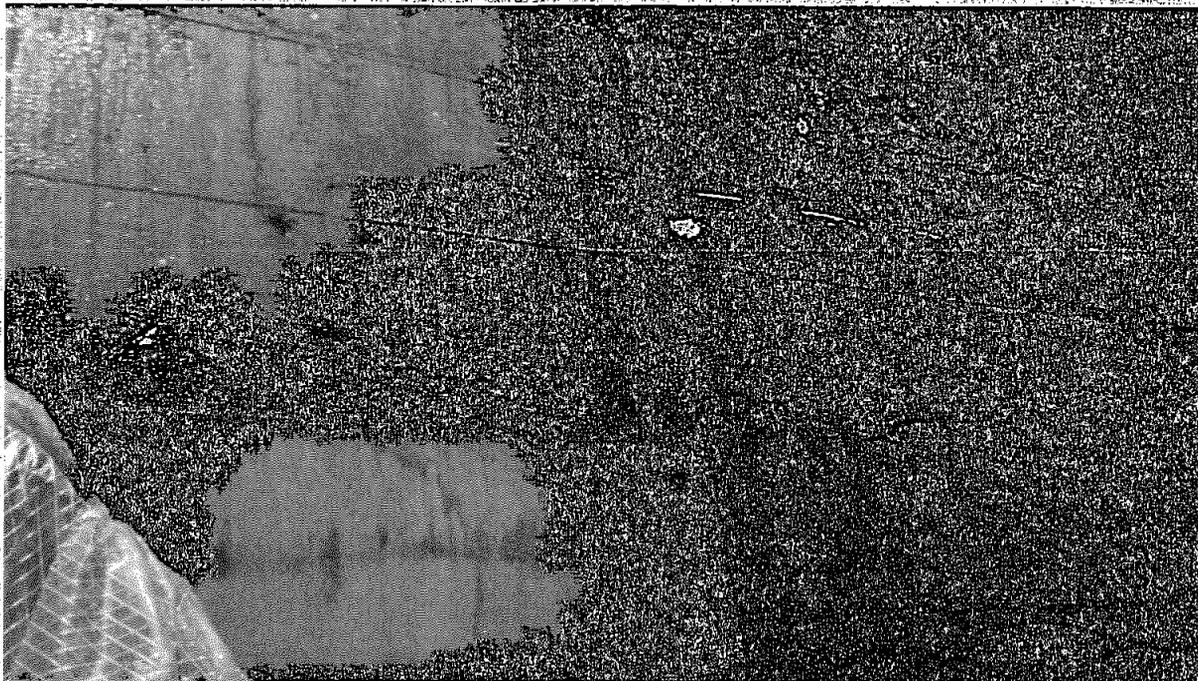
Top of 4th Avenue Stairwell Before Project



Top of 4th Avenue Stairwell on January 23, 2015



Party Wall Water



July 10, 2014



July 25, 2014



July 25, 2014



July 25, 2014



July 25, 2014



July 25, 2014 (may be upside down)



January 23, 2015

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

FILED
STATE OF ALASKA
THIRD DISTRICT
2015 JUL -2 PM 3:33
CLERK JUDICIAL SERVICE
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff

vs.

716 WEST FOURTH AVENUE LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,
Defendants.

Case No. 3AN-15-05969CI

**PLAINTIFF'S OPPOSITION TO 716 WEST FOURTH AVENUE LLC'S
CIVIL RULE 56(f) REQUEST FOR ADDITIONAL TIME TO ANSWER
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT
EXTENSION)**

Plaintiff, Alaska Building, Inc. (ABI), opposes the request by defendant 716 West Fourth Avenue LLC (716 LLC) for additional time Under Civil Rule 56(f) to respond to ABI's Motion for Partial Summary Judgment. In the alternative, the current 45 day stay of discovery should be terminated and 716 LLC granted no more than a 45 day extension from the original due date of June 29, 2015.

**A. 716 Has Failed to Provide Any Reasons Justifying Its
Rule 56(f) Extension Request**

In *Munn v. Bristol Bay Housing Authority*, 777 P.2d 188, 193 (Alaska 1989), the Alaska Supreme Court held that in order to receive relief under Civil Rule 56(f), the party

must state in its affidavit "adequate reasons why 'he cannot [within the original time frame] . . . present . . . facts essential to justify his opposition' to the motion for summary judgment." The cases cited by 716 LLC similarly require adequate reasons for why the party cannot produce evidence in the normal time frame. *See, Gamble v. Northshore Partnership*, 907 P.2d 477, 485 (Alaska 1995); *Mitchell v. Teck Cominco Alaska Inc.*, 193 P.3d 751, 759 (Alaska 2008); and *Hymes v. Deramus*, 119 P.3d 963 (Alaska 2005).

In *Mitchell*, 193 P.3d at 759 the Alaska Supreme Court noted that adequate reasons had been given:

Mitchell provided adequate reasons why he needed additional time to oppose summary judgment. He noted that the conversion of the dismissal motion came before discovery had been completed, advised the court that the parties were in the process of setting up a deposition schedule, and even described some of the information he was trying to discover. It is noteworthy that in conformance with his representations to the court, Mitchell then conducted at least nine depositions between February and May 2006 and participated in others that Teck Cominco conducted.

In *Hymes*, 119 P.3d at 965, the Alaska Supreme Court held that

The circumstances of this case required a reasonable continuance. Thirty days is not likely to be enough time for an incarcerated pro se litigant to arrange for an expert medical affidavit.

Unlike these cases, not only has 716 LLC failed to provide adequate reasons why it cannot provide evidence to oppose ABI's Motion for Partial Summary Judgment, there simply are not any genuine disputes as to any material facts. ABI's Motion for Partial Summary Judgment is based on the legal argument that the lease for the new Anchorage

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
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(907) 274-7686
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*Opposition to 716 LLC
Rule 56(f) Request*

Page 2

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Legislative Information Office (LIO Lease)¹ does not extend a real property lease and is therefore illegal under AS 36.30.083(a). In support of the Motion for Partial Summary Judgment, ABI submitted an affidavit as to the following facts, which it believes are not disputed and, frankly, cannot be genuinely disputed:

The LIO Lease provides for:

- a. demolition of the then existing Anchorage Legislative Information Office located at 716 West 4th Avenue in Anchorage, Alaska down to its foundation and steel frame,
- b. demolition of the adjacent old Empress Theatre, located at 712 West 4th Avenue, occupied by the Anchor Pub at that time,
- c. moving the existing Anchorage Legislative Information Office prior to the demolition of the old Legislative Information Office Building, and
- d. construction of a new office building for lease as the new Anchorage Legislative Information Office.

Supporting Affidavit, Paragraph 2.

On June 26, 2015, in connection with a request by 716 LLC for an extension of time to file replies to the motions and request 716 LLC, itself, had just filed, counsel wrote 716 LLC's counsel, stating that it was believed the above were undisputed facts and asked the following questions:

Do you dispute any of these facts? If so, why can't you produce such evidence? Are there any other facts that you think are relevant? If so, what? And why can't you produce those? In other words, how is discovery going to have any impact on the Motion for Partial for Summary

¹ More particularly described as that certain contract, dated September 19, 2013, by and between defendant Legislative Affairs Agency and defendant 716 West Fourth Avenue LLC (716 LLC), titled "Extension of Lease and Lease Amendment No. 3, a true and correct copy of which is attached as Exhibit 1 to the June 12, 2015, Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment (Supporting Affidavit).

Judgment other than to allow your client to continue to collect rent from the illegal lease that will then likely not be recoverable.

Exhibit A, p.2. 716 LLC responded, "I am not going to hash out in any way what you claim to be 'undisputed facts.' " *Id*, at p. 1.

However, responding to, or "hashing out," as 716 LLC calls it, what ABI asserts are undisputed facts is exactly what is required of 716 LLC upon the filing of ABI's Motion for Partial Summary Judgment. As set forth above, *Munn* and all of the other cases require 716 LLC to give adequate reasons why it cannot present facts essential to justify its opposition' to the motion for summary judgment within the normal time frame. 716 LLC has given no reasons why it cannot present facts in opposition to the Motion for Partial Summary Judgment in the time frame allowed.²

B. 716 LLC Should Be Able to Produce Any Facts Related to the Motion for Partial Summary Judgment

716 LLC is the developer and Lessor of the new Anchorage LIO Building. It should have readily at hand any facts it might need. In *Munn*, 777 P.2d at 193, citing, Wright & Miller with approval, the Alaska Supreme Court noted that while normally a party need not show what facts are sought and what steps have been taken to access them, it is appropriate when the court is skeptical about a genuine factual issue emerging.

² At ¶ 8 of its June 23, 2015, affidavit filed in support of its Rule 56(f) Request, counsel for 716 LLC states that he will be unavailable from June 29, 2015, through July 14, 2015. This is a reason to ask for an extension of time to respond to ABI's Motion for Partial Summary Judgment (which 716 LLC has done) but it is not a reason why 716 LLC is not able to produce facts necessary to oppose summary judgment.

It is respectfully suggested this Court should be extremely skeptical about a genuine material factual issue emerging. ABI's Motion for Partial Judgment is based on the simple and straightforward enforcement of AS 36.30.083(a), which only allows deviation from the normal public bidding process to extend a lease. 716 LLC can pretend that discovery will produce facts relevant to opposing the Motion for Partial Summary Judgment, but the question is a legal one. Is entering into a contract to tear down a building to its steel frame and foundation, tear down the building next to it, and having the tenant vacate the building for over a year while a new building is constructed before the tenant occupies the newly constructed building a lease extension? These facts are not in genuine dispute. Whether the LIO Lease extends a real property lease is a legal issue.

C. The State is Prejudiced by an Extension

716 LLC asks for a ten month extension until 20 days after the close of discovery to produce evidence to oppose ABI's Motion for Partial Summary Judgment. In support of this, at page 5 of its Rule 56(f) Request, 716 LLC cites to *Mitchell v. Teck Cominco Alaska Inc.*, 193 P.3d 751, 758 (2008), as follows:

The [Alaska Supreme] Court found that the employee's proposed order requesting a continuance expressly stated that the court would hold the summary judgment in abeyance pending completion of discovery and additional briefing, and set a briefing schedule twenty days after the close of discovery.

This appears to be deliberately misleading because it suggests the Alaska Supreme Court set a briefing schedule twenty days after the close of discovery. No such extension was granted by the trial court or approved by the Alaska Supreme Court. In fact, it was only the proposed order that set such a schedule and the Alaska Supreme Court was discussing

*Opposition to 716 LLC
Rule 56(f) Request*

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the requirement that a request under Civil Rule 56(f) be unambiguous. There is simply no reason in this case for the 10 month extension requested by 716 LLC to produce evidence to oppose the Motion for Summary Judgment.³

Delay in considering the Motion for Partial Summary Judgment will almost certainly severely prejudice the State of Alaska if this Court determines that the LIO Lease is illegal for violation of AS 36.30.083(a), because 716 LLC is almost certainly not going to be able to pay back the money it received under the illegal lease, or even the approximately \$177,000 per month above the amount allowed under AS 36.30.083(a). As set forth in Exhibit A to the Supporting Affidavit, there is a \$28,600,000 loan on the new LIO Building. The 45 day discovery stay with respect to Count One prevents ABI from discovering at this point the terms of the loan and 716 LLC's capitalization, but even at a low interest rate of 5% per year for a 30 year loan, the monthly payments are over \$150,000 per month, while 10% under market rent, the amount allowed by AS 36.30.083(a), is around \$104,000 per month. Thus, the allowable rent under AS 36.30.083(a) will likely not even cover the debt service on the building.⁴

³ As 716 LLC acknowledges, one of the other requirements for a Rule 56(f) extension of time to produce evidence to oppose a motion for summary judgment is the requestor not be dilatory in conducting discovery. 716 LLC's request for a ten month extension essentially seeks permission to be dilatory. This is an additional reason for denying its Rule 56(f) Request. Moreover, through its June 23, 2015, Motion to Stay Discovery it is seeking to be prevented from conducting discovery, beyond the 45 day stay of discovery granted by this Court on June 17, 2015. In other words, 716 LLC wants it both ways. It is saying it needs discovery to produce facts and at the same time is seeking a stay of discovery.

⁴ It was far more expensive to demolish the old Anchorage Legislative Information Office Building and the Anchor Pub and then construct a new building on the site than it would have been to just construct a new building.

One of the purposes of utilizing the limited liability company form of business, such as 716 LLC is almost always, if not always, to shield the owners (members) from liability.⁵ 716 LLC appears to be a single property LLC and as such it is very unlikely to have the assets to pay back much, if any, rent that is paid to it in excess of that allowable under AS 36.30.083(a), let alone should the remedy be that 716 LLC is liable for all of the rent paid to it under the LIO Lease.⁶ Every month that goes by without a determination that the LIO Lease is illegal under AS 36.30.083(a) is extremely prejudicial.

In *Miller v. Treadwell*, 245 P.3d 867, 876 (Alaska 2010), the Supreme Court held:

[T]hough we have interpreted Civil Rule 56(f) liberally to allow a litigant a meaningful opportunity to obtain evidence to present a case, pure speculation cannot support a fishing expedition for evidence to oppose summary judgment in an election contest.

(footnote omitted). It is respectfully suggested that here, 716 has not even presented pure speculation to support a fishing expedition for evidence to oppose summary judgment. It simply wants to delay the day of reckoning. It is also respectfully suggested that the likely prejudice to the State from 716 LLC's probable inability to pay rent back that was paid to it under the illegal LIO Lease is a compelling reason not to allow a Rule 56(f) extension to allow a speculative fishing expedition. It isn't in the same category as an election dispute, but it is respectfully suggested, it is a compelling reason.

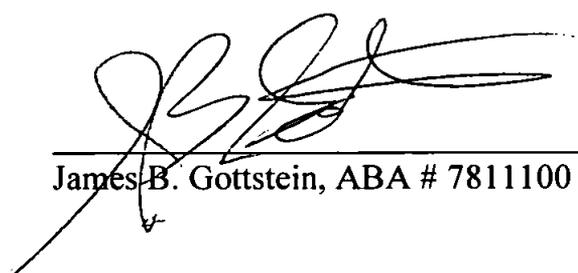
⁵ Under AS 10.50.265 limited liability company members are not liable for the debts of the limited liability company solely by reason of being a member.

⁶ Piercing the limited liability shield is a difficult, uncertain, endeavor and there is no reason to exacerbate the problem by allowing 716 LLC to continue to receive illegal rent as it is attempting to do without adequate protection of the State. *See*, Exhibit A, page 2.

D. Conclusion

For the foregoing reasons, the defendant 716 West Fourth Avenue LLC's Request for a Civil Rule 56(f) extension of time to respond to Plaintiff's Motion for Partial Summary Judgment (Not Extension) should be **DENIED** or, the current discovery stay terminated and 776 LLC allowed 45 days from the original due date of June 29, 2015.

Dated July 2, 2015.



James B. Gottstein, ABA # 7811100

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof to:

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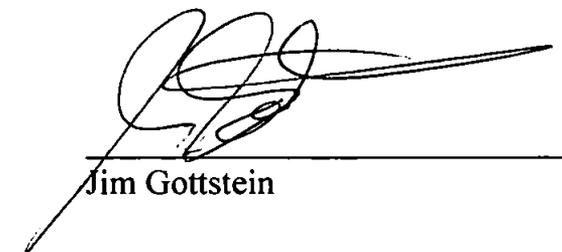
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Dated July 2, 2015.



Jim Gottstein

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*Opposition to 716 LLC
Rule 56(f) Request*

Page 8

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James B. Gottstein

From: Jeffrey W. Robinson <jeffrey@anchorlaw.com>
Sent: Friday, June 26, 2015 11:57 AM
To: James B. Gottstein; Eva R. Gardner
Cc: Donald W. McClintock
Subject: RE: Blanket Extension Request

Thanks, Jim. I simply asked if you would agree to extend me the courtesy of replying to any oppositions or motions you file until a week after I return. I am not going to hash out in any way what you claim to be "undisputed facts." I am not going to reply to the questions you posed at the end of your message. You are entitled to oppose any motions we have filed or file whatever you deem to be in your best interest to file to protect your interests. If you do not agree to my request, please note that Eva Gardner from my firm will be covering the case for me in my absence. She is copied here. Please copy both of us on future correspondence. I hope you have a good weekend, and that your father's health has improved.

JWR

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Friday, June 26, 2015 11:48 AM
To: Jeffrey W. Robinson
Cc: james.b.gottstein@gottsteinlaw.com; Donald W. McClintock
Subject: Blanket Extension Request

Hi Jeff,

Yesterday, you wrote, "I am paternity leave from 6/30-7/15 and would appreciate the opportunity to reply to any oppositions, or oppose any motions, until at least a week or so after my return. Is this agreeable?"

Normally, this wouldn't be a problem and in the final analysis I won't oppose allowing you until July 22nd for any responsive pleadings so long as you include this e-mail, but your client gains an extreme financial benefit from delay and has been doing everything possible to achieve such delay. Its Rule 56(f) Request to not even be required to present opposing evidence to Alaska Building's Motion for Partial Summary Judgment (Not Extension) for ten months dramatically illustrates this. Especially since your client should have any such evidence at hand. (The Motion for Partial Summary Judgment is purely a legal question based on what I believe are the following undisputed facts:)

The New LIO Lease provides for:

1. demolition of the then existing Anchorage Legislative Information Office located at 716 West 4th Avenue in Anchorage, Alaska down to its foundation and steel frame,
2. demolition of the adjacent old Empress Theatre, located at 712 West 4th Avenue, occupied by the Anchor Pub at that time,
3. moving the existing Anchorage Legislative Information Office prior to the demolition of the old Legislative Information Office Building, and
4. construction of a new office building for lease as the new Anchorage Legislative Information Office.

Do you dispute any of these facts? If so, why can't you produce such evidence? Are there any other facts that you think are relevant? If so, what? And why can't you produce those? In other words, how is discovery going to have any impact on the Motion for Partial for Summary Judgment other than to allow your client to continue to collect rent from the illegal lease that will then likely not be recoverable.

So, I have some questions for you.

1. Will 716 West Fourth Avenue LLC agree to sequester all rent not needed for debt service and direct operating costs, including not paying any money to any of its members, directly or indirectly, and recover any such money previously paid until Count One is resolved?
2. Will 716 West Fourth Avenue LLC post a bond for repayment of any rent that the Court holds should be repaid?
3. If not, will 716 West Fourth Avenue LLC provide me with its accounting data to date and on a monthly basis notwithstanding the stay of discovery as to Count One?

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

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DISTRICT
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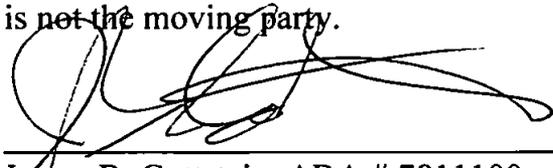
ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff
vs.
716 WEST FOURTH AVENUE LLC, *et al.*,
Defendants.

Case No. 3AN-15-05969CI

**OPPOSITION TO 716 WEST FOURTH AVENUE, LLC'S
MOTION FOR EXPEDITED CONSIDERATION**

The justification given for expedited consideration by 716 West Fourth Avenue LLC (716 LLC) is that its reply to Plaintiff's Opposition to Legislative Affairs Agency's Motion to Stay Proceeding would pass before briefing on its motion to extend deadlines would be completed. However, 716 is not allowed a reply to the Legislative Affairs Agency's motion under Civil Rule 77(d) because it is not the moving party.

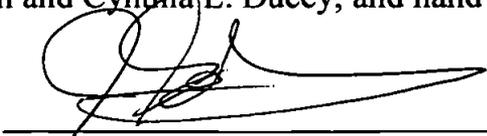
Dated July 2, 2015.


James B. Gottstein, ABA # 7811100

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof and accompanying proposed order to Kevin M. Cuddy, Jeffrey W. Robinson/Eva R. Gardner, Blake Call, Mark Scheer, Daniel T. Quinn and Cynthia L. Ducey, and hand delivered a chambers copy to Judge Patrick McKay.

Dated July 2, 2015.


Jim Gottstein

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

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STATE OF ALASKA
THIRD JUDICIAL DISTRICT

2015 JUL -2 AM 11:14

CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969CI

**OPPOSITION TO 716 WEST FOURTH AVENUNUE, LLC'S
MOTION TO STAY DISCOVERY OF COUNT I**

Plaintiff, Alaska Building Inc., (ABI) Opposes the June 23, 2015, 716 West Fourth Avenue LLC (716 LLC) Motion to Stay Discovery of Count One of Plaintiff Alaska Building, Inc.'s Complaint (716's Discovery Stay Motion).

716's Discovery Motion is confusing because on June 17, 2015, this Court granted a 45 day of discovery as to Count One pursuant to the motion of defendant Legislative Affairs Agency (Discovery Stay Order). While 716 LLC acknowledges this discovery stay decision in footnote 1, it does not otherwise address why this Court should ignore its previous order.

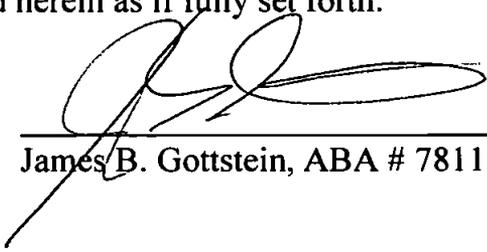
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In essence, 716's Discovery Stay Motion is a motion for reconsideration of this Court's Discovery Stay Order without complying with any of the requirements of Civil Rule 77(k).

Otherwise, ABI objects to 716's Discovery Stay Motion on the same grounds as its June 8, 2015, Plaintiff's Opposition to Legislative Affairs Agency's Motion to Stay Discovery, which is hereby incorporated herein as if fully set forth.

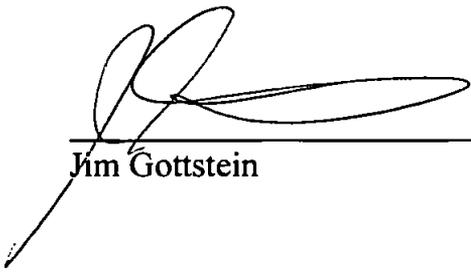
Dated July 2, 2015.


James B. Gottstein, ABA # 7811100

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof to Kevin M. Cuddy, Jeffrey W. Robinson/Eva R. Gardner, Blake Call, Mark Scheer, Daniel T. Quinn and Cynthia L. Ducey.

Dated July 2, 2015.


Jim Gottstein

*Opposition to 716 LLC's
Motion for Expedited Consideration*

Page 2

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THIRD DISTRICT

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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

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**LEGISLATIVE AFFAIRS AGENCY'S REPLY IN SUPPORT OF MOTION TO
STAY PROCEEDINGS**

As the many briefs filed in recent days confirm, a stay of proceedings will promote judicial economy. Neither the parties nor the Court should expend their resources on litigating the merits of Count 1 when a potentially dispositive motion to

dismiss on the threshold issue of standing is pending. Plaintiff has failed to offer any worthwhile reason why a stay is unwarranted here.

I. ARGUMENT

As explained in the Legislative Affairs Agency's ("Agency") opening brief, a stay of proceedings makes sense here because there is a pending dispositive motion to dismiss on the threshold issue of standing. If that motion is granted, Count 1 will be dismissed. Litigating the underlying merits of Count 1 may well prove to be a waste of time, effort, and money if the Court finds that Plaintiff lacks standing to bring the claim.

A. A Stay of Proceedings Is Appropriate Here.

Plaintiff does not meaningfully dispute any of these points, but nevertheless urges the Court to allow Plaintiff to litigate the merits of Count 1, while the Court simultaneously decides the Agency's motion to dismiss. The inefficiency of Plaintiff's preferred litigation approach is already becoming obvious. Plaintiff has already filed a motion for partial summary judgment on the merits of Count 1. Both the Agency and Defendant 716 West Fourth Avenue LLC recently filed responses, and both requested a stay of proceedings pursuant to Civil Rule 56(f) so that the parties could obtain necessary discovery.¹ That discovery will not be available for some time because the Court stayed discovery as to Count 1 on June 17. Plaintiff has already confirmed its intention to oppose the requests for relief under Civil Rule 56(f).² This means that there will be more

¹ The Agency filed its request on June 29. Defendant 716 West Fourth Avenue LLC filed its request on June 23.

² See Plaintiff's Opposition to Legislative Affairs Agency's Motion to Stay Proceedings ("Opp.") at 8 n.11

briefing and argument before this Court about the need (or lack thereof) for discovery about the merits of a motion for partial summary judgment that the Court may never need to reach. This is the very definition of a waste of judicial resources.

Importantly, the Court already considered and ruled on these issues of judicial economy when granting the motion to stay discovery. The Court held that good cause existed for granting a stay of discovery because, among other things, the motion to dismiss could eliminate the expense of discovery and the use of judicial resources revolving discovery disputes.³ The same rationale applies here. The pending and fully-briefed motion to dismiss, if granted, will eliminate the expense of discovery *and* need for briefing of other issues (like Plaintiff's motion for partial summary judgment and the 56(f) requests) *and* the use of judicial resources relating to that briefing *and* all other litigation-related activity concerning Count 1. Good cause exists for staying the proceedings as to Count 1 to conserve judicial resources.

Plaintiff worries that the litigation may be "unnecessarily prolonged" if there is a stay of proceedings that permits the Court to address the Agency's dispositive motion to dismiss, but this misses the point. Trial is more than a year away. Early consideration of the Agency's motion to dismiss may very well streamline the case, obviate unnecessary discovery, moot Plaintiff's pending motion for partial summary judgment, and allow the parties to litigate the remainder of the case more efficiently. A stay avoids the wasting of the parties' and the Court's resources in the event that the motion to dismiss is granted.

³ See Order Granting Defendant Legislative Affairs Agency's Motion to Stay Discovery at 2 (dated June 17, 2015) (the "Discovery Stay Order").

Briefing on Plaintiff's potentially irrelevant motion for partial summary judgment will not be completed soon because both defendants require discovery to respond to that motion, and that discovery cannot even be requested for at least a month due to the existing stay of discovery. Forcing the parties to litigate the merits of Count 1 will be costly, time-consuming, and likely completely unnecessary.

Plaintiff asserts that its filing of the motion for partial summary judgment is relevant for establishing citizen-taxpayer standing because it demonstrates that Plaintiff is capable of advocating its position. This is wrong and irrelevant for two reasons. First, the Agency did not challenge Plaintiff's ability to competently advocate its position. Instead, the Agency asserts that Plaintiff lacks citizen-taxpayer standing because it is not an appropriate plaintiff to litigate Count 1. Second, even if Plaintiff's capacity was at issue,⁴ Plaintiff has already filed its motion for partial summary judgment. To the extent that this brief could demonstrate Plaintiff's capacity, it has already done so. The brief has been filed. The Court does not need to order the parties to spend additional resources so that Plaintiff can establish its competence. There are numerous less expensive ways to do so that do not require briefing by the defendants or the gathering of discovery.

B. The Merits Should Only Be Addressed If Standing Exists.

Plaintiff urges the Court to rule on the merits because Plaintiff may ultimately decide to appeal any adverse ruling on the standing issue, and Plaintiff would prefer to address the issue of standing and the merits of the case in the same appeal.⁵ If Plaintiff's

⁴ Defendant 716 West Fourth Avenue LLC addressed this in its motion to dismiss.

⁵ See Opp. at 6-7.

odd rationale were adopted, of course, then no stay of proceedings would ever be granted. Standing is a threshold issue, and the merits of the claim should only be litigated if Plaintiff has standing to bring the underlying claim.⁶

Plaintiff notes that both the issue of standing and the merits were heard by the Alaska Supreme Court at the same time in *Myers v. Roberson*,⁷ but Plaintiff fails to mention that the trial court in that case *denied* the motion to dismiss under Rule 12(b)(1).⁸ It is no surprise, then, that the Alaska Supreme Court was able to evaluate both the standing and merits arguments at once since the denial of the 12(b)(1) motion meant that the parties would litigate the merits. The trial court did not decide it wanted to allow for the simultaneous litigation of standing issue and the merits. Rather, it decided that the motion to dismiss lacked merit and so the parties proceeded to litigate the merits. If the motion to dismiss had been granted, there would be no reason to reach the merits. That is likely the case here. The Court should not allow Plaintiff to potentially unnecessarily litigate the merits simply because of Plaintiff's desire to package any future appeal a certain way.

Plaintiff also asserts that the Court should not be concerned about the wasting of the parties' resources because it should not cost "very much" to litigate the merits of Count 1 since "[i]t is not expected that there will be any dispute" about Plaintiff's views on the lease.⁹ Plaintiff is mistaken. There are disputes about Plaintiff's misreading of the

⁶ See *Alaskans for a Common Language, Inc. v. Kritz*, 3 P.3d 906, 911 (Alaska 2000).

⁷ See Opp. at 7.

⁸ See *Myers*, 891 P.2d 199, 202 (Alaska 1995).

⁹ Opp. at 8.

lease and the scope of the project, as well as Plaintiff's misstatements of law regarding the proper scope of extensions generally and for this project in particular. Both defendants in Count 1 have confirmed in their requests for relief under Civil Rule 56(f) that discovery will be required to resolve these disputed issues of material fact. It will be expensive and time-consuming to address the merits of Count 1, and that effort may prove to be wholly unnecessary if Plaintiff lacks standing to litigate the claim.

C. Plaintiff Will Not Be Prejudiced by a Stay of Proceedings.

Plaintiff argues that there the proceedings should not be stayed because of the potential prejudice of any delay to the State – not the Plaintiff.¹⁰ In fact, the subheading for this portion of its brief states that “The State of Alaska Will Likely be Severely Prejudiced by the Stay.” Plaintiff is not the State and is not advocating on behalf of the State. True to form, Plaintiff has no standing to make these arguments about the potential negative impact to the State. Plaintiff's concerns lack merit.¹¹

As the Court held previously with respect to the stay of discovery, “the motion was filed sufficiently in advance of current discovery deadlines such that a stay will not unfairly prejudice any party.”¹² The same rationale applies here. A stay of proceedings as to Count 1 will allow the Court and the parties to conserve resources while the Court determines whether it is appropriate to reach the merits of Plaintiff's claim.

¹⁰ See Opp. at 9-10. Plaintiff has one unsupported line in its brief asserting that it will be prejudiced by a delay of more than few weeks, but fails to provide any explanation or factual support for how or why it would be prejudiced by such a delay.

¹¹ Plaintiff also fails to provide *any* factual support for its speculation that 716 West Fourth Avenue LLC lacks resources to “pay back” any rents deemed owed to the Agency. The “prejudice” claimed by Plaintiff is wholly dependent on guesswork.

¹² Discovery Stay Order at 2.

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II. CONCLUSION

For the foregoing reasons, the Agency respectfully requests that this Court order a stay of proceedings as to Count 1.

DATED: July 2, 2015.

STOEL RIVES LLP

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

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on July 2, 2015, a true and correct copy of the foregoing was served via First Class Mail on:

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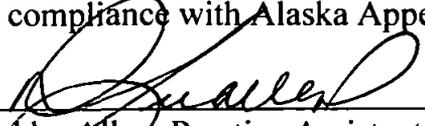
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I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).



Debby Allen, Practice Assistant

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

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

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

**[PROPOSED] ORDER GRANTING MOTION TO EXTEND DEADLINES TO
RESPOND TO MOTIONS**

Having considered 716 West Fourth Avenue, LLC's ("716") Motion to Extend
Deadline to Reply to Plaintiff's Opposition to Legislative Affairs Agency's Motion to
Stay Proceedings, and any opposition or reply thereto, the Court ORDERS as follows:

1. 716 shall have until July 22, 2015 to file its Reply to Plaintiff's Opposition
to Legislative Affairs Agency's Motion to Stay Proceedings.
2. For any other motions that have been or may be filed in this action, the
time for 716's responsive briefs shall be extended until at least July 31, 2015, absent a
specific contrary order from this Court.

JUN 30 2015

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DATED this ___ day of _____, 2015.



PATRICK J. MCKAY
Superior Court Judge

[PROPOSED] ORDER GRANTING MOTION TO EXTEND DEADLINES TO RESPOND TO MOTIONS
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

{10708-101-00275415;1}

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 30 day of June 2015, on:

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ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

[PROPOSED] ORDER GRANTING MOTION TO EXTEND DEADLINES TO RESPOND TO MOTIONS
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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Attorneys for Defendant
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STATE OF ALASKA
THIRD DISTRICT
2015 JUN 18 PM 4:51
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BY: DEPUTY CLERK

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

ALASKA BUILDING, INC., an Alaskan
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Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

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

**(of June 16, 2015 Order Denying Motion for Expedited Consideration of Defendant
Legislative Affairs Agency's Motion for Stay of Proceedings)**

THIS COURT, having reviewed Defendant Legislative Affairs Agency's (the
"Agency") Motion for Reconsideration of the June 16, 2015 Order Denying Motion for
Expedited Consideration of Defendant Legislative Affairs Agency's Motion for Stay of

[PROPOSED] ORDER GRANTING LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR
RECONSIDERATION (06/16/15 Order)
ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI
Page 1 of 3

000769

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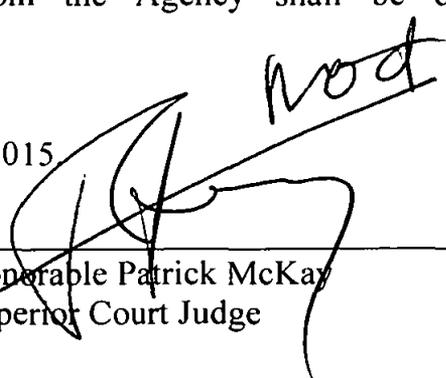
Proceedings, any opposition and/or responses thereto, and being duly advised in the premises, this Court finds and ORDERS as follows:

(1) The Agency's Motion for Reconsideration is GRANTED;

(2) Plaintiff's opposition to the motion to stay proceedings shall be due on

6/29/15 ~~close of business~~ *close of business*, and any reply brief from the Agency shall be due on 7/16/29/15 ~~close of business~~ *close of business*.

DATED this 23rd day of June, 2015


Honorable Patrick McKay
Superior Court Judge

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on June 18, 2015, a true and correct copy of the foregoing was served via first class mail on:

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

Mark P. Scheer
Scheer & Zehnder LLP
701 Pike Street, Suite 2200
Seattle, WA 98101
(Attorneys for Def/Criterion General, Inc.)

I certify that on 6 a copy of the following was mailed/ faxed/ hand-delivered to each of the following at their addresses of record.

Administrative Assistant

STOEL RIVES LLP
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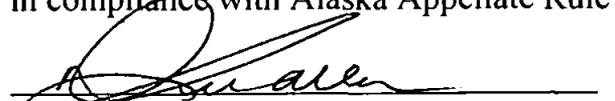
Jeffrey W. Robinson
Ashburn & Mason
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(Attorneys for Defendant 716 West Fourth Avenue, LLC)

Cynthia L. Ducey, Esq.
Delaney Wiles, Inc.
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(Attorneys for Defendant, Pfeffer Development, LLC)

Daniel T. Quinn, Esq.
Richmond & Quinn
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(Attorneys for Defendant Koonce Pfeffer Bettis, inc. d/b/a KPB Architects)

Blake H. Call, Esq.
Call & Hanson, P.C.
413 G Street
Anchorage, Alaska 99501
(Co-Attorneys for Def/Criterion General, Inc.)

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


Debby Allen, Litigation Practice Assistant

79279239.1 0081622-00003

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

FILED
STATE OF ALASKA
THIRD DISTRICT

2015 JUL -7 PM 3:39

CLERK OF THE COURTS

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska)
corporation,)
Plaintiff)
)
vs.)
)
716 WEST FOURTH AVENUE LLC, <i>et al.</i>)
)
Defendants.)
)

Case No. 3AN-15-05969CI

**REPLY TO:
LEGISLATIVE AFFAIRS AGENCY'S OPPOSITION TO
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
(NOT EXTENSION) AND REQUEST FOR RELIEF UNDER CIVIL
RULE 56(f)**

**A. The Parties' Characterization of the Lease Is Not
Controlling**

Defendant Legislative Affairs Agency's Opposition to the Motion for Partial Summary Judgment (Not Extension) by Alaska Building, Inc. (ABI) is largely that by calling the LIO Lease¹ an extension it complies with the AS 36.30.083(a) requirement that

¹ More particularly described as that certain contract, dated September 19, 2013, by and between defendant Legislative Affairs Agency and defendant 716 West Fourth Avenue LLC (716 LLC), titled "Extension of Lease and Lease Amendment No. 3, a true and correct copy of which is attached as Exhibit 1 to the June 12, 2015, Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment (Supporting Affidavit).

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it extend a real property lease to bypass the regular public bidding process.² It is respectfully suggested that it is the actual effect of the LIO Lease, rather than what it is called that controls. *See, e.g., Department of Revenue v. Baxter*, 486 P.2d 360, 364 (Alaska 1971) (the substantial effect of the instruments employed, rather than the particular form used controlling).

Here, ABI's motion for Partial Summary Judgment contends that the LIO Lease does not extend a real property lease as required under AS 36.30.083(a). With respect to this issue, ABI asserts that the following terms and effect of the LIO Lease results in the legal conclusion that it does not extend a real property lease:³

- a. Demolition of the then existing Anchorage Legislative Information Office located at 716 West 4th Avenue in Anchorage, Alaska down to its foundation and steel frame,
- b. Demolition of the adjacent old Empress Theatre, located at 712 West 4th Avenue, occupied by the Anchor Pub at that time,
- c. Moving the existing Anchorage Legislative Information Office prior to the demolition of the old Legislative Information Office Building, and
- d. Construction of a new office building for lease as the new Anchorage Legislative Information Office.

Paragraph 2 of Supporting Affidavit.

It is a simple argument, which may or may not ultimately prevail, but it is a legal issue based on indisputable facts.

² AS 36.30.083(a) also requires that such a lease achieves "minimum cost savings of at least 10 percent below the market rental value."

³ The Legislative Affairs Agency tries to make a big deal that ABI does not dispute that the LIO Lease is a real property lease. The point isn't whether it is a real property lease or not—ABI agrees it is—but whether it extends such a lease.

*Reply Re: Motion for
Partial Summary Judgment (Not Extension)*

Confirming the provisions of the LIO Lease, its effect, as depicted in the following photographs produced by defendant Koonce Pfeiffer Bettis, Inc., d/b/a KPB Architects (KPB) in its Initial Disclosures⁴ confirm that the old Anchorage Legislative Information Office was demolished down to its steel frame and foundation, the adjacent old Empress Theatre, most recently the Anchor Pub, was demolished, and a new building constructed.⁵



⁴ Reply Affidavit, ¶2.

⁵ The Legislative Affairs Agency objects to ABI's use of the word "new," but that is another irrelevancy. However one describes what was constructed, the question is whether the LIO Lease extended a real property lease.



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*Reply Re: Motion for
Partial Summary Judgment (Not Extension)*

Page 4

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While this demolition and construction occurred, the existing Anchorage Legislative Information Office was moved, which is both provided in the LIO Lease at ¶1.1.c.2. and Exhibit B-1 thereto,⁶ and affied to in the Supporting Affidavit at ¶2.c.

So, again, the question is whether these indisputable facts establish as a legal matter that the LIO Lease did not extend a real property lease as required by AS 36.30.083(a) in order to legally avoid the public bidding process. It is respectfully suggested the points raised by the Legislative Affairs Agency do not defeat the Motion for Partial Summary Judgment.

⁶ Pages 3 and 83 of Exhibit 1, to Supporting Affidavit.

*Reply Re: Motion for
Partial Summary Judgment (Not Extension)*

B. AS 36.30.083(a) Is Controlling

At page 7 of its Opposition, the Legislative Affairs Agency asserts that a factual issue over whether there has been compliance with the terms of AS 36.30.020 precludes summary judgment as to compliance with AS 36.30.038(a). While there certainly is great doubt as to the validity of the findings that there was compliance with AS 36.30.020, that factual issue is irrelevant to the Motion for Partial Summary Judgment. That the Legislative Affairs Agency was also required to comply with AS 36.30.020, does not mean it was not required to comply with AS 36.30.083(a). Or put differently, even if there was compliance with AS 36.30.020, if the LIO Lease does not extend a real property lease, it is still illegal under AS 36.30.083(a).

C. That There May Have Been Previous Extensions Is Irrelevant to Whether the LIO Lease Complies With AS 36.30.083(a)

At pages 4-5 of its opposition, the Legislative Affairs Agency argues that because there have been previous amendments or extensions of the lease for the Anchorage Legislative Information Office Building, the LIO Lease is an extension. However, that there have been previous modifications or extensions of the lease is irrelevant to whether the LIO Lease is in compliance with requirement in AS 36.30.083(a) that in order to be legal, the LIO Lease must extend a real property lease.

D. The LIO Lease Is Not In Accord with the Intent of AS 36.30.083(a)

At page 7 of ABI's Memorandum in Support of Motion for Partial Summary Judgment (Partial Summary Judgment Memo) it states:

*Reply Re: Motion for
Partial Summary Judgment (Not Extension)*

Exhibit 1, is the legislative history that describes the rationale behind AS 36.30.083(a). The fundamental economic principle is that rental rates in new leases spread the costs of construction, including tenant improvements over the term of the lease (amortization) and that during a lease extension, the landlord does not have those costs and can and often will dramatically reduce the rent for an extension to reflect it having already recovered those costs.

The Legislative Affairs Agency does not dispute this in its opposition.

The Legislative Affairs Agency complains about the non-Alaska cases cited by ABI in support of its contention that the LIO Lease is not an extension, but cites no authority of its own. There are no cases interpreting AS 36.30.083(a) and it is respectfully suggested it should be interpreted in accord with its fundamental purpose, as repeatedly and consistently stated in its legislative history, which is attached as Exhibit 1 to the Memorandum in Support of the Motion for Partial Summary Judgment and described above.

Whether one calls the project a renovation or construction of a new building, the LIO Lease achieves the opposite of the Legislature's intent in enacting AS 36.30.083(a).

E. A Civil Rule 56(f) Extension Would be Pointless

The Legislative Affairs Agency requests a Civil Rule 56(f) extension in the event the Motion for Partial Summary Judgment is not denied. Defendant 716 West Fourth Avenue LLC (716 LLC) also requested a Civil Rule 56(f) extension and rather than repeat its entire argument here, ABI hereby incorporates its July 2, 2015, opposition thereto with additional points germane specifically to the Legislative Affairs Agency's Rule 56(f) Request.

*Reply Re: Motion for
Partial Summary Judgment (Not Extension)*

Unlike 716 LLC, the Legislative Affairs Agency has identified two factual issues for which it asserts it needs discovery. The first is that the Legislative Affairs Agency needs "discovery from the other defendants concerning details of the construction activities, including the permits that were obtained."⁷ First, neither the construction details nor the permits are relevant to determining the Motion for Partial Summary Judgment. Second, defendant KPB Architects provided construction details and permit documents with its Initial Disclosures.⁸

The other factual issue for which the Legislative Affairs Agency asserts it needs discovery is "whether the lease extension is so 'drastically different' from the original lease that it should not qualify as an extension."⁹ However, attached as Exhibits A-C to the June 29, 2015, Kevin Cuddy Affidavit are what he affies are the prior versions of the lease.¹⁰ Thus, the Legislative Affairs Agency doesn't need to discover the original lease to compare it with the LIO Lease. Since the Legislative Affairs Agency is the lessee, it should have these in its files and, apparently, already does.

In order to receive a Civil Rule 56(f) extension, a party is required to provide adequate reasons why the party cannot produce evidence in the normal time frame. *See, Gamble v. Northshore Partnership*, 907 P.2d 477, 485 (Alaska 1995); *Mitchell v. Teck Cominco Alaska Inc.*, 193 P.3d 751, 759 (Alaska 2008); and *Hymes v. Deramus*, 119 P.3d

⁷ June 29, 2015, Kevin Cuddy Affidavit ¶ 10.

⁸ Reply Affidavit, ¶ 3. KPB Architects' Initial Disclosures were served after the Legislative Affairs Agency's opposition to the instant motion.

⁹ June 29, 2015, Kevin Cuddy Affidavit ¶ 11.

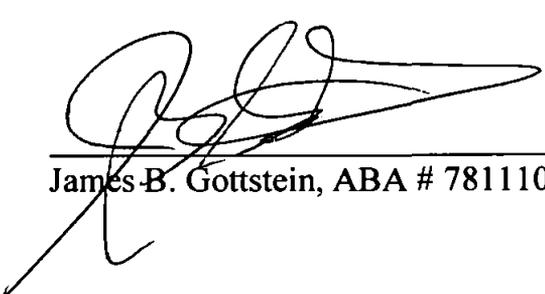
¹⁰ June 29, 2015, Kevin Cuddy Affidavit ¶¶ 15-17.

963 (Alaska 2005). It is respectfully suggested that the Legislative Affairs Agency has failed to do so. However, should this Court grant the Legislative Affairs Civil Rule 56(f) Request, ABI respectfully suggests that the current discovery stay be terminated and the Legislative Affairs Agency allowed 45 days from the original due date of June 29, 2015 to supplement its opposition to ABI's Motion for Partial Summary Judgment with whatever discovery it has obtained that it asserts is relevant.

F. Conclusion

For the foregoing reasons, plaintiff Alaska Building, Inc.'s Motion for Partial Summary Judgment (Not Extension) should be **GRANTED**. In the alternative, it is respectfully suggested the current discovery stay should be terminated and defendant Legislative Affairs Agency allowed 45 days from the original due date of June 29, 2015.

Dated July 7, 2015.



James B. Gottstein, ABA # 7811100

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

FILED
STATE OF ALASKA
DISTRICT
2015 JUL -7 PM 3:40

CLERK TRIAL COURT
BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969CI

**AFFIDAVIT IN SUPPORT OF REPLY TO:
LEGISLATIVE AFFAIRS AGENCY'S OPPOSITION TO
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
(NOT EXTENSION AND REQUEST FOR RELIEF UNDER CIVIL
RULE 56(f))**

THIRD JUDICIAL DISTRICT)

)ss

STATE OF ALASKA)

JAMES B. GOTTSTEIN, being first sworn under oath hereby deposes and states as follows:

1. I am the attorney for plaintiff Alaska Building Inc.
2. Included in the Initial Disclosures of defendant Koonce Pfeffer Bettis, Inc., d/b/a

KPB Architects (KPB Architects), received July 2, 2015, are the attached photographs depicting different stages of demolition of the old Anchorage Legislative Information

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Office Building and the adjacent Old Empress Theatre, and construction of the current Anchorage Legislative Information Office Building pursuant to that certain contract, dated September 19, 2013, by and between defendant Legislative Affairs Agency and defendant 716 West Fourth Avenue LLC (716 LLC), titled "Extension of Lease and Lease Amendment No. 3 (LIO Project), a true and correct copy of which is attached as Exhibit 1 to the June 12, 2015, Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment (Not Extension).

3. Also included in the KPB Architects Initial Disclosures are construction details and permitting documents pertaining to the demolition and construction involved in the LIO Project.

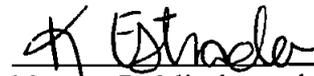
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 7th day of July, 2015.



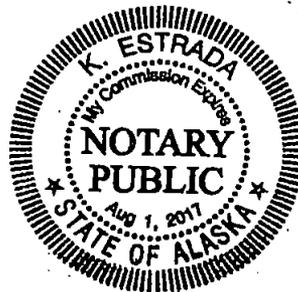
James B. Gottstein

SUBSCRIBED AND SWORN TO before me this 7 day of July 2015.



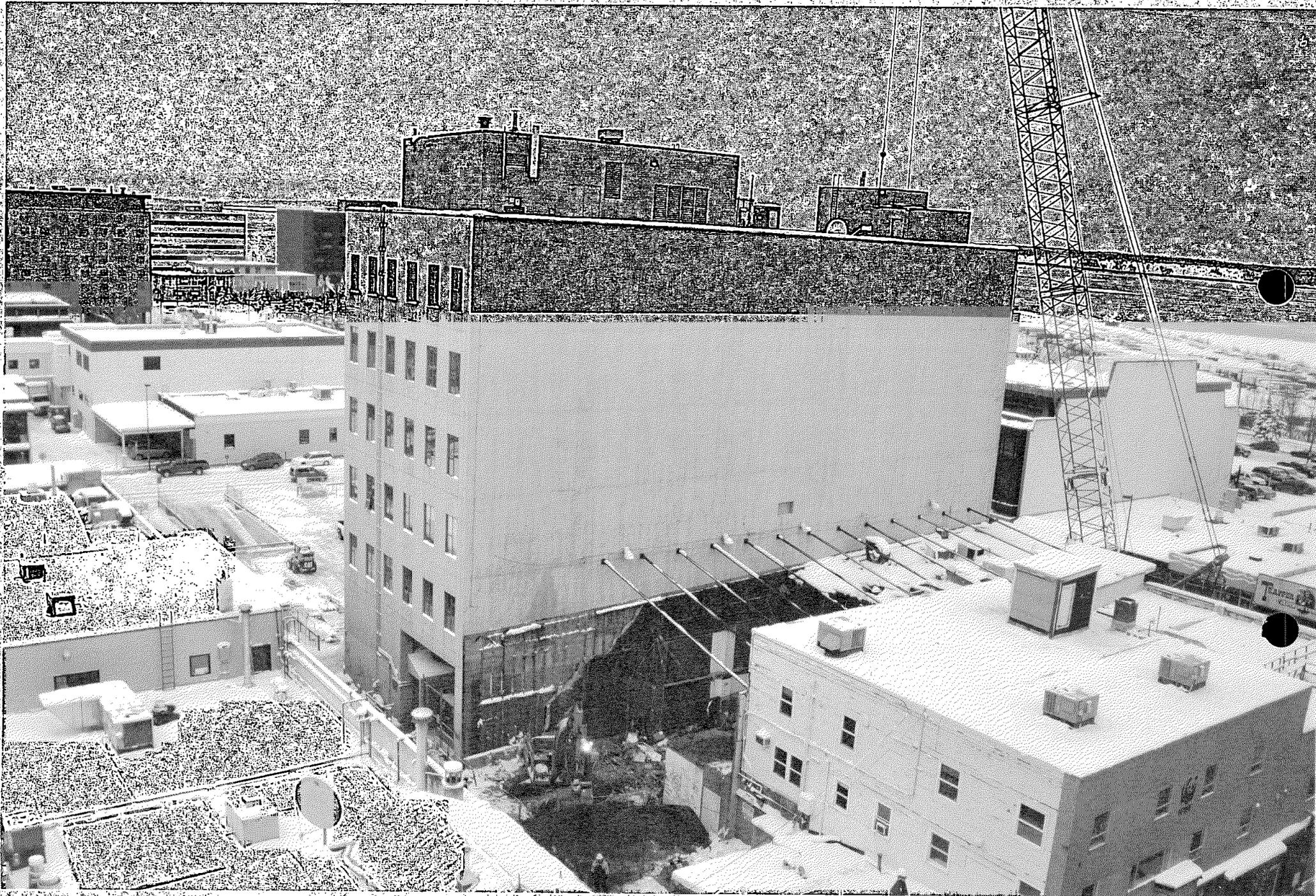
Notary Public in and for Alaska

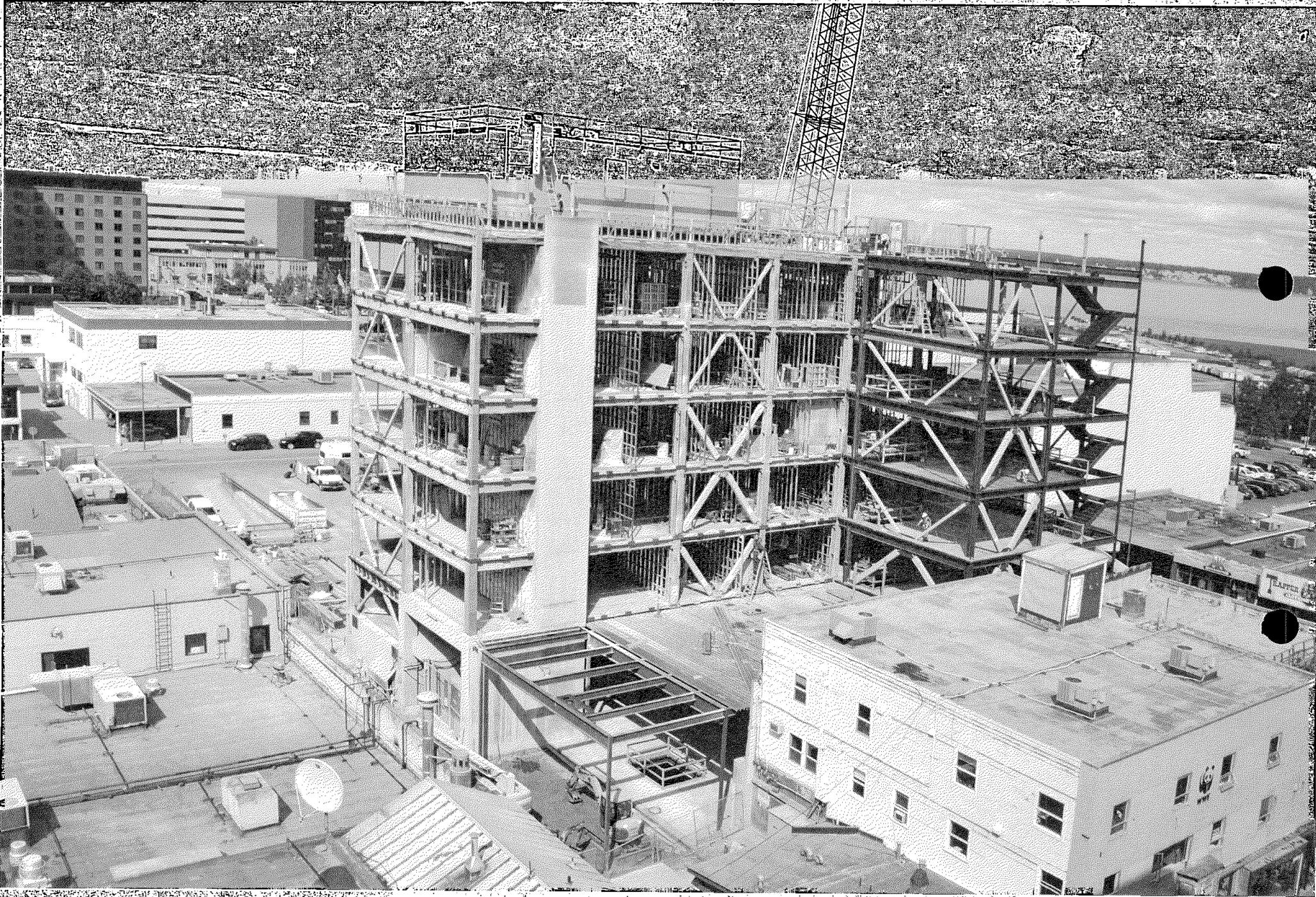
My Commission Expires: 8/1/17





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

FILED
STATE OF ALASKA
THIRD DISTRICT

2015 JUL -7 PM 3:39

CLERK OF ALASKA

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, *et al.*,

Defendants.

CERTIFICATE OF SERVICE

Case No. 3AN-15-05969CI

I hereby certify that on this date I mailed a copy of:

1. Reply to: Legislative Affairs Agency's Opposition to Plaintiff's Motion for Partial Summary Judgment (Not Extension) and Request for Relief Under Civil Rule 56(f),
2. Affidavit In Support Of Reply To: Legislative Affairs Agency's Opposition To Plaintiff's Motion For Partial Summary Judgment (Not Extension) And Request For Relief Under Civil Rule 56(f),
3. this Certificate of Service, to:

Jeffrey W. Robinson
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Kevin M. Cuddy
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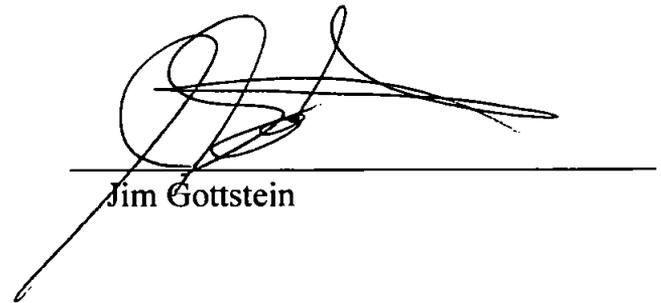
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Anchorage, Alaska 99501

Mark P. Scheer
Scheer & Zehnder LLP
701 Pike St., Ste 2200
Seattle, WA 98101

Dated: July 7, 2015



Jim Gottstein

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Certificate of Service
Case No. 3AN-15-05969

Page 2

000788

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

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

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants. _____

sq

[PROPOSED] ORDER GRANTING MOTION TO DISMISS COUNT I

THIS COURT, having reviewed Defendant 716 West Fourth Avenue, LLC's ("Defendant") Motion to Dismiss Count I, any opposition and/or responses thereto, and being duly advised in the premises, this Court finds as follows:

It is ORDERED that 716's Motion to Dismiss Count I for lack of subject matter jurisdiction is hereby GRANTED.

DATED this ____ day of _____, 2015.

Patrick J. McKay

PATRICK J. MCKAY
Superior Court Judge

JUN 23 2015

ASHBURN & MASON P.C.
LAWYERS
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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 23 day of June 2015, on:

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Law Offices of James B. Gottstein
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ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

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[PROPOSED] ORDER GRANTING MOTION TO DISMISS COUNT I
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969CI

**ORDER GRANTING
REQUEST FOR ORAL ARGUMENT
(Motion to Dismiss or Sever)**

Upon request of plaintiff Alaska Building, Inc., pursuant to Civil Rule 77(e)(2), for oral argument on the Legislative Affairs Agency's Motion to Dismiss or, in the Alternative, to Sever Claims, oral argument thereon shall be held, August 18, 2015, 2015 at 2:30 p.m, in Courtroom 301, Nesbett Courthouse, 825 West 4th Avenue, Anchorage, Alaska .

Dated

6/24/15


PATRICK L. MCKAY
SUPERIOR COURT JUDGE

I certify that on 7/6/15 a copy of the following was mailed/ faxed/ hand-delivered to each of the following at their addresses of record James Gottstein / Jeffrey Robinson / Blake Call / Mark Scheet / Daniel Quinn / Kevin Cuddy / Cynthia Ducey
Administrative Assistant [Signature]

JUN 19 2015

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000791

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

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

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

[PROPOSED] ORDER GRANTING MOTION FOR EXPEDITED
CONSIDERATION OF 716 WEST FOURTH AVENUE, LLC'S MOTION TO
EXTEND DEADLINES TO RESPOND TO MOTIONS

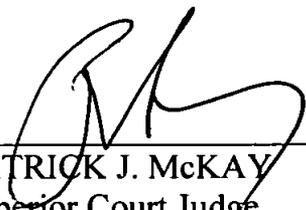
Having considered 716 West Fourth Avenue, LLC's ("716") Motion for Expedited Consideration of its Motion to Extend Deadlines to Respond to Motions, and any opposition or reply thereto, the Court ORDERS as follows:

716's Motion for Expedited Consideration is ^{denied} GRANTED. Any opposition to ~~716's Motion to Extend Deadlines shall be filed by the close of business on Wednesday, July 1, and any reply shall be filed by the close of business on Thursday, July 2nd, so that a decision may issue by the close of business on Monday, July 6th.~~

ASHBURN & MASON P.C.
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TEL 907.276.4331 • FAX 907.277.8235

JUN 30 2015

DATED this 20 day of July, 2015.


PATRICK J. MCKAY
Superior Court Judge

ASHBURN & MASON INC.
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ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

7-7-15 via email to Ashburn & Mason

I certify that on 7/16/15 a copy
of the following was mailed/ faxed/ hand-delivered
to each of the following at their addresses of
record James Grotstein / Jeffrey Robinson
Blake Call / Mark Scherer / Daniel Quinn
Kevin Cuddey / Cynthia Ducey
Administrative Assistant Ku

[PROPOSED] ORDER GRANTING MOTION FOR EXPEDITED CONSIDERATION
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 30 day of June 2015, on:

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Mark P. Scheer
Scheer & Zehnder LLP
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Seattle, WA 98101

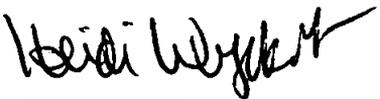
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Dan Quinn
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Blake Call
Call & Hanson P.C.
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Anchorage, Alaska 99501

ASHBURN & MASON

By: 
Heidi Wyckoff

[PROPOSED] ORDER GRANTING MOTION FOR EXPEDITED CONSIDERATION
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

FILED
 STATE OF ALASKA
 THIRD JUDICIAL DISTRICT
 2015 JUN 30 PM 3:45
 CLERK TRIAL COURT
 BY: _____

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

ALASKA BUILDING, INC., an Alaska)
 corporation,)
)
 Plaintiffs,)
)
 vs.)
)
 716 WEST FOURTH AVENUE LLC,)
 KOONCE PFEFFER BETTIS, INC., d/b/a)
 KP ARCHITECTS, PFEFFER)
 DEVELOPMENT, LLC, LEGISLATIVE)
 AFFAIRS AGENCY, and CRITERION)
 GENERAL, INC.,)
 Defendants.)

Case No.: 3AN-15-05969 CI

716 WEST FOURTH AVENUE, LLC'S
MOTION FOR EXPEDITED CONSIDERATION

716 WEST FOURTH AVENUE, LLC ("716"), by and through its attorney of record, Jeffrey W. Robinson, Ashburn & Mason, P.C., and pursuant to Rule 77(g) of the Alaska Rules of Civil Procedure, hereby moves for an order shortening time within which its Motion to Extend Deadlines for Responding to Motions may be heard, considered, and ruled upon, and for an order shortening time when any oppositions are to be filed and served.

716 makes this request because under the normal timeframes provided in the Civil Rules, briefing on this Motion would not be complete until after the current deadline for 716's reply to Plaintiff's Opposition to Legislative Affairs Agency's Motion to Stay Proceedings (June 8) had passed. As described in the affidavit of counsel accompanying the Motion to Extend Deadlines, and as required by Civil Rule

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77(g)(4), counsel has made a good-faith effort to resolve the issues raised in these motions with opposing counsel. A decision on the Motion to Extend Deadlines is necessary by the close of business on July 6, 2015, so that undersigned's office will have time to prepare the reply on the substantive Motion to Stay Proceedings, should the requested extension not be granted.

For these reasons, 716 respectfully requests that the Court grant its Motion for Expedited Consideration and enter the attached proposed order.

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

DATED: 6/30/15

By: 
for Jeffrey W. Robinson
Alaska Bar No. 10805038

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716 WEST FOURTH AVENUE, LLC'S MOTION FOR EXPEDITED CONSIDERATION
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

{10708-101-00275409;1}

CERTIFICATE OF SERVICE

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Heidi Wyckoff

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716 WEST FOURTH AVENUE, LLC'S MOTION FOR EXPEDITED CONSIDERATION
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

{10708-101-00275409;1}

Kevin Cuddy (Alaska Bar #0810062)
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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

**[PROPOSED] ORDER GRANTING DEFENDANT LEGISLATIVE AFFAIRS
AGENCY'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO SEVER
CLAIMS FOR MISJOINDER**

THIS COURT, having reviewed Defendant Legislative Affairs Agency's (the
"Agency") Motion to Dismiss, any opposition and/or responses thereto, and being duly
advised in the premises, this Court finds as follows:

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

__ IT IS THEREFORE ORDERED that Defendant Legislative Affairs Agency's Motion to Dismiss for lack of subject matter jurisdiction is GRANTED.

Or

__ IT IS THEREFORE ORDERED that Defendant Legislative Affairs Agency's Motion to Dismiss for lack of subject matter jurisdiction is DENIED, but the claims against the Legislative Affairs Agency contained in Count One of the Complaint are SEVERED from this case. If Plaintiff wishes to pursue the claims in Count One against the Legislative Affairs Agency, it must file a separate case.

DATED this _____ day of _____, 2015.



Honorable Patrick McKay
Superior Court Judge

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on May 27, 2015, a true and correct copy of the foregoing was served via first class mail on:

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(Attorney for Plaintiff)

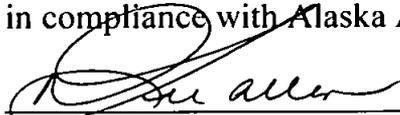
Mark P. Scheer
Scheer & Zehnder LLP
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(Attorneys for Def/Criterion General, Inc.)

Jeffrey W. Robinson
Ashburn & Mason
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(Attorneys for Defendant 716 West Fourth Avenue, LLC)

Daniel T. Quinn, Esq.
Richmond & Quinn
360 K Street, Suite 200
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(Attorneys for Defendant Koonce Pfeffer Bettis, inc. d/b/a KP&B Architects)

Cynthia L. Ducey, Esq.
Delaney Wiles, Inc.
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Anchorage, AK 99501
(Attorneys for Defendant, Pfeffer Development, LLC)

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



Debby Allen, Litigation Practice Assistant

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S-16371

3AN-15-05969 CI

VOLUME 3

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-15-05969CI

**ORDER GRANTING UNOPPOSED MOTION TO
EXTEND TIME FOR REPLY RE:
ALASKA BUILDING, INC.'S MOTION TO COMPEL RESPONSES
TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO 716
WEST FOURTH AVENUE LLC**

Alaska Building, Inc.'s, unopposed motion for an extension of time until November 18, 2015, to file its reply regarding Alaska Building, Inc.'s Motion To Compel Responses To Plaintiff's First Requests For Production To 716 West Fourth Avenue LLC is hereby **GRANTED.**

Dated 11/5, 2015.


PATRICK J. MCKAY,
SUPERIOR COURT JUDGE

I certify that on 11/5/15 a copy of the following was mailed/ faxed/ hand-delivered to each of the following at their addresses of record.

James Gottstein
Jeffrey Robinson / Kevia Cuddey
Administrative Assistant

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NOV 02 2015

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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-15-05969CI

**ORDER GRANTING UNOPPOSED MOTION TO
EXTEND TIME FOR REPLY RE:
ALASKA BUILDING, INC.'S MOTION
FOR PRELIMINARY INJUNCTION**

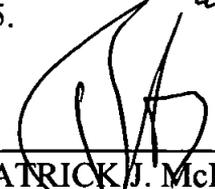
Alaska Building, Inc.'s, unopposed motion for an extension of time until November

18, 2015, to file its reply regarding Alaska Building, Inc.'s Motion for Preliminary

Injunction is hereby **GRANTED**.

*Counsel - please note that court
will not be able to address motion
(because of his extension) until mid December
at earliest. (P)*

Dated 11/5, 2015.


PATRICK J. MCKAY,
SUPERIOR COURT JUDGE

I certify that on 11/5/15 a copy
of the following was mailed/ faxed/ hand-delivered
to each of the following at their addresses of
record.

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Jeffrey Robinson / Kevin Cuddy
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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

OCT 21 2015

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

Case No.: 3AN-15-05969CI

v.

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

Defendants.

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#24
**[PROPOSED] ORDER GRANTING DEFENDANT LEGISLATIVE
AFFAIRS AGENCY'S MOTION FOR SUMMARY JUDGMENT**

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

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

DATED this _____ day of _____, 2015.

NOT USED

Honorable Patrick McKay
Superior Court Judge

CERTIFICATE OF SERVICE AND OF FONT

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

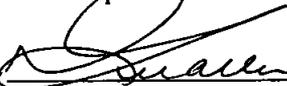
VIA HAND DELIVERY

James B. Gottstein, Esq.
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(Attorney for Plaintiff)

VIA FIRST CLASS MAIL

Jeffrey W. Robinson
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(Attorneys for Defendant 716 West Fourth Avenue, LLC)

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



Debby Allen, Practice Assistant

80415105.1 0081622-00003

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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.)

**PROPOSED ORDER GRANTING 716'S MOTION FOR RULING OF LAW
PRECLUDING ABI'S CLAIMS FOR QUI TAM AND PUNITIVE DAMAGES**

Having considered Defendant 716 West Fourth Avenue, LLC's ("716") Motion for Ruling of Law Precluding ABI's Claims for *Qui Tam* and Punitive Damages, and any opposition thereto, the Court hereby GRANTS the Motion. Plaintiff Alaska Building, Inc.'s ("ABI") claims for 10% of the purported savings to the Legislative Affairs Agency and punitive damages (asserted on page 3 of ABI's Second Amended Complaint, at paragraphs B and C) are DISMISSED.

DATED: _____

NOT USED

HON. PATRICK J. McKAY
Superior Court Judge

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OCT 06 2015

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I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 6 day of October 2015, on:

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PROPOSED ORDER GRANTING 716'S MOTION FOR RULING OF LAW PRECLUDING ABI'S CLAIMS
FOR *QUITAM* AND PUNITIVE DAMAGES
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil
{10708-101-00291048;1}

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.)

**^ [PROPOSED] ORDER DENYING PLAINTIFF'S MOTION TO COMPEL
RESPONSES TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO
716 WEST FOURTH AVENUE, LLC**

Having considered the parties' briefing regarding Plaintiff's Motion to Compel Responses to Plaintiff's First Requests for Production to 716 West Fourth Avenue, LLC, the motion is DENIED.

Alternatively, the Court shall perform an *in camera* review of 716 West Fourth Avenue LLC's Operating Agreement. In the event the Court finds this document relevant to the instant action, it will release this document to Plaintiff only under a confidentiality and protective order to be drafted by 716 and approved by the Court within ten days of the issuance of the order. If the Court finds that the Operating Agreement is not relevant to this action, it will not release the document to Plaintiff. No other documents pertaining to 716's financial operations are ordered to be released at this time.

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A brief hearing regarding unresolved discovery issues relating to Plaintiff's Motion to Compel will be held, if necessary, following the conclusion of oral argument addressing 716's Motion for Summary Judgment under the Laches Doctrine, which 716 has joined.

DATED: _____

~~NOT USED~~
HON. PATRICK J. McKAY
Superior Court Judge

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 27 day of October 2015, on:

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By: 
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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-15-05969CI

**ORDER GRANTING
MOTION TO COMPEL RESPONSES TO PLAINTIFF'S
FIRST REQUESTS FOR PRODUCTION TO 716 WEST
FOURTH AVENUE LLC**

Upon the motion by plaintiff, Alaska Building, Inc., to compel responses to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC pursuant to Civil Rule 37(d), and after consideration of all responses, if any, it is hereby Ordered that the motion is **GRANTED**.

IT IS FURTHER ORDERED,

1. Defendant, 716 West Fourth Avenue LLC shall produce the requested material within 30 days of this Order, and
2. Defendant, 716 West Fourth Avenue LLC shall describe any documents or other material withheld because of an asserted privilege as follows:

- (a) The date of the document or other item;
- (b) The author or addressor of the document or other item;

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OCT 06 2015

000811

- (c) The recipient or addressee of the document or other item;
- (d) The number of pages of the document;
- (e) The general subject matter of the document or other item;
- (f) Each person who sent, received and obtained copies of the document or other item;
- (g) A general description of the document or other item (i.e., letter, report, memoranda, audio or video recording); and
- (h) The basis of the privilege asserted with respect to the alleged grounds for non-production of the document or other item.

Dated _____, 2015.

NOT USED

PATRICK J. McKAY,
SUPERIOR COURT JUDGE

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*Order Granting Motion to Compel
716 LLC Production*

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Page 2

000812

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-15-05969CI

2/19 **ORDER GRANTING
MOTION TO COMPEL RESPONSES TO PLAINTIFF'S
FIRST REQUESTS FOR PRODUCTION TO 716 WEST
FOURTH AVENUE LLC**

Upon the motion by plaintiff, Alaska Building, Inc., to compel responses to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC pursuant to Civil Rule 37(d), and after consideration of 716 West Fourth Avenue's opposition and Alaska Building, Inc.'s reply, it is hereby Ordered that the motion is **GRANTED** as follows:

1. Such discovery shall be subject to any discovery or protective order applicable thereto.
2. Except as otherwise specifically provided below, all the requested documents shall be produced.
3. The following numbered documents listed in the Attorney Client Privilege Log served with Supplemental Responses to Alaska Building, Inc.'s First Request for

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Production (E-mail Privilege Log) shall be produced: 1, 2, 4, 5, 6, 8, 19, 46, 50 & 51 shall be produced.

4. To be able to assess the applicability of the attorney/client privilege with respect to the other documents listed in the E-mail Privilege Log, 716 LLC shall state:

- (a) any other recipients of the document, including those after the initial transmittal,
- (b) the general subject matter, and
- (c) the date.

5. To be able to assess the applicability of the attorney/client privilege defendant, 716 West Fourth Avenue LLC shall describe (i) the redactions in 716 West Fourth Avenue document production numbers 716-001273, 716-001281, 716-001283, 716-001285, 716-001298, 716-001300, 716-001302, 716-001303, 716-001347-1348, 716-001412, 716-001947, and 716-002352, and (2) any other documents or other material withheld because of an asserted privilege as follows:

- (a) The date of the document or other item;
- (b) The author or addressor of the document or other item;
- (c) The recipient or addressee of the document or other item;
- (d) The number of pages of the document;
- (e) The general subject matter of the document or other item;
- (f) Each person who sent, received and obtained copies of the document or other item;
- (g) A general description of the document or other item (i.e., letter, report, memoranda, audio or video recording); and
- (h) The basis of the privilege asserted with respect to the alleged grounds for non-production of the document or other item.

6. Defendant, 716 West Fourth Avenue LLC shall comply within 30 days of this

Order.

Dated _____, 2015.

NOT USED

PATRICK J. McKAY,
SUPERIOR COURT JUDGE

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*Order Granting Motion to Compel
716 LLC Production*

s

Page 3 of 3

000815

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

FILED
STATE OF ALASKA
THIRD DISTRICT
2015 NOV -5 AM 11:20
CLERK TRIAL COURTS
BY: _____

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff
vs.
716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY
Defendants.

Case No. 3AN-15-05969CI

#24
**OPPOSITION TO DEFENDANT LEGISLATIVE AFFAIRS
AGENCY'S MOTION FOR SUMMARY JUDGMENT UNDER THE
LACHES DOCTRINE**

Plaintiff, Alaska Building, Inc., opposes Defendant Legislative Affairs Agency's
Motion For Summary Judgment Under The Laches Doctrine (Laches Motion).

A. Alaska Laches Law

The Supreme Court has articulated the general standard for laches as follow:

Whether laches bars a suit is a question properly addressed to the trial court's discretion; we will not overturn its decision unless our review of the record leaves us with a definite and firm conviction that a mistake has been committed. To mount a laches defense, "the defendant must show, (1) that the plaintiff has unreasonably delayed in bringing the action, and (2) that this unreasonable delay has caused undue harm or prejudice to the defendant."

Laverty v. Alaska R.R. Corp., 13 P.3d 725, 729 (Alaska 2000), footnotes omitted. "The superior court has 'broad discretion to sustain or deny a defense based on laches.' "

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Offshore Systems-Kenai v. State, Dept. of Transp. and Public Facilities, 282 P.3d 348, 354 (Alaska 2012).

Whether or not laches is even available as a defense depends upon whether the underlying relief requested is legal or equitable. *Laverty*, 13 P.3d at 730. ("laches is an equitable defense against equitable causes of action, but not a legal defense against actions at law.").

In *Laverty*, the Supreme Court discussed this in the context of a claim for declaratory relief as follows:

Courts in other jurisdictions have described the declaratory judgment as a *sui generis* form of relief, arising neither at law nor at equity. We have similarly described the Declaratory Judgment Act as adding "another remedy to existing legal and equitable remedies." These characterizations cause a problem when the affirmative defense of laches is raised against a claim for declaratory relief, since laches is an equitable defense against equitable causes of action, but not a legal defense against actions at law. Courts often resolve this problem by looking to the circumstances surrounding the claim and applying laches if the claim would have arisen in equity before declaratory judgment was available.

Here, *Laverty* sought a declaration and a parallel injunction, which might lead courts in some jurisdictions to treat the declaration as equitable relief, subject to laches. In Alaska, however, the issue is complicated by the broad right of standing that our law confers on citizen-taxpayers. Unlike many jurisdictions, Alaska permits citizen-taxpayer standing when a case raises issues of "public significance" and the person bringing the case is an "appropriate" party to raise the issue. Our law thus recognizes that declaratory relief is often the simplest and most effective form of judgment in cases involving significant public interest brought pursuant to citizen-taxpayer standing.

13 P.3d at 730, footnotes omitted.

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*Opposition to LAA's
Laches Motion*

Page 2 of 10

000817

B. Analysis

(1) The Delay Was Not Unreasonable or Unconscionable

As set forth above, the Supreme Court has historically held one of the requirements to assert the laches defense is that the delay be unreasonable. Most recently, in *State, Dept. of Commerce and Economic Development, Div. of Insurance*, 8 P.3d 351, 358 (Alaska 2000), the Supreme Court held the delay has to be for an unconscionable period.

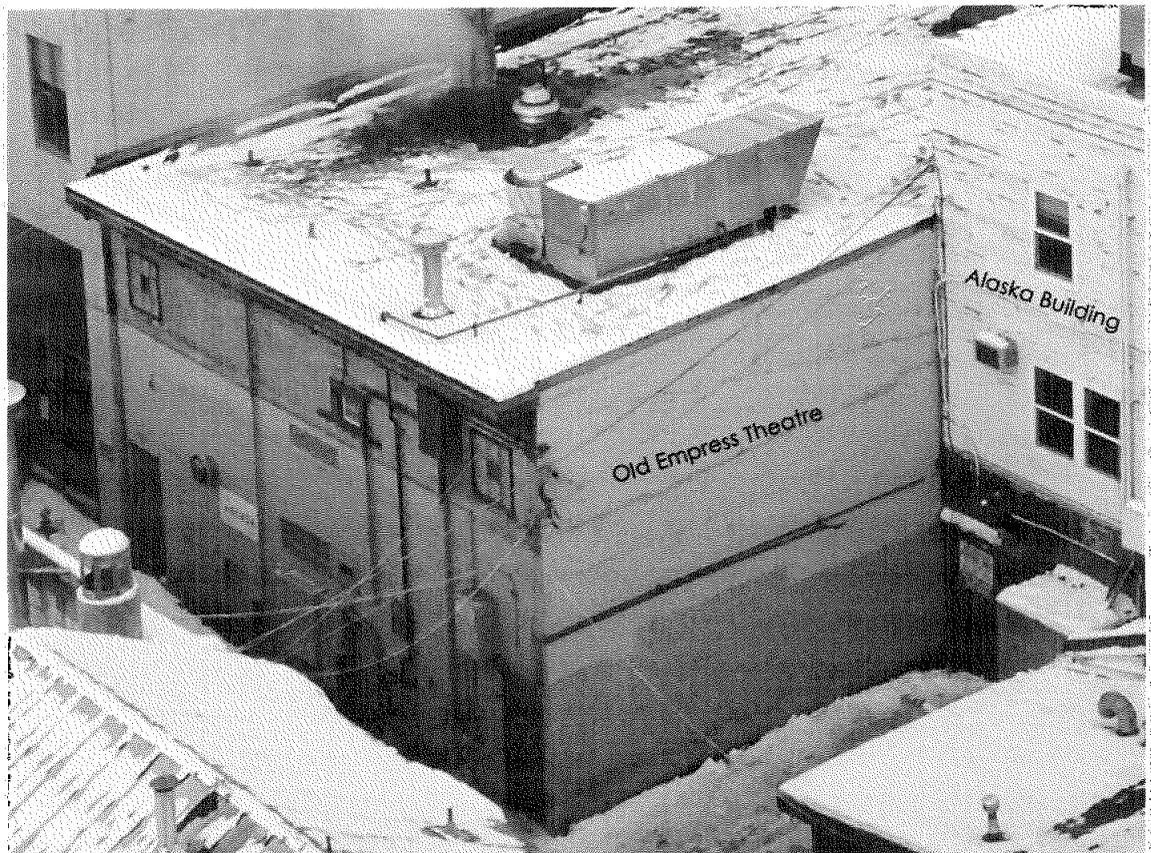
The delay here was neither. Alaska Building, Inc., did not file suit to try and stop the construction because of its valid concern of retaliatory damage to the Alaska Building if an attempt to stop the project was unsuccessful. *See*, highlighted portions of the deposition transcript of Alaska Building, Inc.'s president. Exhibit 1, pages 10 (Transcript page 140), 11-12 (141-142), 14 (144), 15 (145).

In fact, 716 LLC threatened to cut off the gas to the Alaska Building during negotiations over moving the gas service. *See*, deposition transcript pages Exhibit 1, pages 4 (87), 5 (97), 7-8 (99-100), and Exhibit 2.

716 LLC also threatened to demolish a substantial portion of the shared wall that was used by the Alaska Building. Exhibit 3. Three distinct portions of the wall must be described to understand this. The North 50 feet was a true party wall, subject to formal, recorded, party wall obligations, which supported the 2nd floor and roof of that portion of the Alaska Building. The middle segment, runs south from the end of the formal party wall to the South end of the Alaska Building. The Alaska Building uses this segment as its outer wall, with the second and third floors built inside of it. The following picture shows the posts and beams of the first floor supporting the 3rd and 4th floors using this wall.



The third section of the wall extended beyond the South wall of the Alaska Building as shown in the following picture.



LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
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(907) 274-9493

*Opposition to LAA's
Laches Motion*

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Alaska Building, Inc., had agreed to 716 LLC removing this latter, most southern section of the wall, extending beyond the South wall of the Alaska Building, but not the true Party Wall portion, or the middle section, as depicted in the first picture, yet as set forth in Exhibit 3, 716 LLC threatened to remove the middle section, which is the outer wall for that portion of the Alaska Building.

So, Alaska Building, Inc., was justifiably concerned that trying to stop the project would result in substantial, even catastrophic, damage to the Alaska Building. Under such circumstances, the delay was neither unreasonable nor unconscionable.

In addition, the extremely short time frame between the announcement of the project, on or around October 2, 2013, and the anticipated commencement of demolition of the Old Empress Theatre on November 15, 2013, made suing to stop it not feasible.

In *City and Borough of Juneau v. Breck*, 706 P.2d 313 (Alaska 1985), the principle case relied upon by the Legislative Affairs Agency, and 716 LLC in its Joinder, the Supreme Court held that laches applied because the signing of the contract and commencement of work should have galvanized the plaintiff into action in finding the delay unreasonable. It is respectfully suggested, however, that the fundamental standard is whether the delay was reasonable or unconscionable and the foregoing circumstances demonstrate that it was not. To allow a laches defense to be asserted when the party established so short a time frame that mounting a legal challenge to stop it was infeasible turns the concept of unreasonable delay on its head. Similarly the prospect of retaliatory damage to the Alaska Building makes the delay not unreasonable nor unconscionable.

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*Opposition to LAA's
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(2) Neither the Legislative Affairs Agency Nor 716 LLC Will Suffer Under Harm or Prejudice.

The other prerequisite for the laches defense is undue harm or prejudice. It is respectfully suggested neither 716 LLC, nor the Legislative Affairs Agency will suffer undue harm or prejudice.

As set forth in Alaska Building, Inc.'s Opposition To 716's Motion For Ruling Of Law Precluding ABI's Claims For Qui Tam And Punitive Damages, 716 LLC knew that the LIO 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. Under these circumstances, 716 LLC would not be suffering undue harm or prejudice. Moreover, if, as 716 LLC asserts, the rental rate under the LIO Lease is more than 10% below market, then it would be more than made whole by being allowed to lease at market if the Legislative Affairs Agency leaves. The argument of harm by 716 is an admission that the lease rate is not at least 10% below market as required by AS 36.30.083(a).

With respect to the Legislative Affairs Agency, if it is paid back the excess rent 716 LLC has received, which 716 LLC has at least implicitly represented to this Court it is capable of doing,¹ then the Legislative Affairs Agency suffers no prejudice. There are other potential remedies that make the Legislative Affairs Agency whole, such as applying all funds paid by the Legislative Affairs Agency to a proper rental rate under AS

¹ In its Opposition to the Motion for Preliminary Injunction, which is attached as Exhibit A to its Joinder, at page 14, 716 LLC states, "ABI's sole claim of irreparable harm is the unsubstantiated, speculative claim that because 716 is limited liability corporation it will be unable to pay 'pay back rent money it has received in excess of that allowed by law.' "

36.30.083(a), towards future rent, including the \$7.5 million for "tenant improvements."

In other words, the excess rent paid by the Legislative Affairs Agency could be a credit for future rent. The issue of the interplay between a declaratory judgment and potential remedies is more fully addressed in the next section, but the point here is that declaring the LIO Lease illegal, null and void does not necessarily result in a monetary loss by the Legislative Affairs Agency.

Moreover, even the claimed harm in invalidating the lease is dwarfed by the harm from continuing the lease. As set forth in the Affidavit of Larry Norene filed in support of Alaska Building, Inc.'s Motion for Preliminary Injunction, the Legislative Affairs Agency is being charged \$2,076,537 more per year than allowed under AS 36.30.083(a). Over the approximately 8½ years remaining on the lease, declaring the lease illegal, null and void will result in a savings of over \$17 million for the balance of the term.² In other words, the Legislative Affairs Agency actually suffers harm if laches is applied.

In sum, neither the Legislative Affairs Agency nor 716 LLC will suffer undue harm or prejudice.

(3) Laches Is Not Available for the Declaratory Judgment Claim that the LIO Lease is Illegal

In *Laverty*, the Supreme Court agreed that laches could be applied to the request for injunctive relief, but not to the claim for declaratory relief without a showing that there

² There is no other proper evidence of market rent in this case so far. If either 716 LLC or the Legislative Affairs Agency presents an affidavit as to market rent, then there will create a factual dispute that should be resolved by an evidentiary hearing on market rent.

was also undue prejudice with respect to that relief. *Breck* is to the same effect. In *Laverty*, the Supreme Court cited Alaska's declaratory judgment statute, AS 22.10.020(g),³ which provides:

(g) In case of an actual controversy in the state, the superior court, upon the filing of an appropriate pleading, may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought. The declaration has the force and effect of a final judgment or decree and is reviewable as such. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against an adverse party whose rights have been determined by the judgment.

(Emphasis added.)

The declaratory relief requested here is a:

Judgment declaring the September 19, 2013, agreement between 716 West Fourth Avenue LLC and the Legislative Affairs Agency pertaining to the Anchorage Legislative Information Office building illegal, null and void.

Second Amended Complaint, page 3. The Second Amended Complaint also asks for, "Such other further and additional relief as the Court find just." *Id.* Normally, this is just a *pro forma* prayer for relief, but it takes on real meaning here in light of the provision in AS 22.10.020(g) for further proceedings following the grant of a declaratory judgment.

A declaration that the LIO Lease is illegal occasions no undue harm or prejudice to the Legislative Affairs Agency or 716 LLC. Perhaps a declaratory judgment that the LIO Lease is null and void is akin to injunctive relief, but not one that just declares the lease illegal, i.e., a violation of AS 36.30.083(a).

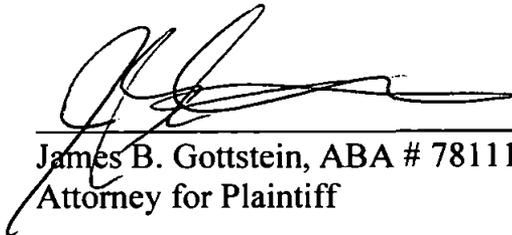
³ 13 P.3d at 729.

If the Court issues a declaratory judgment that the LIO Lease is illegal, i.e., a violation of AS 36.30.083(a), proceedings for "further necessary or proper relief . . . after reasonable notice and hearing," can be held to determine exactly what further or proper relief should be fashioned.

C. Conclusion

For the foregoing reasons Defendant Legislative Affairs Agency's Motion For Summary Judgment Under The Laches Doctrine should be **DENIED**.

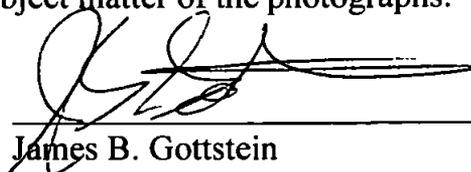
Dated November 5, 2015.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

VERIFICATION

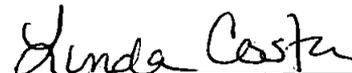
James B. Gottstein, being first duly sworn, deposes and states that to the best of my knowledge and belief, (1) all of the factual statements contained herein are true, (2) all of the exhibits hereto are true and correct copies, and (3) the two photographs were produced in discovery and accurately depict the subject matter of the photographs.

Dated November 5, 2015.


James B. Gottstein

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




Notary Public in and for Alaska
My Commission Expires: 04/10/2017

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JAMES B. GOTTSTEIN
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99501

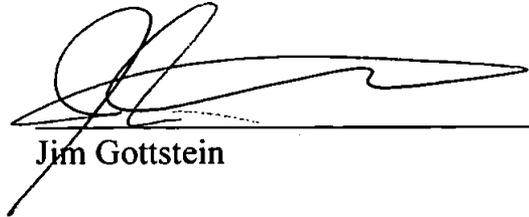
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*Opposition to LAA's
Laches Motion*

CERTIFICATE OF SERVICE

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

Dated November 5, 2015.



Jim Gottstein

In the Matter Of:

ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

JAMES GOTTSTEIN - VOL. II

October 23, 2015

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1 ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC
IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 JAMES GOTTSTEIN - VOL. II on 10/23/2015

3
4 **THIRD JUDICIAL DISTRICT AT ANCHORAGE**

5 **ALASKA BUILDING, INC., an**
6 **Alaska corporation,**

7 **Plaintiff,**

**CERTIFIED
TRANSCRIPT**

8 **vs.**

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

12 **Defendants.**

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**

1 ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC
2 JAMES GOTTSTEIN - VOL. II on 10/23/2015 A-P-P-E-A-R-A-N-C-E-S

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For Plaintiff:

James B. Gottstein
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Anchorage, Alaska 99501
907/274-7686

For Defendant 716 West Fourth Avenue LLC:

Jeffrey W. Robinson
ASHBURN & MASON
1227 West 9th Avenue, Suite 200
Anchorage, Alaska 99501
907/276-4331

For Defendant Legislative Affairs Agency:

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

Court Reporter:

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

1 was, I think, a meeting early in the month, maybe
2 the 2nd or 3rd, and then I can't remember when there
3 was the situation with moving the gas line.

4 Q. Right.

5 A. And (Bob O'Neill just said he was just going)

6 to disconnect my gas line, because we hadn't yet)

7 reached an agreement on it.)

8 Q. I'm going to get there. I'm asking you
9 between the 11th and the 25th, the dates of these
10 e-mails, you had some communication with entities
11 involved in the project, correct?

12 A. For sure with Mr. McClintock. You know,
13 I'd have to -- you know, it's not unlikely, but I
14 don't have any specific recollections of the
15 timeframe. If you -- you know, of contacts in that
16 timeframe.

17 Q. Fair to say that, on the 25th, you
18 expressed two principal concerns to Mr. McClintock.
19 The first was the integrity of the Alaska Building,
20 right? And this is at the bottom of page 1 of your
21 e-mail. Correct?

22 A. Uh-huh.

23 Q. And the second was that you not bear any
24 costs if something were to go wrong, right? Those
25 were the two concerns that you expressed as of

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 was it 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 and therefore they could have liability ultimately
2 if the lease was -- was there a meeting generally
3 with your tenants to discuss what you had uncovered
4 after reading the statute?

5 A. I never had a meeting with the tenants. I
6 would issue memos, and I met, talked to different
7 tenants at different times.

8 MR. ROBINSON: I'm going to mark as
9 Exhibit G, Mr. Gottstein...

10 (Exhibit G marked.)

11 BY MR. ROBINSON:

12 Q. Do you recall writing this memo,
13 Mr. Gottstein?

14 A. Yes.

15 Q. And the date?

16 A. Yes.

17 Q. What's the date?

18 A. It says October 29th, 2013.

19 Q. Okay. And you had previously written your
20 tenants a memo on October 10th, 2013?

21 A. Yes. Yeah, I assume so.

22 Q. What was the nature of this memo? I'm
23 referring to one and two on page 1.

24 A. (Well, the big concern was the threat to
25 just turn off gas to the Alaska Building in the

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 ~~ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC~~
~~JAMES GOTTSSTEIN - VOL. II on 10/23/2015~~ 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 versions of this letter. Is that right?

2 A. Yes.

3 Q. Do you see those on the screen?

4 A. I see another one dated October 31st, 2013.

5 Q. And what was the time on that?

6 A. 11:00 a.m.
ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC
JAMES GOTTSSTEIN - VOL. II on 10/23/2015

7 Q. Okay. And you testified earlier today that
8 you were thinking about, quote, unquote, launching
9 the grenade and seeking an injunction to stop the
10 project unless you received adequate assurances that
11 the Alaska Building would not be damaged. Is that
12 right?

13 A. Yes.

14 Q. And did you receive those assurances on or
15 about October 30th?

16 A. No, I wouldn't say that they were
17 satisfactory, but that's what I could -- could get.

18 And then ultimately (I decided not to file the
19 injunction, because I felt there was too much risk
20 of not being successful, and having retaliatory
21 damage to the Alaska Building, especially after
22 Mr. McClintock pointed out that I probably wouldn't
23 be able to post the bond.)

24 Q. Did you take any further steps after you
25 had been drafting these letters to the Attorney

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 Q. Okay. And by then you had already scrapped
2 this idea of alerting the Attorney General about any
3 concerns with the lease extension. Is that right?

4 A. Yeah. I mean, I -- he didn't bring it up,
5 but I actually e-mailed Mr. McClintock about that.

6 Q. Okay. Did you have a conversation with
7 Daniel Herz from the Alaska Dispatch News in August
8 of 2015 in connection with the hearing on the motion
9 to dismiss?

10 A. Yes.

11 Q. And --

12 A. I mean, I'm not sure of the specific date.

13 Q. Roughly in that time period?

14 A. Some -- sometime before the -- that
15 hearing.

16 Q. Okay. And in an article that Mr. Herz
17 published on August 17th, 2015, he reports that you
18 had estimated you had put the equivalent of \$40,000
19 of your own time into the case at that point.

20 A. Yes.

21 Q. Was that true?

22 A. Yes.

23 Q. And roughly how much do you have into the
24 case now if you had \$40,000 worth of time as of
25 mid-August 2015?

1 A. I don't know. I mean, I actually pulled up
2 the billing and looked at it, and I haven't done --
3 I don't know what it is now.

4 Q. In excess of 50,000?

5 A. Probably, yes. Yeah. I would be surprised
6 if it wasn't

ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC
JAMES GOTTSTEIN - VOL. II on 10/23/2015

7 Q. Okay. And you had indicated earlier this
8 morning that you were conflicted about whether to
9 bring a suit for the public back in October of 2013.

10 A. Well, I don't know that I said that, but it
11 was in an e-mail. And I was conflicted about even
12 entering into an agreement with 716 LLC because of
13 the lease being illegal. So in other words, I had a
14 desire to bring the claim that it was illegal back
15 then, and that was -- the conflict was that I felt
16 that was going to, you know, put the Alaska Building
17 at great risk. And that was -- that was the
18 conflict.)

19 Q. Okay. And so you were prepared to put the
20 interest of the building and any potential property
21 damage it may suffer ahead of that of the public, in
22 terms of the legality or illegality of this lease?

23 A. Well, you have to put that in the context
24 of my evaluation of the prospect of being
25 unsuccessful in preventing the project from going

1 forward. And as I thought about it, (I thought it)
2 was going to be very difficult to actually stop the
3 project, and that would then jeopardize the Alaska
4 Building.

5 Q. Why did you think that? Why did you think
6 it would be difficult to stop the project from going
7 forward?

8 A. Basically the bond requirement.

9 Q. Anything else?

10 A. No, not really.

11 Q. Did you ever --

12 A. I mean --

13 Q. Sorry. Go ahead.

14 A. I mean, there's always litigation risk, so,
15 I mean, I have -- in the Mental Health Trust Lands
16 litigation, David Walker, co-counsel, you know, said
17 that if you have a hundred percent case, you have an
18 80 percent chance of winning. And so there's a
19 bond, and then there's just a general litigation
20 risk, which I saw as having very potentially severe
21 negative consequences.

22 Q. Did this idea about a potential injunction
23 or other lawsuit in the October 2013 timeframe, did
24 that ever go further than an idea? Did you actually
25 begin to start drafting any pleadings?

James B. Gottstein

From: Bob O'Neill <BOneill@PfefferDevelopment.com>
Sent: Monday, October 28, 2013 11:47 AM
To: 'James B. Gottstein'
Cc: Mark Pfeffer; Donald W McClintock
Subject: Gas Meter Removal Notification
Attachments: Gottstein Notice of Gas Meter Removal-10-28-13.pdf

Jim,
Please see attached. A copy of this letter is also being mailed to you. Don't hesitate to contact me if you have any questions.

Thanks,

Bob O'Neill, PE
Director of Project Management

PFEFFER DEVELOPMENT, LLC
Commercial Real Estate Developers
425 G Street, Suite 210 | Anchorage, Alaska 99501 p 907.646.4644 | f 907.646.4655

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

James B. Gottstein

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Tuesday, October 29, 2013 2:31 PM
To: 'Donald W. McClintock'
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Gas Meter Removal Notification

I have to admit to laughing out loud.

From: Donald W. McClintock [mailto:dwm@anchorlaw.com]
Sent: Tuesday, October 29, 2013 2:24 PM
To: 'James B. Gottstein'
Cc: 'Dennis Berry'
Subject: RE: Gas Meter Removal Notification

Jim,

I am running down the gas load information. And yes I recognize the document. But I am not above self criticism!

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

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From: James B. Gottstein [mailto:james.b.gottstein@gottsteinlaw.com]
Sent: Tuesday, October 29, 2013 12:31 PM
To: Donald W. McClintock
Cc: 'Dennis Berry'; james.b.gottstein@gottsteinlaw.com
Subject: RE: Gas Meter Removal Notification

Hi Don,

The problem is that this is your client's project and one never knows what will happen when messing around with an old building like the Alaska Building. I have therefore (hopefully) attached a form of indemnification agreement. You may even recognize it.

I just talked with Dennis and he has been in communication with Enstar who said they didn't have any information on the gas loads to size the new meter. I know that your client's contractor has come in and secured

that information. Please provide it to me, and especially Dennis. I know they took pictures of the plates. I talked this morning to the person from whom I purchased the rooftop units and he had a vague recollection that the reason those lines were installed from the meter behind the Empress might have been the line serving that little building on Alaska Building, Inc.'s property was not big enough.

Dennis has very little time into the gas service relocation issue and all I want him to do is have someone look at the plan and make sure it is okay. If things go south, there might be more.

I am almost certainly going to have to go on a deposition trip to Milwaukee sometime before the 15th of November. I may have to leave keys with BBFM for access. That might be a good idea anyway.

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: Tuesday, October 29, 2013 11:33 AM
To: 'James B. Gottstein'
Cc: Dennis Berry; 'Bob O'Neill'; Rebecca A. Windt; 'Shea C. Simasko'
Subject: RE: Gas Meter Removal Notification

Jim,

This will be our first test of effective communication for the project. I think we agree with the end result. 716 W. 4th Ave, LLC is willing to pay for the work. The issue of BBFM is perhaps not a major one; we would be providing the coordination so I was not sure what role you saw them playing. Perhaps, if it is just in an oversight capacity and we have some idea of the cost involved, it is not a major issue.

The main issue was I did not want to get tripped up over indemnity agreements, which so far have been an obstacle. My solution to that was we would agree on a licensed and bonded contractor to do the work, you would be its client. Is that route satisfactory?

Our estimate is if the work is well coordinated, the time to cut the lines and patch it into the boilers would be around 4 hours, which should minimize everyone's inconvenience.

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

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From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Tuesday, October 29, 2013 9:09 AM
To: Donald W. McClintock
Cc: Dennis Berry; james.b.gottstein@gottsteinlaw.com
Subject: RE: Gas Meter Removal Notification

Hi Don,

It is hard for me to see how moving the service is anything other than your client's responsibility.

It has never been explained why my client should bear any costs caused by your client's project.

I am skeptical Enstar will allow your client to shut off the gas to my client's building in the middle of the winter.

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](mailto:James.B.Gottstein@GottsteinLaw.Com)

From: Donald W. McClintock [<mailto:dwm@anchorlaw.com>]
Sent: Monday, October 28, 2013 7:56 PM
To: 'James B. Gottstein'
Cc: Rebecca A. Windt; Heidi A. Wyckoff
Subject: RE: Gas Meter Removal Notification

Jim,

The argument misses the point. Although we can dive deep into the weeds and argue about whether you have a legal right to keep your gas lines on the Anchor Pub walls, the fact remains the lines won't connect to anything in a few weeks as ENSTAR will not allow the meter to remain there while demolition is planned. One cannot gain a prescriptive easement to the alley, which you astutely pointed out was the location of the meter.

The offer stands, we will arrange for a third party licensed and bonded contractor to reconnect your line to the meter location, as approved by ENSTAR, with appropriate supply. That will require the contractor to access the building to turn off and on the boiler and gas fired equipment. We are happy to talk to BBFM about it but that will be at your cost. The contractor would be your contractor, we would just reimburse the contractor's expense—that should get us around indemnity for either you or 716 W. 4th Avenue. We will coordinate with the contractor, but if BBFM wants to make some recommendations as to who to use we would consider that.

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

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From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Monday, October 28, 2013 5:58 PM
To: Donald W. McClintock
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Gas Meter Removal Notification

Hi Don,

There is little doubt Alaska Building, Inc., has an easement for those gas lines. See, *HP Ltd. Partnership v. Kenai River Airpark, LLC*, 270 P.3d 719 (Alaska 2012).

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

-----Original Message-----

From: Donald W. McClintock [<mailto:dwm@anchorlaw.com>]
Sent: Monday, October 28, 2013 3:49 PM
To: 'James B. Gottstein'
Cc: Rebecca A. Windt; Dennis Berry; Rebecca A. Windt
Subject: RE: Gas Meter Removal Notification

Jim,

As noted earlier, we are not willing to enter into an indemnity agreement. We actually would request a waiver and indemnity to undertake the work for you. We would be hiring a third party contractor in any event.

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

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copies. This communication is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. Your cooperation is appreciated.

-----Original Message-----

From: James B. Gottstein [mailto:james.b.gottstein@gottsteinlaw.com]
Sent: Monday, October 28, 2013 3:46 PM
To: Donald W. McClintock
Cc: Rebecca A. Windt; Dennis Berry; james.b.gottstein@gottsteinlaw.com
Subject: RE: Gas Meter Removal Notification

Hi Don,

(Your client can move the service, subject to BBFM's approval of the plan, payment of BBFM's costs pertaining thereto by your client, and your client indemnifying Alaska Building, Inc.)

Jim

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

-----Original Message-----

From: Donald W. McClintock [mailto:dwm@anchorlaw.com]
Sent: Monday, October 28, 2013 3:37 PM
To: 'jg@touchngo.com'
Cc: Rebecca A. Windt
Subject: RE: Gas Meter Removal Notification

Jim,

Your point I guess is that the meter itself is in the alley, surrounded by a protective cage connected to our building. ENSTAR will not allow your meter to remain in the alley with the building slated for demolition. And your piping is pretty clearly attached to our building wall, which we want removed.

As noted before, we have been willing to assist you in relocating the piping to your own meter; but not on the terms outlined in your proposed agreement.

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

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-----Original Message-----

From: James B. Gottstein [mailto:james.b.gottstein@gottsteinlaw.com] On Behalf Of jg@touchngo.com
Sent: Monday, October 28, 2013 3:11 PM
To: Donald W. McClintock
Cc: jg@touchngo.com
Subject: RE: Gas Meter Removal Notification

Hi Don,

I don't know if the meter is on your property or not. It certainly isn't on your building.

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

-----Original Message-----

From: Donald W. McClintock [mailto:dwm@anchorlaw.com]
Sent: Monday, October 28, 2013 2:39 PM
To: James B. Gottstein
Cc: jim.gottstein@psychrights.org; Rebecca A. Windt; Dani Crosby; Matthew T. Findley
Subject: Re: Gas Meter Removal Notification

Jim

ENSTAR delivers gas to the meter which is on our building.
Don

Sent from my iPhone

> On Oct 28, 2013, at 2:26 PM, "James B. Gottstein"
> <james.b.gottstein@gottsteinlaw.com> wrote:
>
> Hi Don,
>
> The picture clearly shows the gas is being delivered to my property.

>
> 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
>
>
> -----Original Message-----
> From: Donald W. McClintock [mailto:dwm@anchorlaw.com]
> Sent: Monday, October 28, 2013 2:09 PM
> To: 'James B. Gottstein'
> Cc: jg@touchngo.com; Dennis Berry; 'Bob O'Neill'; Rebecca A. Windt
> Subject: RE: Gas Meter Removal Notification
>
> Jim,
>
> Here is a pretty good shot of the piping running from the meter around
> the corner and then to your building. We are not shutting off your
> gas in the way you raise the question; we have asked ENSTAR to stop
> delivering gas to our property. Originally, we were going to do it
> sooner and assist in the relocation of your piping, but since we are
> not allowed onto your property we moved the date back to allow you
> time to set up your own service. This is not difficult to do, but you
> should do it sooner rather than later.
>
> 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
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> printed copies. This communication is covered by the Electronic
> Communications Privacy Act, 18 U.S.C. 2510-2521. Your cooperation is
> appreciated.
>
>
> -----Original Message-----
> From: James B. Gottstein [mailto:james.b.gottstein@gottsteinlaw.com]

> Sent: Monday, October 28, 2013 12:42 PM
> To: Donald W. McClintock
> Cc: jg@touchngo.com; Dennis Berry
> Subject: RE: Gas Meter Removal Notification

>

> Hi Don,

>

> What makes Pfeffer think he can just turn off my gas service? I just
> looked at the meter and it is not clear to me it is on your client's
> property.

>

>

>

> 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

>

>

> -----Original Message-----

> From: Bob O'Neill [mailto:BOneill@PfefferDevelopment.com]
> Sent: Monday, October 28, 2013 11:47 AM
> To: 'James B. Gottstein'
> Cc: Mark Pfeffer; Donald W McClintock
> Subject: Gas Meter Removal Notification

>

> Jim,
> Please see attached. A copy of this letter is also being mailed to you.
> Don't hesitate to contact me if you have any questions.

>

> Thanks,

>

> Bob O'Neill, PE
> Director of Project Management

>

> PFEFFER DEVELOPMENT, LLC
> Commercial Real Estate Developers
> 425 G Street, Suite 210 | Anchorage, Alaska 99501 p 907.646.4644 | f
> 907.646.4655

>

>

>

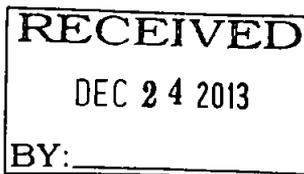
>

>

ASHBURN & MASON P.C.

LAWYERS

DANI CROSBY • MATTHEW T. FINDLEY • EVA R. GARDNER • MERA MATTHEWS
DONALD W. MCCLINTOCK III • JACOB A. SONNEBORN • THOMAS V. WANG • REBECCA A. WINDT
OF COUNSEL MARK E. ASHBURN • JULIAN L. MASON III • A. WILLIAM SAUPE



December 23, 2013

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

Re: Party Wall Agreement
Our File No.: 10708.050

Dear Jim:

I am writing in response to our conversation regarding the legal scope 716 West Fourth Avenue's ("716") obligation to preserve the "Party Wall" pursuant to that Access, Indemnity, and Insurance Agreement ("Agreement") between Alaska Building, Inc. ("Alaska Building") and 716, executed December 6, 2103. The language of the Agreement is very clear with respect to this obligation.

Pursuant to the terms of the Agreement, the "Party Wall" is a defined term for that shared portion of 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."¹ These documents (the "Party Wall Agreement") in turn define the Party Wall as:

[T]he 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;

¹ Agreement at pg. 1.

ASHBURN & MASON P.C.

Jim Gottstein
Page 2
December 23, 2013

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 grantee herein, thence north along the top line of said building to the North end of said wall, then vertically downward to the place of beginning

The Party Wall Agreement is included with this letter for reference.

The Agreement requires the following with respect to preservation of the Party Wall:

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.*²

716 remains committed to its obligations pursuant to the Agreement and the Party Wall Agreement. That said, pursuant to both the Agreement and the Party Wall Agreement, 716's preservation obligations extend only to that portion of shared wall described in the Party Wall Agreement. Any portion of the eastern wall of the Empress Theater attached to the Party Wall but not included in the scope of the Party Wall Agreement is located entirely on 716's property and is by definition the sole property of 716.

While I understand your concerns about preservation of the Party Wall and, by extension, the Alaska Building, the legal documents are very clear with respect to the scope of shared ownership and the scope of 716's preservation obligations. If you see specific conflicting language or an alternate description in the documents, please let me know and I would be happy to discuss this with you.

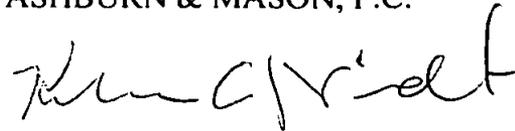
² Agreement at paragraph 7, pg. 4.

ASHBURN & MASON P.C.

Jim Gottstein
Page 3
December 23, 2013

Very truly yours,

ASHBURN & MASON, P.C.



Rebecca A. Windt

James B. Gottstein

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Wednesday, January 15, 2014 3:18 AM
To: Rebecca A. Windt
Cc: dwm@anchorlaw.com; Eric Follett; james.b.gottstein@gottsteinlaw.com; DaveD@criteriongeneral.com; Bob O'Neill
Subject: Your Letter of December 23rd

Dear Ms. Windt:

This is to reiterate that your interpretation of the Access, Indemnity, and Insurance Agreement contained in your December 23, 2013 letter, is incorrect. Extracting, the relevant portion of the parallel construction of the italicized language you cited in Section 7 of the agreement is as follows:

Portions of the eastern wall of the Empress Theater not shared by the Empress Theater and the Alaska Building . . . may be removed during the Project in 716's discretion.

I asked Eric Follett who negotiated the agreement on my behalf, and he concurred that none of the Party Wall except portions extending south of the south end of the Alaska Building is allowed to be removed.

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

ASHBURN & MASON P.C.

LAWYERS

DANI CROSBY • MATTHEW T. FINDLEY • EVA R. GARDNER • MERA MATTHEWS
DONALD W. MCCLINTOCK III • JACOB A. SONNEBORN • THOMAS V. WANG • REBECCA A. WINDT
OF COUNSEL MARK E. ASHBURN • JULIAN L. MASON III • A. WILLIAM SAUPE

January 21, 2014

Via Electronic & U.S. Mail:

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

Re: Party Wall Agreement
Our File No.: 10708.050

Mr. Gottstein:

This letter responds to your January 15, 2014 e-mail regarding the Access, Indemnity and Insurance Agreement (the "Agreement"). The language of the Agreement is clear:

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.¹

Your e-mail failed to include the underlined portion of the above, which makes clear the role of the Party Wall Agreement in determining the portions of the eastern wall of the Empress Theater which may be removed during the Project.

Further, even disregarding the underlined portion of the paragraph above, the Party Wall Agreement legally defines the portion of the eastern wall of the Empress Theater which is "not shared by the Empress Theater and the Alaska Building." Any portion of this wall

¹ Agreement at paragraph 7, pg. 4 (emphasis added).

ASHBURN & MASON P.C.

Jim Gottstein
Page 2
January 21, 2014

beyond the scope of the Party Wall Agreement is located entirely on real property owned by 716 West Fourth Avenue, LLC, and is not subject to any legal rights held by the Alaska Building. While this portion of the eastern wall of the Empress Theater may be located very close to the western wall of the Alaska Building, the wall is, by definition, not shared by the properties.

Very truly yours,

ASHBURN & MASON, P.C.



Rebecca A. Windt

RAW:haw
cc: Client

{10708-050-00173549;1}

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

Alaska Building Inc
Plaintiff,

vs.

716 West Fourth Avenue LLC et al
Defendant.

CASE NO: 3AN-15-05969CI

CALENDARING ORDER

This case is scheduled for:

Event: Oral Argument: Summary Judgment Motion – Laches Doctrine

Court: 825 W 4th Ave Anchorage, AK 99501

Location: Courtroom 301, Nesbett Courthouse

Date: December 16, 2015

Time: 2:30 pm

Judge: Patrick J McKay

November 4, 2015

Effective Date



Judge Patrick J McKay

I certify that on 11/05/15
a copy of this notice was mailed to:
James B Gottstein Esq
Kevin M Cuddy
Jeffrey W Robinson

Clerk: KNixon

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

FILED
 STATE OF ALASKA
 THIRD DISTRICT
 OCT 28 PM 4:17
 CLERK INTL. DIV.
 BY: DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska)
 corporation,)
)
 Plaintiffs,)
)
 vs.)
)
 716 WEST FOURTH AVENUE LLC, and)
 LEGISLATIVE AFFAIRS AGENCY,)
)
 Defendants.)
)
)

Case No.: 3AN-15-05969 Civil

[PROPOSED] ORDER GRANTING THE UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR 716 TO REPLY TO PLAINTIFF'S OPPOSITION TO 716'S MOTION FOR RULING OF LAW PRECLUDING ALASKA BUILDING, INC.'S CLAIMS FOR QUI TAM AND PUNITIVE DAMAGES

This Court, having reviewed 716 West Fourth Avenue LLC's Unopposed Motion to Extend Filing Deadline for 716 to Reply to Plaintiff's Opposition to 716's Motion for Ruling of Law Precluding Plaintiff's *Qui Tam* and Punitive Damages, and being duly advised in the premises, enters the following ORDER:

716 may file a reply by **November 20, 2015.**

DATED this 20 day of November, 2015.

HON. PATRICK J. MCKAY
 Superior Court Judge

I certify that on 11/2/15 a copy of the following was mailed faxed/ hand-delivered to each of the following at their addresses of record: James Gotschew / Jeffrey Robinson / Kevin Cuddy

Administrative Assistant K

OCT 28 2015

ASHBURN & MASON INC.
 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 28 day of October 2015, on:

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

- hand delivered 10/28/15

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

- mailed 10/28/15

ASHBURN & MASON

By: *Heidi Wyckoff*
Heidi Wyckoff

OCT 28 2015

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

[PROPOSED] ORDER RE UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR 716 TO REPLY TO PLAINTIFF'S OPPOSITION TO 716'S MOTION FOR RULING OF LAW PRECLUDING QUI TAM AND PUNITIVE DAMAGES CLAIM
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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.

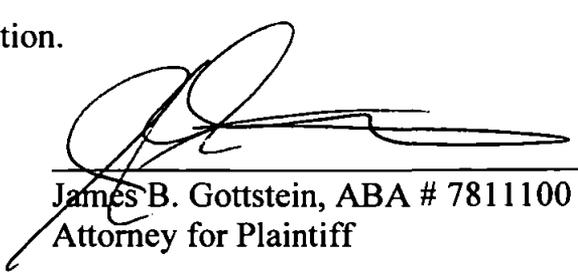
FILED
STATE OF ALASKA
THIRD DISTRICT
2015 NOV -2 PM 3:17
CLERK TRIAL COURT
BY: DEPUTY CLERK

Case No. 3AN-15-05969CI

**UNOPPOSED MOTION and MEMORANDUM TO
EXTEND TIME FOR REPLY Re:
ALASKA BUILDING, INC.'S MOTION TO COMPEL RESPONSES
TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO 716
WEST FOURTH AVENUE LLC**

Plaintiff, Alaska Building, Inc., moves for an extension of time until November 18, 2015, to file its reply regarding its Motion To Compel Responses To Plaintiff's First Requests For Production To 716 West Fourth Avenue LLC. Defendant 716 West Fourth Avenue LLC does not oppose this motion.

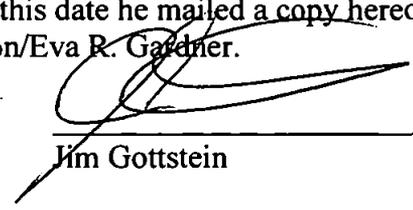
Dated November 2, 2015.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

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

Dated November 2, 2015.


Jim Gottstein

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 208
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

000862

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

FILED
STATE OF ALASKA
THIRD DISTRICT
2015 NOV -2 PM 3:17
CLERK TRIAL COURT
BY: DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

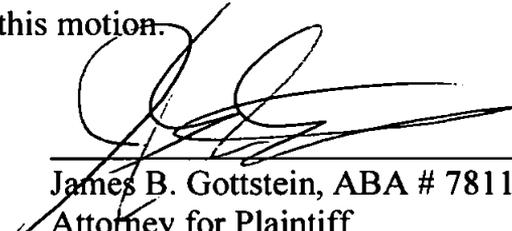
Defendants.

Case No. 3AN-15-05969CI

**UNOPPOSED MOTION and MEMORANDUM TO
EXTEND TIME FOR REPLY Re:
MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff, Alaska Building, Inc., moves for an extension of time until November 18, 2015, to file its reply regarding its Motion for Preliminary Injunction. Defendant 716 West Fourth Avenue LLC does not oppose this motion.

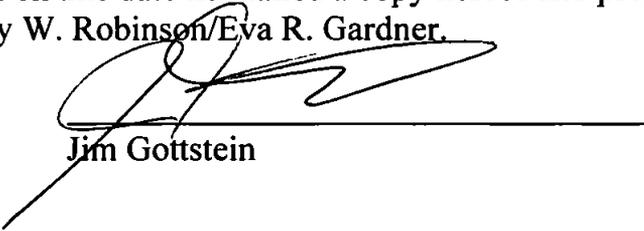
Dated November 2, 2015.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

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

Dated November 2, 2015.


Jim Gottstein

LAW OFFICES OF
JAMES B. GOTTSTEIN
408 G STREET, SUITE 208
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

000863

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

STATE OF ALASKA
THIRD JUDICIAL DISTRICT
FILED
OCT 29 PM 4:22
CLERK TRIAL COURT
RENTAL CLERK

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

Plaintiff,)

vs.)

Case No.: 3AN-15-05969 CI

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

CONFIDENTIALITY AGREEMENT

Alaska Building, Inc. ("ABI") and 716 West Fourth Avenue ("716") (collectively, the "Parties") agree to entry of the following as a stipulated order pursuant to Alaska Rule of Civil Procedure 26(c).

In the course of responding to discovery in this case, 716 may produce documents to ABI containing proprietary business information, including development information, marketing and business plans, trade secrets, confidential commercial or financial information, sales and pricing information, information subject to protective orders or confidentiality orders in other cases, and other information that otherwise may be protected from public disclosure. Because disclosure of such material poses a substantial risk of causing serious harm to 716, the Parties agree that the documents shall not be disclosed to any third party.

Specifically, the Parties agree as follows:

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

1. All documentary material produced by 716 (including material already produced and material that will be produced in the future) in the above-captioned litigation (“Discovery”) is subject to this Agreement.
2. Copies of the Discovery produced pursuant to this Agreement may be used by ABI only to further the ABI’s pursuit of its claims or defenses in this litigation. Discovery shall not be used for any other purpose.
3. Copies of any Discovery, unless otherwise ordered by the Superior Court for good cause shown, may not be produced for inspection or copying by, nor may its contents be disclosed to, anyone—other than ABI’s own employees, agents, or representatives, including legal counsel retained for purposes of prosecuting or defending the above-captioned litigation—without the consent of 716. This prohibition on disclosing Discovery includes a prohibition on publishing Discovery online or in any other public manner.
4. If ABI desires to attach Discovery to any filing with the Superior Court, it shall make its filing (including exhibits) under seal, unless 716 has previously agreed that the filing may be made publicly. The Superior Court may at its discretion, after allowing a reasonable time for 716 to object, order any such filing to be made part of the public file.
5. Nothing herein shall be construed to affect in any manner the admissibility at trial of any document, testimony, or other evidence. Nothing herein shall be construed as an agreement by any Party to produce or supply documents or other material, or as a waiver by any Party of its right to object to the production of any document or other

materials, or as a waiver of any claim of an applicable privilege with regard to the production of any document or other materials. Nor shall inadvertent disclosure of a document subject to the attorney-client privilege, work-product doctrine, or any other applicable privilege, immunity, or defense – or inadvertent disclosure of a document without the appropriate confidentiality designation constitute a waiver of any applicable privilege.

6. This Agreement shall survive and continue in force after termination of the above-captioned litigation, whether by trial, appeal, settlement, or otherwise.
7. By written agreement of the Parties, or upon order of the Court, the terms of this Stipulation may be amended or modified.
8. 716 may raise any alleged violation of this Agreement before the Superior Court in the above-captioned litigation. If the Superior Court finds that a violation has occurred, it shall issue appropriate injunctive relief and award 716 its costs and reasonable attorney's fees incurred in bringing the violation to the court's attention. The Superior Court may also award compensatory damages for the violation.
9. This Confidentiality Agreement shall be construed under the laws of the State of Alaska.
10. This Confidentiality Agreement shall not be assignable by any Party, and no Party may delegate its duties under this Agreement without the prior written consent of the other.

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

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

DATED: 10.29.15

By: *JWR*
Jeffrey W. Robinson
Alaska Bar No. 0805038

LAW OFFICES OF JAMES GOTTSTEIN
Attorneys for Alaska Building, Inc.

DATED: _____

By: _____
James B. Gottstein
Alaska Bar No. 7811100

CONFIDENTIALITY AGREEMENT

Page 4 of 4

{10708-101-00301026;1}

000867

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

STATE OF ALASKA
THIRD JUDICIAL DISTRICT
OCT 29 PM 4:22
CLERK TRIAL COURT
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiff,)

vs.)

Case No.: 3AN-15-05969 CI

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

NOTICE OF FILING UNSIGNED AFFIDAVIT OF MARK PFEFFER

Attached to 716 West Fourth Avenue, LLC's Opposition to Plaintiff's Motion for Preliminary Injunction is the unsigned Affidavit of Mark Pfeffer. The signed affidavit will be filed as soon as it is received in the office of the undersigned.

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

DATED: 10-29-15

By: JW
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

D

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile
 U.S. Mail on the 29 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
Heidi Wyckoff

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

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

STATE FILED
 THIRD JUDICIAL DISTRICT
 OCT 29 11:44:21 AM
 ANCHORAGE, ALASKA
 CLERK OF SUPERIOR COURT

ALASKA BUILDING, INC., an Alaska corporation,
 Plaintiff,
 vs.
 716 WEST FOURTH AVENUE LLC, and LEGISLATIVE AFFAIRS AGENCY,
 Defendants.

Case No.: 3AN-15-05969 CI

MOTION FOR PROTECTIVE ORDER

Defendant 716 West Fourth Avenue LLC (“716”), by and through counsel, brings this motion for a protective order governing discovery produced to Plaintiff Alaska Building, Inc. (“ABI”) in this matter.¹

The purpose of discovery is to allow litigants a fair opportunity “to investigate their opponent's claims and gather evidence to support their own assertions.”² To ensure that litigants do not abuse the liberal access granted by the discovery rules, Civil Rule 26(c) provides that a court “may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense,” including “that the disclosure or discovery may be had only on

¹ This motion goes to the broad issue of how ABI may use information produced in discovery; it does not address the more specific discovery disputes that have been raised in the context of ABI’s pending Motion to Compel.

² *McCormick v. Chippewa, Inc.*, 330 P.3d 345, 351 (Alaska 2014).

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

specified terms and conditions[.]” In this action, ABI has requested—and 716 has produced—extensive internal documents. To 716’s surprise, ABI has published nearly *all documents* produced on the website of its attorney.³ This exceeds the bounds of normal litigation behavior and is an abuse of the discovery process.

The discovery process allows ABI to obtain private information not ordinarily available to the public—but only for the limited purpose of advancing its litigation position. There is no legitimate litigation-related reason for ABI to publicly disseminate 716’s production online.⁴

716 accordingly requests that the Court enter a protective order as follows:

1. Requiring ABI and its attorney to remove the discovery that has been published on the internet; and
2. Relieving 716 of any further duty of production unless and until ABI agrees to the attached (or similar) confidentiality agreement, which will prevent ABI from publishing discovery documents and limits ABI’s use of discovery documents to purposes directly related to its prosecution of its claims in this suit.

If the Court is unwilling to grant this relief, 716 requests, in the alternative, that 716 be afforded an opportunity to make appropriate redactions to its past and future

³ Law Offices of James B. Gottstein website, “Discovery” tab of litigation-specific webpage at <http://gottsteinlaw.com/AkBldgv716W4thAve/AkBldgv716W4thAveLLC.htm>.

⁴ 716 has since learned that this conduct is not without precedent. As discussed in 716’s Opposition to ABI’s Motion to Compel at 7-8, which discussion is incorporated here by reference, opposing counsel has a history of improper distribution of information.

production (to remove sensitive information) and that ABI be forced to bear the costs and fees associated with that task.

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

DATED: 10-29-15

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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
facsimile U.S. Mail on the 29 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
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 SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

FILED
 STATE OF ALASKA
 THIRD DISTRICT
 OCT 29 PM 4:21
 SUPERIOR COURT
 DEBRY CLERK

ALASKA BUILDING, INC., an Alaska)
 corporation,)
)
 Plaintiff,)
)
 vs.)
)
 716 WEST FOURTH AVENUE LLC, and)
 LEGISLATIVE AFFAIRS AGENCY,)
 Defendants.)

Case No.: 3AN-15-05969 CI

CONFIDENTIALITY AGREEMENT

Alaska Building, Inc. ("ABI") and 716 West Fourth Avenue ("716") (collectively, the "Parties") agree to entry of the following as a stipulated order pursuant to Alaska Rule of Civil Procedure 26(c).

In the course of responding to discovery in this case, 716 may produce documents to ABI containing proprietary business information, including development information, marketing and business plans, trade secrets, confidential commercial or financial information, sales and pricing information, information subject to protective orders or confidentiality orders in other cases, and other information that otherwise may be protected from public disclosure. Because disclosure of such material poses a substantial risk of causing serious harm to 716, the Parties agree that the documents shall not be disclosed to any third party.

Specifically, the Parties agree as follows:

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

1. All documentary material produced by 716 (including material already produced and material that will be produced in the future) in the above-captioned litigation (“Discovery”) is subject to this Agreement.
2. Copies of the Discovery produced pursuant to this Agreement may be used by ABI only to further the ABI’s pursuit of its claims or defenses in this litigation. Discovery shall not be used for any other purpose.
3. Copies of any Discovery, unless otherwise ordered by the Superior Court for good cause shown, may not be produced for inspection or copying by, nor may its contents be disclosed to, anyone—other than ABI’s own employees, agents, or representatives, including legal counsel retained for purposes of prosecuting or defending the above-captioned litigation—without the consent of 716. This prohibition on disclosing Discovery includes a prohibition on publishing Discovery online or in any other public manner.
4. If ABI desires to attach Discovery to any filing with the Superior Court, it shall make its filing (including exhibits) under seal, unless 716 has previously agreed that the filing may be made publicly. The Superior Court may at its discretion, after allowing a reasonable time for 716 to object, order any such filing to be made part of the public file.
5. Nothing herein shall be construed to affect in any manner the admissibility at trial of any document, testimony, or other evidence. Nothing herein shall be construed as an agreement by any Party to produce or supply documents or other material, or as a waiver by any Party of its right to object to the production of any document or other

materials, or as a waiver of any claim of an applicable privilege with regard to the production of any document or other materials. Nor shall inadvertent disclosure of a document subject to the attorney-client privilege, work-product doctrine, or any other applicable privilege, immunity, or defense – or inadvertent disclosure of a document without the appropriate confidentiality designation constitute a waiver of any applicable privilege.

6. This Agreement shall survive and continue in force after termination of the above-captioned litigation, whether by trial, appeal, settlement, or otherwise.
7. By written agreement of the Parties, or upon order of the Court, the terms of this Stipulation may be amended or modified.
8. 716 may raise any alleged violation of this Agreement before the Superior Court in the above-captioned litigation. If the Superior Court finds that a violation has occurred, it shall issue appropriate injunctive relief and award 716 its costs and reasonable attorney's fees incurred in bringing the violation to the court's attention. The Superior Court may also award compensatory damages for the violation.
9. This Confidentiality Agreement shall be construed under the laws of the State of Alaska.
10. This Confidentiality Agreement shall not be assignable by any Party, and no Party may delegate its duties under this Agreement without the prior written consent of the other.

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

DATED: 10.29.15

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

By: *JWR*
Jeffrey W. Robinson
Alaska Bar No. 0805038

LAW OFFICES OF JAMES GOTTSTEIN
Attorneys for Alaska Building, Inc.

DATED: _____

By: _____
James B. Gottstein
Alaska Bar No. 7811100

CONFIDENTIALITY AGREEMENT

Page 4 of 4

{10708-101-00301026;1}

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1. I am an attorney with the law firm of Stoel Rives, LLP, counsel for Defendant Legislative Affairs Agency (“Agency”) in the above-captioned litigation and submit this affidavit in support of Defendant Legislative Affairs Agency’s Reply in Support of Request for Entitlement to Attorneys’ Fees and Costs.

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

3. Attached as **Exhibit A** to Legislative Affairs Agency’s Reply in Support of Request for Entitlement to Attorneys’ Fees and Costs is a true and correct copy of Defendant Criterion General, Inc.’s Offer of Judgment dated and served by hand on July 22, 2015 on James B. Gottstein, Attorney for Plaintiff.

4. Attached as **Exhibit B** to Legislative Affairs Agency’s Reply in Support of Request for Entitlement to Attorneys’ Fees and Costs is a true and correct copy of Jim Gottstein’s July 22, 2015 correspondence to Blake Call accepting Criterion General, Inc.’s Offer of Judgment.

5. Attached as **Exhibit C** to Legislative Affairs Agency’s Reply in Support of Request for Entitlement to Attorneys’ Fees and Costs is a true and correct copy of the July 24, 2015 Offer of Judgment (Damage to Alaska Building) to Defendant Legislative Affairs Agency.

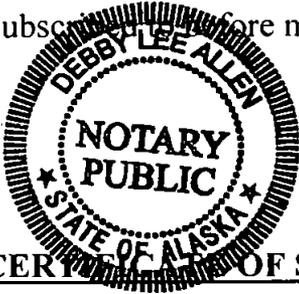
I declare under penalty of perjury that the foregoing is true and correct.

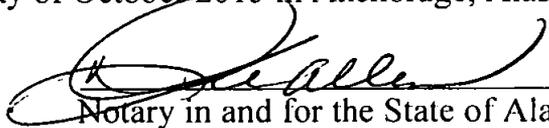
DATED this 29 of October, 2015.



KEVIN M. CUDDY

Subscribed before me this ~~29th~~ day of October 2015 in Anchorage, Alaska.





Notary in and for the State of Alaska
My Commission expires: 12/17/16

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on October 29 2015, a true and correct copy of the foregoing was served in the manner identified below on:

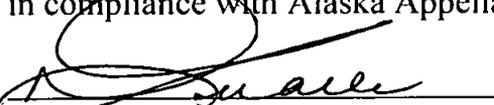
VIA FIRST CLASS MAIL

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

VIA FIRST CLASS MAIL

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

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



Debby Allen, Practice Assistant
80471055.1 0081622-00003

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

FILE

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RECEIVED

JUL 23 2015

Stoel Rives LLP

1
2 Mark P. Scheer, ASBA No. 8807153
3 mscheer@scheerlaw.com
4 Scheer & Zehnder LLP
5 701 Pike Street, Suite 2200
6 Tel: 206-262-1200
7 Fax: 206-223-4065
8 Attorney for Defendant Criterion General, Inc.

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

ALASKA BUILDING, INC., an Alaska corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

CASE NO. 3AN-15-05969CI

Defendants.

OFFER OF JUDGMENT

TO: James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
Attorney for Plaintiff(s)

The Defendant Criterion General, Inc., pursuant to Civil Rule 68 and AS 09.30.065(a), hereby offers to allow entry of judgment for plaintiff Alaska Building, Inc. in this action for the sum of FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00), inclusive of Civil Rule 79 costs, prejudgment interest, and attorney's fees. This offer of

OFFER OF JUDGMENT - Page 1

SCHEER & ZEHNDER LLP
701 PIKE STREET, SUITE 2200
SEATTLE, WA 98101
P: (206) 262-1200 F: (206) 223-4065

EXHIBIT A | Page 1 of 4

1 judgment includes the entire claim of plaintiff against defendant Criterion General, Inc. and
2 any vicarious liability any other defendant might have for the actions of Criterion General
3 Inc. and any and all liens and/or subrogation interests of all parties, persons or entities.

4 This is an offer of compromise only, and is not to be construed as an admission.

5
6 DATED this 22nd day of June, 2015.

7 SCHEER & ZEHNDER LLP

8
9 By Mark P. Scheer
10 Mark P. Scheer, ASBA No. 8807153
11 mscheer@scheerlaw.com
12 Scheer & Zehnder LLP
13 701 Pike Street, #2200
14 Seattle, WA 98101
15 Tel: 206-262-1200
16 Fax: 206-223-4065
17 Attorney for Defendant Criterion General, Inc.

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Alaska, that the following is true and correct:

I am employed by the law firm of Call & Hanson, P.C.

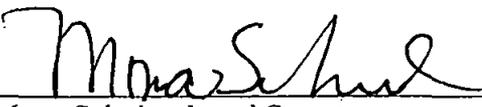
At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the State of Alaska, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On the date set forth below I served the documents to which this is attached, in the manner noted on the following persons:

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
<u>Counsel for Plaintiff</u> James B. Gottstein Law Offices of James B. Gottstein 406 G Street, Suite 206 Anchorage, AK 99501	() Via U.S. Mail (X) Via Legal Messenger () Via E-Mail () Via Overnight Mail
<u>Counsel for Defendant</u> <u>716 West Fourth Avenue LLC</u> Jeffrey W. Robinson Ashburn & Mason P.C. 1227 W. 9th Avenue, Suite 200 Anchorage, Alaska 99501-5914	(X) Via U.S. Mail () Via Legal Messenger () Via E-Mail () Via Overnight Mail
<u>Counsel for Defendant</u> <u>Pfeffer Development, LLC</u> Cynthia L. Ducey Delaney Wiles 1007 W. 3rd Avenue, Suite 400 Anchorage, AK 99501	(X) Via U.S. Mail () Via Legal Messenger () Via E-Mail () Via Overnight Mail
<u>Counsel for Defendant</u> <u>Legislative Affairs Agency</u> Kevin M. Cuddy Stoel Rives LLP	(X) Via U.S. Mail () Via Legal Messenger () Via E-Mail () Via Overnight Mail

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
510 L Street, Suite 500 Anchorage, AK 99501	
<u>Counsel for Defendant</u> <u>Koonce Pfeffer Bettis, Inc. d/b/a</u> <u>KPB Architects</u> Daniel T. Quinn Richmond & Quinn 360 K Street, Suite 200 Anchorage, Alaska 99501	<input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via E-Mail <input type="checkbox"/> Via Overnight Mail

DATED this 22nd day of July, 2015, at Anchorage, Alaska.



 Mona Schultz, Legal Secretary

Law offices of
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA 99501
(907) 274-7686
TELECOPIER (907) 274-9493

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RECEIVED
JUL 23 2015

July 22, 2015

Stoel Rives LLP

Hand Delivered

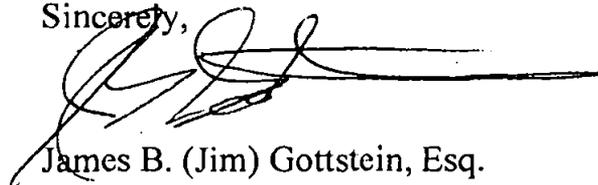
Blake Call
Call & Hanson
413 G Street, Suite 206
Anchorage, AK 99501

Re: Offer of Judgment in *Alaska Building
Inc., v. Criterion General, et al.*,
Case No. 3AN-15-05969CI

Dear Mr. Call:

The Offer of Judgment in the above referenced case hand delivered to my office today is accepted.

Sincerely,



James B. (Jim) Gottstein, Esq.

cc: Mark Scheer
Jeffrey W. Robinson/Eva R. Gardner
Daniel T. Quinn
Cynthia L. Ducey
Kevin M. Cuddy

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

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, *et al.*,

Defendants.

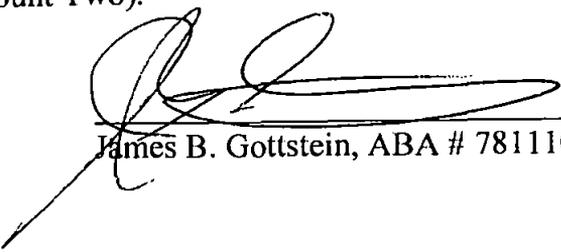
**OFFER OF JUDGMENT
(Damage to Alaska Building)**

Case No. 3AN-15-05969CI

**To: Defendant Legislative Affairs Agency
From: Alaska Building, Inc.**

The Plaintiff Alaska Building, Inc., pursuant to Civil Rule 68 and AS 09.30.065(a), hereby offers to allow judgment be entered against Defendant Legislative Affairs Agency (LAA) in the amount of \$25,000 in complete satisfaction of its claim against LAA for damage to the Alaska Building (Count Two).

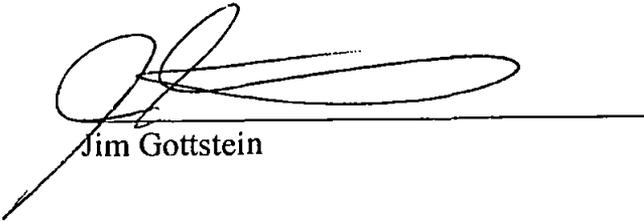
Dated July 27, 2015.


James B. Gottstein, ABA # 7811100

CERTIFICATE OF SERVICE

I certify that on this date I hand delivered a copy hereof to Kevin M. Cuddy, Jeffrey W. Robinson/Eva R. Gardner, Blake Call, Daniel T. Quinn and Cynthia L. Ducey, and e-mailed a copy to Mark Scheer.

Dated July 24, 2015.


Jim Gottstein

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 208
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

EXHIBIT C | Page 1 of 1

000886

FILED
STATE OF ALASKA
THIRD DISTRICT

2015 OCT 29 PM 1:16

CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

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

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

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

Defendants.

Case No.: 3AN-15-05969CI

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

**DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S REPLY IN SUPPORT OF
REQUEST FOR ENTITLEMENT TO ATTORNEYS' FEES AND COSTS**

In its opening brief, Defendant Legislative Affairs Agency ("LAA") explained why it was the prevailing party respect to the property damage claim raised against it by Plaintiff Alaska Building, Inc. ("ABI"). ABI agrees that it has functionally dismissed LAA from the property damage claim by not naming LAA in the separate action that now addresses that claim. Despite this, ABI argues that it is "plain wrong" that LAA – which paid nothing as a defendant in the property damage claim – is the prevailing party on that

d

000887

claim. ABI claims that LAA was not a prevailing party because LAA was only included in the claim due to its alleged vicarious liability for the conduct of Criterion General, Inc. (“Criterion”)¹ Once ABI had resolved its claim with Criterion, the logic goes, there was no property damage claim to pursue as against LAA and so LAA’s dismissal was a non-event. Therefore, in ABI’s view, ABI was the prevailing party against LAA since it obtained payment from Criterion. ABI’s argument is demonstrably incorrect.

Criterion presented ABI with an offer of judgment on July 22, 2015. That offer encompassed “the entire claim of plaintiff against defendant Criterion General, Inc. *and any vicarious liability any other defendant might have for the actions of Criterion General Inc.* and any and all liens and/or subrogation interests of all parties, persons or entities.”² That offer was accepted in its entirety on the same day – July 22, 2015.³ Then, *after* ABI had already accepted Criterion’s offer of judgment which encompassed any vicarious liability claims any other defendant may have, ABI proceeded to seek additional recoveries from LAA. In particular, on July 24, 2015 (two days *after* accepting Criterion’s offer of judgment), ABI made an offer of judgment to be entered against LAA in the amount of \$25,000 with respect to the property damage claim.⁴ That

¹ Opposition to Legislative Affairs Agency’s Motion for Entitlement to Attorney’s Fees and Costs at 1.

² Offer of Judgment at 2 (Exh. A) (served by hand on July 22, 2015) (emphasis added). Note that the offer itself has a date of June 22, 2015, but the listed month is apparently a typographical error.

³ Letter from Jim Gottstein to Blake Call dated July 22, 2015 (Exh. B).

⁴ Offer of Judgment (Damage to Alaska Building) to Defendant Legislative Affairs Agency (dated July 24, 2015) (Exh. C).

is, ABI was continuing to seek more money from LAA after the vicarious liability claims were resolved. ABI's contention that its claim was solely for vicarious liability for the actions of Criterion is flatly inconsistent with ABI's subsequent offer of judgment which necessarily indicated that ABI understood that its claim against LAA was still alive despite having accepted Criterion's offer of judgment.⁵

ABI's claims are further undermined by its joint motion for an order dismissing Criterion with prejudice from the lawsuit. ABI did not seek to dismiss its claims against LAA or any other party whose sole alleged liability in the case was due to Criterion's actions. Instead, ABI's proposed order requested that all claims against Criterion alone be dismissed with prejudice so that Criterion would be dismissed as a party to this case.⁶ This is directly contrary to ABI's late-found position that all claims against LAA were resolved by the settlement with Criterion. Instead of dismissing its claims against LAA on July 24, ABI was demanding additional money for claims it insisted were still alive despite its acceptance of the Criterion offer of judgment. ABI cannot rewrite history in order to avoid a finding that LAA was the prevailing party as to this ill-advised claim.

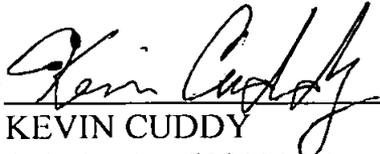
⁵ LAA notes that it agrees that there was never any plausible claim against LAA for any direct liability for the alleged property damage. That said, there also was never any plausible claim against LAA under a vicarious liability theory. Nevertheless, ABI persisted with its claim against LAA after resolving its claim against Criterion (including any vicarious liability claims).

⁶ See proposed Order Dismissing with Prejudice All Claims Against Defendant Criterion General, Inc. (filed Aug. 19, 2015).

For the foregoing reasons, LAA seeks a finding that it is the prevailing party with respect to the property damage claim (which was originally Count 2 in the first amended complaint).

DATED: October 29, 2015.

STOEL RIVES LLP

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

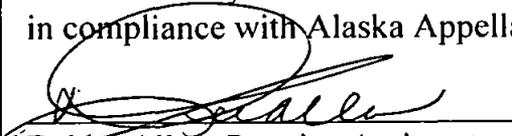
CERTIFICATE OF SERVICE AND OF FONT

I hereby certify that on October 29, 2015, I caused a true and correct copy of the foregoing to be served by U.S. mail on:

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

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

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


Debby Allen, Practice Assistant

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

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

2015 OCT 23 2:11 PM
 BY [Signature]
 CLERK OF COURT

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 JEFFREY W. ROBINSON IN SUPPORT OF UNOPPOSED
 MOTION TO EXTEND FILING DEADLINE FOR 716 TO FILE REPLY TO
 PLAINTIFF'S OPPOSITION TO 716'S MOTION FOR RULING OF LAW
 PRECLUDING ALASKA BUILDING, INC.'S CLAIMS FOR QUI TAM AND
 PUNITIVE DAMAGES**

STATE OF ALASKA)
) ss.
 THIRD JUDICIAL DISTRICT)

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case, and submit this affidavit in support of 716 West Fourth Avenue, LLC's Unopposed Motion to Extend Filing Deadline for 716 to file a Reply to Plaintiff's Opposition to 716's Motion for Ruling of Law Precluding Alaska Building, Inc.'s claims for *Qui Tam* and Punitive Damages. I have personal knowledge of all facts described herein.

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

2. The deadline to reply to Plaintiff's opposition is 11/3/2015. Plaintiff has agreed to allow Defendant to file a reply by November 20, 2015. This matter was discussed, and agreed to, by parties' counsel in an email dated October 28, 2015. Counsel for 716 will be out of state from 11/3-11/9 and has numerous other matters to attend to immediately prior to departure and upon return.

3. 716 agreed to extend to Mr. Gottstein additional time to reply to other motions should he need more time.

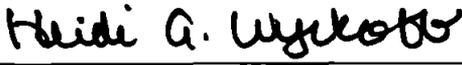
4. This motion is not made for purposes of undue harassment or delay.

FURTHER YOUR AFFIANT SAYETH NAUGHT.



Jeffrey W. Robinson

SUBSCRIBED AND SWORN to before me this 28 day of October, 2015.



NOTARY PUBLIC in and for Alaska
My Commission Expires: 11/2019



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

AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR
716 TO REPLY TO PLAINTIFF'S OPPOSITION TO 716'S MOTION FOR RULING OF LAW
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 28 day of October 2015, on:

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

- hand-delivered 10-28-15

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

- mailed 10-28-15

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

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

AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR
716 TO REPLY TO PLAINTIFF'S OPPOSITION TO 716'S MOTION FOR RULING OF LAW
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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

2015 OCT 23 PM 1:11
CLERK OF COURT
BY _____

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiff,)

vs.)

Case No.: 3AN-15-05969 CI

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

UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR 716 WEST FOURTH AVENUE, LLC'S REPLY TO PLAINTIFF'S OPPOSITION TO 716'S MOTION FOR RULING OF LAW PRECLUDING ALASKA BUILDING, INC.'S CLAIMS FOR QUI TAM AND PUNITIVE DAMAGES

Defendant 716 West Fourth Avenue, LLC ("716"), by and through counsel Ashburn & Mason, P.C., hereby moves the court to extend the deadline by which it is to reply to Plaintiff's opposition to 716's Motion for Ruling of Law Precluding Plaintiff's Claims for Qui Tam and Punitive Damages. Plaintiff does not oppose this request. This motion is accompanied by the attached affidavit of counsel and proposed order.

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

DATED: 10-28-15

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

d

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
 facsimile U.S. Mail on the 28 day of October 2015, on:

James B. Gottstein - hand delivered 10/28/15
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501

Kevin Cuddy - mailed 10/28/15
Stoel Rives, LLP
510 L Street, Suite 500
Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

ASHBURN & MASON P.C.
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1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
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UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR
716 TO REPLY TO PLAINTIFF'S OPPOSITION TO 716 MOTION FOR RULING OF LAW
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil
{10708-101-00300874;1}

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.)

NOTICE TO THE COURT 716 WEST FOURTH AVENUE, LLC'S (SECOND) SUPPLEMENTAL RESPONSES TO ALASKA BUILDING, INC.'S FIRST REQUEST FOR PRODUCTION

COMES NOW, Defendant 716 West Fourth Avenue, LLC ("716"), by and through counsel, Ashburn & Mason, P.C. provides notice to the court that it has supplemented its responses to Alaska Building, Inc.'s First Requests for Production on October 28, 2015. Pursuant to an email dated October 22, 2015 from Plaintiff's counsel, James Gottstein, to counsel for 716, Jeffrey Robinson, Plaintiff requested the following be produced as Plaintiff believed the requested items/attachments were missing from emails previously produced by 716 in its supplemental production of October 14, 2015.

The attachments to the emails were produced as Bates Nos. 716-005871 through 716-006146 unless noted as not having contained attachments.

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

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

DATED: 10-28-08

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 28 day of October 2015, on:

James B. Gottstein - Hand delivered 10/28/15
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501

Kevin Cuddy - mailed 10/28/15
Stoel Rives, LLP
510 L Street, Suite 500
Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

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

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

FILED
STATE OF ALASKA
THIRD DISTRICT

2015 OCT 28 AM 11:31

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

Case No. 3AN-15-05969CI

#20

PROPER PROOF OF SERVICE

I hereby certify that I mailed:

1. on October 23, 2015, a copy of Alaska Building, Inc.'s Opposition to
Legislative Affairs Agency's Motion for Entitlement to Attorney's Fees and
Costs, and
2. on this date, this Proper Proof of Service,

to:

Jeffrey W. Robinson/
Eva R. Gardner
Ashburn & Mason, PC
1227 W. 9th Ave., Ste. 200
Anchorage, AK 99501

Kevin M. Cuddy
Stoel Rives LLP
510 L St., Ste. 500
Anchorage, AK 99501

Dated: October 28, 2015



Jim Gottstein

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

Certificate of Service

Page 1

000899

D

NOTICE OF DEFICIENT FILING(S)

FROM:

Alaska Court System
Nesbett Courthouse
825 W 4th Ave
Anchorage, AK 99501

DATE: October 26, 2015

CASE NO: 3AN-15-05969CI

CASE Alaska Building Inc vs. 716 West

NAME: Fourth Avenue LLC et al

CLERK: ERoehl

PHONE: 264-0736

TO:

JAMES B GOTTSTEIN ESQ
406 G ST STE 206
ANCHORAGE, AK 99501

Your documents are being returned to you.

The document(s) you submitted to the court is/are deficient. Please provide the following:

- Proper Proof of Service as required by Civil Rule 5(f). You must specifically state the names of persons served. Certificiate of Service is not signed for Opposition filed on 10/23/15.

Deficiencies must be corrected within 20 calendar days from the date of this notice.



FILE COPY

NOTICE OF DEFICIENT FILING(S)

FROM:

Alaska Court System
Nesbett Courthouse
825 W 4th Ave
Anchorage, AK 99501

DATE: October 28, 2015

CASE NO: 3AN-15-05969CI

CASE Alaska Building Inc vs. 716 West

NAME: Fourth Avenue LLC et al

CLERK: ERoehl

PHONE: 264-0736

TO:

JEFFREY W ROBINSON
1227 W 9TH AVE STE 200
ANCHORAGE, AK 99501

Your documents are being returned to you.

The document(s) you submitted to the court is/are deficient. Please provide the following:

Other: The Notice of Filing Unsigned Affidavit of MarkPfeffer has been Lodged, It is unsigned and not dated.

Deficiencies must be corrected within 20 calendar days from the date of this notice.

FILE COPY

LOGGED

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

2015 OCT 27 PM 5:04

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiff,)

vs.)

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

Case No.: 3AN-15-05969 CI

NOTICE OF FILING UNSIGNED AFFIDAVIT OF MARK PFEFFER

Attached to 716 West Fourth Avenue, LLC's Opposition to Plaintiff's Motion for Preliminary Injunction is the unsigned Affidavit of Mark Pfeffer. The signed affidavit will be filed as soon as it is received in the office of the undersigned.

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

DATED: _____

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

0

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile
 U.S. Mail on the 21 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
Heidi Wyckoff

ASHBURN & MASON P.C.
LAWYERS
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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 _____ 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

ASHBURN & MASON P.C.
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FILED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

THIRD JUDICIAL DISTRICT AT ANCHORAGE

OCT 27 PM 5:04

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiff,)

vs.)

Case No.: 3AN-15-05969 CI

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

JOINDER IN LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR SUMMARY JUDGMENT UNDER THE LACHES DOCTRINE REQUEST FOR ORAL ARGUMENT UNDER RULE 77(E)

COMES NOW, Defendant 716 West Fourth Avenue, LLC ("716"), and hereby respectfully joins in Defendant Legislative Affairs Agency's (the "Agency's") motion for summary judgment under the laches doctrine.

716 reincorporates and resubmits its arguments regarding the equitable defense of laches made in the concurrently filed Opposition to Plaintiff's Motion for Preliminary Injunction, attached to this joinder as Exhibit A.

716 additionally joins in the Agency's request for oral argument on the motion to dismiss under Rule 77(e) of the Alaska Rules of Civil Procedure. As 716 has previously indicated, the court should hold oral argument regarding the motion to dismiss prior to any hearing on Plaintiff's motion for preliminary injunction and Plaintiff's motion to compel.

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

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

DATED: 10-27-15

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile
 U.S. Mail on the 27 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

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

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.)

**716'S OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION**

Defendant 716 West Fourth Avenue, LLC ("716") has objected to disclosing certain proprietary information relating to 716's internal financial operations. Plaintiff Alaska Building, Inc. ("ABI") has filed for a preliminary injunction in order to make that otherwise irrelevant proprietary information discoverable. For the reasons stated within this motion, ABI is barred from seeking injunctive relief by the equitable defense of laches and ABI has otherwise failed to meet the "balance of hardships" test. A proposed order denying the injunction and affidavits of counsel and Mark Pfeffer, Operating Manager of 716, accompany this Motion.

I. FACTUAL BACKGROUND

On September 19, 2013, 716 entered into an agreement with the Legislative Affairs Agency (the "Agency") to renovate and expand the Anchorage Legislative Information Office (the "LIO Project"). The Alaska Building, which is owned by ABI,

is situated immediately adjacent to the LIO. Jim Gottstein, president and sole member of ABI, learned about the contemplated renovation of the LIO as early as “mid-September, 2013.”¹ On October 2, 2013 Gottstein met with Mark Pfeffer to discuss the project.² By October 3, 2015, ABI was specifically aware that (1) the construction and renovations involved in the project would cost tens of millions of dollars, (2) was not the subject of a competitive procurement process, and (3) media outlets were reporting the agreement would increase the Legislature’s rent rates.³ By mid-October, Gottstein had reviewed AS 36.30.083(a) and formed the opinion that the September 19, 2013 agreement was not a valid lease extension.⁴

By October 11, 2013 Gottstein was engaging in discussions with his own business associates as well as legal counsel for 716, threatening to seek injunctive relief unless Mark Pfeffer provided assurances that he was taking any potential risk of construction damage to the Alaska Building seriously.⁵

On October 25, 2013 Gottstein again communicated with 716’s counsel regarding ABI’s concerns of potential construction damage associated with the project.⁶ Specifically, ABI requested to be paid for Plaintiff’s personal services to date and

¹ Plaintiff’s Response to 716 Interrogatory No. 1. Attached as Exhibit A.

² *Id.*

³ *See Id.*; Plaintiff’s Response to LAA Interrogatory No. 1. Attached as Exhibit B; Deposition of Jim Gottstein (excerpts attached as Exhibit C) at 77: 21-25.; 78: 1-19.

⁴ *See Ex. A*; Plaintiff’s Response to LAA Interrogatory No. 1; Exhibit C at 78: 20-25; 79: 1-2.

⁵ *See Ex. C* at 81:1-9, 15-25; 83: 24-25; 84: 1.

⁶ *See Ex. C.* at 89: 8-18; October 25, 2013 email chain between Jim Gottstein and Doc McClintock, attached as Exhibit D.

sought to force Pfeffer into agreeing to a “\$Ten [sic] million purchase obligation” if the building was catastrophically damaged.⁷ Representatives of 716 and ABI met on October 28, 2013. Apparently unsatisfied with that meeting, ABI emailed 716’s counsel on October 30, 2013, threatening to “launch the grenade”—later described by Gottstein as filing suit “and asking for a preliminary injunction to stop the project”⁸—unless 716 agreed to his proposed Indemnification Agreement terms.⁹

During this same time period, Plaintiff contemplated, but ultimately chose not to raise his concerns with then Attorney General Michael Geraghty.¹⁰ In one of the letters Gottstein drafted but never sent, dated October 30, 2013, Gottstein raised concerns that (1) the lease extension was illegal under AS 36.30.083, and (2) the project developer had not made adequate assurances that the Alaska Building would not be damaged as a result of any construction.¹¹ Indeed, as part of the October 30, 2013 correspondence with 716’s counsel, Gottstein not only threatened to file for injunctive relief, but also threatened to contact the Attorney General and then Deputy Attorney General for the Department of Law’s Criminal Division, Rick Svobodny.¹² No letters were ever sent.

⁷ *See Id.*

⁸ Ex. C. at 94: 5-14.

⁹ October 30, 2013 email chain between Jim Gottstein and Doc McClintock, attached as Exhibit E.

¹⁰ Draft letters to Attorney General Geraghty, dated October 30, 2013, attached as Exhibit F.

¹¹ *Id.*

¹² *See Exhibit E.*

Indeed, rather than file suit or send a letter notifying a high government official of the alleged lease illegality, ABI voluntarily elected to enter into indemnity and insurance agreements with 716.¹³ Drafting and negotiations regarding the principal agreement took place in November of 2013 and a final Access, Indemnity, and Insurance Agreement (“the Agreement”) was executed on December 6, 2013.¹⁴ As part of the Agreement, 716 paid: (1) \$15,000 to ABI in consideration of the “professional time required to address preparation” for the LIO Project;¹⁵ (2) \$10,000 to ABI for offsite mirroring of data;¹⁶ (3) \$2,000 to Gottstein as a rent abatement payment for relocating his office across the hall during construction;¹⁷ and (4) \$3,900 to ABI for use of the parking space in the alley.¹⁸ Incorporated into the terms of the Agreement, ABI also received over \$14,400 in rent from Criterion General as part of a Space Lease.¹⁹ Based on those values alone, ABI received approximately \$45,300 in compensation under the terms of the Agreement and Space Lease.

LIO Project construction commenced in December 2013 and concluded on or about January 9, 2015.²⁰ At no time during the construction process did ABI file to stop

¹³ One such agreement, regarding relocation of a gas line and gas meters, was actually entered into on October 30, 2013. Exhibit E.; *See also* Ex. C at 97: 7-20.

¹⁴ Interpretation of the Agreement is a subject of dispute in 3AN-15-09785CI.

¹⁵ *See* Ex. C. at 108: 22-25; 109: 1-13.

¹⁶ *See Id.* at 109: 14-23.

¹⁷ *See Id.* at 110: 8-14.

¹⁸ *See Id.* at 109: 24-25; 110: 1-7.

¹⁹ *See Id.* at 111: 2-11.

²⁰ *See* Ex. A. Plaintiff’s Response to LAA Request for Admission No. 17.

the LIO Project. Rather, on January 23, 2015, Gottstein emailed 716 (and Criterion) asserting a claim for \$250,000 for alleged damage to the Alaska Building ABI during the LIO Project construction.²¹ Having tendered the claim to Criterion's insurer pursuant to the terms of the Agreement, 716 did not pay ABI any amount in satisfaction of the alleged damages.²² According to Gottstein, had ABI been compensated for alleged property damage, ABI would "probably not" have filed this litigation.²³

It was not until March 31, 2015—almost 3 months after construction of the LIO ended, 15 months after construction began and 17 months after the extension was signed—that ABI filed suit challenging the damage to the Alaska Building as well as the "legality" of the lease extension.²⁴

II. DISCOVERY REQUEST

ABI has requested discovery of information relating to 716's internal financial operations and 716 has refused to disclose that information on the basis that the confidential and proprietary information sought is irrelevant to ABI's claims.²⁵ As the court is aware, the scope of this litigation is limited to (1) the legality of the lease extension and (2) whether the rental rate affiliated with the lease is at least 10 percent

²¹ See Ex. G Claim from Alaska Building, Inc. dated January 23, 2015.

²² See *Id.* at 118: 24-25; 119: 1-2.

²³ See *Id.*

²⁴ See Ex. A; Plaintiff's Responses to LAA Request for Admission Nos. 19, 20, and 23.

²⁵ See 716's Opposition to Motion to Compel.

below the market rental value of the real property at issue at the time the lease was executed.²⁶ ABI is not asserting a veil piercing argument.²⁷

Preserving its discovery objections, which are fully laid out in 716's opposition to Plaintiff's motion to compel, 716 nevertheless offered to provide 716's Operating Agreement to Judge McKay for an *in camera* review, for Judge McKay to make a relevance determination.²⁸ ABI rejected this overture and filed for a preliminary injunction on October 6, 2015. ABI acknowledges that the disputed discovery is not relevant to the underlying litigation issues—the legality of the lease or the market rental rate—but argues it is relevant for the purposes of this injunction motion.²⁹ Plaintiff's request for a preliminary injunction thus fundamentally appears to be a discovery litigation tactic to obtain otherwise undiscoverable information.

III. ARGUMENT

A. The equitable doctrine of laches bars ABI's claim for injunctive relief.

Despite ABI's extensive knowledge of the LIO Project, its negotiated compensation payments, and its awareness of the tens of millions of dollars paid by 716 to various entities involved in the Project, ABI waited **almost two full years**, until

²⁶ See Amended Complaint, filed by Plaintiff on August 25, 2015.

²⁷ Plaintiff's Motion for Preliminary Injunction at 6; FN 3.

²⁸ See September 30, 2015 email exchange between undersigned and Gottstein, dated, attached as Exhibit H.

²⁹ Motion to Compel at 3, 5-6; Plaintiff's Motion for Preliminary Injunction at 3 (“[i]f 716 LLC had produced documents providing that it would be able to pay back the money, this Motion [for Preliminary Injunction] would not have been filed.”)

October 6, 2015, to file for preliminary injunctive relief. ABI's claim for injunctive relief is now barred under the equitable defense of laches.³⁰

In order to prevail under the defense of laches, 716 must show, (1) that the plaintiff has unreasonably delayed in bringing the action, and (2) that this unreasonable delay has caused undue harm or prejudice to the defendant.³¹ The factual background provided above is evidence of ABI's unreasonable delay in bringing the action. Plaintiff's lawsuit mirrors the facts of *City and Borough of Juneau v. Breck*, 706 P.2d 313 (Alaska 1985) and the application of the laches doctrine should be similarly applied here to bar Plaintiff's request for injunctive relief. In *Breck*, the Supreme Court stated:

[O]ne of the factors to be considered in measuring the plaintiff's delay is when, under the circumstances, it becomes no longer reasonable for the plaintiff to assume that the defendants would comply with the law. Additionally, the court will "look to that point in time when there were positive steps taken by defendants which made their course of conduct irrevocable, and would have galvanized reasonable plaintiffs into seeking a lawyer."³²

Breck involved litigation surrounding the construction of a marine park and parking garage in Juneau.³³ In December 1983 the City and Borough of Juneau ("the City") publicly announced that it was seeking design-build proposals for the parking structure and executed a construction contract with Kiewit in May of 1984.³⁴ The

³⁰ See also The Legislative Affairs Agency's Memorandum in Support Of Motion for Summary Judgment (Laches).

³¹ *City & Borough of Juneau v. Breck*, 706 P.2d 313, 315 (Alaska 1985); See also *Moore v. State*, 553 P.2d 8, 15 (Alaska 1986),

³² *Id.* at 315 (internal citations omitted).

³³ *Id.* at 314.

³⁴ *Id.* at 314.

contract specified the project was to be completed largely within a six to eight month period.³⁵ The legality of the project was opposed by Juneau citizen Betty Breck, who contacted the mayor and voiced her concerns to the City's Assembly on nine separate occasions, even after the City awarded the contract to Kiewit.³⁶ Breck was aware that construction had begun in the middle of May, but contended that it was not until the end of June that she realized the assembly would not respond absent litigation.³⁷ When Breck ultimately filed suit on August 24, 1984 it was "approximately eight months after the city advertised its intent to seek 'design-build' proposals, four months after the contract with Kiewit Construction was signed, and after approximately 50 per cent of the project was complete."³⁸ The superior court nonetheless issued the preliminary injunction after concluding Breck had demonstrated a high probability of success on the merits, and that Breck had shown irreparable injury for which there was no adequate and complete remedy at law.³⁹

The Alaska Supreme Court reversed.⁴⁰ It held that "the signing of the contract and the commencement of work under the contract would have galvanized a reasonable plaintiff into seeking a lawyer."⁴¹ A reasonable person would have known well before June (the date Breck claimed she began to prepare to file suit) that the City was

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 315.

³⁹ *Id.* at 314.

⁴⁰ *Id.* at 315.

⁴¹ *Id.* at 316.

embarking “on a course of action that it would not alter unless forced to.”⁴² The Court agreed with the City’s contention that Breck “should have realized that the large financial commitment, and the delay that would result if the contract was declared void, made such a change inconceivable.”⁴³ It further rejected Breck’s contention that her delay in bringing suit was excusable because she lacked knowledge about how to file suit.⁴⁴ Because cancelation of the contract would have cost the City millions of dollars, and thus resulted in undue prejudice to the City, the Court held that Breck’s claims of injunctive relief were barred by the equitable doctrine of laches.

ABI’s claims are similarly barred as the Plaintiff has (1) unreasonably delayed in bringing the present action and (2) this unreasonable delay has caused undue harm or prejudice to the defendant.

1. Plaintiff unreasonably delayed in bringing the instant action.

In order to evaluate the reasonableness (or unreasonableness) of a plaintiff’s delay, the court must look to when, under the circumstances, it became unreasonable for the plaintiff to assume a defendant would stop its planned course of action absent litigation.⁴⁵ The court must “look to that point in time when there were positive steps taken by defendants which made their course of conduct irrevocable, and would have galvanized reasonable plaintiffs into seeking a lawyer.”⁴⁶ Finally, the Alaskan Supreme

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *See Id.* at 315 (citing *Moore v. State*, 553 P.2d at 16).

⁴⁶ *Id.* (internal citations omitted).

Court has said that “in determining when laches should be applied, our concern is not so much with when the alleged wrong occurred, as it is with when, in light of any resulting prejudice to defendants, it became reasonable to expect plaintiffs to act upon the wrong.”⁴⁷

Here, ABI became aware of the LIO Project sometime between late September and early October 2013. By the middle of October 2013, Gottstein had reviewed AS 36.30.083(a) and formed the belief that the lease was illegal.⁴⁸ By the end of October 2013 ABI threatened to, but chose not to file for injunctive relief or mail any of the letters Gottstein had drafted to the Attorney General voicing his concerns that the LIO project was illegal and the contemplated construction efforts should be terminated. Instead, ABI voluntarily elected to receive approximately \$45,300 in compensation and Gottstein personally observed the construction activities taking place at 716 West 4th Avenue from December 2013 through January 2015.

Other than the parties directly involved in the Project, ABI was arguably the entity most closely involved with the Project. Plaintiff’s building shared a wall with the old Empress Theatre, which was torn down to expand the LIO into the adjacent space. Plaintiff signed agreements with 716 and Criterion involving liability and risk allocation. Plaintiff hired an engineer to help monitor the process. He continued to accept rent payments. Plaintiff waited until three months *after* construction was

⁴⁷ *Moore v. State*, 553 P.2d at 14.

⁴⁸ Plaintiff’s Response to LAA Interrogatory No. 1.

completed to file suit, and only included the lease legality claim as a throw-in claim to his construction damage suit.⁴⁹

Under the facts of this case, Plaintiff is guilty of inexcusable delay in filing this action. The delay was even more unreasonable than the delay in *Breck* given: (1) Gottstein is an attorney and had allegedly formulated the basis for his claim in October 2013 (Breck was not an attorney), (2) ABI waited to file suit until the Project was completed (Breck only waited until the facility was halfway completed); (3) no efforts were actually made to voice concerns to government officials (Breck spoke with the mayor and testified before the assembly on nine occasions); and (4) ABI and Gottstein received approximately \$45,300 in compensation during the construction period (Breck received no compensation).

ABI's delay in bringing this action served to provide ABI with the maximum financial benefit while potentially causing the greatest financial harm to 716. As explained in detail in the following section, ABI was aware that 716 expended tens of millions of dollars in construction costs and expected to receive tens of millions of dollars in lease payments. The court should find ABI has unreasonably delayed in bringing the action.

2. ABI's unreasonable delay caused undue harm or prejudice to 716.

⁴⁹ Plaintiff claims he did not file for an injunction because he was concerned about "retaliatory damage to the Alaska Building." See Ex. C. at 134: 5-7. Although his motive for not filing is irrelevant, it should be made clear that Gottstein himself has acknowledged that no one threatened ABI during the Project. See Ex. C at 141: 22-24; Ex. C. at 118: 24-25; 119: 1-2 (throw-in claim).

The court must next consider whether the unreasonable delay has caused undue harm or prejudice to the defendants in this action. 716 already expended tens of millions of dollars in construction costs. In order to undertake the Project, 716 signed a construction contract with Criterion General on November 11, 2013 in excess of \$30,000,000.⁵⁰ 716 spent approximately \$44,500,000 in construction efforts.⁵¹ The Premises was renovated to meet the specific needs of the Agency, including an expansion of office space and appropriate off-street parking spaces.⁵² The Agency paid \$7.5 million in tenant improvements.⁵³

If ABI had filed an injunction in October, 2013 as Gottstein had threatened, and had he been successful, 716 would not have paid over \$30,000,000 to Criterion. By waiting until well after construction was complete to challenge the lease, ABI's seeks to cause 716 to suffer the maximum prejudice from payments spent in its construction efforts.

In addition to jeopardizing costs already incurred, ABI's request to sequester funds received under the terms of the lease other than direct operating expenses and projected debt services also significantly prejudices the defendants by depriving 716 the benefit of its bargain under the terms of the contract. 716 invested \$9,000,000 of its own money into the project as a good faith investment, expecting a monthly rate of return on

⁵⁰ Affidavit of Mark Pfeffer ¶ 5.

⁵¹ *Id.* at ¶ 7.

⁵² See Extension of Lease and Lease Amendment No. 3.

⁵³ See Affidavit of Jessica Gary ¶¶ 4-7, submitted on 10/21/2015 as part of the Agency's Motion for Summary Judgment; See Affidavit of Mark Pfeffer ¶ 5.

its investment outside of merely recovering debt services and operating expenses.⁵⁴

That monthly rate of return is not a negligible amount.

In summary, 716 faces irreparable injury if the court grants an injunction at this stage—there are deeds of trusts, loans, and commitments made in reliance on the contract that was signed. Sequestering a significant amount of monthly rent payments puts all of that potentially in default and affects numerous entities involved in the Project’s financing, not simply 716 and the Agency. It goes without saying that 716, who has been the Landlord of the LIO for 23 years, stands to lose its professional reputation and status among lending institutions, construction professionals, and business clients should the court grant ABI injunctive relief.

The Court should find that ABI’s unreasonable delay in bringing suit has and will continue to cause undue harm and prejudice to 716. As 716 has met both prongs under the equitable doctrine of laches, the Court should bar ABI’s request for a preliminary injunction.

B. Denial of the preliminary injunction is still appropriate even if the court finds that 716 has not successfully raised the defense of laches.

Preliminary injunctions are extraordinary remedies involving the exercise of very far-reaching power to be granted only sparingly and in limited circumstances.⁵⁵ The traditional purpose of a preliminary injunction is to prohibit an action. Preliminary injunctions are meant to “protect the status quo and to prevent irreparable harm during

⁵⁴ See ¶ 7 of Affidavit of Mark Pfeffer at 7.

⁵⁵ *MicroStrategy Inc. v. Motorola, Inc.*, 245 F.3d 335, 339 (4th Cir. 2001).

the pendency of a lawsuit ultimately to preserve the court's ability to render a meaningful judgment on the merits."⁵⁶ Under Alaska law, in deciding whether to grant or deny a preliminary injunction, Alaska courts apply the "balance of hardships" test. Immediate injunctive relief is warranted when the following three factors are present:

(1) the plaintiff must be faced with irreparable harm; (2) the opposing party must be adequately protected; and (3) the plaintiff must raise serious and substantial questions going to the merits of the case. Where the harm is not irreparable, or where the other party cannot be adequately protected, then the moving party must show probable success on the merits.⁵⁷

Here, ABI cannot show it is faced with irreparable harm by maintaining the status quo during the pendency of the litigation. ABI's sole claim of irreparable harm is the unsubstantiated, speculative claim that because 716 is limited liability corporation it will be unable to pay "pay back rent money it has received in excess of that allowed by law."⁵⁸ Not only does this argument ignore the fact 716's has operated as landlord to the LIO for the past 23 years,⁵⁹ but it also is hypocritical given ABI's assessment that 716 was financially viable enough to execute a ten million dollar purchase option over the Alaska Building.⁶⁰ Likewise, by delaying this litigation, any "damage" is already

⁵⁶ *Perry v. Judd*, 840 F. Supp. 2d 945, 950, 954 (E.D. Va.) *aff'd*, 471 F. App'x 219 (4th Cir. 2012)(barring under laches the plaintiffs' motion for a preliminary injunction where the plaintiffs, various candidates who were seeking the Republican Nomination for office of President of the United States, had "slept on their rights to the detriment of the defendants.")

⁵⁷ *Holmes v. Wolf*, 243 P.3d 584, 591 (Alaska 2010)(internal citations omitted.)

⁵⁸ Plaintiff's Memorandum at 3-4.

⁵⁹ See ¶ 3 of Affidavit of Mark Pfeffer.

⁶⁰ *See Id.*

done; the State, has already paid \$7.5 million in tenant improvements,⁶¹ and 716 has already contributed vast resources in the expansion and renovation efforts. Any “irreparable harm” from that expenditure has already occurred. Finally, with respect to prong one, the availability of funds from the Legislature to pay for the Agency’s monetary obligations is contingent upon appropriation of funds for the particular fiscal year involved.⁶² If the Agency’s Executive Director determines that sufficient funds are not appropriated by the Legislature, the lease can be terminated by the Agency or amended.⁶³ In summary, ABI cannot show continuation of the status quo subjects the State to irreparable harm.⁶⁴

Conversely, 716—the opposing party to the injunction—would be left inadequately protected were the injunction granted. ABI’s request is to sequester funds received under the terms of the lease other than direct operating expenses and projected debt services. This sequestration deprives 716 the benefit of its bargain under the terms of the contract. 716 invested \$9,000,000 of its own money into the LIO Project as a good faith investment, expecting a monthly rate of return on its investment.⁶⁵ As stated above, that monthly rate of return is not de minimus, nor does it exist in a vacuum.

⁶¹ See Affidavit of Jessica Gary ¶¶ 4-7, submitted on 10/21/2015 as part of the Agency’s Motion for Summary Judgment; See Affidavit of Mark Pfeffer ¶ 5.

⁶² Extension of Lease and Lease Amendment No.3 ¶ 43. The Governor, of course, can also veto appropriated funds.

⁶³ *Id.*

⁶⁴ It goes without saying that any irreparable harm ABI faced during construction is over as ABI waited until the construction process was completed to file suit.

⁶⁵ See ¶ 7 of Affidavit of Mark Pfeffer at 7.

And, of course, sequestration of any portion of monthly lease payments adversely affects 716's ability to conduct business in the state.

Because the harm is not irreparable and 716 cannot be adequately protected were an injunction granted, ABI must do more than just raise serious and substantial questions going to the merits of the case; as the moving party ABI must show probable success on the merits.⁶⁶ For the reasons explained above, ABI's claim is likely barred by the equitable defense of laches. Beyond the laches argument, ABI has not shown probable success on the merits. Defendants complied with AS 36.30.083(a). As the lease extension indicates, Timothy Lowe completed an independent analysis "and concluded that the rent due under the terms and conditions of the lease extension and amendment [are] at least 10 percent below the market rental value of the real property at the time of the extension for a ten year term."⁶⁷ In dispute of this claim, ABI has attached an affidavit of a retired real estate appraiser, Larry Norene, to its motion. In the event the case is not summarily dismissed, ABI will have the opportunity to have a battle of the expert appraisals; however, merely finding an individual who disagrees with Mr. Lowe's appraisal is insufficient to support a finding of probable success on the merits. Placing blind faith in Mr. Norene's appraisal, after Mr. Lowe's appraisal was vetted by various groups, including the Alaska Housing Finance Corporation, completely negates the purpose of having safeguards already in place to ensure

⁶⁶ 716 disputes, for the same reasons stated within this section, that ABI has even raised serious and substantial questions going to the merits of the case.

⁶⁷ See ¶ 1.2 of 9/19/13 lease.

statutorily compliance. AS 36.30.083(a) requires the market value to be established by a real estate broker's opinion of the rental value or by an appraisal of the rental value. The legislative council was not obligated to select Mr. Gottstein's preferred appraiser to determine rental value. Similarly, there can be no-good faith dispute that the Lease Extension was an extension of the original lease arrangement, despite Plaintiff's claims to the contrary in his motion for summary judgment on this issue. (The court will not hear argument on this novel claim until at least January 30, 2016.)

In granting citizen-taxpayer standing, the court afforded ABI the opportunity to air its grievances. The court specifically warned ABI at the oral argument on August 18, 2015 that permission to proceed in the litigation was not an indication of whether or not his claims would ultimately prevail. Citizen-standing should not now be interpreted to mean ABI has carte-blanche to jeopardize the financial and professional well-being of the parties involved. There is no prejudice to ABI in waiting for the court to address the merits of its claims pursuant to the court's initial scheduling order and subsequent scheduling of dispositive arguments on summary judgment and other motions. As such, Plaintiff's request for a preliminary injunction should be denied.

In the event the court is inclined to grant ABI's request for the injunction, 716 requests the opportunity for oral argument. Attached to this Opposition is a proposed order, denying the preliminary injunction request and outlining a reasonable schedule for hearings on the various motions the parties have filed.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
 facsimile U.S. Mail on the 27 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
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ASHBURN & MASON

By: 
Heidi Wyckoff

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716'S OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil
(10708-101-00297079;2)

Page 19 of 19

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

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

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

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

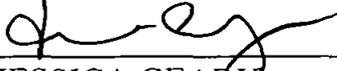
6. LAA subsequently received invoices for each month’s tenant improvements. The amount of those invoices were as follows:

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

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

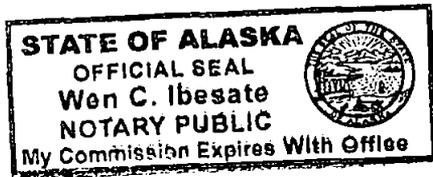
I declare under penalty of perjury that the foregoing is true and correct.

DATED this 21st day of October, 2015.



JESSICA GEARY

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





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

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on October 21, 2015, a true and correct copy of the foregoing was served via USPS Priority Mail on:

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

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

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



Debby Allen, Practice Assistant

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SUPERIOR COURT
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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Case No.: 3AN-15-05969CI

Plaintiff,

v.

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

Defendants.

~~COURT CLERK
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STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
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NOTICE OF FILING ORIGINAL AFFIDAVIT

(re: Affidavit of Jessica Geary Filed in Support of Motion for Summary Judgment)

Defendant Legislative Affairs Agency hereby notifies this Court of filing a the *original* Affidavit of Jessica Geary submitted in support of Defendant Legislative Affairs Agency's Motion for Summary Judgment filed on October 21, 2015.

DATED: October 27, 2015.

STOEL RIVES LLP

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

CERTIFICATE OF SERVICE AND OF FONT

I hereby certify that on October 27, 2015, I caused a true and correct copy of the foregoing to be served in the manner identified below on:

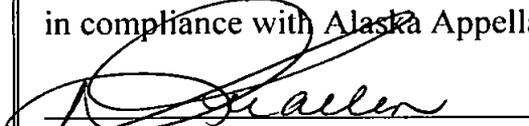
VIA FIRST CLASS MAIL

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VIA FIRST CLASS MAIL

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Fourth Avenue, LLC)

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


Debby Allen, Practice Assistant

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA DISTRICT

THIRD JUDICIAL DISTRICT AT ANCHORAGE OCT 27 PM 5:05

ALASKA BUILDING, INC., an Alaska corporation,
Plaintiff,
vs.
716 WEST FOURTH AVENUE LLC, and LEGISLATIVE AFFAIRS AGENCY, Defendants.

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

AFFIDAVIT OF JEFFREY W. ROBINSON IN SUPPORT OF 716'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

STATE OF ALASKA
)
) ss.
THIRD JUDICIAL DISTRICT)

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case, and submit this affidavit in support of 716's Opposition to Oppose Plaintiff's Motion for Preliminary Injunction.

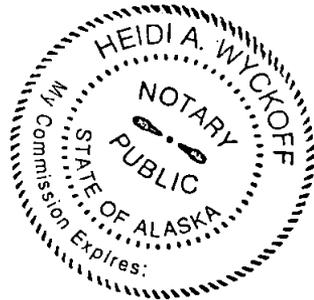
2. I have personal knowledge of all facts described herein and affirm all other facts based on my information and belief.

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

Jeff
Jeffrey W. Robinson

SUBSCRIBED AND SWORN to before me this 27 day of October, 2015.

Heidi A Wyckoff
NOTARY PUBLIC in and for Alaska
My Commission Expires: 4/11/2019



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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 27 day of October 2015, on:

James B. Gottstein
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By: Heidi Wyckoff
Heidi Wyckoff

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

FILED
STATE OF ALASKA
THIRD DISTRICT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

2015 OCT 27 PM 5:04

CLERK OF COURT

BY: _____
DEPUTY CLERK

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

Plaintiff,)

vs.)

Case No.: 3AN-15-05969 CI

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

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.

ASHBURN & MASON P.C.
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-15-05969Civil

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.

SUBSCRIBED AND SWORN to before me this ____ day of October, 2015.

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

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

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-15-05969Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 21 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
Heidi Wyckoff

ASHBURN & MASON INC.
LAWYERS
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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-15-05969Civil

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

OCT 23 PM 4:21

CLERK TRIAL NO. 11

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

Case No. 3AN-15-05969CI

**OPPOSITION TO LEGISLATIVE AFFAIRS AGENCY'S MOTION
FOR ENTITLEMENT TO ATTORNEY'S FEES AND COSTS**

Plaintiff Alaska Building, Inc., opposes the Legislative Affairs Agency's Motion for Entitlement to Attorney's Fees and Costs.

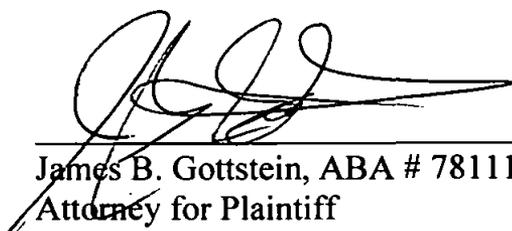
The Legislative Affairs Agency's premise that it prevailed because Alaska Building, Inc., did not include it in the severed case is plain wrong. The settlement between Alaska Building, Inc., with severed defendant Criterion, Inc. (Criterion) for \$50,000 included settlement of the claim against the Legislative Affairs Agency. Attached as Exhibit 1 is a copy of the Release executed with respect to this settlement and the check making the \$50,000 payment.¹ The Legislative Affairs Agency was not named in the separate action

¹ This settlement was the subject of a joint motion to dismiss Criterion by Criterion and Alaska Building, Inc., filed on August 19, 2015, which recites that it also settles claims against any other party arising from vicarious liability for any act committed by Criterion.

because the claim against it was for vicarious liability for the actions of Criterion, which was included in the \$50,000 settlement.

In *Schultz v. Wells Fargo Bank, N.A.*, 301 P.3d 1237, 1243 (Alaska 2013), the Supreme Court held it was an abuse of discretion for the court to find a party did not prevail despite obtaining substantial affirmative relief. Inasmuch as Alaska Building, Inc., received \$50,000 for a settlement that included the claim against the Legislative Affairs Agency, it is the prevailing party for what was the severed Count Two in this action pertaining to damages to the Alaska Building.

Dated October 23, 2015.



James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

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

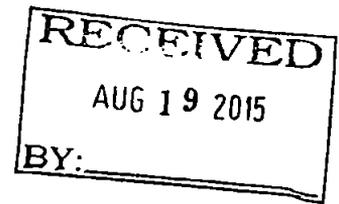
Dated October 23, 2015.

Jim Gottstein

*Opposition to LLA Motion for
Entitlement to Attorney's Fees*

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493



RELEASE

This release of all claims is intended to resolve all disputes between the parties to the release and is entered into in lieu of either party filing a formal Notice of Acceptance of Offer of Judgment and Proposed Judgment form with the court. **Alaska Building, Inc.** has accepted an offer of judgment served on it by defendant **Criterion General Inc.** and this release effectuates that offer and acceptance.

FOR AND IN CONSIDERATION of the sum of **FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000)** and other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned **Alaska Building, Inc.**, individually and for its heirs, executors, administrators, successors in interest, trustees and assigns, has released and does release and forever discharge **Criterion General, Inc.** and any vicarious liability any other defendant might have for the actions of Criterion General Inc., *specifically including any liability for damages caused, in whole or in part, by the acts or omissions of Criterion General, Inc., or those acting on its behalf.*

All of the terms and conditions of this release have been reflected on, without haste; no one is under a disadvantage; no representations other than those set forth herein have been made; and the undersigned has had the opportunity to consult an attorney, signing this release without any coercion whatsoever. No promise or inducement which is not herein expressed has been

made to the undersigned, and in executing this release the undersigned does not rely upon any statement or representation made by any person, firm or corporation hereby released, or any agent, attorney or other person representing such releasees, or any of them, concerning the nature, extent or duration of said damages or losses or the legal liability therefor.

The undersigned **Alaska Building, Inc.**, further agrees all claims asserted therein against **Criterion General, Inc.** (and any vicarious liability any other defendant might have for the actions of Criterion General Inc.) or which could have been asserted therein against **Criterion General, Inc.** are hereby released in the lawsuit instituted by it in the Superior Court for the State of Alaska, Third Judicial District at Anchorage, Alaska, entitled **Alaska Building, Inc. v. Criterion et al**, Case No. 3AN-15-05969CI and that it will assist in any effort to file a joint motion and order of dismissal of less than the entire matter consistent with Rule 41 (a)(2).

Nothing herein contained shall be deemed to be an admission of liability, negligence, or responsibility on the part of **Defendant Criterion General, Inc.** the same being expressly denied.

The undersigned hereby declares that the terms of this release and indemnity agreement have been carefully read and are fully understood and are voluntarily accepted for the purpose of making a full and final compromise, adjustment and settlement of any and all claims, disputed or otherwise, for and on account of the injuries and damages above-mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this

19th day of August, 2015.



JIM GOTTSTEIN, PRESIDENT

ALASKA BUILDING, INC.

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

ss

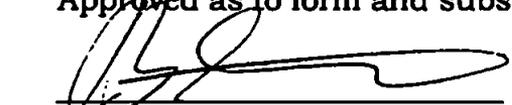
THIS IS TO CERTIFY that on this 19th day of August, 2015, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared **JIM GOTTSTEIN, PRESIDENT, Alaska Building, Inc.**, and acknowledged that he signed this document on behalf of and binding upon the corporation.

WITNESS my hand and notarial seal the day and year first hereinabove written.

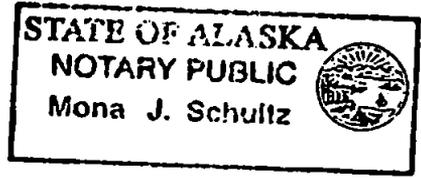


Notary Public in and for Alaska
My Commission Expires: 11/11/2016

Approved as to form and substance:



James B. Gottstein
Attorney for Plaintiff



THE ORIGINAL DOCUMENT HAS A WHITE REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW. DO NOT CASH IF NOT PRESENT



Navigators Insurance Company
400 Atlantic Street
Stamford CT 06901

JP Morgan Chase Bank, N.A.
Chicago, IL

Check No.	Check Date	Payee Ref
0000206725	08/12/2015	ALAS0356-001

70-2322/719

Check Amount
\$50,000.00***

VOID AFTER 180 DAYS

Pay *****FIFTY THOUSAND AND XX/100 DOLLAR *****

To The Order Of ALASKA BUILDING INC
SCHEER ZEHNDER
701 PIKE ST, STE 2200
ATTN: MARK SCHEER ESQ
SEATTLE, WA 98101

By: *CSM DeFalco*
Authorized Signature

By: *[Signature]*
Authorized Signature
Two Signatures Required Over \$50,000

⑆0000206725⑆ ⑆071923226⑆ 001051762⑆

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

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

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

Defendants.

Case No.: 3AN-15-05969CI

[PROPOSED] ORDER GRANTING REQUEST FOR ORAL ARGUMENT
(Motion to for Summary Judgment Under the Laches Doctrine)

Upon request of Defendant Legislative Affairs Agency, Inc., (the "Agency") for oral argument on the Agency's Motion for Summary Judgment Under the Laches Doctrine, oral argument on the Agency's Motion for Summary Judgment Under the Laches Doctrine shall be held on _____, 2015 at _____, ____m., in Courtroom 301, Nesbett Courthouse, 825 W. 4th Avenue, Anchorage, Alaska.

DATED at Anchorage, Alaska this ____ day of _____, 2015.

NOT USED
The Honorable PATRICK J. McKAY
Superior Court Judge

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on October 23, 2015, a true and correct copy of the foregoing was served in the manner identified below on:

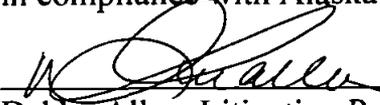
VIA HAND DELIVERY

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

VIA FIRST CLASS MAIL

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

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



Debby Allen, Litigation Practice Assistant

80436328.1 0081622-00003

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

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

Filed in the Trial Courts
STATE OF ALASKA THIRD DISTRICT

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

OCT 27 2015

Plaintiff,)

Clerk of the Trial Courts
By _____ Deputy

vs.)

Case No.: 3AN-15-05969 CI

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

#18
**716'S OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION**

Defendant 716 West Fourth Avenue, LLC ("716") has objected to disclosing certain proprietary information relating to 716's internal financial operations. Plaintiff Alaska Building, Inc. ("ABI") has filed for a preliminary injunction in order to make that otherwise irrelevant proprietary information discoverable. For the reasons stated within this motion, ABI is barred from seeking injunctive relief by the equitable defense of laches and ABI has otherwise failed to meet the "balance of hardships" test. A proposed order denying the injunction and affidavits of counsel and Mark Pfeffer, Operating Manager of 716, accompany this Motion.

I. FACTUAL BACKGROUND

On September 19, 2013, 716 entered into an agreement with the Legislative Affairs Agency (the "Agency") to renovate and expand the Anchorage Legislative Information Office (the "LIO Project"). The Alaska Building, which is owned by ABI,

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ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

A

is situated immediately adjacent to the LIO. Jim Gottstein, president and sole member of ABI, learned about the contemplated renovation of the LIO as early as “mid-September, 2013.”¹ On October 2, 2013 Gottstein met with Mark Pfeffer to discuss the project.² By October 3, 2015, ABI was specifically aware that (1) the construction and renovations involved in the project would cost tens of millions of dollars, (2) was not the subject of a competitive procurement process, and (3) media outlets were reporting the agreement would increase the Legislature’s rent rates.³ By mid-October, Gottstein had reviewed AS 36.30.083(a) and formed the opinion that the September 19, 2013 agreement was not a valid lease extension.⁴

By October 11, 2013 Gottstein was engaging in discussions with his own business associates as well as legal counsel for 716, threatening to seek injunctive relief unless Mark Pfeffer provided assurances that he was taking any potential risk of construction damage to the Alaska Building seriously.⁵

On October 25, 2013 Gottstein again communicated with 716’s counsel regarding ABI’s concerns of potential construction damage associated with the project.⁶ Specifically, ABI requested to be paid for Plaintiff’s personal services to date and

¹ Plaintiff’s Response to 716 Interrogatory No. 1. Attached as Exhibit A.

² *Id.*

³ *See Id.*; Plaintiff’s Response to LAA Interrogatory No. 1. Attached as Exhibit B; Deposition of Jim Gottstein (excerpts attached as Exhibit C) at 77: 21-25.; 78: 1-19.

⁴ *See Ex. A*; Plaintiff’s Response to LAA Interrogatory No. 1; Exhibit C at 78: 20-25; 79: 1-2.

⁵ *See Ex. C* at 81:1-9, 15-25; 83: 24-25; 84: 1.

⁶ *See Ex. C.* at 89: 8-18; October 25, 2013 email chain between Jim Gottstein and Doc McClintock, attached as Exhibit D.

sought to force Pfeffer into agreeing to a “\$Ten [sic] million purchase obligation” if the building was catastrophically damaged.⁷ Representatives of 716 and ABI met on October 28, 2013. Apparently unsatisfied with that meeting, ABI emailed 716’s counsel on October 30, 2013, threatening to “launch the grenade”—later described by Gottstein as filing suit “and asking for a preliminary injunction to stop the project”⁸—unless 716 agreed to his proposed Indemnification Agreement terms.⁹

During this same time period, Plaintiff contemplated, but ultimately chose not to raise his concerns with then Attorney General Michael Geraghty.¹⁰ In one of the letters Gottstein drafted but never sent, dated October 30, 2013, Gottstein raised concerns that (1) the lease extension was illegal under AS 36.30.083, and (2) the project developer had not made adequate assurances that the Alaska Building would not be damaged as a result of any construction.¹¹ Indeed, as part of the October 30, 2013 correspondence with 716’s counsel, Gottstein not only threatened to file for injunctive relief, but also threatened to contact the Attorney General and then Deputy Attorney General for the Department of Law’s Criminal Division, Rick Svobodny.¹² No letters were ever sent.

⁷ *See Id.*

⁸ Ex. C. at 94: 5-14.

⁹ October 30, 2013 email chain between Jim Gottstein and Doc McClintock, attached as Exhibit E.

¹⁰ Draft letters to Attorney General Geraghty, dated October 30, 2013, attached as Exhibit F.

¹¹ *Id.*

¹² *See Exhibit E.*

Indeed, rather than file suit or send a letter notifying a high government official of the alleged lease illegality, ABI voluntarily elected to enter into indemnity and insurance agreements with 716.¹³ Drafting and negotiations regarding the principal agreement took place in November of 2013 and a final Access, Indemnity, and Insurance Agreement (“the Agreement”) was executed on December 6, 2013.¹⁴ As part of the Agreement, 716 paid: (1) \$15,000 to ABI in consideration of the “professional time required to address preparation” for the LIO Project;¹⁵ (2) \$10,000 to ABI for offsite mirroring of data;¹⁶ (3) \$2,000 to Gottstein as a rent abatement payment for relocating his office across the hall during construction;¹⁷ and (4) \$3,900 to ABI for use of the parking space in the alley.¹⁸ Incorporated into the terms of the Agreement, ABI also received over \$14,400 in rent from Criterion General as part of a Space Lease.¹⁹ Based on those values alone, ABI received approximately \$45,300 in compensation under the terms of the Agreement and Space Lease.

LIO Project construction commenced in December 2013 and concluded on or about January 9, 2015.²⁰ At no time during the construction process did ABI file to stop

¹³ One such agreement, regarding relocation of a gas line and gas meters, was actually entered into on October 30, 2013. Exhibit E.; *See also* Ex. C at 97: 7-20.

¹⁴ Interpretation of the Agreement is a subject of dispute in 3AN-15-09785CI.

¹⁵ *See* Ex. C. at 108: 22-25; 109: 1-13.

¹⁶ *See Id.* at 109: 14-23.

¹⁷ *See Id.* at 110: 8-14.

¹⁸ *See Id.* at 109: 24-25; 110: 1-7.

¹⁹ *See Id.* at 111: 2-11.

²⁰ *See* Ex. A. Plaintiff’s Response to LAA Request for Admission No. 17.

the LIO Project. Rather, on January 23, 2015, Gottstein emailed 716 (and Criterion) asserting a claim for \$250,000 for alleged damage to the Alaska Building ABI during the LIO Project construction.²¹ Having tendered the claim to Criterion's insurer pursuant to the terms of the Agreement, 716 did not pay ABI any amount in satisfaction of the alleged damages.²² According to Gottstein, had ABI been compensated for alleged property damage, ABI would "probably not" have filed this litigation.²³

It was not until March 31, 2015—almost 3 months after construction of the LIO ended, 15 months after construction began and 17 months after the extension was signed—that ABI filed suit challenging the damage to the Alaska Building as well as the "legality" of the lease extension.²⁴

II. DISCOVERY REQUEST

ABI has requested discovery of information relating to 716's internal financial operations and 716 has refused to disclose that information on the basis that the confidential and proprietary information sought is irrelevant to ABI's claims.²⁵ As the court is aware, the scope of this litigation is limited to (1) the legality of the lease extension and (2) whether the rental rate affiliated with the lease is at least 10 percent

²¹ See Ex. G Claim from Alaska Building, Inc. dated January 23, 2015.

²² See *Id.* at 118: 24-25; 119: 1-2.

²³ See *Id.*

²⁴ See Ex. A; Plaintiff's Responses to LAA Request for Admission Nos. 19, 20, and 23.

²⁵ See 716's Opposition to Motion to Compel.

below the market rental value of the real property at issue at the time the lease was executed.²⁶ ABI is not asserting a veil piercing argument.²⁷

Preserving its discovery objections, which are fully laid out in 716's opposition to Plaintiff's motion to compel, 716 nevertheless offered to provide 716's Operating Agreement to Judge McKay for an *in camera* review, for Judge McKay to make a relevance determination.²⁸ ABI rejected this overture and filed for a preliminary injunction on October 6, 2015. ABI acknowledges that the disputed discovery is not relevant to the underlying litigation issues—the legality of the lease or the market rental rate—but argues it is relevant for the purposes of this injunction motion.²⁹ Plaintiff's request for a preliminary injunction thus fundamentally appears to be a discovery litigation tactic to obtain otherwise undiscoverable information.

III. ARGUMENT

A. The equitable doctrine of laches bars ABI's claim for injunctive relief.

Despite ABI's extensive knowledge of the LIO Project, its negotiated compensation payments, and its awareness of the tens of millions of dollars paid by 716 to various entities involved in the Project, ABI waited **almost two full years**, until

²⁶ See Amended Complaint, filed by Plaintiff on August 25, 2015.

²⁷ Plaintiff's Motion for Preliminary Injunction at 6; FN 3.

²⁸ See September 30, 2015 email exchange between undersigned and Gottstein, dated, attached as Exhibit H.

²⁹ Motion to Compel at 3, 5-6; Plaintiff's Motion for Preliminary Injunction at 3 (“[i]f 716 LLC had produced documents providing that it would be able to pay back the money, this Motion [for Preliminary Injunction] would not have been filed.”)

October 6, 2015, to file for preliminary injunctive relief. ABI's claim for injunctive relief is now barred under the equitable defense of laches.³⁰

In order to prevail under the defense of laches, 716 must show, (1) that the plaintiff has unreasonably delayed in bringing the action, and (2) that this unreasonable delay has caused undue harm or prejudice to the defendant.³¹ The factual background provided above is evidence of ABI's unreasonable delay in bringing the action. Plaintiff's lawsuit mirrors the facts of *City and Borough of Juneau v. Breck*, 706 P.2d 313 (Alaska 1985) and the application of the laches doctrine should be similarly applied here to bar Plaintiff's request for injunctive relief. In *Breck*, the Supreme Court stated:

[O]ne of the factors to be considered in measuring the plaintiff's delay is when, under the circumstances, it becomes no longer reasonable for the plaintiff to assume that the defendants would comply with the law. Additionally, the court will "look to that point in time when there were positive steps taken by defendants which made their course of conduct irrevocable, and would have galvanized reasonable plaintiffs into seeking a lawyer."³²

Breck involved litigation surrounding the construction of a marine park and parking garage in Juneau.³³ In December 1983 the City and Borough of Juneau ("the City") publicly announced that it was seeking design-build proposals for the parking structure and executed a construction contract with Kiewit in May of 1984.³⁴ The

³⁰ See also The Legislative Affairs Agency's Memorandum in Support Of Motion for Summary Judgment (Laches).

³¹ *City & Borough of Juneau v. Breck*, 706 P.2d 313, 315 (Alaska 1985); See also *Moore v. State*, 553 P.2d 8, 15 (Alaska 1986),

³² *Id.* at 315 (internal citations omitted).

³³ *Id.* at 314.

³⁴ *Id.* at 314.

contract specified the project was to be completed largely within a six to eight month period.³⁵ The legality of the project was opposed by Juneau citizen Betty Breck, who contacted the mayor and voiced her concerns to the City's Assembly on nine separate occasions, even after the City awarded the contract to Kiewit.³⁶ Breck was aware that construction had begun in the middle of May, but contended that it was not until the end of June that she realized the assembly would not respond absent litigation.³⁷ When Breck ultimately filed suit on August 24, 1984 it was "approximately eight months after the city advertised its intent to seek 'design-build' proposals, four months after the contract with Kiewit Construction was signed, and after approximately 50 per cent of the project was complete."³⁸ The superior court nonetheless issued the preliminary injunction after concluding Breck had demonstrated a high probability of success on the merits, and that Breck had shown irreparable injury for which there was no adequate and complete remedy at law.³⁹

The Alaska Supreme Court reversed.⁴⁰ It held that "the signing of the contract and the commencement of work under the contract would have galvanized a reasonable plaintiff into seeking a lawyer."⁴¹ A reasonable person would have known well before June (the date Breck claimed she began to prepare to file suit) that the City was

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 315.

³⁹ *Id.* at 314.

⁴⁰ *Id.* at 315.

⁴¹ *Id.* at 316.

embarking “on a course of action that it would not alter unless forced to.”⁴² The Court agreed with the City’s contention that Breck “should have realized that the large financial commitment, and the delay that would result if the contract was declared void, made such a change inconceivable.”⁴³ It further rejected Breck’s contention that her delay in bringing suit was excusable because she lacked knowledge about how to file suit.⁴⁴ Because cancelation of the contract would have cost the City millions of dollars, and thus resulted in undue prejudice to the City, the Court held that Breck’s claims of injunctive relief were barred by the equitable doctrine of laches.

ABI’s claims are similarly barred as the Plaintiff has (1) unreasonably delayed in bringing the present action and (2) this unreasonable delay has caused undue harm or prejudice to the defendant.

1. Plaintiff unreasonably delayed in bringing the instant action.

In order to evaluate the reasonableness (or unreasonableness) of a plaintiff’s delay, the court must look to when, under the circumstances, it became unreasonable for the plaintiff to assume a defendant would stop its planned course of action absent litigation.⁴⁵ The court must “look to that point in time when there were positive steps taken by defendants which made their course of conduct irrevocable, and would have galvanized reasonable plaintiffs into seeking a lawyer.”⁴⁶ Finally, the Alaskan Supreme

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *See Id.* at 315 (citing *Moore v. State*, 553 P.2d at 16).

⁴⁶ *Id.* (internal citations omitted).

Court has said that “in determining when laches should be applied, our concern is not so much with when the alleged wrong occurred, as it is with when, in light of any resulting prejudice to defendants, it became reasonable to expect plaintiffs to act upon the wrong.”⁴⁷

Here, ABI became aware of the LIO Project sometime between late September and early October 2013. By the middle of October 2013, Gottstein had reviewed AS 36.30.083(a) and formed the belief that the lease was illegal.⁴⁸ By the end of October 2013 ABI threatened to, but chose not to file for injunctive relief or mail any of the letters Gottstein had drafted to the Attorney General voicing his concerns that the LIO project was illegal and the contemplated construction efforts should be terminated. Instead, ABI voluntarily elected to receive approximately \$45,300 in compensation and Gottstein personally observed the construction activities taking place at 716 West 4th Avenue from December 2013 through January 2015.

Other than the parties directly involved in the Project, ABI was arguably the entity most closely involved with the Project. Plaintiff’s building shared a wall with the old Empress Theatre, which was torn down to expand the LIO into the adjacent space. Plaintiff signed agreements with 716 and Criterion involving liability and risk allocation. Plaintiff hired an engineer to help monitor the process. He continued to accept rent payments. Plaintiff waited until three months *after* construction was

⁴⁷ *Moore v. State*, 553 P.2d at 14.

⁴⁸ Plaintiff’s Response to LAA Interrogatory No. 1.

completed to file suit, and only included the lease legality claim as a throw-in claim to his construction damage suit.⁴⁹

Under the facts of this case, Plaintiff is guilty of inexcusable delay in filing this action. The delay was even more unreasonable than the delay in *Breck* given: (1) Gottstein is an attorney and had allegedly formulated the basis for his claim in October 2013 (*Breck* was not an attorney), (2) ABI waited to file suit until the Project was completed (*Breck* only waited until the facility was halfway completed); (3) no efforts were actually made to voice concerns to government officials (*Breck* spoke with the mayor and testified before the assembly on nine occasions); and (4) ABI and Gottstein received approximately \$45,300 in compensation during the construction period (*Breck* received no compensation).

ABI's delay in bringing this action served to provide ABI with the maximum financial benefit while potentially causing the greatest financial harm to 716. As explained in detail in the following section, ABI was aware that 716 expended tens of millions of dollars in construction costs and expected to receive tens of millions of dollars in lease payments. The court should find ABI has unreasonably delayed in bringing the action.

2. ABI's unreasonable delay caused undue harm or prejudice to 716.

⁴⁹ Plaintiff claims he did not file for an injunction because he was concerned about "retaliatory damage to the Alaska Building." See Ex. C. at 134: 5-7. Although his motive for not filing is irrelevant, it should be made clear that Gottstein himself has acknowledged that no one threatened ABI during the Project. See Ex. C at 141: 22-24; Ex. C. at 118: 24-25; 119: 1-2 (throw-in claim).

The court must next consider whether the unreasonable delay has caused undue harm or prejudice to the defendants in this action. 716 already expended tens of millions of dollars in construction costs. In order to undertake the Project, 716 signed a construction contract with Criterion General on November 11, 2013 in excess of \$30,000,000.⁵⁰ 716 spent approximately \$44,500,000 in construction efforts.⁵¹ The Premises was renovated to meet the specific needs of the Agency, including an expansion of office space and appropriate off-street parking spaces.⁵² The Agency paid \$7.5 million in tenant improvements.⁵³

If ABI had filed an injunction in October, 2013 as Gottstein had threatened, and had he been successful, 716 would not have paid over \$30,000,000 to Criterion. By waiting until well after construction was complete to challenge the lease, ABI's seeks to cause 716 to suffer the maximum prejudice from payments spent in its construction efforts.

In addition to jeopardizing costs already incurred, ABI's request to sequester funds received under the terms of the lease other than direct operating expenses and projected debt services also significantly prejudices the defendants by depriving 716 the benefit of its bargain under the terms of the contract. 716 invested \$9,000,000 of its own money into the project as a good faith investment, expecting a monthly rate of return on

⁵⁰ Affidavit of Mark Pfeffer ¶ 5.

⁵¹ Id. at ¶ 7.

⁵² See Extension of Lease and Lease Amendment No. 3.

⁵³ See Affidavit of Jessica Gary ¶¶ 4-7, submitted on 10/21/2015 as part of the Agency's Motion for Summary Judgment; See Affidavit of Mark Pfeffer ¶ 5.

its investment outside of merely recovering debt services and operating expenses.⁵⁴ That monthly rate of return is not a negligible amount.

In summary, 716 faces irreparable injury if the court grants an injunction at this stage—there are deeds of trusts, loans, and commitments made in reliance on the contract that was signed. Sequestering a significant amount of monthly rent payments puts all of that potentially in default and affects numerous entities involved in the Project’s financing, not simply 716 and the Agency. It goes without saying that 716, who has been the Landlord of the LIO for 23 years, stands to lose its professional reputation and status among lending institutions, construction professionals, and business clients should the court grant ABI injunctive relief.

The Court should find that ABI’s unreasonable delay in bringing suit has and will continue to cause undue harm and prejudice to 716. As 716 has met both prongs under the equitable doctrine of laches, the Court should bar ABI’s request for a preliminary injunction.

B. Denial of the preliminary injunction is still appropriate even if the court finds that 716 has not successfully raised the defense of laches.

Preliminary injunctions are extraordinary remedies involving the exercise of very far-reaching power to be granted only sparingly and in limited circumstances.⁵⁵ The traditional purpose of a preliminary injunction is to prohibit an action. Preliminary injunctions are meant to “protect the status quo and to prevent irreparable harm during

⁵⁴ See ¶ 7 of Affidavit of Mark Pfeffer at 7.

⁵⁵ *MicroStrategy Inc. v. Motorola, Inc.*, 245 F.3d 335, 339 (4th Cir. 2001).

the pendency of a lawsuit ultimately to preserve the court's ability to render a meaningful judgment on the merits.”⁵⁶ Under Alaska law, in deciding whether to grant or deny a preliminary injunction, Alaska courts apply the “balance of hardships” test.

Immediate injunctive relief is warranted when the following three factors are present:

(1) the plaintiff must be faced with irreparable harm; (2) the opposing party must be adequately protected; and (3) the plaintiff must raise serious and substantial questions going to the merits of the case. Where the harm is not irreparable, or where the other party cannot be adequately protected, then the moving party must show probable success on the merits.⁵⁷

Here, ABI cannot show it is faced with irreparable harm by maintaining the status quo during the pendency of the litigation. ABI’s sole claim of irreparable harm is the unsubstantiated, speculative claim that because 716 is limited liability corporation it will be unable to pay “pay back rent money it has received in excess of that allowed by law.”⁵⁸ Not only does this argument ignore the fact 716’s has operated as landlord to the LIO for the past 23 years,⁵⁹ but it also is hypocritical given ABI’s assessment that 716 was financially viable enough to execute a ten million dollar purchase option over the Alaska Building.⁶⁰ Likewise, by delaying this litigation, any “damage” is already

⁵⁶ *Perry v. Judd*, 840 F. Supp. 2d 945, 950, 954 (E.D. Va.) *aff’d*, 471 F. App’x 219 (4th Cir. 2012)(barring under laches the plaintiffs’ motion for a preliminary injunction where the plaintiffs, various candidates who were seeking the Republican Nomination for office of President of the United States, had “slept on their rights to the detriment of the defendants.”)

⁵⁷ *Holmes v. Wolf*, 243 P.3d 584, 591 (Alaska 2010)(internal citations omitted.)

⁵⁸ Plaintiff’s Memorandum at 3-4.

⁵⁹ See ¶ 3 of Affidavit of Mark Pfeffer.

⁶⁰ See *Id.*

done; the State, has already paid \$7.5 million in tenant improvements,⁶¹ and 716 has already contributed vast resources in the expansion and renovation efforts. Any “irreparable harm” from that expenditure has already occurred. Finally, with respect to prong one, the availability of funds from the Legislature to pay for the Agency’s monetary obligations is contingent upon appropriation of funds for the particular fiscal year involved.⁶² If the Agency’s Executive Director determines that sufficient funds are not appropriated by the Legislature, the lease can be terminated by the Agency or amended.⁶³ In summary, ABI cannot show continuation of the status quo subjects the State to irreparable harm.⁶⁴

Conversely, 716—the opposing party to the injunction—would be left inadequately protected were the injunction granted. ABI’s request is to sequester funds received under the terms of the lease other than direct operating expenses and projected debt services. This sequestration deprives 716 the benefit of its bargain under the terms of the contract. 716 invested \$9,000,000 of its own money into the LIO Project as a good faith investment, expecting a monthly rate of return on its investment.⁶⁵ As stated above, that monthly rate of return is not de minimus, nor does it exist in a vacuum.

⁶¹ See Affidavit of Jessica Gary ¶¶ 4-7, submitted on 10/21/2015 as part of the Agency’s Motion for Summary Judgment; See Affidavit of Mark Pfeffer ¶ 5.

⁶² Extension of Lease and Lease Amendment No.3 ¶ 43. The Governor, of course, can also veto appropriated funds.

⁶³ *Id.*

⁶⁴ It goes without saying that any irreparable harm ABI faced during construction is over as ABI waited until the construction process was completed to file suit.

⁶⁵ See ¶ 7 of Affidavit of Mark Pfeffer at 7.

And, of course, sequestration of any portion of monthly lease payments adversely affects 716's ability to conduct business in the state.

Because the harm is not irreparable and 716 cannot be adequately protected were an injunction granted, ABI must do more than just raise serious and substantial questions going to the merits of the case; as the moving party ABI must show probable success on the merits.⁶⁶ For the reasons explained above, ABI's claim is likely barred by the equitable defense of laches. Beyond the laches argument, ABI has not shown probable success on the merits. Defendants complied with AS 36.30.083(a). As the lease extension indicates, Timothy Lowe completed an independent analysis "and concluded that the rent due under the terms and conditions of the lease extension and amendment [are] at least 10 percent below the market rental value of the real property at the time of the extension for a ten year term."⁶⁷ In dispute of this claim, ABI has attached an affidavit of a retired real estate appraiser, Larry Norene, to its motion. In the event the case is not summarily dismissed, ABI will have the opportunity to have a battle of the expert appraisals; however, merely finding an individual who disagrees with Mr. Lowe's appraisal is insufficient to support a finding of probable success on the merits. Placing blind faith in Mr. Norene's appraisal, after Mr. Lowe's appraisal was vetted by various groups, including the Alaska Housing Finance Corporation, completely negates the purpose of having safeguards already in place to ensure

⁶⁶ 716 disputes, for the same reasons stated within this section, that ABI has even raised serious and substantial questions going to the merits of the case.

⁶⁷ See ¶ 1.2 of 9/19/13 lease.

statutorily compliance. AS 36.30.083(a) requires the market value to be established by a real estate broker's opinion of the rental value or by an appraisal of the rental value. The legislative council was not obligated to select Mr. Gottstein's preferred appraiser to determine rental value. Similarly, there can be no-good faith dispute that the Lease Extension was an extension of the original lease arrangement, despite Plaintiff's claims to the contrary in his motion for summary judgment on this issue. (The court will not hear argument on this novel claim until at least January 30, 2016.)

In granting citizen-taxpayer standing, the court afforded ABI the opportunity to air its grievances. The court specifically warned ABI at the oral argument on August 18, 2015 that permission to proceed in the litigation was not an indication of whether or not his claims would ultimately prevail. Citizen-standing should not now be interpreted to mean ABI has carte-blanche to jeopardize the financial and professional well-being of the parties involved. There is no prejudice to ABI in waiting for the court to address the merits of its claims pursuant to the court's initial scheduling order and subsequent scheduling of dispositive arguments on summary judgment and other motions. As such, Plaintiff's request for a preliminary injunction should be denied.

In the event the court is inclined to grant ABI's request for the injunction, 716 requests the opportunity for oral argument. Attached to this Opposition is a proposed order, denying the preliminary injunction request and outlining a reasonable schedule for hearings on the various motions the parties have filed.

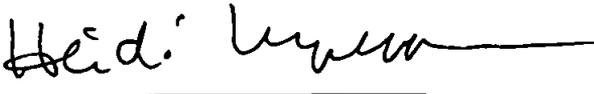
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 27 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

ASHBURN & MASON INC.
LAWYERS
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150313

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

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff
vs.
716 WEST FOURTH AVENUE LLC, *et al.*
Defendants.

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OCT 16 2015
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Case No. 3AN-15-05969CI

**RESPONSE TO 716 WEST FOURTH AVENUE, LLC'S FIRST
DISCOVERY REQUESTS TO ALASKA BUILDING, INC.**

Alaska Building, Inc., hereby responds to 716 West Fourth Avenue, LLC's First
Discovery Requests To Alaska Building, Inc. By doing so, it is not waiving any
evidentiary objections. If it is discovered that these responses should be amended,
corrected or supplemented, Alaska Building, Inc., reserves the right so to do.

REQUESTS FOR PRODUCTION

The produced documents can be downloaded as a "zip" archive from
<http://gottsteinlaw.com/AkBldgv716W4thAve/Discovery/AkBldgDiscovery/Docs4ResponseTo716FirstDiscovery%20Requests/>.

REQUEST FOR PRODUCTION NO. 1:

Please produce all documents, including without limitation, emails, relating to ABI
and/or Jim Gottstein's knowledge of the contemplated renovation of the Legislative
Information Office ("LIO Project"). This should include, but is not limited to, all

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documents indicating when ABI or Jim Gottstein first became aware of the LIO Project and all documentation of ABI and Jim Gottstein's awareness of the ongoing construction work through the LIO Project's completion.

RESPONSE:

Object on the grounds that Mr. Gottstein's knowledge of the contemplated LIO Project is not relevant nor reasonably calculated to lead to the discovery of admissible evidence because this action is brought on behalf of the state and people of Alaska. Notwithstanding the foregoing, the documents are being produced.

REQUEST FOR PRODUCTION NO.2:

Please produce all documents relating to ABI and Jim Gottstein's concerns about and expressed opposition to the LIO Project, including but not limited to concerns regarding the "legality" of the project. This includes, but is not limited to any specific efforts ABI or Jim Gottstein made to stop the LIO project from moving forward either before construction began or after construction commenced. Court filings need not be discovered.

RESPONSE:

Object on the grounds that Mr. Gottstein's concerns about and expressed opposition to the LIO Project, including but not limited to concerns regarding the "legality" of the project are not relevant nor reasonably calculated to lead to the discovery of admissible evidence because this action is brought on behalf of the state and people of Alaska. Notwithstanding the foregoing, the documents are being produced.

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*Responses to 716 W 4th Ave LLC's
First Discovery Requests to Plaintiff*

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REQUEST FOR PRODUCTION NO. 3

Please produce all documents relating to payments and compensation made to ABI and its tenants relating to the LIO Project. This request includes, but is not limited to, any requests for compensation, regardless of whether compensation was actually paid.

RESPONSE:

Object on the grounds that payments and compensation made to ABI and its tenants relating to the LIO Project are not relevant nor reasonably calculated to lead to the discovery of admissible evidence because this action is brought on behalf of the state and people of Alaska. Notwithstanding the foregoing, the documents are being produced.

REQUEST FOR PRODUCTION NO. 4

Please provide all documents relating to communication between Jim Gottstein, or any agent of ABI, and any tenant, or agent of that tenant, regarding any concerns expressed relating to the legality of the LIO project.

RESPONSE:

Object on the grounds that Mr. Gottstein's concerns about and expressed opposition to the LIO Project, including but not limited to concerns regarding the "legality" of the project are not relevant nor reasonably calculated to lead to the discovery of admissible evidence because this action is brought on behalf of the state and people of Alaska. Notwithstanding the foregoing, the documents are being produced.

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*Responses to 716 W 4th Ave LLC's
First Discovery Requests to Plaintiff*

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INTERROGATORIES

INTERROGATORY NO.1

On what date and under what circumstances did ABI and/or Jim Gottstein first acquire knowledge of the contemplated renovation of the Legislative Information Office?

RESPONSE:

Object on the grounds that when and under what circumstances Alaska Building, Inc., and/or I acquired knowledge of the LIO Project is not relevant nor reasonably calculated to lead to the discovery of admissible evidence because this action is brought on behalf of the state and people of Alaska.

Notwithstanding the foregoing, I know I became aware of it by mid-September, 2013. I know the Alaska Dispatch News ran a story about it on June 7, 2013, but I don't have a specific memory of that. I ran into Mark Pfeffer sometime on or around the week of September 16, 2013, and he said he wanted to get together with me, which we did on October 2, 2013, I think. Mr. Pfeffer went through the project during that meeting.

INTERROGATORY NO. 2

Prior to the commencement of this lawsuit, on what date and under what circumstances did ABI and/or Jim Gottstein first express-formally or informally-concern over and/or opposition to the contemplated renovation of the Legislative Information Office? Please describe the first such instance and all subsequent instances.

RESPONSE:

Object on the grounds that, except for informing Don McClintock, attorney for 716 LLC, when and under what circumstances I first expressed -formally or informally-
*Responses to 716 W 4th Ave LLC's
First Discovery Requests to Plaintiff*

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concern over and/or opposition to the LIO Project is not relevant nor reasonably calculated to lead to the discovery of admissible evidence because this action is brought on behalf of the state and people of Alaska. I expressed my concern and opposition to Don McClintock, attorney for 716 LLC in early October, 2013. I remember we had a meeting and might have had a telephone conversation or two and e-mail, which is being produced.

INTERROGATORY NO. 3

Did ABI and/or Jim Gottstein ever receive any payment in connection with the renovation of the Legislative Information Office? If so, please describe the circumstances, including the date, the amount, and the reason for the payment.

RESPONSE:

Object on the grounds that payments to Alaska Building, Inc., or me in connection LIO Project is not relevant nor reasonably calculated to lead to the discovery of admissible evidence because this action is brought on behalf of the state and people of Alaska. Also object to the characterization of the LIO Project as a renovation.

Notwithstanding the foregoing, yes, on December 6, 2013, \$15,000 to Alaska Building, Inc., from 716 LLC pursuant to Section 1 of the November 6, 2013, Access, Indemnity, and Insurance Agreement (Agreement) for payment of professional fees related to the LIO Project, \$10,000 to Alaska Building, Inc., from 716 LLC pursuant to Section 2 of the Agreement for computer mirroring equipment to have close to real-time offsite mirroring since one of the server room walls was the very vulnerable party wall, \$2,000 to me pursuant to Section 3 of the Agreement to pay for me having to move out of my office because my computer desk was right against the party wall and very vulnerable to a

*Responses to 716 W 4th Ave LLC's
First Discovery Requests to Plaintiff*

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catastrophic failure, \$14,400 to Alaska Building, Inc., pursuant to Section 4 of the Agreement for a 12 month lease of the space from which Blu Menswear was constructively evicted by the LIO Project, and \$3,900 to Alaska Building, Inc., from 716 LLC pursuant to Section 5 of the Agreement for use of the parking space on the alley. The Agreement is in 716 LLC's possession and also produced along with copies of the checks.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1

Admit that the alleged damage to ABI's property, if it occurred, was caused by renovation activity.

RESPONSE:

Object to the characterization as renovation. Notwithstanding the foregoing, and assuming the request for admission refers to physical damage, Alaska Building, Inc., admits that the physical damage the Alaska Building was caused by the demolition and construction undertaken pursuant to the LIO Lease.

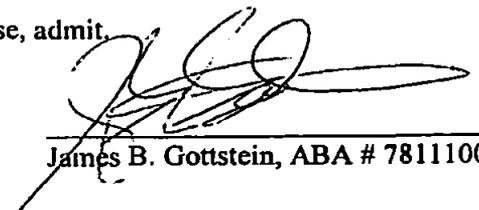
REQUEST FOR ADMISSION NO. 2

Admit that the physical act of signing the lease document at issue did not cause damage to ABI's property.

RESPONSE:

Subject to the previous response, admit.

Dated October 15, 2015.


James B. Gottstein, ABA # 7811100

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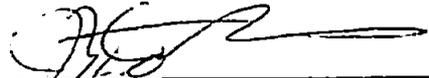
*Responses to 716 W 4th Ave LLC's
First Discovery Requests to Plaintiff*

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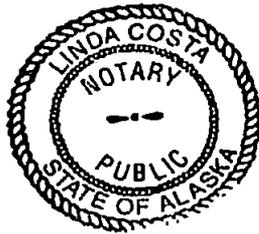
VERIFICATION

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

Dated October 15, 2015.


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

SUBSCRIBED AND SWORN TO before me this 15th day of October 2015.




Notary Public in and for Alaska
My Commission Expires: 04/10/2017

CERTIFICATE OF SERVICE

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

Dated October 15, 2015.


Jim Gottstein

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*Responses to 716 W 4th Ave LLC's
First Discovery Requests to Plaintiff*

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

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, *et al.*
Defendants.

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OCT 06 2015

ASHBURN & MASON

Case No. 3AN-15-05969CI

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

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

REQUESTS FOR ADMISSION

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

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

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

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RESPONSE: Admit.

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

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

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

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

Page 2

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RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

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

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

Page 3

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000975

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

Page 4

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Exhibit B
Page 4 of 14

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

RESPONSE: Admit.

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

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

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

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

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

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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000980

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

RESPONSE: Deny.

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

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

INTERROGATORIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The operating costs were drastically increased.

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

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

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is it at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease.

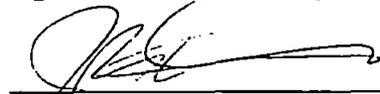
Dated October 5, 2015.


James B. Gottstein, ABA # 7811100

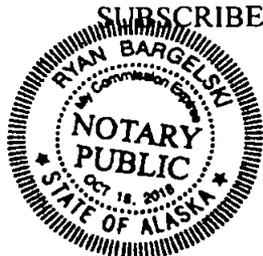
VERIFICATION

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

Dated October 5, 2015.


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

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




Notary Public in and for Alaska
My Commission Expires: 10-18-18

CERTIFICATE OF SERVICE

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

Dated October 5, 2015.


Jim Gottstein

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In the Matter Of:
ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

JAMES GOTTSTEIN - VOL. II

October 23, 2015

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ANCHORAGE, ALASKA 99501
907-272-4383
www.courtreportersalaska.com

1 basis in Alaska statute or common law for that
2 recovery?

3 A. I don't think I -- no, I don't think I
4 admitted that. I mean, I think I'm trying to
5 establish that there is a basis.

6 Q. I want to ask you questions about your
7 questioning of the legality of the lease. Okay?
8 And you've already answered questions germane to
9 this line before, right?

10 A. Ask them. Ask your questions.

11 Q. When did you first specifically become
12 aware of the lease agreement between 716 and the
13 Agency?

14 A. You know, I have -- that's been asked and
15 answered. It was sometime late September or early
16 October.

17 Q. At least at --

18 A. Of 2013.

19 Q. At least by October 3rd, 2013?

20 A. I believe that's correct.

21 Q. Okay. And your knowledge of the lease
22 involved your understanding that the construction
23 renovations would cost tens of millions of dollars,
24 correct?

25 A. Asked and answered. Yes.

1 Q. And specifically 716 West Fourth Avenue LLC
2 was spending in the ballpark 30 to \$40 million in
3 construction renovation efforts, correct?

4 A. I've asked for that information, and -- and
5 you've refused to provide it in discovery. It's the
6 subject of a pending motion to compel, so the --
7 I've certainly seen budgets that say that.

8 Q. You've previously admitted, in requests for
9 admission, that you are aware that tens of millions
10 of dollars were being spent on construction,
11 correct?

12 A. Yeah, I think so.

13 Q. And you were a neighbor of the project,
14 correct?

15 A. Yes.

16 Q. So you personally observed what was
17 happening?

18 A. It looked like, yes, probably, certainly,
19 millions, tens of millions were spent, yes.

20 Q. You've repeatedly claimed that the lease
21 extension is not, in your opinion, an extension,
22 right? And you also came to that conclusion at some
23 point in early to mid-October 2013, right?

24 A. Yes.

25 Q. And that was after you personally reviewed

1 AS 36.30.083, right?

2 A. Yes.

3 Q. And by personally reviewing it, describe
4 what you did.

5 A. Well, I pulled the statute up and read it.

6 Q. Did you read in the statute that there was
7 a requirement that the terms of the lease extension
8 remain exactly the same as the original lease?

9 A. No.

10 Q. You've generally complained -- and,
11 actually, in paragraph 24 of your amended complaint,
12 you --

13 A. Is that the second amended claim?

14 Q. Yes. Jim attempted to convince Pfeffer and
15 716 LLC to not proceed with the LIO project because
16 of the all-but-certain damage to the Alaska Building
17 that would result, and because the LIO project was
18 illegal under AS 36.30.083(a).

19 You've made that claim in your amended
20 complaint?

21 A. Yes.

22 Q. Okay. I want to get into the specifics of
23 that claim, but generally can you describe what
24 specific attempts you took to convince 716 that the
25 lease was illegal?

1 Q. Okay. At some point, when you -- and this
2 was at 7:44 a.m. Did you follow up with Mr. LeClair
3 indicating that you were thinking about filing for
4 an injunction if Pfeffer doesn't provide adequate
5 assurances?

6 A. Uh-huh.

7 Q. What did you mean by that?

8 A. That -- that the project wouldn't damage
9 the Alaska Building.

10 Q. Was that the first time that you mentioned
11 to anyone that you were going to file or possibly
12 file an injunction?

13 A. I don't know. I don't recall. I may have
14 talked to Don before that.

15 MR. ROBINSON: I'm going to hand you,
16 Mr. Gottstein, an e-mail chain dated 10/11/15 --
17 excuse me -- 10/11/13, the same day as the Mr. LeClair
18 e-mail. I'm going to mark this as Exhibit B. If you
19 could take a minute to review it.

20 (Exhibit B marked.)

21 BY MR. ROBINSON:

22 Q. So you sent Mr. LeClair the e-mails roughly
23 around 7:45, 7:50 in the morning on the 11th, right?
24 Excuse me. On the -- yeah, on the 11th, correct?

25 A. Yes.

1 concerns seriously, right?

2 A. Correct.

3 Q. And why did you believe this?

4 A. I had a meeting with him, where he was just
5 very dismissive about my concerns. His plan -- as I
6 said before, I was very alarmed when I heard the
7 idea was to take a front-end loader, or I guess they
8 call them an excavator, to demolish the Empress, old
9 Empress Theater.

10 And I asked about contingency, you know,
11 contingency in the budget and what -- and he basically
12 dismissed the idea. And I said, well, you're going to
13 have to cut the wall -- the wall out, aren't you? He
14 says, oh, no.

15 And to me, that was really outrageous.

16 Q. So your concerns as of this point,
17 October 11, 2013, they had to do with damage to your
18 building? That was your principal concern, correct?

19 A. I -- I was actually also very outraged by
20 the lease agreement itself and had an independent
21 concern about it, and was conflicted about whether
22 or not I should try and stop that, just on the basis
23 of the public interest.

24 And so I'm not -- so -- but my -- the concern
25 expressed in these e-mails is certainly about damage

1 to my building.

2 Q. And that's what I'm getting at, just to be
3 as responsive as we can here. The concern expressed
4 in this specific e-mail had to do with your worry
5 that Mr. Pfeffer was not taking your concerns about
6 any possible building damage seriously, correct?

7 A. Well, I mean, the concern was about the
8 damage to the building.

9 Q. Right.

10 A. And that was, you know, certainly not -- I
11 was not comforted by Mr. Pfeffer's lack of taking it
12 seriously.

13 Q. And after reviewing this e-mail, you'd
14 agree that Mr. McClintock offered to put you in
15 touch with people from Pfeffer Development,
16 including Bob O'Neill, the engineer, to address your
17 concerns. You would agree that that's reflected in
18 Exhibit B, correct? We're on page 1.

19 A. Well, he said, "The line people of the job,
20 Bob O'Neill and Shea Simasko are very experienced
21 and some of the best people I have worked with in
22 terms of professionalism.

23 "Let me know what I can do to help
24 communications."

25 Q. At this point, in October of 2013, roughly

1 THE REPORTER: And the second was that you
2 not bear any costs if something were to go wrong,
3 right? Those were the two concerns that you expressed
4 as of October 25th, 2013?

5 THE WITNESS: Right. So that was not limited
6 to the e-mail.

7 BY MR. ROBINSON:

8 Q. Mr. Gottstein, looking at page 1 of -- this
9 is Exhibit C, correct?

10 The bottom of page 1, in writing to
11 Mr. McClintock on October 25th, 2013, you specifically
12 asserted that your complaints -- or your concerns were
13 the integrity of the Alaska Building and that you not
14 bear any costs as a result of what you term "Mark's
15 project," correct?

16 A. The document speaks for itself.

17 Q. So that's a yes?

18 A. The document speaks for itself.

19 Q. Earlier in this chain -- and I'll refer you
20 to page 3 -- did you try to negotiate with
21 Mr. McClintock an agreement or provision in some
22 contract whereby you would be compensated
23 \$10 million in the event the building was damaged;
24 in other words, Mr. Pfeffer would have to buy your
25 building for \$10 million if you believed it was

1 didn't believe 716 was going to sign the
2 indemnification agreement with language that you
3 wanted included. Is that accurate?

4 A. Yes.

5 Q. So in your mind, the meeting on the 28th
6 didn't go well, so in this e-mail, at some point you
7 threatened to launch the grenade. And if you can
8 explain what you meant by that.

9 A. Just filing for a preliminary -- for the
10 lawsuit and asking for a preliminary injunction to
11 stop the project. And I think that this all, you
12 know, reflects what I said earlier about that I had
13 an independent interest in trying to stop this
14 outrageous lease.

15 Q. Mr. McClintock informed you in the same
16 e-mail on the same day that he was comfortable with
17 the process the Agency's pursued, right?

18 A. It speaks for itself.

19 Q. Okay. Also on the 30th of October, 2013,
20 you started drafting letters to then Attorney
21 General Michael Geraghty, correct?

22 A. Sometime around then, yes.

23 Q. Okay. And this may refresh your
24 recollection. I believe this was exhibit -- was it
25 Exhibit J last time, the draft? This has previously

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 amount of money you received as part of the
2 agreement?

3 A. I don't think so.

4 Q. You were compensated \$15,000, in fact, for
5 professional fees, right?

6 A. I think that's correct.

7 Q. That's correct, right?

8 And you were compensated -- and who
9 compensated you for that?

10 A. 716 LLC, I -- well, I'm not sure. I -- I
11 certainly produced the copies of the checks. I
12 think it was 716.

13 Q. Okay. And I'm going to refer you -- why
14 don't we move on to the next exhibit, which contains
15 the checks. And maybe it will make it easier to
16 track. I'm going to mark it as Exhibit P. It's a
17 payment summary and a copy of checks issued to you,
18 issued to ABI.

19 Exhibit P.

20 (Exhibit P marked.)

21 BY MR. ROBINSON:

22 Q. On the second page of Exhibit P, you'd
23 agree with me that a check was issued to you on
24 December 5th, 2013, in the amount of \$15,000?

25 A. The check was issued to Alaska Building,

1 Inc.

2 Q. Alaska Building, Inc. and in the amount of
3 \$15,000?

4 A. Yes.

5 Q. And that was for professional fees that you
6 personally incurred in preparing for the project,
7 correct?

8 A. Well, that Alaska Building, Inc. incurred.

9 Q. So those weren't fees that you personally
10 incurred as a lawyer and president, sole member
11 of --

12 A. Well, some of it was Law Office billings to
13 Alaska Building, Inc.

14 Q. You'd also agree with me -- and we are on
15 the third page of Exhibit P -- that you were
16 issued -- excuse me -- Alaska Building, Inc. was
17 issued a check for \$10,000? And that had to do with
18 access to the Alaska Building servers during the
19 construction project, more or less?

20 A. No. It was to provide for offsite
21 mirroring of data.

22 Q. You accepted that check?

23 A. Yes.

24 Q. If you can go to the next page,
25 Mr. Gottstein. There's a check in the amount of

1 \$3,900?

2 A. Yes.

3 Q. What was that check for?

4 A. I think it was for parking, for using a
5 parking spot.

6 Q. Was that in the alley?

7 A. Yes.

8 Q. If you can go to the next page, please.

9 Jim Gottstein personally was compensated, in
10 addition, \$2,000 as part of the agreement, correct?

11 A. Well, I wouldn't necessarily say
12 additional. I received a check for 2,000 --

13 Q. As a rent agreement payment, right?

14 A. Yeah, to move across the hall.

15 Q. So you moved, from your office, across the
16 hall because your office abutted the party wall,
17 right, the old Empress Building?

18 A. The one wall -- the wall that my desk was
19 on, or the credenza, actually was -- is the party
20 wall.

21 Q. You were compensated \$2,000 to move your
22 office across the hall during -- how long did your
23 office remain across the hall? When did you move
24 back into your original office?

25 A. I'm not sure, but maybe by April or May of

1 2014.

2 Q. Did Criterion, the general contractor on
3 the project, issue you a check on December 4th,
4 2013, in the amount of \$10,000 for space lease?
5 And, I mean, Alaska Building.

6 A. For how much?

7 Q. \$10,000.

8 A. No.

9 MR. ROBINSON: I'm going to mark this as
10 Exhibit Q. Excuse me. \$14,400.

11 THE WITNESS: Right.

12 MR. ROBINSON: I appreciate your attention to
13 detail.

14 (Exhibit Q marked.)

15 THE WITNESS: Well, you're going to -- you
16 know, whatever I do, you're going to throw up, in my
17 face, whatever I say.

18 BY MR. ROBINSON:

19 Q. Did you receive a letter from Dave
20 DeRoberts, the project manager, on December 4th,
21 indicating that he had enclosed a check in the
22 amount of \$14,400 for the period of January 1st,
23 2014, through December 31st, 2014?

24 A. Yes.

25 Q. So the general contractor of the project

1 Mr. DeRoberts and Mr. Pfeffer and Mr. O'Neill and
2 Dennis Berry. And just briefly, if you can explain
3 your relationship with Mr. Berry. What work did
4 Mr. Berry do during the project?

5 A. He was my consulting engineer.

6 Q. So he consulted on the party wall?

7 A. (Witness nods head.)

8 Q. Yes?

9 A. Yes.

10 Q. Okay. And the \$250,000 claim was his
11 estimate of damage to your building, correct?

12 A. The document speaks for itself, that the
13 \$250,000 claimed is reasonable.

14 Q. In this claim, Mr. Gottstein, dated
15 January 23rd, 2015 -- and feel free to review it
16 thoroughly -- did you ever make a claim that the
17 lease itself was illegal?

18 A. No.

19 Q. When you sent this, did you expect to be
20 compensated by 716 or Criterion or both in the full
21 amount as recommended by Mr. Berry?

22 A. I don't know that I expected it. I -- it
23 would have been the right thing to do.

24 Q. And if you had been compensated in that
25 amount on that date, you never would have brought

1 the lease claim, would you have?

2 A. Probably not.

3 Q. At some point did you send a claim to
4 Sandra Heiden?

5 A. I believe so, yes.

6 Q. A claims adjuster for Navigators Insurance
7 who was the insurer for Criterion?

8 A. Yeah. After it was ignored for a long
9 time, then Ms. Windt -- I asked who it was and
10 basically got the runaround. And finally found out
11 she was involved, and sent it to her.

12 Q. So let's talk about that. After you
13 submitted your claim on January 23rd, 2015, you
14 believe that your claim was ignored by Criterion, by
15 716, correct?

16 A. Well, it had -- there was no response to
17 it. I don't know that -- there was no response to
18 it, to me.

19 Q. You had previously admitted that on
20 March 28th, 2015, you read an article in the
21 Anchorage Daily News that expressed skepticism about
22 the lease, right?

23 Let me refresh your recollection. Let's mark
24 this as Exhibit V. And take a moment to review it.

25 (Exhibit V marked.)

1 hadn't gone forward, right? If you sincerely held
2 those beliefs --

3 A. I don't know that it would have helped the
4 Alaska Building. I think it was important, you
5 know, to the State. But, again, I -- I had great
6 concerns about basically retaliatory damage to the
7 Alaska Building.

8 Q. So help me understand that. What claim
9 have you made that anyone involved in this project
10 was somehow going to retaliate against you for
11 raising a fuss about the lease? You've never made
12 that allegation in a complaint.

13 A. No. I didn't make the allegation in my
14 complaint. That doesn't mean it wasn't a concern.
15 It was my concern, and that's the reason why I
16 didn't do it.

17 Q. You just had a general concern that
18 somehow these -- and you'd agree with me that the
19 communications that we read, at least regarding 716
20 and Pfeffer Development, is Mr. McClintock
21 suggesting that they were sensitive to your
22 concerns, they wanted to meet with you, this was an
23 ongoing discussion, and you entered into a contract
24 with them?

25 A. Well, you know, as 716's lawyer,

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

From: James B. Gottstein [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
Attachments: 131025LIORenovationInvoice.pdf; 131025IndemnityAgreement.doc

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 accomplis* 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

Indemnification Agreement

(Alaska Building, Inc.--Pfeffer Development/Pfeffer/Criterion)

AGREEMENT made as of the 2nd day of October, 2013, between and among:

1. Pfeffer Development, LLC, an Alaska Limited Liability Company, whose address is 425 G Street, Suite 210, Anchorage, Alaska 99501 (Developer);
2. Mark Pfeffer, individually, whose address is 425 G Street, Suite 210, Anchorage, Alaska, 99501 (Pfeffer)
3. Criterion General, Inc., an Alaska corporation, 2820 Commercial Drive, Anchorage, Alaska 99501 (Contractor); and
4. Alaska Building, Inc., an Alaska corporation, 406 G Street, Suite 206, Anchorage, Alaska 99501 (Owner).

RECITALS

- A. Owner owns the Alaska Building situated at 4th and G streets in Anchorage, Alaska, more particularly 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.

- B. Developer owns the adjacent property to the West of the Alaska Building (Old Empress Theater) and intends to demolish the existing structure and construct a new building (Project).
- C. Pfeffer , through the Mark E. Pfeffer Revocable Trust, owns 100% of Pfeffer Development.
- D. 100% of the shares of Owner are owned by Jim Gottstein, through the James B. Gottstein Revocable Trust.
- E. The Alaska Building and the Old Empress Theater share a wall (Party Wall).
- F. Developer is obligated to Owner to maintain the Party Wall and desires access to the Alaska Building in order to fulfill this obligation.
- G. The Alaska Building was purchased by James B. (Jim) Gottstein's grandfather, J.B. "Jake" Gottstein in 1926, and in order to preserve it, in 1995, by Jim Gottstein from his father, B.J. Gottstein.
- H. There is a lot of Gottstein family history associated with the Alaska Building and Jim Gottstein is determined to preserve the building as long as possible. In

addition, it is one of the oldest structures in Anchorage, being first constructed on or around 1917, and of historical importance.

- I. Jim Gottstein is very concerned about catastrophic damage to the Alaska Building caused by the Project and one purpose of this agreement is to incentivize Developer and Contractor to take all possible steps to avoid such damage.
- J. Another purpose is to ensure that Owner and its Tenants are indemnified and held harmless from any and all loss occasioned by the Project.
- K. Owner has hired BBFM Engineers, Inc. (BBFM) to be its representative for the Project.
- L. The Party Wall is the West wall of the Alaska Building's server room, containing servers that need to be available 24 hours a day, 7 days a week, and as a matter of prudence the Owner is arranging to have these servers remotely mirrored in the event the Project interrupts their operation.

NOW THEREFORE IT IS AGREED:

1. Protection and Preservation of the Alaska Building

(a) Developer and Contractor shall take all possible steps to preserve the Party Wall and avoid damage to it and the Alaska Building.

(b) In the event such damage is not avoided, Developer, Pfeffer, and Contractor will, to the extent possible, repair and reconstruct the Party Wall and, if necessary, the Alaska Building, to its condition at the date of this Agreement. **This obligation is joint and several.**

(c) In the event of damage to the Party Wall or the Alaska Building which the Developer determines is not susceptible to repair and reconstruction as set forth in subsection (b), above, the Developer, Pfeffer, or Contractor, or any combination thereof as they may determine, shall purchase the Alaska Building for Ten Million Dollars (\$10,000,000).

2. Maintenance of Safe, Secure and Clean Access

Developer, Contractor and Pfeffer shall maintain safe, secure and clean access to the Alaska Building at all times during the Project, including without limiting the generality of the foregoing, access to the alley parking spot and door adjacent to the Old Empress Theater; **Contractor shall pay Owner \$100 for every day or part of a day access to the alley parking spot is blocked in any way as a result of the Project.**

3. Indemnification:

(a) Developer, Pfeffer and Contractor shall defend, indemnify and hold harmless (i) Owner, (ii) Owner's tenants, agents and employees, and (iii) Jim Gottstein, 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, whether caused by any act or omission of the Contractor, Pfeffer or Developer, or any combination thereof, any subcontractor and, 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.

(b) Without limiting the generality of the foregoing and in addition to Section 1 above, such indemnity shall include the following:

- (i) The reasonable charges by BBFM, Engineers, and Eric Follett, MAI, to Owner related to the Project;
- (ii) Lost rents;
- (iii) Reasonable expenses of Alaska Building Tenants incurred as result of the Project;
- (iv) Owner's share of arbitration costs under subparagraph (c), below;
- (v) Release of hazardous materials caused by the Project;
- (vi) Replacement of the roof of the Alaska Building with the same type of roof it has currently, and reinstallation of the rooftop deck, if anything falls on the Alaska Building's roof as a result of the Project, or the roof develops a leak within 18 months of the Certificate of Occupancy being issued;
- (vii) the time spent by Jim Gottstein on the Project at his normal rate of \$325/hour, receipt of \$6,344, constituting time spent through October 2, 2013, is hereby acknowledged; and
- (viii) The costs of setting up remote mirroring of the servers located in the Alaska Building.

(c) In the event any claims for indemnification by Owner, Jim Gottstein, or any Alaska Building Tenants, are not paid within 30 days, _____, whose address is _____ is appointed as arbitrator to resolve, in each such instance, the amount of indemnification to be paid to Owner, Jim Gottstein, or Alaska Building tenants.

(d) In any and all claims against the Owner, Jim Gottstein, or any of their agents or employees by any employee of the Developer, Pfeffer, 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.

4. Access to Alaska Building

(a) Subject to the terms of this agreement, including consultation with BBFM and its approval, Developer and Contractor shall be granted access to the Alaska Building under a separate access license, in the form attached hereto as Exhibit A at reasonable times in order to plan and implement the Project and minimize the adverse impacts of the Project on the Alaska Building.

(b) Any damage to the Alaska Building, without limiting the generality of the foregoing, such as holes cut in walls or ceilings, to observe the construction of the Alaska Building as it relates to the Party Wall, shall be immediately repaired completely at Developer's and Contractor's expense.

5. Coordination with BBFM

(a) Reid Middleton, the Project's engineering firm shall meet with BBFM the week of October 21, 2013, to get an overview of their design approach.

(b) Developer and Contractor shall provide BBFM the full plan for demolition, shoring structural design and construction sequencing, as well as the means and methods to implement same, at least two weeks before applying for a demolition permit.

(c) No demolition work on the Project shall commence until any and all concerns of BBFM are addressed to its satisfaction.

(d) BBFM shall also be given advance notice of all such work, allowed to observe it in progress and the right to issue a stop work order in the event it observes conditions jeopardizing, safety or the integrity of the Party Wall or the Alaska Building.

(e) A set of monitoring points will be established on the Alaska Building to track any movement, vertically or horizontally, during the demolition and destruction of the Old Empress Theater as well as the completion of the Project.

6. Use of Hazardous Materials on the Project:

(a) Contractor and Developer 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

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

(c) 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.

(d) Contractor and Developer 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.

(e) Contractor and Developer 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 Developer and any person or agency concerning potential environmental contamination and hazardous substances.

(f) Contractor and Developer 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 and Developer, or its authorized representatives and invitees.

7. Conveyance of Party Wall

Immediate upon receiving a Certificate of Occupancy for the Project, all rights in the Party Wall shall be conveyed to Owner in form and substance approved by Owner.

8. Insurance & License Requirements

The CONTRACTOR AND DEVELOPER are 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 set forth 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	\$10,000,000
Lost Rents	\$500,000
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 Developer and subcontractors working on the project.

9. General.

Time is of the essence of 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 unenforceability 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 to this Agreement shall be valid unless the same be in writing and signed by all the parties affected.

IN WITNESS WHEREOF, the parties have entered in to this Agreement

DEVELOPER: Pfeffer Development, LLC, an Alaska Limited Liability Company

By: Mark Pfeffer
Its: Manager

PFEFFER:

Mark Pfeffer, individually, jointly and severally

DEVELOPER: Criterion General, Inc., an Alaska corporation

By: Dave Roberts
Its: President

OWNER: Alaska Building, Inc., an Alaska corporation

By: Jim Gottstein
Its: President

From: Donald W. McClintock
Sent: Wednesday, October 30, 2013 10:07 AM
To: 'James B. Gottstein'
Cc: Rebecca A. Windt; Heidi A. Wyckoff
Subject: RE: Larger Issues

Jim,

Thanks for the clarification. As noted in our meeting, we are comfortable with the process that the agencies pursued.

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

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From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Wednesday, October 30, 2013 9:13 AM
To: Donald W. McClintock
Cc: james.b.gottstein@gottsteinlaw.com
Subject: Larger Issues

Hi Don,

I am assuming your client is not going to work with me to fill in the blanks and sign the Indemnification Agreement I e-mailed last Friday, and we discussed Monday. As you know I have been very conflicted about even making a deal in light of what I learned about the project being a violation of state law. I don't really need anything in writing from Eric to launch the grenade, but gave you the impression you had a couple of days for him to get something in writing to me. Since I don't have any sense that your client is going to agree to the Indemnification Agreement, my moral conflict is resolved, but I do feel I should give you notice since I left the impression your client had through today.

When I met with you on Monday, I fully intended to pursue the criminal violation, but as I was writing the letter to Geraghty and Svobodny, I decided not to mention it. I am not trying to harm Mark; I just think the deal is outrageous and should be stopped.

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

1

Exhibit E
Page 1 of 2

001017

Tel: (907) 274-7686 Fax: (907) 274-9493
e-mail: James.B. Gottstein@GottsteinLaw.Com



ALASKA BUILDING, INC.

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

October 30, 2013

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

Re: Anchorage Legislative Information Office
Fraudulent Lease Extension

Dear Attorney General Geraghty and Deputy Attorney General Svobodny

I am the owner of the Alaska Building, which is adjacent to the Old Empress Theater, most recently the Anchor Pub. The Alaska Building and the Old Empress Theater share a party wall. Thus, I was naturally concerned when plans were announced to demolish the Old Empress Theater to make way for

Sincerely,

Jim Gottstein
President

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

Law offices of
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA 99501
(907) 274-7686
TELECOPIER (907) 274-9493

October 30, 2013

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



Re: Anchorage Legislative Information
Office Renovation Contract

Dear Attorney General Geraghty:

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

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

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

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

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

Michael C. Geraghty
October 30, 2013
Page 2

On its face the appraisal is for \$4.40 per square foot per month rent. It is not believed any building in Anchorage has ever been leased for that much, let alone the almost \$5.00 per square foot market rent that purports to be at least 10 percent less than. Worse, I have had an expert MAI appraiser review the deal and once one adds in all of the extras the State is paying for, deduct the space that one normally doesn't count in the space, and the other shenanigans in the appraisal, the State is actually paying an effective market full service rent in excess of \$7 per square foot per month for rentable office space. Even the appraisal used to support the contract

Please see to it that this illegal contract is cancelled immediately.

Preparatory work on the contract has already commenced with moving a gas line from behind the Old Empress Theatre to behind the Alaska Building scheduled for November 11th, and the demolition of the Old Empress Theatre planned to begin November 15th .

Thus, contract needs to be cancelled by November 8th.

Sincerely,

Jim Gottstein
President

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



ALASKA BUILDING, INC.

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

Claim

To: 716 West Fourth Avenue, LLC & Criterion Construction
From: Alaska Building, Inc.
For: Damage from Legislative Information Office Building Reconstruction Project
Amount: \$250,000

Dated: January 23, 2015:

Jim Gottstein, President

**Known Damage to Alaska Building Caused by Old Empress Theater
Demolition & Construction of Elevator & Utility Tower for
Legislative Information Office Demolition and Reconstruction**

Chronology

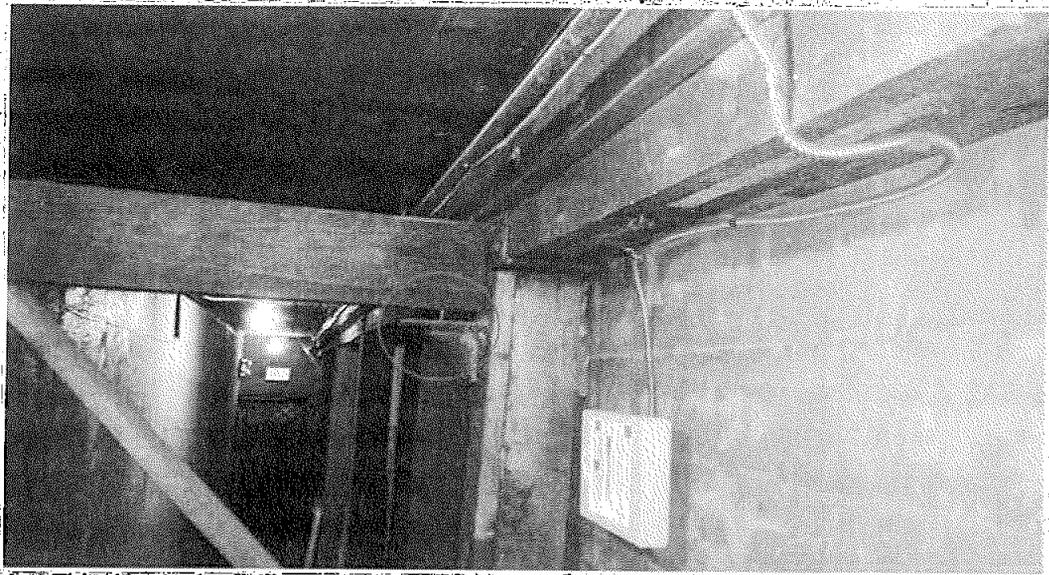
- There was a tremendous amount shaking during the demolition phase of the project.
- When the Old Empress Theater was demolished, the flashing protecting preventing water running down the Alaska Building side of the Party wall was removed and the roof membrane protecting it left open, exposing it to the elements. This was later discovered to have allowed water under the roof and into the building.
- On February 9th there was so much shaking that items fell off the shelves in Octopus Ink and broke. Criterion settled with Octopus Ink only.
- On February 24, 2014, the slab adjoining the party wall failed due to excavation of the basement of the Old Empress Theater, exposing a large void underneath the slab. The void was immediately filled with cement/grout due to extreme safety concerns. A review of the post/beam connection and door to the server room at the top of the internal stairs points to about an inch of downward movement of the wall and floor at the top of the stairs.
- On April 1, 2014, Shara of Octopus Ink reported that things had shifted around so much that the locks are no longer lining up, including that she is not strong enough to open the lock to the alley. Criterion adjusted the doors so they would lock/unlock.
- On April 3, 2014, Dennis Berry noted that the North end of the Party Wall had moved about an inch and Jim Gottstein noted a crack in the slab he hadn't noticed before.
- On May 14, 2014, the pounding removal of the braces caused so much shaking that Jim Gottstein went up and stopped the workers. The braces, which had been placed when it was close to or below 0 degrees Fahrenheit, had apparently expanded, and the workers were pounding them out. An inspection of the stairwell to 4th Avenue reveals that the party wall had moved to the West with significant resultant damage to the Alaska Building.
- From 4th Avenue the extent of the damage/wall movement is even more evident with about an inch of westward movement of the party wall at the top of the stairwell door.
- On May 17, 2014, Jim Gottstein noted that the pounding of the steel beams during the erection of the tower was causing severe shaking.
- Also on May 17, 2014, it was discovered that leaving the membrane covering the Party Wall on the North end open to the elements had caused water to collect under the roof.
- On June 25, 2014, a leak appeared behind the door to Jim Gottstein's office.
- On July 7, 2014, Jim Gottstein noticed a crack in his 4th avenue wall within a few feet of the Party Wall.
- On July 11, 2014, Jim Gottstein was informed that water was running down the Alaska Building on the South side of the Party Wall and had been for weeks.
- On July 25, 2014, water again was running down the Alaska Building side of the Party Wall during a period of heavy rain.
- On August 6, 2014, it appeared that the bracing from the slab failure was failing, indicating further settlement of the slab.
- On August 18, 2014, Jim Gottstein noticed that a couple of ceiling tiles below where the water had accumulated below the roof membrane were stained. The tiles were not stained before the project.
- On January 23, 2015: flashing above the 4th Avenue Stairway door had still not been replaced.

Photographs

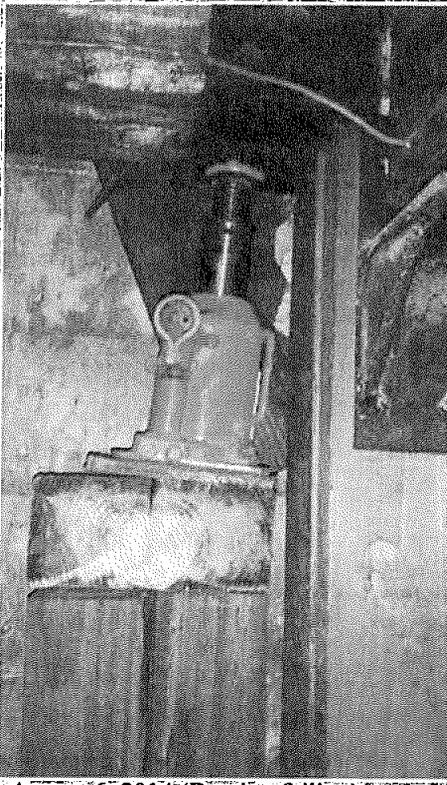
Slab Failure



February 24, 2014

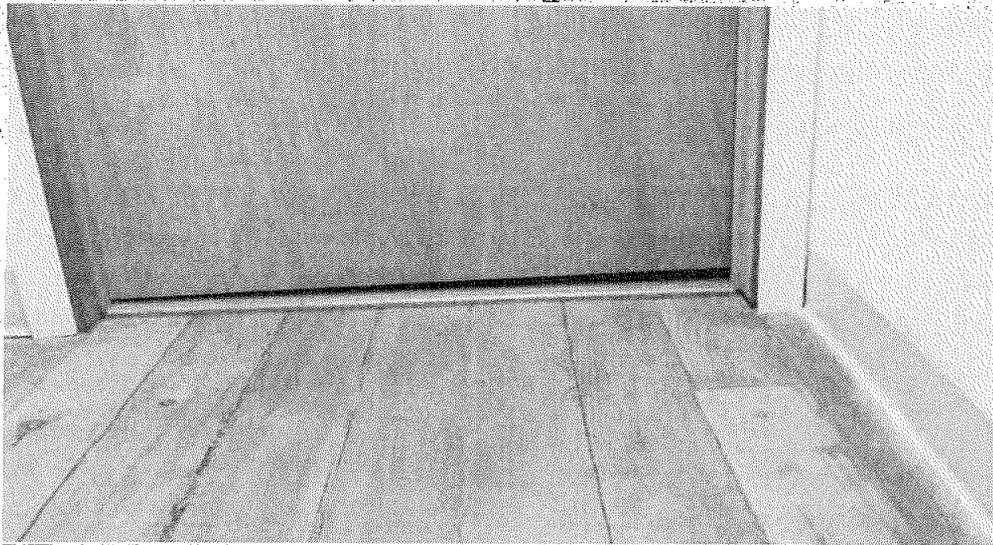


This shows where the post had dropped by what looks to be about an inch.
February 24, 2014



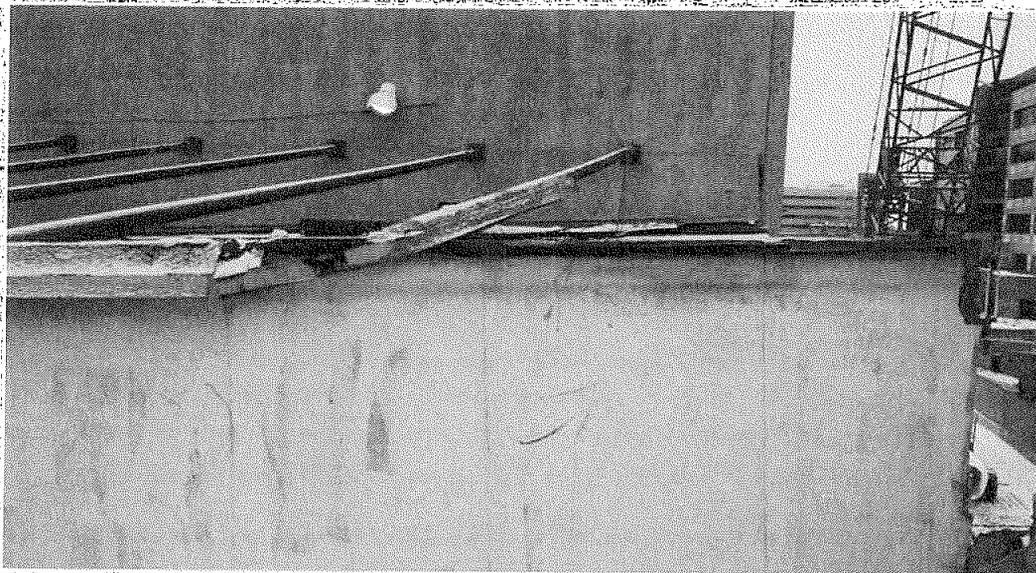
August 6, 2014 (Bracing failing)

Server Room Door at top of Stairs from Party Wall- (Shows Almost 1 Inch Drop in Floor)



(January 20, 2015)

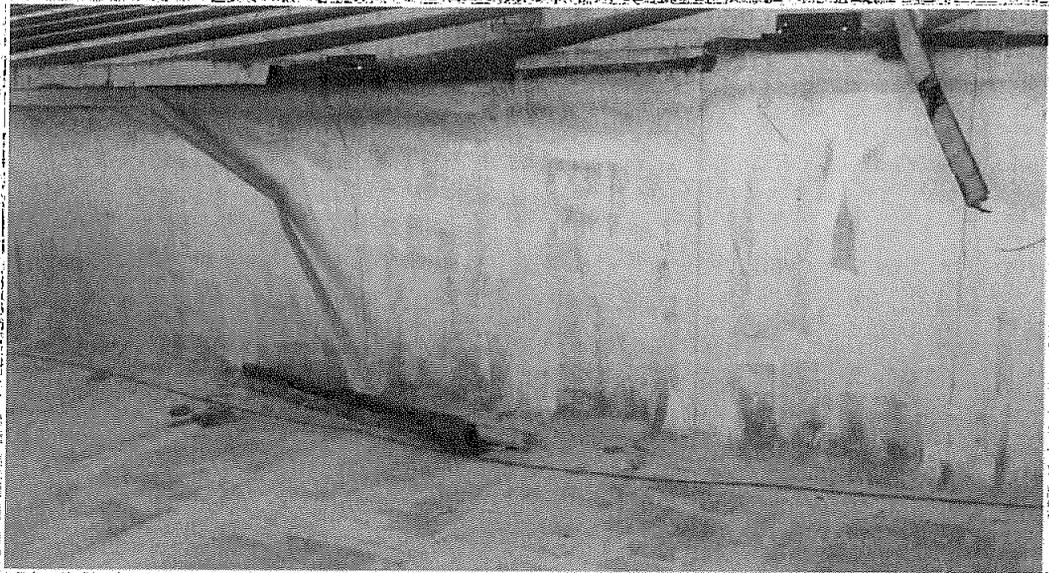
Roof



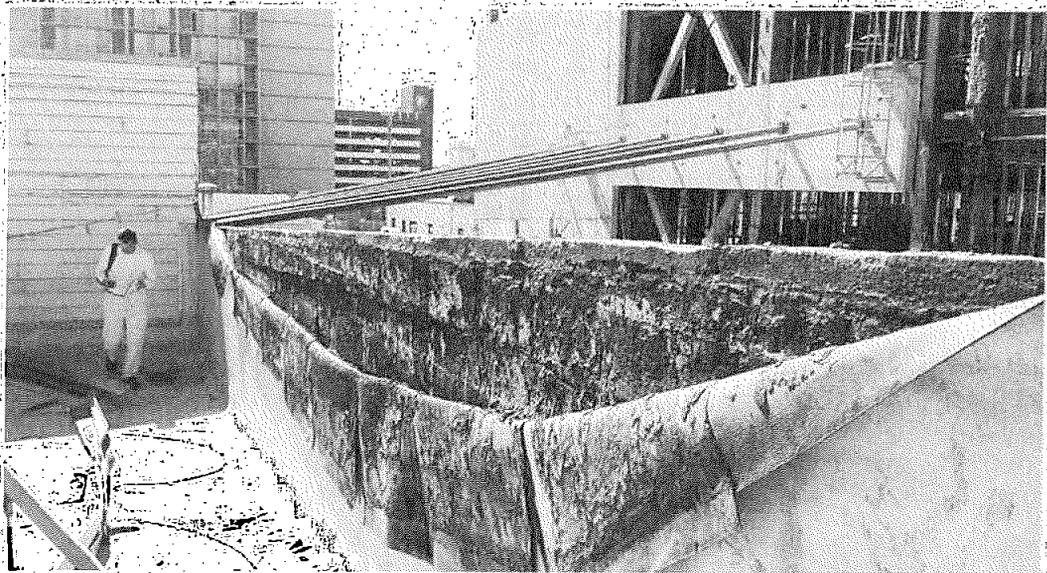
January 9, 2014



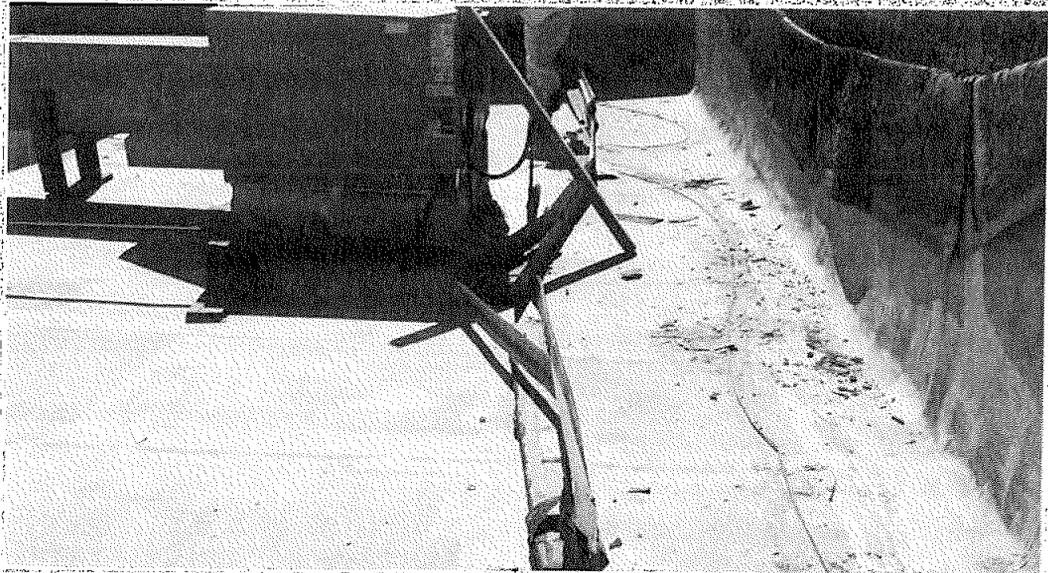
March 13, 2014



March 13, 2014



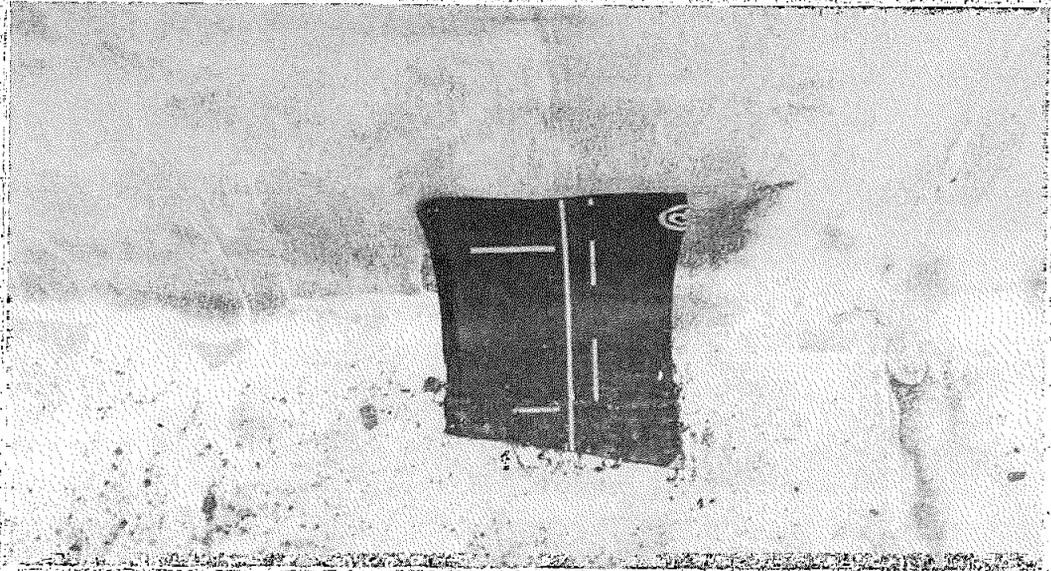
May 16, 2014



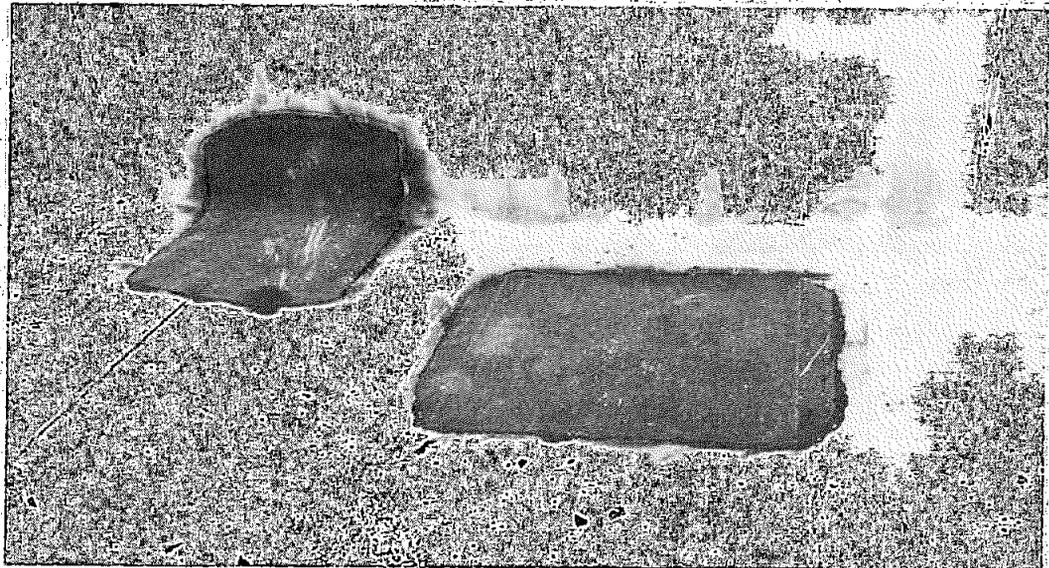
May 16, 2014



May 18, 2014



June 2, 2014



August 20, 2014

Ceiling Tile Stains/Water Damage



Unstained Ceiling Tiles December 1, 2013

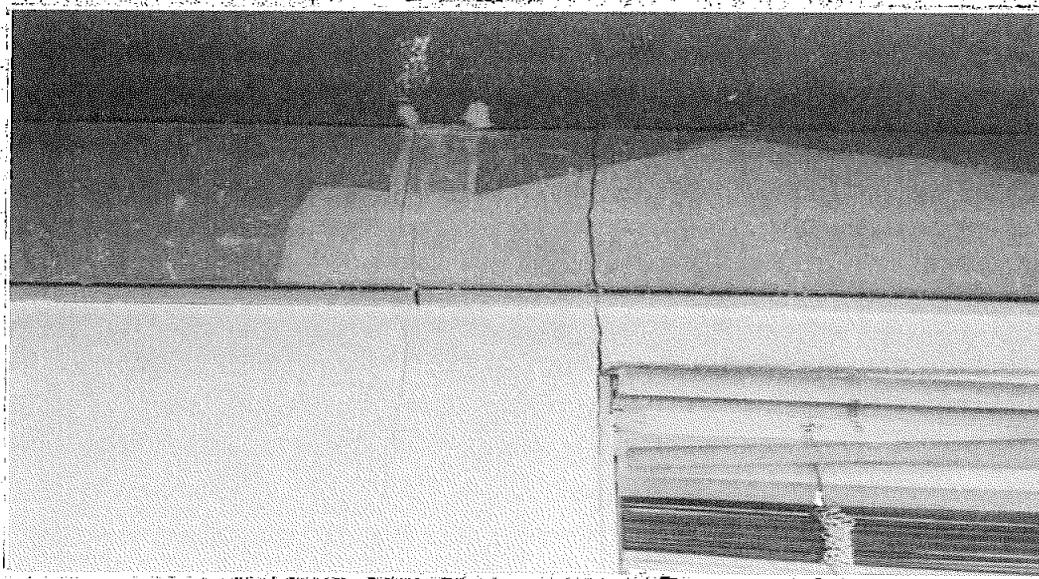


August 17, 2014

Cracks in 4th Avenue Wall

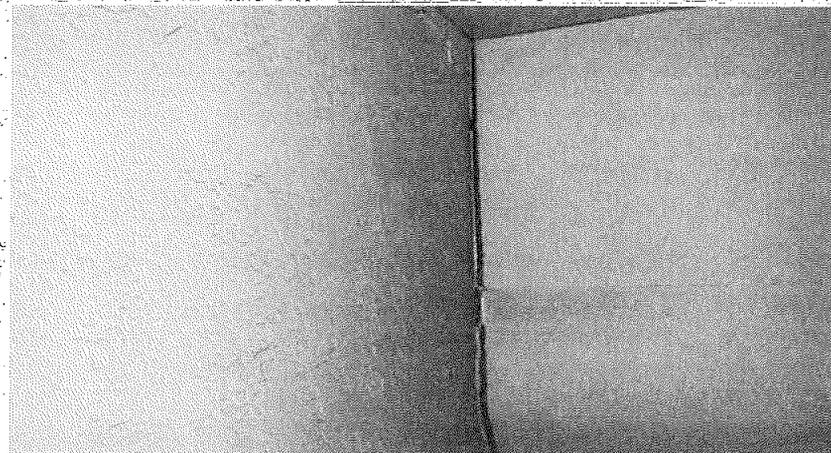
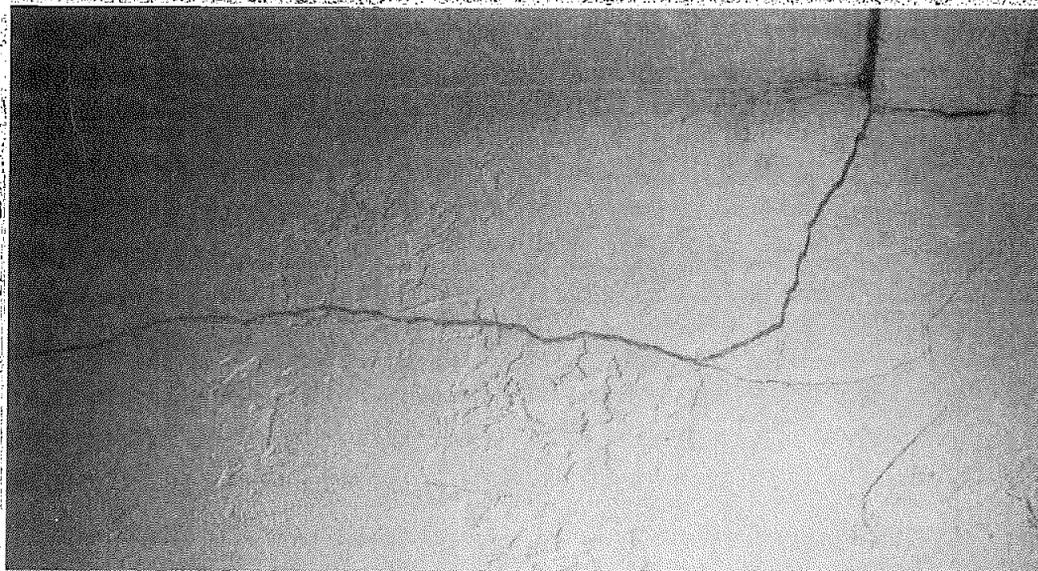


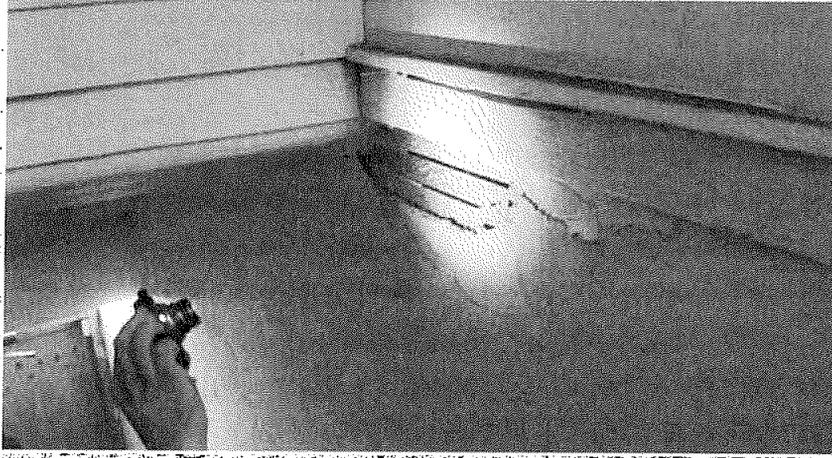
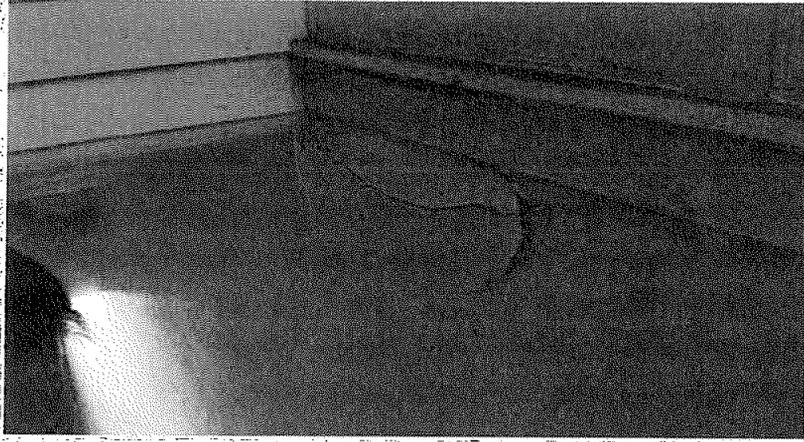
July 7, 2014

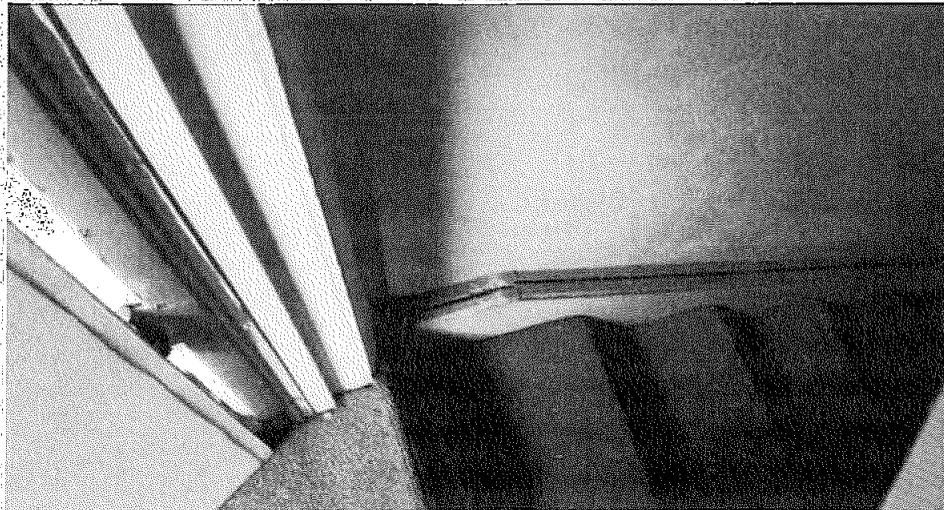


December 26, 2014

4th Avenue Stairwell (All Taken May 16, 2014)

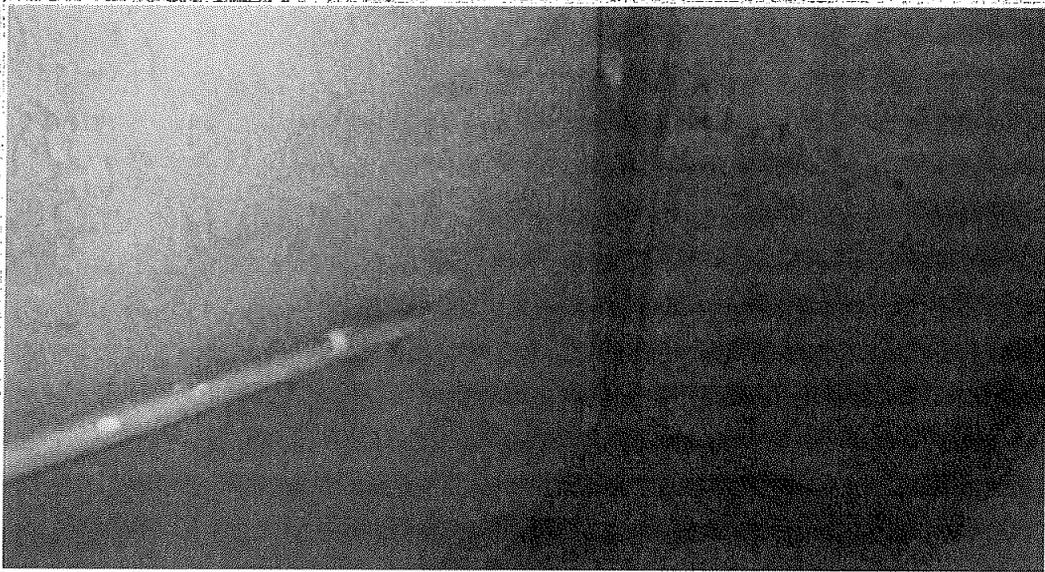
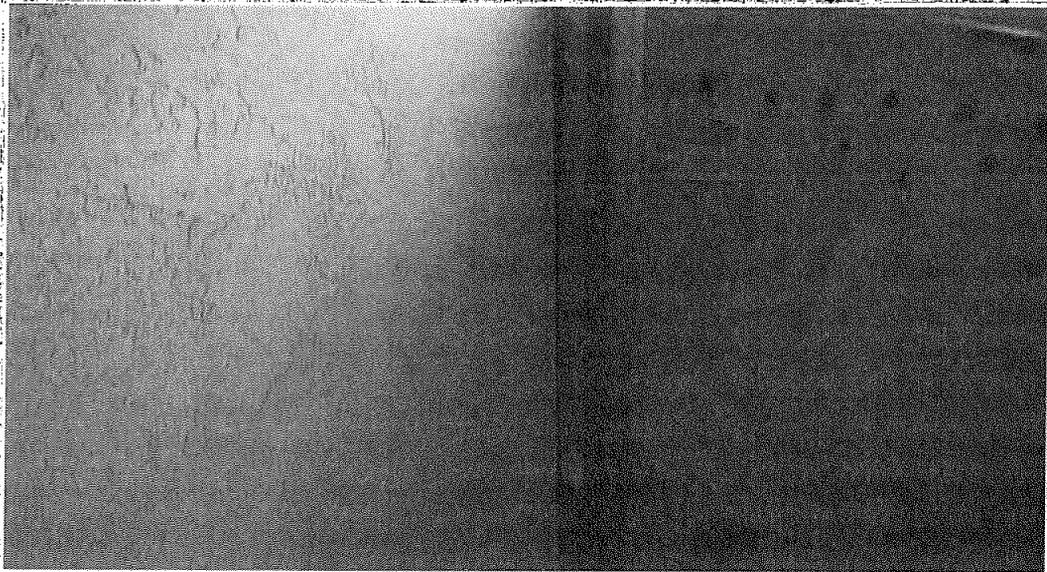




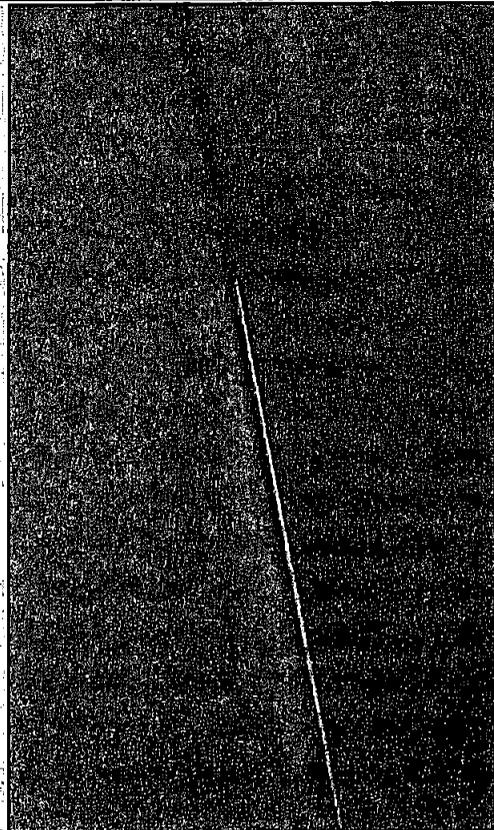
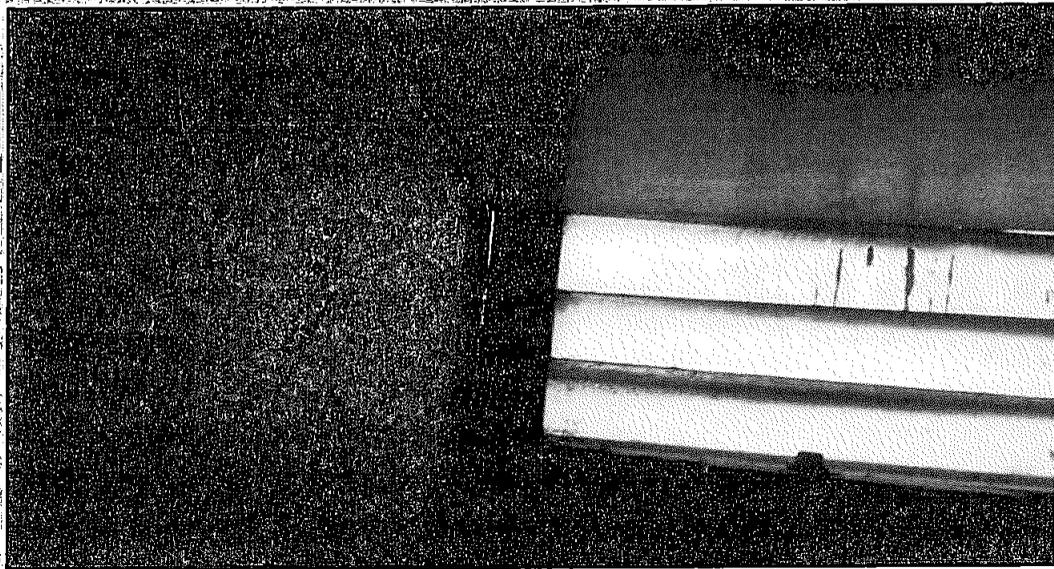


4th Ave Stairwell Door before Project





4th Avenue Stairwell Door after Project





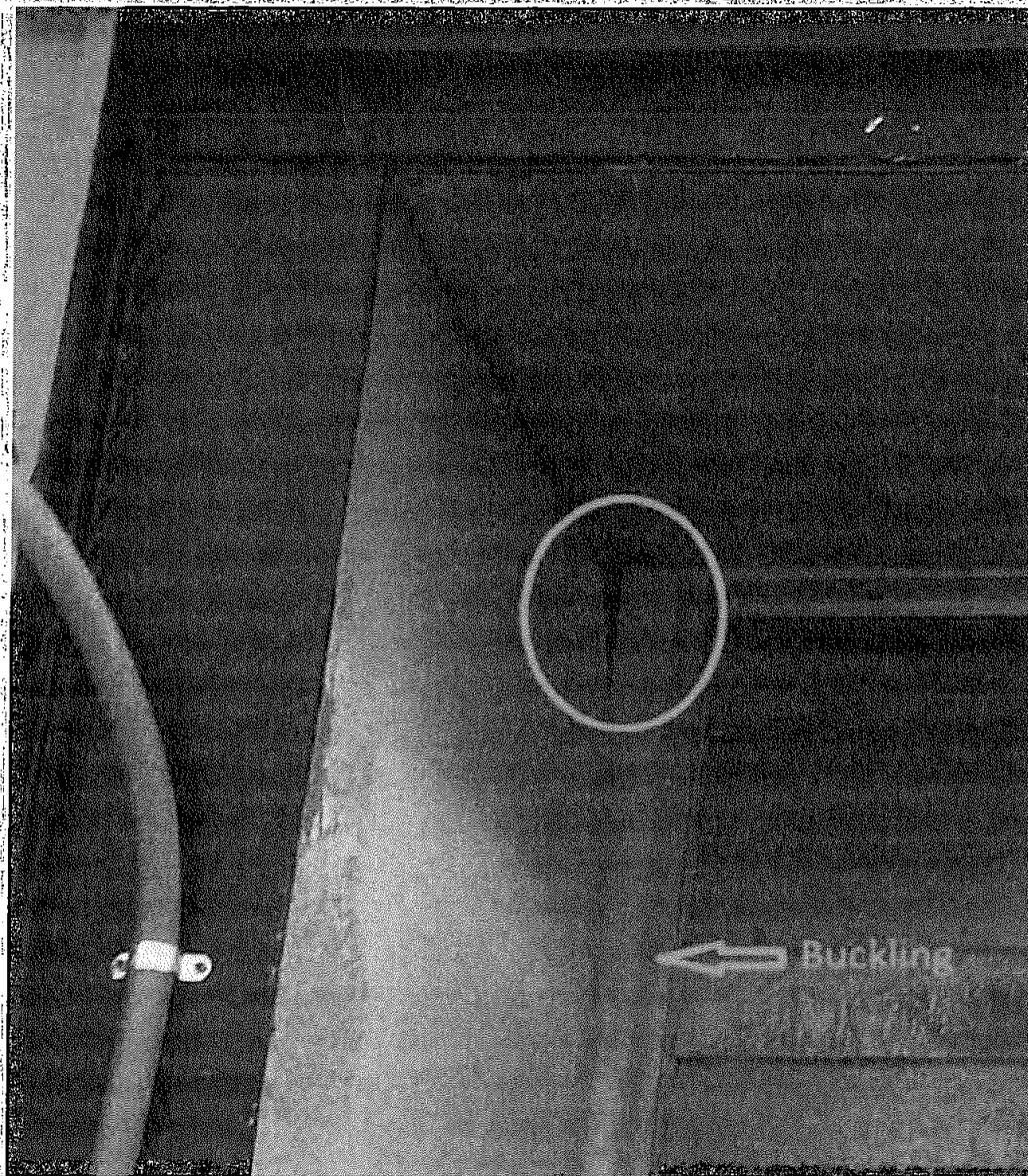
The 4th Avenue Side of the Stairwell Door (January 9, 2015)



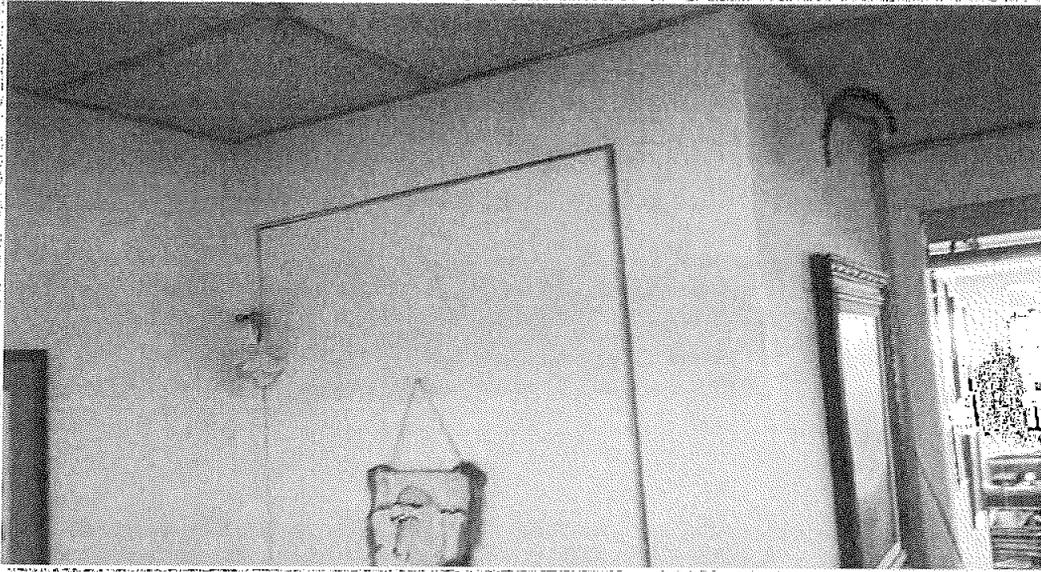


18

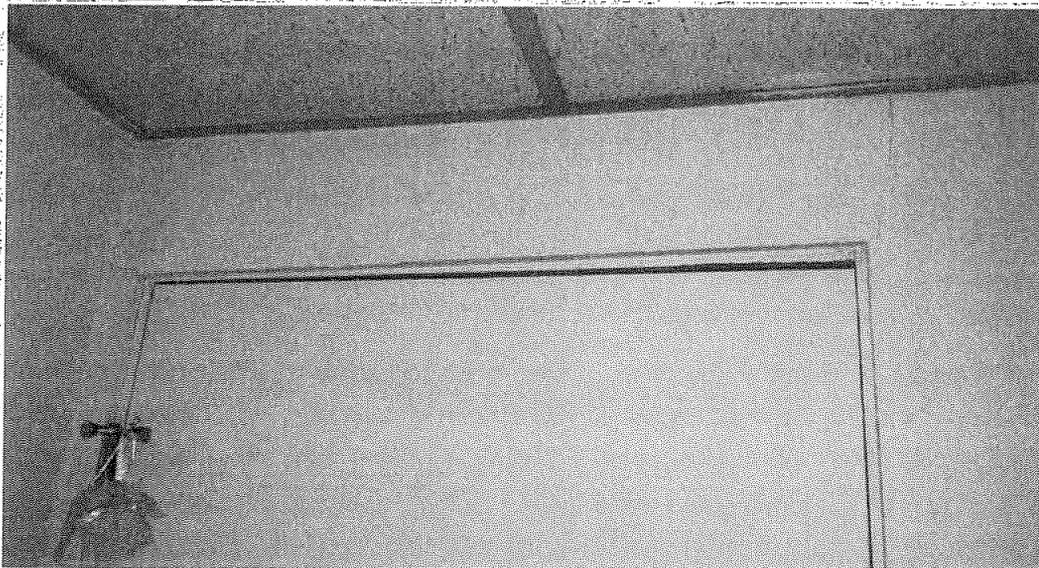
January 23, 2015



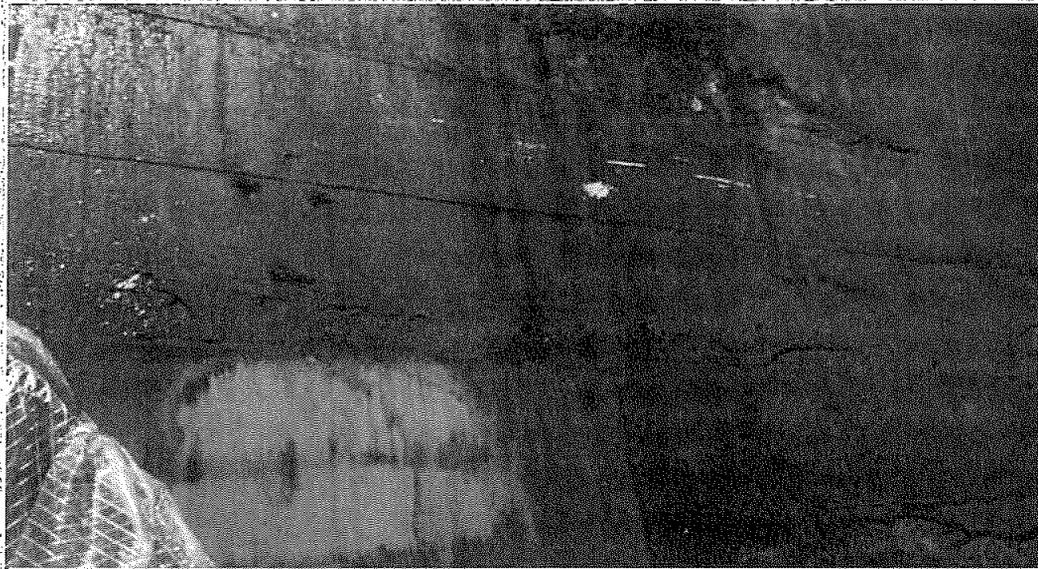
Top of 4th Avenue Stairwell Before Project



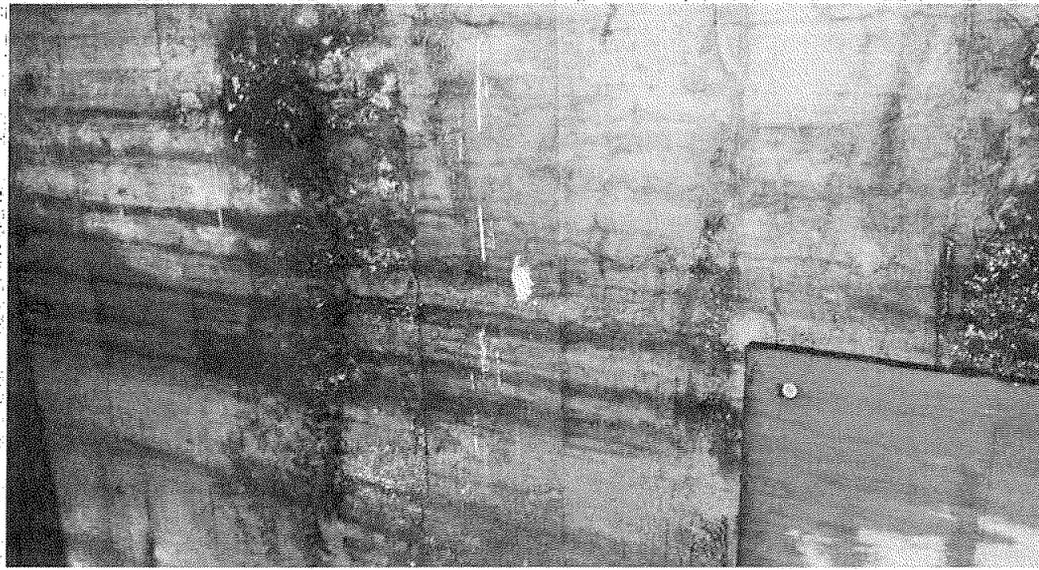
Top of 4th Avenue Stairwell on January 23, 2015



Party Wall Water



July 10, 2014



July 25, 2014



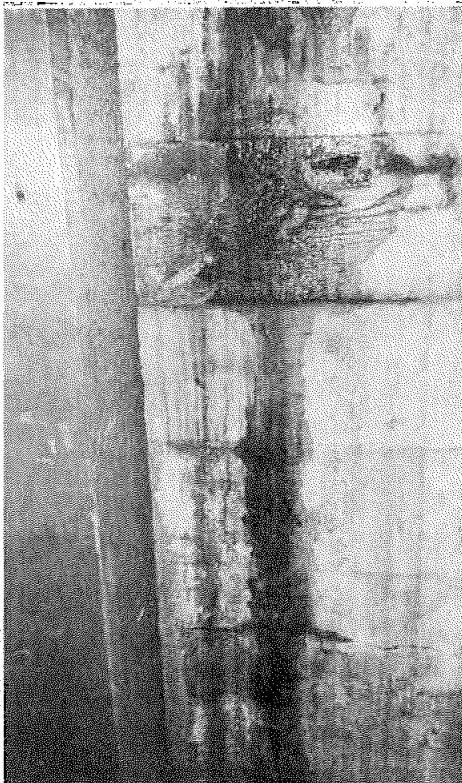
July 25, 2014



July 25, 2014



July 25, 2014



July 25, 2014 (may be upside down)



January 23, 2015

Jeffrey W. Robinson

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Thursday, October 01, 2015 10:31 AM
To: Jeffrey W. Robinson
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Alaska Building, Inc.'s Requests for Production

Hi Jeff,

Responses below.

From: Jeffrey W. Robinson [mailto:jeffrey@anchorlaw.com]
Sent: Wednesday, September 30, 2015 4:31 PM
To: James B. Gottstein
Subject: RE: Alaska Building, Inc.'s Requests for Production

Jim:

1. I indicated I would provide the e-mails within two weeks from today. If any emails are withheld on privilege grounds, I will describe the basis under Rule 26(b)(5). I do not need to be reminded of my procedural obligations, and I also am not going to be able to get you "all documents" withheld on privilege grounds, if they exist, within two weeks. Your request for expediting the case was essentially denied by McKay setting the 1/30 deadline for SJ on your "not extension" argument. Discovery is ongoing. You have discovery obligations as well. I am continuously doing my best to be responsive to all matters affiliated with both actions.

[Jim Gottstein] This has nothing to do with expediting the motion for partial summary judgment. I have expressed concern about your client's ability to pay back money over what is illegally allowed for months and the financial information is critical to determining that. You have given oral assurances that your client is fiscally sound, but refuse to provide any documentation. Since your client is being overpaid by over \$170,000 per month it is absolutely critical that funds be preserved as possible to pay a prospective judgment, including especially that Messrs. Acree and Pfeffer not such your client dry. As I indicated, in light of your failure to provide any such documentation that your client will be able to pay back amounts in excess of what is allowed by law I intend to file a motion for a preliminary injunction on this issue as soon as I can.

2. I dispute your sequence on this point. I thought my suggestion of McKay reviewing the OA was a healthy overture. If he found this document relevant and distributed it to you, you could then assess its relevance, and then determine if you wanted to pursue 716's financial records. You then made the unilateral decision that you were entitled to all of 716's financial information. Not only do I reiterate my objections, but please read the language of your RFP No. 5 and ask yourself if your decision to forego an *in camera* inspection is valid.

[Jim Gottstein] If you were willing to provide an in camera inspection of all of the financial information requested, that would be a different matter.

3. We spoke broadly regarding emails and not specifically regarding RFP 4 related emails. We provided significant material in response to RFP 4. As I previously indicated in 1 above, we will provide additional emails in two weeks.

[Jim Gottstein]

4. Your elaboration upon the basis of you RFP No 6. is a new RFP entirely from your original RFP No. 6. I will review the basis of your request and do my best to respond in due time.

[Jim Gottstein] I clarified RFP 6.

5. We provided the material germane to this request and maintain previously asserted objections.
6. Mischaracterization. We reviewed the items we documented in review of RFP No. 8. I indicated that if there were invoices affiliated with some of this material, I would provide that to you.

[Jim Gottstein] Please correct me if my interpretation is wrong that you are not going to provide documentation of all of the payments requested.

I hope this is helpful and that all parties can act in good faith, patiently, and with respect for due process before needlessly filing motions to compel.

Thanks,

JWR

From: James B. Gottstein [mailto:james.b.gottstein@gottsteinlaw.com]
Sent: Wednesday, September 30, 2015 2:39 PM
To: Jeffrey W. Robinson <jeffrey@anchorlaw.com>
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Alaska Building, Inc.'s Requests for Production

Hi Jeff,

After conferring earlier today this is to confirm where we are at with respect to the September 3, 2015 responses by 716 West Fourth Avenue LLC (716 LLC) to Plaintiff's First Request for Production to 716 West Fourth Avenue LLC.

1. 716 LLC will comply with Civil Rule 26(b)(5) within two weeks with respect to all documents withheld on grounds of privilege
2. You indicated that you would provide documents responsive to Request for Production (RFP) No. 5 regarding the operating agreements, etc., to judge McKay *in camera* for him to determine if they should be provided to Alaska Building, Inc.; however this was contingent on Alaska Building, Inc., dropping the other requests pertaining to 716 LLC's financial status, i.e., RFP 1 pertaining to financing, RFP 2 pertaining to 716 LLC's financial records, and RFP 3 pertaining to payments to Mr. Acree and Mr. Pfeffer and his affiliates,. Since that was not acceptable to Alaska Building, Inc., you indicated you would not provide the documents *in camera*. This has left Alaska Building with having to move to compel with respect to RFPs 1-3, 5.
3. With respect to RFP 4, you will provide the e-mails within two weeks from today. Documents withheld on privilege grounds are subject to the agreement to comply with Civil Rule 26(b)(5) within two weeks. 716 LLC also objected to RFP 4 on the grounds it was unreasonable, overbroad and unduly burdensome in light of various privileges. This makes no sense to me in that I don't see how this is related to privileges. I don't think it is unreasonable, overbroad or unduly burdensome at all to ask for all documents relating to 716 LLC leasing or potentially leasing space for the Anchorage Legislative Information Office upon the expiration of the lease in effect on January 1, 2010 and thereafter. This leaves a motion to compel with respect to that objection unless you reconsider.
4. I said I would rework RFP 6 to clarify what is sought. What I am seeking is documents in 716 LLC's possession, custody or control, relating to the LIO Lease constituting a lease extension, or, in the words of the statute, "extend a real property lease." RFP No. 6, is not directed at the Legislative Affairs Agency's consideration of the issue *per se*, but all documents in 716 LLC's possession relating to the LIO Lease extending a real property lease. An example is LAA_001295, the May 7, 2013, letter from

Mr. Acree to Rep. Hawker proposing to completely renovate the building and renew the lease under AS 36.30.083(a). So, RFP No. 6 would include any documents, including e-mails, that could be considered "backup" or justification for the May 7, 2013, letter, to the extent it relates to the LIO Lease extending a real property lease.

5. With respect to RFP 7, I will move to compel any such valuations that you have withheld on the grounds that they are confidential and proprietary.
6. You said 716 LLC would provide the documents responsive to RFP No. 8, pertaining to payments under the LIO Lease, those being invoices and checks. This should include the \$7.5 million for tenant improvements.

If I have misstated or misinterpreted anything, please let me know.

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: Jeffrey W. Robinson [<mailto:jeffrey@anchorlaw.com>]
Sent: Wednesday, September 30, 2015 9:47 AM
To: James B. Gottstein
Subject: RE: E-mails

Jim:

I will have the emails to you in two weeks. Does that work? As you know, I had been in trial for several weeks. I am also working on Count II matters. What date do you anticipate responding to our RFP?

[Jim Gottstein] I expect to respond on or about the deadline.

Thank you,

JWR

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Wednesday, September 30, 2015 9:44 AM
To: Jeffrey W. Robinson <jeffrey@anchorlaw.com>
Cc: james.b.gottstein@gottsteinlaw.com
Subject: E-mails

Hi Jeff,

In addition to the items in my letter, please be prepared to say when the non-privileged e-mails requested will be produced. It has been almost a month since you responded, "Searches for internal e-mails not privileged are ongoing and this response will be duly supplemented." With respect to claims of privilege, of course, you must provide sufficient information to enable my client to challenge the privilege claims.

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

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.)

**AFFIDAVIT OF JEFFREY W. ROBINSON IN SUPPORT OF 716'S
OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL**

STATE OF ALASKA)

) ss.

THIRD JUDICIAL DISTRICT)

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case, and submit this affidavit in support of 716's Opposition to Oppose Plaintiff's Motion to Compel.

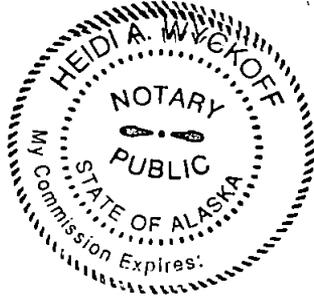
2. I have personal knowledge of all facts described herein and affirm all other facts based on my information and belief.

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

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Jeffrey W. Robinson
Jeffrey W. Robinson

SUBSCRIBED AND SWORN to before me this 27 day of October, 2015.



Heidi A. Wyckoff
NOTARY PUBLIC in and for Alaska
My Commission Expires: 1/11/2019

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

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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 27 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
Heidi Wyckoff

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

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

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.)

Filed in the Trial Courts
STATE OF ALASKA THIRD DISTRICT

OCT 27 2015

Clerk of the Trial Courts
By _____ Deputy

Case No.: 3AN-15-05969 CI

**716'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL RESPONSES
TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION TO 716 WEST
FOURTH AVENUE, LLC**

Plaintiff the Alaska Building, Inc. ("ABI") has moved to compel responses to Plaintiff's First Request for Production to 716 West Fourth Avenue, LLC ("716"). 716 opposes ABI's motion to compel. For the reasons contained herein, this court should deny ABI's motion to compel.

I. Background

On August 25, 2015, ABI filed its Second Amended Complaint in this matter, focusing solely on the purported illegality of the Legislative Information Office ("LIO") lease extension.¹ Plaintiff issued requests for production on August 3, 2015. On September 3, 2015, 716 produced a significant amount of material in response to Plaintiff's requests. The material is specifically described in 716's response, attached as

¹ ABI has filed a separate action relating to alleged construction damages. 3AN-15-9785CI.

Exhibit A. As promised in the initial production, 716 supplemented its discovery production on October 14, 2015. Specifically, 716 produced thousands of pages of emails regarding the LIO Project. 716 has communicated to ABI that it is still working to produce material to ABI germane to the claims at issue in this case and in fact, an additional round of supplemental discovery is being produced to ABI today.

As discussed below, the majority of the discovery requests 716 objects to producing relate to 716's internal financial operations. ABI filed a motion for preliminary injunction in connection with its attempt to obtain this same material. 716's opposition to that injunction is being filed with the court today as well.

I. The financial information sought by Plaintiff is not relevant to any legitimate issue in this case

Under Alaska Civil Rule 26(b)(1), “[p]arties may obtain discovery regarding any matter, not privileged which is relevant to the subject matter involved in the pending action.... The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”

(emphasis added). The information ABI seeks is not reasonably calculated to lead to the discovery of admissible evidence, therefore ABI's Motion to Compel should be denied.

Plaintiff has asserted that the documents pertaining to the “financial condition of [the] LLC” are relevant to “716's ability to pay back money it receives under the LIO Lease in excess of what is allowed under AS 36.30.083(a).”² Plaintiff cites *Lockwood v.*

² See Memorandum in Support of Plaintiff's Motion to Compel at 2-3.

*Geico*³ for the proposition that the relevancy standard should be so broadly construed at the discovery stage to include the financial information it seeks in its motion to compel.⁴ First, the disputed discovery material in *Lockwood* was subject to *in camera* review, both at the trial and appellate levels.⁵ (716's request for the court to review privileged material is addressed *infra*.) Second, the material sought by Lockwood was actually relevant to the bad-faith cause of action. Plaintiff cannot meet this same relevancy threshold.

In *Lockwood*, the plaintiff was injured in an automobile collision and brought a bad-faith tort claim against her insurer, Geico, when Geico refused to make additional medical payments outside of a total settlement of Lockwood's claim.⁶ The superior court denied Lockwood's request to review Geico's training and claims-handling manuals.⁷ The Alaska Supreme Court reversed after conducting an *in camera* inspection of the manuals and determining that portions of the manual were relevant to Lockwood's bad-faith claim because they shed light on Geico's standard practices and could lead to admissible evidence as to what a typical investigation entails and whether standard procedures were followed in Lockwood's case.⁸

Here, ABI's request to access proprietary confidential financial information about 716 and its members is in no way relevant to the two remaining issues in this

³ *Lockwood v. Geico*, 323 P.3d 691 (Alaska 2014).

⁴ See Plaintiff's Memorandum in Support of Motion to Compel at 2.

⁵ *Lockwood v. Geico*, 323 P.3d at 699.

⁶ *Id.* at 692.

⁷ *Id.*

⁸ *Lockwood v. Geico*, 323 P.3d at 699-700.

litigation—whether the lease is an extension and rental rate—nor is it likely to lead to admissible evidence.⁹

As to the first claim, Plaintiff has already asserted that whether the LIO Lease “extends a real property lease... is strictly question of law” which needs to be decided before the court can focus on “the appropriate remedy.”¹⁰ ABI’s request for proprietary confidential financial information about 716 and its members is in no way relevant to this claim, nor is it likely to lead to the discovery of admissible evidence regarding whether the lease at issue is an “extension” under AS 36.30.083(a). At this stage, when there is no indication that ABI will prevail on its claims, it would be putting the cart before the horse to permit ABI to invade the finances of 716 prior to awarding a decision on the merits. ABI has specifically chosen **not to file** a veil piercing claim.¹¹ If it had, ABI might be better able to make a straight faced argument that the requested material could lead to admissible evidence as to whether 716 was solvent or could pay back any purportedly illegally paid rent in the event ABI prevailed. However, as pled, ABI has yet to assert any facts supporting its contention that 716’s finances are relevant to its first claim or that 716 would or could not satisfy any prospective judgment levied against it.

As to the second claim before the court, Plaintiff has claimed that whether the rent being paid to 716 under the lease at issue is at least 10 percent below the market

⁹ See Amended Complaint, filed by Plaintiff on September 25, 2015.

¹⁰ Memorandum in Support of Plaintiff’s Motion for Partial Summary Judgment (Not Extension) at 1-2.

¹¹ See Memorandum in Support of Plaintiff’s Motion for Preliminary Injunction at 5, FN 3.

rental value is “a factual issue.”¹² Plaintiff has submitted an affidavit from Larry Norene, a retired appraiser who was not involved in the actual appraisal of market rent value at the time the lease was executed, to suggest that the lease does not comply with AS 36.30.080(a).¹³ Norene disputes the validity of the appraisal relied upon by the Agency. 716’s private financial information is wholly irrelevant to Norene’s analysis or any other of Plaintiff’s theories on the rental rate. Likewise, ABI has not articulated how 716’s private finances would be relevant to the claim in general. Therefore, the requested material is not only proprietary and privileged, but simply not relevant to the causes of action before the Court. Accordingly, the court should deny ABI’s motion to compel.

II. 716 has conducted discovery in an above-board manner in compliance with the discovery rules.

Plaintiff has egregiously misrepresented 716’s willingness to meaningfully sift through potentially discoverable material by asserting that 716 “did not take [ABI] up on [its] offer” to negotiate a protective order.¹⁴ ABI attached to its motion to compel the email chain between the parties after counsel for ABI and counsel for 716 met to confer on September 30, 2015.¹⁵ Upon review of the emails, it is undisputed that 716 did in fact offer to provide 716’s Operating Agreement to the court for *in camera*

¹² Memorandum in Support of Plaintiff’s Motion for Partial Summary Judgment (Not Extension) at 2, FN 1.

¹³ Norene Affidavit, dated 10/2/15, submitted as an attachment to Plaintiff’s Motion for Preliminary Injunction.

¹⁴ *See Id.*

¹⁵ *See Exhibit 2 Attached to Plaintiff’s Motion to Compel.*

review.¹⁶ 716 stated that if Judge McKay “found this document relevant and distributed it to [ABI], [then ABI] could assess its relevance, and then determine if [ABI] wanted to pursue 716’s financial records.”¹⁷ Instead of agreeing to this reasonable request, given that 716 wholeheartedly disputes that 716’s operative finances or structure are discoverable, ABI then decided to unilaterally file this motion to compel. ABI, not 716, has acted uncooperatively in crafting reasonable safety mechanisms for discovery review.

The trial court has broad discretion in determining the extent of discovery and crafting the scope of protective orders.¹⁸ ABI was offered the opportunity to stipulate to the court’s *in camera* review of 716’s Operating Agreement.¹⁹ 716’s position, nevertheless, remains that if the court finds the Operating Agreement to be discoverable to ABI, it must then release the materials to ABI under an appropriately crafted protective order designed to protect the confidential and privileged information contained within the document. For example, ABI should be prohibited from releasing the document to any third party, and ABI should not be permitted to publish the material

¹⁶ *See Id.*

¹⁷ *Id.* at 1 of 4. Plaintiff’s RFP No. 5 also seeks “all amendments and any other agreements pertaining to the operation and/or management of 716 LLC.” 716 objects to the production of any material other than the current operating agreement as described in this opposition.

¹⁸ *Jones v. Jennings*, 788 P.2d 732, 735 (Alaska 1990).

¹⁹ 716 reincorporates its objection to the release of any material to the Plaintiff involving accounting/booking records (RFP No., 2); documents pertaining to disbursements of payments made to 716 members (RFP No.3); documents of 716’s personal financial statements (RDP No. 1). As thoroughly detailed in 716’s opposition to ABI’s motion for preliminary injunction, these documents have no relevance to the instant action.

on its website or distribute the material to media outlets, like it has done in this case or as Mr. Gottstein did in the Zyprexa case described herein.

716's substantial concerns regarding ABI's willingness to abide by any protective order or confidentiality agreement imposed by the court are warranted. First, ABI has published every document, including all discovery,²⁰ documents referencing private affairs of the parties, and settlement negotiations on its website.²¹ ABI has admitted in depositions that it maintains an e-mail "list" of journalists it contacts about case developments.²² ABI regularly speaks telephonically with reporters about case developments.²³ ABI has actively, and at times inappropriately, chosen to litigate this case in a public forum.

716's concerns are not based on Mr. Gottstein's conduct in this case alone. Mr. Gottstein's history of unlawful dissemination of confidential material is troubling. In *Eli Lilly & Co. v. Gottstein*, the Court of Appeals for the Second Circuit upheld the federal district court's issuance of a permanent injunction that prohibited Mr. Gottstein from further disseminating confidential documents that had been unlawfully disclosed by Mr. Gottstein under a protective order during pretrial discovery in a liability suit in

²⁰ See 10-16-15 Gottstein Depo Transcript at 49-50, attached as Exhibit D.

²¹ Emails produced on Plaintiff's website reference, *inter alia*, counsel's paternity leave schedule, and the parties attempt to negotiate a resolution. This information should not be publically available.

²² See Ex. D at 48-49.

²³ See Ex. D at 48-49.

which Eli Lilly Co. had been sued regarding the use of Zypexa, a prescription drug used to treat schizophrenia.²⁴

The Second Circuit held that Mr. Gottstein had conspired with plaintiff's expert to obtain confidential documents through use of sham subpoenas and then unlawfully disseminated the drug manufacturer's confidential material to various entities, including contacts at the New York Times.²⁵ The Court concluded:

As he issued the subpoenas, burned DVD copies, forwarded emails and sent packages containing the data to associates, Gottstein actively took part in and furthered that shared goal [to violate the protective order and to disseminate Eli Lilly's confidential information]. Therefore, Gottstein aided and abetted [the expert's] violation of the protective order²⁶

Given Mr. Gottstein's behavior thus far in the litigation, on a matter he views as being one of public importance, 716's concerns regarding the dissemination of confidential proprietary information is more than warranted.

This Opposition has largely focused on ABI's request for financial information from 716 and the Operating Agreement. With respect to the production of documents sought by Plaintiff outside of 716's finances, 716 requests a court hearing for the ABI to be able to meaningfully articulate what precisely it is seeking and whether that material has in fact already been produced in 716's voluminous discovery and supplemental discovery production efforts to date. (For example, 716 has produced hundreds of emails regarding its negotiation of the lease extension at issue in response to RFP No.

²⁴ *Eli Lilly & Co. v. Gottstein*, 617 F.3d 186 (2d Cir. 2010); opinion attached as Exhibit B. The District Court's order is attached as Exhibit C.

²⁵ *Id.* at 195.; See also 10-16-5 depo of Jim Gottstein at 52-53.

²⁶ *Eli Lilly & Co. v. Gottstein*, 617 F.3d at 195-196.

4.) Moreover, contrary to assertion, privileged documents were listed in a privilege log provided to Plaintiff by 716. Plaintiff should also have to make a specific application as to why the *additional* documents Plaintiff requests are relevant to the causes of action and/or not validly withheld on privilege/proprietary grounds. For example, 716's production in response to RFP No. 1²⁷ is responsive to the project's financing. The remaining documents sought by plaintiff as part of this request include loan application(s) and personal financial statements, neither of which appear to be germane to the causes of action at issue.

Because ABI has asserted that it filed its motion to compel *and* motion for preliminary injunction only because 716 failed to provide it with internal financial documents, oral argument addressing these motions should be combined. That joint hearing should be deferred, however, until after the court hears the dispositive arguments on laches based on the summary judgment filed by the Agency and joined by 716. A proposed scheduling order is attached to this motion.

²⁷ 716 produced Northrim Bank terms and conditions letter to Mark Pfeffer, dated 9-10-13, Bates-stamped 716-000264 thru 716-000266; 716 – Wells Fargo Commitment Letter, dated 11-29-13, Bates-stamped 716-000267 thru 716-000271; Everbank – Conditional Commitment Letter, dated 11-14-14, Bates-stamped 716-000272 thru 716-000278.; Appraisal of 716 West 4th Avenue prepared by Theodore Jensen, MAI of Reliant Appraisal for Kim St. John of EverBank, dated December 12, 2014, Bates-stamped 716-000279 thru 716-000545.; Appraisal of 716 West 4th Avenue prepared by Theodore Jensen, MAI of Reliant Appraisal for Ms. Deatrice Swazer of Northrim Bank dated October 28, 2013, Bates-stamped (note in two parts)-Part One 716-000546 thru 716-000715 and Part Two 716-000716 thru 716-000881.

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

DATED: 10-27-15

By: JKR
Jeffrey W. Robinson
Alaska Bar No. 0805038

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716'S OPPOSITION TO MOTION TO COMPEL
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil
{10708-101-00297076;1}

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
 facsimile U.S. Mail on the 27 day of October 2015, on:

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Law Offices of James B. Gottstein
406 G Street, Suite 206
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By: Heidi Wyckoff
Heidi Wyckoff

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

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

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

716 WEST FOURTH AVENUE, LLC'S RESPONSES TO ALASKA BUILDING, INC.'S FIRST REQUEST FOR PRODUCTION

COMES NOW, Defendant, 716 West Fourth Avenue ("716 WEST" or "Defendant"), by and through counsel, Ashburn & Mason, P.C. and responds to Plaintiff's First Request for Production.

PRELIMINARY STATEMENT

Discovery in this case is not complete. As discovery proceeds, facts, information, evidence, documents, and things may be discovered which are not set forth in these responses, but which may be responsive to these discovery requests. The following responses are complete based on 716 WEST's current knowledge, information and belief. Furthermore, these responses were prepared based on 716

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WEST's good faith interpretation of the discovery requests and are subject to correction for inadvertent errors or omissions, if any.

716 WEST reserves the right to refer to, conduct discovery with reference to, or offer into evidence at the time of hearing, any and all facts, evidence, documents and things developed during the course of discovery and hearing preparation, notwithstanding references to facts, evidence, documents and things provided herein. These responses are given without prejudice to subsequent revision or supplementation, including objections, based on any information, evidence and documentation which hereinafter may be discovered.

GENERAL OBJECTIONS

716 WEST expressly incorporates the following general objections as if set forth fully in response to each of the following individual discovery requests addressed in the specific objections section below, and any response below is made subject to and without waiving these objections:

1. 716 WEST objects to the discovery requests to the extent they purport to impose requirements upon 716 WEST beyond those authorized by Alaska Rules of Civil Procedure 26, 33, and 34, and otherwise fail to comport with the Alaska rules.
2. 716 WEST objects to requests for the production of documents, calculations, and analyses that do not exist. Under Alaska Civil Rule 34, parties are required to produce documents within their "possession, custody, or control." A document is not within a party's "possession, custody, or control" if it does not exist.

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3. 716 WEST objects to each and every discovery request insofar as they are vague, ambiguous, overly broad, unduly burdensome, or use terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these discovery requests.

4. 716 WEST objects to each and every discovery request insofar as they are not reasonably calculated to lead to the discovery of admissible evidence and are not relevant to the subject matter of this proceeding.

5. 716 WEST objects to providing information to the extent that it is already a matter of public record, or to the extent it is obtainable from other sources that are more convenient and less burdensome, or are equally available to the Plaintiff. Plaintiff is not entitled to require other parties to gather information that is equally available and accessible to it.

6. 716 WEST objects to each and every discovery request insofar as they seek documents or information protected by the attorney-client privilege or the work product privilege. Nothing contained in these responses is intended as, or shall in any way be deemed, a waiver of any such privilege or protection, or any other applicable privilege or doctrine.

7. 716 WEST objects to the instructions contained in Plaintiff's discovery requests. In responding to the requests, 716 WEST will follow the standard discovery rules and practices for civil litigation in the Alaska courts. 716 WEST will produce

non-privileged documents that are within its own possession, custody or control of its respective officers, employees, representatives and attorneys.

8. 716 WEST objects to production of any confidential documents or other information that could prejudice the business interests of 716 WEST or of any party that may have provided the confidential information to 716 WEST.

9. 716 WEST objects to the discovery requests insofar as certain requests are duplicative of other requests. 716 WEST will not undertake to produce more than one copy of any document that may be responsive to more than one request.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Please produce all loan applications and other documents relating to financing the New LIO Building, including without limitation, all projections and *pro formas* and personal financial statements. This includes, without limitation, both interim or construction financing, and permanent financing and loans that were consummated and loans that were not, if any.

RESPONSE: 716 objects to this request because it seeks information that is confidential and proprietary and seeks information and documents protected by the attorney client privilege, work product doctrine, or any other applicable privilege. Subject to and without waiver of the foregoing objections, including any and all general objections, 716 hereby produces the following documents in addition to other relevant documents produced in response to another Request:

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- Northrim Bank terms and conditions letter to Mark Pfeffer, dated 9-10-13, Bates-stamped 716-000264 thru 716-000266.
- 716 – Wells Fargo Commitment Letter, dated 11-29-13, Bates-stamped 716-000267 thru 716-000271.
- Everbank – Conditional Commitment Letter, dated 11-14-14, Bates-stamped 716-000272 thru 716-000278.
- Appraisal of 716 West 4th Avenue prepared by Theodore Jensen, MAI of Reliant Appraisal for Kim St. John of EverBank, dated December 12, 2014, Bates-stamped 716-000279 thru 716-000545.
- Appraisal of 716 West 4th Avenue prepared by Theodore Jensen, MAI of Reliant Appraisal for Ms. Deatrice Swazer of Northrim Bank dated October 28, 2013, Bates-stamped (note in two parts)-Part One 716-000546 thru 716-000715 and Part Two 716-000716 thru 716-000881.

REQUEST FOR PRODUCTION NO. 2:

Please produce the financial records of 716 LLC, from January 1, 2012. If the electronic accounting/bookkeeping records are kept in QuickBooks, please provide the QuickBooks file or a backup of it and any applicable password. If not, it would be preferable for counsel to confer and agree on a reasonably useable form, such as whether exporting to Microsoft Excel or Access is a viable option. Otherwise, they should be produced in word searchable Acrobat (PDF) format and include without limitation (a) all registers (accounts), (b) income statements and balance sheets on an

annual basis to the end of 2014, and monthly thereafter, (c) check register, (d) general ledger, and (e) listing of all real property assets. Initially your response is to include the time period from January 1, 2012 through July 31, 2015, and should be updated monthly by the 10th of each month for the prior month. This request does not include “backup” documentation, except as specifically requested in the following request.

RESPONSE: In addition to the general objections set forth above, 716 objects to this request because it seeks information that is confidential and proprietary. 716 further objects to this request because it calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence in the instant action.

REQUEST FOR PRODUCTION NO. 3:

Please produce all documents relating to payments by 716 LLC to Robert Acree; Mount Trident, LLC; Mark Pfeffer; Mark E. Pfeffer Alaska Trust 12/28/07; or Pfeffer Development, LLC; or any combination thereof.

RESPONSE: Incorporating all previous objections, 716 objects to this request because it seeks information that is confidential and proprietary. 716 further objects to this request because it calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 4:

Please produce all documents, including without limitation, e-mails, relating to 716 LLC leasing or potentially leasing space to the Legislative Affairs Agency for the

Anchorage Legislative Information Office upon the expiration of the lease in effect on January 1, 2010 and thereafter. This includes all documents pertaining to the LIO Lease, including without limitation, negotiation.

RESPONSE: 716 objects to this request to the extent that it calls for production of privileged internal documents. Furthermore, the request for “all documents” relating to the expiration of the lease in effect on January 2, 2010 and thereafter is unreasonable, overbroad, and unduly burdensome in light of the work product doctrine, and other privileges, including attorney-client privilege, protecting such internal documents from discovery. The request is also ambiguous as it suggest that the lease entered into occurred upon expiration and 716 objects to any legal characterization of the events and facts leading up to the execution of the Lease in dispute. Searches for internal e-mails not privileged are ongoing and this response will be duly supplemented. Subject to and without waiver of the foregoing objections, including any and all general objections, 716 hereby produces the following documents in addition to other relevant documents produced in response to another Request:

- 2010 Lease Renewal 2, dated 10-11-10, Bates-stamped 716-000882-716-000887.
- 2011 Lease Renewal 3, dated 4-13-11, Bates-stamped 716-000888 thru 716-000893.
- 2012-2013 Lease Renewal 4, dated 7-19-12, Bates-stamped 716-000894 thru 716-000899.

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- Extension of Lease and Lease Amendment No.3, dated 9-19-13, Bates-stamped 716-000900 thru 716-001079.
- Memorandum of Lease – Recorded, dated 10-7-13, Bates-stamped 716-001080 thru 716-001083.
- Memorandum of Understanding between 716, the Legislative Affairs Agency (“LAA”), and Alaska Housing Finance Corporation (“AHFC”) dated 2/18/14, Bates-stamped 716-001084 thru 716-001087.
- LIO Presentation, Bates-stamped 716-001088 thru 716-001103.
- September 18, 2013 email from Mark Pfeffer to Timothy Lowe, Mike Buller and Doc Crouse with Final Budget attached, Bate Stamped 716-001256 thru 716-001258.

REQUEST FOR PRODUCTION NO. 5:

Please produce the operating agreement for 716 LLC, including all amendments and any other agreements pertaining to the operation and/or management of 716 LLC.

RESPONSE: Incorporating all previous objections, 716 objects to this request because it seeks information that is confidential and proprietary. 716 further objects to this request because it calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 6:

Please produce all documents relating to the LIO Lease complying with the requirement in AS 36.30.083(a) that it extend a real property lease.

RESPONSE: 716 objects to this response because it is duplicative, and because any such documents would be in the possession and control of the LAA and not 716 and would thus impose obligations upon 716 greater than those set forth in the Alaska Rules of Civil Procedure. 716 further objects, because under AS 36.30.083, the legislative council, rather than the landlord, has sole authority to extend real property leases. Under AS 36.30.020, the legislative council adopts and publishes procedures to govern procurement. Therefore, 716 objects to any implicit legal characterization of the procurement process used to enter into this lease. Further, this request is also unduly burdensome to the extent it attempts to extend to 716 the scope of internal procurement documents that are exclusively within the possession, custody, or control of the LAA.

REQUEST FOR PRODUCTION NO. 7:

Please produce all documents relating to opinions, estimates or determinations of the market rental value and/or value of the New LIO Building and/or leasing or purchasing space for the Anchorage Legislative Information Office from January 1, 2010, except for (a) that certain "Rental Value Appraisal Report Anchorage Legislative Information Office," by Waronzof Associates, submitted October 15, 2013, as of June 1, 2014, a copy of which can be accessed by going to <http://bit.ly/1MCkd93>, and (b) that certain October 10, 2013, Report by the Alaska Housing Finance Corporation on the LIO Building Anchorage, Alaska titled "Evaluation of Cost Estimate for Downtown Development," a copy of which can be accessed by going to <http://bit.ly/1LV9MeW>. This request includes communications with any and all persons regarding the market

rent value of the New LIO Building, including without limitation during the planning phase and whether or not any opinion regarding the market rental value of the New LIO Building was formed or provided. In essence, this request is for all documents relating to the value or market rental value relating to leasing space by the Legislative Affairs Agency for the Anchorage Legislative Information Office after the expiration of the then existing lease.

RESPONSE: 716 objects to this request because it seeks information that is confidential and proprietary. Subject to and without waiver of the foregoing objections, including any and all general objections, 716 has already produced, in response to Request for Production No. 1, an appraisal of 716 West 4th Avenue prepared by Theodore Jensen, MAI of Reliant Appraisal for Kim St.John of EverBank, dated December 12, 2014, previously attached as Bates-stamped 716-000279 thru 716-0005454.

REQUEST FOR PRODUCTION NO. 8:

Please produce all document memorializing payments for costs under the LIO Lease for what is called renovations. In other words, this request is to obtain all cost records for construction of the space under the LIO Lease which the Legislative Affairs Agency occupied in January of 2015. This includes payments for project management to defendant Pfeffer Development, LLC.

RESPONSE:

716 objects to this request because it seeks information that is confidential and proprietary and protected by attorney-client privilege, work product doctrine, or any other applicable privilege. 716 further objects because this request is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding. This request is also duplicative of the same request Plaintiff made to Pfeffer Development, LLC., the project manager of the LIO Project. It is also an objectionable request because it seeks the production of documents related to the business activities of third parties not named in Count One.

Subject to and without waiver of the foregoing objections, including any and all general objections, 716 hereby produces the following documents in addition to other relevant documents produced in response to another Request:

- Construction contract between 716 and Criterion General, Inc., including construction cost estimate, dated 11-11-13; Bates-stamped 716-001104 thru 716-001156.
- Criterion General Business License, Bate Stamped 716-001157 thru 716-001159.
- Criterion Payment and Performance Bond, Bate Stamped 716-001160 thru 716-001168.
- Certificate of Liability Insurance, Bate Stamped 716-001169-716-1170;

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- Certificate of Liability Insurance (Wells Fargo), Bate Stamped 716-001171.
- Certificate of Liability Insurance, Bate Stamped 716-001172 thru 716-1177.
- Criterion General Builders Risk, Bate Stamped 716-001178 thru 716-001179.
- Contractor Qualification Statement, Bate Stamped 716-001180 thru 716-001186.
- Change Order #1, Bate Stamped 716-001187 thru 716-001189.
- Change Order #2, Bate Stamped 716-001190 thru 716-001192.
- Change Order #3, Bate Stamped 716-001193 thru 716-001195.
- Change Order #4, Bate Stamped 716-001196 thru 716-001207.
- Certificate of Insurance, Bate Stamped 716-001208-716-001209.
- LIO Change Order dated 12/30/14, Bate Stamped 716-001210 thru 716-001221.
- Kpb Subcontract, Bate Stamped 716-001222 thru 716-001255.

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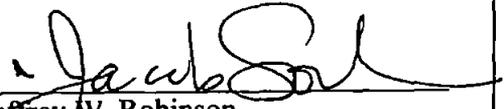
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ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 9/3/15

By: 
for Jeffrey W. Robinson
Alaska Bar No. 0805038

716 WEST FOURTH AVENUE, LLC'S RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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Exhibit A
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001076

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 3 day of September 2015, on:

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716 WEST FOURTH AVENUE, LLC'S RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION
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 KeyCite Yellow Flag - Negative Treatment
Distinguished by Goodman v. Genworth Financial Wealth Management, E.D.N.Y., January 24, 2012
617 F.3d 186
United States Court of Appeals,
Second Circuit.

ELI LILLY & CO., Movant–Appellee,
v.

James B. GOTTSTEIN, Respondent–Appellant,
Vera Sharav, Alliance for Human Research
Protection, John Doe, David S. Egilman, Laura
Ziegler, Mindfreedom International, Judi
Chamberlin, Robert Whitaker, Terri Gottstein,
Jerry Winchester, Dr. Peter Breggin, Dr. Grace
Jackson, Dr. David Cohen, Bruce Whittington, Dr.
Stephen Kruszewski, Will Hall, David Oaks And
Eric Whalen, Respondents.

Docket No. 07–1107–cv. | Argued: Feb. 2, 2010. |
Decided: Aug. 12, 2010.

Synopsis

Background: Multidistrict products liability action was brought against manufacturer of prescription drug used to treat schizophrenia. Following settlement, manufacturer sought permanent injunction to prevent third-party attorney from further disseminating confidential documents disclosed by manufacturer during pretrial discovery. The United States District Court for the Eastern District of New York, Weinstein, J., 474 F.Supp.2d 385, granted manufacturer’s motion, and attorney appealed.

Holdings: The Court of Appeals, Richard D. Cudahy, Circuit Judge, held that:

^[1] evidence was sufficient to establish, on motion for permanent injunction, that non-party attorney aided and abetted plaintiff’s expert in violating protective order;

^[2] permanent injunction did not violate rule governing enforcement of protective orders;

^[3] district court had jurisdiction to enjoin non-party attorney from further disseminating confidential documents; and

^[4] documents disseminated by attorney contained

information that could be subject to protective order.

Affirmed.

West Headnotes (8)

^[1] **Federal Courts**
◆ Injunction

Court of Appeals reviews district court’s factual conclusions in support of issuing permanent injunction for abuse of discretion, which may be found where the court, in issuing the injunction, relied on clearly erroneous findings of fact or an error of law.

1 Cases that cite this headnote

^[2] **Federal Civil Procedure**
◆ Protective orders

Evidence was sufficient to establish, on motion to permanently enjoin non-party attorney’s dissemination of documents produced by drug manufacturer in multidistrict products liability action, that attorney aided and abetted plaintiff’s expert in violating protective order issued in that action; expert contacted attorney to explain that he possessed secret documents regarding drug that were under protective order, attorney understood that expert wanted to disseminate documents to public but would not produce documents without subpoena, attorney used unrelated case of state guardianship to generate subpoena to obtain confidential documents, and attorney strategized with expert on how best to facilitate dissemination of documents in manner ostensibly consistent with protective order to which expert was bound as a signatory.

2 Cases that cite this headnote

^[3] **Federal Civil Procedure**
◆Protective orders

Evidence was sufficient to establish, on motion to permanently enjoin non-party attorney's dissemination of documents produced by drug manufacturer in multidistrict products liability action, that attorney issued sham subpoenas in state guardianship case to obtain and disseminate confidential documents disclosed under protective order during pretrial discovery in the action; attorney intervened in state case and issued subpoenas for disclosure of confidential documents related to drug despite having no evidence that drug was relevant to case in which he had intervened, upon receipt of documents, attorney quickly disseminated documents without reviewing them or applying them to case in which he intervened, and subpoena issued through state court was without legal force in state it was served.

1 Cases that cite this headnote

^[4] **Witnesses**
◆Subpoena duces tecum

Causing a subpoena to be served, with notice that compliance with it by the complicit recipient would violate a court's lawful order, cannot be characterized as "legitimate," even if the improperly obtained documents might otherwise be useful had they been obtained appropriately.

1 Cases that cite this headnote

^[5] **Federal Civil Procedure**
◆Protective orders
Injunction
◆Disclosure or use of trade secrets or confidential information

Permanent injunction prohibiting non-party

attorney from further disseminating confidential documents, consisting mainly of trade secrets and confidential commercial information, disclosed under protective order during pretrial discovery in multidistrict products liability action against manufacturer of drug used to treat schizophrenia did not violate rule governing enforcement of protective orders, since injunction did not purport to bind attorney to provisions of protective order, and injunction merely enjoined attorney from further disseminating confidential documents and required attorney to return any such documents and copies still in his possession. Fed.Rules Civ.Proc.Rules 26(c), 65, 28 U.S.C.A.

3 Cases that cite this headnote

^[6] **Federal Civil Procedure**
◆Protective orders

Substantive provisions of protective order, which facilitated litigants' sharing of confidential discovery in multidistrict products liability action against manufacturer of prescription drug used to treat schizophrenia, were sufficiently detailed, even if order failed to provide nonparties with specific and detailed description of the acts required or prohibited, since protective order did not need to dictate boundaries of permissible behavior by non-signatories to order, and non-signatories could only be enjoined if their actions amounted to aiding and abetting violation of order by person who was privy to it.

Cases that cite this headnote

^[7] **Injunction**
◆Aiding, abetting, or encouraging

District court had jurisdiction to permanently enjoin non-party attorney from further disseminating confidential documents that were subject to protective order in multidistrict products liability case against manufacturer of

prescription drug used to treat schizophrenia, which he obtained from plaintiff's expert witness through use of allegedly sham subpoenas in state guardianship proceeding, since attorney and expert shared common plan to violate protective order in products liability case and to disseminate drug manufacturer's confidential material. Fed.Rules Civ.Proc.Rules 26(c), 65, 28 U.S.C.A.

2 Cases that cite this headnote

[8]

Federal Civil Procedure

◆Protective orders

Privileged Communications and Confidentiality

◆Trade secrets; commercial information

Confidential documents disseminated by attorney and his co-conspirators, in multidistrict products liability action against manufacturer of drug used to treat schizophrenia, contained information that could be subject to protective order, since documents consisted entirely of materials exchanged by parties in discovery phase of litigation, publication of documents would be annoying, embarrassing, oppressive, and burdensome to manufacturer, and documents consisted mainly of trade secrets and confidential commercial information. Fed.Rules Civ.Proc.Rule 26, 28 U.S.C.A.

Cases that cite this headnote

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CALABRESI, RAGGI, and CUDAHY, Circuit Judges.

Opinion

RICHARD D. CUDAHY, Circuit Judge:

The present appeal arises from the flouting of a protective order entered in high-stakes litigation concerning Eli Lilly Co.'s anti-psychotic drug, Zyprexa. David S. Egilman, a plaintiff's expert witness and signatory to the protective order, received confidential documents produced by Eli Lilly. Finding much to dislike in the content of those documents, Egilman wished to distribute them to the media. Not wanting to release the documents to the public in a manner brazenly in disregard of the protective order, he needed a suitably minded individual to act as his partner and to subpoena those documents. Egilman contacted *New York Times* reporter Alex Berenson, who put him in touch with Alaska attorney and mental-health advocate James B. Gottstein, who readily agreed to help. Gottstein, who was not a signatory to the protective order, intervened in an unrelated Alaskan guardianship case, which he used to generate subpoenas purporting to require Egilman to produce all documents in his possession pertaining to Zyprexa. Failing to abide by the terms of the protective order, Egilman distributed a large volume of documents to Gottstein, who in turn copied and forwarded them to a variety of other interested parties. The next day, the *Times* began a series of front-page articles based on the information contained in those documents.

Understandably alarmed, Eli Lilly applied for and received a series of orders culminating in an injunction, which barred Gottstein from disseminating the documents and required their return. *In re Zyprexa Injunction*, 474 F.Supp.2d 385 (E.D.N.Y.2007). Gottstein now appeals that injunction, claiming that the district court erred in finding that his issuing subpoenas was part of a sham proceeding, that he aided and abetted the violation of the protective order, that the documents at issue were confidential, that the court could bind him under the protective order and that the court possessed personal jurisdiction to issue the injunction against him. We affirm the judgment of the district court in all respects.

BACKGROUND

Approximately twenty-million schizophrenia patients have taken the anti-psychotic drug Zyprexa, which some allege has produced negative side effects purportedly

known to, but not disclosed by, the drug's manufacturer, Eli Lilly Co. Some 30,000 lawsuits ensued, which were consolidated pursuant to 28 U.S.C. § 1407 and assigned to the Honorable Jack B. Weinstein of the United States District Court for the Eastern District of New York. *In re Zyprexa Prods. Liab. Litig.*, 314 F.Supp.2d 1380 (J.P.M.L.2004). That court entered a protective order, Case Management Order 3 (CMO-3), which facilitated litigants' sharing of confidential discovery. *In re Zyprexa Prods. Liab. Litig.*, No. 04-MD-1596, 2004 WL 3520247 (E.D.N.Y. Aug. 9, 2004). Among other things, CMO-3 allowed attorneys to share *190 confidential documents with experts, required experts to sign an "Endorsement of Protective Order" and provided a mechanism to dispute whether a document marked confidential had been correctly designated. The protective order contemplated another court's subpoenaing produced materials, but required that the designee of the subpoena notify the producing party in writing prior to the production of confidential materials and allow it a reasonable opportunity to object.

At some point during the litigation, one of the plaintiffs' firms, The Lanier Law Firm, retained Dr. David Egilman as a potential expert witness. Having first attempted to modify it, Egilman signed the Endorsement of Protective Order.¹ The firm sent myriad documents produced by Eli Lilly to Egilman so that he could begin preparing his expert testimony. Egilman ultimately received some half-a-million documents and became quite determined to share their contents with the media. He contacted *New York Times* reporter Alex Berenson and explained his interest. Egilman understood that he was subject to CMO-3, however, and thus required an accomplice to subpoena the documents. Berenson put Egilman in touch with James B. Gottstein for that very purpose.

Gottstein is an Alaskan attorney and an advocate for patients' rights. After talking to Egilman about Eli Lilly's confidential documents and their mutual desire to see those materials disseminated to the public, Gottstein intervened in an unrelated case in which the Alaskan Office of Public Advocacy had been granted guardianship and the right to make treatment decisions for a patient, William Bigley. At that time, Gottstein had no idea if the patient had taken Zyprexa or if the state would use Zyprexa in its treatment of the patient. Yet within hours of intervening, he issued a subpoena that purported to compel Egilman to produce all documents in his possession relating to that particular drug. Despite being addressed to Egilman in Massachusetts, however, the subpoena issued from the Superior Court for the State of Alaska. Gottstein placed the request for documents

pertaining to Zyprexa in the middle of requests for documents relating to 14 other drugs, none of which he expected Egilman to possess. The subpoena, issued on December 6, 2006, called for production of the material by December 20.

In an effort to comply, however perfunctorily, with CMO-3, Egilman faxed a note and copy of the subpoena to Eli Lilly's corporate general counsel. He did not, however, inform the firm that retained him of the subpoena; nor did he apprise Eli Lilly's litigation counsel. Nevertheless, the fax was routed internally and, on December 13, the Lanier Law Firm told Egilman not to produce any documents until Eli Lilly's planned motion to quash the subpoena had been ruled upon in the Alaskan court. Unbeknownst to Lanier and Eli Lilly, however, Egilman had already begun to distribute a plethora of documents to Gottstein the day before.

This clandestine production of Eli Lilly's documents resulted from Gottstein's having served an amended subpoena on December 11, which called for the production of the documents prior to the date and time set for the deposition. This subpoena, *191 again purporting to bind Egilman in Massachusetts, also issued from the Superior Court for the State of Alaska. In violation of the protective order, Egilman informed no one of this second subpoena and began transmitting documents electronically to Gottstein on December 12. Gottstein immediately disseminated the documents to a number of associates.

Realizing the magnitude of the information breach, Eli Lilly took the matter to the Special Master for Discovery, Peter H. Woodin, who ordered Gottstein and Egilman to return all material immediately. Gottstein refused to acknowledge the Special Master's authority over him, so Eli Lilly took the matter up with Magistrate Judge Roanne L. Mann, who determined that Gottstein had aided and abetted a breach of CMO-3. Eli Lilly then took the matter to District Judge Brian M. Cogan, who was sitting as a miscellaneous-duty judge and who issued a temporary injunction. The MDL court extended Judge Cogan's injunction pending a full hearing on the matter, which it conducted on January 16 and 17, 2007. The MDL court issued an injunction on February 13, from which Gottstein now appeals.

DISCUSSION

I. The district court did not abuse its discretion when it characterized the Alaskan subpoenas as a “sham” and found that Gottstein aided and abetted Egilman’s violation of the protective order

^[1] Gottstein challenges the district court’s factual determination that the subpoenas he caused to be served on Egilman were a “pretense.” He also contests the district court’s closely related finding that he aided and abetted the violation of CMO–3.² We review such factual conclusions for abuse of discretion, “which may be found where the Court, in issuing the injunction, relied on clearly erroneous findings of fact or an error of law.” *Knox v. Salinas*, 193 F.3d 123, 129 (2d Cir.1999); see also *In re Complaint of Messina*, 574 F.3d 119, 128 (2d Cir.2009) (holding that we will overturn the factual findings of the district court only where we have a “definite and firm conviction that a mistake has been committed”) (internal quotation marks omitted).

^[2] The district court’s finding that Gottstein conspired with Egilman to violate CMO–3 is amply supported by the record. Egilman called Gottstein on November 28, 2006, explaining that he possessed secret Zyprexa documents produced through litigation and that they “contained some alarming things in them.” He informed Gottstein that the documents were under a protective order.³ Understanding that Egilman would not produce the Zyprexa documents except pursuant to a subpoena, Gottstein needed to find an appropriate case as a vehicle with which to generate one. Gottstein obtained Egilman’s contact information for the subpoena, as well as the latter’s email and phone number. Egilman knew that Gottstein intended to distribute the Zyprexa documents when he obtained them.

*192 There is therefore no question that Gottstein and Egilman were in close contact with one another and strategized how best to facilitate the dissemination of documents protected by CMO–3. The subpoenas served on Egilman merely formalized and facilitated what had already been agreed to. They both understood that issuing a subpoena was a necessary ploy for achieving that distribution in a fashion ostensibly consistent with the protective order to which Egilman was bound as a signatory. It is therefore unsurprising that the manner in which Egilman and Gottstein responded to the subpoenas and caused them to issue, respectively, was designed to delay Eli Lilly’s learning of them and taking action to prevent production. Neither Gottstein nor Egilman informed Eli Lilly’s litigation counsel or the Lanier Law Firm of the first subpoena—actions that both knew would have resulted in Eli Lilly’s learning of the subpoena’s existence promptly. Nor did either of Gottstein and

Egilman inform anyone else of the second, secret subpoena, which called for earlier production. They hindered Eli Lilly’s recognizing the purpose of the subpoenas by burying the request for Zyprexa documents in the middle of requests for documents for some 14 other drugs. This is all strong evidence of Gottstein and Egilman’s acting in concert.

^[3] Further evidence of the subpoena’s being a sham abounds, and this similarly evidences the fact of concert between Egilman and Gottstein. When introduced to Egilman through Berenson, Gottstein wasted no time in planning an end run around the protective order. He searched for, found and then intervened in a case of state guardianship that was wholly unrelated the Zyprexa litigation. Gottstein admitted that he had no evidence at the time of causing the subpoenas to be served on Egilman that Zyprexa was relevant to the case in which he had intervened. On receipt of the material, Gottstein quickly disseminated it to a list of recipients without even reviewing it or applying it to his Alaskan patient’s case. It bears noting, too, that the subpoenas *duces tecum* issued through the Alaskan state court were presumably without legal force in Massachusetts, where Egilman resided and was served.⁴ This further supports the district court’s determination that the subpoenas were a sham.

In sum, the record is unequivocal that Gottstein schemed with Egilman to bypass the protective order and, in fact, aided and abetted the latter’s violation of the same. It is equally clear that the subpoenas issued to Egilman were part of a sham proceeding. The district court did not err, let alone clearly err, in so finding.

*193 Faced with these clear facts, Gottstein is forced to resort to a variety of unavailing assertions. First he contends that, because at least one of his two purposes was supposedly proper, the district court erred in characterizing the subpoenas as a pretense. He relies on *Sussman v. Bank of Israel*, 56 F.3d 450, 459 (2d Cir.1995) and focuses on that court’s holding that a party “should not be penalized for or deterred from seeking warranted judicial relief merely because one of his multiple purposes in seeking that relief may have been improper.” *Id.* at 459. Of course, *Sussman* was concerned with the distinct issue of a plaintiff’s being subject to Fed.R.Civ.P. 11 sanctions for filing a nonfrivolous complaint pursuant to an improper purpose. *Id.* But even putting this distinction aside, Gottstein’s reliance on *Sussman* necessarily flounders on the fact that he is incapable of demonstrating that any of his purposes in subpoenaing and disseminating Eli Lilly’s confidential documents was proper.

¹⁴¹ Gottstein asserts that his “dual purposes” were “to obtain evidence for use in Bigley’s case and other future cases, and [to] make evidence of suppressed hazards or illegal marketing or other evidence of Zyprexa hazards and Lilly [sic] misconduct known to the public.” However, the qualitative nature of a “purpose” cannot be divorced from the manner in which it is pursued. Even if we were to assume that either of his proffered goals in subpoenaing Egilman were otherwise legitimate, the fact of his aiding and abetting the violation of a lawful protective order to achieve that end precludes our finding a proper purpose. Gottstein appears to focus on the discrete act of his causing the two subpoenas to issue, essentially asking that we consider those actions divorced from the larger context of which they were a part. Yet we have already determined that the district court was on firm ground in finding that Gottstein’s actions—including his serving Egilman with the two subpoenas—aided and abetted Egilman’s violation of the protective order. Causing a subpoena to be served, with notice that compliance with it by the complicit recipient would violate a court’s lawful order, cannot be characterized as “legitimate,” even if the improperly obtained documents might otherwise be useful had they been obtained appropriately. Ultimately, Gottstein’s nebulous assertion that the subpoenas were somehow “grounded in law and fact” does not legitimize the manner in which they were employed to facilitate the violation of a court’s order; nor does it take away from their being part of a sham proceeding.

Gottstein’s second argument is no more fruitful. He submits that he acted independently as a lawyer in the interests of his client, which, he contends, precludes any finding that he aided and abetted Egilman’s violation of the protective order. To support this conclusion, Gottstein focuses on *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 65 S.Ct. 478, 89 L.Ed. 661 (1945), for the proposition that a nonparty who “act[s] independently” of a party found in violation of a court order cannot be an aider and abettor if the nonparty’s actions were based on a “genuinely independent interest.” Gottstein contends that he had an interest in the documents that was independent of Egilman’s. Of course, the record does not support a finding that Gottstein acted independently of Egilman, which is the end of the matter. Aiding and abetting a party is not acting independently, as Gottstein himself admits. We would also point to our prior decision in *N.Y. State Nat’l Org. for Women v. Terry*, where we held that a court’s inquiry into the fact of aiding and abetting is “directed to the actuality of concert or participation, without regard to the motives that prompt the concert or participation.” 961 F.2d 390, 397 (2d Cir.1992), *vacated*

*on other *194 grounds sub nom., Pearson v. Planned Parenthood Margaret Sanger Clinic (Manhattan)*, 507 U.S. 901, 113 S.Ct. 1233, 122 L.Ed.2d 640 (1993).

Ultimately, the district court’s finding that Gottstein acted in concert with Egilman to release the confidential material, and related determination that Gottstein aided and abetted Egilman’s violation of CMO–3, seem to us the only reasonable conclusions in light of the facts in the record. The district court certainly did not abuse its discretion in so finding.

II. Gottstein’s challenges to the protective order fail

¹⁵¹ Gottstein challenges the protective order on a number of grounds, all of which fail. He asserts first that the “district court erred by assuming ‘inherent authority’ to use its power to enforce injunctions under Rule 65(d) to enforce a protective order under Rule 26(c) instead.” We reject this argument by virtue of the obvious fact that the district court did not enforce CMO–3 against Gottstein—an order to which Gottstein was not privy. Gottstein seems to miss the fact that the injunction against which he appeals merely “enjoined him from further disseminating” the “documents produced by Eli Lilly and Company subject to CMO–3” and required him “forthwith [to] return any such documents and copies still in his ... possession....” *In re Zyprexa Injunction*, 474 F.Supp.2d at 430. It did not purport to bind Gottstein to the provisions of the protective order. *Id. at passim*. Thus, Gottstein’s assertion that the court “enforce[d] a protective order under Rule 26(c)” against him is wholly mistaken. Nor, as Gottstein contends, did the court impose aiding-and-abetting “liability.” The district court made this abundantly clear, observing that “this is not a contempt proceeding, and the court is not now punishing anyone for any alleged violation of court orders. Rather, this proceeding seeks to prevent irreparable harm to Lilly by enjoining those persons whose actions threaten such harm.” *Id.* at 426.

¹⁶¹ Gottstein next argues that the substantive provisions of the protective order were insufficiently detailed, since they did not delineate the acts sought to be restrained and failed “to provide nonparties with a specific and detailed description of the acts required or prohibited.” These contentions are unavailing. First, it is unclear why a protective order would seek to dictate the boundaries of permissible behavior by non-signatories. Such individuals can only be enjoined when their actions amount to aiding and abetting a violation of the order by a person who is privy to it. In that sense, Gottstein’s objection to the order’s supposed lack of specificity as to appropriate

third-party conduct collapses into his argument that the order's existing provisions are impermissibly vague. He argues on this latter ground that the order's requirement that parties be given a "reasonable opportunity" to object before any disclosure is effected is "too vague to be enforced." Gottstein's contention is border-line disingenuous, however, in light of his election not to read the protective order before aiding and abetting its violation. In any event, the challenged phrasing, familiar from other contexts, *see, e.g.*, Fed.R.Civ.P. 12(d); Fed.R.Crim.P. 5(d)(2), 6(e)(3)(G), 32.1(c)(2)(C), hardly constitutes abuse of what the district court accurately described as its "broad discretion to tailor protective orders to the circumstances of a particular litigation." *In re Zyprexa Injunction*, 474 F.Supp.2d at 413.

III. Gottstein submitted himself to the personal jurisdiction of the Eastern District of New York when he aided and abetted a violation of the court's order

¹⁷ Gottstein makes a further argument. He contends that the district court *195 lacked jurisdiction to enjoin a nonparty who aided and abetted the violation of a protective order.

It is of course true that courts cannot enjoin the entire universe of potential violators of its orders. In *Regal Knitwear*, the Supreme Court held that those who are acting independently of the enjoined party and whose own rights have not been adjudged cannot be bound by an injunction. 324 U.S. at 13–14, 65 S.Ct. 478. Yet, third parties "who are in active concert or participation" with the parties, their officers, agents, servants, employees or attorneys, can be enjoined. Fed.R.Civ.P. 65(d)(2). This language gives force to injunctions and prevents parties from violating them by proxy. "[D]efendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding." *Regal Knitwear*, 324 U.S. at 14, 65 S.Ct. 478.

While the instant case deals with an injunction, it is an injunction founded on a nonparty's aiding and abetting the violation of a protective order. Thus, we must consider whether aiding and abetting the breach of such an order gives the issuing court jurisdiction over the nonparty aider and abettor to enjoin him from continuing those actions.

Gottstein contends that we should adopt a rule saying that district courts have jurisdiction only over parties and signatories to their discovery orders, such that courts are powerless to enjoin the actions of other entities that aid

and abet the violation of those orders. In support of his argument, Gottstein distinguishes orders created under Rule 26(c) from Rule 65 injunctions and points out that, while Rule 65 textually allows third-party aiders and abettors to be enjoined, Rule 26 does not.

His argument fails for multiple reasons. First, Rule 26 neither provides nor suggests that courts lack the power to enjoin nonparties or nonsignatories who aid and abet the violation of their discovery orders. Second, relevant case law is against Gottstein's position. *See, e.g., Waffenschmidt v. MacKay*, 763 F.2d 711, 714 (5th Cir.1985) ("Nonparties who reside outside the territorial jurisdiction of a district court may be subject to that court's jurisdiction if, with actual notice of the court's order, they actively aid and abet a party in violating that order."). Third, a protective order might be thought of as a form of injunction in this particular setting, in which case reading Rules 26 and 65 together would obviously foreclose Gottstein's argument. *See, e.g., Poliquin v. Garden Way, Inc.*, 989 F.2d 527, 535 (1st Cir.1993) ("[A] protective order, like any ongoing injunction, is always subject to the inherent power of the district court...."). Fourth, if taken to its logical conclusion, Gottstein's proposed rule would render protective orders little more than liability-generating documents. If courts cannot bind third parties who aid and abet the violation of their protective orders, then any party, agent, attorney or expert who comes into possession of material he wanted to use against the producing party could simply disseminate the information quickly, then deal with the damages issue after the fact. We understand that the threat of a sizable damages award may deter this action in some cases, but Gottstein's proposed rule would eviscerate courts' ability to manage discovery and, hence, litigation.

Egilman and Gottstein shared the common plan to violate CMO-3 and to disseminate Eli Lilly's confidential material. This is the only reason Egilman sought Gottstein's involvement and is also clearly the reason that Gottstein intervened in the Alaska case and generated the subpoenas. As he issued the subpoenas, burned DVD *196 copies, forwarded emails and sent packages containing the data to associates, Gottstein actively took part in and furthered that shared goal. Therefore, Gottstein aided and abetted Egilman's violation of the protective order. The resulting injunction is a perfectly appropriate device to foreclose further dissemination of the confidential documents produced under the protective order.

IV. The district court did not clearly err in finding

that the documents distributed by Gottstein and his conspirators included a substantial number that were confidential

¹⁸¹ The district court “examined a sampling of the documents distributed by the conspirators,” concluded that “[a]mong them [were] a substantial number whose publication would be annoying, embarrassing, oppressive, and burdensome to Lilly” and further observed that “they reveal trade secrets, confidential preliminary research, development ideas, commercial information, product planning, and employee training techniques.” *In re Zyprexa Injunction*, 474 F.Supp.2d at 404. The district court did not clearly err in reaching this conclusion.

Gottstein contends that the documents he transmitted were not confidential, as evidenced by a variety of subsequent developments outside the record on appeal. This argument is not properly before us and should be raised in front of the district court in the first instance. *See Korn v. Franchard Corp.*, 456 F.2d 1206, 1208 (2d Cir.1972) (observing that “where circumstances have changed between the ruling below and the decision on appeal, the preferred procedure is to remand to give the district court an opportunity to pass on the changed circumstances”). Gottstein also devotes considerable pages to arguing that Eli Lilly’s mass designation of documents as confidential violated CMO–3 because such designation was not made in good faith. He unconvincingly attempts to bolster this conclusory assertion by arguing for “[t]he inference that one of Lilly’s motivations for over-designation of documents as confidential under CMO–3 was to avoid civil and criminal liability.” His argument is in any event misguided, since the question whether Eli Lilly designated its produced documents in good faith is distinct from the question whether those subject to the protective order were free to ignore it. If Egilman or Gottstein believed that particular documents were improperly designated as confidential, then the proper procedure was for either of them to avail himself of the procedure envisioned by CMO–3 for declassifying such

documents. What Gottstein was not entitled to do was to aid and abet Egilman’s violation of the protective order on the ground that that order had been improperly entered. *See In re Criminal Contempt Proceedings*, 329 F.3d 131, 138 (2d Cir.2003) (observing that “it is well settled that persons subject to an injunctive order ... are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order”) (internal quotation marks omitted).

V. The motions for judicial notice and to strike are denied

Gottstein moves for us to take judicial notice of materials not presented below. Eli Lilly moves in response to strike those portions of Gottstein’s brief referencing extra-record materials. We decline to take judicial notice of those materials and so deny Gottstein’s motion for judicial notice and also deny Eli Lilly’s motion to strike on the ground of mootness. In light of our foregoing discussion, however, it should be clear that our granting Gottstein’s *197 motion would not change our analysis; nor would it affect the result we reach.

CONCLUSION

For the foregoing reasons, Gottstein’s motion for judicial notice is DENIED, Eli Lilly’s motion to strike is DENIED as moot and the judgment of the district court is AFFIRMED.

All Citations

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Footnotes

- * Circuit Judge Richard D. Cudahy of the United States Court of Appeals for the Seventh Circuit, sitting by designation.
- ¹ Egilman first attempted to make significant modifications to the Endorsement of Protective Order, but the retaining firm quickly insisted that that was out of the question. They allowed, though, that he could follow the agreement not to disclose confidential materials with the written-in line “unless this conflicts with any other sworn statements.” This modification, while portending the later mass disclosure of confidential material, is not relevant to the present appeal.
- ² It is clear that Egilman violated the protective order by failing to inform Eli Lilly of the second subpoena, which required an earlier production date. *See In re Zyprexa Injunction*, 474 F.Supp.2d at 395. Egilman would also appear to have contravened CMO–3 by failing to provide Eli Lilly with a reasonable opportunity to object to production with respect to

the first subpoena.

- 3 As he testified, Gottstein understood Egilman's reluctance to send him a copy of the order as an effort to avoid his later being charged with knowledge of its contents. Gottstein did not try to convince Egilman to provide him with a copy of CMO-3.
- 4 See, e.g., *U.S. Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 76, 108 S.Ct. 2268, 101 L.Ed.2d 69 (1988) (holding that "the subpoena power of a court cannot be more extensive than its jurisdiction"); *Houston Bus. Journal, Inc. v. Office of Comptroller of Currency*, 86 F.3d 1208, 1213 (D.C.Cir.1996) ("In general, a state-court litigant seeking to compel a non-party to produce documents must use the state court's subpoena power or, if the nonparty is beyond the jurisdiction of such court, use whatever procedures another state may provide."); *Jaynes v. Jaynes*, 496 F.2d 9, 10 (2d Cir.1974); *John Deere Co. v. Cone*, 239 S.C. 597, 124 S.E.2d 50, 53 (1962) (observing that a subpoena directed to an out-of-state entity is "ineffectual" because "the courts of this state are without jurisdiction over persons or property outside of its territory"); Rhonda Wasserman, *The Subpoena Power: Pennoyer's Last Vestige*, 74 MINN. L.REV. 37, 67 n. 135 (1989) ("As a general rule, subpoenas *duces tecum*, like subpoenas *ad testificandum*, have been restricted to the territory of the state."). Cf. ALASKA STAT. § 12.50.010 (2010) (establishing procedures for recognition and enforcement of subpoenas issued by non-Alaska courts in criminal matters). This principle is enshrined in the Federal Rules of Civil Procedure. See Fed.R.Civ.P. 45(a)(2), 45(b)(2), 45(c)(3)(A)(ii), 45(e).

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ZYPREXA LITIGATION, et al.
-----X

In re INJUNCTION
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I. Introduction

This case raises intriguing questions of when it is appropriate to conduct aspects of civil litigation in secrecy, and of what are appropriate limits on civil disobedience by newspaper reporters, forensic experts, and attorneys.

Over the past two and a half years, some thirty thousand related personal injury suits have been before this court as part of a large multidistrict litigation, and in state courts. People suffering from schizophrenia were prescribed the anti-psychotic drug Zyprexa distributed by

defendant, Eli Lilly & Company (“Lilly”). Plaintiffs allege that as a result of inadequate warnings by Lilly they became obese and suffered from diabetes.

The court ordered internal documents of Lilly sealed on consent of the parties so that discovery could be expedited and the individual cases promptly settled or otherwise disposed of on their merits. *See In re Zyprexa Prods. Liab. Litig.*, No. 04-MD-1596, 2004 WL 3520247 (E.D.N.Y. Aug. 9, 2004) (“Case Management Order No. 3” or “CMO-3”) (hereinafter “protective order”); *see also* Fed. R. Civ. P. 26(c)(7) (“the court . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way”); *S.E.C. v. TheStreet.com*, 273 F.3d 222, 229 (2d Cir. 2001) (“protective orders issued under Rule 26(c) serve the vital function of securing the just, speedy, and inexpensive determination of civil disputes by encouraging full disclosure of all evidence that might conceivably be relevant”) (quotation omitted); Parts III.B and IV.A, *infra*.

Almost all of the cases have now been settled. Millions of documents obtained from Lilly by the court-appointed Plaintiffs’ Steering Committees I and II (“PSC”) have been made available to all plaintiffs’ attorneys in pending federal and state cases. *See In re Zyprexa Prods. Liab. Litig.*, No. 04-MD-1596, 2006 WL 3495667, *3 (E.D.N.Y. Dec. 5, 2006) (“All materials obtained by PSC I and PSC II in pretrial discovery have been ordered to be made available to all plaintiffs, state and federal.”). A large number of documents supplied by Lilly are subject to CMO-3; they are stamped, “Confidential - Subject to Protective Order.” Other documents supplied by plaintiffs’ counsel involving medical records of individual plaintiffs have been

sealed.

A New York Times reporter, Alex Berenson, was aware of the protective order. He discussed with a plaintiffs' expert, Dr. David Egilman, means of escaping the order's restrictions and obtaining protected documents in the expert's possession, *see* Part II.D, *infra*, — even though Egilman had agreed in writing to be bound by the order. *See* Part II.C, *infra*.

Both Berenson and Egilman were cognizant of the fact that paragraph 14 of CMO-3 took account of the possibility that the protected documents could be subpoenaed by courts or executive agencies. So Berenson provided Egilman with the name of an Alaska attorney, James Gottstein, unconnected to the instant litigation, who might be willing to employ a pretense to subpoena the documents and help disseminate them in violation of the protective order. *See* Part II.D, *infra*.

To carry out the scheme for obtaining and disseminating the protected documents, Gottstein intervened in a state case in Alaska wholly unrelated to Zyprexa. In that case, he then subpoenaed from Egilman confidential documents he knew to be under the protective order which bore no relevance to the Alaska litigation. The subpoenaed documents were sent by Egilman to Gottstein pursuant to an expedited amended subpoena about which Lilly was deliberately kept in the dark so that it would be unable to make a timely objection. *See* Part II.E, *infra*. Gottstein immediately sent the confidential documents on to Berenson and others. *See* Parts II.E and II.H.1, *infra*.

None of the three conspirators, Berenson, Egilman, and Gottstein, sought a lifting or modification of the protective order, despite the declassification procedures provided for in paragraph 9 of CMO-3. *See In re Zyprexa*, No. 04-MD-1596, 2004 WL at *5.

Intending that they be published extensively, Gottstein distributed the sealed documents to various organizations and individuals. No distribution to newspapers other than the New York Times was made because of Berenson's explicit warning to his co-conspirators that if the Times was not given "an exclusive" on the story, it would not publish anything at all about the documents. *See Part II.H.1, infra.*

Almost at once, the New York Times published excerpts from, and summaries of, the protected documents in a series of lead articles under Berenson's byline. *See, e.g.,* Alex Berenson, *Eli Lilly Said to Play Down Risk of Top Pill*, N.Y. Times, Dec. 17, 2006, at A1; Alex Berenson, *Drug Files Show Maker Promoted Unapproved Use*, N.Y. Times, Dec. 18, 2006, at A1; Alex Berenson, *Disparity Emerges in Lilly Data on Schizophrenia Drug*, N.Y. Times, Dec. 21, 2006, at A1; *see also* Part II.J, *infra.*

Upon being informed of the breach, the court ordered Gottstein to retrieve the documents and return them to the court-appointed Special Master for Discovery. *See In re Zyprexa Prods. Liab. Litig.*, No. 04-MD-1596, 2006 WL 3877528 (E.D.N.Y. Dec. 19, 2006). *See* Parts II.I and II.K.2, *infra.*

Learning that some of the individuals to whom the conspirators had sent the documents had refused to return them and were attempting widespread dissemination, the court issued a preliminary injunction. It enjoined individuals and organizations who had received the documents from Gottstein — except for Berenson; Snighda Prakash of National Public Radio; and congressional staffers Steve Cha and Amelia Desanto (none of whom had been included by Lilly among those from whom it sought return) — from further disseminating them.

The injunction also ordered specified websites not to publish the documents. *See In re*

Zyprexa Prods. Liab. Litig., No. 04-MD-1596, 2007 WL 27117 (E.D.N.Y. Jan. 4, 2007); Parts II.K.5 and II.K.6, *infra*. The documents may possibly be available on other websites. Their gist can be obtained from stories in the press. *See, e.g.*, Alex Berenson, *Eli Lilly Said to Play Down Risk of Top Pill*, N.Y. Times, Dec. 17, 2006, at A1; Alex Berenson, *Drug Files Show Maker Promoted Unapproved Use*, N.Y. Times, Dec. 18, 2006, at A1; Editorial, *Playing Down the Risks of a Drug*, N.Y. Times, Dec. 19, 2006; Julie Creswell, *Court Orders Lawyer to Return Documents About an Eli Lilly Drug*, N.Y. Times, Dec. 20, 2006; Alex Berenson, *Disparity Emerges in Lilly Data on Schizophrenia Drug*, N.Y. Times, Dec. 21, 2006, at A1.

A final injunction is now being issued against two of the conspirators — Egilman and Gottstein — and others who have not returned the documents they obtained from Gottstein; some of these individuals are mentioned in the court’s prior orders. *See* Parts IV.D and IV.H, *infra*.

No newspaper or website is directed to do anything or to refrain from doing anything. *See* Parts IV.F, IV.H.4, and IV.H.7, *infra*. No person is enjoined from expressing an opinion or speaking or writing about the documents. *See* Part VII, *infra*.

A perplexing issue is presented by Lilly’s request for an injunction against websites to which the conspirators sent the documents or which might have been used for further dissemination by those to whom the documents were originally sent. *See* Part IV.F, *infra*. The internet, with its almost infinitely complex worldwide web of strands and nodes, is a major modern tool of free speech and freedom both here and abroad. Its reach extends as far as, and perhaps exceeds, that of newspapers and other traditional media. The law is rightly hesitant about allowing government — including the courts — to inhibit and restrict the use of such

modern instruments of communication. See U.S. Const. amend. I. Cf. Jeffrey S. Klein and Nicholas J. Pappas, *When a Private Sector Employer Fires Worker for Blogging*, N.Y. L.J., Feb. 5, 2007, at 3 (pointing out that with over 60 million blogs in existence — a blog being a type of online diary posted to a website — whistleblowing via the internet, on and off business and government premises, is becoming increasingly common).

Irresponsible people may exercise their own right and opportunity to speak in a manner abusive and constrictive of the rights of others on the internet, in the press, and in other fora. Those whose rights have been abused by the conspirators in violation of the court's protective order include Lilly and tens of thousands of plaintiffs and their attorneys who depended upon CMO-3 and sealing orders of the court to effectively prosecute this important litigation without unnecessary breach of the parties' privacy. It is significant that both the PSC and Lilly support the issuance of the injunction now being issued.

Problems with restrictions by authorities on dissemination of knowledge are not new. They trace back to the Garden of Eden and Socrates' Athens. Most recently they were manifested when people physically disrupted a meeting at Columbia University, preventing speakers from exercising an opportunity to convey their views in an academic setting on a controversial matter. Columbia's President, Lee C. Bollinger, himself a student of free speech, remarked:

[T]he disruption of that event constituted a serious breach of faith against an academic community built on the freedom to think, speak, debate, and disagree. . . . [E]very idea poses a risk of action, for good or bad. But what is hard to learn and hard to live by is the single idea that words are the better way in which to work through conflict and danger. This is certainly true for universities, but also for healthy, free societies. . . .

See Paul Hond, *Fighting Words*, Columbia, Winter 2006-07, p. 13, 16 (sidebar). Notably, in the Columbia University case, the disrupters were sought out for discipline to prevent future assaults on the freedoms of others. *Id.*

Orders for sealing of documents are designed to permit litigants and the courts to examine a party's internal records, which may include embarrassing personal medical information, or valuable business secrets and commercial data, without unnecessarily exposing them to the public's and competitors' view. See Fed. R. Civ. P. 26(c)(7); Parts III.B and IV.A, *infra*. Cf. *Nat'l Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 462 (1958) (holding compelled disclosure of organization's membership list unconstitutional given "inviolability of privacy in group association").

Such protective orders take account of the public's interest in seeing the documents. After balancing the public's right to know and the parties' privacy rights, should the documents sealed by an order such as CMO-3 be found not to warrant continued protection, the order can be modified. See, e.g., *In re Agent Orange Prod. Liab. Litig.*, 104 F.R.D. 559, 572 (E.D.N.Y. 1985) (declassifying documents upon a showing "that the need for disclosure outweighs the need for further protection"), *aff'd* 821 F.2d 139 (2d Cir. 1987). On motion of a party — or of a non-party — who can demonstrate a need to know, sealed documents may be unsealed pursuant to general policy and the terms of the protective order itself. See CMO-3 at ¶¶ 9, 16; Part IV.A, *infra*; see also *In re Agent Orange Prod. Liab. Litig.*, 821 F.2d 139, 145 (2d Cir. 1987) ("It is undisputed that a district court retains the power to modify or lift protective orders that it has entered."); Monograph, *Individual Justice in Mass Tort Litigation*, 66-72 (1995); Aaron Twerski, et al., *Secrecy and the Civil Justice System*, 9 J. of L. & Pol'y, 51, 51-107 (2000);

Note, *Secrecy in Civil Trials: Some Tentative Views*, 9 J. of L. & Pol’y, 53 (2000); Catherine Wimberly et al., *Secrecy in Law and Science*, 23 Cardozo L. Rev. 1 (2001).

Conspirators in the instant case who deliberately thwarted a federal court’s power to effectively conduct civil litigation under the rule of law, as well as those in concert with them, should be enjoined to deter further violations of this and other courts’ orders. See Part IV.D, *infra*. In a democracy it is important to craft any injunction as narrowly as possible so that in protecting essential court processes free speech is not unnecessarily restricted. See Parts IV.E-F, *infra*; Cf., e.g., Ronald L. Goldfarb, *The Contempt Power*, 3 (1963) (“The summary and comparatively unlimited exercise of the [contempt] power compounds the danger to individual freedom which its mere existence implies.”). *But cf. id.* at 89 (finding a “sound reason” to use contempt power to prevent dissemination by the media of evidence which will be used at trial because of adverse impact on the right to a fair trial).

Here, an expert hired by plaintiffs agreed in writing not to distribute documents sealed by court order. See Part II.C, *infra*. He was given access to those documents so that he could assist plaintiffs — people suffering from serious disabilities, mental and physical — in pressing their civil suit against defendant, a major pharmaceutical company. The litigation resulted in an enormous cache of documents made available, subject to CMO-3, to plaintiffs and courts — state and federal — across the country. Tens of thousands of cases have been settled based on these documents with the assistance of all the states and the federal government. See *In re Zyprexa Prods. Liab. Litig.*, No. 04-MD-1596, 2006 WL 3501263, at *1 (E.D.N.Y. Dec. 4, 2006) (“In compliance with this court’s instructions . . . all fifty states as well as the federal government have resolved their Medicare and Medicaid liens.”); *In re Zyprexa Prods. Liab.*

Litig., 451 F. Supp. 2d 458 (E.D.N.Y. 2006) (Memorandum Order & Judgment Regarding Liens and Disbursement Procedures).

Egilman, in violation of his legal obligations, and in conspiracy with a reporter, Berenson, and an attorney unconnected to the litigation, Gottstein, deliberately violated this court's protective order and published sealed documents, intending that they be widely distributed. *See* Part II.D, *infra*. Conspirators Egilman and Gottstein took particular pains to deny Lilly an opportunity to prevent the breach; they made the documents public before Lilly could move to preclude their release, after they had in effect assured Lilly that it had time to protect itself in court before any release would occur. Egilman, in violation of his obligations under CMO-3, did not inform Lilly about a second subpoena procured by Gottstein that contained an accelerated production date.

It is not necessary now to decide whether in the long run the public was better served by this conspiracy to flout CMO-3 than by seeking direct and open revelation through amendment of the court's protective order. Even if one believes, as apparently did the conspirators, that their ends justified their means, courts may not ignore such illegal conduct without dangerously attenuating their power to conduct necessary litigation effectively on behalf of all the people. Such unprincipled revelation of sealed documents seriously compromises the ability of litigants to speak and reveal information candidly to each other; these illegalities impede private and peaceful resolution of disputes.

This is not a case of a government employee, whistleblower, protestor, or juror who faces the difficult choice of "conform[ing his] behavior to the official 'law' while protesting that the law was 'wrong' . . . or . . . conform[ing] to [his] interpretation" of the law, absorbing

whatever legal sanctions are a consequence of the choice. Robert M. Cover, *The Supreme Court, 1982 Term, Foreword: Nomos and Narrative*, 97 Harv. L. Rev. 4, 47 (1983); see also, e.g., Mark Juergensmeyer, *Gandhi vs. Terrorism*, *Daedalus*, 30 (Winter 2007); Note, *Considering Jury "Nullification": When May and Should a Jury Reject the Law to Do Justice*, 30 Am. Crim. L. Rev. 239, 254 (1993) ("There is . . . a deep and profound sense of many Americans that they have the duty to revolt in large and small ways. This is our ultimate protection against tyranny and injustice. Nullification is one of the peaceful barricades of freedom."). For here, the "law," i.e. the protective order, contained an explicit means of escape for those who believed they had a reasonable justification for not complying; the court reserved the power to modify and declassify sealed documents in the public interest. See CMO-3 at ¶¶ 9, 16. In any event, the whistleblower or concerned citizen "defense" should be raised during possible contempt, rather than injunction, stages of this proceeding.

Nor is this a case of a newspaper obtaining, with clean hands, documents provided to it by government employees, whistleblowers, or protestors. See *Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97, 103 (1979) ("[I]f a newspaper *lawfully obtains* truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need . . . of the highest order.") (emphasis supplied). It is unlike *New York Times Co. v. United States*, 403 U.S. 713 (1971) (hereinafter "*Pentagon Papers*"). In the *Pentagon Papers* case, there was no suggestion that the documents were purloined at the New York Times' or Washington Post's instigation. Here, a reporter was deeply involved in the effort to illegally obtain the documents. See Part II.D, *infra*. Affirmatively inducing the stealing of documents is treated differently from passively accepting stolen documents of public

importance for dissemination. See III.D.3, *infra*. But see *Bartnicki v. Vopper*, 532 U.S. 514, 528-29 (2001) (noting that the issue has been left open). The New York Times itself appears to recognize the distinction. See The New York Times, *Ethical Journalism: A Handbook of Values and Practices for the News and Editorial Departments*, 9 (Sept. 2004) (“Staff members must obey the law in pursuit of news. They may not break into buildings, homes, apartments, or offices. They may not purloin data, documents or other property, including such electronic property as databases and e-mail or voice mail messages. They may not tap telephones, invade computer files or otherwise eavesdrop electronically on news sources. In short, they may not commit illegal acts of any sort.”). But see Parts II.D. and II.K.7(b), *infra* (noting Berenson’s and the Times’ position in the instant case).

In the United States the media is, in effect, the fourth branch of government. It enables the people to knowledgeably exercise their sovereignty. But neither members of the media, nor of any other branch of our government, are authorized to violate court orders. See *Dietemann v. Time, Inc.*, 449 F.2d 245, 249 (9th Cir. 1971) (“The First Amendment has never been construed to accord newsmen immunity from torts or crimes committed during the course of newsgathering.”). Cf. *Pentagon Papers*, 403 U.S. at 733 (White, J. concurring) (“Prior restraints require an unusually heavy justification under the First Amendment; but failure by the Government to justify prior restraints does not measure its constitutional entitlement to a conviction for criminal publication.”).

At this point in the litigation there is no need to measure the actions of the conspirators against the ethics rules for journalists, forensic experts, or lawyers. Holmes’ punitive view of the law prevails when a specific order of the court is deliberately flouted. See, e.g., John C.

Goldberg & Benjamin C. Zipursky, *Seeing Tort Law from the Internal Point of View: Holmes and Hart on Legal Duties*, 75 Ford. L. Rev. 1563 (2006) (discussing “morality,” Holmes’ “bad man” rule, and Hart’s “internalization” view). It is enough to find that three individuals — Berenson, Egilman, and Gottstein — conspired to obtain and publish documents in knowing violation of a court order not to do so, and that they executed the conspiracy using other people as their agents in crime. *See* Parts II.D–II.H, *infra*.

The injunction requires the return of the protected documents. *See* Parts IV.B and VIII, *infra*. It is limited to individuals who participated in the conspiracy or aided the conspirators. *See* Parts II.D–II.F, II.H, and VIII, *supra*. No one is restricted from discussion of documents already revealed.

To extend the reach of the injunction further might involve the court in attempting to control a constantly expanding universe of those who might have, or will have, access by reason of the original breach. That such an amplified injunction could be enforced effectively is doubtful. Even if enforcement were possible, on policy grounds the risk of unlimited inhibitions on free speech should be avoided when practicable. *See People of N.Y. v. Operation Rescue Nat’l*, 80 F.3d 64, 70 (2d Cir. 1996) (“in exercising its equitable powers, a court ‘cannot lawfully enjoin the world at large’”) (*quoting* Judge Learned Hand in *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 832 (2d Cir. 1930)).

II. Facts

A. The Litigation

Litigation against Eli Lilly & Co. for injuries allegedly caused by the use of the anti-psychotic drug Zyprexa was initiated in this court in March 2004. *See Benjamin v. Eli Lilly &*

Co., Docket No. 04-CV-00893. Many thousands of other cases were then transferred to this court from federal district courts throughout the United States pursuant to an order of the Judicial Panel on Multidistrict Litigation. *See* Letter from Multidistrict Litigation Panel to Clerk of the Eastern District of New York, No. 04-MD-1596 (Apr. 14, 2004). In addition, there are pending in state courts a considerable number of related cases. *See In re Zyprexa Prods. Liab. Litig.*, No. 04-MD-1596, 2007 WL 160923 (E.D.N.Y. Jan. 18, 2007) (“Memorandum on Cooperation Between Federal and State Judges”).

B. Protective Order, Case Management Order No. 3

To facilitate prompt discovery in these cases, a protective order agreed to and submitted by the parties was issued in August 2004 pursuant to Rule 26(c) of the Federal Rules of Civil Procedure. *See In re Zyprexa Prods. Liab. Litig.*, No. 04-MD-1596, 2004 WL 3520247, *1 (E.D.N.Y. Aug. 9, 2004) (stating purposes of protective order are “[t]o expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality, adequately protect confidential material, and ensure that protection is afforded only to material so entitled . . .”). Preventing disclosures of documents served the added purpose of protecting a vulnerable plaintiff patient population and avoiding prejudice of potential jurors in any jury trial. *See* Tr. of Hr’g on Application to Issue CMO-3 (July 2, 2004) (magistrate judge Chrein: “material that might be misunderstood by the lay reader . . . might do some harm or prejudice a case that is still pending”). CMO-3 was signed by both the district judge and magistrate judge.

The protective order permits parties to designate as “confidential” materials produced in discovery that the producing party believes in good faith are properly protected under Rule 26(c)(7) of the Federal Rules of Civil Procedure. CMO-3 at ¶ 3. All confidential documents

are required to be stamped, “Zyprexa MDL 1596: Confidential-Subject to Protective Order.” *Id.* at ¶ 4(b). Once a document is so marked, it “shall be used by the receiving party solely for the prosecution or defense of this Litigation, to the extent reasonably necessary to accomplish the purpose for which disclosure is made.” *Id.* at ¶ 2.

Except with the prior written consent of the producing party, or in circumstances described in paragraphs 6 and 14 of CMO-3, “no [c]onfidential [d]iscovery [m]aterials, or any portion thereof, may be disclosed to any person.” *Id.* at ¶ 5. Parties are permitted to share confidential materials with “outside consultants or outside experts retained for the purpose of assisting counsel in the Litigation.” *Id.* at ¶ 6(i). An expert to whom disclosure is made must “sign, prior to such disclosure, a copy of the Endorsement of Protective Order, attached as Exhibit A” to CMO-3. *Id.* at ¶ 6(m).

Should a court or administrative agency subpoena the confidential discovery materials, CMO-3 provides a specific procedure for the subpoenaed person to follow:

[T]he person to whom the subpoena . . . is directed shall promptly notify the designating party in writing of all of the following: (1) the discovery materials that are requested for production in the subpoena; (2) the date on which compliance with the subpoena is requested; (3) the location at which compliance with the subpoena is requested; (4) the identity of the party serving the subpoena; and (5) the case name, jurisdiction and index . . . number or other designation identifying the litigation . . . in which the subpoena . . . has been issued. *In no event shall confidential documents be produced prior to the receipt of written notice by the designating party and a reasonable opportunity to object.* Furthermore, the person receiving the subpoena or other process shall cooperate with the producing party in any proceeding relating thereto.

CMO-3 at ¶ 14 (emphasis supplied).

Paragraph 6 of CMO-3 describes thirteen situations, apart from the issuance of a subpoena, where confidential documents may be disclosed to listed persons. When the person

receiving the confidential materials is a customer or competitor of the producing party, “the party wishing to make such disclosure shall give at least three (3) business days advance notice in writing to the counsel who designated such discovery materials as Confidential.” *Id.* at ¶ 6.

The terms “customer” and “competitor” are defined by the order. *Id.*

The designation of particular discovery material as confidential does not require that it permanently remain subject to the protections of CMO-3. Rather, any party or aggrieved entity (even if not a party) can petition the court for declassification of confidential discovery materials at any time.

If at any time a party (or aggrieved entity permitted by the Court to intervene for such purpose) wishes for any reason to dispute a designation of discovery materials as Confidential made hereunder, such person shall notify the designating party of such dispute in writing, specifying by exact Bates number(s) the discovery materials in dispute. The designating party shall respond within 20 days of receiving this notification.

If the parties are unable to amicably resolve the dispute, the proponent of confidentiality may apply by motion to the Court for a ruling that discovery materials stamped as Confidential are entitled to such status and protection under Rule 26 of the Federal Rules of Civil Procedure and this Order, provided that such motion is made within forty five (45) days from the date the challenger of the confidential designation challenges the designation or such other time period as the parties may agree. The designating party shall have the burden of proof on such motion to establish the propriety of its Confidential designation.

If the time for filing a motion . . . has expired without the filing of any such motion, or ten (10) business days (or such longer time as ordered by this Court) have elapsed after the appeal period for an order of this Court that the discovery material shall not be entitled to Confidential status, the Confidential Discovery Material shall lose its designation.

CMO-3 at ¶ 9(b)-9(d).

A petition for wholesale modification of the protective order is expressly permitted:

“Nothing in this Order shall prevent any party or other person from seeking modification of this Order or from objecting to discovery that it believes to be otherwise improper.” *Id.* at ¶ 16.

C. Agreement by Egilman to be Bound by Protective Order

In August of 2006, The Lanier Law Firm (“Lanier”), representing plaintiffs in this litigation, began consulting with Dr. David Egilman, M.D., M.P.H. *Aff. of Richard D. Meadow* at ¶ 3 (January 2, 2007) (“Meadow Aff.”). Lanier decided in October of 2006 that Egilman’s active involvement would assist plaintiffs. Before granting Egilman electronic access to the document depository maintained by the PSC, the firm asked him to sign the “Endorsement of Protective Order” attached to CMO-3. *Id.* at ¶¶ 4-5.

On November 10, 2006, Egilman signed the protective order after making numerous deletions and edits to its text. The following line had been crossed out by him: “I also understand that my execution of this Endorsement of Protective Order, indicating my agreement to be bound by the Order, is a prerequisite to my review of any information or documents designated as Confidential pursuant to the Order.” After the sentence reading “I further agree that I shall not disclose to others, except in accord with the Order, any Confidential Discovery Materials, in any form whatsoever, and that such Confidential Discovery Materials and the information contained therein may be used only for the purposes authorized by the Order,” he added the words “unless release is needed to protect public health.” *Tr. of Hr’g on Preliminary Injunction* at 203 (January 16-17, 2007) (“Tr.”).

Lanier immediately informed Egilman that his amendments to the executed protective order were unacceptable, and that he was required to sign an unamended copy of the order if he wished to gain access to the confidential discovery documents. *Id.* at 205; *Meadow Aff.* at ¶ 6.

On November 14, 2006 Egilman signed a fresh Endorsement of Protective Order. The order was unedited except for the addition of a clause after the line beginning “I further agree that I shall not disclose to others . . .,” reading “unless this conflicts with any other sworn statements.” When questioned by Richard Meadow of the Lanier Law Firm about why the addition of this clause was made,

Dr. Egilman explained that if he were to be subpoenaed by the FDA or Congress, he wanted to ensure that the Protective Order would not preclude providing testimony concerning Zyprexa. Since that explanation did not conflict with my [Meadow’s] understanding of the purposes behind the Protective Order, nor did it conflict with my understanding that the Protective Order would not — in any event — have precluded such testimony by Dr. Egilman, and because Dr. Egilman assured me that he understood the Protective Order, [the Lanier Law Firm] accepted this Protective Order [signed by Egilman].

Id. at ¶ 7; *see also* Tr. at 208, 221-22. Lanier did not inform Lilly about the addition Egilman made. *Id.* at 207.

After he executed the Endorsement of Protective Order, Egilman was given access to the PSC-maintained database of materials produced in discovery. The confidential materials maintained in that database were stamped, as already noted, “Zyprexa MDL 1596: Confidential-Subject to Protective Order.” *See* CMO-3 at ¶ 4(b).

D. Conspiracy of Berenson, Egilman, and Gottstein

About the time that Egilman was retained as a plaintiffs’ expert in the Zyprexa litigation, he began discussing Zyprexa with New York Times reporter Alex Berenson. Berenson wanted to review the confidential Zyprexa documents, which he knew were subject to this court’s protective order. The two conferred about the possibility of obtaining the protected documents by subpoena.

Neither Berenson nor Egilman were aware of any pending case where the Zyprexa documents were likely to be subpoenaed. To circumvent this barrier, Berenson suggested that Egilman contact James Gottstein, an attorney in Alaska who heads the Law Project for Psychiatric Rights (“PsychRights”). Tr. at 94-97. Gottstein had spoken to Berenson in the past about drug-related news items. *Id.* at 95. Based on these conversations, Berenson believed that Gottstein would be a willing ally in an attempt to avoid the court’s protective order by finding a case which could be used as a pretense for subpoenaing the protected documents. *Id.* at 96 (Gottstein: “[Berenson] said that Dr. Egilman had some documents that he wanted to get to the New York Times and that [Berenson] had, you know, thought that I might be someone who would subpoena them.”). *But cf.* Tom Zeller, Jr., *Documents Borne by Winds of Free Speech*, N.Y. Times, Jan. 15, 2007 (“[Gottstein] somehow got wind (and precisely how is the subject of separate legal jujitsu) that Dr. Egilman had some interesting documents Mr. Gottstein was also apparently in a sharing mood, which is how hundreds of pages ended up with a Times reporter, Alex Berenson.”).

On November 28, 2006, Egilman called Gottstein. *See* Tr. at 23. After telling Gottstein that Berenson had suggested that Egilman contact him, Egilman indicated that he had access to confidential Lilly documents pertaining to Zyprexa, and was in possession of those documents subject to a protective order that precluded him from disseminating them.

Q: [Y]our understanding based on your conversation with Dr. [Egilman] was that he called you so that you could assist him in disseminating the documents that were subject to a protective order, right?

. . . .

[Mr. Gottstein]: I think that is probably correct.

Id. at 24-26.

E. Subpoenas Issued by Gottstein

Egilman informed Gottstein that under the terms of the protective order the documents could be produced pursuant to a subpoena if certain procedures were followed including notifying Lilly. *Id.* at 24-30, 73-74 (Gottstein: “[Egilman] suggested that I subpoena [the documents] . . . I think because he thought they should become public.”). Gottstein asked Egilman to send him a copy of the protective order, but according to Gottstein, “[Egilman] said I didn’t want it and I didn’t push it . . . My kind of sense of [Egilman’s reasoning] was that if I didn’t have it, then I wouldn’t be charged with the knowledge of it.” *Id.* at 27-28.

Gottstein was not involved in any litigation in which it would have been appropriate to subpoena the Zyprexa documents. *Id.* at 31-32, 76. He told Egilman, however, that he would try to find a case in which it would be possible to justify a subpoena directed to Dr. Egilman. On December 5, 2006, Gottstein filed intervention papers in a proceeding where the public guardian, the Alaska Office of Public Advocacy, had been granted guardianship over an individual, including the power to approve administration of psychotropic medications; the administration of Zyprexa was not at issue. *Id.* at 33.

Pursuant to Gottstein’s request, the Alaska superior court ministerially and *ex parte* issued a deposition subpoena in the guardianship proceeding on December 6, 2006 to Egilman requiring him to participate in a telephonic deposition on December 20, 2006 and “bring with him” all documents in his possession relating to fifteen drugs, including Zyprexa. *Id.* at 34-35. Egilman faxed a copy of this subpoena to Lilly’s General Counsel on December 6, 2006. He did not notify the Lanier Law Firm, which had retained him as an expert, about the subpoena.

On December 11, 2006, Gottstein — *ex parte* and without notice to Lilly — procured an “amended subpoena” that required Dr. Egilman to deliver the documents to Mr. Gottstein “*prior to*” his deposition on December 20, 2006. Gottstein emailed a copy of the second subpoena to Dr. Egilman, asking him to “please deliver the subpoena’d [sic] materials to me as soon as you can.”

Neither Egilman nor Gottstein informed Lilly, or Lanier, about the second subpoena or the revised earlier production date.

Q: [Y]ou had told Dr. [Egilman] repeatedly that he should send the second subpoena to Lilly, correct?

[Mr. Gottstein]: Yes.

Q: And you knew he planned not to send it to Lilly, correct?

[Mr. Gottstein]: Yeah, I think — he told me he didn’t see that it made any difference.

Q: And you decided that it was not important for you to send the subpoena to Lilly either, correct?

[Mr. Gottstein]: My . . . position is that it was his responsibility under the CMO and not mine.

Id. at 43-44.

The excuse offered to justify the issuance of the second “forthwith” subpoena — that Gottstein needed to study the documents before the telephonic appearance of Egilman took place — was a subterfuge. Tr. at 47-48. Gottstein and Egilman deliberately misled Lilly and violated the terms of CMO-3 by not informing Lilly about the second subpoena. Gottstein attempted to justify his pretense as follows:

Q: You moved the date of the production of documents up, correct?

[Gottstein]: Well, I mean, what it said was — it's like I put in the E-mail, it didn't make any sense for him to bring the documents with him in Attelboro, Massachusetts for me to try to examine them in Anchorage, Alaska. So I had an amended one that said to give it to me prior to the deposition and [to] give it to me as soon as he could so I would have a chance to review them before the deposition.

....

Q: When you issued the subpoena . . . you . . . said you needed the subpoena . . . so that you could review the documents in advance of [Egilman's] deposition, correct?

[Gottstein]: Yes.

Q: And instead of reviewing the documents you start making copies of them as soon as you received them, correct?

[Gottstein]: Yes.

Q: And you proceeded to make copies for the next two days and send them out to the people on your and [Egilman's] list, correct?

[Gottstein]: I made two batches.

....

Q: This is the question I want to make clear. You were so busy [making] copies of these documents that you never got to review them, did you?

[Gottstein]: I looked at some of them. The deposition was quite — a few days off which is, I think, your complaint. So I would pull up some of them and look at them and I — and it wasn't that I was so busy making copies. I had my laptop burning DVDs and my main computer burning DVDs, another laptop

Id. at 42-43, 47-48.

F. Response to the Subpoenas

On December 13, 2006, Lilly contacted the Lanier Law Firm to discuss the first subpoena issued to Dr. Egilman, the only subpoena about which Lilly had been informed. Upon

ascertaining that Lilly intended to file a motion to quash that subpoena in the Alaska Superior Court, Richard Meadow of the Lanier Firm spoke to Egilman and instructed him “not to do anything” in response to the subpoena until Lilly had a chance to address the Alaska court. Egilman agreed, *see* Meadow Aff. at ¶ 9, although he had already begun the transfer to Gottstein. *See* Part II.E, *supra*.

The next day, December 14, 2006, Lilly sent a letter to Egilman and Gottstein, asking “Dr. Egilman to refrain from producing [the confidential documents] and Mr. Gottstein to refrain from further seeking production of the materials unless and until the Superior Court [of Alaska] rules that production is required.” Egilman, as a signatory to the protective order, was further asked to confirm to Lilly that he would refrain from producing the materials.

Unbeknownst to Lilly or Lanier, Egilman had already begun transferring the documents to Gottstein on December 12, 2006, supposedly pursuant to the second subpoena, immediately after that subpoena was issued. In response to Lilly’s letter of December 14th, Egilman wrote to Lilly’s counsel that he had already produced the confidential documents that were subject to the subpoena. Egilman stated his view that he had given Lilly a “reasonable opportunity to respond” to the subpoena as required by CMO-3, and was therefore not in violation of his obligations when he produced the documents six days (out of which three were business days) after he had received the first subpoena. He did not address the question of why he never notified Lilly about the second subpoena with its revised production date.

On December 15, 2006, after learning that Egilman had produced the documents to Gottstein pursuant to a second subpoena about which Lilly had never been informed, Lilly wrote to Gottstein, asking him to (1) identify the protected materials in his possession and return them

to Lilly, (2) refrain from further publishing or publicizing the protected materials, (3) request the return of the materials from anyone to whom he had sent them, and (4) identify those individuals to whom he had sent protected materials.

G. Discharge of Egilman by Lanier

As soon as Lanier learned of Egilman's disclosure of the confidential documents to Gottstein, the firm demanded that Egilman return all Zyprexa-related documents in his possession. It terminated his consultancy. *Id.* at ¶ 11; Tr. at 200.

H. Dissemination of the Documents Pursuant to Conspiracy

1. Acts of Conspirators

During their initial conversation in November 2006, Egilman told Gottstein that when he eventually received the documents — pursuant to a yet-to-be-procured subpoena issued in a yet-to-be-determined case — he should pass them along to certain individuals. That group included Berenson of the New York Times, Steve Cha from the United States House of Representatives Committee on Government Reform, United States Senate staffer Amelia Desanto, and Snighda Prakash of National Public Radio. *Id.* at 35-37.

Q: Dr. Egilman understood that once [the documents] were subpoenaed, that you were going to disseminate them to the individuals that you later certified as having disseminated them to?

[Mr. Gottstein]: Yes . . .

Q: Did he share with you anybody that he would like to have them disseminated with?

[Mr. Gottstein]: Yes.

Id. at 35-36.

As soon Egilman started electronically transferring the documents to Gottstein via

Gottstein's file transfer protocol ("FTP") server on December 12, 2006, Gottstein began sending them to individuals to whom he thought they would be of interest. He had spoken with some of these people beforehand to inform them that an arrangement to obtain and publish confidential Lilly documents was underway. *Id.* at 57 (Gottstein: "Some people knew [the documents] were coming"). That group included Berenson, Steve Cha, Vera Sharav, Will Hall, and Robert Whitaker. *Id.* at 93.

On December 12th, 13th, and 14th, Gottstein provided DVDs containing the documents to Berenson, as well as Dr. Peter Breggin, Steve Cha, Judi Chamberlin, Dr. David Cohen, Terri Gottstein, Will Hall, Dr. Grace Jackson, Dr. Stephen Kruszewski, Snigdha Prakash, Vera Sharav, Robert Whitaker, Bruce Whittington, James Winchester, and Laura Ziegler. *Id.* at 47-48.

Q: [Y]ou were anxious to get [the documents] out as quickly as you could, right?

[Mr. Gottstein]: Anxious, yes, I thought it would be good to get them out.

Q: Before the Court could enter an order telling you you shouldn't?

[Mr. Gottstein]: Well, I don't know. I mean I guess . . . I knew that Eli Lilly would want to try to stop it.

Q: Right, and you wanted to get them out as quickly as you could to make that harder?

[Mr. Gottstein]: Well, I would say yeah, I wanted to get them out [in a] way that would make it impossible to get them back.

Id. at 48-49. To simplify and hasten co-conspirator Berenson's review and use of the documents, Gottstein had provided Berenson with a password to Gottstein's personal FTP server

on which he had electronically posted the documents.

Gottstein and Berenson spoke to each other repeatedly during the week of December 12th. *Id.* at 99. Berenson urged Gottstein not to send the documents to any news or media outlets, because he wanted to ensure that the New York Times would have a “scoop” on the story. *Id.* at 82-83. He threatened that the Times would not write about the Zyprexa documents if any news organization published a story based on them before the Times printed its first article. *Id.* at 83 (Gottstein: “[Berenson] said basically that if anybody else breaks it, they are not going to run the story.”).

Because he wanted a newspaper with an outstanding national reputation such as the New York Times to publish the documents, Gottstein acceded to Berenson’s request. *Id.* at 82-83 (Gottstein: “[T]here were other news outlets that I was going to send them to. And I ended up not doing that [t]o accommodate the New York Times’s desire to break the story.”). Egilman agreed with the decision to refrain from sending the documents to any other news organizations until Berenson was able to break the story. *Id.* at 83.

2. Protectable Distributed Documents

The court has examined a sampling of the documents distributed by the conspirators. It has viewed portions of the materials returned to the Special Master for Discovery, Peter Woodin, pursuant to his and the court’s orders. Among them are a substantial number whose publication would be annoying, embarrassing, oppressive, and burdensome to Lilly; they reveal trade secrets, confidential preliminary research, development ideas, commercial information, product planning, and employee training techniques. *See also, e.g.,* Alex Berenson, *Eli Lilly Said to Play Down Risk of Top Pill*, N.Y. Times, Dec. 17, 2006, at A1; Alex Berenson, *Drug Files Show*

Maker Promoted Unapproved Use, N.Y. Times, Dec. 18, 2006, at A1; Editorial, *Playing Down the Risks of a Drug*, N.Y. Times, Dec. 19, 2006; Alex Berenson, *Disparity Emerges in Lilly Data on Schizophrenia Drug*, N.Y. Times, Dec. 21, 2006, at A1.

These documents are covered by CMO-3. They are included within the kind of documents protectable under Rule 26(c) of the Federal Rules of Civil Procedure. *See* Part IV.A, *infra*.

A small portion of the documents disseminated have been, or may be, declassified under CMO-3. Lilly has taken steps towards declassifying them. *See* Pet'r Br. at 12 n.10 ("Prior to this dispute, Lilly had de-designated following [sic] bates ranges, each of which is among those at issue here: [listing bates ranges]").

I. Attempts by Special Master Woodin to Retrieve Documents

On December 15, 2006, Lilly informed the Special Master for Discovery, Peter Woodin, that confidential documents subject to CMO-3's protection had been disseminated pursuant to a subpoena of which Lilly had never been notified. Lilly and the PSC *jointly* requested that the Special Master issue an order requiring return to him by Gottstein of the confidential documents.

After trying unsuccessfully to reach Gottstein by telephone, Special Master Woodin issued the order requested by the parties. A copy of that order was emailed to Gottstein by the Special Master. Upon receiving it, Gottstein replied that he had voluntarily ceased disseminating the documents after reading Lilly's faxed letter of December 15th. *See* Part II.F, *supra*. He objected to the *ex parte* nature of the order, and questioned both this court's jurisdiction over him and Special Master Woodin's authority to issue such an order. Gottstein informed Berenson

about the Special Master's order, but made no further efforts to comply with its terms. Tr. at 100.

J. Publication by N.Y. Times

On December 17, 2006, the New York Times began publishing front page articles under Berenson's byline about information contained in the confidential Lilly documents. See Alex Berenson, *Eli Lilly Said to Play Down Risk of Top Pill*, N.Y. Times, Dec. 17, 2006, at A1; Alex Berenson, *Drug Files Show Maker Promoted Unapproved Use*, N.Y. Times, Dec. 18, 2006, at A1; Alex Berenson, *Disparity Emerges in Lilly Data on Schizophrenia Drug*, N.Y. Times, Dec. 21, 2006, at A1; see also Editorial, *Playing Down the Risks of a Drug*, N.Y. Times, Dec. 19, 2006; Julie Creswell, *Court Orders Lawyer to Return Documents About an Eli Lilly Drug*, N.Y. Times, Dec. 20, 2006.

K. Formal Court Intervention

Since Gottstein had not complied with Special Master Woodin's order by December 18th — although Gottstein had provided a lengthy response to the order detailing some of the facts of his collaboration with Egilman and suggesting jurisdictional objections — Lilly and the PSC jointly petitioned the court for an injunction requiring Gottstein to return the documents.

1. Argument Before Magistrate Judge Mann

The parties first sought an injunction from magistrate judge Mann. At the hearing the magistrate judge made the following comment:

I think that what happened here was an intentional violation of Judge Weinstein's orders. I think it was inappropriate

I personally [as a magistrate judge, without authority to grant injunctive relief] am not in a position to order you [Gottstein] to return the documents. I can't make you return [the documents], but

I can make you wish you had because I think this is highly improper not only to have obtained the documents on short notice without Lilly being advised of the amendment but then to disseminate them publicly before it could be litigated. It certainly smacks [of] bad faith.

Tr. of Hr'g on Preliminary Injunction at 10 (Dec. 18, 2006).

2. Temporary Restraining Order by Judge Cogan

On the basis of Judge Mann's findings, the parties brought their request for an injunction on December 18th to Judge Cogan, who, as emergency judge, acted in the absence of Judge Weinstein. After hearing from Lilly, the PSC, and Gottstein through his counsel, Judge Cogan issued a temporary restraining order based upon his finding that "Mr. Gottstein has deliberately and knowingly aided and abetted Dr. David Egilman's breach of CMO-3." *See In re Zyprexa Prods. Liab. Litig.*, No. 04-MD-1596, 2006 WL 3877528, *1 (E.D.N.Y. Dec. 19, 2006). Judge Cogan declared:

I think it's clear not only that the facts are as stated in the Magistrate's report and recommendation, but I can tell from the December 17th draft letter from Mr. Gottstein that he was aware that these documents were restricted, and that he undertook procedures to help the expert[], Mr. Egilman, try to circumvent the restrictions that were on him. He deliberately aided and abetted Dr. Egilman in getting these documents released from the restriction that they were under, under the protective order. He knew what he was doing, and he did it deliberately. Those are my findings, and it's on that basis that I grant the relief.

Tr. of Hr'g on Preliminary Injunction at 19-20 (Dec. 18, 2006).

Gottstein was ordered not to further disseminate the documents; to return them to Special Master Woodin; to provide a list of all individuals and organizations to whom he had sent them; to identify to Special Master Woodin which of the confidential documents he passed on to other individuals; to take steps to retrieve them; and to preserve all communications relating to them or

Egilman. *In re Zyprexa, supra*, 2006 WL 3877528.

Over the next few days, Gottstein took steps to comply with the terms of the court's order. He emailed or called each of the people to whom he had sent the documents informing them of the court order and asking that the documents be returned to Special Master Woodin. Tr. at 101-02. Those individuals included: Dr. Peter Breggin, Steve Cha, Judi Chamberlin (of MindFreedom International), Dr. David Cohen, Terri Gottstein, Will Hall, Dr. Grace Jackson, Dr. Stephen Kruszewski, Snigdha Prakash, Vera Sharav (of the Alliance for Human Research Protection), Robert Whitaker, Bruce Whittington, James Winchester, and Laura Ziegler. *See* Part II.H.1, *supra*.

On December 21, 2006, Gottstein issued a written certification stating he had complied with the terms of Judge Cogan's injunction. Dr. Peter Breggin, Dr. Grace Jackson, Dr. Stephen Kruszewski, Bruce Whittington, Laura Ziegler, and the House Committee on Government Reform (through Congressman Henry Waxman, for Steve Cha) returned the documents they had received from Gottstein to Special Master Woodin. *See* Letter of Rep. Henry A. Waxman (Dec. 21, 2006); Letter of Special Master Woodin (Feb. 1, 2007). Gottstein also retrieved the copies he had given to Terri Gottstein, Jerry Winchester, and Will Hall and sent them to the Special Master. *See id.* Berenson, Dr. David Cohen, Judi Chamberlin, Vera Sharav, Robert Whitaker, and Snigdha Prakash have not returned their copies of the confidential documents. At the court's direction, Ms. Sharav gave her attorney the DVDs containing her copies of the documents to be held in escrow. Tr. at 194; *see* Part IV.H.8, *infra*.

3. *Order to Show Cause for Deposition of Egilman by Judge Weinstein*

On December 26, 2006, Lilly petitioned for an order requiring Egilman to show cause

why he should not submit to a deposition and produce documents relating to his possession and dissemination of the confidential Zyprexa documents. A hearing was held on December 28, 2006 by Judge Weinstein at which Egilman was ordered to be deposed within five days and to produce the requested documents.

Egilman began producing documents to Lilly on January 1, 2007. An as-yet-unresolved question is whether this production has been complete.

Egilman has invoked what he claims to be a Fifth Amendment privilege against self-incrimination. *See* Letter of Edward W. Hayes (Jan. 23, 2007). He has neither been deposed nor testified in court.

4. Evasive Actions of Enjoined Persons

Individuals to whom Gottstein sent the documents began devising schemes to evade court orders to return the documents even before any such orders had been issued. In an email dated December 16, 2006, Robert Whitaker wrote to Gottstein: "I would consider building a website that would, ahem, make all the documents available. What could they do to me? And how could they know how the documents got to me? There are several channels apparently that could be the source. You should proceed now in whatever way makes it easiest for you, and let others worry about getting this information out or making it public." Pet'r Findings of Fact, supporting ex. 30.

On December 29, 2006, Lilly learned that despite Gottstein's communication of the court's order requesting the documents' return by those to whom Gottstein had sent them, some recipients had declined to comply and were attempting to widely distribute the documents. In particular, MindFreedom, an organization whose board of directors includes Judi Chamberlin,

Tr. at 236, to whom Gottstein had sent the documents in his attempt to “get [the documents] out [in a] way that would make it impossible to get them back,” *id.* at 49, was attempting widespread dissemination.

David Oaks, the Director of MindFreedom, sent an email alert to the organization’s members informing them of a “grassroots internet campaign” to disseminate the documents. *See* Pet’r Findings of Fact, supporting ex. 24. The email, which included a link to a website from which the documents could be downloaded, was sent on December 25, 2006. According to this message, the organization was “counting on the fact that many courts are closed today.” *Id.* Eric Whalen, a member of MindFreedom, made the documents available for downloading at the website www.joysoup.net. Tr. at 229.

After the preliminary injunction was issued on December 29, 2006, several of the enjoined persons continued their efforts to ensure that the documents remained publicly accessible. In an email exchange on January 2, 2007 among Robert Whitaker, Vera Sharav, Will Hall, David Oaks, and Gottstein, Whitaker offered his gratitude to those who had helped disseminate the documents notwithstanding court orders prohibiting them from doing so: “[K]udos should go to others who have helped get this information out – Will Hall, David Oaks, Vera Sharav, MindFreedom. This is a fight very much worth fighting.” *See* Pet’r Findings of Fact, supporting ex. 28. Sharav responded, “It’s important to keep track of where/when the documents may surface again on cyberspace and *let people know.*” *Id.* (emphasis supplied). Will Hall added, “what a great new years gift . . . massive eli-lilly psych drug scandal.” *Id.*

5. Preliminary Injunction by Judge Cogan

Lilly and the PSC jointly applied for an injunction ordering the people who had received

the documents directly from the conspirators (omitting, however, Berenson and the New York Times) to refrain from disseminating them. On December 29th, a preliminary injunction was issued by Judge Cogan barring Terri Gottstein, Jerry Winchester, Dr. Peter Breggin, Dr. Grace Jackson, Dr. David Cohen, Bruce Whittington, Dr. Stephen Kruszewski, Laura Ziegler, Judi Chamberlin, Vera Sharav, Robert Whitaker, and Will Hall from disseminating the documents, requiring that they remove the documents from any website to which they had posted them, and instructing them to communicate the terms of the order to anyone to whom they had sent the documents. *In re Zyprexa Prods. Liab. Litig.*, No. 04-MD-1596, 2006 WL 3923180, *1 (E.D.N.Y. Dec. 29, 2006).

After receiving notice of the injunction, Vera Sharav put the following message on AHRP's website:

See the court injunction several of us received below but the internet is an uncontrolled information highway. You never know where and when the court's suppressed documents might surface. The documents appear to be downloadable at [two websites for which the addresses are provided].

Tr. at 182.

6. Hearing on Permanent Injunction by Judge Weinstein

The December 29, 2006 preliminary injunction issued by Judge Cogan expired by its terms on January 3, 2007, on which date a hearing was commenced by Judge Weinstein to consider whether the injunction should be extended or modified. The parties who were present — Lilly, the PSC, Terri Gottstein and Judi Chamberlin — agreed to extend the preliminary injunction until January 16, 2007, at which time a full evidentiary hearing would be held. Tr. of Preliminary Injunction Hr'g at 15-18 (Jan. 3, 2007).

On January 4, 2007, at Lilly's request, Judge Weinstein expanded the enjoined parties to include two organizations — MindFreedom and AHRP —, five websites — www.joysoup.net, www.mindfreedom.org, www.ahrp.org, www.ahrp.blogspot.org, and zyprexa.pbwiki.com —, and one individual, Eric Whalen, all of whom were allegedly attempting to disseminate the confidential documents. *Id.* at 18, 28-30; *In re Zyprexa Prods. Liab. Litig.*, No. 04-MD-1596, 2007 WL 27117, *1 (E.D.N.Y. Jan. 4, 2007). On January 12, 2007, Lilly indicated to the court its intent to initiate contempt proceedings against both Egilman and Gottstein.

The scheduled evidentiary hearing was held on January 16 and January 17, 2007. All enjoined parties, with the exception of Jerry Winchester, Dr. Peter Breggin, Dr. Grace Jackson, Dr. Stephen Kruszewski, Laura Ziegler, Will Hall, Eric Whalen, and the five websites, were represented at the hearing. Counsel for "John Doe," an anonymous person who yearned to post the documents on the enjoined website zyprexa.pbwiki.com, was present.

Lilly called four witnesses: James Gottstein, Richard Meadow of the Lanier Law Firm, Vera Sharav, and David Oaks. No other party called witnesses. The witnesses were allowed to be cross-examined by attorneys for each of the parties, including Egilman.

On January 16, 2007, the expanded preliminary injunction of January 4th was extended until there was a decision on the motion for a permanent injunction. *In re Zyprexa Prods. Liab. Litig.*, No. 04-MD-1596, 2007 WL 160925, *1 (E.D.N.Y. Jan. 16, 2007) ("The temporary mandatory injunction issued on January 4, 2007 is extended until the court rules on the motion to modify the injunction which is currently pending.").

7. Invitation to Berenson to Appear by Judge Weinstein

a) Invitation

Berenson had not appeared in these injunction proceedings. To allow him to appear and confront the evidence of conspiracy offered against him at the January 16-17, 2007 hearing, the court invited him to appear and testify as to his involvement. *See In re Zyprexa Prods. Liab. Litig.*, No. 04-MD-1596, 2007 WL 276185 (E.D.N.Y. Jan. 29, 2007).

The invitation issued to Berenson in the form of an order is set forth below:

Alex Berenson, reporter for the New York Times, is invited to voluntarily appear on February 7, 2007 at 10:00 a.m. in the Federal Courthouse, 225 Cadman Plaza East, Brooklyn, New York, Courtroom 10B South, to explain the circumstances of his obtaining documents sealed by the court. If Mr. Berenson chooses to appear, he may be accompanied by his attorney, will be sworn, and will be subject to cross-examination.

This invitation is intended to permit Alex Berenson to confront testimony received at a hearing in this court on January 16-17, 2007 implicating him in a conspiracy to obtain and publish confidential documents sealed by this court.

The attention of Mr. Berenson is directed to the following portions of a transcript of the January 16-17, 2007 hearing. References to "Gottstein" are to James Gottstein, an attorney in Alaska who allegedly forwarded documents received from Dr. David Egilman to Mr. Berenson. Dr. Egilman was a plaintiffs' expert who had agreed not to violate this court's order sealing these documents, but who then sent them to Mr. Gottstein, who in turn transmitted them to Mr. Berenson and others.

Q [attorney for Eli Lilly & Company]: . . . Did you ever have communications with Dr. Egilman between the time that you received the documents and December 17 when the New York Times published a portion?

A [Gottstein]: Did I have communications with Dr. Egilman?

Q: Yes.

A: Yes.

....

Q: What did you talk about?

A: I think most of it was around the New York Times

story and their desire to have – to break it.

....

The Court: You say their, who do you mean?

A: The New York Times desire to be able to break the story.

Q: What did Dr. Egilman say about that?

A: That was basically it

....

I mean there were other news outlets that I was going to send them to. And I ended up not doing that.

Q: Why?

A: To accommodate the New York Times's desire to break the story

Q: Who communicated that desire?

A: Well, Alex Berenson called me about that.

Q: What did he say?

A: He said basically that if anybody else breaks it, they are not going to run the story.

Q: So what? Why was that important to you?

A: Well, because I think the New York Times is maybe the best place to have had this happen from my perspective.

Q: And from Dr. Egilman's perspective also?

....

A: I think he wanted the New York Times to be the first to publish it.

Q: Why do you think that?

A: Because he wanted me to not send it to other news outlets.

Q: What did he tell you about why you shouldn't send it to other news outlets?

A: Basically, the same thing, that the New York Times wouldn't run it if someone else broke it.

Tr. of Hr'g, 81-83 (January 17, 2007).

Q: Before you talked to Dr. Egilman on November 28, did you have any discussions with Alex [Berenson] about the Zyprexa documents in this litigation?

A: No.

Q: After that conversation with Dr. Egilman on November 28th, how soon after that conversation did you start to have communications with Alex Berenson about the Zyprexa documents?

A: Within a few days, I think.

Q: How did that communication start? Did you call him or did he call you?

A: I believe he called me.

Q: And how did he get your name, do you know?

....

A: Do I know how? I think that he was independently aware of what I was doing.

Q: How do you think he became independently aware of what you were doing?

A: I believe that I had e-mailed him before.

Q: Before what?

A: Maybe earlier in the year or a couple of years ago sometime because I had been trying to get publicity about this stuff for years really. So I made contacts with a lot of reporters and I believe that I had contacted Mr. Berenson before.

Q: What caused him to call you three days after your conversation with Dr. Egilman?

A: This would be around what? The second of December or something?

Q: Early December.

A: What caused him to call me? I think he was working on a story on this.

Q: Why did he call you? What did he tell you when he called you?

A: He told me that he had given Dr. Egilman my name.

Q: Alex Berenson had given Dr. Egilman your name?

A: Yes.

Q: Is that how Dr. Egilman came to contact you on November 28?

A: I think so.

Q: And you said that he had told you that he had given Dr. Egilman your name. Help me understand that. What did he say?

A: He said that Dr. Egilman had some documents that he wanted to get to the New York Times and that he had, you know, thought that I might be someone who would subpoena them.

Q: Alex Berenson told you that Dr. Egilman

thought you would be someone who would help him, meaning Dr. Egilman, get the Zyprexa documents to the New York Times, right?

A: Well . . . what I said was that he thought I was someone who might subpoena the documents.

Q: And so how – so Alex Berenson gives Dr. Egilman your name, correct, that’s what he said?

A: That’s what he said.

Q: Then Dr. Egilman calls you on November 28 and says I have some documents you might want to subpoena, right?

A: Did he say that exactly? I think that’s the import of it.

Q: And did the two of you when you were talking on November 28 talk about this relationship you both had with Alex Berenson?

A: I may have mentioned that I tried to contact him before, that I might have tried to contact him before.

The Court: Him is who?

A: Mr. Berenson.

Q: Did you tell Dr. Egilman that you had spoken with Alex [Berenson] and that you understood that he had given Dr. Egilman your name?

A: Yes, I think at some point that was communicated one way or another.

. . . .

Q: But . . . you learned that [Dr. Egilman calling you] was not out of the blue, it was actually orchestrated by Dr. Egilman and Alex Berenson, right?

A: Well, I don't know how that is inconsistent with what I wrote in my letter. It was out of the blue.

Q: It was out of the blue for you, right?

A: Yes.

Q: But it was not out of the blue for Dr. Egilman or Alex Berenson?

....

A: So I mean out of the blue — I mean — it seemed that — it's like I said, what Alex Berenson told me was that he had told Dr. Egilman that I might be someone who would subpoena the documents so I don't know where out of the blue comes into that.

....

Q: After the conversation that you had with Dr. Egilman on November 28, you agreed to subpoena the documents, correct?

A: Yes. Well, to at least try to. To try and find a case to do that.

Q: Okay. And you continued to communicate with Alex Berenson prior to your receipt of the documents relating to the articles that he was planning or hoping to write about Zyprexa, correct?

A: Prior to?

Q: Yes.

A: There may have been some.

Tr. of Hr'g, 95-99 (January 17, 2007).

Lilly shall forthwith serve a copy of this invitation on Alex Berenson, together with all papers filed in the current proceedings to obtain an injunction, including the full transcript of the January 16-17, 2007 hearing. Copies of this order, but not the accompanying papers, shall be served by Lilly via fax, email, or

mail on all attorneys who appeared at the January 16-17, 2007 hearing.

SO ORDERED.

_____/s/_____
Jack B. Weinstein

Date: January 29, 2007
Brooklyn, N.Y.

In re Zyprexa Prods. Liab. Litig., 2007 WL 276185 (E.D.N.Y. Jan. 29, 2007).

b) Response

By letter dated February 5, 2007, the New York Times responded on behalf of Berenson as follows:

Hon. Jack B. Weinstein
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: In re Zyprexa Products Liability Litigation
04-MDL-1596

Dear Judge Weinstein:

I write in response to your Invitation and Order of January 29, 2007 (“1/29 Order”) which, in accordance with Your Honor’s instructions, was provided to us by counsel for Eli Lilly, together with other materials pertinent to the motion for a preliminary injunction now pending before the Court.

We have reviewed the materials forwarded to us by counsel and most particularly the 1/29 Order and understand that there has been testimony presented to the Court by others concerning their perceptions of the circumstances that gave rise to The New York Times’s receipt of certain materials referenced in a series of articles published in the Times over the course of the last several weeks concerning Zyprexa and the controversy concerning it. On behalf of The Times and Alex Berenson, I would like to thank the Court for offering Mr. Berenson the opportunity voluntarily to appear before the Court and, in Your Honor’s words, to “confront [that] testimony.”

We know that Your Honor will appreciate the reasons that lead us to decline your invitation. As a matter of long-held principle, we believe that it would be

inappropriate for any of our journalists voluntarily to testify about news gathering at the Times, our reporters' communications with their sources or the editorial judgments that are made in deciding what is and what is not published by the Times, just as we would vigorously resist any effort by any party to compel such testimony. We guard quite zealously our role as a member of a free and independent press and believe quite passionately that, consistent with the principles embodied in the First Amendment, it is not the role of the newspaper or its reporters to submit to cross-examination about such matters even where it may otherwise serve our particular interests in a particular case to do so. I want to emphasize as clearly as I can that in declining Your Honor's invitation we mean absolutely no disrespect whatsoever to the Court.

Consistent with the procedures set forth in the 1/29 Order, by copy of this letter I am requesting counsel for Eli Lilly to forward this correspondence to all interested counsel as I do not have contact information for all concerned.

Thank you for your time and consideration.

Respectfully submitted,

/s/

George Freeman

[Assistant General Counsel, N.Y. Times]

III. Law

A. Public Right of Access to Documents Produced in Discovery

A presumption of public access applies to judicial proceedings and documents.

Open courts are critical to a democratic society. Access to judicial proceedings and documents is necessary for federal courts to have a measure of accountability and for the public to have confidence in the administration of justice. The rule of law and public acquiescence in judicial decisions demand that courts reveal the bases for their rulings. Without monitoring, the public could have no confidence in the conscientiousness, reasonableness, or honesty of judicial proceedings. Such monitoring is not possible without access to testimony and documents that are used in the performance of Article III functions.

In re NBC Universal, Inc., 426 F. Supp. 2d 49, 51 (E.D.N.Y. 2006) (quotations and citations omitted). *See also Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978) ("the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents"); *United States v. Amodeo*, 71 F.3d 1044,

1048 (2d Cir. 1995).

The presumption of access varies according to the nature of the judicial document to which access is sought. “Unlimited access to every item turned up in the course of litigation would be unthinkable.” *United States v. Amodeo, supra*, at 1048. The Court of Appeals for the Second Circuit has held that “the weight to be given the presumption of access must be governed by the role of the material at issue in the exercise of Article III judicial power and the resultant value of such information to those monitoring the federal courts.” *Id.* at 1049.

The claim of public access is strongest when the documents play a substantial role “in determining litigants’ substantive rights.” *Id.* Fitting squarely within this definition are “documents that served as the principal basis for a summary judgment motion; were introduced at trial; or were material and important to a decision to approve a consent decree.” *In re NBC*, 426 F. Supp. 2d. at 53 (*quoting Amodeo*) (quotation marks omitted).

Falling outside the definition are documents produced by the parties in discovery.

Documents that play no role in the performance of Article III functions, *such as those passed between the parties in discovery*, lie entirely beyond the presumption’s reach, and stand on a different footing than a motion filed by a party seeking action by the court or, indeed, than any other document which is presented to the court to invoke its powers or affect its decisions.

Amodeo, 71 F.3d at 1050 (emphasis added) (quotation omitted). *See also S.E.C. v.*

TheStreet.com, 273 F.3d 222, 232-33 (2d Cir. 2001); *F.T.C. v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 409 (1st Cir. 1987) (“Those documents which play no role in the adjudication process . . . such as those used only in discovery, lie beyond reach [of the presumption of access].”);

Anderson v. Cryovac, Inc., 805 F.2d 1, 13 (1st Cir. 1986) (“There is no tradition of public access to discovery, and requiring a trial court to scrutinize carefully public claims of access would be

incongruous with the goals of the discovery process.”).

The entry of a protective order for documents produced in discovery does not affect the assumption of non-access which attaches to those documents. *See S.E.C. v. TheStreet.com*, 273 F.3d 222, 223 (2d Cir. 2001) (rejecting argument that “the very exercise by the District Court of its power to enter a protective order and to seal the Confidential Testimony transformed the Confidential Testimony into a ‘judicial document’ presumptively open to the public”); *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 782 (3d Cir. 1994) (“[W]hen a court enters an order of protection over documents exchanged during discovery, and these documents have not been filed with the court, such documents are not, by reason of the protective order alone, deemed judicial records to which the right of access attaches.”).

B. Protective Orders

1. Generally

The inherent equitable power of courts to grant confidentiality orders is well-established. *See Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 35 (1984) (“we have no question as to the court’s jurisdiction to [enter protective orders] under the inherent equitable powers of courts of law over their own process, to prevent abuses, oppression, and injustices”) (quotation omitted); *Int’l Prods. Corp. v. Koons*, 325 F.2d 403, 407-08 (2d Cir. 1963); *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 785 (3d Cir. 1994) (“Courts have inherent power to grant orders of confidentiality . . . whether or not such orders are specifically authorized by procedural rules.”). Courts are endowed with broad discretion to tailor protective orders to the circumstances of a particular litigation. *See Seattle Times*, 467 U.S. at 36 (“The unique character of the discovery process requires that the trial court have substantial latitude to fashion protective orders.”).

The power to seal extends to court filings and documents produced in discovery. *See Pansy*, 23 F.3d at 785 (rejecting the argument “that the district court lacked the power to enter an order of confidentiality over a document which is not in the court file nor incorporated into an order of the court”). As civil discovery rules became more expansive over the course of the last century, the role of the courts in protecting producing parties from undue invasions of privacy has correspondingly increased:

The adoption of the Federal Rules of Civil Procedure in 1938 fundamentally changed . . . American procedure. In particular, the discovery system in Rules 26 through 37 revolutionized pretrial preparation. The prior system had limited a litigant’s ability to acquire information largely to what was admissible at trial; since 1938, a litigant has been able to secure the production of information on a vastly broadened scale — essentially, any information that conceivably could be of help in preparing the case The goals underlying the expansion of the discovery process were to facilitate preparation, to avoid surprise at trial, and to promote the resolution of cases on their merits — not to enlarge the public’s access to information. Nonetheless, the expanded scope of discovery under the Federal Rules and the increased amounts of information they generated created side effects outside the adjudicatory system — it posed a threat to privacy and confidentiality. To meet this new problem, the discovery rules contain provisions, such as the authorization for protective orders in Rule 26(c), to limit the discovering party’s use of information beyond the litigation context.

Arthur R. Miller, *Confidentiality, Protective Orders, and Public Access to the Courts*, 105 Harv. L. Rev. 427, 447 (1991); *see also* 8 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2036 (2d ed. 1994) (“Rule 26(c) was adopted as a safeguard for the protection of parties and witnesses in view of the almost unlimited right of discovery given by Rule 26(b)(1).”).

Protective orders serve essential functions in civil adjudications, including the protection of the parties’ privacy and property rights. *See Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34-

35 (“It is clear from experience that pretrial discovery . . . has a significant potential for abuse. This abuse is not limited to matters of delay and expense; discovery also may seriously implicate privacy interests of litigants and third parties.”); *see generally* Miller, *Confidentiality*, at 463-77. “Without an ability to restrict public dissemination of certain discovery materials that are never introduced at trial, litigants would be subject to needless annoyance, embarrassment, oppression, or undue burden or expense.” *S.E.C. v. TheStreet.com*, 273 F.3d 222, 229 (2d Cir. 2001) (*citing* Fed. R. Civ. P. 1).

2. Rule 26(c)

a) Generally

The Federal Rules of Civil Procedure govern the issuance of protective orders covering discovery materials in civil cases. *See* Fed. R. Civ. P. 26(c). “[F]or good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” *Id.* This rule, like the remainder of the Federal Rules of Civil Procedure, must be interpreted in a manner consistent with Rule 1: “These rules . . . shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.” Fed. R. Civ. P. 1; *see also* *Martindell v. Int’l Tel. & Tel. Corp.*, 594 F.2d 291, 295 (2d Cir. 1979) (“the vital function of a protective order issued under Rule 26(c) . . . is to secure the just, speedy, and inexpensive determination of civil disputes . . . by encouraging full disclosure of all evidence that might conceivably be relevant”) (citation omitted).

The permissible scope of discovery in the federal courts is very broad: “Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of

any party.” Fed. R. Civ. P. 26(b)(1). Much of the material produced in discovery is neither incorporated in motions made to the court nor admissible at trial. In order to mitigate the substantial risk to litigants’ privacy and other rights posed by the expansive scope of pretrial discovery, courts are given broad discretion in Rule 26(c) to craft sealing orders “which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c); Part II.B.1, *supra*; *see also* Fed. R. Civ. P. 26 comment (“The information explosion of recent decades has greatly increased . . . the potential for discovery to be used as an instrument for delay or oppression.”).

Rule 26(c) provides a non-exhaustive list of eight types of protective orders that courts may issue. *See* Fed. R. Civ. P. 26(c)(1)–(c)(8). “[A] court is not limited to the eight specified types of orders . . . [it] may be as inventive as the necessities of a particular case require in order to achieve the benign purposes of the rule.” 8 Wright & Miller at § 2036; *see also Ann L. v. X Corp.*, 133 F.R.D. 433, 435 (W.D.N.Y. 1990) (“an order of suppression is a permissible remedy under the ‘catch all clause’ of Fed. R. Civ. P. 26(c)”). “Rule 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required.” *Seattle Times*, 467 U.S. at 36. The touchstone of the court’s power under Rule 26(c) is the requirement of “good cause.” The burden to establish good cause is placed on the party seeking protection. *See* 8 Wright & Miller at § 2035.

To determine whether good cause exists, courts balance “the need for information against the injury that might result if uncontrolled disclosure is compelled.” *See Pansy*, 23 F.3d at 787 (*quoting* Miller, *Confidentiality*). Balancing requires taking into account litigants’ privacy rights as well as the general public’s interest in the information. *See TheStreet.com*, 273 F.3d at

234. The balance struck should incorporate consideration of the overarching purpose of the discovery process: “Discovery involves the use of compulsory process to facilitate orderly preparation for trial, not to educate or titillate the public.” *Joy v. North*, 692 F.2d 880, 893 (2d Cir. 1982); see also Richard L. Marcus, *Myth and Reality in Protective Order Litigation*, 69 Cornell L. Rev. 1, 57 (1983) (“The speculative possibility that in some cases the public would benefit from dissemination of information garnered through discovery hardly warrants the conversion of the process into an investigatory tool for inquisitive litigants.”).

b) Subsection 7

Subsection (7) of Rule 26(c) provides for the issuance of a protective order requiring “that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way.” This “open-ended series of terms . . . need not be limited to ‘true’ trade secrets.” 8 Wright & Miller at § 2043. “Documents falling into categories commonly sealed are those containing trade secrets, confidential research and development information, marketing plans, revenue information, pricing information, and the like.” *Cumberland Packing Corp. v. Monsanto Co.*, 184 F.R.D. 504, 506 (E.D.N.Y. 1999). Examples of protective orders covering commercial documents include: *Sullivan Mktg. v. Valassis Commc’ns*, 1994 U.S. Dist. LEXIS 5824 (S.D.N.Y.1994) (granting protective order to defendant publisher that restricted access to sensitive business contracts, proposals and negotiations); *Moore U.S.A., Inc. & Toppan Forms Co., Ltd. v. Standard Register Co.*, 2000 U.S. Dist. LEXIS 9137 (W.D.N.Y. 2000) (protecting documents containing trade secrets and confidential research and development information); *Vesta Corset Co. v. Carmen Founds.*, 1999 U.S. Dist. LEXIS 124, at *5 (S.D.N.Y.1999) (refusing disclosure of confidential commercial

information such as “pricing, profits, costs, overhead, manufacturing specifications, customer lists, price structure, and dealings with a common customer”); *DDS, Inc. v. Lucas Aero. Power Transmission Corp.*, 182 F.R.D. 1 (N.D.N.Y. 1998) (protecting trade secrets of manufacturing process and customer lists, and breakdown of annual sales figures).

3. *Umbrella Protective Orders*

In large complex cases, courts often enter “umbrella” protective orders, which permit parties to designate in advance a large volume of discovery material as confidential. *See Campbell, Protective Order, supra* at 777-79 (“The use of umbrella orders in complex litigation has become commonplace.”); *Pansy*, 23 F.3d at 787 n.17 (“[B]ecause of the benefits of umbrella protective orders in cases involving large-scale discovery, the court may construct a broad umbrella protective order upon a threshold showing by the movant of good cause.”). Parties are permitted to challenge that designation, and the burden of establishing that there is good cause to protect the designated materials rests at all times with the party seeking protection.

In complicated mass cases the use of umbrella protective orders is recommended by the Manual for Complex Litigation:

When the volume of potentially protected materials is large, an umbrella order will expedite production, reduce costs, and avoid the burden on the court of document-by-document adjudication. Umbrella orders provide that all assertedly confidential material disclosed (and appropriately identified, usually by a stamp) is presumptively protected unless challenged. Such orders typically are made without a particularized showing to support the claim for protection, but such a showing must be made whenever a claim under an order is challenged.

Manual for Complex Litigation, § 11.423 (4th ed. 2004).

The value of umbrella orders has been well-documented:

[T]he propriety and desirability of protective orders securing the confidentiality of documents containing sensitive commercial information that are the subject of discovery in complex cases is too well established to belabor We are unaware of any case in the past half-dozen years of even a modicum of complexity where an umbrella protective order . . . has not been agreed to by the parties and approved by the court.

Zenith Radio Corp. v. Matsushita Elec. Indus. Co., 529 F. Supp. 866, 889 (E.D. Pa. 1981). See also 8 Wright & Miller at § 2035.

4. *First Amendment Implications of Protective Orders*

The leading Supreme Court case addressing the question of how the First Amendment's protection of speech applies to protective orders is *Seattle Times Co. v. Rhinehart*. 467 U.S. 20 (1984); see also Part III.D.4, *infra*. During discovery in a state court action against a newspaper for defamation, the defendant requested the production of documents relating to the financial affairs of the plaintiff and his religious organization. *Id.* at 23-25. Plaintiffs sought a protective order for the financial documents to limit their publication and dissemination by the newspaper. *Id.* at 25.

The trial court entered a protective order prohibiting defendant "from publishing, disseminating, or using the information [produced by plaintiffs] in any way except where necessary to prepare for and try the case." *Id.* at 27. Upholding the order, the Supreme Court of Washington declared: "the information to be discovered concerned the financial affairs of the plaintiff . . . in which he and his associates had a recognizable privacy interest . . . and the giving of publicity to these matters would allegedly and understandably result in annoyance, embarrassment and even oppression." *Id.* at 28 (quotation and citation omitted).

In an appeal to the United States Supreme Court, the *Seattle Times* argued that the

protective order contravened rights under the First Amendment:

Petitioners argue that the First Amendment imposes strict limits on the availability of any judicial order that has the effect of restricting expression. They contend that civil discovery is not different from other sources of information, and that therefore the information is ‘protected speech’ for First Amendment purposes. Petitioners assert the right in this case to disseminate any information gained through discovery They submit [that] [w]hen a protective order seeks to limit expression, it may do so only if the proponent shows a compelling government interest.

Id. at 30-31 (quotation omitted). Responding, the Court acknowledged that most information obtained in civil discovery would rarely fall into the classes of speech unprotected by the First Amendment, such as obscenity, defamatory statements, threats, and the like. *Id.* at 31. Yet, it wrote, it “does not necessarily follow . . . that a litigant has an unrestrained right to disseminate information that has been obtained through pretrial discovery.” *Id.*

Rejected by the unanimous Court was the contention that information obtained through civil discovery is no different from information obtained through other means:

As in all civil litigation, petitioners gained the information they wish to disseminate only by virtue of the trial court’s discovery processes. As the Rules authorizing discovery were adopted by the state legislature, the processes thereunder are a matter of legislative grace. A litigant has no First Amendment right of access to information made available only for purposes of trying his suit.

Id. at 32; *see also Zemel v. Rusk*, 381 U.S. 1, 16-17 (1965) (“The right to speak and publish does not carry with it the unrestrained right to gather information.”).

Protective orders prohibiting dissemination of materials discovered before trial are “not the kind of classic prior restraint that require[] exacting First Amendment scrutiny.” *Seattle Times* at 33. The type of restrictions deemed permissible are those that apply to information obtained through the civil discovery process. While parties may be restrained from

disseminating information obtained through the discovery mechanism, they “may disseminate the identical information . . . as long as the information is gained through means independent of the court’s processes.” *Id.* at 34.

C. Court Authority to Enforce Orders

1. Generally

Courts have the inherent authority to enforce their orders. “[T]he power of a court to make an order carries with it the equal power to punish for a disobedience of that order.” *In re Debs*, 158 U.S. 564, 594 (1895); *see also In re Lafayette Radio Elec. Corp.*, 761 F.2d 84, 93 (2d Cir. 1985) (“ancillary jurisdiction is recognized as part of a court’s inherent power to prevent its judgments and orders from being ignored or avoided with impunity”). The power is a necessary prerequisite to the administration of justice; without it, courts would be ill-equipped to ensure the rule of law in a democratic society.

“It is one of the equitable powers, inherent in every court of justice so long as it retains control of the subject-matter and of the parties, to correct that which has been wrongfully done by virtue of its process.” *See Arkadelphia Milling Co. v. St. Louis Sw. Ry. Co.*, 249 U.S. 134, 146 (1919); *see generally Anderson v. Dunn*, 6 Wheat. 204, 227 (1821) (“Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose . . . submission to their lawful mandates”); *In re Lafayette Radio*, 761 F.2d at 92 (“it is established that a federal court sitting in equity that has jurisdiction to issue a decree necessarily has ancillary and supplemental jurisdiction to enter orders and judgments designed to effectuate that decree”).

2. National Scope

The jurisdiction of a court to enforce its orders extends nationwide. “Nonparties who reside outside the territorial jurisdiction of a district court may be subject to that court’s jurisdiction if, with actual notice of the court’s order, they actively aid and abet a party in violating that order.” *Waffenschmidt v. Mackay*, 763 F.2d 711, 714 (5th Cir. 1985); *see also Stiller v. Hardman*, 324 F.2d 626, 628 (2d Cir. 1963) (“Violation of an injunctive order is cognizable in the court which issued the injunction, regardless of where the violation occurred.”).

D. Injunctions

1. *Generally*

The authority to issue injunctions is derived from the courts’ inherent equity powers and Rule 65 of the Federal Rules of Civil Procedure. “In most cases the determination whether to issue an injunction involves a balancing of the interests of the parties who might be affected by the court’s decision — the hardship on plaintiff if relief is denied as compared to the hardship to defendant if relief is granted.” 11A Wright & Miller at § 2942. Decision as to whether an injunction is warranted on the facts of a particular case is committed to the sound discretion of the trial court. *See id.*; *Lemon v. Kurtzman*, 411 U.S. 192, 200 (1973) (“In shaping equity decrees, the trial court is vested with broad discretionary power”).

At common law, chancery courts in England provided extraordinary relief such as injunctions and specific performance only when the parties could not obtain an effective remedy from the courts of law. 11A Wright & Miller at § 2944; McClintock, *Equity*, § 21 (2d ed. 1948). “Even though there no longer are separate law and equity courts . . . injunctive relief continues to be viewed as ‘extraordinary’ and courts are reluctant to award it if the claimant can secure

adequate rectification of his grievance by an award of damages.” *Id.*

“[I]njunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). “A plaintiff seeking an injunction must show that there is an imminent threat of harm and that the threatened harm is ‘irreparable.’” Owen Fiss, *Injunctions* 59 (2d ed. 1984).

2. *Persons Bound*

Rule 65(d) of the Federal Rules of Civil Procedure provides that an injunction “is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.” Fed. R. Civ. P. 65(d). The rule “is derived from the common law doctrine that a decree of injunction not only binds the parties defendant but also those identified with them in interest, in ‘privity’ with them, represented by them, or subject to their control. In essence it is that [persons bound] may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding.” *Regal Knitwear Co. v. Nat’l Labor Relations Bd.*, 324 U.S. 9, 14 (1945). *See, e.g.*, 2 Wayne R. LaFare, *Substantive Criminal Law*, § 13.2(a) (2d ed. 2003) (discussing criteria for aiding and abetting); *id.* § 13.2(b) at 344; 4 Wharton’s *Criminal Law* § 685 (15th ed. 1996) (same).

“[A]n issue of privity in the context of determining who is bound by an injunction . . . in a particular case is often not easy to resolve.” 11A *Wright & Miller* at § 2956. A fact-sensitive inquiry must be undertaken to determine whether persons not named in an injunction can be bound by its terms because they are acting in concert with an enjoined party. *Id.*; *Vuitton et Fils*

S.A. v. Carousel Handbags, 592 F.2d 126, 130 (2d Cir. 1979) (“Whether one not named in an injunctive decree may nevertheless be bound by it depends on the facts of each case.”).

Those persons named in an injunction are considered “parties” for the purpose of Rule 65(d). *See Madsen v. Women’s Health Ctr., Inc.* 512 U.S. 753, 775 (1994). The party seeking enforcement of an injunction against persons not named bears the burden of demonstrating that those persons are bound by the order. *See People of the State of N.Y. by Vacco v. Operation Rescue Nat’l*, 80 F.3d 64, 70 (2d Cir. 1996).

3. *Enjoining Dissemination of Stolen Protected Documents*

Recovering stolen documents obtained in violation of a court discovery order when needed to protect a party to a litigation is well within the equitable power of a federal district court. *See* 28 U.S.C. § 1651(a) (district courts “may issue all writs necessary or appropriate in aid of their . . . jurisdiction and agreeable to the usages and principles of law”); *Egri v. Conn. Yankee Atomic Power Co.*, 68 Fed. Appx. 249, 255-56 (2d Cir. 2003) (finding injunction enforcing protective order permissible under the All Writs Act) (unpublished opinion); Fed. R. Civ. P. 16(f) (failure to obey a pretrial order); *see generally* Part III.C, *supra*. Even if the order were improperly issued, it must be modified or overturned and not deliberately violated when in force. *See, e.g., Walker v. City of Birmingham*, 388 U.S. 307, 321 (1967) (“One may sympathize with the petitioners’ impatient commitment to their cause. But respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom.”).

The Supreme Court, in *Bartnicki v. Vopper*, 532 U.S. 514 (2001), provided some guidance on the right to publish material of public significance illegally obtained by a third

party. *See also* Part III.B.4, *supra*, on First Amendment implications of protective orders. A cell phone conversation had been illegally intercepted by private parties in violation of a state wiretapping statute, and then turned over to a third person who published it. The third person was considered to be in legal possession of the recorded conversation.

The Court held unconstitutional as applied state legislation prohibiting intentional disclosure of the illegally intercepted communication by the third person. The majority emphasized its reluctance to definitively answer “the question whether, in cases where information has been acquired *unlawfully* by a newspaper . . . government may ever punish not only the unlawful acquisition, but the ensuing publication as well.” *Id.* at 528-29 (internal quotation and citation omitted) (emphasis in original). It listed some of the criteria it weighed in deciding to protect the third party’s publication: First, the third party played no part in the illegal interception, but found out about it “only after it occurred.” *Id.* at 525. Second, access to the information was “lawfully” obtained by the third party even though the information itself was “unlawfully” obtained by another. *Id.* Third, the subject matter was a matter of public concern.

4. *Content Neutral*

Supporting the power to prevent publication in *Bartnicki* was the injunction’s “content neutral” form. *Id.* at 525-29.

Applicability of the First Amendment to an injunction generally depends upon whether any restriction on speech it contains is “content-based” or “content-neutral.” *See Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 450 (2d Cir. 2001). In an assessment of content-neutrality, “[t]he government’s purpose is the controlling consideration. A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on

some speakers or messages but not others.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *see also R.A.V. v. St. Paul*, 505 U.S. 377, 386 (1992) (“The government may not regulate [speech] based on hostility — or favoritism — towards the underlying message expressed.”).

The Court of Appeals for the Second Circuit has defined as content-neutral those regulations that do “not depend on the nature or content of the idea that [a person] wishes to express but only on the materials that would be the medium of expression.” *Lindsey v. Bloomberg*, ___ F.3d ___, slip op. at 18-19 (2d Cir. Feb. 1, 2007); *see also Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (“Government regulation of expressive activity is content neutral so long as it is justified without reference to the content of the regulated speech.”) (emphasis and internal quotation marks omitted).

Injunctions “issued not because of the content of petitioners’ expression . . . but because of . . . prior unlawful conduct” are content neutral. *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 764-65 (1994). Content neutral injunctions must “burden no more speech than necessary to serve a significant government interest,” *Madsen*, 512 U.S. at 765, but they are not required to “employ the least restrictive means of accomplishing the governmental objective.” *Universal City Studios*, 273 F.3d at 455. Because such injunctions do not enjoin speech based on its content, they do “not arouse the fears that trigger the application of constitutional ‘prior restraint’ principles.” *Dallas Cowboys Cheerleaders, Inc. v. Pussycat Cinema, Ltd.*, 604 F.2d 200, 206 (2d Cir. 1979).

“The First Amendment does not prohibit courts from incidentally enjoining speech in order to protect a legitimate property right.” *DVD Copy Control Ass’n Inc. v. Bunner*, 31 Cal 4th. 864, 881; *see also Dallas Cowboys*, 604 F.2d at 206 (“This is not a case of government

ensorship, but a private plaintiff's attempt to protect its property rights.”). “The mere fact that [one] claims an expressive . . . purpose . . . does not give [one] a right, under the First Amendment to the United States Constitution, to appropriate to [oneself] the harvest of those who have sown.” *San Francisco Arts & Ath., Inc. v. U.S. Olympic Comm.*, 483 U.S. 522, 526 (1987) (quotation and citation omitted).

IV. Application of Law to Facts

A. The Documents are Properly Protected Under CMO-3

1. CMO-3 is a Valid Umbrella Protective Order

CMO-3 is an umbrella protective order which permits parties to designate as confidential materials that they “in good faith believe[] [are] properly protected under Federal Rule of Civil Procedure 26(c)(7).” CMO-3 at ¶ 3. The designation of a document as “confidential” can be challenged by an opposing party, or any aggrieved entity, and the burden of establishing confidentiality rests on the producing party. *Id.* at ¶ 9. The use of such umbrella orders, which allow parties to designate substantial volumes of discovery materials as confidential upon a threshold showing of good cause, is permitted in large complex litigations, such as the instant multidistrict litigation consisting of thousands of cases. *See* Manual for Complex Litigation, § 11.423; *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 787 n.17 (3d Cir. 1994); Part III.B.3, *supra*.

2. Documents Contain Information Protectable by CMO-3 and Rule 26(c)

The sealed documents disseminated by Gottstein and his co-conspirators consist entirely of materials that were exchanged by the parties in the discovery phase of this litigation. For purposes of the presumption to public access, they play no role in the adjudication process. *See*

United States v. Amodeo, 71 F.3d 1044, 1050 (2d Cir. 1995); *F.T.C. v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 409 (1st Cir. 1987). See Part III.A, *supra*.

This case is distinguishable from *Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219 (6th Cir. 1996), relied upon by respondents. In *Procter & Gamble*, an injunction prohibiting publication of “standard litigation filings” — consisting of a memorandum of law, complaint, and case statement —, rather than documents produced in discovery and not relied upon by the court, was overturned. *Procter & Gamble* at 222, 225.

In this litigation, a substantial amount of sensitive material, including medical records and trade and proprietary information, has been produced for discovery purposes in accordance with Rule 26(b)(1)’s relatively low threshold of relevance to any claim or defense. See Part III.B.1, *supra*. Such information is not generally appropriate for public consumption. The court entered its protective order covering confidential materials under both its general equitable powers and the authority granted by Rule 26(c). The order was essential to protecting litigants from the embarrassment and oppression that would result from unnecessary pretrial public disclosure of their private information.

The court’s review of a sample of the documents disseminated by the conspirators in violation of CMO-3 as well as the articles in the New York Times provide clear and convincing evidence that they contain information properly protected as confidential under Rule 26(c). See Part II.H.2, *supra*. They consist mainly of trade secrets and confidential commercial information of defendant Lilly; revelation has the potential to impinge on the company’s privacy and property rights and inflict commercial harm. See Fed. R. Civ. P. 26(c)(7) (permitting protective orders that seal “trade secret or other confidential information”); *Cumberland Packing Corp. v.*

Monsanto Co., 184 F.R.D. 504, 506 (E.D.N.Y. 1999) (“Documents falling into categories commonly sealed are those containing trade secrets, confidential research and development information, marketing plans, revenue information, pricing information, and the like.”); *see, e.g., Gelb v. American Tel. & Tel. Co.*, 813 F. Supp. 1022, 1035 (S.D.N.Y. 1993) (sealing internal documents which “constitute potential negative publicity about [defendant’s] marketing tactics” because of “their potential to do commercial harm”).

Any person, whether or not a party to this litigation, who believes documents designated as confidential under CMO-3 have been improperly sealed or should be disclosed in the public interest may take advantage of the order’s declassification provisions and petition the court for declassification of certain documents. *See* CMO-3 at ¶ 9; *see also id.* at ¶ 16 (“Nothing in this Order shall prevent any party or other person from seeking modification of this Order or from objecting to discovery that it believes to be otherwise improper.”).

B. Court has the Power to Order Return of Stolen Documents

A large number of documents sealed by the court have been obtained illegally by the conspirators and those to whom they sent the documents. *See* Part II.H, *supra*. These confidential documents were procured solely by use of the court’s discovery process; there has been no suggestion that anyone was able to retrieve them from any other source before revelation by the three conspirators — Berenson, Egilman, and Gottstein. *See Int’l Prods. Corp. v. Koons*, 325 F.2d 403, 407-08 (2d Cir. 1963).

As in all civil litigation, [respondents] gained the information they wish to disseminate only by virtue of the trial court’s discovery processes. As the Rules authorizing discovery were adopted by the [federal] legislature, the processes thereunder are a matter of legislative grace. A litigant has no First Amendment right of access to information made available only for purposes of trying his suit.

Seattle Times Co. v. Rhinehart, 467 US 20, 32(1984). Respondents here have no right to possession of the confidential documents given to them by the conspirators. Cf. Restatement (First) of Torts § 757, *Liability for Disclosure or Use of Another's Trade Secret* (1939; current through Sept. 2006) ("One who discloses or uses another's trade secret, without a privilege to do so, is liable to the other if (a) he discovered the secret by improper means, or (b) his disclosure or use constitutes a breach of confidence reposed in him by the other in disclosing the secret to him, or (c) he learned the secret from a third person with notice of the facts that it was a secret and that the third person discovered it by improper means or that the third person's disclosure of it was otherwise a breach of his duty to the other . . ."); *Conmar Prods. Corp. v. Universal Slide Fastener Co.*, 172 F.2d 150, 155-56 (2d Cir. 1949).

"It is one of the equitable powers, inherent in every court of justice so long as it retains control of the subject matter and of the parties, to correct that which has been wrongfully done by virtue of its process." *Arkadelphia Milling Co. v. St. Louis Sw. Ry. Co.*, 249 U.S. 134, 145-46 (1919). This power encompasses the authority to order the return of the documents stolen by the conspirators in violation of the protective order. See generally *Anderson v. Dunn*, 6 Wheat. 204, 227 (1821) ("Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose . . . submission to their lawful mandates."); *In re Lafayette Radio Elec. Corp.*, 761 F.2d 84, 92 (2d Cir. 1985) ("it is established that a federal court sitting in equity that has jurisdiction to issue a decree necessarily has ancillary and supplemental jurisdiction to enter orders and judgments designed to effectuate that decree"); see also *Egri v. Conn. Yankee Atomic Power Co.*, 68 Fed. Appx. 249, 255-56 (2d Cir. 2003) ("Pursuant to the All Writs Act, a district court is authorized to bind non-parties where such action is necessary to preserve its ability to

adjudicate proceedings already before it or to enforce its own prior decisions.”) (unpublished opinion).

C. Restrictions on Dissemination Do Not Violate First Amendment Rights

1. *CMO-3's Restriction on Dissemination of Confidential Documents Does Not Implicate First Amendment Rights*

CMO-3's restriction on dissemination of confidential materials produced in discovery does not implicate the parties' freedom of speech; “[a] litigant has no First Amendment right of access to information made available only for purposes of trying his suit.” *Id.* at 32. Litigants do not have “an unrestrained right to disseminate information that has been obtained through pretrial discovery.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 31 (1984).

Nonparties who are prohibited from accessing confidential documents by CMO-3 cannot claim an infringement on their freedom of speech: “The right to speak and publish does not carry with it the unrestrained right to gather information.” *Zemel v. Rusk*, 381 U.S. 1, 16-17 (1965); *see also Joy v. North*, 692 F.2d 880, 893 (2d Cir. 1982) (“Discovery involves the use of compulsory process to facilitate orderly preparation for trial, not to educate or titillate the public.”). Those who can demonstrate a substantial need to know information contained in confidential documents must utilize CMO-3's declassification provisions. *See* CMO-3 at ¶ 9; *see also In re Agent Orange Prod. Liab. Litig.*, 104 F.R.D. 559, 572 (E.D.N.Y. 1985) (declassifying documents upon a showing “that the need for disclosure outweighs the need for further protection”), *aff'd* 821 F.2d 139 (2d Cir. 1987).

2. *The Injunction's Restriction on Dissemination Does Not Impinge on First Amendment Rights*

The instant injunction prohibiting further dissemination of confidential documents is content neutral. Its restriction does “not depend on the nature of the content of the idea that [the enjoined individuals wish] to express but only on the materials that would be the medium of expression.” *Lindsey v. Bloomberg*, ___ F.3d ___, slip op. at 18-19 (2d Cir. Feb. 1, 2007). The injunction is justified not by reference to the content of the covered documents, but rather by their unlawful acquisition. See *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 764-65 (1994) (holding injunctions “issued not because of the content of petitioners’ expression . . . but because of their prior unlawful conduct” are content neutral).

Only a minimal burden on speech results from the instant injunction since it restricts dissemination of documents only if those documents were obtained in the first instance by use of the court’s processes. It does not restrict anyone from discussing any topic or publishing or expressing any opinion. It is content neutral and does not “burden . . . speech [more] than necessary to serve a significant government interest.” *Madsen* at 765. While the court is not required to “employ the least restrictive means of accomplishing the governmental objective,” the injunction here is the least restrictive practicable method available to protect Lilly, the plaintiffs, and the court. *Universal City Studios, Inc., v. Corley*, 273 F.3d 429, 455 (2d Cir. 2001).

Several important governmental interests are served by this injunction. It allows the court to protect the privacy and property rights of litigants appearing before it, which is essential to a fair and efficient system of adjudication. By prohibiting dissemination in violation of the court order the court’s ability to enforce its own orders is preserved. Many of the protected documents contain trade secrets and commercial information, whose privacy the government has

a stake in maintaining: “Trade secret law promotes the sharing of knowledge and the efficient operation of industry.” See *DVD Copy Control Ass’n v. Bunner*, 31 Cal. 4th 864, 878 (Cal. 2003) (discussing “governmental purpose behind protecting trade secrets”).

Respondents’ claims that the injunction represents an impermissible prior restraint are without merit. Content neutral injunctions such as the present one do “not arouse the fears that trigger the application of constitutional prior restraint principles.” *Dallas Cowboys Cheerleaders, Inc. v. Pussycat Cinema, Ltd.*, 604 F.2d 200, 206 (2d Cir. 1979).

The instant case is readily distinguishable the Sixth Circuit Court of Appeals’ decision primarily relied upon by respondents, *Procter & Gamble v. Bankers Trust*, *supra*. In *Procter & Gamble*, the court held an injunction prohibiting a news magazine from publishing litigation filings that had been improperly sealed in the first instance to be an impermissible infringement upon First Amendment rights. *Procter & Gamble*, 78 F.3d at 225. Here, the documents at issue are not litigation filings, but documents produced in discovery, to which the right of public access has not attached. See Parts III.A and IV.A, *supra*; *Procter & Gamble*, 78 F.3d at 225 (“the documents in question are standard litigation filings”). The documents were never unsealed under CMO-3, unlike the filings at issue in *Procter & Gamble*, which were unsealed at the time the district court granted the injunction. See Parts II.H.2 and IV.A, *supra*; *Procter & Gamble*, 78 F.3d at 223, 223 (“the District Court determined that, because the parties could not provide a substantial government interest in keeping the documents confidential, the sealed documents should no longer be protected and should be released into the public domain”) (quotation marks omitted). Finally, the enjoined party in *Procter & Gamble* was a member of the media, Business Week magazine. See *id.* at 225. (describing the overturned injunction as

part of “a practice that, under all but the most exceptional circumstances, violates the Constitution: preventing a *news organization* from publishing information in its possession on a *matter of public concern*”) (emphasis supplied). The enjoined persons here are private, non-media-connected individuals.

The injunction here is content neutral, places only a minimal burden on speech, and serves significant government interests. It does not restrict freedom of speech under the First Amendment.

D. Enjoining Persons Who Refuse to Return the Documents is Necessary to Prevent Irreparable Harm to Lilly

Disclosure of confidential proprietary material and trade secrets poses a significant risk of harm to Lilly, a pharmaceutical company operating in a competitive marketplace. Both Lilly’s competitors’ and detractors’ use of the materials has the potential to inflict severe commercial harm on the company. *See* Dec’l of Gerald Hoffman, ¶ 18 (“If Lilly’s internal documents were to be publicly disseminated, every pharmaceutical company in the world, including competitors to all of Lilly’s marketed medications, including Zyprexa, would have access to a treasure trove of competitive intelligence, in an organized and assembled manner.”). The disclosure of its trade secrets can be considered tantamount to appropriation of the company’s property. *See, e.g., Conman Products Corp. v. Universal Slide Fastener Co.*, 172 F.2d 150, 155 (2d Cir. 1949) (finding trade secrets to be property).

The harm faced by Lilly is amplified by the fact that the protected documents which respondents seek to disseminate are segments of a large body of information, whose selective and out-of-context disclosure may lead to confusion in the patient community and undeserved

reputational harm — “what appears damning may, in context after difficult proof, be shown to be neutral or even favorable to the defendant.” Note, *Secrecy in Civil Trials: Some Tentative Views*, 9 J.L. & Pol’y 53, 58 (2000).

In granting this injunction, the court has balanced the harm to petitioner if relief is denied against the harm to respondents if relief is granted. *See generally* 11A Wright & Miller at § 2942. The harm imposed by the injunction on respondents is minimal. They are required to return stolen documents over which they enjoy no property rights. *See* Part IV.B, *supra*. Their freedom of speech is not impinged upon. *See* Part IV.C, *supra*. To the extent they believe access to the protected documents is essential to their pursuit of the public interest, they may petition the court for declassification of the documents or modification of the protective order. *See* Part IV.C.1, *supra*; *see also Walker v. City of Birmingham*, 388 U.S. 307, 321 (1967) (“One may sympathize with the petitioners’ impatient commitment to their cause. But respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom.”).

Some of the individuals who have thus far refused to comply with requests to return the stolen documents have shown a resolute desire to flout court orders and inflict economic and reputational harm on Lilly. If not enjoined, it is highly probable that these individuals will widely disseminate the documents they know to be protected by a court order, in a form unnecessarily damaging to Lilly. *See, e.g.*, Tr. at 48-49, 193-94; Part II.K.4, *supra*. The injunction against them is therefore necessary to prevent irreparable harm to Lilly.

E. Enjoining Persons Who Returned the Documents is Not Necessary to Prevent Irreparable Harm to Lilly

As discussed *supra* in Part IV.D, dissemination of its confidential documents poses a significant risk of harm to Lilly's privacy, proprietary, and commercial interests. Nonetheless, those individuals who have returned the documents they received from the conspirators, and who have not themselves been implicated in the conspiracy, are unlikely to cause harm to Lilly.

It is not necessary in this case to burden respondents who have demonstrated compliance with and respect for court orders in order to prevent future harm to Lilly. An injunction should be no more burdensome to respondents than necessary to provide complete relief to petitioner. *See Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). No individual who has returned the documents, and is not a member of the conspiracy to illegally procure the documents, is enjoined.

F. Websites Should Not Be Enjoined

A difficult issue is presented by Lilly's request to enjoin certain websites from posting the confidential documents. *See* Part I, *supra*. The websites in question had posted or linked to the documents prior to being enjoined from doing so by the preliminary injunction of January 4, 2007. No site has violated the January 4th order.

A user of one of the enjoined websites, "John Doe," has appeared in this action to contest the injunction's applicability to him. The injunction has no application to him since he apparently received no documents from the conspirators.

Prohibiting five of the internet's millions of websites from posting the documents will not substantially lower the risk of harm posed to Lilly. Websites are primarily fora for speech. Limiting the fora available to would-be disseminators by such an infinitesimal percentage would be a fruitless exercise of the court's equitable power. A more effective use of the court's

equitable discretion is to impose restraints on the individuals who pose the greatest risk of harm to Lilly — those who have not returned the documents despite knowledge that they were illegally procured. *See* Part IV.D, *supra*.

Mindful of the role of the internet as a major modern tool of free speech, *see* Part I *supra*, in the exercise of discretion the court refrains from permanently enjoining websites based on the insubstantial evidence of risk of irreparable harm. Restrictions on speech, even in the context of content-neutrality, should be avoided if not essential to promoting an important government interest. No website is enjoined from disseminating documents.

G. All Named Persons are Bound by the Injunction

The court's power is being exercised to enjoin all persons whose conduct poses a significant risk of irreparable harm to Lilly which cannot be remedied except by injunction. *See* Part III.D, *supra*; Note, *Developments in the Law: Injunctions*, 78 Harv. L. Rev. 994 (1965).

Respondents place great emphasis on Judge Hand's statement in *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832 (2d Cir. 1930), that "the only occasion when a person not a party *may be punished*, is when he has helped bring about . . . an act of a party [in violation of a prior court decree]." *Id.* at 832-33 (emphasis supplied). In *Alemite*, the Court of Appeals for the Second Circuit was considering an appeal from a conviction of contempt by an individual whose alleged violation of an injunction in which he had not been named formed the basis of the contempt proceeding. *Id.* at 832.

Alemite speaks to the question of who may be held in contempt for violating an injunction. *See Developments in the Law: Injunctions, supra*, at 1028-29. It does not bear on the question presented in this case of who the court may enjoin by name in the first instance. Unlike

Alemite, this is not a contempt proceeding, and the court is not now punishing anyone for any alleged violation of court orders. Rather, this proceeding seeks to prevent irreparable harm to Lilly by enjoining those persons whose actions threaten such harm. *See Owen Fiss, Injunctions*, 109 (2d ed. 1984) (“The traditional office of an injunction is to prevent harm.”). The relief granted is not punitive, but preventative. *See generally* Part III.D.1, *supra*.

The necessity of enjoining dissemination and requiring return of the sealed documents is not limited to those who were bound by the terms of CMO-3. The power to enjoin extends to persons and organizations whose activities present a risk of irreparable harm to petitioner that can not be alleviated by means other than injunction.

The parties to these injunction proceedings are the petitioner, Eli Lilly, and respondents, including James Gottstein, David Egilman, Dr. David Cohen, Judi Chamberlin, Vera Sharav, Robert Whitaker, Eric Whalen, and David Oaks. *See* Civil Docket for Case No. 1:07-CV-00504-JBW-RLM. Even if the injunction proceedings are considered part of the more general series of actions, 04-MDL-01596, the respondents who are bound by this order have either been served or have appeared and should return documents illegally obtained that are in their possession. They cannot claim to be bona fide purchasers. *See* Part IV.B, *supra*.

The injunction issued here is binding on all persons named within it as well as “their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.” Fed. R. Civ. P. 65(d). *See, e.g., Vuitton et Fils S.A. v. Carousel Handbags*, 592 F.2d 126, 130 (2d Cir. 1979) (“Whether one *not named* in an injunctive decree may nevertheless be bound by it” is governed by Rule 65(d).) (emphasis supplied).

H. Persons Bound

1. Recipients of Documents

Persons who received documents from Gottstein, but against whom Lilly is not seeking a permanent injunction, are: Alex Berenson (of The New York Times); Snighdha Prakash (of National Public Radio), Amelia Desanto, Steve Cha, Jerry Winchester, Dr. Grace Jackson, the Alliance for Human Research Protection, and MindFreedom International.

Persons and websites against whom Lilly seeks a permanent injunction are: Dr. Peter Breggin, Judi Chamberlin, Dr. David Cohen, Terri Gottstein, Will Hall, David Oaks, Vera Sharav, Eric Whalen, Robert Whitaker, Bruce Whittington, Laura Ziegler, zyprexa.pbwiki.com, www.mindfreedom.org, www.ahrp.org, www.ahrp.blogspot.org, and www.joysoup.net. The individuals named received the documents, but proof that the websites received the documents is lacking.

Persons who have returned the documents and need not be enjoined are: Dr. Peter Breggin, Steve Cha, Terri Gottstein, Will Hall, Dr. Grace Jackson, Dr. Stephen Kruszewski, Bruce Whittington, Jerry Winchester, and Laura Ziegler.

Persons who the evidence demonstrates received, but have not returned, the documents, and against whom Lilly is seeking a final injunction, are: Judi Chamberlin, Dr. David Cohen, David Oaks, Vera Sharav, Eric Whalen, and Robert Whitaker.

2. Amelia Desanto

Documents provided by Gottstein to Senate staffer Amelia Desanto have not been returned. Lilly has not sought an injunction against Desanto. Accordingly, and in light of the comity and respect due a coequal branch of government, Desanto is not enjoined.

3. *N.Y. Times, National Public Radio, and Snighdha Prakash*

No injunction has been sought against the New York Times. No showing has been made that any of its employees other than Berenson possessed the documents. No showing has been made that the Times knew they had been stolen. The reasoning applicable to the New York Times applies to National Public Radio.

Snighdha Prakash of National Public Radio is not enjoined because no injunction against her is sought. The New York Times and National Public Radio are not enjoined.

4. *Berenson*

While Berenson's conduct in assisting in the stealing of the protected documents was reprehensible, Lilly has sought no injunction against him. Accordingly, Berenson is not enjoined.

5. *Gottstein and Egilman*

Gottstein and Egilman have appeared by counsel in these proceedings and are therefore bound. *See* Tr. at 243, 252. Since their irresponsible conduct suggests further restraints to protect the parties and the court, they are included in this injunction.

6. *Websites*

For the reasons stated in Parts I and IV.F, *supra*, it is unlikely that the court can now effectively enforce an injunction against the internet in its various manifestations, and it would constitute a dubious manifestation of public policy were it to attempt to do so. No internet site is enjoined.

7. *Persons Who Have Not Returned the Documents*

The following individuals have been asked to return the documents they received from

Gottstein to the Special Master, but have thus far failed to do so: Dr. David Cohen, Judi Chamberlin, Vera Sharav, Robert Whitaker and Eric Whalen. David Oaks is highly likely to have in his possession copies of the documents that he received directly or indirectly from Gottstein, but he has not returned them. All persons listed in this paragraph are being ordered to return any copies of the documents in their possession to the Special Master immediately. See Part VIII, *infra*.

The attorney for Vera Sharav, who is holding her copies of the documents, is considered to hold them on behalf of Ms. Sharav. He is bound to return them on her behalf.

Berenson, Snighdha Prakash and Amelia Desanto have also not returned the documents. The application of this order to Berenson is discussed in Part IV.H.4, *supra*; the application of this order to Snighdha Prakash is discussed in Part IV.H.3, *supra*; the application of this order to Amelia Desanto is discussed in Part IV.H.2, *supra*.

8. *Persons Restrained*

Berenson's, Egilman's, and Gottstein's brazen flouting of this court's protective order raises serious questions about their responsibility. The court, based on the evidence before it, is not satisfied that they can be counted on to return all copies of the documents they may have in their possession or control. Egilman and Gottstein are therefore being permanently enjoined as noted in Part IV.H.5, *supra*. Berenson is not being enjoined since no injunction against him has been sought by Lilly. See Part IV.H.4, *supra*.

Those individuals who received documents and from whom Lilly seeks return but who have not returned them are ordered to return them. See Part IV.B.7, *supra*. Their disregard for the court's processes poses a significant risk of irreparable harm to Lilly of further dissemination

by them of protected documents. They are enjoined from further attempts at dissemination. *See* Part VIII, *infra*.

V. Findings of Fact and Law

A. Embodied in this Memorandum

This Memorandum and Order contains at various points the court's findings of fact and law. *See, e.g.*, findings in Parts II and IV, *supra*; *see also* Fed. R. Civ. P. 65(d) ("Every order granting an injunction...shall set forth the reasons for its issuance"); Fed R. Civ. P. 52(a).

Petitioner and respondents have submitted extensive formal findings of fact and law. The court sees no need to adopt them in view of this comprehensive memorandum.

B. Irreparable Harm to Lilly

Publication of the protected documents has already created irreparable harm to Lilly by revealing its trade secrets, confidential preliminary research, and merchandising techniques. It has made settlement of the remaining MDL and state cases and trials more difficult by creating probable prejudice largely irrelevant to the issues posed by the pending cases and by making impartial juror selection more difficult. It may have adversely affected prospective plaintiffs who may be less willing to sue if their intimate medical problems can be revealed through violation of the court's protective orders. And, of course, flouting the court's orders weakens the judicial structure.

As noted in Part IV.D, *supra*, there remains the substantial probability of further abuse of CMO-3 by the conspirators and individuals who have not returned the protected documents. This danger constitutes a continuous overhanging threat of harm which is likely to affect Lilly's standing in the marketplace and the value of the corporation as a whole.

There has already been sufficient revelation in the New York Times so that if Congress, the Food and Drug Administration, or the Federal Trade Commission wish to investigate or act they have grounds for doing so, subpoenaing protected documents as necessary for their purposes.

C. Lack of Appreciable Harm to Those Bound

There is little or no harm to anyone bound by the injunction. None are harmed in their private person. To the extent that they wish to protect the public welfare by their revelation of protected documents, CMO-3 provides a vehicle for doing so. *See Part IV.D, supra.*

D. Conclusion

The balance of benefits and harms leads overwhelmingly to support of the injunction now being issued. *See Part IV.D, supra.*

VI. Conclusion

The preliminary injunction was justified. The references and restrictions upon various sites on the internet are not carried over to the final injunction in the exercise of discretion.

VII. Stay

This final judgment and injunction is stayed for ten days to permit an application to the Court of Appeals of the Second Circuit for reinstatement of this court's order of January 4, 2007 including within a preliminary injunction various websites, or for other relief. The preliminary injunction shall remain in effect for ten days.

VIII. Injunction

It is hereby

ORDERED that the following individuals who have received documents produced by Eli

Lilly and Company subject to CMO-3 (including all copies of any electronic documents, hard copy documents and CDs/DVDs) are enjoined from further disseminating these documents: Judi Chamberlin, Dr. David Cohen, David Egilman, James Gottstein, David Oaks, Vera Sharav, Eric Whalen, and Robert Whitaker. He or she shall forthwith return any such documents and copies still in his or her possession or control to Peter Woodin, Special Master for Discovery, at JAMS, 280 Park Avenue, West Building, 28th Floor, New York, N.Y. 10017.

SO ORDERED.

Jack B. Weinstein
Senior United States District Judge

Dated: February 13, 2007
Brooklyn, N.Y.

In the Matter Of:

ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

JAMES GOTTSTEIN - VOLUME I

October 16, 2015

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1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE
3 _____
4 ALASKA BUILDING, INC., an
5 Alaska corporation,
6 Plaintiff,
7 vs. 
8 716 WEST FOURTH AVENUE LLC,
9 and LEGISLATIVE AFFAIRS
10 AGENCY,
11 Defendants.
12 _____
13 Case No. 3AN-15-05969 CI
14 _____
15 DEPOSITION OF JAMES B. GOTTSTEIN
16 VOLUME I
17 _____
18 Pages 1 - 58, inclusive
19 Friday, October 16, 2015
20 2:00 P.M.
21 Taken by Counsel for
22 Defendant 716 West Fourth Avenue LLC
23 at
24 ASHBURN & MASON
25 1227 West 9th Avenue, Suite 200
 Anchorage, Alaska

PACIFIC RIM REPORTING
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1 Q. Okay. How much were you asking for?

2 A. For what?

3 Q. For compensation. And I'm just talking
4 about the whole pot here.

5 A. Well, my big concern was catastrophic
6 damage to the Alaska Building, and there was not
7 really a satisfactory resolution of that in my mind,
8 from my perspective. So from my perspective, that's
9 a big mess.

10 And, you know -- and I suffered two hundred
11 and fifty -- or Alaska Building, Inc. has suffered
12 \$250,000 worth of damage and has gotten fifty so far
13 and may probably get another fifty, and then have to
14 litigate for the rest. So I don't recall in terms of
15 those other pieces. I think the other specific pieces
16 probably were pretty close to what I asked for.

17 Q. Okay. Have you contacted anyone from the
18 press about this case?

19 A. Yes.

20 Q. Who?

21 A. Well, I have this e-mail list that I
22 sent -- I can't remember if I sent anything out to
23 the whole list, but basically it's been Nathaniel
24 Herz, Lisa Demer, Rich Mauer at the Alaska Dispatch
25 News. I must have sent something out to the whole

1 list, because I got calls from, like -- what, like,
2 Fox 4. And ABC, Channel 13, I think, did a story on
3 our argument over standing.

4 Q. Aside from e-mail contacts, have you also
5 had phone contacts with members of the press about
6 this case?

7 A. Yes.

8 Q. Who have you spoken with?

9 A. Lisa Demer and Nathaniel Herz and Rich
10 Mauer.

11 Q. What did you say?

12 A. I mean, I talked about -- I've had various
13 conversations. Talked about the illegal nature of
14 the lease. I mean, my big effort was I wanted -- I
15 felt that it would be good to have people show up at
16 the standing hearing, and so it was some effort to
17 get them to actually put anything in about it.

18 Q. Any other reasons why you've contacted
19 press about this case?

20 A. Well, I think it's a matter of public
21 importance, so that's the reason.

22 Q. Okay. You published all of the discovery
23 that you received in this case on line. Is that
24 right?

25 A. I'm not sure all of it's up there yet, but

1 I -- I have been posting it.

2 Q. And why do you do that?

3 A. I think it's a matter of public interest.

4 Q. You were involved, Mr. Gottstein, with the
5 release of the Zyprexa papers?

6 A. Yes.

7 Q. If you had to do it over again, would you
8 release those papers?

9 A. Not -- no, not in the way that I did.

10 Q. You can object to this characterization,
11 but you boast about it a bit on your website, do you
12 not, for Law Project for Psychiatric Rights?

13 A. Well, the -- these were documents that had
14 been sealed, kept -- you know, made secret that
15 showed tremendous harm being done by Zyprexa that
16 Eli Lilly had -- you know, was keeping -- that knew
17 about this huge amount of damage that was kept
18 secret from the public, so it also was a matter of
19 great public importance.

20 So there was a protective order that said
21 that if the documents were subpoenaed in another case,
22 that Eli Lilly had to be given notice of it and a
23 reasonable opportunity to object before the person who
24 was subpoenaed could produce it.

25 And I followed that. And I think that it

1 he?

2 A. Correct.

3 Q. And he thought that you had deliberately
4 misled Eli Lilly and violated the terms of the
5 protective order?

6 A. I don't -- no, I don't think that's a fair
7 characterization. I mean, that I deliberately
8 misled Eli Lilly? No. I don't think that. He --
9 he determined that I had violated the protective
10 order, of which I was not a party, but in any
11 event --

12 Q. Judge Weinstein found that you used a
13 subpoena as a subterfuge to get around the
14 protective order. Isn't that right?

15 A. You'd have to show me the language. I'm
16 not sure that -- I'd have to look at the exact
17 language of his decision. That doesn't sound right.

18 Q. Leaving aside the language of the decision,
19 was it a subterfuge?

20 A. No.

21 Q. Did you deliberately violate the terms of
22 the protective order?

23 A. No.

24 Q. You sent these protected materials to
25 contacts at The New York Times. Is that right?

1 A. Yes. They were not protected at that time
2 in my mind, because the terms of the protective
3 order had been complied with. I mean, the
4 obligation was on the person I subpoenaed, who was
5 an expert in the case, expert witness in the case,
6 to comply with the protective order. And he
7 determined that Eli Lilly had been given an adequate
8 opportunity to object, and then provided them to me.
9 And at that point I believe that they were no longer
10 protected.

11 Q. Magistrate Judge Mann also reviewed some of
12 this information and your conduct in the Zyprexa
13 proceeding. Is that right?

14 A. So, first off, I don't see how this -- I'm
15 going to object to this line of questioning, just
16 for the record, as I don't see how it's relevant or
17 likely to lead to admissible evidence.

18 What was the question again?

19 Q. Did a magistrate judge, Mann, also get to
20 oversee some of the Zyprexa proceedings and your
21 conduct with respect to the protective order?

22 A. I'm not -- I don't recall the name. It
23 might have been Mann. I don't know why it wouldn't
24 have been.

25 Q. Was there a magistrate judge involved?

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

Filed in the Trial Courts
STATE OF ALASKA, THIRD DISTRICT

OCT 27 2015

Clerk of the Trial Courts
By _____ Deputy

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

Case No. 3AN-15-05969CI

^{#17}
**OPPOSITION TO
716'S MOTION FOR RULING OF LAW PRECLUDING ABI'S
CLAIMS FOR QUI TAM AND PUNITIVE DAMAGES**

Plaintiff, Alaska Building, Inc., opposes 716's Motion For Ruling Of Law
Precluding ABI's Claims For Qui Tam And Punitive Damages.

A. Background

On September 19, 2013, defendant 716 West Fourth Avenue LLC (716 LLC)
entered into a sole source agreement with defendant Legislative Affairs Agency (LAA) to:

(a) demolish (i) the existing Anchorage Legislative Information Office down to
its steel frame and (ii) the Empress Theatre building, and

(b) lease a newly constructed office building to LAA for the Anchorage
Legislative Information Office on the two lots upon which the old LIO building and
the Empress Theatre had been demolished

(LIO Lease or LIO Project).

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This was purportedly authorized under AS 36.30.083(a), but the statute only allows sole source procurement of leased space to extend a real property lease 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. (emphasis added).

The LIO Lease is not an extension because (1) the existing building was demolished down to its foundation and steel frame (2) the adjacent old Empress Theatre, most recently the Anchor Pub, was completely demolished, (3) a brand new building was constructed on the combined sites of the old Legislative Information Office Building and the Old Empress Theatre, and (4) the premises were vacated for at least 13 months during the demolition and while the new building was constructed. This was a new construction project not a lease extension.

In addition, the cost is well over the market rental value of the real property. As set forth in the Affidavit of Larry Norene filed October 6, 2015, 90% of the market rental value is \$108,593 per month. This is the maximum allowed by AS 36.30.083(a). However, the LIO Lease carries rent in the amount of \$281,638, which is \$173,045 more per month than allowed under AS 36.30.083(a).

The remedies sought are:

A. Judgment declaring the September 19, 2013, agreement between 716 West Fourth Avenue LLC and the Legislative Affairs Agency pertaining to the Anchorage Legislative Information Office building illegal, null and void.

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*Opposition to 716 LLC Qui Tam
& Punitive Damages Law Motion*

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B. A Judgment in favor of Alaska Building, Inc., in the amount of 10% of the savings to the Legislative Affairs Agency as a result of the invalidation of the LIO Project Lease.

C. Punitive damages against 716 West Fourth Avenue LLC.

D. Costs and attorney's fees.

E. Such other further and additional relief as the Court find just.

Second Amended Complaint, filed August 25, 2015, page 3.

B. The 10% of Savings Remedy Should Not Be Foreclosed

It is respectfully suggested that allowance of Alaska Building, Inc.'s claim for 10% of the savings to the Legislative Affairs Agency as a result of the invalidation of the LIO Project Lease is necessary to make meaningful the right of citizen-taxpayers to seek judicial redress of illegal governmental action. As a result of the unique development of Alaska law, both by statute and judicially, citizens' and taxpayers' right to bring cases to redress illegal government action has become a hollow paean. More particularly, the now standard imposition of attorney's fees against such a plaintiff who does not prevail has chilled this important check against governmental misdeeds almost out of existence and allowing such a recovery can at least ameliorate this in situations in which such a recovery might be possible.

Prior to the enactment of HB145/Ch. 86 SLA 2003 by the Alaska Legislature, codified at AS 09.60.010(b)(e) (HB 145), the Alaska Supreme Court created a public interest exception to Civil Rule 82 that allowed plaintiffs truly bringing actions in the public interest to be protected from attorney fee awards against them and full, reasonable

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*Opposition to 716 LLC Qui Tam
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attorney's fees if they prevailed.¹ This enabled the right of civic minded people to hold the government accountable for disobeying the law and there was a fair amount of such litigation.

However, in response to the many times the State was found in violation of the law and the consequent awarding of full attorney's fees to the public minded citizens bringing these lawsuits, through HB 145, the Alaska Legislature abrogated the Alaska Supreme Court's judicially created public interest litigant exception to Civil Rule 82 except with respect to litigation to enforce constitutional rights. This was upheld in *Alaska v. Native Village of Nunapitchuk*, 156 P.3d 389 (Alaska 2007). Most public interest litigation has disappeared as a result. The risk of a large attorney's fee award against such a plaintiff has simply made the potential financial cost of a public interest lawsuit too great. *Alaska Conservation Foundation v. Pebble Limited Partnership*, 350 P.3d 273, 285 (Alaska 2015), describes the history and abrogation of the public interest exception to Civil Rule 82, and because the large attorney fee award was vacated because the underlying decision was reversed did not reach the issue of the extent to which this abrogation impermissibly infringes upon the constitutional right to access to the courts.

The problem of substantial attorney's fees awards under Civil Rule 82 chilling legitimate challenges to illegal government action is exacerbated by the abusive use of Offers of Judgment under Civil Rule 68 whereby the State threatens to seek as much as

¹ *Gilbert v. State*, 526 P.2d 1131 (Alaska 1974); *Anchorage v. McCabe*, 568 P.2d 986 (Alaska 1977); *Kenai Lumber Co. v. LeResche*, 646 P.2d 215 (Alaska 1982); and *Dansereau v. Ulmer*, 955 P.2d 916 (Alaska 1998).

75% of its attorney's fees against a plaintiff. At the same time the Legislature has successfully chilled public minded citizens from bring public interest litigation to challenge illegal government action, Alaska has had rampant corruption, of which the particular no-bid lease at issue here is an example with well over \$20 million more than allowed under the statute paid to 716 LLC.

Under these circumstances, approval of the modest 10% of savings claim made here² is something the judiciary can do to address such corruption and the chilling of public interest litigation as a result of the Legislature's abrogation of this Court's public interest litigant exception to Civil Rule 82. Such a judicially created recovery will not solve all the problems created by the legislative abrogation of the public interest litigant exception to Civil Rule 82, but it would address some of it.

In the Legislative Affairs Agency's Non-Opposition to 716's Motion for Ruling of Law Precluding ABI's Precluding ABI's Claims for *Qui Tam* Damages (LAA Non-Opposition), it complains that the 10% recovery could potentially deprive LAA and taxpayers of millions of dollars. This is disingenuous, or at least ironic, since the Legislative Affairs Agency is vigorously attempting to prevent such a savings in this case.

In spite of agreeing this is not a *qui tam* case,³ the LAA Non-Opposition complains that a *qui tam* complaint must be filed under seal. The sealing provision is a specific

² The federal False Claims Act, 31 USC §3729, *et seq.*, grants successful *qui tam* plaintiffs between 15 and 25% if the government intervenes and takes over the case and 25-30% if not. 31 USC §3730(d).

³ Exhibit A, page 8: 22-12 to LAA Non-Opposition.

provision of the federal False Claims Act, 31 U.S.C. § 3730(b)(2), which was enacted because of the Department of Justice's concerns that the filing of a qui tam suit by a private party might "tip off" investigation targets when a criminal inquiry was at a sensitive stage.⁴ However, this case was not brought under the federal False Claims Act and there is no requirement, or even authorization, for this case to have been filed under seal. LAA's true complaint is that the illegality of the LIO Lease has been publicly exposed.

At page 4 of its Non-Opposition, the LAA asserts that because of the federal False Claims Act there is no room for the creation of additional common law. First, as set forth above, Alaska Building, Inc., is not making a *qui tam* argument. In any event, the 10% of savings claim is being made under state law. It can also be noted that many states have enacted state versions of the federal False Claims Act.⁵

Perhaps most egregiously, the LAA attaches pages 41 and 43 of the deposition of Alaska Building, Inc.'s president for the proposition that Alaska Building, Inc., has not stated any legal basis for the 10% claim, but jumps over page 42 of the deposition transcript, where just such an articulation is made (starting on page 41):

Q. So I think we can agree on that, that this is not a qui tam case. What is the basis for claiming an entitlement to 10 percent of the savings?

A. I think that it's -- it's a way to make real the citizen taxpayers' right to bring actions on behalf of the government to stop government -- illegal government action.

⁴ 1986 U.S.C.C.A.N. at 5288-89.

⁵ See, <http://www.taf.org/states-false-claims-acts>, accessed October 24, 2015.

What we had -- from about 1974 through 1998, the Alaska Supreme Court had established what's called a public interest exception to Civil Rule 82, providing that public interest litigants that were truly suing on behalf of the public were not subjected to having attorneys' fees against them and would have -- if they prevailed, would have -- be awarded full attorneys' fees.

So there wasn't really -- if they could establish that they were public interest litigants, they wouldn't really face the risk of having attorneys' fees awarded against them.

In 2003, the Alaska legislature passed a statute that changed that, except with respect to constitutional claims, basically because they were tired of paying attorneys' fees in all these cases where the government was found to have acted illegally.

And so now you have a situation where anybody trying to bring such a suit faces potentially ruinous attorneys' fees if they don't prevail, or certainly large attorneys' fees if they don't prevail. And that, in my -- my sense of it, has essentially virtually dried up public interest litigation, and so now the government pretty much has free rein to act illegally without any kind of check through this public interest litigation.

And so by -- in these types of cases, where a big, you know, savings or recovery on behalf of the government is achieved, this is a way to really make real the citizens' rights to sue to redress illegal government action.⁶

LAA deleting this page of the transcript and then stating at page 3 that plaintiff has made no nonfrivolous argument for establishing new law appears to be a deliberate misstatement.

At note 12, the Legislative Affairs Agency states Alaska Building, Inc.'s claim is confusing because it appears to accuse the state of somehow defrauding itself. No, what Alaska Building, Inc. claims is that the lease the Legislative Affairs Agency executed with 716 LLC is illegal, null and void, and in the face of the Legislative Affairs Agency and the

⁶ Exhibit 1, page 4-5.

rest of officialdom ignoring its illegality, Alaska Building, Inc., should receive 10% of any savings achieved as a result of having the lease declared illegal, null and void.

C. Punitive Damages Should Not be Precluded

In a *qui tam* action, which this is not, the party who improperly received money from the government pays a fine to the government, of which the *relator*⁷ receives a portion. Under the federal False Claims Act, 31 USC §3729(a)(1)(G), there is a civil penalty of between \$5,500 and \$11,000 for each false claim, plus 3 times the amount of damages which the government sustained because of the act of that person (treble damages). In this case, 716 LLC is being overpaid more than \$170,000 per month. Since January of 2015, this presumably amounts to 716 being overpaid over \$1.7 million already.⁸ Should punitive damages be awarded and paid,⁹ they should be paid to the State of Alaska.¹⁰

⁷ The person who brings the action on behalf of the government.

⁸ "Presumably," because both 716 LLC and LAA have refused to produce this information in response to Alaska Building, Inc.'s August 3, 2015, requests for production, which is the subject of a pending motion to compel against 716 LLC and may be the subject of a future motion to compel against LAA.

⁹ It seems highly unlikely that 716 LLC will be able to even pay back the illegal rent it has received let alone any punitive damages. See, Memorandum in Support of Motion for Preliminary Injunction, filed October 6, 2015. Unless the Limited Liability Company Shield is pierced, the illegal rent paid to 716 LLC that has been distributed to its owners will not be recoverable (According to state records, Mount Trident LLC owns 44.44% of 716 LLC, Exhibit 2, and Mr. Pfeffer owns 100% of Mount Trident, Exhibit 3.)

Mr. Pfeffer also owns 100% of the beneficial interest in Pfeffer Development LLC, which was slated to receive \$2.4 million from the construction under the LIO Project. Exhibit 4. 716 LLC has refused to produce documents pertaining to the actual payments, but presumably the payments were pretty close to this. At the time, Mr. Pfeffer's revocable trust owned 100% of Pfeffer Development. Exhibit 5. After Alaska Building, Inc., began

With respect to 716 LLC's specific arguments against an award of punitive damages, it first states that because the 10% of savings claim for compensatory damages should be dismissed, there can be no punitive damages. The fundamental flaw in this argument is that it ignores that the State should be awarded compensatory damages in the amount of rent illegally received by 716 LLC.¹¹ So, whether or not Alaska Building, Inc., receives its 10% of any savings compensatory damages, the compensatory damages requirement for punitive damages is satisfied by an award to the State.

The other prong of 716 LLC's argument, citing AS 09.17.020(b) is that the complaint does not allege outrageous conduct, including acts done with malice or bad motives, or that 716 LLC did not evidence reckless indifference to the interest of another

making the argument in this case that the illegal rent should be paid and perhaps followed to the owner, on August 3, 2015, Mr. Pfeffer filed a change of ownership with the state of Alaska that the Mark E. Pfeffer Alaska Exempt Trust (Pfeffer Exempt Trust) had become the 100% owner of Pfeffer Development. Exhibit 6. The Pfeffer Exempt Trust is presumably one under AS 34.40.110 that is designed to shield assets from creditors. *See, e.g., Timothy Lee, Alaska on the Asset Protection Trust Map: Not Far Enough for a Regulatory Advantage, but Too Far for Convenience?*, 29 *Alaska Law Review* 149, 150 (2012) (commentators have written numerous articles about the destruction of creditors' rights); and Jeremy M. Veit, *Self-Settled Spendthrift Trusts and the Alaska Trust Act: Has Alaska Moved Offshore?*, 16 *Alaska Law Review* 269, 270 (1999) ("The proponents of the Alaska Trust Act hoped to attract millions of dollars worth of trust investment (and the administrative fees that accompany it) to Alaska by providing protection [from creditors] previously available only offshore.").

Thus, Mr. Pfeffer has constructed various barriers to the State's recovery of illegal rent that ended up in his hands. Mr. Acree, on the other hand is the owner, directly, of his share of 716 LLC. Exhibit 2.

¹⁰ AS 09.17.020(j), requires that 50% of any punitive damage award be paid to the state, but in this case, since the conduct was against the state, it should receive 100%, possibly subject to an award to Alaska Building, Inc. of 10% of the savings achieved as a result of this litigation.

¹¹ The complaint could be more clear on this and an amendment might be in order.

*Opposition to 716 LLC Qui Tam
& Punitive Damages Law Motion*

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person. AS 09.17.020(b) only requires that such conduct be proven in support of a claim for punitive damages. While both 716 LLC and LAA have improperly failed to provide relevant discovery, which is the subject a pending motion to compel against 716 LLC and continued discussions between Alaska Building, Inc., and LAA, even from what has been produced there is compelling evidence of conduct justifying punitive damages.

Discovery from 716 LLC reveals that Representative Mike Hawker¹² and Mark Pfeffer¹³ had what Mr. Pfeffer called "back channel" communications using Rep. Hawker's private e-mail account that reveal, among other things, that they put pressure on Pam Varni, the director of the Legislative Affairs Agency, and Doug Gardner, the Legislative Affairs Agency's attorney, to go along with the LIO Project in spite of Ms. Varni's and Mr. Gardner's objections.¹⁴ Discovery from both 716 LLC and the Legislative Affairs Agency also reveal that 716 LLC knew the LIO Lease is illegal.

Mr. Pfeffer and Rep. Hawker's plan in having the legislative procurement rules change to allow a no-bid "material modifications"¹⁵ was to extend the existing lease in its

¹² Rep. Hawker was the chair of the Legislative Council which controls the Legislative Affairs Agency who negotiated the no-bid lease with Mr. Pfeffer.

¹³ At the time, Mr. Pfeffer was formally acting in his capacity as the Manager of Pfeffer Development LLC, which was working for the landlord, 716 LLC. On the same day that the LIO Lease was signed, September 19, 2013, Mr. Pfeffer's revocable trust became an owner of 716 LLC and Mr. Pfeffer became the Manager. Exhibit 7.

¹⁴ The Legislative Affairs Agency failed to produce any e-mails from or to Rep. Hawker's private e-mail account, asserting that it doesn't have possession, custody, or control over it. Alaska Building, Inc., responded that since Rep. Hawker is listed as being subject to the attorney-client privilege these e-mails should be produced. This is the subject of ongoing discussions between the Legislative Affairs Agency and Alaska Building, Inc. Exhibit 8.

¹⁵ See, Exhibit 9.

then current condition ("as-is") under AS 36.30.083(a) for at least 10% below market rent and then a "material modification" to perform the demolition and construction work to build the new Anchorage Legislative Information Office Building. See, June 20, 2013, e-mail from Mr. Stein to Mr. McClintock stating, "the intent was to extend based on beating the as-is BOV¹⁶ by 10%, but then NOT being limited by that standard in the material modification." Exhibit 10, page 1.

Mr. Steiner then goes on to write,

"I don't know whether beating a post-renovation BOV or appraisal by 10% will prove feasible, but I do not believe Rep. Hawker wants or expects to be told that standard limits improvements to the building."

Id. In other words 716 LLC knew the demolition and reconstruction of the Anchorage Legislative Information Office Building could not result in a rental rate 10% below market, but knew Rep. Hawker was determined to proceed regardless of the statutory restriction. Mr. McClintock's e-mail also foreshadows the circular reasoning valuation that was ultimately deployed to make the outrageous claim that the LIO Lease is at least 10% below market rent.¹⁷ The e-mail, from Mr. McClintock, reports Mr. Gardner's "vision of [AS 36.30.] 083 and .040 is that the rent should be 10% below appraisal. *Id.*, page 2.

Mr. McClintock attempted to implement the extend "as-is" and material amendment plan in a July 12, 2013, e-mail to Mr. Gardner, forwarding a draft lease extension under

¹⁶ Broker's Opinion of Value.

¹⁷ Exhibit 10, page 2. "You can probably get the numbers to work out if the lease rate assumes a 10 year term and you can qualify for 25 year financing or the income approach uses a different cap rate than what you do for the financing." *Id.*

AS 36.30.083(a) for the existing building "as-is" and a "material amendment" for the demolition and construction work for the LIO Project.¹⁸ Exhibit 11.

On that same day, July 12, 2013, in an e-mail to Rep. Hawker, Mr. Pfeffer forwarded an e-mail from Mr. McClintock to John Stein, with the note "The back channel between lawyers." Exhibit 12, page 1. Mr. McClintock writes that he and Pfeffer Development's attorney, John Steiner are not confident the entire deal can be done under AS 36.30.083.¹⁹ Exhibit 12, page 1. Rep. Hawker responded that he needed to get back and deal with Mr. Gardner again, stating, "I hate lawyers." *Id.* Presumably, the "I hate lawyers," comment was because Rep. Hawker does not like being told by lawyers that he can't do something because it is illegal.

The next day, Mr. Steiner expanded on Mr. McClintock's report of their meeting with Mr. Gardner, including that the deal was not conceived as being 10% under market rent as required by AS 36.30.083 and that the project would not qualify under AS 36.30.083 as an extension because of the additional space, i.e., the inclusion the building built on the site of the demolished old Empress Theatre. Mr. Steiner also reported that Mr. Gardner believed that the plan to formally extend "as-is" for at least 10% below market rent and then enter into a material modification under the recently changed legislative procurement code would be seen as disingenuous (presumably because it would be disingenuous) and contrary to the action of the Legislative Council at its June 7, 2013

¹⁸ The attachment was omitted from 716 LLC's production and counsel for 716 LLC has given assurances it will be provided.

¹⁹ Which means they do not believe the deal can legally be done under the statute.

meeting. Exhibit 13, page 2. Mr. Steiner also reports that Mr. Gardner was not keen to get crosswise with Rep. Hawker. *Id.*

Then, Mr. Pfeffer forwards this e-mail exchange to Rep. Hawker, telling Rep. Hawker that he thinks Gardner, who as counsel for the Legislative Affairs Agency is Rep. Hawker's lawyer in the matter, "is just flat out wrong," and that he thinks Gardner "needs to be brought along." Mr. Pfeffer also recognizes that the full legislature and governor needed to approve the deal. Exhibit 13, page 1.

On July 25, 2013, Mr. Pfeffer e-mails Rep. Hawker a LIO Project Procurement Analysis, with the warning, "I wouldn't share this with anyone yet. we will scrub the author references if you do want to share it." Exhibit 14.²⁰

On July 26, 2013, Mr. Pfeffer sent an e-mail to Rep. Hawker, titled, "BACK CHANNEL ----- Draft 040(a) determination, stating, "If you agree with this I'll have my guys send to Gardner."²¹ Exhibit 15.

On August 8, 2013, after the rent to which Rep. Hawker had agreed emerged, Pamela Varni, Executive Director of the Legislative Affairs e-mailed Rep. Hawker with her comments, including an analysis of proposed replacements for the Anchorage Legislative Information Office previously rejected by the Legislative Council, all of which were for much less money, as well as a schedule of Executive Branch Office leases.

²⁰ The attachment was omitted from 716 LLC's production and counsel for 716 LLC has given assurances it will be provided.

²¹ The attachment was omitted from 716 LLC's production and counsel for 716 LLC has given assurances it will be provided.

Exhibit 16. In her e-mail Ms. Varni points out that with the figures presented so far, she estimated the cost to be over \$5.00 per square foot, which would make it the most expensive lease ever for the State of Alaska. Exhibit 16, page 2. She also notes that the Legislative Affairs Agency's Fairbanks Class A rental space leasehold improvement costs were \$62.50 per square foot, while the proposal is for \$120 per month, asking, "What is the justification for the disparity." Exhibit 16, page 3

This e-mail was first forwarded by Rep. Hawker from his Legislative e-mail account to his private account and then forwarded to Mr. Pfeffer from his private e-mail account that same day. Exhibit 17, page 1. Mr. Pfeffer responded by writing he would produce a rebuttal and if "Doc" at the Alaska Housing Finance Corporation agrees AHFC can produce the memo to dispute Varni. *Id.* The next day, August 9, 2013, Mr. Pfeffer e-mailed Rep. Hawker a draft of a response to Ms. Varni's analysis, stating, "Obviously please do not forward this email."²² Exhibit 18.

On August 25, 2013, Rep. Hawker e-mailed to Mr. Pfeffer that, "I don't see anything that Pam or Gardner can do now to derail this Not that they will not try." Exhibit 19.

On September 6, 2013, in response to an e-mail from Mr. Gardner, Rep. Hawker writes to Mr. McClintock and Mr. Pfeffer, "How are we doing with Gardner? This note makes me worry a bit. Do we need to plan another sit down?" Exhibit 20, page 1. Mr. Pfeffer responds, "Standby on this Mike. I'm working it." *Id.*

²² The attachment was omitted from 716 LLC's production and counsel for 716 LLC has given assurances it will be provided.

On September 11, 2013, Rep. Hawker e-mails, "I apologize for the obstructionist on my side of the table," which presumably means Mr. Gardner or Pam Varni. Exhibit 21, page 1.

These e-mails show that 716 LLC knew the LIO Project did not qualify under AS 36.30.083(a) because the addition of the tower to be constructed on the site of the demolished Old Empress Theatre ("enlargement") brought it outside the ambit of a lease extension. The e-mails also show that they knew the demolition and construction could not be accomplished and lease the building for at least 10% below market rent. They therefore developed a plan to amend the procurement rules to allow for a no-bid "material modification" of an existing lease, extend the then current lease "as-is" and then a "material modification" to do the demolition and construction work without the 10% below market rent constraint. When Mr. Gardner balked at this as being disingenuous and not what was approved by the Legislative Council, 716 LLC ignored that the LIO Project did not comply with AS 36.30.083(a) and when Ms. Varni balked at the shocking rental rate, and Mr. Gardner continued to raise objections, they were pressured to go along by Mr. Pfeffer, aided and abetted by Rep. Hawker. This much is clear even from what has not been withheld.

It is respectfully suggested that even this incomplete discovery provided by 716 LLC²³ and the Legislative Affairs Agency demonstrates corruption and outrageous action

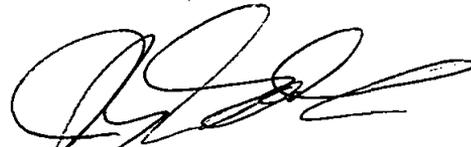
²³ The e-mail production by 716 LLC was 4,482, the bulk of which were attachments, but key attachments identified above were omitted. It strains credulity that this was inadvertent.

justifying punitive damages. However, to the extent this Court disagrees, it is believed additional discovery will reveal even more culpability on the part of 716 LLC, and Alaska Building, Inc., respectfully requests the Motion be held in abeyance pending completion of such discovery.

D. Conclusion

For the foregoing reasons, 716's Motion For Ruling Of Law Precluding ABI's Claims For Qui Tam And Punitive Damages should be **DENIED**.

Dated October 27, 2015.

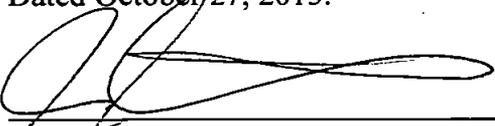


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

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

Dated October 27, 2015.



Jim Gottstein

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

*Opposition to 716 LLC Qui Tam
& Punitive Damages Law Motion*

In the Matter Of:
ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

JAMES GOTTSTEIN - VOLUME I

October 16, 2015

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

3
4 ~~ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC~~
~~JAMES GOTTSTEIN - VOLUME I on 10/16/2015~~
Alaska corporation,

5 Plaintiff,

6 vs.

7 716 WEST FOURTH AVENUE LLC,
8 and LEGISLATIVE AFFAIRS
9 AGENCY,

10 Defendants.

11 _____
Case No. 3AN-15-05969 CI

12 DEPOSITION OF JAMES B. GOTTSTEIN
13 VOLUME I

14
15 Pages 1 - 58, inclusive

16 Friday, October 16, 2015
17 2:00 P.M.

18
19 Taken by Counsel for
20 Defendant 716 West Fourth Avenue LLC
 at
21 ASHBURN & MASON
22 1227 West 9th Avenue, Suite 200
23 Anchorage, Alaska
24
25

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

For Plaintiff:

James B. Gottstein
JAMES B. GOTTSTEIN
406 G Street, Suite 206
Anchorage, Alaska 99501
907/274-7686

For Defendant 716 West Fourth Avenue LLC:

Jeffrey W. Robinson
Eva Gardner
ASHBURN & MASON
1227 West 9th Avenue, Suite 200
Anchorage, Alaska 99501
907/276-4331

For Defendant Legislative Affairs Agency:

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

Court Reporter:

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

1 that. I would be -- I'd welcome any kind of any
2 indication of that.

3 Q. Under a qui tam case like you pursued in
4 the ~~ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC~~ complaint is filed under
5 seal. Is that right?
JAMES GOTTSTEIN - VOLUME I on 10/16/2015

6 A. Yes.

7 Q. And that was not done here?

8 A. No. It's not really a qui tam case.

9 Q. Okay.

10 A. And...

11 Q. So I think we can agree on that, that this
12 is not a qui tam case. What is the basis for
13 claiming an entitlement to 10 percent of the
14 savings?

15 A. I think that it's -- it's a way to make
16 real the citizen taxpayers' right to bring actions
17 on behalf of the government to stop government --
18 illegal government action.)
19 What we had -- from about 1974 through 1998,
20 the Alaska Supreme Court had established what's called
21 a public interest exception to Civil Rule 82,
22 providing that public interest litigants that were
23 truly suing on behalf of the public were not subjected
24 to having attorneys' fees against them and would
25 have -- if they prevailed, would have -- be awarded

1 (full attorneys' fees.)

2 So there wasn't really -- if they could

3 establish that they were public interest litigants,

4 they wouldn't really face the risk of having

5 attorneys' fees awarded against them.)

6 In 2003, the Alaska legislature passed a

7 statute that changed that, except with respect to

8 constitutional claims, basically because they were

9 tired of paying attorneys' fees in all these cases

10 where the government was found to have acted

11 illegally.)

12 And so now you have a situation where anybody

13 trying to bring such a suit faces potentially ruinous

14 attorneys' fees if they don't prevail, or certainly

15 large attorneys' fees if they don't prevail. And

16 that, in my -- my sense of it, has essentially

17 virtually dried up public interest litigation, and so

18 now the government pretty much has free rein to act

19 illegally without any kind of check through this

20 public interest litigation.)

21 And so by -- in these types of cases, where a

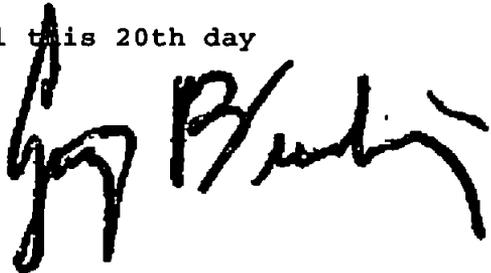
22 big, you know, savings or recovery on behalf of the

23 government is achieved, this is a way to really make

24 real the citizens' rights to sue to redress illegal

25 government action.)

1 CERTIFICATE
2
3 I, GARY BROOKING, Registered Professional
4 Report ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC
JAMES GOTTSSTEIN - VOLUME I on 10/16/2015 for the State of
5 Alaska, do hereby certify that the witness in the
6 foregoing proceedings was duly sworn; that the
7 proceedings were then taken before me at the time
8 and place herein set forth; that the testimony
9 and proceedings were reported stenographically by
10 me and later transcribed by computer transcription;
11 that the foregoing is a true record of the
12 testimony and proceedings taken at that time;
13 and that I am not a party to nor have I any
14 interest in the outcome of the action herein
15 contained.
16 IN WITNESS WHEREOF, I have hereunto set
17 my hand and affixed my seal this 20th day
18 of October, 2015.
19
20
21
22
23
24
25 GB4223



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

Division of Corporations, Business and Professional Licensing

Name(s)

Type	Name
Legal Name	716 West Fourth Avenue, LLC

Entity Details

Entity Type: Limited Liability Company

Entity #: 75015D

Status: Good Standing

AK Formed Date: 12/18/2001

Duration/Expiration: Perpetual

Home State: ALASKA

Next Biennial Report Due: 1/2/2017

Entity Mailing Address: 425 G STREET , SUITE 210, ANCHORAGE, AK 99501

Entity Physical Address: 737 W 5TH AVE, ANCHORAGE, AK 99501

Registered Agent

Agent Name: Robert B Acree

Registered Mailing Address: PO BOX 241826, ANCHORAGE, AK 99524

Registered Physical Address: 737 W 5th Ave, Anchorage, AK 99501

Officials

AK Entity#	Name	Titles	Percent Owned
	Mark Pfeffer	Manager	
10013659	Mount Trident, LLC	Member	44.44
	ROBERT ACREE	Member	55.56

Filed Documents

Date Filed	Type	Filing	Certificate
12/18/2001	Creation Filing		
1/31/2002	Biennial Report		

4/21/2003	Biennial Report		
2/2/2005	Biennial Report		
1/29/2007	Biennial Report		
2/28/2007	Agent Change		
9/10/2010	Biennial Report		
4/23/2011	Biennial Report		
5/6/2013	Biennial Report		
9/18/2013	Certificate of Compliance		
9/23/2013	Amendment		
9/23/2013	Change of Officials		
12/27/2013	Change of Officials		
12/2/2014	Certificate of Compliance		
12/22/2014	Biennial Report		

Division of Corporations, Business and Professional Licensing

Name(s)

Type	Name
Legal Name	Mount Trident, LLC

Entity Details

Entity Type: Limited Liability Company

Entity #: 10013659

Status: Good Standing

AK Formed Date: 6/18/2013

Duration/Expiration: Perpetual

Home State: ALASKA

Next Biennial Report Due: 1/2/2017

Entity Mailing Address: 425 G STREET, SUITE 210, ANCHORAGE, AK 99501

Entity Physical Address: 425 G STREET, SUITE 210, ANCHORAGE, AK 99501

Registered Agent

Agent Name: Ashburn & Mason, A Professional Corporation

Registered Mailing Address: 1227 W. 9TH AVENUE SUITE 200, ANCHORAGE, AK 99501

Registered Physical Address: 1227 W. 9TH AVENUE SUITE 200, ANCHORAGE, AK 99501

Officials

AK Entity#	Name	Titles	Percent Owned
	Mark Pfeffer	Manager	
	Mark E. Pfeffer Alaska Trust Utad 12/28/07	Member	100

Filed Documents

Date Filed	Type	Filing	Certificate
6/18/2013	Creation Filing		
12/16/2013	Initial Report		
12/22/2014	Biennial Report		

Anchorage LIO Building

**Development Budget
September 18, 2013**

64,048

Gross SF

Development Budget

Existing Property & Property Acquisition	\$ 7,890,000	Note 1
Soft Costs	\$ 515,000	Note 2
Construction & A/E Services	\$ 30,169,055	Note 3
Interim Office Space	\$ 1,000,000	Note 4
<u>Contingency</u>	\$ <u>771,722</u>	Note 5
Construction Loan Interest	\$ 1,133,388	Note 6
Loan Fee	\$ 622,368	Note 7
<u>Construction Management</u>	\$ <u>905,433</u>	Note 8
<u>Development Fee</u>	\$ <u>(1,509,055)</u>	Note 9
Total	\$ 44,516,021	Note 10

Note 1 Stipulated value for 716 W 4th + Acquisition cost of 712 W 4th

Note 2 Legal, Title, Appraisal, Geotech, Survey, Taxes, Insurance Environmental

Note 3 Stipulate Sum Proposal from Criterion Construction Date August 27th 2013 inclusive of A/E Fees with final design adjustments incorporated

Note 4 Loss of rent during construction + Cost to construct interim improvements,

Note 5 2.50% of Construction

Note 6 Subtotal project cost of \$39.628m (less existing building value) @ 5.0% for 1 year x 65% average draw down.

Note 7 1.5% of subtotal of cost

Note 8 3% of stipulated sum amount

Note 9 5% of stipulated sum amount

Note 10 Total Cost

DRAFT

9/18/2013 11:32 AM

L27

LAA_001300

Exhibit 4

001200



STATE OF ALASKA
 DEPARTMENT OF
COMMERCE
 COMMUNITY AND
 ECONOMIC DEVELOPMENT

Sean Parnell, Governor
 Susan K. Bell, Commissioner
 Don Habeger, Director

Division of Corporations, Business and Professional Licensing

Office Use Only

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Web-1/20/2014 3:32:29 PM

Limited Liability Company

2014 Biennial Report

For the period ending December 31, 2013

- This report is due on January 02, 2014
- \$100.00 if postmarked before February 02, 2014
- \$137.50 if postmarked on or after February 02, 2014

Entity Name: Pfeffer Development, LLC
Entity Number: 119867
Home Country: UNITED STATES
Home State/Province: ALASKA

Registered Agent

Name: Mark Pfeffer
Physical Address: 425 G Street, Ste. 210,
 Anchorage, AK 99501
Mailing Address: 425 G Street, Ste. 210,
 Anchorage, AK 99501

Entity Physical Address: 425 G STREET, STE. 210, ANCHORAGE, AK 99501

Entity Mailing Address: 425 G STREET, STE. 210, ANCHORAGE, AK 99501

Please include all officials. Check all titles that apply. Must use titles provided. Please list the names and addresses of the members of the domestic limited liability company (LLC). There must be at least one member listed. If the LLC is managed by a manager(s), there must also be at least one manager listed. Please provide the name and address of each manager of the company. You must also list the name and address of each person owning at least 5% interest in the company and the percentage of interest held by that person.

Name	Address	% Owned	Titles
Mark E. Pfeffer	425 G STREET, STE. 210, ANCHORAGE, AK 99501		Manager
Mark E. Pfeffer Revocable Trust Utad 11/22/05	425 G STREET, STE. 210, ANCHORAGE, AK 99501	100	Member

Purpose: Any and all lawful purpose for which a limited liability company may be organized under the Alaska Limited Liability Act.

NAICS Code: 531390 - OTHER ACTIVITIES RELATED TO REAL ESTATE

New NAICS Code (optional):

I certify under penalty of perjury under the Uniform Electronic Transaction Act and the laws of the State of Alaska that the information provided in this application is true and correct, and further certify that by submitting this electronic filing I am contractually authorized by the Official(s) listed above to act on behalf of this entity.

Name: Alana Williams

PO Box 110806, Juneau, AK 99811-0806
 Telephone: (907) 465-2550 Fax: (907) 465-2974 Text Tel: (907) 465-5437
 Website: <http://commerce.alaska.gov/dnn/cbpl>



State of Alaska
Division of Corporations, Business and Professional Licensing
CORPORATIONS SECTION
PO Box 110806
Juneau, AK 99811-0806
Phone: (907) 465-2550
Fax: (907) 465-2974
Website: www.commerce.alaska.gov/occ

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JUNEAU
AUG 13 2015
✓ 2598

NOTICE OF CHANGE OF OFFICIALS
Domestic Limited Liability Company
AS 10.50.765

Division of Corporations, Business
and Professional Licensing

\$25.00 Filing Fee (non-refundable)

Pursuant to Alaska Statutes 10.50.765, the following will apply to the members and/or managers on record.

ITEM 1: Name of the Entity: **Alaska Entity #:**
Pfeffer Development, LLC 119867

ITEM 2: Prior and new information:

Prior member/manager	New (replacement) member/manager	New (replacement) mailing address	X if Member	X if Manager	% of Interest held
Mark E. Pfeffer Revocable Trust Utad 11/22/05	Mark E. Pfeffer Alaska Exempt Trust utad 12/28/07	425 G St, Suite 210 Anchorage, Alaska 99501	X		100%

Attach an additional sheet if necessary.

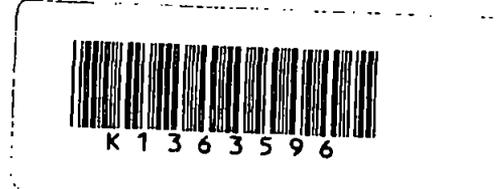
ITEM 3: The Statement must be signed by a manager, member, or Attorney-in-Fact.

	MARK PFEFFER	MEMBER	7/24/15
Signature	Printed name	Title	Date

NOTE: Persons who sign documents filed with the commissioner that are known to the person to be false in material respects are guilty of a class A misdemeanor.

Mail the Notice of Change of Officials and non-refundable \$25.00 filing fee in U.S. dollars to:
State of Alaska, Corporations Section, PO Box 110806, Juneau, AK 99811-0806

STANDARD PROCESSING TIME for complete and correct applications submitted to this office is approximately 10-15 business days. All applications are reviewed in the date order they are received.



3647501

AK Entity #: 75015D
Date Filed: 09/23/2013
State of Alaska, DCCED

State of Alaska
Division of Corporations, Business and Professional Licensing
CORPORATIONS SECTION
PO Box 110806
Juneau, AK 99811-0806
Phone: (907) 465-2550
Fax: (907) 465-2974
Website: www.commerce.alaska.gov/occ

Office Use Only **CORP**

RECEIVED
Juneau

SEP 23 2013

Division of Corporations, Business
and Professional Licensing

125/50 PJ

ARTICLES OF AMENDMENT
Domestic Limited Liability Company
AS 10.50.100

\$25.00 Filing Fee (non-refundable)

Pursuant to Alaska Statutes 10.50.100, the undersigned corporation adopts the following amended Articles of Organization.

ITEM 1: Name of the E Alaska En #:
716 West Fourth Avenue, LLC 75015D

ITEM 2
Date the original Articles of Organization were filed: 12/18/2001

ITEM 3: List each article number being amended, and the amended article in full. Any article being changed is considered an amendment; this includes deletions, edits, corrections, or renumbering of the articles. Verify with previous Articles of Organization and amendments already filed.

Article IV Management shall be amended and restated as follows:

Article IV Management. The limited liability company shall be managed by its Manager.

Attach a separate sheet if needed.

ITEM 4: The Articles of Amendment must be signed by a member, manager or officer or Secretary or Director-in-Fact.
Signature:  Printed name: Robert B. Acree Title: Member Date: 9/19/13

Mail the Articles of Amendment and the non-refundable \$25.00 filing fee in U.S. dollars to State of Alaska, Corporations Section, PO Box 110806, Juneau, AK 99811-0806

STANDARD PROCESSING TIME for complete and correct applications submitted to this office is approximately 10-15 business days. All applications are reviewed in the date order they are received

James B. Gottstein

From: Cuddy, Kevin M. <kevin.cuddy@stoel.com>
Sent: Monday, October 19, 2015 11:19 AM
To: James B. Gottstein
Subject: RE: Discovery Meeting

Jim,

That's fine. (I'm looking into the other questions you've raised).

-Kevin

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Monday, October 19, 2015 8:41 AM
To: Cuddy, Kevin M.
Cc: james.b.gottstein@gottsteinlaw.com
Subject: Discovery Meeting

Hi Kevin,

Do you want to reschedule our discovery meeting to accommodate 716's continued deposition of me?

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

James B. Gottstein

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Sunday, October 18, 2015 11:28 AM
To: 'Cuddy, Kevin M.'
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Discovery Meeting

Thanks Kevin.

I will plan on popping over if that is okay.

With respect to Rep. Hawker's e-mails, it seems to me that since you are claiming the attorney-client privilege applies, that you are obligated to provide documents in his possession, custody or control. Will you agree to supplement your responses to include such documents?

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

-----Original Message-----

From: Cuddy, Kevin M. [mailto:kevin.cuddy@stoel.com]
Sent: Sunday, October 18, 2015 10:46 AM
To: James B. Gottstein
Subject: RE: Discovery Meeting

Jim,

I'm available at 2 p.m. on Friday. I trust you'll call me then.

I do not know whether this particular email was part of the several thousand pages that LAA already produced, but I do note that it appears to be an email sent to Mike Hawker's personal email account -- not his legislative account. LAA does not have possession, custody, or control over legislators' private email accounts (or their private mail, etc.).

-Kevin

From: James B. Gottstein [james.b.gottstein@gottsteinlaw.com]
Sent: Sunday, October 18, 2015 10:35 AM
To: Cuddy, Kevin M.
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Discovery Meeting

Hi Kevin,

How about 2:00 pm on Friday?

I have been going through 716 LLC's e-mail production and there are e-mails that the Legislative Affairs Agency (LAA) should have produced too, such as the attached. If I am mistaken and it was produced by the LAA, I apologize.

Otherwise, please explain/justify.

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

-----Original Message-----

From: Cuddy, Kevin M. [mailto:kevin.cuddy@stoel.com]
Sent: Sunday, October 18, 2015 8:13 AM
To: James B. Gottstein
Subject: Re: Discovery Meeting

Jim,

Let me know some times that work for you. Wednesday is bad for me, but otherwise I'm pretty flexible.

On Oct 17, 2015, at 10:08 PM, James B. Gottstein
<james.b.gottstein@gottsteinlaw.com<mailto:james.b.gottstein@gottsteinlaw.com>> wrote:

Hi Kevin,

I totally forgot about setting a time to meet about discovery when we were together yesterday.

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<<http://gottsteinlaw.com>>
=

From: Mark Pfeffer
Sent: Thursday, June 20, 2013 10:55 AM
To: Mike Hawker (mhawker@gci.net)
Subject: FW: LAA procurement issues

FYI,

The back channel between lawyers.

Mark Pfeffer

PFEFFER DEVELOPMENT, LLC
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907 646 4644 | f 907.646.4655 |

Cell Phone
807 317 6030

From: John L. Steiner
Sent: Thursday, June 20, 2013 10:39 AM
To: Donald W. McClintock; Mark Pfeffer
Cc: Heidi A. Wyckoff
Subject: RE: LAA procurement issues

Don, I just spoke to Mark (before either of us had seen your email) and reviewed some of the background stuff. I gathered enough to know that the intent was to extend based on beating the as-is BOV by 10%, but then NOT being limited by that standard in the material modification. If the lease can be materially modified, why only in some respects and not in others? (That's a rhetorical question.)

I don't know whether beating a post-renovation BOV or appraisal by 10% will prove feasible, but I do not believe Rep. Hawker wants or expects to be told that standard limits improvements to the building. Getting the full first year appropriation done next session should be done in any event.

I still have some stuff to look through to be prepared to talk to Doug, but will get there shortly.

John L. Steiner
Project Director and Counsel

Pfeffer Development, LLC
Commercial Real Estate Developers
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907.646.4644 | f 907.646.4655
d 907 770.4306 | e 907.382.2300

This email may contain confidential or attorney-client privileged information and is in any case confidential. If you are not the intended recipient of this email please notify the sender then delete it permanently.

From: Donald W. McClintock [mailto:dwm@anchorlaw.com]
Sent: Thursday, June 20, 2013 10:18 AM

To: Mark Pfeffer; John L. Steiner
Cc: Heidi A. Wyckoff
Subject: LAA procuremnt issues

Mark and John,

I had another call with Doug. He is certainly driving the form of the deal around his view of how the procurement issues line up; something we probably should be in line with so long as it is not overly conservative and costs real money.

What he wanted to know was whether we would have an appraisal done on the completed loan. I told him typically we would have one to support our construction loan so one should be ordered this summer once the plans and finishes have advanced enough. His vision of .083 and .040 is that the rent should be 10% below appraisal. Mark is that your financial plan? You can probably get the numbers to work out if the lease rate assumes a 10 year term and you can qualify for 25 year financing or the income approach uses a different cap rate than what you do for the financing. But that is the road he is going down and he really wants both leases done at the same time, one for the extension and the other for the material modification and new lease rate. The new lease would take place effective October 2014 on completion and acceptance and we would have some bridging lease until then.

I have not given him permission to talk to Mark, just because we want to keep Mark and Hawker only talking to each other, but I told him he should feel free to talk to John directly.

During the discussion , he also said his plan B, which is belts and suspenders, is to have the 36.30 appropriation done next session as well.

Call with questions.

Don

Donald W. McClintock
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ALASKA STATE LEGISLATURE LEGISLATIVE COUNCIL

Revised Agenda and Motion Sheet

June 7, 2013

Time: 10:00am – 2:00pm

Room: Anchorage LIO Room 670

I. Call to Order

EXECUTIVE SESSION MOTION: I move that Legislative Council go into executive session under Uniform Rule 22 (b) for the discussion of matters, (the immediate knowledge of which would adversely affect the finances of a government unit.)

II. Anchorage LIO (moved up from bottom of agenda)

MOTION – LEASE EXTENSION: (I move that Legislative Council authorize the chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a).)

MOTION – AMEND PROCUREMENT PROCEDURE: (I move that Legislative Council adopt proposed Amendment No. 12 to the Legislative Procurement Procedure 040 to provide a limited ability for the Legislative Affairs Agency, or a Legislative Committee, to materially modify an existing lease that was previously competitively procured.)

MOTION – AUTHORIZE MATERIAL AMENDMENTS TO LEASE: I move that Legislative Council authorize the chairman to negotiate amendments to lease 2004-024411-0 by mutual agreement with the Lessor to remove the limitation of amending a lease that amounts to a material modification in paragraph 42; and to include 712 West Fourth Avenue, with other terms and conditions necessary to accommodate renovations, not to exceed the estimated cost of a similarly sized, located and apportioned newly constructed building as determined by the Alaska Housing Finance Corporation.

MOTION - ENGAGE AHFC AS LESSEE'S REPRESENTATIVE: I move that Legislative Council authorize the chairman to enter into a contract for payment not to exceed \$50,000, for AHFC to act as the Lessee's representative in negotiating an extension to Lease 2004-024411-0, as amended to include 712 West 4th Avenue, and to assist in managing the Lessor's compliance with the terms and conditions of the Lessor's improvements, as described in the lease extension.

III. Approval of Minutes

a. May 13, 2013

MOTION: I move that the minutes from the Legislative Council meeting on May 13, 2013 be approved.

IV. Ratification of Charitable Events

MOTION: I move that Legislative Council ratify the following charity event, which was previously sanctioned by the Legislative Council Chair in accordance with AS 24.60.080(a)(2)(b):

- a. 14th Annual Calista Heritage Foundation Golf Tournament benefitting the Calista Heritage Foundation, Inc.

V. Contract Approvals

- a. MatSu LIO Lease

MOTION: I move that Legislative Council authorize the chairman to approve a one-year renewal of the existing lease agreement for the MatSu Legislative Information Office and Legislators' District Office space for a cost of \$182,215.20.

VI. Other Committee Business

- a. Seward LIO

MOTION: I move that Council approve the Seward LIO going from session only to full time effective June 4, 2013 and ask the Agency to include that increase in their FY 15 budget request.

VII. Adjournment

AMENDMENT NO. 12¹
TO PROCUREMENT PROCEDURES

*** Section 1.** Procurement Procedures sec. 040 is amended by adding a new subsection to read:

(d) A lease that was procured competitively may be materially modified by amendment, and the material modification of the lease does not require procurement of a new lease, if

- (1) the reasons for the modification are legitimate;
- (2) the reasons for the modification were unforeseen when the lease was entered into;
- (3) it is not practicable to competitively procure a new lease;
- (4) the modification is in the best interests of the agency or the committee;
- (5) the procurement officer makes a written determination that the items in paragraphs (1) - (4) exist, the determination details the reasons for concluding why the items exist, and the determination is attached to the amended lease; and
- (6) the use of this subsection is approved by the procurement officer and, in the case of an amendment for the lease of a legislative committee, by a majority of the committee members.

¹ The purpose of this amendment is to allow the agency or a legislative committee to materially modify an existing lease where appropriate without triggering a requirement to obtain a new lease.

10:04:42 AM

- I. **CHAIR MIKE HAWKER** called the Legislative Council meeting to order at 10:00 a.m. in room 670 of the Anchorage Legislative Office Building. Chair Hawker noted that the meeting would start with the executive session first and then Council would proceed to routine motions and business activities. Due to a technical issue with the recorder's microphone, Chair Hawker recited the roll call for purposes of establishing a quorum. Present at the call were Representatives Hawker, Johnson, Stoltze and P. Wilson (via teleconference); and Senators Coghill (via teleconference), Egan, and Micciche (via teleconference), and Hoffman (alternate member).

REPRESENTATIVE JOHNSON moved that that Legislative Council go into executive session under Uniform Rule 22 (b) for the discussion of matters the immediate knowledge of which would adversely affect the finances of a government unit.

10:06:50 AM

Legislative Council went into executive session.

1:02:43 PM

Legislative Council came out of executive session.

CHAIR HAWKER called the roll. Present at the call were Representatives Hawker, Johnson, Pruitt, Stoltze and P. Wilson (via teleconference); and Senators Egan, McGuire, Meyer and Hoffman (alternate member).

II. ANCHORAGE LIO LEASE

Chair Hawker noted that the first order of business is a series of four motions related to the extension of the Anchorage LIO lease.

MOTION - LEASE EXTENSION

SENATOR MCGUIRE moved that Legislative Council authorize the chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a).

REPRESENTATIVE STOLTZE objected to ask for a brief description of the thought process for this item for the public record.

CHAIR HAWKER said this suite of motions allows the Legislature to extend our current lease under AS 36.30.083(a), which provides for lease extension on a sole source basis as long as certain financial conditions are met; amends the Legislature's

procurement procedures to allow material amendments to existing leases; empowers the Chairman to negotiate material amendments to the existing lease - amending paragraph 42 to comply with the amended procurement procedures and incorporating the leasehold improvements proposed by the landlord to modernize the existing LIO facility, limited in cost to be less than similarly sized, located, and apportioned newly constructed facilities in downtown Anchorage as determined by the Alaska Housing Finance Corporation (AHFC); and allows AHFC to be engaged as the Legislature's tenant representative for lease negotiation with the landlord and project oversight. He further noted for the record that Council sought other downtown Anchorage properties suitable to legislative function and found none, leaving the option of constructing a new building. Council has definitively said that a new state-owned building is not a desirable outcome, leading to the decision to improve the existing location.

Representative Gruenberg joined the meeting at this time.

REPRESENTATIVE STOLTZE spoke to the suite of motions. He said he was inclined to support these motions noting the lack of suitable alternative space. He said that the current option of improving the existing space would allow for the possibility of 40 members and 20 members having the ability to meet on some basis. He said he was not talking about a capital move, but under certain circumstances where the public would be served, and he thinks the Legislature would be well-served by the opportunity to meet in Anchorage in possible special sessions. The opportunity to have larger meeting spaces for the public and for the entire Legislature for short-term meetings is something his district would support. He said he has some reservations about parts of the process, is a little bit hesitant about sole-source procurement, but under the circumstances and with the meeting space accommodations being offered, this option has his support.

SENATOR MCGUIRE said for the record that considering the controversy generated when previous Legislative Councils have considered the option of purchasing a building, the current members felt that purchasing a new building at this stage is simply not something this Legislative Council wants to go through. She said they think it is more in the public benefit to keep this particular building on the municipal tax rolls; that keeping with the existing leaseholder is in the public interest; and allowing this leaseholder to make the tenant improvements that are necessary is in the public interest. She said that there are significant health and safety issues with this building that have been brought up time and time again to the Legislative Affairs Agency Executive Director that will need to be covered in those improvements.

CHAIR HAWKER added that pursuing the sole source option within Alaska statute was deemed to be the most practicable method forward as the lease on the current building expires in 11 months with no renewal options left; there is no other option at this point as the Request for Information (RFI) that was issued regarding real estate across the Municipality of Anchorage received only two responses, neither of which was able to accommodate the Legislature downtown at all and both had limited utility regardless of location. He said Council has done adequate due diligence and they are working within the parameters of the time frame in which they find it necessary to work. For these reasons and the substantive reasons stated by Senator McGuire, Council has chosen to pursue a sole sourcing option.

The motion allowing the chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a) passed with no objections.

MOTION - AMEND PROCUREMENT PROCEDURE

1:13:32 PM

SENATOR MCGUIRE moved that Legislative Council adopt proposed Amendment No. 12 to the Legislative Procurement Procedure 040 to provide a limited ability for the Legislative Affairs Agency, or a legislative committee, to materially modify an existing lease that was previously competitively procured.

CHAIR HAWKER, in response to a question for clarification by Representative Stoltze regarding the motion made by Senator McGuire, confirmed that Senator McGuire was mistaken when she said, in part, "...Legislative Affairs Council..." and that the motion reads "Legislative Affairs Agency...".

REPRESENTATIVE GRUENBERG asked about paragraph four, specifically that one of the factors is that the modification must be in the best interest of the Agency or the committee and he wondered if there was a difference between saying that and saying "in the public interest." He said he could foresee something where a narrow Agency might have a particular interest but it might not necessarily be in the public interest and he wondered legally about that.

DOUG GARDNER, Legal Services Director, said some contracts are entered into by the Agency at the direction of Legislative Council and those would be approved by Legislative Council; some contracts are entered into by committee. He said he could not think of any committee leases at the moment, but in order to accommodate the traditional type of leasing, it is broken down into those two categories.

REPRESENTATIVE GRUENBERG interrupted to say that he was drawing a distinction between local interests as opposed to broad public interest or if this amendment considers them to be the same.

MR. GARDNER responded that this Council would be approving those items and because of the composition of Legislative Council which has statewide representation, there wasn't a local interest that wouldn't also be a public interest as a consideration. Representative Gruenberg was satisfied with that response and simply wanted it on the record.

Senator Coghill joined the meeting at this time via teleconference.

CHAIR HAWKER repeated the motion and asked if there were further objections.

The motion to amend Legislative Procurement Procedure 040 passed with no objections.

MOTION - AUTHORIZE MATERIAL AMENDMENTS TO LEASE

1:17:19 PM

SENATOR MCGUIRE moved that Legislative Council authorize the chairman to negotiate amendments to lease 2004-024411-0 by mutual agreement with the Lessor to remove the limitation of amending a lease that amounts to a material modification in paragraph 42; and to include 712 West Fourth Avenue, with other terms and conditions necessary to accommodate renovations, not to exceed the estimated cost of a similarly sized, located and apportioned newly constructed building as determined by the Alaska Housing Finance Corporation.

CHAIR HAWKER said this motion authorizes material amendments to be made to the extended lease and would allow the chair to negotiate material modifications and renovations for the facility currently occupied.

SENATOR EGAN asked for a copy of the motions.

CHAIR HAWKER said a copy of the motions for this meeting should have been emailed to each member. In response to a question posed by Senator Coghill, he said that the quorum is on record so there is no need for a roll call vote.

The motion to authorize material amendments to the lease passed with no objections.

REPRESENTATIVE STOLTZE said he has not talked to Mr. Pfeffer about this project but he had in the past received political contributions from him. He was not asking to be excused from the vote, simply noting it for the record.

CHAIR HAWKER noted as a point of reference that Mr. Pfeffer is a landlord for the building currently occupied by the Legislature in Anchorage. He further noted that he also has received contributions from Mr. Pfeffer over the course of his political career.

REPRESENTATIVE GRUENBERG stated that he also has received political contributions from Mr. Pfeffer.

CHAIR HAWKER stated for the record that the following members indicated that they too had received political contributions from Mr. Pfeffer: Representatives Pruitt and Johnson and Senators Egan, Meyer, Hoffman, Coghill, and McGuire. Representative Peggy Wilson said she has not received a contribution from Mr. Pfeffer that she knows of.

MOTION - ENGAGE AHFC AS LESSEE'S REPRESENTATIVE

CHAIR HAWKER said that there was a benchmark number of \$50,000 in this motion. He said he spoke with Mr. Fauske at AHFC and depending on the amount of work done; the final amount could be anything from gratis to the full amount authorized in this motion. He said he will continue to work with AHFC to accommodate this on as much of a gratis basis as possible.

1:21:58 PM

SENATOR MCGUIRE moved that that Legislative Council authorize the chairman to enter into a contract for payment not to exceed \$50,000, for AHFC to act as the Lessee's representative in negotiating an extension to Lease 2004-024411-0, as amended to include 712 West 4th Avenue, and to assist in managing the Lessor's compliance with the terms and conditions of the Lessor's improvements, as described in the lease extension.

The motion to engage AHFC as Lessee's representative passed with no objections.

CHAIR HAWKER said that with the passage of the fourth and final motion, that takes care of the beginning of a fabulous project to establish legislative facilities that will accommodate legislative needs for the next 10 or more years.

SENATOR MEYER commented that, for the record, he appreciated as an Anchorage legislator that Council has opted to extend and

renovate rather than buy or build a new building. He remembered being upset as an Anchorage Assembly member in the '90s when the State bought the Atwood Building and took it off the tax rolls. He said every time that happens it is essentially a property tax increase for the rest of Anchorage. He said he also appreciates that Council is keeping its obligation to the downtown area and staying in the downtown area even when it's sometimes difficult.

SENATOR HOFFMAN asked about the time frame and transition of the project.

CHAIR HAWKER said that although it is subject to final determination as there will need to be a design process for scope of improvement, he hopes the project will be concluded in approximately a nine month period - commencing sometime between October and December, with completion timed to permit reoccupation as soon as possible after the 2014 legislative session is concluded.

III. APPROVAL OF MINUTES

1:25:18 PM

SENATOR MCGUIRE moved that the minutes from the Legislative Council meeting on May 13, 2013 be approved.

The minutes were approved with no objections.

IV. RATIFICATION OF CHARITABLE EVENT

1:25:53 PM

SENATOR MCGUIRE moved that Legislative Council ratify the following charity event, which was previously sanctioned by the Legislative Council Chair in accordance with AS 24.60.080(a)(2)(b):

a. 14th Annual Calista Heritage Foundation Golf Tournament benefitting the Calista Heritage Foundation, Inc.

CHAIR HAWKER noted for the record that the 14th Annual Calista Heritage Foundation Golf Tournament benefitting the Calista Heritage Foundation, Inc., met all the qualifications in statute of being a 501(c)(3) organization.

The event was ratified with no objections.

From: Mark Pfeffer
Sent: Thursday, June 20, 2013 10:55 AM
To: Mike Hawker (mhawker@pci.net)
Subject: FW: LAA procurement issues

FYI,

The back channel between lawyers.

Mark Pfeffer

PFEFFER DEVELOPMENT, LLC
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907 646 4644 | f 907.646.4655 |

Cell Phone
807 317 6030

From: John L. Steiner
Sent: Thursday, June 20, 2013 10:39 AM
To: Donald W. McClintock; Mark Pfeffer
Cc: Heidi A. Wyckoff
Subject: RE: LAA procurement issues

Don, I just spoke to Mark (before either of us had seen your email) and reviewed some of the background stuff. I gathered enough to know that the intent was to extend based on beating the as-is BOV by 10%, but then NOT being limited by that standard in the material modification. If the lease can be materially modified, why only in some respects and not in others? (That's a rhetorical question.)

I don't know whether beating a post-renovation BOV or appraisal by 10% will prove feasible, but I do not believe Rep. Hawker wants or expects to be told that standard limits improvements to the building. Getting the full first year appropriation done next session should be done in any event.

I still have some stuff to look through to be prepared to talk to Doug, but will get there shortly.

John L. Steiner
Project Director and Counsel

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Commercial Real Estate Developers
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From: Donald W. McClintock [mailto:dwm@anchorlaw.com]
Sent: Thursday, June 20, 2013 10:18 AM

To: Mark Pfeffer; John L. Steiner
Cc: Heidi A. Wyckoff
Subject: LAA procuremnt issues

Mark and John,

I had another call with Doug. He is certainly driving the form of the deal around his view of how the procurement issues line up; something we probably should be in line with so long as it is not overly conservative and costs real money.

What he wanted to know was whether we would have an appraisal done on the completed loan. I told him typically we would have one to support our construction loan so one should be ordered this summer once the plans and finishes have advanced enough. (His vision of .083 and .040 is that the rent should be 10% below appraisal.) Mark is that your financial plan? You can probably get the numbers to work out if the lease rate assumes a 10 year term and you can qualify for 25 year financing (or the income approach uses a different cap rate than what you do for the financing.) But that is the road he is going down and he really wants both leases done at the same time, one for the extension and the other for the material modification and new lease rate. The new lease would take place effective October 2014 on completion and acceptance and we would have some bridging lease until then.

(I have not given him permission to talk to Mark, just because we want to keep Mark and Hawker only talking to each other), but I told him he should feel free to talk to John directly.

During the discussion , he also said his plan B, which is belts and suspenders, is to have the 36.30 appropriation done next session as well.

Call with questions.

Don

Donald W. McClintock
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From: Donald W. McClintock <dwm@anchorlaw.com>
Sent: Friday, July 12, 2013 12:53 PM
To: LAA Legal
Cc: 'bob acree'; Mark Pfeffer; John L. Steiner; Heidi A. Wyckoff
Subject: LAA leases
Attachments: 10 year lease extension 7-11-13 (00133314-3).docx.html; AS 36-30-083 Analysis 7-11 (JS) (00133366).docx.html; Amendment and Restatement of Lease (00132213-6).docx.html

Doug,

Per our conversation today, please find attached draft leases for 716 W. 4th extension and the material amendment to add 712 W. 4th and renovate.

I also attach the analysis on how the extension rent was set under the BOV delivered to Representative Hawker.

As noted, there are business issues that you need to confirm with your clients, but we also stand by to address the various boilerplate clauses. Note, we tried to anticipate from your existing lease structure some of the clauses you would expect to see and obviously are receptive to adding others we may have missed. A lot of the technical detail that are in your leases will be in the plans and specifications in this deal, which we will both have to see once the AHFC and architectural process is complete.

I look forward to working these through with you. Enjoy the weekend; we are enjoying a blue bird summer day in Anchorage.

Don

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From: mhawker@gci.net on behalf of Mike Hawker <mhawker@gci.net>
Sent: Friday, July 12, 2013 6:47 PM
To: Mark Pfeffer
Subject: Re: conversation with Gardner / Attorney client conversation

Crap. I need to get back and deal with him again. Double crap. I hate lawyers.

M

On Jul 12, 2013, at 8:38 PM, Mark Pfeffer <MPfeffer@PfefferDevelopment.com> wrote:

FYI. Let's discuss.

Mark Pfeffer
Sent from my iPhone
907-317-5030

Begin forwarded message:

From: "Donald W. McClintock" <dwm@anchorlaw.com>
Date: July 12, 2013, 5:21:47 PM AKDT
To: Mark Pfeffer <MPfeffer@PfefferDevelopment.com>, 'bob acree' <bobacree@gmail.com>
Cc: John Steiner L. <JSteiner@PfefferDevelopment.com>
Subject: conversation with Gardner / Attorney client conversation

All,

The initial conversation with Gardner was a little rocky. Although his earlier tone a few weeks ago seemed to be more interested in addressing solutions to the contracting issues, (today he was quite dug in with his theory that the motions contemplate a final contract that is 10% below FMV and a deal that can entirely be justified by section 083.) He seems to have blown right past his concerns shared a few weeks ago about how to do a material modification under section 083 and discounted the value of a section 080 approval by the legislature. (I think John and I fundamentally are not confident that the entire deal can be done under section 083 with the material modification as well.) Plus the 10 year term limit is a problem.

He also was not receptive to the reimbursement concept.

We explained that we understood both the motion structure (which he now discounted as not being meaningful or a real justification for how we structured the deal) and the business deal was to allow a FMV deal approved by AHFC. He stated that he had other clients in the Legislature other than Hawker who will be very concerned about not getting a 10% below FMV deal. Hawker is out for a week and he clearly will not budge until after he speaks with him.

We did leave it that next week can be spent ironing out boilerplate, etc., but the big issues will go on hold on his side until after Hawker returns.

1

716-001363

John can chip in when he gets access to a computer.

Don

Donald W. McClintock
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From: Mark Pfeffer
Sent: Saturday, July 13, 2013 10:01 AM
To: Mike Hawker
Subject: Fwd: conversation with Gardner / Attorney client conversation

Before I called you the other day Steiner told me to tell you that he is keenly aware that Rep. Hawker starts with "I hate lawyers".

So at least he is sensitized sentiment.

Anyway see the attached internal memo.

I think Gardner is just flat out wrong.

A) you can extend as is where is.

B) you voted to allow major modifications

C) you can commit previously appropriated funds for the purpose of new and or improved facilities.

D) if the full legislature decides to move forward by approving the lease (and the governor signs off) what more do you need?

I think Gardner has "A" way to keep going but he needs to be brought along other ways.

Anyway, don't stress out over this we'll get there. I think we plan an all hands meeting Monday the 22nd and we don't leave the table until we have agreement on direction.

Lastly, Juli seemed to be fully on board with the direction we discussed. The new schedule worked for her better than the October start.

I'm around if you want to discuss.

Mark Pfeffer
Sent from my iPhone
907-317-5030

Begin forwarded message:

From: "John L. Steiner" <JSteiner@PfefferDevelopment.com>
Date: July 13, 2013, 8:44:59 AM AKDT
To: "Donald W. McClintock" <dwm@anchorglaw.com>, Mark Pfeffer <MPfeffer@PfefferDevelopment.com>, 'bob acree' <bobacree@gmail.com>
Subject: RE: conversation with Gardner / Attorney client conversation

I concur with Don's summary, but will expand on it.

Gardner said he liked the .083 rationale because that section begins "Notwithstanding any other provision of this chapter" which he felt offers complete legal justification and protection. But that

assumes—as he has assumed—that the long-term enlarged and renovated LIO would have to come in at 10% below a BOV for that facility and be limited to 10 years. (We explained that the long term deal was not conceived with those expectations, which we believe was fully understood by Rep. Hawker. Gardner seemed to think some of the legislative council members voted in reliance on exactly the contrary understanding: that the renovated space would satisfy those parameters.)

Gardner has always tended to focus on procurement issues, and specifically raised that again: he said that if we are falling under .080 and not .083, he did not see why that would not need to be selected through an RFP. I responded that the Procurement Code makes this real estate interest transaction exempt from all procurement rules other than .080, and that so long as it complies with that section's legislative approval requirement, no other process is required. He did not concede that point, but offered no reason it was not so. We did not discuss the fact that this transaction was approved by the legislative council as an outgrowth of the its conclusion based on the prior RFI that other feasible and timely alternatives were not available.

Reading between the lines, it seems he likes the .083 rationale also because he assumes competition is ordinarily required, and that it is only the 10% below market standard that provides justification for not competing. He thinks *that* would need to be true for the expanded and renovated space, and if it *were* to be true for the finished project, that should also bring the non-competitive expansion and renovation under the protection of .083 (even though that section addresses only extension, not enlargement—) a factor we did not discuss with him yesterday).

(He also said he did not see the justification for extending the existing space for ten years AS IS under .083 since it was not contemplated that they would remain in it AS IS. He implied that he thought it was—or would be seen to be—disingenuous to extend based on a 10% below market AS IS justification, when it was not the plan to actually continue that AS IS deal.) I responded that indeed they would continue to enjoy that deal—for ten years—if they elect not to approve the renovation modification. It would only be if they conclude the renovation deal is better, and approve that one independently under .080, that the extension would not continue AS IS under .083.

Overall, the deal is not as he had understood it or thought it should be, so he is at least very skeptical and initially resistant to the differences.

I should note that while he was clearly not happy with the plan as we laid it out, he remained cordial with us and said he would read the drafts and continue to think about it. And while he was concerned about how other legislators would view it, (he said he was also not keen to get crosswise with Rep. Hawker, with whom he said he was not in regular touch right now due to Rep. Hawker being out of state for personal reasons.

If Gardner continues to believe there is a procurement issue, it may be useful to carve out the procurement portion of my internal analysis, and provide that to him.

Don, please let us know if you disagree with my recollections in any way. Thanks.

John L. Steiner

Project Director and Counsel

Pfeffer Development, LLC

Commercial Real Estate Developers

425 G Street, Suite 210 | Anchorage, Alaska 99501

p 907.646.4644 | f 907.646.4655

d 907.770.4306 | e 907.332.2300

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From: Donald W. McClintock [mailto:dwm@anchorlaw.com]
Sent: Friday, July 12, 2013 5:22 PM
To: Mark Pfeffer; 'bob acree'
Cc: John L. Steiner
Subject: conversation with Gardner / Attorney client conversation

All,

The initial conversation with Gardner was a little rocky. Although his earlier tone a few weeks ago seemed to be more interested in addressing solutions to the contracting issues, today he was quite dug in with his theory that the motions contemplate a final contract that is 10% below FMV and a deal that can entirely be justified by section 083. He seems to have blown right past his concerns shared a few weeks ago about how to do a material modification under section 083 and discounted the value of a section 080 approval by the legislature. I think John and I fundamentally are not confident that the entire deal can be done under section 083 with the material modification as well. Plus the 10 year term limit is a problem.

He also was not receptive to the reimbursement concept.

We explained that we understood both the motion structure (which he now discounted as not being meaningful or a real justification for how we structured the deal) and the business deal was to allow a FMV deal approved by AHFC. He stated that he had other clients in the Legislature other than Hawker who will be very concerned about not getting a 10% below FMV deal. (Hawker is out for a week and he clearly will not budge until after he speaks with him.)

We did leave it that next week can be spent ironing out boilerplate, etc., but the big issues will go on hold on his side until after Hawker returns.

John can chip in when he gets access to a computer.

Don

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From: Mark Pfeffer
Sent: Thursday, July 25, 2013 9:48 AM
To: Mike Hawker (mhawker@gci.net)
Subject: Procurement
Attachments: Supplement to LIO Project Procurement Analysis 7-24-2013.pdf.html

Mike,

I wouldn't share this with anyone yet. we will scrub the author references if you do want to share it. OR if you get outside counsel they could research and draw their own conclusions

Mark Pfeffer

PFEFFER DEVELOPMENT, LLC
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907 646 4644 | f 907.646.4655 |

Cell Phone
907 317 5030

From: Mark Pfeffer
Sent: Friday, July 26, 2013 3:49 PM
To: Mike Hawker (mhawker@gci.net)
Subject: (BACK CHANNEL)----- Draft 040(a) determination (00139337-2)_v2.docx
Attachments: Draft 040(a) determination (00139337-2)_v2.docx.html

Mike,

If you agree with this I'll have my guys send to Gardner. On hold until I hear from you

Pamela Varni

From: Pamela Varni
Sent: Thursday, August 08, 2013 1:37 PM
To: Rep. Mike Hawker
Cc: Juli Lucky
Subject: Comments on Extension of Lease Amendment #3
Attachments: Extension of Lease Comments.docx; Research Report - 1 pg comparison.pdf; Chart of Executive Branch Anchorage Leases.pdf

Dear Mike – as you requested, attached are my comments on the Extension of Lease and Lease Amendment No. 3 with some additional documentation.

You might not want to change anything but I wanted to show you some comparisons and some of my concerns.

Pam

*Pam Varni, Executive Director
Legislative Affairs Agency
State Capitol, Room 3
Juneau, AK 99801-1182
Main line (907) 465-3800
Direct line (907) 465-6622
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1. Page 2 of 22 – Rental Property and Rental Rate.

The latest version for cost per square foot went from rentable to gross. As I have stated before, all of the Legislature's leases are usable square feet, as are the Executive Branch leases. Basing the rate on gross is not a benefit to the Legislature and increases the overall lease costs. Calculating on rentable is more easily justified since we will be occupying the entire building. What is the justification for using gross square feet? (If we had done an RFP, we would be asking for usable office space with windows; we would also not be requesting over 9,000 square feet of basement space.) We currently have 811 square feet of basement space at 716 W. 4th Avenue and we rent an additional 480 square feet offsite for \$1.20 per square foot. We used to have a conference room in the basement but it was rarely used so we gave up that space. I believe basement space will be undesirable and therefore underutilized. We should not be paying the same per square foot rate for it. The Chris Stephens Commercial Brokerage Opinion of Lease Rate (dated May 5, 2013) for our existing lease at 716 W. 4th Avenue valued the basement rate at \$1.00 per square foot. Under the terms of this proposal, (we will be paying four times the amount for basement space as we are currently and even more compared to his valuation.)

Under this proposal, 712 and 716 will not be retail space but rather an office building; again, we should not be calculating the lease on gross square feet. As I have stated above, (we are already paying additional per square foot costs switching from usable to rentable). Total Gross Building Area is computed by measuring to the outside finished surface of permanent outer building walls without any deductions. All enclosed floors of the building including basements, mechanical equipment floors, penthouses, and the like are included in the measurement. (We should not be leasing the penthouse, vertical penetrations, mechanical equipment, etc., which amounts to paying for space we don't occupy.)

2. Page 3 of 22 – The Base Monthly Rental is \$230,630 (this number needs to be grossed up to include the cost of Property Taxes and Insurance)

Why is there a comment about grossing up the number for property taxes and insurance? When will there be firm numbers? The monthly rental rate of \$230,630 comes to \$3.60 sq. ft. with an additional proposal to do a partial triple net with an estimated cost of over \$600,000 per year on top of that rate. (With the figures presented so far, I estimate our cost to be over \$5.00 per square foot for a ten year lease.) It is worth noting that this Anchorage lease as proposed will be the most expensive Anchorage lease for the State of Alaska (see attached exhibit of Anchorage leases by the Executive Branch). Also, for comparison purposes, I had Research run the numbers comparing the other proposals for Anchorage legislative office space that have been before Legislative Council and this proposal. (As you can see, this proposal is by far the most expensive of any previous proposals over a 30-year period (see attached).)

3. Page 3 of 22 – CPI Removed, 3% yearly increase in rent

The percentage of change in CPI-U needs to be back in the lease. Automatically adding a 3% increase to the total monthly rent is excessive. The calculation for the CPI-U is 35% x base monthly rent x % change in CPI-U, not 100% over the previous month's rent every July 1. As proposed, our costs will increase 3 times as much as the State of Alaska pays for CPI-U increases in rent. For example, our normal CPI-U increase on the \$230,630 (35% x base monthly rental rate x % of change in CPI-U (we will use 3% as an example) would be an increase of \$2,421.62/month versus \$6,918.90/month (\$230,630 x 3%). Also, the CPI-U calculations are meant to compensate the Lessor for the increase in utilities. Under the proposal, the Legislature pays the utilities, etc., under a partial triple net. What is the justification for a 3% yearly increase of rent under those terms?

4. Page 3 of 22 – Monthly Rental Payments Sent by Wire Transfer

The State of Alaska does not at this time pay by wire transfer unless it is to a foreign entity or a payment over a million dollars. Our \$230,630 a month would not qualify. Our Accounting Section has all our leases on "Scheduled Payments" and the Department of Administration issues payment before the first of the month.

5. Page 5 of 22 – Tenant Improvements

The State of Alaska separates the leasehold improvement costs from the base lease cost. Contrast that standard with this proposal which includes in the base lease cost rental rate a portion of the leasehold improvement costs in the amount of \$2,685,760. When the State of Alaska goes out to bid, they have the leasehold improvement portion of construction distinct from the primary structure so that it is limited to the construction needs specific to the requirement of the Agency's solicitation and does not include the basic structure of the building or construction in common areas. The complete new construction of a facility is not considered leasehold improvements. Only a percentage as deemed directly connected with the Agency's needs are identified as leasehold improvements, i.e., partition walls and electrical and data outlets required to meet specific needs of the Agency. Where are the figures to show we are only paying for normal tenant improvements, (i.e. partition walls, electrical, etc.) not for the structure, etc.?

Our Fairbanks Class A rental space cost \$62.50 per square foot for leasehold improvements; and these leasehold improvements were not included in the base rent. This proposal requests a leasehold improvement rate of \$120 per square foot, twice that amount. What is the justification for the disparity?

6. Page 6 of 22 – Utilities and Services

I strongly recommend we have a full service lease and know exactly what our price per square foot is minus 10% to show the savings required under a lease extension. It seems we are assuming too much risk and unknown costs for a ten year period without a substantial reduction in rent to accommodate our maintaining the building and parking areas for maintenance, utilities, janitorial, elevators, fire alarm, HVAC, plumbing repairs, etc.

Other legislative leases require the Lessor at least every five years to renovate the space for worn walls, ceilings, floors and replace damaged or worn wall, floor, or window coverings or paint. This proposal has the Legislature assuming that cost and responsibility.

7. Page 7 of 22 – Electrical Outlets

Our language of electrical outlets every 8 linear feet of wall space is standard RFP language. In fact, the Executive Branch electrical requirements further state, "and one duplex outlet on every wall less than eight linear feet." I do not see a copy of the Approval Plans to ensure we have adequate electrical requirements. I would like to keep our 8 linear feet language and add a section that the Agency will review plans and negotiate with the Lessor to review the electrical requirements.

8. Page 12 of 22 – Maintenance and Repair

The Lessee should keep the building and the areas immediately surrounding, and belonging to the building, free from objectionable tenancy, odors, vermin, rodents, and other features that will in the opinion of the Lessee be detrimental to Lessee's operation. With the Glacier Brewhouse, Orzo, etc. around our existing building, we have had had multiple problems with urine, cigarettes, blood, etc. The Lessor should take responsibility and not have us cleaning up the mess from the surrounding properties.

I suggest we have a full service lease and not substitute Lessor with Lessee.

9. Page 19 of 22 – Reimbursement

I don't think the documentation section should come out. I also can see the Agency paying for design, engineering, etc. that was specific to our requirements, but not for items that are for the structure that would then be of benefit to the Lessor or another tenant.

I'm pleased to discuss further at your convenience.



LEGISLATIVE RESEARCH SERVICES

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Memorandum

TO: Pamela Varni, Executive Director, Legislative Affairs Agency
FROM: Roger Withington, Legislative Analyst
DATE: August 7, 2013
RE: Comparing 30-Year Costs of Construction and Operation of Prospective Anchorage Office Buildings
LRS Report 14.016

You asked for a comparison of total 30-year costs of constructing and operating various proposed Anchorage office buildings that have been or are being considered by the Legislative Council.

As you know, in recent years the Legislative Council has considered a number of proposals for the construction or lease of office space in Anchorage.¹ Below, we briefly compare the estimated aggregate construction (if applicable) and operating costs of those proposals at the end of a 30-year period.²

Estimated Aggregate Construction or Lease Costs and Operating Costs of Certain Proposed Anchorage Legislative Office Buildings at the End of a 30-Year Period

Location	Total Construction or Lease Cost ^(a)	Total Operating Cost	Grand Total
909 W. 9 th Ave. (Unocal Building)	\$14,700,000	\$20,428,952	\$35,128,952
Block 102	\$26,200,000	\$32,609,013	\$58,809,013
Anchorage Community Development Authority Proposal	\$60,609,600	\$40,178,962	\$100,788,562
Block 39	\$89,450,000	\$23,583,304	\$113,033,304
Prospective New Lease for Current Offices at 716 4 th Ave.	\$132,913,441	\$33,063,292	\$165,976,733
Notes: (a) The construction costs of the 909 W. 9th Ave. (Unocal Building), Block 102, Anchorage Community Development Authority Proposal, and Block 39 properties reflect construction costs, including any applicable debt service, at the time the Legislative Council considered these properties.			

We hope this is helpful. If you have questions or need additional information, please let us know.

¹ In the interest of brevity, we omit background information and supporting documentation from this memorandum. At your request, we would be happy to provide our previous reports on this topic, which collectively provide extensive detail. Please note, that with the exception of the Prospective New Lease, all properties reflect construction costs, including any applicable debt service, as calculated at the time the Legislative Council considered the properties.

² The cost of operations for the 909 W. 9th Ave. (Unocal Building), Block 102, and Block 39 properties are based on a uniform cost per square foot of \$11.28 provided by Tanci Mintz, the state's lease manager. Ms. Mintz based this figure on actual costs experienced at the Atwood Building in Anchorage. The Anchorage Community Development Authority (ACDA) proposal to the Legislature included an estimated cost of operations. The cost of operations for the Prospective New Lease is set contractually at \$10 per gross square foot for FY2014. We adjusted all operations costs for inflation at a rate of 3.5 percent annually. Please keep in mind that the building systems at each of the proposed facility would be of somewhat varying design, these operating cost figures should be viewed as rough estimates.

leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2556	Anchor Point	Pub Safety	Kyllonen Business Center	Kyllonen Business Center; Anchor River Subdivision; 34115 Sterling Highway; Anchor Point, AK 99556	Kyllonen Enterprises	3202	1.98520924	Office	4/30/2014		1 One year	Mike Szewc	Southcentral
2556	Anchor Point	Pub Safety	Kyllonen Business Center	Kyllonen Business Center; Anchor River Subdivision; 34115 Sterling Highway; Anchor Point, AK 99556	Kyllonen Enterprises	3600	0.16178611	Outside Storage	4/30/2014		1 One year	Mike Szewc	Southcentral
1201	Anchorage	H&SS	Blomfield Building	Fourth & Gambell LLC Building; East 4th Avenue & Gambell Street; Lot 1A, Block 25B; Anchorage, AK	Fourth & Gambell, LLC	29472	1.90692216	Office	1/31/2021		0 0	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
1328	Anchorage	M&VA	Huffman Business Park	Huffman Business Park; Huffman Building O - Suite 1; 12050 Industry Way; Anchorage, AK Huffman Business Park; Huffman Building M & N - Unit 4; 11900 Industry Way; Anchorage, AK Huffman Business Park; Huffman Building Q - Unit Q5; 12150 Industry Way;	Huffman Building O, LLC	7455	1.39727297	Warehouse	10/14/2013		1 One year	Ken Stewart	Anchorage
1328	Anchorage	Transp & PF	Huffman Business Park	Huffman Business Park; Huffman Building O - Suite 1; 12050 Industry Way; Anchorage, AK Huffman Business Park; Huffman Building M & N - Unit 4; 11900 Industry Way; Anchorage, AK Huffman Business Park; Huffman Building Q - Unit Q5; 12150 Industry Way;	Huffman Building O, LLC	7200	1.35	Office	10/31/2017		5 One year	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

A130

leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
1328	Anchorage	Transp & PF	Huffman Business Park	Huffman Business Park; Huffman Building O - Suite 1; 12050 Industry Way; Anchorage, AK Huffman Business Park; Huffman Building M & N - Unit 4; 11900 Industry Way; Anchorage, AK Huffman Business Park; Huffman Building Q - Unit Q5; 12150 Industry Way;	Huffman Building O, LLC	5800	1.35	Office	10/31/2017		5 One year	Ken Stewart	Anchorage
1445	Anchorage	Labor	SLM Subdivision, 33rd & Eagle	SLM Subdivision; 3301 Eagle Street; Lot 1B, Block 3; Anchorage, AK	Thirty-Third & Eagle, LLC	48640	1.755	Office	3/31/2022		0 0	Ken Stewart	Anchorage
1511	Anchorage	F&G	Raspberry Industrial Park Subdivision	Raspberry Industrial Park Subdivision; Lot 6, Block 2; 333 Raspberry Road; Anchorage, AK Raspberry Industrial Park Subdivision; Lot 4A, Block 1; 525 West 67th Avenue; Anchorage, AK	Worthington F&G, LLC	82382	1.36421718	Office and Other Types of Space	6/30/2020		0 0	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
1521	Anchorage	Pub Safety	Heather Meadows Subdivision	Heather Meadows Subdivision; 536 East 48th Avenue; Lot 7E, Block 2; Anchorage, AK	Egemo Properties, Inc.	2900	1.16457931	Warehouse	2/29/2016		1 One year	Ken Stewart	Anchorage
1521	Anchorage	Pub Safety	Heather Meadows Subdivision	Heather Meadows Subdivision; 536 East 48th Avenue; Lot 7E, Block 2; Anchorage, AK	Egemo Properties, Inc.	10000	1.000481	Office and Other Types of Space	2/29/2016		1 One year	Ken Stewart	Anchorage
2078	Anchorage	H&SS	550 West 8th Avenue	unnamed property; 550 West 8th Avenue; Anchorage, AK	Eighth and F, LLC	1	1293.99	Leasehold Improvement Costs	9/30/2014		0 0	Ken Stewart	Anchorage
2078	Anchorage	H&SS	550 West 8th Avenue	unnamed property; 550 West 8th Avenue; Anchorage, AK	Eighth and F, LLC	24076	1.79236003	Office	9/30/2019		0 0	Ken Stewart	Anchorage
2303	Anchorage	Correction	800 A Street	800 A Street; 800 A Street; Anchorage, AK	8th & A, LLC	15000	1.69348333	Office and Other Types of Space	7/31/2014		1 One year	Ken Stewart	Anchorage
2303	Anchorage	Correction	800 A Street	800 A Street; 800 A Street; Anchorage, AK	8th & A, LLC	1186	1.79	Office	7/31/2014		1 One year	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

A132

leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2313	Anchorage	M&VA	Dimond Center	Dimond Center; Suite 3-220; 800 East Dimond Boulevard; Anchorage, AK Dimond Center; Suite 3-209; 800 East Dimond Boulevard; Anchorage, AK	Dimond Center, LLC	3127	2.21039655	Office	12/31/2013		00	Ken Stewart	Anchorage
2313	Anchorage	M&VA	Dimond Center	Dimond Center; Suite 3-220; 800 East Dimond Boulevard; Anchorage, AK Dimond Center; Suite 3-209; 800 East Dimond Boulevard; Anchorage, AK	Dimond Center, LLC	142	0	Office	12/31/2013		00	Ken Stewart	Anchorage
2345	Anchorage	E&ED	Post Office Mall	Post Office Mall; 333 West 4th Avenue; Lot 5, Block 24A, Plat 68-122; Anchorage, AK	Windward Town & Country Plaza, Inc.	10800	1.75069815	Office	5/31/2014		00	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2382	Anchorage	Law	Carr-Gottstein & Resolution Tower Buildings	Carr-Gottstein Building ; 310 K Street; Lot 1B, Block 31; Anchorage, AK Resolution Tower Building; 1031 West 4th Avenue; Lot 7, Block 31; Anchorage, AK	Whale Building, LLC	81812	3.22144979	Office	9/30/2014		1 Five years	Ken Stewart	Anchorage
2382	Anchorage	Law	Carr-Gottstein & Resolution Tower Buildings	Carr-Gottstein Building ; 310 K Street; Lot 1B, Block 31; Anchorage, AK Resolution Tower Building; 1031 West 4th Avenue; Lot 7, Block 31; Anchorage, AK	Whale Building, LLC	4317	3.22139912	Office	9/30/2014		1 Five years	Ken Stewart	Anchorage
2401	Anchorage	Enviro Con	555 Cordova Street	unnamed property; 555 Cordova Street; Anchorage, AK	555 Cordova, LLC	45050	2.28740622	Office	5/31/2015		5 One year	Ken Stewart	Anchorage
2413	Anchorage	Correction	Carr Gottstein Building	Carr Gottstein Building; 310 K Street; Lot 1 B, Block 31; Anchorage, AK	Whale Building, LLC	2554	2.36922866	Office	6/30/2015		0 0	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2428	Anchorage	Labor	Muldoon Heights Subdivision	Muldoon Heights Subdivision; 1251 Muldoon Road; Tract A, Plat No. 70-257; Anchorage, AK	Noodlum Equities, Ltd.	1	5759	Leasehold Improvement Costs	7/31/2018		00	Ken Stewart	Anchorage
2428	Anchorage	Labor; H&SS	Muldoon Heights Subdivision	Muldoon Heights Subdivision; 1251 Muldoon Road; Tract A, Plat No. 70-257; Anchorage, AK	Noodlum Equities, Ltd.	30198	1.42322439	Office	9/30/2022		00	Ken Stewart	Anchorage
2434	Anchorage	Governor; Labor; Admin	Bayview Commercial Building	Bayview Commercial Building; ARRC Anchorage Terminal; 619 East Ship Creek Avenue; Anchorage, AK 99501	Bayview Properties, LLC	5345	1.55168382	Office	2/28/2014		00	Ken Stewart	Anchorage
2435	Anchorage	Labor	Bayview Commercial Building	Bayview Commercial Building; 619 East Ship Creek Avenue; Anchorage, AK 99501	Bayview Properties, LLC	11987	1.69472178	Office	5/31/2016		1 Three years	Ken Stewart	Anchorage
2449	Anchorage	Admin	College Corner Subdivision	College Corner Subdivision; Suite 128; 2221 E Northern Light Boulevard; Anchorage, AK	Big W Ranch Corp.	3000	1.40662667	Office	12/31/2013		5 One year	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2451	Anchorage	Revenue	Sunshine Plaza	Sunshine Plaza; 411 West 4th Avenue; Lot 4A, Block 24A; Anchorage, AK	Sunshine Plaza, LLC	2200	1.8	Office	1/31/2014		5 One year	Ken Stewart	Anchorage
2451	Anchorage	Governor; Revenue	Sunshine Plaza	Sunshine Plaza; 411 West 4th Avenue; Lot 4A, Block 24A; Anchorage, AK	Sunshine Plaza, LLC	3255	1.73511214	Office	1/31/2014		5 One year	Ken Stewart	Anchorage
2451	Anchorage	Nat Res	Sunshine Plaza	Sunshine Plaza; 411 West 4th Avenue; Lot 4A, Block 24A; Anchorage, AK	Sunshine Plaza, LLC	21268	1.72823897	Office	1/31/2014		5 One year	Ken Stewart	Anchorage
2451	Anchorage	Revenue	Sunshine Plaza	Sunshine Plaza; 411 West 4th Avenue; Lot 4A, Block 24A; Anchorage, AK	Sunshine Plaza, LLC	3690	1.73511382	Office	1/31/2014		5 One year	Ken Stewart	Anchorage
2455	Anchorage	Enviro Con	Fuller Industrial Park	Fuller Industrial Park; 502 West 58th Avenue, Unit J ; Lot 6, Block 4; Anchorage, AK	Arctic Center VIII	2298	1.24020888	Office and Other Types of Space	4/30/2018		3 One year	Ken Stewart	Anchorage
2458	Anchorage	Enviro Con	Warehouse B - 1330 East 2nd Avenue	Warehouse A; 1313 East 3rd Avenue; Lots 1 & 3A, Block 32D; Anchorage, AK Warehouse B; 1330 East 2nd Avenue; Lots 1 & 3A, Block 32D; Anchorage, AK	Stewart Stewart & Cupples, LLC	1223	1.16896157	Office and Other Types of Space	6/30/2013		00	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2466	Anchorage	Admin	333 West 7th Avenue	Original Subdivision; 333 West 7th Avenue, Suite 100; Lot 7A, Block 72; Anchorage, AK 99501	Harrison Properties, LLC	330	1.12487879	Storage	11/30/2017	0		Ken Stewart	Anchorage
2466	Anchorage	Admin	333 West 7th Avenue	Original Subdivision; 333 West 7th Avenue, Suite 100; Lot 7A, Block 72; Anchorage, AK 99501	Harrison Properties, LLC	8644	2.35099954	Office	11/30/2017	0		Ken Stewart	Anchorage
2466	Anchorage	Admin	333 West 7th Avenue	Original Subdivision; 333 West 7th Avenue, Suite 100; Lot 7A, Block 72; Anchorage, AK 99501	Harrison Properties, LLC	1	2955.28	Leasehold Improvement Costs	11/30/2017	00		Ken Stewart	Anchorage
2466	Anchorage	Admin	333 West 7th Avenue	Original Subdivision; 333 West 7th Avenue, Suite 100; Lot 7A, Block 72; Anchorage, AK 99501	Harrison Properties, LLC	5000	2.542228	Office	11/30/2017	00		Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2468	Anchorage	Nat Res	Phillips Office Complex	Phillips Office Complex; 701 West 8th Avenue; Lot 1A, Block 81; Anchorage, AK	Conoco Phillips Alaska, Inc.	3819	3.11965436	Office	3/31/2016		2 Five years	Ken Stewart	Anchorage
2468	Anchorage	Law, CC&E D	Phillips Office Complex	Phillips Office Complex; 701 West 8th Avenue; Lot 1A, Block 81; Anchorage, AK	Conoco Phillips Alaska, Inc.	22709	2.12895944	Office	3/31/2016		2 Five years	Ken Stewart	Anchorage
2469	Anchorage	Admin	Benson DMV	Benson DMV; Corner of Benson Blvd & Spenard Road; 1300 West Benson Boulevard; Anchorage, AK	North Star 1300, LLC	44773	-1.5126304	Lease Rent Credit/Abatement	5/31/2016		1 Three years	Ken Stewart	Anchorage
2469	Anchorage	Admin	Benson DMV	Benson DMV; Corner of Benson Blvd & Spenard Road; 1300 West Benson Boulevard; Anchorage, AK	North Star 1300, LLC	44773	2.15840909	Office and Other Types of Space	5/31/2016		1 Three years	Ken Stewart	Anchorage
2482	Anchorage	Admin	Fifth Avenue Building	Fifth Avenue Building; 900 West Fifth Avenue; Block 55, Lot 1A, Plat 79-259; Anchorage, AK	5th & 6th, LLC	14852	2.7142634	Office	12/31/2016		1 Three years	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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LAA_000138

Exhibit 16, page 15 of 29

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2483	Anchorage	Admin	Fifth Avenue Building	Fifth Avenue Building; 900 West Fifth Avenue; Block 55, Lot 1A, Plat 79-259; Anchorage, AK	5th & 6th, LLC	20496	2.71418228	Office	12/31/2016		1 Three years	Ken Stewart	Anchorage
2498	Anchorage	Correction	Bayview Commercial Building	Bayview Commercial Building; 619 East Ship Creek Avenue; AARC Anchorage Terminal Reserve; Anchorage, AK	Bayview Properties, LLC	3529	1.6031227	Office	5/31/2014		3 One year	Ken Stewart	Anchorage
2498	Anchorage	Environment	Bayview Commercial Building	Bayview Commercial Building; 619 East Ship Creek Avenue; AARC Anchorage Terminal Reserve; Anchorage, AK	Bayview Properties, LLC	9840	1.81467842	Office and Other Types of Space	5/31/2014		2 One year	Ken Stewart	Anchorage
2498	Anchorage	Governor	Bayview Commercial Building	Bayview Commercial Building; 619 East Ship Creek Avenue; AARC Anchorage Terminal Reserve; Anchorage, AK	Bayview Properties, LLC	3217	1.37244949	Office	5/31/2014		3 One year	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenant	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2498	Anchorage	Admin	Bayview Commercial Building	Bayview Commercial Building; 619 East Ship Creek Avenue; AARC Anchorage Terminal Reserve; Anchorage, AK	Bayview Properties, LLC	616	1.75170455	Office	5/31/2015		2 One year	Ken Stewart	Anchorage
2498	Anchorage	Admin	Bayview Commercial Building	Bayview Commercial Building; 619 East Ship Creek Avenue; AARC Anchorage Terminal Reserve; Anchorage, AK	Bayview Properties, LLC	2492	1.37345907	Office	5/31/2015		2 One year	Ken Stewart	Anchorage
2498	Anchorage	Admin	Bayview Commercial Building	Bayview Commercial Building; 619 East Ship Creek Avenue; AARC Anchorage Terminal Reserve; Anchorage, AK	Bayview Properties, LLC	335	1.802	Office	5/31/2015		2 One year	Ken Stewart	Anchorage
2498	Anchorage	Admin	Bayview Commercial Building	Bayview Commercial Building; 619 East Ship Creek Avenue; AARC Anchorage Terminal Reserve; Anchorage, AK	Bayview Properties, LLC	163	1.67110429	Office	5/31/2015		2 One year	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

A140

leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2498	Anchorage	Admin	Bayview Commercial Building	Bayview Commercial Building; 619 East Ship Creek Avenue; AARC Anchorage Terminal Reserve; Anchorage, AK	Bayview Properties, LLC	12864	1.38945274	Office	5/31/2015		2 One year	Ken Stewart	Anchorage
2503	Anchorage	Correction	Town Square Plaza	Town Square Plaza; 500 West 6th Avenue; Lot B, Block 70; Anchorage, AK	Ounalashka Properties, Inc.	3206	1.575	Office	7/31/2017		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	998	3.21472892	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	56093	3.21473196	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	1658	3.21473462	Office	6/30/2019		0 0	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	882	3.21472789	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	Correction	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	2064	3.21473837	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	20629	3.21473217	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	4527	3.21473161	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	2053	3.21472966	Office	6/30/2019		0 0	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	1848	3.21472944	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	6589	3.21473213	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	6485	3.21473246	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2505	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	11824	3.2147319	Office	6/30/2019		0 0	Ken Stewart	Anchorage
2506	Anchorage	H&SS	Frontier Building	Frontier Building; 36th & C Subdivision - 3601 C Street; Tract A2, Plat 82-335; Anchorage, AK 99503	3601 C Street, LLC	9978	3.21473241	Office	6/30/2019		0 0	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2508	Anchorage	Labor, Admin	Alaska Legal Center	Alaska Legal Center, 1016 West 6th Avenue; Lot 1C, Block 65; Anchorage, AK	S & K Properties	16928	2.22299976	Office	7/31/2017		5 One year	Ken Stewart	Anchorage
2525	Anchorage	Nat Res	Arctic Business Park	Arctic Business Park; 510 West 41st Avenue - Suite 102, Unit H; Birch Knoll Tract 1B; Anchorage, AK	Arctic Business Park III	1835	1.39295913	Office and Other Types of Space	4/30/2014		0 0	Ken Stewart	Anchorage
2528	Anchorage	Governor	800 A Street	800 A Street; Lots 1,2,3,4,and 5, Block 105; 800 A Street; Anchorage, AK	8th & A, LLC	752	1.8524867	Office	9/30/2013		0 0	Ken Stewart	Anchorage
2528	Anchorage	Governor	800 A Street	800 A Street; Lots 1,2,3,4,and 5, Block 105; 800 A Street; Anchorage, AK	8th & A, LLC	6794	1.65004121	Office	9/30/2013		0 0	Ken Stewart	Anchorage
2535	Anchorage	H&SS	Revere Commercial Center	Revere Commercial Center, Independence Park Subdivision; 9210 Vanguard Drive, Suite #102; Anchorage, AK 99507	Spinvest, LLC	5361	1.828241	Office and Other Types of Space	10/31/2013		0 0	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2537	Anchorage	Enviro Con	Dimond Industrial Center	Dimond Industrial Center; 7720 King Street; Lot 5, Block 5, Plat No. 80-49; Anchorage, AK	King Street Rentals	5324	0.46494741	Office and Other Types of Space	1/31/2014		0 0	Ken Stewart	Anchorage
2560	Anchorage	Governor	RAM Building	RAM Building; 2525 Gambell Street; Lot 28A, Block 4, Lampert Subdivision; Anchorage, AK	Michael Investments, LLC	9044	1.43110349	Office	4/30/2014		1 One year	Ken Stewart	Anchorage
2562	Anchorage	M&VA	Dimond Center	Dimond Center; 800 East Dimond Boulevard, Suite 3-229; Lot 3D, Block 2; Anchorage, AK	Dimond Center, LLC	1035	2.06637681	Office	12/31/2013		0 0	Ken Stewart	Anchorage
2578	Anchorage	E&ED	Dimond Center	Dimond Center; Dimond Industrial Subdivision; 800 E. Dimond East Boulevard, STE #200; Anchorage, AK	Dimond Center Holdings, LLC	400	1.031525	Storage	5/31/2014		4 One year	Ken Stewart	Anchorage
2578	Anchorage	E&ED	Dimond Center	Dimond Center; Dimond Industrial Subdivision; 800 E. Dimond East Boulevard, STE #200; Anchorage, AK	Dimond Center Holdings, LLC	5170	1.23784333	Office	5/31/2014		4 One year	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenant s	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duratio n	Contractin g Officer	Region
2587	Anchorage	H&SS	McKay Annex	McKay Annex - McKay Subdivision; 323 E. 4th Avenue; Lot A1; Anchorage, AK	JBG Memorial, LLC	1	33649	Leasehold Improvement Costs	2/28/2023		00	Ken Stewart	Anchorage
2587	Anchorage	H&SS	McKay Annex	McKay Annex - McKay Subdivision; 323 E. 4th Avenue; Lot A1; Anchorage, AK	JBG Memorial, LLC	45168	1.70168836	Office	2/28/2023		3 Five years	Ken Stewart	Anchorage
2599	Anchorage	Correct ion	Transit Center	Transit Center; 830 G Street; Anchorage, AK 99501	Anchorage Community Development Authority	2205	2.19	Office	2/7/2017		2 Five years	Ken Stewart	Anchorage
2603	Anchorage	Correct ion	Transit Center - Municipality Parking Garage	Transit Center - Municipality Parking Garage; 6th & H Street Parking Garage; 700 West 6th Avenue; Anchorage, AK	Anchorage Community Development Authority	13	103.846154	Parking	9/30/2017		00	Ken Stewart	Anchorage
2608	Anchorage	H&SS	Mt. McKinley Professional Building	Mt. McKinley Professional Building; 733 West 4th Avenue, Suite #300; Lot 9, Block 28; Anchorage, AK 99501	WBC Real Estate Investment Fund #1, LLC	2899	2.67928941	Office and Other Types of Space	12/31/2014		4 One year	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2608	Anchorage	H&SS	Mt. McKinley Professional Building	Mt. McKinley Professional Building; 733 West 4th Avenue, Suite #300; Lot 9, Block 28; Anchorage, AK 99501	WBC Real Estate Investment Fund #1, LLC	1	1579.2	Leasehold Improvement Costs	12/31/2013	0	0	Ken Stewart	Anchorage
2617	Anchorage	M&VA	4600 Debarr Road Building	4600 Debarr Road Building; Russian Jack Commons Subdvn, Tract C; 4600 Debarr Road, Suite #300; Anchorage, AK 99508	4600 Debarr Road, LLC	1458	2.7	Office	6/30/2019	10	One year	Ken Stewart	Anchorage
2617	Anchorage	Labor	4600 Debarr Road Building	4600 Debarr Road Building; Russian Jack Commons Subdvn, Tract C; 4600 Debarr Road, Suite #300; Anchorage, AK 99508	4600 Debarr Road, LLC	1	4744.4	Leasehold Improvement Costs	6/30/2019	0	0	Ken Stewart	Anchorage
2617	Anchorage	M&VA	4600 Debarr Road Building	4600 Debarr Road Building; Russian Jack Commons Subdvn, Tract C; 4600 Debarr Road, Suite #300; Anchorage, AK 99508	4600 Debarr Road, LLC	1	750.33	Leasehold Improvement Costs	6/30/2019	0	0	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenant s	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duratio n	Contractin g Officer	Region
2617	Anchorage	Labor	4600 Debar Road Building	4600 Debar Road Building; Russian Jack Commons Subdvn, Tract C; 4600 Debar Road, Suite #300; Anchorage, AK 99508	4600 Debar Road, LLC	9350	2.70204064	Office	6/30/2019	10	One year	Ken Stewart	Anchorage
2620	Anchorage	Pub Safety	Tudor Municipal Campus Subdivision	Tudor Municipal Campus Subdivision; Anchorage, AK 99519	Anchorage, Municipality of	691732	0.00000012	Ground	2/28/2059	1	25 years	Ken Stewart	Anchorage
2632	Anchorage	H&SS; Correct ion	920 East Whitney Road	Unknown; 920 East Whitney Road; Anchorage, AK 99501	Alaska Railroad Corporation	7200	1.01388889	Storage	11/30/2013	0	0	Ken Stewart	Anchorage
2636	Anchorage	E&ED	Mountain View Commerce Center	Mountain View Commerce Center; 161 South Klevin Street, Suite #102; Anchorage, AK 99508	Anchorage Community Land Trust	3549	1.34081995	Office	4/30/2015	5	One year	Ken Stewart	Anchorage
2636	Anchorage	E&ED	Mountain View Commerce Center	Mountain View Commerce Center; 161 South Klevin Street, Suite #102; Anchorage, AK 99508	Anchorage Community Land Trust	1	4604.96	Leasehold Improvemen t Costs	4/30/2015	0	0	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2637	Anchorage	Pub Safety	Regional Fire Training Center	Regional Fire Training Center; 1140 Airport Heights; Anchorage, AK 99508	Anchorage, Municipality of	400	3.75	Office	9/30/2015		1 Five years	Ken Stewart	Anchorage
2841	Anchorage	H&SS	Anchorage Business Park	Anchorage Business Park ; 4501 Business Park Blvd, Ste 24; Bldg L, Lots 4 & 5, Blk 1 & Lot 6, Blk 2; Anchorage, AK Anchorage Business Park; 4601 Business Park Boulevard; Building K, Suite K-10 & K-42 ; Anchorage, AK Anchorage Business Park; 4701 Busi	Anchorage Business Center, LLC	6079	1.9	Office	7/31/2018		4 One year	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2641	Anchorage	H&SS	Anchorage Business Park	Anchorage Business Park ; 4501 Business Park Blvd, Ste 24; Bldg L, Lots 4 & 5, Blk 1 & Lot 6, Blk 2; Anchorage, AK Anchorage Business Park; 4601 Business Park Boulevard; Building K, Suite K-10 & K-42 ; Anchorage, AK Anchorage Business Park; 4701 Busi	Anchorage Business Center, LLC	1	10727.56	Leasehold Improvement Costs	2/29/2016		0 0	Ken Stewart	Anchorage
2641	Anchorage	H&SS	Anchorage Business Park	Anchorage Business Park ; 4501 Business Park Blvd, Ste 24; Bldg L, Lots 4 & 5, Blk 1 & Lot 6, Blk 2; Anchorage, AK Anchorage Business Park; 4601 Business Park Boulevard; Building K, Suite K-10 & K-42 ; Anchorage, AK Anchorage Business Park; 4701 Busi	Anchorage Business Center, LLC	15531	1.9	Office	2/29/2016		5 One year	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2641	Anchorage	H&SS	Anchorage Business Park	Anchorage Business Park ; 4501 Business Park Blvd, Ste 24; Bldg L, Lots 4 & 5, Blk 1 & Lot 6, Blk 2; Anchorage, AK Anchorage Business Park; 4601 Business Park Boulevard; Building K, Suite K-10 & K-42 ; Anchorage, AK Anchorage Business Park; 4701 Busl	Anchorage Business Center, LLC	2148	1.9	Office	2/29/2016		5 One year	Ken Stewart	Anchorage
2641	Anchorage	Transp &PF	Anchorage Business Park	Anchorage Business Park ; 4501 Business Park Blvd, Ste 24; Bldg L, Lots 4 & 5, Blk 1 & Lot 6, Blk 2; Anchorage, AK Anchorage Business Park; 4601 Business Park Boulevard; Building K, Suite K-10 & K-42 ; Anchorage, AK Anchorage Business Park; 4701 Busl	Anchorage Business Center, LLC	870	1.98102299	Office	2/29/2016		5 One year	Ken Stewart	Anchorage

* One-time payment; monthly rent and cost per unit cannot be calculated

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leasecontacts1.xls

Lease	Location	Tenants	Common Name	Property Name & Address	Lessor Name	Sq Feet or Other Units	Cost per SqFt or Unit (Monthly)	Space Type	Expiration Date	Options Remaining	Option Duration	Contracting Officer	Region
2653	Anchorage	CC&E D	Tonsina Subdivision	Tonsina Subdivision; Lot 2 Wood Subdiv & Lot 3 Sunbeam Subdiv; 903 W Northern Lights; Anchorage, AK 99503	Griffin, Sue c/o Tammy Krous	3545	1.55	Office	10/31/2013		1 One year	Ken Stewart	Anchorage
2660	Anchorage	Enviro Con	East Dimond Center	East Dimond Center; 2241 Cinnabar Loop; Block 2, Lot 17; Anchorage, AK 99507	GTK Commercial Real Estate, LLC	15075	0.72898574	Office and Other Types of Space	5/31/2020		3 One year	Ken Stewart	Anchorage
2660	Anchorage	Enviro Con	East Dimond Center	East Dimond Center; 2241 Cinnabar Loop; Block 2, Lot 17; Anchorage, AK 99507	GTK Commercial Real Estate, LLC	1	3459.14	Leasehold Improvement Costs	5/31/2020		0 0	Ken Stewart	Anchorage

From: Mike Hawker <mhawker@gci.net>
Sent: Thursday, August 08, 2013 5:01 PM
To: Mark Pfeffer
Subject: Re: Comments on Extension of Lease Amendment #3

Yep. M

On Aug 8, 2013, at 4:43 PM, Mark Pfeffer <MPfeffer@PfefferDevelopment.com> wrote:

Well. Here we go!

I'll dig into this. Once I've identified All of the math errors and bad assumptions ill get with Do. At AHFC and see if he agrees. if he does (they can produce the memo that settles up the issues.)

Jeez! & double Jeez!

Sent from my iPhone

On Aug 8, 2013, at 2:27 PM, "Mike Hawker" <mhawker@gci.net> wrote:

Begin forwarded message:

From: "Rep. Mike Hawker" <Rep.Mike.Hawker@akleg.gov>
Date: August 8, 2013, 2:22:05 PM AKDT
To: Hawker Michael <mhawker@gci.net>
Subject: Fwd: Comments on Extension of Lease Amendment #3

Begin forwarded message:

From: "Pamela Varni" <Pamela.Varni@akleg.gov>
To: "Rep. Mike Hawker"
<Rep.Mike.Hawker@akleg.gov>
Cc: "Juli Lucky" <Juli.Lucky@akleg.gov>
Subject: Comments on Extension of Lease Amendment #3

Dear Mike – as you requested, attached are my comments on the Extension of Lease and Lease Amendment No. 3 with some additional documentation.

You might not want to change anything but I

wanted to show you some comparisons and some of
my concerns.

Pam

Pam Varni, Executive Director
Legislative Affairs Agency
State Capitol, Room 3
Juneau, AK 99801-1182
Main line (907) 465-3800
Direct line (907) 465-6622
Cell phone (907) 209-1942

<Extension of Lease Comments.docx>

<Research Report - 1 pg comparison.pdf>

<Chart of Executive Branch Anchorage Leases.pdf>

From: Mark Pfeffer
Sent: Friday, August 09, 2013 1:36 PM
To: Mike Hawker
Subject: response
Attachments: (8_9_13 response document draft.docx.html)

I ran out of time but this is a draft and you can see where its heading.

I'm a little bit pissed off that I am having to spend several hours responding to a work product that is frankly "GARBAGE"

(When faced with a credible well thought out proposal that can be factually documented by the experts (ours), but which she is incapable of comprehending, Pam is reverting to her hold "smoke and mirror" ways. None of the numbers on the comparable proposal sheet make any sense to me.)

I can't find my version of the Pam produced "comparable" document that I gave you at our first meeting in January. Do you still have that? See how the amounts on that sheet tally with the new comparable sheet.

(Obviously please do not forward this email. Thanks.)

(More to follow)

Mark Pfeffer

PFEFFER DEVELOPMENT, LLC
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907 646 4644 | f 907.646.4655 |

Cell Phone
907 317 6030

From: MHawker <mhawker@gci.net>
Sent: Sunday, August 25, 2013 7:48 AM
To: Mark Pfeffer
Subject: did not get the revised schedule

Hi Mark,

I received the new schematic presentation, but did not receive a copy of the revised project schedule we discussed on the phone.

If you can forward it, I will be really happy to give it a look see.

Again, magnificent presentation on Friday..... (I don't see anything that Pam or Gardner can do now to derail this.... Not that they will not try.)

Best,

Mike

From: [Rep. Mike Hawker](mailto:Rep.Mike.Hawker@akleg.gov) <Rep.Mike.Hawker@akleg.gov>
Sent: Friday, September 06, 2013 11:40 AM
To: Mark Pfeffer
Subject: Re: LIO Lease Extension and Amendment v. 09/04/2013

Got it. Thanks.

On Sep 6, 2013, at 11:18 AM, ["Mark Pfeffer"](mailto:MPfeffer@PfefferDevelopment.com) <MPfeffer@PfefferDevelopment.com> wrote:

> Standby on this Mike. I'm working it

>

> Mark Pfeffer

>

> PFEFFER DEVELOPMENT, LLC

> 425 G Street, Suite 210 | Anchorage, Alaska 99501 p 907 646 4644 |

> f 907.646.4655 |

>

> Cell Phone

> 907 317 5030

>

>

> -----Original Message-----

> From: Rep. Mike Hawker [mailto:Rep.Mike.Hawker@akleg.gov]

> Sent: Friday, September 06, 2013 9:54 AM

> To: 'Donald W. McClintock' (dwm@anchorlaw.com); Mark Pfeffer;

> mbuller@ahfc.us

> Subject: FW: LIO Lease Extension and Amendment v. 09/04/2013

>

> How are we doing with Gardner? This note made me worry a bit. Do we need to plan another sit down?

>

> Mike

>

>

>

> -----Original Message-----

> From: Nola Cedergreen [mailto:ncedergr@ahfc.us]

> Sent: Wednesday, September 04, 2013 2:44 PM

> To: LAA Legal; Rep. Mike Hawker; Pamela Varni; dwm@anchorlaw.com

> Subject: RE: LIO Lease Extension and Amendment v. 09/04/2013

>

> Sounds like a plan. I will keep my schedule open.

>

>

> Sent from my Verizon Wireless 4G LTE Smartphone

>

>

>

> ----- Original message -----

> From: LAA Legal <LAA.Legal@akleg.gov>

> Date: 09/04/2013 1:47 PM (GMT-08:00)
> To: Nola Cedergreen <ncedergr@ahfc.us>, "Rep. Mike Hawker"
> <Rep.Mike.Hawker@akleg.gov>, Pamela Varni
> <Pamela.Varni@akleg.gov>, dwm@anchorlaw.com
> Subject: RE: LIO Lease Extension and Amendment v. 09/04/2013

>
>
> Nola,
> Thanks for your drafting work. I understand that you have, in your most recent draft, made some changes and not others. I will leave it to the client to make a decision on how to move forward on your recommendations in your current draft. However, section 1.1(b) and section 36 require, in my view, a conversation by short teleconference.

>
> If Exhibits A and B will be ready soon, I suggest that when the drafts are available we have another teleconference to address them and secs. 1.1(b) and 36. The last call was productive and efficient. I will hold my comments on new drafts until then, if this suggested process is acceptable to Representative Hawker.

> Doug Gardner, Director
> LAA Legal Services

>
> Sent by:
> MaryEllen Duffy
> Special Assistant
> LAA Legal Services
> 907-465-6651 direct
> 907-465-2029 fax
> MaryEllen.Duffy@akleg.gov

>
>
>
>
> Warning: This message and any attachments to it are confidential. If you have received this message in error, please notify the sender by electronic mail and delete the message. If you are not the intended recipient of this message, you are hereby notified that disclosing, disseminating, or copying this message or any attachments to it is prohibited. Thank you.

>
>
>
> -----Original Message-----

> From: Nola Cedergreen [mailto:ncedergr@ahfc.us]
> Sent: Tuesday, September 03, 2013 7:37 PM
> To: Rep. Mike Hawker; LAA Legal; Pamela Varni; dwm@anchorlaw.com
> Subject: LIO Lease Extension and Amendment v. 09/04/2013

>
> Please give this a test drive ...

>
> Mr. McClintock's latest draft was used as the base document which was revised slightly based upon a review of my handwritten notes from our teleconference, the detailed notes provided by Representative Hawker's office, and the September 3rd summary prepared by Doug Gardner.

>
> With the exception of the following reference in Doug's September 3rd document, I believe I have addressed most questions: "P. 11. Sec. 21: ...after 'not the responsibility of Lessor' ... that the clause ... be included." I couldn't find "not the responsibility of Lessor" in Section 21. Please point me in the right direction.

> The definition section has been expanded and requires some review to be certain the parties agree. The delay in performance section has hopefully been clarified in a manner that will avoid confusion between the renovation to be accomplished prior to the Lessee's acceptance and occupancy of the Premises and any subsequent alteration/renovation projects that may come along after occupancy. Section 43 requires a careful read. I believe I have quoted AS 36.30.083 (a) correctly but recommend a legal review of my work.

>
> Attached is a track changes comparison between Mr. McClintock's draft and the 9/4/13 version. I believe Doc Crouse and Mark Pfeffer are both working on the content of Exhibit "A" and Exhibit "B".

>
> Thanks for all of your help and feedback.

>
> The information transmitted in this email and any attachments is intended only for the personal and confidential use of the intended recipients. This message may be or may contain privileged and confidential communications. If you as the reader are not the intended recipient, you are hereby notified that you have received this communication in error and that any retention, review, use, dissemination, distribution or copying of this communication or the information contained is strictly prohibited. The sender does not accept any responsibility for any loss, disruption or damage to your data or computer system that may occur while using data contained in, or transmitted with, this e-mail. If you have received this communication in error, please notify the sender immediately and delete the original message from your system.

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From: Rep. Mike Hawker <Rep.Mike.Hawker@akleg.gov>
Sent: Wednesday, September 11, 2013 6:01 AM
To: Nola Cedergreen
Cc: Mark Pfeffer, Mike Buller
Subject: Re: Lease revisions.

Thanks all for the extra hours. I apologize for the obstructionist on my side of the table.

I will also review this first thing this morning.

Mike, let me know where and when you want to meet with Mark on numbers.

Mike

On Sep 11, 2013, at 5:27 AM, "Nola Cedergreen" <ncederg@ahfc.us> wrote:

> Looks great. Good revisions/clarification.
>
>
> From: Donald W. McClintock [dwm@anchorlaw.com]
> Sent: Tuesday, September 10, 2013 7:48 PM
> To: Nola Cedergreen; Rep.Mike.Hawker@akleg.gov; laa.legal@akleg.gov; Pamela.Varni@akleg.gov
> Cc: mpfeffer@pfefferdevelopment.com; Mike Buller; Heidi A. Wyckoff
> Subject: RE: Lease revisions.
>
> Nola and Doug,
>
> Here are my tracked changes annotations to the lease on Nola's post teleconference version. I am available to talk tomorrow any time up to 4:15 when I have a court system conference.
>
> Doug, I tweaked the para. 36 language for consistency; please review it carefully.
>
> These changes have not been reviewed by Mark so I reserve the right to make additional changes per his review.
>
> I look forward to getting this wrapped up tomorrow and appreciate your attention.
>
> 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.

>

>

> -----Original Message-----

> From: Nola Cedergreen [mailto:ncedergr@ahfc.us]

> Sent: Tuesday, September 10, 2013 4:11 PM

> To: Rep.Mike.Hawker@akleg.gov; laa.legal@akleg.gov; Pamela.Varni@akleg.gov

> Cc: Donald W. McClintock; mpfeffer@pfefferdevelopment.com; Mike Buller

> Subject:

>

> Here is a version for Mr. McClintock to work from.

>

> Representative Hawker/Pam: please see rough draft language for Section 3 ... does it accurately reflect your intent?

>

>

>

> The information transmitted in this email and any attachments is intended only for the personal and confidential use of the intended recipients. This message may be or may contain privileged and confidential communications. If you as the reader are not the intended recipient, you are hereby notified that you have received this communication in error and that any retention, review, use, dissemination, distribution or copying of this communication or the information contained is strictly prohibited. The sender does not accept any responsibility for any loss, disruption or damage to your data or computer system that may occur while using data contained in, or transmitted with, this e-mail. If you have received this communication in error, please notify the sender immediately and delete the original message from your system.

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> <ANC LIO Extension Version 09102013 post teleconf (00149979-2).docx>

S-16371

3AN-15-05969 CI

VOLUME 4

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

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

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

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

Defendants.)

[PROPOSED] ORDER GRANTING THE UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR 716 TO REPLY TO PLAINTIFF'S OPPOSITION TO 716'S MOTION FOR RULING OF LAW PRECLUDING ALASKA BUILDING, INC.'S CLAIMS FOR QUI TAM AND PUNITIVE DAMAGES

This Court, having reviewed 716 West Fourth Avenue LLC's Unopposed Motion to Extend Filing Deadline for 716 to Reply to Plaintiff's Opposition to 716's Motion for Ruling of Law Precluding Plaintiff's *Qui Tam* and Punitive Damages, and being duly advised in the premises, enters the following ORDER:

716 may file a reply by **November 24, 2015.**

DATED this 9 day of December, 2015.

Eric B. Hanston

HON. PATRICK J. McKAY
Superior Court Judge

I certify that on 12/7/15 a copy of the following was mailed/ faxed/ hand-delivered to each of the following at their addresses of record.

James Goltstein / Jeffrey Robinson
Denise Burns / Blake Salt / Mark Schaefer
Kevin Cuddy / Cynthia Ducey
Administrative Assistant *[Signature]*

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

[PROPOSED] ORDER RE UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR 716 TO REPLY TO PLAINTIFF'S
OPPOSITION TO 716'S MOTION FOR RULING OF LAW PRECLUDING QUI TAM AND PUNITIVE DAMAGES CLAIM
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil.

{10708-101-00305216;1}

Page 2 of 2

001268

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

2015 NOV 24 PM 4:2

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiff,)

vs.)

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

Case No.: 3AN-15-05969 CI

NOTICE OF SUPPLEMENTATION OF RECORD
RE: PLAINTIFF'S MOTION TO COMPEL

Defendant 716 West Fourth Avenue, LLC ("716"), by and through counsel Ashburn & Mason, P.C., hereby supplements the record on Plaintiff's Motion to Compel. Plaintiff's Reply on the Motion included a letter to undersigned counsel, but the Reply was filed without allowing the undersigned the opportunity to respond to the letter. In the interest of providing the Court with a complete record, and to demonstrate that communications on certain issues are ongoing and do not necessarily merit Court attention, the undersigned respectfully provides the most recent installment in the relevant correspondence.

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

DATED: 11-24-15

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 24 day of 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 P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

NOTICE OF SUPPLEMENTATION OF THE RECORD RE: MOTION TO COMPEL
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil
{10708-101-00305960;1}

ASHBURN & MASON P.C.

LAWYERS

MATTHEW T. FINDLEY • EVA R. GARDNER • REBECCA E. LIPSON • DONALD W. McCLINTOCK III
JEFFREY W. ROBINSON • JACOB A. SONNEBORN • THOMAS V. WANG
OF COUNSEL JULIAN L. MASON III • A. WILLIAM SAUPE

November 24, 2015

Via Electronic & US Mail:

Jim Gottstein
Alaska Building, Inc.
406 G Street, Suite 206
Anchorage, Alaska 99501

Re: Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC
3AN-15-05969CI
Our File No.: 10708.101

Dear Jim:

This letter responds to yours of November 11, 2015, which requested additional discovery from 716.

On September 3, 2015, 716 produced nearly 1,000 pages of documents in response to your first set of discovery requests. 716 later produced an additional 4,000+ pages of supplemental production. Given the volume of documents requested, our office had to send them out for professional processing. On October 22, 2015, you requested several allegedly missing attachments to the e-mails produced. On reviewing the production, we discovered that the outside processor had made some errors and had in fact failed to print some attachments. 716 promptly provided these attachments in additional supplemental responses. Several of the e-mails you mentioned did not actually have attachments, a fact we were careful to explain in our response.

1227 WEST 9TH AVENUE, SUITE 200, ANCHORAGE, AK 99501 • TEL 907.276.4331 • FAX 907.277.8235

{10708-101-00305017;1}

SUPPLEMENT

001271

ASHBURN & MASON P.C.

Jim Gottstein
Page 2
November 24, 2015

Our office has thus gone to great lengths (and great expense) to ensure that all attachments to the e-mails were produced. You appear to accept this in your recent letter, which does not assert that we have omitted any documents that were *actually attached* to the e-mails produced.

Instead, your letter demands an entirely new level of production: information and documents *discussed in*, but not *attached to*, e-mails produced. While 716 does not dispute your ability to pursue this information, we do object to your attempt to characterize it as within the scope of your original discovery request. Asking a witness to explain statements made in a letter is something that should be done through subsequent discovery requests or depositions. The mere fact that you have questions about documents produced in response to your original request does not make those questions part of the original request.

For example, you have demanded additional information related to an e-mail dated September 13, 2013 from Mike Buller to Mark Pfeffer (Bates no. 716-2103). The e-mail, which was sent without any attachment, states “We have updated numbers from Tim and he will be available by phone.” Your most recent letter accuses 716 of failing to produce the “updated numbers” referenced by Mr. Buller along with the e-mail. But this information was not attached to or included in the original e-mail; it is merely something that Mr. Buller referenced in an e-mail, which you are welcome to explore through additional discovery processes.

Regarding the other e-mails you identify, we previously explained to you—after double- and triple-checking—that those e-mails had no attachments. To ensure there is no confusion, we have re-explained this below:

- 716-2171: This e-mail correspondence references an “Exhibit C” as having been sent in a separate e-mail. You have demanded that 716 produce Exhibit C. 716 is not obligated to find documents within its production to satisfy your inquiries; it is your duty to review the discovery and form your own conclusions. However, our office was able to easily confirm that Exhibit C was in fact produced to you. As a courtesy we are providing information that will allow you to locate it. The document referenced was provided on October 28, 2015 in 716’s Second Supplement to First

ASHBURN & MASON P.C.

Jim Gottstein
Page 3
November 24, 2015

Requests for Production at Bates Nos. 716-006012 thru 716-006020. Again, we are providing this information as a courtesy; we do not plan to conduct any additional searches of our production in response to your inquiries.

- 716-2074 & 2075: This e-mail appears to have been sent from Mr. Pfeffer's iPad and the message—which recites a list of documents—does not indicate there were any attachments to it.
- 716-2167: Again, this e-mail had no attachments; rather it appears to reference a communication Mr. Pfeffer had separately with Waronzof. If there is no such separate communication in the documents provided to you thus far, that means we do not have one to produce.
- 716-2173: In this e-mail, Mr. Pfeffer referenced the hypothetical production of a memo. The memo was clearly not attached to his e-mail and it appears from the context that it was a document within AHFC's sole control, not 716's. 716 is not under a duty to produce it in the context of your original discovery request.
- 716-2292: In this e-mail, Mr. Pfeffer stated that he had attached certain documents and you have asked for the missing attachment. However, as we previously confirmed, the e-mail in fact had no attachments—Mr. Pfeffer did not include the referenced documents. The e-mail was produced as it was sent.
- 716-2367: This an e-mail between Waronzof and AHFC on which Mr. Pfeffer was merely cc'd. It references a model "sent yesterday." We produced all responsive e-mails we were able to locate. If there is no e-mail in the production from the previous day containing a model, that means we do not have one to produce.

We hope these responses help you understand that we have met our duties of production with regard to these e-mails, and that your latest letter demands information that is beyond the scope of your original requests. Although discovery is ongoing, we have produced all e-mails currently known to be responsive to your requests.

ASHBURN & MASON P.C.

Jim Gottstein
Page 4
November 24, 2015

As a final note, we were disappointed to see that you included your November 11 letter in your most recent filing with the Court without waiting for our response. Your letter did not provide a deadline for our response and, as you are well aware, both Eva and I were out of the office the preceding week and facing several response deadlines upon our return. Had you communicated a deadline, we would have met it, and perhaps avoided the need to waste the Court's time with yet another minor collateral dispute.

Sincerely,

ASHBURN & MASON, P.C.



Jeffrey W. Robinson

JWR:haw

cc: Mark Pfeffer
Dave DeRoberts
Bob O'Neill

{10708-101-00305017;1}

SUPPLEMENT

001274

ASHBURN & MASON P.C.

LAWYERS

MATTHEW T. FINDLEY • EVA R. GARDNER • REBECCA E. LIPSON • DONALD W. MCCLINTOCK III
JEFFREY W. ROBINSON • JACOB A. SONNEBORN • THOMAS V. WANG
OF COUNSEL JULIAN L. MASON III • A. WILLIAM SAUPE

November 24, 2015

Via Electronic & US Mail:

Jim Gottstein
Alaska Building, Inc.
406 G Street, Suite 206
Anchorage, Alaska 99501

Re: Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC
3AN-15-05969CI
Our File No.: 10708.101

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{10708-101-00305017;1}

SUPPLEMENT

001275

ASHBURN & MASON P.C.

Jim Gottstein
Page 2
November 24, 2015

Our office has thus gone to great lengths (and great expense) to ensure that all attachments to the e-mails were produced. You appear to accept this in your recent letter, which does not assert that we have omitted any documents that were *actually attached* to the e-mails produced.

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ASHBURN & MASON P.C.

Jim Gottstein
Page 3
November 24, 2015

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ASHBURN & MASON P.C.

Jim Gottstein
Page 4
November 24, 2015

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Sincerely,

ASHBURN & MASON, P.C.

Jeffrey W. Robinson

JWR:haw

cc: Mark Pfeffer
Dave DeRoberts
Bob O'Neill

{10708-101-00305017;1}

SUPPLEMENT

001278

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.

CLERK, COURT

BY: _____ DEPUTY CLERK

Case No.: 3AN-15-05969 CI

REPLY TO OPPOSITION TO MOTION FOR PROTECTIVE ORDER

Defendant 716 West Fourth Avenue LLC ("716"), by and through counsel, files this reply to Alaska Building, Inc.'s ("ABI") Opposition to 716's Motion for Protective Order.

In its opposition, ABI attempts to overcome 716's motion on multiple grounds, arguing that ABI has a "constitutionally protected right" to publish 716's documents, that 716 has failed to show "good cause" for its requested protective order, and that 716's motion should be denied on a technicality. As explained below, none of these arguments should sway the Court's decision. U.S. Supreme Court precedent makes clear that ABI has no constitutional right to disseminate 716's documents; 716's motion shows ample good cause for a protective order; and ABI's own brief makes clear that the technical deficiency of which it complains was harmless. ABI also takes issue with 716's request that ABI bear the cost of the extensive redactions that will be necessary if

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

ABI continues to publish discovery online. This position ignores that redacting discovery documents to render them suitable for online publication will exponentially increase 716's discovery costs. It would be inequitable to place that additional burden on 716 solely because ABI has decided to exceed the normal bounds of discovery and publish the entirety of discovery online.

I. The U.S. Supreme Court has ruled that litigants do not have First Amendment right in traditionally private pretrial discovery processes and acknowledged the implicit harm in indiscriminate publication of discovery.

ABI presents several cases that it asserts provide it an inviolable First Amendment right to use 716's discovery information in whatever way it chooses. But it disregards that the U.S. Supreme Court spoke clearly and unequivocally on this issue in *Seattle Times Co. v. Rhinehart*.¹ There, the Supreme Court considered a litigant making the same arguments ABI makes here: that restraining its use of information obtained through the discovery process would violate its rights under the First Amendment. The Supreme Court roundly rejected this position, holding: "A litigant has no First Amendment right of access to information made available only for purposes of trying his suit."² Rather, litigants access that information only as "a matter of legislative grace."³ Therefore, "continued court control over the discovered information does not raise the same specter of government censorship that such control might suggest in

¹ 467 U.S. 20, 30 (1984).

² *Id.* at 32.

³ *Id.*

other situations.”⁴ The Supreme Court went on to note that pretrial discovery processes are not “public components of a civil trial,” but are generally “conducted in private as a matter of modern practice.”⁵

The Supreme Court explained that discovery provides “an opportunity . . . for litigants to obtain—incidentally or purposefully—information that not only is irrelevant but if publicly released could be damaging to reputation and privacy.”⁶ Thus, “the government clearly has a substantial interest in preventing this sort of abuse of its processes.”⁷

Seattle Times is dispositive. ABI was permitted to obtain discovery from 716 by the Alaska Legislature’s adoption of the discovery rules, for the express and sole purpose of furthering its litigation position. Its acquisition of 716’s documents does not give it the right to publish them indiscriminately or use them for any other purpose.

The harm 716 suffers by having thousands of its internal e-mails published and searchable online was detailed in its original motion and is moreover obvious on its face. Indeed, in *Seattle Times*, the Supreme Court commented that the governmental interest in preventing abuse of the discovery process bears on good cause: “The prevention of the abuse that can attend the coerced production of information under a

⁴ *Id.*

⁵ *Id.* at 33.

⁶ *Id.* at 35.

⁷ *Id.*

State's discovery rule is sufficient justification for the authorization of protective orders."⁸

II. The omission of a separate certification was harmless, as ABI had made clear that it would not conform its behavior to 716's requests and any efforts to resolve the issue would have been futile.

Although 716 filed its motion under Civil Rule 26(c), which provides that a motion for a protective order be accompanied by a certification from the movant, 716's motion is not a typical Rule 26(c) request. The rule contemplates a situation where a party is seeking to withhold production. Here, 716 has already made extensive production; it thus is not seeking a protective order in the classic sense of the term. Rather, 716 seeks a remedial order that will ensure that ABI uses information received in discovery appropriately.

The purpose of the certification is to ensure that the parties have had an opportunity to confer and work things out between themselves before bringing a matter to the Court's attention. 716 acknowledges its oversight in failing to include such a certification but maintains that the omission was harmless: ABI's response makes clear that any such efforts would have been futile and would merely have increased the legal costs to both sides.⁹ 716 seeks to preclude ABI from publishing all discovery on the internet; the "discovery order" proposed by ABI in its motion does not even address that

⁸ *Id.* at 35-36; *cf. id.* at 27 (citing trial court's determination that restriction was necessary to avoid the "chilling effect" that dissemination would have on "a party's willingness to bring his case to court.").

⁹ As noted in 716's original motion, opposing counsel has a history of improperly disseminating information. Mot. at 2 n.4. In addition, opposing counsel made clear at his deposition that he has strong, unshakeable opinions regarding his right to do so.

issue and even expressly excludes discovery that has already been produced, and ABI's brief makes clear that it firmly and zealously believes it has a constitutional right to do whatever it wants with material obtained through the discovery process.

III. In the alternative, if ABI insists on publicly disseminating all of 716's internal documents, ABI should be forced to bear the cost of the redactions that are necessary to render the documents suitable for publication.

In its motion, 716 requested in the alternative that if ABI is permitted to continue publishing discovery online, 716 be permitted an opportunity to redact sensitive information at ABI's expense. 716 provided un-redacted documents to ABI in discovery on the assumption that—as in every other case litigated in this state—the documents would be used by ABI and its counsel only for purposes of trial preparation; but if the documents are to be published and searchable on the Internet, 716 is entitled to redact information typically kept private, such as individual e-mail addresses and any other personal information contained in the thousands of pages produced. Since this redaction would be necessitated solely by ABI's insistence on publishing the documents, it is a cost that should be borne by ABI, not 716.

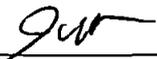
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CONCLUSION

For the foregoing reasons, 716 respectfully requests that the Court grant its motion.

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

DATED: 11-20-15

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

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I certify that a copy of the foregoing was served electronically messenger
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FILED
STATE OF ALASKA
THIRD DISTRICT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

2015 NOV 24 PM 4:26

BY: _____
DEPUTY CLERK

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 716 WEST FOURTH AVENUE, LLC'S MOTION FOR RULING OF LAW PRECLUDING ALASKA BUILDING, INC.'S CLAIMS FOR QUI TAM AND PUNITIVE DAMAGES

Defendant 716 West Fourth Avenue LLC ("716"), by and through counsel, files this reply to Plaintiff's Opposition to 716's Motion for Ruling of Law Precluding Alaska Building, Inc.'s Claims for Qui Tam and Punitive Damages. For the reasons contained in this reply and in 716's original motion, this court should not award ABI *qui tam* or punitive damages as sought by Plaintiff under the facts alleged.

I. No law supports ABI's 10% claim.

This Court has previously held that ABI's 10% claim was inadequate to grant it interest-injury standing.¹ ABI acknowledges that there is no statutory or common law

¹ See August 21, 2015 Order at 3, n 15.

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authority to support such an award.² Instead, it invites the Court to create a new remedy. In so doing, ABI asks the Court to override the Alaska Legislature's express abrogation of the public interest litigant exception to Civil Rule 82, and also asks this Court to ignore the Alaska Legislature's enactment of the Civil Rules governing the award of attorney's fees.³ This request is both inappropriate and impossible, as the creation of such legislative remedies is beyond the power of this (or any) Court.

The Agency, in its joinder of reply in support of 716's Motion for Ruling or Law Precluding ABI's Claims for *Qui Tam* damages, makes additional argument on this issue. 716 incorporates the Agency's arguments into this reply by reference.

As there is no basis in law to award ABI the 10% damages it seeks, 716 urges the Court to dismiss that damage claim from the Second Amended Complaint.

II. There Is Still No Basis for a Punitive Damages Award against 716.

In its original motion, 716 pointed out that ABI's claims—as pled in its most recent (third) complaint—were inadequate to support a punitive damages award as a matter of law, as they did not include the requisite claim for compensatory damages and failed to allege any facts going to 716's conduct. Rather than respond meaningfully to these legal arguments, ABI merely asserted (incorrectly) that it had in fact asserted a

² Under oath, Mr. Gottstein testified that although he hadn't seen any common law that would award a private plaintiff a 10% savings claim to a private litigant, it was "possible" that he would "come up with some." See Mr. Gottstein's 10/16/15 deposition at 43: 13-18, attached as Exhibit A.

³ See AS 09.60.010(b).; See also *Nautilus Marine Enters. v. Exxon Mobil*, 332 P.3d 554, 559 (Alaska 2014)(articulating that "The purpose of Rule 82 is to partially compensate a prevailing party for expenses incurred in winning a case.") ABI is not asking for an award under Civil Rule 82 as a prevailing party but seeks to have the court create a new substantive right not supported either by the Rule of Civil Procedure or legislative authorization.

compensatory damages claim, then devoted most of its opposition to a detailed discussion of discovery documents allegedly supporting its substantive legal claim regarding flaws in the procurement process. As 716 filed a motion for ruling of law based on ABI's pleading, ABI's extensive factual discussion should not technically be at issue; however, to ensure that the Court is presented with a complete record, 716 responds to them below.

A. ABI's Second Amended Complaint seeks only declaratory judgment, which cannot support punitive damages.

Alaska law does not permit punitive damages in the absence of a compensatory damage award.⁴ In its original motion, 716 explained that ABI had failed to assert a viable claim for compensatory damages that could, in turn, support a punitive damages award.⁵ ABI responded by asserting that it has brought a claim for compensatory damages on behalf of the State.⁶ But this assertion is incorrect: the Second Amended Complaint is devoid of any such claim. Rather, the Second Amended Complaint seeks only a *declaratory judgment* regarding the alleged invalidity of the Lease.⁷

Indeed, even if ABI had pled a compensatory damages claim, it is not at all clear that citizen-taxpayer standing carries with it the ability to assert claims for monetary damage on behalf of a third party. Injunctive and declaratory relief are the more traditional remedies in a citizen-taxpayer suit. ABI has presented no authority that

⁴ 716's Motion at 3 and n.7.

⁵ *Id.* at 3.

⁶ Plaintiff's Opposition at 9.

⁷ Plaintiff's Opposition at 2 (quoting Second Amended Complaint).

would support an attempt to seek damages on behalf of the State and this attempt in fact appears to be beyond the bounds of its citizen-taxpayer standing.

Fundamentally, however, the problem is that ABI has pled no claim for compensatory damages. Declaratory judgment alone cannot support an award of punitive damages.⁸ Under Alaska law, ABI cannot sustain a claim for punitive damages, and that claim should be dismissed.⁹

B. Even if ABI had pled a compensatory damages claim, there would be no factual basis for a punitive damages claim.

The Second Amended Complaint makes only a single allegation regarding 716's conduct: it alleges that 716 entered into a lease ABI declares to be illegal. 716's original motion explained that this bare allegation is inadequate, as a matter of law, to support a claim for punitive damages.¹⁰ In its opposition, ABI introduced evidence far beyond the four corners of its pleading to support an array of brand-new allegations: it now alleges that 716 acted "outrageously" through e-mail communications between the Lessor's representative and the Lessee's representative during lease negotiations.

⁸ Although none of the three Complaints ABI has filed to date suggests that punitive damages should be awarded to the State, ABI now asserts that "since the conduct was against the state, [the state] should receive 100% [of any punitive damages award], possibly subject to an award to Alaska Building, Inc. of 10% of the savings achieved as a result of this litigation." See Opposition at 9. ABI asks for double the statutory amount that would be ordinarily paid to the state under AS 09.17.020 (j) and ignores that fact that the state is barred from filing "or join[ing] a civil action to recover punitive damages.

⁹ ABI grudgingly acknowledges that the Second Amended Complaint "could be more clear" and hints at an intention to amend the complaint yet again. See Opposition at 9, FN 11. As no motion to amend has been filed, this is not yet an issue; however, 716 notes that ABI has already amended the complaint *three times*. Each time, 716 has been forced to answer and engage in motion practice. ABI cannot endlessly use 716's attorneys to refine its pleading. Equity and due process demand that some limits be imposed.

¹⁰ 716's Motion at 4-5.

Though these new allegations are nowhere to be found in the Second Amended Complaint and are thus beyond the scope of this motion, they are prejudicial enough—and such gross mischaracterizations of reality—that 716 is compelled to respond to them. Through the course of discovery, 716 provided thousands of emails to ABI. The following will demonstrate that these communications were entirely ordinary in the context of negotiation between an existing landlord and tenant, that the negotiations were sanctioned and directed by the Legislative Council, that the actual lease was procured under a process that resulted from Legislative Council direction, and that the lease was the result of a legislative procurement rule process and in compliance with AS 36.30.083. The mere fact that 716 participated in this process does not relieve ABI of its obligation to follow the basic requirements of pleading, nor does it nullify 716’s due process right to a complaint that clearly states the factual basis of the claims.

The LIO project came about after years of failed State efforts to locate other suitable space. It followed more than 13 separate unsuccessful public and competitive procurement initiatives by the State dating back to 2002, including: Requests for Proposals (“RFP”s) issued by the Agency in April 2002 and July 2003; Requests for Information (“RFI”s) issued in February 2006, March 2007, May 2009, June 2011, and May 2013; efforts to achieve “government-to-government” procurement of space in 2008, 2009, and twice in 2011, and efforts to purchase the Unocal Building in April 2010 and November, 2011. The original lease was originally competitively bid under RFP 391 and publicly issued on July 17, 2003. 716 had been the landlord of the LIO for

more than two decades,¹¹ with approximately 12 months remaining on the prior 10-year lease (set to expire May 31, 2014), by the time the Legislative Council approached 716 to discuss the most recent lease extension of its space.

716 presented three renewal options to the full Legislative Council in May of 2013, each at different rent levels. The Council issued an RFI on May 14, 2013 to fully assess whether any other building (existing or new) would meet the State's requirements.¹² The RFI explicitly did not require the Agency to enter into a contractual relationship with any entity that responded to the RFI, not did it preclude the Agency from entering into contract with an entity that did not respond to the RFI.¹³

On June 7, 2013 the Legislative Council voted unanimously to authorize its Chairman and Chief Procurement Officer, Representative Mike Hawker, to negotiate material modifications to the lease, including renovation and retrofit of the expanded premises, with its existing Landlord, 716.¹⁴ In compliance with Alaska Legislative Procurement Procedure 040(d), Rep. Hawker's provided a written determination setting forth in detail the Council's basis for authorizing the lease modifications, which

¹¹ Over the years, the lease was subject to prior extensions and numerous amendments.

¹² See 5/14/13 RFI attached as Exhibit B; Mr. Gottstein has testified that ABI was never interested in serving as Landlord for the LIO.

¹³ See Exhibit B at 3.

¹⁴ See Procurement Officer's Findings under Legislative Procurement Procedure 040(d) attached as Exhibit C.

included adding 712 West Fourth Avenue – property immediately adjacent to the existing leased premises at 716 West Fourth Avenue – to the premises.¹⁵

On the same date, in a separate unanimously-passed motion, the Council authorized the Alaska Housing Finance Corporation (“AHFC”) to act as the Lessee’s representative in negotiating the lease, and to assist in managing the Lessor’s compliance with the terms and conditions of the proposed improvements. As the market rental value of the extension needed to be established “by a real estate broker’s opinion of the rental value or by an appraisal of the rental value,” pursuant to AS 36.30.083(a), AHFC was tasked with the responsibility to review and approve the appraisal. AHFC did in fact review and approve Tim Lowe’s September 18, 2013 appraisal of the renovated premises, which included the parking garage. In compliance with the lease reporting requirements of AS 36.30.083(b), on September 19, 2013, Pam Varni, Executive Director of the Agency, certified that the rent due under the lease would be 10 percent below the market rental value of the real property as established by Mr. Lowe’s appraisal and reviewed by AHFC.¹⁶ In fact, Ms. Varni concluded that the

¹⁵ By adopting Amendment No. 12, subsection (d) was added to Legislative Procurement Procedure 040, which provides: (d) a lease that was procured competitively may be materially modified by amendment, and the material modification of the lease does not require procurement of a new lease, if (1) the reasons for the modification are legitimate; the reasons for the modification were unforeseen when the lease was entered into; (3) it is not practicable to competitively procure a new lease; the modification is in the best interests of the agency or the committee; (5) the procurement officer makes a written determination that the items in paragraphs (1)-(4) exist, the determination details the reasons for concluding why the items exist, and the determination is attached to the amended lease; and (6) the use of this subsection is approved by the procurement officer, and in the case of an amendment for the lease of a legislative committee, by a majority of the committee members.

¹⁶ See Lease Reporting Requirement Letter dated 9/19/13, attached as Exhibit D.

annual rent payment exceeded the 10 percent reduction in market rental value¹⁷, and would save the Lessee \$528,344 annually.¹⁸ The parties executed the lease extension on September 19, 2013.

ABI claims in its Opposition that the September certification was obtained only because Rep. Hawker and Mark Pfeffer of 716 “put pressure on” Ms. Varni and the Agency’s lawyer, Doug Gardner, “to go along with the Project in spite of Ms. Varni’s and Mr. Gardner’s objections.”¹⁹ But ABI supports this claim only by cherry-picking evidence and presenting it without context. ABI relies on an email forwarded from Mr. Pfeffer to Rep. Hawker from June 20, 2013. This email came *two weeks after* the Legislative Council authorized Rep. Hawker to negotiate the lease extension with the Lessor and its representative, and contained 716’s lawyers’ dialogue concerning the pros and cons of the legal ways in which the extension could be achieved.²⁰

It was ultimately in the Agency’s purview to decide *how* it wished to approve the extension; but as a co-negotiator of the deal, Mr. Pfeffer had a legitimate and reasonable interest in ensuring that Rep. Hawker had full information when making legal decisions that affected both parties to the extension. Not only would it be contrary to the June 7, 2013 authorization for the parties to fail to negotiate the expansion and renovation

¹⁷ The annual rental payment negotiated with 716 under the terms of the lease is 86.48% of the appraised value.

¹⁸ See Exhibit D.

¹⁹ Plaintiff’s Opposition at 10.

²⁰ See Lease Extension at 1, attached as Exhibit E; See also Exhibit C at 2, authorizing the Chairman to negotiate amendments to the lease “by mutual agreement with the Lessor...”

project, it would be impractical—and hardly comport with good faith—for the Landlord to have no communication with the Tenant in discussing the financing, legality, and logistics of a project of this magnitude. Moreover, given the occupancy timeline required by the Tenant, it was not feasible for 716 to wait until all the ink had dried on the transaction before acting; accordingly, as the June 20 email indicates, 716 had to immediately begin making financial commitments to the LIO Project. For example, 716 had to secure a construction loan, which involved ordering a bank appraisal.²¹

Because of the necessity of making commitments prior to final execution of the lease extension, 716 bore a huge amount of risk in the transaction. Much of the risk was beyond 716's control: as noted above, the parties did not find out until September 18, 2013, the day before the lease was signed, that Mr. Lowe's appraisal would support the economics of the deal. Had it come in over 10% above the market rental value, then 716 would have borne a substantial financial loss because the parties would *not* have been able to extend the lease under AS 36.30.083. AHFC controlled the process because it ultimately had to review and validate Mr. Lowe's appraisal.

716's interest in ensuring that the transaction was properly structured to comply with all applicable legal requirements was entirely ordinary, as that was one of the few risks 716 could affirmatively help mitigate by providing the expertise of its own attorneys. From June 7, 2013 through September 19, 2013, the common theme from 716's lawyers and representatives was risk management. To ensure that the Agency

²¹ See Plaintiff's Opposition, Exhibit 10, page 2 of 2.

considered all alternatives, 716 discussed that a full legislative bill authorizing the extension would provide more certainty and alleviate risk. Ultimately, the Agency decided to pursue the AS 36.30.083(a) extension approach, and that approach was validated by Mr. Lowe's professional conclusion of value. After the months of review the Agency had conducted, 716 did not question the legality of its chosen approach or Mr. Lowe's third-party vetted appraisal.

Given this context, which was omitted from ABI's Opposition, it is disingenuous to suggest that Mr. Gardner or Ms. Varni were "pressured to go along by Mr. Pfeffer, aided and abetted by Representative Hawker."²² Ms. Varni raised some questions about the economics of the deal in early August 2013 as it related to comparable prospective Anchorage office buildings.²³ But—as the Agency and Ms. Varni herself later concluded—her initial analysis was based on inaccurate information and thus missed the mark.²⁴ At the end of the day, the statutory approach involved an assessment of monthly rental value, not an analysis of cost-per-square-foot as Ms. Varni had suggested; and the comparisons developed by Ms. Varni's analyst were neither current nor appropriate, especially considering that none of the "comparable" properties offered over 60,000 square feet with dedicated on-site parking, and that the conclusions of

²² See Plaintiff's Opposition at 8.

²³ See Plaintiff's Opposition, Exhibit 15

²⁴ Mr. Pfeffer referred to the comparable memo as "garbage" because the numbers did not make any sense given the scope of the Project discussed between the parties. See Plaintiff's Opposition, Exhibit 18.

previous RFPs had deemed certain of the “comparable” properties unacceptable for legislative space.

Fundamentally, there was no existing market space suitable to meet the Legislature’s articulated needs other than what the proposal at issue offered. (The lease extension itself specifically incorporated this fact.²⁵) The Legislative Council, *at its sole discretion*, elected to proceed with the scope of this project and declined to proceed with less costly options. As Rep. Hawker specifically noted for the record at the June 7, 2013 Council meeting, the Council previously “sought other downtown Anchorage properties suitable to legislative function and found none, leaving the option of constructing a new building. Council has **definitively said** that a new state-owned building is not a desirable outcome, leading to the decision to improve the existing location.”²⁶ The Agency, with Ms. Varni’s input, decided that it was in its best interest for its current landlord to remodel and expand the existing space. This was ultimately what was valued, in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) that govern the appraisal industry.

ABI’s argument is also misleading in that it suggests Ms. Varni and Mr. Gardner were opposed to the extension, when in fact they never ceased working on it or gave any indication that they found it problematic. Both individuals continued to negotiate

²⁵ See Exhibit E at 1, “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.”

²⁶ 6/7/13 Council Meeting Minutes at 3.(emphasis supplied.) The Council Minutes are attached as Exhibit F.

the terms of the lease extension on a near-daily basis from the time Ms. Varni issued her initial flawed memo on August 8, 2015 until the date the lease was executed on September 19, 2013. Ms. Varni's AS 36.30.083(b) cost saving calculation and report to the Legislative Budget and Audit Committee were incorporated into the lease as Exhibit D, and she signed the lease extension on behalf of the Agency the very next day. Neither Ms. Varni nor Mr. Gardner has ever asserted that they were pressured in any way to adopt the lease extension, and ABI has no evidence—and no right—to challenge their authorization to execute the lease on the Agency's behalf.

ABI's attempt to dispute that the Lowe appraisal report establishes a cost savings of at least 10 percent below the market rental value of the property is simply wrong. ABI has not shown or alleged that Mr. Lowe was statutorily unqualified to give his opinion of the appraised rental value. ABI has not shown or alleged that AHFC failed in its obligation to review the negotiation process. Instead, ABI contends that the lease extension is not statutorily compliant because Larry Norene, a retired real estate broker whom ABI hired as part of this litigation, offered a differing opinion of the maximum allowable lease rate in a cursory 3-page affidavit that is, notably, *not* USPAP-compliant. ABI attempts to use this affidavit as a basis for the Court to declare that the lease is invalid, and award it punitive damages.²⁷ But a difference in appraisal conclusions is neither outrageous nor uncommon;²⁸ nor does a later, different appraisal of value

²⁷ See Opposition at 2-3.

²⁸ If this were the case, nearly every litigated valuation dispute would end with one appraiser sanctioned for offering an outrageous opinion of value.

invalidate an earlier one as a good-faith basis for the Agency's conclusions. ABI fails to explain why Norene's non-USPAP-compliant, conclusory three-page affidavit should call into question 716's good-faith acceptance of the Lowe appraisal—which was moreover supported by third-party lender appraisers as a basis for extending financing.²⁹

It merits mention that Mr. Lowe prepared a 96-page appraisal for AHFC, which was acting as the tenant's representative for the Council (and the Agency, as an administrative agent for the Council), and in doing so certified that the report conformed to USPAP standards. Mr. Lowe is a certified Member of the Appraisal Institute ("MAI"), a fellow of the Royal Institution of Chartered Surveyors (FRICS), and he has achieved the Counsel of Real Estate ("CRE") designation as an appraiser experienced in the valuation and evaluation of commercial properties.³⁰

Yet in the world as pled by ABI's Second Amended Complaint, 716 engaged in outrageous conduct—and faces punitive damages liability—merely because it **entered into** the lease agreement. ABI does not argue that AHFC's conduct was outrageous or that it acted with reckless indifference in reviewing and approving the appraisal report. ABI also does not make these accusations against the Agency, which selected AHFC as the third party to review the appraisal. Nothing in Mr. Lowe's thorough appraisal

²⁹ The appraisals submitted under seal demonstrate this.

³⁰ Mr. Lowe's appraisal included market data gathered from Per Bjorn Rolli, MAI of Reliant Advisors and Steve Carlson, MAI, both of Anchorage. Mr. Lowe's appraisal was further referenced in, and relied upon, in an appraisal prepared by Theodore Jensen, MAI for EverBank on December 12, 2014. See Page 5 of 12-5-14 Appraisal, attached as Exhibit G. 716 requests that the Court put this document in the confidential portion of its file. The appraisal is 266 pages, 716 attaches page 5 which references the Lowe Appraisal.

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report, or the subsequent execution of the lease, suggests any conduct committed by 716 in the lease negotiation process that would rise to the level of circumstances that would make an AS 09.17.020(b) punitive damages award available to it should this case ultimately make its way to the fact finder.³¹

ABI's sole justification for its attempt to recover punitive damages from 716 relies on its mischaracterization of emails exchanged during lease negotiations regarding the best way to structure the lease extension in compliance with applicable law. In the context of the execution of the lease, as described *supra*, this argument is hollow. Accordingly, the Court should preclude ABI from seeking a punitive damages award.

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Attorneys for 716 West Fourth Avenue, LLC

DATED: 11-24-15

By: JWR
Jeffrey W. Robinson
Alaska Bar No. 0805038

³¹ The court will hear argument on December 16, 2015, on why ABI's case should be dismissed under the doctrine of laches.

CERTIFICATE OF SERVICE

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In the Matter Of:

ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

JAMES GOTTSTEIN - VOLUME I

October 16, 2015

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EXHIBIT A

Page 1 of 4

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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

DEPOSITION OF JAMES B. GOTTSTEIN
VOLUME I

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

Taken by Counsel for
Defendant 716 West Fourth Avenue LLC
at
ASHBURN & MASON
1227 West 9th Avenue, Suite 200
Anchorage, Alaska

**CERTIFIED
TRANSCRIPT**

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

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1 Q. So thank you for the answer. I'm going to
2 go back to my original question, which is: What is
3 the basis for your claim to an entitlement of
4 10 percent of the fees?

5 A. I just said it.

6 Q. I'm not sure that you have. You gave me a
7 history lesson about the public interest exception
8 for Rule 82. Is there a statute?

9 A. No.

10 Q. False Claims Act? This isn't a qui tam
11 case, right?

12 A. Correct.

13 Q. Is there any common law that you can point
14 to to say that a savings of this type had been given
15 a private litigant?

16 A. No. Well, not yet anyway. So, I mean,
17 it's possible I'll come up with some, but I haven't
18 found -- I haven't seen any yet.

19 I mean, I think that the -- this is a very
20 important public issue, and the point is, is that if
21 this right of public -- the public citizens to sue
22 over illegal government action is to have any, you
23 know, reality at all, there needs to be some
24 countervailing element for the prospect of attorneys'
25 fees being awarded against a plaintiff if they're

State of Alaska

Legislative Affairs Agency

Administrative Services, Supply Section

State Capitol Room 3 ~ Juneau, AK 99801-1182 ~ Phone (907) 465-6705 ~ Fax (907) 465-2918



REQUEST FOR INFORMATION (RFI) ANCHORAGE PROFESSIONAL OFFICE SPACE

The Legislative Affairs Agency ("Agency") is interested in receiving information regarding the availability of new or existing professional office space for lease to serve as Legislators' personal Anchorage Offices and the Legislative Agency Support Offices in the greater Anchorage area. The space must meet the general descriptions in this request and be available for occupancy by May 1, 2014.

Respondents must include the following property identification information:

- Owner's, and, if applicable, agent's name and contact information
- Physical address of property
- Tax assessor's plat and lot numbers of property
- At least one but no more than 10 photographs of proposed property

A response to this RFI must address the following minimum requirements of the Agency:

- 30,000 to 45,000 square feet of net usable Class A or Class B office space located within the Municipality of Anchorage
- Comply with all planning and zoning ordinances and Municipal development plans for government facilities
- Contiguous office space (multiple floors acceptable)
- Identify available dedicated on-site parking and alternative parking
- Full telecommunications and broadband wiring in facility
- Two executive conference rooms suitable for general meetings (approximately 250 sq. ft.)
- Four 3-room office suites (approximately 800 sq. ft.)
- Twenty-three 2-room office suites (approximately 500 sq. ft.)
- Fifteen 1-room office suites (approximately 200 sq. ft.)
- Copier rooms on each floor occupied
- Kitchenette space on each floor occupied minimally including a sink and wash area
- Storage Area – for boxes, supplies, equipment spares (approximately 1,100 sq. ft.)
- Information Services Staff Area & Maintenance Shop – suitable for three people and work bench for maintaining equipment (approximately 300 sq. ft.)
- One network room – equipped with cooling for 200 sq. ft. of computer and telecommunications equipment.
- Network Closets – one per floor with good ventilation (approximately 50 sq. ft.) preferable in silo configuration
- Contiguous ground floor space (minimum of 3,600 sq. ft.) for the Legislative Information Office consisting of:
 - Two small enclosed offices with additional open space for four support staff

State of Alaska

Legislative Affairs Agency

Administrative Services, Supply Section

State Capitol Room 3 ~ Juneau, AK 99801-1182 ~ Phone (907) 465-6705 ~ Fax (907) 465-2918



- One large hearing room – suitable for legislative hearings and teleconferencing (approximately 1,500 sq. ft. adjoined by a teleconference bridge room approximately 200 sq. ft.)
- Two medium hearing rooms – suitable for legislative hearings and teleconferencing (approximately 500 sq. ft.)
- One small hearing room – suitable for legislative hearings and teleconferencing (approximately 200 sq. ft.)
- LIO Copier & Mailroom enclosed office – close proximity to LIO (approximately 250 sq. ft.)

Occupancy Date:

Occupancy is required by May 1, 2014. Any offering must be able to meet this requirement and identify a strategy and timeline to accommodate this deadline.

Cost Information:

Provide approximate cost information:

- Identify both net usable and net rentable space in square feet
- Identify full service or triple net
- Identify tenant improvement allowance
- Cost information must be provided on both net usable and net rentable space

Responses that do not include the above cost information presented in the form required will be of little assistance to the Agency. The respondent acknowledges that information provided to the Legislative Affairs Agency in response to this RFI is a public record subject to public inspection in accordance with the Alaska Public Records Law, AS 40.25.123(b).

Submission:

Provide one electronic copy of the requested information to the email address below. Submissions shall not exceed five pages of narrative and no more than 10 photographs. Responses to this RFI must be received no later than 4:00 p.m. AST, on May 24, 2013. Please note the State does not accept responsibility for failed emailed response deliveries.

Tina Strong, Procurement Officer
Legislative Affairs Agency
State Capitol, Room 3
Juneau, AK 99801-1182
PH: (907) 465-6705

State of Alaska

Legislative Affairs Agency

Administrative Services, Supply Section

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FAX: (907) 465-2918

Email: tina.strong@akleg.gov

This RFI in no manner obligates the Legislative Affairs Agency to lease space or pursue a contractual relationship with an entity that responds to this RFI or limits or restricts the Legislative Affairs Agency's right to lease space or pursue a contractual relationship with an entity that does not respond to this RFI, on such terms the Legislative Affairs Agency considers necessary or desirable.

This RFI in no manner obligates the Legislative Affairs Agency to pay any costs incurred in the preparation of any response to this RFI. A party responding to this RFI is responsible for all costs associated with their response. Responses become the property of the Agency.

PROCUREMENT OFFICER'S FINDINGS UNDER
LEGISLATIVE PROCUREMENT PROCEDURE 040(d)

Introduction

The purpose of this document is to provide a written determination, in compliance with Alaska Legislative Procurement Procedure 040(d), setting forth in detail the procurement officer's determination supporting material modifications of the Legislature's Lease of the Anchorage Legislative Information Office dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended March 3, 2009, renewed for the final one-year term on May 20, 2013, which was previously competitively bid under RFP 391 and publicly issued on July 17, 2003, (hereinafter "Lease"). The current Lease will expire on May 31, 2014.

The material modifications to the Lease that are the subject of this written determination were authorized by Legislative Council, and by mutual agreement with the Lessor. The material modifications to the Lease are amending the existing definition of "premises" within Section 1 of the Lease, titled "RENTAL PROPERTY AND RENTAL RATE," by adding the additional property commonly known as 712 West Fourth Avenue, which is immediately adjacent to the existing leased premises at 716 West Fourth Avenue, and amending other sections of the Lease as necessary to allow for the renovation and retrofit of the expanded premises, including but not limited to, a transition to a triple net leasing structure and changes necessary to accommodate renovation of the premises as described in Exhibits A and B of the Lease.

Background

A. Legislative Council's Authorization to Materially Modify Lease

On June 7, 2013, Legislative Council passed the following motions¹ related to the Legislature's Lease of the Anchorage Legislative Information Office dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended March 3, 2009, renewed for the final one-year term on May 20, 2013, and which will expire on May 31, 2014:

MOTION - AMEND PROCUREMENT PROCEDURE: I move that Legislative Council adopt proposed Amendment No. 12 to the Legislative Procurement Procedure 040 to provide the limited ability for the Legislative Affairs Agency, or a Legislative Committee, to materially modify an existing lease that was previously competitively procured.

MOTION - AUTHORIZE MATERIAL AMENDMENTS TO LEASE: I move that Legislative Council authorize the chairman to negotiate amendments to lease 2004-024411-0 by mutual agreement with the Lessor to remove the limitation of amending a lease that amounts to a material

¹ In addition to the motions set out in the text of these findings, two additional related motions were also passed by Legislative Council on June 7, 2013:

MOTION - LEASE EXTENSION: I move that Legislative Council authorize the chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a).

MOTION - ENGAGE AHFC (Alaska Housing Finance Corporation) AS LESSEE'S REPRESENTATIVE: I move that Legislative Council authorize the chairman to enter into a contract for payment not to exceed \$50,000, for AHFC to act as the Lessee's representative in negotiating an extension to Lease 2004-024411-0, as amended to include 712 West 4th Avenue, and to assist in managing the Lessor's compliance with the terms and conditions of the Lessor's improvements, as described in the lease extension.

modification in paragraph 42; and to include 712 West Fourth Avenue, with other terms and conditions necessary to accommodate renovations, not to exceed the estimated cost of a similarly sized, located and apportioned newly constructed building as determined by the Alaska Housing Finance Corporation.

B. Requirements of Alaska Legislative Procurement Procedure 040(d)

Legislative Procurement Procedure 040, as amended by Amendment No. 12 and authorized by Legislative Council as set forth in the motion above, added subsection (d), which provides:

(d) A lease that was procured competitively may be materially modified by amendment, and the material modification of the lease does not require procurement of a new lease, if

(1) the reasons for the modification are legitimate;

(2) the reasons for the modification were unforeseen when the lease was entered into;

(3) it is not practicable to competitively procure a new lease;

(4) the modification is in the best interests of the agency or the committee;

(5) the procurement officer makes a written determination that the items in paragraphs (1) - (4) exist, the determination details the reasons for concluding why the items exist, and the determination is attached to the amended lease; and

(6) the use of this subsection is approved by the procurement officer and, in the case of an amendment for the lease of a legislative committee, by a majority of the committee members.

Procurement Officer's Determination Under Legislative Procurement Procedure 040(d)

040(d): Previously Competitively Bid Requirement

As previously discussed, the Legislature's Lease of the Anchorage Legislative Information Office dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended March 3, 2009, renewed for the final one-year term on May 20, 2013, was previously competitively bid under RFP 391, which was publicly issued on July 17, 2003. Accordingly, under Legislative Procurement Procedure 040(d), the Lease may be materially modified.

040(d)(1): Reasons for the Modification are Legitimate

The decision to modify the Lease is consistent with the purpose of the present Lease, which is to provide office space for the Legislature. These amendments do not alter the essential identity or main purpose of the contract, and do not constitute a new undertaking, and therefore are a legitimate modification of the Lease.

The property at 712 West Fourth Avenue is unique, since it is the only adjacent space to 716 West Fourth Avenue available to satisfy the Legislature's need for additional space, and meets the essential requirement of keeping all the present legislative offices in one building. The addition of 712 West Fourth Avenue allows the Legislature to extend its current Lease as provided under AS 36.30.083(a). Given the uniqueness of the property, and the fact that no other bidder would be able to provide space adjacent to 716 West Fourth Avenue, it would be a waste of private sector resources and legislative procurement resources to competitively bid for the only adjacent property.

The expanded premise will be renovated to meet the needs of the Lessee. In accordance with the expansion of the leased premises, the renovation, and the Lease Extension executed under AS 36.30.083(a), it is necessary to amend material terms of the Lease. Without the modifications, the Lease would not be functional to govern the premises. Given the uniqueness of the property and the ability of the Legislature to have input in the design and function of the renovated building, a competitively bid procurement would be impractical, inefficient, and ultimately, likely unsuccessful in providing premises as suited to the needs of the Legislature.

Accordingly, modifying the Lease by adding 712 West Fourth Avenue to the "premises" and by amending other lease terms to accommodate the expanded premises and the Lease Extension under AS 36.30.083(a) does not subvert the purposes of competitive bidding, and is a legitimate exercise of the Legislature's procurement authority.

040(d)(2): Reasons for Modification Unforeseen When Lease was Entered Into

When the Lease was entered into for 716 West Fourth Avenue in 2004, it was unforeseen that the Legislature would need significant additional space, or that the infrastructure problems with the building would worsen, e.g., the exhausted service life of the HVAC system and the water system, and the elevator failing to handle the demands of staff and public use.

In 2004, based on the Executive Director's Office's best assessment, there were approximately 54 legislative staff working in the building. Today, in 2013, there are approximately 72, which is an increase during the ten-year term of the Lease of approximately one-third. The result of this unforeseen increase in staffing demands on the space in the building is that the staff for some legislators work in shared space. Shared space fails to meet standards for confidential meetings with constituents, and other intra-office privacy concerns. The space has only worked because of the patience and cooperation of Anchorage legislative staff and legislators. However, after the current

Lease term expires the limited space will no longer be acceptable. In addition to the staff of different legislators sharing space, three Anchorage area legislators are sharing space with their staff, which is also not acceptable.

The Legislature requires office space beyond the needs of the Anchorage-area legislators and staff. Once the Lease is amended, the renovated facility will provide space for the Speaker of the House, and the Senate President, who are both out-of-Anchorage legislators, and for rural legislators who require space for conducting work and attending legislative meetings in Anchorage.

Further, the existing building is in need of substantial renovation and upgrade. The condition of the premises is no longer suitable for legislative use. Physical deficiencies include lack of potable water, limited restroom facilities, ineffective HVAC system, deteriorated and leaking plumbing, an unreliable and inadequate elevator, insecure and unsafe below-ground parking facilities, leaking windows, worn window coverings and carpeting, inadequate electrical service, unpleasant odors in the elevator, inefficient lighting, and hazardous materials used in the original construction of the building. All of these will be remediated in the renovation and upgrade.

Had each of these factors been taken individually, fluctuating space demands may have been foreseen at some level. However, the pressure on space in the building from the multiple impacts discussed above was not foreseen when the Lease was entered into in 2004.

§40(d)(3): Not Practicable to Competitively Procure a New Lease

The Anchorage Legislative Information Office has been located in leased space at 716 West Fourth Avenue for approximately 20 years. Occupancy was initially under a 10 year lease which terminated in 2003, that was extended month-by-month through 2004, when the current lease was established following an RFP process. The Legislature

is now in its 10th year under the current Lease, having just exercised the final of five one-year renewal options allowed under the terms of the Lease.

Over the past five years the Legislature has explored and requested proposals on numerous occasions seeking alternative space. None of those efforts has resulted in a solution that was possible, practicable or acceptable. Given that the Lease has nearly expired, the Legislature recently provided notice to the public of a Request For Information ("RFI")³ from parties interested in providing legislative office space in Anchorage. Two parties provided responses detailing the space they had available. Both spaces were located in areas that were not acceptable to Legislative Council for the needs of the Legislature. The available properties in the responses to the RFI failed to provide constituent access, access to other state and local centers of government, access to public transportation, and access to lodging and meeting spaces. In summary, based on the RFI responses, there are no facilities available for lease that are suitable for the Legislature's unique needs.

Because of the limited interest shown in the RFI and the lack of suitable legislative space available for lease, Legislative Council reconsidered the existing leased space at 716 West Fourth Avenue, and made the determination that the existing building, if renovated and with the addition of a suitable amount of additional space, could continue to serve the Legislature and public. The only available property adjacent to 716 West Fourth Avenue that would facilitate the needed renovations to 716 West Fourth Avenue, and provide additional space, is 712 West Fourth Avenue.

In addition to its efforts to formally identify potential lease space through the issue of an RFI, commercial real estate brokers and others were consulted in an attempt to determine if lease space suitable to meet the Legislature's needs might be available.

³ The complete RFI is available at
<http://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=168321>.

These inquiries delivered the same results as the RFI; there are no existing facilities available to meet the Legislature's needs,

Based on the foregoing discussion and factors, inclusive of the lack of suitable remaining time for any additional procurement efforts, as Procurement Officer, I find that it would not be practicable to competitively bid a lease for Anchorage legislative office space because of: (1) limited interest demonstrated by the response to the RFI; (2) no available property suitable for legislative needs offered in response to the RFI; (3) the decision by Legislative Council to exercise its option under AS 36.30.083(a) and extend its lease of 716 West Fourth Avenue, subject to renovations by the Lessor and a cost saving of 10 percent less than fair market value; and (4) the uniqueness of the location of 712 West Fourth Avenue to the Legislature's existing office space at 716 West Fourth Avenue.

040 (d)(4): The Modification is in the Best Interests of the Agency or the Committee

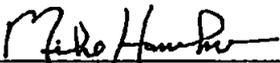
The existing leased space at 716 West Fourth Avenue, while at the end of the service life of the building systems, and despite chronic maintenance problems, has served the Legislature and constituent needs for approximately 20 years. The location on Fourth Avenue provides central access for legislators and constituents to meeting spaces, hotels, the courts, state and local government offices, public transportation, and other support facilities. The current lease includes parking, which is essential for public access to government by constituents, legislators, and staff.

Based on all factors considered above, the Legislative Council made the decision to exercise its option under AS 36.30.083(a) to enter into negotiations with the Lessor, to extend the Lease subject to the building being suitably improved with a modest addition of space, and subject to the requirements in AS 36.30.083(a) that the cost to the Legislature be at least 10 percent below the market rental value of the real property at the time of the extension. The decision to amend the Lease as provided by Alaska

Final
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Legislative Procurement Procedure 040(d), is in Legislative Council's best interest, since it will facilitate the extension of the Lease with the necessary improvements and with additional needed space, at a cost-savings to the Legislature, as provided by AS 36.30.083(e).

Lastly, in addition to the determination herein, as Chairman of Legislative Council and Procurement Officer, I have provided written notice to legislative leadership of the successful conclusion of negotiations and the intent to extend and amend the lease as provided herein.



Representative Mike Hawker
Chairman of Legislative Council and
Procurement Officer

9.16.13

Date

Alaska State Legislature

Legislative Affairs Agency

Office of the Executive Director

Terry Miller Legislative Office Building, Room 217

Mailing Address: State Capitol, Rm. 3 Juneau, Alaska 99801-1182 Phone (907) 465-3800 Fax (907) 465-3234



2013 SEP 25 AM 9:49

September 19, 2013

Senator Anna Fairclough, Chair
Representative Mike Hawker, Vice-Chair
Legislative Budget & Audit Committee
State Capitol
Juneau, AK 99801-1182

RE: AS 36.30.083(b) Lease Reporting Requirement

Dear Senator Fairclough and Representative Hawker:

In accordance with the requirements of AS 36.30.083(b), the Legislative Affairs Agency would like to report to the Legislative Budget and Audit Committee that the Agency will be entering into a 10-year real property lease extension of the Anchorage Legislative Offices and Anchorage Legislative Information Office at 716 West 4th Avenue effective June 1, 2014, during the end of fiscal year 2014.

The lease will also be amended to accommodate an expansion and renovation of the premises. As required by AS 36.30.083(a), the market rental value of the renovated premises, including the parking garage, was appraised by real estate appraiser Tim Lowe, MAI, CRE, FRICS, of Waronzof and Associates, Inc. on September 18, 2013, and reviewed by the Alaska Housing Finance Corporation, to establish that the rent due under the lease is 10 percent below the market rental value of the real property. Mr. Lowe has assessed the rental value of the property, as of the effective date of the lease extension on June 1, 2014, at \$325,667 a month or \$3,908,000 annually. The annual rental payment will be \$281,638 a month or \$3,379,656 annually, exceeding the 10 percent reduction in market rental value required by AS 36.30.083(a). Our annual savings will be \$528,344.

Sincerely,

Handwritten signature of Pamela A. Varni in cursive.

Pamela A. Varni
Executive Director

cc: Tina Strong, Contracting Officer, LAA

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 Waronzoff 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 8:00am 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) 485-2918

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).

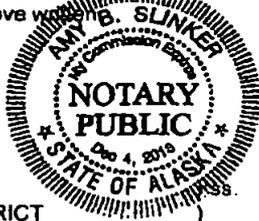
51. **AGREEMENT IN ITS ENTIRETY:**

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.

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 19th day of September, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, MARK E. PFEFFER, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that they had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Amy B. Slinker
Notary Public in and for Alaska
My commission expires: 12/4/13

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

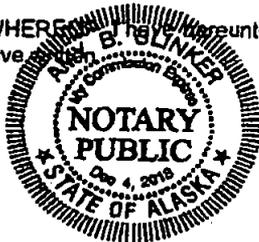
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 19th day of September, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ALANA WILLIAMS, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of MARK E. PFEFFER ALASKA TRUST UTAD 12/28/07, and who acknowledged to me that she had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Amy B. Slinker
Notary Public in and for Alaska
My commission expires: 12/4/13

10:04:42 AM

- I. **CHAIR MIKE HAWKER** called the Legislative Council meeting to order at 10:00 a.m. in room 670 of the Anchorage Legislative Office Building. Chair Hawker noted that the meeting would start with the executive session first and then Council would proceed to routine motions and business activities. Due to a technical issue with the recorder's microphone, Chair Hawker recited the roll call for purposes of establishing a quorum. Present at the call were Representatives Hawker, Johnson, Stoltze and P. Wilson (via teleconference); and Senators Coghill (via teleconference), Egan, and Micciche (via teleconference), and Hoffman (alternate member).

REPRESENTATIVE JOHNSON moved that that Legislative Council go into executive session under Uniform Rule 22 (b) for the discussion of matters the immediate knowledge of which would adversely affect the finances of a government unit.

10:06:50 AM

Legislative Council went into executive session.

1:02:43 PM

Legislative Council came out of executive session.

CHAIR HAWKER called the roll. Present at the call were Representatives Hawker, Johnson, Pruitt, Stoltze and P. Wilson (via teleconference); and Senators Egan, McGuire, Meyer and Hoffman (alternate member).

II. ANCHORAGE LIO LEASE

Chair Hawker noted that the first order of business is a series of four motions related to the extension of the Anchorage LIO lease.

MOTION - LEASE EXTENSION

SENATOR MCGUIRE moved that Legislative Council authorize the chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a).

REPRESENTATIVE STOLTZE objected to ask for a brief description of the thought process for this item for the public record.

CHAIR HAWKER said this suite of motions allows the Legislature to extend our current lease under AS 36.30.083(a), which provides for lease extension on a sole source basis as long as certain financial conditions are met; amends the Legislature's

procurement procedures to allow material amendments to existing leases; empowers the Chairman to negotiate material amendments to the existing lease - amending paragraph 42 to comply with the amended procurement procedures and incorporating the leasehold improvements proposed by the landlord to modernize the existing LIO facility, limited in cost to be less than similarly sized, located, and apportioned newly constructed facilities in downtown Anchorage as determined by the Alaska Housing Finance Corporation (AHFC); and allows AHFC to be engaged as the Legislature's tenant representative for lease negotiation with the landlord and project oversight. He further noted for the record that Council sought other downtown Anchorage properties suitable to legislative function and found none, leaving the option of constructing a new building. Council has definitively said that a new state-owned building is not a desirable outcome, leading to the decision to improve the existing location.

Representative Gruenberg joined the meeting at this time.

REPRESENTATIVE STOLTZE spoke to the suite of motions. He said he was inclined to support these motions noting the lack of suitable alternative space. He said that the current option of improving the existing space would allow for the possibility of 40 members and 20 members having the ability to meet on some basis. He said he was not talking about a capital move, but under certain circumstances where the public would be served, and he thinks the Legislature would be well-served by the opportunity to meet in Anchorage in possible special sessions. The opportunity to have larger meeting spaces for the public and for the entire Legislature for short-term meetings is something his district would support. He said he has some reservations about parts of the process, is a little bit hesitant about sole-source procurement, but under the circumstances and with the meeting space accommodations being offered, this option has his support.

SENATOR MCGUIRE said for the record that considering the controversy generated when previous Legislative Councils have considered the option of purchasing a building, the current members felt that purchasing a new building at this stage is simply not something this Legislative Council wants to go through. She said they think it is more in the public benefit to keep this particular building on the municipal tax rolls; that keeping with the existing leaseholder is in the public interest; and allowing this leaseholder to make the tenant improvements that are necessary is in the public interest. She said that there are significant health and safety issues with this building that have been brought up time and time again to the Legislative Affairs Agency Executive Director that will need to be covered in those improvements.

CHAIR HAWKER added that pursuing the sole source option within Alaska statute was deemed to be the most practicable method forward as the lease on the current building expires in 11 months with no renewal options left; there is no other option at this point as the Request for Information (RFI) that was issued regarding real estate across the Municipality of Anchorage received only two responses, neither of which was able to accommodate the Legislature downtown at all and both had limited utility regardless of location. He said Council has done adequate due diligence and they are working within the parameters of the time frame in which they find it necessary to work. For these reasons and the substantive reasons stated by Senator McGuire, Council has chosen to pursue a sole sourcing option.

The motion allowing the chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a) passed with no objections.

MOTION - AMEND PROCUREMENT PROCEDURE

1:13:32 PM

SENATOR MCGUIRE moved that Legislative Council adopt proposed Amendment No. 12 to the Legislative Procurement Procedure 040 to provide a limited ability for the Legislative Affairs Agency, or a legislative committee, to materially modify an existing lease that was previously competitively procured.

CHAIR HAWKER, in response to a question for clarification by Representative Stoltze regarding the motion made by Senator McGuire, confirmed that Senator McGuire was mistaken when she said, in part, "...Legislative Affairs Council..." and that the motion reads "Legislative Affairs Agency...".

REPRESENTATIVE GRUENBERG asked about paragraph four, specifically that one of the factors is that the modification must be in the best interest of the Agency or the committee and he wondered if there was a difference between saying that and saying "in the public interest." He said he could foresee something where a narrow Agency might have a particular interest but it might not necessarily be in the public interest and he wondered legally about that.

DOUG GARDNER, Legal Services Director, said some contracts are entered into by the Agency at the direction of Legislative Council and those would be approved by Legislative Council; some contracts are entered into by committee. He said he could not think of any committee leases at the moment, but in order to accommodate the traditional type of leasing, it is broken down into those two categories.

REPRESENTATIVE GRUENBERG interrupted to say that he was drawing a distinction between local interests as opposed to broad public interest or if this amendment considers them to be the same.

MR. GARDNER responded that this Council would be approving those items and because of the composition of Legislative Council which has statewide representation, there wasn't a local interest that wouldn't also be a public interest as a consideration. Representative Gruenberg was satisfied with that response and simply wanted it on the record.

Senator Coghill joined the meeting at this time via teleconference.

CHAIR HAWKER repeated the motion and asked if there were further objections.

The motion to amend Legislative Procurement Procedure 040 passed with no objections.

MOTION - AUTHORIZE MATERIAL AMENDMENTS TO LEASE

1:17:19 PM

SENATOR MCGUIRE moved that Legislative Council authorize the chairman to negotiate amendments to lease 2004-024411-0 by mutual agreement with the Lessor to remove the limitation of amending a lease that amounts to a material modification in paragraph 42; and to include 712 West Fourth Avenue, with other terms and conditions necessary to accommodate renovations, not to exceed the estimated cost of a similarly sized, located and apportioned newly constructed building as determined by the Alaska Housing Finance Corporation.

CHAIR HAWKER said this motion authorizes material amendments to be made to the extended lease and would allow the chair to negotiate material modifications and renovations for the facility currently occupied.

SENATOR EGAN asked for a copy of the motions.

CHAIR HAWKER said a copy of the motions for this meeting should have been emailed to each member. In response to a question posed by Senator Coghill, he said that the quorum is on record so there is no need for a roll call vote.

The motion to authorize material amendments to the lease passed with no objections.

REPRESENTATIVE STOLTZE said he has not talked to Mr. Pfeffer about this project but he had in the past received political contributions from him. He was not asking to be excused from the vote, simply noting it for the record.

CHAIR HAWKER noted as a point of reference that Mr. Pfeffer is a landlord for the building currently occupied by the Legislature in Anchorage. He further noted that he also has received contributions from Mr. Pfeffer over the course of his political career.

REPRESENTATIVE GRUENBERG stated that he also has received political contributions from Mr. Pfeffer.

CHAIR HAWKER stated for the record that the following members indicated that they too had received political contributions from Mr. Pfeffer: Representatives Pruitt and Johnson and Senators Egan, Meyer, Hoffman, Coghill, and McGuire. Representative Peggy Wilson said she has not received a contribution from Mr. Pfeffer that she knows of.

MOTION - ENGAGE AHFC AS LESSEE'S REPRESENTATIVE

CHAIR HAWKER said that there was a benchmark number of \$50,000 in this motion. He said he spoke with Mr. Fauske at AHFC and depending on the amount of work done; the final amount could be anything from gratis to the full amount authorized in this motion. He said he will continue to work with AHFC to accommodate this on as much of a gratis basis as possible.

1:21:58 PM

SENATOR MCGUIRE moved that that Legislative Council authorize the chairman to enter into a contract for payment not to exceed \$50,000, for AHFC to act as the Lessee's representative in negotiating an extension to Lease 2004-024411-0, as amended to include 712 West 4th Avenue, and to assist in managing the Lessor's compliance with the terms and conditions of the Lessor's improvements, as described in the lease extension.

The motion to engage AHFC as Lessee's representative passed with no objections.

CHAIR HAWKER said that with the passage of the fourth and final motion, that takes care of the beginning of a fabulous project to establish legislative facilities that will accommodate legislative needs for the next 10 or more years.

SENATOR MEYER commented that, for the record, he appreciated as an Anchorage legislator that Council has opted to extend and

renovate rather than buy or build a new building. He remembered being upset as an Anchorage Assembly member in the '90s when the State bought the Atwood Building and took it off the tax rolls. He said every time that happens it is essentially a property tax increase for the rest of Anchorage. He said he also appreciates that Council is keeping its obligation to the downtown area and staying in the downtown area even when it's sometimes difficult.

SENATOR HOFFMAN asked about the time frame and transition of the project.

CHAIR HAWKER said that although it is subject to final determination as there will need to be a design process for scope of improvement, he hopes the project will be concluded in approximately a nine month period - commencing sometime between October and December, with completion timed to permit reoccupation as soon as possible after the 2014 legislative session is concluded.

III. APPROVAL OF MINUTES

1:25:18 PM

SENATOR MCGUIRE moved that the minutes from the Legislative Council meeting on May 13, 2013 be approved.

The minutes were approved with no objections.

IV. RATIFICATION OF CHARITABLE EVENT

1:25:53 PM

SENATOR MCGUIRE moved that Legislative Council ratify the following charity event, which was previously sanctioned by the Legislative Council Chair in accordance with AS 24.60.080(a) (2) (b):

a. 14th Annual Calista Heritage Foundation Golf Tournament benefitting the Calista Heritage Foundation, Inc.

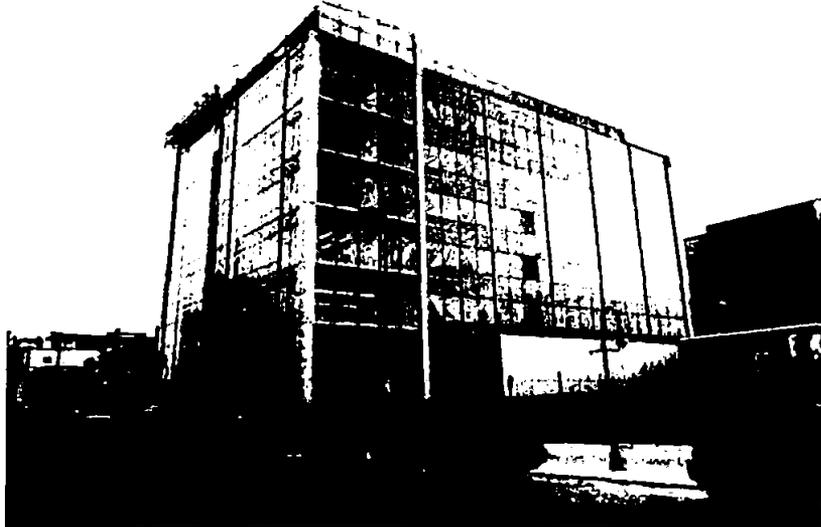
CHAIR HAWKER noted for the record that the 14th Annual Calista Heritage Foundation Golf Tournament benefitting the Calista Heritage Foundation, Inc., met all the qualifications in statute of being a 501(c) (3) organization.

The event was ratified with no objections.

Appraisal Assignment

Format: Appraisal Report

Reliant



Legislative Affairs Building

**716 West 4th Avenue
Anchorage, Alaska 99501**

Latitude: 61°13'5.85"N, Longitude: 149°53'47.36"W

Client Reference Number: RIMS #14-000472-03-01

Reliant Reference Number: 14-0900



9330 Vanguard Drive, Suite 201
Anchorage, Alaska 99507
Phone: (907) 929-2226
Fax: (907) 929-2260
Email: admin@reliantadvisory.com
www.reliantadvisory.com

as of December 5, 2014

**Prepared For:
Mr. Jim StJohn
EverBank**

716-000279

EXHIBIT G
Page 1 of 2

001350

follows:

- Plat map
- Conceptual drawings and floor plans
- Geotechnical report
- Construction costs and remaining cost to complete
- Purchase and Sale Agreement (for Anchor Pub at 712 West 4th Avenue prior to renovation/expansion project)
- Complete lease documentation
- Market rent appraisal report by Timothy Lowe, MAI, CRE, FRICS
- Pro-forma operating expense information

The following information was not available to the appraiser:

- Three years of historic operating data
- Full architectural plans
- As built
- Title report
- Environmental study

Market Analysis

Extensive research on macro and micro economic conditions within the subject's market has been conducted. Extensive research on current market conditions within the subject's sector of the real estate market has been conducted. The Appraisal Institute recognizes two categories of market analysis: inferred and fundamental. Inferred analyses (Level A and B) are basic methods by which future supply and demand conditions are inferred by current and general market conditions (secondary data). In fundamental analyses (Level C and D), general information is supplemented by detailed data in order to forecast supply and demand, as well as subject-specific absorption and capture (primary data). The market analysis performed in this assignment is based on inferred demand.

Approaches to Value

LAND VALUATION	This approach was developed because it is necessary to develop a credible and reliable estimate of market value for this property type.
COST APPROACH	This approach was developed because it is necessary to develop a credible and reliable estimate of market value for this property type.
SALES COMPARISON APPROACH	This approach was not developed because there is inadequate market data to develop a credible value estimate through this approach. That said, the most relevant available sales data was gathered and analyzed primarily as a test of reasonableness for the value developed in the other approaches. The available sales data also aided in the selection of an appropriate rate of return for the subject.
INCOME CAPITALIZATION APPROACH	This approach was developed because it is necessary to develop a credible and reliable estimate of market value for this property type.

FILED
JUDICIAL DISTRICT
2015 NOV 20 PM 2:49
CLERK TRIAL COURT
ANCHORAGE ALASKA

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

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Case No.: 3AN-15-05969CI

Plaintiff,

v.

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

Defendants.

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

**DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S JOINDER OF REPLY IN
SUPPORT OF 716'S MOTION FOR RULING OF LAW PRECLUDING ABI'S
CLAIMS FOR QUI TAM DAMAGES**

In its non-opposition to 716 West Fourth Avenue, LLC's motion for ruling of law precluding Alaska Building, Inc.'s ("ABI") claims for *qui tam* damages, Defendant Legislative Affairs Agency ("LAA") explained that there is absolutely no legal support for ABI's claim for 10 percent of any "savings" secured in this case. There is no statute and no common law that would allow this recovery. ABI does not dispute this.

D

Instead, ABI argues that this Court should establish new law to authorize a multi-million dollar payday to ABI – at the expense of Alaska taxpayers – if ABI prevails in its lawsuit.¹ ABI concedes (again) that this is not a False Claims Act action, but offers the *non sequitur* that many states have enacted state versions of the federal False Claims Act as though this legitimizes ABI’s requested relief.² Alaska has not enacted a version of the False Claims Act, so it is unclear how this is relevant. There is simply no basis in Alaska state law for this claim, and ABI has never identified one.

ABI asks this Court to create some new remedy that would award ABI millions of dollars if it prevails, but this request is frivolous.³ As ABI makes clear, this hypothetical “judicially created recovery” is intended to establish new law out of whole cloth and override the legislative abrogation of the public interest litigant exception to Civil Rule 82.⁴ ABI is already aware of this abrogation because it affirmatively cited to *Alaska v. Native Village of Nunapitchuk*, 156 P.3d 389 (Alaska 2007), the very case which

¹ See Opposition to 716’s Motion for Ruling of Law Precluding ABI’s Claims for *Qui Tam* and Punitive Damages at 3-7 (“Opp.”) (filed Oct. 27, 2015).

² See *id.* at 6.

³ ABI devotes the bulk of its brief to complaining that a plaintiff *who does not prevail* may be subjected to a large attorney fee award, thereby “chilling” that plaintiff’s desire to bring claims in the public interest. See *id.* at 3 (“imposition of attorney’s fees against such a plaintiff who does not prevail has chilled this important check against governmental misdeeds”); *id.* at 4-5 (“The problem of substantial attorney’s fee awards under Civil Rule 82 chilling legitimate challenges to illegal government action”); *id.* at 4 (“The risk of a large attorney’s fee award against such a plaintiff has simply made the potential financial cost of a public interest lawsuit too great.”). This is an entirely different issue than whether or not a private litigant *who does prevail* should be entitled to millions of dollars in a *qui tam*-like recovery for a successful lawsuit. That is the focus of the instant motion and this brief.

⁴ See Opp. at 5, 7.

recognized that the general public interest exception to Civil Rule 82 had been abrogated (and upheld that abrogation).⁵ This made-up *qui tam* recovery is designed, in ABI's view, to incentivize public interest litigation by compensating a prevailing party with more than the usual Rule 82 fees for winning a case, but state law unequivocally forecloses any such recovery: "Except as otherwise provided by statute, a court in this state may not discriminate in the award of attorney fees and costs to or against a party in a civil action or appeal based on [the former public interest litigant factors]."⁶ See AS 09.60.010(b). ABI is asking this Court to grant a type of relief that is prohibited by state law and has no legal support whatsoever.

During the August 18 oral argument with respect to standing and the severance of ABI's claims, this Court noted that ABI was asking the Court to manufacture a claim for 10 percent of the purported savings. The Court went on to hold in its subsequent Order that ABI "clearly" did not have interest-injury standing – meaning ABI did not have even an "identifiable trifle" of an interest – to challenge the legality of the lease.⁷ Plaintiff refused to take the hint and doubled-down by re-raising the claim for 10 percent of

⁵ See *id.* at 404; see Opp. at 4 (citing case and noting that it upheld the abrogation of the judicially created public interest litigant exception to Civil Rule 82 except as to constitutional claims, which are not relevant here).

⁶ "The purpose of Rule 82 is to partially compensate a prevailing party for the expenses incurred in winning a case." *Nautilus Marine Enters. v. Exxon Mobil*, 332 P.3d 554, 559 (Alaska 2014) (internal quotation omitted). If ABI's claim is not for some type of heightened "prevailing party" award, then ABI has presented no basis whatsoever for its 10 percent "savings" request.

⁷ See Order dated Aug. 20, 2015, at 3 & n.15 ("This Court would note that this rather novel claim [for 10 percent of any savings] is not an issue presently before the Court, but the Court does not find enough credence in the claim to grant interest-injury standing.").

savings in its second amended complaint thereafter. In the absence of an “identifiable trifle” of an interest that needed to be compensated, ABI obviously had no claim for millions of dollars here. Even assuming that ABI genuinely believes that it should be rewarded with millions of dollars for belatedly suing the defendants *17 months after ABI concluded* that LAA allegedly failed to comply with the State Procurement Code (and after ABI pocketed tens of thousands of dollars from the construction project), this belief is not objectively reasonable.⁸ There is no statutory basis for ABI’s requested recovery. There is no common law basis, either, and the False Claims Act does not allow for the creation of additional common law to supplement its remedies.⁹ ABI’s contention is precisely the type of “empty-head pure-heart” justification for patently frivolous arguments that Rule 11 is intended to eliminate.¹⁰

For the foregoing reasons, LAA requests that the Court preclude ABI from recovering 10 percent of any “savings” it recovers if ABI prevails in its challenge to the legality of the lease. LAA also requests such other relief as the Court deems appropriate.

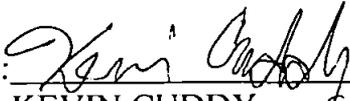
⁸ See Legislative Affairs Agency’s Memorandum in Support of Motion for Summary Judgment Under the Laches Doctrine at 2-6 (filed Oct. 21, 2015)

⁹ See *Mortgages, Inc. v. United States Dist. Court for the Dist. of Nevada (Las Vegas)*, 934 F.2d 209, 213 (9th Cir. 1991).

¹⁰ See *Smith v. Ricks*, 31 F.3d 1478, 1488 (9th Cir. 1994); *Margo v. Weiss*, 213 F.3d 55, 64 (2d Cir. 2000) (quoting Fed. R. Civ. P. 11 advisory committee note to 1993 amendments).

DATED: November 20, 2015.

STOEL RIVES LLP

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

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on November 20, 2015, a true and correct copy of the foregoing was served by U.S. mail on:

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

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

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


Debby Allen, Practice Assistant

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

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FILED
STATE OF ALASKA
THIRD DISTRICT

THIRD JUDICIAL DISTRICT AT ANCHORAGE
NOV 20 PM 4:15

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiff,)

vs.)

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

Case No.: 3AN-15-05969 CI

BY: _____
ATTORNEY

UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR 716 WEST FOURTH AVENUE, LLC'S REPLY TO PLAINTIFF'S OPPOSITION TO 716'S MOTION FOR RULING OF LAW PRECLUDING ALASKA BUILDING, INC.'S CLAIMS FOR QUI TAM AND PUNITIVE DAMAGES

Defendant 716 West Fourth Avenue, LLC ("716"), by and through counsel Ashburn & Mason, P.C., hereby moves the court to extend the deadline by which it is to reply to Plaintiff's opposition to 716's Motion for Ruling of Law Precluding Plaintiff's Claims for Qui Tam and Punitive Damages. 716 seeks an additional two days to reply. Plaintiff does not oppose this request. This motion is accompanied by the attached affidavit of counsel and proposed order.

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

DATED: 11-20-15

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

UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR
716 TO REPLY TO PLAINTIFF'S OPPOSITION TO 716 MOTION FOR RULING OF LAW
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil
{10708-101-00305215;1}

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.)

**AFFIDAVIT OF JEFFREY W. ROBINSON IN SUPPORT OF UNOPPOSED
MOTION TO EXTEND FILING DEADLINE FOR 716 TO FILE REPLY TO
PLAINTIFF'S OPPOSITION TO 716'S MOTION FOR RULING OF LAW
PRECLUDING ALASKA BUILDING, INC.'S CLAIMS FOR QUI TAM AND
PUNITIVE DAMAGES**

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case, and submit this affidavit in support of 716 West Fourth Avenue, LLC's Unopposed Motion to Extend Filing Deadline for 716 to file a Reply to Plaintiff's Opposition to 716's Motion for Ruling of Law Precluding Alaska Building, Inc.'s claims for *Qui Tam* and Punitive Damages. I have personal knowledge of all facts described herein.

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

2. The deadline to reply to Plaintiff's opposition is 11/20/2015. Plaintiff, who is out of the office until December 6, 2015 has agreed to allow Defendant to file a reply by November 24, 2015. This matter was discussed, and agreed to, by parties' counsel in an email dated November 20, 2015. Counsel for 716 has three affiliated briefs in this case that it is filing today and two briefs it is filing in the severed construction case. It was not feasible to file all six by today, and 716 is asking for only two additional days.

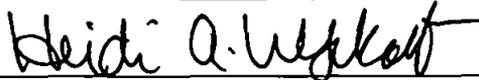
3. This motion is not made for purposes of undue harassment or delay.

FURTHER YOUR AFFIANT SAYETH NAUGHT.



Jeffrey W. Robinson

SUBSCRIBED AND SWORN to before me this 20 ^{November} day of ~~October~~, 2015.



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AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR
716 TO REPLY TO PLAINTIFF'S OPPOSITION TO 716'S MOTION FOR RULING OF LAW
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969 Civil

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~~ 2015, on:

November

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716 TO REPLY TO PLAINTIFF'S OPPOSITION TO 716'S MOTION FOR RULING OF LAW
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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.)

Filed in the Trial Courts
STATE OF ALASKA, THIRD DISTRICT

NOV 20 2015

Clerk of the Trial Courts
By _____ Deputy

Case No.: 3AN-15-05969 CI

**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

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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: JWR
Jeffrey W. Robinson
Alaska Bar No. 0805038

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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.)

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I certify that a copy of the foregoing was served electronically messenger
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In the Matter Of:

ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

JAMES GOTTSTEIN - VOL. II

October 23, 2015

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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) 274-9498 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:**

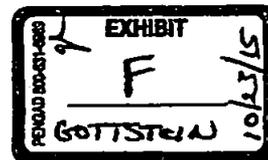
The Contractor, Criterion General, Inc. located at 2820 Commercial Drive Anchorage, Alaska 99501, shall defend, indemnify and hold harmless the Owner, Alaska Building, Inc. and their agents and employees from and against all claims, damages, losses and expenses including interest, costs and attorneys' 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
ALASKA BUILDING, Inc.
B.
Gottstein
DATE
n

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

David Delahant
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.	<u>General Liability</u>	
	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.	<u>Automobile</u>	
	Combined Single Limit	\$1,000,000

C.	<u>Workers' Compensation</u>	
	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 Anchorage AK 99519	CONTACT NAME: Brenda Nolin, CIC, CISR PHONE (A/C No. Ext): (907) 561-1250 FAX (A/C No.): (907) 561-4315 E-MAIL ADDRESS: b.nolin@alaskausainsurance.com PRODUCER CUSTOMER ID #: 00052773
INSURED Criterion General, Inc. 2820 Commercial Drive Anchorage AK 99501-3015	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:

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	ADD'L SUBR INSR' WVR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Surplus Lines Policy GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC		LA13CGL01914500	1/1/2013	1/1/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ EXCLUDED PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		BAA1455340530	1/1/2013	1/1/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Medical payments \$ 5,000 Uninsured motorist combined \$ 1,000,000
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE RETENTION \$		Surplus Lines Policy Worldwide Facilities Inc. CH13EXC768845IC	1/1/2013	1/1/2014	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 Products-Cmp Ops Aggregate \$ 4,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y <input type="checkbox"/> N/A If yes, describe under DESCRIPTION OF OPERATIONS below		WC41NC014537013	1/1/2013	1/1/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER EL EACH ACCIDENT \$ 1,000,000 EL DISEASE - EA EMPLOYEE \$ 1,000,000 EL DISEASE - POLICY LIMIT \$ 1,000,000
D	<input checked="" type="checkbox"/> Pollution Liability <input checked="" type="checkbox"/> Professional Liability		PKC300494 Surplus Lines Policy-WVF	1/1/2013	1/1/2014	\$1M Ea Occ Pol/\$2M Aggregate Ded:\$50,000 \$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 jg@touchngo.com Alaska Building, Inc. Home of the AlaskaCam (r) Jim Gottstein, President 406 G Street, Suite 206 Anchorage, AK 99501	CANCELLATION 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 <i>Brenda L. Nolin</i>
---	---

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

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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

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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):

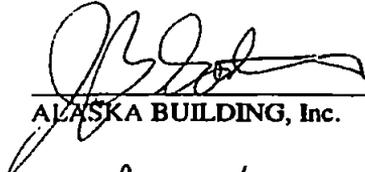
A "Catastrophic Event" shall be any of the following: (i) an event of structural or physical damage to the Alaska Building, alleged to be caused in part or entirely by the actions and or omissions of 716, its contractors, employees or agents during the Project or as a result of acts or omissions that 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
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- 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 Leve Offices of Jerald B. Miller 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. Weddow
[TENANT]

CLARE WADDOW, EXEC. DIRECTOR.
TITLE

1/6/2014.
DATE

716 WEST FOURTH AVENUE, LLC
 425 G ST. STE 210
 ANCHORAGE, AK 99501
 (907)648-4644

WELLS 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

[Handwritten Signature]
 AUTHORIZED SIGNATURE

MEMO
 Rent Abatement

⑈00 10 29⑈ ⑆ 1 25 2000 5 7 ⑆ 5 7 9 3 2 4 9 9 0 4 ⑈

716 WEST FOURTH AVENUE, LLC

1029

Partners for Progress				1/9/2014		
Date	Type	Reference	Original Amt.	Balance Due	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

Partners for Progress				1/9/2014		
Date	Type	Reference	Original Amt.	Balance Due	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.com 1-800-328-0304 www.deluxeforms.com

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
(10703-050-00159601;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 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

Puff 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 # Sta. 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 Clare / Lindstrom
[TENANT]

CLARE LINDSTROM 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
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
(10762-050-0015901;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

Paul A.

(TENANT)

Executive Director, Alaska Center for the Environment

TITLE

1/7/14

DATE

1027

716 WEST FOURTH AVENUE, LLC

425 G ST. STE 210
ANCHORAGE, AK 99501
(807)846-4844

WELLS FARGO BANK, N.A.
ANCHORAGE, ALASKA
88-5-1252

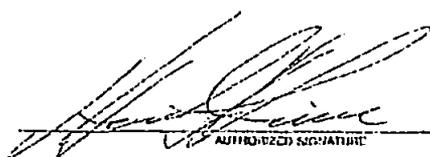
1/9/2014

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⑈ ⑆125200057⑆5793249904⑈

716 WEST FOURTH AVENUE, LLC

1027

Alaska Center for Environment
Date Type Reference
1/9/2014 Bill

Original Amt.
2,950.00

Balance Due
2,950.00

1/9/2014
Discount

Payment
2,950.00

Check Amount

Wells Fargo 5793249 Rent Abatement

2,950.00

6 WEST FOURTH AVENUE, LLC

1027

Alaska Center for Environment
Date Type Reference
1/9/2014 Bill

Original Amt.
2,950.00

Balance Due
2,950.00

1/9/2014
Discount

Payment
2,950.00

Check Amount

Wells Fargo 5793249 Rent Abatement

2,950.00

Deluxe Corp 1-800-328-0304 www.deluxalaska.com

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L
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S
K
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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.**

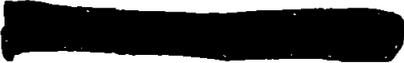
**THIS COVER SHEET HAS BEEN ADDED TO THIS
DOCUMENT TO PROVIDE SPACE FOR
RECORDING DATA. THIS COVER SHEET APPEARS
AS THE FIRST PAGE OF THE DOCUMENT IN THE
OFFICIAL PUBLIC RECORD AND IS TO BE
CONSIDERED PART OF THE OFFICIAL
DOCUMENT.**

DO NOT DETACH

ALASKA

2006-078621-0

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



STEWART
68997

***STATUTORY WARRANTY DEED**

COE

The Grantors, TOM CHEN and MING TZE CHEN, husband and wife, of 706 W. 4th Hill, Anchorage, AK 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 5780 Lincoln Ellsworth 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

FRANCIS I. NOSER, JR., A Professional Corporation
810 N Street, Suite 102, Anchorage, Alaska 99501
(907) 274-3622



2007-077937-0

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.

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

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

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



Diana Guib
Notary Public in and for Alaska
My Commission expires: 11/22/2008

AFTER RECORDING RETURN TO:
Joseph Graham
2780 Lincoln St. North CA
LA BACH AV 9557



#3

3

293

the Territory of Alaska, duly commissioned and sworn, personally came Otto Holm, 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.

Witnessed by me, Notary Public in and for the Territory of Alaska, residing at Anchorage, in commission expires June 1st 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 grantee 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)
KNIK PRECINCT) 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.



District Recorder

(114)

300

5

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 Dollars, 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. 16, 1919.

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; and 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. Ruess 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 2:30 o'clock P. M., at the request of Arthur Frame.

W. M. Rogers
District Recorder

R E C I T

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 Plan 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 WARRANTY, 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 deeded 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.

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 West 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.

Both 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 12th day of July, A. D. 1923.

Homer T. Fowler Grantor

Austin E. Lathrop Grantee

United States of America,)
Territory of Alaska.) ss.

THIS IS TO CERTIFY that on this 12th 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 be 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) E. L. De Graff
Notary Public for ALASKA
My Commission expires Jan. 23, 1926.

The foregoing instrument was filed for record July 15, 1923, at 4:30 o'clock P. M., at the request of E. L. De Graff.

W. H. Rogers
District Recorder

deplumb

(#5)

BK 10
Pg 83

WARRANTY

WHEREAS, on the sixth day of December, 1914, 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 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 Austin E. Lathrop, Grantee, the following WARRANTY, to-wit:

From the southwest corner of Lot two (2) Block Forty (40) thirty-nine and one-half (39½) feet West 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 thereof 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 14th day of July, A. D., 1928.

Homer T. Fowler Grantor

Austin E. Lathrop Grantee

United States of America,)
Territory of Alaska,) ss.

THIS IS TO CERTIFY that on this 14th day of July, 1928, 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. 22, 1929.

The foregoing instrument was filed for record July 14, 1928, at 4:30 o'clock P. M., at the request of R. L. De Graff.

District Recorder

anal #5

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 (39 1/2) East to the place of beginning; Running North thirty (30) feet along the line of West thirty-nine and one-half feet (39 1/2) 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 in 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.

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

Cladya Samu /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/ Cladya Samu
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 26, 1944 at the request of Lathrop Company
/s/ [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@anchorlaw.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:

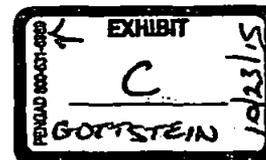
Hi Don,

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

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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 Redl, 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.

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

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Manager:

By its Member:

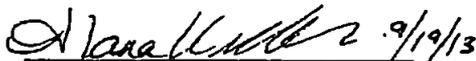


Mark E. Pfeffer 9/19/13
Manager Date
Tax Identification No.: 46-3882212
Business License No.: 423463

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 9/19/13
Its: Trustee Date

LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY

Representative Mike Hawker Date
Chair, Alaska Legislative Council
Procurement Officer

CERTIFYING AUTHORITY

APPROVED AS TO FORM:

Pamela A. Vami Date
Executive Director
Legislative Affairs Agency

Legal Counsel Date

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

COPY

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: *J.W. Robinson*
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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
 facsimile U.S. Mail on the 6th 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-15-05969Civil
{10708-101-00301950;1}

Page 2 of 2

EXHIBIT I
Page 2 of 7

001454

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.

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

{10708-101-00300534;2}

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-15-05969Civil

{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.



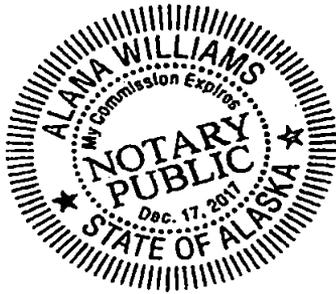
Mark Pfeffer

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

SUBSCRIBED AND SWORN to before me this 5th day of ~~October~~ ^{November}, 2015.

Alana Williams

NOTARY PUBLIC in and for Alaska
My Commission Expires: 12/17/17



ASHBURN & MASON^{PC}
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

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-15-05969Civil

{10708-101-00300534;2}

Page 4 of 5

EXHIBIT I
Page 6 of 7

001458

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

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

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-15-05969Civil

{10708-101-00300534;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.

2015 NOV 18 PM 3:01
CLERK OF ALASKA
THIRD DISTRICT
BY: [Signature]

Case No. 3AN-15-05969CI

**REPLY Re:
ALASKA BUILDING, INC.'S MOTION TO COMPEL RESPONSES
TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO 716
WEST FOURTH AVENUE LLC**

Alaska Building, Inc., hereby replies to 716's Opposition to Plaintiff's Motion to Compel Responses to Plaintiff's First Request for Production to 716 West Fourth Avenue, LLC (Opposition).

A. Claims of Attorney-Client Privilege

716 West Fourth Avenue LLC (716 LLC) claims the attorney-client privilege for a large number of documents, but does not describe any withheld documents sufficiently to be able to assess the applicability of the privilege as required by Civil Rule 26(b)(5).

(1) The E-mail Privilege Log

Attached as Exhibit 1, is the privilege log provided by 716 LLC in connection with its Supplemental Responses to Alaska Building, Inc.'s First Request for Production

LAW OFFICES OF
JAMES B. GOTTSTEIN
408 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

d

(Supplemental Response).¹ The claim of attorney-client privilege fails on its face for a number of these documents.

E-mails between Bob Acree and Mark Pfeffer do not qualify for the attorney-client privilege. These are listed as Nos. 1, 2, 6, 8, 19, 46, 50 & 51 of the e-mail privilege log, Exhibit 1.

No. 4, the e-mail from John Bitney to Rebecca Windt and No. 26 from Mr. Bitney to Mr. Pfeffer do not appear to qualify for the attorney-client privilege. Mr. Bitney does not appear in the Alaska Bar Association's attorney directory.

No. 5, an e-mail to Jill Follett from Rebecca Windt does not qualify. Eric Follett, who was assisting Alaska Building, Inc., used the Jill Follett e-mail address.

Thus, the following numbered claims of privilege from the Privilege Log, Exhibit 1, do not qualify on their face: 1, 2, 4, 5, 6, 8, 19, 46, 50 & 51.

To be able to assess the applicability of the other claims of attorney/client privilege as required under Civil Rule 26(b)(5), any other person(s) who received the e-mail whether in the specific e-mail, or subsequently, and the general subject matter should be provided.²

¹ Exhibit 2.

² Alaska Building, Inc., presumes that the claim of attorney-client privilege for e-mails between Mr. Pfeffer and 716 LLC's attorney, Don McClintock before Mr. Pfeffer became a member and manager of 716 LLC on September 19, 2013, Exhibits 3 & 4, and therefore not represented by Mr. McClintock, and e-mails between Mr. McClintock and John Steiner, attorney for Pfeffer Development LLC, is based on Evidence Rule 503(b)(3) pertaining to common interest representation.

(2) Redacted E-mails

In addition to withholding the e-mails listed in the e-mail privilege log, 716 LLC redacted 12 other e-mails without any explanation. Exhibit 5. This was one of the subjects of an e-mail from counsel for Alaska Building, Inc., to counsel for 716 LLC. Exhibit 6, pages 2-3. 716 LLC has not responded to this as of the filing hereof. To the extent any of these have been redacted on the basis of any claim of privilege, 716 LLC should be required to describe the redactions sufficiently to allow Alaska Building, Inc., and the Court to assess the applicability of the privilege as required by Civil Rule 26(b)(5). This description should include the sender and all recipients, whether in the specific e-mail, or subsequently, as well as the general subject matter and the date. If these were not redacted on privilege grounds, 716 LLC should be required to justify each redaction.

(3) Other Claims of Attorney-Client Privilege

716 LLC made a blanket attorney-client objection, and objected to several requests for production on the grounds of attorney client privilege without providing any information whatsoever that would allow Alaska Building, Inc., and the Court to assess the applicability of the privilege as required by Civil Rule 26(b)(5) with respect to specific documents.³ The specific objections and refusal to produce are as follows:

- Request For Production No. 1, relating to the financing of the new Anchorage Legislative Information Office Building.

³ Exhibit A to Alaska Building's Motion to Compel is its first production request, and Exhibit B thereto, 716 LLC's responses.

- Request for Production No. 4, relating to leasing of the space to the Legislative Affairs Agency for the Anchorage Legislative Information Office upon the expiration of the then current lease.
- Request for Production No. 8, relating to payments for costs under the LIO Lease.

716 LLC subsequently produced e-mails relating to Request for Production No. 4, for which the claims for attorney-client privilege have been addressed in the previous sections. 716 LLC has not provided any description for any other withheld documents to allow Alaska Building, Inc., and this Court to assess the applicability of the privilege as required by Civil Rule 26(b)(5).

Therefore, Alaska Building, Inc., requests 716 LLC be required to describe each document or other item withheld on the grounds of any privilege not otherwise specifically addressed herein as follows:

- (a) The date of the document or other item;
- (b) The author or addressor of the document or other item;
- (c) The recipient or addressee of the document or other item;
- (d) The number of pages of the document;
- (e) The general subject matter of the document or other item;
- (f) Each person who sent, received and obtained copies of the document or other item;
- (g) A general description of the document or other item (i.e., letter, report, memoranda, audio or video recording); and
- (h) The basis of the privilege asserted with respect to the alleged grounds for non-production of the document or other item.

**B. Documents Withheld On the Grounds They Are
Confidential and Proprietary**

716 LLC objected to and did not produce documents on the grounds they are confidential and proprietary in response to the following requests for production:⁴

- Request For Production No. 1, relating to the financing of the new Anchorage Legislative Information Office Building.
- Request for Production No. 2, relating to the financial records of 716 LLC. These were requested in electronic format.
- Request for Production No.3, relating payments to the owners of 716 LLC and Pfeffer Development Co.
- Request for Production No. 5, relating to the operating agreement and amendments for 716 LLC and any other agreements pertaining to the operation and/or management of 716 LLC.⁵
- Request for Production No. 7, relating to valuation and leasing space for the Anchorage Legislative Information Office.⁶

⁴ Exhibit B to Motion to Compel.

⁵ 716 LLC did offer to provide the Operating Agreement to the Court for an *in camera* inspection, which was considered insufficient by Alaska Building, Inc., because it did not include other documents withheld on the grounds of confidentiality. *See*, Exhibit 2 to Rule 37(d) Certificate, filed October 6, 2015, p. 1. ("[Jim Gottstein] If you were willing to provide an *in camera* inspection of all of the financial information requested, that would be a different matter.")

⁶ 716 LLC chose to produce two circular appraisals, but apparently withheld other valuations.

- Request for Production No. 8, relating to payments of costs under the LIO Lease.

As set forth in the Motion to Compel, claims that documents are confidential and proprietary are no grounds to withhold them. Instead a protective order should be sought, first through negotiation and, if unsuccessful, through motion. There is an extant motion for a protective order, which will presumably resolve in what manner the documents should be protected, if any, and the documents should be produced in accordance with such determination.⁷

C. Claims of Irrelevancy

716 LLC also objected to and failed to produce documents in response to the following requests for production on the grounds that they are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence.

- Request for Production No. 2, relating to the financial records of 716 LLC.
- Request for Production No.3, relating to payments to the owners of 716 LLC and Pfeffer Development LLC.
- Request for Production No. 5, relating to the operating agreement and amendments for 716 LLC and any other agreements pertaining to the operation and/or management of 716 LLC.

⁷ Accompanying Alaska Building, Inc.'s opposition to 716 LLC's Motion for Protective Order is a proposed Discovery Order that it believes expedites the flow of discovery material, facilitates prompt resolution of confidentiality, adequately protects confidential material, and ensures that protection is afforded only to material so entitled.

In addition to the relevancy of these documents to the pending Motion for Preliminary Injunction to prevent 716 LLC from distributing funds to its owners that will make it unable to pay back money it has received in excess of that allowed by AS 36.30.083(a), these documents are relevant to piercing the limited liability shield . 716 LLC has suggested that because Alaska Building, Inc., has not yet attempted to pierce this liability shield it is barred from doing so. This is not true. *Pister v. State, Dept. of Revenue*, 354 P.3d 357, 362-363 (Alaska 2015).

D. Documents Referred to in E-mails

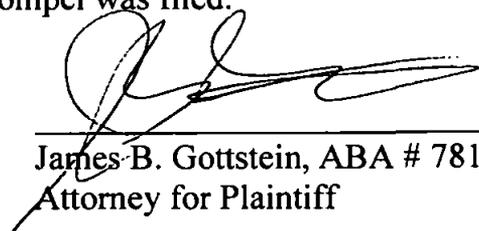
After 716 LLC produced e-mails with its Supplemental Response, Exhibit 2, Alaska Building, Inc., identified a number of missing attachments and documents referred to in the e-mails and wrote counsel for 716 LLC about them. Exhibit 6, pages 1-2. In 716 West Fourth Avenue, LLC's (Second) Supplemental Responses to Alaska Building, Inc.'s First Requests for Production (Second Supplement), Exhibit 7, 716 LLC produced attachments,⁸ but where specific documents were identified as having been referred to, or where it was clear the attachments were missing, 716 LLC merely responded that there were no attachments. Counsel for Alaska Building, Inc., wrote counsel for 716 LLC about this, Exhibit 8, and has not received a response as of the filing hereof. These documents should be produced.

⁸ Some attachments may be missing, but Alaska Building, Inc., has not yet had a chance to review the production to make that determination.

E. Conclusion

For the foregoing reasons, Alaska Building, Inc.'s Motion to Compel Responses to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC should be granted. For the Court's convenience, a new proposed Order has been lodged herewith, reflecting events since the Motion to Compel was filed.

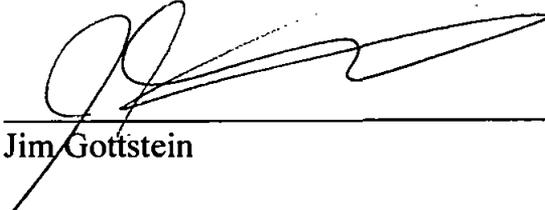
Dated November 18, 2015.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

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

Dated November 18, 2015.


Jim Gottstein

Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC and Legislative Affairs Agency

3AN-15-05956CI

**- Attorney Client Communication
Privilege Log -
Page 1 of 5**

RECEIVED
OCT 14 2015
BY: _____

No.	Date	To	From	Description	Privilege	Bates#
(1)	07.26.13	Bob Acree	Mark Pfeffer	Email	Attorney Client Privilege	716-001256
(2)	07.10.13	Bob Acree	Mark Pfeffer	Email	Attorney Client Privilege	716-001257
3.	12.06.13	Mark Pfeffer	Rebecca Windt	Email	Attorney Client Privilege	716-001258
(4)	05.09.11	John Bitney	Mark Pfeffer	Email	Attorney Client Privilege	716-001259-61
(5)	11.20.13	Jill Follett	Rebecca Windt	Email	Attorney Client Privilege	716-001306-08
(6)	09.09.13	Mark Pfeffer	Bob Acree	Email	Attorney Client Privilege	716-001309-13
7.	12.06.13	Don McClintock	Mark Pfeffer	Email	Attorney Client Privilege	716-001316
(8)	07.10.13	Bob Acree	Mark Pfeffer	Email	Attorney Client Privilege	716-001317
(9)	11.15.11	Mark Pfeffer	Don McClintock	Email	Attorney Client Privilege	716-001318
(10)	08.29.13	Mark Pfeffer	Don McClintock	Email	Attorney Client Privilege	716-001319
(11)	08.30.13	Mark Pfeffer	Don McClintock	Email	Attorney Client Privilege	716-001320
(12)	07.31.13	Mark Pfeffer	Don McClintock	Email	Attorney Client Privilege	716-001321

Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC and Legislative Affairs Agency

3AN-15-05956CI

**- Attorney Client Communication
Privilege Log -**

Page 2 of 5

No.	Date	To	From	Description	Privilege	Bates#
(13)	07.11.13	John Steiner	Don McClintock	Email	Attorney Client Privilege	716-001322
(14)	07.12.13	John Steiner	Don McClintock	Email	Attorney Client Privilege	716-001323
(15)	06.20.13	Mark Pfeffer	Don McClintock	Email	Attorney Client Privilege	716-001324
16.	07.10.13	Bob Acree	Don McClintock	Email	Attorney Client Privilege	716-001325
(17)	07.05.13	Mark Pfeffer	Don McClintock	Email	Attorney Client Privilege	716-001326
(18)	09.17.13	Mark Pfeffer	Don McClintock	Email	Attorney Client Privilege	716-001327
(19)	09.13.13	Bob Acree	Mark Pfeffer	Email	Attorney Client Privilege	716-001328
20.	11.27.13	Thomas Wang	Shea Simasko	Email	Attorney Client Privilege	716-001329-32
21.	11.25.13	Donald McClintock	Thomas Wang	Email	Attorney Client Privilege	716-001333-36
22.	11.18.13	Don McClintock	Bob Acree	Email	Attorney Client Privilege	716-001337-39
23.	11.18.13	Don McClintock	Mark Pfeffer	Email	Attorney Client Privilege	716-001340-41
24.	11.27.13	Shea Simasko	Thomas Wang	Email	Attorney Client Privilege	716-001342-46

Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC and Legislative Affairs Agency

3AN-15-05956CI

**- Attorney Client Communication
Privilege Log -**

Page 3 of 5

No.	Date	To	From	Description	Privilege	Bates#
25.	10.16.13	Mark Pfeffer	Rebecca Windt	Email	Attorney Client Privilege	716-001351-57
26.	05.09.11	John Bitney	Mark Pfeffer	Email	Attorney Client Privilege	716-001358-62
27.	08.27.13	Don McClintock	Mark Pfeffer	Email	Attorney Client Privilege	716-001365-66
28.	09.18.13	Don McClintock	Mark Pfeffer	Email	Attorney Client Privilege	716-001367-69
29.	09.18.13	Don McClintock	Mark Pfeffer	Email	Attorney Client Privilege	716-001370-71
30.	07.26.13	Mark Pfeffer	Don McClintock	Email	Attorney Client Privilege	716-001375-76
31.	07.26.13	Mark Pfeffer	Don McClintock	Email	Attorney Client Privilege	716-001377
32.	07.12.13	Bob Acree	Don McClintock	Email	Attorney Client Privilege	716-001378-79
33.	07.11.13	Bob Acree	Don McClintock	Email	Attorney Client Privilege	716-001380-81
34.	07.11.13	John Steiner	Don McClintock	Email	Attorney Client Privilege	716-001382-83
35.	07.12.13	John Steiner	Don McClintock	Email	Attorney Client Privilege	716-001384-85
36.	07.09.13	John Steiner	Mark Pfeffer	Email	Attorney Client Privilege	716-001386-87

Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC and Legislative Affairs Agency

3AN-15-05956CI

**- Attorney Client Communication
Privilege Log -**

Page 4 of 5

No.	Date	To	From	Description	Privilege	Bates#
37.	07.10.13	John Steiner	Mark Pfeffer	Email	Attorney Client Privilege	716-001388-90
(38.)	07.10.13	John Steiner	Don McClintock	Email	Attorney Client Privilege	716-001391-93
(39.)	09.04.13	Mark Pfeffer	Don McClintock	Email	Attorney Client Privilege	716-001394-96
(40.)	08.21.13	Mark Pfeffer	Don McClintock	Email	Attorney Client Privilege	716-001397-98
(41.)	09.06.13	Don McClintock	Mark Pfeffer	Email	Attorney Client Privilege	716-001399-1401
(42.)	09.05.13	Don McClintock	Mark Pfeffer	Email	Attorney Client Privilege	716-001418-19
(43.)	08.21.13	Don McClintock	Mark Pfeffer	Email	Attorney Client Privilege	716-001420-21
(44.)	06.25.13	John Steiner	Don McClintock	Email	Attorney Client Privilege	716-001422-24
(45.)	06.25.13	John Steiner	Don McClintock	Email	Attorney Client Privilege	716-001425-28
(46.)	08.30.13	Mark Pfeffer	Bob Acree	Email	Attorney Client Privilege	716-001695-97
47.	08.30.13	Don McClintock	Bob Acree	Email	Attorney Client Privilege	716-001698-1700
(48.)	08.30.13	Mark Pfeffer	Don McClintock	Email	Attorney Client Privilege	716-001701-03

Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC and Legislative Affairs Agency

3AN-15-05956CI

**- Attorney Client Communication
Privilege Log -
Page 5 of 5**

No.	Date	To	From	Description	Privilege	Bates#
<u>(49.)</u>	08.30.13	Mark Pfeffer	Don McClintock	Email	Attorney Client Privilege	716-001704-06
<u>(50.)</u>	08.30.13	Mark Pfeffer	Bob Acree	Email	Attorney Client Privilege	716-001707-08
<u>(51.)</u>	09.03.13	Mark Pfeffer	Bob Acree	Email	Attorney Client Privilege	716-001709-10
<u>(52.)</u>	09.03.13	Don McClintock	Mark Pfeffer	Email	Attorney Client Privilege	716-001711-12
53.	09.03.13	Don McClintock	Bob Acree	Email	Attorney Client Privilege	716-001713
<u>(54.)</u>	09.03.13	Don McClintock	Mark Pfeffer	Email	Attorney Client Privilege	716-001714-16
55.	12.04.13	Mark Pfeffer	Don McClintock	Email	Attorney Client Privilege	716-001717-18
56.	09.25.13	Don McClintock	Mark Pfeffer	Email	Attorney Client Privilege	716-001719-22
57.	08.30.13	Bob Acree	Don McClintock	Email	Attorney Client Privilege	716-001723-25

OCT 14 2015
BY: _____

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

ALASKA BUILDING, INC., an Alaska)
corporation,)
)
Plaintiffs,)
)
vs.)
)
716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Case No.: 3AN-15-05969 Civil

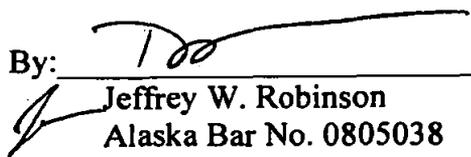
Defendants.

**716 WEST FOURTH AVENUE, LLC'S SUPPLEMENTAL
RESPONSES TO ALASKA BUILDING, INC.'S FIRST REQUEST FOR
PRODUCTION**

COMES NOW, Defendant, 716 West Fourth Avenue ("716 WEST" or "Defendant"), by and through counsel, Ashburn & Mason, P.C. and supplements their response to Plaintiff's First Request for Production dated September 3, 2015 with the attached emails.

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

DATED: 10-14-2015

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

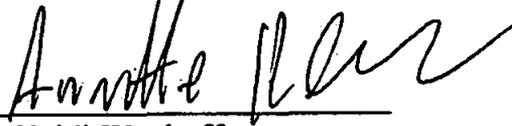
ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by messenger on the 14
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

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

716 WEST FOURTH AVENUE, LLC'S SUPPLEMENTAL RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

Page 2 of 2

{10708-101-00298167;1}

Exhibit 2, page 2 of 2

001474

James B. Gottstein

From: Donald W. McClintock <dwm@anchorlaw.com>
Sent: Monday, October 28, 2013 6:17 PM
To: 'James B. Gottstein'
Cc: Rebecca A. Windt
Subject: RE: 716 W 4TH AVE, LLC

Jim,

(My client on these matters as noted earlier is 716 W. 4th Avenue, LLC.)

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

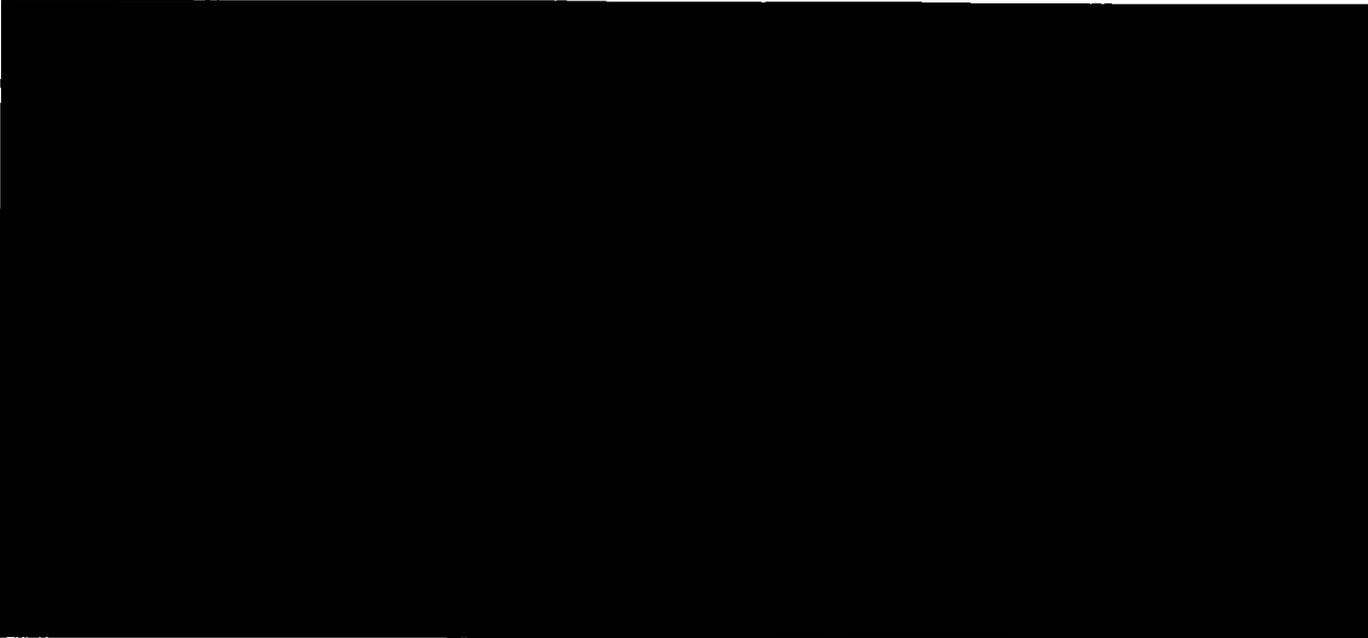
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From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Monday, October 28, 2013 6:03 PM
To: Donald W. McClintock
Cc: james.b.gottstein@gottsteinlaw.com
Subject: 716 W 4TH AVE, LLC

Hi Don,

I see Robert Acree signed the lease "extension." Are you representing 716 W 4TH AVE, LLC or Mr. Acree with respect to this matter? If not, do you know if anyone else is? Mr. Acree might want to know what is going on if he doesn't know already.

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: Rep. Mike Hawker [mailto:Rep.Mike.Hawker@akleg.gov]
Sent: Tuesday, August 20, 2013 8:03 AM
To: Pamela Varni; Juli Lucky
Cc: mbuller@ahfc.us
Subject: FW: LIO Lease Extension

Pam and Juli,

Here is the 'final' businessman's work product - prepared by AHFC, our Transaction Advisor, with participatory input from all parties. AHFC is prepared to stand behind this approach as reasonable, proper, and legally justified. A best and most professional approach, as it might be.

Nola will be available to present and explain the substance and form with Mr. Gardener, as will the AG who worked with it on behalf of AHFC.

Mr. Pfeffer is also now providing a copy of this document to his counsel, and I expect we will have a certain amount of lawery crap to contend with as this is finally papered, but I have great faith that the AHFC people are competent and have performed their work with appropriate care, due diligence, and professional expertise in government lease contracting.

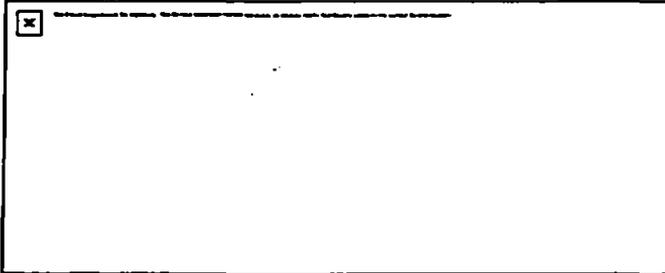
AHFC will be in my office on Thursday afternoon to meet with us (Pam, Juli, and me) to respond to any substantive business concerns with the proposed lease, before we discuss its major financial policy negotiation points with the Legislative Council in executive session on Friday.

Best,

Mike

From: Mike Buller [mbuller@ahfc.us]
Sent: Monday, August 19, 2013 1:58 PM
To: Rep. Mike Hawker; LAA Legal
Cc: Nola Cedergreen
Subject: LIO Lease Extension

Gentlemen here's our latest copy of the draft LIO lease extension. Nola Cedergreen is the primary author. My AG has also reviewed the document. If you have any questions or comments, please give me a call.



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From: Mark Pfeffer <MPfeffer@PfefferDevelopment.com>
Date: August 23, 2013, 2:15:16 PM AKDT
To: Mike Buller <mbuller@ahfc.us>, Doc Crouse <dcrouse@ahfc.us>
Cc: Bob O'Neill <BOneill@PfefferDevelopment.com>, "Donald W. McClintock" <dwm@anchorlaw.com>
Subject: Exhibit A & B of the lease and schedule to close

Mike and Doc

We will have Exhibits A & B of the lease done by close of business Tuesday the 27th

As mentioned previously our deadline to close on the Anchor Pub is technically tomorrow August 24th but since it falls on a weekend it pushes to Monday the 26th. We have a one-time right to extend the closing for 30 days and we have exercised it. The final closing date is now September 23rd. We met with the seller two days ago and he says (and we more or less believe him) that he has a backup buyer. So I think we need to treat 9-23 as a hard deadline.

We'll need time in front of that to complete financing and acquisition closing issues.

So if possible I am suggesting the following schedule. Note that I have not vetted this proposed schedule with anyone on my side and I know you'll have steps that I have not included so this is all for discussion purposes and subject to change

Tue 8-27 Exhibit A & B Submitted to AHFC

Thu 8-29 Deal term discussion

Modified NNN	Define Lessor/Lessee responsibilities
T1 Allowance / Costs	Define amortization/one-time payment balance
Reimbursement clause	In or Out?
Final Base Rent TBD	Based on the above cost split
	Starting Rate?
	Escalation rate ____%?
	Validated by appraisal
	Effective dates
	Interim space rates and relocation dates
Add Parking Deck	Yes or No
Option to Purchase?	I have some ideas about how we approach this which I will send under separate cover.

Tue 9-3/4 Appraiser Meetings

Thu 9-5 Finalize deal terms Subject to appraisal meetings

Thu 9-12
possible) Final number from Appraiser Final Report to follow (don't know if this is

Thu 9-19 Final report from Appraiser (don't know if this is possible)

Fri 9-20 *Execute Amendment*****

Mon 9-23 Close on Anchor Pub acquisition

For reference purposes I have attached today's presentation. Keep in mind these images are still part of a confidential negotiation and so are not public yet. I believe Rep. Hawker and aide Juli lucky have a plan for roll-out after the lease is signed.

Thanks for all of the hard work to date on this and for entrusting Pfeffer Development with this project.

We are looking forward to working with you both again.

Mark Pfeffer

PFEFFER DEVELOPMENT, LLC
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907.646.4644 | f 907.646.4655 |

Cell Phone
807.317.6030

From: Mark Pfeffer <MPfeffer@PfefferDevelopment.com>
Date: August 23, 2013, 2:15:16 PM AKDT
To: Mike Buller <mbuller@ahfc.us>, Doc Crouse <dcrouse@ahfc.us>
Cc: Bob O'Neill <BOneill@PfefferDevelopment.com>, "Donald W. McClintock" <dwm@anchorlaw.com>
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Tue 9-3/4 **Appraiser Meetings**

Thu 9-5 **Finalize deal terms** **Subject to appraisal meetings**

Thu 9-12 **Final number from Appraiser** **Final Report to follow (don't know if this is possible)**

Thu 9-19 **Final report from Appraiser** **(don't know if this is possible)**

Fri 9-20 *****Execute Amendment*****

Mon 9-23 **Close on Anchor Pub acquisition**

For reference purposes I have attached today's presentation. Keep in mind these images are still part of a confidential negotiation and so are not public yet. I believe Rep. Hawker and aide Juli Lucky have a plan for roll-out after the lease is signed.

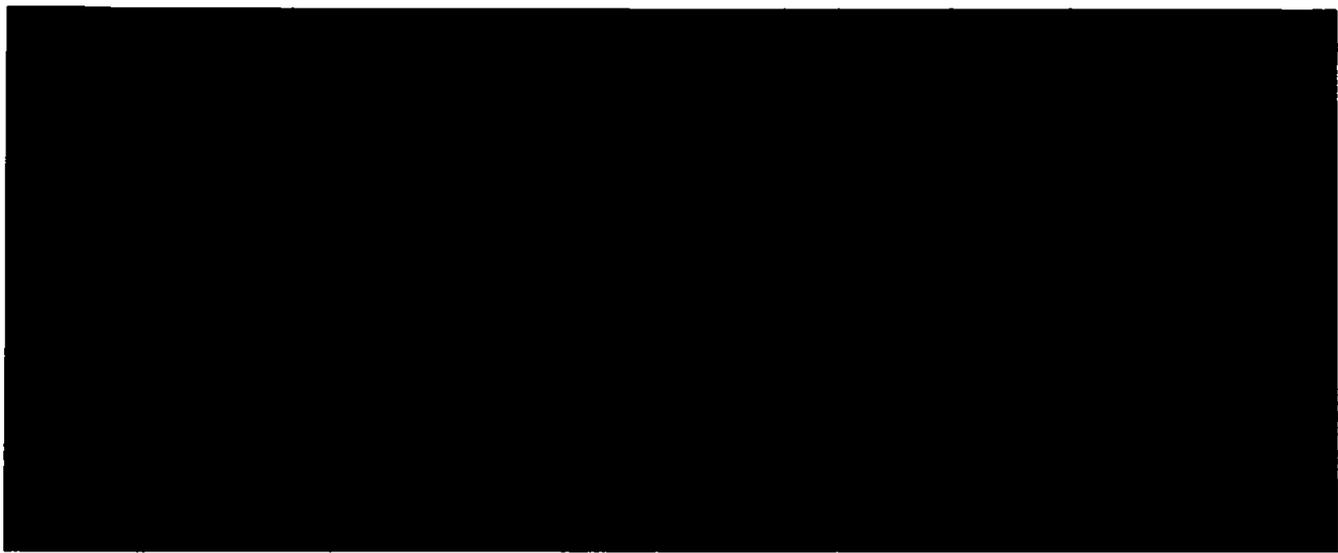
Thanks for all of the hard work to date on this and for entrusting Pfeffer Development with this project.

We are looking forward to working with you both again.

Mark Pfeffer

PFEFFER DEVELOPMENT, LLC
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907.646.4644 | f 907.646.4655 |

Cell Phone
907.817.8030



From: Elise L. Sonray
Sent: Wednesday, August 28, 2013 12:02 PM
To: Doc Crouse
Cc: Mark Pfeffer
Subject: revised Exhibit A- LIO Approval Plans

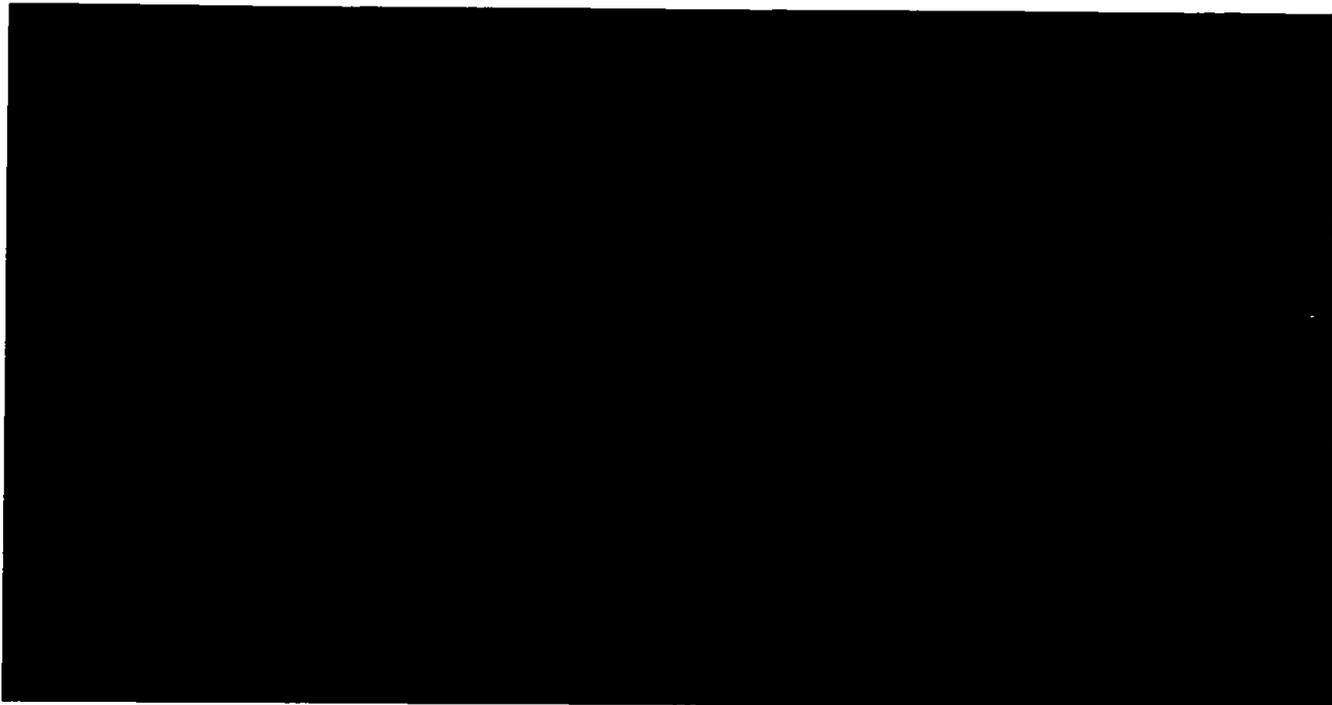
Doc,
Please use this revised version with corrected cover pages. Please excuse the inconvenience.

Thanks and have a great day,

Elise Sonray
Office Assistant

PFEFFER DEVELOPMENT, LLC
Commercial Real Estate Developers
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907.646.4644 | f 907.646.4655

Why is this page blank?



From: MaryEllen Duffy [<mailto:MaryEllen.Duffy@akleg.gov>]
Sent: Friday, August 30, 2013 3:40 PM
To: Donald W. McClintock; 'ncedergr@ahfc.us'
Cc: Pamela Varni
Subject: Revised LAA Lease

The following messages are from Doug Gardner.

Don,

Thanks for being responsive and providing us with your draft and suggested language. I hope to review your language this weekend and discuss our comments with Nola, so she can, if it is easier, incorporate them in her next draft.

I want to avoid too many versions of the lease, and hope this works for you. Have a nice weekend.

Doug

Nola,

Will this process work for you. Also, if you can, please provide us with a phone number so we can discuss some of our edits in response to Don's proposed language. Thanks. Have a nice weekend.

Doug

Sent by Peggy LaMonica for

MaryEllen Duffy
Special Assistant
LAA Legal Services
907-465-6651 direct
907-465-2029 fax
MaryEllen.Duffy@akleg.gov

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From: [REDACTED]
Sent: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

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From: MaryElen Duffy [<mailto:MaryElen.Duffy@akleg.gov>]
Sent: Friday, August 30, 2013 3:40 PM
To: Donald W. McClintock; 'ncedergr@ahfc.us'
Cc: Pamela Varni
Subject: Revised LAA Lease

The following messages are from Doug Gardner.

Don,

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Doug

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Doug

Sent by Peggy LaMonica for
MaryEllen Duffy
Special Assistant
LAA Legal Services
907-465-6651 direct
907-465-2029 fax
MaryEllen.Duffy@akleg.gov

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-----Original Message-----

From: Donald W. McClintock [mailto:dwm@anchorlaw.com]
Sent: Friday, September 06, 2013 8:44 AM
To: 'Nola Cedergreen'
Cc: Mark Pfeffer; Heidi A. Wyckoff
Subject: RE: LIO Lease Extension and Amendment v. 09/04/2013

Nola,

I do not disagree with your analysis of the default clauses; Ironically I think it is weaker for the Landlord than your version in the last draft; mainly this is not an issue that I have strong feelings about. Both will work although I agree his version is less rigorous than your draft. Anyhow, thanks for forwarding this on and we will see what happens.

Mark will have to update you on the Exhibits.

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)
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-----Original Message-----

From: Nola Cedergreen [mailto:ncedergr@ahfc.us]
Sent: Thursday, September 05, 2013 7:50 PM
To: Donald W. McClintock
Cc: Mark Pfeffer; Heidi A. Wyckoff
Subject: RE: LIO Lease Extension and Amendment v. 09/04/2013

Looks good, thanks. I like the SNDA ... very simple and straightforward compared to others I have read.

My concern with the version of Section 36 that Doug wants to reinsert is that it is old boilerplate that is not well-suited to the pending renovation work to be accomplished per Exhibit A or Exhibit B, that the reference to a deadline for delivery of the premises is not consistent with the current draft of the lease amendment and extension, and it is not well-suited to other renovation/alterations that the Lessee might request (for example, an addition to the parking garage). I thought we had worked this out during our teleconference and accordingly, I made the changes I had understood to be acceptable. It is possible that this is not Doug's preference, but instead, is a process that Pam is familiar and comfortable with (i.e. reference to the procurement staff). Since this is not a typical TI build-out, I doubt it is something that Pam's staff will have the experience to supervise as contract administrator - likely the reason Doc Crouse has been asked to assist. Perhaps a private conversation between you and Doug might work it out ... I'm good with whatever you two agree on.

So ... I am in favor of marking the draft with the current date and your initials and sending both the draft lease and SNDA to Doug, Representative Hawker, and Pam. Do you have an idea when Exhibit A and Exhibit B will be finalized?

From: Donald W. McClintock [dwm@anchorlaw.com]
Sent: Thursday, September 05, 2013 6:32 PM
To: Nola Cedergreen
Cc: Mark Pfeffer; Heidi A. Wyckoff
Subject: RE: LIO Lease Extension and Amendment v. 09/04/2013

Nola,

I made minor edits to your draft in track changes; 1.2 is supposed to address the issue Doug is raising about the valuation date. Let me know your thoughts. The other change is to section 49.

As you know I would also like to add the SNDA and estoppel clauses to this lease and appreciate your running it by LAA.

What are your thoughts about his section 36?

Thanks for your efforts.

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)
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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.

—Original Message—

From: Nola Cedergreen [mailto:ncedergr@ahfc.us]

Sent: Tuesday, September 03, 2013 7:37 PM

To: Rep.Mike.Hawker@akleg.gov; laa.legal@akleg.gov; Pamela.Varni@akleg.gov; Donald W. McClintock

Subject: LIO Lease Extension and Amendment v. 09/04/2013

Please give this a test drive ...

Mr. McClintock's latest draft was used as the base document which was revised slightly based upon a review of my handwritten notes from our teleconference, the detailed notes provided by Representative Hawker's office, and the September 3rd summary prepared by Doug Gardner.

With the exception of the following reference in Doug's September 3rd document, I believe I have addressed most questions: "P. 11. Sec. 21: ...after 'not the responsibility of Lessor' ... that the clause ... be included." I couldn't find "not the responsibility of Lessor" in Section 21. Please point me in the right direction.

The definition section has been expanded and requires some review to be certain the parties agree. The delay in performance section has hopefully been clarified in a manner that will avoid confusion between the renovation to be accomplished prior to the Lessee's acceptance and occupancy of the Premises and any subsequent alteration/renovation projects that may come along after occupancy. Section 43 requires a careful read. I believe I have quoted AS 36.30.083 (a) correctly but recommend a legal review of my work.

Attached is a track changes comparison between Mr. McClintock's draft and the 9/4/13 version. I believe Doc Crouse and Mark Pfeffer are both working on the content of Exhibit "A" and Exhibit "B".

Thanks for all of your help and feedback.

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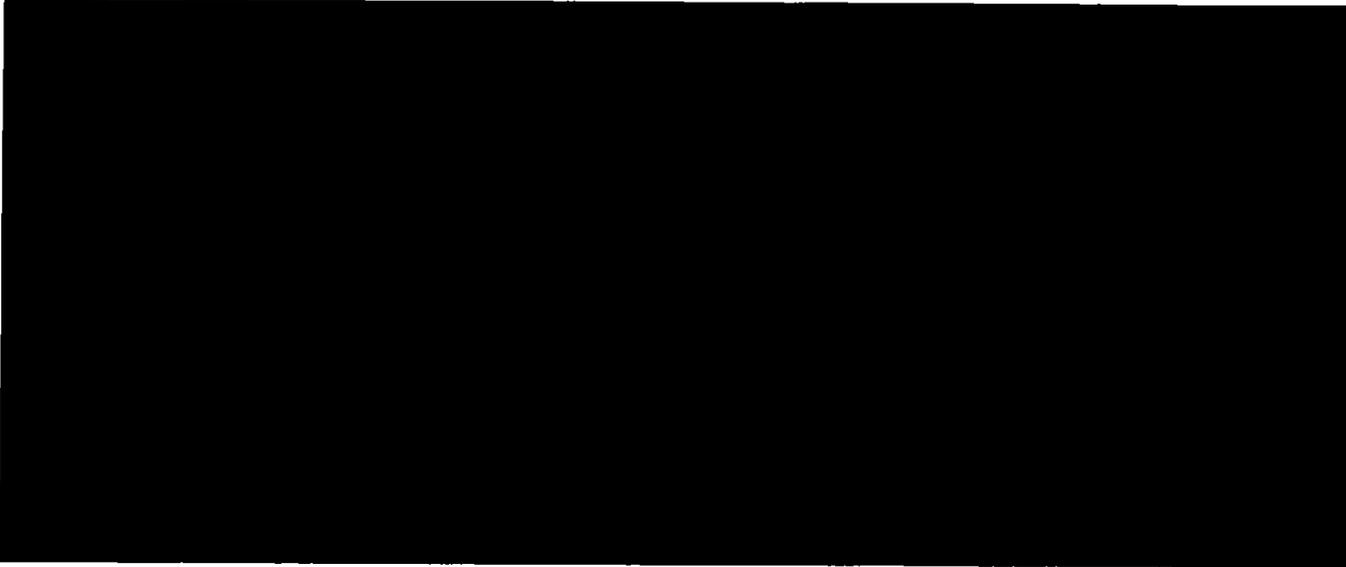
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From: "Rep. Mike Hawker" <Rep.Mike.Hawker@akleg.gov>
Date: September 12, 2013, 4:11:43 PM AKDT
To: Pamela Varni <Pamela.Varni@akleg.gov>, LAA Legal <LAA.Legal@akleg.gov>, Juli Lucky <Juli.Lucky@akleg.gov>
Cc: "mbuller@ahfc.us" <mbuller@ahfc.us>, "ncedergr@ahfc.us" <ncedergr@ahfc.us>
Subject: ExhibitC finalmch.rd.doc - the real final

I propose that the attached document be the final Exhibit C finding (once changes are accepted). It incorporates everyone's comments – substantive and syntactic. Let me know what you think.

Mike



From: Nola Cedergreen <ncedergr@ahfc.us>
Date: September 12, 2013, 4:33:10 PM AKDT
To: "laa.legal@akleg.gov" <laa.legal@akleg.gov>, "Rep.Mike.Hawker@akleg.gov" <Rep.Mike.Hawker@akleg.gov>, "Pamela.Varni@akleg.gov" <Pamela.Varni@akleg.gov>
Cc: "dwm@anchorlaw.com" <dwm@anchorlaw.com>, "mpfeffer@pfefferdevelopment.com" <mpfeffer@pfefferdevelopment.com>, Mike Buller <mbuller@ahfc.us>, Doc Crouse <dcrouse@ahfc.us>, Greg Rochon <grochon@ahfc.us>
Subject: Final LIO Lease pending financial info ...

Yep, I put the "final" tag on it. Here you go.

From: Nola Cedergreen
Sent: Thursday, September 12, 2013 4:07 PM
To: LAA Legal; Rep. Mike Hawker; Pamela Varni
Cc: dwm@anchorlaw.com; mpfeffer@pfefferdevelopment.com; Mike Buller; Doc Crouse; Greg Rochon
Subject: RE: Almost final LIO lease ...

Got it. After these changes I will mark the lease portion as final w/the exception of the financial information and will delete all of my previous versions of the document.

From: LAA Legal [LAA.Legal@akleg.gov]
Sent: Thursday, September 12, 2013 3:56 PM
To: Nola Cedergreen; Rep. Mike Hawker; Pamela Varni
Cc: dwm@anchorlaw.com; mpfeffer@pfefferdevelopment.com; Mike Buller; Doc Crouse; Greg Rochon
Subject: RE: Almost final LIO lease ...

Nola,

I have the following final comments:

p. 1; The language indented that describes the premises as set out in the current lease does not reference "and exclusive use of all parking within the adjacent parking facility."

What the lease currently provides following State of Alaska, is "and eighty-six (86) reserved off-street parking places."

p. 1; Please insert the following in Whereas #2, following "chairman":
to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a), and,

p. 5, sec. 3, third paragraph; Should read: "Invoices, unless disapproved, shall be . . . "

p. 5, sec. 3; "acquisition" is misspelled.

p. 16, sec. 39; There is a missing quotation mark after the ellipses.

p. 19, sec. 51; replace "This" at the beginning of the section with "The Lease,"
Correct punctuation and other language accordingly.

Nola - please delete the document identifier 13-065.plm on the last page, as it is no longer relevant.

Thank you,
Doug Gardner
LAA Legal Services

Sent by:
MaryEllen Duffy
Special Assistant
LAA Legal Services
907-465-6651 direct
907-465-2029 fax
MaryEllen.Duffy@akleg.gov

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-----Original Message-----

From: Nola Cedergreen [<mailto:ncedergn@ahfc.us>]
Sent: Thursday, September 12, 2013 2:34 PM
To: Rep. Mike Hawker; Pamela Varni; LAA Legal
Cc: dwm@anchorlaw.com; mpfeffer@pfefferdevelopment.com; Mike Buller; Doc Crouse; Greg Rochon

Subject: Almost final LIO lease ...

Here you go ... the body of the lease amendment and extension is nearly final and only lacks a bit of financial information.

We are down to 21 pages in length; the "widows and orphans" and pagination will be cleaned up when the last information is ready to finalize (I've been trying to clean up the formatting and organize the sections with each draft and have decided to stop that no-value-added exercise).

Thanks to everyone who worked together to edit and improve this document.

Nola

The information transmitted in this email and any attachments is intended only for the personal and confidential use of the intended recipients. This message may be or may contain privileged and confidential communications. If you as the reader are not the intended recipient, you are hereby notified that you have received this communication in error and that any retention, review, use, dissemination, distribution or copying of this communication or the information contained is strictly prohibited. The sender does not accept any responsibility for any loss, disruption or damage to your data or computer system that may occur while using data contained in, or transmitted with, this e-mail. If you have received this communication in error, please notify the sender immediately and delete the original message from your system.

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From:
Sent:
To:
Subject:
Attachments:

-----Original Message-----

From: Mike Buller [<mailto:mbuller@ahfc.us>]
Sent: Wednesday, September 18, 2013 3:22 PM
To: Pamela Varni; Doug Gardner; Mark Pfeffer; Nola Cedergreen; Juli Lucky
Subject: Fwd: Revised Interim Letter

Pam here's Tim's official Letter of Conclusion based on his appraisal. I think it contains all of the information you'll need for your rent certification. If it doesn't let me know and we'll provide any additional information you may require.

Sent from my iPad

Begin forwarded message:

From: Timothy Lowe <tlowe@waranzof.com<<mailto:tlowe@waranzof.com>>>
Date: September 18, 2013, 2:52:36 PM AKDT
To: Mike Buller <mbuller@ahfc.us<<mailto:mbuller@ahfc.us>>>
Cc: Doc Crouse <dcrouse@ahfc.us<<mailto:dcrouse@ahfc.us>>>, "Rep. Mike Hawker" <Rep.Mike.Hawker@akleg.gov<<mailto:Rep.Mike.Hawker@akleg.gov>>>
Subject: Revised Interim Letter

Mike:

Reflecting the edits to clearly state that the statutory test is met. Please review and call with questions or comments.

Tim Lowe

Timothy Lowe
Waranzof Associates, Inc.
999 North Sepulveda Boulevard
Suite 440
El Segundo, CA 90245

V 310-322-7744

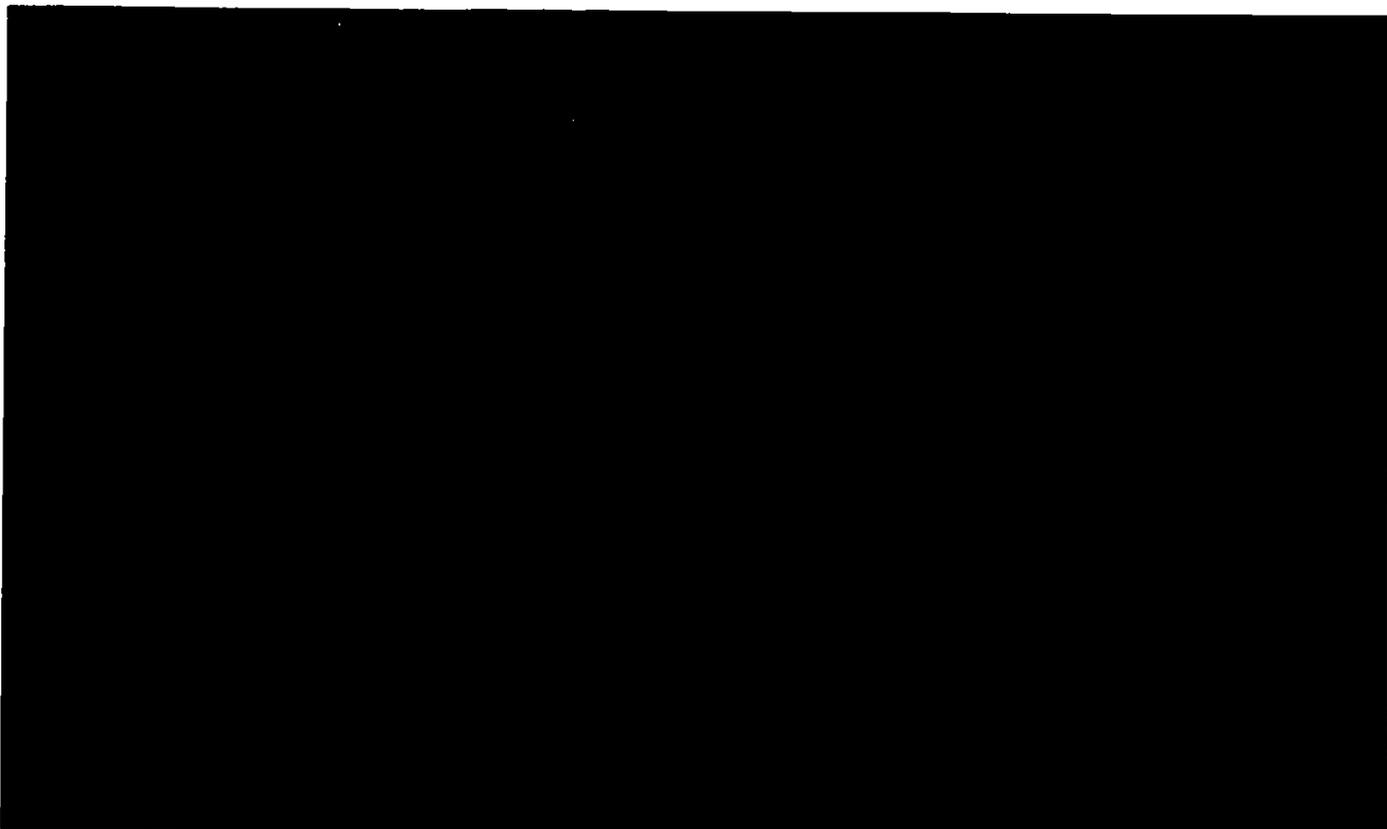
F 310-322-7755

C 310-600-2933

tlowe@waronzof.com<mailto:tlowe@waronzof.com>

www.waronzof.com<http://www.waronzof.com>

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From: LAA Legal [<mailto:LAA.Legal@akleg.gov>]
Sent: Wednesday, June 19, 2013 4:14 PM
To: Donald W. McClintock
Cc: Heidi A. Wyckoff
Subject: RE: Legislative Procurement Procedures

Doug Gardner asked that I send you the current Legislative Procurement Procedures. Attached is a .pdf of the 2013 Legislative Procurement Procedures.

MaryEllen Duffy
Special Assistant
LAA Legal Services
907-465-6651 direct
907-465-2029 fax
MaryEllen.Duffy@akleg.gov

Warning: This message and any attachments to it are confidential. If you have received this message in error, please notify the sender by electronic mail and delete the message. If you are not the intended recipient of this message, you are hereby notified that disclosing, disseminating, or copying this message or any attachments to it is prohibited. Thank you.

From: Donald W. McClintock [<mailto:dwm@anchorlaw.com>]
Sent: Wednesday, June 19, 2013 9:56 AM
To: LAA Legal
Cc: Heidi A. Wyckoff
Subject: RE: Contact

Doug,

It was a pleasure meeting you and I look forward to working with you.

I am in meetings most of today but free tomorrow morning.

If I am out, please feel free to coordinate teleconference times with my assistant Heidi, also copied above.

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

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From: LAA Legal [<mailto:LAA.Legal@akleg.gov>]
Sent: Wednesday, June 19, 2013 9:48 AM
To: Donald W. McClintock
Subject: Contact

Good Morning Don,

It was a pleasure to meet you yesterday in Mark's office. I hope to speak with you later today about next steps. Please use this e-mail address for any communications you want to send to me.

Thanks,

Doug

Doug Gardner, Director

LAA Legal Services

Sent by:

MaryEllen Duffy

Special Assistant

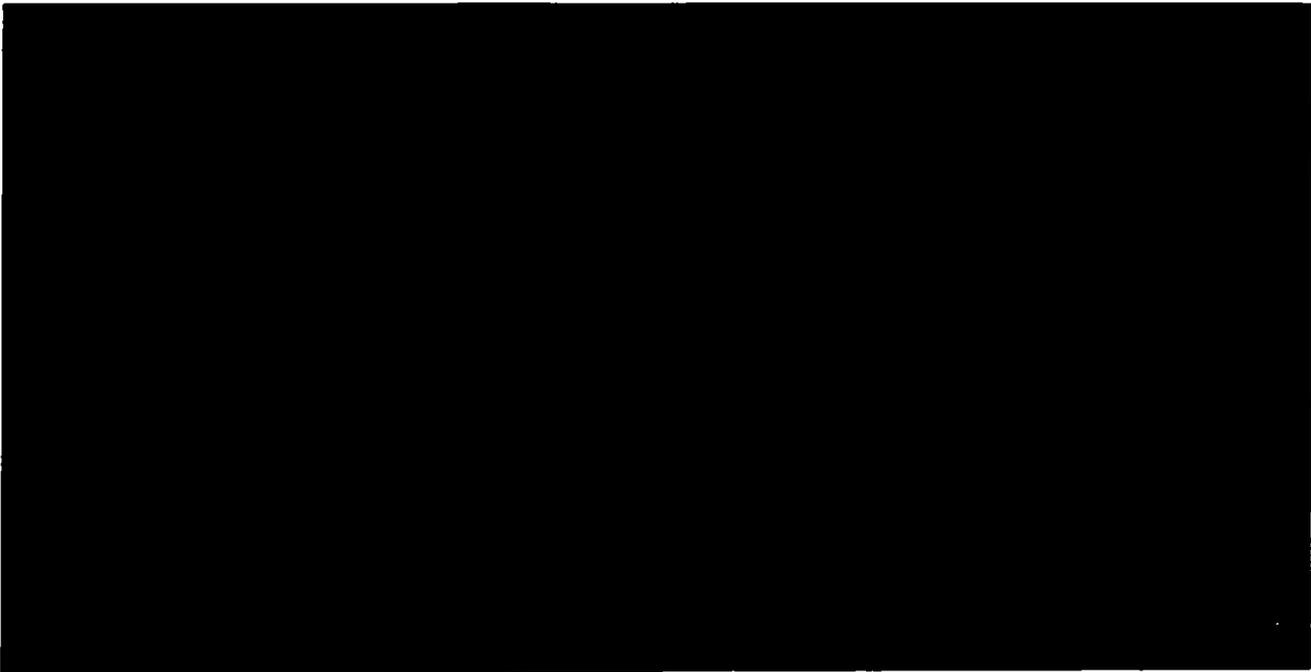
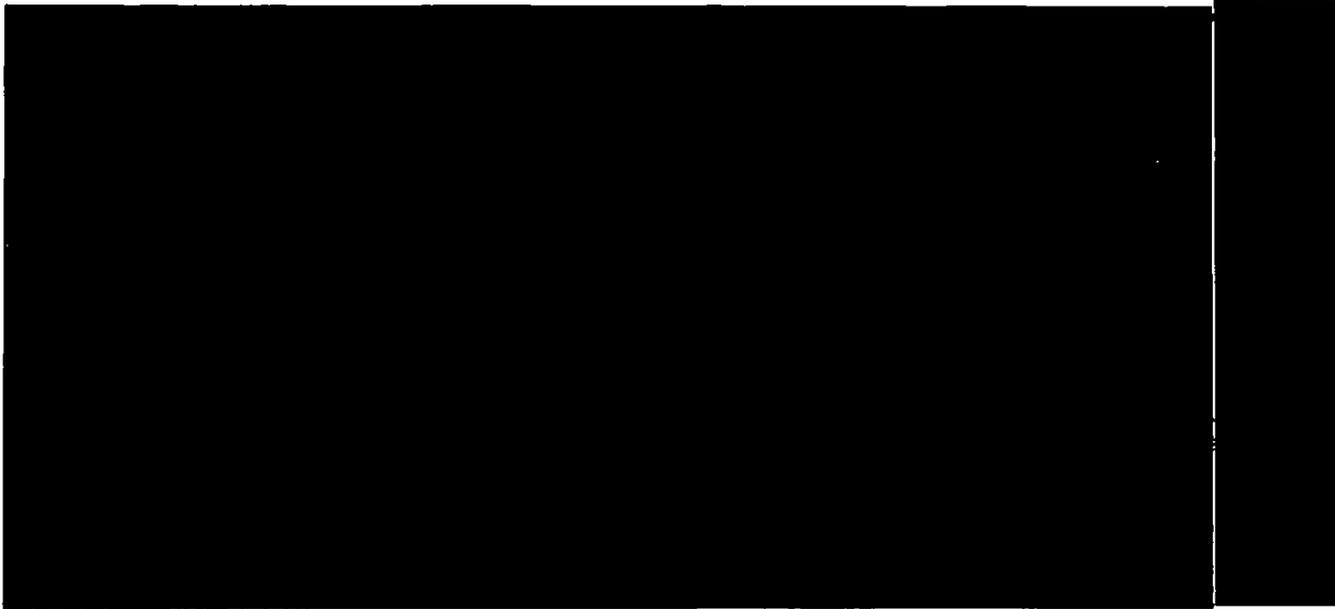
LAA Legal Services

907-465-6651 direct

907-465-2029 fax

MaryEllen.Duffy@akleg.gov

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From: Jim Gottstein [mailto:jim.gottstein@psychrights.org]
Sent: Monday, October 14, 2013 6:59 PM
To: Donald W. McClintock
Cc: Rebecca A. Windt; Heidi A. Wyckoff; jim.gottstein@psychrights.org; dberry@bbfm.com; Forrest Braun
Subject: RE: Access and Indemnity Agreement

Hi Don,

One of the things that bothers me about how the Project is being conducted is Pfeffer and Criterion pretending there is nothing to worry about when they demolish the Anchor, with which the Alaska Building shares a wall. If there is nothing to worry about then there should be no problem with Pfeffer agreeing to the compulsory purchase in the event there is such damage to the Alaska Building that it is not restorable. (I see I left out three zeros in the purchase price).

I have (hopefully) attached a copy the memo I distributed to the Alaska Building tenants today. In it you will note I suggest the tenants whose space includes the party wall should be vacated during the demolition. For example, the clerk at Blu Menswear sits 2-3 feet from the party wall. I just can't see how it is safe for her to be there when the Anchor is torn down. In fact, I wonder about the safety until such time as the wall to the West of the current party wall has been constructed. I think the safety issue for Alaska Building tenants during the entire construction process is one of the things at which the engineers should look. I think the collapse of the building that my office and Blu Menswear occupy is entirely possible. One of my purposes is to focus Pfeffer and Criterion on these possibilities to avoid such a catastrophe.

In the agreement I include lost rents. My computer sits right on a cradenza that abuts against the party wall. It is on 4th Avenue, so is right next to where the elevator and utilities tower is going up. I think it will be too noisy to occupy my office during much of the construction and am making alternate arrangements, including working from home. Since I don't pay rent, the agreement doesn't contemplate compensation for this.

Other than vacating the spaces that include the party wall during the actual demolition for safety reasons, I am certainly not encouraging the tenants to vacate their spaces.

There are all kinds of things that could happen. Just causing a pipe to break inside a wall could cause a cascade of problems that might condemn the building. Maybe I am being an alarmist and BBFM will reassure me. But, fundamentally, to the extent the Project proceeds without negative impacts on the Alaska Building none of those provisions will be triggered.

Jim Gottstein, President
Alaska Building, Inc.
Home of the AlaskaCam (r)

406 G Street, Suite 206
Anchorage, AK 99501
Tel: (907) 274-7686
Fax: (907) 274-9493
ig@touchngo.com

From: Donald W. McClintock [<mailto:dwm@anchorlaw.com>]
Sent: Monday, October 14, 2013 6:16 PM
To: 'Jim Gottstein'
Cc: Rebecca A. Windt; Heidi A. Wyckoff
Subject: RE: Access and Indemnity Agreement

Jim,

I am checking back as to what exactly needs to be done with the wall or any entry into your property. This draft seems to be of two minds—part is a straightforward access agreement with traditional insurance requirements and indemnity for damage done(if any) while on your property; and part seems to be a much broader requirement based upon the assumption that the conduct of the project on 716 W. 4th Avenues' property will disrupt and damage your property and seems to impose a much broader standard of care than an adjoining landowner owes to a neighbor; including but not limited to the compulsory sale requirement.

Anyhow, before jumping into the nuances on this, we both need better input from the contractor as to what exactly needs to be done: (1) first on your property; (2) on the party wall. That can help guide us to commercially reasonable language that is commensurate with the impact to be reasonably expected.

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

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From: Jim Gottstein [<mailto:jim.gottstein@psychrights.org>]
Sent: Monday, October 14, 2013 9:40 AM
To: Donald W. McClintock
Cc: jim.gottstein@psychrights.org
Subject: Access and Indemnity Agreement

Hi Don,

I have (hopefully) attached the Access and Indemnification Agreement I have cobbled together for the Legislative Information Office renovations as it pertains to the Alaska Building.

Jim Gottstein, President
Alaska Building, Inc.
Home of the AlaskaCam (r)
406 G Street, Suite 206
Anchorage, AK 99501
Tel: (907) 274-7686
Fax: (907) 274-9493
jg@touchngo.com

<131014Memo2Tenants.pdf>

James B. Gottstein

From: Jeffrey W. Robinson <jeffrey@anchorlaw.com>
Sent: Thursday, October 22, 2015 11:37 AM
To: James B. Gottstein
Cc: Eva R. Gardner
Subject: RE: First Supplemental (e-mail) Production

Thanks, Jim. Discovery is ongoing. It took a tremendous amount of work to review and produce the latest batch of discovery. As always, 716 is committed to being as responsive as possible to ABI's discovery requests. I will do my best to respond to your email in the next several weeks, keeping in mind that we have your deposition on deck, and we are also in the process of fully reviewing your latest production efforts. Moreover, we have to respond to the various motions you filed in this action, and attend to matters regarding the separately filed action.

JWR

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Thursday, October 22, 2015 11:28 AM
To: Jeffrey W. Robinson <jeffrey@anchorlaw.com>
Cc: james.b.gottstein@gottsteinlaw.com; Eva R. Gardner <eva@anchorlaw.com>
Subject: First Supplemental (e-mail) Production

Hi Jeff,

In going through 716 LLC's first supplemental production relating to e-mails, I have found the following deficiencies.

Missing Documents

Please produce the following, which seem to be missing.

1. Attachment to 7/22/13 Doug Gardner e-mail to John Steiner. 716-1295
2. Attachments to D. McClintock 7/12/13 E-mail to Doug Gardner. 716-1480
3. Attachment to 5/31/13 Hawker to Pfeffer e-mail. 716-1860
4. Attachment to 7/25/13 Pfeffer to Hawker e-mail. 716-1949
5. Attachment referenced in two 8/13/13 e-mails Pfeffer/Lowe. 716-1979
6. Attachment to 8/20/13 Hawker to Varni & Lucky (final businessman's work product). 716-2008.
7. Attachment to 8/19/13 Mike Buller to Hawker e-mail. 716-2009.
8. Attachments to 8/19/13 Pfeffer e-mail to Tim Lowe. 716-2074 & 2075
9. Updated numbers from Lowe. 716-2103
10. Documents sent to Tim Lowe. 716-2167
11. September 11, 2013 version of Exhibit C. 716-2171.
12. Memo to dispute Varni Analysis referenced at 716-2173.

13. Attachment to 9/4/13 Pfeffer e-mail to Cedergreen, Buller & Crouse. 716-2190
14. Attachment to 8/9/13 Pfeffer e-mail to Hawker. 716-2241
15. Attachment to 8/16/13 Pfeffer e-mail to Lowe. 716-2250
16. Attachments to 9/17/13 Pfeffer to Lowe e-mail. 716-2251
17. Attachment to 9/12/13 Pfeffer to Hawker e-mail. 716-2257
18. Attachment to 8/12/13 Pfeffer to Lowe. 716-2259
19. Attachment to 8/11/13 Pfeffer to Lowe. 716-2260
20. Attachment to 6/6/13 Pfeffer to Hawker/Lucky. 716-2261
21. Attachment to 9/10/13 Pfeffer to Lowe. 716-2264
22. Attachments to 6/17/13 Lucky to Buller, Schubert, Pfeffer. 716-2276
23. Attachment to 7/26/13 Pfeffer to Hawker. 716-2284
24. Attachment to 9/11/13 Pfeffer to Hawker. 716-2285
25. Missing attachment to 9/17/13 Pfeffer to Lowe, Buller, Crouse. 716-2292
26. Attachment to 8/27/13 Acree to Pfeffer. 716-2293
27. Attachment to 8/27/13 Pfeffer to Crouse. 716-2294
28. Attachment to 6/5/13 Mark Pfeffer to Hawker. 716-2316
29. Attachments to 8/14/13 Hawker to Pfeffer. 716-2320
30. Attachment to 8/30/13 Pfeffer to Rowley & Simasko. 716-2326
31. Attachment to 3/20/12 Schubert to Pfeffer. 716-2333
32. "model sent yesterday" referred to in 9/12/13 Lowe to Buller. 716-2367

If these have already been produced, please let me know where and I apologize.

Redactions.

The following pages have redactions.

- 1273
- 1281
- 1283
- 1285
- 1298
- 1300
- 1302
- 1303
- 1347-1348
- 1412
- 1947
- 2352

716 LLC needs to justify the redactions, which appear to be e-mail replies or forwards. If the attorney-client privilege is claimed 716 LLC should, at a minimum, provide the following information to comply with Civil Rule 26(b)(2):

- (1) The date;
- (2) The sender;
- (3) The recipient(s), including any copies, including blind copies;
- (4) The subject;
- (5) A general description of the redacted e-mail.

If something other than the attorney-client privilege is claimed to justify the redactions, 716 LLC should state the basis.

Blank Pages

Also, why are the following pages blank? 1269, 1270, 1276, 1278, 1279, 1280, 1284, 1876, 1896, 1988, 2046, 2047, 2272, 2273, 2275, 2277, 2287, 2288, 2289, 2291, 2295, 2298, 2309, 2310, & 2319. These don't appear to be blank e-mail pages because they do not have numbers at the bottom center. *See*, e.g., 716-4027 which shows the page number.

Unfinished Sentence

Finally, Is something missing after "Do you want to add to the last paragraph something along" at 716-2171?

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

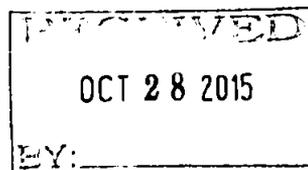
IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska
corporation,)

Plaintiff,)

vs.)

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



Case No.: 3AN-15-05969 CI

**716 WEST FOURTH AVENUE, LLC'S (SECOND) SUPPLEMENTAL
RESPONSES TO ALASKA BUILDING, INC.'S FIRST REQUEST FOR
PRODUCTION**

COMES NOW, Defendant 716 West Fourth Avenue, LLC ("716"), by and through counsel, Ashburn & Mason, P.C. and supplements its response to Plaintiff's First Request for Production dated September 3, 2015. Pursuant to an email dated October 22, 2015, Plaintiff requested the following be produced as Plaintiff believed the requested items were missing:

1. Attachment to 7/22/13 Doug Gardner e-mail to John Steiner. 716-1295;
2. Attachments to D. McClintock 7/12/13 E-mail to Doug Gardner. 716-1480;
3. Attachment to 5/31/13 Hawker to Pfeffer e-mail. 716-1860;
4. Attachment to 7/25/13 Pfeffer to Hawker e-mail. 716-1949;
5. Attachment referenced in two 8/13/13 e-mails Pfeffer/Lowe. 716-1979;

ASHBURN & MASON INC.

LAWYERS

1227 WEST 9TH AVENUE, SUITE 200

ANCHORAGE, ALASKA 99501

TEL 907.276.4331 • FAX 907.277.8235

6. Attachment to 8/20/13 Hawker to Varni & Lucky (final businessman's work product) 716-2008;

7. Attachment to 8/19/13 Mike Buller to Hawker e-mail. 716-2009;

8. Attachments to 8/19/13 Pfeffer e-mail to Tim Lowe. 716-2074 & 2075-

No attachments contained in email;

9. Updated numbers from Lowe 716-2103 -**No attachments contained in email;**

10. Documents sent to Tim Lowe. 716-2167 **No attachments contained in email;**

11. September 11, 2013 version of Exhibit C. 716-2171 **No attachments contained in email;**

12. Memo to dispute Varni Analysis referenced at 716-2173 **No attachments contained in email;**

13. Attachment to 9/4/13 Pfeffer e-mail to Cedergreen, Buller & Crouse. 716-2190;

14. Attachment to 8/9/13 Pfeffer e-mail to Hawker 716-2241;

15. Attachment to 8/16/13 Pfeffer e-mail to Lowe. 716-2250;

16. Attachments to 9/17/13 Pfeffer to Lowe e-mail. 716-2251;

17. Attachment to 9/12/13 Pfeffer to Hawker e-mail 716-2257;

18. Attachment to 8/12/13 Pfeffer to Lowe 716-2259;

19. Attachment to 8/11/13 Pfeffer to Lowe. 716-2260;

20. Attachment to 6/6/13 Pfeffer to Hawker/Lucky 716-226;
21. Attachment to 9/10/13 Pfeffer to Lowe 716-2264;
22. Attachments to 6/17/13 Lucky to Buller, Schubert, Pfeffer. 716-2276;
23. Attachment to 7/26/13 Pfeffer to Hawker.716-2284;
24. Attachment to 9/11/13 Pfeffer to Hawker 716-2285;
25. Missing attachment to 9/17/13 Pfeffer to Lowe, Buller, Crouse. 716-2292

No attachments contained in email;

26. Attachment to 8/27/13 Acree to Pfeffer 716-2293;
27. Attachment to 8/27/13 Pfeffer to Crouse 716-2294;
28. Attachment to 6/5/13 Mark Pfeffer to Hawker 716-2316;
29. Attachments to 8/14/13 Hawker to Pfeffer 716-2320;
30. Attachment to 8/30/13 Pfeffer to Rowley & Simasko 716-2326;
31. Attachment to 3/20/12 Schubert to Pfeffer 716-2333;
32. "model sent yesterday" referred to in 9/12/13 Lowe to Buller 716-2367.

The attachments to the emails are produced and attached as Bates Nos. 716-005871 thru 716-006146 unless noted above as containing no attachments.

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

DATED: 10-28-15

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile
 U.S. Mail on the 28 day of October 2015, on:

James B. Gottstein
Law Offices of James B. Gottstein - hand-delivered 10/28/15
406 G Street, Suite 206
Anchorage, Alaska 99501

Kevin Cuddy - mailed 10/28/15
Stoel Rives, LLP
510 L Street, Suite 500
Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

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

Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969 Civil
716 (Second) Supplemental Responses to Plaintiff's First Request for Production
{10708-101-00300861;1}

Page 4 of 4

Exhibit 7, page 4 of 4

001511

James B. Gottstein

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Wednesday, November 11, 2015 1:16 PM
To: 'Jeffrey W. Robinson'
Cc: Eva R. Gardner, james.b.gottstein@gottsteinlaw.com
Subject: Second Supplement to Production Request
Attachments: 151111Ltr2JRobinsonRe2ndSuppTo1stProductionResponses.pdf

Hi Jeff,

Please find attached a letter regarding 716 LLC's Second Supplement to Alaska Building, Inc.'s first set of requests for production to 716 LLC. If you can respond promptly that will be great since my reply regarding the extant motion to compel will be filed by mid next week and it would be nice to have this piece of it resolved.

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, ALASKA 99501
(907) 274-7686
TELECOPIER (907) 274-9493

November 11, 2015

Jeffrey L. Robinson
Ashburn & Mason
1227 W. 9th Ave., Ste. 200
Anchorage, AK 99501

via e-mail

Re: 716 West Fourth Avenue LLC's (Second) Supplemental Responses to Alaska Building, Inc.'s First Requests for Production

Dear Mr. Robinson:

This is in reference to 716 West Fourth Avenue LLC's (Second) Supplemental Responses to Alaska Building, Inc.'s First Requests for Production in *Alaska Building, Inc., v. 716 West Fourth Avenue LLC, et al.*, Anchorage Superior Court Case No. 3AN-15-5969CI (Second Supplement). There are 6 responses in the Second Supplement indicating there were no attachments to the e-mails and a 7th place where it was noted on the production cover page, but not in the Second Supplement. In each case, attachments were not requested; rather requested were documents referenced in the e-mails. Attached, please find copies of these e-mails, marked to show what was requested. Using the same numbers as in the Second Supplement these are briefly described below as well.

8. Attachments to 8/19/13 Pfeffer e-mail to Tim Lowe. 716-2074 & 2075-**No attachments contained in email;**

What was requested were what looks like attachments to the August 19, 2013, at 6:23 e-mail from Mark Pfeffer to which the August 19, 2013 5:34 e-mail back from Tim Lowe to Mark Pfeffer responds.

9. Updated numbers from Lowe 716-2103 -**No attachments contained in email;**

What was requested were the updated numbers from Tim referred to in the e-mail.

10. Documents sent to Tim Lowe. 716-2167 **No attachments contained in email;**

What was requested was the information that the e-mail indicates was sent.

11. September 11, 2013 version of Exhibit C. 716-2171 **No attachments contained in email;**

What was requested was the September 11, 2013, version of Exhibit C, which was forwarded from Rep. Hawker's legislative e-mail account to his personal account and then forwarded to Mr. Pfeffer.

12. Memo to dispute Varni Analysis referenced at 716-2173 **No attachments contained in email;**

What was requested was "the memo that settles up the issues" relating to Ms. Varni's analysis that was contemplated in the e-mail.

Jeffrey L. Robinson
November 11, 2015
Page 2

25. Missing attachment to 9/17/13 Pfeffer to Lowe, Buller, Crouse. 716-2292. **No attachments contained in email;**

What was requested was the "missing attachments." The e-mail references attachments of clean final versions of budget and lease calculation, but it does not appear they were attached.

32. "model sent yesterday" referred to in 9/12/13 Lowe to Buller 716-2367.

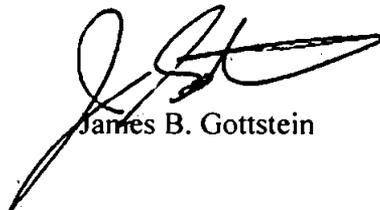
What was requested was the model that had been sent the previous day.

If you have any questions about what was and is being requested, please let me know.

Also, my sense is that not all the attachments were produced, but I haven't had a chance to determine that yet. I am not waiving the right to production of such missing attachments, if any.

Your cooperation will be appreciated.

Sincerely,



James B. Gottstein

Enc.

From: Mark Pfeffer
Sent: Monday, August 19, 2013 5:34 PM
To: Timothy Lowe
Subject: Re: List

And my next week is no picnic either.

My first ever parent teacher conference on Tuesday
Kids first day of kindergarten on Wednesday
Bond bank board meeting in Barrow on Wednesday (conflict! That I am taking heat over)
Vancouver Wa. On Friday.(RAC stuff)

Given your stuff: Anniversary (36 years? Wow! Congrats!) and Mom moves to house (Wow!-2) I totally get the push back until the following week.

Thanks for bearing with me and my stress level on this one. This stuff is not for the feint of heart.

Talk to you in the morning.

Sent from my iPad

On Aug 19, 2013, at 5:25 PM, "Timothy Lowe" <tlowe@waronzof.com> wrote:

Thanks

Timothy Lowe, MAI, CRE, FRICS
Waronzof Associates, Inc.
999 North Sepulveda Boulevard
Suite 440
El Segundo, CA 90245
310.322.7744 T
310.322.7755 F
310.600.2933 M
tlowe@waronzof.com
www.waronzof.com

On Aug 19, 2013, at 6:23 PM, Mark Pfeffer wrote:

(Original lease with amendments)
(Proposed lease amendment)
(Plans and specs)
(Ahfc letter proposal for stand alone building at 7th and F)

These look like they were attached to the previous e-mail and were requested..

Pfeffer Calculation of "value"
(Chevron Building costs with "adjustments" to compare to proposed.)
(Legislative council motions for approval)

More as I think of it.

Sent from my iPad

From: Mike Buller <mbuller@ahfc.us>
Sent: Friday, September 13, 2013 11:21 AM
To: Mark Pfeffer
Cc: Rep. Mike Hawker; Doc Crouse
Subject: Re: Meeting today?....

We have updated numbers from Tim and he will be available by phone.

Requested the updated numbers

Sent from my iPad

On Sep 13, 2013, at 11:19 AM, "Mark Pfeffer" <MPfeffer@PfefferDevelopment.com> wrote:

> How about 1:00pm? I'll push my 2:00 back to 2:30
>
> Do we have what we need from Tim?
>
> Mark Pfeffer
>
> PFEFFER DEVELOPMENT, LLC
> 425 G Street, Suite 210 | Anchorage, Alaska 99501 p 907 646 4644 |
> f 907.646.4655 |
>
> Cell Phone
> 907 317 5030
>
> —Original Message—
> From: Mike Buller [mailto:mbuller@ahfc.us]
> Sent: Friday, September 13, 2013 11:18 AM
> To: Rep. Mike Hawker
> Cc: Mark Pfeffer; Doc Crouse
> Subject: Re: Meeting today?....
>
> We'er available any time today at our offices. Just let me know when.
>
> Sent from my iPad
>
> On Sep 13, 2013, at 11:06 AM, "Rep. Mike Hawker"
> <Rep.Mike.Hawker@akleg.gov<mailto:Rep.Mike.Hawker@akleg.gov>> wrote:
>
> Would work for me.
>
> On Sep 13, 2013, at 11:00 AM, "Mark Pfeffer"
> <MPfeffer@PfefferDevelopment.com<mailto:MPfeffer@PfefferDevelopment.com>> wrote:
>
> Hi Guys are we meeting today to discuss numbers and status?
>
> I have a 2:00 -2:45 pm meeting out in the AHFC neighborhood. So I could pretty easily do it at AHFC (or downtown). I
can also probably get my 2:00 meet to move time slot if needed.
>

> Mark Pfeffer
>
> PFEFFER DEVELOPMENT, LLC
> 425 G Street, Suite 210 | Anchorage, Alaska 99501 p 907 646 4644 |
> f 907.646.4655 |
>
> Cell Phone
> 907 317 5030
>
>

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From: Mark Pfeffer
Sent: Tuesday, September 10, 2013 11:05 AM
To: Timothy Lowe; Mike Buller
Cc: Doc Crouse
Subject: RE: Request for Actual Cost Info - 909 9th

sent

Requested what
was sent

Mark Pfeffer

PFEFFER DEVELOPMENT, LLC
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907 646 4644 | f 907.646.4655 |

Cell Phone
907 317 6030

From: Timothy Lowe [mailto:tlowe@waronzof.com]
Sent: Tuesday, September 10, 2013 9:56 AM
To: Mike Buller
Cc: Mark Pfeffer; Doc Crouse
Subject: Re: Request for Actual Cost Info - 909 9th

Thank you, Mike.

Tim Lowe

Timothy Lowe, MAI, CRE, FRICS
Waronzof Associates, Inc.
999 North Sepulveda Boulevard
Suite 440
El Segundo, CA 90245
310.322.7744 T
310.322.7755 F
310.600.2933 M
tlowe@waronzof.com
www.waronzof.com

On Sep 10, 2013, at 10:26 AM, Mike Buller wrote:

That works for AHFC. Mark please work directly with Tim.

Sent from my iPad

On Sep 10, 2013, at 9:24 AM, "Mark Pfeffer"
<MPfeffer@PfefferDevelopment.com<<mailto:MPfeffer@PfefferDevelopment.com>>> wrote:

Doc/Mike

If it works for you I'd like to give the info direct to Tim to keep it out of the public realm. No problem with you looking at it and seeing he numbers id just rather not have it a public document. Does that work for you guys?

Mark Pfeffer

PFEFFER DEVELOPMENT, LLC
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907 646 4644 | f 907.646.4655 |

Cell Phone
907 317 5030

From: Timothy Lowe [<mailto:tlowe@waronzof.com>]
Sent: Tuesday, September 10, 2013 8:56 AM
To: Doc Crouse
Cc: Mark Pfeffer; Mike Buller
Subject: Request for Actual Cost Info - 909 9th

Doc:

With this email, I'm requesting - from Pfeffer Development, through AHFC, actual cost information for the 909 building, which I can then compare with information from the HMS cost estimate completed in 2010 for the Legislative Affairs Agency, in conjunction with their "look" at the building as an LJO alternative. I've included Mark Pfeffer in this email chain because Mark may feel that the information on the 909/Nana project is or should be treated as confidential, and not held in your files as part of this project. I'd be happy to receive the information directly from Pfeffer Development, but want to make sure that AHFC is in the loop of this communication.

Thanks very much; contact me with any comments or questions.

Tim Lowe

Timothy Lowe, MAI, CRE, FRICS
Waronzof Associates, Inc.
999 North Sepulveda Boulevard
Suite 440
El Segundo, CA 90245
310.322.7744 T
310.322.7755 F
310.600.2933 M
tlowe@waronzof.com<<mailto:tlowe@waronzof.com>>
www.waronzof.com<<http://www.waronzof.com>>

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From: Mark Pfeffer
Sent: Thursday, September 12, 2013 6:14 AM
To: Mark Pfeffer
Subject: Re: revised Exhibit C

Requested revised Exhibit C, which was forward from Rep. Hawker's legislative account to his gmail account and then to Pfeffer, to which this e-mail responds.

Well that appears to get the job done as far as the finding goes.

BUT jeez, i know its too late now and there's no turning back but he justifies sole source procurement so many times in this thing why not just do sole source and cut the deal everyone wants without being hamstrung by 083a.

Anyway just grousing over the logic chain.

One last thought. Do you want to add to the last paragraph something along

Looks like this box gets checked

Sent from my iPad

On Sep 12, 2013, at 5:56 AM, "Mike Hawker" <mhawker@gcl.net> wrote:

Enjoy the day! Talk with you later.

M

Begin forwarded message:

From: "Rep. Mike Hawker" <Rep.Mike.Hawker@akleg.gov>
Date: September 12, 2013, 5:55:08 AM AKDT
To: Hawker Michael <mhawker@gcl.net>
Subject: Fwd: revised Exhibit C

Begin forwarded message:

From: LAA Legal <LAA.Legal@akleg.gov>
Date: September 11, 2013, 2:51:15 PM AKDT
To: "Rep. Mike Hawker" <Rep.Mike.Hawker@akleg.gov>
Subject: revised Exhibit C

Representative Hawker,
Attached is a revised version of Exhibit C. Our revisions make clear that modifications to the lease are being made to both add 712 West Fourth Avenue, and changes necessary to accommodate renovations of the premises. Please make changes as you see fit. My suggestion is that this document remain an attorney-client work-product until you sign it. Let me know if you need more.
Doug Gardner

Legal Services Director
Legislative Affairs Agency

Sent by:
MaryEllen Duffy
Special Assistant
LAA Legal Services
907-465-6651 direct
907-465-2029 fax
MaryEllen.Duffy@okleg.gov

Warning: This message and any attachments to it are confidential. If you have received this message in error, please notify the sender by electronic mail and delete the message. If you are not the intended recipient of this message, you are hereby notified that disclosing, disseminating, or copying this message or any attachments to it is prohibited. Thank you.

<13-087plm.doc>

From: Mike Hawker <mhawker@gci.net>
Sent: Thursday, August 08, 2013 5:01 PM
To: Mark Pfeffer
Subject: Re: Comments on Extension of Lease Amendment #3

Yep. M

On Aug 8, 2013, at 4:43 PM, Mark Pfeffer <MPfeffer@PfefferDevelopment.com> wrote:

Well. Here we go!

I'll dig into this. Once I've identified All of the math errors and bad assumptions ill get with Do. At AHFC and see if be agrees. if he does (they can produce the memo that settles up the issues.)

Jeez! & double Jeez!

Sent from my iPhone

Asked for this memo to dispute Pam Varni's analysis

On Aug 8, 2013, at 2:27 PM, "Mike Hawker" <mhawker@gci.net> wrote:

Begin forwarded message:

From: "Rep. Mike Hawker" <Rep.Mike.Hawker@akleg.gov>
Date: August 8, 2013, 2:22:05 PM AKDT
To: Hawker Michael <mhawker@gci.net>
Subject: Fwd: Comments on Extension of Lease Amendment #3

Begin forwarded message:

From: "Pamela Varni" <Pamela.Varni@akleg.gov>
To: "Rep. Mike Hawker" <Rep.Mike.Hawker@akleg.gov>
Cc: "Juli Lucky" <Juli.Lucky@akleg.gov>
Subject: Comments on Extension of Lease Amendment #3

Dear Mike - as you requested, attached are my comments on the Extension of Lease and Lease Amendment No. 3 with some additional documentation.

You might not want to change anything but I

wanted to show you some comparisons and some of
my concerns.

Pam

Pam Varni, Executive Director
Legislative Affairs Agency
State Capitol, Room 3
Juneau, AK 99801-1182
Main line (907) 465-3800
Direct line (907) 465-6622
Cell phone (907) 209-1942

<Extension of Lease Comments.docx>

<Research Report - 1 pg comparison.pdf>

<Chart of Executive Branch Anchorage Leases.pdf>

From: Mark Pfeffer
Sent: Tuesday, September 17, 2013 5:04 PM
To: Timothy Lowe; Mike Buller; Doc Crouse
Cc: ncedergr@ahfc.us
Subject: Clean version of final budget adn lease calculation.

Gentlemen,

Attached are clean final versions of budget and lease calculation.

Asked for the
missing
attachments

The new lease rate of \$247,756 assumes

- NNN,
- an escalator and
- that the Tenant pays \$7,500,000 (vs. \$7,685,000.)

I trust that Tim will do the same math that generated the "Level Rent" rate burdened with "Lessor obligations" and that would be the number inserted into the lease. The \$7,500,000 in the lease can remain the same.

ALSO NOTE paragraph 1.1 d) will need some wordsmithing to remove the escalation language if we go with the flat rate. I assume Nola will cover this.

All of the above work for everyone? Besides the LLC documents is there a ball in my court?

Thanks Everyone

Mark Pfeffer

PFEFFER DEVELOPMENT, LLC
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907 646 4644 | f 907.646.4655 |

Cell Phone
907 317 8030

From: Mark Pfeffer
Sent: Tuesday, September 17, 2013 8:03 AM
To: Bob Acree
Subject: Fwd: LIO Building - Appraisal Status

Sent from my iPad

Begin forwarded message:

From: Timothy Lowe <tlowe@waronzof.com>
Date: September 17, 2013, 7:58:20 AM AKDT
To: Mike Buller <mbuller@ahfc.us>
Cc: Doc Crouse <dcrouse@ahfc.us>, Mark Pfeffer <MPfeffer@PfefferDevelopment.com>
Subject: LIO Building - Appraisal Status

Mike:

Asked for this model that had been sent the day before.

It is Tuesday morning, just before 9 am. I am continuing to work on the report but it is not done yet. I have two meetings mid-day that I must attend, but will otherwise be working on the report. No surprises, just grinding away. Consistent with my updated model sent yesterday, the market rent conclusion - no tenant improvements included (tenant funds them), remains at \$3,6122,000 per year, or \$301,000 per month. This includes underlying NNN rent at \$289,012/month and "service obligations of the landlord at \$11,967 per month.

I will keep you posted. Call with questions or comments.

Tim Lowe

Timothy Lowe, MAI, CRE, FRICS
Waronzof Associates, Inc.
999 North Sepulveda Boulevard Suite 440
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310.600.2933 M
tlowe@waronzof.com
www.waronzof.com

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

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Case No.: 3AN-15-05969CI

Plaintiff,

v.

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

Defendants.

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

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

Summary judgment is appropriate here. ABI does not dispute any of the facts identified in LAA's motion for summary judgment.¹ ABI concedes that it waited more than 17 months after it concluded the LIO lease was allegedly contrary to AS 36.30.083 before filing suit. ABI also concedes that it waited until after LAA and 716 West spent tens of millions of dollars on the renovation of the LIO building – indeed, until after the renovation was basically complete and the building was reopened for public business – before it first alerted LAA of any concerns with the LIO lease. With no material facts in dispute, these concessions compel a conclusion that ABI's complaint should be dismissed under the doctrine of laches because it delayed bringing any claim for an unreasonable amount of time and both LAA and 716 West were unduly harmed by that delay.

Unable to dispute any of the material facts, ABI makes three dubious arguments in an effort to salvage its claim. LAA addresses each in turn.

I. ABI'S DELAY WAS UNREASONABLE.

ABI does not dispute that it delayed bringing any claim about the LIO lease until more than 15 months after construction began in earnest on the renovation project. ABI also does not dispute that it had no indication, once construction began on the renovation project in December 2013, that LAA would voluntarily reverse course and declare the LIO lease void due to any supposed inconsistency with the State Procurement Code. ABI nevertheless waited until late March 2015 to file suit challenging the legality of the LIO lease. This delay was patently unreasonable.

¹ LAA uses the same abbreviations from its opening brief.

ABI complains that the “extremely short time frame” between the project announcement and the anticipated start of demolition work “made suing to stop it not feasible.”² ABI’s operative complaint contains only ten numbered paragraphs and a prayer for relief, spanning a mere three pages.³ There is no evidence in the record as to why it was infeasible for ABI to draft and file a three-page complaint in the two months before construction began or immediately thereafter. In any event, *City and Borough of Juneau v. Breck* forecloses this argument.⁴ In that case, Ms. Breck first became aware of possible procurement code violations in March 1984 and the construction began in May – two months later.⁵ Here, ABI believed that the LIO lease was inconsistent with the State Procurement Code when the project was first announced in October 2013. Construction began two months later, in December – just as in *Breck*.⁶ The Alaska Supreme Court had no difficulty finding that the doctrine of laches applied in *Breck* when Ms. Breck had two months to bring suit before construction began yet she unreasonably delayed filing for an additional three months.⁷ ABI similarly had two months to bring suit before construction began yet it unreasonably delayed bringing suit for an additional *fifteen* months. ABI makes no attempt to distinguish *Breck*.

² Opposition to Defendant Legislative Affairs Agency’s Motion for Summary Judgment Under the Laches Doctrine (“Opp.”) at 5.

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

⁴ 706 P.2d 313 (Alaska 1985).

⁵ *Id.* at 314.

⁶ While demolition was originally anticipated to start in mid-November 2013, construction actually began in roughly early December 2013, as Mr. Gottstein testified. See Exh. B to Legislative Affairs Agency’s Memorandum in Support of Motion for Summary Judgment Under the Laches Doctrine (“LAA Mem.”) at 44:11-14.

⁷ See *Breck*, 706 P.2d at 315-16.

ABI argues that its 15-month delay in bringing suit should nevertheless be excused because ABI was concerned that 716 West might cause retaliatory damage to the Alaska Building if ABI brought a legal challenge and failed.⁸ While ABI colorfully claims that 716 West “threatened” to cut off the gas to the Alaska Building prior to construction or to remove a part of the shared wall during construction,⁹ a close reading reveals that there is no causal link between any construction options considered by 716 West and ABI’s concerns about the project’s legality, which ABI expressed to 716 West’s lawyer in October 2013 when the project was first announced.¹⁰ Instead, these so-called “threats” were merely options that 716 West considered regarding how to handle the construction that were resolved amicably. ABI alleges no specific facts to suggest that these construction choices were or could have been related to ABI’s concerns with the legality of the project. Indeed, ABI’s president testified that no one ever threatened any retaliatory damage to the Alaska Building for any reason.¹¹ He also confirmed that 716 West’s lead counsel, Don McClintock, never suggested that ABI might be subject to some sort of retaliatory damage if it continued to express its concerns with the project.¹²

ABI’s subjective – and completely unfounded – suspicion about potential retaliatory damage does not render its 15-month delay in bringing suit “reasonable.” There is no evidence to suggest that 716 West would have retaliated against ABI for

⁸ See Opp. at 3-5.

⁹ See *id.* at 3, 5.

¹⁰ LAA Mem. at 3.

¹¹ See Exh. 1 to Opp. at 11 (page 141:15-24).

¹² See *id.* at 11-12 (pages 141:25-142:4).

bringing a legal challenge. ABI's professed concern is all the more perplexing and unreasonable because, as the Court is aware, ABI was fully indemnified for any negligent damage caused by the construction.¹³ 716 West therefore had every incentive to avoid damaging the Alaska Building during the construction, independent of any complaint ABI may have filed concerning the lease. ABI's baseless subjective worries are not grounded in any specific facts arising from admissible evidence that could show a genuine issue of material fact sufficient to defeat LAA's motion for summary judgment.¹⁴ Even assuming that ABI genuinely worried about potential retaliatory damage, despite the undisputed evidence that no one ever threatened any such damage and that ABI was indemnified for any negligent damage, that does not render ABI's 15 month delay in bringing its claim reasonable.

II. ABI'S UNREASONABLE DELAY PREJUDICED LAA AND 716 WEST.

The Alaska Supreme Court has held that "[t]he prejudice aspect of the defense of laches applies primarily where money or valuable services will be wasted as a result of

¹³ See Complaint ¶ 6 (filed March 31, 2015) (quoting the Access, Indemnity, and Insurance Agreement that was entered into between ABI and 716 West: "The contractor employed by 716 to complete the Project . . . shall defend, indemnify and hold harmless [ABI] 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 . . .").

¹⁴ See, e.g., *Kollander v. Kollander*, 322 P.3d 897, 904 (Alaska 2014) (affirming application of laches doctrine despite appellee's claim that was "as diligent in pursuing a remedy as a reasonable soul could be, especially one so rattled by the prospect of litigation"); see also *Breck*, 706 P.2d at 316 (applying the laches doctrine despite the trial court's finding that the plaintiff "did the best she could in the circumstances" because she lacked sufficient resources to bring suit earlier).

the unreasonable delay, assuming the suit to be ultimately successful.”¹⁵ LAA showed in its opening brief that ABI’s unreasonable delay in bringing this action resulted in LAA spending \$7.5 million in tenant improvements for the LIO project. If ABI’s suit is successful, ABI’s lease will be, in effect, voided,¹⁶ and that \$7.5 million will have been wasted. ABI does not dispute this loss, but cavalierly argues that LAA will nevertheless not be prejudiced because it suggests the Court could make LAA whole through various damages remedies. ABI’s argument misses the mark.

ABI strains to find unprecedented ways in which the Court could impose “other potential remedies that make the Legislative Affairs Agency whole” if ABI’s claim succeeds.¹⁷ ABI thus acknowledges that LAA would suffer a loss and would need to be “made whole.” ABI claims that the loss of \$7.5 million in tenant improvements could be reimbursed to LAA through a “credit for future rent” from 716 West.¹⁸ If the lease is voided, however, the landlord-tenant relationship would be terminated. There is no guarantee that either LAA or 716 West would be willing or able to proceed with a new lease under some different and unknown terms. It would then be impossible for LAA to be made whole through any “credits” for future rent. Not surprisingly, ABI offers no legal support whatsoever for its labored financial shuffling.

¹⁵ *Bibo v. Jeffrey’s Restaurant*, 770 P.2d 290, 293 (Alaska 1989).

¹⁶ *See infra* Section III.

¹⁷ Opp. at 6.

¹⁸ *Id.* at 7.

Ultimately, ABI's argument proves too much. ABI argues that voiding the lease would "not necessarily result in a monetary loss" and thereby prejudice for LAA because the Court could award some damages or other relief that would compensate LAA for its loss.¹⁹ The problem with this conceptual approach is self-evident: Under ABI's theory, there can never be "prejudice" if the Court always has the ability to "make whole" any defendant who has been harmed by a late-filed suit. Money can never be "wasted" (and result in "prejudice" for purposes of the laches doctrine) because the Court could simply award sufficient damages to offset any waste; the laches doctrine would be neutered. But that is not the law. When a late-filed suit would potentially result in millions of wasted funds – as with the construction procurement in *Breck*, and here – that constitutes "prejudice."²⁰

ABI also makes a four-sentence argument – again, with no legal support – that LAA would not be prejudiced if the Court in effect voided the LIO lease because LAA allegedly should be paying less under AS 36.30.083(a).²¹ ABI appears to argue that the would-be \$7.5 million in wasted funds for tenant improvements should be ignored because LAA is purportedly being charged too much, and LAA would allegedly enjoy a net cost-savings if the lease was voided. An identical argument was made and rejected in *Breck*. In that case, Ms. Breck argued that "rebidding in the proper manner will result in

¹⁹ See *id.*

²⁰ See *Breck*, 706 P.2d at 316-17.

²¹ See *Opp.* at 7.

a substantial savings for the City and Borough.”²² The Alaska Supreme Court rejected Ms. Breck’s argument concerning supposed net savings, noting that the defendant’s evidence showing \$1.5 to \$2 million in additional costs was not contested by Ms. Breck.²³ Likewise, ABI does not contest that LAA will suffer a loss of \$7.5 million of wasted tenant improvements if the lease is voided but merely offers far-flung hypotheticals with no factual support to offset that guaranteed loss. ABI simply believes there is a chance that voiding the lease would result in “savings” because of its understanding of market rents.²⁴ But the affidavit cited by ABI does not demonstrate that there is any alternative space available for LAA to use at ABI’s preferred rates (let alone any space that meets LAA’s requirements). Even if Mr. Norene’s estimates of the fair market rents were accurate, which they are not, ABI has not identified any tangible savings that LAA would enjoy if the lease was voided. ABI simply assumes, with no factual support, that some unknown landlord would provide some unknown space in some unknown location at the rents identified by Mr. Norene. ABI has not identified any actual concrete savings that LAA would receive if the lease was voided, much less any savings that would offset the guaranteed loss of \$7.5 million in wasted tenant improvements for the LIO building. LAA would be prejudiced if ABI’s lawsuit is successful.

²² *Breck*, 706 P.2d at 316 n.15.

²³ *See id.*

²⁴ *See Opp.* at 7.

III. THE LACHES DOCTRINE APPLIES TO ABI'S DECLARATORY JUDGMENT CLAIM.

ABI asks this Court to declare that the LIO lease is "illegal, null and void"²⁵ – or at the very least declare that the lease is "illegal."²⁶ ABI asserts that this declaration would cause no prejudice to LAA and therefore the laches doctrine does not apply.²⁷ Oddly, ABI appears to concede that declaratory relief that the LIO lease is null and void is "perhaps" akin to injunctive relief and would prejudice LAA.²⁸ This much seems undeniable, since LAA would have no right to remain in the building under a null and voided lease and would therefore be forced to abandon \$7.5 million in tenant improvements that it already paid for in the building.

Despite this, ABI suggests that a judgment "that just declares the lease illegal" would not cause any harm or prejudice to LAA.²⁹ ABI offers no factual or legal support for its contention attempting to distinguish a declaration of "null and void" from "illegal."³⁰ ABI's requested relief is conjunctive, not disjunctive, as it seeks a declaratory judgment that the LIO lease is "illegal, null *and* void."³¹ ABI's acknowledgment that a declaratory judgment rendering the LIO lease null and void is "akin to injunctive relief"

²⁵ Second Amended Complaint, Prayer A.

²⁶ Opp. at 8.

²⁷ See *id.* at 7-8. It is clear that the laches doctrine applies to claims for declaratory relief. See *Breck v. Ulmer*, 745 P.2d 66, 68 (Alaska 1987) (noting that Ms. Breck's request for declaratory relief was barred by the doctrine of laches). Ms. Breck had sought a declaration that the contract for a construction project was illegal and void because it violated procurement rules requiring competitive bidding. See *Breck*, 706 P.2d at 313.

²⁸ See Opp. at 8.

²⁹ *Id.*

³⁰ See *id.*

³¹ Second Amended Complaint, Prayer A (emphasis added).

effectively confirms that the laches doctrine should apply here. In any event, ABI's belated effort to focus just on the alleged illegality of the lease fares no better. A contract that is illegal because it is directly contrary to a statute is unenforceable.³² Accordingly, if the LIO lease was declared to be illegal then LAA would be prejudiced because it would be unable to enforce its rights to remain as a tenant in a building where it had paid for \$7.5 million in tenant improvements.

ABI's musings about some hypothetical and unarticulated relief to offset the guaranteed prejudice that would result from a declaratory judgment that the LIO lease is contrary to AS 36.30.083 are wholly lacking. ABI does not cite a single case in support of its theory.³³ As confirmed by the affidavit of Jessica Geary, LAA's Finance Manager, LAA will suffer a loss of \$7.5 million in abandoned tenant improvements if the LIO lease is determined to be void and unenforceable. ABI has presented zero evidence, or even credible argument, that LAA will not sustain that loss. This constitutes precisely the type of prejudice that the laches doctrine is intended to protect against.

³² See, e.g., *Pavone v. Pavone*, 860 P.2d 1228, 1231 (Alaska 1993) ("We have no power, either in law or in equity, to enforce an agreement which directly contravenes a legislative enactment."); see *id.* at 1232 (finding that an agreement was unenforceable because it directly contravened a statute); *Jimerson v. Tetlin Native Corp.*, 144 P.3d 470, 472-74 (Alaska 2006); see also *Leisnoi, Inc. v. Merdes & Merdes, P.C.*, 379 P.3d 879, 888-89 (Alaska 2013).

³³ Opp. at 9.

IV. CONCLUSION

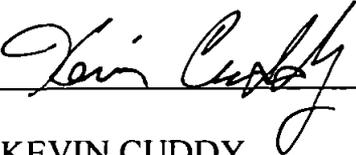
LAA's motion for summary judgment should be granted because there are no material facts in dispute and the laches doctrine applies to the undisputed facts.³⁴ The undisputed facts are that ABI knew about the alleged violation of the statute by October 2013; ABI knew that the project was not going to stop as of December 2013 but took no action for 15 months; LAA spent \$7.5 million on tenant improvements (and 716 West spent tens of millions renovating the building) in the interim; and LAA stands to lose its \$7.5 million investment if the lease is now voided. ABI argues that its delay was "reasonable" because it purportedly believed there would be retaliation against the building if ABI sued to stop the construction. In order to rule on this motion for summary judgment, the Court does not need to address whether ABI really believed that there would be retaliation. The Court may decide, based on the undisputed facts, that the application of laches is warranted because ABI unreasonably delayed bringing its claim, LAA was prejudiced by this delay, and ABI's excuse for not bringing suit earlier was unreasonable in light of the facts that no one ever threatened any retaliatory damage to the building and ABI had an indemnification agreement in hand for any such damage.

For the foregoing reasons, Legislative Affairs Agency's motion should be granted and Plaintiff's lawsuit should be dismissed with prejudice.

³⁴ See *Nat'l Ass'n of Gov't Employees v. City Pub. Serv. Bd. of San Antonio, Texas*, 40 F.3d 698, 707 (5th Cir. 1994) ("[T]o the extent that the facts relevant to laches are undisputed on summary judgment, the abuse of discretion standard applies. Put another way, as long as the district court applies the correct legal standard on summary judgment and does not resolve disputed issues of material fact against the nonmovant, its determination of whether the undisputed facts warrant an application of laches is reviewed for abuse of discretion.").

DATED: November 16, 2015

STOEL RIVES LLP

By: 

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

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on November 16, 2015, a true and correct copy of the foregoing was served via first class mail on:

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

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

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


Debby Allen, Practice Assistant

LEGISLATIVE AFFAIRS AGENCY'S REPLY ISO MOTION FOR SUMMARY JUDGMENT (LACHES)
ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI
Page 11

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED
STATE OF ALASKA
THIRD DISTRICT
2015 NOV 10 PM 3:28
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

Case No. 3AN-15-05969CI

OPPOSITION TO MOTION FOR PROTECTIVE ORDER

Plaintiff Alaska Building, Inc., opposes the Motion for Protective Order filed by defendant 716 West Fourth Avenue LLC (716 LLC).

A. The Motion for Protective Order is Defective

Civil Rule 26(c) requires that a motion for a protective order be "accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action." 716 LLC did not comply with this requirement in spite of Alaska Building, Inc., inviting it to do so. In fact, on September 24, 2015, counsel wrote to counsel for 716 LLC with respect to 716 LLC withholding material on the ground it was confidential or proprietary that, "The proper procedure is to first try to negotiate a protective order under Civil Rule 26(c), and failing that, to move for an appropriate protective order." Exhibit 1, page 1. 716 LLC, declined this invitation to negotiate a protective order and never conferred with counsel for Alaska

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D

Building, Inc., about a protective order. 716 LLC's Motion for Protective Order thus does not include the required accompanying certification and by all rights should be denied on that basis.

However, Alaska Building, Inc., believes, as it stated at footnote 4 of its Memorandum in Support of Motion to Compel Responses to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC (Motion to Compel) that "a protective order is probably appropriate with respect to personal financial information." In addition, Alaska Building, Inc., addresses the merits so the parties can just move on and discovery proceed without further delays by 716 LLC. A proposed discovery order is filed contemporaneously herewith that protects personal financial information and allows 716 LLC the opportunity to make the required particularized showing of good cause that is required for a protective order.

B. 716 LLC's Complaint About Public Dissemination Is Misplaced

First, though, Alaska Building addresses the erroneous charge that Alaska Building, Inc., acted improperly to make discovery publicly available since the Motion for Protective Order was explicitly prompted by the public dissemination of material provided by 716 LLC in discovery. . 716 LLC asserts it is improper to publicly disseminate discovery materials, but the Motion for Protective Order is devoid of any authority other than the inapposite case of *McCormick v. Chippeway, Inc.*, 330 P.3d 345 (Alaska 2014). However, it is clear that absent a valid protective order, parties to litigation have a constitutionally protected right to disseminate materials obtained during discovery as they see fit. *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 780 (1st Cir. 1988); *Oklahoma Hosp. Ass'n v.*

*Opposition to Motion for
Protective Order*

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Oklahoma Pub. Co., 748 F.2d 1421, 1424 (10th Cir.1984), *cert. denied*, 473 U.S. 905, 105 S.Ct. 3528 (1985). *Jepson, Inc. v. Makita Elec. Works, Ltd.*, 30 F.3d 854, 858 (3rd Cir. 1994), similarly held that absent a protective order, parties to a law suit may disseminate materials obtained during discovery as they see fit. In *Estate of Frankl v. Goodyear Tire and Rubber Co.*, 853 A.2d 880, n5 (N.J. 2004), the New Jersey Supreme Court noted that absent a protective order, parties may voluntarily disclose discovery documents.

Alaska Building, Inc., did not abuse the discovery process; 716 LLC simply did not take the well-established step of seeking a protective order to prevent disclosure, despite being invited to do so.

C. 716 Has Made No Showing of Good Cause

Under Civil Rule 26(c), the moving party must show good cause for a protective order. 716 LLC has made no showing at all. Counsel did not find any Alaska Cases interpreting Civil Rule 26(c)'s good cause requirement, so it will cite cases interpreting the similar Federal Rule.

716 LLC is requesting what is known as a "blanket" protective order, applying to all discovery. *San Jose Mercury News, Inc. v. U.S. Dist. Court, District of Northern California*, 187 F.3d 1096, 1103 (9th Cir. 1999) discusses the inherently infirm nature of such a protective order as follows:

It is well-established that the fruits of pretrial discovery are, in the absence of a court order to the contrary, presumptively public. Rule 26(c) authorizes a district court to override this presumption where "good cause" is shown.

In the instant case, the district court entered a blanket stipulated protective order pursuant to Rule 26(c). Such blanket orders are inherently subject to challenge

and modification, as the party resisting disclosure generally has not made a particularized showing of good cause with respect to any individual document.

(Citations omitted.)

San Jose Mercury mentions the requirement that there be a particularized showing of good cause for protection of each document. This was explicitly stated a few years later in *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir 2003):

Any such [Rule 26(c) protective] order, however, requires that the court's determination "identify and discuss the factors it considered in its 'good cause' examination to allow appellate review of the exercise of its discretion." *Phillips v. Gen. Motors*, 307 F.3d 1206, 1212 (9th Cir.2002).

A party asserting good cause bears the burden, for each particular document it seeks to protect, of showing that specific prejudice or harm will result if no protective order is granted. *Id.* at 1210-11 (citing *San Jose Mercury News*, 187 F.3d at 1102); see also *Beckman*, 966 F.2d at 476 ("[B]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test.") (quoting *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d Cir.1986) (internal quotation marks omitted)); *Deford v. Schmid Prods. Co.*, 120 F.R.D. 648, 653 (D.Md.1987) (requiring party requesting a protective order to provide "specific demonstrations of fact, supported where possible by affidavits and concrete examples, rather than broad, conclusory allegations of potential harm").

To the same effect is *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786-787 (3rd Cir. 1994):

"Good cause is established on a showing that disclosure will work a clearly defined and serious injury to the party seeking closure. The injury must be shown with specificity." *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir.1984). "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning," do not support a good cause showing. *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d Cir.1986), *cert. denied*, 484 U.S. 976, 108 S.Ct. 487, 98 L.Ed.2d 485 (1987). The burden of justifying the confidentiality of each and every document sought to be covered by a protective order remains on the party seeking the order. *Id.* at 1122.

(footnote omitted.)

*Opposition to Motion for
Protective Order*

Civil Rule 26(c) allows protective orders to be issued when good cause has been shown to protect against embarrassment, but this is a high bar:

[B]ecause release of information not intended by the writer to be for public consumption will almost always have some tendency to embarrass, an applicant for a protective order whose chief concern is embarrassment must demonstrate that the embarrassment will be particularly serious. As embarrassment is usually thought of as a nonmonetizable harm to individuals, it may be especially difficult for a business enterprise, whose primary measure of well-being is presumably monetizable, to argue for a protective order on this ground. Cf. *Joy v. North*, supra (a protective order will not issue upon the broad allegation that disclosure will result in injury to reputation); to succeed, a business will have to show with some specificity that the embarrassment resulting from dissemination of the information would cause a significant harm to its competitive and financial position.

Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1121 (3rd Cir. 1986).

The extent to which there is a First Amendment component restricting the scope of protective orders is discussed in *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 6-7 (1st Cir. 1986). This is particularly germane here because of the intense public interest in this case.

Filed contemporaneously herewith is a proposed discovery order which Alaska Building, Inc., believes adequately protects confidential material and ensures that protection is afforded only to material so entitled

D. Alaska Building, Inc., Should Not Bear the Cost of 716 LLC's Redactions

716 LLC alternatively requests that Alaska Building, Inc., be forced to bear the costs of redacting documents. This is not proper. If 716 LLC wants to protect certain information through redactions it should bear its own costs in doing so. Alaska Building, Inc., is not waiving the right to assert such redactions are improper.

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*Opposition to Motion for
Protective Order*

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E. Conclusion

For the foregoing reasons, 716 LLC's Motion for Protective Order should be **DENIED** without prejudice to seek protection of documents pursuant to the proposed discovery order filed contemporaneously herewith.

Dated November 10, 2015.

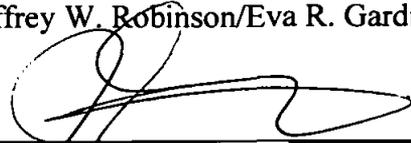


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

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

Dated November 10, 2015.



Jim Gottstein

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*Opposition to Motion for
Protective Order*

Page 6 of 6

001545

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September 24, 2015

Jeffrey L. Robinson
Ashburn & Mason
1227 W. 9th Ave., Ste. 200
Anchorage, AK 99501

Re: 716 LLC's Responses to Alaska Building, Inc's First
Requests for Production; *Alaska Building, Inc., v. 716 West
Fourth Avenue LLC, et al.*, Anchorage Superior Court Case
No. 3AN-15-5969CI

Dear Mr. Robinson:

This is an attempt under Civil Rules 34(b) and 37(d) to resolve without court action your failure to provide certain requested documents under Civil Rule 34 in response to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC (Production Requests).

You have objected to producing documents on the following grounds:

1. They are confidential and/or proprietary.
2. They are protected by the attorney client privilege, work product doctrine.
3. They are not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

First, that documents are confidential and/or proprietary is no justification for withholding them. *Lockwood v. Geico*, 323 P.3d 691, 699-700 (Alaska 2014). The proper procedure is to first try to negotiate a protective order under Civil Rule 26(c), and failing that, to move for an appropriate protective order. *Id.*

Second, Civil Rule 26(b)(5), expressly requires you to provide sufficient information with respect to documents withheld on privilege grounds to enable the plaintiff to challenge any claims of privilege:¹

(5) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Third, your relevance objection is misplaced. As the Alaska Supreme Court reiterated in *Lockwood*, 323 P.3d at 699, the "relevancy standard is to be broadly construed at the discovery stage." In fact, in light of my previously informing you of the relevance of 716 LLC's financial information, it is disingenuous at best to claim lack of relevance. I have spoken with you in person about its relevance as well as written you. See, attached e-mails. In a nutshell, it is

¹ See, *Lee v. State*, 141 P.3d. 232, n1 of Appendix, adopted by reference, 141 P.3d. 351.

Jeffrey L. Robinson
September 24, 2015
Page 2

probable to highly probable that at least Mr. Pfeffer is sucking out all funds in excess of that needed to operate the building, which will leave 716 LLC even more unable to pay any award. As you know, my client believes excess payment to 716 LLC is accumulating at over \$175,000 per month. You can expect a motion for a preliminary injunction to sequester funds along the lines of the attached e-mails.

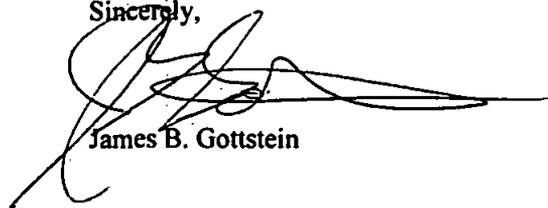
The relevance of the Operating Agreement also goes to the ability to pay back overpayments as well as whether 716 LLC is essentially a completely different entity other than having the same name. Publicly available documents show that Mr. Pfeffer is now the Manager, apparently in sole control. This is relevant to whether the contract between the Legislative Affairs Agency and 716 LLC is an extension. It is also possible Mr. Pfeffer has agreed to indemnify Mr. Acree for any costs associated with the agreement being illegal under AS 36.30.083(a).

You also objected to producing documents related to the LIO Lease complying with the requirement in AS 36.30.083(a) that it extend a real property lease (Request for Production No. 6) on the grounds that these documents "would be in the possession of the Legislative Affairs Agency," and related assertions. If your client has no such documents in its possession, it should just respond thusly. If, it does have such documents in its possession, it is required to produce them.

You also objected to providing documents relating to payments by the Legislative Affairs Agency for what is called renovations (Request for Production No. 8), on the grounds that (a) it is duplicative of requests made to Pfeffer Development LLC (Pfeffer Development), and (b) they relate to business activities of third parties not named in Count One. Neither of these objections are well taken, even leaving aside that Pfeffer Development is no longer in the case and has refused to respond to the requests for production served on it for that reason.

It is my hope that your client will comply with its discovery obligations as outlined herein without court action. I will also call to confer about this in an attempt to resolve this.

Sincerely,



James B. Gottstein

cc: *via e-mail*

Enc.

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.)

#29
AFFIDAVIT OF JEFFREY W. ROBINSON IN SUPPORT OF UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR 716 TO FILE REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR SUMMARY JUDGMENT UNDER THE LACHES DOCTRINE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case, and submit this affidavit in support of 716 West Fourth Avenue, LLC's Unopposed Motion to Extend Filing Deadline for 716 to file a Reply to Plaintiff's Opposition to Defendant Legislative Affairs Agency's Motion for Summary Judgment Under the Laches Doctrine. I have personal knowledge of all facts described herein.

ASHBURN & MASON P.C.
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ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

2. The deadline to reply to Plaintiff's opposition is 11/17/2015. Plaintiff has agreed to allow Defendant to file a reply by November 20, 2015. This matter was discussed, and agreed to, by parties' counsel in an email dated November 6, 2015. Counsel for 716 will be out of state from 11/3-11/9 and has numerous other matters to attend to immediately prior to departure and upon return.

3. 716 agreed to extend to Mr. Gottstein additional time to reply to other motions should he need more time.

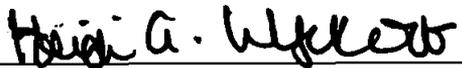
4. This motion is not made for purposes of undue harassment or delay.

FURTHER YOUR AFFIANT SAYETH NAUGHT.



Jeffrey W. Robinson

SUBSCRIBED AND SWORN to before me this 9th day of November, 2015.



NOTARY PUBLIC in and for Alaska
My Commission Expires: 11/2016



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AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR
716 TO REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT UNDER THE LACHES DOCTRINE
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
facsimile U.S. Mail on the 9th day of October 2015, on:

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Anchorage, Alaska 99501

Kevin Cuddy
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ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

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AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR
716 TO REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT UNDER THE LACHES DOCTRINE
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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.)

NOTICE OF FILING ORIGINAL AFFIDAVIT OF JEFFREY W. ROBINSON

Defendant 716 West Fourth Avenue, LLC'S Unopposed Motion to Extend Filing
Deadline for 716 to Reply to Plaintiff's Opposition to Defendant Legislative Affairs
Agency's Motion for Summary Judgment Under the Laches Doctrine was filed with an
unsigned Affidavit of Jeffrey W. Robinson. Attached to this notice is the original
Affidavit.

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

DATED: 11-9-15

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
 facsimile U.S. Mail on the 9th day of October 2015, on:

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

FILED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT
2015 NOV -9 PM 3:32

CLERK TRIAL COURTS
BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

Case No. 3AN-15-05969CI

**REPLY Re:
MOTION FOR PRELIMINARY INJUNCTION**

The opposition by 716 West Fourth Avenue LLC (716 LLC) to Alaska Building, Inc.'s Motion for Preliminary Injunction (Opposition) supports granting the Motion for Preliminary Injunction by essentially admitting that (a) it will not be able to pay back rent it has received in excess of that allowed by AS 26.30.083(a), and (b) it is distributing funds to its owners.

716 LLC argues that since the entity 716 West Fourth Avenue LLC "has operated as landlord to the LIO for the past 23 years" there should be no concern about its ability to pay back the money, yet, tellingly, Mr. Pfeffer's affidavit does not affie that 716 LLC is going to be able to pay back money it has received in excess of what is allowed under AS 36.30.083(a). 716 LLC also (a) essentially admits its owners are pulling cash out of 716

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
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001553

LLC, and (b) is resisting discovery that should reveal whether it will be able to pay back rent it has received in excess of that allowed by AS 36.30.083(a).¹

716 LLC states it is "expecting a monthly rate of return on its investment" which is "not de minimus."² This must mean payments to 716 LLC's owners because 716 LLC is receiving the money. The requested preliminary injunction does not prevent that rate of return to the extent that 716 LLC is not ordered to pay back rent it has received in excess of that allowed by AS 36.30.083(a). The money is just not allowed to be dissipated to its owners during the pendency of this action if the preliminary injunction is issued.

716 LLC argues that Alaska Building, Inc., does not suffer harm if the preliminary injunction is not granted. This is true, but this suit is on behalf of the State of Alaska and the State of Alaska will suffer irreparable harm to the extent that it will not be able to collect on an order to pay back rent 716 LLC has received in excess of that allowed by AS 36.30.083(a) that has been dissipated to its owners.³

In sum, nothing in 716 LLC's Opposition changes that Alaska Building, Inc., has established that (1) the State of Alaska is faced with irreparable harm; (2) 716 LLC is adequately protected; and (3) Alaska Building, Inc., has raised serious and substantial

¹ This is one of the categories of documents 716 LLC has failed to produce and is one of the subjects of the pending Motion to Compel.

² Opposition, page 15.

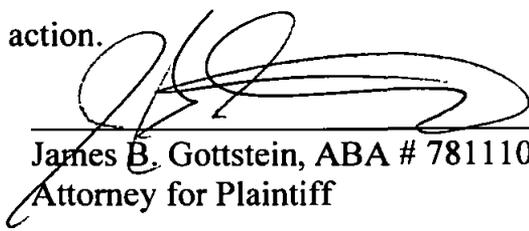
³ There is the possibility of trying to pierce the limited liability company shield, but this is an uncertain remedy and after Alaska Building, Inc., suggested resort to piercing the limited liability company shield might be needed, it appears Mr. Pfeffer transferred his interest in 716 LLC to a special type of trust designed to protect assets from creditors. See, footnote 9 of Opposition To 716's Motion For Ruling Of Law Precluding ABI's Claims For Qui Tam And Punitive Damages.

*Reply Re: Motion for
Preliminary Injunction*

questions going to the merits of the case, thus satisfying the criteria for the issuance of the preliminary injunction. *Holmes v. Wolf*, 243 P.3d 584, 589, 591, (Alaska 2010). In fact, Alaska Building, Inc., has gone beyond raising serious and substantial questions going to the merits, and has established probable success on the merits, which entitles it to the preliminary injunction even if the harm to the State of Alaska is not irreparable, or 716 LLC cannot be adequately protected. *Id.*

Finally, 716 LLC raises a laches defense, but that goes to whether the whole case should be dismissed, not whether Alaska Building, Inc., delayed unreasonably in filing its Motion for Preliminary Injunction and 716 LLC suffers undue harm or prejudice if the preliminary injunction is granted. 716 made no argument whatsoever that Alaska Building, Inc., delayed unreasonably in filing the Motion for Preliminary Injunction. 716 LLC does argue in another context that its owners will be harmed by not receiving money, but that is not harm to 716 LLC, and in any event, the harm or prejudice is slight, far less the "undue" harm or prejudice required for a successful laches defense, since it just means distributions to the owners will be delayed during the pendency of this action in the unlikely event 716 LLC prevails in this action.

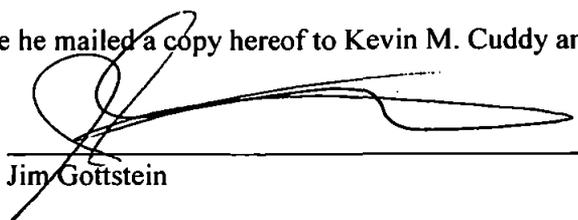
Dated November 9, 2015.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

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

Dated November 9, 2015.


Jim Gottstein

*Reply Re: Motion for
Preliminary Injunction*

Page 3 of 3

001555

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska corporation,

Plaintiffs,

vs.

716 WEST FOURTH AVENUE LLC, and LEGISLATIVE AFFAIRS AGENCY,

Defendants.

NOV -6 PM 4:45

BY: DEPUTY CLERK

Case No.: 3AN-15-05969 Civil

[PROPOSED] ORDER GRANTING THE UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR 716 TO REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR SUMMARY JUDGMENT UNDER THE LACHES DOCTRINE

This Court, having reviewed 716 West Fourth Avenue LLC's Unopposed Motion to Extend Filing Deadline for 716 to Reply to Plaintiff's Opposition to Defendant Legislative Affairs Agency's Motion for Summary Judgment Under the Laches Doctrine, and being duly advised in the premises, enters the following ORDER:

716 may file a reply by **November 20, 2015**.

DATED this 11 day of November, 2015.


HON. PATRICK J. MCKAY
Superior Court Judge

I certify that on 11/9/15 a copy of the following was mailed/axed/ hand-delivered to each of the following at their addresses of record.

James Gottstein
Jeffrey Roberson / Kevin Chalco
Administrative Assistant

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
facsimile U.S. Mail on the 6th 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 P.C.
LAWYERS
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[PROPOSED] ORDER RE UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR 716 TO REPLY TO PLAINTIFF'S
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT UNDER THE LACHES DOCTRINE
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

{10708-101-00301931;1}

FILED
 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD DISTRICT
 THIRD JUDICIAL DISTRICT AT ANCHORAGE
 2015 NOV -6 PM 4:45

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiff,)

vs.)

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

CLERK OF COURT
 BY: _____
 DEPUTY CLERK

Case No.: 3AN-15-05969 CI

**UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR
 716 WEST FOURTH AVENUE, LLC'S REPLY TO PLAINTIFF'S
 OPPOSITION TO DEFENDANT LEGISLATIVE AFFAIRS MOTION FOR
 SUMMARY JUDGMENT UNDER THE LACHES DOCTRINE**

Defendant 716 West Fourth Avenue, LLC ("716"), by and through counsel Ashburn & Mason, P.C., hereby moves the court to extend the deadline by which it is to reply to Plaintiff's opposition to Defendant Legislative Affairs Agency's Motion for Summary Judgment Under the Laches Doctrine. Plaintiff does not oppose this request. This motion is accompanied by the attached affidavit of counsel and proposed order.

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

DATED: 11-6-15

By: Lo Gosz
 Jeffrey W. Robinson
 Alaska Bar No. 0805038

ASHBURN & MASON P.C.
 LAWYERS
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 ANCHORAGE, ALASKA 99501
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
 facsimile U.S. Mail on the 6th 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
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ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

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UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR
716 TO REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT UNDER LACHES DOCTRINE
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil
{10708-101-00301929;1}

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.)

FILED in the TRIAL COURTS
STATE OF ALASKA, THIRD DISTRICT

NOV 06 2015

By _____ Clerk of the Trial Court Deputy

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.

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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.

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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.

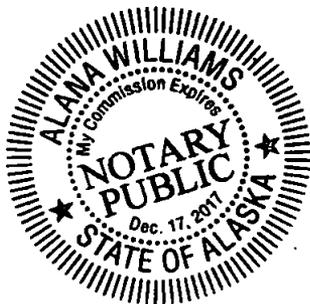
AFFIDAVIT OF MARK PFEFFER IN SUPPORT OF 716'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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

SUBSCRIBED AND SWORN to before me this 5th day of ~~October~~ ^{November}, 2015.

Alana Williams

NOTARY PUBLIC in and for Alaska
My Commission Expires: 12/17/17



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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-15-05969Civil

{10708-101-00300534;2}

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

ASHBURN & MASON INC.
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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-15-05969Civil

{10708-101-00300534;2}

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT ANCHORAGE

ALASKA BUILDING, INC., an Alaska corporation,

Plaintiff,

vs.

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

BY: DEPUTY CLERK

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: [Signature]
Jeffrey W. Robinson
Alaska Bar No. 0805038

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
 facsimile U.S. Mail on the 0th day of ~~October~~ 2015, on:
November

James B. Gottstein
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406 G Street, Suite 206
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Kevin Cuddy
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ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

ASHBURN & MASON P.C.
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE, 5

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiff,)

vs.)

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

2015 NOV 11 11:11 AM
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BY: _____
DEPUTY CLERK

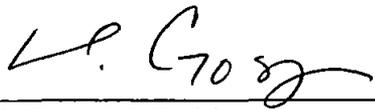
Case No.: 3AN-15-05969 CI

NOTICE OF FILING UNSIGNED AFFIDAVIT OF JEFFREY ROBINSON

Attached to 716 West Fourth Avenue, Unopposed Motion to Extend Filing Deadline for 716 to File Reply to Plaintiff's Opposition to Defendant Legislative Affairs Agency Motion for Summary Judgment Under the Laches Doctrine is the unsigned Affidavit of Jeffrey Robinson. Jeffrey Robinson is currently traveling out of state at the time of the filing of the Unopposed Motion and unavailable for signature. The signed affidavit will be filed as soon as it is received in the office of the undersigned.

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.
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile
 U.S. Mail on the 6th day of November 2015, on:

James B. Gottstein
Law Offices of James B. Gottstein
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Anchorage, Alaska 99501

Kevin Cuddy
Stoel Rives, LLP
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Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

ASHBURN & MASON P.C.
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

THIRD JUDICIAL DISTRICT AT ANCHORAGE -6 PM 6:45

ALASKA BUILDING, INC., an Alaska corporation,

Plaintiff,

vs.

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

Case No.: 3AN-15-05969 CI

BY: DEPUTY CLERK

AFFIDAVIT OF JEFFREY W. ROBINSON IN SUPPORT OF UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR 716 TO FILE REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR SUMMARY JUDGMENT UNDER THE LACHES DOCTRINE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case, and submit this affidavit in support of 716 West Fourth Avenue, LLC's Unopposed Motion to Extend Filing Deadline for 716 to file a Reply to Plaintiff's Opposition to Defendant Legislative Affairs Agency's Motion for Summary Judgment Under the Laches Doctrine. I have personal knowledge of all facts described herein.

ASHBURN & MASON INC.
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2. The deadline to reply to Plaintiff's opposition is 11/17/2015. Plaintiff has agreed to allow Defendant to file a reply by November 20, 2015. This matter was discussed, and agreed to, by parties' counsel in an email dated November 6, 2015. Counsel for 716 will be out of state from 11/3-11/9 and has numerous other matters to attend to immediately prior to departure and upon return.

3. 716 agreed to extend to Mr. Gottstein additional time to reply to other motions should he need more time.

4. This motion is not made for purposes of undue harassment or delay.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Jeffrey W. Robinson

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

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR
716 TO REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT UNDER THE LACHES DOCTRINE
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
facsimile U.S. Mail on the 6th 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 P.C.
LAWYERS
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AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION TO EXTEND FILING DEADLINE FOR
716 TO REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT UNDER THE LACHES DOCTRINE
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

S-16371

3AN-15-05969 CI

VOLUME 5

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

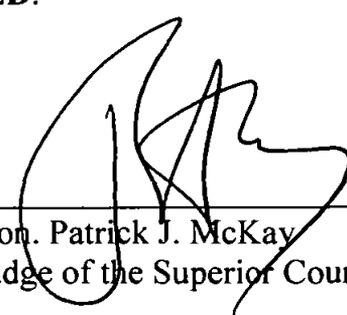
Defendants.

Case No. 3AN-15-05969CI

^{#176}
**ORDER GRANTING
UNOPPOSED MOTION FOR ENLARGMENT OF
TIME TO FILE REPLY TO LEGISLATIVE AFFAIRS
AGENCY'S OPPOSITION TO PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT (NOT
EXTENSION)**

Plaintiff Alaska Building, Inc.'s motion for an enlargement of time to file its Reply to the Legislative Affairs Agency's Opposition to Plaintiff's Motion for Partial Summary Judgment (Not Extension), until its reply to 716 West Fourth Avenue LLC's opposition to the same motion is due is hereby **GRANTED**.

Dated 2/8, 2016.


Hon. Patrick J. McKay
Judge of the Superior Court

I certify that on 2/10/16 a copy
of the following was ~~mailed/faxed/hand-delivered~~
to each of the following at their addresses of emailed
record. James Gottstein
Kevin Cuddy / Jeffrey Robinson
Administrative Assistant Ke

LAW OFFICES OF
JAMES B. GOTTSTEIN
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001573

FEB 5 2016

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

FILED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

2016 FEB -5 PM 1:36

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

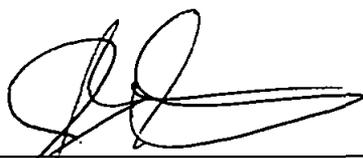
Defendants.

Case No. 3AN-15-05969CI

**UNOPPOSED MOTION FOR ENLARGMENT OF
TIME TO FILE REPLY TO LEGISLATIVE AFFAIRS
AGENCY'S OPPOSITION TO PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT (NOT
EXTENSION)**

Plaintiff Alaska Building, Inc., hereby moves for an enlargement of time to file its Reply to the Legislative Affairs Agency's Opposition to Plaintiff's Motion for Partial Summary Judgment (Not Extension), until its reply to 716 West Fourth Avenue LLC's opposition to the same motion is due. This motion is not opposed by the other parties. See, Exhibit 1.

Dated February 5, 2016.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

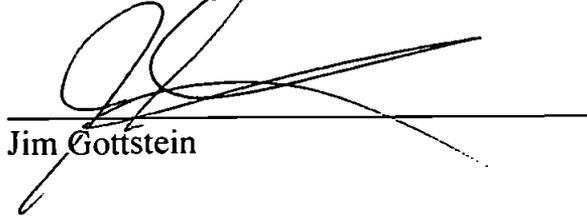
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001574

CERTIFICATE OF SERVICE

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

Dated February 5, 2016.



Jim Gottstein

James B. Gottstein

From: Jeffrey W. Robinson <jeffrey@anchorlaw.com>
Sent: Thursday, February 04, 2016 3:49 PM
To: James B. Gottstein
Subject: RE: Extension for Reply to LAA Opposition

Jim:

No problem at all to replying after I submit my opposition on the 16th.

JWR

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Thursday, February 04, 2016 3:23 PM
To: Jeffrey W. Robinson <jeffrey@anchorlaw.com>
Cc: james.b.gottstein@gottsteinlaw.com
Subject: Extension for Reply to LAA Opposition

Hi Jeff,

I don't think it makes any sense for me to file a reply to the LAA's opposition until after you file 716 LLC's opposition and I have asked Keven if he objects to my reply being due the same time as to your client's opposition.

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

James B. Gottstein

From: Cuddy, Kevin M. <kevin.cuddy@stoel.com>
Sent: Friday, February 05, 2016 12:00 PM
To: James B. Gottstein
Subject: RE: Reply Enlargement of Time

Hi Jim,

I was able to confer with the client and can confirm that LAA does not object to the requested enlargement of time.

Have a good weekend,
Kevin

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Thursday, February 04, 2016 3:21 PM
To: Cuddy, Kevin M.
Cc: james.b.gottstein@gottsteinlaw.com
Subject: Reply Enlargement of Time

Hi Kevin,

Do you object to me obtaining an enlargement of time to file my reply to your opposition to Alaska Building, Inc.'s Motion for Partial Summary Judgment (Not Extension) so that it will be due the same time as my reply to 716 LLC's opposition? It doesn't seem to me that the Court can rule on the motion until after 716 LLC's opposition and my reply are filed so there would be no prejudice to your client by the short delay.

James B. Gottstein
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FEB -3 2016

Clerk of the Trial Courts
By _____ Deputy

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

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

Case No. 3AN-15-05969 CI

v.

716 WEST FOURTH AVENUE, LLC and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

**LEGISLATIVE AFFAIRS AGENCY'S OPPOSITION TO PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)**

The Legislative Affairs Agency ("LAA") extended a real property lease for the Legislative Information Office building ("LIO") pursuant to AS 36.30.083(a). It is undisputed that LAA has had a real property lease with its landlord ("716 West") for the LIO at this location for more than a decade and that, on September 19, 2013, LAA entered into the Extension of Lease and Lease Amendment No. 3 (the "Lease Extension") with the same landlord for the same location to continue its tenancy there. Consistent

with the parties' intent, this was a lease extension that concerned the same basic space being rented from the same landlord, albeit with extensive renovations and some expansion. Plaintiff ("ABI") argues that any modifications to the terms and conditions of the original lease – aside from a simple change in the end date of the lease – compels a finding that this is not an "extension" under the statute. The law is otherwise. Accordingly, the Court should deny ABI's motion for partial summary judgment.

As the Court is aware, the Legislature's Second Regular Session is presently underway. The pendency of this litigation and ABI's ongoing challenges to the validity of these procurement procedures have created uncertainty concerning the application of AS 36.30.083(a) for this lease, which has the potential to impact budgeting and other decisions that will be made during the session. LAA respectfully requests that the Court provide a ruling on the potentially dispositive¹ legal issue of the proper interpretation of AS 36.30.083(a) as soon as practicable.

¹ If ABI's motion is denied, the parties will litigate whether or not LAA satisfied that portion of AS 36.30.083(a) which requires that a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of extension would be achieved on the rent due under the lease. If ABI's motion is granted because the lease is found not to be an "extension" and the lease is voided as a result, then the "cost savings" issue will be moot.

I. STATEMENT OF UNDISPUTED FACTS²

LAA entered into a lease for the LIO premises at 716 West 4th Avenue pursuant to the lease dated April 6, 2004, which included five one-year renewal options.³ This lease was competitively procured. In 2006, the lease was amended to modify the amount of property being rented: the number of reserved parking spaces was decreased from 98 to 86.⁴ The parties also agreed to a reduction in the rent to account for the change in the amount of rented property.⁵ In 2009, the lease was amended again to modify the amount of property that was available exclusively to LAA. LAA assigned to the Anchorage Community Development Authority the right to manage roughly 58% of the reserved parking spaces for “off hours parking.”⁶ The lease term was also extended for another year by exercising a renewal, and the rent was modified to reflect changes in 716 West’s variable costs.⁷ Following the exercise of all renewals, the lease was set to expire on May 31, 2014, unless extended.

² LAA’s description of the facts differs from and expands upon those in the Memorandum in Support of Plaintiff’s Motion for Partial Summary Judgment (Not Extension) (the “Motion”) (filed June 12, 2015). LAA believes that these differences are not material and should not deter the Court from issuing a legal ruling on the proper interpretation of AS 36.30.083(a) as a matter of law.

³ See Exh. A at 1.

⁴ See Exh. B at 1 ¶ 1.

⁵ See *id.* at 2 ¶ 2.

⁶ See Exh. C at 2-3 ¶ 2 [sic] (amending paragraph 39 of the original lease).

⁷ See *id.* at 1-2 ¶¶ 1-2.

The Alaska Legislative Council (“Legislative Council”) is a permanent interim committee and service agency of the Legislature.⁸ The Legislative Council has control and direction over all legislative office space.⁹ LAA notified the Legislative Budget and Audit Committee Legislature on September 19, 2013, that it would be entering into the Lease Extension and described the relevant terms.¹⁰ LAA described the rental payments, the renovation of the premises, and the amendment to accommodate an expansion of the premises. The Lease Extension was openly and promptly disclosed to the Legislature and the public.

The Legislative Council has the authority to adopt and publish procedures that govern the procurement of various supplies and services by the Legislature.¹¹ These procedures must be based on the competitive principles in the State Procurement Code, but must also “be adapted to the special needs of the legislative branch as determined by the legislative council.”¹² The Legislative Council adopted and published the Alaska Legislative Procurement Procedures to address these procurements.¹³ Section 40 of the Alaska Legislative Procurement Procedures exempts certain contracts from competitive solicitation requirements. In particular, a contract (including a lease) is exempt if the

⁸ AS 24.20.010.

⁹ AS 24.20.060(5).

¹⁰ See Exh. D (Sept. 19, 2013 letter from Pamela Varni to Sen. Anna Fairclough and Rep. Mike Hawker); AS 36.30.083(b).

¹¹ AS 36.30.020.

¹² *Id.*

¹³ The Alaska Legislative Procurement Procedures are publicly available at: <https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=97814>

procurement officer determines in writing that it is not practicable to award the contract by competitive sealed bidding, competitive sealed proposals, or another competitive method, and an award of the contract in this fashion is in the LAA's best interest.¹⁴ This written determination is a public record.¹⁵ A lease that was originally procured competitively may be materially modified by an amendment – without the need for procurement of a new lease – if:

1. the reasons for the modification are legitimate;
2. the reasons for the modification were unforeseen when the lease was entered into;
3. it is not practicable to competitively procure a new lease;
4. the modification is in the best interests of the agency or the committee;
5. the procurement officer makes a written determination that the items in paragraphs (1) – (4) exist, the determination details the reasons for concluding why the items exist, and the determination is attached to the amended lease; and
6. the use of this subsection is approved by the procurement officer and, in the case of an amendment to a lease concerning a legislative committee, by a majority of the committee members.¹⁶

On September 16, 2013, the procurement officer (Rep. Mike Hawker) made a written determination that the 2004 lease between LAA and 716 West could be materially modified to incorporate the immediately adjacent property without procurement of a new lease.¹⁷ This written determination was appended to the Lease Extension and complied

¹⁴ See Exh. E, Alaska Legislative Procurement Procedures § 040.

¹⁵ See *id.*

¹⁶ *Id.* § 040(d).

¹⁷ See Exh. F at 2 (the expanded footprint now included 712 West Fourth Avenue as well).

with all of the requirements of Section 40 of the Alaska Legislative Procurement Procedures. In a nine-page document, the procurement officer detailed his findings as to why the Lease Extension complied with the requirements of Alaska Legislative Procurement Procedures. ABI does not assert that the Lease Extension violated AS 36.30.020 or the Alaska Legislative Procurement Procedures.¹⁸

LAA entered into the Lease Extension with 716 West on September 19, 2013.¹⁹ The Lease Extension extended the existing lease for 10 years from June 1, 2014, to May 31, 2024.²⁰ The Lease Extension provided for demolishing the former restaurant/bar known as the Anchor Bar, aside from its east wall, and remodeling, renovating, and expanding the existing LIO so that it now covered both lots on the combined site from the old LIO building and the Anchor Bar.²¹ It provides for site demolition of the existing structures and nearby sidewalk, excavation and backfill on top of the existing foundation, abandonment of existing water services and installation of a new water service to connect to the main, installation of new sanitary sewer service, and construction of the current structure based on new plumbing, heating, fuel system, ventilation, electrical, and

¹⁸ To be clear, ABI does dispute that the Lease Extension is appropriate, but its complaint is that the Lease Extension purportedly does not “extend” a real property lease nor was it at least 10% below the market rental value of the real property at the time of the extension. *See* Response to Interrogatory No. 5, attached as Exh. G. Aside from those issues, which hinge on the interpretation of AS 36.30.083(a), ABI does not dispute that the Lease Extension complies with AS 36.30.020 and the Alaska Legislative Procurement Procedures.

¹⁹ *See* Exh. 1 (attached to Affidavit in Support of Plaintiff’s Motion for Partial Summary Judgment (Not Extension) (filed June 12, 2015)).

²⁰ *See id.* at 2.

²¹ *See id.* at 49.

insulation designs.²² The Alaska State Legislature vacated the premises for over 13 months during the demolition and reconstruction process.

II. ARGUMENT

A. The Lease Extension Relates to a Real Property Lease.

ABI claims that the Lease Extension did not “extend a real property lease” under AS 36.30.081.²³ ABI does not dispute, nor could it, that the subject of the Lease Extension is a “real property lease.” The Lease Extension amends the original 2004 lease (recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, as previously amended). It relates to the leasing of certain real property rights from 716 West.

B. Under the Broad Terms of AS 36.30.083(a) the Lease Extension is an Extension of the Same Contract for a Real Property Lease.

Given that the subject of the Lease Extension is real property rights – i.e., the leasing of a building – the core issue presented by ABI’s Motion is whether or not the Lease Extension qualifies as an “extension” under AS 36.30.083(a). ABI’s argument that it does not confuses the plain language of the statute and imposes constrictions absent from Alaska law. Alaska Statute 36.30.083(a) is broadly written to permit the Legislative

²² See *id.* at 49-70; *id.* at 70 (“The proposed renovation consists of removing the Anchor Bar from the east side of the building, removing the east and west concrete walls from the existing building, and removing the existing north elevator and stair core (along with the northern penthouse).”). Certain features of the old building remained, as ABI concedes. See Motion at 3 (acknowledging that the foundation and steel frame of the original LIO building remained intact).

²³ See Motion at 7.

Council to extend a real property lease if certain cost savings are achieved;²⁴ the statute contains no restrictions suggesting that substantial renovations are impermissible for a lease extension.²⁵

ABI argues that LAA did not “extend” the lease when it lengthened the duration of that lease because there were also changes to some lease terms.²⁶ This overly restrictive approach defies logic and is contrary to the history of this lease; leases are not the static documents that ABI claims. As reflected in the history of the lease at issue, the parties permissibly changed the lease rates and the amount of property being rented pursuant to the terms of that lease numerous times since 2004. The fact that the landlord completed extensive renovations, or that other changes were made to the terms of the lease, does not alter the fundamental character of the Lease Extension as an extension of a lease.

1. The Plain Language of the Statute Does Not Limit the Scope of Lease Extensions to Exclude Substantial Lease Modifications.

ABI appears to argue that the extension of a lease’s term is not an “extension” under AS 36.30.083(a) if either the lease’s terms or the structure of the building changes “too much.”²⁷ It is entirely unclear how much change ABI deems to be “too much” so

²⁴ Alaska Statute 36.30.083(a) permits a lease extension 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.”

²⁵ The statute’s only requirement beyond a 10 percent cost savings is that “[t]he 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.” AS 36.30.083(a).

²⁶ See Motion at 6-7.

²⁷ See Motion at 6 (noting that the Lease Extension “contains drastically different terms than the lease it purports to extend, including adding space”); *id.* at 5 (arguing that

that the statute governing lease extensions no longer applies. More pointedly, there is nothing in the statute to support ABI's argument. In order to meet the needs of the LIO, substantial renovations were required if LAA was to remain in the same space.²⁸ Renovations are common when extending commercial leases, as are changes to various lease terms. LAA obtained these extensive renovations and modifications to the lease terms in order to extend the lease for the same basic space with the same landlord for the same purpose. Nothing in AS 36.30.083(a) imposes some arbitrary limitation on the extent of any modifications either to the original lease arrangement or the physical structure. All that is required is the extension of the lease itself, which is what was achieved here.

ABI points to no authority to affirmatively suggest that substantial modifications must be rendered outside the scope of lease extensions. ABI does insist, however, that an extension must exclusively lengthen the duration of the lease arrangement. But this interpretation of the term "extension" is at odds with the plain language of the statute since it expressly contemplates that there will be changes in the terms and conditions when the lease is extended. In particular, the extension must include a minimum cost savings of at least 10 percent below the market value of the real property at the time of the extension.²⁹ The lease rate is therefore expected to change from the original lease to

there can be no lease extension when the renovations entail the demolition of two buildings and constructing a new building in their place while the tenant is displaced).

²⁸ See Exh. D.

²⁹ AS 36.30.083.

the extended lease. As embodied in the statute's use of the word "extension," this change to a lease term does not alter the character of the resulting agreement.

ABI relies on two Georgia cases for the proposition that an "extension" only occurs when there is a stipulation to lengthen the contract timespan on the same terms and conditions as stated in the original lease.³⁰ This Georgia case law is inapposite. That case law generally involves whether an old broker is entitled to additional commissions for an extension of the original lease it procured, as opposed a contract renewal for which any new broker would be entitled to the commissions.³¹ But AS 36.30.083 has nothing to do with a broker's entitlement to commissions or the triggering of certain rights by a lessee. On its face, the statute relates to the ability of the LAA, the court system, and other public entities to continue a leasing relationship with the existing lessor by extending the term of the existing relationship, subject to certain conditions. There is no requirement that the terms remain exactly the same as the original lease. The lease cost may be less than the original lease if certain upfront costs no longer apply during the extended term, as emphasized by Plaintiff.³² Or it may be more than the original lease if market rents in the area have increased and the original lease rent is uneconomic and unrealistic. In either case, the lease term concerning rent may be different and Alaska

³⁰ See *id.* at 6 (citing *Crystal Blue Granite Quarries, Inc. v. McLanahan*, 261 Ga. 267, 268 (Ga. 1991) and *Brannen/Goddard Co. v. Sheffield, Inc.*, 524 S.E.2d 534 (Ga. App. 1999)).

³¹ See *Brannen/Goddard Co.*, 524 S.E.2d at 535-36. *Crystal Blue Granite Quarries, Inc.* related to a lessee's desire to compel the lessor to continue a leasing arrangement under existing favorable terms.

³² See Motion at 7.

law contemplates that an “extension” will still exist. Contrary to ABI’s interpretation, a lease remains an “extension” even when there are changes to lease terms other than the lease end date.

2. Changes to Lease Terms Do Not Render the Lease a Different Contract.

ABI’s main contention is that the Lease Extension is not a continuation of “the same contract” because it does not merely lengthen the time upon the original lease terms and conditions.³³ But this is incorrect. By its terms, the Lease Extension extended the May 23, 2013 Renewal of Lease No. 5, which in turn amended the Lease dated April 6, 2004.³⁴ The Lease Extension amends, extends, and modifies the original lease, as did earlier amendments, yet it is still a continuation of the same contract. The same parties (LAA and 716 West) continued their longstanding contractual arrangement to lease office space and parking spaces on the corner of 4th Avenue and H Streets in Anchorage. Renting the same space from the same landlord under a modified version of the same contract qualifies as a lease extension.

Changes to lease terms are completely routine over time in a commercial lease. Indeed, there have been fluctuations in lease specifics under those general terms over the past decade: the number of allotted parking spaces has changed,³⁵ the rent has changed (sometimes up, sometimes down),³⁶ and the facilities have undergone renovations,

³³ See *id.* at 6.

³⁴ See Exh. 1 at 1.

³⁵ See Exh. B.

³⁶ See *id.* (decrease of rent); Exh. C (increase of rent).

including relocation of staff, tearing down walls, and creating offices.³⁷ But none of these changes to the leased space or the applicable rent means that these prior amendments did not concern “the same contract.” Modifications to leases are routine and do not render each modification a different contract.³⁸

While ABI states repeatedly that the Lease Extension is not an extension, it does not propose any alternative characterization of the transaction, such as a lease renewal. LAA was in the space before, expressed a desire to remain in the same leased space (albeit with considerable renovations), and proceeded to remain in that space for an extended term after the renovations were completed. This is an extension. Some courts draw a distinction between an “extension” and a “renewal” of a lease – usually for purposes of determining whether the statute of limitations applies to the new lease timeframe.³⁹ The original 2004 lease agreement contains an “Extension” provision:

³⁷ See Exh. A at 3. LAA was already the tenant when the 2004 lease was entered into, and prior to the start of the 2004 lease term the parties agreed to tear down various walls and construct other walls to change the office configuration, construct new offices, enlarge other offices, relocate the Legislative Ethics Office and Data Processing Staff, among other changes. *See id.*

³⁸ See, e.g., *In re S.E. Nichols Inc.*, 120 B.R. 745, 748 (Bankr. S.D.N.Y. 1990) (“In determining whether a new agreement constitutes a new lease or the modification of an existing lease, substance, rather than form, controls. Typically, legitimate lease modifications will include provisions reducing rent, or surrendering unexpired terms.” (internal citations omitted)); *Mission Hosps., Inc. v. N. Carolina Dep’t of Health & Human Servs., Div. of Health Serv. Regulation*, 696 S.E.2d 163, 169 (2010) (“Under contract law, a modification to a lease does not necessarily create a new contract, and rather, the intention of the parties governs.”).

³⁹ See 49 Am. Jur. 2d Landlord and Tenant § 141, at 154 (1995). Because an extension is the continuation of the old tenancy, the existing lease terms are deemed to cover the full extended period for purposes of the statute of frauds. A renewal requires the creation of a new tenancy that is separate from the initial one. *See id.* It does not

“Any holding over after the expiration of this Lease or of a renewal of this Lease shall be construed to be a tenancy from month-to-month at the same monthly rental rate, and on the same terms and conditions as specified in this Lease.”⁴⁰ As the leading treatise recognizes, the question of whether a lease creates a renewal or an extension “is one of the intent of the parties.”⁴¹ If any distinction between renewals and extensions is even recognized, courts typically look to the language of the transaction and, if necessary, the surrounding circumstances.⁴² The language of the transaction here – starting with the very title of the Lease Extension – is unambiguous. The surrounding circumstances also confirm that the parties intended for this to be an extension, as reflected in LAA’s express satisfaction of the various requirements of AS 36.30.083 and the original lease’s “EXTENSION” clause.⁴³

appear that Alaska courts have recognized a bright-line distinction between a renewal and an extension. “The distinction may not be recognized on the ground that the difference between the meanings of the terms ‘renewal’ and ‘extension’ of a lease is too refined and theoretical to be applied.” *Id.* The statute’s text provides some guidance on the issue, suggesting that a “renewal” comes into play when there are “renewal options that are defined in the lease” or “optional renewal periods provided for in the lease.” AS 36.30.080(c), (c)(2). An “extension,” on the other hand, does not reflect the triggering of some renewal period or option already contained in the lease. *See* AS 36.30.083(a). There were no remaining renewal options in the 2004 Lease.

⁴⁰ Exh. A at 15 ¶ 37.

⁴¹ 2 POWELL ON REAL PROPERTY § 16B.05[4][a], at 16B-102 (Michael Allan Wolf ed., LexisNexis Matthew Bender 2015).

⁴² *See id.* Those courts rejecting the technicality of the common law distinction between extensions and renewals generally treat all lease provisions that allow the tenant to retain the premises beyond the initial term as extensions. *See id.* § 16B.05[4][b], at 16B-103.

⁴³ *See* Exh. A at 15 ¶ 37.

ABI also fails to consider the Agency's adherence to the Alaska Legislative Procurement Procedures provided by AS 36.30.020, which undergird the definition of "extension" in AS 36.30.083(a). Consistent with those procedures, the Procurement Officer made a written determination that material modifications were appropriate as part of the Lease Extension for a host of reasons.⁴⁴ The scope and rationale for these modifications, including an expansion of the LIO's physical footprint, are decisions vested with the Legislature pursuant to AS 36.30.020 and the Alaska Legislative Procurement Procedures, which authorize and empower the Legislative Council to make modifications to existing leases that are in the best interests of LAA. The Alaska Constitution expressly commits to the Legislature the authority to adopt its own rules of procedure and to the Legislative Council the ability to perform the duties assigned by the Legislature, including property procurement.⁴⁵

III. CONCLUSION

LAA complied with AS 36.30.083(a). LAA was a tenant of the LIO at the corner of 4th Avenue and H Streets in Anchorage both before and after the Lease Extension. 716 West was the landlord both before and after the Lease Extension. By renting the same space from the same landlord, irrespective of renovations and modifications to the

⁴⁴ See Exh. F.

⁴⁵ See ALASKA CONST. Art. II, §§ 11-12; *Abood v. League of Women Voters of Alaska*, 743 P.2d 333, 338 (Alaska 1987) (holding that claims are not justiciable when the judiciary is placed in direct conflict with the Legislature's constitutionally authorized rulemaking prerogative); see also *Green Party of Alaska v. State, Div. of Elections*, 147 P.3d 728, 735 (Alaska 2006) (recognizing that deference is owed to the Legislature when that body is making policy determinations that require balancing various considerations); *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 981 (Alaska 2005) (same).

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lease terms, the Lease Extension qualifies as a lease extension pursuant to LAA's statutory authority and the Alaska Legislative Procurement Procedures. For the foregoing reasons, the Court should deny Plaintiff's motion for partial summary judgment and rule as a matter of law that the Lease Extension qualifies as an "extension" under AS 36.30.083.

LAA respectfully requests that the Court issue a ruling as promptly as practicable while the Legislature is still in session.

DATED: February 3, 2016.

STOEL RIVES LLP

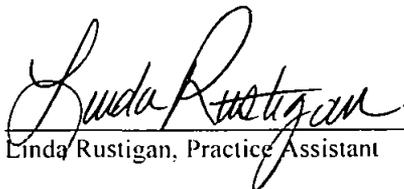
By: 
KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE

This certifies that on February 3, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

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

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


Linda Rustigan, Practice Assistant

FEB -3 2016

Clerk of the Trial Courts
By _____ Deputy

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

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

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

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

Case No. 3AN-15-05969 CI

v.

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

Defendants.

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

AFFIDAVIT OF KEVIN M. CUDDY
(Re: LEGISLATIVE AFFAIRS AGENCY'S OPPOSITION TO PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, KEVIN M. CUDDY, being sworn on oath, say as follows:

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

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

2. I am an attorney with the law firm of Stoel Rives, LLP, counsel for Defendant Legislative Affairs Agency (“Agency”) in the above-captioned litigation and submit this affidavit in support of Defendant Legislative Affairs Agency’s Opposition to Plaintiff’s Motion for Partial Summary Judgment (Not Extension).

3. Attached hereto as **Exhibit A** is a true and correct copy of the Lease between the Legislative Affairs Agency and 716 West Fourth Avenue, LLC recorded in the Anchorage Recording District on April 9, 2004 at 2004-024411-0.

4. Attached hereto as **Exhibit B** is a true and correct copy of Lease Amendment No. 1 between the Legislative Affairs Agency and 716 West Fourth Avenue, LLC recorded in the Anchorage Recording District on September 18, 2006.

5. Attached hereto as **Exhibit C** is a true and correct copy of Lease Amendment No. 2 and Renewal of Lease between the Legislative Affairs Agency and 716 West Fourth Avenue, LLC recorded in the Anchorage Recording District on March 18, 2009.

6. Attached hereto as **Exhibit D** is a true and correct copy of a letter dated September 19, 2013, from Pamela Varni to Senator Anna Fairclough and Representative Mike Hawker.

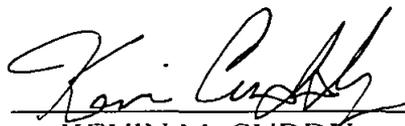
7. Attached hereto as **Exhibit E** is a true and correct copy of the Alaska Legislative Procurement Procedures, which are located at <https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=97814>.

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8. Attached hereto as **Exhibit F** is a true and correct copy of the Procurement Officer's Findings Under Legislative Procurement Procedure 040(d). This document was appended to the Extension of Lease and Lease Amendment No. 3.

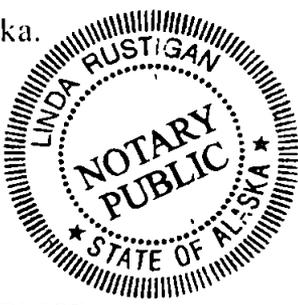
9. Attached hereto as **Exhibit G** is a true and correct excerpt of the Response to Defendant's (Legislative Affairs Agency) First Discovery Requests to Plaintiff Alaska Building, Inc. (Interrogatory # 5) (dated Oct. 5, 2015).

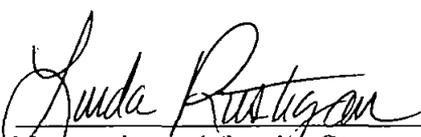
I declare under penalty of perjury that the foregoing is true and correct.
DATED this 3rd day of February, 2016.



KEVIN M. CUDDY

SUBSCRIBED AND SWORN to before me this 3rd day of February 2016
in Anchorage, Alaska.





Notary in and for the State of Alaska
My Commission expires: 3-6-19

CERTIFICATE OF SERVICE

This certifies that on February 2, 2016, a true and correct copy of the foregoing was served by first class mail as follows on:

James B. Gottstein, Esq.
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Linda Rustigan, Practice Assistant

2004-024411-0

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LEASE

LEASE AMOUNT FOR FIRST YEAR: \$597,000.00
(excluding CPI-U adjustment amount)

THIS LEASE, made and entered into on the date the Legislative Affairs Agency 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 241828, 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".

WITNESSETH:

1. **RENTAL PROPERTY AND RENTAL RATE:** The Lessor leases to the Lessee and the Lessee leases from the Lessor the premises, hereinafter "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 Ninety-Eight (98) reserved off-street parking places, for a term of five (5) years beginning June 1, 2004, and terminating at 11:59 p.m. on May 31, 2009, with the Lessee having five (5) one (1) year renewal options to be exercised by giving notice in writing to Lessor at the Lessor's above address at least thirty (30) days before the expiration of each term. The Base Monthly Rental is Fifty-Two Thousand and No/100 Dollars (\$52,000.00) each month; however for the period June 1, 2004, through May 31, 2005, the Base Monthly Rental will be reduced by \$2,250.00 each month by the Lessor to partially offset the costs incurred by the Lessee in purchasing and installing security camera equipment and any HVAC work that will have to be done as part of the Lessee's renovation.

The rent shall be adjusted the first of July of each year beginning in 2005 to reflect changes in the Lessor's variable costs. Variable costs are defined as all operational costs other than debt service and profit and further defined for the purpose of the Lease as thirty-five percent (35%) of the Base Monthly Rental Rate. The adjustment will be based on the percentage of change, between ~~2004~~ and the calendar year before the calendar year of the adjustment, in the U.S.

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Department of Labor Consumer Price Index for All Urban Consumers, Anchorage Area (CPI-U). The Annual Adjusted Monthly Rental Rate will be computed as follows:

PERCENTAGE OF CHANGE IN CPI-U

(Annual average CPI-U for the calendar year preceding the year of adjustment) - (Annual average CPI-U for the calendar year XX (XX)) = x

x/Annual average CPI-U for the calendar year XX (XX)% = y%

ADJUSTED MONTHLY RENTAL RATE

[(35% x Base Monthly Rental Rate) x % of change in CPI-U] + Base Monthly Rental Rate = Adjusted Monthly Rental Rate.

[(35% x Base Monthly Rental Rate) x y%] + Base Monthly Rental Rate = Adjusted Monthly Rental Rate.

Retroactive adjustments will not be allowed.

The monthly rental payments shall be due and payable on the first day of each month of the Lease and shall be sent by first class mail to the office of the Lessor whose address is listed above.

2. **ADA COMPLIANCE:** On the date of occupancy and throughout the entire occupancy of the Lessee, the Lessor shall ensure that the premises (including, but not limited to, restrooms), the reserved parking spaces, the common areas (including, but not limited to, restrooms and parking area), and any subsequent alterations to the premises shall meet the specifications of the ADA Accessibility Guidelines for Buildings and Facilities per the Americans with Disabilities Act (ADA) Appendix A to 28 CFR 36, as currently written and as they may be subsequently amended (hereafter referred to as ADA compliance).

Under the previous paragraph, the premises (including, but not limited to restrooms), the reserved parking spaces, the common areas (including, but not limited to, restrooms and parking area), and subsequent alterations must meet the ADA compliance requirements as they apply to a public entity. The Lessor must provide space that meets the same level of ADA compliance as if the leased space were in a newly constructed State-owned facility from which all program services are directly delivered to the public.

The Lessee's acceptance of the Lessor's space and alterations and any inspection by the Lessee do not relieve the Lessor of responsibility for ADA compliance. The Lessor further agrees to perform and pay the costs of any alterations needed to meet the above-prescribed ADA compliance.

The Lessor must furnish an ADA Facility Audit Report from an architect registered to practice in the State of Alaska, at no cost to the Lessee, after the completion of any new construction or any alteration, except for Lessee's and Lessor's improvements under section 3 of this Lease, of the existing space undertaken during the Lease. The ADA Facility Audit Report must indicate



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that the offered space complies with all the requirements of the ADA compliance and this section.

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

3. **DELIVERY OF PREMISES; RENOVATIONS:** The Lessee is currently occupying the premises under the current lease, which terminates May 31, 2004. Except for Lessor's carpeting obligations in this section 3, the Lessor will not be reconfiguring or making other improvements to prepare the premises for this Lease, unless the improvements are required by another section of this Lease. The Lessor has agreed to allow the Lessee to perform renovations to the current premises before the Lease term begins on June 1, 2004. Although Lessor and Lessee are currently leasing most of the premises under the current lease, this Lease will apply to the renovations allowed under this section 3, and the current lease is amended to that extent. These renovations will be paid for by the Lessee and will include, but are not limited to, the following:

- 1) re-locating the Data Processing Staff to what is currently Suite 240A, constructing a separate entrance to the room to split up the suite from what is currently 240B, and installing appropriate electrical, data, and phone jacks;
- 2) re-locating the Network Room from the basement area to what is currently the Supply Room on the second floor of the premises, and installing appropriate electrical, data and phone jacks;
- 3) re-wiring all offices located on floors 2 – 6 with Cat 5e or Cat 6 wiring;
- 4) re-locating the Legislative Ethics Office to what is currently Suite 240B, constructing a separate entrance to the room to split up the suite from what is currently 240A, and installing appropriate electrical, data, and phone jacks if required;
- 5) expanding the current large teleconference room by taking down a wall of what is currently Suite 230 and making Suite 230 part of the large teleconference room;
- 6) constructing walls, adding a door, tearing down walls, and installing appropriate electrical, data and phone jacks to make 3 House offices out of what is currently Suite 380 and the Storage Room;
- 7) constructing walls, adding a door, tearing down walls, and installing appropriate electrical, data and phone jacks to make 3 House offices out of what is currently Suite 470 and 2 Storage Rooms;
- 8) constructing a new office in what is currently open space in the hallway by the Senate Conference Room and installing appropriate electrical, data, and phone jacks;
- 9) enlarging what is currently a Storage Room, Suite 680, into a larger House office by constructing walls, tearing down a wall in House Conference Room, Suite 670, adding a door, and installing appropriate electrical, data, and phone jacks;
- 10) re-balancing the HVAC system due to the above remodel.

The Lessor has agreed to provide, at no cost to the Lessee, up to an additional 540 square yards of new high quality commercial quality carpet that matches the existing carpet in the amount necessary to patch any carpet that had been re-carpeted in the fall of 2002 in the offices affected by the above renovations. In addition, the Lessor has also agreed to provide and install new carpeting and cove base in all offices that were not re-carpeted in the fall of 2002, at no cost to the Lessee. The Lessee will notify the Lessor when these offices will be



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ready to be carpeted, and the Lessor will complete the installation within one month after Lessee's notification.

4. **UTILITIES AND SERVICES:** The Lessor will provide at no additional cost beyond the rental payments all utilities, including heat, electricity, sewage, potable water, and trash removal from the premises, and janitorial services, except that the Lessee will pay its own telephone utility bills. The Lessor will also provide, at no additional cost beyond the rental payments, its building maintenance staff to promptly lower and raise the Alaska State Flag and the United States Flag, that are installed outside the building, whenever requested by the Lessee to do so.

5. **ELECTRICAL REQUIREMENTS:** The Lessor shall ensure that the requirements in this section 5 are met.

A. **ELECTRICAL WIRING STANDARDS:** All electrical work performed and electrical systems shall comply with the current applicable editions of:

1. the National Electrical Code of National Board of Fire Underwriters;
2. the rules, regulations, and codes of the State and applicable municipality;
3. the standardized rules of the National Electrical Manufacturer's Association.

The above minimum requirements shall not preclude the use of higher-grade materials or better workmanship.

B. **MAIN SERVICE FACILITIES:** The main service facilities and meter panel shall be adequate to provide the electrical load that will be required. This service shall be enclosed in a suitable enclosure which is readily accessible for inspection. Single phase, 60 cycle, 120/240 V service shall be supplied.

C. **LIGHTING:** Lighting fixtures shall be provided which are capable of producing well diffused illumination at working levels of no less than 75 FT-C in office and clerical areas; and no less than 50 FT-C in lobbies, restrooms, parking areas and similar areas. Fixtures shall be provided with louvers or plastic diffusers. Bare lamp fixtures will not be acceptable.

Specified illumination levels must be at task surface height (generally 30 inches above floor) unless noted otherwise in this section 5. For types of spaces not listed in the previous paragraph, illumination levels must be in accordance with current IES recommendations.

All lamps shall be consistent throughout space with regard to color, temperature, quality, and type. A maintenance program shall be conducted throughout the duration of the Lease to maintain this consistency.

D. **SWITCHING:** Individual switching shall be provided for each room or area. Switches shall be located inside the lighted space, adjacent to the entry, accessible with doors open or closed. In lieu of or in addition to the previous sentence, lighting may be controlled by a building control system. Motion detectors are acceptable in lieu of switches for all spaces except open offices. Three- or four-way switching, as



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appropriate, shall be provided in corridors and large rooms with more than one entry.

- E. **ELECTRICAL OUTLETS:** Existing outlets in the premises currently occupied by the Lessee are sufficient. If additional outlets are required, the Lessee shall be responsible for these costs; however, the Lessor shall be responsible for maintaining all outlets in good working order.

Legislative Information Office: A 120V, 20 amp dedicated outlet shall be provided in the copy room for the LIO copier.

Senate Space: A 120V, 60hz, 20 amp dedicated shall be provided in each of the two (2) copy rooms.

House Space: A 120V 20 amp dedicated shall be provided in each of the two (2) copy rooms.

In toilet rooms a minimum of one duplex receptacle (with ground fault protection) shall be provided above the counter (adjacent to sink or mirror) and a minimum of one general use receptacle shall be provided.

- F. **DOCUMENTATION:** The Lessor shall post a floor plan at each circuit breaker panel with labeling to correspond to individual circuit breaker labels, and keep the posted floor plan up to date.

6. **DRINKING WATER AND RESTROOM REQUIREMENTS:** The Lessor shall ensure that the drinking water and restroom facilities meet the requirements in this section 6.

- A. **DRINKING WATER:** Water suitable for drinking purposes shall be provided through drinking fountains or water coolers located at a central location in the main hallways on each floor. If water coolers are provided, the delivered bottled water with disposable paper cups shall be supplied by the Lessor at no additional cost to the Lessee.

- B. **RESTROOMS:** The Lessor shall provide separate adequate toilet and lavatory facilities for men and women in compliance with all applicable codes and the state's safety regulations, and section 2 of this Lease. Each toilet room shall have single entrance doors, with automatic door closers or other approved entrance arrangement. They shall be equipped or provided with stall partitions with doors. They shall also be provided with adequate mirrors, soap, tissue and paper towel dispensers, sanitary napkin dispensers in the women's restrooms, deodorizers, sanitary tissue seat cover dispensers, and ventilation. Each restroom shall have hot and cold running water. Public restrooms shall not be located within the Lessee's leased space. Access to the public restrooms may not be through the Lessee's leased space.

7. **HEATING, COOLING, AND VENTILATION REQUIREMENTS:** The Lessor shall ensure that the requirements of this section 7 are met.

- A. **HEATING AND COOLING:** Facilities shall be provided to maintain a temperature in all the offices and similar type space uniformly within 68 degrees F to 78 degrees F

The existing configuration of the thermostat control units and heating zones in the premises currently occupied by the Lessee are sufficient, however, the Lessor shall be responsible for maintaining such in good working order.

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range. The temperature to be maintained in this zone is the area two (2) feet above the floor to a height of five (5) feet above the floor.

If the temperature is not maintained within the 68 degrees F to 78 degrees F range, as required by the previous paragraph, for a period of more than one (1) working day, 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.

B. VENTILATION: All occupied areas of the building shall be provided with at least the minimum amount of outside (ventilation) air prescribed by ASHRAE Standard 62-89: "Ventilation for Acceptable Indoor Air Quality". This ventilation air shall be introduced by mechanical means. A minimum of six air changes per hour shall be provided in occupied spaces. Exhaust air systems serving toilet rooms and janitor's closets shall be sized to provide a minimum of 10 air changes per hour.

8. **WINDOW COVERING REQUIREMENTS:** The Lessor shall comply with this section 8. All outside windows shall be equipped with blinds, or other approved material and shall be installed, ready for use with all necessary hardware when the Lessee occupies the rental premises. Window coverings shall be of good quality and appearance matching the decor of the space and shall adequately reduce incoming heat and light to a comfortable level. The Lessee reserves the right to select the color of the window coverings, if new window coverings are to be installed.
9. **FLOOR COVERING REQUIREMENTS:** The Lessor shall comply with this section 9. Office floors shall be covered with a good quality of commercial grade carpeting. Other floors shall be covered with carpet, suitable linoleum, or tile of standard size which is free of defects. The Lessee reserves the right to select the color of the floor covering, if a new floor covering is to be installed. Carpeting shall be of a good quality commercial grade and shall not generate more than a minimal amount of static electricity under normal use. New floor coverings shall be installed in a skilled manner common to the trade.
10. **ACOUSTICAL REQUIREMENTS:** All offices and similar type space shall be equipped with acoustical ceiling tiles, panels, or other sound absorption material. The overall noise factor shall not exceed 90 decibel (dba) for an eight-hour workday at level A reading. Acoustical control must be sufficient to permit conferences, waiting room noise, and office work to progress simultaneously. It is the Lessor's responsibility to furnish the proper combination of sound



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absorptive material on ceilings, walls, and floors to achieve the specified preferred notice criteria level.

11. **PARTITION REQUIREMENTS:** Unless otherwise specified by Lessee, the Lessor shall ensure that all partitions are floor to ceiling, flush type, and of drywall construction, and that the finish is paint, paneling, or other Lessee-approved material.
12. **PAINTING REQUIREMENTS:** The Lessor shall ensure that all surfaces which normally would be painted are 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 (a) select the colors for areas to be newly painted; or (b) determine whether existing painted surfaces are satisfactory, if the Lessor wants to use the existing painted surfaces without painting them for the Lease.
13. **DOOR HARDWARE REQUIREMENTS:** The Lessor shall ensure that the requirements of this section 13 are met. All doors shall be equipped with all necessary hardware. Cylinder locks and door checks shall be furnished and installed on all doors which open into public corridors or space otherwise accessible to other than those persons to be employed in the premises. All locks shall be masterkeyed and duplicate individual keys shall be supplied as required. Outside door keys shall be supplied as required by the Lessee.
14. **VOICE AND DATA REQUIREMENTS:** The Lessor shall ensure that adequate telephone service is available and that all necessary conduit and other features necessary to satisfy the telephone company's requirements are included in the building. The Lessee will be responsible for the actual connection of telephone and communications equipment required by the Lessee and as stated in section 3 ("Delivery of Premises; Renovations"). Under section 3 of this Lease, the Lessee will be responsible for the re-wiring at the start of this Lease of all offices on floors 2 through 6 in the premises with Category 5e or Category 6 compliant wiring, including, but not limited to, the installation of any necessary conduit.
15. **PARKING REQUIREMENTS:** The Lessor shall ensure the requirements of this section 15 are met.

Reserved off-street parking shall be of sufficient size to allow proper and easy parking, and have a hard and well-drained surface. The area shall be marked "Reserved" to identify the private parking nature of each reserved space, and each space reserved by the Lessee within the area shall be at least 8-1/2 feet wide by 17 feet long and shall be marked to provide for proper parking and otherwise identified as private parking.

Ninety-Eight (98) reserved parking spaces shall be provided for the exclusive use of the Lessee. These ninety-eight (98) parking spaces must be provided at no additional cost to the Lessee.

Ninety (90) of the reserved ninety-eight (98) parking spaces provided for the exclusive use of the Lessee must be located in the parking lot adjacent to the west side of the 716 West 4th Avenue building. All parking locations must be well lit and have good accessibility in and out of the parking area.



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An additional eight (8) reserved public parking spaces must be provided for the exclusive use of the Lessee for the Lessee's invitees to the building. This parking must be located no more than two blocks walking distance from the office location and have good accessibility in and out of the parking area.

16. **FIRE PREVENTION:** The Lessor shall maintain the premises in keeping with good fire prevention practices. The Lessee reserves the right at reasonable times to enter and make fire prevention and fire protection inspections of the building and space occupied.
17. **HAZARDS:** The Lessor shall maintain the building free of structural or mechanical hazards.
18. **JANITORIAL SERVICES:** The Lessor shall be responsible for janitorial services as outlined below for the entire premises, common areas, and private parking areas. Janitorial services must be performed by competent employees of the Lessor or by a competent janitorial company and the Lessor must notify the Lessee of all names of who will be performing these janitorial services. The Lessor must give the janitorial employees or company a copy of the actual janitorial duties that are stated in the Lease. The Lessor must notify the Lessee of all janitorial employee or company changes relating to who will be performing the janitorial services. When the janitorial work is being performed, a person not performing the janitorial work may not enter or remain on the leased premises, except as otherwise authorized by Lessee.

Janitorial services shall be performed after office hours unless otherwise specified or as conveniently as possible to the occupying entities. The premises generally are occupied Monday through Friday except State holidays. In the event that various areas are occupied at times other than specified herein, the janitorial services shall be performed at other times as convenient. The Lessee prefers the following:

A. DAILY SERVICES:

1. Empty wastebaskets. Empty and wipe ashtrays and place contents in a metal container separate from other waste material. Collect all wastepaper and trash and dispose of it away from the premises.
2. Sweep halls and floors in the interior of the building. Tile floors are to be swept with a yarn broom or a dust mop treated with polyethylene glycol or similar non-injurious material. (If lobby area is tiled, B-1 will become a daily service.)
3. Vacuum all carpets in offices, conference rooms, workstations, hallways, aisles used for circulation within said premises, common areas, entryways, elevator lobbies and corridors.
4. Dust all visible surfaces of furniture, fixtures, and equipment to a height of six (6) feet.
5. Mop or scrub toilet room floors, wash all plumbing fixtures with warm water and soap. Disinfect urinals and water closets. Damp wipes all dispensers, tiled portion of toilet room walls and stall partitions.



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6. Provide and maintain adequate supplies of toilet paper, seat covers, deodorizers, sanitary napkins, towels and soap in toilet rooms. These supplies are to be of standard or better quality and are to be furnished by the Lessor. The Lessor shall also provide a closed disposal container for waste sanitary napkins.
7. Clean and disinfect any drinking fountains.
8. Police sidewalks by collecting and removing all trash and other discarded materials.
9. At the end of each workday, the janitorial supervisor must inspect the entire building to ensure that all work is complete and all necessary doors are locked.

B. WEEKLY SERVICES:

1. Damp mop all waxed floors and machine buff to remove traffic marks and restore luster of wax.
2. Remove all fingermarks and smudges from walls, woodwork, and glass surfaces.

C. MONTHLY SERVICES: Vacuum fabric furniture.

D. EVERY SIX MONTHS SERVICES:

1. Dust or vacuum window coverings such as blinds, etc., as may be the case, overhead pipes, ventilation vents, or molding, etc., that must be reached by ladder.
2. Dust or wash light fixtures as appropriate for greatest light efficiency.
3. Wash windows and glass wind deflectors inside and out leaving no streaks or unwashed places. Wipe water spots from sills and frames. Use drop cloth as required to protect adjacent surfaces, fixtures, and furniture. Wash windows at equal intervals of time, weather and conditions permitting.
4. Wash all wastebaskets.
5. Wash walls in public halls and stairwells where wall covering permits. Wash pipes and rails in stairwells. Clean and wax all paneling.
6. Shampoo carpets in high traffic areas of the premises.

E. AS REQUIRED:

1. Replace burned out lamps (to be furnished by the Lessor).
2. Remove snow and ice from sidewalks, entrances, outside storage areas, parking areas, and other areas as applicable to an extent which will render the areas safe to pedestrian traffic and automobile operation.
3. Shampoo ALL carpeted areas of the premises.



4. Remove spots and stains from carpets, tile and linoleum. Remove all foreign matter (gum, smudges, etc.) from floors, handrails and furniture.
5. Remove all wax from all floors by mopping or scrubbing with a synthetic detergent or wax remover, rinse thoroughly and apply good skid resistant wax of a type recommended by floor tile manufacturers. When wax is dry, machine buff to smooth sheen.
6. Clean or replace all entry rugs. Rugs are to be furnished by the Lessor at each building entrance and will be of sufficient size to preclude the tracking of dirt and mud into the building.

19. **COMPLIANCE WITH LAWS:** The Lessor shall comply with the requirements of this section 19.

- A. Except as otherwise provided elsewhere in this Lease, all improvements and new construction of existing structures, and all appurtenances, improvements, new construction, and existing structures shall conform to all applicable state, Federal and local laws, ordinances, codes, and regulations pertaining to them. In the absence of local or state regulations, national codes shall apply. Minimum requirements of the Lease shall not be construed as lowering the standard established by local regulations, and when local regulations and codes contain more stringent provisions, they shall govern. The Lessor shall be responsible for obtaining all required permits. The premises and the common areas must comply with Federal and state law relative to occupational health and safety regulations. The Lessor shall be responsible for the accomplishment and cost of any building alterations necessary to comply with these requirements.
- B. The Lessor must comply with all other applicable federal and state labor, wage/hour, safety and associated laws that have a bearing on this Lease and must have all licenses and permits required by the state and/or municipality for the performance of the work required by this Lease.

20. **MAINTENANCE AND REPAIR:** The Lessor shall at all times maintain the premises and common areas in a safe condition and in a good state of general repair, maintenance, and tenable condition, including, but not limited to, the roof and the heating, electrical, ventilation, plumbing, sanitary, and any elevator or escalator facilities. The Lessor shall keep the roof free from roof leaks. The Lessor shall keep the common areas in a clean condition. The Lessor shall keep the building and the areas immediately surrounding and belonging to the building free from objectionable tenancy, odors, vermin, rodents, and other features that will in the opinion of the Lessee be detrimental to Lessee's operation. The term "repair" includes repairs of any type, including, but not limited to, exterior and interior, structural and nonstructural, routine or periodic, except in the case of damage arising from the negligence of the Lessee's agents or employees.

21. **SIGNS:** The Lessor shall provide and erect/affix adequate signage to identify the Lessee's presence and to easily direct the public to the Lessee's space. The Lessor shall provide and erect, at no cost to the Lessee, signage as follows: In all buildings, entrances, and common lobbies, hallways and elevators, and on all doors or walls at entrances to the Lessee's leased spaces.



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The Lessee reserves the right to erect or affix additional door or wall signs, at the Lessee's cost, within its leased space to further identify room names and/or numbers. The size and character of the signs shall be at the Lessee's discretion and shall not unreasonably detract from the aesthetics of the building.

22. **ELEVATORS**: The Lessor shall ensure that the premises under this Lease which are on the second floor and above are served by an elevator that, in addition to complying with section 2 of this Lease, complies with the current applicable editions of the rules, regulations, and codes of the State, and the applicable municipality. Documentation from a licensed elevator repairperson stating that the elevator is in good working order and meets all the minimum standards shall be provided by the Lessor, at no cost to Lessee, if requested by the Lessee.
23. **RENOVATION**: At least every five (5) years of occupancy or at the reasonable written request of the Lessee, the Lessor shall renovate the premises by refinishing all damaged or worn walls, ceilings, floors, or built-in fixtures or replacing damaged or worn wall, floor or window coverings or paint. If the Lessor does not respond to such reasonable renovation requests by the Lessee, the Lessee reserves the right to hire competent workers to accomplish such renovation(s) at the Lessor's expense, and may deduct the costs from the rent payments. 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 select the color(s) of the floor covering, if a new floor covering is to be installed, window coverings, if new window coverings are to be installed, and paint for areas to be newly painted.
24. **WAGE-RELATED REQUIREMENTS**: If the Lessor performs construction, alteration, repair, renovation, or redecoration work while the Lessee is occupying the premises, and if this work amounts to 20 percent or more of the entire term of this Lease (excluding optional renewals), 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 subcontractors 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 subcontractors 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 Wage and Hour Administration of the Department of Labor for more information.
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, but not limited to, elevators, lobbies, stairwells, and restrooms. The Lessor shall provide seven day a week security patrolling for the building and parking area at no cost to the Lessee. The Lessee will be responsible for purchasing and installing security cameras in the lower parking area, and for their operation and maintenance, including any monitoring.



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26. **ACCESS BY LESSOR:** The Lessor and its agents will have the right to enter the premises at any time during business hours and after reasonable notice to Lessee (In case of emergency, at any time and without notice) to examine and make the repairs, alterations, improvements, or additions that Lessor determines to be necessary or desirable, or to show the premises to actual or potential Lessees, purchasers, workers, or contractors. If the Lessee is not personally present to permit entry and an entry is necessary to make repairs, Lessor may enter the same by master key (or force if an emergency) without rendering the Lessor liable for the actual entry. The Lessor may not enter the premises for other reasons without the permission of the Lessee. Nothing contained in this section shall be construed to impose on the Lessor a duty of repair of the building except as provided for elsewhere in the Lease.
27. **USE OF PREMISES:** The Lessee will use the premises only for an office and in a careful and proper manner. Use for an office includes use for public meetings. The Lessee will not use or permit all or part of the premises to be used for another purpose without the prior written consent of the Lessor, which shall not be unreasonably withheld. The Lessee will not use or occupy the premises or permit them to be used or occupied for a purpose or business considered extra-hazardous on account of fire or other hazard, or in a manner which violates federal, state, or local laws or regulations.
28. **QUIET ENJOYMENT:** If the Lessee pays the rent as provided by the Lease and keeps, observes, and performs all of the other covenants of the Lease by it to be kept, performed and observed, the Lessee shall and may peaceably and quietly have, hold, and enjoy the premises for the term of such Lease.
29. **LESSEE ALTERATIONS:** Except as provided for in section 3 ("Delivery of Premises; Renovations") and section 33 ("Remedies on Default"), the Lessee may not make, or allow to be made, alterations of the premises without the written consent of Lessor, which shall not be unreasonably withheld. Alterations shall be performed in a professional and skilled manner. Lessee will not allow or permit a lien or other encumbrance to be placed against the premises.
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.
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, 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 current lease or before Lessee or Lessor made the improvements under section 3 of this Lease.
32. **UNTENANTABILITY:** During the term of this Lease, if the premises or any part is rendered untenable by public authority, or by fire, the elements, or other casualty, a proportionate part of the rent according to the extent of such untenability shall be abated and suspended until the premises are again made tenantable and restored to their former condition by the Lessor;



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and if the premises or a substantial part of the premises is rendered untenable by public authority or casualty and remain untenable for a period of thirty (30) days, the Lessee may, at its option, terminate this Lease by written notice to the Lessor. The Lessee's decision shall be controlling as to whether or not the premises are fit or unfit for occupancy. This 30-day period shall not be so restrictively construed that the Lessee is bound to remain in the leased facility if the Lessee's business cannot be safely executed. If warranted due to unsafe conditions, the Lessee is free to move elsewhere. If the premises are made tenable again within this 30-day period, the Lessee will return to the facility for occupancy. The Lessee may also choose to recover from Lessor any excess costs, over the abated Lease payments, occasioned by relocation due to untenability.

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 sixty (60) 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, but not limited to, administrative costs, from the rent, if the Lessor fails to fix the problem within a reasonable time after Lessee notifies the Lessor in writing of the 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, but not limited to, 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 a reasonable time after receiving written notification of the default from the Lessee, the Lessee may terminate the Lease by giving 10 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 32 ("Untenantability").~~

34. **INDEMNIFICATION:** The Lessor shall indemnify, hold harmless, and defend the Lessee from and against any claim of, or liability for, error, omission, or negligent act of the Lessor under this Lease. The Lessor will not be required to indemnify the Lessee for a claim of, or liability for, the independent negligence of the Lessee. If there is a claim of, or liability for, the joint negligent error or omission of the Lessor and the independent negligence of the Lessee, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. In this section 34, "Lessor" and "Lessee" include the employees, agents, and other contractors who are directly responsible, respectively, to each. In this section 34, "independent negligence" means negligence other than in the Lessee's selection, administration, monitoring, or controlling of the Lessor and in approving or accepting the Lessor's work.

35. **INSURANCE:** Without limiting the Lessor's indemnification responsibilities under section 34 ("Indemnification"), it is agreed that the Lessor shall purchase at its own expense and maintain



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In force at all times during the Lease the following insurance, except as provided elsewhere in this section 35:

- A. workers' compensation insurance as required by AS 23.30.045(d) for all employees engaged in work under the contract and as required by any other applicable law;
- B. comprehensive general liability insurance covering all business premises of, and operations by or on behalf of, the Lessor in the performance of the contract, including, but not limited to, blanket contractual coverage, products coverage, premises and operations coverage, independent contractors coverage, broad form property damage endorsement, and personal injury endorsement; the policy must have minimum coverage limits of \$1,000,000 combined single limit per occurrence; unless waived by the Lessee, the insurance policy shall name the Lessee as an additional insured;
- C. commercial automobile liability insurance covering all vehicles used by the Lessor in the performance of the contract, with minimum coverage limits of \$500,000 combined single limit per occurrence.

The Lessor is an entity without employees and does not have the workers' compensation insurance required above. If at any time during the term of the Lease, including any renewals, the Lessor hires one or more employees, the Lessor will purchase at its own expense and maintain in force at all times workers' compensation insurance under A. of this section 35 for the employee or employees and submit proof of the workers' compensation insurance to the Lessee.

Upon request, the Lessor shall provide the Lessee with evidence satisfactory to the Lessee of the insurance identified in B. - C. above. Each of the required insurance policies must provide for the Lessee to receive a 30-day prior notice of any cancellation. Where specific limits are shown above, it is understood that they are the minimum acceptable limits. If a policy contains higher limits, the Lessee will be entitled to coverage to the extent of the higher limits. All insurance policies must comply with, and be issued by, insurers licensed to transact the business of insurance in Alaska or in another state.

In addition, the Lessor shall require any contractor or subcontractor to provide and maintain for its employees workers' compensation insurance.

36. **DELAYS IN PERFORMANCE:** Delays in performance by the Lessor due to unforeseeable causes beyond the control and without fault or neglect of the Lessor may be excused. 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 Supply Officer in writing within ten (10) days of the commencement of the unforeseeable cause. The Supply Officer shall ascertain the facts and the extent of delay and the extent of the time for completing the project. The Supply Officer may approve an extension when, in the Supply Officer's judgment, the findings of fact justify an extension. Pending final decision on an extension of time under this section, the Lessor shall proceed diligently with the



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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.

37. **EXTENSION**: Any holding over after the expiration date of this Lease or of a renewal of this Lease shall be construed to be a tenancy from month-to-month at the same monthly rental rate, and on the same terms and conditions as specified in this Lease.
38. **TIME**: Time is of the essence.
39. **ASSIGNMENT OR TRANSFER**: Assignment or other transfer of this Lease is subject to Section 160 of the Procurement Procedures of the Alaska State Legislature. The Lessee's interest in this Lease may not be assigned without Lessor's prior written consent and Lessor's consent will not be unreasonably withheld.
40. **BINDING ON SUCCESSORS**: Subject to section 39, this Lease and all the covenants, provisions and conditions contained in the Lease shall inure to the benefit of and be binding upon the successors and assigns of the Lessor and the Lessee.
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 products 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 during the Lease, the Lessor must use, wherever practical, timber, lumber, and manufactured lumber products originating in this state from local forests.
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 and if the amendment does not amount to a material modification of the Lease.
43. **AUTHORIZATION; CERTIFICATION**: Execution of this Lease was authorized by a majority of the members of the Alaska Legislative Council at a meeting on January 15, 2004.
- Funds are available in an appropriation to pay for the Lessee's monetary obligations under the lease through June 30, 2005. The availability of funds to pay for the Lessee's monetary obligations under the Lease after June 30, 2005, 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, 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.
44. **VENUE AND CHOICE OF LAW**: In the event that the parties of the Lease find it necessary to litigate the terms of the Lease, venue shall be the State of Alaska, First Judicial District, at Juneau and the Lease shall be interpreted according to the laws of Alaska.

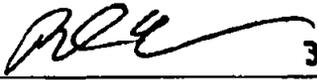


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2004-024411-0

45. **ENTIRE AGREEMENT:** This Lease sets forth the entire understanding of Lessor and Lessee, and no modification may be made to this Lease except by written addendum signed by all parties.

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

 3/30/04

Robert B. Acree Date
Member
Tax Identification No.: 03-0443569
Business License No.: 423463

CERTIFYING AUTHORITY

 4/6/04

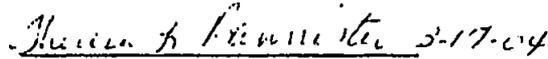
Pamela A. Varni Date
Executive Director
Legislative Affairs Agency

LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY

 4/2/04

Senator Gene Therriault Date
Chair
Alaska Legislative Council
Procurement Officer

APPROVED AS TO FORM:

 3-17-04

Heather A. Pennington Date
Legal Counsel



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2004-024411-0

~~OREGON~~
STATE OF ALASKA
Courtney Mulholland) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 30 day of March, 2004, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

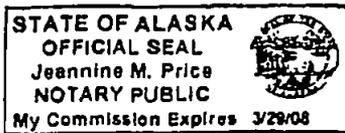


Donna Lemaster
Notary Public in and for ~~Alaska~~ Oregon
My commission expires: July 10, 2005

STATE OF ALASKA)
FIRST JUDICIAL DISTRICT) ss.

THIS IS TO CERTIFY that on the 2nd day of April, 2004, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared SENATOR GENE THERRIAULT, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing instrument as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Jeannine M. Price
Notary Public in and for Alaska
My commission expires: 3/29/08



STATE OF ALASKA

FIRST JUDICIAL DISTRICT

)
) ss.
)

THIS IS TO CERTIFY that on the 6th day of April, 2004, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the EXECUTIVE DIRECTOR of the STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Jeannine M. Price
Notary Public in and for Alaska
My commission expires: 3/29/08

FOR RECORDING DISTRICT OFFICE USE ONLY:

No Charge - State Business

After recording return to:
Jan Price, Supply Officer
Legislative Affairs Agency
State Capitol
Juneau, AK 99801-1182



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2004-024411-0

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LEASE AMENDMENT NO. 1

THIS LEASE AMENDMENT, made and entered into on the date the Legislative Affairs Agency Executive Director or her designee signs the lease amendment, 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", hereby amends the lease dated April 6, 2004, recorded in Book 2004-024411-O, Pages 1 - 18, Anchorage Recording District, Third Judicial District, State of Alaska,

WITNESSETH

WHEREAS, Lessor is leasing to Lessee the following described premises, hereinafter "premises",

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;

WHEREAS, there has been a dispute between Lessee and Lessor as to the size and number of the reserved parking spaces provided to Lessee under the Lease;

WHEREAS, during the dispute described in the previous whereas clause, Lessee has rented additional parking spaces from another person and deducted the rental amount for these spaces from the rent paid by Lessee under this Lease; and

WHEREAS, this Lease Amendment represents a settlement of the dispute described in the previous two whereas clauses.

NOW, THEREFORE, LESSOR AND LESSEE AMEND THE LEASE AS FOLLOWS:

1. Section 1, "Rental Property and Rental Rate," of the Lease is amended by amending the phrase, "and Ninety-Eight (98) reserved off-street parking places," to now read "and Eighty-Six (86) reserved off-street parking places,"

2. Beginning on June 1, 2006, the monthly rental rate will be decreased by \$1,000.00 each month to reflect the reduced number of parking spaces that the Lessor will be providing to the Lessee.
3. The Lessor will permit the Lessee's security guard to occupy space in the first floor lobby common area space across from the elevators at no additional cost to the Lessee until the first floor lobby common area space is needed by the Lessor to fulfill space requirements of other tenants in the building.
4. Section 15, "Parking Requirements," of the Lease is deleted and replaced with the following section:
 15. **PARKING REQUIREMENTS:** The Lessor shall ensure the requirements of this section 15 are met.
 - A. Lessor will provide at no additional cost to the Lessee 86 off-street parking spaces in the upper and lower parking lots adjacent to the west side of the 716 West 4th Avenue building for the use of the Lessee and Lessee's invitees to the building. These 86 spaces must be available to Lessee and Lessee's invitees 24 hours a day 7 days a week.
 - B. Each parking space provided under A. of this sec. 15 shall be marked "Reserved" to identify the private parking nature of the space. The current striping of each parking space located in the upper and lower parking lots adjacent to the west side of the 716 West 4th Avenue building will remain in effect for the duration of the lease. In this subsection B, "current" means in existence on the date this lease amendment is entered into.
 - C. Parking spaces provided under A. of this sec. 15 must be of sufficient size to allow proper and easy parking and must have a hard and well-drained surface. Each parking space must be marked to provide for proper parking. All parking locations must be well lit and have good accessibility in and out of the parking area.
5. Notwithstanding any other provision in the Lease, Lessor waives any and all claims that Lessor may have or allege against the Lessee for or arising out of the Lessee's withholding of rent from the Lessor during the dispute between the Lessor and the Lessee over the size and number of the reserved parking spaces provided by Lessor under the Lease.
6. **AUTHORIZATION; CERTIFICATION:**

Execution of this lease amendment was authorized by a majority of the members of the Alaska Legislative Council at a meeting on May 22, 2006.

Execution of this lease amendment by the Legislative Affairs Agency Executive Director or her designee hereby constitutes a certification that funds are available in an



appropriation to pay for Lessee's monetary obligations under the Lease through June 30, 2006. Availability of funds to pay for Lessee's monetary obligations under the Lease after June 30, 2006, is contingent upon the 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, the Lease will be terminated by the Lessee or amended. To terminate under this section, the Lessee shall provide notice of the termination to the Lessor.

7. All other provisions of the Lease will remain the same.

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

LESSOR:

716 WEST FOURTH AVENUE, LLC



Robert B. Acree Date

Member
Tax Identification No.: 03-0443569
Business License No.: 423463

CERTIFYING AUTHORITY



Pamela A. Varni Date
Executive Director
Legislative Affairs Agency

LESSEE:

STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY



Representative Pete Kott
Chair
Alaska Legislative Council 9-11-06
Procurement Officer Date

APPROVED AS TO FORM:



Donald M. Ballou 6-14-2006
Legal Counsel Date



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2006-083569-0

STATE OF ALASKA ^{Hawaii})
COUNTY OF HAWAII ^{Hawaii}) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 23rd day of August, 2006, before me the undersigned Notary Public in and for the State of ~~Alaska~~ ^{Hawaii}, duly commissioned and sworn as such, personally appeared ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing lease amendment on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing lease amendment as his free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



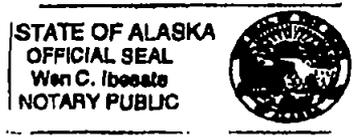
[Signature]
Notary Public in and for Alaska ^{Hawaii}
My commission expires: _____



STATE OF ALASKA)
FIRST JUDICIAL DISTRICT) ss.

THIS IS TO CERTIFY that on the 11th day of September 2006, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared REPRESENTATIVE PETE KOTT, known to me and to me known to be the individual named in and who executed the above and foregoing lease amendment and renewal as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing instrument as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Wen C. Ibesate
Notary Public in and for Alaska
My commission expires: 9/3/07



STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 12th day of September 2006, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing lease amendment as the EXECUTIVE DIRECTOR of the STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

STATE OF ALASKA
OFFICIAL SEAL
Wen G. Ibesate
NOTARY PUBLIC



Wen G. Ibesate
Notary Public in and for Alaska
My commission expires: 9/3/07

FOR RECORDING DISTRICT OFFICE USE ONLY:
No Charge - State Business

After recording return to:
Jan Price, Supply Officer
Legislative Affairs Agency
State Capitol
Juneau, AK 99801-1182

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AMENDMENT NO. 2 AND RENEWAL OF LEASE

LEASE AMOUNT FOR FIRST YEAR OF RENEWAL: \$637,137.72
(excluding CPI-U adjustment amount)

THIS AMENDMENT AND RENEWAL OF LEASE, made and entered into on the date the Legislative Affairs Agency 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", hereby amends and renews the lease dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, and amended September 12, 2006.

WITNESSETH

WHEREAS, the Lessor is currently leasing to the Lessee the following described premises, hereinafter "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.

NOW, THEREFORE, LESSOR AND LESSEE, AGREE AS FOLLOWS:

1. That the Lease is renewed for a term of one (1) year beginning June 1, 2009, and terminating at 11:59 p.m. on May 31, 2010, with the Lessee having four (4) remaining one (1) year renewal options to be exercised by giving notice in writing to Lessor at the Lessor's above address at least thirty (30) days before the expiration of each term.
2. The monthly rental rate for this renewal term is Fifty-Three Thousand, Ninety Four, and 81/100 dollars (\$53,094.81). The rent will be adjusted the first of July in 2009 to reflect changes in the Lessor's variable costs. The adjustment will be based on the percentage of change, between 2003 and the calendar year before the calendar year of the adjustment, in the U.S. Department of Labor Consumer Price Index for All Urban

Consumers, Anchorage Area (CPI-U). The Annual Adjusted Monthly Rental Rate will be computed as follows:

PERCENTAGE OF CHANGE IN CPI-U

(Annual average CPI-U for the calendar year preceding the year of adjustment) -
(Annual average CPI-U for the calendar year 2003 (162.50) = x

$$X / 162.50\% = y\%$$

ADJUSTED MONTHLY RENTAL RATE

[(35% x Base Monthly Rental Rate) x % of change in CPI-U] + Base Monthly Rental Rate = Adjusted Monthly Rental Rate.

[(35% x Base Monthly Rental Rate) x y%] + Base Monthly Rental Rate = Adjusted Monthly Rental Rate.

2. Section 39, "Assignment or Transfer", of the Lease is amended to read:

39. **ASSIGNMENT OR TRANSFER:**

Assignment or other transfer of this Lease is subject to Section 160 of the Procurement Procedures of the Alaska State Legislature. The Lessee's interest in this Lease may not be assigned without Lessor's prior written consent and Lessor's consent will not be unreasonable withheld.

The Lessor consents to the Lessee's assignment to the Anchorage Community Development Authority (ACDA), an instrument of the Municipality of Anchorage, of a limited right to manage the Fifty-Two (52) parking spaces of the upper parking lot for off hours public parking based on the following terms:

(1) Legislative Affairs Agency (LAA) will assign to ACDA the limited right to manage the Fifty-Two (52) parking spaces of the upper parking lot located at 716 West Fourth Avenue for off hours public parking at the following times:

1. Twenty-four hours per day on weekends; and
2. On weekdays, between the hours of 5:30 p.m. through 7:00 a.m.

However, upon prior written notice from LAA, ACDA will suspend public parking during these off-hour periods should LAA need these parking spaces for special events, such as legislative hearings.



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2009-017284-0

- (2) At all times Thirty-Four (34) parking spaces on the lower level of the parking lot located at 716 West Fourth Avenue will be reserved for exclusive use of LAA.
- (3) At all times during which ACDA has the right to manage the parking on the upper level parking portion of the property for public parking, ACDA will maintain supervision of the property and all responsibility associated with it including, but not limited to, snow and ice removal. ACDA may provide for public parking upon such terms and conditions as it considers appropriate, in its sole judgement, including the use of signage, on-site or off-site patrons' security measures, and collection of any and all fees.
- (4) 716 West Fourth Avenue, LLC, will pay ACDA the costs it currently pays for maintaining the parking lots in a safe condition and good state of general repair including, but not limited to, snow and ice removal, at all times.
- (5) ACDA will select and install all revenue control equipment for the public parking spaces. The first \$25,000 in parking revenue shall be retained by ACDA to cover purchase of the revenue control equipment and for operations and maintenance costs.
- (6) Any parking revenue received by ACDA from operations above \$25,000 shall be split equally between LAA and ACDA.
- (7) ACDA shall provide enforcement for both the upper and lower levels of parking lots located at 716 West Fourth Avenue 24 hours per day / 7 days per week.
- (8) ACDA shall not issue citations to or remove any vehicles that park on the upper and lower levels of parking lots located at 716 West Fourth Avenue if the vehicles are displaying an LIO or LAA approved legislative parking sticker.
- (9) ACDA will hold LAA and 716 West Fourth Avenue, LLC harmless to the full extent provided by the law with respect to any claims arising out of the use of the parking areas during any period which ACDA has the right to manage and operate under this Agreement.

3. **AUTHORIZATION; CERTIFICATION:** Execution of this Lease Amendment and Renewal was authorized by a majority of the members of the Alaska Legislative Council at a meeting on January 27, 2009.



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2009-017284-0

Funds are available in an appropriation to pay for the Lessee's monetary obligations under the lease through June 30, 2009. The availability of funds to pay for the Lessee's monetary obligations under the Lease after June 30, 2009, 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, 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.

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

Robert B. Acree 2/25/09
Robert B. Acree Date
Member
Tax Identification No.: 03-0443568
Business License No.: 423463

CERTIFYING AUTHORITY:

Pamela A. Verni 3/11/09
Pamela A. Verni Date
Executive Director
Legislative Affairs Agency

LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY

John Harris 3-3-09
Representative John Harris Date
Chair
Alaska Legislative Council
Procurement Officer

APPROVED AS TO FORM:

B. J. Kane 2/17/09
Legal Counsel Date

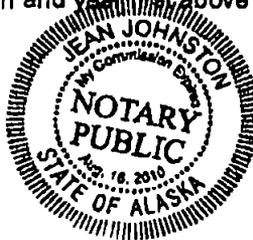


4 of 6
2009-017284-0

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 25th day of February, 2009, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

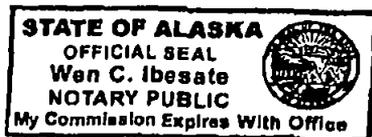


Jean Johnston
Notary Public in and for Alaska
My commission expires: 8/16/10

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 3rd day of March, 2009, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared Representative John Harris, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing instrument as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Wen C. Ibesate
Notary Public in and for Alaska
My commission expires: "with office"



6 of 6

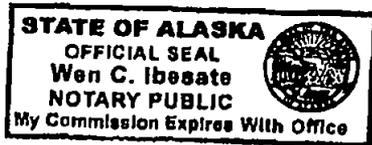
2009-017284-0

STATE OF ALASKA
FIRST JUDICIAL DISTRICT

)
) ss.
)

THIS IS TO CERTIFY that on the 11th day of March, 2009, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the EXECUTIVE DIRECTOR of the STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Wen C. Ibesate
Notary Public in and for Alaska
My commission expires: "With Office"

FOR RECORDING DISTRICT OFFICE USE ONLY:
No Charge - State Business

After recording return to:
Tina Strong, Supply Officer
Legislative Affairs Agency
State Capitol, Rm 3
Juneau, AK 99801-1182



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2009-017284-0

EXHIBIT D

Alaska State Legislature

Legislative Affairs Agency

Office of the Executive Director

Terry Miller Legislative Office Building, Room 217

Mailing Address: State Capitol, Rm. 3 Juneau, Alaska 99801-1182 Phone (907) 465-3800 Fax (907) 465-3234



2013 SEP 25 AM 9:49

September 19, 2013

Senator Anna Fairclough, Chair
Representative Mike Hawker, Vice-Chair
Legislative Budget & Audit Committee
State Capitol
Juneau, AK 99801-1182

RE: AS 36.30.083(b) Lease Reporting Requirement

Dear Senator Fairclough and Representative Hawker:

In accordance with the requirements of AS 36.30.083(b), the Legislative Affairs Agency would like to report to the Legislative Budget and Audit Committee that the Agency will be entering into a 10-year real property lease extension of the Anchorage Legislative Offices and Anchorage Legislative Information Office at 716 West 4th Avenue effective June 1, 2014, during the end of fiscal year 2014.

The lease will also be amended to accommodate an expansion and renovation of the premises. As required by AS 36.30.083(a), the market rental value of the renovated premises, including the parking garage, was appraised by real estate appraiser Tim Lowe, MAI, CRE, FRICS, of Waronzo and Associates, Inc. on September 18, 2013, and reviewed by the Alaska Housing Finance Corporation, to establish that the rent due under the lease is 10 percent below the market rental value of the real property. Mr. Lowe has assessed the rental value of the property, as of the effective date of the lease extension on June 1, 2014, at \$325,667 a month or \$3,908,000 annually. The annual rental payment will be \$281,638 a month or \$3,379,656 annually, exceeding the 10 percent reduction in market rental value required by AS 36.30.083(a). Our annual savings will be \$528,344.

Sincerely,

Handwritten signature of Pamela A. Varni in cursive.

Pamela A. Varni
Executive Director

cc: Tina Strong, Contracting Officer, LAA

ALASKA LEGISLATIVE PROCUREMENT PROCEDURES
(revised 11/21/13)

* Section 1. The Administrative Services Policy and Procedures Manual is amended by adding new sections to read:

Sec. 010. PURPOSE.

The purpose of these procurement procedures is to adopt competitive procurement principles applicable to the Legislature that ensure the fair and equitable treatment of all persons who deal with the procurement system of the Legislature.

Sec. 020. APPLICATION.

(a) These procedures apply to all contracts entered into after December 31, 1987, for services, professional services, supplies, or construction to be provided to a legislative agency or legislative committee except:

- (1) employment contracts;
- (2) contracts that do not exceed \$35,000 each year;
- (3) contracts for utilities; in this paragraph, "utilities" includes water, heat, sewer, telephone services and garbage;
- (4) contracts with a state agency, including a department, the University of Alaska, and a public corporation;
- (5) contracts to purchase memberships in professional and legislative organizations;
- (6) contracts to handle an emergency situation, including a situation that arises because of fire, flood, equipment failure, or other compelling reason; to qualify for this exemption, the procurement officer shall make a written determination that there is an emergency, and the determination must recite the facts on which the determination is based;
- (7) contracts for the purchase of maintenance services for equipment, software, or both;
- (8) contracts for hospitality or government protocol; and
- (9) contracts for artifacts or art.

(b) Only section 150(b) of these procedures applies to contracts with a municipality in the state.

Sec. 030. NOTICE OF SOLICITATIONS.

(a) A solicitation to procure services, professional services, supplies, or construction under a contract must be extended to a sufficient number of firms or persons to insure that public interest in competition is adequately served. Bids or proposals from at least six firms or persons listed on

the appropriate contractor list maintained by the Department of Administration and the Department of Transportation and Public Facilities shall be solicited for contracts equal to or greater than \$100,000. Bids or proposals from at least three firms or persons listed on the appropriate contractor list maintained by the Department of Administration and the Department of Transportation and Public Facilities shall be solicited for contracts of less than \$100,000. Lists of contractors maintained by the Department of Administration and the Department of Transportation and Public Facilities shall be used in soliciting bids or proposals under this section.

(b) Advertising in a medium that will reasonably bring the invitation or proposal to the attention of persons able to provide the required services, professional services, supplies, or construction may be substituted for direct solicitation or used jointly with direct solicitation of bids or proposals.

(c) The procurement officer shall give notice of the solicitation at least 21 days before the date for the opening of bids or proposals unless the officer makes a determination in writing that a shorter notice period is necessary for a particular solicitation.

(d) If an insufficient number of firms or persons have the expertise required to enable an agency to solicit the number of bids or proposals required under (a) of this section, the agency shall solicit bids or proposals

- (1) from each person or firm listed on the appropriate contractor list that appears to possess the required expertise;
- (2) from any person or firm with the required expertise of which the contracting agency or committee may be aware.

(e) A legislator or the procurement officer for a legislative committee may request the Legislative Affairs Agency to carry out the solicitation responsibilities under this section.

Sec. 033. LIMITED COMPETITION PROCUREMENTS.

(a) A procurement may be made without using competitive sealed bidding or competitive sealed proposals if the procurement is

- (1) for supplies and does not exceed \$100,000; this paragraph includes a space lease that does not exceed
 - (A) \$100,000, even if the lease exceeds 7,000 square feet; or
 - (B) 7,000 square feet, even if the lease exceeds \$100,000;
- (2) for services and does not exceed \$100,000; or
- (3) for construction and does not exceed \$200,000.

(b) A procurement made under this section shall be made by contacting at least three firms or persons for written bids or proposals and is not subject to the solicitation requirements of sec. 030 or the preference requirements of secs. 142 or 145.

Sec. 035. PRACTICAL COMPETITION PROCUREMENT.

A construction contract that does not exceed \$100,000, or a contract for supplies, services, or professional services may be awarded without using competitive sealed bidding or competitive sealed proposals, if the procurement officer determines in writing that a situation exists that makes competitive sealed bidding or competitive sealed proposals impractical or contrary to the public interest. Procurements made under this section shall be made with competition that is practical under the circumstances and without complying with the solicitation requirements of sec. 030 or the preference requirements of secs. 142 or 145.

Sec. 040. EXEMPTIONS.

(a) A contract is exempt from the solicitation requirements of sec. 030 and from sec. 145, if

- (1) the procurement officer determines in writing that
 - (A) it is not practicable to award a contract by competitive sealed bidding, competitive sealed proposals, or other competitive method; and
 - (B) award of the contract under this paragraph is in the agency's or committee's best interest;
- (2) the contract is with a contractor that the Department of Administration has selected by competitive bidding to provide to state agencies the service, product, leased space, or construction that is the subject of the contract; or
- (3) the contract is for legal services.

(b) An exemption in (a)(1) of this section applies only if it is approved by the procurement officer, and in the case of a contract for a legislative committee, by a majority of the committee members. A written justification that details the reasons for the exemption in (a)(1) of this section shall be attached to the contract and filed under sec. 200 of these procedures as a public record. A contract proposed for award under the exemption in (a)(1) of this section is not valid unless the required approval is received.

(c) Sections 142, 147, and 210 of these procedures do not apply to a contract that is exempt under (a)(2) of this section.

(d) A lease that was procured competitively may be materially modified by amendment, and the material modification of the lease does not require procurement of a new lease, if

- (1) the reasons for the modification are legitimate;
- (2) the reasons for the modification were unforeseen when the lease was entered into;

- (3) it is not practicable to competitively procure a new lease;
- (4) the modification is in the best interests of the agency or the committee;
- (5) the procurement officer makes a written determination that the items in paragraphs (1) - (4) exist, the determination details the reasons for concluding why the items exist, and the determination is attached to the amended lease; and
- (6) the use of this subsection is approved by the procurement officer and, in the case of an amendment for the lease of a legislative committee, by a majority of the committee members.

Sec. 045. SMALL PROCUREMENTS.

(a) Professional services contracts that do not exceed \$100,000 may be made as small procurements under this section. Procurements made under this section are not subject to sec. 145 or to the solicitation requirements set forth in sec. 030 of these procedures. Small procurements are subject to the provisions of sec. 147 of these procedures. A small procurement that is made by a solicitation of bids is subject to the Alaska bidder preference set out in sec. 145(c) of these procedures.

(b) A contract awarded as a small procurement under this section may be amended so that the contract amount exceeds the amounts set out in (a) of this section, without complying with the solicitation requirements set forth in sec. 030 of these procedures. However, a contract may not be artificially divided to avoid the solicitation requirements set forth in sec. 030 of these procedures.

Sec. 050. ONLY ONE BID OR PROPOSAL RECEIVED.

(a) If only one responsive bid is received in response to an invitation for bids, including multi-step bidding, an award may be made to the single bidder if the procurement officer finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise the bid may be rejected and:

- (1) new bids or offers may be solicited;
- (2) the proposed procurement may be cancelled; or
- (3) if the procurement officer determines in writing that the need for the supply or service continues, but that the price of the one bid is not fair and reasonable and there is not time for resolicitation or resolicitation would likely be futile, the procurement may then be conducted under sec. 040 of these procedures.

(b) If only one proposal is received in response to a request for proposals, the procurement officer may, as the officer deems appropriate, make an award, cancel the procurement, or if time permits, resolicit for the purpose of obtaining competitive sealed proposals.

Sec. 070. BID AND PERFORMANCE BONDS FOR SUPPLY CONTRACTS OR SERVICE CONTRACTS.

In addition to any other bond required by law, bid and performance bonds or other security may be required for supply contracts or service contracts as the procurement officer deems advisable to protect the interest of the agency. These requirements shall be set forth in the solicitation. Bid or performance bonds may not be used as a substitute for a determination of bidder or offeror responsibility.

Sec. 080. CONDITIONING BIDS OR PROPOSALS UPON OTHER AWARDS NOT ACCEPTABLE.

A bid or proposal that is conditioned upon receiving award of both the particular contract being solicited and another legislative contract is nonresponsive and not acceptable.

Sec. 090. DETERMINATION OF TERMS AND CONDITIONS.

The procurement officer is authorized to determine the provisions, terms and conditions of solicitations and contracts, provided the provisions, terms and conditions are not contrary to statutory or other requirements governing the procurement.

Sec. 095. HUMAN TRAFFICKING.

(a) A procurement may not be made from a person that has headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C).

(b) The procurement officer may set restrictions on procurement from a person that conducts business in but does not have headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C).

Sec. 100. UNSOLICITED OFFERS.

(a) An unsolicited offer is an offer other than one submitted in response to a solicitation.

(b) The procurement officer shall consider an unsolicited offer as provided in this section. To be considered for evaluation an unsolicited offer:

- (1) must be in writing;
- (2) must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the agency;
- (3) must be unique or innovative;
- (4) must demonstrate that the proprietary character of the offering warrants consideration of the use of a noncompetitive procurement; and
- (5) may be subject to testing under terms and conditions specified by the agency.

(c) The unsolicited offer must be evaluated to determine its use to the agency and whether it would be to the agency's advantage to enter into a contract based on the offer.

(d) A written request for confidentiality of technical data and trade secrets contained in an unsolicited offer that is made in writing shall be honored. If an award is made, confidentiality of data shall be agreed upon by the parties and governed by the provisions of the contract. Confidential data not contained in the contract are not open to public inspection under sec. 200 of these procedures. If agreement cannot be reached on confidentiality, the agency may reject the unsolicited offer.

Sec. 110. POLICY FOR CANCELLATION OF SOLICITATIONS.

Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for informational purposes only. The solicitation must give the status of funding for the procurement. Preparing and distributing a solicitation requires the expenditure of state time and funds. Businesses also incur expense in examining and responding to solicitations. Therefore, although issuance of a solicitation does not compel award of a contract, a solicitation may be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the agency's best interest.

Sec. 120. CANCELLATION OF SOLICITATION: REJECTION OF ALL BIDS OR PROPOSALS.

(a) A solicitation issued by an agency must state that the solicitation may be cancelled as provided in this section.

(b) Before opening, a solicitation may be cancelled in whole or in part when the procurement officer determines in writing that cancellation is in the agency's best interest. Reasons for cancellation include:

- (1) the agency no longer requires the supplies, services, or construction;
- (2) the agency no longer can reasonably expect to fund the procurement; or
- (3) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

(c) When a solicitation is cancelled before opening, notice of cancellation shall be sent to all businesses solicited. The notice of cancellation must:

- (1) identify the solicitation;
- (2) briefly explain the reason for cancellation; and
- (3) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar supplies, services, professional services, or construction.

(d) After opening but before award, all bids or proposals may be rejected in whole or in part when the procurement officer determines in writing that rejection is in the agency's best interest. Reasons for rejection include:

- (1) the supplies, services, professional services, or construction being procured are no longer required;
- (2) ambiguous or otherwise inadequate specifications were part of the solicitation;
- (3) the solicitation did not provide for consideration of all factors of significance to the agency;
- (4) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (5) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
- (6) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

(e) A notice of rejection that includes the information required under (c) of this section shall be sent to all businesses that submitted bids or proposals.

(f) In this section, "opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.

(g) The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

Sec. 125. BID OR PROPOSAL PREPARATION COSTS.

If for any reason a contract is not awarded after a solicitation, an agency of the legislature may not be held liable for bid or proposal preparation costs.

Sec. 130. REJECTION OF INDIVIDUAL BIDS OR PROPOSALS.

(a) A solicitation issued by an agency shall provide that a bid or proposal may be rejected in whole or in part when in the best interest of the agency as provided in this section.

(b) Reasons for rejecting a bid submitted in competitive sealed bidding or in the second phase of multi-step sealed bidding include:

- (1) the business that submitted the bid is nonresponsible as determined under sec. 210 of these procedures;

- (2) the bid is not responsive, that is, it does not conform in all material respects to the invitation for bids;
- (3) the supply, service, professional service, or construction item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the invitation for bids.

(c) In this section, "proposal" means an offer submitted in response to a solicitation other than a bid. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction, and the stated requirement in the solicitation may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or part of a proposal. Reasons for rejecting proposals include:

- (1) the business that submitted the proposal is nonresponsible as determined under sec. 210 of these procedures;
- (2) the proposal ultimately fails to meet the announced requirements of the agency in a material respect; or
- (3) the proposed price is clearly unreasonable.

(d) Upon request, unsuccessful bidders or offerors shall be advised of the reasons for the rejection.

Sec. 140. ALL-OR-NONE BIDS OR PROPOSALS.

Unless a solicitation permits a bid or proposal to limit acceptance to the entire bid or proposal offering, a bid or proposal so limited is nonresponsive. If the solicitation permits such a limitation, the agency may not reject part of the bid or proposal and award on the remainder.

Sec. 142. ALASKA PRODUCT PREFERENCE.

In a contract involving the purchase of supplies, including a construction contract, 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. 145. CONTRACT AWARD.

(a) Except as provided in (c) of this section, the procurement officer shall award a contract based on a solicitation of bids with reasonable promptness to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the solicitation.

(b) In this section, "Alaska bidder" means a person who

- (1) holds a current Alaska business license;

- (2) submits a bid or proposal for goods, services, or construction under the name as appearing on the person's current Alaska business license;
- (3) has maintained a place of business within the state staffed by the person or an employee of the person for a period of six months immediately preceding the date of the bid or proposal;
- (4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, is a limited liability company organized under AS 10.50 and all members are residents of the state, or is a partnership under AS 32.06 or AS 32.11 and all partners are residents of the state; and
- (5) if a joint venture, is composed entirely of ventures that qualify under (1) - (4) of this subsection.

(c) Except as provided in (c) of this section, the procurement officer shall award a contract based on a solicitation of bids to the lowest responsible and responsive Alaska bidder if the bid is not more than five percent higher than the lowest nonresident bidder's.

(d) The procurement officer shall award a contract based on a solicitation of proposals with reasonable promptness to the responsible and responsive offeror whose proposal is determined in writing by the procurement officer to be the most advantageous to the state after taking into consideration price and the evaluation factors set out in the request for proposals. Other factors and criteria may not be used in the evaluation. When determining whether a proposal is advantageous to the state, the procurement officer shall consider whether the offeror qualifies as an Alaska bidder under (b) of this section.

(e) Notwithstanding sec. 142, if the procurement is done by competitive sealed bidding, the procurement officer shall award the contract to the lowest responsible and responsive bidder after application of an Alaska bidder preference of five percent, an Alaska products preference under AS 36.30.322 - 36.30.338, and a recycled products preference under AS 36.30.337, an Alaska veterans' preference under AS 36.30.321(f), and preferences under AS 36.20.321(b), (d), (g), (i), and (k) relating to persons with disabilities, including employment programs. In this subsection, "employment program" has the meaning given in AS 36.30.990.

Sec. 147. DETERMINATION TO AWARD A CONTRACT TO A NONRESIDENT.

If the procurement officer awards a contract to a person who does not reside or maintain a place of business in the state and if the supplies, services, professional services, or construction that is the subject of the contract could have been obtained from sources in the state, the procurement officer shall issue a written statement explaining the basis of the award. The statement required under this section shall be kept in the contract file.

Sec. 150. PREPARATION AND AWARD OF CONTRACTS.

(a) A contract must be self-contained and written with care and thoroughness.

(b) Contracts and amendments to contracts must be authorized as follows:

- (1) contracts involving House operating funds must be authorized by the Speaker of the House and a majority of the members of the Legislative Council in a meeting, except that contracts for legal services need be authorized by the Speaker only;
- (2) contracts involving Senate operating funds must be authorized by the President of the Senate and a majority of the members of the Legislative Council in a meeting, except that contracts for legal services need be authorized by the President only;
- (3) contracts of a legislative committee must be authorized by a majority of the members of the committee in a meeting;
- (4) contracts of the Legislative Affairs Agency must be authorized by a majority of the members of the Legislative Council in a meeting of the Legislative Council;
- (5) contracts of the Legislative Finance Division and the Legislative Audit Division must be authorized by a majority of the members of the Legislative Budget and Audit Committee in a meeting of the committee;
- (6) contracts of a research agency established by the legislature must be authorized by a majority of the members of the Legislative Council in a meeting.

(c) A contract must be executed by the provider of the service, professional service, supply, or construction, and the procurement officer and shall be approved as to form by legislative legal counsel.

(d) A contract must contain:

- (1) the amount of the contract stated on its first page;
- (2) the date for the work to begin or the supplies to be delivered;
- (3) the date by which the work must be completed;
- (4) a description of the services to be performed or the supplies to be procured under the contract; and
- (5) a statement of the status of the funding for the contract.

(e) Subsections (a), (c), and (d) of this section do not apply when a State of Alaska delivery order form is used.

(f) Notwithstanding (b) of this section, the procurement officer for a construction contract may, without obtaining committee authorization otherwise required by (b) of this section, authorize an

increase in the amount to be paid a contractor under the construction contract if the increase results from a change to the construction contract that is within the general scope of the original construction contract. The cumulative amount of all increases that may be authorized for one construction contract by a procurement officer under this subsection may not exceed \$25,000, or 10 percent of the original amount of the construction contract, whichever is more. In this subsection, "construction contract" means a contract in which the work includes construction services, even if supplies or other services are also provided under the contract.

The procurement officer will notify members of the appropriate committee of any authorized change orders.

Sec. 160. NOVATION OR CHANGE OF NAME.

(a) A legislative contract for the lease of legislative space that does not include a subordination agreement, may be assigned with the consent of the procurement officer. Any other legislative contract is not transferable, or otherwise assignable, without the consent of the procurement officer, and in the case of a contract for a committee, a majority of the members of that committee. However, a contractor may assign money receivable under a contract after due notice to the procurement officer.

(b) When it is in the best interest of the agency, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee must agree that:

- (1) the transferee assume all of the transferor's obligations;
- (2) the transferor waives all rights under the contract as against the agency; and
- (3) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

(c) When a contractor requests to change the name in which it holds a contract with an agency, the procurement officer responsible for the contract shall, upon receipt of a document indicating a change of name, enter into an agreement with the requesting contractor to effect the change of name. The agreement changing the name must specifically indicate that no other terms and conditions of the contract are thereby changed.

Sec. 170. CONTRACTING FOR INSTALLMENT PURCHASE PAYMENTS, INCLUDING INTEREST.

Supply contracts may provide for installment purchase payments, including interest charges, over a period of time. Installment payments, however, should be used judiciously in order to achieve economy and not to avoid budgetary restraints and must be justified in writing by the procurement officer. The justification shall be attached to the contract and filed under sec. 200 of these procedures. An installment payment agreement may not be used unless a provision for installment payments is included in the solicitation document.

Sec. 180. STANDARD OVERHEAD RATE.

(a) If the University of Alaska or any other state agency has established an applicable standard overhead rate, the standard overhead rate shall be included in a proposal for a contract submitted by the University of Alaska or the state agency.

(b) In this section, "standard overhead rate" means a charge established by the University of Alaska or a state agency that is designed to compensate the University of Alaska or the state agency for administration and support services incidentally provided with the services.

Sec. 195. DISCLOSURE OF PROPOSALS.

Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the selection process. A register of proposals containing the name and address of each offeror shall be prepared. The register and the proposals are open for public inspection after the notice of intent to award a contract is issued. To the extent that the offeror designates and the procurement officer concurs, trade secrets and other proprietary data contained in the proposal documents are confidential.

Sec. 200. PROCUREMENT FILES.

(a) A copy of each solicitation or unsolicited offer that does not result in a contract together with relevant documents shall be filed, as is appropriate, with the Legislative Affairs Agency, the legislative finance division, or the legislative audit division. The invitation to bid or request for proposals and each bid or proposal submitted shall be filed with the filed contract copy unless the contract is one in which an invitation to bid or a request for proposals is not required. Except as otherwise provided in secs. 100 and 195 of these procedures, procurement files are open for public inspection.

(b) A contract for services provided to the legislative audit division in the preparation of an audit report or a performance review report does not have to be filed under (a) of this section until the report is released under AS 24.20.311.

Sec. 210. RESPONSIBILITY OF PROSPECTIVE CONTRACTORS.

Before awarding a contract, the procurement officer must be satisfied that the prospective contractor is responsible. If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the procurement officer. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination must be made part of the procurement file.

Sec. 220. STANDARDS OF RESPONSIBILITY.

(a) Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor has:

- (1) the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;

- (2) a satisfactory record of performance;
- (3) a satisfactory record of integrity;
- (4) qualified legally to contract with the agency; and
- (5) supplied all necessary information in connection with the inquiry concerning responsibility.

(b) The prospective contractor shall supply information requested by the procurement officer concerning the responsibility of the contractor. If the contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if the failure is unreasonable.

(c) The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (1) evidence that the contractor possesses the necessary items;
- (2) acceptable plans to subcontract for the necessary items; or
- (3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

Sec. 230. FILING OF A PROTEST.

An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction by an agency. The protest shall be filed with the procurement officer in writing and include the following information:

- (1) the name, address, and telephone number of the protester;
- (2) the signature of the protester or the protester's representative;
- (3) identification of the contracting agency and the solicitation or contract at issue;
- (4) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
- (5) the form of relief requested.

Sec. 240. TIME FOR FILING A PROTEST.

(a) A protest based upon alleged improprieties in a solicitation involving competitive sealed bidding that are apparent before the bid opening shall be filed before the bid opening. A protest

based on alleged improprieties in a solicitation involving competitive sealed proposals that are apparent

- (1) before the due date for receipt of initial proposals shall be filed before that due date;
- (2) after the due date for receipt of initial proposals shall be filed before the next due date for receipt of adjusted proposals that occurs after the improprieties are apparent.

(b) In situations not covered under (a) of this section, protests shall be filed within 10 days after a notice of intent to award the contract is issued by the procurement officer.

(c) If the protester shows good cause, the procurement officer of the contracting agency may consider a filed protest that is not timely.

Sec. 250. NOTICE OF A PROTEST.

The procurement officer shall immediately give notice of a protest filed under sec. 240 of these procedures to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

Sec. 260. STAY OF AWARD.

If a protest is filed the award may be made unless the procurement officer of the contracting agency determines in writing that a:

- (1) reasonable probability exists that the protest will be sustained; or
- (2) stay of the award is not contrary to the best interests of the state.

Sec. 270. DECISION BY THE PROCUREMENT OFFICER.

(a) The procurement officer of the contracting agency shall issue a written decision containing the basis of the decision within 14 days after a protest has been filed. A copy of the decision shall be furnished to the protester by certified mail or other method that provides evidence of receipt.

(b) The time for a decision may be extended up to 26 days for good cause by the Legislative Council. If an extension is granted, the procurement officer shall notify the protester in writing of the date the decision is due.

(c) If a decision is not made by the date it is due, the protester may proceed as if the procurement officer had issued a decision adverse to the protester.

Sec. 280. PROTEST REMEDIES.

(a) If the procurement officer sustains a protest in whole or in part, the procurement officer shall implement an appropriate remedy.

(b) In determining an appropriate remedy, the procurement officer shall consider the circumstances surrounding the solicitation or procurement including the seriousness of the

procurement deficiencies, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent the procurement has been accomplished, costs to the agency and other impacts on the agency of a proposed remedy, and the urgency of the procurement to the welfare of the state.

(c) Notwithstanding (a) and (b) of this section, if a protest is sustained in whole or part, the protestor's damages are limited to reasonable bid or proposal preparation costs.

Sec. 290. APPEAL ON A PROTEST.

(a) An appeal from a decision of a procurement officer on a protest may be filed by the protester with the Legislative Council. An appeal shall be filed within seven days after the decision is received by the protester. The protester shall file a copy of the appeal with the procurement officer.

(b) An appeal must contain the information required under sec. 230 of these procedures. In addition, the appeal must include

- (1) a copy of the decision being appealed; and
- (2) identification of the factual or legal errors in the decision that form the basis for the appeal.

Sec. 300. NOTICE OF A PROTEST APPEAL.

(a) The procurement officer shall immediately give notice of an appeal filed under sec. 290 of these procedures to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

(b) The Legislative Council shall, on request, furnish a copy of the appeal to a person notified under (a) of this section, except that confidential material shall be deleted from the copy.

Sec. 310. STAY OF AWARD DURING PROTEST APPEAL.

If a protest appeal is filed before a contract is awarded and the award was stayed under sec. 260 of these procedures, the filing of the appeal automatically continues the stay until the Legislative Council makes a written determination that the award of the contract without further delay is necessary to protect substantial interests of the state.

Sec. 320. PROTEST REPORT.

(a) The procurement officer of the contracting agency shall file a complete report on the protest and decision with the Legislative Council within 10 days after a protest appeal is filed. The procurement officer shall furnish a copy of the report to the protester and to interested parties that have requested a copy of the appeal under sec. 300(b) of these procedures.

(b) The procurement officer may request the Legislative Council chair for an extension of time to prepare the protest report. The request must be in writing listing the reasons for the request. The Legislative Council chair shall respond to the request in writing. If an extension is granted, the Legislative Council chair shall list the reasons for granting the extension and indicate the date

the protest report is due. The Legislative Council chair shall notify the protester in writing that the time for submission of the report has been extended and the date the report is due.

(c) The protester may file comments on the protest report with the Legislative Council within 10 days after the report is received. The protester shall provide copies of the comments to the procurement officer and to interested parties that have requested a copy of the appeal under sec. 300(b) of these procedures.

(d) The protester may request the Legislative Council chair for an extension of time to prepare the comments on the protest report. The request must be in writing listing the reasons for the request. The Legislative Council chair shall respond to the request in writing. If an extension is granted, the Legislative Council chair shall list the reasons for granting the extension and indicate the date the comments are due. The Legislative Council chair shall notify the procurement officer in writing that the time for submission of the comments has been extended and the date the comments are due.

Sec. 330. DECISION WITHOUT HEARING.

(a) The Legislative Council shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely under sec. 290 of these procedures.

(b) The Legislative Council may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of fact.

(c) Within 30 days after the period for filing comments under sec. 320(c) or (d) has expired the Legislative Council may adopt the decision of the procurement officer as the final decision without a hearing.

Sec. 340. HEARING ON PROTEST APPEAL.

A hearing on a protest appeal shall be conducted in accordance with sec. 450 of these procedures.

Sec. 350. CONTRACT CONTROVERSIES.

(a) A contractor shall file a claim concerning a contract awarded under this chapter with the procurement officer. The contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of the contractor's knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the state is liable.

(b) If a controversy asserted by a contractor concerning a contract awarded under these procedures cannot be resolved by agreement, the procurement officer shall, after receiving a written request by the contractor for a decision, issue a written decision. The decision shall be made no more than 90 days after receipt by the procurement officer of all necessary information from the contractor. Failure of the contractor to furnish necessary information to the procurement officer constitutes a waiver of the claim. Before issuing the decision the procurement officer shall review the facts relating to the controversy and obtain necessary assistance from legal, fiscal, and other advisors.

(c) The time for issuing a decision under (b) of this section may be extended for good cause by the Legislative Council chair if the controversy concerns an amount in excess of \$50,000. The procurement officer shall notify the contractor in writing that the time for the issuance of a decision has been extended and of the date by which a decision shall be issued.

(d) The procurement officer shall furnish a copy of the decision to the contractor by certified mail or other method that provides evidence of receipt. The decision shall include a:

- (1) description of the controversy;
- (2) reference to the pertinent contract provisions;
- (3) statement of the agreed upon and disputed facts;
- (4) statement of reasons supporting the decision; and
- (5) statement substantially as follows:

"This is the final decision of the procurement officer. This decision may be appealed to the Legislative Council. If you appeal, you must file a written notice of appeal with the Legislative Council within 14 days after you receive this decision."

(e) If a decision is not made by the date it is due, the contractor may proceed as if the procurement officer had issued a decision adverse to the contractor.

(f) If a controversy asserted by the Legislature concerning a contract awarded under this chapter cannot be resolved by agreement the matter shall be immediately referred to the Legislative Council.

Sec. 360. APPEAL ON A CONTRACT CONTROVERSY.

(a) An appeal from a decision of the procurement officer on a contract controversy may be filed by the contractor with the Legislative Council. The appeal shall be filed within 14 days after the decision is received by the contractor. The contractor shall file a copy of the appeal with the procurement officer.

(b) An appeal shall contain a copy of the decision being appealed and identification of the factual or legal errors in the decision that form the basis for the appeal.

Sec. 370. HEARING ON A CONTRACT CONTROVERSY.

(a) Except as provided in (b) of this section, a hearing shall be conducted according to sec. 450 of these procedures on a contract controversy appealed to the Legislative Council or referred to the Legislative Council under sec. 350(f) of these procedures.

(b) Within 30 days after receipt of an appeal on a contract controversy the Legislative Council may adopt the decision of the procurement officer as the final decision without a hearing.

Sec. 380. AUTHORITY TO DEBAR OR SUSPEND.

(a) After consultation with the using agency and the attorney general and after a hearing conducted according to sec. 450 of these procedures the Legislative Council may debar a person for cause from consideration for award of contracts. Notice of a debarment hearing shall be provided in writing at least seven days before the hearing. The debarment may not be for a period of more than three years.

(b) The Legislative Council, after consultation with the using agency and the attorney general, may suspend a person from consideration for award of contracts if there is probable cause for debarment and compelling reasons require suspension to protect state interests. The suspension may not be for a period exceeding three months.

Sec. 390. CAUSES FOR DEBARMENT OR SUSPENSION.

The causes for debarment or suspension include the following:

- (1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a state contractor;
- (3) conviction or civil judgment finding a violation under state or federal antitrust statutes;
- (4) violation of contract provisions of a character that is regarded by the Legislative Council to be so serious as to justify debarment action, such as
 - (A) knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (B) failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment;
- (5) for violation of the ethical standards set out in law or regulation; and
- (6) any violation of these procedures or other cause determined to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity.

Sec. 400. WRITTEN DETERMINATIONS.

(a) The Legislative Council shall issue a written decision to debar or suspend. The decision must:

- (1) state the reasons for the action taken; and
- (2) inform the debarred person of rights to judicial appeal or inform the suspended person of rights to administrative and judicial appeal.

(b) A copy of the decision under (a) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other intervening party.

Sec. 410. HEARING ON A SUSPENSION.

(a) A person suspended under sec. 380 of these procedures is entitled to a hearing conducted according to sec. 450 of these procedures if the person files a written request for a hearing with the Legislative Council within seven days after receipt of the notice of suspension under sec. 400 of these procedures.

(b) If a suspended person requests a hearing the Legislative Council shall schedule a prompt hearing unless the attorney general determines that a hearing at the proposed time is likely to jeopardize an investigation. A hearing may not be delayed longer than six months after notice of the suspension is provided under sec. 400 of these procedures.

Sec. 420. LIST OF PERSONS DEBARRED OR SUSPENDED.

The chairman of the Legislative Council shall maintain a list of all persons debarred or suspended from consideration for award of contracts.

Sec. 430. REINSTATEMENT.

(a) The Legislative Council may at any time after a final decision to debar a person from consideration for award of contracts reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.

(b) A debarred person may request reinstatement by submitting a petition to the Legislative Council supported by evidence showing that the cause for debarment no longer exists or has been substantially mitigated.

(c) The Legislative Council may require a hearing on a reinstatement petition. A decision on reinstatement shall be made in writing within seven days after a reinstatement petition is submitted. The decision shall specify the factors on which it is based.

Sec. 440. LIMITED PARTICIPATION.

The Legislative Council may permit a debarred person to participate in a contract on a limited basis during the debarment period if the Legislative Council determines in writing that the participation is advantageous to the state. The determination shall specify the factors on which it is based and the limits imposed on the debarred person.

Sec. 450. HEARING PROCEDURES.

(a) The chairman of the Legislative Council shall act as a hearing officer or appoint a hearing officer for a hearing conducted under these procedures. The hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing. The hearing shall be conducted in an informal manner.

(b) The hearing officer may:

- (1) hold prehearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
- (2) require parties to state their positions concerning the various issues in the proceeding;
- (3) require parties to produce for examination those relevant witnesses and documents under their control;
- (4) rule on motions and other procedural matters;
- (5) regulate the course of the hearing and conduct of the participants;
- (6) establish time limits for submission of motions or memoranda;
- (7) impose appropriate sanctions against a person who fails to obey an order of the hearing officer, including
 - (A) prohibiting the person from asserting or opposing designated claims or defenses or introducing designated matters into evidence;
 - (B) excluding all testimony of an unresponsive or evasive witness; and
 - (C) excluding a person from further participation in the hearing;
- (8) take official notice of a material fact not appearing in evidence, if the fact is among the traditional matters subject to judicial notice;
- (9) administer oaths or affirmations.

(c) A transcribed record of the hearing shall be made available at cost to a party that requests it.

Sec. 460. RECOMMENDATION BY THE HEARING OFFICER.

(a) The hearing officer shall recommend a decision to the Legislative Council based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.

(b) The Legislative Council may affirm, modify, or reject the hearing officer's recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or take other appropriate action.

Sec. 470. FINAL DECISION BY LEGISLATIVE COUNCIL.

A final decision by the Legislative Council after a hearing under these procedures shall be sent within 20 days after the hearing to all parties by personal service or certified mail.

Sec. 480. APPEAL.

The decision of the Legislative Council under sec. 470 may be appealed to the Superior Court in accordance with the procedures established in AS 44.62.560 - 44.62.570 for appeals from decisions of executive branch agencies. A claimant may also bring an action under AS 09.50.250 - 09.50.300 at any time after one year has elapsed since the presentation of the claim under sec. 360, if no decision has been made by the Legislative Council.

Sec. 900. DEFINITIONS.

In these procedures, unless the context in which a term is used clearly requires a different meaning,

- (1) "agency" means any subdivision of the legislative branch that conducts procurements, including legislative committees;
- (2) "days" means calendar days and includes weekends and holidays; if a due date falls on a weekend or a legal holiday then the due date is the next working day;
- (3) "interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract; whether an actual or prospective bidder or offeror has an economic interest depends on the circumstances;
- (4) "procurement officer" means:
 - (A) the chairman of the Finance Committee with respect to contracts of that committee and the chairman of the Rules Committee with respect to contracts of that committee;
 - (B) the chairman of a legislative committee, other than the Finance Committees and the Rules Committees, with respect to a contract of that committee;
 - (C) the Speaker of the House with respect to House leadership contracts;
 - (D) the President of the Senate with respect to Senate leadership contracts;

- (E) the chairman of the Legislative Council with respect to contracts of the Legislative Affairs Agency and contracts of a research agency established by the legislature;
 - (F) the chairman of the Legislative Budget and Audit Committee with respect to contracts of the Legislative Finance Division and the Legislative Audit Division;
- (5) "professional services" means professional, technical, or consultant's services that are predominantly intellectual in character and that
- (A) include analysis, evaluation, prediction, planning, or recommendation; and
 - (B) result in the production of a report or the completion of a task;
- (6) "solicitation" means an invitation for bids, a request for proposals, or any other document issued by the legislature for the purpose of soliciting bids or proposals to perform a contract.
- (7) "supplies" has the meaning given in AS 36.30.990.

* Sec. 2. The following sections of the Administrative Services Policy and Procedures Manual are repealed:

- (1) the section headed "Contracts" on page 1.13;
- (2) the section headed "Purchasing" on page 3.1.

* Sec. 3. These procedures take effect January 1, 1988.

EXHIBIT C

PROCUREMENT OFFICER'S FINDINGS UNDER LEGISLATIVE PROCUREMENT PROCEDURE 040(d)

Introduction

The purpose of this document is to provide a written determination, in compliance with Alaska Legislative Procurement Procedure 040(d), setting forth in detail the procurement officer's determination supporting material modifications of the Legislature's Lease of the Anchorage Legislative Information Office dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended March 3, 2009, renewed for the final one-year term on May 20, 2013, which was previously competitively bid under RFP 391 and publicly issued on July 17, 2003, (hereinafter "Lease"). The current Lease will expire on May 31, 2014.

The material modifications to the Lease that are the subject of this written determination were authorized by Legislative Council, and by mutual agreement with the Lessor. The material modifications to the Lease are amending the existing definition of "premises" within Section 1 of the Lease, titled "RENTAL PROPERTY AND RENTAL RATE," by adding the additional property commonly known as 712 West Fourth Avenue, which is immediately adjacent to the existing leased premises at 716 West Fourth Avenue, and amending other sections of the Lease as necessary to allow for the renovation and retrofit of the expanded premises, including but not limited to, a transition to a triple net leasing structure and changes necessary to accommodate renovation of the premises as described in Exhibits A and B of the Lease.

Background

A. Legislative Council's Authorization to Materially Modify Lease

On June 7, 2013, Legislative Council passed the following motions¹ related to the Legislature's Lease of the Anchorage Legislative Information Office dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended March 3, 2009, renewed for the final one-year term on May 20, 2013, and which will expire on May 31, 2014:

MOTION - AMEND PROCUREMENT PROCEDURE: I move that Legislative Council adopt proposed Amendment No. 12 to the Legislative Procurement Procedure 040 to provide the limited ability for the Legislative Affairs Agency, or a Legislative Committee, to materially modify an existing lease that was previously competitively procured.

MOTION - AUTHORIZE MATERIAL AMENDMENTS TO LEASE: I move that Legislative Council authorize the chairman to negotiate amendments to lease 2004-024411-0 by mutual agreement with the Lessor to remove the limitation of amending a lease that amounts to a material

¹ In addition to the motions set out in the text of these findings, two additional related motions were also passed by Legislative Council on June 7, 2013:

MOTION - LEASE EXTENSION: I move that Legislative Council authorize the chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a).

MOTION - ENGAGE AHFC (Alaska Housing Finance Corporation) AS LESSEE'S REPRESENTATIVE: I move that Legislative Council authorize the chairman to enter into a contract for payment not to exceed \$50,000, for AHFC to act as the Lessee's representative in negotiating an extension to Lease 2004-024411-0, as amended to include 712 West 4th Avenue, and to assist in managing the Lessor's compliance with the terms and conditions of the Lessor's improvements, as described in the lease extension.

modification in paragraph 42; and to include 712 West Fourth Avenue, with other terms and conditions necessary to accommodate renovations, not to exceed the estimated cost of a similarly sized, located and apportioned newly constructed building as determined by the Alaska Housing Finance Corporation.

B. Requirements of Alaska Legislative Procurement Procedure 040(d)

Legislative Procurement Procedure 040, as amended by Amendment No. 12 and authorized by Legislative Council as set forth in the motion above, added subsection (d), which provides:

(d) A lease that was procured competitively may be materially modified by amendment, and the material modification of the lease does not require procurement of a new lease, if

- (1) the reasons for the modification are legitimate;
- (2) the reasons for the modification were unforeseen when the lease was entered into;
- (3) it is not practicable to competitively procure a new lease;
- (4) the modification is in the best interests of the agency or the committee;
- (5) the procurement officer makes a written determination that the items in paragraphs (1) - (4) exist, the determination details the reasons for concluding why the items exist, and the determination is attached to the amended lease; and

(6) the use of this subsection is approved by the procurement officer and, in the case of an amendment for the lease of a legislative committee, by a majority of the committee members.

Procurement Officer's Determination Under Legislative Procurement Procedure 040(d)

040(d); Previously Competitively Bid Requirement

As previously discussed, the Legislature's Lease of the Anchorage Legislative Information Office dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended March 3, 2009, renewed for the final one-year term on May 20, 2013, was previously competitively bid under RFP 391, which was publicly issued on July 17, 2003. Accordingly, under Legislative Procurement Procedure 040(d), the Lease may be materially modified.

040(d)(1): Reasons for the Modification are Legitimate

The decision to modify the Lease is consistent with the purpose of the present Lease, which is to provide office space for the Legislature. These amendments do not alter the essential identity or main purpose of the contract, and do not constitute a new undertaking, and therefore are a legitimate modification of the Lease.

The property at 712 West Fourth Avenue is unique, since it is the only adjacent space to 716 West Fourth Avenue available to satisfy the Legislature's need for additional space, and meets the essential requirement of keeping all the present legislative offices in one building. The addition of 712 West Fourth Avenue allows the Legislature to extend its current Lease as provided under AS 36.30.083(a). Given the uniqueness of the property, and the fact that no other bidder would be able to provide space adjacent to 716 West Fourth Avenue, it would be a waste of private sector resources and legislative procurement resources to competitively bid for the only adjacent property.

The expanded premise will be renovated to meet the needs of the Lessee. In accordance with the expansion of the leased premises, the renovation, and the Lease Extension executed under AS 36.30.083(a), it is necessary to amend material terms of the Lease. Without the modifications, the Lease would not be functional to govern the premises. Given the uniqueness of the property and the ability of the Legislature to have input in the design and function of the renovated building, a competitively bid procurement would be impractical, inefficient, and ultimately, likely unsuccessful in providing premises as suited to the needs of the Legislature.

Accordingly, modifying the Lease by adding 712 West Fourth Avenue to the "premises" and by amending other lease terms to accommodate the expanded premises and the Lease Extension under AS 36.30.083(a) does not subvert the purposes of competitive bidding, and is a legitimate exercise of the Legislature's procurement authority.

040(d)(2); Reasons for Modification Unforeseen When Lease was Entered Into

When the Lease was entered into for 716 West Fourth Avenue in 2004, it was unforeseen that the Legislature would need significant additional space, or that the infrastructure problems with the building would worsen, e.g., the exhausted service life of the HVAC system and the water system, and the elevator failing to handle the demands of staff and public use.

In 2004, based on the Executive Director's Office's best assessment, there were approximately 54 legislative staff working in the building. Today, in 2013, there are approximately 72, which is an increase during the ten-year term of the Lease of approximately one-third. The result of this unforeseen increase in staffing demands on the space in the building is that the staff for some legislators work in shared space. Shared space fails to meet standards for confidential meetings with constituents, and other intra-office privacy concerns. The space has only worked because of the patience and cooperation of Anchorage legislative staff and legislators. However, after the current

Lease term expires the limited space will no longer be acceptable. In addition to the staff of different legislators sharing space, three Anchorage area legislators are sharing space with their staff, which is also not acceptable.

The Legislature requires office space beyond the needs of the Anchorage-area legislators and staff. Once the Lease is amended, the renovated facility will provide space for the Speaker of the House, and the Senate President, who are both out-of-Anchorage legislators, and for rural legislators who require space for conducting work and attending legislative meetings in Anchorage.

Further, the existing building is in need of substantial renovation and upgrade. The condition of the premises is no longer suitable for legislative use. Physical deficiencies include lack of potable water, limited restroom facilities, ineffective HVAC system, deteriorated and leaking plumbing, an unreliable and inadequate elevator, insecure and unsafe below-ground parking facilities, leaking windows, worn window coverings and carpeting, inadequate electrical service, unpleasant odors in the elevator, inefficient lighting, and hazardous materials used in the original construction of the building. All of these will be remediated in the renovation and upgrade.

Had each of these factors been taken individually, fluctuating space demands may have been foreseen at some level. However, the pressure on space in the building from the multiple impacts discussed above was not foreseen when the Lease was entered into in 2004.

040(d)(3): Not Practicable to Competitively Procure a New Lease

The Anchorage Legislative Information Office has been located in leased space at 716 West Fourth Avenue for approximately 20 years. Occupancy was initially under a 10 year lease which terminated in 2003, that was extended month-by-month through 2004, when the current lease was established following an RFP process. The Legislature

is now in its 10th year under the current Lease, having just exercised the final of five one-year renewal options allowed under the terms of the Lease.

Over the past five years the Legislature has explored and requested proposals on numerous occasions seeking alternative space. None of those efforts has resulted in a solution that was possible, practicable or acceptable. Given that the Lease has nearly expired, the Legislature recently provided notice to the public of a Request For Information ("RFI")² from parties interested in providing legislative office space in Anchorage. Two parties provided responses detailing the space they had available. Both spaces were located in areas that were not acceptable to Legislative Council for the needs of the Legislature. The available properties in the responses to the RFI failed to provide constituent access, access to other state and local centers of government, access to public transportation, and access to lodging and meeting spaces. In summary, based on the RFI responses, there are no facilities available for lease that are suitable for the Legislature's unique needs.

Because of the limited interest shown in the RFI and the lack of suitable legislative space available for lease, Legislative Council reconsidered the existing leased space at 716 West Fourth Avenue, and made the determination that the existing building, if renovated and with the addition of a suitable amount of additional space, could continue to serve the Legislature and public. The only available property adjacent to 716 West Fourth Avenue that would facilitate the needed renovations to 716 West Fourth Avenue, and provide additional space, is 712 West Fourth Avenue.

In addition to its efforts to formally identify potential lease space through the issue of an RFI, commercial real estate brokers and others were consulted in an attempt to determine if lease space suitable to meet the Legislature's needs might be available.

² The complete RFI is available at <http://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=168321>.

These inquiries delivered the same results as the RFI; there are no existing facilities available to meet the Legislature's needs,

Based on the foregoing discussion and factors, inclusive of the lack of suitable remaining time for any additional procurement efforts, as Procurement Officer, I find that it would not be practicable to competitively bid a lease for Anchorage legislative office space because of: (1) limited interest demonstrated by the response to the RFI; (2) no available property suitable for legislative needs offered in response to the RFI; (3) the decision by Legislative Council to exercise its option under AS 36.30.083(a) and extend its lease of 716 West Fourth Avenue, subject to renovations by the Lessor and a cost saving of 10 percent less than fair market value; and (4) the uniqueness of the location of 712 West Fourth Avenue to the Legislature's existing office space at 716 West Fourth Avenue.

040 (d)(4): The Modification is in the Best Interests of the Agency or the Committee

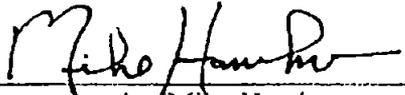
The existing leased space at 716 West Fourth Avenue, while at the end of the service life of the building systems, and despite chronic maintenance problems, has served the Legislature and constituent needs for approximately 20 years. The location on Fourth Avenue provides central access for legislators and constituents to meeting spaces, hotels, the courts, state and local government offices, public transportation, and other support facilities. The current lease includes parking, which is essential for public access to government by constituents, legislators, and staff.

Based on all factors considered above, the Legislative Council made the decision to exercise its option under AS 36.30.083(a) to enter into negotiations with the Lessor, to extend the Lease subject to the building being suitably improved with a modest addition of space, and subject to the requirements in AS 36.30.083(a) that the cost to the Legislature be at least 10 percent below the market rental value of the real property at the time of the extension. The decision to amend the Lease as provided by Alaska

Final
Page 9

Legislative Procurement Procedure 040(d), is in Legislative Council's best interest, since it will facilitate the extension of the Lease with the necessary improvements and with additional needed space, at a cost-savings to the Legislature, as provided by AS 36.30.083(a).

Lastly, in addition to the determination herein, as Chairman of Legislative Council and Procurement Officer, I have provided written notice to legislative leadership of the successful conclusion of negotiations and the intent to extend and amend the lease as provided herein.



Representative Mike Hawker
Chairman of Legislative Council and
Procurement Officer

9.16.13
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, *et al.*
Defendants.

FILE
81022-3
RECEIVED
OCT 06 2015
Stoel Rives LLP

Case No. 3AN-15-05969CI

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

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

REQUESTS FOR ADMISSION

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

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

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

LAW OFFICES OF
JAMES B. GOTTSSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7606
FACSIMILE
(907) 274-0493

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

The rent was drastically increased as was the per square foot rent.

The premises changed drastically, including the legal description with the inclusion of the adjoining property; the leased space going from 22,834 square feet net to 64,000 square feet gross.

The operating costs were drastically increased.

INTERROGATORY NO. 5: If you contend that the Lease Extension did not comply with either AS 36.30.020 or the Alaska Legislative Procurement Procedures, please describe WITH PARTICULARITY all facts supporting your contention.

RESPONSE: AS 36.30.020, requires that the procedures comply with AS 36.30.083(a) and the agreement does not in that it neither extends a real property lease nor

LAW OFFICES OF
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ANCHORAGE, ALASKA
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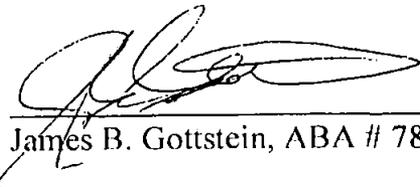
*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

EXHIBIT G - Page 2 of 3

001658

is it at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease.

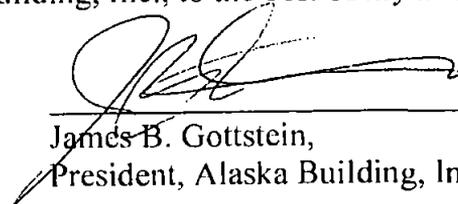
Dated October 5, 2015.


James B. Gottstein, ABA # 7811100

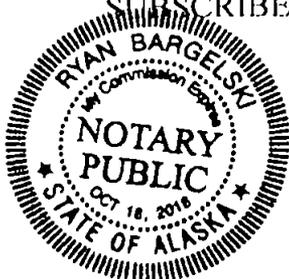
VERIFICATION

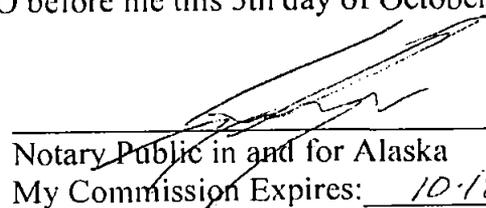
James B. Gottstein, being first duly sworn, deposes and states that I am the president of Alaska Building, Inc., the plaintiff in the above captioned litigation, I have read the above Responses to Interrogatories and believe to be true and complete based on the information available to Alaska Building, Inc., to the best of my knowledge and belief.

Dated October 5, 2015.


James B. Gottstein,
President, Alaska Building, Inc.

SUBSCRIBED AND SWORN TO before me this 5th day of October 2015.

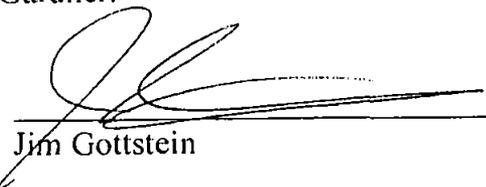



Notary Public in and for Alaska
My Commission Expires: 10-18-18

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated October 5, 2015.


Jim Gottstein

LAW OFFICES OF
JAMES B. GOTTSSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7086
FACSIMILE
(907) 274-9493

*Responses to Legislative Affairs Agency's
First Discovery Requests to Plaintiff*

EXHIBIT G - Page ¹⁴ 3 of 3

001659

Kevin Cuddy (Alaska Bar #0810062)
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: (907) 277-1900
Facsimile: (907) 277-1920

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

Case No. 3AN-15-05969 CI

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY,

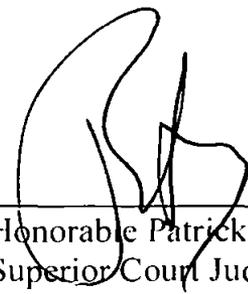
Defendants.

**ORDER GRANTING DEFENDANT THE AGENCY'S NON-OPPOSED MOTION
FOR 2-DAY EXTENSION OF TIME TO FILE ITS OPPOSITION TO
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT
EXTENSION)**

THIS COURT, having reviewed Defendant Legislative Affairs Agency's (the "Agency") Motion for Extension of Time, any opposition and/or responses thereto, and being duly advised in the premises, this Court finds and ORDERS as follows:

IT IS HEREBY ORDERED that said Motion is GRANTED. The Agency's Opposition is now due on February 3, 2016..

DATED this 27th day of January, 2016.



Honorable Patrick McKay
Superior Court Judge

CERTIFICATE OF SERVICE

This certifies that on January 27, 2016, I caused a true and correct copy of the foregoing to be served on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)



Practice Assistant

81090839.1 0081622-00003

I certify that on 1/28/16 a copy
of the following was ~~mailed~~ ~~faxed~~ ~~hand-delivered~~
to each of the following at their addresses of ~~mailed~~
record. James Gottstein

Jeffrey Robinson/Kevin Cuddey

Administrative Assistant 

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1930

44
JUL 27 PM 1:05
STOEL RIVES
LEGISLATIVE AFFAIRS AGENCY

Kevin Cuddy (Alaska Bar #0810062)
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: (907) 277-1900
Facsimile: (907) 277-1920

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

Case No. 3AN-15-05969 CI

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

**LEGISLATIVE AFFAIRS AGENCY'S NON-OPPOSED MOTION FOR TWO-
DAY EXTENSION OF TIME TO FILE ITS OPPOSITION TO PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)**

Legislative Affairs Agency ("LAA"), respectfully moves for a two (2) day
extension of time in which to file its Opposition to Plaintiff's Motion for Partial

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

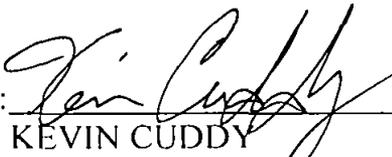
d

Summary Judgment (Not Extension), filed on June 12, 2015. Defendants' opposition, currently due on February 1, 2016, would now become due February 3, 2016.

Counsel for LAA has communicated with counsel for Plaintiff, who stated its non-opposition to this requested extension of time.

DATED: January 27, 2016

STOEL RIVES LLP

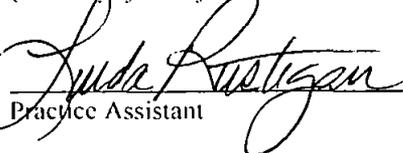
By: 
KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE

This certifies that on January 27, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)


Practice Assistant

81090583.1 0081622-00003

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)

Defendants.)

**[PROPOSED] ORDER GRANTING THE UNOPPOSED MOTION TO EXTEND
DEADLINE FOR 716 WEST FOURTH AVENUE, LLC TO FILE ITS
OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY
JUDGMENT (NOT EXTENSION)**

This Court, having reviewed 716 West Fourth Avenue LLC's Unopposed Motion to Extend Deadline for 716 West Fourth Avenue, LLC to file its Opposition to Plaintiff's Motion for Partial Summary Judgment, and being duly advised in the premises, enters the following ORDER:

716 West Fourth Avenue, LLC shall have until **February 16, 2016** to file its Opposition.

DATED this 1st day of February, 2016 ^(M)



HON. PATRICK J. MCKAY
Superior Court Judge

I certify that on 2/11/16 a copy of the following was mailed ~~faxed~~ ~~hand-delivered~~ to each of the following at their addresses of record emailed
James Lottstein
Jeffrey Robinson / Kevin Cuddy
Administrative Assistant K

JAN 28 2016

ASHBURN & MASON P.C.
LAWYERS
227 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 28 day of January, 2016.

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

[PROPOSED] ORDER RE UNOPPOSED MOTION TO EXTEND DEADLINE FOR 716 TO FILE OPPOSITION TO PARTIAL MOTION FOR SUMMARY JUDGMENT

Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

{10708-101-00314590;1}

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FILED
STATE OF ALASKA
THIRD DISTRICT

THIRD JUDICIAL DISTRICT AT ANCHORAGE 16 JAN 28 PM 1:16

CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiff,)

vs.)

Case No.: 3AN-15-05969 CI

716 WEST FOURTH AVENUE LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)
Defendants.)

**AFFIDAVIT OF JEFFREY W. ROBINSON IN SUPPORT OF UNOPPOSED
MOTION TO EXTEND DEADLINE FOR 716 WEST FOURTH AVENUE, LLC
TO FILE OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT (NOT EXTENSION)**

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case, and submit this affidavit in support of 716 West Fourth Avenue, LLC's Unopposed Motion to Extend Deadline for 716 West Fourth Avenue, LLC to file its Opposition to Plaintiff's Motion for Partial Summary Judgment (Not Extension). I have personal knowledge of all facts described herein.

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL. 907.276.4331 • FAX 907.277.8235

2. I have personally received assurances from counsel for the Legislative Affairs Agency and for Alaska Building, Inc. that they do not oppose the requested extension.

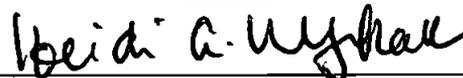
3. This motion is not made for purposes of undue harassment or delay.

FURTHER YOUR AFFIANT SAYETH NAUGHT.



Jeffrey W. Robinson

SUBSCRIBED AND SWORN to before me this 28 day of January, 2016.



NOTARY PUBLIC in and for Alaska
My Commission Expires: 4/1/2019



ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION TO EXTEND DEADLINE TO FILE OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 28 day of January, 2016, 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

AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION TO EXTEND DEADLINE TO FILE OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

FILED
STATE OF ALASKA
THIRD DISTRICT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2016 JAN 28 PM 1:16

THIRD JUDICIAL DISTRICT AT ANCHORAGE

CLERK TRIAL COURTS

ALASKA BUILDING, INC., an Alaska)
corporation,)
)
Plaintiff,)
)
vs.)
)
716 WEST FOURTH AVENUE LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)
Defendants.)
)

BY: _____
DEPUTY CLERK

Case No.: 3AN-15-05969 CI

**UNOPPOSED MOTION TO EXTEND DEADLINE FOR
716 WEST FOURTH AVENUE, LLC TO FILE OPPOSITION TO PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)**

Defendant 716 West Fourth Avenue, LLC ("716"), by and through counsel Ashburn & Mason, P.C., hereby moves the court to extend the deadline by which it is to file its Opposition to Plaintiff's Motion for Partial Summary Judgment (Not Extension). Counsel for Alaska Building, Inc. and Legislative Affairs Agency, with whom the undersigned has conferred, do not oppose this request. This motion is accompanied by the attached proposed order and affidavit of counsel.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 1-28-16

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

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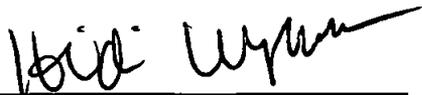
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 28 day of January, 2016, 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

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

FILED
CLERK OF ALASKA
THIRD DISTRICT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2016 JAN 26 PM 1:35

THIRD JUDICIAL DISTRICT AT ANCHORAGE

CLERK TRIAL COURT

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiff,)

vs.)

Case No.: 3AN-15-05969 CI

716 WEST FOURTH AVENUE LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)
Defendants.)

**AFFIDAVIT OF JEFFREY W. ROBINSON IN SUPPORT OF UNOPPOSED
MOTION TO EXTEND DEADLINE FOR 716 WEST FOURTH AVENUE, LLC
TO SUBMIT MATERIALS IN COMPLIANCE WITH COURT'S ORDER OF
JANUARY 13, 2016 REGARDING PLAINTIFF'S MOTION TO COMPEL**

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case, and submit this affidavit in support of 716 West Fourth Avenue, LLC's Unopposed Motion to Extend Deadline for 716 West Fourth Avenue, LLC to Submit Materials in Compliance with Court's Order of January 13, 2016. I have personal knowledge of all facts described herein.

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

2. In the Court's January 13, 2016 Order Regarding Plaintiff's Motion to Compel, it granted 716 fifteen (15) days to comply with the Court's Order. The deadline for 716 to comply pursuant to the Court's order is January 28, 2016. Plaintiff has agreed to allow 716 an additional ten (10) days to comply with the Court's Order and extends the deadline to February 8, 2016. This matter was discussed, and agreed to, by counsel for Plaintiff and counsel for 716 when they met in person on January 15, 2016 and their agreement was confirmed in an email dated January 15, 2016. Counsel for 716 will be out of state from January 19th thru January 25th and has numerous other matters to attend to immediately prior to departure and upon return.

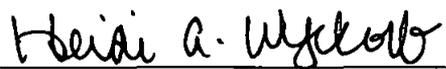
3. This motion is not made for purposes of undue harassment or delay.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

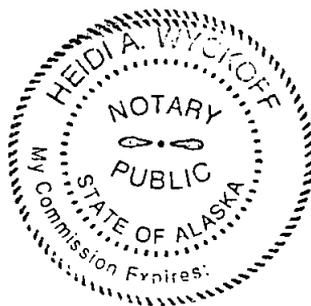


Jeffrey W. Robinson

SUBSCRIBED AND SWORN to before me this 26 day of January, 2016.



NOTARY PUBLIC in and for Alaska
My Commission Expires: 1/11/2019



ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION TO EXTEND DEADLINE FOR 716 TO SUBMIT MATERIALS IN COMPLIANCE WITH COURT'S ORDER
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969 Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
facsimile U.S. Mail on the 26 day of January, 2016, 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 P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION TO EXTEND DEADLINE FOR 716 TO SUBMIT MATERIALS IN
COMPLIANCE WITH COURT'S ORDER

Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969 Civil

FILED
STATE OF ALASKA
THIRD DISTRICT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2016 JAN 26 PM 1:35

THIRD JUDICIAL DISTRICT AT ANCHORAGE

CLERK TAXAL COURT

ALASKA BUILDING, INC., an Alaska)
corporation,)

BY: _____
DEPUTY CLERK

Plaintiff,)

vs.)

Case No.: 3AN-15-05969 CI

716 WEST FOURTH AVENUE LLC and)
LEGISLATIVE AFFAIRS AGENCY,)
Defendants.)

NOTICE OF FILING ORIGINAL AFFIDAVIT OF JEFFREY ROBINSON

Attached to 716 West Fourth Avenue, Unopposed Motion to Extend Deadline for 716 West Fourth Avenue, LLC to Submit Materials in Compliance with Court's Order of January 13, 2016 Regarding Plaintiff's Motion to Compel is the unsigned Affidavit of Jeffrey Robinson. Attached to this Notice is the original Affidavit.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 1-26-16

By: *JWR*
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 26 day of January 2016, 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 P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Alaska Building Inc.,)
)
 Plaintiff,)
)
 v.)
)
 716 West Fourth Avenue LLC, and)
 Legislative Affairs Agency,) Case No. 3AN-15-05969CI
)
 Defendants.)

ORDER DENYING MOTION FOR RECONSIDERATION RE: LACHES

716 has moved for reconsideration of the Order Denying Summary Judgment Re: Laches, dated 1/7/16, on 2 issues. First, it contends the court "overlooked or misconceived" the material fact that ABI was seeking *qui tam* damages- despite 716's citations to the footnote where the court rather dismissively acknowledged the request for *qui tam* damages. The court did not "miss" the request for damages; the court simply did not give the request much weight, and subsequently dismissed the claim for damages at defendants' request.¹ As stated in the order requested to be reconsidered, the court found that "under the unique facts involved in this litigation"² laches doesn't apply.

The court does not find that the defense of laches applies to the request for a declaratory judgment. As also stated in the order requested to be reconsidered, the court may well have found laches to apply to a legitimate parallel request for damages or injunction. As the Alaska Supreme Court has previously held:

¹ See Order Regarding ABI's *Qui Tam* and Punitive Damages Request for Relief, dated 1/13/16

² See Order at p. 4

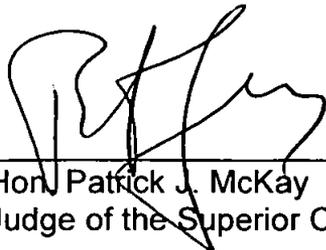
Accordingly, a finding that injunctive relief would be blocked by laches does not necessarily mean that an accompanying claim for declaratory relief should also be blocked. Rather, courts should independently examine each cause of action to determine whether laches should apply.³

Even if the court was presented with a parallel claim that was subject to a laches defense, the court still finds that the request for declaratory relief in and of itself does not give rise to a laches defense.

Finally, 716 requests "the court to reconsider its application of the prejudice prong of the equitable defense of laches". Irrespective of whether the court found that laches did not apply to the request for declaratory relief, the court also found that the defendants did not conclusively prove prejudice to the standard required for summary dismissal of the case. There never was a serious question that 716 spent significant funds in preparing the leasehold for occupancy. The only accurate way to measure the allegations of past prejudice (expenses) is to speculate on future prejudice (what will happen if...). An issue such as this would rarely be capable of meeting the demanding standards of summary judgment. The court reiterates - "spending money is not the equivalent of suffering harm"⁴. Whatever the court's final decision, 716 will still own the building that they spent their (and not an insignificant amount of LAA's) money on. 716 will have the ability to sell or lease the building- it's the amount they receive at sale or lease that cannot be conclusively proved at this juncture that ultimately will determine their prejudice, if any.

The motion for reconsideration is DENIED.

1/22/16
DATE


Hon. Patrick J. McKay
Judge of the Superior Court

³ Laverty v. Alaska R.R. Corp., 13 P.3rd 725, (Alaska 2000), at 730.

⁴ Order at p. 8.

I certify that on 1/25/16 a copy of the following was ~~mailed~~ ~~faxed~~ ~~hand-delivered~~ to each of the following at their addresses of record. James Stockton emailed
Jeffrey Robinson Kevin Cuddy
Administrative Assistant 

001677

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska)
 corporation,)

Plaintiffs,)

vs.)

716 WEST FOURTH AVENUE LLC, and)
 LEGISLATIVE AFFAIRS AGENCY,)

Defendants.)

Case No.: 3AN-15-05969 Civil

**PROPOSED ORDER GRANTING THE UNOPPOSED MOTION TO EXTEND
 DEADLINE FOR 716 WEST FOURTH AVENUE, LLC TO SUBMIT
 MATERIALS IN COMPLIANCE WITH COURT'S ORDER OF JANUARY 13,
 2016 REGARDING PLAINTIFF'S MOTION TO COMPEL**

This Court, having reviewed 716 West Fourth Avenue LLC's Unopposed Motion to Extend Deadline for 716 West Fourth Avenue, LLC to Submit Materials in Compliance with Court's Order of January 13, 2016 Regarding Plaintiff's Motion to Compel, and being duly advised in the premises, enters the following ORDER:

716 West Fourth Avenue, LLC shall have until **February 8, 2016** to submit the materials in compliance with the Court's Order of January 13, 2016 Regarding Plaintiff's Motion to Compel.

DATED this 22^d day of January, 2015.

HON. PATRICK J. MCKAY
 Superior Court Judge

I certify that on 1/25/16 a copy of the following was mailed/faxed/hand delivered to each of the following at their addresses of record: James Gottstein, Jeffrey Roberson, Kevin Cuddy *emailed*

Administrative Assistant

JAN 19 2016

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 19 day of January, 2016.

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 P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

[PROPOSED] ORDER RE UNOPPOSED MOTION TO EXTEND DEADLINE FOR 716 TO SUBMIT MATERIALS IN COMPLIANCE WITH COURT'S ORDER

Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

{10708-101-00313212;1}

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-15-05969CI

PA
**ORDER GRANTING MOTION FOR STATUS
CONFERENCE**

Alaska Building, Inc.'s, request for a status conference with respect to its October 6,
2015 Motion to Compel Responses to Plaintiff's First Request for Production to 716 West
Fourth Avenue LLC. (Motion) is hereby **GRANTED**. A status conference on the Motion
shall be held _____, 2016, in Courtroom 301, Nesbett Courthouse,
825 W 4th Avenue, Anchorage, Alaska, at _____ .m.

Dated _____, 2016.

PATRICK J. McKAY,
SUPERIOR COURT JUDGE

NOT USED

JAN 04 2016

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

001680

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

2016 JAN 22 PM 1:13

CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

**REQUEST FOR
IN CAMERA REVIEW**

Case No. 3AN-15-05969CI

Pursuant to the Court's invitation in its January 13, 2016 Order Regarding Alaska Building, Inc.'s Motion to Compel, Plaintiff Alaska Building, Inc., requests the Court conduct an *in camera* review of the operating agreement for 716 West Fourth Avenue LLC (716 LLC), including all amendments and any other agreements pertaining to the operation and/or management of 716 LLC. It is hard to identify in advance all of the possibilities the documents might contain that would be relevant to this action or lead to relevant evidence, but three things for which Alaska Building, Inc., was looking are (1) any agreement(s) to indemnify any person, (2) any other indications that the owners of 716 LLC knew the lease the subject of this action was not at least 10% below market rent and/or did not extend a real property lease, and (3) that 716 LLC otherwise does not have clean hands.

Dated January 22, 2016.



James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

LAW OFFICES OF
JAMES B. GOTTSTEIN
408 G STREET, SUITE 208
ANCHORAGE, ALASKA
99501

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(907) 274-7686
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(907) 274-9493

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof and proposed order to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated January 22, 2016.



Jim Gottstein

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

FILED in the TRIAL COURTS
State of Alaska Third District

ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiff,)

vs.)

716 WEST FOURTH AVENUE LLC and)
LEGISLATIVE AFFAIRS AGENCY,)
Defendants.)

JAN 19 2016

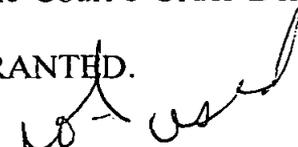
Clerk of the Trial Courts
By _____ Deputy

Case No.: 3AN-15-05969 CI

[PROPOSED] ORDER GRANTING MOTION FOR RECONSIDERATION

Having considered the parties' briefing regarding Defendant 716 West Fourth Avenue, LLC's Motion for Reconsideration of the Court's Order Denying Motion for Summary Judgment Re: Laches, the request is GRANTED.

DATED: _____



HON. PATRICK J. McKAY
Superior Court Judge

JAN 19 2016

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LAWYERS
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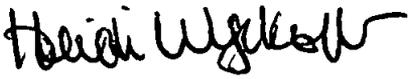
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 19th day of January 2016, 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

ASHBURN & MASON P.C.
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2016 JAN 19 PM 3:23

THIRD JUDICIAL DISTRICT AT ANCHORAGE

BY: _____

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiff,)

vs.)

Case No.: 3AN-15-05969 CI

716 WEST FOURTH AVENUE LLC, and LEGISLATIVE AFFAIRS AGENCY, Defendants.)

MOTION FOR RECONSIDERATION OF THE COURT'S ORDER DENYING MOTION FOR SUMMARY JUDGMENT RE: LACHES

Defendant 716 West Fourth Avenue LLC ("716"), by and through counsel, Ashburn & Mason, P.C., and pursuant to Alaska Rule of Civil Procedure 77(k), hereby respectfully moves the court to reconsider its January 7, 2016 order denying Defendants' motion for summary judgment under the laches doctrine. 716 asks this Court to reconsider two portions of its ruling. First, under Civil Rule 77(k)(1)(ii)¹, this Court overlooked or misconceived the material fact that Plaintiff was in fact seeking damages when it brought the instant action. Second, under Civil Rule 77(k)(1)(ii), the court should reconsider its application of the prejudice prong of the equitable defense of laches.

¹ Under Civil Rule 77(k)(1)(ii), a party may move the court to reconsider a ruling previously decided if, in reaching its decision: (ii) the court has overlooked or misconceived some material fact or proposition of law.

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d

I. Plaintiff did in fact seek damages in this suit

The Court overlooked or misconceived the scope and breadth of ABI's actual (and repeated) requests for damages throughout this litigation. In balancing ABI's 17 month delay in bringing suit against the hardship the defendants would suffer if the lease were declared illegal, the Court concluded that the harm was yet "unknown."² The Court then admitted that it would have likely reached a different conclusion "if ABI were seeking an award of damages."³ Yet, Plaintiff's request for *qui tam* damages dominates the pleadings in this case

Plaintiff's initial complaint sought, *inter alia*, a judgment in its favor for "10% of the savings to the Legislative Affairs Agency" if the lease were invalidated or reformed.⁴ ABI pressed onward with its request for this award even *after* the court concluded that it only had citizen taxpayer standing and not interest injury standing,⁵ filing a Second Amended Complaint a mere five days after the ruling requesting the identical 10% award for itself.⁶ In his October 16, 2015 deposition, Mr. Gottstein acknowledged that even though this wasn't a *qui tam* case, he was still dedicated to

² See Court's Order at 7.

³ See *Id.* The Court's footnote acknowledged that ABI was seeking a novel *qui tam* damages claim, which at the time of the January 7, 2016 order regarding laches was still outstanding.

⁴ See Plaintiff's Complaint at Page 5, ¶ C.

⁵ See Order regarding Motion to Dismiss dated 8/20/2015.

⁶ See Second Amended Complaint, dated 8/25/2015.

“com[ing] up with some law” that would justify the court rewarding him, a private litigant, 10% relief.⁷

ABI never wavered from its *qui tam* damages request. For example, on October 2, 2015, Plaintiff submitted an affidavit from Larry Norene estimating that over the course of the lease term (10 years), the Agency would pay \$20,765,360 over the permissible market rental rate under AS 36.30.083(a).⁸ Accordingly, as he has admitted, Mr. Gottstein could have potentially pocketed over \$2,000,000 had the Court permitted his *qui tam* claim to go forward and ultimately accepted Norene’s overpayment calculations.⁹

ABI has unabashedly sought damages in this case and the Court overlooked this material fact in its order regarding laches. Yes, as all parties have acknowledged, the Plaintiff sought a “novel” award. And, as this Court found, the award was without merit and had no basis in statutory law. Nevertheless, Defendants were forced to defend against this claim in numerous motions filed by ABI and in all three Complaints filed in this action. Accordingly, in light of having overlooked the fact that ABI actually pursued damages, 716 requests that the court reconsider its decision precluding a summary judgment ruling in its favor under the laches doctrine.

⁷ See 716’s Reply to ABI’s Opposition to Motion for Ruling of Law, Attachment A at 4.

⁸ See Larry Norene Affidavit attached to Plaintiff’s Motion for Preliminary Injunction.

⁹ A good deal of Mr. Gottstein’s sworn deposition testimony addressed this issue:

Q: And you still believe you’re entitled to roughly a \$2.1 million windfall if the court accepts your *qui tam* argument?

A: Well, I object to the characterization as “windfall,” and we’ll see whether or not the courts agree with it, but I’m certainly making that claim. See 10/23/15 Deposition at 76: 19-24

a) **The court overlooked undisputed factual evidence of the actual prejudice incurred by 716 because of ABI's delay in filing suit**

There are no genuine issues of material facts pertaining to the harm suffered by 716 as a result of Plaintiff's unreasonable delay. It is undisputed that 1) 716 spent tens of millions of dollars renovating and expanding the LIO, 2) Plaintiff gained financially from the Project, 3) and Plaintiff failed to file a lawsuit to prevent the Project from going forward despite believing that it was illegal even *before* construction commenced. The Court's Order acknowledges the \$44 million dollar outlay in construction costs was **avoidable** had Plaintiff timely challenged the lease, but perplexingly concludes that "spending money is not the equivalent of suffering harm if the money is recouped in a different fashion."¹⁰ Even looking in the light most favorable to ABI, there are simply no factual inferences in the record to suggest that 716 would be able to recoup the \$44 million in building costs should the lease be declared illegal.¹¹

ABI has never contested that 716 served as the Landlord of the LIO for 23 years¹² and that the *entire* renovation and expansion project was *designed* to meet the Lessee's specific needs.¹³ On one hand, the Court acknowledged that "716 may not be

¹⁰ See Court's Order at 8.

¹¹ In the instant case, the construction contract alone was in excess of \$30 million dollars. In *Laverty v. Alaska R.R. Corp.*, 13 P.3d 725, 729 (Alaska 2000) where the Supreme Court denied Plaintiff's request for injunctive relief because it was barred by laches, the gravel removal company spent large amount of time and money on "geotechnical studies" and the overall permitting process, fees which pale in comparison to what 716 spent on the instant Project.

¹² See Affidavit of Mark Pfeffer, attached to 716's Opposition to Plaintiff's Motion for Preliminary Injunction, incorporated into 716's Joinder in the Agency's Motion to Dismiss.

¹³ See Extension of Lease and Lease Amendment No. 3 at 1.

able to lease to any one on similar terms”¹⁴ should it declare the lease illegal, and on the other hand the Court definitively concluded that upon a declaration that the current lease is illegal 716 “will be able to lease the building at a greater rate since it claims the current rate is 10% below the market value.”¹⁵ There are no factual inferences in the record to support the notion that should the lease be declared illegal, 716 could find a replacement tenant for *any* meaningful rental rate. Plaintiff presented no facts in support of the idea that 716 may recoup any sum should it renegotiate its existing lease or find an entirely new tenant at some future date should the contract be voided.

Nor has there been any meaningful inference from the record that any hypothetical replacement tenant would commit to occupying the uniquely designed building for any meaningful length of time. There has never been any factual inference in the record to suggest that the parties to the lease did not intend to extend the lease for any period other than the full June 1, 2014-May 31, 2024 ten-year lease term as authorized under AS 346.30.080(a).¹⁶ Because the Court overlooked the **actual** prejudice suffered by 716 as a result of ABI’s delay, 716 respectfully asks the Court to reconsider its Order and find that Plaintiff’s lawsuit is equitably barred by the doctrine of laches.

¹⁴ See Court’s Order at 9. It goes without saying that it is illegal to enforce a lease that violates a statute.

¹⁵ See *Id.*

¹⁶ See Affidavit of Mark Pfeffer in support of 716’s opposition to Plaintiff’s Motion for Preliminary Injunction at ¶ 9.

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ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 1/19/06

By: Jeffrey W. Robinson
Jeffrey W. Robinson
Alaska Bar No. 0805038

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 19th day of January, 2016, 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

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2015 JAN 19 PM 3:35

THIRD JUDICIAL DISTRICT AT ANCHORAGE

CLERK TRIAL COURT

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiff,)

vs.)

716 WEST FOURTH AVENUE LLC and LEGISLATIVE AFFAIRS AGENCY, Defendants.)

Case No.: 3AN-15-05969 CI

NOTICE OF FILING UNSIGNED AFFIDAVIT OF JEFFREY ROBINSON

Attached to 716 West Fourth Avenue, Unopposed Motion to Extend Deadline for 716 West Fourth Avenue, LLC to Submit Materials in Compliance with Court's Order of January 13, 2016 Regarding Plaintiff's Motion to Compel is the unsigned Affidavit of Jeffrey Robinson. Jeffrey Robinson is currently traveling out of state at the time of the filing of the Unopposed Motion and unavailable for signature. The signed affidavit will be filed as soon as it is received in the office of the undersigned.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 1/19/16

By: Jeffrey W. Robinson
Jeffrey W. Robinson
Alaska Bar No. 0805038

ASHBURN & MASON P.C.
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D

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile
 U.S. Mail on the 19 day of January 2016, 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

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.)

**AFFIDAVIT OF JEFFREY W. ROBINSON IN SUPPORT OF UNOPPOSED
MOTION TO EXTEND DEADLINE FOR 716 WEST FOURTH AVENUE, LLC
TO SUBMIT MATERIALS IN COMPLIANCE WITH COURT'S ORDER OF
JANUARY 13, 2016 REGARDING PLAINTIFF'S MOTION TO COMPEL**

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case, and submit this affidavit in support of 716 West Fourth Avenue, LLC's Unopposed Motion to Extend Deadline for 716 West Fourth Avenue, LLC to Submit Materials in Compliance with Court's Order of January 13, 2016. I have personal knowledge of all facts described herein.

ASHBURN & MASON P.C.
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2. In the Court's January 13, 2016 Order Regarding Plaintiff's Motion to Compel, it granted 716 fifteen (15) days to comply with the Court's Order. The deadline for 716 to comply pursuant to the Court's order is January 28, 2016. Plaintiff has agreed to allow 716 an additional ten (10) days to comply with the Court's Order and extends the deadline to February 8, 2016. This matter was discussed, and agreed to, by counsel for Plaintiff and counsel for 716 when they met in person on January 15, 2016 and their agreement was confirmed in an email dated January 15, 2016. Counsel for 716 will be out of state from January 19th thru January 25th and has numerous other matters to attend to immediately prior to departure and upon return.

3. This motion is not made for purposes of undue harassment or delay.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Jeffrey W. Robinson

SUBSCRIBED AND SWORN to before me this ____ day of January, 2016.

NOTARY PUBLIC in and for Alaska
My Commission Expires:_____

AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION TO EXTEND DEADLINE FOR 716 TO SUBMIT MATERIALS IN COMPLIANCE WITH COURT'S ORDER
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969 Civil

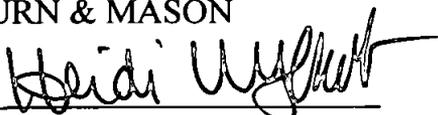
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 19 day of January, 2016, 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

ASHBURN & MASON P.C.
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AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION TO EXTEND DEADLINE FOR 716 TO SUBMIT MATERIALS IN COMPLIANCE WITH COURT'S ORDER
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969 Civil

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2016 JAN 19 PM 3:35

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.)

**UNOPPOSED MOTION TO EXTEND DEADLINE FOR
716 WEST FOURTH AVENUE, LLC TO SUBMIT MATERIALS IN
COMPLIANCE WITH COURT'S ORDER OF JANUARY 13, 2016
REGARDING PLAINTIFF'S MOTION TO COMPEL**

Defendant 716 West Fourth Avenue, LLC ("716"), by and through counsel Ashburn & Mason, P.C., hereby moves the court to extend the deadline by which it is to submit materials in compliance with the Court's order of January 13, 2016 regarding Plaintiff's Motion to Compel. Plaintiff does not oppose this request. This motion is accompanied by the attached affidavit of counsel and proposed order.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 1/19/16

By: Jeffrey W. Robinson
Jeffrey W. Robinson
Alaska Bar No. 0805038

ASHBURN & MASON P.C.
LAWYERS
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CERTIFICATE OF SERVICE

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James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501

Kevin Cuddy
Stoel Rives, LLP
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Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

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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-15-05969CI

** 12*
**ORDER GRANTING
ALASKA BUILDING, INC.'S MOTION TO ORDER
REP. HAWKER TO REQUEST E-MAILS FROM GCI**

Upon the motion by plaintiff, Alaska Building, Inc., for an order requiring former Legislative Council Chair Rep. Mike Hawker to request GCI to provide copies to the Legislative Affairs Agency's attorney in this matter of all of his e-mail from January 1, 2013, to October 1, 2013, , it is hereby ORDERED the motion is GRANTED.

IT IS FURTHER ORDERED,

1. Within 10 days of this Order, Rep. Mike Hawker request that GCI provide copies of all of his e-mails from January 1, 2013, to October 1, 2013, to Kevin Cuddy, of Stoel Rives, 510 L St., Ste. 500, Anchorage, AK 99501. *

2. The Legislative Affairs Agency shall produce all non-privileged e-mails, including attachments, responsive to Plaintiff's First Requests for Production to Legislative Affairs Agency within three weeks of receiving such e-mails.

LAW OFFICES OF
JAMES B. GOTTSTEIN
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DEC 14 2015

001699

3. With respect to any e-mails withheld on grounds of privilege, to be able to assess the applicability of the asserted privilege Legislative Affairs Agency shall state:

- (a) The date;
- (b) The author or sender;
- (c) The recipient or recipients;
- (d) Any other person who sent, received or obtained copies of the e-mail;
- (e) The subject of the e-mail; and
- (f) The basis of the privilege asserted with respect to the alleged grounds for non-production of the e-mail.

* Per "Notice", Mr. Hawker has requested e-mails. (P)

Dated 1/15/16


PATRICK J. MCKAY,
SUPERIOR COURT JUDGE

I certify that on 1/19/16 a copy of the following was ~~mailed/faxed/hand-delivered~~ *emailed* to each of the following at their addresses of record. *James Gottstein*
Jeffrey Robinson / Kevin Cuddy
Administrative Assistant *K1*

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 208
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

Order Requiring Rep. Hawker
to Request E-mails

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-15-05969CI

2 **DISCOVERY ORDER**

Upon the motion by defendant 716 West Fourth Avenue for a protective order pursuant to Alaska Rule of Civil Procedure 26(c), and in consideration of the opposition of plaintiff Alaska Building, Inc., it is hereby ORDERED that the motion is denied, except as follows to expedite the flow of discovery material, facilitate the prompt resolution over confidentiality, adequately protect confidential material, and ensure that protection is afforded only to material so entitled:

1. This Order applies to all products of discovery in this matter subsequent to the date of this Order, but does not apply to documents or information gained by means other than the discovery process in this matter, including documents that may have also been produced through discovery in this matter.

2. Except as otherwise ordered by the Court, personal financial information shall be classified as confidential.

NOV 10 2015

NOV 11 2015

LAW OFFICES OF
JAMES B. GOTTSSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

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001701

3. Except as otherwise ordered by the Court Social Security Numbers shall be redacted.
4. Except as otherwise ordered by the Court,
 - (a) documents containing bank, credit union, or other financial institution accounts may be redacted except for the last three digits of the account number and the name of the financial institution, and
 - (b) credit card, bank card, or debit card account may be redacted except for the last four digits of the account number and the name of the issuing institution
5. A producing party wishing to redact documents in any other manner or keep any documents confidential must produce the documents when due and properly seek a protective order under Civil Rule 26(c).
6. Any documents withheld or redacted on the basis of a privilege shall describe such documents as follows:
 - (a) The date of the document or other item;
 - (b) The author or addressor of the document or other item;
 - (c) The recipient or addressee of the document or other item;
 - (d) The number of pages of the document;
 - (e) The general subject matter of the document or other item;
 - (f) Each person who sent, received and obtained copies of the document or other item;
 - (g) A general description of the document or other item; and
 - (h) The basis of the privilege asserted.
7. With the exception of documents or information acquired other than through

discovery in this matter, produced documents for which a motion for protective order has

been filed shall not be further disseminated by any receiving party pending determination of the motion for protective order. *

Dated 1/15/16, 2015.


PATRICK J. MCKAY,
SUPERIOR COURT JUDGE

* Financial documents which do not have a public figure (legislator or state employee) as a party may not be published without court order. *pu*

I certify that on 1/19/16 a copy of the following was ~~mailed/faxed/hand delivered~~ *emailed* to each of the following at their addresses of record: James Gottstein
Jeffrey Robinson/ Kevin Cuddy
Administrative Assistant *pu*

LAW OFFICES OF
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)

Defendants.)

PROPOSED ORDER GRANTING MOTION FOR PROTECTIVE ORDER

This Court, having reviewed 716 West Fourth Avenue LLC's Motion for Protective Order and any oppositions and replies thereto, and being duly advised in the premises, enters the following ORDER:

1. ABI and its attorney are required to remove the discovery that has been published on the internet; and
2. 716 is relieved of any further duty of production unless and until ABI agrees to the attached (or similar) confidentiality agreement, which will prevent ABI from publishing discovery documents and limits ABI's use of discovery documents to purposes directly related to its prosecution of its claims in this suit.

Or in the alternative:

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

OCT 29 2015

1. 716 shall make appropriate redactions to its past and future production (to remove sensitive information) and ABI shall bear the costs and fees associated with that task.

DATED this ____ day of _____, 2015.

HON. PATRICK J. MCKAY
Superior Court Judge

ASHBURN & MASON INC.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

[PROPOSED] ORDER GRANTING MOTION FOR PROTECTIVE ORDER
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

{10708-101-00301055;1}

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
facsimile U.S. Mail on the 29 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
Heidi Wyckoff

ASHBURN & MASON P.C.
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[PROPOSED] ORDER GRANTING MOTION FOR PROTECTIVE ORDER
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

{10708-101-00301055;1}

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Alaska Building Inc.,)
)
 Plaintiff,)
)
 v.)
)
 716 West Fourth Avenue LLC, and)
 Legislative Affairs Agency,) Case No. 3AN-15-05969CI
)
 Defendants.)

**ORDER REGARDING ABI'S QUI TAM AND PUNITIVE DAMAGES REQUEST FOR
RELEIF**

I. Background

On September 9, 2013, the Legislative Affairs Agency (LAA) and the 716 West Fourth Avenue LLC (716) entered into an agreement to renovate and expand the existing Legislative Information Office (LIO Project). At the completion of this project, the LAA once again leased the office space.¹ Construction began in December 2013 and was completed around January 9, 2015.²

The Alaska Building, owned by Alaska Building Inc. (ABI), is a building adjacent to the LIO Project whose president and sole member is James Gottstein. ABI filed a lawsuit on behalf of ABI and the Alaskan taxpayers on March 31, 2015 alleging in relevant part that because the LIO Project did not comply with the requirements under AS 36.30, the project is illegal. Under AS 36.30, leases into which LAA enter are subject to a competitive bidding process and legislative notice. AS 36.30.083 exempts from these bidding and notice requirements lease extensions that will result in a "cost savings of at least 10 percent below the market rental value of the... property." As part of his remedies, ABI requested "[j]udgement in favor of Alaska Building in the amount of

¹ 716's Opp. to Mot. for Prelim. Inj. 1-2.

² *Id.* at 4.

10% of the savings to the Legislative Affairs Agency for invalidation of the LIO Project Lease”³ and “[p]unitive damages against 716 W. Fourth Avenue LLC.”⁴ 716 and the LAA have moved for a ruling of law as to whether ABI may pursue these two requested reliefs.

II. Legal Standard

716 and LAA have requested a “ruling of law precluding ABI’s claims for *qui tam* and punitive damages.”⁵ The practical effect of a ruling in favor of 716 and LAA would be granting them summary judgement on these issues. As such, the summary judgement standard will be utilized here.

Summary judgement is appropriate where “there is no issue as to any material fact and the moving party is entitled to a judgement as a matter of law.”⁶ The non-moving party must “set forth specific facts showing that he could produce evidence reasonably tending to dispute or contradict the movant’s evidence and thus demonstrate that a material issues of fact exists.”⁷ Alaska has a lenient summary judgement standard,⁸ but mere allegations are insufficient and the non-moving party “must set forth specific facts showing that there is a genuine issue of material fact.”⁹ The court views “the facts in the light most favorable to the non-moving party and draw[s] all factual inferences in the non-moving party’s favor.”¹⁰

III. Issues Presented

A. *ABI has no legal grounds upon which to request 10% of any savings resulting invalidating the lease.*

³ Second Amended Complaint ¶ C.

⁴ *Id.* at ¶ E.

⁵ Title of Defendant’s Motion “716’s Motion for Ruling of Law Precluding ABU’s Claims for Qui Tam and Punitive Damages.”

⁶ Alaska R. Civ. P. 56(c).

⁷ *Christensen v. Alaska Sales and Service, Inc.* 335 P.3d 514, 517 (Alaska 2014).

⁸ *Estate of Milos v. Quality Asphalt Paving, Inc.*, 145 P.3d 533, 537 (Alaska 2006).

⁹ *Kelly v. Municipality of Anchorage*, 270 P. 3d 801, 803 (Alaska 2012) (internal citations omitted).

¹⁰ *Kalenka v. Jadon, Inc.*, 305 P.3d 346, 349 (Alaska 2013).

B. *ABI may not seek punitive damages because declaratory judgment provides no pecuniary relief.*

IV. Analysis

A. *ABI has no legal grounds upon which to request 10% of any savings resulting from invalidating the lease.*

Black's Law Dictionary defines a *qui tam* action as "[a]n action brought *under a statute* that allows a private person to sue for a penalty, part of which the government or some specific public institution will receive."¹¹ This court first notes that ABI is not bringing its lawsuit under a statute that provides a monetary penalty. It therefore finds that ABI is not bringing a *qui tam* case.

ABI argues that it is not in fact bringing a *qui tam* action¹² but that the court should grant an award equaling 10% of the savings "to make meaningful the right of citizen-taxpayers to seek judicial redress of illegal government action."¹³ It argues that the 2003 passage of HB 145 codified as AS 09.60.010(b)-(e) had a chilling effect on citizen-taxpayer suits. ABI urges this court to create a common law incentive for bringing public interest law suits.

HB 145 abolished the Alaska Supreme Court's public-interest exception to Alaska Rule of Civil Procedure 82 concerning attorney's fees.¹⁴ Rule 82 provides discretion for courts to allocate attorney's fees, and in most civil litigation, it acts as a "loser pays" rule."¹⁵ In *Gilbert v. State*, the Alaska Supreme Court carved out its exception holding that "it is an abuse of discretion [under Civil Rule 82] to award attorney's fees against a losing party who has in good faith raised a question of genuine public interest before the

¹¹ *Qui Tam Action*, Black's Law Dictionary (10th ed.2014) (emphasis added).

¹² Pl.'s Opp. Mot. 6.

¹³ *Id.* at 3.

¹⁴ *State v. Native Village of Nunapitchuk*, 156 P.3d 389, 391-92 (Alaska 2007).

¹⁵ *Id.* at 394.

courts.”¹⁶ HB 145 overruled this judicially created public interest exception and courts are no longer allowed to consider whether a claim is of a public interest nature except in limited constitutional contexts.¹⁷

The Alaska Supreme Court’s public interest exception was grounded in the discretion Rule 82 afforded to courts when allocating attorney’s fees. Here, there is no statutory authority that would allow this court to create such an incentive, and ABI does not provide any legal theory upon which this court could justify creating new law. Rather, ABI’s argument is one of public policy, which is better left to legislature; like HB 145, any incentive to bring a public interest case should go through the proper legislative channels. The court therefore declines ABI’s invitation to create a public interest lawsuit incentive and finds that ABI has no legal grounds on which to request 10% of any lease savings.

B. ABI may not seek punitive damages because declaratory judgment provides no pecuniary relief.

Alaska allows punitive damages when the plaintiff can show “by clear and convincing evidence that the defendant’s conduct[:]

- (1) Was outrageous, including acts done with malice or bad motives; or
- (2) Evidenced reckless indifference to the interest of another person.”¹⁸

716 argues that because ABI is not seeking compensatory damages, punitive damages are unavailable.¹⁹ Thus the first issue is whether punitive damages are even available to ABI.

Compensatory damages are a legal remedy. ABI requests in relevant part that the lease between the LAA and 716 be declared “illegal, null and void.”²⁰ A declaratory

¹⁶ *Id.* (internal citations omitted).

¹⁷ *Id.* at 395.

¹⁸ AAS 09.17.020 (b)(1)-(2).

¹⁹ Def.’s Mot. Ruling of Law 3.

²⁰ Second Amended Compl. ¶1A.

judgement is neither legal nor equitable but is an additional remedy²¹ and does not provide any remedy beyond a declaration of “the rights and legal relations of an interested party seeking the declaration.”²² Though ABI states that “the State should be awarded compensatory damages in the amount of rent illegally received by 716 LLC,”²³ the relief requested does not provide the legal remedy of compensatory damages.²⁴ However, the unavailability of compensatory damages does not necessarily foreclose ABI from receiving punitive damages.

Alaska’s punitive damage statute does not require, per se, that compensatory damages, or any damages, be awarded before punitive damages are allowed.²⁵ In capping punitive damages, the statute provides that a punitive damages award “may not exceed the greater of 1) three times the amount of compensatory damages awarded to the plaintiff in the actions; or 2) the sum of \$500,000.”²⁶ Looking at the first section, logic dictates that if the compensatory damages are zero then the punitive damages must also be zero. But, the two sections are separated by the disjunctive “or” suggesting that compensatory damages are not a prerequisite for punitive damages if the plaintiff has met the other statutory requirements. A cursory review of the Alaska’s tort reform act of 2007 (HB 58) does not provide any insight on whether Alaska’s legislators intended punitive damages to be tied strictly to an award of compensatory damages or if punitive damages could be awarded in the absence of other damages.

Despite the ambiguity of Alaska’s punitive damages statute, the traditional position is that punitive damages are not allowed absent a request for or award of

²¹ *Laverty v. Alaska R.R. Corp.*, 13 P.3d 725, 730 (Alaska 2000).

²² AS 22.10.020(g).

²³ Plt.’s Opposition Mot. 9.

²⁴ Moreover, when a court finds a contract is illegal it often “leave[s] the parties as the court finds them at the time the illegality is discovered, [and does not] restore them to the same position they would have been had the contract never existed.” *Jipac, N.V. v. Silas*, 174 Vt. 57, 61-62 (Vermont 2002). A declaratory judgement that the lease is illegal may therefore not allow for any money to be returned to the LAA.

²⁵ See AS 09.17.020.

²⁶ AS 09.17.020(f)(1)-(2).

compensatory damages.²⁷ The Mississippi Supreme Court succinctly summarizes the justification of this line of thinking:

As a general rule, exemplary or punitive damages are “added damages” and are in addition to the actual or compensatory damages due because of an injury or wrong. The kind of wrongs to which punitive damages are applicable are those which, besides the violation of a right or the actual damages sustained, import insult, fraud, or oppression and not merely injuries but injuries inflicted in the spirit of wanton disregard for the rights of others. In order to warrant the recovery of punitive damages, there must enter into the injury some element of aggression or some coloring of insult, malice or gross negligence, evincing ruthless disregard for the rights of others, so as to take the case out of the ordinary rule.

In other words, punitive damages do not exist in a vacuum, but serve as a way of increasing the punishment in cases involving truly reprehensible behaviors.

716 cites *DeNardo v. GCI Commc'n Corp.*, 983 P.2d 1288, 1292 (Alaska 1999), which states “[a] punitive damages claim cannot stand alone; because we reject DeNardo’s underlying claim, we also necessarily affirm summary judgment on his punitive damages claim.” However, in that case, the court affirmed summary judgement against all DeNardo’s underlying claims leaving *only* a request for punitive damages. This scenario is distinguishable from the present case where compensatory damages are not requested or recoverable but other claims exist besides that for punitive damages.

Alaska courts have awarded punitive damages without compensatory damages. In *Lockhart v. Draper*, 209 P.3d 1025 (Alaska 2009) the Alaska Supreme Court found that:

²⁷ *Groshek v. Trewin*, 784 N.W.2d 163, 175 (Wis. 2010) (Therefore, our holding in *Tucker* forecloses recovery of punitive damages in a case where there is no award of compensatory damages); *Nabours v. Longview Sav. & Loan Ass'n*, 700 S.W.2d 901, 903 (Tx. 1985) (Even in cases where actual damages are *not recoverable*, it is still necessary to allege, prove and secure jury findings on the existence and amount of actual damage sufficient to support an award of punitive damage) (emphasis in original).

punitive damages may be available though actual damages are not an “essential element” of the cause of action if (1) the underlying cause of action states a claim for relief independent of the request for punitive damages, and (2) the plaintiff establishes that defendant's conduct rose to the requisite level of culpability and that plaintiff suffered “substantial damage,” even if the amount of actual damages may be uncertain.²⁸

There, the appellant was appealing an award of punitive damages against him in a fraudulent conveyance action. The Alaska Supreme Court upheld the superior court's conclusion that “it could award punitive damages “in a case where something substitutes for the compensatory damages, i.e., the wrongful conveyance which is righted.” The *Lockhart* court relied on *Haskins v. Sheldon*, 558 P.2d 487 (Alaska 1976) which allowed the return of a wrongfully converted tractor to substitute for damages and upheld the appellee's award of punitive damages because of the malice conduct under which the tractor was seized.

In both cases, the courts found that there was an underlying pecuniary loss that was righted even though damages were not an element of either legal theory under which the cases were brought. In *Haskins* it was the return of the seized tractor and in *Lockhart* it was the corrected wrongful conveyance. These two situations are distinguishable from the present case. Assuming *arguendo* that the contract is found to be “illegal null and void,” this declaratory judgement would not provide a substitute for compensatory damages necessary under the *Lockhart* and *Haskins* reasoning.²⁹ Thus, even though punitive damages may be awarded even when compensatory damages are not sought as long as the two elements identified in *Lockhart* are present,³⁰ a declaratory judgement would not provide a substitute for compensatory damages and thus the first element of *Lockhart* is absent. The court therefore finds that ABI may not

²⁸ *Lockhart v. Draper*, 209 P.3d 1025, 1028 (Alaska 2009).

²⁹ In addition to the *Lockhart* and *Haskins* reasoning, the Alaska Supreme Court has also permitted punitive damages when only nominal damages are awarded. *Barber v. Nat'l Bank of Alaska*, 815 P.2d 857, 864 (Alaska 1991) (holding punitive damages may be awarded in nominal damages).

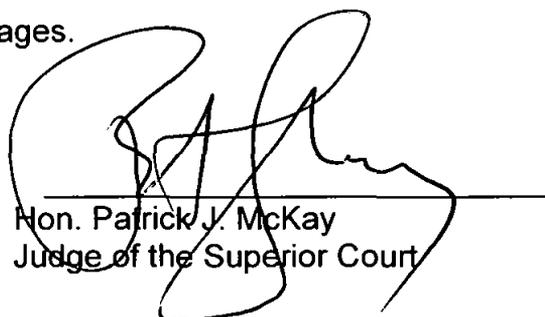
³⁰ “(1) the underlying cause of action states a claim for relief independent of the request for punitive damages, and (2) the plaintiff establishes that defendant's conduct rose to the requisite level of culpability and that plaintiff suffered “substantial damage,” even if the amount of actual damages may be uncertain.” *Lockhart v. Draper*, 209 P.3d at 1028 (Alaska 2009).

pursue punitive damages. Because the court has determined that ABI may not seek punitive damages in the absence of some pecuniary relief, it does not need to address *Lockhart's* second element - malicious or egregious behavior.³¹

V. Conclusion

There is no statutory authority under which ABI may request 10% of any savings stemming from invalidating the lease nor is there statutory authority that would permit the court to create a monetary incentive for bringing public interest law suits. The court therefore finds that ABI is not entitled to request such relief. The court further finds that though punitive damages may be awarded absent compensatory damages, there must at least be an aspect of pecuniary relief, which is absent in the present case, and thus ABI is precluded from requesting punitive damages.

1/13/16
DATE



Hon. Patrick J. McKay
Judge of the Superior Court

I certify that on 1/13/16,
a copy of the above was mailed to each of
the following at their addresses of record: *emailed*
James Holtz
Jeffrey Robinson *Kevin Cuddey*

K. Nixon/Judicial Assistant

³¹ Additional issues regarding whether ABI may seek punitive damages include whether ABI can request punitive damages on behalf of the state and whether the state can collect punitive damages in a public-interest law suit. Because the court has already determined that ABI may not pursue punitive damages, the court will not address these questions at this time.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Alaska Building Inc.,)
)
 Plaintiff,)
)
 v.)
)
 716 West Fourth Avenue LLC, and)
 Legislative Affairs Agency,) Case No. 3AN-15-05969CI
)
 Defendants.)

ORDER REGARDING ALASKA BUILDING INC'S MOTION TO COMPEL

I. Background

On September 9, 2013, the Legislative Affairs Agency (LAA) and the 716 West Fourth Avenue LLC (716) entered into an agreement to renovate and expand the existing Legislative Information Office (LIO Project). At the completion of this project, the LAA once again leased the office space.¹ Construction began in December 2013 and was completed around January 9, 2015.²

The Alaska Building, owned by Alaska Building Inc. (ABI), is a building adjacent to the LIO Project whose president and sole member is James Gottstein. Mr. Gottstein filed a lawsuit on behalf of ABI and the Alaskan taxpayers on March 31, 2015 alleging in relevant part that because the LIO Project did not comply with the requirements under AS 36.30, the project is illegal. Under AS 36.30, leases into which LAA enter are subject to a competitive bidding process and legislative notice. AS 36.30.083 exempts lease extensions that will result in a "cost savings of at least 10 percent below the market rental value of the... property." ABI filed this Motion to Compel when 716 failed to produce all of the documents ABI requested in its First Request for Production.

II. Legal Standard

Alaska Rule of Evidence 37(2)(A) allows a party to move a court to compel a party to disclose information required under Rule 26(a) or Rule 26.1(b) if that party fails to make appropriate disclosures.

¹ 716's Opp. to Mot. for Prelim. Inj. 1-2.

² *Id.* at 4.

III. Issues Presented

A. *Claiming confidentiality or proprietary information is not a satisfactory defense against producing relevant evidence.*

B. *Individual Requests for Production.*

IV. Analysis

A. *Claiming confidentiality or proprietary information is not a satisfactory defense against producing relevant evidence.*

As an initial matter, 716 repeatedly refused to produce documents claiming they were “confidential and proprietary.”³ Valid defenses against producing requested documents include claims of privilege or that the materials were prepared in anticipation for trial.⁴ In either instance, the party claiming the privilege must “describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.”⁵ If the documents do not fall into one of these privileged categories, 716 can request a protective order under Rule 26(c). Otherwise, the court finds that claiming confidentiality and proprietary information is an invalid defense for non-production.

B. *Individual Requests for Production*

Request for Production 1

“Please produce all loan applications and other documents relating to financing the New LIO Building, including without limitation, all projections and *pro formas* and personal financial statements....”⁶

716 produced five documents including two appraisals, two commitment letters and a terms and conditions letter from Northrim Bank. 716 objects to producing any additional documents related to this subject matter first on the grounds that this information “is confidential and proprietary.”⁷ As discussed above, there is no confidential exemption to discovery; 716 can instead seek a protective order under Rule 26(c) for this information. 716 also claims that these documents are protected by privilege and work-product doctrine.⁸ 716 has not provided a privilege log for these documents. 716 must

³ See e.g. Def.’s Opp. to Mot. to Compel Ex. A at 4.

⁴ Alaska R. Civ. Pro. 26(b)(5).

⁵ Alaska R. Civ. Pro. 26(b)(5).

⁶ Def.’s Opp. to Mot. to Compel Ex. A at 4.

⁷ *Id.*

⁸ *Id.*

either produce these documents or provide a log as required by Rule 26(b)(5) including the requirements addressed in Request for Production 4. .

Request for Production 2

"Please produce the financial records of 716 LLC, from January 1, 2012...."⁹

716 first objects on the grounds that this information "is confidential and proprietary,"¹⁰ which is an invalid objection. 716 also objects that this information is not relevant to this case.¹¹ ABI counters that these documents are relevant to the then pending motion for injunction. The court has ruled against ABI on that motion and 716 LLC's finances are otherwise irrelevant to the legality of the lease. The court sustains 716's objections to this Request for Production.

Request for Production 3

"Please produce all documents relating to payments by 716 LLC to Robert Acree; Mount Trident, LLC; Mark Pfeffer Alaska Trust 12/28/07; or Pfeffer Development, LC; or any combination thereof."¹²

716 first objects on the grounds that this information "is confidential and proprietary."¹³ 716 also objects that this information is not relevant to this case.¹⁴ ABI counters that these documents are relevant to the then pending motion for injunction. The court has ruled against ABI on that motion and 716 LLC's payments to these parties are otherwise irrelevant to the legality of the lease. The court sustains 716's objections to this Request for Production.

Request for Production 4

"Please produce all documents, including without limitation, e-mails, relating to 716 LLC leasing or potentially leasing space to the Legislative Affairs Agency for the Anchorage Legislative Information Office upon the expiration of the lease in effect on January 1, 2010 and thereafter. This includes all documents pertaining to the LIO Lease, including without limitation, negotiation."¹⁵

716 objects on the grounds that these documents are privileged and this request is "unreasonable, overbroad, and unduly burdensome in light of ...[these privileges]."¹⁶

⁹ *Id.* at 5.

¹⁰ *Id.* at 6.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 6-7.

¹⁶ *Id.* at 7.

716 also objects that this request is "ambiguous as it suggest [sic] that the lease entered into occurred upon expiration and 716 objects to any legal characterization of the events and facts leading up to the execution of the Lease in dispute."¹⁷ 716 provided eight documents in response to this Request for Production.¹⁸ 716 the provided supplemental disclosures a short time thereafter which included emails,¹⁹ redacted emails,²⁰ and a privilege log.²¹

ABI argues that the privilege log fails due to a number of deficiencies including format and the inapplicability of this privilege between various parties.²² As it is currently structured, the privilege log does not provide critical information such as a general description of the emails' content and who else, if anyone, received these communications.²³ The court is therefore unable at this time to determine whether the privileges are appropriately applied. The court is abstaining from overruling or sustaining 716's objections until it has supplemented its privilege log with:

- The title of any addressor or addressee that is not a party to the case nor has submitted an official entry of appearance;
- The name and title of all recipients of a communication besides the addressee and;
- The general subject matter of the communication.

Request for Production 5

"Please produce the operating agreement for 716 LLC, including all amendments and any other agreements pertaining to the operation and/or management of 716 LLC."²⁴

716 objects on the grounds that this information is "confidential and proprietary" and irrelevant.²⁵ 716 also argues that it had previously offered to provide the operating agreement to this court for an *in camera* review to determine any relevance it may have.²⁶ This document does not seem particularly relevant but since 716 has offered it to the court for an *in camera* review the court will conduct an *in camera* review of this document if ABI requests it.

Request for Production 7

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Pl.'s Reply to Def.s Opp. to Mot to Compel Ex. 2.

²⁰ Pl.'s Reply to Def.s Opp. to Mot to Compel Ex. 5.

²¹ Pl.'s Reply to Def.s Opp. to Mot to Compel Ex. 1.

²² Pl.'s Reply to Def.s Opp. to Mot to Compel at 2-3.

²³ *See generally* Pl.'s Reply to Def.s Opp. to Mot to Compel Ex. 1.

²⁴ Def.'s Opp. to Mot. to Compel Ex. A at 8.

²⁵ *Id.*

²⁶ Def.'s Opp. to Mot. to Compel at 5; Pl.'s Mot. to Compel Exhibit 2 at pg 1 of 4 (these pages are numbered oddly).

"Please produce all documents relating to opinions, estimates or determinations of the market rental value and/or value of the New LIO Building and/or leasing or purchasing space for the Anchorage Legislative Information Office from January 1, 2010 except for [certain documents accessible online]... This request includes communications with any and all persons regarding the market rent value of the New LIO Building including without limitation during the planning phase and whether or not any opinion regarding the market rental value of the New LIO Building was formed or provided."²⁷

716 responds that it produced an appraisal for Request for Production 1 then objects on the grounds that the information is "confidential and proprietary."²⁸ This is an invalid objection. 716 should seek a protective order under Rule 26(c) for qualifying information. The court overrules 716's objections and compels them to produce any additional information that is requested in this Request for Production but has not been produced.

Request for Production 8

"Please produce all documents memorializing payments for costs under the LIO Lease for what is called renovations. In other words, this request is to obtain all cost records for construction of the space under the LIO Lease with the Legislative Affairs Agency occupied in January of 2015. This includes payments for project management to defendant Pfeffer Development, LLC."²⁹

716 objects on the grounds that this information is "confidential and proprietary," privileged, not relevant, duplicative, and "objectionable because it seeks the production of documents related to the business activities of third parties not named in Count One."³⁰ Because this information may be relevant (or lead to relevant information) to the determination of whether the LAA is paying "at least 10% below market value, the court overrules 716's objections and requires that they produce any documents pertaining to this Request for Production or produce a privilege log which includes the requirements addressed in Request for Production 4.

²⁷ Def.'s Opp. to Mot. to Compel Ex. A at 9-10.

²⁸ *Id.* at 10.

²⁹ *Id.*

³⁰ *Id.* at 11.

III. Conclusion

The court grants 716 LLC 15 days to comply with this order.

1/13/16
DATE



Hon. Patrick J. McKay
Judge of the Superior Court

I certify that on 1/13/16,
a copy of the above was mailed to each of
the following at their addresses of record: *emailed*
James Gottstein
Jeffrey Robinson / Kevin Cuddey

K. Nixon/Judicial Assistant *Ku*

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

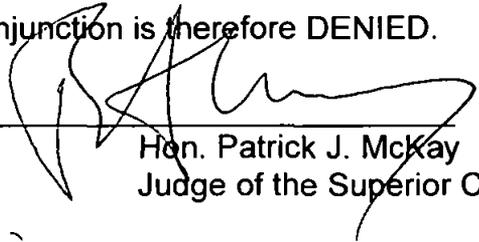
Alaska Building Inc.,)
)
Plaintiff,)
)
v.)
)
716 West Fourth Avenue LLC, and)
Legislative Affairs Agency,) Case No. 3AN-15-05969CI
)
Defendants.)

ORDER DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Alaska Building Inc.(ABI), requested that the court enjoin 716 West Fourth Avenue LLC (716) from disbursing any funds received under the Legislative Information Office lease beyond what is necessary for debt service and operations. To succeed, ABI had to meet one of two tests: (1) the "balance of hardships test" under which it must raise "serious and substantial questions going to the merits of the case," and demonstrate that it faces "irreparable harm," that 716 is "adequately protected" or (2) demonstrate "probable success on the merits." The court finds that ABI has not sufficiently demonstrated that it faces "irreparable harm." The only relief requested is a declaratory judgment and "qui tam" award to plaintiff-- neither would support a request for preliminary injunction.

ABI's motion for a preliminary injunction is therefore DENIED.

1/11/16
DATE


Hon. Patrick J. McKay
Judge of the Superior Court

I certify that on 1/11/16,
a copy of the above was mailed to each of *emailed*
the following at their addresses of record:
James Scottstein
Jeffrey Robinson / Kevin Cuddy
K. Nixon/Judicial Assistant *K*

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan)
corporation,)
Plaintiff,)
vs.)
716 WEST FOURTH AVENUE, LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)
Defendants.)
_____)

3AN-15-05969 CI

ORDER DENYING MOTION FOR SUMMARY JUDGMENT RE: LACHES

I. Background

On September 9, 2013, the Legislative Affairs Agency (LAA) and the 716 West Fourth Avenue LLC (716) entered into an agreement to renovate and expand the existing Legislative Information Office (LIO Project).¹ The project required a virtual “gutting” of the existing rental space, demolition and subsequent reconstruction of a separate building on an adjoining lot, increasing the square footage of the leasehold from approximately 23,645 square feet to approximately 64,048 square feet. The agreement called for the LAA to pay for certain tenant improvements estimated to have cost in excess of \$7.5 million. The project required relocation of the tenants for several months. At the completion of this project, the LAA once again leased the office space. Construction began in December 2013 and was completed around January 9, 2015.²

¹ LAA Mot. for Summ. J. at 2.

² *Id.* at 5.

The monthly rental increased from \$56,863.05 to \$281,638 and the term of the lease was extended to May 31, 2024.

The Alaska Building, owned by Alaska Building Inc. (ABI) whose president and sole member is James Gottstein, is a building adjacent to the LIO Project. By October 3, 2013, Mr. Gottstein was aware that the LAA and 716 had signed a contract for the LIO Project and that the project would cost several million dollars.³ By October 11, 2013, Mr. Gottstein had met with the attorney for 716 and expressed concerns that the lease was illegal and was contemplating filing an injunction⁴. Around October 28, 2013, he once again met with 716's attorney and expressed his opinion that the project was illegal under AS 36.30.083(a).⁵ Mr. Gottstein filed a lawsuit on behalf of ABI on March 31, 2015 alleging in relevant part that because the LIO Project did not comply with the requirements of AS 36.30, the project is illegal.⁶ Under AS 36.30, leases in which the LAA is a party are subject to a competitive bidding process and legislative notice, unless exempted. AS 36.30.083 exempts lease "extensions" that will result in a "cost savings of at least 10 percent below the market rental value of the... property." Over defendants' objections, Mr. Gottstein was granted citizen taxpayer standing.⁷ LAA filed this motion requesting summary judgement under the laches doctrine. 716 joined in LAA's motion for summary judgement.

II. Issues Presented

- A. Is the equitable defense of laches available to ABI's declaratory relief request?
- B. Did ABI fail to bring its complaint in a timely manner?

³ LAA Mot. Summ. J. Exhibit A Request for Admission (RFA) Nos. 4-5.

⁴ *Id.* Interrogatory No. 1.

⁵ *Id.* Interrogatory No. 2.

⁶ First Amended Complaint ¶¶17-21.

⁷ ABI's original complaint contained two counts: Count 1 alleged the illegality of the lease and Count 2 alleged damage to ABI's building during the renovations. The LAA moved that the suit be dismissed as against it because ABI lacked standing to bring suit on Count 1 and the LAA was not the correct party against whom to bring suit in Count 2. Alternatively, the LAA requested that the suit be severed. The court found that ABI had citizen taxpayer standing for Count 1 and severed the counts pursuant to Alaska's Civil Rule 20(a) in its Aug. 8, 2015 Order. ABI filed an amended complaint as to Count 1 and filed a separate suit regarding the allegations in Count 2 that is currently before Judge Rindner in 3AN-15-09785CI.

C. Will ABI's delay harm the LAA?

D. Will ABI's delay harm 716?

III. Summary Judgement Standard

Summary judgement is appropriate where "there is no issue as to any material fact and the moving party is entitled to a judgement as a matter of law."⁸ The non-moving party must "set forth specific facts showing that he could produce evidence reasonably tending to dispute or contradict the movant's evidence and thus demonstrate that a material issues of fact exists."⁹ Alaska has a lenient summary judgement standard,¹⁰ but mere allegations are insufficient and the non-moving party "must set forth specific facts showing that there is a genuine issue of material fact."¹¹ The court views "the facts in the light most favorable to the non-moving party and draw[s] all factual inferences in the non-moving party's favor."¹²

IV. Analysis

Both the LAA and 716 assert the equitable defense of laches against ABI's lawsuit. For a laches defense to succeed, the defendants must show that 1) the plaintiff waited an unreasonable amount of time in bringing his suit and 2) that the plaintiff's unreasonable delay resulted in prejudice or undue harm to the defendants.¹³ As part of determining whether the delay was unreasonable, the court can consider "a lack of diligence in seeking a remedy, or acquiescence in the alleged wrong..."¹⁴ Importantly, "[t]he analysis is actually less of a distinct two-part test than an overall balancing of the equities."¹⁵ Because of the balancing nature of the laches test, whether a delay is unreasonable is often better judged in light of the harm suffered by the defendants. Unless the Alaska Supreme Court is left with a "definite and firm conviction that a

⁸ Alaska R. Civ. P. 56(c).

⁹ *Christensen v. Alaska Sales and Service, Inc.* 335 P.3d 514, 517 (Alaska 2014).

¹⁰ *Estate of Milos v. Quality Asphalt Paving, Inc.*, 145 P.3d 533, 537 (Alaska 2006).

¹¹ *Kelly v. Municipality of Anchorage*, 270 P. 3d 801, 803 (Alaska 2012) (internal citations omitted).

¹² *Kalenka v. Jadon, Inc.*, 305 P.3d 346, 349 (Alaska 2013).

¹³ *Laverty v. Alaska R.R. Corp.*, 13 P.3d 725, 729 (Alaska 2000).

¹⁴ *Kollander v. Kollander*, 322 P.3d 897, 903 (Alaska 2014).

¹⁵ *McGill v. Wahl*, 839 P.2d 393, 399 (Alaska 1992).

mistake has been committed”¹⁶ it will not overturn the trial court’s determination of whether laches bars a suit.¹⁷

A. Is the equitable defense of laches available to ABI’s declaratory relief request?

Mr. Gottstein objects to the defense of laches being raised, arguing that this defense is not available against his requested declaratory relief. Alaska courts have held that “laches is an equitable defense against equitable causes of action, but not a legal defense against actions at law.”¹⁸ However, declaratory relief is neither equitable nor legal, but an additional remedy.¹⁹ The LAA urges the court to view this requested relief as an equitable pleading and allow it to raise the defense of laches.²⁰

In its complaint, ABI only seeks declaratory relief. But ABI has also requested a preliminary injunction²¹, asking the court to utilize equitable powers to prevent perceived harm during the period of the pending lawsuit. Realistically, the declaratory relief requested would effectively bar either defendant from reliance on the provisions of the lease, opening up a myriad of both legal and equitable resolutions to the situation which defendants would then find themselves. Under the unique facts in this litigation, the court does find that the defense of laches is available to this lawsuit.

B. Did ABI fail to bring his complaint in a timely manner?

In determining whether a delay was unreasonable, the court “will look to the point in time at which the defendants’ actions indicated that their conduct was irrevocable and

¹⁶ *Laverty*, 13 P.3d at 729.

¹⁷ *Id.*

¹⁸ *Laverty*, 13 P.3d at 730; See also *Hanson v. Kake Tribal Corp.*, 939 P.2d 1320, 1325 n. 1 (Alaska 1997).

¹⁹ *Laverty*, 13 P.3d at 730.

²⁰ ABI belatedly raised the unclean hands doctrine to defeat the laches summary judgment motion. While certainly one who requests an equitable ruling must “come with clean hands”, the court notes there may be additional material questions of fact surrounding this issue, but does not base its current decision on this recently raised legal argument.

²¹ Pl.’s Mot for Prelim.Inj. (docketed Oct. 6, 2015). ABI requests that 716 be enjoined from disbursing any funds received under the lease beyond what is necessary to operating expenses and debt service.

would have galvanized a reasonable plaintiff into seeking a lawyer.”²² There is no specific length of time that serves as the threshold for a successful defense of laches. [Instead], the court will balance the length of the delay against the seriousness of the prejudice the defendant suffers.²³ As part of determining whether the delay was unreasonable, the court can consider “a lack of diligence in seeking a remedy, or acquiescence in the alleged wrong...”²⁴

LAA and 716 rely heavily on *City and Borough of Juneau v. Breck*, 706 P.2d 313 (Alaska 1985) to persuade the court that Mr. Gottstein’s seventeen month delay was unreasonable. In that case, Ms. Breck sued the City of Juneau for violating the city code’s competitive bid process when it hired a construction firm to complete a project. From April through June 1984, Ms. Breck appeared before the borough assembly expressing her concerns that the construction contract was illegal. In August, after nearly 50% of the project was completed and the city had spent approximately \$1.5 million, she sued the city asking for an injunction. The Alaska Supreme Court found that the two elements necessary for laches to apply were present: “1) that the plaintiff ha[d] unreasonably delayed in bringing the action; and 2) that this unreasonable delay ha[d] caused undue harm or prejudice to the defendant.”²⁵ The court reasoned that though that Plaintiff had waited only four months from when the contract was signed until she brought her law suit, her delay had prejudiced the city because of the amount of money it had already spent and the additional costs the city would incur by cancelling the contract, send the project out to bid, and complete the project with a new firm.²⁶

Specifically, the court in *Breck* found that when the parties signed the construction contract and subsequently started construction, Mrs. Breck should have been prompted to seek counsel.²⁷ Without explicitly saying so, the Court balanced the

²² McGill v. Wahl, 839 P.2d 393, 398-99 (Alaska 1992).

²³ Pavlik v. State, Dept. of Community and Regional Affairs, 637 P.2d 1045, 1047-8 (Alaska 1981) (internal citations omitted) (No specific time must elapse before the defense of laches can be raised because the propriety of refusing to hear a claim turns as much upon the gravity of the prejudice suffered by the defendant as the length of the plaintiff’s delay.” Thus, where there is a long delay, a lesser degree of prejudice will be required).

²⁴ Kollander v. Kollander, 322 P.3d 897, 903 (Alaska 2014).

²⁵ *Id.* at 315.

²⁶ *Id.*

²⁷ 706 P.2d 313, 315-16 (Alaska 1985).

length of her delay against the prejudice that ensued from her delay citing estimates that such a delay would cost between \$1.5-2 million. Thus, when balanced against the prejudice Ms. Breck's delay caused the ostensibly short amount of time (four months) it took for her to file her suit rose to the level of "unreasonable."

The court finds that Mr. Gottstein was aware of the potential illegality of the contract within weeks of its announcement. Yet he waited seventeen months and until the completion of the project to bring suit.²⁸ In his responses to LAA's request for admissions, Mr. Gottstein admitted that "there was no indication, once construction began in late 2013, that [the LAA] had any intention to voluntarily declare the Lease Extension void due to an alleged irregularity in the procurement process." During the seventeen month delay, Mr. Gottstein also collected \$15,000 in professional fees from 716²⁹ and \$10,000 in rent from the construction company.³⁰ The court views Mr. Gottstein's financial gains as acquiescence and, combined with the seventeen months ABI waited to bring the law suit, this delay seems "unreasonable."

Mr. Gottstein cites concerns over retaliatory actions from 716 if he brought this law suit during the construction period. The court finds that Mr. Gottstein's fears do not seem particularly well-founded³¹ and any threatened retaliatory damage could be remedied by damages. The court finds that fear of retaliation is not a legitimate reason to not bring a timely lawsuit especially when damages could have made Mr. Gottstein whole again.

²⁸ See Ex. A Interrogatory No. 2.

²⁹ See id. RFA 9.

³⁰ See id. RFA 12-14.

³¹ Mr. Gottstein states several times during his October 23, 2015 deposition that he was concerned that 716 was going to shut off the gas to the ABI building. See e.g. Pl.'s Opp. Mot. Sum. J. Laches, Exhibit 1, pg. 4-5 (Gottstein Dep. 87: 5-7; 97: 17-19) However, he also admits that 716 never actually threatened to disconnect his gas. Id. at pg 11-12 (Gottstein Dep. 141:22-142:6). Bolstering this assertion, he also provides a series of emails between 716's counsel and himself discussing 716 disconnecting and re-connecting Alaska Building's gas lines. Pl.'s Opp. Mot. Sum. J. Laches, Exhibit 2. Even viewing these emails and statements in the light most favorable to Mr. Gottstein, it does not appear that 716 was threatening to cut off the Alaska Building's gas supply for longer than it would take to reconnect it to another meter. He also states that he was worried that 716 would demolish a shared "Party Wall." Pl.'s Opp. Mot. Sum. J. Laches, pg. 3-5. It appears this fear stems from a disagreement over who owned portions of that wall. See Pl.'s Opp. Mot. Sum. J. Laches, Exhibit 3. It is unclear whether 716 would have torn down this wall regardless of ownership if Mr. Gottstein had moved ahead with his suit.

Though the court could find ABI's delay was unreasonable, the court must still balance the delay against the hardship the defendant's will suffer. Neither the LAA's nor 716's future harm seems particularly egregious. In fact, viewing the facts in a light most favorable to ABI as this court is required to do, a finding that the lease is "illegal, null and void" may potentially benefit either party, as discussed below. Thus, when balanced against the unknown degree of harm that the parties may incur because of this delay, the court may ultimately determine that the seventeen month delay is not so unreasonable.

While balancing the harm, the court might come to a different conclusion if ABI were seeking an award of damages³². The court would find unreasonable delay if damages were requested for the period between the fall of 2013 and the date of the lawsuit. But all that is before the court is a request for declaratory relief³³ seeking to declare void a process which resulted in an executory contract that still has eight and one-half years (8&1/2) of monthly rental payments remaining.

C .Will ABI's delay harm the LAA?

As part of the LIO Project, the LAA paid \$7.5 million in tenant improvements. The LAA argues it will be harmed if the lease is found null and void because it may have to relocate and abandon those improvements. Had Mr. Gottstein brought this suit before or even during construction, the LAA contends it could have saved all or part of the \$7.5 million.

Though there are many similarities between *Breck* and the current case, a key distinguishing element is that in *Breck* the expense was a one-time outlay of money. Here, the LAA will continue paying a sizeable monthly rent for several additional years in addition to its initial \$7.5 million investment in tenant improvements. Mr. Gottstein's real estate expert conservatively calculated that over the course of the current lease, the LAA will be paying over \$17 million in excess of allowable rent. If the lease is found

³² Other than the novel claim of *qui tam* damages which is subject to a separate dispositive motion.

³³ Laverty, 13 P.3d at 730,731.

“illegal, null and void”³⁴ and the LAA abandons the building in favor of less expensive office space, it and the Alaskan tax payers will be saving potentially much more than the original \$7.5 million. It remains a question of fact whether the LAA would ultimately forfeit the entire \$7.5 million it spent on improvements since the lease makes no specific mention of such a contingency.³⁵

There are other material questions pertaining to the extent of harm the LAA may suffer. The lease provides for termination if not funded by the legislature, meaning the requested declaratory relief may not harm either party if the court simply determines the legality of an already voidable contract.³⁶ The court finds that summary judgment favoring the LAA is inappropriate at this time without an opportunity to fully develop the facts, determine the credibility of the witnesses, and test the data supplied in support of harm alleged in the request for summary judgment.

D. Will ABI's delay harm 716?

716 similarly argues that it will be unfairly prejudiced absent a successful defense of laches. In joining the LAA's motion for summary judgement under this doctrine, 716 utilized its briefing against Mr. Gottstein's motion for a preliminary injunction in its entirety to argue it will be unfairly prejudiced. There, 716 argues that it spent over \$44 million in renovations, some which were specifically tailored to the LAA's needs.³⁷ 716 further argues had Mr. Gottstein brought this suit earlier, it could have avoided this tremendous outlay of money. Obviously the money spent could have been avoided, but spending money is not the equivalent of suffering harm if the money is recouped in a different fashion.

³⁴ First Amended Complaint Requested Relief A.

³⁵ See September 19, 2013 Lease Extension and Amendment 3, Section 3 (Renovation and Delivery of Premises) and Section 33 (Remedies on Default). Neither section mention what would happen to the \$7.5 million in the event of a default or otherwise. The court does not intend to speculate on legal remedies or “attachments” to the leasehold in this summary judgment format. Suffice to say that uncertainty exists.

³⁶ Extension of Lease and Lease Amendment NO.3, Sec. 1.2, at p.4 of 22. Neither party seemed to commit to the legal ramifications of that clause in the lease.

³⁷ 716 Opp. to Mot. for Prelim. Inj. 12

The facts on this issue are not yet fully ascertainable and certainly aren't presented with such a degree of certainty that this court should rely on them for summary judgment. On the one hand, if the court finds the lease "illegal, null and void" 716 and the LAA may renegotiate the contract to reflect a 10% below market value rental rate meaning 716 may have to amortize the renovation's expense over a longer time and lose some of the benefit of its bargain, therefore incurring some harm. 716 may not be able to lease to any one on similar terms also incurring harm. On the other hand, in the event that the court declares the lease "illegal, null and void," and the parties are unable to reach a new agreement, 716 will be able to lease the building at a greater rate since it claims the current rate is 10% below the market value. Indeed, 716 may even benefit from a finding that the lease is "illegal, null and void."

The court finds that there are genuine issues of material facts pertaining to the extent of harm 716 may suffer and that summary judgment favoring 716 is inappropriate at this time.

V. Conclusion

After balancing the equities, the court finds that while it is fairly clear ABI should have brought this law suit at an earlier date, there are material questions of fact as to the continuing harm suffered by the two defendants. ABI's only acknowledged request is for a declaratory ruling on the legality of the lease for failure to follow procurement procedures mandated by Alaska law. Summary dismissal of this litigation by the court's invoking its equitable powers and utilizing the defense of laches would result in a complete avoidance of a ruling on the legality of the LAA/716 lease -- hardly an equitable result to any involved party, but most especially to the citizen taxpayer.

Summary judgement is not appropriate at this time. In particular, the court finds that neither the LAA nor 716 have conclusively established that it will be harmed by a court ruling on the legality of the LAA/716 lease extension agreement.

This decision is not to be construed as a finding that the defense of laches is unavailable to the defendants at trial. The court simply finds that defendants have not

met the substantial burden required by a party seeking summary judgment. Summary judgment is DENIED.³⁸

Dated this 7th day of January, 2016, at Anchorage, Alaska.



Patrick J. McKay/Superior Court Judge

I certify that on 1/7/16 a copy
of the following was ~~mailed/faxed/hand-delivered~~ *emailed*
to each of the following at their addresses of
record, *James Gottstein*
Jeffrey Robinson/Kevin Cuddy

Administrative Assistant *Jm*

³⁸ ABI's motion for a ARCP 56(f) continuance is deemed moot.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED
JAN -6 PM 3:36
CLERK TRIAL COURT
BY: [Signature]

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

Case No. 3AN-15-05969CI

RESPONSE TO NOTICE OF DEFICIENT FILING(S)

On January 6, 2016, plaintiff Alaska Building, Inc., received a January 5, 2016 Notice of Deficient Filing(s) regarding its Reply Re: Conditional Civil Rule 56(f) Request to the effect that not all parties who have appeared had been served as required by Civil Rule 5(a) (Deficiency Notice).

The Deficiency Notice is in error. Following the August 20, 2015, Order in this case severing Count Two from this action, the only parties remaining in this case are plaintiff Alaska Building, Inc., and defendants 716 West Fourth Avenue LLC and Legislative Affairs Agency. All of these parties were served. Civil Rule 5(a) does not, in fact, require service on all parties "that have entered an appearance;" rather it requires service on "each of the parties." Since Pfeffer Development, LLC, Koonce Pfeffer Bettis, Inc., d/b/a KPB Architects ,and Criterion General, Inc., have been severed from this action

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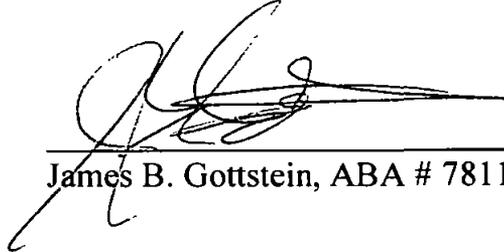
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they are no longer parties in this case and Civil Rule 5(a) does not require service upon them. However, they are being served with this Notice as a courtesy.

Please rescind the Deficiency Notice. In order to avoid this problem in the future, perhaps the clerk's records could be amended reflect the current parties.

Dated January 6, 2016.



James B. Gottstein, ABA # 7811100

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof to:

Jeffrey W. Robinson/
Evar R. Gardner
Ashburn & Mason, PC
1227 W. 9th Ave., Ste. 200
Anchorage, AK 99501

Blake Call
Call & Hanson
413 G Street
Anchorage, AK 99501

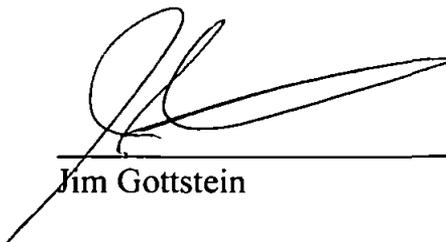
Daniel T. Quinn
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Dated January 6, 2016.



Jim Gottstein

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NOTICE OF DEFICIENT FILING(S)

FROM:

Alaska Court System
Nesbett Courthouse
825 W 4th Ave
Anchorage, AK 99501

DATE: January 5, 2016

CASE NO: 3AN-15-05969CI

CASE Alaska Building Inc vs. 716 West

NAME: Fourth Avenue LLC et al

CLERK: PWilliams

PHONE: 264-0480

TO:

JAMES B GOTTSTEIN ESQ
406 G ST STE 206
ANCHORAGE, AK 99501

Your documents are being returned to you.

The document(s) you submitted to the court is/are deficient. Please provide the following:

The "Reply RE: Conditional Civil Rule 56(f) Request for Additional Time....", and the "Request for Status Conference RE: Alaska Building, Inc's Motion to Compel Responses...", both filed on 1/04/2016, lack service upon all parties that have appeared in this case (Civil rule 5(a)).

Deficiencies must be corrected within 20 calendar days from the date of this notice.

FILE COPY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT
2016 JAN -4 AM 10:22
CLERK TRIAL COURT
BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

Case No. 3AN-15-05969CI

**REQUEST FOR STATUS CONFERENCE Re:
ALASKA BUILDING, INC.'S MOTION TO COMPEL RESPONSES
TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO 716
WEST FOURTH AVENUE LLC**

Alaska Building, Inc., requests a status conference with respect to its October 6, 2015 Motion to Compel Responses to Plaintiff's First Request for Production to 716 West Fourth Avenue LLC. In its November 24, 2015 Notice of Supplementation of Record Re: Plaintiff's Motion to Compel, 716 West Fourth Avenue LLC (716 LLC) attached a letter its counsel had written that same day that asserts proper production has been made. Attached hereto as Exhibit 1 is Alaska Building, Inc.'s December 8, 2015, response, written the day after counsel returned to town, demonstrating that 716 LLC has not adequately responded.

There are a number of different categories of requested documents for which the adequacy of production is disputed, with 716 LLC focused on what it has produced and Alaska Building, Inc., focused on what has not been produced and the failure of 716 LLC

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to comply with Civil Rule 26(b)(5) pertaining to claimed privileges. Alaska Building, Inc., believes it could be useful to the Court to hold a status conference to sort out where things stand.

Dated January 3, 2016.

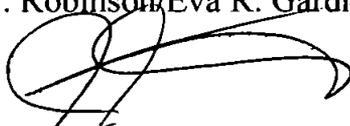


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof and proposed order to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated January 3, 2016.



Jim Gottstein

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December 8, 2015

Jeffrey L. Robinson
Ashburn & Mason
1227 W. 9th Ave., Ste. 200
Anchorage, AK 99501

via e-mail

Re: Your November 24th Letter

Dear Mr. Robinson:

This is in response to your November 24, 2015 letter. First, I want to address your statement at the end of the letter that I did not include a deadline in my letter. As you know, I was scheduled to be out of the office from November 19th, until December 7th. You also knew that my deadline for filing Alaska Building, Inc's reply was November 18th. In my November 11th e-mail transmitting the letter to you, I wrote:

If you can respond promptly that will be great since my reply regarding the extant motion to compel will be filed by mid next week and it would be nice to have this piece of it resolved.

The reply was filed on its due date, November 18, 2015, which was seven days after you received the letter.

Your letter also inaccurately states that Alaska Building, Inc., has demanded an entirely new level of production. This is not true. All of these documents were requested in Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC (First Production Requests), which were served on August 3, 2015. 716 LLC is required to produce not only the documents identified in the e-mails, but all other responsive documents. The e-mails identified documents responsive to the First Production Requests that 716 LLC has failed to produce. 716 LLC is now over 90 days late in producing these documents.

Not only has 716 LLC failed to produced these specifically identified documents, it has no doubt failed to produce other documents responsive to Alaska Building, Inc.'s First Production Requests. With respect to the items in your letter. The following responds to the specific items discussed your letter.

Exhibit C. There were multiple versions and the one to which you refer was attached to an August 9, 2013 e-mail, while the one in question was referenced in a September 11, 2013 e-mail.

Documents from Mark Pfeffer to Tim Lowe. The documents referenced in 716-2074 are required to be produced under Request for Production No. 7, whether or not they were attached to that e-mail.

Updated Tim Lowe Numbers. You state that you are not obligated to provide the "updated numbers from Tim" referenced in 716-2103. On what basis do you make this claim? The updated numbers are required to be produced under Request for Production No. 7. That Mr. Pfeffer was available by phone to discuss them does not negate that there is a responsive

document(s), even if just handwritten notes. All such responsive documents should be produced.

Documents Sent to Tim Lowe September 10, 2013. With respect to 716-2103, you state "If there is no such separate communication in the documents provided to you thus far, that means we do not have one to produce." I have re-reviewed 716 LLC's production and do not believe it has been produced. Mr. Pfeffer sent an e-mail on September 10, 2013 stating that the information had been "sent" to Mr. Lowe, and 716-2264 appears to be the transmittal. However, I do not believe the attachment, 909 Final.pdf.html, has been produced. If it has, please identify it. Otherwise, please produce it.

Varni Memo Rebuttal. At 716 2173, with respect to Pam Varni's analysis of space costs, Mr. Pfeffer wrote:

I'll dig into this. Once I've identified All of the math errors and bad assumptions ill get with Do. At AHFC and see if be agrees. if he does they can produce the memo that settles up the issues.

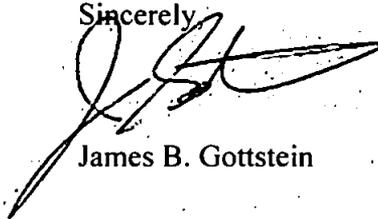
If any such memo is in 716 LLC's possession it must be produced. In addition, whether or not any such memo was ever promulgated by AHFC, the e-mail states that Mr. Pfeffer was going to identify all of the supposed math errors and bad assumptions. Any writing, including handwritten notes, or computer files by Mr. Pfeffer or anyone else evidencing such supposed math errors and bad assumptions should be produced. If Mr. Pfeffer did not identify such supposed math errors and bad assumptions, please so state.

Clean version of final budget adn lease calculation. With respect to 716-2292, you repeat that the attachment was missing. However, the e-mail identifies "clean final versions of budget and lease calculations." These documents should be produced.

Model Sent Yesterday. With respect to the "updated model" sent September 16, 2013, you state "if there is no e-mail in the production from the previous day containing a model, that means we do not have one to produce." Frankly, I do not find it credible that Mr. Pfeffer or his minions do not have a copy. Please produce it.

Finally, you complain that Alaska Building, Inc., is requesting a witness to explain statements in documents, which should be done through a deposition or other discovery requests, presumably interrogatories or requests for admissions. This is not the case, Alaska Building, Inc., has merely asked for 716 LLC to produce requested documents that are identified in produced documents. Alaska Building, Inc., is entitled to full compliance with its First Production Requests before deposing witnesses.

Sincerely



James B. Gottstein

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED
STATE OF ALASKA
2016 JAN -4 AM 10:22

CLERK TRIAL COURT

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

Case No. 3AN-15-05969CI

**REPLY Re:
CONDITIONAL CIVIL RULE 56(f) REQUEST FOR ADDITIONAL
TIME TO CONDUCT DISCOVERY REGARDING LEGISLATIVE
AFFAIRS MOTION FOR SUMMARY JUDGMENT UNDER THE
LACHES DOCTRINE**

In its Opposition to Plaintiff's Conditional Civil Rule 56(f) Request (Opposition), 716 West Fourth Avenue LLC (716 LLC) asserts Alaska Building, Inc., should not be allowed to raise the unclean hands defense because (1) it was not included in Alaska Building, Inc.'s opposition to the Defendant Legislative Affairs Agency's Motion for Summary Judgment Under the Laches Doctrine (Laches Motion), (2) the unclean hands defense cannot be used by a plaintiff, and (3) Alaska Building, Inc., has been dilatory in conducting discovery. None of these arguments are well taken.

1. Timeliness

This situation is analogous to *Mitchell v. Teck Cominco Alaska Inc.*, 193 P.3d 751 (Alaska 2008) in which the Supreme Court reversed and vacated summary judgment

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001739

because the superior court did not grant a Civil Rule 56(f) request. In that case, Mitchell filed a supplemental opposition in which he requested a Civil Rule 56(f) continuance. Here, Alaska Building, Inc., filed a conditional Civil Rule 56(f) request following the end of the normal briefing cycle, but a week before oral argument.¹ The reason for filing a conditional Civil Rule 56(f) request is Alaska Building, Inc., believes the Laches Motion should be denied upon the current record, either outright or because there are factual disputes that must be determined at an evidentiary hearing.

Alaska Building, Inc., believes the laches defense should be denied outright because, as a matter of law, (1) the Legislative Affairs Agency has admitted it will save over \$22 million by moving into the Atwood Building, and (2) 716 LLC is precluded from asserting that it will lose money by invalidating the lease because that argument is directly contrary to its central substantive contention in this case that the lease is more than 10% below market rent.² In addition, as the Court pointed out at oral argument on the Laches Motion, the Legislative Affairs Agency has the right to terminate the lease for lack of funds or appropriation. Thus, as a matter of law, neither the Legislative Affairs Agency nor 716 LLC suffer any undue prejudice by the delay.

¹ While the court was surprised at the oral argument about the laches argument, opposing counsel were served an extra copy *via* e-mail a week before the argument to give them the maximum amount of time to prepare for it. Still, counsel acknowledges it would have been better to have raised the issue earlier. In such circumstances, the opposing parties can be given additional time to respond, but the unclean hands defense should not be disallowed on timeliness grounds.

² As counsel stated at oral argument, the assertion by 716 LLC that the lease is more than 10% below market rent is not true, but 716 LLC is precluded from making this argument inconsistent with its central substantive position in this action.

To the extent the Court does not agree the record is currently sufficient to deny the Laches Motion outright, the factual disputes over whether there is any undue prejudice to either party by the delay must be resolved at an evidentiary hearing.³ Unlike *City and Borough of Juneau v. Breck*, 706 P.2d 313 (Alaska 1985), here, Alaska Building, Inc., has presented evidence challenging the prejudice proposed by the Legislative Affairs Agency and 716 LLC. Granting summary judgment in light of these factual disputes would be error. The Court can deny the Laches Motion without foreclosing the laches argument pending an evidentiary hearing on undue prejudice if it does not find that the Laches Motion should be denied as a matter of law on the current record.

However, if the Court does not deny the Laches Motion either outright or because of the factual disputes, Alaska Building, Inc., should be allowed to conduct further discovery on unclean hands under Civil Rule 56(f) to oppose the Laches Motion.

2. The Availability of the Unclean Hands Defense

716 LLC also makes the erroneous argument that only defendants can assert unclean hands, i.e., that it is unavailable to a plaintiff to defeat a laches argument. This is untrue. As the 9th Circuit recently held:

The doctrine [of unclean hands] bars relief to a plaintiff who has violated conscience, good faith or other equitable principles in his prior conduct, as well as to a plaintiff who has dirtied his hands in acquiring the right presently asserted. *Dollar Sys., Inc. v. Avcar Leasing Sys., Inc.*, 890 F.2d 165, 173 (9th Cir.1989) (citations omitted). The doctrine of unclean hands also can bar a defendant from asserting an equitable defense. See *Jarrow Formulas, Inc. v. Nutrition Now, Inc.*, 304 F.3d 829, 841–42 (9th Cir.2002) (noting that a

³ Alaska Building, Inc., also disputes that the delay was unreasonable, but does not believe there is any genuine factual dispute on this issue.

defendant with unclean hands is barred from asserting the equitable defense of laches).

Seller Agency Council, Inc. v. Kennedy Center for Real Estate, 621 F.3d 981, 986 (9th Cir 2010), emphasis added.

Some courts hold that the misconduct has to have caused the delay, while others do not. In addition to it not being a requirement in the 9th Circuit as explicated in *Seller*, the Nebraska Supreme Court has held:

Laches is an equitable defense, and in order to benefit from the operation of laches, a party must come to the court with clean hands. Under the doctrine of unclean hands, a person who comes into a court of equity to obtain relief cannot do so if he or she has acted inequitably, unfairly, or dishonestly as to the controversy in issue.

Olsen v. Olsen, 657 N.W.2d 1, 10 (Neb 2003). It does not appear the Alaska Supreme Court has yet had occasion to address this question. If the wrongdoing in an unclean hands defense to a laches motion is only available in Alaska as to the issue of delay, here, the threat of damage to the Alaska Building by 716 LLC qualifies.

3. Discovery

Finally, 716 LLC asserts Alaska Building, Inc., has been dilatory in conducting discovery. In doing so, 716 LLC turns its refusal to provide adequate responses to Alaska Building, Inc.'s First Requests for Production into Alaska Building, Inc., being dilatory.⁴

Alaska Building, Inc., served requests for production on 716 LLC and the Legislative Affairs Agency on August 3, 2015, the day the stay of discovery expired. Since then,

⁴ That Alaska Building, Inc., has chosen not to conduct depositions prior to obtaining adequate responses does not make it dilatory.

Alaska Building, Inc., has been taking steps to obtain proper compliance, including filing a motion to compel on October 6, 2015. 716 LLC has withheld documents on the specious grounds that they are confidential and proprietary.⁵ 716 LLC has withheld documents on the grounds of privilege without complying with Civil Rule 26(b)(5) and redacted others without any reason asserted at all. 716 LLC has failed to produce documents referred to in e-mails and otherwise failed to provide requested documents.

4. Conclusion

For the foregoing reasons, Alaska Building, Inc.'s Conditional Civil Rule 56(f) Request should be granted if the Legislative Affairs Agency's Motion for Summary Judgment Under the Laches Doctrine is not denied on the current record.

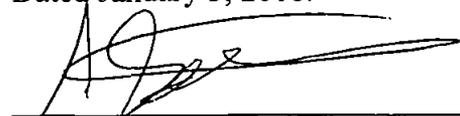
Dated January 3, 2016.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated January 3, 2016.


Jim Gottstein

⁵ Also pending is a motion for a protective order filed after the Motion to Compel. This is the proper way to handle confidential and proprietary documents, rather than flouting the discovery rules and withholding them.

NOTICE OF DEFICIENT FILING(S)

FROM:

Alaska Court System
Nesbett Courthouse
825 W 4th Ave
Anchorage, AK 99501

DATE: December 30, 2015

CASE NO: 3AN-15-05969CI

CASE Alaska Building Inc vs. 716 West

NAME: Fourth Avenue LLC et al

CLERK: PWilliams

PHONE: 264-0480

TO:

JEFFREY ROBINSON
1227 WEST 9TH AVENUE
SUITE 200
ANCHORAGE, AK 99501

Your documents are being returned to you.

The document(s) you submitted to the court is/are deficient. Please provide the following:

- Proper Proof of Service as required by Civil Rule 5(a). All parties that have appeared in the case must be served with any pleadings filed.

Deficiencies must be corrected within 20 calendar days from the date of this notice.

FILE COPY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

12/25 11:08 AM

CLEER FILED

BY: [Signature]

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiff,)

vs.)

Case No.: 3AN-15-05969 CI

716 WEST FOURTH AVENUE LLC, and LEGISLATIVE AFFAIRS AGENCY, Defendants.)

#31
AMENDED CERTIFICATE OF SERVICE OF OPPOSITION TO PLAINTIFF'S CONDITIONAL CIVIL RULE 56(f) REQUEST

I certify that a copy of the Opposition to Plaintiff's Conditional Civil Rule 56(f) Request was served by U.S. Mail on the 22nd day of December, 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 A. 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 DEFICIENT FILING(S)

FROM:

Alaska Court System
Nesbett Courthouse
825 W 4th Ave
Anchorage, AK 99501

DATE: December 28, 2015

CASE NO: 3AN-15-05969CI

CASE Alaska Building Inc vs. 716 West

NAME: Fourth Avenue LLC et al

CLERK: PWilliams

PHONE: 264-0480

TO:

JEFFREY W ROBINSON
1227 W 9TH AVE STE 200
ANCHORAGE, AK 99501

Your documents are being returned to you.

The Opposition to Plaintiff's Conditional Civil Rule 56(f) Request you submitted to the court on 12/22/2015 is deficient. Please provide the following:

The certificate of service for the above referenced motion was left blank.

Deficiencies must be corrected within 20 calendar days from the date of this notice.

*Correct
12/29/15*

FILE COPY

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-15-05969CI

**ORDER GRANTING
ALASKA BUILDING, INC.'S CIVIL RULE 56(f) REQUEST**

Upon the motion by plaintiff, Alaska Building, Inc., pursuant to Civil Rule 56(f) for a continuance to Legislative Affairs Motion for Summary Judgment Under the Laches Doctrine, and after consideration of response(s), if any, it is hereby ORDERED the motion is **GRANTED**. It is further ORDERED, Plaintiff shall have until the time for responses to all other motions of law to respond to Legislative Affairs Motion for Summary Judgment Under the Laches Doctrine.

Dated _____.

*ruled -
denied
in
main
order
4/11/16*

PATRICK J. McKAY,
SUPERIOR COURT JUDGE

DEC 09 2015

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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

[PROPOSED] ORDER DENYING PLAINTIFF'S CONDITIONAL RULE 56 (F) REQUEST

Having considered the parties' briefing regarding Plaintiff's Conditional Civil Rule 56(f) Request, the request is DENIED.

DATED: _____

NOT USED
HON. PATRICK J. MCKAY
Superior Court Judge

DEC 22 2015

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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 22 day of December 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

DEC 22 2015

ASHBURN & MASON INC.
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2015 DEC 28 PM 4:11

CLERK OF COURT

BY: _____
DEPUTY CLERK

Kevin Cuddy (Alaska Bar #0810062)
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: (907) 277-1900
Facsimile: (907) 277-1920

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Case No.: 3AN-15-05969CI

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

^{#32}
**LEGISLATIVE AFFAIRS AGENCY'S NOTICE THAT PLAINTIFF'S
PREMATURE MOTION CONCERNING REP. HAWKER'S EMAILS IS MOOT**

On December 10, counsel for the plaintiff ("ABI") first alerted the Legislative Affairs Agency ("LAA") that it wished to seek discovery of certain emails that are not in LAA's possession, custody, or control. In that email, ABI asked whether Rep. Mike Hawker would request copies of certain materials from his Internet Service Provider. Two business days later, ABI filed a motion asking the Court to order Rep. Hawker to make this request to his Internet Service Provider. ABI provides no legal support for this

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request, noting only that it is precluded from seeking the information directly by a federal statute. ABI offers no authority for the proposition that any defendant – let alone a non-party – should be forced to seek additional materials from an Internet Service Provider when those materials are not in his possession, custody, or control.

This motion was premature and unnecessary. While LAA disputes that this extraordinary measure is required or appropriate, or has any impact on the pending summary judgment motion, Rep. Hawker is willing to request copies of e-mails that are not in his possession, custody, or control from January 1, 2013 to October 1, 2013 from his Internet Service Provider. Plaintiff's motion is moot.

DATED: December 28, 2015.

STOEL RIVES LLP

By: 

KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE AND OF FONT

I hereby certify that on December 28, 2015, I caused a true and correct copy of the foregoing to be served by U.S. mail on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)

I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).



Debby Allen, Practice Assistant

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

FILED
STATE OF ALASKA
THIRD DISTRICT
2015 DEC 22 AM 8:54
CLERK, TRIAL COURTS
BY DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska)
corporation,)
)
Plaintiff,)
)
vs.)
)
716 WEST FOURTH AVENUE LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)
Defendants.)
)

Case No.: 3AN-15-05969 CI

#31

**OPPOSITION TO PLAINTIFF'S CONDITIONAL CIVIL RULE 56(f)
REQUEST**

Defendant 716 West Fourth Avenue LLC ("716"), by and through counsel, opposes Plaintiff Alaska Building, Inc.'s ("ABI") Conditional Civil Rule 56(f) Request for Additional Time to Conduct Discovery Regarding Legislative Affairs Motion for Summary Judgment under the Laches Doctrine ("56(f) Request").

On October 21, the Legislative Affairs Agency ("Agency") filed a Motion for Summary Judgment under the Laches Doctrine ("Laches Motion"), which was joined by 716. ABI filed its opposition brief on November 5. Briefing concluded on November 20. On December 9—over a month after filing its opposition, and less than a week before the December 16 oral argument—ABI filed its 56(f) Request, seeking to postpone determination of the Laches Motion pending completion of additional unspecified discovery processes.

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The Court should deny the 56(f) Request without further consideration for two reasons: (1) it was untimely and procedurally improper, and (2) it fails to demonstrate a need for further discovery on any material fact.

I. The 56(f) Request is Untimely.

A party must state the grounds for a 56(f) request in its opposition to summary judgment.¹ The Alaska Supreme Court has recognized this, holding that “it is necessary that the party [making a request pursuant to Rule 56(f)] make it clear to the trial court and the opposing party that he opposes the summary judgment motion on this ground.”² ABI failed to comply with this requirement. In its November 5 opposition to the Laches Motion, it presented only two arguments: that its delay in filing was reasonable and that no prejudice had resulted from the delay. It did not mention any need for additional discovery and certainly did not “make it clear to the trial court and the opposing party” that it was opposing the motion on Rule 56(f) grounds. Even in its present 56(f) Request, ABI does not argue that any additional discovery is required on these two material facts of unreasonable delay and prejudice.

Instead, ABI states an intention to conduct discovery on a single new issue: the unclean hands doctrine, which it asserts may operate as a defense to laches. But the unclean hands argument is not at issue in the Laches Motion because ABI failed to raise it in its opposition brief. To the extent ABI may argue that its failure to timely raise an unclean hands defense is excusable because it was previously unaware that the defense

¹ Rule 56(c); Rule 56(f).

² *Jennings v. State*, 566 P.2d 1304, 1313 (Alaska 1977).

may be available, that argument is contradicted by the docket. ABI has been making similar allegations of corruption for months.³ And it articulated speculations identical to those in the present Affidavit in a brief it filed on October 27,⁴ well in advance of its November 5 opposition to the Laches Motion. By failing to timely assert the unclean hands argument, despite being fully aware of all the alleged grounds for it, ABI waived the argument.

Moreover, in the 56(f) request, ABI does not actually identify what additional discovery it plans to do on the new unclean hands issue; it merely speculates that discovery may support its vague accusations of “corruption” and “the extent of the pressure” that may have been exerted on Agency employees.⁵ Nor does ABI demonstrate the diligence in discovery required for a 56(f) request. ABI has in fact been dilatory in that regard. Since the discovery stay was lifted in August, ABI has propounded only a single round of discovery requests. As discussed in the accompanying affidavit of counsel, 716 produced nearly 6000 pages of responsive documents. ABI has expressed dissatisfaction with 716’s responses and alleged that 716 actually possesses documents not yet produced. 716 has repeatedly explained that certain requested documents never existed or are simply not within 716’s control and

³ E.g., ABI’S Opposition to 716 LLC Motion to Dismiss at 4 (“ . . . as a result of corruption, the LIO Lease violates AS 36.30.083(a)’s requirements . . .”).

⁴ ABI’S Opposition to 716’s Motion for Ruling of Law Precluding ABI’s Claims for Qui Tam and Punitive Damages at 10-15.

⁵ Gottstein Aff. ¶ 6. These speculations are without any basis in fact. As addressed more fully elsewhere, none of the thousands of documents produced to date suggests corruption was at play. See 716’s Reply to Opposition to Motion for Ruling of Law Precluding Alaska Building, Inc.’s Claim for Qui Tam and Punitive Damages at 4-14.

thus cannot be produced. Despite this, ABI has failed to take any affirmative steps to obtain the information in other ways. The *only* new discovery action ABI has taken since August has been to seek recovery of Representative Hawker's deleted e-mails from GCI. It has not scheduled a single deposition, despite 716's repeated suggestion that deposition testimony may be the best (and only) way to obtain information that does not exist in documentary form.

Rule 56(f) "will not be liberally applied to aid parties who have been lazy or dilatory."⁶ ABI's 56(f) Request—filed over a month after its opposition, without any showing of diligence in discovery or a need for more discovery—is inexcusably untimely and should be disregarded.⁷

II. The 56(f) Request Fails to Identify a Need for Discovery on Any Material Fact, as the Unclean Hands Doctrine Is Inapplicable.

The 56(f) request also merits denial because it fails to identify a need for discovery on any facts material to the Laches Motion. As ABI acknowledged in its opposition to the Laches Motion, the defense of laches is available where the plaintiff's delay in bringing suit was unreasonable and prejudiced the defendants. These are the only material facts at issue.

ABI admitted it came to the conclusion the lease was illegal in early October 2013 and considered asserting a claim at that time. Instead, it decided to wait until

⁶ *Jennings*, 566 P.2d 1304, 1313 (Alaska 1977).

⁷ While "excusable neglect" may be presented as justification for an untimely filing, ABI failed to present any such reason for its untimeliness here. Rule 6(b)(2); *Erica G. v. Taylor Taxi, Inc.*, 357 P.3d 783 (Alaska 2015). Indeed, the affidavit ABI attached to its 56(f) Request identifies no information that was unknown at the time it filed its opposition brief on November 5.

March 2015 to file suit, deliberately delaying until construction was complete and the LIO building occupied. At the December 16 oral argument, ABI conceded that these facts were undisputed. The prejudice to the defendants is similarly undisputed: in reliance on the Agency's good-faith determination that the Lease extension complied with applicable law, the parties expended millions—in 716's case, tens of millions—of dollars renovating the LIO building to meet the Legislature's specific needs.⁸ Moreover, ABI has never requested additional time under 56(f) to seek discovery related to *any* actual issue it raised in its opposition to the laches motion (i.e., that its delay was somehow excusable or non-prejudicial to defendants).

Even if ABI had timely raised the unclean hands argument, it has no application to the issues at hand. ABI's argument is circular: ABI brought suit because it believed defendants engaged in culpable conduct; defendants asserted laches as a defense; ABI now seeks to avoid the laches defense by asserting that defendants engaged in culpable conduct. As ABI's own case quotation demonstrates, unclean hands is a defense employed by *defendants* against culpable *plaintiffs*.⁹ Almost by definition, every

⁸ At oral argument on December 16, the Court explored whether the 90-day termination clause in the Lease diminished the potential prejudice to 716. That issue has not been briefed and is thus not susceptible to a decision on the current record. More significantly, it is irrelevant to the question at hand. Any harm 716 may suffer as a result of termination by the Agency is distinct from and unrelated to the harm 716 would suffer from judicial invalidation of the Lease itself. If the Agency were to terminate the lease, 716 would have an opportunity to explore the legitimacy of the stated reasons for termination, determine if the termination comported with the covenant of good faith and fair dealing, and evaluate any claims it may have for breach of contract under the Lease. By contrast, if the entire Lease were declared invalid as a result of ABI's suit, 716 would be left without any remedy. The two scenarios are similar only insofar as the LIO building would be empty under both; legally and financially, 716 would be in dramatically different positions.

⁹ 56(f) Request at 1-2 (quoting *Knaebel v. Heiner*, 663 P.2d 551, 554 (Alaska 1983)); *see also*, e.g., *Cook v. Cook*, 249 P.3d 1070, 1082 (Alaska 2011) ("The doctrine of unclean hands is an equitable

defendant in every lawsuit is accused of some wrongdoing. Laches would never be available if a plaintiff could avoid it merely by reiterating its initial allegations, reframed as an unclean hands argument.¹⁰ No reported case in Alaska holds that the unclean hands doctrine bars a defendant from asserting the defense of laches.¹¹

Finally, even if unclean hands could clearly operate as a bar to a laches defense, ABI has not identified any conduct by defendants that meets the requirements for application of the doctrine. A party's hands are clean where it has acted "without fraud or deceit"¹² and where its conduct has not caused harm to the plaintiff.¹³ ABI does not dispute, because it cannot dispute, that the Legislative Council chairman and chief procurement officer, Mike Hawker, was unanimously approved by the Legislative

defense that, in some cases, bars a plaintiff from claims in equity."); *Henrichs v. Chugach Alaska Corp.*, 250 P.3d 531, 540 (Alaska 2011) ("To successfully raise the unclean hands defense under Alaska law, a defendant must show: (1) that the plaintiff perpetrated some wrongdoing; and (2) that the wrongful act related to the action being litigated.) (emphasis added) (internal quotation marks omitted).

¹⁰ Indeed, if the unclean hands doctrine had any place in this action, it would be as a defense to ABI's claims: ABI, despite knowing full well of the alleged illegality of the lease extension, actively assisted in its performance, including by providing space to the contractor undertaking the work. It was thus an accomplice in the same "illegal" act of which it complains.

¹¹ Some federal appellate courts have explored the relationship between unclean hands and laches in the narrow context of inventions and trade practices, but their holdings vary and often require the defendant's wrongdoing to have contributed to the plaintiff's delay. For example, the D.C. Circuit has held that "a plaintiff relying on the unclean hands doctrine to defeat a defense of laches must show not only that the defendant engaged in misconduct, but moreover that the defendant's misconduct was responsible for the plaintiff's delay in bringing suit." *Serdarevic v. Advanced Med. Optics, Inc.*, 532 F.3d 1352, 1361 (Fed. Cir. 2008). Here, defendant's alleged wrongdoing is entirely unrelated to ABI's reasons for delaying suit.

¹² *Knaebel v. Heiner*, 663 P.2d 551, 554 (Alaska 1983).

¹³ *Cook*, 249 P.3d at 1082 ("[T]he doctrine of unclean hands will not apply if the party asserting unclean hands fails to show harm resulting from the alleged wrongful conduct.") (citing 27A Am. Jur. 2d Equity § 105).

Council to negotiate the extension with 716 and its representatives.¹⁴ Instead, ABI alleges only that 716, while negotiating the Lease extension terms, engaged in a robust discussion of alternative legislative options to ratify the lease extension. Ultimately, the Agency, as it was authorized to do under state procurement law, decided *not* to adopt 716's proposed option and determined that extending the lease under AS 36.30.083(a) was its preferred course of action. Negotiating a lease extension pursuant to the Legislative Council's authorized process hardly rises to the level of fraud or deceit; and as 716's proposal was not adopted, its conduct in advocating for it has no causal nexus to any harm alleged by ABI in this suit.

III. CONCLUSION

ABI seeks to postpone the Court's decision on the Laches Motion by raising a brand-new argument on an irrelevant issue long after briefing has closed. But the Civil Rules impose motion deadlines for a reason. If parties were allowed to supplement their briefing every time a new legal theory came to mind, courts would never be able to reach decisions, and cases would never be resolved. For these reasons, 716 respectfully requests that the Court deny ABI's Conditional Rule 56(f) Request.

¹⁴ See Procurement Officer's Findings under Legislative Procurement Procedure 040(d), attached to the Lease as Exhibit V.

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ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 12-22-15

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile
 U.S. Mail on the ____ day of December, 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

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

FILED
2015 DEC 22 10:03 AM
BY [Signature]

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC, and LEGISLATIVE AFFAIRS AGENCY Defendants.)

AFFIDAVIT OF JEFFREY W. ROBINSON IN SUPPORT OF 716 WEST FOURTH AVENUE'S OPPOSITION TO PLAINTIFF'S CONDITIONAL RULE 56(F) REQUEST

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case, and submit this affidavit in support of 716 West Fourth Avenue, LLC's Opposition to Plaintiff's Conditional Rule 56(f) Request for Additional Time to Conduct Discovery Regarding Legislative Affairs Motion for Summary Judgment under the Laches Doctrine.

2. Plaintiff has asserted that 716 has refused to produce certain documents relevant to its position that Defendants' laches motion should be barred by its newly

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asserted defense of unclean hands.¹ Plaintiff also asserts that 716 is “over 90 days late in producing responsive documents” purportedly contained in already discovered e-mails and related attachments.² Plaintiff makes these assertions to support its position that additional discovery will uncover additional as-yet undisclosed documents. However, both assertions are factually incorrect.

3. 716 has acted in good-faith throughout discovery and has been exceptionally diligent in its production efforts.

4. To date, 716 has produced nearly 6,000 pages of documents to ABI. On June 6, 2015, 716 produced documents 716-000001-716-000263. On September 3, 2015, 716 produced documents 716-000264- 716-001255. On October 14, 2015, 716 produced documents 716-001726-716-5870.

5. ABI has never requested any additional discovery relating to the reasons it objected to the Agency’s Motion to Dismiss under the Laches Doctrine: that its delay in filing resulted from alleged threats 716 made to damage ABI’s gas line or building, and that it was simply not feasible for ABI to file suit in any of the 17 months between October 2013 and March 2015.

6. The Court has yet to rule on ABI’s Motion to Compel. 716 objected to ABI’s Motion to Compel and filed an objection to ABI’s Motion for Preliminary Injunction, which also sought material related to 716’s internal financial operations.

¹ See Affidavit of Plaintiff’s Counsel in Support of its 56(f) Request at §§ 4-5.

² See Plaintiff’s Affidavit at §9.

AFFIDAVIT OF JEFFREY ROBINSON
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-5969

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716 has already detailed the basis for its objection to producing this irrelevant and proprietary information, which does not relate in any way to the subject of Plaintiff's opposition to the laches motion.

7. Plaintiff's reply to its motion to compel included a letter to undersigned counsel requesting additional material. 716 supplemented the record in a court filing on November 24, 2015, including a letter counsel sent to Mr. Gottstein once again reiterating its position that it has fulfilled 716's production responsibilities. Plaintiff replied to this letter on December 8, 2015 seeking the exact information which it had previously requested, and which 716 had already replied either did not exist or was not within the scope of Plaintiff's initial discovery request.

8. Although these discovery disputes are not directly at issue in Plaintiff's 56(f) request, this background is relevant to Plaintiff's assertion that additional discovery will yield heretofore undisclosed documents relevant to its allegations of misconduct. 716 has provided a fulsome response and made this clear to Plaintiff; Plaintiff's continuing belief that additional documents exist is unfounded.

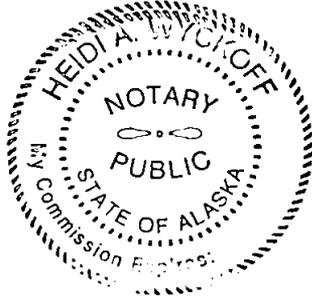
9. Although 716 has provided numerous well-founded explanations regarding the adequacy of its discovery responses and the unavailability of additional documents, ABI has not sought to conduct a single deposition in this case to date.

AFFIDAVIT OF JEFFREY ROBINSON
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-5969

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Jeff
Jeffrey W. Robinson

SUBSCRIBED AND SWORN to before me this 22 day of December, 2015.



Heidi A. Wyckoff
NOTARY PUBLIC in and for Alaska
My Commission Expires: 1/1/2019

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AFFIDAVIT OF JEFFREY ROBINSON
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-5969

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 22 day of December 2015, on:

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Law Offices of James B. Gottstein
406 G Street, Suite 206
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Cynthia L. Ducey
Delaney Wilson, Inc.
1007 W. 3rd Avenue, Ste. 400
Anchorage, Alaska 99501

Robert J. Dickson
Atkinson Conway & Gagnon
420 L Street, Suite 500
Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

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AFFIDAVIT OF JEFFREY ROBINSON
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-5969

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED
DEC 14 PM 2:22
CLERK TRIAL COURT
BY: DEBRA CLARK

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff
vs.
716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY
Defendants.

Case No. 3AN-15-05969CI

**MOTION AND MEMORANDUM TO ORDER REP.
HAWKER TO REQUEST E-MAILS FROM GCI**

Plaintiff Alaska Building, Inc., hereby moves for an order requiring former
Legislative Council Chair Rep. Mike Hawker, who negotiated the lease the subject matter
of this action, to request GCI to provide to the Legislative Affairs Agency's attorney in this
matter copies of all of his e-mail from January 1, 2013, to October 1, 2013, to enable
compliance with Plaintiff's First Requests for Production to Legislative Affairs Agency.

Exhibit A.

As set forth at Paragraph 10 of the December 9, 2015, Affidavit Of Counsel In
Support Of Alaska Building, Inc.'s Conditional Civil Rule 56(f) Request For Additional
Time To Conduct Discovery Regarding Legislative Affairs Motion For Summary
Judgment Under The Laches Doctrine (Affidavit of Counsel), and Exhibit 1, thereto,
counsel for the Legislative Affairs Agency has reported that the Legislative Affairs

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Agency is not able to produce responsive e-mails from or to Rep. Mike Hawker because he has deleted them. The Affidavit of Counsel is attached hereto as Exhibit B for the Court's convenience.

Paragraph 10 of the Affidavit of Counsel states that the logical next step is for Alaska Building to subpoena the e-mails from GCI, but in preparing for such a subpoena, counsel became aware that cases interpreting the Electronic Communications Privacy Act, 18 U.S.C. 2702, hold that it invalidates such subpoenas. *See, e.g., In re Subpoena Duces Tecum to AOL, LLC*, 550 F.Supp.2d 606 (E.D. Va 2008), citing to *Theofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2003). Big concerns include that such subpoenas would obtain privileged and irrelevant, potentially embarrassing, material.

Therefore, Alaska Building, Inc., has determined that the next logical step is for this Court to order Rep. Hawker to request GCI to send copies of his e-mails to the Legislative Affairs Agency's attorney in this matter to enable the Legislative Affairs Agency to be able to comply with Plaintiff's First Requests for Production to Legislative Affairs Agency with full attorney review. 18 U.S.C. 2702(b)(3) specifically allows for GCI to provide such copies with the consent of Rep. Hawker. Therefore, it is respectfully suggested this Court should order Rep. Hawker to provide such consent.

Counsel sent an e-mail to counsel for the Legislative Affairs asking him to do this voluntarily, Exhibit C, but has not heard back. It hasn't been a long time since this e-mail was sent, but if such a request to GCI was made before the time for opposition hereto is due, it would merely render this motion moot.

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Motion & Memorandum
Re: Rep. Hawker's Private E-mails

Page 2 of 3

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A. Conclusion

For the foregoing reasons, Alaska Building, Inc., respectfully requests the Court order Rep. Hawker to request GCI to send copies of his e-mails from January 1, 2013, to October 1, 2013 to counsel for the Legislative Affairs Agency .

Dated December 14, 2015.

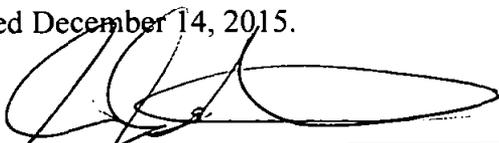


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed and e-mailed a copy hereof and proposed Order to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated December 14, 2015.



Jim Gottstein

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Motion & Memorandum
Re: Rep. Hawker's Private E-mails

Page 3 of 3

001769

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, *et al.*,

Defendants.

Case No. 3AN-15-05969CI

**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO
LEGISLATIVE AFFAIRS AGENCY**

Pursuant to Civil Rule 34 Plaintiff Alaska Building, Inc., serves the following requests for production on Defendant Legislative Affairs Agency. If counsel for the Legislative Affairs Agency claims an attorney-client relationship with any current or former legislator(s) with respect to this matter such that counsel believes Rule 4.2 of the Alaska Rule of Professional Conduct applies, these requests for production include production from such legislator(s).

Electronic production of hard-copy documents as word searchable Acrobat (PDF) files is preferred. Reasonably useable forms or formats for electronically stored information include (i) word searchable Acrobat (PDF) for written documents, (ii) jpeg or tiff for photographs or other images or graphics, (iii) MP3 for audio files, (iv) MPEG or MP4 for video files, and (v). pst (Outlook) or word searchable Acrobat for E-mails.

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I. DEFINITIONS

Unless the request conclusively indicates otherwise, the following definitions apply to the words used in these interrogatories:

A. LIO Lease: The words "LIO Lease" refers to that certain document titled "Extension of Lease and Lease Amendment No. 3," a copy of which is attached as Exhibit 1 to the June 12, 2015, Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment.

B. New LIO Building. The term "New LIO Building," means the completed building under the LIO Lease.

C. Document: The term "document" is defined to mean and include any and all graphic or physical representations, including without limitation all handwritten, typed or printed material, photographs, copies of all the foregoing, and electronically stored information within the meaning of Civil Rule 34(a), including e-mail.

D. Relate: The words "relate" or "relating to" mean referring to, pertaining to, concerning, alluding to, responding to, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, mentioning, reflecting, analyzing, constituting, evidencing, or pertaining to, directly or indirectly, in whole or in part.

II. CLAIMS OF PRIVILEGE:

If any document(s) or other item(s) identified or requested herein are withheld for any reasons under a claim of privilege or any other claim, the particular document or other item(s) withheld are to be described as follows:

- (1) The date of the document or other item;
- (2) The author or addressor of the document or other item;
- (3) The recipient or addressee of the document or other item;
- (4) The number of pages of the document;
- (5) The general subject matter of the document or other item;
- (6) Each person who sent, received and obtained copies of the document or other item;
- (7) A general description of the document or other item (i.e., letter, report, memoranda, audio or video recording); and

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Plaintiff's First Requests for Production
To Legislative Affairs Agency

Page 2

- (8) The basis of the privilege asserted with respect to the alleged grounds for non-production of the document or other item.

REQUEST FOR PRODUCTION NO. 1.

Please produce all documents, from January 1, 2010, forward, including without limitation, e-mails, relating to leasing or potentially leasing space by the Legislative Affairs Agency for the Anchorage Legislative Information Office when the then current lease terminated. This request encompasses all efforts relating to acquiring space for the Anchorage Legislative Information Office following the expiration of the then existing lease. This includes all responsive documents relating to the LIO Lease, including without limitation, negotiations and internal consideration by the Legislative Affairs Agency.

RESPONSE

REQUEST FOR PRODUCTION NO. 2.

Please produce all documents relating to the LIO Lease complying with the requirement in AS 36.30.083(a) that it extend a real property lease.

RESPONSE

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Plaintiff's First Requests for Production
To Legislative Affairs Agency

Page 3

REQUEST FOR PRODUCTION NO. 3.

Please produce all documents relating to opinions, estimates or determinations of the market rental value and/or value of the New LIO Building relating to leasing or purchasing space for the Anchorage Legislative Information Office upon the expiration of the then existing lease, except for (a) that certain "Rental Value Appraisal Report Anchorage Legislative Information Office," by Waronzof Associates, submitted October 15, 2013, as of June 1, 2014, a copy of which can be accessed by going to <http://bit.ly/1MCkd93>, and (b) that certain October 10, 2013, Report by the Alaska Housing Finance Corporation on the LIO Building Anchorage, Alaska, titled "Evaluation of Cost Estimate for Downtown Development," a copy of which can be accessed by going to <http://bit.ly/1LV9MeW>. This request includes communications with any and all persons regarding the market rental value of the New LIO Building, including without limitation during the planning phase and whether or not any opinion regarding the market rental value of the New LIO Building was formed or provided. In essence this request is for all documents relating to the value or market rental value relating to leasing space by the Legislative Affairs Agency for the Anchorage Legislative Information Office after the expiration of the then existing lease.

RESPONSE

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Plaintiff's First Requests for Production
To Legislative Affairs Agency

Page 4

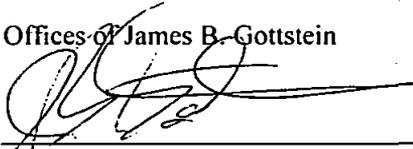
REQUEST FOR PRODUCTION NO. 4.

Please produce all documents relating to payments under the LIO Lease. This request should be updated monthly.

RESPONSE

DATED: August 3, 2015.

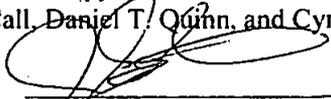
Law Offices of James B. Gottstein

By: 

James B. Gottstein, ABA # 7811100,
Attorney for Alaska Building, Inc.

CERTIFICATE OF SERVICE

I certify that on August 3, 2015, I hand delivered a copy hereof to Kevin M. Cuddy, Jeffrey W. Robinson/Eva R. Gardner, Blake Call, Daniel T. Quinn, and Cynthia L. Ducey, and mailed a copy to Mark Scheer.


Jim Gottstein

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Plaintiff's First Requests for Production
To Legislative Affairs Agency

Page 5

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-15-05969CI

**AFFIDAVIT OF COUNSEL
IN SUPPORT OF
ALASKA BUILDING, INC.'S CONDITIONAL CIVIL RULE 56(f)
REQUEST FOR ADDITIONAL TIME TO CONDUCT DISCOVERY
REGARDING LEGISLATIVE AFFAIRS MOTION FOR SUMMARY
JUDGMENT UNDER THE LACHES DOCTRINE**

THIRD JUDICIAL DISTRICT)

)ss

STATE OF ALASKA)

JAMES B. GOTTSTEIN, Esq., being first sworn under oath, hereby deposes and states as follows:

1. I am the attorney for plaintiff Alaska Building, Inc., in the above captioned action and this affidavit is submitted in support of the plaintiff's Conditional Civil Rule 56(f) Request for Additional Time to Conduct Discovery Regarding Legislative Affairs Motion for Summary Judgment Under the Laches Doctrine (56(f) Request).

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2. The 56(f) Request is conditional, because Alaska Building, Inc., may very well be entitled to denial of the Legislative Affairs Motion for Summary Judgment Under the Laches Doctrine (Laches Motion) on the current record.

3. However, if not, counsel believes that additional discovery could very well produce additional evidence supporting denial of the Laches Motion.

4. Most particularly, additional evidence to support the defense of unclean hands could be discovered.

5. Defendant 716 LLC has refused to produce certain documents relevant to such a defense which is the subject of a pending motion to compel production. This and other discovery could reveal even more evidence that 716 LLC and the Legislative Affairs Agency knew the no-bid lease the subject of this litigation was illegal. It might also reveal that the owners of 716 LLC have pocketed millions of dollars from the illegal lease already.

6. Other discovery might reveal the extent of the pressure Mr. Pfeffer and Rep. Hawker exerted on Pam Varni and Doug Gardner, the Legislative Affairs Agency's executive director and lawyer, respectively, to go along with the lease in spite of their concerns over its legality. It might even reveal more wrongdoing, such as payoffs, constituting classic corruption.

7. Additional discovery could also very well reveal that the Tim Lowe appraisal used to justify the no bid lease under AS 36.30.083(a) was fraudulent and unduly

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*Affidavit of Counsel In Support of
Civil Rule 56(f) Request*

Page 2 of 4

influenced by Mr. Pfeffer or otherwise. This appraisal appears to have been used in a criminal act under AS 36.30.930(2) to justify the no-bid lease under AS 36.30.083(a).

8. Alaska Building, Inc., has been very diligent with its discovery. It immediately propounded requests for production to both 716 LLC and the Legislative Affairs Agency when the stay of discovery expired on August 3, 2015, and has been working to obtain compliance, particularly from 716 LLC ever since, including the pending motion to compel production from 716 LLC.

9. In its responses, 716 LLC complains that Alaska Building, Inc., seeks documents in addition to whatever might be contained in e-mail and related attachments and is over 90 days late in producing responsive documents. It has also made what appears to be unfounded claims of privilege. These are currently among the issues in the pending motion to compel.

10. With respect to the Legislative Affairs Agency's responses to Alaska Building's first production requests to it, the Legislative Affairs Agency first asserted the private e-mails of Rep. Hawker, the chair of the Legislative Council who negotiated the illegal no-bid contract the subject of this litigation, were not subject to production because they were not in the possession, custody or control of the Legislative Affairs Agency. *See*, Exhibit 1, page 2. Then, when I wrote that if Rep. Hawker was going to be considered his client for purposes of the attorney-client privilege, such e-mail was subject to production, counsel for the Legislative Affairs Agency indicated he would consult with his client. *See*, Exhibit 1, pages 1 & 2. Counsel for the Legislative Affairs Agency subsequently reported orally

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*Affidavit of Counsel In Support of
Civil Rule 56(f) Request*

Page 3 of 4

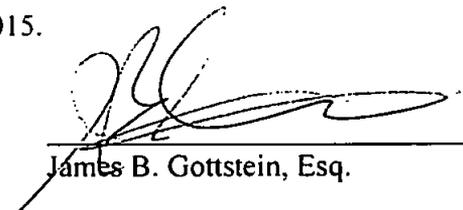
that the e-mails had been deleted. I asked that he put that in writing, but have yet to receive such a writing. Alaska Building, Inc.'s logical next step is to subpoena the e-mail provider(s).

11. In order for depositions of Rep. Hawker and Mark Pfeffer (and others) to be maximally productive, Alaska Building, Inc., needs as much of a documentary record as possible and the obstructionist behavior of 716 LLC in particular has dragged out this process.

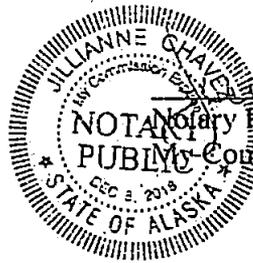
12. Therefore, counsel believes it is appropriate to grant the requested Civil Rule 56(f) extension if the court finds the current record insufficient to deny the Laches Motion.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 9th day of December, 2015.


James B. Gottstein, Esq.

SUBSCRIBED AND SWORN TO before me this 9th day of December, 2015.




Notary Public in and for Alaska
Commission Expires: December 2, 2018

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*Affidavit of Counsel In Support of
Civil Rule 56(f) Request*

Page 4 of 4

Exhibit B, page 4 of 9

001778

James B. Gottstein

From: Cuddy, Kevin M. <kevin.cuddy@stoel.com>
Sent: Monday, October 19, 2015 11:19 AM
To: James B. Gottstein
Subject: RE: Discovery Meeting

Jim,

That's fine. I'm looking into the other questions you've raised.

-Kevin

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Monday, October 19, 2015 8:41 AM
To: Cuddy, Kevin M.
Cc: james.b.gottstein@gottsteinlaw.com
Subject: Discovery Meeting

Hi Kevin,

Do you want to reschedule our discovery meeting to accommodate 716's continued deposition of me?

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

Exhibit 1, page 1 of 5

Exhibit B, page 5 of 9

001779

James B. Gottstein

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
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To: 'Cuddy, Kevin M.'
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Discovery Meeting

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-Kevin

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Exhibit 1, page 2 of 5

Exhibit B, page 6 of 9

001780

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Otherwise, please explain/justify.

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=

From: Mark Pfeffer
Sent: Thursday, June 20, 2013 10:55 AM
To: Mike Hawker (mhawker@gci.net)
Subject: FW: LAA procurement issues

FYI,

The back channel between lawyers.

Mark Pfeffer

PFEFFER DEVELOPMENT, LLC
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907 646 4644 | f 907.646.4655 |

Cell Phone
907 317 8030

From: John L. Steiner
Sent: Thursday, June 20, 2013 10:39 AM
To: Donald W. McClintock; Mark Pfeffer
Cc: Heidi A. Wyckoff
Subject: RE: LAA procurement issues

Don, I just spoke to Mark (before either of us had seen your email) and reviewed some of the background stuff. I gathered enough to know that the intent was to extend based on beating the as-is BOV by 10%, but then NOT being limited by that standard in the material modification. If the lease can be materially modified, why only in some respects and not in others? (That's a rhetorical question.)

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I still have some stuff to look through to be prepared to talk to Doug, but will get there shortly.

John L. Steiner

Project Director and Counsel

Pfeffer Development, LLC
Commercial Real Estate Developers
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907.646.4644 | f 907.646.4655
d 907 770.4306 | e 907.382.2300

This email may contain confidential or attorney-client privileged information and is in any case confidential. If you are not the intended recipient of this email please notify the sender then delete it permanently.

From: Donald W. McClintock [mailto:dwm@anchorlaw.com]
Sent: Thursday, June 20, 2013 10:18 AM

1

716-001271

Exhibit 1, page 4 of 5

Exhibit B, page 8 of 9

001782

To: Mark Pfeffer; John L. Steiner
Cc: Heidi A. Wyckoff
Subject: LAA procuremnt issues

Mark and John,

I had another call with Doug. He is certainly driving the form of the deal around his view of how the procurement issues line up; something we probably should be in line with so long as it is not overly conservative and costs real money.

What he wanted to know was whether we would have an appraisal done on the completed loan. I told him typically we would have one to support our construction loan so one should be ordered this summer once the plans and finishes have advanced enough. His vision of .083 and .040 is that the rent should be 10% below appraisal. Mark is that your financial plan? (You can probably get the numbers to work out if the lease rate assumes a 10 year term and you can qualify for 25 year financing or the income approach uses a different cap rate than what you do for the financing.) But that is the road he is going down and he really wants both leases done at the same time, one for the extension and the other for the material modification and new lease rate. The new lease would take place effective October 2014 on completion and acceptance and we would have some bridging lease until then.

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During the discussion, he also said his plan B, which is belts and suspenders, is to have the 36.30 appropriation done next session as well.

Call with questions.

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

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James B. Gottstein

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Thursday, December 10, 2015 9:22 AM
To: Cuddy, Kevin M.
Cc: james.b.gottstein@gottsteinlaw.com
Subject: GCI E-mails

Good Morning Kevin,

As I was working towards issuing a subpoena to GCI for Rep. Hawker's e-mails I found that the cases interpreting 18 U.S.C.A. § 2702 hold I can't do that. See, e.g., *In re Subpoena Duces Tecum to AOL, LLC*, 550 F.Supp.2d 606 (E.D. Va 2008), citing to *Theofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2003)

I think the court can order Rep. Hawker to request GCI to provide them to you so that you can then respond to Alaska Building, Inc.'s First Requests for Production, but I wonder if Rep. Hawker will just go ahead do that without court involvement?

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Anchorage, AK 99501
Tel: (907) 274-7686 Fax: (907) 274-9493
e-mail: James.B. Gottstein@GottsteinLaw.Com

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

STATE OF ALASKA
THIRD JUDICIAL DISTRICT
2015-05-26 PM 3:42

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff
vs.
716 WEST FOURTH AVENUE LLC,
and LEGISLATIVE AFFAIRS AGENCY,
Defendants.

Case No. 3AN-15-05969CI

**AFFIDAVIT OF COUNSEL
IN SUPPORT OF
ALASKA BUILDING, INC.'S CONDITIONAL CIVIL RULE 56(f)
REQUEST FOR ADDITIONAL TIME TO CONDUCT DISCOVERY
REGARDING LEGISLATIVE AFFAIRS MOTION FOR SUMMARY
JUDGMENT UNDER THE LACHES DOCTRINE**

THIRD JUDICIAL DISTRICT)
)ss
STATE OF ALASKA)

JAMES B. GOTTSTEIN, Esq., being first sworn under oath, hereby deposes and states as follows:

1. I am the attorney for plaintiff Alaska Building, Inc., in the above captioned action and this affidavit is submitted in support of the plaintiff's Conditional Civil Rule 56(f) Request for Additional Time to Conduct Discovery Regarding Legislative Affairs Motion for Summary Judgment Under the Laches Doctrine (56(f) Request).

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

2. The 56(f) Request is conditional, because Alaska Building, Inc., may very well be entitled to denial of the Legislative Affairs Motion for Summary Judgment Under the Laches Doctrine (Laches Motion) on the current record.

3. However, if not, counsel believes that additional discovery could very well produce additional evidence supporting denial of the Laches Motion.

4. Most particularly, additional evidence to support the defense of unclean hands could be discovered.

5. Defendant 716 LLC has refused to produce certain documents relevant to such a defense which is the subject of a pending motion to compel production. This and other discovery could reveal even more evidence that 716 LLC and the Legislative Affairs Agency knew the no-bid lease the subject of this litigation was illegal. It might also reveal that the owners of 716 LLC have pocketed millions of dollars from the illegal lease already.

6. Other discovery might reveal the extent of the pressure Mr. Pfeffer and Rep. Hawker exerted on Pam Varni and Doug Gardner, the Legislative Affairs Agency's executive director and lawyer, respectively, to go along with the lease in spite of their concerns over its legality. It might even reveal more wrongdoing, such as payoffs, constituting classic corruption.

7. Additional discovery could also very well reveal that the Tim Lowe appraisal used to justify the no bid lease under AS 36.30.083(a) was fraudulent and unduly

influenced by Mr. Pfeffer or otherwise. This appraisal appears to have been used in a criminal act under AS 36.30.930(2) to justify the no-bid lease under AS 36.30.083(a).

8. Alaska Building, Inc., has been very diligent with its discovery. It immediately propounded requests for production to both 716 LLC and the Legislative Affairs Agency when the stay of discovery expired on August 3, 2015, and has been working to obtain compliance, particularly from 716 LLC ever since, including the pending motion to compel production from 716 LLC.

9. In its responses, 716 LLC complains that Alaska Building, Inc., seeks documents in addition to whatever might be contained in e-mail and related attachments and is over 90 days late in producing responsive documents. It has also made what appears to be unfounded claims of privilege. These are currently among the issues in the pending motion to compel.

10. With respect to the Legislative Affairs Agency's responses to Alaska Building's first production requests to it, the Legislative Affairs Agency first asserted the private e-mails of Rep. Hawker, the chair of the Legislative Council who negotiated the illegal no-bid contract the subject of this litigation, were not subject to production because they were not in the possession, custody or control of the Legislative Affairs Agency. *See*, Exhibit 1, page 2. Then, when I wrote that if Rep. Hawker was going to be considered his client for purposes of the attorney-client privilege, such e-mail was subject to production, counsel for the Legislative Affairs Agency indicated he would consult with his client. *See*, Exhibit 1, pages 1 & 2. Counsel for the Legislative Affairs Agency subsequently reported orally

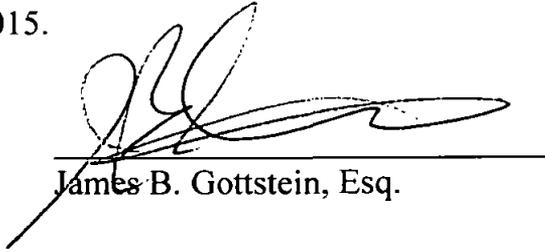
that the e-mails had been deleted. I asked that he put that in writing, but have yet to receive such a writing. Alaska Building, Inc.'s logical next step is to subpoena the e-mail provider(s).

11. In order for depositions of Rep. Hawker and Mark Pfeffer (and others) to be maximally productive, Alaska Building, Inc., needs as much of a documentary record as possible and the obstructionist behavior of 716 LLC in particular has dragged out this process.

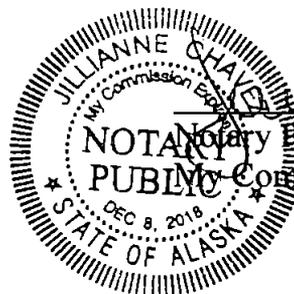
12. Therefore, counsel believes it is appropriate to grant the requested Civil Rule 56(f) extension if the court finds the current record insufficient to deny the Laches Motion.

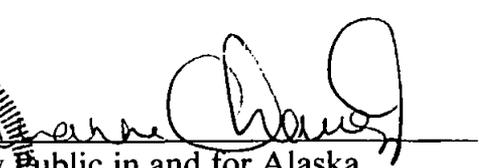
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 9th day of December, 2015.


James B. Gottstein, Esq.

SUBSCRIBED AND SWORN TO before me this 9th day of December, 2015.




Notary Public in and for Alaska

Commission Expires: December 8, 2018

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

*Affidavit of Counsel In Support of
Civil Rule 56(f) Request*

Page 4 of 4

001788

James B. Gottstein

From: Cuddy, Kevin M. <kevin.cuddy@stoel.com>
Sent: Monday, October 19, 2015 11:19 AM
To: James B. Gottstein
Subject: RE: Discovery Meeting

Jim,

That's fine. I'm looking into the other questions you've raised.

-Kevin

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED
2015 DEC -9 PM 3:42
THIRD DISTRICT

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff
vs.
716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY
Defendants.

Case No. 3AN-15-05969CI

**CONDITIONAL CIVIL RULE 56(f) REQUEST FOR ADDITIONAL
TIME TO CONDUCT DISCOVERY REGARDING LEGISLATIVE
AFFAIRS MOTION FOR SUMMARY JUDGMENT UNDER THE
LACHES DOCTRINE**

Pursuant to Civil Rule 56(f), should the Court not find the current admissions, affidavits and other admissible evidence insufficient to deny the Legislative Affairs Motion for Summary Judgment under the Laches Doctrine (Laches Motion), plaintiff Alaska Building, Inc., requests a continuance to permit depositions to be taken or other discovery to be had or may make such other order as is just. This Request is supported by the accompanying Affidavit of Counsel.

The discovery is expected to primarily be directed at the defense of unclean hands to the Laches Motion. In *Knaebel v. Heiner*, 663 P.2d 551, 554 (Alaska 1983) the Supreme Court adopted the following standard for the unclean hands defense:

The equitable maxim, "He who comes into equity must come with clean hands," has been interpreted as meaning that, "since equity tries to enforce

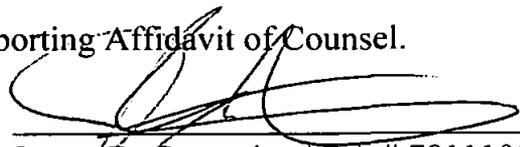
LAW OFFICES OF
JAMES B. GOTTSTEIN
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99501
TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

good faith in defendants, it no less stringently demands the same good faith from plaintiffs." Chaffee, *Some Problems of Equity* 1 (1950). In order to successfully raise the defense of "unclean hands," the defendant must show: (1) that the plaintiff perpetrated some wrongdoing; and (2) that the wrongful act related to the action being litigated. *Id.* Although " 'equity does not demand that its suitors shall have led blameless lives,' as to other matters, it does require that they shall have acted fairly and without fraud or deceit *as to the controversy in issue.*"

(emphasis in original, citation omitted). *Knaebel* is still good law in Alaska. *Henrichs v. Chugach Alaska Corp.*, 250 P.3d 531, 540 (Alaska 2011)

In Alaska Building, Inc.'s view, on the current record, this Court should find neither 716 LLC nor the Legislative Affairs Agency, through its then Chair, Rep. Mike Hawker, acted fairly and without fraud or deceit as to the controversy in issue here. Alaska Building, Inc., also believes other admissions and un rebutted evidence mandates denial of the Laches Motion. However, in the event the Court finds insufficient evidence on the current record to deny the Laches Motion it should grant Alaska Building, Inc.'s Rule 56(f) Request for the reasons stated in the supporting Affidavit of Counsel.

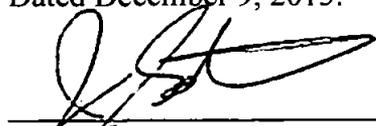
Dated December 9, 2015.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed and e-mailed a copy hereof, and the accompany Affidavit of Counsel and proposed Order to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated December 9, 2015.


Jim Gottstein

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
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Rule 56(f) Request

s

Page 2 of 2

001795

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

2015
DEC -7 PH 1:32
CLERK TRIAL COURT
BY: DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff

vs.

716 WEST FOURTH AVENUE LLC,
and LEGISLATIVE AFFAIRS AGENCY,

Defendants.

Case No. 3AN-15-05969CI

AFFIDAVIT OF JAMES B. GOTTSTEIN, ESQ.

THIRD JUDICIAL DISTRICT)
)ss
STATE OF ALASKA)

JAMES B. GOTTSTEIN, Esq., being first sworn under oath, hereby deposes and states as follows:

1. Attached hereto is a true and correct copy of the November 24, 2015, Memorandum to the Alaska State Legislature Legislative Council (Legislative Council) by Senator Gary Stevens, chair of the Legislative Council, titled "Anchorage LIO Office Space Report" (LIO Report).

2. The LIO Report was downloaded from the Alaska Legislatures website at http://www.legis.state.ak.us/basis/get_documents.asp?session=29&docid=29009, and is still available thereat as of the date hereof.

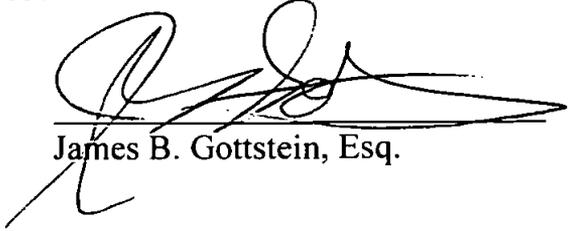
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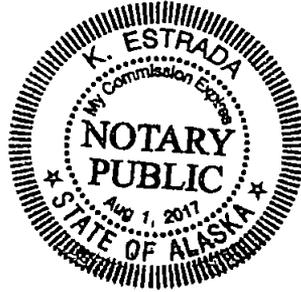
001796

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 7th day of December, 2015.


James B. Gottstein, Esq.

SUBSCRIBED AND SWORN TO before me this 7th day of December, 2015.




Notary Public in and for Alaska
My Commission Expires: 8/1/17



ALASKA STATE LEGISLATURE LEGISLATIVE COUNCIL

MEMORANDUM

CHAIR:

Sen. Gary Stevens

VICE CHAIR:

Rep. Bob Herron

SENATE MEMBERS:

President Kevin Meyer
Sen. John Coghill
Sen. Lyman Hoffman
Sen. Charlie Huggins
Sen. Anna MacKinnon
Sen. Peter Micciche
Sen. Lesil McGuire – alt

HOUSE MEMBERS:

Speaker Mike Chenault
Rep. Mike Hawker
Rep. Craig Johnson
Rep. Sam Kito
Rep. Charisse Millett
Rep. Mark Neuman
Rep. Steve Thompson – alt

COMMITTEE CONTACT:

Session/Interim:
State Capitol 429
Juneau, AK 99801-1182
(907) 465-4925

Committee Aide:

Katrina Matheny
(907) 465-4713

TO: Legislative Council Members
FROM: Senator Gary Stevens, Chair
Legislative Council
DATE: November 24, 2015
SUBJECT: Anchorage LIO Office Space Report

At the April 13, 2015 Legislative Council meeting there was general agreement that, in the face of enormous financial problems, the Legislature must reduce its cost of doing business as is being done in all other State agencies and departments. Specifically, the Council voted to direct the Chair to analyze options for legislative office space in Anchorage and report back to the full Council for consideration of the following:

1. Purchasing 716 W. 4th Avenue Building and Land;
2. Request Bonding Costs from Alaska Housing Finance Corporation (AHFC) to purchase 716 W. 4th Avenue; and
3. Evaluate State-Owned Office Space.

This memo and the attached documents comprise my report to Council. In working with the Departments of Revenue and Administration, as well as AHFC, the LAA and I have put together an Anchorage Legislative Offices Cost Comparison (summary attached). Below are five scenarios that compare annual cash outlays over a 10 year period (2016-2025) not including tenant improvement costs:

1. Continue Current Lease 716 W. 4th Avenue: \$40,320,000;
2. Purchase 716 W. 4th Ave. funded by AHFC Issuing Fixed-Rate Bonds Plus Operating Costs: \$48,850,000;
3. Purchase 716 W. 4th Ave. Issuance of Variable Rate Certificates of Participation Plus Operating Costs: \$44,614,600;
4. Cash Purchase of 716 W. 4th Ave.: (\$37,950,000 plus operating costs) \$43,200,000; or
5. Move to State-Owned Space at the Atwood Building: \$6,647,760.

Negotiations have been ongoing over the interim between the managing owner of 716 W. 4th Ave., Mark Pfeffer; his attorney Don McClintock with Ashburn & Mason, P.C.; Serena Carlsen, our outside real estate attorney with Stoel Rives, LLP; myself and Council Chair staff Katrina Matheny; as well as, Pam Varni, Executive Director and Doug Gardner, Legal Director of the Legislative Affairs Agency.

I am ready to discuss in detail the five different scenarios with the full Council and any other interested Members.

Attachments

ANCHORAGE LEGISLATIVE OFFICES COST COMPARISON

Scenario #1: Continue Current Lease at 716 W. 4th Avenue

Action Required: The Legislature needs to fully fund the Legislature State Facilities Rent Component every year for the remainder of the original 10 year lease, which expires on May 31, 2024. For comparison purposes, all the scenarios, including this one, are 10 year projections. Costs per square foot are based on usable space of 45,371 sq. ft. We have a total of 86 parking spaces.

Costs to Occupy 716 W. 4th Ave. at Current Lease Terms, Fiscal Years 2016-2025			
Fiscal Year	Lease Amount	Operating Expenses	Total Annual Cost
2016	\$3,379,656	\$652,344	\$4,032,000
2017	\$3,379,656	\$652,344	\$4,032,000
2018	\$3,379,656	\$652,344	\$4,032,000
2019	\$3,379,656	\$652,344	\$4,032,000
2020	\$3,379,656	\$652,344	\$4,032,000
2021	\$3,379,656	\$652,344	\$4,032,000
2022	\$3,379,656	\$652,344	\$4,032,000
2023	\$3,379,656	\$652,344	\$4,032,000
2024	\$3,379,656	\$652,344	\$4,032,000
2025	\$3,379,656	\$652,344	\$4,032,000
Total	\$33,796,560	\$6,523,440	\$40,320,000
Average Annual Cost			\$4,032,000
Total Monthly Costs per Usable Square Foot			\$7.41

Total 10 Year Lease & Operating Expenses	\$40,320,000
Tenant Improvement Costs	\$7,500,000
Total Monthly Costs per Usable Sq. Ft. Including Tenant Improvements	\$8.78

Scenario #2: Purchase 716 W. 4th Avenue Funded by AHFC Issuing Fixed-Rate Bonds

Action Required: The Legislature needs to pass a stand-alone bill to enable AHFC to finance the purchase of this building. Among the financing options available to the Legislature when it purchases or constructs facilities is the issuance of debt in the form of bonds sold to investors. Alaska's current credit profile would enable the issuance of bonds with a 10-year maturity at a fixed rate of approximately 2.16 percent. Summing all annual expenditures shows total annual costs of approximately \$4.8 million. This scenario is based on a usable space estimate of 45,371 square feet. A building manager position has been factored in this scenario. The Legislature would own an asset and be responsible for all ongoing maintenance and operating costs of this building. We have a total of 86 parking spaces.

Cost to Purchase 716 W. 4th Ave. by Issuing Bonds: Average Annual Costs, Fiscal Years 2016-2025				
Fiscal Year	Building Purchase	Debt Service Interest	Operating Expenses	Total Annual Cost
<i>Cost of Bond Issuance and Administration</i>				<i>\$850,000</i>
2016	\$3,795,000	\$480,000	\$525,000	\$4,800,000
2017	\$3,795,000	\$480,000	\$525,000	\$4,800,000
2018	\$3,795,000	\$480,000	\$525,000	\$4,800,000
2019	\$3,795,000	\$480,000	\$525,000	\$4,800,000
2020	\$3,795,000	\$480,000	\$525,000	\$4,800,000
2021	\$3,795,000	\$480,000	\$525,000	\$4,800,000
2022	\$3,795,000	\$480,000	\$525,000	\$4,800,000
2023	\$3,795,000	\$480,000	\$525,000	\$4,800,000
2024	\$3,795,000	\$480,000	\$525,000	\$4,800,000
2025	\$3,795,000	\$480,000	\$525,000	\$4,800,000
Total	\$37,950,000	\$4,800,000	\$5,250,000	\$48,850,000
Average Annual Cost				\$4,885,000
Total Monthly Costs per Usable Square Foot				\$8.97

Total to Purchase & Operating Expenses	\$48,850,000
Tenant Improvement Costs	\$7,500,000
Total Monthly Costs per Usable Sq. Ft. Including Tenant Improvements	\$10.35

Scenario #3: Purchase 716 W. 4th Avenue via Issuance of Variable Rate Certificates of Participation

Action Required: The Legislature would need to pass a stand-alone bill outlining the project, cost, annual payment and total payments. With variable rate securities, the interest rate paid on bonds is reset periodically for the following week, month, or year. This has the effect of resetting the interest rate every so often on the short (lower interest rate) end of the yield curve. As a result, the Legislature would pay only the short term interest rate rather than the fixed long-term blended rate and will pay a lower rate at the point of issuance. The risk with a variable rate is as interest rates rise, the state's credit quality diminishes, or there is market dislocation that results in the interest rate changing from one year to the next. In this era of historically low interest rates, it appears reasonable to expect increases in rates over the life of the securities; however, attempting to predict the timing or amount of such increases would be purely speculative. As a result, the figures below are shown at a flat interest rate of 0.6 percent (the current variable rate available), and is therefore likely the minimum cost scenario. A building manager position is factored in this scenario. Costs per square foot are based on usable space of 45,371 sq. ft. The Legislature would own an asset and be responsible for all ongoing maintenance and operating costs of this building. We have a total of 86 parking spaces.

Cost to Purchase 716 W. 4th Ave. by Issuing Variable Rate Certificates of Participation: Average Annual Costs over Fiscal Years 2016-2025				
Fiscal Year	Principal	Debt Service Interest	Operating Expenses	Total Annual Cost
<i>Approximate Cost of COP Issuance and Administration</i>				<i>\$265,000</i>
2016	\$3,695,000	\$216,615	\$525,000	\$4,436,615
2017	\$3,715,000	\$194,385	\$525,000	\$4,434,385
2018	\$3,740,000	\$172,020	\$525,000	\$4,437,020
2019	\$3,760,000	\$149,520	\$525,000	\$4,434,520
2020	\$3,785,000	\$126,885	\$525,000	\$4,436,885
2021	\$3,805,000	\$104,115	\$525,000	\$4,434,115
2022	\$3,830,000	\$81,210	\$525,000	\$4,436,210
2023	\$3,850,000	\$58,170	\$525,000	\$4,433,170
2024	\$3,875,000	\$34,995	\$525,000	\$4,434,995
2025	\$3,895,000	\$11,685	\$525,000	\$4,431,685
Total	\$37,950,000	\$1,149,600	\$5,250,000	\$44,614,600
Average Annual Cost				\$4,461,460
Total Monthly Costs per Usable Square Foot				\$8.19

Total to Purchase & Operating Expenses	\$44,614,600
Tenant Improvement Costs	\$7,500,000
Total Monthly Costs per Usable Sq. Ft. Including Tenant Improvements	\$9.57

Scenario #4: Purchase 716 W. 4th Avenue

Action Required: The Legislature would appropriate in the capital budget \$37,950,000 to go toward the purchase price of \$37,000,000 plus the estimated cost of \$950,000 prepayment penalty of the landlord for his loan of \$28,000,000. The Legislature would own an asset and be responsible for all ongoing maintenance and operating costs of this building. The Legislature would not be reimbursing the landlord for property taxes or insurance once we are owners. A building manager position is factored in this scenario. We have a total of 86 parking spaces.

Cost to Purchase 716 W. 4th Ave. through Single Appropriation with Occupancy Costs, Fiscal Years 2016-2025			
Fiscal Year	Building Purchase	Operating Expenses	Total Annual Cost
2016	\$37,950,000	\$525,000	\$38,475,000
2017		\$525,000	\$525,000
2018		\$525,000	\$525,000
2019		\$525,000	\$525,000
2020		\$525,000	\$525,000
2021		\$525,000	\$525,000
2022		\$525,000	\$525,000
2023		\$525,000	\$525,000
2024		\$525,000	\$525,000
2025		\$525,000	\$525,000
Total	\$37,950,000	\$5,250,000	\$43,200,000
Average Annual Cost			\$4,320,000
Total Monthly Costs per Usable Square Foot			\$7.93

Total To Purchase & Operating Expenses	\$43,200,000
Tenant Improvement Costs	\$7,500,000
Total Monthly Costs per Usable Sq. Ft. Including Tenant Improvements	\$9.31

SCENARIO #5: Move to State-Owned Space at the Atwood Building

Action Required: Non appropriation of the lease with 716 W. 4th Avenue and enter into a State lease with the Department of Administration for the Atwood Building. Of the total of 838 parking spots available in the Linny Pacillo parking facility, we would be paying for 84 parking spots based on our square footage. There are also 80 underground parking spots reserved for Legislators on a first come, first served basis at the Atwood Building. There are an additional 266 spots available on a first come, first served basis located in Blocks 102 and 79. Figures are based on per sq. ft., per month, costs of \$1.5375 for office space and of \$0.3091 for parking, as quoted by Tanci Mintz, State Leasing and Facilities Manager. At 716 W. 4th Avenue we previously had 811 sq. ft. of basement space. After the remodel there is 10,080 gross sq. ft. and 8,048 usable sq. ft. of basement space that we are not utilizing. We will not have basement space at the Atwood Building. We also have extra offices at 716 W. 4th that we are not using and will not have at the Atwood.

Prospective Lease of Office Space in the Atwood Building, Fiscal Years 2016-2025			
Fiscal Year	Office Lease 30,000 sq. ft. usable space	Parking 84 parking spaces	Total
2016	\$553,500	\$111,276	\$664,776
2017	\$553,500	\$111,276	\$664,776
2018	\$553,500	\$111,276	\$664,776
2019	\$553,500	\$111,276	\$664,776
2020	\$553,500	\$111,276	\$664,776
2021	\$553,500	\$111,276	\$664,776
2022	\$553,500	\$111,276	\$664,776
2023	\$553,500	\$111,276	\$664,776
2024	\$553,500	\$111,276	\$664,776
2025	\$553,500	\$111,276	\$664,776
Total	\$5,535,000	\$1,112,760	\$6,647,760
Average Annual Cost			\$664,776
Total Monthly Costs per Usable Square Foot			\$1.85

Total 10 Year Lease & Operating Expenses	\$6,647,760
Tenant Improvement Costs For Atwood Building	\$3,500,000
Tenant Improvements Lost From 716 W. 4th Avenue	\$7,500,000
Total Monthly Costs per Usable Sq. Ft. Plus Operating Costs	\$4.90

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED
 STATE OF ALASKA
 THIRD JUDICIAL DISTRICT

DEC -7 PM 1:32
 CLERK TRIAL COURT
 BY: DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
 corporation,
 Plaintiff
 vs.
 716 WEST FOURTH AVENUE LLC, and
 LEGISLATIVE AFFAIRS AGENCY
 Defendants.

#24
**NOTICE OF ADMISSIONS BY
 LEGISLATIVE AFFAIRS AGENCY**

Case No. 3AN-15-05969CI

PLEASE TAKE NOTICE that pursuant to Evidence Rules 801(d)(2) and 1007, the November 24, 2015, Memorandum to the Alaska State Legislature Legislative Council (Legislative Council) by Senator Gary Stevens, chair of the Legislative Council, titled "Anchorage LIO Office Space Report" (LIO Report) attached to the Affidavit of James B. Gottstein Esq., of even date, constitutes an admissions by party-opponent Legislative Affairs Agency (LAA), that (a) there is space available in the Atwood Building for the Anchorage Legislative Information Office, and (b) the LAA will save \$22,672,240 by moving to the Atwood Building, including taking into account the \$7.5 million spent on tenant improvements. These admissions by party-opponent LAA belie contrary assertions in its Reply Brief In Support of Motion for Summary Judgment Under the Laches Doctrine.

Dated December 7, 2015.


 James B. Gottstein, ABA # 7811100
 Attorney for Plaintiff

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

DEC -7 PM 1:32

CLERK TRIAL COURT
BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY
Defendants.

Case No. 3AN-15-05969CI

CERTIFICATE OF SERVICE

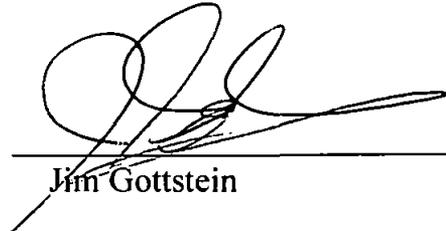
I hereby certify that on this date I mailed a copy of:

1. Notice of Admissions by Legislative Affairs Agency,
2. Affidavit of James B. Gottstein (attaching November 24, 2015, Legislative Council Chair's Anchorage LIO Office Space Report), and
3. this Certificate of Service, to:

Jeffrey W. Robinson/
Eva R. Gardner
Ashburn & Mason, PC
1227 W. 9th Ave., Ste. 200
Anchorage, AK 99501

Kevin M. Cuddy
Stoel Rives LLP
510 L St., Ste. 500
Anchorage, AK 99501

Dated: December 7, 2015



Jim Gottstein

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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-15-05969CI

**ORDER GRANTING
MOTION FOR PRELIMINARY INJUNCTION**

Upon motion by Plaintiff, Alaska Building, Inc., for a preliminary injunction prohibiting Defendant 716 West Fourth Avenue LLC (716 LLC), from disbursing any funds received pursuant to that certain contract, dated September 19, 2013, by and between defendant Legislative Affairs Agency (LAA) and defendant 716 LLC, titled "Extension of Lease and Lease Amendment No. 3" (LIO Lease) except for required debt service and the necessary direct operating costs of 716 LLC pertaining to the LIO Lease, and consideration of opposition thereto, it is hereby **ORDERED** that the Motion is **GRANTED**.

IT IS FURTHER ORDERED:

1. Defendant 716 West Fourth Avenue LLC is prohibited from disbursing any funds received under the LIO Lease except for necessary direct operating expenses and required debt service, consisting of required interest and principle

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001806

payments on the existing loan or loans securing the building at 716 West Fourth Avenue in Anchorage, Alaska.

2. Defendant 716 West Fourth Avenue LLC is specifically prohibited from disbursing any funds received under the LIO Lease to its managers or members, including Mark Pfeffer, Robert Acree, Mount Trident, LLC, or any person or entity in which Mark Pfeffer, Robert Acree, or Mount Trident, LLC, or any combination thereof, have an ownership or beneficial interest.

Dated _____, 2015.

PATRICK J. MCKAY
SUPERIOR COURT JUDGE

RECEIVED
JUN 10 2015

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*Order Granting
Preliminary Injunction*

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Page 2

001807

COURT OF ALASKA
THIRD JUDICIAL DISTRICT
FILED OCT 27 PM 5:04
ANCHORAGE

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

§ **[PROPOSED] ORDER DENYING PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Having considered the parties' briefing regarding Plaintiff's Motion for Preliminary Injunction, the motion is DENIED.

Alternatively, the Court will schedule oral argument on this motion at a time to be scheduled following the conclusion of oral argument addressing 716's Motion for Summary Judgment under the Laches Doctrine, which 716 has joined.

DATED: _____

HON. PATRICK J. MCKAY
Superior Court Judge

NOT RECORDED

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 27 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
Heidi Wyckoff

ASHBURN & MASON INC.
LAWYERS
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S-16371

3AN-15-05969 CI

VOLUME 6

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-15-05969CI

WJ ORDER GRANTING
ALASKA BUILDING, INC., MOTION FOR ENLARGEMENT OF
TIME TO FILE MOTION FOR COSTS AND ATTORNEY'S FEES

Alaska Building, Inc., has moved under Civil Rule 6(b) for an enlargement of time until 10 days after determination of the pending motion for reconsideration to file its motion for costs and attorney's fees against defendants 716 West Fourth Avenue LLC (716 LLC) and the Legislative Affairs Agency pursuant to Civil Rules 68, 79 and 82 due to the pendency of 716 LLC's motion for reconsider.

Good cause having been shown, it is hereby Ordered the motion is **GRANTED**.

Dated April 11, 2016.

Erin B. Mauston
Patrick J. McKay/Superior Court Judge

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I certify that on 4/11/16 a copy of the following was ~~mailed/faxed/hand-delivered~~ to each of the following at their addresses of mailed record. *James Gottstein*
Jeffrey Robinson / Kevin Cuddy
Administrative Assistant *Kn*

001811

MAR 9 1 2016

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

Kevin Cuddy (Alaska Bar #0810062)
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Telephone: (907) 277-1900
Facsimile: (907) 277-1920

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

Case No. 3AN-15-05969 CI

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

³⁴⁷
**ORDER GRANTING LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR
EXTENSION OF TIME TO FILE RESPONSE TO MOTION FOR
RECONSIDERATION**

THIS COURT, having reviewed Defendant Legislative Affairs Agency's ("LAA")
Motion for Extension of Time to File Its Response to Motion for Reconsideration, and
being duly advised in the premises, this Court finds and ORDERS as follows:

IT IS HEREBY ORDERED that the Defendant's Legislative Affairs Agency's
Motion for Extension of Time to File Its Response to Motion for Reconsideration IS
ORDER GRANTING LAA'S MOTION FOR EXTENSION OF TIME TO FILE RESPONSE TO MOTION FOR
RECONSIDERATION

ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI

GRANTED. This extension tolls the Court's deadline for ruling upon the motion for reconsideration, as well as all applicable appellate deadlines. See Civil Rule 77(k)(4).

DATED this 11 day of April, 2016.


Honorable Patrick McKay
Superior Court Judge

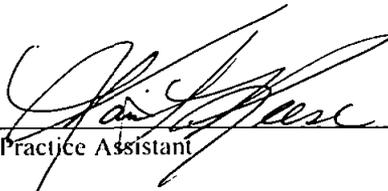
STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

CERTIFICATE OF SERVICE

This certifies that on April 6, 2016, I caused a true and correct copy of the foregoing to be served on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
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(Attorney for Plaintiff)

Jeffrey W. Robinson
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
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(Attorneys for Defendant 716 West Fourth Avenue, LLC)


Practice Assistant

86266273.1 0081622-00003

I certify that on 4/11/16 a copy
of the following was mailed/faxed/hand-delivered
to each of the following at their addresses of email of
record. James Gottstein
Jeffrey Robinson/Kevin Cuddy
Administrative Assistant kn

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED
STATE OF ALASKA
DISTRICT
2016 APR 11 PM 1:25

CLERK TRIAL COURT

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff
vs.
716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY
Defendants.

Case No. 3AN-15-05969CI

#41

**ALASKA BUILDING, INC., RESPONSE TO 716 WEST FOURTH
AVENUE MOTION FOR RECONSIDERATION OF THE COURT'S
ORDER GRANTING MOTION FOR SUMMARY JUDGMENT RE:
"NOT EXTENSION"**

Defendant 716 West Fourth Avenue LLC (716) has moved for reconsideration¹ of this Court's March 24, 2016, final appealable declaratory judgment, titled Order on Motion for Summary Judgment Re: Lease Is Not an Extension (Declaratory Judgment) and this Court has requested responses. Alaska Building, Inc., is pleased to do so. 716 asserts two reasons for granting reconsideration: (1) that it was denied due process because the Declaratory Judgment did not allow it to further present a factual basis to support a *laches* defense, and (2) that this Court erred in finding it had jurisdiction to decide whether the

¹ 716 does not identify in which way(s) this Court has overlooked, misapplied, failed to consider or misconceived a directly controlling principle, or misconceived a material question as required by Civil Rule 77(k)(2).

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LIO Lease complied with AS 36.30.083(a) because it was approved by the Legislature and therefore a nonjusticiable political issue. Neither assertion is well taken.

A. This Court Correctly Held the Laches Defense Unavailable for the Declaratory Judgment

In accordance with *Laverty v. Alaska R.R. Corp.*, 13 P.3d 725, 730 (Alaska 2000), this Court held *laches* was not available against Alaska Building, Inc.'s request for declaratory judgment. Order Denying Motion for Reconsideration Re: Laches, p. 4 ("The court does not find that the defense of laches applies to the request for a declaratory judgment."). The Declaratory Judgment explicitly issued only a declaratory judgment, stating in footnote 45 that, "Declaratory judgment is the only remaining relief requested in ABI's Second Amended Complaint." Thus, 716's argument that it is a violation of Due Process because it has not been allowed to present its *laches* defense is fallacious. It is no violation of Due Process to disallow evidence on an unavailable defense.

Alaska Building, Inc., requested a hearing on further necessary or proper relief pursuant to AS 22.10.020(g) should declaratory judgment be granted.² Alaska Building, Inc., contemplated such further relief would include recovery of payments under the LIO Lease should it be declared illegal. However, this Court declined Alaska Building, Inc.'s invitation for such a hearing. Should this Court decide to reverse itself and conduct a hearing on such further necessary or proper relief, then the question would arise as to

² Page 9 of February 23, 2016, Reply to: Legislative Affairs Agency's and 716 LLC's Oppositions to Plaintiffs' Motion for Partial Summary Judgment (Not Extension). *See*, also, page 9 of November 5, 2015, Opposition to Defendant Legislative Affairs Agency's Motion for Summary Judgment Under the Laches Doctrine.

whether a *laches* defense applies to such further relief. If so, the defendants would be allowed to put on evidence attempting to prove undue harm or prejudice, and Alaska Building, Inc., allowed to introduce evidence on unclean hands.

There is a pretty comprehensive analysis of such further necessary or proper relief when a public contract has been judicially determined illegal in the Appendix to *Earthmovers of Fairbanks, Inc. v. State, Dept. of Transp.*, 765 P.2d 1360 (Alaska 1988), cited by 716 at footnote 3. Under this analysis, in light of 716 not only being charged with knowing the requirements of AS 36.30.083(a), but also actually knowing the LIO Lease did not comply, there is a good chance all of the money paid under the illegal lease should be returned.³ At most, 716 would be entitled to retain fair market rent. Contrary to the suggestion of 716 in footnote 3, *estoppel* would not be available to 716.

However, since the Declaratory Judgment foreclosed any remedy in this action beyond declaratory relief there is no prejudice to 716 that would make the *laches* defense available. There has been no denial of Due Process by holding *laches* unavailable.

B. The Lease's Non-Compliance With AS 36.30.083(a) Is Justiciable

Citing AS 36.30.080(c)(1), 716 raises for the first time on reconsideration⁴ that by making the appropriation for the first year's rent, the Legislature approved the LIO Lease. In making this argument 716 also asserts for the first time that AS 36.30.850(b)(5) renders AS 36.30.083 a nullity. This cannot be so.

³ See, footnote 6 of *Earthmovers* Appendix.

⁴ This is grounds alone for denying the Motion for reconsideration, *Katz v. Murphy*, 165 P.3d 649, 661-662 (Alaska 2007), however Alaska Building, Inc., will address the merits.

(1) The First Year's Rent Appropriation Did Not Constitute Legislative Approval

First, by its very terms AS 36.30.080(c)(1) does not apply to lease extensions under AS 36.30.083(a). This Court made the distinction between leases, lease renewals, and lease extensions, and the separate statutes pertaining to each in its Declaratory Judgment.

716 argues that the Legislative Council complied with the notice provision of AS 36.30.080(c) and therefore the appropriation of the first year's rent constitutes approval of the LIO Lease. This is fallacious. AS 36.30.083 provides for a separate and different notice than AS 36.30.080(c). Neither AS 36.30.080, nor AS 36.30.083 provide that an appropriation of the first year's rent of an extension under AS 36.30.083(a) constitutes approval.

In footnote 17, 716 cites to AS 36.30.850(b)(5) for the proposition that the procurement code does not apply to AS 36.30.083 because AS 36.30.083 is not listed as an exception to the exception. Or, rather, that AS 36.30.080 "is the operative procurement requirement," because AS 36.30.083 is not listed in AS 36.30.850(b)(5). AS 36.30.850(b)(5) provides in pertinent part:

(b) This chapter applies to every expenditure of state money by the state, acting through an agency, under a contract, except that this chapter does not apply to . . .

(5) acquisitions or disposals of real property or interest in real property, except as provided in AS 36.30.080 and 36.30.085;

Assuming *arguendo* that a lease extension is an acquisition of an interest in land,⁵ then 716's argument is that AS 36.30.083 is not part of AS 36.30. This makes no sense.

Looking at the history of AS 36.30.850(b)(5), one sees that it was enacted in 1986 SLA Ch. 106, and only included AS 36.30.080. In 1994 SLA Ch. 75, §3, the authority of the Legislative Council to exercise control over legislative space to lease or lease-purchase or lease-financing was curtailed in AS 24.20.060(5) and made subject to AS 36.30.080(c). Section 7, added AS 36.30.085 pertaining to lease-purchases, and Section 8 amended AS 36.30.850(b)(5) to add AS 36.30.085. However, when AS 36.30.083 was first added through 1996 SLA Ch. 137, § 11, a corresponding amendment to AS 36.30.850(b)(5) was not made, nor was AS 36.30.850(b)(5) amended when AS 36.30.083 was repealed and reenacted to its current provisions through 2004 SLA Ch. 89, §11.⁶

716's analysis means that AS 36.30.083 is read completely out of the statutes because the corresponding amendment to AS 36.30.850(b)(5) was not made. This is an incorrect way to interpret statutes in Alaska:

When construing a statute, this court "presume[s] that the legislature intended every word, sentence, or provision of a statute to have some purpose, force, and effect, and that no words or provisions are superfluous." "[A]ll sections of an act are to be construed together so that all have meaning and no section conflicts with another." If one statutory "section deals with a subject in general terms and another deals with a part of the same subject in a more detailed way, the two should be harmonized, if possible; but if there is a

⁵ If it is not, then the AS 36.30.850(b)(5) exception to the exception does not apply.

⁶ As originally enacted in 1996, AS 36.30.083 made lease extensions subject to procedures adopted under AS 36.30.020, but this was deleted when AS 36.30.083(a) was repealed and reenacted in 2004 SLA Ch. 89, §11.

conflict, the specific section will control over the general." "[I]f two statutes conflict, then the later in time controls over the earlier."

Nelson v. Municipality of Anchorage, 267 P.3d 636, 642 (Alaska 2011), footnotes omitted.

As 36.30.083 is both more specific and later in time. It controls. It has its own specific notice requirement, which unlike AS 36.30.080(c)(1) does not provide that appropriation of the first year's rent constitutes approval. This Court should not graft it into the statute.

(2) Whether the Lease Complies with AS 36.30.083 is Justiciable

716 and the Legislative Affairs Agency both argue that the procurement decision by the Legislative Council under its Procurement Procedures is not justiciable, but the Legislative Affairs Agency's position is that whether the lease complies with AS 36.30.083(a) is justiciable. Alaska Building, Inc., did not claim the lease violated the Legislative Council's procurement procedures; its position is simply that the Legislative Council was required to comply with AS 36.30.083(a), regardless of its procedures. This Court agreed with the Legislative Affairs Agency that whether the Legislative Council complied with its procedures was nonjusticiable. Alaska Building, Inc., did not agree, but did not claim a violation of the Legislative Council's procedures, relying instead on the LIO Lease violating AS 36.30.083(a), which is controlling.⁷ In any event, whether the LIO Lease complies with AS 36.30.083(a) is justiciable.

Malone v. Meekins, 650 P.2d 351 (Alaska 1982), and *Abood v. League of Women Voters of Alaska*, 743 P.2d 333 (Alaska 1987) do not support a claim of non-justiciability.

⁷ It might be worth noting that AS 36.30.020 does not authorize the Legislative Council to adopt procedures pertaining to AS 36.30.083(a).

In both cases, the question was the Legislature's procedures. In *Malone*, the House voted to replace its Speaker. The Alaska Supreme Court held that so long as no constitutional provision was violated the issue was non-justiciable. In *Abood* the Alaska Supreme Court held it was up to the Legislature to decide if meetings of members to discuss and attempt to obtain agreement on the budget had to be open to the public under Alaska's Open Meetings Act, AS 44.62.310. The Alaska Supreme Court held it is the Legislature's prerogative to make, interpret and enforce its own procedural rules.

This case is far different. Leasing space has nothing to do with the Legislature's procedures. None of the U.S. Supreme Court *Baker v. Carr*⁸ elements that must be "prominent on the surface," adopted by the Alaska Supreme Court in *Malone*, favor nonjusticiability. These elements are:

1. Textually demonstrable constitutional commitment of the issue to a coordinate political department;
2. A lack of judicially discoverable and manageable standards for resolving it;
3. The impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion;
4. The impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government;
5. An unusual need for unquestioning adherence to a political decision already made;
6. The potentiality of embarrassment from multifarious pronouncements by various departments on one question.

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⁸ 369 U.S. 186, 217, 82 S.Ct. 691, 710 (US 1962).

In order: (1) the Judicial Council's only authority under the Alaska Constitution is that granted to it by the Legislature, Alaska Const. Art. II, §11, (2) this Court had no trouble resolving whether the LIO Lease "extends a real property lease" under AS 36.30.083(a); (3) no initial policy determination by the Court was required—the Legislature had already made that initial policy determination, (4) the Legislature did not ask the Court to refrain from ruling on whether the lease complied with AS 36.30.083(a), (5) there is no need, let alone an unusual need, for unquestioning adherence to a political decision already made—this was a procurement decision, not a political decision, and (6) there is not the potentiality of the type of embarrassment from multifarious pronouncements held applicable by the U.S. Supreme Court.⁹

In *Baker v. Carr* the United States Supreme Court held that election redistricting did not rise to the level of a non-justiciable political question. If redistricting for elections does not rise to the level of being a non-justiciable political issue certainly neither does whether the LIO Lease complies with Alaska's procurement code.

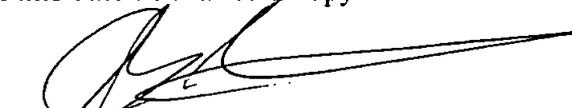
Dated April 11, 2016.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated April 11, 2016.


Jim Gottstein

⁹ The risk the U.S. Supreme Court referred to was "embarrassment of our government abroad, or grave disturbance at home." 369 U.S. at 226.

FILED
STATE OF ALASKA
THIRD DISTRICT

2016 APR -8 PM 4:28

CLERK TRIAL COURT

BY: _____
DEPUTY CLERK

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY, and
CRITERION GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969 CI

**LEGISLATIVE AFFAIRS AGENCY'S REPLY IN SUPPORT OF MOTION FOR
EXTENSION OF TIME TO FILE ITS RESPONSE TO MOTION FOR
RECONSIDERATION**

Pursuant to Civil Rule 77(k)(3), the Court requested that Legislative Affairs Agency ("LAA") file a response to the pending motion for reconsideration with respect to the legality of the lease for the Legislative Information Office building (the "LIO"). That response would ordinarily be due by April 11. In light of recent events, including a

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contingent offer to purchase the LIO, LAA requested a three-week extension of time to file its response. Plaintiff opposes that request, but none of its arguments has merit. The extension should be granted.

Since LAA prepared its motion, it has been publicly reported that defendant 716 West Fourth Avenue, LLC (“716”) has conditionally agreed to sell the LIO pursuant to the contingent offer.¹ While Plaintiff complains that LAA improperly speculated that some decisions regarding the potential purchase of the LIO by April 17, 2016,² at least one of the key decisions was apparently made in the past few days. More decision are anticipated soon.

In an effort to avoid potentially wasting the Court’s (and the parties’) time and effort, LAA asked for additional time before further briefing was required. Plaintiff opposes that request for a series reasons, each of which is addressed in order.

First, Plaintiff asserts that it is extremely unlikely that a decision to purchase the LIO will be made by April 17.³ This may or may not be true, but it is likely that the parties will know whether or not the proposed purchase is viable by then. As Plaintiff

¹ <http://www.ktuu.com/news/news/senator-owners-agree-to-sell-anchorage-office-building-to-legislature-for-325-million/38884660> (last visited Apr. 7, 2016).

² Alaska Building, Inc., Opposition to Legislative Affairs Agency’s Motion for Extension of Time to File Its Response to Motion for Reconsideration at 1 (filed Apr. 7, 2016) (“Opp.”).

³ See *id.* at 1-2.

concedes, the Legislature may decide not to purchase the LIO by April 17.⁴ Or the Legislature may support the purchase and send it to the governor for a decision. If the purchase remains viable, a further extension may be warranted. But the parties can cross that bridge if and when we get there. For now, for the sake of judicial economy, it makes sense to grant a short extension so that the parties understand the lay of the land before expending additional resources on litigating these issues.

Second, Plaintiff claims that LAA's request for an extension is somehow inconsistent with its earlier request for a prompt ruling on the legality of the lease.⁵ Not true. The Court did issue a ruling on its interpretation of AS 36.30.083, and this decision helped facilitate budgeting and other decisions that had to be made by the Legislature. LAA's requested extension seeks to give the parties' sufficient breathing room to determine whether the purchase will go forward (which will shape the scope of their relationship prospectively). There is no added uncertainty here.

Third, Plaintiff asserts that 716's motion must be resolved no matter what happens and therefore no extension is warranted.⁶ That may or may not be true. It remains possible that 716 could withdraw its motion in connection with the sale of the LIO,

⁴ See *id.* at 2 n.1.

⁵ See *id.* at 2.

⁶ See *id.* at 2-3.

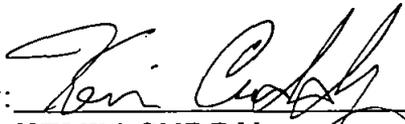
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thereby mooting the issue.⁷ Even if the motion is not mooted, however, there is no urgency to resolving this motion for reconsideration right now. In particular, Plaintiff does not even attempt to argue that there is some urgency that requires the motion to be addressed immediately. Plaintiff identifies no prejudice it may suffer as a result of a three-week extension – or an extension of any duration at all. Plaintiff simply claims that the Court will ultimately need to rule on the motion for reconsideration and therefore the motion for an extension of time should be denied. LAA submits that a short postponement of time will not prejudice any party and may give greater clarity to the scope of, and possibly need for, any future litigation.

LAA respectfully requests that its motion for an extension of time to respond to 716's motion for reconsideration be granted.

DATED: April 8, 2016

STOEL RIVES LLP

By: 

KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

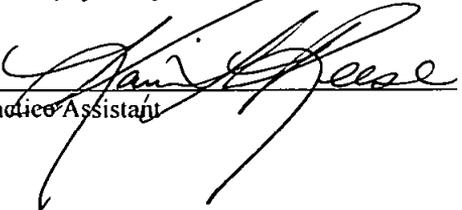
⁷ This decision rests, of course, with 716. LAA does not presume to know how 716 will proceed in this litigation.

CERTIFICATE OF SERVICE

This certifies that on April 8, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

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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-15-05969CI

4/7/16
**ORDER DENYING
LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR
EXTENSION OF TIME TO FILE ITS RESPONSE TO
MOTION FOR RECONSIDERATION**

Upon due consideration of defendant Legislative Affairs Agency's Motion for Extension of Time to File Its Response to Motion for Reconsideration (Extension Motion) and plaintiff Alaska Building, Inc.'s opposition thereto, it is hereby ORDERED the motion is DENIED.

Dated _____, 2016.

~~NOT USED~~

Hon. Patrick J. McKay
Judge of the Superior Court

APR - 7 2016

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001827

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED
STATE OF ALASKA
DISTRICT
2016 APR -7 PM 1:26

CLERK TRIAL COURT
BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

Case No. 3AN-15-05969CI

**ALASKA BUILDING, INC., OPPOSITION TO LEGISLATIVE
AFFAIRS AGENCY'S MOTION FOR EXTENSION OF TIME TO
FILE ITS RESPONSE TO MOTION FOR RECONSIDERATION**

Plaintiff, Alaska Building, Inc. opposes the Legislative Affairs Agency's Motion for Extension of Time to File Its Response to Motion for Reconsideration (Extension Motion).

As grounds for the extension, the Legislative Affairs Agency speculates that at least some decisions regarding whether the State will purchase the Anchorage Legislative Information Office Building (LIO Building) will be made by the scheduled end of the current legislative session on April 17, 2016. However, it is extremely unlikely that a decision to purchase the LIO Building will be made by such time. Unless the governor announces his intention to sign or veto a legislative decision to purchase the LIO Building before then, even if the Legislature passes a bill to purchase the LIO Building, no decision

will be made until the governor decides what he will do.¹ It is respectfully suggested that this litigation should not be delayed by speculation as to future events, which as set forth below do not change the necessity for resolution of the Motion for Reconsideration.

In its Extension Motion the Legislative Affairs Agency is taking a position contrary to one it took just two months ago. At page 2 of the Legislative Affairs Agency's Opposition to Plaintiff's Motion for Partial Summary Judgment (Not Extension), dated February 3, 2016, the Legislative Affairs Agency asked this Court to provide a ruling on the potentially dispositive legal issue of the proper interpretation of AS 36.30.083(a) *as soon as practicable* because of the impact on budgeting and other decisions that will be made this legislative session by the Alaska Legislature. Now, in its Extension Motion, the Legislative Affairs Agency reverses course and requests that the Legislature and Governor act with such uncertainty.²

Even if the Legislature decides to purchase the LIO Building and the governor goes along, the Motion for Reconsideration needs to be resolved. In fact, whatever the Legislature and governor do, the Motion for Reconsideration has to be resolved. That the scope of this litigation may be impacted by legislative and gubernatorial action is irrelevant. The status of the Declaratory Judgment is in limbo. No change in the scope of this litigation due to legislative and gubernatorial action can resolve that. The Motion for

¹ Of course, the Legislature very well might decide to not purchase the LIO Building by the scheduled end of the regular session.

² Of course, this Court's March 24, 2016, Order on Motion for Summary Judgment Re: Lease Is Not an Extension (Declaratory Judgment) would be subject to appeal and there is unavoidable uncertainty in at least that respect.

Reconsideration, and therefore the status of the Declaratory Judgment, can only be decided by:

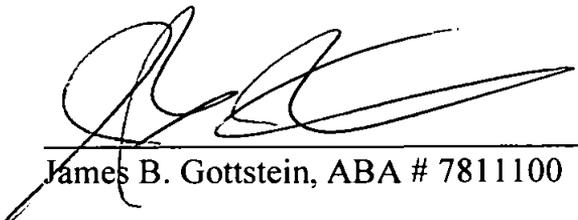
- (a) action by this Court,
- (b) inaction by this Court for the time period specified in Civil Rule 77(k)(4), or
- (c) withdrawal of the Motion for Reconsideration by 716.

The latter seems highly unlikely.

This Court's request for responses under Civil Rule 77(k)(3) is a courtesy to the non-moving parties and this Court need not accommodate an extension request when the stated ground are so feeble. This opposition is being e-mailed to the Legislative Affairs Agency as well as mailed, so it will have plenty of time to file its response within the time requested by the Court if it should so choose.

Alaska Building, Inc., respectfully suggests the Legislative Affairs Agency's Extension Motion be **DENIED**.

Dated April 7, 2016.


James B. Gottstein, ABA # 7811100

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof and accompanying proposed Order to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner and e-mailed a copy to Kevin M Cuddy.

Dated April 7, 2016.


Jim Gottstein

*Opposition to Legislative Affairs Motion
for Reconsideration Response Extension*

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STATE OF ALASKA
THIRD DISTRICT

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CLERK TRIAL COURT

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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY, and
CRITERION GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969 CI

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3/27
**LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR EXTENSION OF TIME
TO FILE ITS RESPONSE TO MOTION FOR RECONSIDERATION**

On March 30, 2016, defendant 716 West Fourth Avenue, LLC ("716") filed a motion for reconsideration of this Court's summary judgment order concerning the lease for the Legislative Information Office building ("LIO") in Anchorage. On March 31, 2016, the Court issued an order requesting that the other parties respond to that motion on or before April 11, 2016. Later that day in a meeting that had been previously scheduled,

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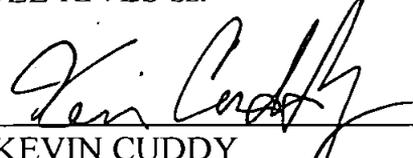
the Legislative Council voted to make an offer for the State to purchase the LIO, subject to certain conditions including budgetary appropriations and approval of the Legislature. The legislative session is set to conclude on April 17, 2016, and it is expected that at least some decisions will be made concerning any potential purchase by then, though finalization of any transaction could take longer. If the State purchases the LIO, it would impact the scope of this proceeding.

In light of this intervening event, the Legislative Affairs Agency ("LAA") respectfully requests a three-week extension of time in which to file its response to 716's motion for reconsideration. This should give the parties and the Court additional clarity about the direction of this proceeding. No party will be prejudiced by this extension of time. LAA's response, currently due on April 11, 2016, would now become due on or before May 1, 2016. This extension would also toll the Court's deadline for ruling upon the motion for reconsideration, as well as applicable appellate deadlines. *See* Civil Rule 77(k)(4).

Counsel for LAA has communicated with counsel for Plaintiff and 716. 716 does not oppose the requested extension of time. Plaintiff may oppose the request, but pursuant to this Court's order has no ability to file any response to LAA's brief.

DATED: April 6, 2016

STOEL RIVES LLP

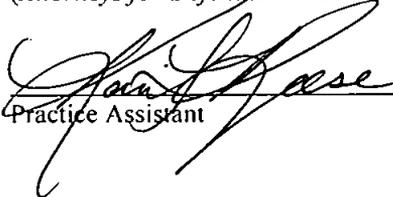
By: 
KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE

This certifies that on April 6, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2016 APR -4 PM 1:13

THIRD JUDICIAL DISTRICT AT ANCHORAGE

CLERK TRIAL COURTS

ALASKA BUILDING, INC.,)
Plaintiff,)
)
vs.)
)
716 WEST FOURTH AVENUE LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)
Defendants.)

BY: _____
DEPUTY CLERK

Case No.: 3AN-15-05969 CI

716 WEST FOURTH AVENUE, LLC'S NON-OPPOSITION TO ALASKA BUILDING, INC.'S MOTION AND MEMORANDUM FOR ENLARGEMENT OF TIME TO FILE MOTION FOR COSTS AND ATTORNEY'S FEES

Defendant, 716 West Fourth Avenue, LLC, by and through counsel, Ashburn & Mason, P.C., hereby non-opposes Alaska Building, Inc.'s Motion and Memorandum for Enlargement of Time to File Motion for Costs and Attorney's Fees.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 4-4-16

By: JWR
Jeffrey W. Robinson
Alaska Bar No. 0805038

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①

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 4th day of April, 2016, on:

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Kevin Cuddy
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ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

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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.

FILED
THIRD DISTRICT
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CLERK TRIAL COURT
BY: DEPUTY CLERK

Case No. 3AN-15-05969CI

**ALASKA BUILDING, INC., MOTION AND MEMORANDUM FOR
ENLARGEMENT OF TIME TO FILE MOTION FOR COSTS AND
ATTORNEY'S FEES**

Pursuant to Civil Rule 6(b) plaintiff, Alaska Building, Inc., moves for an enlargement of time until 10 days after determination of the pending motion for reconsideration to file its motion for costs and attorney's fees against defendants 716 West Fourth Avenue LLC (716 LLC) and the Legislative Affairs Agency pursuant to Civil Rules 68, 79 and 82.

On March 24, 2016, this Court issued its Order on Motion for Summary Judgment Re: Lease is Not an Extension (Order) as the final appealable order, a declaratory judgment that the September 9, 2013 agreement to renovate and expand the existing Legislative Information Office is illegal and invalid under AS 36.30.083(a) because it did not extend a real property lease. Under Civil Rules 79 and 82, Alaska Building, Inc., has ten days from the distribution of the Order to file its motion for costs and attorney's fees.

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001836

dt

However, on March 30, 2016, defendant 716 West Fourth Avenue LLC filed a motion for reconsideration and on March 31, 2016, this Court requested Alaska Building, Inc., and defendant Legislative Affairs Agency to file responses on or before April 11, 2016.

In *Worland v. Worland*, 193 P.3d 735, 742 (Alaska 2008) the Supreme Court indicated the proper procedure when a motion for reconsideration is pending is to file a motion for enlargement of time to file a motion for attorney's fees under Civil Rule 82.

The requested enlargement of time is justified because, at a minimum, additional attorney's fees will be incurred responding to the motion for reconsideration. In addition, it is possible that reconsideration will be granted and some modification of the Order vitiating the triggering of the time to file a motion for attorney's fees will be made.

Dated March 31, 2016.

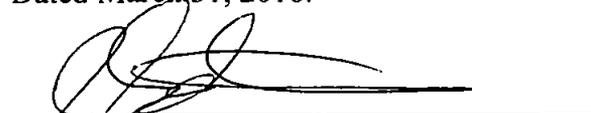


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof along with the accompanying proposed order to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated March 31, 2016.



Jim Gottstein

*Motion for Enlargement of Time to
File Motion for Costs & Attorney's Fees s*

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FEB 23 2016

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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.)

file

**[PROPOSED] ORDER DENYING ALASKA BUILDING, INC.'S MOTION AND
MEMORANDUM TO SHOW CAUSE WHY 716 WEST FOURTH AVENUE
LLC SHOULD NOT BE HELD IN CONTEMPT**

The Alaska Building, Inc.'s Motion and Memorandum to Show Cause Why 716 West Fourth Avenue, LLC Should Not be Held In Contempt is hereby **DENIED**. 716 shall produce the remaining RFP 1 documents under seal for inspection by the court within 24 hours of the entry of this order. If the court determines the documents are relevant to the remaining causes of action, the court shall distribute the documents to ABI under the protective order previously drafted by 716¹ and subject to all its terms, including an absolute limitation on publication.

MOT

DATED: _____

HON. PATRICK J. McKAY
Superior Court Judge

¹ [Proposed] Order Granting 716's Motion for Protective Order, received by the court on February 17, 2016.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 23 day of February 2016, 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
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ANCHORAGE, ALASKA 99501
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[PROPOSED] ORDER DENYING PLAINTIFF'S MOTION TO SHOW CAUSE
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil
{10708-101-00318757;1}

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-15-05969CI

**ORDER TO SHOW CAUSE WHY DEFENDANT 716
WEST FOURTH AVENUE LLC SHOULD NOT BE
HELD IN CONTEMPT**

**TO: MANAGER OF DEFENDANT 716
WEST FOURTH AVENUE LLC**

Upon the showing of plaintiff Alaska Building, Inc., you are hereby **ORDERED** to appear on _____, 2016, at _____m., in Courtroom 301 of the Nesbett Courthouse, 825 West 4th Avenue, Anchorage, Alaska to give any legal reason why this Court should not find you guilty of contempt, and order any appropriate sanctions for your willful failure to obey this Court's January 13, 2016, Order Regarding Alaska Building Inc's Motion to Compel requiring you to produce all loan applications and other documents relating to financing the New LIO Building.

Dated _____, 2016.

MOT

PATRICK J. McKAY,
SUPERIOR COURT JUDGE

FEB 22 2016

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99501

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001840

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC and,)
LEGISLATIVE AFFAIRS AGENCY,)

Defendants.)

[PROPOSED] ORDER GRANTING 716'S MOTION FOR PROTECTIVE ORDER

This Court, having reviewed 716 West Fourth Avenue LLC's Motion for Protective Order, and any opposition thereto, enters the following Protective Order:

PROTECTIVE ORDER

1. This Protective Order applies to all material ("Additional Discovery") to be produced by 716 West Fourth Avenue LLC ("716") pursuant to the Court's Order Regarding ABI's Motion to Compel, dated January 13, 2016.

2. The Additional Discovery may be used by ABI only to further Alaska Building Inc.'s ("ABI") pursuit of its claims or defenses in this litigation. Additional Discovery shall not be used for any other purpose.

3. Copies of any Additional Discovery, unless otherwise ordered by the Superior Court for good cause shown, may not be produced for inspection or copying

FEB 17 2016

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by, nor may its contents be disclosed to, anyone—other than ABI’s own employees, agents, or representatives, including legal counsel retained for purposes of prosecuting or defending the above-captioned litigation—without the consent of 716. This prohibition on disclosing Additional Discovery includes a prohibition on publishing Additional Discovery online or in any other public manner.

4. If ABI desires to attach Additional Discovery to any filing with the Superior Court, it shall make its filing (including exhibits) under seal, unless 716 has previously agreed that the filing may be made publicly. The Superior Court may at its discretion, after allowing a reasonable time for 716 to object, order any such filing to be made part of the public file.

5. This Protective Order shall survive and continue in force after termination of the above-captioned litigation, whether by trial, appeal, settlement, or otherwise.

6. The Court’s Discovery Order, dated 1/15/16, remains in effect. Accordingly, financial documents of 716 “may not be published without court order.”

7. 716 may raise any alleged violation of this Protective Order by motion before the Court. If the Court finds that a violation has occurred, it shall issue appropriate injunctive relief and award 716 its costs and reasonable attorney’s fees incurred in bringing the violation to the court’s attention. The Superior Court may also award compensatory damages for the violation.

[PROPOSED] ORDER GRANTING 716’S MOTION FOR PROTECTIVE ORDER
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969

8. 716 is not required in any way to turn over any “personal financial statements” or any information relating to 716’s finances as may be contained in loan documents unless determined by the court after, in camera review, that this material is relevant to the instant cause of action.

DATED this ___ day of _____, 2016.

M O O T

HON. PATRICK J. MCKAY
Superior Court Judge

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[PROPOSED] ORDER GRANTING 716’S MOTION FOR PROTECTIVE ORDER
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
facsimile U.S. Mail on the 17th day of February 2016, 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

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[PROPOSED] ORDER GRANTING 716'S MOTION FOR PROTECTIVE ORDER
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC and,)
LEGISLATIVE AFFAIRS AGENCY,)

Defendants.)

[PROPOSED] ORDER ON ALASKA BUILDING, INC.'S REQUEST FOR IN
CAMERA REVIEW

This Court, having reviewed Alaska Building, Inc.'s ("ABI") Request for In Camera Review and 716 West Fourth Avenue LLC's ("716") response thereto, orders the following:

1. Within seven (7) days of the date of this Order, 716 shall provide its operating agreement, including material amendments, to the Court for in camera review.

2. If the Court determines that the operating agreement should be produced to ABI, it will allow 716 an opportunity to seek a protective order in advance of the production.

FEB 16 2016

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DATED this ___ day of _____, 2015.

MOOT

HON. PATRICK J. MCKAY
Superior Court Judge

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FEB 16 2016

[PROPOSED] ORDER RE RESPONSE TO ALASKA BUILDING, INC'S REQUEST FOR IN
CAMERA REVIEW
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969

{10708-101-00314826;1}

Page 2 of 3

001846

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 16 day of February 2016, on:

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Law Offices of James B. Gottstein
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Anchorage, Alaska 99501

Kevin Cuddy
Stoel Rives, LLP
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Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

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FEB 16 2016

[PROPOSED] ORDER RE RESPONSE TO ALASKA BUILDING, INC'S REQUEST FOR IN CAMERA REVIEW
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA
THIRD JUDICIAL DISTRICT
2016 MAR 30 PM 4:56
CLERK, JUDICIAL COURTS
BY SAFETY FILEX

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 CI

716 WEST FOURTH AVENUE LLC and LEGISLATIVE AFFAIRS AGENCY,)

Defendants.)

CERTIFICATE OF SERVICE OF MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING MOTION FOR SUMMARY JUDGMENT RE: "NOT AN EXTENSION"

I certify that a copy of 716 West Fourth Avenue, LLC's Motion for Reconsideration Of The Court's Order Granting Motion for Summary Judgment Re: "Not An Extension" and [Proposed] Order Granting Motion for Reconsideration was served electronically messenger facsimile U.S. Mail on the 30th day of March 2016, on:

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By: Heidi Wyckoff
Heidi Wyckoff

CERTIFICATE OF SERVICE
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969

STATE OF ALASKA
 THIRD JUDICIAL DISTRICT
 2016 MAR 30 PM 4:55
 COUNTY OF ANCHORAGE
 CIVIL DIVISION

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC.,)	
Plaintiff,)	
)	
vs.)	
)	
716 WEST FOURTH AVENUE LLC, and)	
LEGISLATIVE AFFAIRS AGENCY,)	Case No.: 3AN-15-05969 CI
Defendants.)	

**MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING
 MOTION FOR SUMMARY JUDGMENT RE: "NOT EXTENSION"**

Under Civil Rule 77(k)(1)(i) and (iii),¹ Defendant 716 West Fourth Avenue LLC ("716") respectfully moves the Court to reconsider its March 24, 2016 Order granting final relief. The Order raises serious due process and jurisdictional concerns that require resolution.

First, the Order deprives 716 of its due process right to be heard on the issue decided and present a defense.² Entering a final order invalidating the *lease*, based solely on a record addressing the *procurement process*, exceeds the scope of the issues presented to the Court to date. Moreover, deciding the case on its merits, without allowing 716 to be heard on its laches defense, violates 716's right to make a defense and conflicts with the Court's prior ruling.

Second, the Order overlooks that the Legislature approved the lease extension under statutes that specifically commit approval of leases to that branch of government. When ruling that it had jurisdiction to review the Lease Extension's compliance with AS 36.30.083(a), the Court failed to consider AS 36.30.020's mandate that leases be analyzed in light of AS 36.30.080(c)-(e). The Legislature's actual appropriation of rent under these statutes served as a

¹ Civil Rule 77(k)(1)(i) and (iii) (a party may seek reconsideration if "[t]he court has overlooked, misapplied or failed to consider a statute, decision or principle directly controlling" or "misconceived a material question in the case[.]").

² 716 raised this argument in its Opposition to ABI's Motion, but the Court did not address it in the recent Order. See 716's Opp. to Pl.'s Mot. for Partial S.J. (Not Extension) at 16-17.

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legislative act of law, and is an independent basis for the validity of the Lease Extension. Additionally, the Legislature's approval of the lease renders any question over its validity a nonjusticiable political question outside the Court's subject matter jurisdiction.

I. Due process requires further proceedings before a final order.

Significant due process issues arise from the Court's entry of a final order. The Court's ruling "that the lease is invalid" resolves an issue that was beyond the scope of the question before it. The issue presented to the Court was whether the lease was in compliance with the procurement laws. The Court's finding that the *procurement process* was flawed does not automatically invalidate the lease, which was entered into with apparent authority and which engendered tens of millions of dollars of reliance by both 716 and LAA. This is a complex and factual issue that requires further development of the record as a matter of due process.³

In addition, the Court's decision to enter final relief on the merits now, before 716 has had an opportunity to present evidence on its laches defense, fundamentally infringes 716's right to due process.⁴ It was also in conflict with the Court's prior ruling, which expressly reserved the laches defense for trial.⁵

The Court's January Laches Order held that "[u]nder the unique findings in this

³ It bears noting that even a final judgment in this action does not end the relationship between 716 and the LAA. *Earthmovers of Fairbanks, Inc. v. State, Department of Transportation*, 765 P.2d 1360 (Alaska 1988), confirms that in the event of nonperformance, 716 will have an estoppel claim based on its reliance on the State's assurances regarding the Lease Extension's legality.

⁴ *Smithart v. State*, 988 P.2d 583, 586 (Alaska 1999) ("[A] defendant's right to present a defense is a fundamental element of due process."); *cf.* Alaska Const. Art. 1 § 7 ("No person shall be deprived of life, liberty, or property, without due process of law.").

⁵ Laches bars a suit if the defendant shows (1) that the plaintiff unreasonably delayed in bringing the action, and (2) the unreasonable delay has caused undue harm or prejudice to the defendant. *See City & Borough of Juneau v. Breck*, 706 P.2d 313, 315 (Alaska 1985). When raising the defense of laches, prejudice is measured where "money or valuable services will be wasted as a result of the unreasonable delay[.]" *See Bibo v. Jeffrey's Restaurant*, 770 P.2d 290, 293 (Alaska 1989).

litigation, the court does find that the defense of laches is available to this lawsuit.”⁶ The Court also found that ABI’s financial gains, combined with the seventeen months ABI waited to file suit, constituted “unreasonable” delay.⁷ However, the Court went on to hold that it would be premature to rule on the defense, as the final criterion—prejudice—involved genuine issues of material fact.⁹ The Court expressly stated that “[t]his decision is not to be construed as a finding that the defense of laches is unavailable to the defendants at trial.”¹⁰

Laches acts as a defense to suit, separate and apart from the merits of the plaintiff’s underlying claims.¹¹ Entering final relief against 716, before hearing its defense, violates 716’s due process right to establish the prejudice it suffered from ABI’s unreasonable delay.

II. The Court lacks subject-matter jurisdiction to invalidate the lease.

This Court acknowledged the Legislative Council’s authority under AS 36.30.020 to adapt its procurement procedures to meet the special needs of the legislative branch as determined by the Legislative Council¹² and concluded that the procurement findings made by

⁶ See Laches Order, Jan. 7, 2016, at 4.

⁷ *Id.* at 6.

⁸ *Id.*

⁹ *Id.* at 9.

¹⁰ *Id.* at 9. The Court’s subsequent order denying reconsideration, dated January 22, 2016, appeared to hold that laches defense is inapplicable to a request for pure declaratory judgment. Although the Court characterized its recent decision invalidating the lease as a “declaratory judgment,” Order at 17, the ruling is widely being perceived as effectively terminating the lease. This appears to be the result contemplated in the Court’s original Laches Order, which discussed the potential fallout from such a ruling. See Laches Order at 9 (outlining two scenarios that could result from a ruling that the lease is illegal, both of which assume termination of the lease obligations).

¹¹ *Conti v. Bd. of Civil Serv. Commissioners*, 461 P.2d 617, 623-24 (Cal. 1969) (in bank) (“laches constitutes an affirmative defense which does not reach to the merits of the cause”); *Johnson v. City of Loma Linda*, 5 P.3d 874, 884 (Cal. 2000) (“The defense of laches has nothing to do with the merits of the cause against which it is asserted.”); *Danjaq LLC v. Sony Corp.*, 263 F.3d 942 (9th Cir. 2001) (affirming trial court’s bifurcation of proceedings to hear laches in advance of merits, and dismissal of claim for laches).

¹² Order at 3.

the Legislative Council were not a justiciable issue.¹³ The Court further acknowledged that the procedures “must be consistent with the provisions of AS 36.30.080(c)-(e) and AS 36.30.170(b) [sic].”¹⁴ Although the Court cited the AS 36.30.080 provisions, it failed to actually analyze or apply this statute, as it was required to do. But the Legislature’s approval of the lease extension in accord with AS 36.30.080(c) explicitly places ABI’s challenge to the validity of the lease outside of the Court’s jurisdiction, regardless of its findings under AS 36.30.083.

AS 36.30.080(c) provides that a lease may be entered into by the Legislative Council if two things happen: (i) the Legislative Council provides notice to the Legislature of any leases in which the annual rent payment exceeds \$2,500,000; and (ii) the lease is “approved by the legislature by law.” A lease is approved by the legislature “by law” if the Legislature appropriates “rent payable during the initial period of the lease.”¹⁵ Both of these requirements happened here.¹⁶ Further, the Legislature’s subsequent approval of the Lease Extension means that its validity is necessarily non-justiciable, regardless of this Court’s finding of defects in the application of AS 36.30.083 prior to that approval by the Legislature.¹⁷

The presence of a political question deprives a court of subject matter jurisdiction.¹⁸

¹³ *Id.* at 11 n.30.

¹⁴ *Id.* at 4. *See supra* n.3. (AS 36.30.020 refers to AS 36.30.085 not 170(b)).

¹⁵ AS 36.30.080(c)(1)(Emphasis added).

¹⁶ Pam Varni notified the Legislature of the Lease Extension’s statutory compliance. *See* Ex. D to the Lease Extension. First year’s rent has been appropriated and is being paid.

¹⁷ AS 36.30.850(b)(5) provides that the procurement code does not apply to “acquisitions or disposals of real property or interests in real property, except as provided in AS 36.30.080 and 36.30.085.” The point is .080 is the operative procurement requirement under this title.

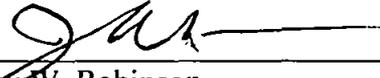
¹⁸ *Corrie v. Caterpillar, Inc.*, 503 F.3d 974 (9th Cir. 2007). *See also Marbury v. Madison*, 5 U.S. 137, 170 (1803) (“Questions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.”) An objection to a court’s subject matter jurisdiction can be raised by any party (or the court itself *sua sponte*) at any stage of litigation, including after trial and the entry of judgment. *See Arbaugh v. Y & H Copr.*, 546 U.S. 500, 506 (2006).

This Court acknowledged the guiding principles of *Baker v. Carr*, 369 U.S. 186, 217 (1962) in performing its justiciability analysis.¹⁹ *Baker* demands a “discriminating inquiry into the precise facts and posture of the particular case” before a court may withhold its own constitutional power to resolve cases and controversies.”²⁰ This Court found that the only distinction between this case and *Abood* and *Malone* was the Legislature’s failure in the instant case to ask for deference.²¹ As expressed in *Corrie v. Caterpillar*, the Court cannot fail to apply the political doctrine because another branch of government expresses hesitancy about the case proceeding; subject-matter jurisdiction is not waivable or left to the Court’s discretion.²²

In light of the Legislature’s express approval of the Lease Extension under AS 36.30.080(c), this Court lacks subject-matter jurisdiction to find it is invalid. At a minimum, a final order cannot be entered finding the lease to be “invalid” for noncompliance with AS 36.30.083 without resolving the separate question of whether the Legislature’s subsequent act of approving the lease provides a separate basis for its validity.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 3-30-16

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

¹⁹ See Order at 7. See also *Occidental of Umm al Qaywayn, Inc. v. A Certain Cargo of Petroleum*, 577 F.2d 1196, 1203 (5th Cir. 1978) (reiterating that “the inextricable presence of one or more of the [*Baker v. Carr*] factors will render the case nonjusticiable under the Article III ‘case or controversy’ requirement”) The Court recognized 716’s standing to present the question. Order at 10, n.27 (citing *Corrie*, 503 F.3d 974).

²⁰ *Baker v. Carr*, 269 U.S. at 216.

²¹ See *id.*

²² *Corrie*, 503 F.3d at 982.

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-15-05969CI

#99
**ORDER DENYING
716 WEST FOURTH AVENUE LLC'S MOTION FOR
PROTECTIVE ORDER**

In consideration of the second Motion for Protective Order filed under Civil Rule 26(c) by defendant 716 West Fourth Avenue's on February 17, 2016, and the opposition of plaintiff Alaska Building, Inc., and in light of 716 West Fourth Avenue LLC's non-compliance with previous discovery orders, it is hereby **ORDERED** that the motion is **DENIED. IT IS FURTHER ORDERED**, that within three days hereof 716 West Fourth Avenue LLC shall fully comply with this Court's January 13, 2016, Order Regarding Alaska Building Inc's Motion to Compel, subject to the provisions of this Court's January 15, 2016, Discovery Order.

Dated _____, 2016.

Patrick J. McKay, Superior Court Judge

NOT USED

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
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FEB 29 2016

001855

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 CI

716 WEST FOURTH AVENUE LLC and LEGISLATIVE AFFAIRS AGENCY,)

Defendants.)

716 WEST FOURTH AVENUE, LLC'S PRELIMINARY WITNESS LIST AND EXPERT IDENTIFICATION

COMES NOW, Defendant, 716 West Fourth Avenue, LLC, by and through counsel, and hereby submits its preliminary witness list:

Lay witnesses.

- Alaska Building, Inc.
c/o James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
907-274-7686

Mr. Gottstein is expected to testify about the delay in filing suit, his acquiescence in that delay, and the potential prejudice it caused to the defendants. He will further testify to

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the legal and factual basis for any and all claims made against the 716 as it pertains to the lease extension at issue.

2. 716 West Fourth Avenue, LLC
c/o Jeffrey W. Robinson
Ashburn & Mason, PC
1227 W. 9th Avenue, Suite 200
Anchorage, AK 99501
907-276-4331
Attorney-Client Privilege

Defendant in this matter. Individuals from 716 West Fourth Avenue, LLC who may have relevant information in this matter include but are not limited to: Robert B. Acree, Robert O'Neil, and Mark Pfeffer. These individuals will likely testify about the factual circumstances of the lease extension and Project, including the historical leasing of space to the Agency for the Legislative Information Office building ("LIO"), the circumstances of negotiating the extension with the lessee, and the prejudice caused to 716 under the laches doctrine.

3. Legislative Affairs Agency
c/o Kevin Cuddy
Stoel Rives, LLP
510 L Street, Suite 500
Anchorage, AK 99501
907-277-1900

Defendant in this matter. Individuals from the Legislative Affairs Agency who may have relevant information in this matter include but are not limited to: Doug Gardner; Mike Hawker, and Pam Varni. These witnesses will testify about the attempts

716 LLC'S PRELIMINARY WITNESS LIST
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969

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made to secure alternative space for the LIO, the negotiation of the extension, the Agency's compliance with the Alaska Procurement Code and the Alaska Legislative Procurement Procedures, and issues that touch on the laches doctrine.

4. David LeClair
935 W. Third Avenue
Anchorage, Alaska 99501
(907) 278-2277

Mr. LeClair is Mr. Gottstein's business associate, with whom he discussed various issues regarding the lease, including market rate and the lease's purported illegality. Mr. Leclair will testify regarding these themes as well as circumstances invoking the doctrine of laches.

5. Larry Norene
3105 Lakeshore Drive A107
Anchorage, Alaska 99517
(907)229-1737

Mr. Norene is a retired real estate appraiser enlisted by Mr. Gottstein to review the lease extension, Mr. Lowe's appraisal, and various other information. Mr. Norene submitted an affidavit in conjunction with Plaintiff's Motion for Preliminary Injunction, asserting that the LIO Lease is "for a completely net lease" and estimating that he believed the state overpaid the allowable amount under AS 36.30.083(a).

6. DeWayne "Doc" Crouse
Alaska Housing Finance Corporation ("AHFC")
4300 Boniface Parkway
Anchorage, Alaska 99504
(907) 338-6100

716 LLC'S PRELIMINARY WITNESS LIST
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969

Mr. Crouse was the construction director at AHFC at the time the lease was executed. He has knowledge about the pricing of the Project, and actions AHFC took as the Lessee's representative in negotiating the lease extension, including assisting in managing the Lessor's compliance with the terms and conditions of the Lessor's improvements, as described in the extension. Mr. Crouse may also testify about AHFC's review of Mr. Lowe's appraisal, which established that rent due under the lease is 10 percent below the market rental value of the real property.

7. Michael Buller
Alaska Housing Finance Corporation ("AFHC")
4300 Boniface Parkway
Anchorage, Alaska 99504
(907) 338-6100

Mr. Buller is the Deputy Executive Director of the AHFC at the time the lease was executed. He has knowledge about the pricing of the Project, and actions AHFC took as the Lessee's representative in negotiating the lease extension, including assisting in managing the Lessor's compliance with the terms and conditions of the Lessor's improvements, as described in the extension. Mr. Buller may also testify about AHFC's review of Mr. Lowe's appraisal, which established that rent due under the lease is 10 percent below the market rental value of the real property.

8. Tim Lowe
WARONZOF ASSOCIATES, INC.
400 Continental Boulevard
Sixth Floor
El Segundo, CA 90254
(310) 322-07744

The Agency has retained Mr. Lowe as an expert. It is expected that he will testify with respect to his appraisal report, including but not limited to the existing market rental value of the LIO as of June 1, 2013, and the methodology he used to value special purpose office buildings.

9. Members of the Alaska Legislative Council (and Records Custodian of the Committee Minutes) present either in person or telephonically for the June 7, 2013 meeting

Alaska Legislative Council
State Capital
Juneau, Alaska 99801

Any or all of the 11 members of the Legislative Council, who were present in person (or telephonically) during this meeting may be called to testify about the series of motions they passed related to the extension of the Anchorage LIO lease.

10. Any witness whose identity is disclosed in the course of further discovery.
11. Any witness listed by any other party to the case.
12. Any and all necessary rebuttal witnesses.

12. Any and all necessary rebuttal witnesses.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 3-15-16

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
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716 LLC'S PRELIMINARY WITNESS LIST
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
facsimile U.S. Mail on the 15 day of March 2016, 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 P.C.
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716 LLC'S PRELIMINARY WITNESS LIST
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED
STATE OF ALASKA
CLERK OF COURT
15 MAR 14 AM 10:21
CLERK TRIAL COURT
BY: _____

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

Case No. 3AN-15-05969CI

ALASKA BUILDING, INC., PRELIMINARY WITNESS LIST

Plaintiff Alaska Building, Inc., hereby submits its preliminary list of witnesses who may be called to testify in the above captioned case:

1. Larry Norene, (907) 229-1737, 10938 Suneagle Cir., Eagle River, 99577. Mr. Norene is expected to testify as to the market rental value of the Anchorage Legislative Information Office Building. *See, also, Alaska Building, Inc., Summary of Non-Retained Expert Testimony.*

2. John Schwamm, (480) 766-9990, 540 L Street, # 500, Anchorage, Alaska 99501. Mr. Schwamm is expected to testify as to the market rental value of the Anchorage Legislative Information Office Building. *See, Alaska Building, Inc., Summary of Non-Retained Expert Testimony.*

3. Pam Varni, (907) 465-6622, State Capitol, Room 3, Juneau, AK 99801-1182. Ms. Varni is expected to testify about hers and the Legislative Affairs Agency's actions in

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

negotiating and approving the LIO Lease. In addition it is expected Ms. Varni will testify as to the cost of alternative space.

4. Michael Buller, Deputy Executive Director of the Alaska Housing Finance Corporation, P.O. Box 101020, Anchorage, AK 99510 907-330-8453. Mr. Buller is expected to testify as to the role and actions of the Alaska Housing Finance Corporation as they relate to this matter.

5. Peter Shorett, 601 Union St., Suite 4720, Seattle WA 98101, 206.205.0201. Mr. Shorett is expected to testify about the market value and market rental value of the new Anchorage Legislative Information Office Building.

6. Robert Evans, P.O. Box 100384, 330 L St., Anchorage, AK 99510, (907) 351-7394. Mr. Evans is expected to testify about defendant 716 West Fourth Avenue LLC's understanding of the procurement requirements relating to the Anchorage Legislative Information Office.

7. John Bitney, PO Box 521072, Big Lake, AK 99652, (907) 317-0038. Mr. Bitney is expected to testify about defendant 716 West Fourth Avenue LLC's understanding of the procurement requirements relating to the Anchorage Legislative Information Office.

8. Tim Lowe, (310) 322-7744, 999 North Sepulveda Boulevard, Suite 440, El Segundo, CA 90245. Mr. Lowe is expected to testify about his Rental Value Appraisal Report—Anchorage Legislative Information Office.

9. Rep. Mike Hawker, c/o Kevin Cuddy at Stoel Rives, (907) 263-8410, 510 L Street, Suite 500, Anchorage, Alaska 99501. Rep. Hawker is expected to testify as to the negotiation and approval of the LIO Lease.

10. Mark Pfeffer, c/o Jeffrey Robinson at Ashburn & Mason 276-4331, 1227 West Ninth Ave, Ste 200, Anchorage, AK 99501. Mr. Pfeffer is expected to testify as to the negotiation and approval of the LIO Lease. In addition, Mr. Pfeffer is expected to testify as to undue prejudice defendant 716 West Fourth Avenue LLC will or will not suffer if the LIO Lease is declared null and void and to facts constituting unclean hands under the Laches Doctrine.

11. Robert Acree, c/o Jeffrey Robinson at Ashburn & Mason 276-4331, 1227 West Ninth Ave, Ste 200, Anchorage, AK 99501. Mr. Acree is expected to testify as to the negotiation and approval of the LIO Lease. In addition, Mr. Acree is expected to testify as to undue prejudice defendant 716 West Fourth Avenue LLC will or will not suffer if the LIO Lease is declared null and void and to facts constituting unclean hands under the Laches Doctrine.

12. Greg Jones, former Director of the Alaska Mental Health Trust Land Office, (907) 250-6401, PO Box 670, Willow Alaska 99688, 23705 West Abbey Rd., Willow, AK 99688, 11325 East Lake Joy Dr. NE, Carnation, WA 98104. Mr. Jones is expected to testify about land the Mental Health Trust Authority had at 7th and L Streets in Anchorage, Alaska upon which it was prepared to construct a building to suit the specifications of the

Legislative Affairs Agency for the Anchorage Legislative Information Office and lease it back.

13. Juli Lucky, (907) 269-0244, 716 W 4th Avenue, Suite 615, Anchorage, AK 99501-2133. Ms. Lucky is expected to testify as to facts relevant to unclean hands and undue prejudice relating to the Legislative Affairs Agency's Motion for Summary Judgment under the Laches Doctrine.

14. Don McClintock, 276-4331, 1227 West Ninth Ave, Ste 200, Anchorage, AK 99501. Mr. McClintock is expected to testify as to facts relevant to unclean hands and undue prejudice under the Laches Doctrine.

15. John Steiner, (907) 646-4644, 425 G St Ste 210, Anchorage, AK 99501. Mr. Steiner is expected to testify as to facts relevant to unclean hands and undue prejudice under the Laches Doctrine.

16. Doug Gardner, (907) 465-2450, State Capitol, Room 3, Juneau, AK 99801-1182. Mr. Gardner is expected to testify as to facts relevant to unclean hands and undue prejudice under the Laches Doctrine.

17. Any witness identified on a witness list of any other party.

18. Any witnesses called by any other party.

19. Any witness necessary to lay a foundation for the admission into evidence of any exhibit.

20. Any witness necessary in rebuttal.

21. Any other witness who is deposed before trial.

Alaska Building, Inc.
Preliminary Witness List

Page 4 of 5

LAW OFFICES OF
JAMES B. GOTTSTEIN
408 G STREET, SUITE 208
ANCHORAGE, ALASKA
99501

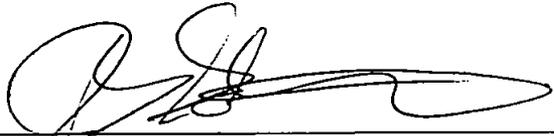
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FACSIMILE
(907) 274-9493

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22. Any witness made known through discovery occurring after the date of this

Preliminary Witness List.

Dated March 14, 2016.

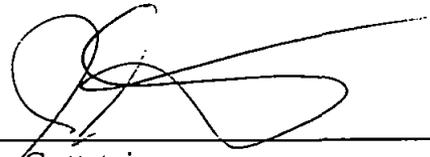


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof and proposed order to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated March 14, 2016.



Jim Gottstein

ALASKA
THIRD JUDICIAL DISTRICT

2015 MAR 14 PM 4:17

FILED
BY
RECEIVED

Kevin Cuddy (Alaska Bar #0810062)
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: (907) 277-1900
Facsimile: (907) 277-1920

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

Case No. 3AN-15-05969 CI

v.

716 WEST FOURTH AVENUE, LLC and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

**DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S PRELIMINARY WITNESS
LIST**

Pursuant to this Court's Routine Pretrial Order dated May 21, 2015, Defendant Legislative Affairs Agency (LAA), by and through its undersigned counsel, hereby submits its preliminary witness list.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

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By listing its employees and former employees here, LAA does not consent to Plaintiff Alaska Building Inc.'s communications with them, and does not consent to or authorize any communications otherwise prohibited by any applicable rule of professional conduct.

Similarly, witnesses identified in this Preliminary Witness List may possess information or knowledge protected by the attorney-client privilege, the work product doctrine, or other applicable legal privileges and protections. By listing witnesses, LAA does not waive its right to assert any applicable privilege or protection as to the listed witnesses. LAA does not concede that the individuals listed necessarily have discoverable information regarding the claims or defenses in this action, but have identified such individuals reading broadly its disclosure obligations.

POTENTIAL FACT WITNESSES

- I. James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(907) 274-7686

Mr. Gottstein is expected to testify concerning the timing of Alaska Building, Inc.'s lawsuit, the motivation for the same, the reasons for any delay in bring that lawsuit, payments or promises of payment received by Alaska Building, Inc., and the legal and factual basis for the claims against the LAA.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

2. Robert B. Acree
Donald McClintock
Robert O'Neil
Mark Pfeffer
John Steiner
716 West Fourth Avenue, LLC
c/o Jeffrey W. Robinson Ashburn & Mason, PC
1227 W. 9th Avenue, Suite 200
Anchorage, AK 99501
(907) 276-4331

Messrs. Acree, McClintock, O'Neil, Pfeffer and Steiner are expected to testify concerning LAA's history of attempts to secure alternative space for the Legislative Information Office building ("LIO"), the negotiation of the lease extension, the potential prejudice under the laches doctrine, and the parties' efforts to comply with the Procurement Code and the Alaska Legislative Procurement Procedures.

3. Mike Hawker Attorney-Client Privilege
c/o Kevin Cuddy, Esq.
Stoel Rives LLP
510 L Street, Suite 500
Anchorage, AK 99501
(907) 277-1900

Rep. Hawker is expected to testify concerning the history of attempts to secure alternative space for the LIO, his actions as the Procurement Officer, the negotiation of the lease extension, the potential prejudice to the LAA and the State under the laches doctrine, and the LAA's efforts to comply with the Procurement Code and the Alaska Legislative Procurement Procedures.

4. Pam Varni Attorney-Client Privilege
c/o Kevin Cuddy, Esq.
Stoel Rives LLP
510 L Street, Suite 500
Anchorage, AK 99501
(907) 277-1900

Ms. Varni is expected to testify concerning the history of attempts to secure alternative space for the LIO, the negotiation of the lease extension, and the LAA's efforts to comply with the Procurement Code and the Alaska Legislative Procurement Procedures.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

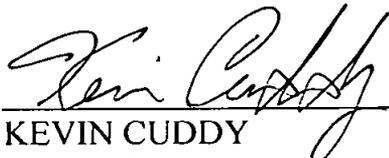
5. Tim Lowe **RETAINED EXPERT**
WARONZOF ASSOCIATES, INC.
400 Continental Boulevard
Sixth Floor
El Segundo, CA 90245
(310) 322-7744

Mr. Lowe is expected to provide expert testimony with respect to his appraisal report dated October 15, 2013, including but not limited to the existing market rental value of the LIO as of June 1, 2014, and the appropriate methodology for valuing special purpose office buildings.

6. Any and all individuals, parties and other persons disclosed by Plaintiff Alaska Building, Inc. in its initial disclosures and any supplementation thereof.
7. Any and all individuals, parties and other persons disclosed by Plaintiff Alaska Building, Inc. in its preliminary and final witness lists and any supplementation thereof.
8. Any and all individuals listed or called by Plaintiff Alaska Building, Inc. or 716 West Fourth Avenue, LLC to testify at trial.
9. Any and all witnesses identified through further discovery and any supplementation thereof.
10. Any and all rebuttal witnesses.

DATED: March 14, 2016.

STOEL RIVES LLP

By: 

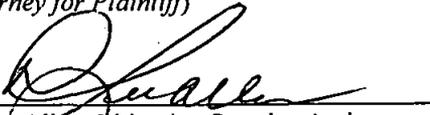
KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE

This certifies that on March 14, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)



Debby Allen, Litigation Practice Assistant

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STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

FILED
STATE OF ALASKA
THIRD DISTRICT

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CLERK TRIAL COURT

BY: _____
DEPUTY CLERK

Kevin Cuddy (Alaska Bar #0810062)
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: (907) 277-1900
Facsimile: (907) 277-1920

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

Case No. 3AN-15-05969 CI

v.

716 WEST FOURTH AVENUE, LLC and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S EXPERT DISCLOSURE

Pursuant to this Court's Routine Pretrial Order dated May 21, 2015, Defendant Legislative Affairs Agency (LAA), by and through its undersigned counsel, hereby provide notice that Defendant LAA may call the following expert witness to testify at trial in the above-captioned matter:

1. Tim Lowe
WARONZOF ASSOCIATES, INC.
400 Continental Boulevard
Sixth Floor
El Segundo, CA 90245

Retained expert

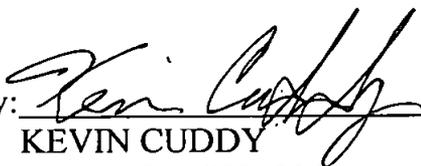
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STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

Mr. Lowe is expected to provide expert testimony with respect to his appraisal report dated October 15, 2013, including but not limited to the existing market rental value of the LIO as of June 1, 2014, and the appropriate methodology for valuing special purpose office buildings.

DATED: March 14, 2016.

STOEL RIVES LLP

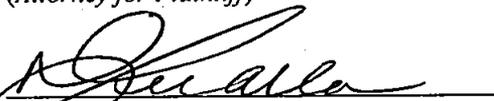
By: 
KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE

This certifies that on March 14, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)


Debby Allen, Litigation Practice Assistant

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2016 FEB 23 PM 4:19

THIRD JUDICIAL DISTRICT AT ANCHORAGE

CLERK TRIAL COURT

ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiffs,)

vs.)

716 WEST FOURTH AVENUE LLC and)
LEGISLATIVE AFFAIRS AGENCY,)

Defendants.)

BY: _____
DEPUTY CLERK

Case No.: 3AN-15-05969 CI

#40
**716 LLC'S OPPOSITION TO MOTION AND MEMORANDUM TO SHOW
CAUSE WHY 716 WEST FOURTH AVENUE LLC SHOULD NOT BE HELD IN
CONTEMPT**

716 West Fourth Avenue, LLC ("716") complied with the court's January 13, 2016 Order.¹ The Order invited 716 to "seek a protective order under Rule 26(c)" for the information the Alaska Building Inc. ("ABI") sought in Request for Production ("RFP")² Consequently, 716 sought a protective order **and** made a contemporaneous offer to provide the information to the court "under seal for an *in camera* inspection."³ ABI's reading of the Order to require 716 to produce the documents *and* simultaneously

¹ Order Regarding Alaska Building Inc's Motion to Compel attached as Exhibit A.

² See Exhibit A at 2.

³ Affidavit of Counsel in Support of Motion for Protective Order at § 6.

ASHBURN & MASON P.C.
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seek a protective order defeats the purpose of seeking a protective order in the first place.

716's insistence on the requested documents being afforded judicial protection is warranted. Not only has the Plaintiff publicly disseminated all discovery related to the pending action, but the court has already held that the personal financial information of 716's members and the business entity is irrelevant to the remaining causes of action. "The court has ruled against ABI on [the preliminary injunction] motion and 716's finances are otherwise irrelevant to the legality of the lease."⁴

Based on this court's own finding of irrelevancy, 716 continues to object to production of "all projections and *pro formas* and personal financial statements." However, in a showing of continued good faith, a proposed order regarding the requested material associated with the loan applications is attached to this Opposition.

ABI's other objections to 716's latest production efforts are difficult to ascertain, as 716 has complied with all discovery requests and court orders. 716 cannot produce discovery that does not exist. If the court wishes to inquire further into this matter, which appears to be yet another abusive litigation tactic, 716 invites the court to hold a hearing. Otherwise, 716 requests the court accept 716's proposed remedy—submission of RFP 1 documents under seal—and direct the parties to focus on the actual substantive matters pending before the court.

⁴ See Exhibit A at 3, sustaining 716's Objections to RFP 2 and 3.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 2-23-16

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

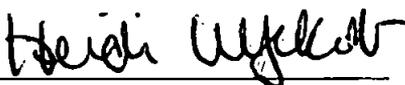
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
facsimile U.S. Mail on the 23 day of February 2016, on:

James B. Gottstein
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Anchorage, Alaska 99501

Kevin Cuddy
Stoel Rives, LLP
510 L Street, Suite 500
Anchorage, Alaska 99501

ASHBURN & MASON

By: 
Heidi Wyckoff

ASHBURN & MASON P.C.
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1227 WEST 9TH AVENUE, SUITE 200
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716 LLC'S OPPOSITION TO MOTION TO SHOW CAUSE
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Alaska Building Inc.,)
)
 Plaintiff,)
)
 v.)
)
 716 West Fourth Avenue LLC, and)
 Legislative Affairs Agency,) Case No. 3AN-15-05969CI
)
 Defendants.)

ORDER REGARDING ALASKA BUILDING INC'S MOTION TO COMPEL

I. Background

On September 9, 2013, the Legislative Affairs Agency (LAA) and the 716 West Fourth Avenue LLC (716) entered into an agreement to renovate and expand the existing Legislative Information Office (LIO Project). At the completion of this project, the LAA once again leased the office space.¹ Construction began in December 2013 and was completed around January 9, 2015.²

The Alaska Building, owned by Alaska Building Inc. (ABI), is a building adjacent to the LIO Project whose president and sole member is James Gottstein. Mr. Gottstein filed a lawsuit on behalf of ABI and the Alaskan taxpayers on March 31, 2015 alleging in relevant part that because the LIO Project did not comply with the requirements under AS 36.30, the project is illegal. Under AS 36.30, leases into which LAA enter are subject to a competitive bidding process and legislative notice. AS 36.30.083 exempts lease extensions that will result in a "cost savings of at least 10 percent below the market rental value of the... property." ABI filed this Motion to Compel when 716 failed to produce all of the documents ABI requested in its First Request for Production.

II. Legal Standard

Alaska Rule of Evidence 37(2)(A) allows a party to move a court to compel a party to disclose information required under Rule 26(a) or Rule 26.1(b) if that party fails to make appropriate disclosures.

¹ 716's Opp. to Mot. for Prelim. Inj. 1-2.

² *Id.* at 4.

III. Issues Presented

- A. *Claiming confidentiality or proprietary information is not a satisfactory defense against producing relevant evidence.*
- B. *Individual Requests for Production.*

IV. Analysis

- A. *Claiming confidentiality or proprietary information is not a satisfactory defense against producing relevant evidence.*

As an initial matter, 716 repeatedly refused to produce documents claiming they were "confidential and proprietary."³ Valid defenses against producing requested documents include claims of privilege or that the materials were prepared in anticipation for trial.⁴ In either instance, the party claiming the privilege must "describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection."⁵ If the documents do not fall into one of these privileged categories, 716 can request a protective order under Rule 26(c). Otherwise, the court finds that claiming confidentiality and proprietary information is an invalid defense for non-production.

- B. *Individual Requests for Production*

Request for Production 1

"Please produce all loan applications and other documents relating to financing the New LIO Building, including without limitation, all projections and *pro formas* and personal financial statements...."⁶

716 produced five documents including two appraisals, two commitment letters and a terms and conditions letter from Northrim Bank. 716 objects to producing any additional documents related to this subject matter first on the grounds that this information "is confidential and proprietary."⁷ As discussed above, there is no confidential exemption to discovery; 716 can instead seek a protective order under Rule 26(c) for this information. 716 also claims that these documents are protected by privilege and work-product doctrine.⁸ 716 has not provided a privilege log for these documents. 716 must

³ See e.g. Def.'s Opp. to Mot. to Compel Ex. A at 4.

⁴ Alaska R. Civ. Pro. 26(b)(5).

⁵ Alaska R. Civ. Pro. 26(b)(5).

⁶ Def.'s Opp. to Mot. to Compel Ex. A at 4.

⁷ *Id.*

⁸ *Id.*

either produce these documents or provide a log as required by Rule 26(b)(5) including the requirements addressed in Request for Production 4.

Request for Production 2

"Please produce the financial records of 716 LLC, from January 1, 2012...."⁹

716 first objects on the grounds that this information "is confidential and proprietary,"¹⁰ which is an invalid objection. 716 also objects that this information is not relevant to this case.¹¹ ABI counters that these documents are relevant to the then pending motion for injunction. The court has ruled against ABI on that motion and 716 LLC's finances are otherwise irrelevant to the legality of the lease. The court sustains 716's objections to this Request for Production.

Request for Production 3

"Please produce all documents relating to payments by 716 LLC to Robert Acree; Mount Trident, LLC; Mark Pfeffer Alaska Trust 12/28/07; or Pfeffer Development, LC; or any combination thereof."¹²

716 first objects on the grounds that this information "is confidential and proprietary."¹³ 716 also objects that this information is not relevant to this case.¹⁴ ABI counters that these documents are relevant to the then pending motion for injunction. The court has ruled against ABI on that motion and 716 LLC's payments to these parties are otherwise irrelevant to the legality of the lease. The court sustains 716's objections to this Request for Production.

Request for Production 4

"Please produce all documents, including without limitation, e-mails, relating to 716 LLC leasing or potentially leasing space to the Legislative Affairs Agency for the Anchorage Legislative Information Office upon the expiration of the lease in effect on January 1, 2010 and thereafter. This includes all documents pertaining to the LIO Lease, including without limitation, negotiation."¹⁵

716 objects on the grounds that these documents are privileged and this request is "unreasonable, overbroad, and unduly burdensome in light of ...[these privileges]."¹⁶

⁹ *Id.* at 5.

¹⁰ *Id.* at 6.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 6-7.

¹⁶ *Id.* at 7.

716 also objects that this request is "ambiguous as it suggest [sic] that the lease entered into occurred upon expiration and 716 objects to any legal characterization of the events and facts leading up to the execution of the Lease in dispute."¹⁷ 716 provided eight documents in response to this Request for Production.¹⁸ 716 the provided supplemental disclosures a short time thereafter which included emails,¹⁹ redacted emails,²⁰ and a privilege log.²¹

ABI argues that the privilege log fails due to a number of deficiencies including format and the inapplicability of this privilege between various parties.²² As it is currently structured, the privilege log does not provide critical information such as a general description of the emails' content and who else, if anyone, received these communications.²³ The court is therefore unable at this time to determine whether the privileges are appropriately applied. The court is abstaining from overruling or sustaining 716's objections until it has supplemented its privilege log with:

- The title of any addressor or addressee that is not a party to the case nor has submitted an official entry of appearance;
- The name and title of all recipients of a communication besides the addressee and;
- The general subject matter of the communication.

Request for Production 5

"Please produce the operating agreement for 716 LLC, including all amendments and any other agreements pertaining to the operation and/or management of 716 LLC."²⁴

716 objects on the grounds that this information is "confidential and proprietary" and irrelevant.²⁵ 716 also argues that it had previously offered to provide the operating agreement to this court for an *in camera* review to determine any relevance it may have.²⁶ This document does not seem particularly relevant but since 716 has offered it to the court for an *in camera* review the court will conduct an *in camera* review of this document if ABI requests it.

Request for Production 7

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Pl.'s Reply to Def.s Opp. to Mot to Compel Ex. 2.

²⁰ Pl.'s Reply to Def.s Opp. to Mot to Compel Ex. 5.

²¹ Pl.'s Reply to Def.s Opp. to Mot to Compel Ex. 1.

²² Pl.'s Reply to Def.s Opp. to Mot to Compel at 2-3.

²³ See generally Pl.'s Reply to Def.s Opp. to Mot to Compel Ex. 1.

²⁴ Def.'s Opp. to Mot. to Compel Ex. A at 8.

²⁵ *Id.*

²⁶ Def.'s Opp. to Mot. to Compel at 5; Pl.'s Mot. to Compel Exhibit 2 at pg 1 of 4 (these pages are numbered oddly).

"Please produce all documents relating to opinions, estimates or determinations of the market rental value and/or value of the New LIO Building and/or leasing or purchasing space for the Anchorage Legislative Information Office from January 1, 2010 except for [certain documents accessible online]... This request includes communications with any and all persons regarding the market rent value of the New LIO Building including without limitation during the planning phase and whether or not any opinion regarding the market rental value of the New LIO Building was formed or provided."²⁷

716 responds that it produced an appraisal for Request for Production 1 then objects on the grounds that the information is "confidential and proprietary."²⁸ This is an invalid objection. 716 should seek a protective order under Rule 26(c) for qualifying information. The court overrules 716's objections and compels them to produce any additional information that is requested in this Request for Production but has not been produced.

Request for Production 8

"Please produce all documents memorializing payments for costs under the LIO Lease for what is called renovations. In other words, this request is to obtain all cost records for construction of the space under the LIO Lease with the Legislative Affairs Agency occupied in January of 2015. This includes payments for project management to defendant Pfeffer Development, LLC."²⁹

716 objects on the grounds that this information is "confidential and proprietary," privileged, not relevant, duplicative, and "objectionable because it seeks the production of documents related to the business activities of third parties not named in Count One."³⁰ Because this information may be relevant (or lead to relevant information) to the determination of whether the LAA is paying "at least 10% below market value, the court overrules 716's objections and requires that they produce any documents pertaining to this Request for Production or produce a privilege log which includes the requirements addressed in Request for Production 4.

²⁷ Def.'s Opp. to Mot. to Compel Ex. A at 9-10.

²⁸ *Id.* at 10.

²⁹ *Id.*

³⁰ *Id.* at 11.

III. Conclusion

The court grants 716 LLC 15 days to comply with this order.

1/13/16

DATE



Hon. Patrick J. McKay
Judge of the Superior Court

I certify that on 1/13/16
a copy of the above was mailed to each of
the following at their addresses of record: *emailed*
James Stotskin
Jeffrey Robinson *Kevin Quately*
K. Nixon/Judicial Assistant *Ka*

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED FEB 22 PM 1:51

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC,
and LEGISLATIVE AFFAIRS AGENCY,

Defendants.

Case No. 3AN-15-05969CI

**AFFIDAVIT OF JAMES B. GOTTSTEIN, ESQ.
IN SUPPORT OF MOTION TO SHOW CAUSE**

THIRD JUDICIAL DISTRICT)
)ss
STATE OF ALASKA)

JAMES B. GOTTSTEIN, Esq., being first sworn under oath, hereby deposes and
states as follows:

1. I am the attorney for plaintiff Alaska Building, Inc., in the above captioned
action.
2. On February 18, 2016, I received 150 pages of documents from defendant 716
West Fourth Avenue LLC (716 LLC), mailed the previous day, which 716 LLC purports to
fully comply with this Court's January 13, 2016, Order Regarding Alaska Building Inc's
Motion to Compel (Order to Compel).

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

001884

3. These documents consist of the following:

(a) Pages 1-3, are an e-mail that was previously claimed as privileged, which it turns out was already in Alaska Building, Inc.'s possession, and had been produced to 716 LLC by Alaska Building, Inc.,

(b) Pages 4-29 are a Construction Deed of Trust,

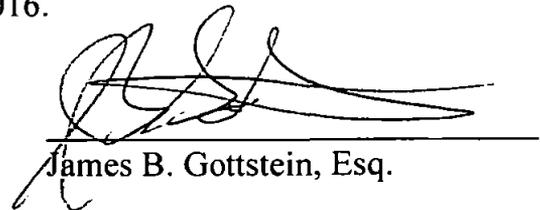
(c) Pages 30-34 pertain to applications for payment by Criterion General, Inc., the general contractor, and

(d) Pages 35-150 are the October 15, 2013, Rental Value Appraisal Report Anchorage Legislative Information Office, as of June 1, 2014, prepared by Timothy R. Lowe of Waronzof Associates, commonly (and generously) referred to as the "Lowe Appraisal," which appears to have been downloaded from my law office's website because it contains the same highlighting.

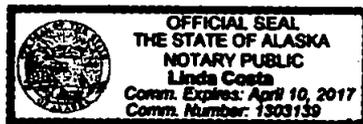
4. No other documents were received.

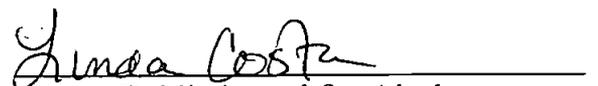
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 22nd day of February, 2016.


James B. Gottstein, Esq.

SUBSCRIBED AND SWORN TO before me this 22nd day of February, 2016.




Notary Public in and for Alaska
My Commission Expires: 04/10/2017

Affidavit of James B. Gottstein, Esq.
In Support of Motion to Show Cause

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FEB 22 PM 1:52

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY
Defendants.

CERTIFICATE OF SERVICE

Case No. 3AN-15-05969CI

I hereby certify that on this date I hand delivered a copy of:

1. Motion to Show Cause Why Defendant 716 West Fourth Avenue LLC Should Not Be Held in Contempt;
2. Memorandum in Support of Motion to Show Cause Why Defendant 716 West Fourth Avenue LLC Should Not Be Held in Contempt;
3. Affidavit of James B. Gottstein, Esq., In Support of Motion to Show Cause;
4. (Proposed) Order to Show Cause Why Defendant 716 West Fourth Avenue LLC Should Not Be Held in Contempt; and
5. this Certificate of Service, to:

Jeffrey W. Robinson/
Eva R. Gardner
Ashburn & Mason, PC
1227 W. 9th Ave., Ste. 200
Anchorage, AK 99501

Kevin M. Cuddy
Stoel Rives LLP
510 L St., Ste. 500
Anchorage, AK 99501

Dated: February 22, 2016



Jim Gottstein

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

2016 FEB 02 PM 1:51

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

Case No. 3AN-15-05969CI

**MEMORANDUM IN SUPPORT OF
MOTION TO SHOW CAUSE WHY 716 WEST FOURTH
AVENUE LLC SHOULD NOT BE HELD IN CONTEMPT**

Alaska Building, Inc., has moved for an order to show cause why the Manager of defendant 716 West Fourth Avenue LLC (716 LLC) should not be held in contempt for disobeying this Court's January 13, 2016, Order Regarding Alaska Building Inc's Motion to Compel (Order to Compel), and its January 15, 2016, Discovery Order (Discovery Order).

A. Facts

The Order to Compel, required 716 LLC, among other things, to produce all documents responsive to Request for Production No. 1,¹ subject to (a) the right to seek a

¹ Request for Production No. 1 is for:

[A]ll loan applications and other documents relating to financing the New LIO Building, including without limitation, all projections and *pro formas*

protective order under Rule 26(c) contemporaneously with producing the documents, and
(2) providing a proper privilege log as required by Rule 26(b)(5) for any documents withheld. More specifically, paragraph 5 of the Discovery Order provides:

5. A producing party wishing to . . . keep any documents confidential must produce the documents when due and properly seek a protective order under Civil Rule 26(c).²

In its February 17, 2016, Motion for Protective Order and Statement of Compliance With Court's Order Regarding AGI's Motion to Compel (Motion for Protective Order), at pages 2-3, 716 LLC states:

At this time, 716 is not producing loan documents that may include "personal financial statements" or any material previously found by the court to be "irrelevant to the legality of the lease," including 716's financial information and seeks a protective order from this court relieving it of the obligation to produce financial information as to 716 and its members. . . .

Later on page 3, 716 LLC states:

In compliance with the court's ruling with respect to RFP 1, and subject to the instant protective order, as requested by the court, 716 hereby produces the following loan applications and other documents relating to financing the LIO building: Bates Nos.: 716-006147-716-00006172.

This statement is untrue. Bates Nos.: 716-006147-716-00006172 is the construction deed

and personal financial statements. This includes, without limitation, both interim or construction financing, and permanent financing and loans that were consummated and loans that were not, if any.

² 716 LLC is protected from dissemination during the pendency of any motion for protective order by paragraph 7 of the Discovery Order. In addition, paragraph 2 of the Discovery Order makes all personal financial information confidential and the interlineation by the Court at the end prohibits publication of financial information not involving a public figure (legislator or state employee) without court order.

*Memorandum in Support of
Motion for Order to Show Cause*

Page 2 of 4

of trust, Exhibit 1. That's it. No loan applications were produced. No *pro formas* or any other information that may be indicative of the value of the New LIO Building supplied with the loan application(s), other than the Lowe Appraisal that Alaska Building, Inc., specifically indicated need not be produced were produced.³ See, Affidavit of James B. Gottstein in Support of Motion to Show Cause.

In paragraph 6 of the Affidavit of Jeffrey W. Robinson in Support of Motion for Protective Order, Mr. Robinson states that if Alaska Building, Inc., wants 716 LLC to produce documents relating to the financing of the New LIO Building it has already been ordered to produce in the Order to Compel, it "should make a request to the court."

A. Analysis

Alaska Building, Inc., already made that request with its Motion to Compel and this Court ordered 716 LLC to produce documents responsive to Request Production No. 1 in its Order to Compel, which 716 LLC has willfully disobeyed.

Civil Rule 37(b)(2)(D) provides in pertinent part:

"If a party or an officer, director, or managing agent of a party . . . fails to obey an order to provide . . . discovery, . . . the court in which the action is pending may make an order treating as a contempt of court the failure to obey . . ."

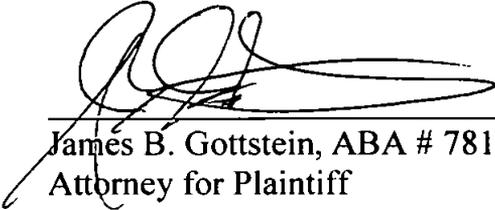
³ The copy of the Lowe Appraisal produced by 716 LLC appears to have been downloaded from the gottsteinlaw.com website because it has exactly the same highlighting where Mr. Lowe explicitly bases the appraisal on the rent being paid under the lease rather than market rates. See, Exhibit 2, which are the two relevant pages as they have been on the website since at least November 1, 2015, and Exhibit 3, which are the same two pages produced by 716 LLC as 716-006180 & 716-006182.

In *Lee v. State*, 141 P.3d 342 (Alaska 2006), the Alaska Supreme Court upheld an order to show cause why the defendant should not be held in contempt for violating an order requiring production of documents. This is exactly the situation here. Frankly, Alaska Building, Inc., finds 716 LLC's flouting of this Court's Order to Compel and Discovery Order stunning.

B. Conclusion

For the foregoing reasons, the Manager of 716 LLC should be ordered to show cause why he should not be held in contempt for 716 LLC's flouting of this Court's Order to Compel.

Dated February 22, 2016.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

*Memorandum in Support of
Motion for Order to Show Cause*

Page 4 of 4

RECORDATION
REQUESTED BY:
Wells Fargo Bank,
National Association
Commercial Real
Estate
MAC # K3212-020
301 W. Northern
Lights Blvd, Suite
201
Anchorage, AK
99503

WHEN RECORDED MAIL
TO:
Wells Fargo Bank,
National Association
BBSG - Boise Loan
Ops LDI
P.O. Box 34858,
San Antonio, TX
78265

FOR RECORDER'S USE ONLY



20017458120600235

CONSTRUCTION DEED OF TRUST

THIS DEED OF TRUST is dated December 6, 2013, among 716 West Fourth Avenue, LLC, an Alaska limited liability company, whose address is c/o Mark Pfeiffer, Manager, 425 G Street, Suite 210, Anchorage, AK 99501 ("Grantor"); Wells Fargo Bank, National Association, whose address is Commercial Real Estate, MAC # K3212-020, 301 W. Northern Lights Blvd, Suite 201, Anchorage, AK 99503 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Wells Fargo Financial National Bank, whose address is c/o BBSG-Boise Loan Ops LDI, P.O. Box 34858, San Antonio, TX 78265 (referred to below as "Trustee").

CONVEYANCE AND GRANT: For valuable consideration, Grantor conveys to Trustee in trust,

716-006147

DEED OF TRUST
(Continued)

Page 2

with power of sale, for the benefit of Lender as Beneficiary, all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in the Anchorage Recording District, Third Judicial District, the State of Alaska:

Parcel No. 1:

The West 39 and 1/2 feet of Lot 2, Block 40, ORIGINAL TOWNSITE OF ANCHORAGE, 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.

Parcel No. 2:

Lot 3A, Block 40, ANCHORAGE TOWNSITE, according to the official plat thereof, filed under Plat Number 94-68, Records of the Anchorage Recording District, Third Judicial District, State of Alaska;

The Real Property of its address is commonly known as 712 & 716 W 4TH AVE, ANCHORAGE, AK 99501. The Real Property tax identification number is 002-105-26 & 002-105-49.

CROSS-COLLATERALIZATION. In addition to the Note, this Deed of Trust secures all obligations, debts, and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations; and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

Grantor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property as security for the indebtedness. In addition to this assignment under common law, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS ALSO GIVEN TO SECURE ANY AND ALL OF GRANTOR'S OBLIGATIONS UNDER THAT CERTAIN CONSTRUCTION LOAN AGREEMENT BETWEEN

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DEED OF TRUST

(Continued)

Page 3

GRANTOR AND LENDER OF EVEN DATE HERewith. ANY EVENT OF DEFAULT UNDER THE CONSTRUCTION LOAN AGREEMENT, OR ANY OF THE RELATED DOCUMENTS REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

CONSTRUCTION MORTGAGE. This Deed of Trust is a "construction mortgage" for the purposes of Sections 9-334 and 2A-309 of the Uniform Commercial Code, as those sections have been adopted by the State of Alaska.

POSSESSION AND MAINTENANCE OF THE PROPERTY: Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may: (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property (this privilege is a license from Lender to Grantor automatically revoked upon default).

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby: (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all

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DEED OF TRUST
(Continued)

Page 4

claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, stone, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property, whether legal, beneficial or equitable, whether voluntary or involuntary, whether by outright sale, deed, installment sale contract, land contract, contract for deed, community property agreement or community property trust or other trust, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any trust holding title to the Real Property, or

716-006150

DEED OF TRUST
(Continued)

Page 5

by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Alaska law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust:

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a cash basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance on such

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coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 100 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts, Grantor is required to discharge or pay under this Deed

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of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note unless payment of interest at that rate would be contrary to applicable law, in which event such expenses shall bear interest at the highest rate permitted by applicable law from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE: The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Grantor warrants that, (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and; (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such

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proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice at Grantor's expense, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may, at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default, as provided below unless Grantor either: (1) pays the tax before it becomes delinquent; or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures; and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Real and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest.

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Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES: ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents; and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact: If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE: If Grantor pays all the indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and this Personal Property. Any reconveyance fee required by law shall be paid by Grantor, if permitted by applicable law.

EVENTS OF DEFAULT: Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

- Payment Default:** Grantor fails to make any payment which due under the indebtedness.
- Other Defaults:** Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

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Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note, or in any of the Related Documents.

Default on Other Payments. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Default in Favor of Third Parties. Should Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to repay the indebtedness or Grantor's ability to perform Grantor's obligations under this Deed of Trust or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document) to create a valid and perfected security interest or lien at any time and for any reason.

Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or foreclosure proceeding, and if Grantor gives Lender written notice of the creditor or foreclosure proceeding and deposits with Lender monies or a surety bond for the creditor or foreclosure proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreement. Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor or any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

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Insecurity. Lender in good faith believes itself insecure:

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

Foreclosure. With respect to all or any part of the Property, Trustee shall have the right to sell the Property pursuant to a non-judicial foreclosure sale and Trustee or Lender shall have the right to sell the Property upon judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law. If the power of sale is invoked, Trustee shall execute a written notice of the occurrence of an Event of Default and of the election to cause the Property to be sold and shall record such notice in each Recording District in which the Property or some part of the Property is located. Trustee shall mail copies of the notice of default, in the manner provided by the laws of Alaska, to Grantor and to such other persons as the laws of Alaska prescribe. Trustee shall give notice of sale and shall sell the Property according to the laws of Alaska. After the lapse of time required by law following the recording of the notice of default, Trustee, without demand on Grantor, may sell the Property at the time and place and under the terms designated in the notice of sale, in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender's or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the property to said without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made in the Trustee's deed. Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees, and cost of title evidence; (b) to all sums secured by this Deed of Trust in such order as Lender, in Lender's sole discretion, directs; and (c) the excess, if any, to the person or persons legally entitled to the excess proceeds.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse

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instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the appraised value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshaled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved or pending, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate unless payment of interest at that rate would be contrary to applicable law, in which event such expenses shall bear interest at the highest rate permitted by applicable law from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however, subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic

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stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees; title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee (pursuant to Lender's instructions) are part of this Deed of Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall, upon default, have the right to sell the Property by notice and non-judicial sale; and Trustee or Lender shall have the right to sell the Property by judicial action and foreclosure sale, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office for the Anchorage Recording District, Third Judicial District, State of Alaska. The instrument shall be executed and acknowledged by Lender or Lender's successor in interest, and shall contain, in addition to all other matters required by state law, the date this Deed of Trust was executed, the names of the original Lender, Trustee, and Grantor, the book and page where this Deed of Trust is recorded, the name and address of the successor trustee, and either an acknowledgment signed and acknowledged by the Trustee named in this Deed of Trust of a receipt of a copy of the instrument or an affidavit of service of a copy of the instrument on the Trustee. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

NOTICES. Unless otherwise provided by applicable law, any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or if mailed, when deposited in the United States mail, as first class, certified or registered, mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning

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of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

CONSENT TO SELL LOAN. The parties hereto agree: (a) Lender may sell or transfer all or part of this loan to one or more purchasers, whether related or unrelated to Lender, without notice and without the consent of the parties; (b) Lender may provide to any purchaser, or potential purchaser, any information or knowledge Lender may have about the parties or about any other matter relating to this loan obligation, without notice, and the parties waive any rights to privacy it may have with respect to such matters; (c) the purchaser of a loan will be considered its absolute owner and will have all the rights granted under the loan documents or agreements governing the sale of the loan; (d) the purchaser of a loan may enforce its interests irrespective of any claims or defenses that the parties may have against Lender, and (e) to waive all notices of sale of the loan, as well as all notices of any repurchase, and all rights of offset or counterclaim that the parties have now or later against Lender or against any purchaser of the loan.

FACSIMILE AND COUNTERPART. This document may be signed in any number of separate copies, each of which shall be effective as an original, but all of which taken together shall constitute a single document. An electronic transmission or other facsimile of this document or any related document shall be deemed an original and shall be admissible as evidence of the document and the signer's execution.

COMMUNITY AND OTHER PROPERTY. In addition to the rights of Lender under any applicable community property laws, Borrower, Guarantor or Grantor who is a Married Person and who has an interest in marital or community property under applicable law acknowledges and agrees that his/her obligation as a Borrower, Guarantor or Grantor is incurred in the interest of and to benefit the marital community (or domestic partnership, if applicable), and expressly agrees that recourse may be had against his or her separate property and his or her rights in community property and community assets for all of his or her obligations to Lender, in addition to any other property that may be subject to rights of Lender. Borrower and Guarantor also agree not to, without Lender's prior written consent, enter into any community property agreement which alters the separate or community property character of any of such party's property. For the purpose of this provision, "Married Person" means a person in a spousal relationship and shall include parties to a duly registered and/or legally recognized same-sex civil union, domestic partnership, and other terms, whether or not gender-specific to a spousal relationship, that denote spousal relationship, as those terms are used throughout the laws, codes and regulations of states and/or jurisdictions that recognize legally married same-sex couples, civil unions and/or domestic partnerships; and any references herein to a married person or marital status shall be deemed to also include the applicable corresponding term, or other reference relating to a party to a civil union or domestic partnership. To the extent this provision may conflict with another provision of this Guaranty that other provision shall control.

EXECUTION OF DOCUMENTS, CONSULTATION WITH COUNSEL. Each party hereto acknowledges and agrees that he/she/it has had an opportunity to review and consider the terms and provisions of this agreement and each related loan document, to consult with counsel

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of his/her/its choice, if desired, and to suggest changes to the structure and terms of the agreements. Each party hereto warrants and agrees that his/her/its execution of this agreement and any related loan documents is made voluntarily and with full knowledge of the significance and effect of such agreements.

DEFINITION OF INDEBTEDNESS. The definition of "indebtedness" herein includes, without limitation, all liability of Borrower or other party having its obligations to Lender secured by this Deed of Trust, whether liquidated or unliquidated, defined, contingent, conditional or of any other nature whatsoever, and performance of all other obligations arising under any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement) howsoever described or defined at any time entered into with Lender in connection with the Note.

ENCUMBRANCES. Grantor/Mortgagor/Trustor shall not, without Lender's consent, mortgage, assign, grant a lien upon or security interest in, or otherwise encumber the Property or any interest in the Property, or allow such a lien or security interest to exist or arise, whether voluntarily, involuntarily or by operation of law, except for liens and security interests in favor of Lender, or property taxes attributable to the Property which are not past due.

APPRAISALS, FEES AND EXPENSES. Grantor/Trustor agrees that Lender may obtain appraisals and reappraisals and perform property evaluations and appraisal reviews of the Real Property when required by the regulations of the Federal Reserve Board or the Office of the Comptroller of the Currency, or any other regulatory agency, or at such other times as Lender may reasonably require. Appraisals shall be performed by an independent third party appraiser selected by Lender; property evaluations and appraisal reviews may be performed by third party appraisers or appraisers and staff of Lender. The fees, expenses and other cost of such appraisals, reappraisals, property evaluations and appraisal reviews shall be paid by Grantor/Trustor. In addition, Grantor/Trustor shall be responsible for payment of all fees and expenses of Lender and third parties relating to inspecting the Real Property, environmental review, title policies and endorsements (or title certificates, abstracts of title or legal opinions of title where applicable), and monitoring the payment of property taxes and any governmental taxes, fees and recording costs relating to this deed.

LEASES AND RENTS. Grantor/Trustor/Mortgagor presently assigns to Lender all of Grantor/Trustor/Mortgagor's right, title and interest in and to all present and future leases of the Property and all rents from the Property. This Assignment of Rents is given to secure (A) Payment of the indebtedness and (B) Performance of any and all obligations under the Note and Mortgage/Deed of Trust. Grantor/Trustor/Mortgagor's present assignment to Lender hereunder in of all present and future leases includes all leases, licenses, rental agreements and other agreements of any kind relating to the use or occupancy of any of the Property, together with all guarantees of and security for any tenant's performance, and all extensions, renewals and modifications thereto (as used in this paragraph, each a "Lease" and collectively, the "Leases"), together with any and all Rents from the Property. This assignment shall not impose upon Lender any duty to produce Rents, nor cause Lender to be a mortgagee in possession, or responsible for performing any of the obligations of the lessor under any Lease. Lender confers upon Grantor/Trustor/Mortgagor a license to collect and retain the Rents as they come due, until the occurrence of any Event of Default, at which time this license shall be automatically revoked, and Lender, or its designated agent may, at its option and without notice, make, cancel, enforce or modify any Lease or Rents, collect Rents and do any acts

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(Continued)

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which Lender deems proper to protect the security hereof or exercise any other right or remedy hereinafter. Grantor/Trustor/Mortgagor represents and warrants that there exists no material default under present Leases and that those Leases are in full force and effect. Lender, at its option and without notice, may notify any tenant of this assignment of the Leases and Rents. Grantor/Trustor/Mortgagor agrees, at its expense, (i) to comply with and enforce all the terms and conditions under each Lease, and defend in any action in connection with any Lease; (ii) not to modify any Lease in any material respect, nor accept surrender under or terminate the term of any Lease, nor waive or release any tenant under any Lease; (iii) not to anticipate the Rents under any Lease; and (iv) to give prompt notice to Lender of any default by any tenant under any Lease, and of any notice of default on the part of Grantor/Trustor/Mortgagor under any Lease received from a tenant. Should Grantor/Trustor/Mortgagor fail to do any act required to be done by Grantor/Trustor/Mortgagor hereunder, then Lender, at its option and without notice, may make or do the same in such manner and to such extent as Lender deems necessary to protect the security hereof. Grantor/Trustor/Mortgagor agrees to pay to Lender immediately upon demand all sums expended under the authority hereof, including reasonable attorneys' fees, together with interest thereon at the highest rate per annum payable under any indebtedness, and the same, at Lender's option, may be added to the indebtedness and secured hereby.

ASSOCIATION OF UNIT OWNERS: The following provisions apply if the Real Property has been submitted to unit ownership law or similar law for the establishment of condominiums or cooperative ownership of the Real Property:

A. Power of Attorney: Trustor/Grantor grants an irrevocable power of attorney to Lender to vote, in Lender's discretion on any matter that may come before the association of unit owners. Lender shall have the right to exercise this power of attorney only after Trustor's/Grantor's default; however, Lender may decline to exercise this power as Lender sees fit.

B. Insurance: The insurance as required herein may be carried by the association of unit owners on Trustor's/Grantor's behalf, and the proceeds of such insurance may be paid to the association of unit owners for the purpose of repairing or reconstructing the Property. If not so used by the association, such proceeds shall be paid to Lender.

C. Default: Trustor's/Grantor's failure to perform any of the obligations imposed on Trustor/Grantor by the declaration submitting the Real Property to unit ownership, by the bylaws of the association of unit owners, or by any rules or regulations thereunder, shall be an event of default under this Deed of Trust. If Trustor's/Grantor's interest in the Real Property is a leasehold interest and such property has been submitted to unit ownership, any failure by Trustor/Grantor to perform any of the obligations imposed on Trustor/Grantor by the lease of the Real Property from its owner, any default under such lease which might result in termination of the lease as it pertains to the Real Property, or any failure of Trustor/Grantor as a member of an association of unit owners to take any reasonable action within Trustor's/Grantor's power to prevent a default under such lease by the association of unit owners or by any member of the association shall be an Event of Default under this Deed of Trust.

FAILURE TO PROVIDE INSURANCE: Grantor/Trustor/Mortgagor ("Owner") acknowledges and agrees that if Owner fails to provide any required insurance on the terms set forth herein or in any Related Documents, or fails to continue such insurance in force in compliance with the requirements of this agreement or any Related Documents, Lender may purchase insurance at

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Owner's expense as provided therein. Such insurance may protect Lender's interests, and may otherwise protect none of, or less than all of, Owner's interests. The cost of any such insurance shall become a part of the indebtedness and shall be payable on demand or added to the Note as provided herein, at Lender's option. OWNER ACKNOWLEDGES THAT IF LENDER SO PURCHASES ANY SUCH INSURANCE, THE INSURANCE MAY PROVIDE LIMITED PROTECTION AGAINST PHYSICAL DAMAGE TO THE COLLATERAL, UP TO THE BALANCE OF THE LOAN; HOWEVER, OWNER'S EQUITY IN THE COLLATERAL MAY NOT BE INSURED. IN ADDITION, THE INSURANCE MAY NOT PROVIDE ANY PUBLIC LIABILITY OR PROPERTY DAMAGE INDEMNIFICATION AND MAY NOT MEET THE REQUIREMENTS OF ANY FINANCIAL RESPONSIBILITY LAWS.

LENDER TO BE NAMED LOSS PAYEE. All required policies and certificates of insurance shall name Mortgagee/Beneficiary as loss payee, and shall provide that the insurance cannot be terminated as to Mortgagee/Beneficiary except upon a minimum of ten (10) days' prior written notice to Mortgagee/Beneficiary. Immediately upon any request by Lender/Mortgagee/Beneficiary, Grantor/Trustor/Mortgagor shall deliver to Lender/Mortgagee/Beneficiary the original of all such policies or certificates, with receipts evidencing annual prepayment of the premiums.

ARBITRATION AGREEMENT. Arbitration - Binding Arbitration. Lender and each party to this agreement hereby agree, upon demand by any party, to submit any Dispute to binding arbitration in accordance with the terms of this Arbitration Program. Arbitration may be demanded before the institution of a judicial proceeding, or during a judicial proceeding, but not more than 60 days after service of a complaint, third party complaint, cross-claim, or any answer thereto, or any amendment to any of such pleadings. A "Dispute" shall include any dispute, claim or controversy of any kind, whether in contract or in tort, legal or equitable, now existing or hereafter arising, relating in any way to any aspect of this agreement, or any related note, instrument or agreement incorporating this Arbitration Program (the "Documents"), or any renewal, extension, modification or refinancing of any indebtedness or obligation relating thereto, including without limitation, their negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination, or any request for additional credit. This provision is a material inducement for the parties entering into the transactions relating to this Agreement. In the event of a court-ordered arbitration, the party requesting arbitration shall be responsible for timely filing the demand for arbitration and paying the appropriate filing fee within 30 days of the abatement order or the time specified by the court; the party's failure to do so shall result in that party's right to demand arbitration being automatically terminated with respect to such Dispute. DISPUTES SUBMITTED TO ARBITRATION ARE NOT RESOLVED IN COURT BY A JUDGE OR JURY TO THE EXTENT ALLOWED BY APPLICABLE LAW. THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARBITRATED PURSUANT TO THIS ARBITRATION PROGRAM.

A. Governing Rules. Any arbitration proceeding will (i) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (ii) be conducted by the American Arbitration Association ("AAA"), or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or

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counterclaim is at least \$1,000,000.00 exclusive of claimed interest, arbitration fees and costs, in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes are referred to herein, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Arbitration proceedings hereunder shall be conducted at a location mutually agreeable to the parties, or if they cannot agree, then at a location selected by the AAA in the state of the applicable substantive law governing the Note. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any Dispute. The arbitrator shall award all costs and expenses of the arbitration proceeding.

B. No Waiver of Provisional Remedies, Self-Help and Foreclosure. The arbitration requirement does not limit the right of any party to (i) foreclose against real or personal property collateral; (ii) exercise self-help remedies relating to collateral or proceeds of collateral such as entry of repossession; or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment, or the appointment of a receiver, before during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of any party to submit any Dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in sections (i), (ii) and (iii) of this paragraph.

C. Arbitrator Qualifications and Powers. Any arbitration proceeding in which the amount in controversy is \$5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than \$5,000,000.00. Any Dispute in which the amount in controversy exceeds \$5,000,000.00 shall be decided by majority vote of a panel of three arbitrators, provided however, that all three arbitrators must actively participate in all hearings and deliberations. Every arbitrator shall be a neutral practicing attorney or a retired member of the state or federal judiciary, in either case with a minimum of ten years experience in the substantive law applicable to the subject matter of the Dispute. The arbitrator will determine whether or not an issue is arbitrable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all Disputes in accordance with the applicable substantive law and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the applicable state rules of civil procedure, or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

D. Discovery. In any arbitration proceeding discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the Dispute being

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arbitrated and must be completed no later than 20 days before the hearing date. Any requests for an extension of the discovery periods or any discovery disputes will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

E. Class Proceedings and Consolidations. No party hereto shall be entitled to join or consolidate disputes by or against others in any arbitration, except parties to this agreement, or any contract, instrument or document relating to this agreement, or to include in any arbitration any dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity.

F. Small Claims Court. Any party may require that a Dispute be resolved in Small Claims Court if the Dispute and related claims are fully within that court's jurisdiction.

G. State Specific Provisions:

If Delaware, Pennsylvania or Virginia law governs the Dispute, the following provision is applicable: If there is a Confession of Judgment in the Note, any Guaranty, or Related Documents, Confession of Judgment. Notwithstanding anything herein to the contrary, the arbitration requirement does not limit or preclude the right of Lender to confess judgment pursuant to a Warrant of attorney provision set forth in the Note, any Guaranty, or Related Documents. No party shall have the right to demand binding arbitration of any claim, dispute or controversy seeking to (i) strike-off or open a judgment obtained by confession pursuant to a warrant of attorney contained in the Note, any Guaranty, or Related Documents, or (ii) challenge the waiver of a right to prior notice and a hearing before judgment is entered, or after judgment is entered, but, before execution upon the judgment. Any claim, disputes or controversies challenging the confession of judgment shall be commenced and prosecuted in accordance with the procedures set forth, and in the forum specified by the applicable state rules of civil procedure or other applicable law.

If Maryland law governs the Dispute, the following provision is applicable: If there is a Confession of Judgment in the Note, any Guaranty, or Related Documents, Confession of Judgment. Notwithstanding anything herein to the contrary, the arbitration requirement does not limit or preclude the right of Lender to confess judgment, and no party shall have the right to demand binding arbitration of any claim, dispute or controversy seeking to open a judgment obtained by confession. Nothing herein, including the arbitration requirement, shall limit the right of any party to foreclose judicially or non-judicially against any real or personal property collateral, or exercise judicial or non-judicial power of sale rights. No provision regarding submission to a jurisdiction and/or venue in any court or the waiver of any right to trial by jury is intended or shall be construed to be in derogation of the provisions for arbitration of any dispute. Any claim or counterclaim or defense raised in connection with Lender's exercise of any rights set forth in the Note, any Guaranty, or Related Documents shall be subject to the arbitration requirement.

If South Carolina law governs the Dispute, the following provision is included: **WAIVER OF JURY TRIAL. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO ARBITRATE ANY DISPUTE AS SET FORTH IN THIS MORTGAGE, TO THE EXTENT ANY DISPUTE IS NOT SUBMITTED TO ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION**

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TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, LENDER AND MORTGAGOR WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH DISPUTE AND ANY ACTION ON SUCH DISPUTE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY LENDER AND MORTGAGOR, AND THEY HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. LENDER AND MORTGAGOR ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. MORTGAGOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

H. Real Property Collateral:

If California law governs the Dispute, the following provisions are included: Real Property Collateral: Judicial Reference: Notwithstanding anything herein to the contrary, no Dispute shall be submitted to arbitration if the Dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of California, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable, if any such Dispute is not submitted to arbitration, the Dispute shall be referred to a referee in accordance with California Code of Civil Procedure Section 838, et seq., and this general reference agreement is intended to be specifically enforceable in accordance with said Section 838, as amended or replaced from time to time. A referee with the qualifications required herein for arbitrators shall be selected pursuant to the AAA's selection procedures. Judgment upon the decision rendered by a referee shall be entered in the court in which such proceeding was commenced in accordance with California Code of Civil Procedure Sections 644 and 645, as amended or replaced from time to time.

If Connecticut law governs the Dispute, the following provision is included: Real Property Collateral: Notwithstanding anything herein to the contrary, no dispute shall be submitted to arbitration if the dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property located in Connecticut unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of Sections 49-1 and 49-14, et seq. of the Connecticut General Statutes, as amended or replaced from time to time, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable.

If Idaho, Kansas, Montana, Nevada, South Dakota or Virginia law governs the Dispute, the following provision is included:

Real Property Collateral: Notwithstanding anything herein to the contrary, no Dispute shall be submitted to arbitration if the Dispute concerns indebtedness secured directly or indirectly, in:

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whole or in part, by any real property unless (i) the holder of the mortgage lien or security interest specifically elects in writing to proceed with the arbitration; or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of Idaho, Kansas, Montana, Nevada, South Dakota or Virginia, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable.

If Utah law governs the Dispute, the following provision is included: Real Property Collateral; Judicial Reference. Notwithstanding anything herein to the contrary, no Dispute shall be submitted to arbitration if the Dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration; or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of Utah, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable. If any such Dispute is not submitted to arbitration, the Dispute shall be referred to a master in accordance with Utah Rule of Civil Procedure 53, as amended or replaced from time to time, and this general reference agreement is intended to be specifically enforceable. A master with the qualifications required herein for arbitrators shall be selected pursuant to the AAA's selection procedures. Judgment upon the decision rendered by a master shall be entered in the court in which such proceeding was commenced in accordance with Utah Rule of Civil Procedure 53(e), as amended or replaced from time to time.

L. Miscellaneous. To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the Dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business or by applicable law or regulation. If more than one agreement for arbitration by or between the parties potentially applies to a Dispute, the arbitration provision most directly related to the documents between the parties or the subject matter of the Dispute shall control. This arbitration provision shall survive the repayment of the Note and the termination, amendment or expiration of any of the Documents or any relationship between the parties.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property, less all cash expenditures made in connection with the operation of the Property.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes

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only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Governing Law. This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Alaska without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Alaska.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity, or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Alaska as to all indebtedness secured by this Deed of Trust.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular.

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as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means Wells Fargo Bank, National Association, and its successors and assigns.

Borrower. The word "Borrower" means 716 West Fourth Avenue, LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-489 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Grantor. The word "Grantor" means 718 West Fourth Avenue, LLC.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the

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Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust. Specifically, without limitation, indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Deed of Trust.

Lender. The word "Lender" means Wells Fargo Bank, National Association, its successors and assigns.

Note. The word "Note" means the promissory note dated December 9, 2013, in the original principal amount of \$28,222,653.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of this Deed of Trust is 12-06-2068. NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property, together with all accessories, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all issues and profits thereon and proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means Wells Fargo Financial National Bank, whose address is c/o BBSG-Base Loan Ops LDI, PO Box 34850, San Antonio, TX 78285 and any substitute or successor trustees.

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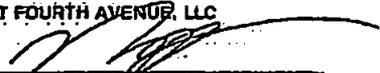
DEED OF TRUST
(Continued)

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GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST,
AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

716 WEST FOURTH AVENUE, LLC

By: 

Robert B. Acree, Member of 716 West Fourth Avenue,
LLC

MOUNT TRIDENT, LLC, Member of 716 West Fourth Avenue, LLC

MARK E. PFEFFER ALASKA TRUST, Member of Mount Trident,
LLC

By: 

Alana Williams, Trustee

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(Continued)

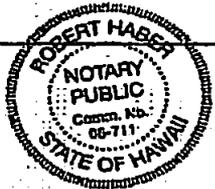
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LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Hawaii)
)
 3rd) SS
)
 JUDICIAL DISTRICT)

On this 14th day of December, 2013, before me, the undersigned Notary Public, personally appeared Robert B Acres, Member of 718 West Fourth Avenue, LLC; and known to me to be a member or designated agent of the limited liability company that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Deed of Trust and in fact executed the Deed of Trust on behalf of the limited liability company.

By Robert B Acres Residing at Waikaloa Hawaii 96755
Notary Public in and for the State of Hawaii My commission expires 11-19-14



716-006172

Mr. Michael Buller
October 15, 2013
Page 2

Our estimate of Market Rent is based on the specific terms and conditions of the lease extension agreement now being finalized. Included in these terms and conditions is an agreement wherein the tenant (Legislative Affairs Agency acting on behalf of the Alaska Legislative Council) will contribute \$7.5 million to the cost of the renovation and expansion project for tenant improvements. We refer to this lease as a modified triple-net lease, and under its terms and conditions, the landlord will have certain maintenance and replacement obligations, while tenant will pay normal operating expenses, to include utilities, taxes, insurance and other usual costs of building operations. Our estimate of Market Rent is presented under the assumption that the tenant contributes \$7.5 million for tenant improvements costs; thus, the tenant's cost contribution is reflected in our conclusion of Market Rent. Our estimate of Market Rent also includes costs to the landlord for certain maintenance and replacement obligations specified under the lease extension agreement.

You have also asked us to express our opinion of Market Rent as if the lease terms and conditions were modified to reflect a level annual rent over the ten year term of the lease extension. Our conclusion of Market Rent stated above contemplates a two percent (2%) annual escalation in rent. We have performed an analysis to convert our estimate of Market Rent from an amount which escalates at two percent annually to a Market Rent estimate that remains level for each year of the ten year lease extension. Based then upon this analysis, we have formed the opinion that the estimated Market Rent for the renovated and expanded Legislative Information Office building, as contemplated by the lease extension agreement now under negotiation, and assuming a level rent payment for each of the ten years of the lease extension period, as of its effective date of June 1, 2014, assuming the building is completed per the lease agreement and landlord proposals, is:

THREE MILLION NINE HUNDRED AND EIGHT THOUSAND DOLLARS PER YEAR

\$3,908,000 PER YEAR

LEVEL ANNUAL RENT

The specific terms and conditions embodied in our conclusion of market rent are fully described within this appraisal report. Our conclusions of Market Rent both incorporate a hypothetical condition that the building is completed per current plans on or about June 1, 2014, and the extraordinary assumption that the terms and conditions of the lease are as presently under negotiation.

Our recommendations for a purchase price under a purchase option provision to be incorporated into the lease extension agreement is also described in our report.

The landlord's proposed rent under the terms and conditions of the lease extension agreement now under negotiation is \$247,756 per month plus Waronzo's estimate of the landlord's service obligations under the lease agreement, or \$12,687 per month, for a total of \$260,443 per month, or \$3,125,316 per year, with rent escalations of 2% per year over the ten year term of the lease extension. We find that for an escalating lease, the proposed contract rent of \$260,443 per month represents 86.48% of our Market Rent conclusion of \$301,167 per month (\$3,614,000 annually).

Landlord has also agreed to a level annual equivalent rent of \$3,379,658 per year, or \$281,638 per month, for each of the ten years of the lease extension, inclusive of the service obligation cost component, under an alternative rent escalation structure. Our Market Rent conclusion, under a level rent structure for ten years, is \$3,908,000 per year, or \$325,667 per month. We find that for a level lease, the proposed contract rent of \$281,638 per month also represents 86.48% of our Market Rent conclusion.



Anchorage Legislative Information Office
Estimate of Rental Value

Alaska Housing Finance Corporation
As of June 1, 2014

EXECUTIVE SUMMARY

Subject Property:	An expanded and renovated 64,068 gross sf six story special purpose office building leased for ten years to the Alaska Legislative Affairs Agency on behalf of the Alaska Legislative Council, serving as the Anchorage Legislative Information Office.
Location:	716 & 712 W. 4 th Avenue, Anchorage, Alaska 99501
Property Owner:	716 West Fourth Avenue, LLC or affiliate
Property Rights Appraised:	Leasehold interest, subject to specific terms and conditions of a lease extension agreement now under negotiation.
Date of Value:	June 1, 2014; the effective date of the lease extension.
Hypothetical Conditions:	Completion of the building and availability for occupancy on or about the lease extension date.
<u>Extraordinary Assumptions:</u>	<u>Estimate of Market Rent expressed solely in the context of the lease extension agreement now under negotiation.</u>
Site Description:	31,129 sf corner site, zoned B2-B
Existing Building Improvements	Existing six story office building containing 45,623 sf Existing commercial building containing 11,630 sf Existing approximately 100 space two level parking structure, containing approximately 40,000 sf.
Proposed Building Improvements	Six story office building with basement, containing 64,048 sf
Highest and Best Use If Vacant: As Improved as Proposed:	Office, Hotel, Retail or Commercial Development Special purpose occupancy by state agency.
Valuation Analysis	
Market Rent - Project Cost & Rate of Return	\$3,614,000 per year (Year One of a ten year lease)
Direct Rent Comparison	[to be determined]
Conclusion of Market Rent	\$3,614,000 per year (Year One of a ten year lease)

Mr. Michael Buller
October 15, 2013
Page 2

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\$3,908,000 PER YEAR

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The specific terms and conditions embodied in our conclusion of market rent are fully described within this appraisal report. Our conclusions of Market Rent both incorporate a hypothetical condition that the building is completed per current plans on or about June 1, 2014, and the extraordinary assumption that the terms and conditions of the lease are as presently under negotiation.

Our recommendations for a purchase price under a purchase option provision to be incorporated into the lease extension agreement is also described in our report.

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Landlord has also agreed to a level annual equivalent rent of \$3,379,658 per year, or \$281,638 per month, for each of the ten years of the lease extension, inclusive of the service obligation cost component, under an alternative rent escalation structure. Our Market Rent conclusion, under a level rent structure for ten years, is \$3,908,000 per year, or \$325,667 per month. We find that for a level lease, the proposed contract rent of \$281,638 per month also represents 86.48% of our Market Rent conclusion.



716-006180

EXECUTIVE SUMMARY

Subject Property:	An expanded and renovated 64,068 gross sf six story special purpose office building leased for ten years to the Alaska Legislative Affairs Agency on behalf of the Alaska Legislative Council, serving as the Anchorage Legislative Information Office.
Location:	716 & 712 W. 4 th Avenue, Anchorage, Alaska 99501
Property Owner:	716 West Fourth Avenue, LLC or affiliate
Property Rights Appraised:	Leasehold interest, subject to specific terms and conditions of a lease extension agreement now under negotiation.
Date of Value:	June 1, 2014; the effective date of the lease extension.
Hypothetical Conditions:	Completion of the building and availability for occupancy on or about the lease extension date.
Extraordinary Assumptions:	Estimate of Market Rent expressed solely in the context of the lease extension agreement now under negotiation.
Site Description:	31,129 sf corner site, zoned B2-B
Existing Building Improvements	Existing six story office building containing 45,623 sf Existing commercial building containing 11,630 sf Existing approximately 100 space two level parking structure, containing approximately 40,000 sf.
Proposed Building Improvements	Six story office building with basement, containing 64,048 sf
Highest and Best Use If Vacant: As Improved as Proposed:	Office, Hotel, Retail or Commercial Development Special purpose occupancy by state agency.
Valuation Analysis	
Market Rent - Project Cost & Rate of Return	\$3,614,000 per year (Year One of a ten year lease)
Direct Rent Comparison	[to be determined]
Conclusion of Market Rent	\$3,614,000 per year (Year One of a ten year lease)

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FEB 22 PM 1:51
C...
E...

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY
Defendants.

Case No. 3AN-15-05969CI

**MOTION TO SHOW CAUSE WHY 716 WEST FOURTH
AVENUE LLC SHOULD NOT BE HELD IN CONTEMPT**

Alaska Building, Inc., hereby moves for an order to show cause why the Manager of defendant 716 West Fourth Avenue LLC (716 LLC) should not be held in contempt for disobeying this Court's (1) January 13, 2016, Order Regarding Alaska Building Inc's Motion to Compel, and (2) January 15, 2016, Discovery Order.

Dated February 22, 2016.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7886
FACSIMILE
(907) 274-9493

STATE OF ALASKA
 THIRD JUDICIAL DISTRICT
 2016 FEB 17 PM 5:05
 CLERK
 DEPUTY CLERK

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 CI

716 WEST FOURTH AVENUE LLC and LEGISLATIVE AFFAIRS AGENCY,)

Defendants.)

716 LLC'S MOTION FOR PROTECTIVE ORDER AND STATEMENT OF COMPLIANCE WITH COURT'S ORDER REGARDING ABI'S MOTION TO COMPEL

Defendant 716 West Fourth Avenue LLC ("716"), by and through counsel, brings this motion for a protective order governing the additional production ordered by the Court on January 13, 2016.¹ 716 brings this motion pursuant to Civil Rule 26(c) and at the Court's invitation as announced in its January 13, 2016 order.

I. Court's Previous Discovery Related Orders

On October 29, 2015, 716 moved for a protective order that would require ABI and its attorney to remove discovery published on the internet and to relieve 716 of any obligation to produce further documents unless ABI agreed to enter into a

¹ By agreement, the parties have extended the original 15-day deadline for compliance with the Court's order to mid-February.

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 LAWYERS
 1227 WEST 9TH AVENUE, SUITE 200
 ANCHORAGE, ALASKA 99501
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confidentiality agreement. The court issued a discovery order on January 15, 2016, holding, in part, that “a producing party wishing to redact documents in any other manner or keep any documents confidential must produce the documents when due and properly seek a protective order under Civil Rule 26(c).”² The court further ordered that financial documents “which do not have a public figure (legislator or state employee) as a party may not be published without court order.”³

Two days prior to issuing the discovery order, on January 13, 2016, this court issued an order regarding ABI’s Motion to Compel. 716 submits the instant motion for two reasons: 1) to inform the court that as a result of this production (and prior production efforts) 716 is in full compliance with all discovery requests and court orders; 2) to ensure that ABI strictly adheres to the requirements of the Alaska Civil Rules with respect to the possession, distribution, and retention of the material contained in the instant production. To date, 716 has produced more than 6,200 pages of responsive documents to ABI.

II. Report of Compliance

RFP 1

The court invited 716 to seek a protective order under Rule 26(c) for the information sought by Plaintiff in Request for Production (“RFP”) 1.⁴ At this time, 716

² See Discovery Order, dated 1/16/16.

³ See *Id.*

⁴ See Motion to Compel Order at 2.

is not producing loan documents that may include “personal financial statements” or any material previously found by the court to be “irrelevant to the legality of the lease,” including 716’s financial information and seeks a protective order from this court relieving it of the obligation to produce financial information as to 716 and its members. 716 is producing recorded loan documents as requested by Plaintiff, consistent with Plaintiff’s request for this information.

In the event that this Court still finds upon a proper showing of relevance (and despite previous court orders to the contrary) that “personal financial statements” or information regarding “716’s finances” contained in the loan documents could be relevant to ABI’s cause of action, 716 asks that the court order that such documents will first be provided to the Court under seal for its examination prior to any production to plaintiff..

In compliance with the court’s ruling with respect to **RFP 1**, and subject to the instant protective order, as requested by the court, 716 hereby produces the following loan applications and other documents relating to financing the LIO building: Bates Nos.: 716-006147-716-00006172.

RFP 4⁵

This court indicated it was abstaining from overruling or sustaining 716’s objections until it has supplemented its privilege log with:

⁵ The Court sustained 716’s objections to Requests for Production 2 and 3.

- The title of any addressor or addressee that is not a party to the case nor has submitted an official entry of appearance;
- The name and title of all recipients of a communication besides the addressee and;
- The general subject matter of the communication.

Accordingly, 716 **has updated** its privilege log and provided it to Plaintiff. Furthermore, 716 is producing to ABI an email (originally marked as No. 5 in the privilege log) previously withheld on privilege grounds upon a determination that the email is not privileged. Subject to the instant protective order, this email is identified as Bates Nos. 716-001306.

RFP 5

Given its prior rulings on 716's financial operations, the Court found that 716's Operating Agreement did not appear to be "particularly relevant."⁶ However, given that 716 previously offered for the court to inspect this document *in camera*, the court indicated it would conduct an *in camera* review of the document upon ABI's request. ABI has since requested this document. On February 16, 2016, 716 submitted a response to ABI's request, which sought material beyond the operating agreement (and asserted new grounds for the request.) 716 also submitted a proposed order responsive

⁶ See Court's Order at 4.

to RFP 5. Once ordered by the Court, 716 will submit the **operating agreement** to the court for *in camera* inspection.

RFP 7

The court advised that 716 should seek a protective order under Rule 26(c) for any material yet to be produced under this request and to produce such information. The Court should be aware that the construction loan appraisal prepared by Reliant (10/28/13) was already produced as Bates Nos. 716-000546-716-001156. The final appraisal prepared by Everbank (12/12/14) was previously provided in Bates Nos. 716-001104-001156. Plaintiff has already obtained, and produced on his website, Waronzof Associates' appraisal as prepared for AHFC. (Plaintiff indicated it did not need "certain documents accessible online.") Nevertheless, in an abundance of caution, 716 will supplement production with a hard copy of this document, attached here as Bates Nos. 716-006178-716-006293.

RFP 8

The court overruled 716's objection to production of the requested material sought by Plaintiff in RFP 8. 716 hereby notifies the court it has already produced documents indicating payments made for project management to defendant Pfeffer Development, LLC. This payment information was previously included in the Development Agreement, previously produced in 716's initial disclosures and marked as Bates Nos. 716-000021-000032.

716 LLC'S MOTION FOR PROTECTIVE ORDER
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969

In response to RFP 8, and subject to the instant protective order, 716 hereby attaches the following additional responsive documents memorializing payments for costs under the LIO Lease for renovations. These documents are included as: Bates Nos. 006173-006177.

III. Protective Order

Discovery's purpose is to allow litigants a fair opportunity "to investigate their opponent's claims and gather evidence to support their own assertions."⁷ The discovery process thus allows ABI to obtain private information not ordinarily available to the public—but only for the limited purpose of advancing its litigation position.⁸ Indeed, the U.S. Supreme Court has held that discovery is "conducted in private as a matter of modern practice."⁹

As detailed in 716's October 30, 2015 Motion for Protective Order and subsequent Reply in support of that motion, ABI has—contrary to established local practice and in an abuse of the discovery privilege—publicly disseminated every discovery document produced by 716 in this action.¹⁰ The additional production recently compelled by the Court includes confidential and proprietary business documents. Publication of these sensitive documents would expose 716's finances and

⁷ *McCormick v. Chippewa, Inc.*, 330 P.3d 345, 351 (Alaska 2014).

⁸ *Cf. Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 30-35 (1984).

⁹ *Id.* at 35.

¹⁰ Law Offices of James B. Gottstein website, "Discovery" tab of litigation-specific webpage at <http://gottsteinlaw.com/AkBldgv716W4thAve/AkBldgv716W4thAveLLC.htm>.

inner workings to the public, to the detriment of its business relationships and future negotiation power.

There is no legitimate litigation-related reason for ABI to publicly disseminate 716's production online, and good cause exists to continue to protect this information from publication. 716 accordingly requests that the Court enter the attached protective order applicable to the additional compelled discovery, which will protect 716's confidential business information from improper dissemination by ABI.

Additionally, as described in 716's summary regarding RFP 1 *supra*, if the Plaintiff wishes to pursue 716's personal financial information or any internal documents regarding 716's finances included in loan documents, it must make an argument that this material is relevant, despite court order to the contrary. Plaintiff's request to examine this material may be mooted by the Court's expected forthcoming review of 716's operating agreement, which it has already described as "not being particularly relevant" to the instant causes of action.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 2-17-16

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

ASHBURN & MASON P.C.
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TEL 907.276.4331 • FAX 907.277.8235

716 LLC'S MOTION FOR PROTECTIVE ORDER
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 17 day of February 2016, 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
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716 LLC'S MOTION FOR PROTECTIVE ORDER
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969

STATE OF ALASKA
 THIRD JUDICIAL DISTRICT
 2016 FEB 17 AM 5:00
 BY CLERK
 DEPUTY

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 JEFFREY W. ROBINSON IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

STATE OF ALASKA)
) ss.
 THIRD JUDICIAL DISTRICT)

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case, and submit this affidavit in support of 716 West Fourth Avenue, LLC's Motion for Protective Order. I have personal knowledge of all facts described herein.

2. 716 has previously attempted to negotiate a confidentiality agreement with ABI governing discovery in this matter without success. The parties could not agree on how the operating agreement would be provided to ABI or whether it should

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be subject to judicial *in camera* inspection. A motion is pending before the court to review the operating agreement.

3. The court issued a Discovery Order on 1/15/16, and further requested that 716 move for a protective order under Rule 26(c) in response to Plaintiff's motion to compel.

4. The additional production compelled by the Court's January 13, 2016 order is comprised of sensitive business information. In compliance with the court's 1/15/16 order, ABI may not distribute or publish the material provided to it by 716 on 2/17/16.

5. Dissemination of these documents would have a detrimental effect on 716's business operations.

6. As the court has already found in both its denial of Plaintiff's motion for preliminary injunction and in its order regarding Plaintiff's motion to compel that 716's finances are irrelevant to this cause of action, "personal statements" or any other information regarding 716's finances are being withheld in response to RFP 1. If Plaintiff still wishes to obtain this irrelevant information purportedly contained within loan documents, he should make a request to the court. If the court wishes to inspect this information, 716 will provide the information to the court under seal for an *in camera* inspection..

AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION FOR PROTECTIVE ORDER
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

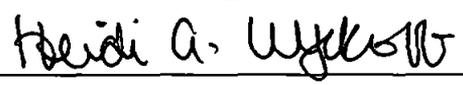
7. Entry of this proposed protective order would significantly reduce the risk of this harm and does not prejudice ABI in any way.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

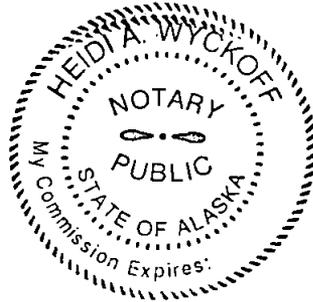


Jeffrey W. Robinson

SUBSCRIBED AND SWORN to before me this 17 day of February, 2016.



NOTARY PUBLIC in and for Alaska
My Commission Expires: 4/11/2019



ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION FOR PROTECTIVE ORDER
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
facsimile U.S. Mail on the 17 day of January, 2016, 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
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AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION FOR PROTECTIVE ORDER
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA
 THIRD DISTRICT

CLERK, TRIAL COURT
 JUDICIAL DISTRICT

FEB 16 PM 4:54

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiffs,)

vs.)

716 WEST FOURTH AVENUE LLC and LEGISLATIVE AFFAIRS AGENCY,)

Defendants.)

Case No.: 3AN-15-05969 Civil

RESPONSE TO ALASKA BUILDING, INC.'S REQUEST FOR IN CAMERA REVIEW

As noted in the Court's Order Regarding ABI'S Motion to Compel, Defendant 716 West Fourth Avenue, LLC ("716") previously offered to provide its operating agreement to the Court for *in camera* review. Without waiving its relevance and confidentiality objections, 716 intends to follow through on this offer and provide the operating agreement to the Court if ordered to do so.

716 notes that in its Request for In Camera Review, ABI asserted new grounds for relevance. As these grounds were not raised in its Motion to Compel, and as they moreover seem inapplicable to a mundane business document such as the operating agreement, 716 respectfully requests that the Court disregard them.

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If the Court ultimately determines the operating agreement should be produced to ABI, 716 further requests that the production be subject to a protective order. 716's operating agreement is confidential and proprietary, and having it publicly disseminated by ABI would be detrimental to its business practices.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 2-16-16

By: JWR
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

RESPONSE TO REQUEST FOR IN CAMERA REVIEW
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969C1

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 16 day of February 2016, 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 P.C.
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RESPONSE TO REQUEST FOR IN CAMERA REVIEW
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969C1

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2016 FEB 16 PM 4:19

THIRD JUDICIAL DISTRICT AT ANCHORAGE

CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
Corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 CI

716 WEST FOURTH AVENUE LLC and
LEGISLATIVE AFFAIRS AGENCY.,)

Defendants.)

716 LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT (NOT EXTENSION) AND REQUEST FOR ORAL
ARGUMENT UNDER CIVIL RULE 77(E)(2)

Plaintiff Alaska Building Inc. ("ABI") requests that this Court rule on matters that are consigned to the discretion of the Legislature and that are non-judicial. ABI claims that the "Extension of Lease and Lease Amendment No. 3" ("Lease Extension") between 716 and the Legislative Affairs Agency ("Agency") violates AS 36.30.083(a). Specifically, ABI alleges that as a matter of law a lease extension can never involve demolition work on an existing structure to any degree that would necessitate a tenant to temporarily relocate until the remodel is complete, and that the modification of various

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lease terms in the Lease Extension preclude the lease from actually being an “extension” under AS 36.30.083(a).¹

The Legislative Council has the authority under the State Procurement Code to modify its procurement rules and to authorize lease extensions. ABI’s motion should be denied since (1) Plaintiff’s request for the Court to declare that the lease extension is not actually an “extension” would require the Court impermissibly interfere with the Legislature’s procurement findings, (2) the Lease Extension is in fact an extension under the Procurement Code, and (3) genuine issues of material fact exist precluding summary judgment. 716 requests the Court hear oral argument on the motion under Civil Rule 77(e)(2).

I. BACKGROUND

On April 6, 2004, 716 and the Agency entered into a lease for the LIO Premises.² The lease was competitively bid under FRP 391, which was publically issued on July 17, 2003. The Lease contained five one-year renewal options and was amended various

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¹ See Plaintiff’s Memo in Support of Summary Judgment at 5. The cost savings compliance issue is not subject to the instant motion.

² Recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District State of Alaska. Attached as Exhibit A with Amendments.

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times.³ The lease was renewed for a final one-year term on May 20, 2013 and was set to expire on May 31, 2014, unless the parties agreed to extend the lease.

On June 7, 2013, the Legislative Council met to discuss a series of four motions related to the extension of the Anchorage LIO lease.⁴ Eleven (11) of the Council members participated in the hearing.⁵ Mike Hawker, Chairman of the Legislative Council and the Legislative Council's Chief Procurement Officer with respect to contracts of the Legislative Affairs Agency, reported that the Council's efforts to find other downtown space suitable to legislative function had failed,⁶ and as a new state-owned building was not a desirable outcome, the council wanted to move forward by improving the existing location.⁷ Senator McGuire indicated that there were "significant health and safety issues" associated with the current building, and

³ In 2006, the number of parking spaces was decreased and the rent reduced to account for the change in the amount of rented property. *See* Lease Amendment No. 1, recorded in Book 2006-0635690. In 2006, the lease term was extended an additional year by exercising a renewal option, and the rent was modified to reflect changes in 716's variable costs. *See* Amendment No. 2. And Renewal of Lease, recorded in Book2009-017284-0. Both amendments were submitted as exhibits attached to the Agency's opposition.

⁴ 28th Legislature (2013-2014) Committee Minutes from June 7, 2013, attached as Exhibit B.

⁵ *See Id.* at 1. Eight (8) members of the Council were physically present and three (3) members participated telephonically. Three members were absent: Senator Gary Stevens, Senator Charlie Huggins, and Representative Mike Chenault.

⁶ Chairman Hawker indicated that the most recent RFI generated two responses, neither of which would accommodate the Legislature downtown and that both responses had "limited utility regardless of location." *See Id.* at 2.

⁷ *Id.* at 2.

Representative Stoltze indicated that the public would benefit from “larger meeting spaces” and other modifications designed to meet the needs of the legislature.⁸

After significant debate, the Legislative Council **unanimously passed** the following motions with **no objections**: 1) a motion allowing the Chairman to negotiate all the terms and conditions necessary to extend the lease under AS 36.30.083(a); 2) a motion for the Legislative Council to adopt Amendment No. 12 to the Legislative Procurement Procedure 040 to allow the Agency to “materially modify an existing lease that was previously competitively procured.”; 3) a motion to authorize material amendments to the lease, including the addition of 712 West Fourth Avenue with other terms and conditions necessary to accommodate renovations, and 4) a motion for the Legislative Council to authorize the Alaska Housing Finance Corporation to act as its representative during negotiations. Upon passage of the final motion, Chairman Hawker declared that this was “the beginning of a fabulous project to establish legislative facilities that will accommodate legislative needs for the next 10 or more years.”⁹

Prior to the execution of the lease extension, on September 16, 2013, in compliance with Alaska Legislative Procurement Procedure 040(d), Chairman Hawker made detailed **written findings** that the Lease may be materially modified without

⁸ *Id.*

⁹ *See Id* at 4.

procurement of a new Lease.¹⁰ The modifications included, as discussed at the June meeting, adding additional adjacent property at 712 West Fourth Avenue to the existing premises, and amending other sections of the Lease to allow for renovation of the expanded premises.¹¹ The written findings were included as an addendum to the lease extension.

Having satisfied the procedural and statutory requirements for the Lease Extension, the parties entered into the agreement on September 19, 2013.¹² The Lease Extension, which was made between the same exact parties as original lease, extended the existing lease from June 1, 2014 to May 31, 2024.¹³ Also on September 19, 2013, Pam Varni, Executive Director of the Legislative Affairs Agency, in compliance with AS 36.30.083(b), certified to the Legislative Budget and Audit Committee that the Agency was entering “a 10-year lease extension of the Anchorage Legislative Information Office”¹⁴ and that the lease met the requirements of AS 36.30.083(a).¹⁵

¹⁰ See Procurement Officer’s Findings Under Legislative Procurement Procedure 040(d), incorporated into the lease extension as Exhibit C and attached here as Exhibit C.

¹¹ *Id.* at 1.

¹² See Extension of Lease and Lease Amendment No. 3, Attached as Exhibit D.

¹³ See Exhibit D at 2.

¹⁴ See Exhibit E, marked as Exhibit D as incorporated into the Lease Extension.

¹⁵ AS 36.30.083(a) provides: Notwithstanding any other provision of this chapter, the department, the Board of Regents of the University of Alaska, the legislative council, or the court system may extend a real property lease that is entered into under this chapter 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. Plaintiff separately challenges whether the lease extension exceeded 10 percent reduction under the statute.

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II. ARGUMENT

A. Plaintiff raises a non-justiciable political question.

In compliance with AS 36.30.020 and the Alaska Legislative Procurement Procedures, the Legislative Council, as it deemed necessary, properly adapted its procurement procedures to meet the special needs of the legislative branch and entered into a proper lease extension under AS 36.30.080(a). Because the legislature adopted and followed its own rules of procedure, Plaintiff's claim that the lease extension is not an extension is not justiciable, and thus as a matter of law ABI's motion for summary judgment should be denied.

The Alaska Legislative Council is a constitutionally created permanent interim committee and service agency of the Legislature.¹⁶ It is composed of fourteen legislators, seven from each chamber, including the president of the senate and the speaker of the house.¹⁷ The legislative council has numerous powers, including the power to organize and adopt rules for the conduct of its business,¹⁸ and to exercise control and direction over all legislative space.¹⁹ The council has further power to "do

¹⁶ Alaska Const. art. II, § 11: There shall be a legislative council, and the legislature may establish other interim committees. The council and other interim committees may meet between legislative sessions. They may perform duties and employ personnel as provided by the legislature. Their members may receive an allowance for expenses while performing their duties.; *see also* AS 24.20.010

¹⁷ AS 24.20.020.

¹⁸ AS 24.20.060(1). See also AS 24.20.060(6)(granting the council further authority to produce, publish, distribute, and to contract for the printing of reports, memoranda, and other materials it finds necessary for the accomplishment of tis work.)

¹⁹ AS 24.20.060(5)

all things necessary to carry out legislative directives and law, and the duties set out in the uniform rules of the legislature.”²⁰ Under AS 36.30.020, the Legislative Council shall adopt and publish procedures to govern the procurement of supplies and services by the Legislature “and [the procedures] must be adapted to the **special needs** of the legislative branch **as determined by the legislative council.**”²¹ Accordingly, the council adopts and publishes the Alaska Legislative Procurement Procedures.

Section 040 of the Alaska Legislative Procurement Procedures exempts various contracts from competitive solicitation requirements if various conditions are met.²² As discussed *supra*, on June 7, 2013, the Legislative Council passed various motions related to the lease. First, it adopted Amendment No. 12 to the Legislative Procurement Procedure 040, which provided the Agency with the ability to materially modify an existing lease that was previously competitively procured. Second, it authorized Mr. Hawker, Chairman of the Legislative Council and its Chief Procurement Officer, to “remove the limitation of amending a lease that amounts to a material modification,” and to include adjacent space at 712 West Fourth Avenue into the definition of premises. Accordingly, subsection (d) was added to Legislative Procurement Procedure 040, which permitted the lease to be modified by an amendment and without procurement of a new lease if the following terms were met:

- 1) The reasons for the modification are legitimate;

²⁰ AS 24.20060(6).

²¹ AS 36.30.020(emphasis supplied.)

²² Attached as Exhibit F.

- 2) The reasons for the modification were unforeseen when the lease was entered into;
- 3) It is not practicable to competitively procure a new lease;
- 4) The modification is in the best interests of the agency of the committee;
- 5) The procurement officer makes a written determination that the items in paragraphs (1)-(4) exist, the determination is attached to the amended lease; and
- 6) The use of this subsection is approved by the procurement officer and, in the case of an amendment to a lease concerning a legislative committee, by a majority of the committee members.²³

Representative Hawker made detailed written findings as to why the Lease Extension complied with the requirements of Alaska Legislative Procurement Procedures as outlined above.²⁴ Importantly, the legislative council expressed that the modification of the lease to include the addition of the 712 West Fourth Avenue space allowed “the Legislature to extend its current Lease.”²⁵ This was so because the Legislature needed additional space, but also wanted to keep all the present legislative offices in one building.²⁶ As the council put it, “modifying the Lease by adding 712 West Fourth Avenue to the ‘premises’ and by amending other lease terms to accommodate the expanded premises and the Lease Extension under AS 36.30.083(a)

²³ See Exhibit C.

²⁴ See *Id.* On a fundamental level, the Legislative Council, in adopting the June 7, 2013 motions and subsequently making written compliance findings, was executing its constitutionally mandated function to meet, perform its duties, and regulate and adopt appropriate rules.

²⁵ Exhibit B at 4.

²⁶ *Id.*

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does not subvert the purposes of competitive bidding, and is a legitimate exercise of the Legislature's procurement authority."²⁷

In *Abood v. League of Women Voters of Alaska* the Alaska Supreme Court held that "[t]he Alaska Constitution expressly commits to the legislature authority to adopt its own rules of procedure."²⁸ *Abood* involved a challenge from the League of Women Voters of Alaska, the Anchorage Daily News, and the Fairbanks Daily News Miner (the "League") that various closed committee meetings of the Senate and House Finance Committees violated the League's implied right of public access to legislative committee or caucus meetings under the Alaska Constitution.²⁹

The Legislators opposing the challenge argued that under Article II, section 12 of the Alaska Constitution³⁰, the Legislature was "specifically and exclusively authorized to adopt its own rules of procedure."³¹ Under that authority, the legislature adopted a Uniform Rule addressing which types of meetings should be held open to the general public. The legislators therefore argued that "only the legislature may determine whether the Open Meetings Act should apply to the legislature, and how [the Act]

²⁷ See Exhibit C at 5.

²⁸ 742 P.2d 333, 337 (Alaska 1987).

²⁹ *Id.* at 333.

³⁰ "The houses of each legislature shall adopt uniform rules of procedure. Each house may choose its officers and employees. Each is the judge of the election and qualifications of its members and may expel a member with the concurrence of two-thirds of its members. Each shall keep a journal of its proceedings." See Alaska Const. art. II, § 12.

³¹ *Abood*, 742 P.2d at 337.

should apply consistent with [the Uniform Rule.]³² Relying on *Malone v. Meekins*³³ and *Abood v. Gorsuch*³⁴, the Court agreed that it was the legislature's prerogative to make, interpret and enforce its own procedural rules, and the judiciary could not compel the legislature to exercise purely legislative prerogative.³⁵

Under Alaska law, in order to survive a justiciability challenge, ABI's claim that the lease extension was "not an extension" would have to involve a right protected by either the Alaska Constitution or the United States Constitution.³⁶ *Abood* is consistent with the long-standing and much emphasized principle that the judiciary must avoid engaging in unwarranted interference with a coordinate branch of government.³⁷ Although courts may intervene to protect constitutional rights from infringement by Congress, "where constitutional rights are not violated, there is no warrant for the judiciary to interfere with the internal procedures of Congress."³⁸ Plaintiff has never asserted that the lease extension has violated any constitutional right.

³² *Id.*

³³ 650 P.2d 351, 357 (Alaska 1982) ("For the courts to assume responsibility for overseeing the officer selection process of a legislative body would be highly intrusive and, in our opinion, inconsistent with the respect owed the legislature by the judiciary.")

³⁴ 703 P.2 1158, 1160 (Alaska 1985) ("There are certain questions involving coordinate branches of the government, sometimes unhelpfully called political questions, that the judiciary will decline to adjudicate.")

³⁵ *Abood*, 742 P.2d at 338 (citing *Moffitt v. Willis*, 459 Sp.2d 1018, 1021 (Fla. 1984).); see also *Green Part of Alaska v. State, Division of Elections*, 147 P.3d 718, 735 (Alaska 2006).

³⁶ *Abood v. League of Women Voters of Alaska*, 743 P.2d 333, 340 (Alaska 1987)

³⁷ *Exxon Corp. v. F.T.C.*, 589 F.2d 582 (D.C. Cir. 1978); see also *Railroad Comm'n v. Pullman Co.*, 312 U.S. 496, 500, 61 S.Ct. 642, 85 L.Ed 971 (1941) (holding that Courts should refrain from creating "needless friction" with a coordinate branch of government)).

³⁸ *Id.* at 590.

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Both *Abood* and *Malone* hold that the *Baker v. Carr*³⁹ elements should also guide the trial court's decision whether the political question at issue is non-justiciable and thus immune from judicial scrutiny.⁴⁰ These elements include: (1) a textually demonstrable commitment of the issue to a coordinate political department; (2) the impossibility of a court's undertaking an independent resolution of the case without expressing lack of respect due coordinate branches of government; and (3) the need for adherence to a political decision already made. Here, Mr. Hawker's findings under Alaska 040(d) that the original competitively procured lease could be materially modified by an amendment without the need for procurement of a new lease were in compliance with AS 36.30.020, which explicitly permit the Legislative Council to adapt its procurement procedures to meet the "special needs of the legislative branch as determined by the legislative council."

It was the Legislative Council's explicit prerogative to make, interpret and enforce its own procedural rules in determining how best to extend its existing contract, accounting for the modifications encompassed in the extension. The Legislative Council thus, consistent with the authority vested in it under the Alaska Constitution and AS 36.30.020 could rightfully "adapt" its published procurement procedures "to meet the special needs of the legislative branch as determined by the legislative

³⁹ 369 U.S. 186, 217 (1962).

⁴⁰ *Abood v. League of Women Voters of Alaska*, 743 P.2d 333, 337 (Alaska 1987); See also *Malone v. Meekins*, 650 P.2d 351, 357 (Alaska 1982);

council”⁴¹ Consistent with the principles of *Abood* and *Baker*, the Court must defer to the political decision already made by the legislative council. Indeed, one cannot think of a greater infringement on the Legislature’s prerogatives than to second guess its application of its own procurement rules in effect at this time. Plaintiff’s challenge is not justiciable and summary judgment should be denied.

B. The Lease Extension is an “extension” under the State Procurement Code.

Even if the court were to independently attempt to resolve and scrutinize a decision already made by a coordinate branch of government in that branch’s sole discretion, ABI’s argument that the lease extension is “not an extension” still fails.

Plaintiff argues that the lease extension does not comply with the “plain enough meaning of AS 36.30.083(a),” yet the **only** requirement for a lease extension to be valid under AS 36.30.080(a) is the achievement of a 10 percent savings as established by a real estate broker's opinion of the rental value or by an appraisal of the rental value.⁴²

The statute at issue contains absolutely no restriction on the degree to which the existing premises can be modified under a lease extension. The statute similarly does not restrict in any way the degree in which the terms may change from the original lease to the “extended” lease nor how many terms may or may not change.

⁴² Plaintiff’s Memorandum in Support of Motion for Partial Summary Judgment Re: Not Extension at 6.
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Plaintiff offers no authority whatsoever for the court to conclude that the contract at issue is not what it purports to be – a lease extension – simply because some of the lease extension’s terms or the building structure changed as part of the extension. Plaintiff’s inflexible belief that a lease can only remain an “extension” if only the lease end date changes runs afoul of basic rules of statutory interpretation. When interpreting statutes or contracts, “unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.”⁴³ Legislative history is useful only to the extent that it helps demonstrate the intent of the legislature.⁴⁴ The plainer the language, the more persuasive any legislative history to the contrary must be.⁴⁵

There is no question that the subject of the Lease Extension is a real property lease. It relates to the Agency’s leasing of defined real property rights from 716, its Landlord, with whom it had an existing lease. The recorded contract at issue is called “Extension of Lease and Lease Amendment No. 3” and establishes the effective term of the lease extension: June 1, 2014-May 31, 2024. Both parties to the actual contract -the Agency and 716 – continue to maintain that the contract at issue is an extension, and the Agency continues to make timely monthly payments under its contractual obligations. This is consistent with the intent of the contracting parties at the time the Lease

⁴³ *State v. Neidermeyer*, 14 P.3d 264, 272 n/ 38 (Alaska 2000)(citation omitted); *See also* Restatement (Second) of Contracts § 201 cmt a: “Unless a different intention is shown, language is interpreted in accordance with its generally prevailing meaning. *See* § 202(3).” Section 202(3) provides “[u]nless a different intention is manifested, (a) where language has a generally prevailing meaning, it is interpreted in accordance with that meaning.”

⁴⁴ *See Heller v. State, Dep’t of Revenue*, 314 P.3d 69, 74 (Alaska 2013).

⁴⁵ *Id.*

Extension as evidenced in the language of the lease and the supporting documents, principally Pam Varni's certification to the Legislative Budget & Audit Committee that the Agency was entering into a 10-year "real property lease extension" of the LIO.⁴⁶

AS 36.30.083(a) allows the Council to extend a real property lease if certain cost savings are achieved; the statute does not restrict the parties from renovating – either in a minimal or substantial way – the premises subject to the extension. Plaintiff can point to no language in the statute itself to support its proposition that the statutory language restricts lease or premises modifications in any way. As a backup, Plaintiff argues that even if the statutory language is not entirely clear, the legislative history "seals the conclusion" that the lease extension is not actually an extension under AS 36.30.083(a).⁴⁷ ABI argues, for example, that the lease extension cannot be a true lease extension because the occupants of the LIO had to move into interim space as the renovation and expansion project took place.⁴⁸ The argument, however, also lacks support in the language of the actual statute; there is nothing prohibitive in the plain language of AS 36.30.083(a) that would disallow a tenant from moving into interim space after an extension has been reached with the landlord.

The purpose of the 2004 bill at issue was to "increase the State's ability to negotiate lease extensions" by reducing the threshold from a ten to fifteen percent

⁴⁶ See Exhibit E.

⁴⁷ Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment Re: Not Extension at 7.

⁴⁸ See *Id.* at 3; see also *Plaintiff's Affidavit in Support of Motion for Summary Judgment at §§ 4,5.*

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reduction off of the existing lease rate (as was required at the time), to a ten percent reduction of the current market rate.⁴⁹ In other words, tying the lease rate to the percentage of the current market rate would *help* the state negotiate more frequently and avoid an inefficient re-procurement process. While the legislature discussed that cutting out re-procurement would allow the state to avoid the cost and disruption of not having to move, the intent of the statute was to *increase* extensions for real estate leases with the State's existing landlords.

ABI has presented no factual evidence that the State was prejudiced financially (or in terms of lack of productivity caused by the relocation) by working in the interim space its lessor provided while it worked on the remodel and expansion of the LIO. Additionally, the state bore no additional expense at all during the renovation and expansion of the LIO. The lease specifically provided that the state would pay its then current base monthly rental rate until it took over occupancy in the refurbished building.⁵⁰ Lessor provided the interim office space and parking during the Renovations, and set forth a comprehensive schedule notifying the LIO tenants of the construction schedule – all of which was incorporated into the lease as Exhibit B-1.⁵¹ In short, the fact that the state offices had to be temporarily relocated while the renovation

⁴⁹ See 5/07/04 Legislative Minutes for CS HB 545 (L & C) in the Senate Finance Committee at 24 as attached to Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment.(emphasis supplied.)

⁵⁰ See Exhibit D, Sec. 1.1(c) on Page 3.

⁵¹ See Exhibit D Sec. 1.1 (c)(2) on page 3 and Exhibit B-1 of Lease Extension.

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and expansion project that the legislative council specifically contracted for was being constructed does not, in any way, disqualify the lease as an extension of real property.

C. This Court has already found issues of material fact exist relating to Defendants' defense of laches, such that summary judgment is inappropriate at this time.

Defendants previously moved for summary judgment under the equitable doctrine of laches arguing that ABI's unreasonable delay in filing suit prejudiced Defendants. This Court denied the motion in an order dated January 7, 2016,⁵² finding genuine issues of material fact exist as to the extent of harm 716 (and the Agency) may suffer if the lease were declared "illegal, null and void" and thus decided that summary judgment was inappropriate as of the time it issued its order.⁵³ The court made several additional important findings. First, it found that Plaintiff's "financial gains served as acquiescence to the alleged wrongdoing and, combined with the seventeen months ABI waited to bring the lawsuit, this delay seems unreasonable".⁵⁴ Second, "[u]nder the unique facts in this litigation, the court does find that the defense of laches is available to this lawsuit"⁵⁵ and that its order should "not be construed as a finding that the defense of laches is unavailable to the defendants at trial."⁵⁶ The court found that the following material facts remain: whether the Defendants may renegotiate the contract "to reflect a

⁵² Attached as Exhibit G.

⁵³ *Id.* at 9.

⁵⁴ *Id.* at 6.

⁵⁵ *Id.* at 4.

⁵⁶ *Id.* at 9.

10% below market value” rate, which would incur harm to 716 if it had to amortize the renovation’s expense over a longer period of time and thus lose the benefit of the bargain.; or whether upon declaration that the lease is illegal, and provided the Agency and 716 cannot reach a new agreement, 716 may succeed in renting the building at a rate greater than the 10% below market value of the current lease, and therefore profit from a declaration that the lease is illegal. Because the Court has already concluded that these material issues of fact entitle 716 to explore the prejudice prong of laches, partial summary judgment setting this Lease aside for non-compliance with AS 36.30.083(a) must be withheld until 716 has an opportunity to present all of its defenses in this case at trial.

IV. CONCLUSION

The Alaska Constitution expressly commits to the Legislature the authority to adopt its own rules of procedure and to the Legislative Council the ability to perform the duties assigned by the Legislature.⁵⁷ In properly exercising its authority, eleven members (11) of the Legislative Council unanimously approved four motions proposed by Chairman Hawker “related to the extension of the Anchorage LIO lease” in a June 7, 2013 Legislative Council session. Consistent with internal Legislative Procurement Procedure 040(d), as authorized by AS 36.30.020, Chairman Hawker provided a written

⁵⁷ See ALASKA CONST. ART. II, § § 11-12.

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determination that the material modifications made to the existing lease were appropriate.

Based on these findings, Pam Varni certified that the Agency's would be entering a "10-year real property **lease extension**" of the LIO in compliance with AS 36.30.083(a). As the Legislative Council was constitutionally authorized to exercise and adapt its rulemaking prerogative, as it did here, Plaintiff's request that the court invalidate its decision to extend the lease is simply not justiciable.

Likewise, nothing in the plain language of the statute (or the legislative history) precludes a finding that the Lease Extension was indeed an "extension." The parties in this case unquestionably intended to enter into a lease extension when they executed the lease extension on September 19, 2013, and did in fact enter into such an extension. The Court should deny Plaintiff's motion for partial summary judgment and rule as a matter of law that the Lease Extension qualifies as an "extension" under AS 36.30.083.

A finding in Plaintiff's favor is further precluded by the existence of genuine issues of material fact regarding the availability of a complete defense to ABI's claim under the doctrine of laches. Finally, 716 requests that the court calendar oral argument on this motion under Civil Rule 77(e)(2).

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DATED: 2-16-16

By: 
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 16 day of February 2016, on:

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LEASE AMENDMENT NO. 1

THIS LEASE AMENDMENT, made and entered into on the date the Legislative Affairs Agency Executive Director or her designee signs the lease amendment, 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", hereby amends the lease dated April 6, 2004, recorded in Book 2004-024411-O, Pages 1 - 18, Anchorage Recording District, Third Judicial District, State of Alaska.

WITNESSETH

WHEREAS, Lessor is leasing to Lessee the following described premises, hereinafter "premises",

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;

WHEREAS, there has been a dispute between Lessee and Lessor as to the size and number of the reserved parking spaces provided to Lessee under the Lease;

WHEREAS, during the dispute described in the previous whereas clause, Lessee has rented additional parking spaces from another person and deducted the rental amount for these spaces from the rent paid by Lessee under this Lease; and

WHEREAS, this Lease Amendment represents a settlement of the dispute described in the previous two whereas clauses.

NOW, THEREFORE, LESSOR AND LESSEE AMEND THE LEASE AS FOLLOWS:

1. Section 1, "Rental Property and Rental Rate," of the Lease is amended by amending the phrase, "and Ninety-Eight (98) reserved off-street parking places," to now read "and Eighty-Six (86) reserved off-street parking places,"

2. Beginning on June 1, 2006, the monthly rental rate will be decreased by \$1,000.00 each month to reflect the reduced number of parking spaces that the Lessor will be providing to the Lessee.
3. The Lessor will permit the Lessee's security guard to occupy space in the first floor lobby common area space across from the elevators at no additional cost to the Lessee until the first floor lobby common area space is needed by the Lessor to fulfill space requirements of other tenants in the building.
4. Section 15, "Parking Requirements," of the Lease is deleted and replaced with the following section:

15. **PARKING REQUIREMENTS:** The Lessor shall ensure the requirements of this section 15 are met.

- A. Lessor will provide at no additional cost to the Lessee 86 off-street parking spaces in the upper and lower parking lots adjacent to the west side of the 716 West 4th Avenue building for the use of the Lessee and Lessee's invitees to the building. These 86 spaces must be available to Lessee and Lessee's invitees 24 hours a day 7 days a week.
- B. Each parking space provided under A. of this sec. 15 shall be marked "Reserved" to identify the private parking nature of the space. The current striping of each parking space located in the upper and lower parking lots adjacent to the west side of the 716 West 4th Avenue building will remain in effect for the duration of the lease. In this subsection B, "current" means in existence on the date this lease amendment is entered into.
- C. Parking spaces provided under A. of this sec. 15 must be of sufficient size to allow proper and easy parking and must have a hard and well-drained surface. Each parking space must be marked to provide for proper parking. All parking locations must be well lit and have good accessibility in and out of the parking area.

5. Notwithstanding any other provision in the Lease, Lessor waives any and all claims that Lessor may have or allege against the Lessee for or arising out of the Lessee's withholding of rent from the Lessor during the dispute between the Lessor and the Lessee over the size and number of the reserved parking spaces provided by Lessor under the Lease.

6. **AUTHORIZATION; CERTIFICATION:**

Execution of this lease amendment was authorized by a majority of the members of the Alaska Legislative Council at a meeting on May 22, 2006.

Execution of this lease amendment by the Legislative Affairs Agency Executive Director or her designee hereby constitutes a certification that funds are available in an



2 of 5

2006-063569-0

appropriation to pay for Lessee's monetary obligations under the Lease through June 30, 2006. Availability of funds to pay for Lessee's monetary obligations under the Lease after June 30, 2006, is contingent upon the 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, the Lease will be terminated by the Lessee or amended. To terminate under this section, the Lessee shall provide notice of the termination to the Lessor.

7. All other provisions of the Lease will remain the same.

IN WITNESS WHEREOF, the Lessor and Lessee have executed this lease amendment and renewal on the day, month, and year indicated below.

LESSOR:

716 WEST FOURTH AVENUE, LLC

 8/23/06

Robert B. Acree Date
Member
Tax Identification No.: 03-0443569
Business License No.: 423463

LESSEE:

STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY


Representative Pete Kott
Chair
Alaska Legislative Council 9-11-06
Procurement Officer Date

CERTIFYING AUTHORITY

 9/12/06

Pamela A. Varni Date
Executive Director
Legislative Affairs Agency

APPROVED AS TO FORM:

 6-14-2006
Legal Counsel Date



3 of 5
2006-063569-0

STATE OF ALASKA)
COUNTY OF HAWAII) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 23rd day of August, 2006, before me the undersigned Notary Public in and for the State of ~~Alaska~~ ^{Hawaii}, duly commissioned and sworn as such, personally appeared ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing lease amendment on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing lease amendment as his free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



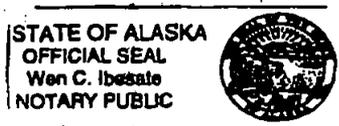
[Signature]
Notary Public in and for ~~Alaska~~ ^{Hawaii}
My commission expires: _____



STATE OF ALASKA)
FIRST JUDICIAL DISTRICT) ss.

THIS IS TO CERTIFY that on the 11th day of September 2006, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared REPRESENTATIVE PETE KOTT, known to me and to me known to be the individual named in and who executed the above and foregoing lease amendment and renewal as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing instrument as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Wen C. Ibesate
Notary Public in and for Alaska
My commission expires: 9/3/07



STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 12th day of September 2006, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the Individual named in and who executed the above and foregoing lease amendment as the EXECUTIVE DIRECTOR of the STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

STATE OF ALASKA
OFFICIAL SEAL
Wen C. Iversen
NOTARY PUBLIC



Wen C. Iversen
Notary Public in and for Alaska
My commission expires: 9/3/07

FOR RECORDING DISTRICT OFFICE USE ONLY:
No Charge - State Business

After recording return to:
Jan Price, Supply Officer
Legislative Affairs Agency
State Capitol
Juneau, AK 99801-1182



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2010-053405-0

Recording Dist: 301 - Anchorage
10/14/2010 2:15 PM Pages: 1 of 5



RENEWAL OF LEASE

LEASE AMOUNT FOR RENEWAL PERIOD: \$663,246.48

THIS RENEWAL OF LEASE, made and entered into on the date the Legislative Affairs Agency 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", hereby amends and renews the lease dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended September 12, 2006, and amended and renewed on March 11, 2009.

WITNESSETH

WHEREAS, the Lessor is currently leasing to the Lessee the following described premises, hereinafter "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.

NOW, THEREFORE, LESSOR AND LESSEE, AGREE AS FOLLOWS:

1. That the Lease is renewed for a term of one (1) year beginning June 1, 2010, and terminating at 11:59 p.m. on May 31, 2011, with the Lessee having three (3) remaining one (1) year renewal options to be exercised by giving notice in writing to Lessor at the Lessor's above address at least thirty (30) days before the expiration of each term.

2. The monthly rental rate of Fifty-Four Thousand, Twenty-Four, and 84/100 dollars (\$54,024.84) remained firm until July 1, 2010, at which time the rent was adjusted to reflect changes in the Lessor's variable costs. The annual adjustment will be based on the percentage of change between 2003 and the calendar year before the calendar year of the adjustment, in the U.S. Department of Labor Consumer Price Index for All Urban Consumers, Anchorage Area (CPI-U). The Annual Adjusted Monthly Rental Rate will be computed as follows:

PERCENTAGE OF CHANGE IN CPI-U

(Annual average CPI-U for the calendar year preceding the year of adjustment) -
(Annual average CPI-U for the calendar year 2003 (162.50) = x

$$X / 162.50\% = y\%$$

ADJUSTED MONTHLY RENTAL RATE

[(35% x Base Monthly Rental Rate) x % of change in CPI-U] + Base Monthly Rental Rate = Adjusted Monthly Rental Rate.

[(35% x Base Monthly Rental Rate) x y%] + Base Monthly Rental Rate = Adjusted Monthly Rental Rate.

The monthly rental rate for the year beginning July 1, 2010, is computed as follows:

Annual average CPI-U for the calendar year 2009 (191.70) -
Annual average CPI-U for the calendar year 2003 (162.50) = 29.20

$$29.20/162.50\% = 17.97\%$$

$$[(35\% \times \$52,000.00) \times 17.97\%] + \$52,000 = \$55,270.54$$

3. **AUTHORIZATION; CERTIFICATION:** Execution of this Renewal of Lease was authorized by a majority of the members of the Alaska Legislative Council at a meeting on July 19, 2010.

Funds are available in an appropriation to pay for the Lessee's monetary obligations under the lease through June 30, 2011. In addition to any other right of the Lessee under this Lease to terminate the Lease, if, in the judgment of the Legislative Affairs



2 of 5

Agency Executive Director, sufficient funds are not appropriated, 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.

4. All other provisions of the original lease, as amended and renewed, will remain the same.

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Renewal of Lease on the day, month, and year indicated below.

LESSOR:
716 WEST FOURTH AVENUE, LLC



Robert B. Acree 9/29/10
Member Date
Tax Identification No.: 03-0443569
Business License No.: 423463

LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY

*T. Benitez de' staff
for RP. John Harris*

Representative John Harris Date
Chair 10-7-10
Alaska Legislative Council
Procurement Officer

CERTIFYING AUTHORITY:

APPROVED AS TO FORM:

Pamela A. Varni 10/11/10

Pamela A. Varni Date
Executive Director
Legislative Affairs Agency

B. J. Kane 7/22/10

Legal Counsel Date



3 of 5

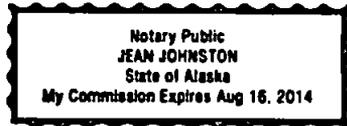
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716-000885

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 20th day of September, 2010, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing Renewal of Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing Renewal of Lease on behalf of and as the free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

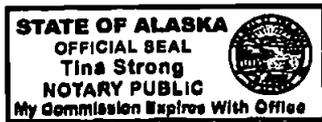


Jean Johnston
Notary Public in and for Alaska
My commission expires: 8/16/14

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 1st day of October, 2010, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared Representative John Harris, known to me and to me known to be the individual named in and who executed the above and foregoing Renewal of Lease as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing Renewal of Lease as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Tina Strong
Notary Public in and for Alaska
My commission expires: "with office"



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2010-053405-0

Page 4 of 5

716-000886

Exhibit A
Page 9 of 38

001965

STATE OF ALASKA

)
) ss.
)

FIRST JUDICIAL DISTRICT

THIS IS TO CERTIFY that on the 11th day of October, 2010, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing Renewal of Lease as the EXECUTIVE DIRECTOR of the STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing Renewal of Lease as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Wen C. Ibesate
Notary Public in and for Alaska
My commission expires: "With Office"

FOR RECORDING DISTRICT OFFICE USE ONLY:
No Charge - State Business

After recording return to:
Tina Strong, Supply Officer
Legislative Affairs Agency
State Capitol, Rm 3
Juneau, AK 99801-1182



5 of 5
2010-053405-0

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2011-019915-0

Recording Dist: 301 - Anchorage
4/29/2011 3:02 PM Pages: 1 of 5



RENEWAL OF LEASE

LEASE AMOUNT FOR RENEWAL PERIOD: \$667,876.56

THIS RENEWAL OF LEASE, made and entered into on the date the Legislative Affairs Agency Executive Director or her designee signs the Renewal of 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", hereby amends and renews the lease dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended September 12, 2006, amended and renewed on March 11, 2009, and renewed October 11, 2010.

WITNESSETH

WHEREAS, the Lessor is currently leasing to the Lessee the following described premises, hereinafter "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.

NOW, THEREFORE, LESSOR AND LESSEE, AGREE AS FOLLOWS:

1. That the Lease is renewed for a term of one (1) year beginning June 1, 2011, and terminating at 11:59 p.m. on May 31, 2012, with the Lessee having two (2) remaining one (1) year renewal options to be exercised by giving notice in writing to Lessor at the Lessor's above address at least thirty (30) days before the expiration of each term.

2. The monthly rental rate of Fifty-Five Thousand, Two Hundred Seventy, and 55/100 dollars (\$55,270.55) will remain firm until July 1, 2011, at which time the rent will be adjusted to reflect changes in the Lessor's variable costs. The annual adjustment will be based on the percentage of change between 2003 and the calendar year before the calendar year of the adjustment, in the U.S. Department of Labor Consumer Price Index for All Urban Consumers, Anchorage Area (CPI-U). The Annual Adjusted Monthly Rental Rate will be computed as follows:

PERCENTAGE OF CHANGE IN CPI-U

(Annual average CPI-U for the calendar year preceding the year of adjustment) -
(Annual average CPI-U for the calendar year 2003 (162.50) = x

$$X / 162.50\% = y\%$$

ADJUSTED MONTHLY RENTAL RATE

[(35% x Base Monthly Rental Rate) x % of change in CPI-U] + Base Monthly Rental Rate = Adjusted Monthly Rental Rate.

[(35% x Base Monthly Rental Rate) x y%] + Base Monthly Rental Rate = Adjusted Monthly Rental Rate.

The monthly rental rate for the year beginning July 1, 2011, is computed as follows:

Annual average CPI-U for the calendar year 2010 (195.14) -
Annual average CPI-U for the calendar year 2003 (162.50) = 32.64

$$32.64/162.50\% = 20.09\%$$

$$[(35\% \times \$52,000.00) \times 20.09\%] + \$52,000 = \$55,656.38$$

3. **AUTHORIZATION; CERTIFICATION:** Execution of this Renewal of Lease was authorized by a majority of the members of the Alaska Legislative Council at a meeting on March 17, 2011.

Funds are available in an appropriation to pay for the Lessee's monetary obligations under the lease through June 30, 2012. In addition to any other right of the Lessee under this Lease to terminate the Lease, if, in the judgment of the Legislative Affairs



2 of 5

2011-019915-0

Agency Executive Director, sufficient funds are not appropriated, 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.

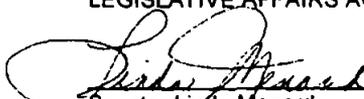
4. All other provisions of the original lease, as amended and renewed, will remain the same.

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Renewal of Lease on the day, month, and year indicated below.

LESSOR:
716 WEST FOURTH AVENUE, LLC

LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY


Robert B. Acree
Date 4/5/11


Senator Linda Menard
Date 04-13-11

Member
Tax Identification No.: 03-0443569
Business License No.: 423463

Chair
Alaska Legislative Council
Procurement Officer

CERTIFYING AUTHORITY:

APPROVED AS TO FORM:


Pamela A. Varni
Date 4/13/11
Executive Director
Legislative Affairs Agency


Melissa L. Gunniston
Date 3/30/11
Legal Counsel



3 of 5
2011-019915-0

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 5th day of April, 2011, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing Renewal of Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing Renewal of Lease on behalf of and as the free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Jean Johnston
Notary Public in and for Alaska
My commission expires: 8/16/14

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 13 day of April, 2011, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared SENATOR LINDA MENARD, known to me and to me known to be the individual named in and who executed the above and foregoing Renewal of Lease as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and she acknowledged to me that she executed the foregoing Renewal of Lease as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Tina Strong
Notary Public in and for Alaska
My commission expires: with office

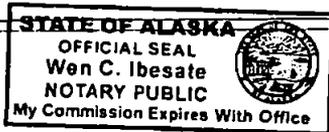


2011-019915-0

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 13th day of April, 2011, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing Renewal of Lease as the EXECUTIVE DIRECTOR of the STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing Renewal of Lease as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Wen C. Ibesate
Notary Public in and for Alaska
My commission expires: "With Office"

FOR RECORDING DISTRICT OFFICE USE ONLY:
No Charge - State Business

After recording return to:
Tina Strong, Supply Officer
Legislative Affairs Agency
State Capitol, Rm 3
Juneau, AK 99801-1182



5 of 5
2011-019915-0

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2012-040759-0

Recording District 301 ANCHORAGE

07/23/2012 03:15 PM Page 1 of 5



RENEWAL OF LEASE NO. 4

LEASE AMOUNT FOR RENEWAL PERIOD: \$675,624.30

THIS RENEWAL OF LEASE NO. 4, made and entered into on the date the Legislative Affairs Agency Executive Director or her designee signs the Renewal of Lease No. 4, 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 and renews the lease dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended September 12, 2008, amended and renewed on March 11, 2009, and renewed October 11, 2010 and April 13, 2011.

WITNESSETH

WHEREAS, the Lessor is currently leasing to the Lessee the following described premises, hereinafter "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.

NOW, THEREFORE, LESSOR AND LESSEE, AGREE AS FOLLOWS:

1. That the Lease is renewed for a term of one (1) year beginning June 1, 2012, and terminating at 11:59 p.m. on May 31, 2013, with the Lessee having one (1) remaining one (1) year renewal option to be exercised by giving notice in writing to Lessor at the Lessor's above address at least thirty (30) days before the expiration of the renewal term.

2. The monthly rental rate of Fifty-Five Thousand, Six Hundred Fifty-Six, and 38/100 dollars (\$55,656.38) will remain firm until July 1, 2012, at which time the rent will be adjusted to reflect changes in the Lessor's variable costs. The annual adjustment will be based on the percentage of change between 2003 and the calendar year before the calendar year of the adjustment, in the U.S. Department of Labor Consumer Price Index for All Urban Consumers, Anchorage Area (CPI-U). The Annual Adjusted Monthly Rental Rate will be computed as follows:

PERCENTAGE OF CHANGE IN CPI-U

(Annual average CPI-U for the calendar year preceding the year of adjustment) -
(Annual average CPI-U for the calendar year 2003 (162.50) = x

$$x / 162.50\% = y\%$$

ADJUSTED MONTHLY RENTAL RATE

[(35% x Base Monthly Rental Rate) x % of change in CPI-U] + Base Monthly Rental Rate = Adjusted Monthly Rental Rate.

[(35% x Base Monthly Rental Rate) x y%] + Base Monthly Rental Rate = Adjusted Monthly Rental Rate.

The monthly rental rate for the year beginning July 1, 2012, is computed as follows:

Annual average CPI-U for the calendar year 2011 (201.247) -
Annual average CPI-U for the calendar year 2003 (162.50) = 38.927

$$38.927/162.50\% = 23.96\%$$

$$[(35\% \times \$52,000.00) \times 23.96\%] + \$52,000 = \$56,380.72$$

3. **AUTHORIZATION: CERTIFICATION:** Execution of this Renewal of Lease No. 4 was authorized by a majority of the members of the Alaska Legislative Council at a meeting on March 22, 2012.

Funds are available in an appropriation to pay for the Lessee's monetary obligations under the lease through June 30, 2013. 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, 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.

4. All other provisions of the original lease, as amended and renewed, will remain the same.

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Renewal of Lease No. 4 on the day, month, and year indicated below.

LESSOR:
716 WEST FOURTH AVENUE, LLC



Robert B. Acree Date
Member
Tax Identification No.: 03-0443569
Business License No.: 423463

LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY



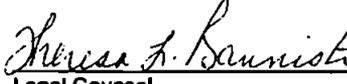
Senator Linda Menard Date
Chair
Alaska Legislative Council
Procurement Officer

CERTIFYING AUTHORITY:

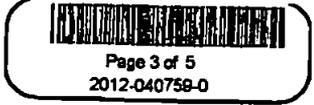


Pamela A. Varni Date
Executive Director
Legislative Affairs Agency

APPROVED AS TO FORM:



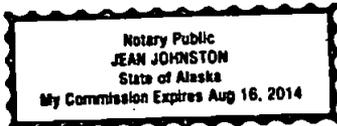
Theresa S. Saunio Date
Legal Counsel



STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 10th day of May, 2012, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing Renewal of Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing Renewal of Lease on behalf of and as the free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

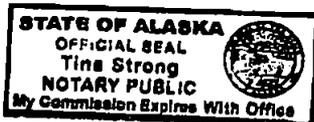


Jean Johnston
Notary Public in and for Alaska
My commission expires: 8/16/14

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 12th day of July, 2012, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared SENATOR LINDA MENARD, known to me and to me known to be the individual named in and who executed the above and foregoing Renewal of Lease as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and she acknowledged to me that she executed the foregoing Renewal of Lease as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Tina Strong
Notary Public in and for Alaska
My commission expires: "with office"



STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 19th day of July, 2012, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing Renewal of Lease as the EXECUTIVE DIRECTOR of the STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing Renewal of Lease as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

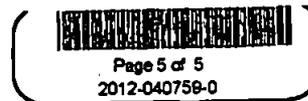
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Wen C. Ibesate
Notary Public in and for Alaska
My commission expires: "With Office"

FOR RECORDING DISTRICT OFFICE USE ONLY:
No Charge - State Business

After recording return to:
Tina Strong, Supply Officer
Legislative Affairs Agency
State Capitol, Rm 3
Juneau, AK 99801-1182



2004-024411-0

Recording Dist: 301 - Anchorage
4/9/2004 3:31 PM Pages: 1 of 18

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LEASE

LEASE AMOUNT FOR FIRST YEAR: \$597,000.00
(excluding CPI-U adjustment amount)

THIS LEASE, made and entered into on the date the Legislative Affairs Agency 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".

WITNESSETH:

1. **RENTAL PROPERTY AND RENTAL RATE:** The Lessor leases to the Lessee and the Lessee leases from the Lessor the premises, hereinafter "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 Ninety-Eight (98) reserved off-street parking places, for a term of five (5) years beginning June 1, 2004, and terminating at 11:59 p.m. on May 31, 2009, with the Lessee having five (5) one (1) year renewal options to be exercised by giving notice in writing to Lessor at the Lessor's above address at least thirty (30) days before the expiration of each term. The Base Monthly Rental is Fifty-Two Thousand and No/100 Dollars (\$52,000.00) each month; however for the period June 1, 2004, through May 31, 2005, the Base Monthly Rental will be reduced by \$2,250.00 each month by the Lessor to partially offset the costs incurred by the Lessee in purchasing and installing security camera equipment and any HVAC work that will have to be done as part of the Lessee's renovation.

The rent shall be adjusted the first of July of each year beginning in 2005 to reflect changes in the Lessor's variable costs. Variable costs are defined as all operational costs other than debt service and profit and further defined for the purpose of the Lease as thirty-five percent (35%) of the Base Monthly Rental Rate. The adjustment will be based on the percentage of change, between ~~2004~~ and the calendar year before the calendar year of the adjustment, in the U.S.

2003

Department of Labor Consumer Price Index for All Urban Consumers, Anchorage Area (CPI-U). The Annual Adjusted Monthly Rental Rate will be computed as follows:

PERCENTAGE OF CHANGE IN CPI-U

(Annual average CPI-U for the calendar year preceding the year of adjustment) - (Annual average CPI-U for the calendar year XX (XX)) = x

x/Annual average CPI-U for the calendar year XX (XX)% = y%

ADJUSTED MONTHLY RENTAL RATE

[(35% x Base Monthly Rental Rate) x % of change in CPI-U] + Base Monthly Rental Rate = Adjusted Monthly Rental Rate.

[(35% x Base Monthly Rental Rate) x y%] + Base Monthly Rental Rate = Adjusted Monthly Rental Rate.

Retroactive adjustments will not be allowed.

The monthly rental payments shall be due and payable on the first day of each month of the Lease and shall be sent by first class mail to the office of the Lessor whose address is listed above.

2. **ADA COMPLIANCE:** On the date of occupancy and throughout the entire occupancy of the Lessee, the Lessor shall ensure that the premises (including, but not limited to, restrooms), the reserved parking spaces, the common areas (including, but not limited to, restrooms and parking area), and any subsequent alterations to the premises shall meet the specifications of the ADA Accessibility Guidelines for Buildings and Facilities per the Americans with Disabilities Act (ADA) Appendix A to 28 CFR 36, as currently written and as they may be subsequently amended (hereafter referred to as ADA compliance).

Under the previous paragraph, the premises (including, but not limited to restrooms), the reserved parking spaces, the common areas (including, but not limited to, restrooms and parking area), and subsequent alterations must meet the ADA compliance requirements as they apply to a public entity. The Lessor must provide space that meets the same level of ADA compliance as if the leased space were in a newly constructed State-owned facility from which all program services are directly delivered to the public.

The Lessee's acceptance of the Lessor's space and alterations and any inspection by the Lessee do not relieve the Lessor of responsibility for ADA compliance. The Lessor further agrees to perform and pay the costs of any alterations needed to meet the above-prescribed ADA compliance.

The Lessor must furnish an ADA Facility Audit Report from an architect registered to practice in the State of Alaska, at no cost to the Lessee, after the completion of any new construction or any alteration, except for Lessee's and Lessor's improvements under section 3 of this Lease, of the existing space undertaken during the Lease. The ADA Facility Audit Report must indicate



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that the offered space complies with all the requirements of the ADA compliance and this section.

If these provisions on ADA compliance conflict with another provision in this Lease, these provisions govern.

3. **DELIVERY OF PREMISES; RENOVATIONS:** The Lessee is currently occupying the premises under the current lease, which terminates May 31, 2004. Except for Lessor's carpeting obligations in this section 3, the Lessor will not be reconfiguring or making other improvements to prepare the premises for this Lease, unless the improvements are required by another section of this Lease. The Lessor has agreed to allow the Lessee to perform renovations to the current premises before the Lease term begins on June 1, 2004. Although Lessor and Lessee are currently leasing most of the premises under the current lease, this Lease will apply to the renovations allowed under this section 3, and the current lease is amended to that extent. These renovations will be paid for by the Lessee and will include, but are not limited to, the following:

- 1) re-locating the Data Processing Staff to what is currently Suite 240A, constructing a separate entrance to the room to split up the suite from what is currently 240B, and installing appropriate electrical, data, and phone jacks;
- 2) re-locating the Network Room from the basement area to what is currently the Supply Room on the second floor of the premises, and installing appropriate electrical, data and phone jacks;
- 3) re-wiring all offices located on floors 2 – 6 with Cat 5e or Cat 6 wiring;
- 4) re-locating the Legislative Ethics Office to what is currently Suite 240B, constructing a separate entrance to the room to split up the suite from what is currently 240A, and installing appropriate electrical, data, and phone jacks if required;
- 5) expanding the current large teleconference room by taking down a wall of what is currently Suite 230 and making Suite 230 part of the large teleconference room;
- 6) constructing walls, adding a door, tearing down walls, and installing appropriate electrical, data and phone jacks to make 3 House offices out of what is currently Suite 380 and the Storage Room;
- 7) constructing walls, adding a door, tearing down walls, and installing appropriate electrical, data and phone jacks to make 3 House offices out of what is currently Suite 470 and 2 Storage Rooms;
- 8) constructing a new office in what is currently open space in the hallway by the Senate Conference Room and installing appropriate electrical, data, and phone jacks;
- 9) enlarging what is currently a Storage Room, Suite 680, into a larger House office by constructing walls, tearing down a wall in House Conference Room, Suite 670, adding a door, and installing appropriate electrical, data, and phone jacks;
- 10) re-balancing the HVAC system due to the above remodel.

The Lessor has agreed to provide, at no cost to the Lessee, up to an additional 540 square yards of new high quality commercial quality carpet that matches the existing carpet in the amount necessary to patch any carpet that had been re-carpeted in the fall of 2002 in the offices affected by the above renovations. In addition, the Lessor has also agreed to provide and install new carpeting and cove base in all offices that were not re-carpeted in the fall of 2002, at no cost to the Lessee. The Lessee will notify the Lessor when these offices will be



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ready to be carpeted, and the Lessor will complete the installation within one month after Lessee's notification.

4. **UTILITIES AND SERVICES:** The Lessor will provide at no additional cost beyond the rental payments all utilities, including heat, electricity, sewage, potable water, and trash removal from the premises, and janitorial services, except that the Lessee will pay its own telephone utility bills. The Lessor will also provide, at no additional cost beyond the rental payments, its building maintenance staff to promptly lower and raise the Alaska State Flag and the United States Flag, that are installed outside the building, whenever requested by the Lessee to do so.
5. **ELECTRICAL REQUIREMENTS:** The Lessor shall ensure that the requirements in this section 5 are met.
- A. **ELECTRICAL WIRING STANDARDS:** All electrical work performed and electrical systems shall comply with the current applicable editions of:
1. the National Electrical Code of National Board of Fire Underwriters;
 2. the rules, regulations, and codes of the State and applicable municipality;
 3. the standardized rules of the National Electrical Manufacturer's Association.

The above minimum requirements shall not preclude the use of higher-grade materials or better workmanship.

- B. **MAIN SERVICE FACILITIES:** The main service facilities and meter panel shall be adequate to provide the electrical load that will be required. This service shall be enclosed in a suitable enclosure which is readily accessible for inspection. Single phase, 60 cycle, 120/240 V service shall be supplied.
- C. **LIGHTING:** Lighting fixtures shall be provided which are capable of producing well diffused illumination at working levels of no less than 75 FT-C in office and clerical areas; and no less than 50 FT-C in lobbies, restrooms, parking areas and similar areas. Fixtures shall be provided with louvers or plastic diffusers. Bare lamp fixtures will not be acceptable.

Specified illumination levels must be at task surface height (generally 30 inches above floor) unless noted otherwise in this section 5. For types of spaces not listed in the previous paragraph, illumination levels must be in accordance with current IES recommendations.

All lamps shall be consistent throughout space with regard to color, temperature, quality, and type. A maintenance program shall be conducted throughout the duration of the Lease to maintain this consistency.

- D. **SWITCHING:** Individual switching shall be provided for each room or area. Switches shall be located inside the lighted space, adjacent to the entry, accessible with doors open or closed. In lieu of or in addition to the previous sentence, lighting may be controlled by a building control system. Motion detectors are acceptable in lieu of switches for all spaces except open offices. Three- or four-way switching, as



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appropriate, shall be provided in corridors and large rooms with more than one entry.

- E. **ELECTRICAL OUTLETS:** Existing outlets in the premises currently occupied by the Lessee are sufficient. If additional outlets are required, the Lessee shall be responsible for these costs; however, the Lessor shall be responsible for maintaining all outlets in good working order.

Legislative Information Office: A 120V, 20 amp dedicated outlet shall be provided in the copy room for the LIO copier.

Senate Space: A 120V, 60hz, 20 amp dedicated shall be provided in each of the two (2) copy rooms.

House Space: A 120V 20 amp dedicated shall be provided in each of the two (2) copy rooms.

In toilet rooms a minimum of one duplex receptacle (with ground fault protection) shall be provided above the counter (adjacent to sink or mirror) and a minimum of one general use receptacle shall be provided.

- F. **DOCUMENTATION:** The Lessor shall post a floor plan at each circuit breaker panel with labeling to correspond to individual circuit breaker labels, and keep the posted floor plan up to date.

6. **DRINKING WATER AND RESTROOM REQUIREMENTS:** The Lessor shall ensure that the drinking water and restroom facilities meet the requirements in this section 6.

- A. **DRINKING WATER:** Water suitable for drinking purposes shall be provided through drinking fountains or water coolers located at a central location in the main hallways on each floor. If water coolers are provided, the delivered bottled water with disposable paper cups shall be supplied by the Lessor at no additional cost to the Lessee.

- B. **RESTROOMS:** The Lessor shall provide separate adequate toilet and lavatory facilities for men and women in compliance with all applicable codes and the state's safety regulations, and section 2 of this Lease. Each toilet room shall have single entrance doors, with automatic door closers or other approved entrance arrangement. They shall be equipped or provided with stall partitions with doors. They shall also be provided with adequate mirrors, soap, tissue and paper towel dispensers, sanitary napkin dispensers in the women's restrooms, deodorizers, sanitary tissue seat cover dispensers, and ventilation. Each restroom shall have hot and cold running water. Public restrooms shall not be located within the Lessee's leased space. Access to the public restrooms may not be through the Lessee's leased space.

7. **HEATING, COOLING, AND VENTILATION REQUIREMENTS:** The Lessor shall ensure that the requirements of this section 7 are met.

- A. **HEATING AND COOLING:** Facilities shall be provided to maintain a temperature in all the offices and similar type space uniformly within 68 degrees F to 78 degrees F

The existing configuration of the thermostat control units and heating zones in the premises currently occupied by the Lessee are sufficient, however, the Lessor shall be responsible for maintaining such in good working order.

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range. The temperature to be maintained in this zone is the area two (2) feet above the floor to a height of five (5) feet above the floor.

If the temperature is not maintained within the 68 degrees F to 78 degrees F range, as required by the previous paragraph, for a period of more than one (1) working day, 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.

- B. **VENTILATION:** All occupied areas of the building shall be provided with at least the minimum amount of outside (ventilation) air prescribed by ASHRAE Standard 62-89: "Ventilation for Acceptable Indoor Air Quality". This ventilation air shall be introduced by mechanical means. A minimum of six air changes per hour shall be provided in occupied spaces. Exhaust air systems serving toilet rooms and janitor's closets shall be sized to provide a minimum of 10 air changes per hour.
8. **WINDOW COVERING REQUIREMENTS:** The Lessor shall comply with this section 8. All outside windows shall be equipped with blinds, or other approved material and shall be installed, ready for use with all necessary hardware when the Lessee occupies the rental premises. Window coverings shall be of good quality and appearance matching the decor of the space and shall adequately reduce incoming heat and light to a comfortable level. The Lessee reserves the right to select the color of the window coverings, if new window coverings are to be installed.
9. **FLOOR COVERING REQUIREMENTS:** The Lessor shall comply with this section 9. Office floors shall be covered with a good quality of commercial grade carpeting. Other floors shall be covered with carpet, suitable linoleum, or tile of standard size which is free of defects. The Lessee reserves the right to select the color of the floor covering, if a new floor covering is to be installed. Carpeting shall be of a good quality commercial grade and shall not generate more than a minimal amount of static electricity under normal use. New floor coverings shall be installed in a skilled manner common to the trade.
10. **ACOUSTICAL REQUIREMENTS:** All offices and similar type space shall be equipped with acoustical ceiling tiles, panels, or other sound absorption material. The overall noise factor shall not exceed 90 decibel (dba) for an eight-hour workday at level A reading. Acoustical control must be sufficient to permit conferences, waiting room noise, and office work to progress simultaneously. It is the Lessor's responsibility to furnish the proper combination of sound



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absorptive material on ceilings, walls, and floors to achieve the specified preferred notice criteria level.

11. **PARTITION REQUIREMENTS:** Unless otherwise specified by Lessee, the Lessor shall ensure that all partitions are floor to ceiling, flush type, and of drywall construction, and that the finish is paint, paneling, or other Lessee-approved material.
12. **PAINTING REQUIREMENTS:** The Lessor shall ensure that all surfaces which normally would be painted are 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 (a) select the colors for areas to be newly painted; or (b) determine whether existing painted surfaces are satisfactory, if the Lessor wants to use the existing painted surfaces without painting them for the Lease.
13. **DOOR HARDWARE REQUIREMENTS:** The Lessor shall ensure that the requirements of this section 13 are met. All doors shall be equipped with all necessary hardware. Cylinder locks and door checks shall be furnished and installed on all doors which open into public corridors or space otherwise accessible to other than those persons to be employed in the premises. All locks shall be masterkeyed and duplicate individual keys shall be supplied as required. Outside door keys shall be supplied as required by the Lessee.
14. **VOICE AND DATA REQUIREMENTS:** The Lessor shall ensure that adequate telephone service is be available and that all necessary conduit and other features necessary to satisfy the telephone company's requirements are included in the building. The Lessee will be responsible for the actual connection of telephone and communications equipment required by the Lessee and as stated in section 3 ("Delivery of Premises; Renovations"). Under section 3 of this Lease, the Lessee will be responsible for the re-wiring at the start of this Lease of all offices on floors 2 through 6 in the premises with Category 5e or Category 6 compliant wiring, including, but not limited to, the installation of any necessary conduit.
15. **PARKING REQUIREMENTS:** The Lessor shall ensure the requirements of this section 15 are met.

Reserved off-street parking shall be of sufficient size to allow proper and easy parking, and have a hard and well-drained surface. The area shall be marked "Reserved" to identify the private parking nature of each reserved space, and each space reserved by the Lessee within the area shall be at least 8-1/2 feet wide by 17 feet long and shall be marked to provide for proper parking and otherwise identified as private parking.

Ninety-Eight (98) reserved parking spaces shall be provided for the exclusive use of the Lessee. These ninety-eight (98) parking spaces must be provided at no additional cost to the Lessee.

Ninety (90) of the reserved ninety-eight (98) parking spaces provided for the exclusive use of the Lessee must be located in the parking lot adjacent to the west side of the 716 West 4th Avenue building. All parking locations must be well lit and have good accessibility in and out of the parking area.



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An additional eight (8) reserved public parking spaces must be provided for the exclusive use of the Lessee for the Lessee's invitees to the building. This parking must be located no more than two blocks walking distance from the office location and have good accessibility in and out of the parking area.

16. **FIRE PREVENTION:** The Lessor shall maintain the premises in keeping with good fire prevention practices. The Lessee reserves the right at reasonable times to enter and make fire prevention and fire protection inspections of the building and space occupied.
17. **HAZARDS:** The Lessor shall maintain the building free of structural or mechanical hazards.
18. **JANITORIAL SERVICES:** The Lessor shall be responsible for janitorial services as outlined below for the entire premises, common areas, and private parking areas. Janitorial services must be performed by competent employees of the Lessor or by a competent janitorial company and the Lessor must notify the Lessee of all names of who will be performing these janitorial services. The Lessor must give the janitorial employees or company a copy of the actual janitorial duties that are stated in the Lease. The Lessor must notify the Lessee of all janitorial employee or company changes relating to who will be performing the janitorial services. When the janitorial work is being performed, a person not performing the janitorial work may not enter or remain on the leased premises, except as otherwise authorized by Lessee.

Janitorial services shall be performed after office hours unless otherwise specified or as conveniently as possible to the occupying entities. The premises generally are occupied Monday through Friday except State holidays. In the event that various areas are occupied at times other than specified herein, the janitorial services shall be performed at other times as convenient. The Lessee prefers the following:

A. DAILY SERVICES:

1. Empty wastebaskets. Empty and wipe ashtrays and place contents in a metal container separate from other waste material. Collect all wastepaper and trash and dispose of it away from the premises.
2. Sweep halls and floors in the interior of the building. Tile floors are to be swept with a yarn broom or a dust mop treated with polyethylene glycol or similar non-injurious material. (If lobby area is tiled, B-1 will become a daily service.)
3. Vacuum all carpets in offices, conference rooms, workstations, hallways, aisles used for circulation within said premises, common areas, entryways, elevator lobbies and corridors.
4. Dust all visible surfaces of furniture, fixtures, and equipment to a height of six (6) feet.
5. Mop or scrub toilet room floors, wash all plumbing fixtures with warm water and soap. Disinfect urinals and water closets. Damp wipes all dispensers, tiled portion of toilet room walls and stall partitions.



6. Provide and maintain adequate supplies of toilet paper, seat covers, deodorizers, sanitary napkins, towels and soap in toilet rooms. These supplies are to be of standard or better quality and are to be furnished by the Lessor. The Lessor shall also provide a closed disposal container for waste sanitary napkins.
7. Clean and disinfect any drinking fountains.
8. Police sidewalks by collecting and removing all trash and other discarded materials.
9. At the end of each workday, the janitorial supervisor must inspect the entire building to ensure that all work is complete and all necessary doors are locked.

B. WEEKLY SERVICES:

1. Damp mop all waxed floors and machine buff to remove traffic marks and restore luster of wax.
2. Remove all fingermarks and smudges from walls, woodwork, and glass surfaces.

C. MONTHLY SERVICES: Vacuum fabric furniture.

D. EVERY SIX MONTHS SERVICES:

1. Dust or vacuum window coverings such as blinds, etc., as may be the case, overhead pipes, ventilation vents, or molding, etc., that must be reached by ladder.
2. Dust or wash light fixtures as appropriate for greatest light efficiency.
3. Wash windows and glass wind deflectors inside and out leaving no streaks or unwashed places. Wipe water spots from sills and frames. Use drop cloth as required to protect adjacent surfaces, fixtures, and furniture. Wash windows at equal intervals of time, weather and conditions permitting.
4. Wash all wastebaskets.
5. Wash walls in public halls and stairwells where wall covering permits. Wash pipes and rails in stairwells. Clean and wax all paneling.
6. Shampoo carpets in high traffic areas of the premises.

E. AS REQUIRED:

1. Replace burned out lamps (to be furnished by the Lessor).
2. Remove snow and ice from sidewalks, entrances, outside storage areas, parking areas, and other areas as applicable to an extent which will render the areas safe to pedestrian traffic and automobile operation.
3. Shampoo ALL carpeted areas of the premises.



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4. Remove spots and stains from carpets, tile and linoleum. Remove all foreign matter (gum, smudges, etc.) from floors, handrails and furniture.
5. Remove all wax from all floors by mopping or scrubbing with a synthetic detergent or wax remover, rinse thoroughly and apply good skid resistant wax of a type recommended by floor tile manufacturers. When wax is dry, machine buff to smooth sheen.
6. Clean or replace all entry rugs. Rugs are to be furnished by the Lessor at each building entrance and will be of sufficient size to preclude the tracking of dirt and mud into the building.

19. **COMPLIANCE WITH LAWS:** The Lessor shall comply with the requirements of this section 19.

- A. Except as otherwise provided elsewhere in this Lease, all improvements and new construction of existing structures, and all appurtenances, improvements, new construction, and existing structures shall conform to all applicable state, Federal and local laws, ordinances, codes, and regulations pertaining to them. In the absence of local or state regulations, national codes shall apply. Minimum requirements of the Lease shall not be construed as lowering the standard established by local regulations, and when local regulations and codes contain more stringent provisions, they shall govern. The Lessor shall be responsible for obtaining all required permits. The premises and the common areas must comply with Federal and state law relative to occupational health and safety regulations. The Lessor shall be responsible for the accomplishment and cost of any building alterations necessary to comply with these requirements.
- B. The Lessor must comply with all other applicable federal and state labor, wage/hour, safety and associated laws that have a bearing on this Lease and must have all licenses and permits required by the state and/or municipality for the performance of the work required by this Lease.

20. **MAINTENANCE AND REPAIR:** The Lessor shall at all times maintain the premises and common areas in a safe condition and in a good state of general repair, maintenance, and tenantable condition, including, but not limited to, the roof and the heating, electrical, ventilation, plumbing, sanitary, and any elevator or escalator facilities. The Lessor shall keep the roof free from roof leaks. The Lessor shall keep the common areas in a clean condition. The Lessor shall keep the building and the areas immediately surrounding and belonging to the building free from objectionable tenancy, odors, vermin, rodents, and other features that will in the opinion of the Lessee be detrimental to Lessee's operation. The term "repair" includes repairs of any type, including, but not limited to, exterior and interior, structural and nonstructural, routine or periodic, except in the case of damage arising from the negligence of the Lessee's agents or employees.

21. **SIGNS:** The Lessor shall provide and erect/affix adequate signage to identify the Lessee's presence and to easily direct the public to the Lessee's space. The Lessor shall provide and erect, at no cost to the Lessee, signage as follows: in all buildings, entrances, and common lobbies, hallways and elevators, and on all doors or walls at entrances to the Lessee's leased spaces.

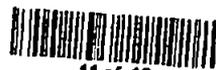


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The Lessee reserves the right to erect or affix additional door or wall signs, at the Lessee's cost, within its leased space to further identify room names and/or numbers. The size and character of the signs shall be at the Lessee's discretion and shall not unreasonably detract from the aesthetics of the building.

22. **ELEVATORS:** The Lessor shall ensure that the premises under this Lease which are on the second floor and above are served by an elevator that, in addition to complying with section 2 of this Lease, complies with the current applicable editions of the rules, regulations, and codes of the State, and the applicable municipality. Documentation from a licensed elevator repairperson stating that the elevator is in good working order and meets all the minimum standards shall be provided by the Lessor, at no cost to Lessee, if requested by the Lessee.
23. **RENOVATION:** At least every five (5) years of occupancy or at the reasonable written request of the Lessee, the Lessor shall renovate the premises by refinishing all damaged or worn walls, ceilings, floors, or built-in fixtures or replacing damaged or worn wall, floor or window coverings or paint. If the Lessor does not respond to such reasonable renovation requests by the Lessee, the Lessee reserves the right to hire competent workers to accomplish such renovation(s) at the Lessor's expense, and may deduct the costs from the rent payments. 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 select the color(s) of the floor covering, if a new floor covering is to be installed, window coverings, if new window coverings are to be installed, and paint for areas to be newly painted.
24. **WAGE-RELATED REQUIREMENTS:** If the Lessor performs construction, alteration, repair, renovation, or redecoration work while the Lessee is occupying the premises, and if this work amounts to 20 percent or more of the entire term of this Lease (excluding optional renewals), 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 subcontractors 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 subcontractors 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 Wage and Hour Administration of the Department of Labor for more information.
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, but not limited to, elevators, lobbies, stairwells, and restrooms. The Lessor shall provide seven-day a week security patrolling for the building and parking area at no cost to the Lessee. The Lessee will be responsible for purchasing and installing security cameras in the lower parking area, and for their operation and maintenance, including any monitoring.


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26. **ACCESS BY LESSOR:** The Lessor and its agents will have the right to enter the premises at any time during business hours and after reasonable notice to Lessee (in case of emergency, at any time and without notice) to examine and make the repairs, alterations, improvements, or additions that Lessor determines to be necessary or desirable, or to show the premises to actual or potential Lessees, purchasers, workers, or contractors. If the Lessee is not personally present to permit entry and an entry is necessary to make repairs, Lessor may enter the same by master key (or force if an emergency) without rendering the Lessor liable for the actual entry. The Lessor may not enter the premises for other reasons without the permission of the Lessee. Nothing contained in this section shall be construed to impose on the Lessor a duty of repair of the building except as provided for elsewhere in the Lease.
27. **USE OF PREMISES:** The Lessee will use the premises only for an office and in a careful and proper manner. Use for an office includes use for public meetings. The Lessee will not use or permit all or part of the premises to be used for another purpose without the prior written consent of the Lessor, which shall not be unreasonably withheld. The Lessee will not use or occupy the premises or permit them to be used or occupied for a purpose or business considered extra-hazardous on account of fire or other hazard, or in a manner which violates federal, state, or local laws or regulations.
28. **QUIET ENJOYMENT:** If the Lessee pays the rent as provided by the Lease and keeps, observes, and performs all of the other covenants of the Lease by it to be kept, performed and observed, the Lessee shall and may peaceably and quietly have, hold, and enjoy the premises for the term of such Lease.
29. **LESSEE ALTERATIONS:** Except as provided for in section 3 ("Delivery of Premises; Renovations") and section 33 ("Remedies on Default"), the Lessee may not make, or allow to be made, alterations of the premises without the written consent of Lessor, which shall not be unreasonably withheld. Alterations shall be performed in a professional and skilled manner. Lessee will not allow or permit a lien or other encumbrance to be placed against the premises.
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.
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, 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 current lease or before Lessee or Lessor made the improvements under section 3 of this Lease.
32. **UNTENANTABILITY:** During the term of this Lease, if the premises or any part is rendered untenable by public authority, or by fire, the elements, or other casualty, a proportionate part of the rent according to the extent of such untenability shall be abated and suspended until the premises are again made tenantable and restored to their former condition by the Lessor;



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and if the premises or a substantial part of the premises is rendered untenable by public authority or casualty and remain untenable for a period of thirty (30) days, the Lessee may, at its option, terminate this Lease by written notice to the Lessor. The Lessee's decision shall be controlling as to whether or not the premises are fit or unfit for occupancy. This 30-day period shall not be so restrictively construed that the Lessee is bound to remain in the leased facility if the Lessee's business cannot be safely executed. If warranted due to unsafe conditions, the Lessee is free to move elsewhere. If the premises are made tenable again within this 30-day period, the Lessee will return to the facility for occupancy. The Lessee may also choose to recover from Lessor any excess costs, over the abated Lease payments, occasioned by relocation due to untenability.

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 sixty (60) 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, but not limited to, administrative costs, from the rent, if the Lessor fails to fix the problem within a reasonable time after Lessee notifies the Lessor in writing of the 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, but not limited to, 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 a reasonable time after receiving written notification of the default from the Lessee, the Lessee may terminate the Lease by giving 10 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 32 ("Untenability").

34. **INDEMNIFICATION:** The Lessor shall indemnify, hold harmless, and defend the Lessee from and against any claim of, or liability for, error, omission, or negligent act of the Lessor under this Lease. The Lessor will not be required to indemnify the Lessee for a claim of, or liability for, the independent negligence of the Lessee. If there is a claim of, or liability for, the joint negligent error or omission of the Lessor and the independent negligence of the Lessee, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. In this section 34, "Lessor" and "Lessee" include the employees, agents, and other contractors who are directly responsible, respectively, to each. In this section 34, "independent negligence" means negligence other than in the Lessee's selection, administration, monitoring, or controlling of the Lessor and in approving or accepting the Lessor's work.

35. **INSURANCE:** Without limiting the Lessor's indemnification responsibilities under section 34 ("Indemnification"), it is agreed that the Lessor shall purchase at its own expense and maintain



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in force at all times during the Lease the following insurance, except as provided elsewhere in this section 35:

- A. workers' compensation insurance as required by AS 23.30.045(d) for all employees engaged in work under the contract and as required by any other applicable law;
- B. comprehensive general liability insurance covering all business premises of, and operations by or on behalf of, the Lessor in the performance of the contract, including, but not limited to, blanket contractual coverage, products coverage, premises and operations coverage, independent contractors coverage, broad form property damage endorsement, and personal injury endorsement; the policy must have minimum coverage limits of \$1,000,000 combined single limit per occurrence; unless waived by the Lessee, the insurance policy shall name the Lessee as an additional insured;
- C. commercial automobile liability insurance covering all vehicles used by the Lessor in the performance of the contract, with minimum coverage limits of \$500,000 combined single limit per occurrence.

The Lessor is an entity without employees and does not have the workers' compensation insurance required above. If at any time during the term of the Lease, including any renewals, the Lessor hires one or more employees, the Lessor will purchase at its own expense and maintain in force at all times workers' compensation insurance under A. of this section 35 for the employee or employees and submit proof of the workers' compensation insurance to the Lessee.

Upon request, the Lessor shall provide the Lessee with evidence satisfactory to the Lessee of the insurance identified in B. - C. above. Each of the required insurance policies must provide for the Lessee to receive a 30-day prior notice of any cancellation. Where specific limits are shown above, it is understood that they are the minimum acceptable limits. If a policy contains higher limits, the Lessee will be entitled to coverage to the extent of the higher limits. All insurance policies must comply with, and be issued by, insurers licensed to transact the business of insurance in Alaska or in another state.

In addition, the Lessor shall require any contractor or subcontractor to provide and maintain for its employees workers' compensation insurance.

36. **DELAYS IN PERFORMANCE:** Delays in performance by the Lessor due to unforeseeable causes beyond the control and without fault or neglect of the Lessor may be excused. 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 Supply Officer in writing within ten (10) days of the commencement of the unforeseeable cause. The Supply Officer shall ascertain the facts and the extent of delay and the extent of the time for completing the project. The Supply Officer may approve an extension when, in the Supply Officer's judgment, the findings of fact justify an extension. Pending final decision on an extension of time under this section, the Lessor shall proceed diligently with the



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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.

37. **EXTENSION:** Any holding over after the expiration date of this Lease or of a renewal of this Lease shall be construed to be a tenancy from month-to-month at the same monthly rental rate, and on the same terms and conditions as specified in this Lease.
38. **TIME:** Time is of the essence.
39. **ASSIGNMENT OR TRANSFER:** Assignment or other transfer of this Lease is subject to Section 160 of the Procurement Procedures of the Alaska State Legislature. The Lessee's interest in this Lease may not be assigned without Lessor's prior written consent and Lessor's consent will not be unreasonably withheld.
40. **BINDING ON SUCCESSORS:** Subject to section 39, this Lease and all the covenants, provisions and conditions contained in the Lease shall inure to the benefit of and be binding upon the successors and assigns of the Lessor and the Lessee.
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 products 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 during the Lease, the Lessor must use, wherever practical, timber, lumber, and manufactured lumber products originating in this state from local forests.
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 and if the amendment does not amount to a material modification of the Lease.
43. **AUTHORIZATION: CERTIFICATION:** Execution of this Lease was authorized by a majority of the members of the Alaska Legislative Council at a meeting on January 15, 2004.
- Funds are available in an appropriation to pay for the Lessee's monetary obligations under the lease through June 30, 2005. The availability of funds to pay for the Lessee's monetary obligations under the Lease after June 30, 2005, 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, 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.
44. **VENUE AND CHOICE OF LAW:** In the event that the parties of the Lease find it necessary to litigate the terms of the Lease, venue shall be the State of Alaska, First Judicial District, at Juneau and the Lease shall be interpreted according to the laws of Alaska.

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45. **ENTIRE AGREEMENT:** This Lease sets forth the entire understanding of Lessor and Lessee, and no modification may be made to this Lease except by written addendum signed by all parties.

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

Robert B. Acree 3/30/04
Robert B. Acree Date
Member
Tax Identification No.: 03-0443569
Business License No.: 423463

CERTIFYING AUTHORITY

Pamela A. Varni 4/6/04
Pamela A. Varni Date
Executive Director
Legislative Affairs Agency

LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY

Gene Therriault 4/2/04
Senator Gene Therriault Date
Chair
Alaska Legislative Council
Procurement Officer

APPROVED AS TO FORM:

Heidi K. Pennington 3-17-04
Legal Counsel Date



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~~OREGON~~
STATE OF ALASKA
County of Matanuska) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 30 day of March, 2004, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Donna Lemaster
Notary Public in and for ~~Alaska~~ Oregon
My commission expires: July 10, 2005

STATE OF ALASKA)
FIRST JUDICIAL DISTRICT) ss.

THIS IS TO CERTIFY that on the 2nd day of April, 2004, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared SENATOR GENE THERRIAULT, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing instrument as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Jeannine M. Price
Notary Public in and for Alaska
My commission expires: 3/29/08



STATE OF ALASKA
FIRST JUDICIAL DISTRICT

)
) ss.
)

THIS IS TO CERTIFY that on the 16th day of April, 2004, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the EXECUTIVE DIRECTOR of the STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Jeannine M. Price
Notary Public in and for Alaska
My commission expires: 3/29/08

FOR RECORDING DISTRICT OFFICE USE ONLY:
No Charge - State Business

After recording return to:
Jan Price, Supply Officer
Legislative Affairs Agency
State Capitol
Juneau, AK 99801-1182



28th Legislature(2013-2014)
Committee Minutes
HOUSE LEGISLATIVE COUNCIL
June 07, 2013

House Friday, June 07, 2013 9:53:00 AM

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JUNE 07, 2013
10:00 AM

MEMBERS PRESENT

Representative Mike Hawker, Chair
Representative Max Gruenberg
Representative Craig Johnson
Representative Lance Pruitt
Representative Bill Stoltze
Senator Dennis Egan
Senator Lesil McGuire
Senator Kevin Meyer

MEMBERS ON TELECONFERENCE

Senator Peter Micciche, Vice Chair
Representative Peggy Wilson
Senator John Coghill

MEMBERS ABSENT

Senator Gary Stevens
Senator Charlie Huggins
Representative Mike Chenault

AGENDA

APPROVAL OF MINUTES
RATIFICATION OF CHARITY EVENTS
CONTRACT APPROVALS
OTHER COMMITTEE BUSINESS

SPEAKER REGISTER

DOUG GARDNER, Legal Services Director, Legislative Affairs Agency

10:04:42 AM

I. CHAIR MIKE HAWKER called the Legislative Council meeting to order at 10:00 a.m. in room 670 of the Anchorage Legislative Office Building. Chair Hawker noted that the meeting would start with the executive session first and then Council would proceed to routine motions and business activities. Due to a technical issue with the recorder's microphone, Chair Hawker recited the roll call for purposes of establishing a quorum. Present at the call were Representatives Hawker, Johnson, Stoltze and P. Wilson (via teleconference); and Senators Coghill (via teleconference), Egan, and Micciche (via teleconference), and Hoffman (alternate member).

REPRESENTATIVE JOHNSON moved that that Legislative Council go into executive session under Uniform Rule 22 (b) for the discussion of matters the immediate knowledge of which would adversely affect the finances of a government unit.

10:06:50 AM

Legislative Council went into executive session.

1:02:43 PM

Legislative Council came out of executive session.

CHAIR HAWKER called the roll. Present at the call were Representatives Hawker, Johnson, Pruitt, Stoltze and P. Wilson (via teleconference); and Senators Egan, McGuire, Meyer and Hoffman (alternate member).

II. ANCHORAGE LIO LEASE

Chair Hawker noted that the first order of business is a series of four motions related to the extension of the Anchorage LIO lease.

MOTION - LEASE EXTENSION

SENATOR MCGUIRE moved that Legislative Council authorize the chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a).

REPRESENTATIVE STOLTZE objected to ask for a brief description of the thought process for this item for the public record.

CHAIR HAWKER said this suite of motions allows the legislature to extend our current lease under AS 36.30.083(a), which provides for lease extension on a sole source basis as long as certain financial conditions are met; amends the Legislature's procurement procedures to allow material amendments to existing leases; empowers the Chairman to negotiate material amendments to the existing lease - amending paragraph 42 to comply with the amended procurement procedures and incorporating the leasehold improvements proposed by the landlord to modernize the existing LIO facility, limited in cost to be less than similarly sized, located, and apportioned newly constructed facilities in downtown Anchorage as determined by the Alaska Housing Finance Corporation (AHFC); and allows AHFC to be engaged as the Legislature's tenant representative for lease negotiation with the landlord and project oversight. He further noted for the record that Council sought other downtown Anchorage properties suitable to legislative function and found none, leaving the option of constructing a new building. Council has definitively said that a new state-owned building is not a desirable outcome, leading to the decision to improve the existing location.

Representative Gruenberg joined the meeting at this time.

REPRESENTATIVE STOLTZE spoke to the suite of motions. He said he was inclined to support these motions noting the lack of suitable alternative space. He said that the current option of improving the existing space would allow for the possibility of 40 members and 20 members having the ability to meet on some basis. He said he was not talking about a capital move, but under certain circumstances where the public would be served, and he thinks the legislature would be well-served by the opportunity to meet in Anchorage in possible special sessions. The opportunity to have larger meeting spaces for the public and for the entire legislature for short-term meetings is something his district would support. He said he has some reservations about parts of the process, is a little bit hesitant about sole-source procurement, but under the circumstances and with the meeting space accommodations being offered, this option has his support.

SENATOR MCGUIRE said for the record that considering the controversy generated when previous Legislative Councils have considered the option of purchasing a building, the current members felt that purchasing a new building at this stage is simply not something this Legislative Council wants to go through. She said they think it is more in the public benefit to keep this particular building on the municipal tax rolls; that keeping with the existing leaseholder is in the public interest; and allowing this leaseholder to make the tenant improvements that are necessary is in the public interest. She said that there are significant health and safety issues with this building that have been brought up time and time again to the Legislative Affairs Agency Executive Director that will need to be covered in those improvements.

CHAIR HAWKER added that pursuing the sole source option within

Alaska statute was deemed to be the most practicable method forward as the lease on the current building expires in 11 months with no renewal options left; there is no other option at this point as the Request for Information (RFI) that was issued regarding real estate across the Municipality of Anchorage received only two responses, neither of which was able to accommodate the legislature downtown at all and both had limited utility regardless of location. He said Council has done adequate due diligence and they are working within the parameters of the time frame in which they find it necessary to work. For these reasons and the substantive reasons stated by Senator McGuire, Council has chosen to pursue a sole sourcing option.

The motion allowing the chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a) passed with no objections.

MOTION - AMEND PROCUREMENT PROCEDURE

1:13:32 PM

SENATOR MCGUIRE moved that Legislative Council adopt proposed Amendment No. 12 to the Legislative Procurement Procedure 040 to provide a limited ability for the Legislative Affairs Agency, or a legislative committee, to materially modify an existing lease that was previously competitively procured.

CHAIR HAWKER, in response to a question for clarification by Representative Stoltze regarding the motion made by Senator McGuire, confirmed that Senator McGuire was mistaken when she said, in part, "...Legislative Affairs Council..." and that the motion reads "Legislative Affairs Agency..."

REPRESENTATIVE GRUENBERG asked about paragraph four, specifically that one of the factors is that the modification must be in the best interest of the Agency or the committee and he wondered if there was a difference between saying that and saying "in the public interest." He said he could foresee something where a narrow Agency might have a particular interest but it might not necessarily be in the public interest and he wondered legally about that.

DOUG GARDNER, Legal Services Director, said some contracts are entered into by the Agency at the direction of Legislative Council and those would be approved by Legislative Council; some contracts are entered into by committee. He said he could not think of any committee leases at the moment, but in order to accommodate the traditional type of leasing, it is broken down into those two categories.

REPRESENTATIVE GRUENBERG interrupted to say that he was drawing a distinction between local interests as opposed to broad public interest or if this amendment considers them to be the same.

MR. GARDNER responded that this Council would be approving those items and because of the composition of Legislative Council which has statewide representation, there wasn't a local interest that wouldn't also be a public interest as a consideration. Representative Gruenberg was satisfied with that response and simply wanted it on the record.

Senator Coghill joined the meeting at this time via teleconference.

CHAIR HAWKER repeated the motion and asked if there were further objections.

The motion to amend Legislative Procurement Procedure 040 passed with no objections.

MOTION - AUTHORIZE MATERIAL AMENDMENTS TO LEASE

1:17:19 PM

SENATOR MCGUIRE moved that Legislative Council authorize the chairman to negotiate amendments to lease 2004-024411-0 by mutual agreement with the Lessor to remove the limitation of amending a lease that amounts to a material modification in paragraph 42; and to include 712 West Fourth Avenue, with other terms and

conditions necessary to accommodate renovations, not to exceed the estimated cost of a similarly sized, located and apportioned newly constructed building as determined by the Alaska Housing Finance Corporation.

CHAIR HAWKER said this motion authorizes material amendments to be made to the extended lease and would allow the chair to negotiate material modifications and renovations for the facility currently occupied.

SENATOR EGAN asked for a copy of the motions.

CHAIR HAWKER said a copy of the motions for this meeting should have been emailed to each member. In response to a question posed by Senator Coghill, he said that the quorum is on record so there is no need for a roll call vote.

The motion to authorize material amendments to the lease passed with no objections.

REPRESENTATIVE STOLTZE said he has not talked to Mr. Pfeffer about this project but he had in the past received political contributions from him. He was not asking to be excused from the vote, simply noting it for the record.

CHAIR HAWKER noted as a point of reference that Mr. Pfeffer is a landlord for the building currently occupied by the Legislature in Anchorage. He further noted that he also has received contributions from Mr. Pfeffer over the course of his political career.

REPRESENTATIVE GRUENBERG stated that he also has received political contributions from Mr. Pfeffer.

CHAIR HAWKER stated for the record that the following members indicated that they too had received political contributions from Mr. Pfeffer: Representatives Pruitt and Johnson and Senators Egan, Meyer, Hoffman, Coghill, and McGuire. Representative Peggy Wilson said she has not received a contribution from Mr. Pfeffer that she knows of.

MOTION - ENGAGE AHFC AS LESSEE'S REPRESENTATIVE

CHAIR HAWKER said that there was a benchmark number of \$50,000 in this motion. He said he spoke with Mr. Fauske at AHFC and depending on the amount of work done; the final amount could be anything from gratis to the full amount authorized in this motion. He said he will continue to work with AHFC to accommodate this on as much of a gratis basis as possible.

1:21:58 PM

SENATOR MCGUIRE moved that that Legislative Council authorize the chairman to enter into a contract for payment not to exceed \$50,000, for AHFC to act as the Lessee's representative in negotiating an extension to Lease 2004-024411-0, as amended to include 712 West 4th Avenue, and to assist in managing the Lessor's compliance with the terms and conditions of the Lessor's improvements, as described in the lease extension.

The motion to engage AHFC as Lessee's representative passed with no objections.

CHAIR HAWKER said that with the passage of the fourth and final motion, that takes care of the beginning of a fabulous project to establish legislative facilities that will accommodate legislative needs for the next 10 or more years.

SENATOR MEYER commented that, for the record, he appreciated as an Anchorage legislator that Council has opted to extend and renovate rather than buy or build a new building. He remembered being upset as an Anchorage Assembly member in the '90s when the State bought the Atwood Building and took it off the tax rolls. He said every time that happens it is essentially a property tax increase for the rest of Anchorage. He said he also appreciates that Council is keeping its obligation to the downtown area and

staying in the downtown area even when it's sometimes difficult.

SENATOR HOFFMAN asked about the time frame and transition of the project.

CHAIR HAWKER said that although it is subject to final determination as there will need to be a design process for scope of improvement, he hopes the project will be concluded in approximately a nine month period - commencing sometime between October and December, with completion timed to permit reoccupation as soon as possible after the 2014 legislative session is concluded.

III. APPROVAL OF MINUTES

1:25:18 PM

SENATOR MCGUIRE moved that the minutes from the Legislative Council meeting on May 13, 2013 be approved.

The minutes were approved with no objections.

IV. RATIFICATION OF CHARITABLE EVENT

1:25:53 PM

SENATOR MCGUIRE moved that Legislative Council ratify the following charity event, which was previously sanctioned by the Legislative Council Chair in accordance with AS 24.60.080(a)(2)(b):

a. 14th Annual Calista Heritage Foundation Golf Tournament benefitting the Calista Heritage Foundation, Inc.

CHAIR HAWKER noted for the record that the 14th Annual Calista Heritage Foundation Golf Tournament benefitting the Calista Heritage Foundation, Inc., met all the qualifications in statute of being a 501(c) (3) organization.

The event was ratified with no objections.

V. CONTRACT APPROVALS

a. Mat-Su LIO Lease

CHAIR HAWKER noted this item was a routine reauthorization of the Mat-Su LIO lease with no particular changes.

1:27:55 PM

SENATOR MCGUIRE moved that Legislative Council authorize the chairman to approve a one-year renewal of the existing lease agreement for the Mat-Su Legislative Information Office and Legislators' District Office space for a cost of \$182,215.20.

REPRESENTATIVE STOLTZE objected to note that the general feedback is that the Mat-Su is a delegation that has increased in size, space was added after 2010 reapportionment and there will probably be more space needed after 2020; he said the space has a good landlord who is very responsive to the tenant concerns; it's a good location; and this space has good support from the Mat-Su delegation.

The motion to renew the Mat-Su lease passed with no objections.

b. Seward LIO

CHAIR HAWKER said this last item was requested by the Speaker of the House. He said currently the Seward LIO operates on a six month basis for legislative session. Seward has been a very active community and the Speaker has asked that this facility be staffed and available year round for an additional cost of \$59,200. He said this amount can be accommodated within existing budgets with the understanding that all items currently budgeted will be reviewed in the next budget cycle.

1:30:45 PM

SENATOR MCGUIRE moved that Council approve the Seward LIO going from session only to full time effective June 4, 2013, and ask

the Agency to include that increase in their FY 15 budget request.

The motion passed with no objections.

CHAIR HAWKER said that items for future meetings include Capitol issues, legislative information office security issues, and Facebook access among a number of other items for Council to deal with over the summer.

SENATOR EGAN noted that Steve Daigle, Chief of Security, has volunteered to arrange a presentation to Legislative Council on a variety of security options.

CHAIR HAWKER said his staff is working to schedule that. He added that the Capitol exterior portico project is underway now, the steps have been removed from the front of the Capitol and the project is going as well as could possibly be hoped. It is, at the moment, on time and going forward as authorized.

REPRESENTATIVE STOLTZE said he has had contact from constituent groups regarding Capitol Security's involvement on the incident on the protest censorship encroachment, specifically mentioning Mr. Daigle's name as an intervener. He said he would be remiss if he didn't bring this up and that Council would be avoiding an important policy issue if this wasn't looked at.

CHAIR HAWKER said that the ACLU filed a Freedom of Information Act request with the Governor's Office related to that issue. The Governor's Office has responded completely with their full disclosure. He said it is his understanding that the ACLU was not contemplating going any further with this issue. Should they provide any further request to the Legislature, we will certainly comply with that. Immediately after he became aware of the circumstance during session, he issued a statement of policy under executive authority reaffirming the Legislature's commitment to freedom of speech and public access to the Capitol. With that affirmation and very specific directives about being sure to err on the side of the public's freedom of speech, at this point, from a legislative perspective, he sees the issue as closed; the Legislature has taken preventative action and the administration has taken the remedial action that was requested by the ACLU.

Chair Hawker expressed his gratitude in response to Representative Stoltze's statement that he would gauge what the continued public interest is as he is not guided by what the ACLU deems as relevant.

There being no further business before the committee, the Legislative Council meeting was adjourned at 1:35 p.m.

1:35:35 PM

EXHIBIT C

PROCUREMENT OFFICER'S FINDINGS UNDER
LEGISLATIVE PROCUREMENT PROCEDURE 040(d)

Introduction

The purpose of this document is to provide a written determination, in compliance with Alaska Legislative Procurement Procedure 040(d), setting forth in detail the procurement officer's determination supporting material modifications of the Legislature's Lease of the Anchorage Legislative Information Office dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended March 3, 2009, renewed for the final one-year term on May 20, 2013, which was previously competitively bid under RFP 391 and publicly issued on July 17, 2003, (hereinafter "Lease"). The current Lease will expire on May 31, 2014.

The material modifications to the Lease that are the subject of this written determination were authorized by Legislative Council, and by mutual agreement with the Lessor. The material modifications to the Lease are amending the existing definition of "premises" within Section 1 of the Lease, titled "RENTAL PROPERTY AND RENTAL RATE," by adding the additional property commonly known as 712 West Fourth Avenue, which is immediately adjacent to the existing leased premises at 716 West Fourth Avenue, and amending other sections of the Lease as necessary to allow for the renovation and retrofit of the expanded premises, including but not limited to, a transition to a triple net leasing structure and changes necessary to accommodate renovation of the premises as described in Exhibits A and B of the Lease.

Background

A. Legislative Council's Authorization to Materially Modify Lease

On June 7, 2013, Legislative Council passed the following motions¹ related to the Legislature's Lease of the Anchorage Legislative Information Office dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended March 3, 2009, renewed for the final one-year term on May 20, 2013, and which will expire on May 31, 2014:

MOTION - AMEND PROCUREMENT PROCEDURE: I move that Legislative Council adopt proposed Amendment No. 12 to the Legislative Procurement Procedure 040 to provide the limited ability for the Legislative Affairs Agency, or a Legislative Committee, to materially modify an existing lease that was previously competitively procured.

MOTION - AUTHORIZE MATERIAL AMENDMENTS TO LEASE: I move that Legislative Council authorize the chairman to negotiate amendments to lease 2004-024411-0 by mutual agreement with the Lessor to remove the limitation of amending a lease that amounts to a material

¹ In addition to the motions set out in the text of these findings, two additional related motions were also passed by Legislative Council on June 7, 2013:

MOTION - LEASE EXTENSION: I move that Legislative Council authorize the chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a).

MOTION - ENGAGE AHFC (Alaska Housing Finance Corporation) AS LESSEE'S REPRESENTATIVE: I move that Legislative Council authorize the chairman to enter into a contract for payment not to exceed \$50,000, for AHFC to act as the Lessee's representative in negotiating an extension to Lease 2004-024411-0, as amended to include 712 West 4th Avenue, and to assist in managing the Lessor's compliance with the terms and conditions of the Lessor's improvements, as described in the lease extension.

modification in paragraph 42; and to include 712 West Fourth Avenue, with other terms and conditions necessary to accommodate renovations, not to exceed the estimated cost of a similarly sized, located and apportioned newly constructed building as determined by the Alaska Housing Finance Corporation.

B. Requirements of Alaska Legislative Procurement Procedure 040(d)

Legislative Procurement Procedure 040, as amended by Amendment No. 12 and authorized by Legislative Council as set forth in the motion above, added subsection (d), which provides:

(d) A lease that was procured competitively may be materially modified by amendment, and the material modification of the lease does not require procurement of a new lease, if

(1) the reasons for the modification are legitimate;

(2) the reasons for the modification were unforeseen when the lease was entered into;

(3) it is not practicable to competitively procure a new lease;

(4) the modification is in the best interests of the agency or the committee;

(5) the procurement officer makes a written determination that the items in paragraphs (1) - (4) exist, the determination details the reasons for concluding why the items exist, and the determination is attached to the amended lease; and

(6) the use of this subsection is approved by the procurement officer and, in the case of an amendment for the lease of a legislative committee, by a majority of the committee members.

Procurement Officer's Determination Under Legislative Procurement Procedure 040(d)

040(d): Previously Competitively Bid Requirement

As previously discussed, the Legislature's Lease of the Anchorage Legislative Information Office dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended March 3, 2009, renewed for the final one-year term on May 20, 2013, was previously competitively bid under RFP 391, which was publicly issued on July 17, 2003. Accordingly, under Legislative Procurement Procedure 040(d), the Lease may be materially modified.

040(d)(1): Reasons for the Modification are Legitimate

The decision to modify the Lease is consistent with the purpose of the present Lease, which is to provide office space for the Legislature. These amendments do not alter the essential identity or main purpose of the contract, and do not constitute a new undertaking, and therefore are a legitimate modification of the Lease.

The property at 712 West Fourth Avenue is unique, since it is the only adjacent space to 716 West Fourth Avenue available to satisfy the Legislature's need for additional space, and meets the essential requirement of keeping all the present legislative offices in one building. The addition of 712 West Fourth Avenue allows the Legislature to extend its current Lease as provided under AS 36.30.083(a). Given the uniqueness of the property, and the fact that no other bidder would be able to provide space adjacent to 716 West Fourth Avenue, it would be a waste of private sector resources and legislative procurement resources to competitively bid for the only adjacent property.

The expanded premise will be renovated to meet the needs of the Lessee. In accordance with the expansion of the leased premises, the renovation, and the Lease Extension executed under AS 36.30.083(a), it is necessary to amend material terms of the Lease. Without the modifications, the Lease would not be functional to govern the premises. Given the uniqueness of the property and the ability of the Legislature to have input in the design and function of the renovated building, a competitively bid procurement would be impractical, inefficient, and ultimately, likely unsuccessful in providing premises as suited to the needs of the Legislature.

Accordingly, modifying the Lease by adding 712 West Fourth Avenue to the "premises" and by amending other lease terms to accommodate the expanded premises and the Lease Extension under AS 36.30.083(a) does not subvert the purposes of competitive bidding, and is a legitimate exercise of the Legislature's procurement authority.

040(d)(2): Reasons for Modification Unforeseen When Lease was Entered Into

When the Lease was entered into for 716 West Fourth Avenue in 2004, it was unforeseen that the Legislature would need significant additional space, or that the infrastructure problems with the building would worsen, e.g., the exhausted service life of the HVAC system and the water system, and the elevator failing to handle the demands of staff and public use.

In 2004, based on the Executive Director's Office's best assessment, there were approximately 54 legislative staff working in the building. Today, in 2013, there are approximately 72, which is an increase during the ten-year term of the Lease of approximately one-third. The result of this unforeseen increase in staffing demands on the space in the building is that the staff for some legislators work in shared space. Shared space fails to meet standards for confidential meetings with constituents, and other intra-office privacy concerns. The space has only worked because of the patience and cooperation of Anchorage legislative staff and legislators. However, after the current

Lease term expires the limited space will no longer be acceptable. In addition to the staff of different legislators sharing space, three Anchorage area legislators are sharing space with their staff, which is also not acceptable.

The Legislature requires office space beyond the needs of the Anchorage-area legislators and staff. Once the Lease is amended, the renovated facility will provide space for the Speaker of the House, and the Senate President, who are both out-of-Anchorage legislators, and for rural legislators who require space for conducting work and attending legislative meetings in Anchorage.

Further, the existing building is in need of substantial renovation and upgrade. The condition of the premises is no longer suitable for legislative use. Physical deficiencies include lack of potable water, limited restroom facilities, ineffective HVAC system, deteriorated and leaking plumbing, an unreliable and inadequate elevator, insecure and unsafe below-ground parking facilities, leaking windows, worn window coverings and carpeting, inadequate electrical service, unpleasant odors in the elevator, inefficient lighting, and hazardous materials used in the original construction of the building. All of these will be remediated in the renovation and upgrade.

Had each of these factors been taken individually, fluctuating space demands may have been foreseen at some level. However, the pressure on space in the building from the multiple impacts discussed above was not foreseen when the Lease was entered into in 2004.

040(d)(3): Not Practicable to Competitively Procure a New Lease

The Anchorage Legislative Information Office has been located in leased space at 716 West Fourth Avenue for approximately 20 years. Occupancy was initially under a 10 year lease which terminated in 2003, that was extended month-by-month through 2004, when the current lease was established following an RFP process. The Legislature

is now in its 10th year under the current Lease, having just exercised the final of five one-year renewal options allowed under the terms of the Lease.

Over the past five years the Legislature has explored and requested proposals on numerous occasions seeking alternative space. None of those efforts has resulted in a solution that was possible, practicable or acceptable. Given that the Lease has nearly expired, the Legislature recently provided notice to the public of a Request For Information ("RFI")² from parties interested in providing legislative office space in Anchorage. Two parties provided responses detailing the space they had available. Both spaces were located in areas that were not acceptable to Legislative Council for the needs of the Legislature. The available properties in the responses to the RFI failed to provide constituent access, access to other state and local centers of government, access to public transportation, and access to lodging and meeting spaces. In summary, based on the RFI responses, there are no facilities available for lease that are suitable for the Legislature's unique needs.

Because of the limited interest shown in the RFI and the lack of suitable legislative space available for lease, Legislative Council reconsidered the existing leased space at 716 West Fourth Avenue, and made the determination that the existing building, if renovated and with the addition of a suitable amount of additional space, could continue to serve the Legislature and public. The only available property adjacent to 716 West Fourth Avenue that would facilitate the needed renovations to 716 West Fourth Avenue, and provide additional space, is 712 West Fourth Avenue.

In addition to its efforts to formally identify potential lease space through the issue of an RFI, commercial real estate brokers and others were consulted in an attempt to determine if lease space suitable to meet the Legislature's needs might be available.

² The complete RFI is available at
<http://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=168321>.

These inquiries delivered the same results as the RFI; there are no existing facilities available to meet the Legislature's needs,

Based on the foregoing discussion and factors, inclusive of the lack of suitable remaining time for any additional procurement efforts, as Procurement Officer, I find that it would not be practicable to competitively bid a lease for Anchorage legislative office space because of: (1) limited interest demonstrated by the response to the RFI; (2) no available property suitable for legislative needs offered in response to the RFI; (3) the decision by Legislative Council to exercise its option under AS 36.30.083(a) and extend its lease of 716 West Fourth Avenue, subject to renovations by the Lessor and a cost saving of 10 percent less than fair market value; and (4) the uniqueness of the location of 712 West Fourth Avenue to the Legislature's existing office space at 716 West Fourth Avenue.

040 (d)(4): The Modification is in the Best Interests of the Agency or the Committee

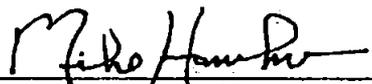
The existing leased space at 716 West Fourth Avenue, while at the end of the service life of the building systems, and despite chronic maintenance problems, has served the Legislature and constituent needs for approximately 20 years. The location on Fourth Avenue provides central access for legislators and constituents to meeting spaces, hotels, the courts, state and local government offices, public transportation, and other support facilities. The current lease includes parking, which is essential for public access to government by constituents, legislators, and staff.

Based on all factors considered above, the Legislative Council made the decision to exercise its option under AS 36.30.083(a) to enter into negotiations with the Lessor, to extend the Lease subject to the building being suitably improved with a modest addition of space, and subject to the requirements in AS 36.30.083(a) that the cost to the Legislature be at least 10 percent below the market rental value of the real property at the time of the extension. The decision to amend the Lease as provided by Alaska

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Legislative Procurement Procedure 040(d), is in Legislative Council's best interest, since it will facilitate the extension of the Lease with the necessary improvements and with additional needed space, at a cost-savings to the Legislature, as provided by AS 36.30.083(a).

Lastly, in addition to the determination herein, as Chairman of Legislative Council and Procurement Officer, I have provided written notice to legislative leadership of the successful conclusion of negotiations and the intent to extend and amend the lease as provided herein.



Representative Mike Hawker
Chairman of Legislative Council and
Procurement Officer

9.16.13
Date

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 ("Untenability") 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 products 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.

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

LESSOR:
716 WEST FOURTH AVENUE, LLC

By its Manager:

By its Member:



Mark E. Pfeffer Date
Manager 9/19/13
Tax Identification No.: 46-3882212
Business License No.: 423463

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 9/19/13

LESSEE:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY

Representative Mike Hawker Date
Chair, Alaska Legislative Council
Procurement Officer

CERTIFYING AUTHORITY

APPROVED AS TO FORM:

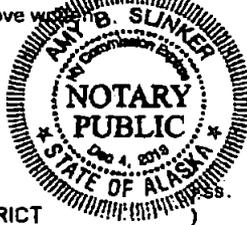
Pamela A. Vami Date
Executive Director
Legislative Affairs Agency

Legal Counsel Date

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 19th day of September, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, MARK E. PFEFFER, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that they had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Amy B. Slinker
Notary Public in and for Alaska
My commission expires: 12/4/13

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

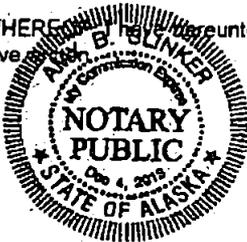
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 19th day of September, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ALANA WILLIAMS, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of MARK E. PFEFFER ALASKA TRUST UTAD 12/28/07, and who acknowledged to me that she had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



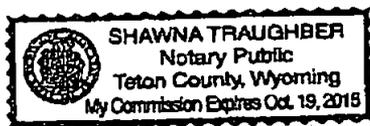
Amy B. Slinker
Notary Public in and for Alaska
My commission expires: 12/4/13

Wyoming

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 19th day of September, 2013, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared REPRESENTATIVE MIKE HAWKER, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing Lease as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Shawna Traughber
Notary Public in and for Alaska Wyoming
My commission expires: 10/19/2015

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of _____, 2013, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the EXECUTIVE DIRECTOR of the STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

FOR RECORDING DISTRICT OFFICE USE ONLY:
No Charge - State Business

After recording return to:
Tina Strong, Supply Officer
Legislative Affairs Agency
State Capitol, RM 3
Juneau, AK 99801-1182

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of _____, 2013, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared REPRESENTATIVE MIKE HAWKER, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing Lease as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

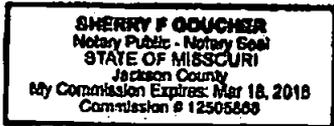
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

STATE OF *Missouri*)
County of Jackson) ss.

THIS IS TO CERTIFY that on the 19 day of September 2013, before me, the undersigned Notary Public in and for ~~Missouri~~ *Alaska*, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the EXECUTIVE DIRECTOR of the STATE OF *Alaska* LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Sherry F. Ooucher

Notary Public in and for *Missouri*
My commission expires: 03-18-18

FOR RECORDING DISTRICT OFFICE USE ONLY:
No Charge - State Business

After recording return to:
Tina Strong, Supply Officer
Legislative Affairs Agency
State Capitol, RM 3
Juneau, AK 99801-1182

EXHIBIT A – LIO

APPROVAL PLANS

DC 9/19/13

Exhibit A – LIO Architectural Plans

Joe 9/19/16

PFEFFER DEVELOPMENT 716 W 4TH AVE. Renovation

09.17.2013

ANCHORAGE, ALASKA



CIVIL ENGINEER

BBSC ENGINEERING
11301 OLIVE LANE
ANCHORAGE, ALASKA 99515
Ph: 907.222.1005 Fax: 907.322.6210

STRUCTURAL ENGINEER

REID MIDDLETON, INC.
4300 D STREET, SUITE 302
ANCHORAGE, ALASKA 99503
Ph: 907.562.3436 Fax: 907.561.8319

MECHANICAL ENGINEER

RJA ENGINEERING, INC.
2522 ARCTIC BOULEVARD, SUITE 200
ANCHORAGE, ALASKA 99503
Ph: 907.276.0321 Fax: 907.276.1761

ELECTRICAL ENGINEER

ESC ENGINEERS
6327 OLD EDWARD HWY
ANCHORAGE, ALASKA 99516
Ph: 907.349.0712 Fax: 907.9660713

DEVELOPER

PFEFFER DEVELOPMENT, LLC
425 G STREET, SUITE 210
ANCHORAGE, ALASKA 99501
Ph: 907.646.4644 Fax: 907.646.4655

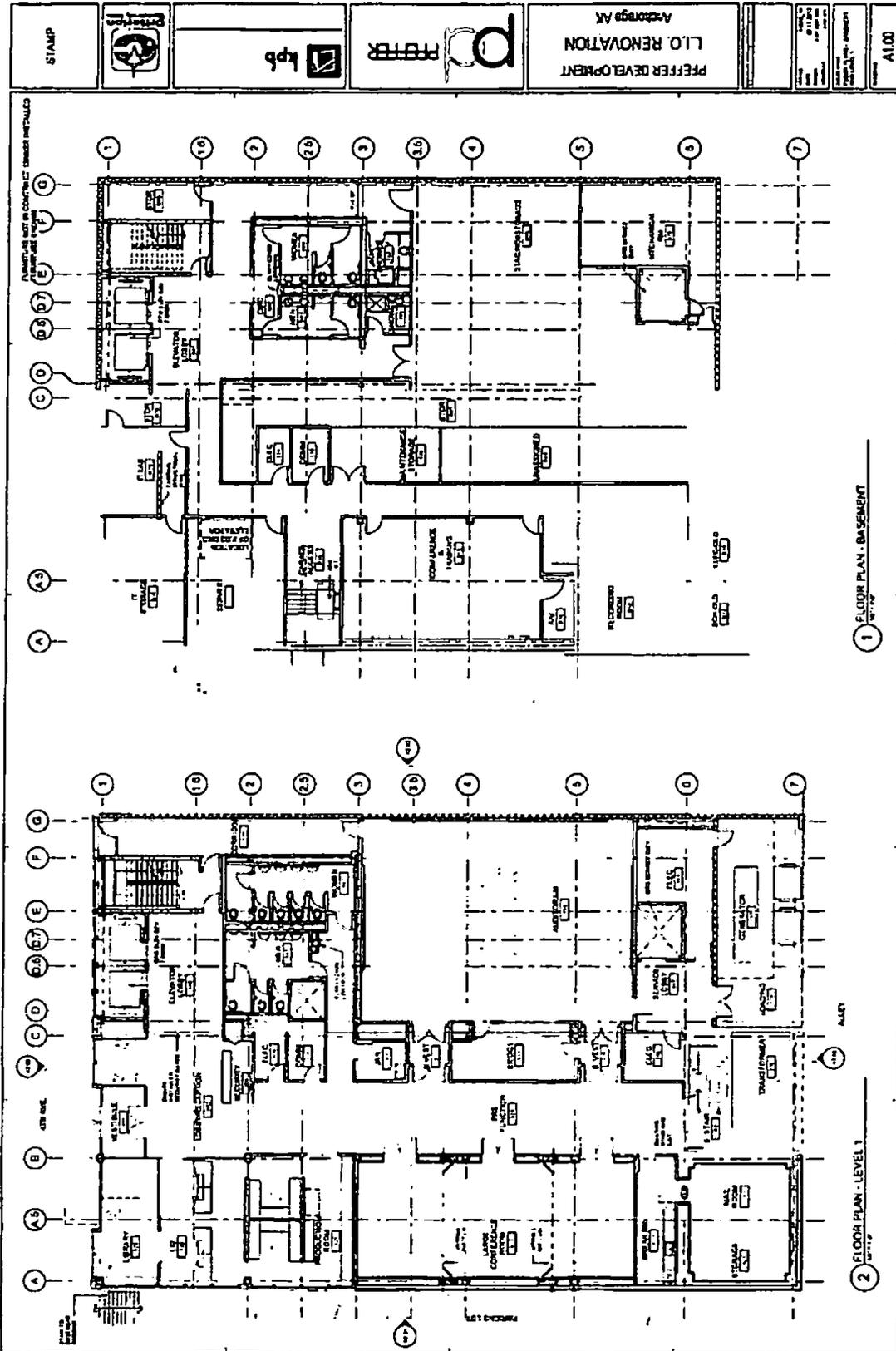
CONTRACTOR / TEAM LEAD

CRITTEBORN GENERAL, INC.
7530 COMMERCIAL DRIVE
ANCHORAGE, ALASKA 99501
Ph: 907.277.3200 Fax: 907.272.8344

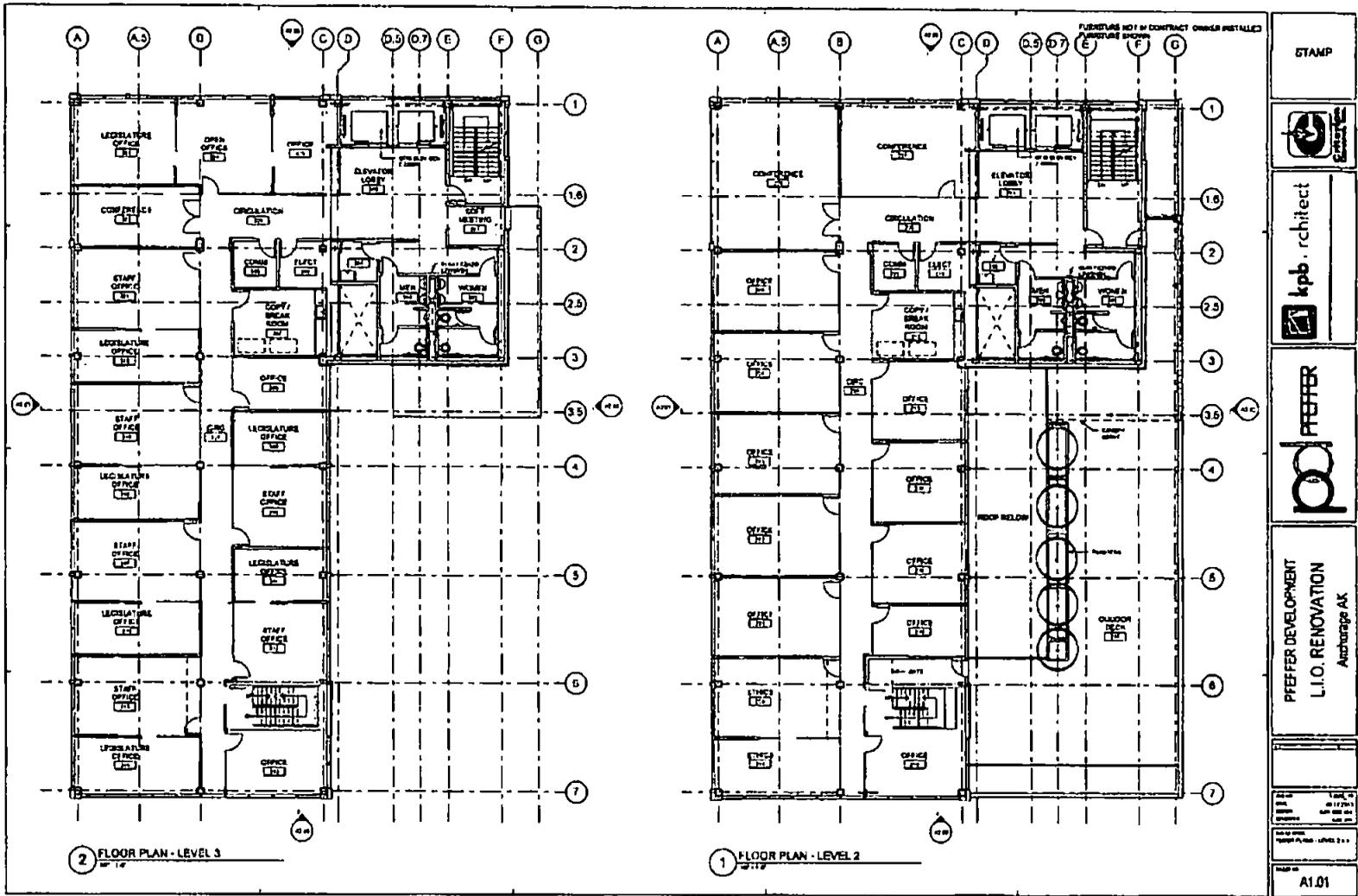
ARCHITECT

ISSO ARCHITECTS
425 G STREET, SUITE 600
ANCHORAGE, ALASKA 99501
Ph: 907.274.7443 Fax: 907.274.7407

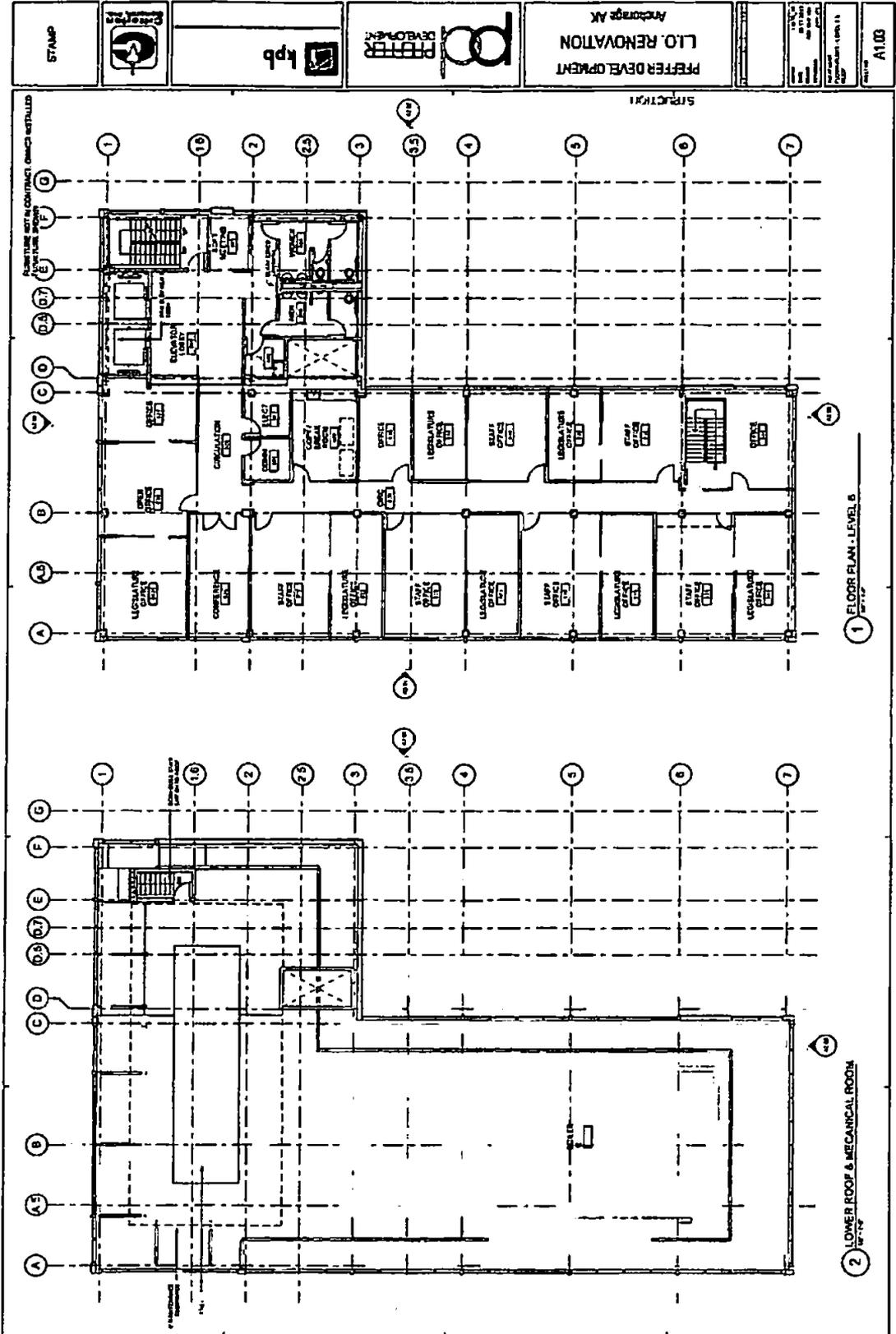
Case 9/19/13



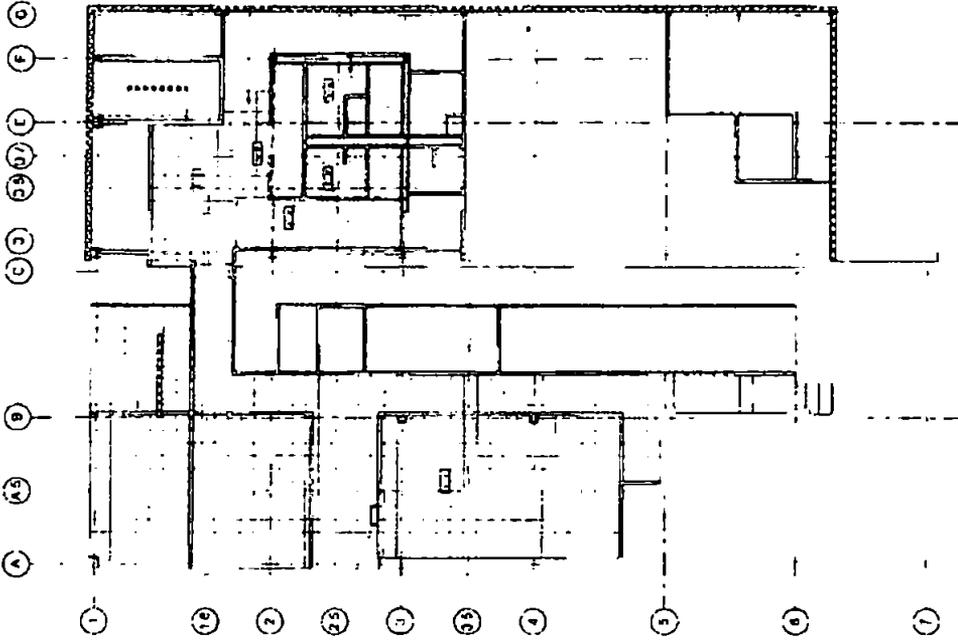
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9/19/17

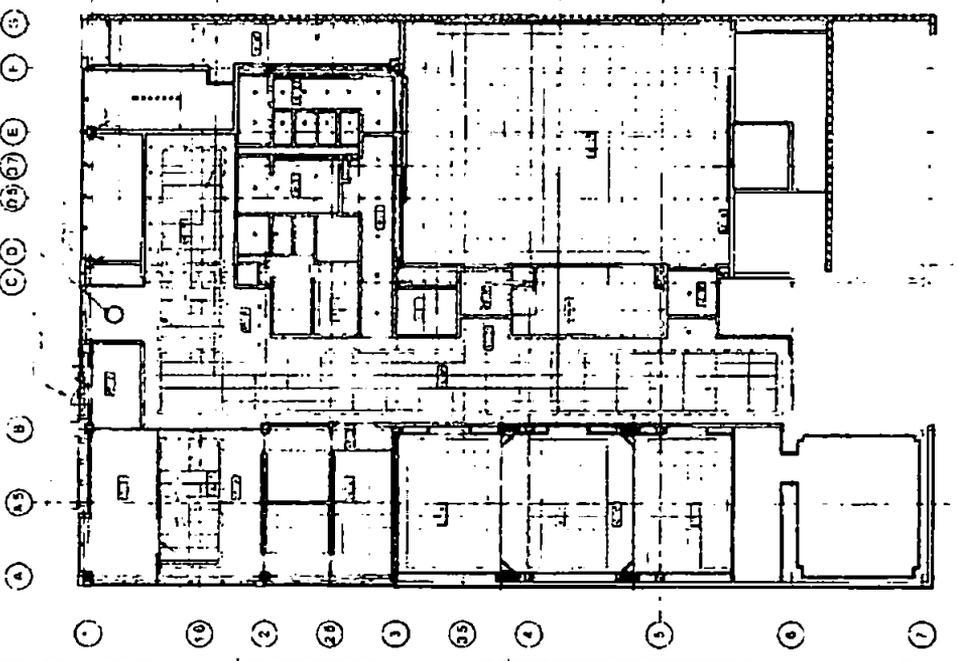


*2008
9/19/10*



GENERAL NOTE: ALL DIMENSIONS AND MATERIALS ARE TO BE VERIFIED BY THE CONTRACTOR. ONLY THE CONTRACTOR IS RESPONSIBLE FOR VERIFYING THE ACCURACY OF THE DIMENSIONS AND MATERIALS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES.

3 REFLECTED CEILING PLAN - BASEMENT



1 REFLECTED CEILING PLAN - LEVEL 1

2-100
9/19/13

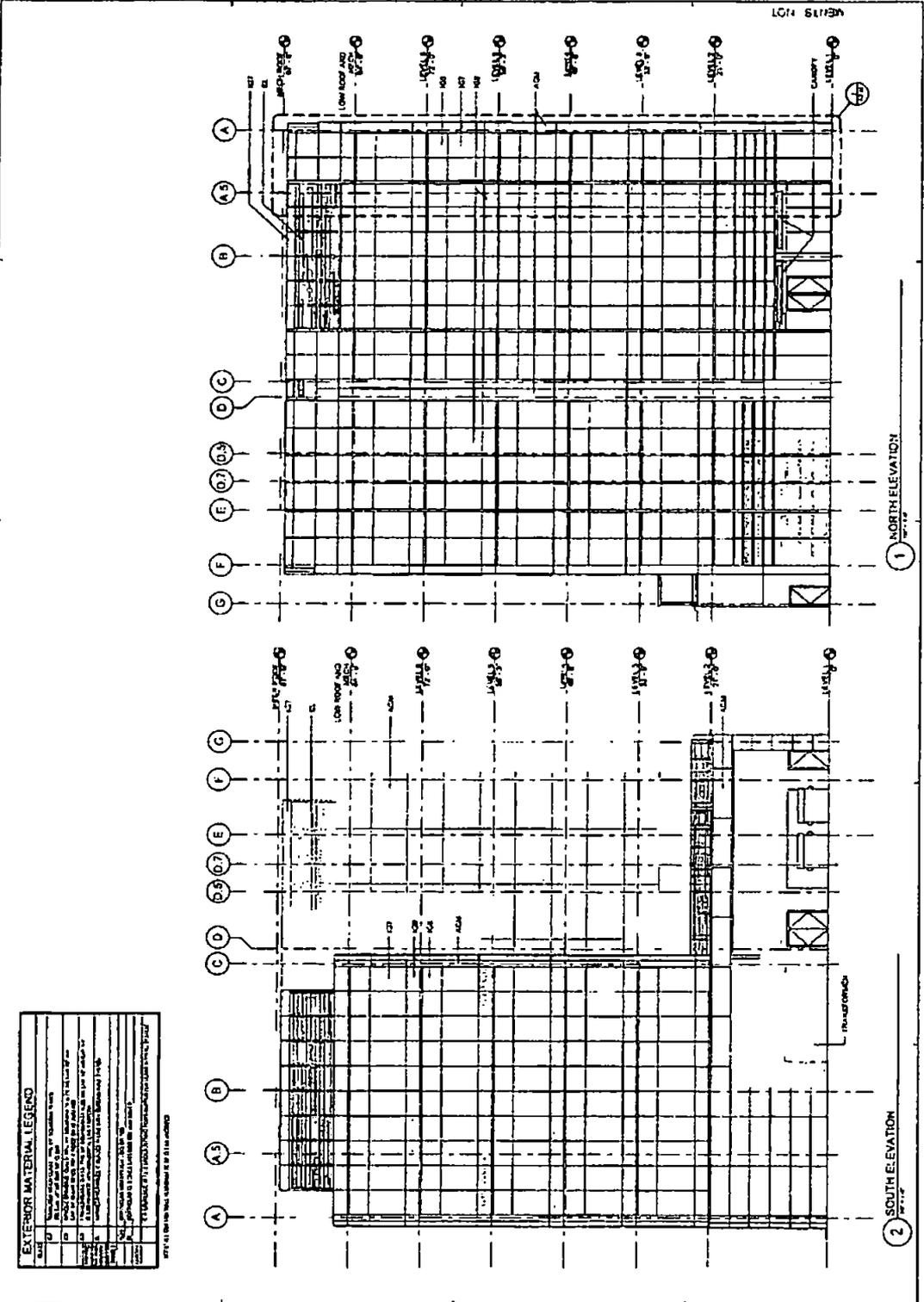
STAMP



PEPPER DEVELOPMENT
L10 RENOVATION
Andrzej Ax

DATE: 11/19/19
SCALE: AS SHOWN
PROJECT: L10 RENOVATION
SHEET: 101

A2.00



EXTERIOR MATERIAL LEGEND

NO.	DESCRIPTION	FINISH
1	CONCRETE	AS SHOWN
2	BRICK	AS SHOWN
3	GLASS	AS SHOWN
4	WOOD	AS SHOWN
5	ROOFING	AS SHOWN
6	PAINT	AS SHOWN
7	CLADDING	AS SHOWN
8	SCREENING	AS SHOWN
9	LANDSCAPE	AS SHOWN
10	OTHER	AS SHOWN

SEE SHEET 102 FOR MATERIAL SCHEDULE

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9/19/19

**LEGISLATIVE INFORMATION OFFICE RENOVATION
WEST 4TH AVENUE**

LEGAL

**ORIGINAL TOWN SITE SUBDIVISION; LOTS: 2 AND 3A
LOT SIZES COMBINED: 0.71 ACRES
ZONE: B2B**

**BLOCK: 40 LOT 2 W39.5' (712 W. 4TH AVE.)
LOT SIZE: 5,135 SF
TAX CODE: 002-105-26-000
GRID NO: SW1230**

**BLOCK: 40 LOT 3A (716 W 4TH AVE)
LOT SIZE: 25,994 SF
TAX CODE: 002-105-49-000
GRID NO: SW1230**

IBC 2009, IEBC 2009, IFC 2009

CHAPTER 3 - USE AND OCCUPANCY CLASSIFICATION

304.1 ASSEMBLY GROUP A-3, BUSINESS GROUP B, TENANT STORAGE ROOM GROUP S-1

CHAPTER 4 - SPECIAL DETAILED REQUIREMENTS BASED ON USE AND OCCUPANCY

405.3 AUTOMATIC SPRINKLER SYSTEM. THE HIGHEST LEVEL OF AN EXIT DISCHARGE SERVING THE UNDERGROUND PORTIONS OF THE BUILDING AND ALL LEVELS BELOW SHALL BE EQUIPPED WITH AN AUTOMATIC SPRINKLER SYSTEM INSTALLED IN ACCORDANCE WITH SECTION 903.3.1.1. WATER-FLOW SWITCHES AND CONTROL VALVES SHALL BE SUPERVISED IN ACCORDANCE WITH SECTION 903.4.

CHAPTER 5 - GENERAL BUILDING HEIGHTS AND AREAS

TABLE 503 ALLOWABLE BUILDING HEIGHTS AND AREAS

OCCUPANCY:	A-3/B/S-1
CONSTRUCTION TYPE:	TYPE II A
BUILDING HEIGHT:	5 STORIES + 1 PER HEIGHT INCREASE (504.2) 6 STORIES ACTUAL BUILDING HEIGHT 6TH LEVEL FLOOR 64'-6" + 20 FEET INCREASE (504.2)
BUILDING AREA:	A-3/B/S-1 (GROSS) 11,140 SF BASEMENT 11,549 SF FIRST FLOOR

1 A11076.01

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7,968 SF FLOORS 2-6
1,659 SF MECHANICAL PENTHOUSE
64,188 SF ACTUAL GROSS

508.1 BUILDING AREA MODIFICATIONS

ALLOWABLE AREA=37,500+(37,500X.75)= 65,625 SF/FLOOR (OK)

$LF=(363.75/363.75-.025)X30/30=.75$

TABLE 508.2.5 INCIDENTAL ACCESSORY OCCUPANCIES

MECHANICAL ROOM – 1 HOUR OR PROVIDE AUTOMATIC FIRE-EXTINGUISHING SYSTEM.

508.2.5.2 NONFIRE-RESISTANCE-RATED SEPARATION AND PROTECTION. WHERE TABLE 805.2.5 ALLOWS FOR AUTOMATIC FIRE-EXTINGUISHING SYSTEM IN LIEU OF 1-HOUR FIRE BARRIER INCIDENTAL ACCESSORY OCCUPANCIES SHALL BE SEPARATED FROM THE BUILDING BY CONSTRUCTION CAPABLE OF RESISTING THE PASSAGE OF SMOKE.

TABLE 508.4 REQUIRED SEPARATIONS OF OCCUPANCIES

NO FIRE BARRIER OR HORIZONTAL ASSEMBLY CONSTRUCTED IS REQUIRED BETWEEN: A-3, B AND S-1 OCCUPANCIES.

CHAPTER 6 – TYPES OF CONSTRUCTION

TABLE 601 FOR TYPE II A CONSTRUCTION

PRIMARY STRUCTURE:	1 HOUR
BEARING WALLS EXTERIOR:	1 HOUR
BEARING WALLS INTERIOR:	1 HOUR
NON-BEARING WALLS EXTERIOR:	1 HOUR AT GREATER THAN OR EQUAL TO 30 FEET (TABLE 602)
NON-BEARING WALLS INTERIOR:	0 HOUR
FLOOR CONSTRUCTION:	1 HOUR
ROOF CONSTRUCTION:	1 HOUR

CHAPTER 7 – FIRE AND SMOKE PROTECTION FEATURES

TABLE 705.8 MAXIMUM AREA OF OPENINGS

EAST WALL AT PROPERTY LINE:	NO OPENINGS PERMITTED
EAST WALL AT SETBACK:	25% GREATER THAN 5' TO 10'
WEST WALL:	UNLIMITED
NORTH WALL:	UNLIMITED
SOUTH WALL AT ALLEY:	UNLIMITED

708 SHAFT ENCLOSURES

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708.4 FIRE-RESISTANCE RATING
2 HOUR FIRE-RESISTANCE RATING (6 STORY BUILDING)

708.14.1 EXCEPTION 4. ENCLOSED ELEVATOR LOBBIES ARE NOT REQUIRED WHERE THE BUILDING IS PROTECTED BY AN AUTOMATIC SPRINKLER SYSTEM INSTALLED IN ACCORDANCE WITH SECTION 903.3.1.1 OR 903.3.1.2.

715 OPENING PROTECTIVES

TABLE 715.4 FIRE DOOR AND FIRE SHUTTER FIRE PROTECTION RATINGS:

FIRE PARTITION OR CORRIDOR WALLS:

1 HOUR ASSEMBLY RATING: ¾ HOUR MINIMUM
2 HOUR ASSEMBLY RATING: 1.5 HOUR MINIMUM

FIRE BARRIERS:

1 HOUR ASSEMBLY RATING: ¾ HOUR MINIMUM
2 HOUR ASSEMBLY RATING : 1.5 HOUR MINIMUM

715.4.3.2 GLAZING IN DOOR ASSEMBLIES: IN A 20-MINUTE FIRE DOOR THE GLAZING MATERIAL IN THE DOOR ITSELF SHALL HAVE A MINIMUM FIRE-PROTECTION-RATED GLAZING OF 20 MINUTES. NFPA 257 OR UL 9.

TABLE 715.5 FIRE WINDOW ASSEMBLY FIRE PROTECTION RATINGS:

FIRE BARRIERS WITH GREATER THAN 1 HR.:	NP
FIRE BARRIERS WITH 1 HOUR RATING:	¾ HOUR MINIMUM
FIRE PARTITIONS WITH ¾ HOUR RATING:	1/3 HOUR MINIMUM
FIRE PARTITION WITH 1 HOUR RATING:	3/4 HOUR MINIMUM
PARTY WALLS:	NP

716 DUCTS AND AIR TRANSFER OPENINGS

TABLE 716.3.2.1 FIRE DAMPER RATING: 1.5 HR. MINIMUM DAMPER RATING FOR PENETRATIONS OF 3 HR. OR LESS FIRE-RESISTANCE RATED ASSEMBLIES.

CHAPTER 9 - FIRE PROTECTION SYSTEMS

903 OCCUPANCY B/S-1: AN AUTOMATIC SPRINKLER SYSTEM INSTALLED IN ACCORDANCE WITH SECTION 903 SHALL BE PROVIDED.

905.3.1 REQUIRED INSTALLATION. CLASS I STANDPIPE SYSTEM WILL BE INSTALLED PER EXCEPTION 1.

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906 PORTABLE FIRE EXTINGUISHERS

TABLE 906.3 MAXIMUM TRAVEL DISTANCE TO EXTINGUISHER = 75 FEET

907 FIRE ALARM AND DETECTION SYSTEMS

907.2.2 GROUP B/S-1. FIRE ALARM SYSTEMS AND SMOKE ALARMS SHALL BE PROVIDED.

907.2.9.1 MANUAL FIRE ALARM SYSTEM: IS PROVIDED ALONG WITH A AN AUTOMATIC SPRINKLER SYSTEM AND THE OCCUPANT NOTIFICATION APPLIANCES WILL AUTOMATICALLY ACTIVATE THROUGHOUT THE NOTIFICATION ZONES UPON A SPRINKLER WATER FLOW.

CHAPTER 10 - MEANS OF EGRESS

1004 OCCUPANT LOAD (USABLE)

BASEMENT: 9,806 SF <i>MINIMUM)</i>	A-3	891 SF/15=60 OCCUPANTS (EGRESS WIDTH .2 X 60=12"
	B	3,631 SF/100=36 OCCUPANTS (EGRESS WIDTH .2 X 36=7.2"
	MECH	1,393 SF/300=5 OCCUPANTS
	S-1	3,561 SF/300=12 OCCUPANTS
LEVEL 1: 10,374 SF <i>MINIMUM)</i>	A-3	3,227 SF/15=215 OCCUPANTS (EGRESS WIDTH .2 X 215=43"
	B	6,179 SF/100=62 OCCUPANTS
	MECH	308 SF/300=1 OCCUPANT
	S-1	660 SF/300=7 OCCUPANTS
LEVEL 2-6:	B	6,964 SF /100=70 OCCUPANTS X 5=350 OCCUPANTS (EGRESS WIDTH .3 X 70=21" MINIMUM PER FLOOR)
ROOF:	PENT	1,442 SF/300=5 OCCUPANTS

TOTAL BUILDING OCCUPANT LOAD=753

TABLE 1016.1 EXIT ACCESS TRAVEL DISTANCE:

B/S-1	300 FT SPRINKLERED
A	250 FT

TABLE 1018.1 CORRIDOR FIRE-RESISTANCE RATING:

A/B/S-1:	0 SPRINKLERED
-----------------	----------------------

1018.4 DEAD END CORRIDOR:

B/S-1:	50 FT SPRINKLERED
A:	20 FT SPRINKLERED

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TABLE 1021.1 MINIMUM NUMBER OF EXITS. 2 REQUIRED

1022.1 ENCLOSURES REQUIRED EXIT STAIRWAYS ARE CONSTRUCTED IN ACCORDANCE WITH SECTION 707. THE FIRE-RESISTANCE RATINGS ARE 2 HOURS.

CHAPTER 11 - ACCESSIBILITY

DUE TO THE EXISTING CONDITIONS OF THIS 1969 BUILDING, NOT ALL ACCESSIBILITY COMPONENTS FOR NEW CONSTRUCTION CAN BE ACHIEVED.

1104.1 SITE ARRIVAL POINTS: THE BUILDING IS ACCESSIBLE FROM ARRIVAL POINTS ON THE EXISTING SITE.

1105.1 PUBLIC ENTRANCE: THE ENTRY POINTS ARE ACCESSIBLE.

1105.1 PUBLIC ENTRANCE: MODIFIED ACCESSIBLE ELEMENTS ARE PROVIDED ON EACH FLOOR. DUE TO EXISTING STRUCTURAL LIMITATION NOT ACCESSIBLE ROUTES AND CLEARANCES ARE ACHIEVABLE.

CHAPTER 29 - PLUMBING SYSTEMS

**TABLE 2902.1
753/2=377 M&W**

BUSINESS

WATER CLOSETS

	MEN	WOMEN	REQUIRED	PROVIDED
<i>1 PER 25 FIRST 50</i>	2	2		
<i>1 PER 50 BALANCE</i>	7	7		
TOTAL	9 *A(3)	9	3 M 9 W	9 M 17 W
URINALS (.67% OF WC'S)*A	6		6 M	9 M
LAVATORIES	5	5	5 M 5 W	15 M 16 W
DRINKING FOUNTAINS			8	7 (+ WATER SERVICE STATIONS)
SERVICE SINK			1	5

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9/19/13

LLO – Architectural Narrative

09.06.13

Refer to Elevation drawings A2.01, A2.02 and A2.03 for exterior materials.

Conference Areas

Reception
The conference areas will be located on the first floor.

Meeting
The meeting areas will be located on the first floor.

Training
The training area will be located on the first floor. The area will be used for training and seminars. The area will be located on the first floor.

Elevator Lobby – level one

Reception
The elevator lobby will be located on the first floor.

Meeting
The elevator lobby will be located on the first floor.

Training
The elevator lobby will be located on the first floor. The area will be used for training and seminars. The area will be located on the first floor.

Elevator Lobbies – typical floors

Reception
The elevator lobbies will be located on the typical floors.

Meeting
The elevator lobbies will be located on the typical floors.

Training
The elevator lobbies will be located on the typical floors. The area will be used for training and seminars. The area will be located on the typical floors.

Office Suites

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9/19/13

Toilet Rooms

• All toilet rooms shall have a minimum of 10 sq ft of floor area per occupant.
• All toilet rooms shall have a minimum of 10 sq ft of floor area per occupant.
• All toilet rooms shall have a minimum of 10 sq ft of floor area per occupant.

Acoustical Requirements

• All rooms shall have a minimum of 10 sq ft of floor area per occupant.
• All rooms shall have a minimum of 10 sq ft of floor area per occupant.

Over-all Energy Efficiency

• All rooms shall have a minimum of 10 sq ft of floor area per occupant.

File
9/19/13

Exhibit A – LIO Civil Narrative

See 9/19/13

CIVIL NARRATIVE

The proposed project is located within Municipality of Anchorage Grid SW1230 and will occupy Lots 3A and Lot 2 W39.5', Block 40, Original Subdivision. The properties are zoned B2B by the MOA. The two lots combined are approximately 0.71 acres and are currently occupied by a restaurant/bar, 7-story building, and a two-level parking area. As part of this project, the two lots will be combined, the restaurant demolished, and the 6-story office building remodeled and expanded.

It is expected that construction of the new Legislative Information Office (LIO) will also include major sidewalk and alleyway improvements.

Site Demolition

Site preparation will include the following:

- Complete demolition of the existing Anchor Pub, with exception of the east wall.
- Approximately 1,800 sf existing sidewalk along 4th Avenue.
- 2,000 sf existing asphalt in alleyway.

Excavation and Backfill

The existing foundation material is suitable for foundation support. Excavation and backfill will follow the recommendations of the geotechnical report that is being prepared for this project by Northern Geotechnical Engineering – Terra Firma Testing.

Water Service

An 8" cast iron pipe (CIP) water main is located in the alley to the south of the properties, approximately 10-feet below the road surface. An existing 6" DIP water service extends into the alley behind the LIO. An existing 4" CIP water service connects the Anchor Pub to the 8" water main in the alley. Both existing services will be abandoned at the main.

A new 6" water service will be connected to the 8" service line entering the new addition. All water system components will be based on the Municipality of Anchorage Standard Specifications and Details.

Water system improvements required for this project will likely include the following:

- Abandon the existing water service connections to the main.
- Installation of 12 lf new 8" service connection to the 8" cast iron main.
- Installation of a new Private Fire Hydrant on property. NFPA requires that the FDC is located less than 100' from the nearest fire hydrant.
- Installation of 10.5 lf new 6" water service from the hydrant leg to the structure.

Sanitary Sewer Service

An existing 12" Vitrified Clay (VC) sanitary sewer main is located in the alley, at approximately 8 to 10-feet below grade. AWWU is planning to upgrade the existing sewer pipe in the fall of 2013 using a Cured In Place Pipe (CIPP) rehabilitation method. Coordination with AWWU will be required to inform them which connections will need to be reestablished. All wastewater from this area is treated at the John M. Asplund Wastewater Treatment Facility in Anchorage. All sanitary sewer system components will be based on the Municipality of Anchorage Standard Specifications and Details.

Sewer system improvements for this project will likely include the following:

- Install 4' diameter sewer control manhole on property in loading area.
- Install approximately 28 LF of 6" PVC sewer service.

Storm Water System

Currently, storm water is collected on the roofs of the existing structures and directed to the municipal storm drain system via roof drains.

Joe 9/19/13

- Verify current roof drain location and size.
- If size and location is acceptable, connect new structure roof drains to existing roof drain.
- If the size and location of the existing roof drain piping is not acceptable, install an additional 125 lf 12" CPEP in the alleyway and a 1 Type 1 Manhole near the south west corner of the LIO. Connect new roof drain to the new manhole.

Site Access

The property will be easily accessible to pedestrians, bicyclists, automobiles, and service/ emergency vehicles. The existing surface lot and underground parking are to remain. Sidewalk and alleyway improvements are planned along 4th Avenue and in the alley to the south of the properties. A loading area is planned on the south side of the building adjacent to the alley to accommodate truck loading, dumpsters and an emergency generator.

Site Access improvements for this project will likely include the following:

- 1,000 sf of heated sidewalk along 4th Avenue
- 2,000 sf asphalt replacement in alley

Geotechnical Considerations

A subsurface investigation of the project site by Northern Geotechnical Engineering – Terra Firma Testing is underway. Four borings are to be drilled and samples taken from various depths to classify the surrounding soils. A geotechnical report will be prepared which will include recommendations for the following:

- Excavation & Fill Placement
- Utilities
- Pavement
- Foundation Design

Required Development Permits

The following is a list of development permits that most likely will be required from the Municipality of Anchorage to construct the new LIO Development.

- Municipality of Anchorage (MOA) Right-of-Way Permit
- MOA Storm Water Site Plan Review
- MOA Grading, Excavation, and Fill Permit
- MOA Building Permit
- AWWU Private System Water & Sewer Service Permits

Parking

Existing onsite parking is available for up to 103 spaces. Upgrades to the existing garage consist of new lighting, paint and a secure basement level with access control.

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9/19/13

Exhibit A – LIO Mechanical Narrative

Ende 9/19/12

P R O J E C T N A R R A T I V E
LIO Anchorage State Legislative Office Building Renovation

Design Parameters:

The latest adopted version of the following codes and standards as amended by the Municipality of Anchorage are currently applicable for this project:

International Mechanical Code
International Fuel Gas Code
Uniform Plumbing Code
International Building Code
International Fire Code
NFPA 13
SMACNA – Sheet Metal Design Standards
National Electrical Code
Americans with Disabilities Act (ADA)
ASHRAE/IES Standard 90.1
International Energy Conservation Code

The design parameters listed in this document may be considered a working document as well. As the design progresses the parameters in this document may be revised as a result of changing technology, payback analysis and/or feedback from the owner.

Mechanical & Plumbing Demolition:

All existing mechanical and plumbing systems will be demolished from the building. Remodel work will provide all new plumbing systems from the main AWWU utilities in the alley; and will be installed completely new to support the new building addition and existing structure. All existing heating and ventilation systems will be completely demolished from the building and will be replaced with new efficient systems.

Fire Protection:

As this is a design build project the sprinkler contractor will work with a NICET licensed sprinkler designer to provide design and installation of the sprinkler system. It is anticipated that a standard wet-pipe sprinkler system complying with NFPA 13 will be provided throughout the facility. A dry-pipe sprinkler system may be necessary to protect canopies or overhangs if they are built of combustible construction.

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The building height of 110' to the mechanical penthouse level in combination with the available water pressure at the site is very close to needing a fire pump to supply adequate pressure to the sprinkler heads at the top of the building. The need for a fire pump will need to be analyzed by the sprinkler designer to determine if piping can be sized to meet site conditions. Static water pressure is approximately 80 PSI; available flow at the main is 2,436 GPM at 20 PSI residual.

A single sprinkler riser will be acceptable since the building is less than 52,000 square feet per floor. Dry standpipe risers will be located in the stairwell exit enclosure(s). One dry pipe will need to extend through the roof for fire department access.

A suitably sized fire department connection line will be routed from the sprinkler riser to near the building's main entry. Sprinkler piping will need to conform to the requirements of NFPA 13.

Plumbing:

The new water service and sprinkler riser will be located in the basement and first floor mechanical room adjacent to the South alley to support both domestic water and sprinkler systems. The requirement for a fire pump (if necessary) will drive space constraints and locations as the design moves forward.

It is anticipated that a 6" water service will be provided for the building. The domestic water system will be separated from the sprinkler system by a double check back flow prevention device in accordance with requirements of the UPC.

Due to the height of the building a domestic water pressurization pump package will be necessary to provide adequate pressure for plumbing fixtures in the upper floors. A variable speed controlled multiple pump package will be specified to service the upper floors. The basement and lower level floors will operate using city water pressure and will be piped separate from the domestic water booster pump. The domestic water service will also include a backflow preventer. All domestic water piping will be specified to be Copper, CPVC or PEX piping.

The new sanitary sewer service will enter the building from the South alley. The pipe will be 6" diameter and enter the building above the floor level of the basement. The basement plumbing fixtures will drain to a duplex lift station that will pump the sanitary waste up to the level of the incoming sanitary sewer line. The lift station will be located in a dedicated room that is ventilated continuously at 5 air changes per hour. Sanitary piping will be specified to be cast iron no-hub or copper, drain waste and vent (DWV). ABS and PVC can be considered for areas that do not have return air plenums, or noise concerns.

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Domestic hot water for the building will be provided using two separate water heaters. One water heater will be located in the first floor area and supply the lower floors that operate using city water pressure. The second water heater will be located in the mechanical penthouse and will serve the fixtures that operate using the domestic water pressure booster pump. Water heaters will be gas fired sealed combustion high efficiency equipment. A hot water recirculation system will be required to provide hot water to plumbing fixtures located on each floor. Water will be stored in the tank at 140 degrees and will be routed through a tempering valve prior to distribution to the rest of the building. The distribution temperature will be adjustable but we recommend a 115-degree temperature. Tempering valves with the appropriate ASSE listing will be utilized at public lavatories.

New plumbing fixtures will be installed throughout the facility. All the existing fixtures will be demolished. The new plumbing fixtures will be specified to include water and energy saving devices and will incorporate vandal resistant features to prevent tampering. New floor drains will be installed where required. All new floor drains will be equipped with trap primers as required by code. In addition to the new restroom groups, each legislative office floor will include a kitchen sink, dishwasher & hydration station and refrigerator. Single stall shower rooms will be provided in the basement for the small locker and exercise equipment areas.

New exterior, frost-proof hose bibbs will be provided for both the new addition and existing portion of the building. Hose bibbs will be installed around the exterior of the building at approximately 150' intervals or specifically where needed for clean-up or irrigation for planting. Hot water and cold water hose bibbs will be installed in the toilet rooms where Janitor rooms are not located adjacent to the toilet rooms.

New rainleader piping will be installed to support the new roof drains and overflow drains serving the facility. The roof drains and overflow drains will connect at the roof and tie into the primary storm drain lines inside the building; an overflow scupper will be installed where the building storm sewer leaves the building in accordance with Handout Number 39 of the Municipality of Anchorage Building Safety Division.

The existing gas meter bar has several gas meters that serve various buildings on the block. The final location of the gas meter(s) and service to the building(s) that are currently supplied from the South alley will need to be coordinated with Enstar and the various building owners.

Elevator sump pumps will be necessary; current code requires 50 GPM capacity per elevator car. The Municipality of Anchorage is currently preparing a policy that may allow 50 GPM capacity per elevator pit; this will be evaluated during the design process.

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Fuel Systems:

New natural gas piping will be provided to supply the boilers, water heater, and the rooftop HVAC unit on the roof. Due to the length of run from the meter location to the roof it is anticipated that a medium pressure gas piping system will be designed to limit the size of the gas piping. The location of the medium pressure gas piping will need to be coordinated with the architecture. Enstar has restrictions on the use of medium pressure gas piping within a building. The gas piping may have to be enclosed in a decorative chase or be routed exposed up the exterior of the building. The gas meter will be provided with a mechanical operated earthquake valve to shut off gas in the event of a significant seismic event.

In addition the gas meter and gas piping that was recently installed for the Verizon generator located on the roof of the building will need to be addressed in the remodel similar to that described above (for new gas piping to the boiler/HVAC system).

The packaged standby generator will be provided and specified by the electrical engineer. The generator will include a double wall subbase fuel storage tank with the unit for fuel storage.

Heating:

The new boiler system will be installed in the existing penthouse mechanical room. The heating system will include two (2) sealed combustion high efficiency-modulating boilers. Two in-line mounted circulating pumps with variable frequency drives will supply heating water to the building.

Depending upon the selected boilers; piping will be either a parallel pipe design, or a primary/secondary piping arrangement with a boiler pump. The hot water supply temperature will be reset based on outside air temperature. The outside air reset schedule will increase supply hot water temperatures during peak heating season operation and decrease hot water supply temperatures to minimum levels during shoulder and summer seasons.

The building will be heated with fintube radiation. The fintube will be located continuously along the perimeter of the building to provide warmth where the heat is lost through the exterior wall. Entryway terminal heat transfer equipment will be cabinet unit heaters; storage rooms and penthouse areas will utilize hydronic unit heaters. Perimeter fintube and the terminal heating units will provide heat to the building during unoccupied hours when the air-handling units are off. Hydronic heating coils will be installed in each of the VAV boxes to provide tempering of supply air and supplemental heating for occupant comfort. Fintube, terminal heating equipment, and heating coils will be oversized to

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operate with 140 degree F water to allow the high efficiency boilers to operate at condensing temperatures throughout the year.

A direct return heating system will supply the terminal heating equipment. The piping mains will be routed vertically in the ventilation shaft and tee off at each floor to serve fin tube, unit heaters, and VAV box coils. Heating coils and terminal heating equipment will be provided with 2-way valves to take advantage of the variable speed pumps. Isolation valves will be provided at each floor where piping exits the shaft for maintenance and isolation for remodel work.

The primary heating system will utilize water with inhibitors for corrosion protection and stabilization a chemical feed and test station will be incorporated into the design. Glycol water systems are not necessary for the building as the rooftop HVAC unit has gas heat and there will be no heating coils exposed to freezing conditions.

Ventilation:

The ventilation system for the building will consist of a new packaged, gas fired, electric cool, direct expansion HVAC rooftop unit. The air distribution system will be designed to conform to ASHRAE Standard 62.1 to ensure good indoor air quality. CO2 sensors and outside air intake volumetric measurement sensors will be employed to ensure adequate ventilation rates. A post construction, pre-occupancy ventilation purge of the building is planned to remove indoor air contaminants produced by off gassing of new construction materials.

The building ventilation system will be variable air volume (VAV). Medium pressure supply air ductwork will be routed from the rooftop HVAC unit to each floor using a ventilation shaft. A combination fire/smoke damper will be required where the supply duct penetrates the shaft wall. The ventilation shaft will also provide the path for return and relief air back to the rooftop HVAC unit. Return air openings complete with combination fire/smoke dampers and sound lined elbows will be provided above ceiling at each floor to allow return air to transfer into the shaft. The space above the T-Bar ceiling on each floor will be a return air plenum.

Sound control is important between legislative suits. As such the walls will go full height for each of the suites and the corridors. An air transfer opening with a sound lined transfer boot will be located above the ceiling at the entry door of each suite to allow return air to transfer to the space above the corridor ceiling and back to the ventilation shaft.

The VAV system will be sized to cool the building using 55 degree F supply air in the ductwork distribution system. The VAV system supply air temperature will be reset based upon the air temperature required to cool the hottest room. The air

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handling unit fan will modulate up or down as needed to meet the required demand load. The fin tube radiation will be controlled with the local VAV box and coil in sequence to maintain a comfortable space temperature.

Air distribution will include multiple types of inlet/outlets for the various building areas. Flow bar style diffusers are anticipated for the legislative offices and common areas supply air. A combination of flowbar and 4-way throw diffusers will supply air to the remainder of the spaces. A combination of eggcrate and bar grilles are anticipated for return and exhaust.

The packaged rooftop unit will include relief fans to ensure air turnover during economizer operation. The relief fans will include a variable frequency drive to allow capacity modulation to maintain a +0.05" (adjustable) pressure differential between the indoor and outdoor.

The main restrooms rooms, break rooms, janitor closets and other similar spaces in the facility will be served by a roof mounted variable speed domex exhaust fan. The exhaust fan will be scheduled to operate during the owner's occupied/unoccupied schedule. Ductwork will be slightly oversized to allow the addition of exhaust requirements in the future. This will allow exhaust modifications by simply rebalancing the system.

Communication closets and AV Room areas will be provided with a dedicated cooling exhaust air fan with transfer air duct to maintain space temperature. The exhaust fan will draw air from the occupied space and discharge the air into the return air plenum above the ceiling. A close on rise thermostat will start the exhaust fan when temperature rises above set point and shut off the fan when the set point is achieved. The dedicated exhaust fan will be capable of 24/7 operation allowing cooling of the communication closets when main building air handling units are shut off during unoccupied modes.

The lift station enclosure room located in the basement will include a dedicated exhaust fan that is extended to discharge to the exterior of the building. The fan will be sized to provide a minimum of 5 air changes per hour and will operate continuously.

IT Room Cooling:

The IT room will be provided with two completely redundant cooling systems. Each cooling system will be sized to meet 100% of the cooling load (plus some expansion) to allow back-up should one unit fail. This will also allow one unit to be taken down for service without affecting operation of the IT Room computer equipment.

Each cooling system will be specified to include humidification and dehumidification capability to maintain the space between 30% and 50% relative

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humidity. Condensate will be pumped (or drain by gravity if possible) to an indirect waste location in the facility.

Each cooling system will include a remote dry cooler and duplex pump package to provide free cooling when outside air temperatures are suitable. The dry coolers (or a single two circuit dry cooler) will be located in the adjacent parking garage. Glycol piping will extend between the dry cooler(s) and the cooling units in the IT Room to transfer rejected heat from the IT Room to the exterior. During winter operation a cooling coil in the unit provides cooling. During the summer the heat rejected from the operating compressors is rejected to the exterior using the drycooler.

The system will utilize a 50/50 mixture of propylene glycol and water and will include a glycol fill tank and expansion tank. (deleted "air separator." We don't typically install air separators on dry coolers)

Snowmelt:

The owner is providing snowmelt for three areas of the building: the front entry/sidewalk, the South rear entry/loading area and the parking garage ramp for safety and reduced snow removal and icemelt use. This will reduce maintenance of high traffic areas in the building. The first two areas can be combined and supplied from a single snowmelt boiler located in the first floor mechanical room located at the South end of the building. An alternate approach under consideration will be to provide a heat exchanger and snowmelt pump at each snowmelt location and provide the energy for melting snow from the main boiler system that supplies the building.

If a separate boiler is used it will be a gas fired sealed combustion high efficiency boiler. The boiler will supply heat into a snowmelt piping distribution loop that extends to each of the snowmelt areas. A snowmelt distribution manifold will supply tubing loops at each snowmelt location. Snowmelt tubing will typically be 5/8" diameter located 6" on center (over insulation) but embedded in the slab.

A stand alone Tekmar controller would operate the distribution pumps and enable the boiler in sequence to melt snow in the two locations. A snowmelt sensor located in each of the areas can be employed to automatically start/stop the system and control idle mode between snowfalls.

Insulation:

The building will be designed in accordance with LEED concepts. Insulation for piping, ductwork, and equipment will be in accordance with the International Energy Conservation Code (IECC). Supply air ductwork located in the return air plenum above the ceiling plenum will require insulation. Insulation will also be

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installed on the air separator, as well as valves/hydronic specialties larger than 2" diameter.

Controls:

A microprocessor based direct digital control (DDC) system will be specified for the facility. The control system will be performance specified by the engineer to meet the sequence of operations listed in the contract documents. The control system will be specified to be a Trane Tracer Building Automation system.

The control system will include a full graphics package to allow point and click access for control of mechanical system.

The boiler system will be specified to include a package boiler controller. The boiler controller will communicate with the building DDC system to provide alarm information only.

The rooftop HVAC unit and VAV boxes can be provided complete with Trane Tracer controls to seamlessly integrate into the DDC network. The main building exhaust fan would also be controlled by the DDC system.

Remaining equipment such as unit heaters, cabinet unit heaters, communication closet exhaust fans, will be controlled with standalone electric/electronic controls that do not require connection to the DDC system.

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Exhibit A – LIO Electrical Narrative

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ELECTRICAL AND TELECOMMUNICATIONS DESIGN NARRATIVE
LIO ANCHORAGE STATE LEGISLATIVE OFFICE BUILDING RENOVATION

Scope of Work Basis of Design

Design and construction of the facilities will comply with the latest publications identified under the References section. In addition the apparatus, equipment, materials, and installation will conform to the standards of the National Electrical Manufacturers' Association (NEMA), Underwriters' Laboratories, Inc. (UL)*, the Institute of Electrical and Electronic Engineers (IEEE), the Illuminating Engineers Society (IES), and the Occupational Safety and Health Administration (OSHA). *All electrical devices and equipment will be listed by an acceptable certified testing laboratory.

The design will include calculations supporting the designed fault interrupting capacities, calculations supporting the total connected building load, panel loads and estimated building and panel feeder voltage drops.

The electrical design and construction will include, but is not limited to:

Main distribution switchboards consisting of metering equipment and overcurrent protection for distribution and branch circuit panels.

Feeders to distribution and branch circuit panels.

Branch circuit panels for power, lighting, HVAC, etc.

Branch circuit wiring systems for equipment, lighting, duplex receptacles, appliances, motors, motor starters, etc., as required.

Wall switches, duplex receptacles and other wiring devices.

All hangers, anchors, sleeves, chases, support for fixture, and electrical materials and equipment.

Interior lighting fixtures, controls complete with all lamps.

Wiring and connections to all equipment furnished by the owner.

Exterior lighting and controls.

Telecommunication system.

Fire Alarm system with monitoring of sprinkler system.

Door Access.

CCTV System.

Cable TV system.

References

The following electrical codes and standards will be applicable to the electrical design of the facility:

International Building Code (IBC)

International Residential Code (IRC)

Illumination Engineers Society (IES) Lighting Handbook

NFPA 101 Life Safety Code

NFPA 70 - NEC National Electrical Code

NFPA 72, National Fire Alarm Code

TIA/EIA 568A, Commercial Building Telecommunications Cabling Standard

TIA/EIA 568B, Commercial Building Telecommunications Wiring Standard

TIA/EIA 569A, Commercial Building Telecommunications Pathways and Spaces

TIA/EIA 600, The Administration Standard for the Telecommunications Infrastructure of Commercial Buildings

TIA/EIA-606

TIA/EIA 607, Commercial Building Grounding and Bonding Requirements for Telecommunications

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Design and construction of the facility will comply with the latest publications identified under the References section. In addition the apparatus, equipment, materials, and installation will conform to the standards of the National Electrical Manufacturers' Association (NEMA), Underwriters' Laboratories, Inc. (UL)*, the Institute of Electrical and Electronic Engineers (IEEE), the Illuminating Engineers Society (IES), and the Occupational Safety and Health Administration (OSHA).

*All electrical devices and equipment will be listed by an acceptable certified testing laboratory.

Power Distribution

Electrical Service

The current service is a 208V 3 Phase 1200 Amp. It is planned to replace the existing electrical service with a new 2500 Amp 208 Volt or a 1200 Amp 480V 3 phase service depending on which proves more cost effective. Verizon has existing equipment on the roof which must remain functional during the remodel. The load is 200 Amp 208V single phase and includes a natural gas fire generator.

Service Equipment - Main Distribution Switchboard

Service entrance equipment will be dead front construction, equipped with circuit breakers and sized to accommodate 125% of building load. The building loads will be metered at the service entrance equipment. Meter will be digital and equipped with communication port for future remote energy monitoring. The digital meter will provide as minimum voltage and amps each phase, KW/KWH demand, KVA and usage. Meter provided will be equipped with an output connection to transmit the signal to a remote location via telephone lines at a later date. Transient voltage surge suppressor will be provided at the service equipment. Surge suppressor will meet the requirements of IEEE C62.41 and be UL listed and labeled as having been tested in accordance with UL 1449.

Standby Power

A 150 KW standby power generator is planned to be installed on the alley side of the building. Generator to be installed in a weatherproof enclosure. An integral sub base fuel module will be provided in the unit.

A single 600 Amp 4 pole automatic transfer switch with distribution for the elevators, telecommunication equipment in each telecom room, heating equipment, partial lighting and misc power receptacles deemed critical.

Interior Electrical Power Distribution

Complete interior electrical distribution system will be provided as required by the National Electrical Code. Voltage drop will be in accordance to National Electrical recommendation. An electrical room will be provided on each floor. Each floor will be provided with a 480V/277V lighting panel and two 208V/120V power panel for receptacles etc. Outlets in all office suites will exceed code and will placed on office suite demising walls perpendicular to exterior walls to accommodate at least four workstations per office.

Panelboards

All panels will be sized for the load served plus 25% spare capacity and 15% space. Only bolt-on circuit breakers will be used. All panels located in finished areas will be recessed and all panels and conduits located in unfinished areas will be surface mounted. Separate electrical rooms will be provided to the greatest extent possible and on each floor of multi-story buildings.

Conduit and Raceways

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All interior wiring in the building will be run in conduit. Raceways will be specified of the type suited for the applications and locations. Raceways installed for future systems will include pull wire. To the maximum extent practical, conduit will be installed concealed in all areas except utility spaces.

Conductors

Conductors will be copper. Conductor #12 or smaller will be solid. Conductor #10 or larger will be stranded. All building wiring (line-voltage between 100-600 volts) will have type THHN, or XHHW 75 ° C (167 ° F) insulation and be rated at 600 volts unless some other type is specifically required for a particular application. Power conductors will not be smaller than #12 AWG.

A separate insulated grounding conductor will have green color or marking insulated and be sized and installed per NEC requirements, in all secondary, distribution, feeder and branch circuit conduits.

Branch Circuits for Receptacle and Lighting Circuits

Lighting and convenience outlets will be run on separate circuits. Dedicated circuits for loads greater than 50% of the circuit capacity will be provided.

Circuits for computers and electronic devices will be designed to have a dedicate neutral and the panels and transformers rated accordingly.

Devices

All duplex receptacles will be 20 amp, 125 volt, three pole grounded type specification grade duplex receptacles NEMA 5-20R are acceptable unless type of equipment requires different configuration. Impact resistant plastic plates will be provided for boxes and devices. Ground fault interrupt (GFI) type duplex receptacles will be provided in locations as required by the NEC and provided with weatherproof device plate covers at exterior locations. At least one GFI receptacle will be provided in each restroom and janitor's closet. Arc-fault circuit interrupter protection will be provided in accordance with NEC.

Provide the minimum power outlets required by NEC but not less than a duplex outlet on each wall. In office and administration areas provide double-duplex receptacles at each location and near a data outlet.

Lighting

Exterior Lighting

General

All lighting shall comply with the recommendations of the Illumination Engineering Society of North America (IESNA). All exterior site and area lighting will be LED.

Interior Lighting

General

Illumination levels will be in accordance with the recommendations of the latest Illuminating Engineering Society (IES) Lighting Handbook.

The lighting systems will be designed to provide comfortable visibility conditions having adequate intensities for the safe and effective accomplishment of the tasks to be performed. The finish and color of room surfaces will be coordinated with the lighting system design to reduce glare, increase light utilization, and attain an acceptable brightness ratio recommended by Illuminating Engineering Society (IES) Lighting Handbook. Light sources and fixtures will be selected to provide the most efficient and economical system practicable. Linear fluorescent and compact fluorescent lighting will be provided as the primary source of illumination. Lighting calculations will be based on the actual finish material reflectance or a maximum of

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80% for ceiling, 50% for the wall and 20% for floor whichever is lower. Light fixture schedules including lamp type, voltage, wattage, type of mounting, manufacturer name and catalog number will be provided.

All conference rooms will include 5% dimming ballast.

Refer to architectural reflected ceiling plans and catalog cuts for additional information.

Lighting Control

Control switches for general room lighting will be located at room entrances and other locations for control of lighting fixtures and systems. Typically, rooms with more than one door will have three or four-way switches as required.

Emergency Lighting System

Emergency lighting will be provided per NFPA 101. Emergency lighting will be designed as an integral part of the facility lighting system, and will be incorporated as part of the system lighting fixture. As a minimum, emergency lighting will be provided for building corridors, stairs and common areas.

Exit Signs

Exit signage will conform to NFPA 101. Exit signs will be glass green edge light emitting diode (LED).

Grounding

Provide a building grounding electrode system consisting of a ground ring, metal underground water pipe, building structural steel, concrete encased electrodes, and copper clad steel rod electrodes. A ring ground of #1/0 AWG bare copper buried within the building foundation interconnecting to a 3-meter minimum length ground rods and foundation every interior/exterior corner 2 meters from the building.

All line voltage circuit wiring will contain a separate bare or green insulated grounding conductor. Conduit raceways will not be utilized as the only grounding method. A min #6 AWG copper will be provided from service equipment ground to main telecommunication closet per TIA/EIA 607 requirements.

Other Requirements

Mechanical Connections

Mechanical connections for mechanical equipment. See mechanical narrative.
Provide option to provide power for fire pump as sized by mechanical engineer.

Conference Rooms

Conference rooms will include wall flat screens with network connections, laptop interface, video conferencing and power/telecom under the conference tables.

Lighting in conference room will be dimmable.

Seismic and Testing Requirements

Design, calculations, and testing of all seismic requirements for electrical and communications equipment shall be provided. All electrical equipment shall be tested in accordance with applicable specification for each type of equipment. Testing shall include any required factory testing, field testing, and operating testing. As a minimum, testing shall include, transformers, wiring, switches, light fixtures, circuit breakers, contactors, and head bolt outlets.

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Telecommunications (Voice and Data)

Cat 6 horizontal Telecommunication cabling system will be provided with all cables routed back to dedicated telecommunication room on each floor.

Vertical Telecommunication system will include 200 pair copper voice cable and 24 strand fiber optic riser.

Distribution will be design in compliance with ANSI/EIA/TIA standards. The telecommunications system will be complete and include the telephone/data and cable system backboards, punch down blocks, and all associated raceways, cable tray, j-hooks, outlets and cabling.

Equipment racks shall be floor mounted 19 inch wide. Provide minimum 50 foot-candle lighting level and minimum two dedicated 20-ampere 110 volt power branch circuits in the communications room. A wall-mounted telephone near the entry door of each main communications rooms will be provided.

Cable tray will be used for interior distribution of com systems.

Provide 24 port, rack mounted fiber optic patch panel with coupling plates and ST connector ports
Distribution of fiber optic cables throughout the new building will be by others.

Copper cable distribution shall be 4-pair 24 AWG, 100-ohm unshielded twisted pair (UTP) in 1 inch conduit. All copper pairs and fiber optic strands shall be terminated and tested. Copper connectors will be EIA/TIA Cat 6 8-pin/8-position insulation displacement terminations wired per T568B. Fiber optic connectors will be EIA/TIA "SC" type 5685C. A minimum of two 8-pin modular RJ45 type connectors will be provided in each outlet box. In finished areas standard outlet boxes will be 4-11/16 x 4-11/16 double gang electrical box with the faceplate flush with the wall surface. In unfinished areas the outlets shall be surface mounted.

One outlet in each main mechanical and electrical room of the buildings for official communications. Communications outlets will be provided in all private offices, platoon offices, conference rooms. Number of outlets will be per the requirements of the RFP in each area.

Cable TV (CATV) System

Cable television connection will be provided to all buildings. Service will be coordinated with GCI. Each office suite and conference rooms will include outlets.

Fire Alarm

The building will be equipped with an addressable fire alarm system with a fire alarm panel and dialer panel
A remote annunciator will be provided at the building entrance.

Access Control System

Door access control system will be required for approximately 20 doors. System to be compatible with existing State of Alaska systems at other facilities.

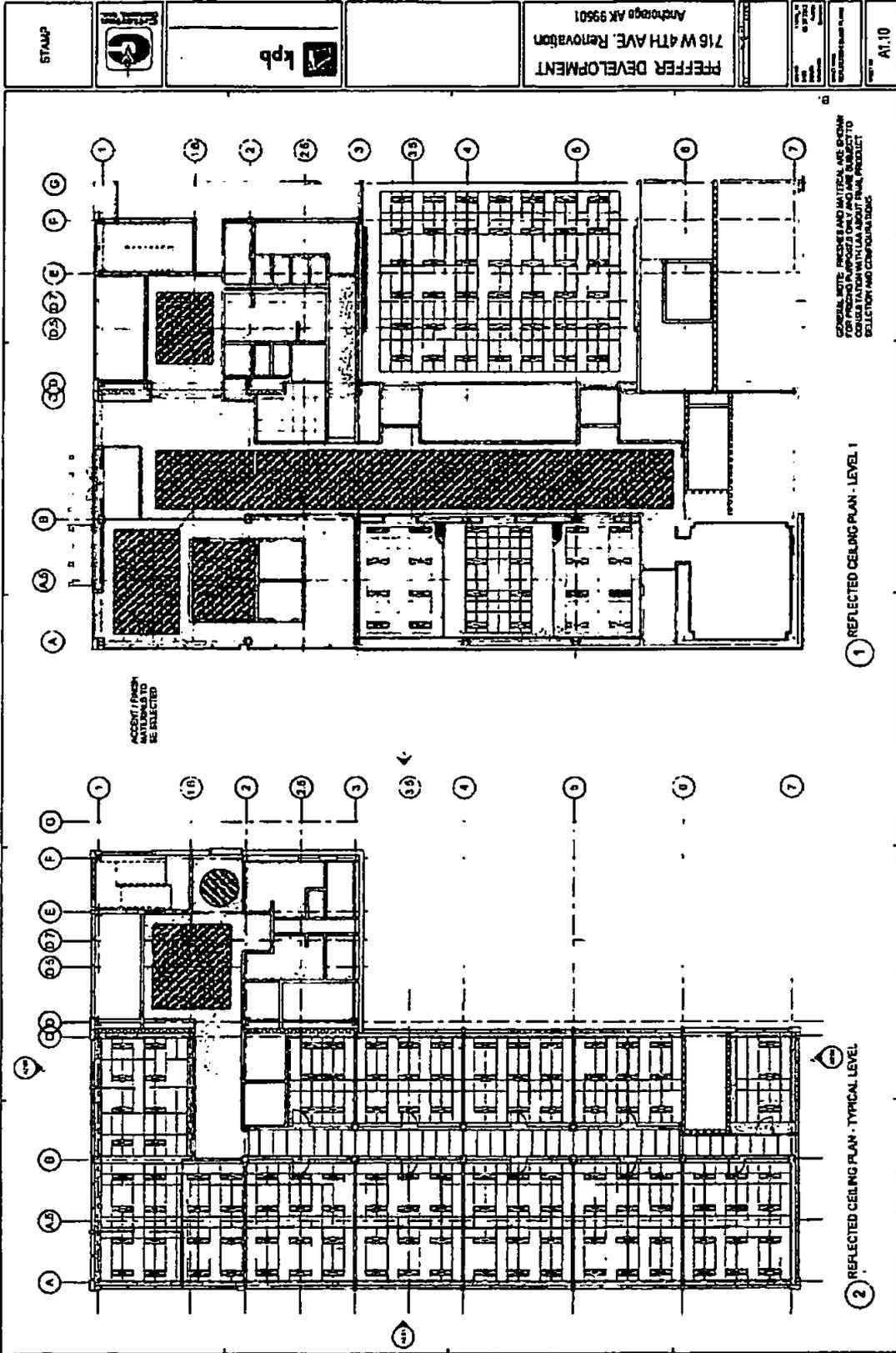
CCTV Security

A CCTV system will be required with an assumed 20 cameras with recording DVR's for a 2 week period.

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Exhibit A – LIO Reflected Ceiling Plans

See 9/19/13



See 9/11/11

Exhibit A –
LIO Structural Plans Narrative

File 9/19/12

Legislative Information Office (LIO) Building Renovation

Structural Narrative

08-28-13

Existing Construction

The existing legislative information office building is a 7-story (6-story + 1-story basement) building located in downtown Anchorage, AK. No as-built or original construction drawings are available for this building. All the information below is based on data accumulated in the field and assumptions based on typical construction techniques.

The existing gravity-resisting system starts with concrete on metal deck floors, supported by steel bar-joists. The floor decks are typically 1.5-inch metal deck with concrete topping between 3.5 and 4.5 inches thick for a total average thickness of 5.5-inches. The roof uses the same deck and concrete as the floors. The typical floor and roof framing are steel bar joists spanning in the north-south direction between girders. The joists are 14 to 18-inches deep, spaced at 24-inches on-center, and span 20 to 27-feet. The girders and columns supporting the steel bar joists are steel wide-flange moment frames oriented in the east-west direction and are located in seven lines spaced over the length of the building. The girders are 24-inches deep (W24) and the columns are 14-inches wide (W14).

The exterior walls on the east and west sides are 8-inch thick cast-in-place concrete shear walls for the full height of the building. On the north side, the wall consists of a precast and glazing system. On the south wall, the exterior wall is a panelized exterior system similar to an exterior insulated finishing system (EIFS).

The basement floor is 12-feet below the first floor and is a concrete slab on grade that is 2-feet below the grade of the parking garage on the west side, and 3.5-feet below the basement of the Anchor Bar on the east side. Large grade beams run north-south along the sides of the building supporting the 8-inch concrete walls above and the columns along Grids A & C (east and west sides).

At the southwest corner of the first floor, a concrete vault (used by the previous bank tenant) anchors the corner of the building. The first floor is 21-feet tall, while the other stories are 12.75-feet tall. The roof has two penthouses on top; one toward the north end for the elevator, and one on the south side for the mechanical units. In addition, a cell-phone antenna has recently been added on the roof between the penthouses.

The existing lateral system is separated by direction. In the east-west direction, the lateral system is steel moment frames, with W14 columns and W24 beams at each numbered grid. The connections between the beams and columns are referred to as "Pre-Northridge Welded Unreinforced Flange, Welded Web" connections (Pre-Northridge WUF-W). These connections weld the top and bottom flange, as well as the web, of the beam to the column flange. These welds have exhibited low ductility behavior during past seismic events in California over the last 20 years. These types of connections have now been prohibited by the building code without specialized detailing to make them more ductile. Ductile behavior is

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important in buildings, because preventing collapse of buildings after an earthquake is a function of not just the building's strength, but also its ductility.

In the north-south direction, the lateral system is concrete shear walls on the east and west sides. When originally built, these walls were solid for their entire length. In a previous renovation, windows were cut in these walls to bring daylight into the building. No calculations are available for the renovation, so it is unclear whether any strengthening measures were undertaken to verify or enhance the capacity of the perforated shear walls.

Proposed Renovation

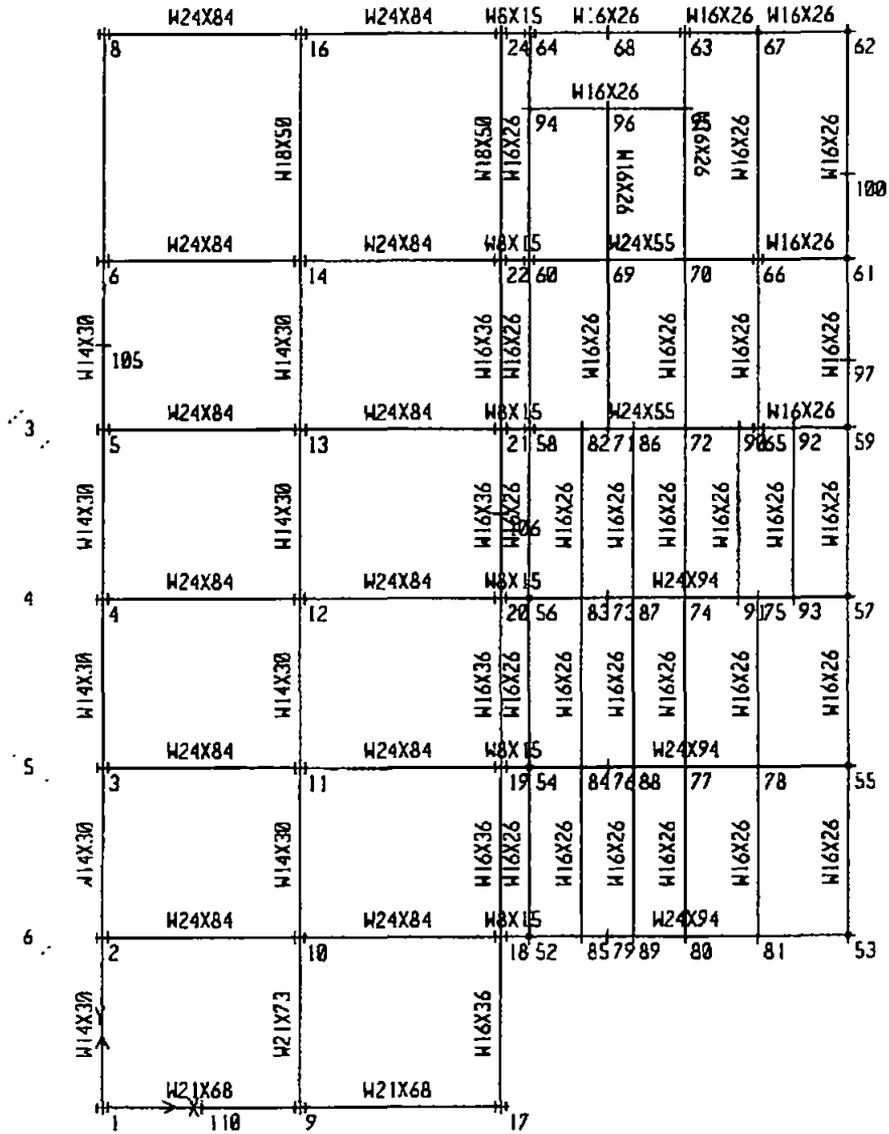
The proposed renovation consists of removing the Anchor Bar from the east side of the building, removing the east and west concrete walls from the existing building, and removing the existing north elevator and stair core (along with the northern penthouse). When these items are removed, the east side addition will be in-filled with a new meeting and hearing space on the basement and first floors, and a six story elevator and stair core on the north end.

During the demolition process, new shoring will be required along the northern edge of the Anchor Bar (along 4th Ave) and on the eastern side (adjacent to the existing building) to retain the basement and foundation excavation for the new building, which is expected to be 15 to 16 feet deep. This shoring will likely consist of steel piling with lagging between piling and will be permanent.

Since the usage and loads in the existing building are not changing, the gravity load resisting system in the existing building is adequate for the new gravity loads and only needs to be modified where the north core stairs and elevator are being removed. The gravity system in the new portion of the building will be tube-steel and wide-flange columns with wide-flange beams. The new floor and roof framing will be concrete on metal deck and supported by wide-flange beams. The foundation of the 6-story tower portion will be a thick concrete mat foundation (approximately 3-feet thick) and with the remainder of the new addition being founded on isolated concrete footings.

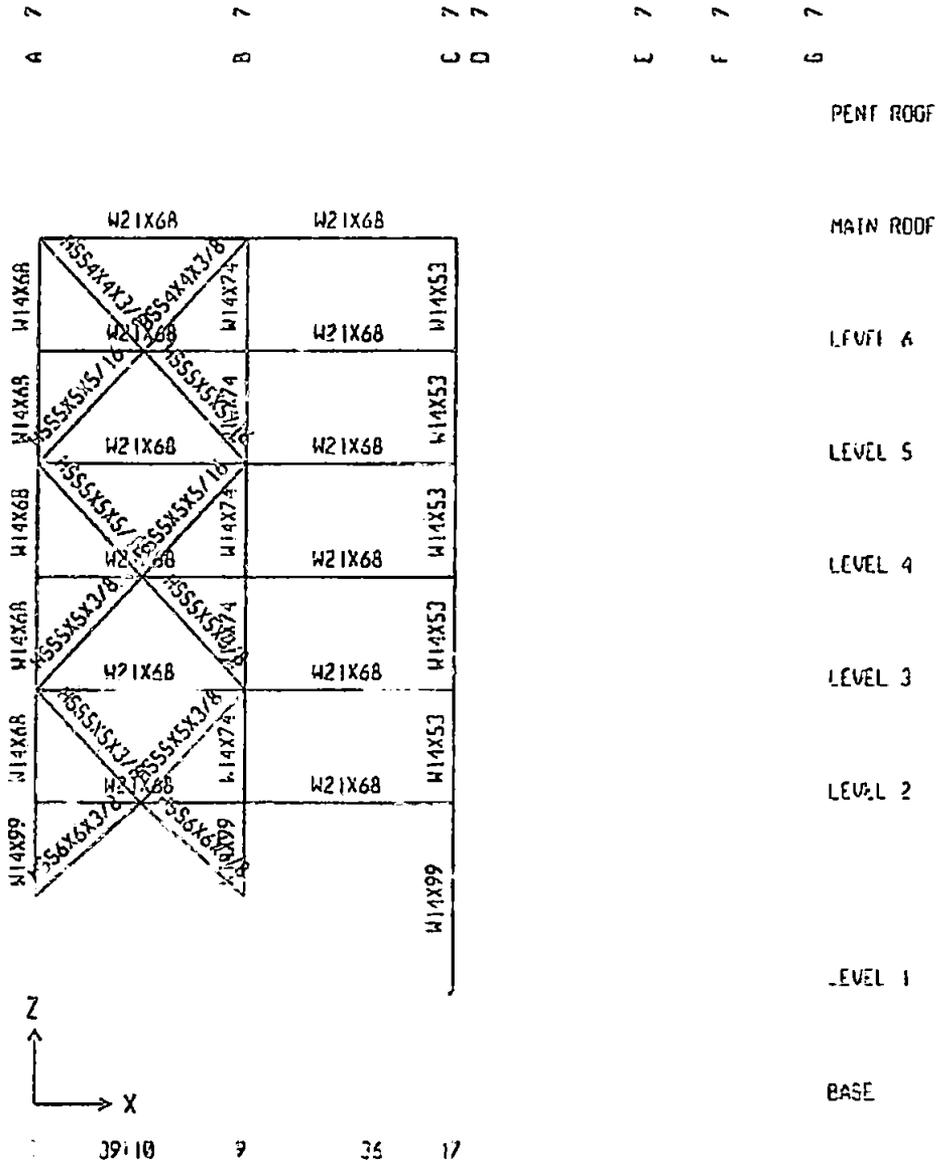
The lateral-load resisting system in the existing building is being completely revised in this renovation. The moment frame connections in the east-west direction are inadequate under current codes, and the concrete walls in the north-south direction are being removed to allow for new curtain wall. To replace the lateral system, new buckling restrained braced frames (BRBF) will be added in both the existing and new portions of the building. Since the entire system is being updated, the new and existing portions of the building will be combined and no seismic joint will be used. BRBF's are an advanced braced frame system that equalizes the braces capacity in both compression and tension, which creates a more balanced response to seismic forces and creates a significantly more ductile response. These braces will be welded and bolted to the existing and new steel frames in three bays in both the north-south and east-west directions.

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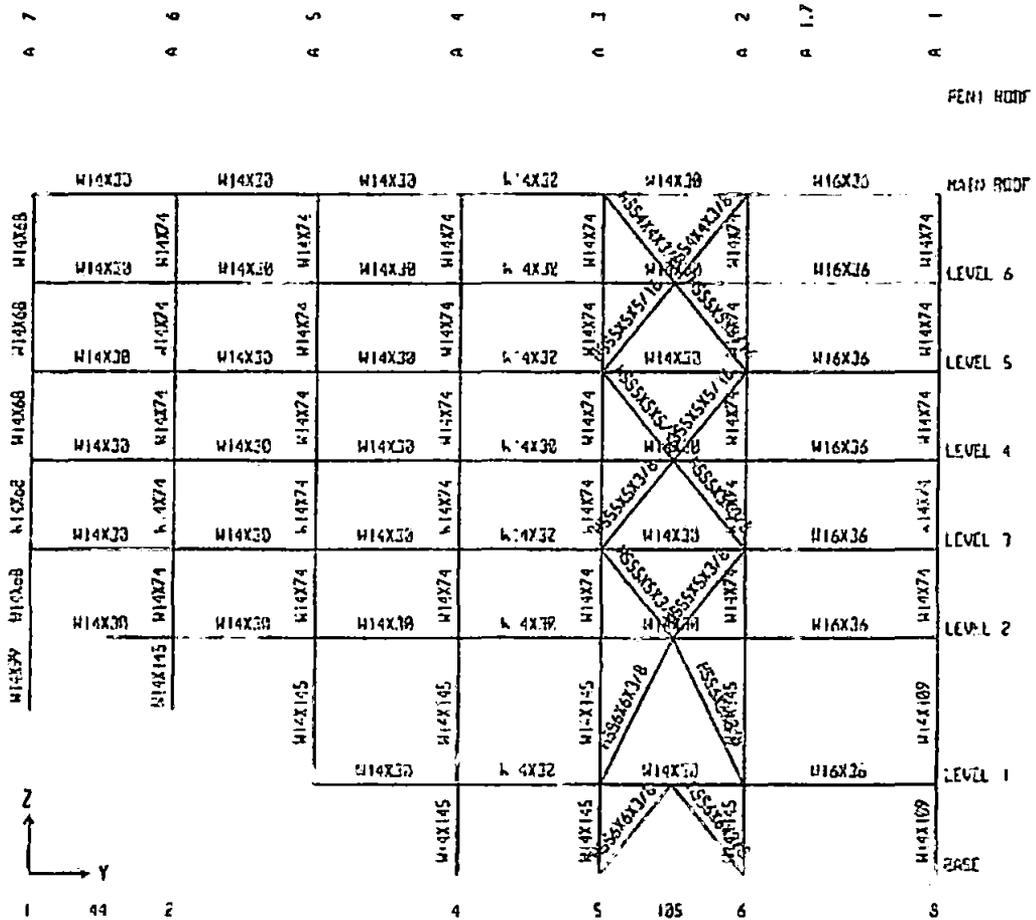
ETABS v9.7.4 - File: LIO-v2.0 - August 28, 2013 11:07
 Plan View - LEVEL 2 - Elevation 405.8996 - Kip-In Units

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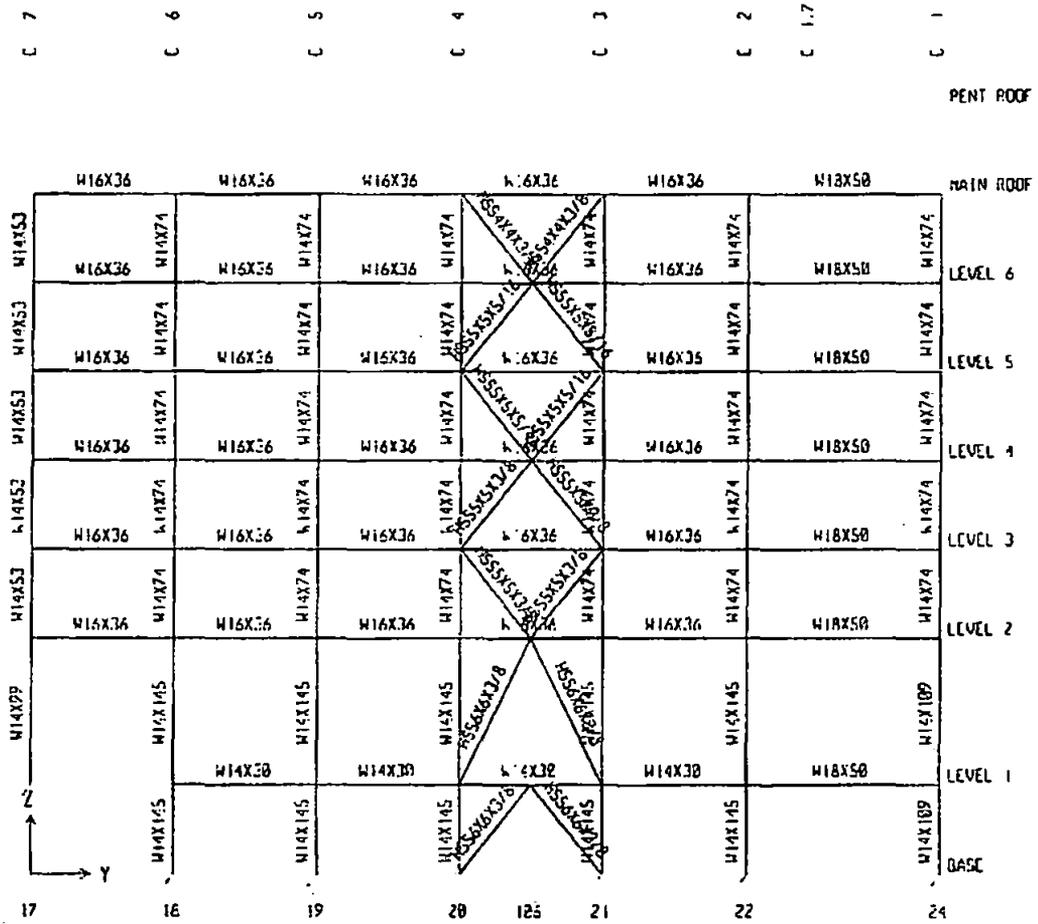
ETABS v8.7.4 - File: UO-v2.0 - August 28, 2013 11:05
 Elevation View - 7 - Kip-In Units

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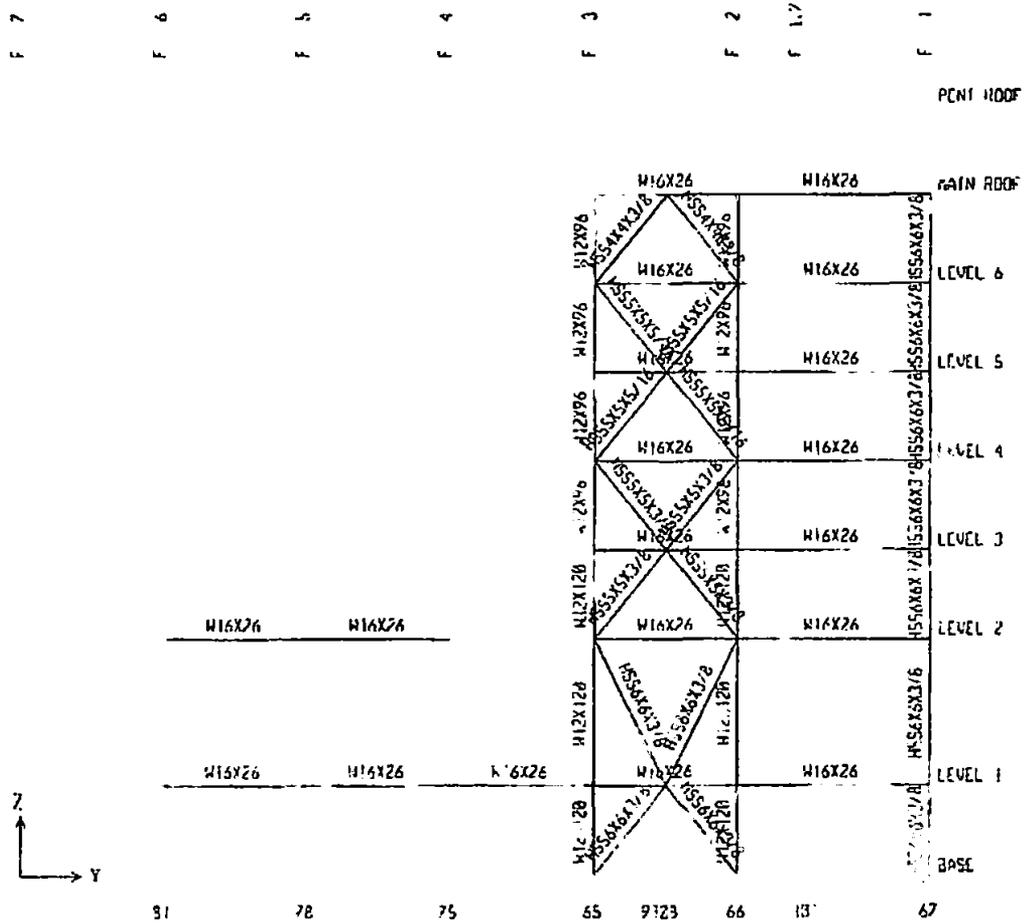


ETABS v9.7.4 - File: LIO-v2.0 - August 28, 2013 11:08
Elevation View - A - Kip-in Units

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 Elevation View - C - Kip-In Units



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 Elevation View F Kip-In Units

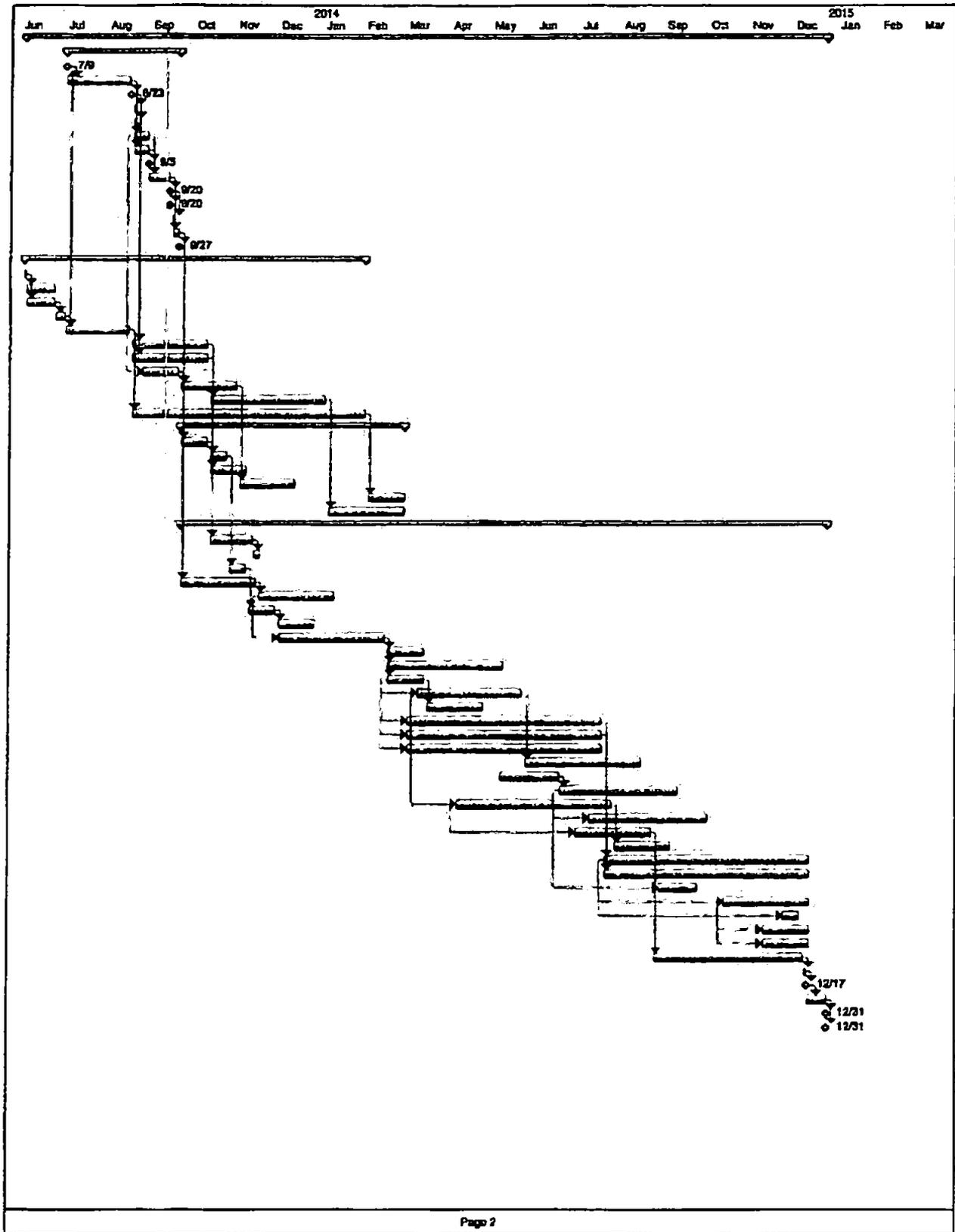
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EXHIBIT B

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ID	Task Name	Duration	Start	Finish	Predecessors	Feb	Mar	Apr	May
1	LIO Building	407 days	Tue 6/11/13	Wed 12/31/14					
2	Financing	58 days	Tue 7/9/13	Fri 8/27/13					
3	Concept Design and Pricing to AHFC	0 days	Tue 7/9/13	Tue 7/9/13 21					
4	Lease Rate and Scope Discussions with Legislature	33 days	Wed 7/10/13	Fri 8/23/13 3					
5	NTP to Design Build Team to progress drawings	0 days	Fri 8/23/13	Fri 8/23/13 4					
6	Design and Schedule Exhibits to AHFC	2 days	Mon 8/26/13	Tue 8/27/13 5					
7	Added Garage Deck Proposal	5 days	Mon 8/26/13	Fri 8/30/13 5					
8	Deal Term discussion with Legislature	9 days	Mon 8/26/13	Thu 9/5/13 4					
9	Appraiser Meetings	9 days	Mon 8/26/13	Thu 9/5/13 4					
10	Finalize Deal Terms	0 days	Thu 9/5/13	Thu 9/5/13 8					
11	Final Appraisal	11 days	Fri 9/6/13	Fri 9/20/13 9					
12	Execute Lease amendment	0 days	Fri 9/20/13	Fri 9/20/13 11					
13	Close on Anchor Pub Financing	0 days	Fri 9/20/13	Fri 9/20/13 11					
14	Close on Anchor Pub Acquisition	1 day	Mon 9/23/13	Mon 9/23/13 12					
15	Close on Construction Loan	5 days	Mon 9/23/13	Fri 9/27/13 11					
16	Final Construction NTP	0 days	Fri 9/27/13	Fri 9/27/13 15					
17	Design	174 days	Tue 6/11/13	Fri 2/7/14					
18	Design Kick-off meeting	1 day	Tue 8/11/13	Tue 8/11/13					
19	Geotechnical and Survey	15 days	Wed 8/12/13	Tue 7/2/13 18					
20	15% Design core and Shell and TI Scope	15 days	Wed 8/12/13	Tue 7/2/13 18					
21	Slip Sum Pricing	5 days	Wed 7/9/13	Tue 7/9/13 20					
22	Scope Adjustments	83 days	Wed 7/10/13	Fri 8/23/13 21					
23	100% Structural Building Design	40 days	Mon 8/26/13	Fri 10/18/13 5					
24	65% Design core and shell	40 days	Mon 8/26/13	Fri 10/18/13 5					
25	Temporary Relocation Spca Design	20 days	Mon 8/27/13	Fri 9/27/13 8SS+5 days					
26	95% Design core and shell	30 days	Mon 9/30/13	Fri 11/8/13 23					
27	Added Garage Deck Design	60 days	Mon 10/21/13	Fri 1/10/14 24					
28	95% TI Design	120 days	Mon 8/26/13	Fri 2/7/14 22					
29	Permitting	115 days	Mon 9/23/13	Fri 3/7/14					
30	Temporary Space TI Permit	15 days	Mon 9/30/13	Fri 10/18/13 25					
31	Demolition Permit	10 days	Mon 10/21/13	Fri 11/1/13 24					
32	Structural Shell Permit (needed for LIO Demo)	20 days	Mon 10/21/13	Fri 11/8/13 23					
33	Core and Shell Permit	30 days	Mon 11/11/13	Fri 12/20/13 28					
34	TI Permit	20 days	Mon 2/10/14	Fri 3/7/14 29					
35	Garage Deck Permit	40 days	Mon 1/13/14	Fri 3/7/14 27					
36	Construction	328 days	Mon 9/23/13	Wed 12/31/14					
37	Build Out Temporary Space	23 days	Mon 10/21/13	Wed 11/20/13 30					
38	Refer to Legislature and LIO	3 days	Thu 11/21/13	Mon 11/25/13 37					
39	Bar Demolition	10 days	Mon 11/4/13	Fri 11/15/13 31					
40	Crane Mobilization	40 days	Mon 9/30/13	Fri 11/22/13 16					
41	LIO Building Demo	40 days	Mon 11/25/13	Fri 1/17/14 40					
42	Shoring on Bar Site	13 days	Mon 11/18/13	Fri 12/6/13 39					
43	Foundation construction	20 days	Mon 12/9/13	Fri 1/3/14 42					
44	Structural Steel/Electric Refit	53 days	Mon 12/9/13	Fri 2/21/14 41SS+10 days					
45	Site Utility Work - Building foundation	20 days	Mon 2/24/14	Fri 3/21/14 44					
46	Exterior Skin/Curtain wall	60 days	Mon 2/24/14	Fri 5/10/14 44					
47	Membrane Roofing/Insulation	20 days	Mon 2/24/14	Fri 3/21/14 44					
48	Interior Framing	55 days	Mon 3/17/14	Fri 5/30/14 47SS+15 days					
49	Stair Construction	30 days	Mon 3/24/14	Fri 5/2/14 47					
50	Electrical Rough In	100 days	Mon 3/10/14	Fri 7/25/14 47SS+10 days					
51	Mechanical Rough In	100 days	Mon 3/10/14	Fri 7/25/14 47SS+10 days					
52	HVAC Rough In	100 days	Mon 3/10/14	Fri 7/25/14 47SS+10 days					
53	Elevator Installation	60 days	Mon 8/2/14	Fri 9/22/14 48					
54	Site Utility Work - In RCW	30 days	Thu 5/15/14	Wed 6/25/14					
55	Garage Deck foundation and structural work	60 days	Thu 6/26/14	Wed 8/17/14 54					
56	Gypsum Wall board	80 days	Mon 4/14/14	Fri 8/1/14 48SS+20 days					
57	Garage Deck architectural, mechanical and electrical	60 days	Thu 7/17/14	Wed 10/8/14 53SS+15 days					
58	Interior Taping and Painting	40 days	Mon 7/7/14	Fri 8/29/14 58SS+60 days					
59	Grid/Gyp Ceilings	30 days	Mon 8/4/14	Fri 9/12/14 58					
60	Electrical Trim	105 days	Mon 7/28/14	Fri 12/10/14 60					
61	Mechanical Trim	105 days	Mon 7/28/14	Fri 12/10/14 51					
62	Alley Paving, Sidewalk concrete, Landscaping	20 days	Thu 9/4/14	Wed 10/1/14 55SS+60 days					
63	Flooring	45 days	Mon 10/20/14	Fri 12/19/14 60SS+60 days					
64	Elevator Finishes	10 days	Mon 12/1/14	Fri 12/12/14 60SS+30 days					
65	Casework Install	25 days	Mon 11/17/14	Fri 12/19/14 63SS+20 days					
66	Doors and Hardware	25 days	Mon 11/17/14	Fri 12/19/14 63SS+20 days					
67	Finishes	76 days	Mon 8/1/14	Mon 12/15/14 58					
68	Final Cleaning	2 days	Tue 12/15/14	Wed 12/17/14 67					
69	Substantial completion/CCO	0 days	Wed 12/17/14	Wed 12/17/14 68					
70	Tenant FF&E	10 days	Thu 12/18/14	Wed 12/31/14 69					
71	Tenant Occupancy	0 days	Wed 12/31/14	Wed 12/31/14 70					
72	Final Completion/CO	0 days	Wed 12/31/14	Wed 12/31/14 70					

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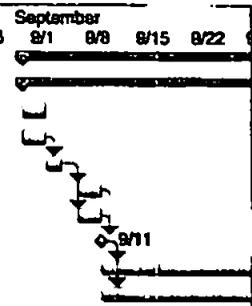


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EXHIBIT B-1

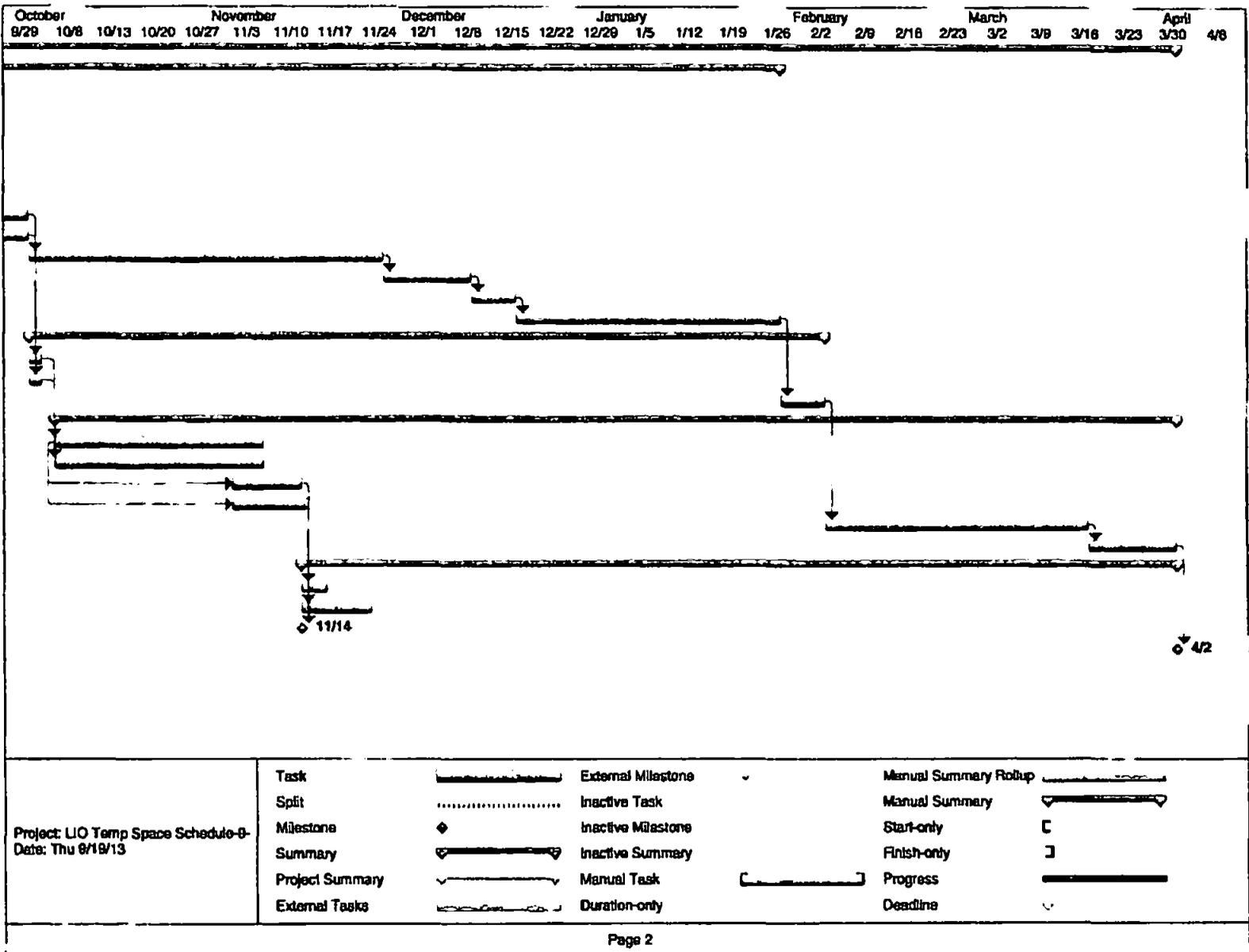
File 9/19/13

ID	Task Name	Duration	Start	Finish	8/18	8/25	September	8/1	8/8	8/15	8/22
1	LIO Interim Space Schedule	153 days	Mon 8/2/13	Wed 4/2/14							
2	Design	108 days	Mon 8/2/13	Wed 1/29/14							
3	Immediately available space programming - 733 W 4th	3 days	Mon 8/2/13	Wed 8/4/13							
4	Immediately available space programming 425 G Street 7th floor	3 days	Mon 8/2/13	Wed 8/4/13							
5	Meeting with LIO Staff to refine program	2 days	Thu 8/8/13	Fri 8/9/13							
6	Refine Draft layout of LIO Space	3 days	Mon 8/9/13	Wed 8/11/13							
7	Draft Layout of legislature office space	3 days	Mon 8/9/13	Wed 8/11/13							
8	Meeting with LIO Staff to Approve plan	0 days	Wed 8/11/13	Wed 8/11/13							
9	Permit Drawings - 733 W. 4th	15 days	Thu 8/12/13	Wed 10/2/13							
10	Permit Drawings 425 G Street	15 days	Thu 8/12/13	Wed 10/2/13							
11	Locate Other available spaces for legislative offices	40 days	Thu 10/3/13	Wed 11/27/13							
12	Draft Layout - other available spaces	10 days	Thu 11/28/13	Wed 12/11/13							
13	Review Layout with Committee	5 days	Thu 12/12/13	Wed 12/18/13							
14	Permit Drawings - other available spaces	30 days	Thu 12/19/13	Wed 1/29/14							
15	Permits	90 days	Thu 10/3/13	Wed 2/5/14							
16	TI Permit - 733 W. 4th	2 days	Thu 10/3/13	Fri 10/4/13							
17	TI Permit 425 G Street	2 days	Thu 10/3/13	Fri 10/4/13							
18	TI Permit - Other Available Spaces	5 days	Thu 1/30/14	Wed 2/5/14							
19	Construction	128 days	Mon 10/7/13	Wed 4/2/14							
20	LIO Temp Space Construction - 733 W 4th	25 days	Mon 10/7/13	Fri 11/8/13							
21	Temp Space 425 G Street Construction	25 days	Mon 10/7/13	Fri 11/8/13							
22	IT Systems Set-up and Testing 733 W 4th and 425 G Street 7th floor	9 days	Mon 11/4/13	Thu 11/14/13							
23	IT Systems relocation from Current Facility	10 days	Mon 11/4/13	Fri 11/15/13							
24	Construction Legislature office space other location	30 days	Thu 2/6/14	Wed 3/19/14							
25	IT Systems set-up and testing - other location	10 days	Thu 3/20/14	Wed 4/2/14							
26	Moving	99 days	Thu 11/14/13	Wed 4/2/14							
27	Move LIO in to Interim Space	2 days	Fri 11/16/13	Mon 11/18/13							
28	Complete Vacation of existing LIO building	7 days	Fri 11/15/13	Mon 11/25/13							
29	Some Legislative Offices Available in 733 W. 4th	0 days	Thu 11/14/13	Thu 11/14/13							
30	Remainder of Legislature offices available	0 days	Wed 4/2/14	Wed 4/2/14							



Project: LIO Temp Space Schedule-9 Date: Thu 8/19/13	Task		External Milestone		Manual Summary Rollup	
	Split		Inactive Task		Manual Summary	
	Milestone		Inactive Milestone		Start-only	[
	Summary		Inactive Summary		Finish-only]
	Project Summary		Manual Task		Progress	
	External Tasks		Duration-only		Deadline	

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EXHIBIT C

PROCUREMENT OFFICER'S FINDINGS UNDER
LEGISLATIVE PROCUREMENT PROCEDURE 040(d)

Introduction

The purpose of this document is to provide a written determination, in compliance with Alaska Legislative Procurement Procedure 040(d), setting forth in detail the procurement officer's determination supporting material modifications of the Legislature's Lease of the Anchorage Legislative Information Office dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended March 3, 2009, renewed for the final one-year term on May 20, 2013, which was previously competitively bid under RFP 391 and publicly issued on July 17, 2003, (hereinafter "Lease"). The current Lease will expire on May 31, 2014.

The material modifications to the Lease that are the subject of this written determination were authorized by Legislative Council, and by mutual agreement with the Lessor. The material modifications to the Lease are amending the existing definition of "premises" within Section 1 of the Lease, titled "RENTAL PROPERTY AND RENTAL RATE," by adding the additional property commonly known as 712 West Fourth Avenue, which is immediately adjacent to the existing leased premises at 716 West Fourth Avenue, and amending other sections of the Lease as necessary to allow for the renovation and retrofit of the expanded premises, including but not limited to, a transition to a triple net leasing structure and changes necessary to accommodate renovation of the premises as described in Exhibits A and B of the Lease.

Background

A. Legislative Council's Authorization to Materially Modify Lease

On June 7, 2013, Legislative Council passed the following motions¹ related to the Legislature's Lease of the Anchorage Legislative Information Office dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended March 3, 2009, renewed for the final one-year term on May 20, 2013, and which will expire on May 31, 2014:

MOTION - AMEND PROCUREMENT PROCEDURE: I move that Legislative Council adopt proposed Amendment No. 12 to the Legislative Procurement Procedure 040 to provide the limited ability for the Legislative Affairs Agency, or a Legislative Committee, to materially modify an existing lease that was previously competitively procured.

MOTION - AUTHORIZE MATERIAL AMENDMENTS TO LEASE: I move that Legislative Council authorize the chairman to negotiate amendments to lease 2004-024411-0 by mutual agreement with the Lessor to remove the limitation of amending a lease that amounts to a material

¹ In addition to the motions set out in the text of these findings, two additional related motions were also passed by Legislative Council on June 7, 2013:

MOTION - LEASE EXTENSION: I move that Legislative Council authorize the chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a).

MOTION - ENGAGE AHFC (Alaska Housing Finance Corporation) AS LESSEE'S REPRESENTATIVE: I move that Legislative Council authorize the chairman to enter into a contract for payment not to exceed \$50,000, for AHFC to act as the Lessee's representative in negotiating an extension to Lease 2004-024411-0, as amended to include 712 West 4th Avenue, and to assist in managing the Lessor's compliance with the terms and conditions of the Lessor's improvements, as described in the lease extension.

modification in paragraph 42; and to include 712 West Fourth Avenue, with other terms and conditions necessary to accommodate renovations, not to exceed the estimated cost of a similarly sized, located and apportioned newly constructed building as determined by the Alaska Housing Finance Corporation.

B. Requirements of Alaska Legislative Procurement Procedure 040(d)

Legislative Procurement Procedure 040, as amended by Amendment No. 12 and authorized by Legislative Council as set forth in the motion above, added subsection (d), which provides:

(d) A lease that was procured competitively may be materially modified by amendment, and the material modification of the lease does not require procurement of a new lease, if

(1) the reasons for the modification are legitimate;

(2) the reasons for the modification were unforeseen when the lease was entered into;

(3) it is not practicable to competitively procure a new lease;

(4) the modification is in the best interests of the agency or the committee;

(5) the procurement officer makes a written determination that the items in paragraphs (1) - (4) exist, the determination details the reasons for concluding why the items exist, and the determination is attached to the amended lease; and

(6) the use of this subsection is approved by the procurement officer and, in the case of an amendment for the lease of a legislative committee, by a majority of the committee members.

Procurement Officer's Determination Under Legislative Procurement Procedure 040(d)

040(d); Previously Competitively Bid Requirement

As previously discussed, the Legislature's Lease of the Anchorage Legislative Information Office dated April 6, 2004, recorded in Book 2004-024411-0, Anchorage Recording District, Third Judicial District, State of Alaska, amended March 3, 2009, renewed for the final one-year term on May 20, 2013, was previously competitively bid under RFP 391, which was publicly issued on July 17, 2003. Accordingly, under Legislative Procurement Procedure 040(d), the Lease may be materially modified.

040(d)(1); Reasons for the Modification are Legitimate

The decision to modify the Lease is consistent with the purpose of the present Lease, which is to provide office space for the Legislature. These amendments do not alter the essential identity or main purpose of the contract, and do not constitute a new undertaking, and therefore are a legitimate modification of the Lease.

The property at 712 West Fourth Avenue is unique, since it is the only adjacent space to 716 West Fourth Avenue available to satisfy the Legislature's need for additional space, and meets the essential requirement of keeping all the present legislative offices in one building. The addition of 712 West Fourth Avenue allows the Legislature to extend its current Lease as provided under AS 36.30.083(a). Given the uniqueness of the property, and the fact that no other bidder would be able to provide space adjacent to 716 West Fourth Avenue, it would be a waste of private sector resources and legislative procurement resources to competitively bid for the only adjacent property.

The expanded premise will be renovated to meet the needs of the Lessee. In accordance with the expansion of the leased premises, the renovation, and the Lease Extension executed under AS 36.30.083(a), it is necessary to amend material terms of the Lease. Without the modifications, the Lease would not be functional to govern the premises. Given the uniqueness of the property and the ability of the Legislature to have input in the design and function of the renovated building, a competitively bid procurement would be impractical, inefficient, and ultimately, likely unsuccessful in providing premises as suited to the needs of the Legislature.

Accordingly, modifying the Lease by adding 712 West Fourth Avenue to the "premises" and by amending other lease terms to accommodate the expanded premises and the Lease Extension under AS 36.30.083(a) does not subvert the purposes of competitive bidding, and is a legitimate exercise of the Legislature's procurement authority.

040(d)(2): Reasons for Modification Unforeseen When Lease was Entered Into

When the Lease was entered into for 716 West Fourth Avenue in 2004, it was unforeseen that the Legislature would need significant additional space, or that the infrastructure problems with the building would worsen, e.g., the exhausted service life of the HVAC system and the water system, and the elevator failing to handle the demands of staff and public use.

In 2004, based on the Executive Director's Office's best assessment, there were approximately 54 legislative staff working in the building. Today, in 2013, there are approximately 72, which is an increase during the ten-year term of the Lease of approximately one-third. The result of this unforeseen increase in staffing demands on the space in the building is that the staff for some legislators work in shared space. Shared space fails to meet standards for confidential meetings with constituents, and other intra-office privacy concerns. The space has only worked because of the patience and cooperation of Anchorage legislative staff and legislators. However, after the current

Lease term expires the limited space will no longer be acceptable. In addition to the staff of different legislators sharing space, three Anchorage area legislators are sharing space with their staff, which is also not acceptable.

The Legislature requires office space beyond the needs of the Anchorage-area legislators and staff. Once the Lease is amended, the renovated facility will provide space for the Speaker of the House, and the Senate President, who are both out-of-Anchorage legislators, and for rural legislators who require space for conducting work and attending legislative meetings in Anchorage.

Further, the existing building is in need of substantial renovation and upgrade. The condition of the premises is no longer suitable for legislative use. Physical deficiencies include lack of potable water, limited restroom facilities, ineffective HVAC system, deteriorated and leaking plumbing, an unreliable and inadequate elevator, insecure and unsafe below-ground parking facilities, leaking windows, worn window coverings and carpeting, inadequate electrical service, unpleasant odors in the elevator, inefficient lighting, and hazardous materials used in the original construction of the building. All of these will be remediated in the renovation and upgrade.

Had each of these factors been taken individually, fluctuating space demands may have been foreseen at some level. However, the pressure on space in the building from the multiple impacts discussed above was not foreseen when the Lease was entered into in 2004.

040(d)(3): Not Practicable to Competitively Procure a New Lease

The Anchorage Legislative Information Office has been located in leased space at 716 West Fourth Avenue for approximately 20 years. Occupancy was initially under a 10 year lease which terminated in 2003, that was extended month-by-month through 2004, when the current lease was established following an RFP process. The Legislature

is now in its 10th year under the current Lease, having just exercised the final of five one-year renewal options allowed under the terms of the Lease.

Over the past five years the Legislature has explored and requested proposals on numerous occasions seeking alternative space. None of those efforts has resulted in a solution that was possible, practicable or acceptable. Given that the Lease has nearly expired, the Legislature recently provided notice to the public of a Request For Information ("RFI")² from parties interested in providing legislative office space in Anchorage. Two parties provided responses detailing the space they had available. Both spaces were located in areas that were not acceptable to Legislative Council for the needs of the Legislature. The available properties in the responses to the RFI failed to provide constituent access, access to other state and local centers of government, access to public transportation, and access to lodging and meeting spaces. In summary, based on the RFI responses, there are no facilities available for lease that are suitable for the Legislature's unique needs.

Because of the limited interest shown in the RFI and the lack of suitable legislative space available for lease, Legislative Council reconsidered the existing leased space at 716 West Fourth Avenue, and made the determination that the existing building, if renovated and with the addition of a suitable amount of additional space, could continue to serve the Legislature and public. The only available property adjacent to 716 West Fourth Avenue that would facilitate the needed renovations to 716 West Fourth Avenue, and provide additional space, is 712 West Fourth Avenue.

In addition to its efforts to formally identify potential lease space through the issue of an RFI, commercial real estate brokers and others were consulted in an attempt to determine if lease space suitable to meet the Legislature's needs might be available.

² The complete RFI is available at <http://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=168321>.

These inquiries delivered the same results as the RFI; there are no existing facilities available to meet the Legislature's needs,

Based on the foregoing discussion and factors, inclusive of the lack of suitable remaining time for any additional procurement efforts, as Procurement Officer, I find that it would not be practicable to competitively bid a lease for Anchorage legislative office space because of: (1) limited interest demonstrated by the response to the RFI; (2) no available property suitable for legislative needs offered in response to the RFI; (3) the decision by Legislative Council to exercise its option under AS 36.30.083(a) and extend its lease of 716 West Fourth Avenue, subject to renovations by the Lessor and a cost saving of 10 percent less than fair market value; and (4) the uniqueness of the location of 712 West Fourth Avenue to the Legislature's existing office space at 716 West Fourth Avenue.

040 (d)(4): The Modification is in the Best Interests of the Agency or the Committee

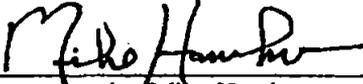
The existing leased space at 716 West Fourth Avenue, while at the end of the service life of the building systems, and despite chronic maintenance problems, has served the Legislature and constituent needs for approximately 20 years. The location on Fourth Avenue provides central access for legislators and constituents to meeting spaces, hotels, the courts, state and local government offices, public transportation, and other support facilities. The current lease includes parking, which is essential for public access to government by constituents, legislators, and staff.

Based on all factors considered above, the Legislative Council made the decision to exercise its option under AS 36.30.083(a) to enter into negotiations with the Lessor, to extend the Lease subject to the building being suitably improved with a modest addition of space, and subject to the requirements in AS 36.30.083(a) that the cost to the Legislature be at least 10 percent below the market rental value of the real property at the time of the extension. The decision to amend the Lease as provided by Alaska

Final
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Legislative Procurement Procedure 040(d), is in Legislative Council's best interest, since it will facilitate the extension of the Lease with the necessary improvements and with additional needed space, at a cost-savings to the Legislature, as provided by AS 36.30.083(a).

Lastly, in addition to the determination herein, as Chairman of Legislative Council and Procurement Officer, I have provided written notice to legislative leadership of the successful conclusion of negotiations and the intent to extend and amend the lease as provided herein.



Representative Mike Hawker
Chairman of Legislative Council and
Procurement Officer

9.16.13
Date

EXHIBIT D

Alaska State Legislature

Legislative Affairs Agency

Office of the Executive Director

Terry Miller Legislative Office Building, Room 217

Mailing Address: State Capitol, Rm. 3 Juneau, Alaska 99801-1182 Phone (907) 465-3800 Fax (907) 465-3234



2013 SEP 25 AM 9:49

September 19, 2013

Senator Anna Fairclough, Chair
Representative Mike Hawker, Vice-Chair
Legislative Budget & Audit Committee
State Capitol
Juneau, AK 99801-1182

RE: AS 36.30.083(b) Lease Reporting Requirement

Dear Senator Fairclough and Representative Hawker:

In accordance with the requirements of AS 36.30.083(b), the Legislative Affairs Agency would like to report to the Legislative Budget and Audit Committee that the Agency will be entering into a 10-year real property lease extension of the Anchorage Legislative Offices and Anchorage Legislative Information Office at 716 West 4th Avenue effective June 1, 2014, during the end of fiscal year 2014.

The lease will also be amended to accommodate an expansion and renovation of the premises. As required by AS 36.30.083(a), the market rental value of the renovated premises, including the parking garage, was appraised by real estate appraiser Tim Lowe, MAI, CRE, FRICS, of Waronzof and Associates, Inc. on September 18, 2013, and reviewed by the Alaska Housing Finance Corporation, to establish that the rent due under the lease is 10 percent below the market rental value of the real property. Mr. Lowe has assessed the rental value of the property, as of the effective date of the lease extension on June 1, 2014, at \$325,667 a month or \$3,908,000 annually. The annual rental payment will be \$281,638 a month or \$3,379,656 annually, exceeding the 10 percent reduction in market rental value required by AS 36.30.083(a). Our annual savings will be \$528,344.

Sincerely,

Handwritten signature of Pamela A. Varni in cursive.

Pamela A. Varni
Executive Director

cc: Tina Strong, Contracting Officer, LAA

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, MARK E. PFEFFER, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that they had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ALANA WILLIAMS, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of MARK E. PFEFFER ALASKA TRUST UTAD 12/28/07, and who acknowledged to me that she had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of _____, 2013, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared REPRESENTATIVE MIKE HAWKER, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing Lease as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

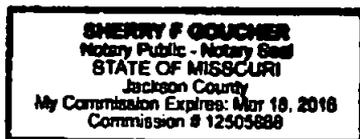
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

STATE OF *Missouri*)
County of Jackson) ss.

THIS IS TO CERTIFY that on the 19 day of September, 2013, before me, the undersigned Notary Public in and for ~~Missouri~~, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the EXECUTIVE DIRECTOR of the STATE OF ~~Alaska~~ LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Sherry F. Goucher

Notary Public in and for Missouri
My commission expires: 03-18-16

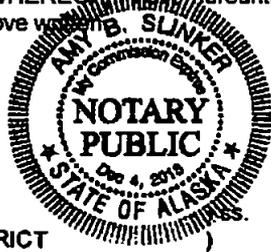
FOR RECORDING DISTRICT OFFICE USE ONLY:
No Charge - State Business

After recording return to:
Tina Strong, Supply Officer
Legislative Affairs Agency
State Capitol, RM 3
Juneau, AK 99801-1182

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 19th day of September, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, MARK E. PFEFFER, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that they had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Amy B. Slinker
Notary Public in and for Alaska
My commission expires: 12/4/13

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

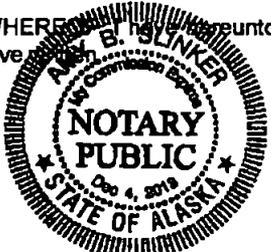
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 19th day of September, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ALANA WILLIAMS, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of MARK E. PFEFFER ALASKA TRUST UTAD 12/28/07, and who acknowledged to me that she had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.



Amy B. Slinker
Notary Public in and for Alaska
My commission expires: 12/4/13

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of _____, 2013, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared REPRESENTATIVE MIKE HAWKER, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the CHAIR OF THE ALASKA LEGISLATIVE COUNCIL, and he acknowledged to me that he executed the foregoing Lease as the free and voluntary act and deed of his principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of _____, 2013, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared PAMELA A. VARNI, known to me and to me known to be the individual named in and who executed the above and foregoing Lease as the EXECUTIVE DIRECTOR of the STATE OF ALASKA LEGISLATIVE AFFAIRS AGENCY, and she acknowledged to me that she executed the foregoing instrument as the free and voluntary act and deed of her principal for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

FOR RECORDING DISTRICT OFFICE USE ONLY:
No Charge - State Business

After recording return to:
Tina Strong, Supply Officer
Legislative Affairs Agency
State Capitol, RM 3
Juneau, AK 99801-1182

ASHBURN & MASON P.C.

LAWYERS

DANI CROSBY • MATTHEW T. FINDLEY • MERA MATTHEWS • DONALD W. McCLINTOCK III
JACOB A. SONNEBORN • THOMAS V. WANG • REBECCA A. WINDT
OF COUNSEL MARK E. ASHBURN • JULIAN L. MASON III • A. WILLIAM SAUPE

September 23, 2013

Via Hand Delivery:

Michael Buller
Alaska Housing Finance Corporation
4300 Boniface Parkway
Anchorage, Alaska 99504

Re: the Extension of Lease and Lease Amendment No. 3 between 716 W.
Fourth Avenue, LLC and the Legislative Affairs Office.
Our File No.: 10708.050

Dear Mr. Buller:

Please find enclosed the original signature of Robert Acree on the Extension of Lease and Lease Amendment No. 3 between 716 W. Fourth Avenue, LLC and the Legislative Affairs Office.

Please contact our office should you have any questions.

Very truly yours,

ASHBURN & MASON, P.C.



Donald W. McClintock

Enc.

{10708-050-00152370;1}

1227 WEST 9TH AVENUE, SUITE 200, ANCHORAGE, AK 99501 • TEL 907.276.4331 • FAX 907.277.8235

CERTIFYING AUTHORITY

APPROVED AS TO FORM:

Pamela A. Varni Date
Executive Director
Legislative Affairs Agency

Legal Counsel Date

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, MARK E. PFEFFER, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that they had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

Notary Public in and for Alaska
My commission expires: _____

California
STATE OF ~~ALASKA~~)
) ss.
~~THIRD JUDICIAL DISTRICT~~)
County of Mariposa

THIS IS TO CERTIFY that on this 19 day of September, 2013, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared, ROBERT B. ACREE, known to me and to me known to be the individual named in and who executed the above and foregoing Lease on behalf of 716 WEST FOURTH AVENUE, LLC, and who acknowledged to me that he had full power and authority to, and did execute the above and foregoing Lease on behalf of and as the free and voluntary act and deed of said organization, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day, month and year first above written.

[Signature]

Notary Public in and for Alaska
My commission expires: 06/04/14

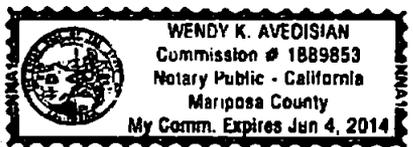


EXHIBIT D

Alaska State Legislature
Legislative Affairs Agency

Office of the Executive Director

Terry Miller Legislative Office Building, Room 217

Mailing Address: State Capitol, Rm. 3 Juneau, Alaska 99801-1182 Phone (907) 465-3800 Fax (907) 465-3234



2013 SEP 25 AM 9:49

September 19, 2013

Senator Anna Fairclough, Chair
Representative Mike Hawker, Vice-Chair
Legislative Budget & Audit Committee
State Capitol
Juneau, AK 99801-1182

RE: AS 36.30.083(b) Lease Reporting Requirement

Dear Senator Fairclough and Representative Hawker:

In accordance with the requirements of AS 36.30.083(b), the Legislative Affairs Agency would like to report to the Legislative Budget and Audit Committee that the Agency will be entering into a 10-year real property lease extension of the Anchorage Legislative Offices and Anchorage Legislative Information Office at 716 West 4th Avenue effective June 1, 2014, during the end of fiscal year 2014.

The lease will also be amended to accommodate an expansion and renovation of the premises. As required by AS 36.30.083(a), the market rental value of the renovated premises, including the parking garage, was appraised by real estate appraiser Tim Lowe, MAI, CRE, FRICS, of Waronzof and Associates, Inc. on September 18, 2013, and reviewed by the Alaska Housing Finance Corporation, to establish that the rent due under the lease is 10 percent below the market rental value of the real property. Mr. Lowe has assessed the rental value of the property, as of the effective date of the lease extension on June 1, 2014, at \$325,667 a month or \$3,908,000 annually. The annual rental payment will be \$281,638 a month or \$3,379,656 annually, exceeding the 10 percent reduction in market rental value required by AS 36.30.083(a). Our annual savings will be \$528,344.

Sincerely,

Handwritten signature of Pamela A. Varni in cursive.

Pamela A. Varni
Executive Director

cc: Tina Strong, Contracting Officer, LAA

ALASKA LEGISLATIVE PROCUREMENT PROCEDURES
(revised 11/21/13)

* Section I. The Administrative Services Policy and Procedures Manual is amended by adding new sections to read:

Sec. 010. PURPOSE.

The purpose of these procurement procedures is to adopt competitive procurement principles applicable to the Legislature that ensure the fair and equitable treatment of all persons who deal with the procurement system of the Legislature.

Sec. 020. APPLICATION.

(a) These procedures apply to all contracts entered into after December 31, 1987, for services, professional services, supplies, or construction to be provided to a legislative agency or legislative committee except:

- (1) employment contracts;
- (2) contracts that do not exceed \$35,000 each year;
- (3) contracts for utilities; in this paragraph, "utilities" includes water, heat, sewer, telephone services and garbage;
- (4) contracts with a state agency, including a department, the University of Alaska, and a public corporation;
- (5) contracts to purchase memberships in professional and legislative organizations;
- (6) contracts to handle an emergency situation, including a situation that arises because of fire, flood, equipment failure, or other compelling reason; to qualify for this exemption, the procurement officer shall make a written determination that there is an emergency, and the determination must recite the facts on which the determination is based;
- (7) contracts for the purchase of maintenance services for equipment, software, or both;
- (8) contracts for hospitality or government protocol; and
- (9) contracts for artifacts or art.

(b) Only section 150(b) of these procedures applies to contracts with a municipality in the state.

Sec. 030. NOTICE OF SOLICITATIONS.

(a) A solicitation to procure services, professional services, supplies, or construction under a contract must be extended to a sufficient number of firms or persons to insure that public interest in competition is adequately served. Bids or proposals from at least six firms or persons listed on

the appropriate contractor list maintained by the Department of Administration and the Department of Transportation and Public Facilities shall be solicited for contracts equal to or greater than \$100,000. Bids or proposals from at least three firms or persons listed on the appropriate contractor list maintained by the Department of Administration and the Department of Transportation and Public Facilities shall be solicited for contracts of less than \$100,000. Lists of contractors maintained by the Department of Administration and the Department of Transportation and Public Facilities shall be used in soliciting bids or proposals under this section.

(b) Advertising in a medium that will reasonably bring the invitation or proposal to the attention of persons able to provide the required services, professional services, supplies, or construction may be substituted for direct solicitation or used jointly with direct solicitation of bids or proposals.

(c) The procurement officer shall give notice of the solicitation at least 21 days before the date for the opening of bids or proposals unless the officer makes a determination in writing that a shorter notice period is necessary for a particular solicitation.

(d) If an insufficient number of firms or persons have the expertise required to enable an agency to solicit the number of bids or proposals required under (a) of this section, the agency shall solicit bids or proposals

- (1) from each person or firm listed on the appropriate contractor list that appears to possess the required expertise;
- (2) from any person or firm with the required expertise of which the contracting agency or committee may be aware.

(e) A legislator or the procurement officer for a legislative committee may request the Legislative Affairs Agency to carry out the solicitation responsibilities under this section.

Sec. 033. LIMITED COMPETITION PROCUREMENTS.

(a) A procurement may be made without using competitive sealed bidding or competitive sealed proposals if the procurement is

- (1) for supplies and does not exceed \$100,000; this paragraph includes a space lease that does not exceed
 - (A) \$100,000, even if the lease exceeds 7,000 square feet; or
 - (B) 7,000 square feet, even if the lease exceeds \$100,000;
- (2) for services and does not exceed \$100,000; or
- (3) for construction and does not exceed \$200,000.

(b) A procurement made under this section shall be made by contacting at least three firms or persons for written bids or proposals and is not subject to the solicitation requirements of sec. 030 or the preference requirements of secs. 142 or 145.

Sec. 035. PRACTICAL COMPETITION PROCUREMENT.

A construction contract that does not exceed \$100,000, or a contract for supplies, services, or professional services may be awarded without using competitive sealed bidding or competitive sealed proposals, if the procurement officer determines in writing that a situation exists that makes competitive sealed bidding or competitive sealed proposals impractical or contrary to the public interest. Procurements made under this section shall be made with competition that is practical under the circumstances and without complying with the solicitation requirements of sec. 030 or the preference requirements of secs. 142 or 145.

Sec. 040. EXEMPTIONS.

(a) A contract is exempt from the solicitation requirements of sec. 030 and from sec. 145, if

- (1) the procurement officer determines in writing that
 - (A) it is not practicable to award a contract by competitive sealed bidding, competitive sealed proposals, or other competitive method; and
 - (B) award of the contract under this paragraph is in the agency's or committee's best interest;
- (2) the contract is with a contractor that the Department of Administration has selected by competitive bidding to provide to state agencies the service, product, leased space, or construction that is the subject of the contract; or
- (3) the contract is for legal services.

(b) An exemption in (a)(1) of this section applies only if it is approved by the procurement officer, and in the case of a contract for a legislative committee, by a majority of the committee members. A written justification that details the reasons for the exemption in (a)(1) of this section shall be attached to the contract and filed under sec. 200 of these procedures as a public record. A contract proposed for award under the exemption in (a)(1) of this section is not valid unless the required approval is received.

(c) Sections 142, 147, and 210 of these procedures do not apply to a contract that is exempt under (a)(2) of this section.

(d) A lease that was procured competitively may be materially modified by amendment, and the material modification of the lease does not require procurement of a new lease, if

- (1) the reasons for the modification are legitimate;
- (2) the reasons for the modification were unforeseen when the lease was entered into;

- (3) it is not practicable to competitively procure a new lease;
- (4) the modification is in the best interests of the agency or the committee;
- (5) the procurement officer makes a written determination that the items in paragraphs (1) - (4) exist, the determination details the reasons for concluding why the items exist, and the determination is attached to the amended lease; and
- (6) the use of this subsection is approved by the procurement officer and, in the case of an amendment for the lease of a legislative committee, by a majority of the committee members.

Sec. 045. SMALL PROCUREMENTS.

(a) Professional services contracts that do not exceed \$100,000 may be made as small procurements under this section. Procurements made under this section are not subject to sec. 145 or to the solicitation requirements set forth in sec. 030 of these procedures. Small procurements are subject to the provisions of sec. 147 of these procedures. A small procurement that is made by a solicitation of bids is subject to the Alaska bidder preference set out in sec. 145(c) of these procedures.

(b) A contract awarded as a small procurement under this section may be amended so that the contract amount exceeds the amounts set out in (a) of this section, without complying with the solicitation requirements set forth in sec. 030 of these procedures. However, a contract may not be artificially divided to avoid the solicitation requirements set forth in sec. 030 of these procedures.

Sec. 050. ONLY ONE BID OR PROPOSAL RECEIVED.

(a) If only one responsive bid is received in response to an invitation for bids, including multi-step bidding, an award may be made to the single bidder if the procurement officer finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise the bid may be rejected and:

- (1) new bids or offers may be solicited;
- (2) the proposed procurement may be cancelled; or
- (3) if the procurement officer determines in writing that the need for the supply or service continues, but that the price of the one bid is not fair and reasonable and there is not time for resolicitation or resolicitation would likely be futile, the procurement may then be conducted under sec. 040 of these procedures.

(b) If only one proposal is received in response to a request for proposals, the procurement officer may, as the officer deems appropriate, make an award, cancel the procurement, or if time permits, resolicit for the purpose of obtaining competitive sealed proposals.

Sec. 070. BID AND PERFORMANCE BONDS FOR SUPPLY CONTRACTS OR SERVICE CONTRACTS.

In addition to any other bond required by law, bid and performance bonds or other security may be required for supply contracts or service contracts as the procurement officer deems advisable to protect the interest of the agency. These requirements shall be set forth in the solicitation. Bid or performance bonds may not be used as a substitute for a determination of bidder or offeror responsibility.

Sec. 080. CONDITIONING BIDS OR PROPOSALS UPON OTHER AWARDS NOT ACCEPTABLE.

A bid or proposal that is conditioned upon receiving award of both the particular contract being solicited and another legislative contract is nonresponsive and not acceptable.

Sec. 090. DETERMINATION OF TERMS AND CONDITIONS.

The procurement officer is authorized to determine the provisions, terms and conditions of solicitations and contracts, provided the provisions, terms and conditions are not contrary to statutory or other requirements governing the procurement.

Sec. 095. HUMAN TRAFFICKING.

(a) A procurement may not be made from a person that has headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C).

(b) The procurement officer may set restrictions on procurement from a person that conducts business in but does not have headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C).

Sec. 100. UNSOLICITED OFFERS.

(a) An unsolicited offer is an offer other than one submitted in response to a solicitation.

(b) The procurement officer shall consider an unsolicited offer as provided in this section. To be considered for evaluation an unsolicited offer:

- (1) must be in writing;
- (2) must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the agency;
- (3) must be unique or innovative;
- (4) must demonstrate that the proprietary character of the offering warrants consideration of the use of a noncompetitive procurement; and
- (5) may be subject to testing under terms and conditions specified by the agency.

(c) The unsolicited offer must be evaluated to determine its use to the agency and whether it would be to the agency's advantage to enter into a contract based on the offer.

(d) A written request for confidentiality of technical data and trade secrets contained in an unsolicited offer that is made in writing shall be honored. If an award is made, confidentiality of data shall be agreed upon by the parties and governed by the provisions of the contract. Confidential data not contained in the contract are not open to public inspection under sec. 200 of these procedures. If agreement cannot be reached on confidentiality, the agency may reject the unsolicited offer.

Sec. 110. POLICY FOR CANCELLATION OF SOLICITATIONS.

Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for informational purposes only. The solicitation must give the status of funding for the procurement. Preparing and distributing a solicitation requires the expenditure of state time and funds. Businesses also incur expense in examining and responding to solicitations. Therefore, although issuance of a solicitation does not compel award of a contract, a solicitation may be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the agency's best interest.

Sec. 120. CANCELLATION OF SOLICITATION: REJECTION OF ALL BIDS OR PROPOSALS.

(a) A solicitation issued by an agency must state that the solicitation may be cancelled as provided in this section.

(b) Before opening, a solicitation may be cancelled in whole or in part when the procurement officer determines in writing that cancellation is in the agency's best interest. Reasons for cancellation include:

- (1) the agency no longer requires the supplies, services, or construction;
- (2) the agency no longer can reasonably expect to fund the procurement; or
- (3) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

(c) When a solicitation is cancelled before opening, notice of cancellation shall be sent to all businesses solicited. The notice of cancellation must:

- (1) identify the solicitation;
- (2) briefly explain the reason for cancellation; and
- (3) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar supplies, services, professional services, or construction.

(d) After opening but before award, all bids or proposals may be rejected in whole or in part when the procurement officer determines in writing that rejection is in the agency's best interest. Reasons for rejection include:

- (1) the supplies, services, professional services, or construction being procured are no longer required;
- (2) ambiguous or otherwise inadequate specifications were part of the solicitation;
- (3) the solicitation did not provide for consideration of all factors of significance to the agency;
- (4) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (5) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
- (6) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

(e) A notice of rejection that includes the information required under (c) of this section shall be sent to all businesses that submitted bids or proposals.

(f) In this section, "opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.

(g) The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

Sec. 125. BID OR PROPOSAL PREPARATION COSTS.

If for any reason a contract is not awarded after a solicitation, an agency of the legislature may not be held liable for bid or proposal preparation costs.

Sec. 130. REJECTION OF INDIVIDUAL BIDS OR PROPOSALS.

(a) A solicitation issued by an agency shall provide that a bid or proposal may be rejected in whole or in part when in the best interest of the agency as provided in this section.

(b) Reasons for rejecting a bid submitted in competitive sealed bidding or in the second phase of multi-step sealed bidding include:

- (1) the business that submitted the bid is nonresponsible as determined under sec. 210 of these procedures;

- (2) the bid is not responsive, that is, it does not conform in all material respects to the invitation for bids;
- (3) the supply, service, professional service, or construction item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the invitation for bids.

(c) In this section, "proposal" means an offer submitted in response to a solicitation other than a bid. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction, and the stated requirement in the solicitation may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or part of a proposal. Reasons for rejecting proposals include:

- (1) the business that submitted the proposal is nonresponsible as determined under sec. 210 of these procedures;
- (2) the proposal ultimately fails to meet the announced requirements of the agency in a material respect; or
- (3) the proposed price is clearly unreasonable.

(d) Upon request, unsuccessful bidders or offerors shall be advised of the reasons for the rejection.

Sec. 140. ALL-OR-NONE BIDS OR PROPOSALS.

Unless a solicitation permits a bid or proposal to limit acceptance to the entire bid or proposal offering, a bid or proposal so limited is nonresponsive. If the solicitation permits such a limitation, the agency may not reject part of the bid or proposal and award on the remainder.

Sec. 142. ALASKA PRODUCT PREFERENCE.

In a contract involving the purchase of supplies, including a construction contract, 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. 145. CONTRACT AWARD.

(a) Except as provided in (c) of this section, the procurement officer shall award a contract based on a solicitation of bids with reasonable promptness to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the solicitation.

(b) In this section, "Alaska bidder" means a person who

- (1) holds a current Alaska business license;

- (2) submits a bid or proposal for goods, services, or construction under the name as appearing on the person's current Alaska business license;
- (3) has maintained a place of business within the state staffed by the person or an employee of the person for a period of six months immediately preceding the date of the bid or proposal;
- (4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, is a limited liability company organized under AS 10.50 and all members are residents of the state, or is a partnership under AS 32.06 or AS 32.11 and all partners are residents of the state; and
- (5) if a joint venture, is composed entirely of ventures that qualify under (1) - (4) of this subsection.

(c) Except as provided in (e) of this section, the procurement officer shall award a contract based on a solicitation of bids to the lowest responsible and responsive Alaska bidder if the bid is not more than five percent higher than the lowest nonresident bidder's.

(d) The procurement officer shall award a contract based on a solicitation of proposals with reasonable promptness to the responsible and responsive offeror whose proposal is determined in writing by the procurement officer to be the most advantageous to the state after taking into consideration price and the evaluation factors set out in the request for proposals. Other factors and criteria may not be used in the evaluation. When determining whether a proposal is advantageous to the state, the procurement officer shall consider whether the offeror qualifies as an Alaska bidder under (b) of this section.

(e) Notwithstanding sec. 142, if the procurement is done by competitive sealed bidding, the procurement officer shall award the contract to the lowest responsible and responsive bidder after application of an Alaska bidder preference of five percent, an Alaska products preference under AS 36.30.322 - 36.30.338, and a recycled products preference under AS 36.30.337, an Alaska veterans' preference under AS 36.30.321(f), and preferences under AS 36.20.321(b), (d), (g), (i), and (k) relating to persons with disabilities, including employment programs. In this subsection, "employment program" has the meaning given in AS 36.30.990.

Sec. 147. DETERMINATION TO AWARD A CONTRACT TO A NONRESIDENT.

If the procurement officer awards a contract to a person who does not reside or maintain a place of business in the state and if the supplies, services, professional services, or construction that is the subject of the contract could have been obtained from sources in the state, the procurement officer shall issue a written statement explaining the basis of the award. The statement required under this section shall be kept in the contract file.

Sec. 150. PREPARATION AND AWARD OF CONTRACTS.

(a) A contract must be self-contained and written with care and thoroughness.

(b) Contracts and amendments to contracts must be authorized as follows:

- (1) contracts involving House operating funds must be authorized by the Speaker of the House and a majority of the members of the Legislative Council in a meeting, except that contracts for legal services need be authorized by the Speaker only;
- (2) contracts involving Senate operating funds must be authorized by the President of the Senate and a majority of the members of the Legislative Council in a meeting, except that contracts for legal services need be authorized by the President only;
- (3) contracts of a legislative committee must be authorized by a majority of the members of the committee in a meeting;
- (4) contracts of the Legislative Affairs Agency must be authorized by a majority of the members of the Legislative Council in a meeting of the Legislative Council;
- (5) contracts of the Legislative Finance Division and the Legislative Audit Division must be authorized by a majority of the members of the Legislative Budget and Audit Committee in a meeting of the committee;

(6) contracts of a research agency established by the legislature must be authorized by a majority of the members of the Legislative Council in a meeting.

(c) A contract must be executed by the provider of the service, professional service, supply, or construction, and the procurement officer and shall be approved as to form by legislative legal counsel.

(d) A contract must contain:

- (1) the amount of the contract stated on its first page;
- (2) the date for the work to begin or the supplies to be delivered;
- (3) the date by which the work must be completed;
- (4) a description of the services to be performed or the supplies to be procured under the contract; and
- (5) a statement of the status of the funding for the contract.

(e) Subsections (a), (c), and (d) of this section do not apply when a State of Alaska delivery order form is used.

(f) Notwithstanding (b) of this section, the procurement officer for a construction contract may, without obtaining committee authorization otherwise required by (b) of this section, authorize an

increase in the amount to be paid a contractor under the construction contract if the increase results from a change to the construction contract that is within the general scope of the original construction contract. The cumulative amount of all increases that may be authorized for one construction contract by a procurement officer under this subsection may not exceed \$25,000, or 10 percent of the original amount of the construction contract, whichever is more. In this subsection, "construction contract" means a contract in which the work includes construction services, even if supplies or other services are also provided under the contract.

The procurement officer will notify members of the appropriate committee of any authorized change orders.

Sec. 160. NOVATION OR CHANGE OF NAME.

(a) A legislative contract for the lease of legislative space that does not include a subordination agreement, may be assigned with the consent of the procurement officer. Any other legislative contract is not transferable, or otherwise assignable, without the consent of the procurement officer, and in the case of a contract for a committee, a majority of the members of that committee. However, a contractor may assign money receivable under a contract after due notice to the procurement officer.

(b) When it is in the best interest of the agency, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee must agree that:

- (1) the transferee assume all of the transferor's obligations;
- (2) the transferor waives all rights under the contract as against the agency; and
- (3) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

(c) When a contractor requests to change the name in which it holds a contract with an agency, the procurement officer responsible for the contract shall, upon receipt of a document indicating a change of name, enter into an agreement with the requesting contractor to effect the change of name. The agreement changing the name must specifically indicate that no other terms and conditions of the contract are thereby changed.

Sec. 170. CONTRACTING FOR INSTALLMENT PURCHASE PAYMENTS, INCLUDING INTEREST.

Supply contracts may provide for installment purchase payments, including interest charges, over a period of time. Installment payments, however, should be used judiciously in order to achieve economy and not to avoid budgetary restraints and must be justified in writing by the procurement officer. The justification shall be attached to the contract and filed under sec. 200 of these procedures. An installment payment agreement may not be used unless a provision for installment payments is included in the solicitation document.

Sec. 180. STANDARD OVERHEAD RATE.

(a) If the University of Alaska or any other state agency has established an applicable standard overhead rate, the standard overhead rate shall be included in a proposal for a contract submitted by the University of Alaska or the state agency.

(b) In this section, "standard overhead rate" means a charge established by the University of Alaska or a state agency that is designed to compensate the University of Alaska or the state agency for administration and support services incidentally provided with the services.

Sec. 195. DISCLOSURE OF PROPOSALS.

Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the selection process. A register of proposals containing the name and address of each offeror shall be prepared. The register and the proposals are open for public inspection after the notice of intent to award a contract is issued. To the extent that the offeror designates and the procurement officer concurs, trade secrets and other proprietary data contained in the proposal documents are confidential.

Sec. 200. PROCUREMENT FILES.

(a) A copy of each solicitation or unsolicited offer that does not result in a contract together with relevant documents shall be filed, as is appropriate, with the Legislative Affairs Agency, the legislative finance division, or the legislative audit division. The invitation to bid or request for proposals and each bid or proposal submitted shall be filed with the filed contract copy unless the contract is one in which an invitation to bid or a request for proposals is not required. Except as otherwise provided in secs. 100 and 195 of these procedures, procurement files are open for public inspection.

(b) A contract for services provided to the legislative audit division in the preparation of an audit report or a performance review report does not have to be filed under (a) of this section until the report is released under AS 24.20.311.

Sec. 210. RESPONSIBILITY OF PROSPECTIVE CONTRACTORS.

Before awarding a contract, the procurement officer must be satisfied that the prospective contractor is responsible. If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the procurement officer. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination must be made part of the procurement file.

Sec. 220. STANDARDS OF RESPONSIBILITY.

(a) Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor has:

- (1) the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;

- (2) a satisfactory record of performance;
- (3) a satisfactory record of integrity;
- (4) qualified legally to contract with the agency; and
- (5) supplied all necessary information in connection with the inquiry concerning responsibility.

(b) The prospective contractor shall supply information requested by the procurement officer concerning the responsibility of the contractor. If the contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if the failure is unreasonable.

(c) The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (1) evidence that the contractor possesses the necessary items;
- (2) acceptable plans to subcontract for the necessary items; or
- (3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

Sec. 230. FILING OF A PROTEST.

An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction by an agency. The protest shall be filed with the procurement officer in writing and include the following information:

- (1) the name, address, and telephone number of the protester;
- (2) the signature of the protester or the protester's representative;
- (3) identification of the contracting agency and the solicitation or contract at issue;
- (4) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
- (5) the form of relief requested.

Sec. 240. TIME FOR FILING A PROTEST.

(a) A protest based upon alleged improprieties in a solicitation involving competitive sealed bidding that are apparent before the bid opening shall be filed before the bid opening. A protest

based on alleged improprieties in a solicitation involving competitive sealed proposals that are apparent

- (1) before the due date for receipt of initial proposals shall be filed before that due date;
- (2) after the due date for receipt of initial proposals shall be filed before the next due date for receipt of adjusted proposals that occurs after the improprieties are apparent.

(b) In situations not covered under (a) of this section, protests shall be filed within 10 days after a notice of intent to award the contract is issued by the procurement officer.

(c) If the protester shows good cause, the procurement officer of the contracting agency may consider a filed protest that is not timely.

Sec. 250. NOTICE OF A PROTEST.

The procurement officer shall immediately give notice of a protest filed under sec. 240 of these procedures to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

Sec. 260. STAY OF AWARD.

If a protest is filed, the award may be made unless the procurement officer of the contracting agency determines in writing that a:

- (1) reasonable probability exists that the protest will be sustained; or
- (2) stay of the award is not contrary to the best interests of the state.

Sec. 270. DECISION BY THE PROCUREMENT OFFICER.

(a) The procurement officer of the contracting agency shall issue a written decision containing the basis of the decision within 14 days after a protest has been filed. A copy of the decision shall be furnished to the protester by certified mail or other method that provides evidence of receipt.

(b) The time for a decision may be extended up to 26 days for good cause by the Legislative Council. If an extension is granted, the procurement officer shall notify the protester in writing of the date the decision is due.

(c) If a decision is not made by the date it is due, the protester may proceed as if the procurement officer had issued a decision adverse to the protester.

Sec. 280. PROTEST REMEDIES.

(a) If the procurement officer sustains a protest in whole or in part, the procurement officer shall implement an appropriate remedy.

(b) In determining an appropriate remedy, the procurement officer shall consider the circumstances surrounding the solicitation or procurement including the seriousness of the

procurement deficiencies, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent the procurement has been accomplished, costs to the agency and other impacts on the agency of a proposed remedy, and the urgency of the procurement to the welfare of the state.

(c) Notwithstanding (a) and (b) of this section, if a protest is sustained in whole or part, the protestor's damages are limited to reasonable bid or proposal preparation costs.

Sec. 290. APPEAL ON A PROTEST.

(a) An appeal from a decision of a procurement officer on a protest may be filed by the protester with the Legislative Council. An appeal shall be filed within seven days after the decision is received by the protester. The protester shall file a copy of the appeal with the procurement officer.

(b) An appeal must contain the information required under sec. 230 of these procedures. In addition, the appeal must include

(1) a copy of the decision being appealed; and

(2) identification of the factual or legal errors in the decision that form the basis for the appeal.

Sec. 300. NOTICE OF A PROTEST APPEAL.

(a) The procurement officer shall immediately give notice of an appeal filed under sec. 290 of these procedures to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

(b) The Legislative Council shall, on request, furnish a copy of the appeal to a person notified under (a) of this section, except that confidential material shall be deleted from the copy.

Sec. 310. STAY OF AWARD DURING PROTEST APPEAL.

If a protest appeal is filed before a contract is awarded and the award was stayed under sec. 260 of these procedures, the filing of the appeal automatically continues the stay until the Legislative Council makes a written determination that the award of the contract without further delay is necessary to protect substantial interests of the state.

Sec. 320. PROTEST REPORT.

(a) The procurement officer of the contracting agency shall file a complete report on the protest and decision with the Legislative Council within 10 days after a protest appeal is filed. The procurement officer shall furnish a copy of the report to the protester and to interested parties that have requested a copy of the appeal under sec. 300(b) of these procedures.

(b) The procurement officer may request the Legislative Council chair for an extension of time to prepare the protest report. The request must be in writing listing the reasons for the request. The Legislative Council chair shall respond to the request in writing. If an extension is granted, the Legislative Council chair shall list the reasons for granting the extension and indicate the date

the protest report is due. The Legislative Council chair shall notify the protester in writing that the time for submission of the report has been extended and the date the report is due.

(c) The protester may file comments on the protest report with the Legislative Council within 10 days after the report is received. The protester shall provide copies of the comments to the procurement officer and to interested parties that have requested a copy of the appeal under sec. 300(b) of these procedures.

(d) The protester may request the Legislative Council chair for an extension of time to prepare the comments on the protest report. The request must be in writing listing the reasons for the request. The Legislative Council chair shall respond to the request in writing. If an extension is granted, the Legislative Council chair shall list the reasons for granting the extension and indicate the date the comments are due. The Legislative Council chair shall notify the procurement officer in writing that the time for submission of the comments has been extended and the date the comments are due.

Sec. 330. DECISION WITHOUT HEARING.

(a) The Legislative Council shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely under sec. 290 of these procedures.

(b) ~~The Legislative Council may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of fact.~~

(c) Within 30 days after the period for filing comments under sec. 320(c) or (d) has expired the Legislative Council may adopt the decision of the procurement officer as the final decision without a hearing.

Sec. 340. HEARING ON PROTEST APPEAL.

A hearing on a protest appeal shall be conducted in accordance with sec. 450 of these procedures.

Sec. 350. CONTRACT CONTROVERSIES.

(a) A contractor shall file a claim concerning a contract awarded under this chapter with the procurement officer. The contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of the contractor's knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the state is liable.

(b) If a controversy asserted by a contractor concerning a contract awarded under these procedures cannot be resolved by agreement, the procurement officer shall, after receiving a written request by the contractor for a decision, issue a written decision. The decision shall be made no more than 90 days after receipt by the procurement officer of all necessary information from the contractor. Failure of the contractor to furnish necessary information to the procurement officer constitutes a waiver of the claim. Before issuing the decision the procurement officer shall review the facts relating to the controversy and obtain necessary assistance from legal, fiscal, and other advisors.

(c) The time for issuing a decision under (b) of this section may be extended for good cause by the Legislative Council chair if the controversy concerns an amount in excess of \$50,000. The procurement officer shall notify the contractor in writing that the time for the issuance of a decision has been extended and of the date by which a decision shall be issued.

(d) The procurement officer shall furnish a copy of the decision to the contractor by certified mail or other method that provides evidence of receipt. The decision shall include a:

- (1) description of the controversy;
- (2) reference to the pertinent contract provisions;
- (3) statement of the agreed upon and disputed facts;
- (4) statement of reasons supporting the decision; and
- (5) statement substantially as follows:

"This is the final decision of the procurement officer. This decision may be appealed to the Legislative Council. If you appeal, you must file a written notice of appeal with the Legislative Council within 14 days after you receive this decision."

(e) If a decision is not made by the date it is due, the contractor may proceed as if the procurement officer had issued a decision adverse to the contractor.

(f) If a controversy asserted by the Legislature concerning a contract awarded under this chapter cannot be resolved by agreement the matter shall be immediately referred to the Legislative Council.

Sec. 360. APPEAL ON A CONTRACT CONTROVERSY.

(a) An appeal from a decision of the procurement officer on a contract controversy may be filed by the contractor with the Legislative Council. The appeal shall be filed within 14 days after the decision is received by the contractor. The contractor shall file a copy of the appeal with the procurement officer.

(b) An appeal shall contain a copy of the decision being appealed and identification of the factual or legal errors in the decision that form the basis for the appeal.

Sec. 370. HEARING ON A CONTRACT CONTROVERSY.

(a) Except as provided in (b) of this section, a hearing shall be conducted according to sec. 450 of these procedures on a contract controversy appealed to the Legislative Council or referred to the Legislative Council under sec. 350(f) of these procedures.

(b) Within 30 days after receipt of an appeal on a contract controversy the Legislative Council may adopt the decision of the procurement officer as the final decision without a hearing.

Sec. 380. AUTHORITY TO DEBAR OR SUSPEND.

(a) After consultation with the using agency and the attorney general and after a hearing conducted according to sec. 450 of these procedures the Legislative Council may debar a person for cause from consideration for award of contracts. Notice of a debarment hearing shall be provided in writing at least seven days before the hearing. The debarment may not be for a period of more than three years.

(b) The Legislative Council, after consultation with the using agency and the attorney general, may suspend a person from consideration for award of contracts if there is probable cause for debarment and compelling reasons require suspension to protect state interests. The suspension may not be for a period exceeding three months.

Sec. 390. CAUSES FOR DEBARMENT OR SUSPENSION.

The causes for debarment or suspension include the following:

- (1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a state contractor;
- (3) conviction or civil judgment finding a violation under state or federal antitrust statutes;
- (4) violation of contract provisions of a character that is regarded by the Legislative Council to be so serious as to justify debarment action, such as
 - (A) knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (B) failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment;
- (5) for violation of the ethical standards set out in law or regulation; and
- (6) any violation of these procedures or other cause determined to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity.

Sec. 400. WRITTEN DETERMINATIONS.

(a) The Legislative Council shall issue a written decision to debar or suspend. The decision must:

- (1) state the reasons for the action taken; and
- (2) inform the debarred person of rights to judicial appeal or inform the suspended person of rights to administrative and judicial appeal.

(b) A copy of the decision under (a) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other intervening party.

Sec. 410. HEARING ON A SUSPENSION.

(a) A person suspended under sec. 380 of these procedures is entitled to a hearing conducted according to sec. 450 of these procedures if the person files a written request for a hearing with the Legislative Council within seven days after receipt of the notice of suspension under sec. 400 of these procedures.

(b) If a suspended person requests a hearing the Legislative Council shall schedule a prompt hearing unless the attorney general determines that a hearing at the proposed time is likely to jeopardize an investigation. A hearing may not be delayed longer than six months after notice of the suspension is provided under sec. 400 of these procedures.

Sec. 420. LIST OF PERSONS DEBARRED OR SUSPENDED.

The chairman of the Legislative Council shall maintain a list of all persons debarred or suspended from consideration for award of contracts.

Sec. 430. REINSTATEMENT.

(a) The Legislative Council may at any time after a final decision to debar a person from consideration for award of contracts reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.

(b) A debarred person may request reinstatement by submitting a petition to the Legislative Council supported by evidence showing that the cause for debarment no longer exists or has been substantially mitigated.

(c) The Legislative Council may require a hearing on a reinstatement petition. A decision on reinstatement shall be made in writing within seven days after a reinstatement petition is submitted. The decision shall specify the factors on which it is based.

Sec. 440. LIMITED PARTICIPATION.

The Legislative Council may permit a debarred person to participate in a contract on a limited basis during the debarment period if the Legislative Council determines in writing that the participation is advantageous to the state. The determination shall specify the factors on which it is based and the limits imposed on the debarred person.

Sec. 450. HEARING PROCEDURES.

(a) The chairman of the Legislative Council shall act as a hearing officer or appoint a hearing officer for a hearing conducted under these procedures. The hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing. The hearing shall be conducted in an informal manner.

(b) The hearing officer may:

- (1) hold prehearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
- (2) require parties to state their positions concerning the various issues in the proceeding;
- (3) require parties to produce for examination those relevant witnesses and documents under their control;
- (4) rule on motions and other procedural matters;
- (5) regulate the course of the hearing and conduct of the participants;
- (6) establish time limits for submission of motions or memoranda;
- (7) impose appropriate sanctions against a person who fails to obey an order of the hearing officer, including
 - (A) prohibiting the person from asserting or opposing designated claims or defenses or introducing designated matters into evidence;
 - (B) excluding all testimony of an unresponsive or evasive witness; and
 - (C) excluding a person from further participation in the hearing;
- (8) take official notice of a material fact not appearing in evidence, if the fact is among the traditional matters subject to judicial notice;
- (9) administer oaths or affirmations.

(c) A transcribed record of the hearing shall be made available at cost to a party that requests it.

Sec. 460. RECOMMENDATION BY THE HEARING OFFICER.

(a) The hearing officer shall recommend a decision to the Legislative Council based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.

(b) The Legislative Council may affirm, modify, or reject the hearing officer's recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or take other appropriate action.

Sec. 470. FINAL DECISION BY LEGISLATIVE COUNCIL.

A final decision by the Legislative Council after a hearing under these procedures shall be sent within 20 days after the hearing to all parties by personal service or certified mail.

Sec. 480. APPEAL.

The decision of the Legislative Council under sec. 470 may be appealed to the Superior Court in accordance with the procedures established in AS 44.62.560 - 44.62.570 for appeals from decisions of executive branch agencies. A claimant may also bring an action under AS 09.50.250 - 09.50.300 at any time after one year has elapsed since the presentation of the claim under sec. 360, if no decision has been made by the Legislative Council.

Sec. 900. DEFINITIONS.

In these procedures, unless the context in which a term is used clearly requires a different meaning,

- (1) "agency" means any subdivision of the legislative branch that conducts procurements; including legislative committees;
- (2) "days" means calendar days and includes weekends and holidays; if a due date falls on a weekend or a legal holiday then the due date is the next working day;
- (3) "interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract; whether an actual or prospective bidder or offeror has an economic interest depends on the circumstances;
- (4) "procurement officer" means:
 - (A) the chairman of the Finance Committee with respect to contracts of that committee and the chairman of the Rules Committee with respect to contracts of that committee;
 - (B) the chairman of a legislative committee, other than the Finance Committees and the Rules Committees, with respect to a contract of that committee;
 - (C) the Speaker of the House with respect to House leadership contracts;
 - (D) the President of the Senate with respect to Senate leadership contracts;

- (E) the chairman of the Legislative Council with respect to contracts of the Legislative Affairs Agency and contracts of a research agency established by the legislature;
 - (F) the chairman of the Legislative Budget and Audit Committee with respect to contracts of the Legislative Finance Division and the Legislative Audit Division;
- (5) "professional services" means professional, technical, or consultant's services that are predominantly intellectual in character and that
- (A) include analysis, evaluation, prediction, planning, or recommendation; and
 - (B) result in the production of a report or the completion of a task;
- (6) "solicitation" means an invitation for bids, a request for proposals, or any other document issued by the legislature for the purpose of soliciting bids or proposals to perform a contract.
- (7) "supplies" has the meaning given in AS 36.30.990.
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* Sec. 2. The following sections of the Administrative Services Policy and Procedures Manual are repealed:

- (1) the section headed "Contracts" on page 1.13;
- (2) the section headed "Purchasing" on page 3.1.

* Sec. 3. These procedures take effect January 1, 1988.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan)
corporation,)
Plaintiff,)
vs.)
716 WEST FOURTH AVENUE, LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)
Defendants.)
_____)

3AN-15-05969 CI

ORDER DENYING MOTION FOR SUMMARY JUDGMENT RE: LACHES

I. Background

On September 9, 2013, the Legislative Affairs Agency (LAA) and the 716 West Fourth Avenue LLC (716) entered into an agreement to renovate and expand the existing Legislative Information Office (LIO Project).¹ The project required a virtual "gutting" of the existing rental space, demolition and subsequent reconstruction of a separate building on an adjoining lot, increasing the square footage of the leasehold from approximately 23,645 square feet to approximately 64,048 square feet. The agreement called for the LAA to pay for certain tenant improvements estimated to have cost in excess of \$7.5 million. The project required relocation of the tenants for several months. At the completion of this project, the LAA once again leased the office space. Construction began in December 2013 and was completed around January 9, 2015.²

¹ LAA Mot. for Summ. J. at 2.

² *Id.* at 5.

The monthly rental increased from \$56,863.05 to \$281,638 and the term of the lease was extended to May 31, 2024.

The Alaska Building, owned by Alaska Building Inc. (ABI) whose president and sole member is James Gottstein, is a building adjacent to the LIO Project. By October 3, 2013, Mr. Gottstein was aware that the LAA and 716 had signed a contract for the LIO Project and that the project would cost several million dollars.³ By October 11, 2013, Mr. Gottstein had met with the attorney for 716 and expressed concerns that the lease was illegal and was contemplating filing an injunction⁴. Around October 28, 2013, he once again met with 716's attorney and expressed his opinion that the project was illegal under AS 36.30.083(a).⁵ Mr. Gottstein filed a lawsuit on behalf of ABI on March 31, 2015 alleging in relevant part that because the LIO Project did not comply with the requirements of AS 36.30, the project is illegal.⁶ Under AS 36.30, leases in which the LAA is a party are subject to a competitive bidding process and legislative notice, unless exempted. AS 36.30.083 exempts lease "extensions" that will result in a "cost savings of at least 10 percent below the market rental value of the... property." Over defendants' objections, Mr. Gottstein was granted citizen taxpayer standing.⁷ LAA filed this motion requesting summary judgement under the laches doctrine. 716 joined in LAA's motion for summary judgement.

II. Issues Presented

- A. Is the equitable defense of laches available to ABI's declaratory relief request?
- B. Did ABI fail to bring its complaint in a timely manner?

³ LAA Mot. Summ. J. Exhibit A Request for Admission (RFA) Nos. 4-5.

⁴ *Id.* Interrogatory No. 1.

⁵ *Id.* Interrogatory No. 2.

⁶ First Amended Complaint ¶¶17-21.

⁷ ABI's original complaint contained two counts: Count 1 alleged the illegality of the lease and Count 2 alleged damage to ABI's building during the renovations. The LAA moved that the suit be dismissed as against it because ABI lacked standing to bring suit on Count 1 and the LAA was not the correct party against whom to bring suit in Count 2. Alternatively, the LAA requested that the suit be severed. The court found that ABI had citizen taxpayer standing for Count 1 and severed the counts pursuant to Alaska's Civil Rule 20(a) in its Aug. 8, 2015 Order. ABI filed an amended complaint as to Count 1 and filed a separate suit regarding the allegations in Count 2 that is currently before Judge Rindner in 3AN-15-09785CI.

C. Will ABI's delay harm the LAA?

D. Will ABI's delay harm 716?

III. Summary Judgement Standard

Summary judgement is appropriate where "there is no issue as to any material fact and the moving party is entitled to a judgement as a matter of law."⁸ The non-moving party must "set forth specific facts showing that he could produce evidence reasonably tending to dispute or contradict the movant's evidence and thus demonstrate that a material issues of fact exists."⁹ Alaska has a lenient summary judgement standard,¹⁰ but mere allegations are insufficient and the non-moving party "must set forth specific facts showing that there is a genuine issue of material fact."¹¹ The court views "the facts in the light most favorable to the non-moving party and draw[s] all factual inferences in the non-moving party's favor."¹²

IV. Analysis

Both the LAA and 716 assert the equitable defense of laches against ABI's lawsuit. For a laches defense to succeed, the defendants must show that 1) the plaintiff waited an unreasonable amount of time in bringing his suit and 2) that the plaintiff's unreasonable delay resulted in prejudice or undue harm to the defendants.¹³ As part of determining whether the delay was unreasonable, the court can consider "a lack of diligence in seeking a remedy, or acquiescence in the alleged wrong..."¹⁴ Importantly, "[t]he analysis is actually less of a distinct two-part test than an overall balancing of the equities."¹⁵ Because of the balancing nature of the laches test, whether a delay is unreasonable is often better judged in light of the harm suffered by the defendants. Unless the Alaska Supreme Court is left with a "definite and firm conviction that a

⁸ Alaska R. Civ. P. 56(c).

⁹ *Christensen v. Alaska Sales and Service, Inc.* 335 P.3d 514, 517 (Alaska 2014).

¹⁰ *Estate of Milos v. Quality Asphalt Paving, Inc.*, 145 P.3d 533, 537 (Alaska 2006).

¹¹ *Kelly v. Municipality of Anchorage*, 270 P. 3d 801, 803 (Alaska 2012) (internal citations omitted).

¹² *Kalenka v. Jadon, Inc.*, 305 P.3d 346, 349 (Alaska 2013).

¹³ *Laverty v. Alaska R.R. Corp.*, 13 P.3d 725, 729 (Alaska 2000).

¹⁴ *Kollander v. Kollander*, 322 P.3d 897, 903 (Alaska 2014).

¹⁵ *McGill v. Wahl*, 839 P.2d 393, 399 (Alaska 1992).

mistake has been committed"¹⁶ it will not overturn the trial court's determination of whether laches bars a suit.¹⁷

A. Is the equitable defense of laches available to ABI's declaratory relief request?

Mr. Gottstein objects to the defense of laches being raised, arguing that this defense is not available against his requested declaratory relief. Alaska courts have held that "laches is an equitable defense against equitable causes of action, but not a legal defense against actions at law."¹⁸ However, declaratory relief is neither equitable nor legal, but an additional remedy.¹⁹ The LAA urges the court to view this requested relief as an equitable pleading and allow it to raise the defense of laches.²⁰

In its complaint, ABI only seeks declaratory relief. But ABI has also requested a preliminary injunction²¹, asking the court to utilize equitable powers to prevent perceived harm during the period of the pending lawsuit. Realistically, the declaratory relief requested would effectively bar either defendant from reliance on the provisions of the lease, opening up a myriad of both legal and equitable resolutions to the situation which defendants would then find themselves. Under the unique facts in this litigation, the court does find that the defense of laches is available to this lawsuit.

B. Did ABI fail to bring his complaint in a timely manner?

In determining whether a delay was unreasonable, the court "will look to the point in time at which the defendants' actions indicated that their conduct was irrevocable and

¹⁶ *Laverty*, 13 P.3d at 729.

¹⁷ *Id.*

¹⁸ *Laverty*, 13 P.3d at 730; See also *Hanson v. Kake Tribal Corp.*, 939 P.2d 1320, 1325 n. 1 (Alaska 1997).

¹⁹ *Laverty*, 13 P.3d at 730.

²⁰ ABI belatedly raised the unclean hands doctrine to defeat the laches summary judgment motion. While certainly one who requests an equitable ruling must "come with clean hands", the court notes there may be additional material questions of fact surrounding this issue, but does not base its current decision on this recently raised legal argument.

²¹ Pl.'s Mot for Prelim. Inj. (docketed Oct. 6, 2015). ABI requests that 716 be enjoined from disbursing any funds received under the lease beyond what is necessary to operating expenses and debt service.

would have galvanized a reasonable plaintiff into seeking a lawyer."²² There is no specific length of time that serves as the threshold for a successful defense of laches. [Instead], the court will balance the length of the delay against the seriousness of the prejudice the defendant suffers.²³ As part of determining whether the delay was unreasonable, the court can consider "a lack of diligence in seeking a remedy, or acquiescence in the alleged wrong..."²⁴

LAA and 716 rely heavily on *City and Borough of Juneau v. Breck*, 706 P.2d 313 (Alaska 1985) to persuade the court that Mr. Gottstein's seventeen month delay was unreasonable. In that case, Ms. Breck sued the City of Juneau for violating the city code's competitive bid process when it hired a construction firm to complete a project. From April through June 1984, Ms. Breck appeared before the borough assembly expressing her concerns that the construction contract was illegal. In August, after nearly 50% of the project was completed and the city had spent approximately \$1.5 million, she sued the city asking for an injunction. The Alaska Supreme Court found that the two elements necessary for laches to apply were present: "1) that the plaintiff ha[d] unreasonably delayed in bringing the action; and 2) that this unreasonable delay ha[d] caused undue harm or prejudice to the defendant."²⁵ The court reasoned that though that Plaintiff had waited only four months from when the contract was signed until she brought her law suit, her delay had prejudiced the city because of the amount of money it had already spent and the additional costs the city would incur by cancelling the contract, send the project out to bid, and complete the project with a new firm.²⁶

Specifically, the court in *Breck* found that when the parties signed the construction contract and subsequently started construction, Mrs. Breck should have been prompted to seek counsel.²⁷ Without explicitly saying so, the Court balanced the

²² McGill v. Wahl, 839 P.2d 393, 398-99 (Alaska 1992).

²³ Pavlik v. State, Dept. of Community and Regional Affairs, 637 P.2d 1045, 1047-8 (Alaska 1981) (internal citations omitted) (No specific time must elapse before the defense of laches can be raised because the propriety of refusing to hear a claim turns as much upon the gravity of the prejudice suffered by the defendant as the length of the plaintiff's delay." Thus, where there is a long delay, a lesser degree of prejudice will be required).

²⁴ Kollander v. Kollander, 322 P.3d 897, 903 (Alaska 2014).

²⁵ *Id.* at 315.

²⁶ *Id.*

²⁷ 706 P.2d 313, 315-16 (Alaska 1985).

length of her delay against the prejudice that ensued from her delay citing estimates that such a delay would cost between \$1.5-2 million. Thus, when balanced against the prejudice Ms. Breck's delay caused the ostensibly short amount of time (four months) it took for her to file her suit rose to the level of "unreasonable."

The court finds that Mr. Gottstein was aware of the potential illegality of the contract within weeks of its announcement. Yet he waited seventeen months and until the completion of the project to bring suit.²⁸ In his responses to LAA's request for admissions, Mr. Gottstein admitted that "there was no indication, once construction began in late 2013, that [the LAA] had any intention to voluntarily declare the Lease Extension void due to an alleged irregularity in the procurement process." During the seventeen month delay, Mr. Gottstein also collected \$15,000 in professional fees from 716²⁹ and \$10,000 in rent from the construction company.³⁰ The court views Mr. Gottstein's financial gains as acquiescence and, combined with the seventeen months ABI waited to bring the law suit, this delay seems "unreasonable."

Mr. Gottstein cites concerns over retaliatory actions from 716 if he brought this law suit during the construction period. The court finds that Mr. Gottstein's fears do not seem particularly well-founded³¹ and any threatened retaliatory damage could be remedied by damages. The court finds that fear of retaliation is not a legitimate reason to not bring a timely lawsuit especially when damages could have made Mr. Gottstein whole again.

²⁸ See Ex. A Interrogatory No. 2.

²⁹ See id. RFA 9.

³⁰ See id. RFA 12-14.

³¹ Mr. Gottstein states several times during his October 23, 2015 deposition that he was concerned that 716 was going to shut off the gas to the ABI building. See e.g. Pl.'s Opp. Mot. Sum. J. Laches, Exhibit 1, pg. 4-5 (Gottstein Dep. 87: 5-7; 97: 17-19) However, he also admits that 716 never actually threatened to disconnect his gas. Id. at pg 11-12 (Gottstein Dep. 141:22-142:6). . Bolstering this assertion, he also provides a series of emails between 716's counsel and himself discussing 716 disconnecting and re-connecting Alaska Building's gas lines. Pl.'s Opp. Mot. Sum. J. Laches, Exhibit 2. Even viewing these emails and statements in the light most favorable to Mr. Gottstein, it does not appear that 716 was threatening to cut off the Alaska Building's gas supply for longer than it would take to reconnect it to another meter. He also states that he was worried that 716 would demolish a shared "Party Wall." Pl.'s Opp. Mot. Sum. J. Laches, pg. 3-5. It appears this fear stems from a disagreement over who owned portions of that wall. See Pl.'s Opp. Mot. Sum. J. Laches, Exhibit 3. It is unclear whether 716 would have torn down this wall regardless of ownership if Mr. Gottstein had moved ahead with his suit.

Though the court could find ABI's delay was unreasonable, the court must still balance the delay against the hardship the defendant's will suffer. Neither the LAA's nor 716's future harm seems particularly egregious. In fact, viewing the facts in a light most favorable to ABI as this court is required to do, a finding that the lease is "illegal, null and void" may potentially benefit either party, as discussed below. Thus, when balanced against the unknown degree of harm that the parties may incur because of this delay, the court may ultimately determine that the seventeen month delay is not so unreasonable.

While balancing the harm, the court might come to a different conclusion if ABI were seeking an award of damages³². The court would find unreasonable delay if damages were requested for the period between the fall of 2013 and the date of the lawsuit. But all that is before the court is a request for declaratory relief³³ seeking to declare void a process which resulted in an executory contract that still has eight and one-half years (8&1/2) of monthly rental payments remaining.

C. Will ABI's delay harm the LAA?

As part of the LIO Project, the LAA paid \$7.5 million in tenant improvements. The LAA argues it will be harmed if the lease is found null and void because it may have to relocate and abandon those improvements. Had Mr. Gottstein brought this suit before or even during construction, the LAA contends it could have saved all or part of the \$7.5 million.

Though there are many similarities between *Breck* and the current case, a key distinguishing element is that in *Breck* the expense was a one-time outlay of money. Here, the LAA will continue paying a sizeable monthly rent for several additional years in addition to its initial \$7.5 million investment in tenant improvements. Mr. Gottstein's real estate expert conservatively calculated that over the course of the current lease, the LAA will be paying over \$17 million in excess of allowable rent. If the lease is found

³² Other than the novel claim of *qui tam* damages which is subject to a separate dispositive motion.

³³ Lavery, 13 P.3d at 730,731.

"illegal, null and void"³⁴ and the LAA abandons the building in favor of less expensive office space, it and the Alaskan tax payers will be saving potentially much more than the original \$7.5 million. It remains a question of fact whether the LAA would ultimately forfeit the entire \$7.5 million it spent on improvements since the lease makes no specific mention of such a contingency.³⁵

There are other material questions pertaining to the extent of harm the LAA may suffer. The lease provides for termination if not funded by the legislature, meaning the requested declaratory relief may not harm either party if the court simply determines the legality of an already voidable contract.³⁶ The court finds that summary judgment favoring the LAA is inappropriate at this time without an opportunity to fully develop the facts, determine the credibility of the witnesses, and test the data supplied in support of harm alleged in the request for summary judgment.

D. Will ABI's delay harm 716?

716 similarly argues that it will be unfairly prejudiced absent a successful defense of laches. In joining the LAA's motion for summary judgment under this doctrine, 716 utilized its briefing against Mr. Gottstein's motion for a preliminary injunction in its entirety to argue it will be unfairly prejudiced. There, 716 argues that it spent over \$44 million in renovations, some which were specifically tailored to the LAA's needs.³⁷ 716 further argues had Mr. Gottstein brought this suit earlier, it could have avoided this tremendous outlay of money. Obviously the money spent could have been avoided, but spending money is not the equivalent of suffering harm if the money is recouped in a different fashion.

³⁴ First Amended Complaint Requested Relief A.

³⁵ See September 19, 2013 Lease Extension and Amendment 3, Section 3 (Renovation and Delivery of Premises) and Section 33 (Remedies on Default). Neither section mention what would happen to the \$7.5 million in the event of a default or otherwise. The court does not intend to speculate on legal remedies or "attachments" to the leasehold in this summary judgment format. Suffice to say that uncertainty exists.

³⁶ Extension of Lease and Lease Amendment NO.3, Sec. 1.2, at p.4 of 22. Neither party seemed to commit to the legal ramifications of that clause in the lease.

³⁷ 716 Opp. to Mot. for Prelim. Inj. 12

The facts on this issue are not yet fully ascertainable and certainly aren't presented with such a degree of certainty that this court should rely on them for summary judgment. On the one hand, if the court finds the lease "illegal, null and void" 716 and the LAA may renegotiate the contract to reflect a 10% below market value rental rate meaning 716 may have to amortize the renovation's expense over a longer time and lose some of the benefit of its bargain, therefore incurring some harm. 716 may not be able to lease to any one on similar terms also incurring harm. On the other hand, in the event that the court declares the lease "illegal, null and void," and the parties are unable to reach a new agreement, 716 will be able to lease the building at a greater rate since it claims the current rate is 10% below the market value. Indeed, 716 may even benefit from a finding that the lease is "illegal, null and void."

The court finds that there are genuine issues of material facts pertaining to the extent of harm 716 may suffer and that summary judgment favoring 716 is inappropriate at this time.

V. Conclusion

After balancing the equities, the court finds that while it is fairly clear ABI should have brought this law suit at an earlier date, there are material questions of fact as to the continuing harm suffered by the two defendants. ABI's only acknowledged request is for a declaratory ruling on the legality of the lease for failure to follow procurement procedures mandated by Alaska law. Summary dismissal of this litigation by the court's invoking its equitable powers and utilizing the defense of laches would result in a complete avoidance of a ruling on the legality of the LAA/716 lease -- hardly an equitable result to any involved party, but most especially to the citizen taxpayer.

Summary judgement is not appropriate at this time. In particular, the court finds that neither the LAA nor 716 have conclusively established that it will be harmed by a court ruling on the legality of the LAA/716 lease extension agreement.

This decision is not to be construed as a finding that the defense of laches is unavailable to the defendants at trial. The court simply finds that defendants have not

met the substantial burden required by a party seeking summary judgment. Summary judgment is DENIED.³⁸

Dated this 7th day of January, 2016, at Anchorage, Alaska.



Patrick J. McKay/Superior Court Judge

I certify that on 1/7/16 a copy
of the following was ~~mailed~~ ~~faxed~~ ~~hand delivered~~ emailed
to each of the following at their addresses of
record. James Gottstein
Jeffrey Robinson/Kevin Cuddy
Administrative Assistant JR

³⁸ ABI's motion for a ARCP-56(f) continuance is deemed moot.

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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

Case No.: 3AN-15-05969CI

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

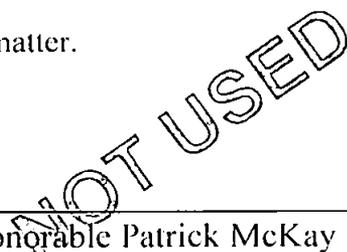
^v **[PROPOSED] FINDING**

THIS COURT, having reviewed Defendant Legislative Affairs Agency's (the "Agency") request for a finding that it is the prevailing party with respect to the property damage claim raised against it by Plaintiff Alaska Building, Inc. ("ABI"), any opposition and/or responses thereto, and being duly advised in the premises, this Court finds and ORDERS as follows:

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The Legislative Affairs Agency is the "prevailing party" with respect to the property damage claim that was originally described in Count 2 of the First Amended Complaint (which was subsequently severed and is now proceeding in *Alaska Building, Inc. v. Pfeffer Development, LLC*, 3AN-15-09785CI). The Legislative Affairs Agency may bring a motion for attorney's fees and costs under Civil Rules 68, 79, and 82 within 10 days of the date shown on the clerk's certificate of distribution on the final judgment in this matter.

DATED this _____ day of _____, 2015.



Honorable Patrick McKay
Superior Court Judge

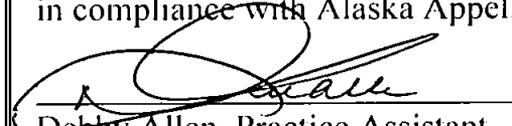
CERTIFICATE OF SERVICE AND OF FONT

This certifies that on October 15, 2015, I caused a true and correct copy of the foregoing to be served on:

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I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).



Debby Allen, Practice Assistant

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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-15-05969CI

1/13 **ORDER FOR *IN CAMERA* REVIEW**

Pursuant to the Plaintiff, Alaska Building, Inc.'s request at the Court's invitation in its January 13, 2016, Order Regarding Alaska Building, Inc.'s Motion to Compel, defendant 716 West Fourth Avenue LLC (716 LLC) is hereby **ORDERED** to produce to the Court for *in camera* review the operating agreement for 716 LLC including all amendments and any other agreements pertaining to the operation and/or management of 716 LLC.

Dated _____, 2016.

NOT USED

PATRICK J. McKAY,
SUPERIOR COURT JUDGE

JAN 22 2016

LAW OFFICES OF
JAMES B. GOTTSTEIN
408 G STREET, SUITE 208
ANCHORAGE, ALASKA
99501

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002149

3. a hearing for further necessary or proper relief pursuant to AS 22.10.020(g), shall be held August 15, 2016, beginning at 8:30 am, in Courtroom 301 of the Boney Courthouse 425 G Street, Anchorage, Alaska.

Dated _____, 2016.

Patrick J. McKay/Superior Court Judge

NOTIFIED

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*Order Granting Motion for
Partial Summary Judgment (Not Extension)*

Page 2 of 2

002151

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC and,)
LEGISLATIVE AFFAIRS AGENCY,)

Defendants.)

[PROPOSED] ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT (NOT EXTENSION)

Having considered the parties' briefing regarding Alaska Building, Inc.'s Motion for Partial Summary Judgment (Not Extension), the Motion is hereby DENIED. ORAL ARGUMENT on the Motion shall be scheduled for _____

DATED this ___ day of _____, 2016.

HON. PATRICK J. MCKAY
Superior Court Judge

NOT USED

FEB 16 2016

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
facsimile U.S. Mail on the 16 day of February 2016, on:

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[PROPOSED] ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

Case No. 3AN-15-05969 CI

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

^{JK}
**ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY
JUDGMENT (NOT EXTENSION)**

THIS COURT, having reviewed Defendant Legislative Affairs Agency's ("LAA")
Opposition to Plaintiff's Motion for Partial Summary Judgment (Not Extension), and/or
responses thereto, and being duly advised in the premises, this Court finds and ORDERS
as follows:

ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)
ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI

Page 1 of 2

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FEB - 3 2016

002154

IT IS HEREBY ORDERED that the Plaintiff's Motion for Partial Summary Judgment (Not Extension) IS DENIED.

DATED this _____ day of _____, 2016.

~~NOT USED~~

Honorable Patrick McKay
Superior Court Judge

CERTIFICATE OF SERVICE

This certifies that on February 3, 2016, I caused a true and correct copy of the foregoing to be served on:

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STATE OF ALASKA
THIRD JUDICIAL DISTRICT
2016 FEB 11 PM 3:50
BY: _____

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Attorneys for Defendant
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

Case No. 3AN-15-05969 CI

v.

716 WEST FOURTH AVENUE, LLC and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

**LEGISLATIVE AFFAIRS AGENCY'S RESPONSE TO COURT'S REQUEST
DATED FEBRUARY 26, 2016**

LAA'S RESPONSE TO COURT'S REQUEST DATED FEBRUARY 26, 2016
ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI

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✓

In response to the Court's February 26, 2016 Order, the Legislative Affairs Agency ("LAA") is not asking the Court to find the entire case to be nonjusticiable. When LAA engages in procurements, courts may generally interpret and apply the Procurement Code for some transactions without violating the separation of powers doctrine.¹ There are limits, however.

Some portions of the lease extension determination are nonjusticiable because of the "lack of judicially discoverable and manageable standards for resolving [the issue]" and "the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion."² Here, the Legislature statutorily authorized the Legislative Council to adopt the Alaska Legislative Procurement Procedures (the "Procedures") to address the special needs of the Legislature.³ These Procedures require the Procurement Officer to make certain discretionary policy determinations. The responsibility for making these findings has been committed to the Legislative Council and it would be impossible for the Court to undertake an independent review of those findings without, in the words of the Alaska Supreme Court, "expressing a lack of respect for that [coordinate] branch of government."⁴ There are no "judicially discoverable and manageable standards"⁵ that may be used to resolve the questions of whether the reasons

¹ See, e.g., *State Center, LLC v. Lexington Charles Ltd. P'ship*, 92 A.3d 400, 421 (Md. Ct. App. 2014) (noting trial judge's rejection of state agencies' motion to dismiss on "political question" grounds where plaintiff's claims related to interpretation and implementation of state procurement laws); cf. AS 36.30.685.

² *Baker v. Carr*, 369 U.S. 186, 217 (1982); see also *Kanuk ex rel. Kanuk v. State, Dep't of Natural Res.*, 335 P.3d 1088, 1096-97 (Alaska 2014) (using the *Baker v. Carr* criteria to identify nonjusticiable political questions).

³ AS 36.30.020 (providing that the Legislative Council shall adopt procurement procedures that "must be adapted to the special needs of the legislative branch as determined by the legislative council"); *Green Party of Alaska v. State, Div. of Elections*, 147 P.3d 728, 735 (Alaska 2006) (deference owed when Legislature is making policy determinations that require balancing various considerations).

⁴ *State, Dep't of Natural Res. v. Tongass Conserv. Soc'y*, 931 P.2d 1016, 1019 (Alaska 1997); see also *Kanuk*, 335 P.3d at 1099 (finding policy-based decisions are better reserved for agencies or the Legislature).

⁵ *Baker*, 396 U.S. at 217.

for the material modification were in the best interests of LAA, legitimate, or unforeseen to LAA when it first entered into the lease. Nor could the Court properly determine whether it was practicable for LAA to competitively procure a new lease because of the policy determinations inherent to such a decision.

Accordingly, the Court may not second-guess the Procurement Officer's determinations under the Procedures that:

- the reasons for a material modification (i.e., an expansion of the Legislative Information Office's physical footprint) of the lease were legitimate;
- the reasons for the modification were unforeseen when the original lease was entered into;
- it was not practicable to competitively procure a new lease; or
- the modification was in the best interests of the LAA.⁶

The application of the Procedures to these policy determinations is nonjusticiable.

Despite these limitations, LAA does not contend that the entire case is necessarily nonjusticiable because Plaintiff's request for declaratory relief could conceivably be limited to the lease extension's compliance or non-compliance with AS 36.30.083.⁷ If so, then no political question should be at issue. To the extent that the Court decides that any ruling depends upon an evaluation of the Legislature's rules of procedure and how they were applied, including the related policy determinations made by the Procurement Officer (e.g., the expansion of the Legislative Information Office's footprint), the case would be nonjusticiable.

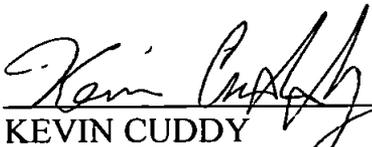
LAA respectfully notes that this is a very complicated and fact-specific issue to address in the two pages allotted by the Court. To the extent that the Court would benefit from additional briefing, LAA would be happy to provide it.

⁶ See Procurement Officer's Findings Under Legislative Procurement Procedure 040(d) at 4-9 (attached as Exh. F to Affidavit of Kevin M. Cuddy) (filed Feb. 3, 2016).

⁷ Cf. *State Center, LLC*, 92 A.3d at 421; AS 36.30.685.

DATED: March 11, 2016.

STOEL RIVES LLP

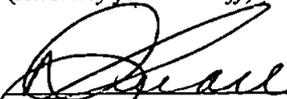
By: 
KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE

This certifies that on March 11, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)


Debby Allen, Litigation Practice Assistant

81823173.4 0081622-00003

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

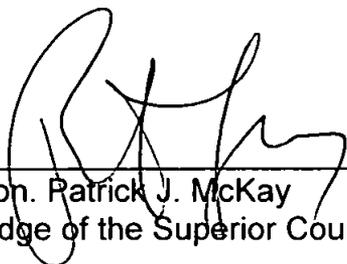
IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Alaska Building Inc.,)
)
 Plaintiff,)
)
 v.)
)
 716 West Fourth Avenue LLC, and)
 Legislative Affairs Agency,) Case No. 3AN-15-05969CI
)
 Defendants.)

ORDER STAYING PENDING DISCOVERY MOTIONS (#35, #39, and #40)

Case motions #35 (Motion for *In Camera* Review), #39 (Motion for Protective Order), and #40 (Motion for Order to Show Cause Why 716 West Fourth Avenue LLC Should Not Be Held In Contempt) are stayed pending ruling on case motion #4 (Plaintiff's Motion for Partial Summary Judgment, not extension) currently set for oral argument on March 22, 2016.

3/1/16
DATE


Hon. Patrick J. McKay
Judge of the Superior Court

I certify that on 3/2/16
a copy of the above was mailed to each of
the following at their addresses of record:
James Scottstein ^{emailed}
Kevin Cuddeyl Jeffrey Robinson
K. Nixon/Judicial Assistant Ku

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED
STATE OF ALASKA
2016 FEB 29 PM 3:29

CLERK TRIAL COURT

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

CERTIFICATE OF SERVICE

Case No. 3AN-15-05969CI

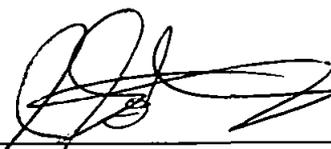
I hereby certify that on this date I hand delivered a copy of:

1. Reply to 716 LLC's Opposition to Alaska Building, Inc. Motion to Show Cause Why 716 West Fourth Avenue LLC Should Not Be Held in Contempt;
2. Opposition to 716's Motion for Protective Order;
3. (Proposed) Order Denying 716 West Fourth Avenue LLC's Motion for Protective Order; and
4. this Certificate of Service, to:

Jeffrey W. Robinson/
Eva R. Gardner
Ashburn & Mason, PC
1227 W. 9th Ave., Ste. 200
Anchorage, AK 99501

Kevin M. Cuddy
Stoel Rives LLP
510 L St., Ste. 500
Anchorage, AK 99501

Dated: February 29, 2016



Jim Gottstein

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

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THIRD JUDICIAL DISTRICT
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CLERK TRIAL COURT
BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff
vs.
716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY
Defendants.

Case No. 3AN-15-05969CI

**OPPOSITION TO 716'S MOTION FOR PROTECTIVE
ORDER**

Plaintiff Alaska Building, Inc., opposes the Motion for Protective Order filed February 17, 2016, by 716 West Fourth Avenue LLC (716), which is the second motion for what might be characterized as a case management protective order filed by 716 (Second Motion for Protective Order).

**A. The Second Motion for Protective Order Should Be
Denied for Failure to Comply With Civil Rule 26(c)**

As a threshold matter, counsel for 716 did not confer or attempt to confer with counsel for Alaska Building, Inc., to try to resolve the discovery dispute without court action as required by Civil Rule 26(c). As a result, 716's motion lacks the certification required by the rule. Instead, paragraph 2 of the Affidavit of Jeffrey W. Robinson in Support of Motion for Protective Order (Robinson Affidavit) states that "716 has previously attempted to negotiate a confidentiality agreement with [Alaska Building, Inc.]

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governing discovery in this matter without success." This is a disguised way of stating that 716 has not complied with the requirement to confer or attempt to confer before filing its Second Motion for Protective Order. Alaska Building, Inc. respectfully submits that 716's failure to comply with Civil Rule 26(c) is sufficient reason to deny its Second Motion for Protective Order.

**B. The Issues Raised in the Motion Have Already Been
Decided Against 716**

On October 6, 2015, Alaska Building, Inc. filed a Motion to Compel Responses to Plaintiff's First Requests for Production to 716 West Fourth Avenue LLC. On October 29, 2015, 716 filed a previous motion for protective order (First Motion for Protective Order) on substantially similar grounds to its Second Motion for Protective Order.

On January 13, 2016, this Court denied 716's objections to some of Alaska Building, Inc.'s requests for production, sustained others, and required proper logs for documents withheld on grounds of privilege.¹ In denying 716's objections to Request for Production No. 1 for loan related documents, the order states in relevant part:

As discussed above, there is no confidential exemption to discovery; 716 can instead seek a protective order under Rule 26(c) for this information. 716 also claims that these documents are protected by privilege and work-product doctrine. 716 has not provided a privilege log for these documents. 716 must either produce these documents or provide a log as required by Rule 26(b)(5).

Order to Compel at pp 2-3.

By its Discovery Order of January 15, 2016, this Court denied 716's First Motion for Protective Order and also set procedures to be followed in this matter, "to expedite the

¹ See Order Regarding Alaska Building Inc's Motion to Compel (Order to Compel).

flow of discovery material, facilitate the prompt resolution over confidentiality, adequately protect confidential material, and ensure that protection is afforded only to material so entitled."² The Discovery Order was entered after briefing by both parties, including citation to *Foltz v. State Farm Mut. Auto. Ins. Co.*,³ and *Pansy v. Borough of Stroudsburg*,⁴ by Alaska Building, Inc., holding that protective orders require a particularized showing of good cause with respect to each document for which protection is requested.

Paragraphs 5 & 7 of the Discovery Order implement this particularized showing requirement as follows:

5. A producing party wishing to redact documents . . . or keep any documents confidential must produce the documents when due and properly seek a protective order under Civil Rule 26(c).

7. With the exception of documents or information acquired other than through discovery in this matter, produced documents for which a motion for protective order has been filed shall not be further disseminated by any receiving party pending determination of the motion for protective order.

By ordering the production of documents while keeping them confidential pending a determination of a motion for protective order, the Discovery Order allows the requesting party and, if necessary, the Court to evaluate what protection, if any, should be accorded specific documents.

The grounds 716 gives for claiming protection in its Second Motion for Protective Order are, "Publication of these sensitive documents would expose 716's finances and

² Order to Compel at p.1.

³ 331 F.3d 1122, 1130 (9th Cir 2003).

⁴ 23 F.3d 772, 786-787 (3rd Cir. 1994)

inner workings to the public, to the detriment of its business relationships and future negotiation power."⁵ The only support for this claimed harm are the conclusory statements in paragraphs 4 and 5 of the Robinson Affidavit that: "The additional production compelled by the Court's January 13, 2016 order is comprised of sensitive business information" and "Dissemination of these documents would have a detrimental effect on 716's business operations."

First, Mr. Robinson is 716's attorney, not an owner or manager of 716. As such, he lacks the competency to make such factual proof. Second, even if Mr. Robinson had the competency to affie to these facts, they are insufficient to support the required particularized showing of good cause for protection of each document. Furthermore, to the extent Mr. Robinson's statements are read to mean that all such documents, if disseminated, would have some detrimental effect on 716's business operations, they are demonstrably false.

As set forth in Exhibit 1 to Alaska Building, Inc.'s February 22, 2016, "Memorandum in Support of Motion to Show Cause Why 716 West Fourth Avenue Should Not Be Held in Contempt," and paragraph 3 of the supporting Affidavit of James B. Gottstein, out of 150 pages of documents produced pursuant to the Order to Compel, 3 pages were an e-mail Alaska Building, Inc., already possessed, 26 pages were of a deed of trust that was recorded, and 116 pages were of the "Lowe Appraisal," which was also already in Alaska Building, Inc.'s possession. This leaves only 5 pages pertaining to

⁵ Second Motion for Protective Order, pp 7-8.

applications for payment by Criterion General, Inc., which do not seem to be the sort of documents for which a protective order is warranted.

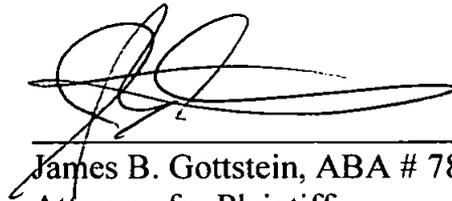
Alaska Building, Inc. respectfully submits that 716 should be required to follow the court-ordered procedures—procedures specified by this Court after 716 was given a full and fair opportunity to be heard.

C. Conclusion

For the foregoing reasons, Alaska Building, Inc. respectfully urges that 716's Second Motion for Protective Order be denied, with the order specifying that contemporaneously with complying with the Order to Compel, 716 may move for a confidentiality order as allowed in the Discovery Order.

A proposed order has been lodged herewith.

Dated February 29, 2016.



James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED
STATE OF ALASKA
CLERK TRIAL COURTS
2016 FEB 29 PM 3:29

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

Case No. 3AN-15-05969CI

**REPLY TO 716 LLC'S OPPOSITION TO ALASKA
BUILDING, INC. MOTION TO SHOW CAUSE WHY 716
WEST FOURTH AVENUE LLC SHOULD NOT BE
HELD IN CONTEMPT**

After full briefing by both parties, this Court denied 716 LLC's objections to Alaska Building, Inc.'s Request for Production No. 1 (RFP1) and ordered that "716 must either produce these documents or provide a privilege log as required by Rule 26(b)(5)."¹ The Order to Compel also allowed 716 LLC to seek a protective order for produced material. This Court's January 15, 2016, Discovery Order classifies any material for which a motion for protective order is filed confidential pending determination of the motion. In spite of these orders, 716 LLC refused to comply with this Court's Order to Compel. As a result,

¹ January 13, 2016, Order Regarding Alaska Building Inc's Motion to Compel (Order to Compel), pp 2-3.

Alaska Building, Inc. was forced to file this motion for an order that 716 LLC show cause why 716 LLC should not be held in contempt for disobeying the Order to Compel.

Alaska Building, Inc. showed in its opening memo that 716 LLC did not comply with the Order to Compel. "Once noncompliance [with a discovery order] has been demonstrated, the noncomplying party bears the burden of proving that the failure to comply was not willful." *Khalsa v. Chose*, 261 P.3d 367, 392 (Alaska 2011) (citations omitted).

Not only has 716 LLC not met its burden, but it actually trumpets that its disobedience is based on its continuing objection. In 716 LLC own words:

716 continues to object to production of "all projections and pro formas and personal financial statements." However, in a showing of continued good faith, a proposed order regarding the requested material associated with the loan applications is attached to this Opposition.

Opposition, page 2. Disobeying the Order to Compel while offering a "showing of good faith" with a motion that has essentially already been decided against it² is no justification. In fact, a refusal to comply with a court order based on an objection that has been overruled is willful disobedience. *DeNardo v. ABC Inc. RVs Motorhomes*, 51 P.3d 919, 923 (Alaska 2002).

² The Discovery Order denied a similar motion by 716 LLC, and established procedures "to expedite the flow of discovery material, facilitate the prompt resolution over confidentiality, adequately protect confidential material, and ensure that protection is afforded only to material so entitled."

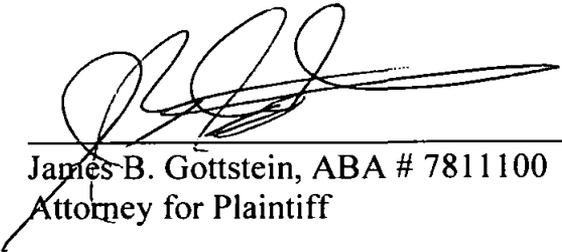
*Reply Re: Motion for
Order to Show Cause*

Page 2 of 3

716 LLC seems to believe it can avoid or mitigate the consequences of its willful and deliberate disobedience by claiming, without explanation, that it is acting in "continued good faith." Apparently it expects that merely stating continuing good faith will induce this Court to (1) overlook or ignore that it willfully disobeyed the Order to Compel, and (2) reconsider (without motion) and modify its earlier orders. Alaska Building, Inc. respectfully urges the Court to do neither.

Instead, Alaska Building, Inc., believes defendant 716 LLC is required to obey this Court's orders. Therefore, Alaska Building, Inc., respectfully requests this Court **grant** its Motion to Show Cause Why 716 West Fourth Avenue LLC Should Not Be Held In Contempt.

Dated February 29, 2016.



James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Alaska Building Inc

Plaintiff,

vs.

716 West Fourth Avenue LLC et al
Defendant.

CASE NO: 3AN-15-05969CI

CALENDARING ORDER

This case is scheduled for:

Event: Oral Argument: motion for partial summary judgment-not extension

Court: 825 W 4th Ave Anchorage, AK 99501

Location: Courtroom 301, Nesbett Courthouse

Date: March 22, 2016

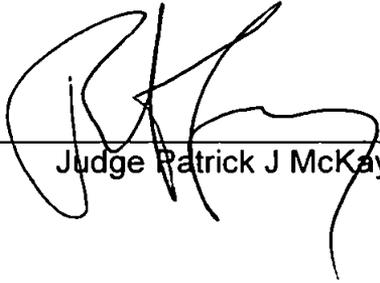
Time: 2:30 pm – 4:00 pm

Judge: Patrick J McKay

Defendant Legislative Affairs Agency is ordered to file a specific response to the following question: Is the legislature asking the judiciary to find this case to be nonjusticiable? The response is requested to be filed no later than 7 days before oral argument or March 15, 2016 and shall not exceed two(2) pages

February 26, 2016

Effective Date



Judge Patrick J McKay

I certify that on 02/26/16
a copy of this notice was e-mailed to:

James B Gottstein Esq
Kevin M Cuddy Esq
Jeffrey W Robinson

Clerk: KNixon

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

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STATE OF ALASKA
THIRD DISTRICT
2016 FEB 25 PM 1:18

CLERK TRIAL COURT

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

Case No. 3AN-15-05969CI

**REPLY TO 716 LLC RESPONSE TO ALASKA
BUILDING, INC.'S REQUEST FOR *IN CAMERA*
REVIEW**

Alaska Building, Inc.'s Request for Production No. 5 (RFP5), reads:

Please produce the operating agreement for 716 LLC, including all amendments and any other agreements pertaining to the operation and/or management of 716 LLC.

This Court's January 13, 2016, Order Regarding Alaska Building Inc's Motion to Compel, page 4, states:

[The operating agreement] does not seem particularly relevant but since 716 has offered it to the court for an *in camera* review the court will conduct an *in camera* review of this document if [Alaska Building, Inc.] requests it.

Alaska Building, Inc., has requested the Court to conduct an *in camera* review of the operating agreement, including all amendments and any other agreements pertaining to the operation and/or management of 716 LLC (Request).

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a

002171

Because Civil Rule 26(b) allows discovery of material that may not be admissible itself, "if the information sought appears reasonably calculated to lead to the discovery of admissible evidence," in its Request, Alaska Building, Inc., briefly identified the sorts of information it was seeking to identify, to wit: (1) any agreement(s) to indemnify any person, (2) any other indications that the owners of 716 LLC knew the lease the subject of this action was not at least 10% below market rent and/or did not extend a real property lease, and (3) that 716 LLC otherwise does not have clean hands.

For example, if Mr. Pfeffer, the new part owner and sole manager of 716 LLC, has agreed to indemnify Mr. Acree, the former 100% owner of 716 LLC, that would be an obvious trail to look down. Something this obvious, however, seems unlikely. It is hard to identify all of the possible provisions that might warrant further investigation, but Alaska Building, Inc., wanted to give the Court an idea of the types of things it was looking for.

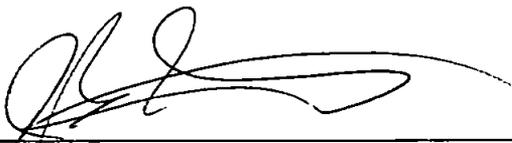
As to the scope of material for the *in camera* review, the Request tracked RFP5, which was fashioned so that it would be functional, rather than depend on what a document might be called. If there are "other agreements pertaining to the operation and/or management of 716 LLC" that 716 LLC would not classify as the "operating agreement and material amendments,"¹ it is hard for Alaska Building, Inc., to see why they should be withheld from the *in camera* review. For starters, why should 716 LLC get to decide what is a "material" amendment? That 716 LLC specifically objects to the "all

¹ (Emphasis added).

amendments" language and wants to substitute "material amendments" raises questions as to what amendments it intends to withhold from the *in camera* review because they are not "material" in 716 LLC's sole judgment. If there are other agreements pertaining to the operation and/or management of 716 LLC that are not labeled the operating agreement or a material amendment by 716 LLC, Alaska Building, Inc., respectfully suggests they should be provided.

Alaska Building, Inc., has no objection to 716 LLC being allowed to seek a protective order for documents the Court might decide should be produced to Alaska Building, Inc. This Court's January 15, 2016, Discovery Order specifically provides that a party may move for a protective order and the documents produced will remain confidential pending determination of the motion. Alaska Building, Inc., sees no reason to deviate from this procedure.

Dated February 25, 2016.

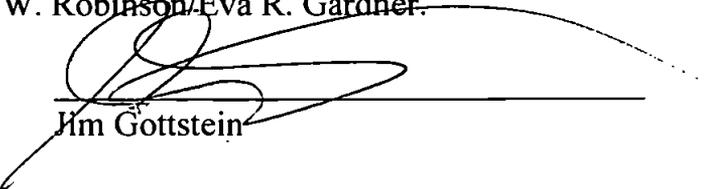


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof and proposed order to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated February 25, 2016.



Jim Gottstein

Request for In Camera Review Reply

Page 3 of 3

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

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BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, *et al.*

Defendants.

Case No. 3AN-15-05969CI

**REPLY TO:
LEGISLATIVE AFFAIRS AGENCY'S AND
716 LLC'S OPPOSITIONS TO PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)**

**A. The Contract Does Not Extend a Real Property Lease Within the
Meaning of AS 36.30.083(a)**

The question presented by Alaska Building, Inc.'s Motion for Partial Summary Judgment (Not Extension) is whether the lease entered into by the Legislative Affairs Agency (LAA) and 716 West Fourth Avenue LLC (716 LLC) for the new Anchorage Legislative Information Office (Lease) "extends" a real property lease within the meaning of AS 36.30.083(a). AS 36.30.083(a) provides as pertinent:

[T]he legislative council . . . may extend a real property lease that is entered into under this chapter 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.

(emphasis added).

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There is no dispute that the Lease provided for the demolition of the existing building down to its steel frame and foundation, demolition of the adjoining building, and construction of an otherwise new building, while the Anchorage Legislative Information Office moved out for over a year. As the Legislative Affairs Agency put it, the Lease . . .

provided for demolishing the former restaurant/bar known as the Anchor Bar, aside from its east wall, and remodeling, renovating, and expanding the existing LIO so that it now covered both lots on the combined site from the old LIO building and the Anchor Bar. It provides for site demolition of the existing structures and nearby sidewalk, excavation and backfill on top of the existing foundation, abandonment of existing water services and installation of a new water service to connect to the main, installation of new sanitary sewer service, and construction of the current structure based on new plumbing, heating, fuel system, ventilation, electrical, and insulation designs. The Alaska State Legislature vacated the premises for over 13 months during the demolition and reconstruction process.

Pages 6-7 of the Legislative Affairs Agency's opposition. Alaska Building, Inc., also draws the Court's attention to the photographs contained in its June 12, 2015, Memorandum and supporting affidavit, as well as in its July 7, 2015, reply to the Legislative Affairs Agency's June 29, 2015, opposition. It is apparent the Lease was a contract to construct and lease back the building.

Section B.1. of the Legislative Affairs Agency's February 3, 2016, opposition argues AS 36.30.083(a) does not preclude substantial modifications, stating, "It is entirely unclear how much change [Alaska Building, Inc.] deems to be 'too much' " to qualify as an extension. For better or worse, this Court is not being asked to draw the exact boundaries of how much is too much because this case does not present a close question.

In its opposition at page 12, 716 LLC argues that AS 36.30.083(a) "does not restrict in any way the degree to which the terms may change from the original lease," and at 13

*Reply to LAA & 716 LLC's Oppositions to
Motion for Partial Summary Judgment (Not Extension)*

Page 2 of 9

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that the Lease complies with AS 36.30.083(a) because 716 LLC and the Legislative Affairs Agency say the Lease is an extension. The former reads completely out of the statute the requirement that an agreement "extend a real property lease," and the latter ignores that it is the effect of an instrument that controls, not how it is characterized by the parties.¹

Section B.2. of the Legislative Affairs Agency's February 3, 2016, opposition argues that the Lease is not a new contract, but that is beside the point; the question is whether it "extends" a lease within the meaning of AS 36.30.083(a). At page 13 the Legislative Affairs Agency argues that it is the intent of the parties that controls whether a lease is an extension or not. However, the question here is not whether the parties intended it to be an extension, but compliance with AS 36.30.083(a).

Just last August, in *DeVilbiss v. Matanuska-Susitna Borough*, 356 P.3d 290, 295 (Alaska 2015), the Supreme Court had occasion to summarize Alaska jurisprudence on statutory interpretation

Determining the plain meaning of the statute is not the whole inquiry; we also look to the legislative purpose and the intent of the statute. We have adopted a sliding scale approach to statutory interpretation, under which "[t]he plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be." "We apply this sliding scale approach even if a statute is facially unambiguous."

(footnotes omitted). In that case, the Supreme Court found the plain meaning of the statute was confirmed by the legislative history.

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¹ *Department of Revenue v. Baxter*, 486 P.2d 360, 364 (Alaska 1971).

Here, the plain meaning of the statute excludes the Lease. Demolishing two buildings² and constructing a new one in its place while the tenant vacates for over a year is simply not an extension under the plain meaning of AS 36.30.083(a).

This is confirmed by the legislative history cited by Alaska Building, Inc., in its June 12, 2015, Memorandum in support of the Motion (Memo) , attached as Exhibit 1 thereto. This legislative history is that AS 36.30.083(a) "will avoid the costs and disruption of moving state offices and large numbers of state employees," and take economic advantage of the fact that all of the costs of building leased space is paid for over the initial term of the lease.³ The letter transmitting the bill states:

In the past, DOA leases consisted of a constant rental rate throughout the life of the lease. This was unduly costly for the state, since initial construction and tenant improvements (TI) of office buildings are generally financed and amortized only over the initial lease period, not the optional renewal periods. The state was effectively paying multiple times for one-time costs.⁴

There is no question that AS 36.30.083(a) was enacted in its current form to take advantage of landlords having paid for their construction costs before leases are extended and therefore able to offer lower rents. This was the reason for allowing deviation from the competitive bidding process normally required. The legislative history thus confirms the plain meaning of the statute that demolishing the existing and adjacent buildings to construct a new office building while the tenant has to move out for over a year is not an

² The old Anchorage Legislative Information Office down to its foundation and steel frame.

³ Exhibit 1 to Memo, page 4.

⁴ Exhibit 1, to Memo, page 1.

extension. Neither the Legislative Affairs Agency nor 716 LLC addressed this legislative history.

Instead they argue the Legislative Council was authorized to ignore the requirements of AS 36.30.083(a).

B. The Legislative Council Did Not Have Authority to Violate AS 36.30.083(a)

Both LAA and 716 LLC spend a considerable part of their oppositions arguing that the Legislative Council was not bound by AS 36.30.083(a) because it complied with its (just amended) procurement rules. However, the Legislative Council was required to comply with the statute as well as its own procurement rules. Alaska Const. Art. II, §11, cited by 716 at page 6 of its opposition for the proposition that the Legislative Council has independent constitutional authority, provides that the Legislative Council may only perform duties as provided by the Legislature. Both the Legislative Affairs Agency and 716 LLC cite AS 36.30.020 for the proposition that the Legislative Council had the authority to enter into the Lease, but AS 36.30.020 explicitly requires the procedures adopted by the Legislative Council to be "based on the competitive principles consistent" with AS 36.30. And, of course, AS 36.30.083(a), allowing deviation from the competitive bidding process is explicitly applicable to the Legislative Council. Moreover, the actions of the Legislative Council approving the negotiation of the Lease required the Lease to

comply with AS 36.30.083(a)⁵ and the Lease itself states in numerous places that it was entered into under the authority of AS 36.30.083(a).

C. The Court Can and Should Decide Now Whether the Lease Extends a Real Property Lease

At page 2 of its opposition, the Legislative Affairs Agency asks this Court to decide the Motion as soon as practicable:

The pendency of this litigation and [Alaska Building, Inc.'s] ongoing challenges to the validity of these procurement procedures have created uncertainty concerning the application of AS 36.30.083(a) for this lease, which has the potential to impact budgeting and other decisions that will be made during the session. LAA respectfully requests that the Court provide a ruling on the potentially dispositive legal issue of the proper interpretation of AS 36.30.083(a) as soon as practicable.

(footnote omitted).

In contrast, 716 LLC argues that this Court should delay consideration of the Motion until after trial because this Court left open the possibility 716 LLC can prove undue prejudice under the *laches* doctrine at trial. 716 LLC misreads this Court's decision on the Legislative Affairs Agency's *Laches* Motion. The Conclusion of this Court's Order Denying Summary Judgment Re: *Laches*, includes the following:

ABI's only acknowledged request is for a declaratory ruling on the legality of the lease for failure to follow procurement procedures mandated by Alaska law. Summary dismissal of this litigation by the court's invoking its equitable powers and utilizing the defense of *laches* would result in a complete avoidance of a ruling on the legality of the LAA/716 lease-- hardly an

⁵ Specifically, as set forth in Exhibit B to 716 LLC's opposition, page 3, the action taken by the Legislative Council was, "The motion allowing the chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a) passed with no objections." (emphasis added).

equitable result to any involved party, but most especially to the citizen taxpayer.

716 LLC moved for reconsideration of this Order and in the Court's Order Denying Motion for Reconsideration Re: Laches, this Court made even clearer that, "The court does not find that the defense of laches applies to the request for a declaratory judgment" and "[T]he court still finds that the request for declaratory relief in and of itself does not give rise to a laches defense."

Alaska Building, Inc.'s Motion for Partial Summary Judgment (Not Extension) requests a judgment declaring the Lease does not comply with AS 36.30.083(a) in that it does not extend a real property lease. This is precisely the relief for which this Court has held *laches* is unavailable. If this Court grants the instant motion for partial summary judgment for an order declaring the Lease illegal for noncompliance with AS 36.30.083(a), under this Court's laches decision the defendants may attempt to prove prejudice in support of their laches defense at trial as to the remedy that the Lease is also null and void as a result. Alaska Building, Inc., also believes that under AS 22.10.020(g) this Court should set a hearing for further necessary or proper relief, which would include such possible remedies as (a) 716 LLC paying back funds received in excess of that allowed by AS 36.30.083(a), and (b) reformation of the Lease.

716 LLC also argues that whether the Lease complies with AS 36.30.083(a) is a nonjusticiable political matter, citing *Malone v. Meekins*, 650 P.2d 351 (Alaska 1982), and *Abood v. League of Women Voters of Alaska*, 743 P.2d 333 (Alaska 1987). As a threshold matter, while the Legislative Affairs Agency might have standing to raise the justiciability

*Reply to LAA & 716 LLC's Oppositions to
Motion for Partial Summary Judgment (Not Extension)*

Page 7 of 9

002180

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
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issue, 716 LLC does not. As set forth above, the Legislative Affairs Agency has requested a decision on the motion as soon as practicable.

In any event, *Meekins* and *Abood* are inapposite. *Meekins* involved the House removing its Speaker and electing a new one, which the Supreme Court held was not subject to judicial review. Similarly, in *Abood*, the Supreme Court held that the Legislature did not have to follow the Open Meetings Act, AS 44.62.310, because how the Legislature operates was within its sole province so long as constitutional rights were not violated. In both cases, it was the full legislature that acted.

Here, the Legislative Council is subject to the explicit requirements of AS 36.30.083(a), negating the first *Baker v. Carr* test of "a textually demonstrable constitutional commitment of the issue to a coordinate political department," adopted by the Alaska Supreme Court in *Malone*.⁶ Alaska Building, Inc., does not doubt that the full legislature has the power to act on the Lease, but the Legislative Council does not have authority to violate AS 36.30.083(a). Even if the Legislature acts on the Lease this Court would still have authority to determine the application of AS 36.30.083(a) to the Lease, subject to possible mootness and application of the public interest exception to the mootness doctrine.⁷

As the Supreme Court cautioned in both *Malone*⁸ and *Abood*⁹, merely

⁶ 650 P.2d at 357, citing to *Baker v. Carr*, 369 U.S. 186, 210 217, 82 S.Ct. 691, 710 (US 1962).

⁷ See, *Wetherhorn v. Alaska Psychiatric Inst.*, 156 P.3d 371, 380 (Alaska 2007).

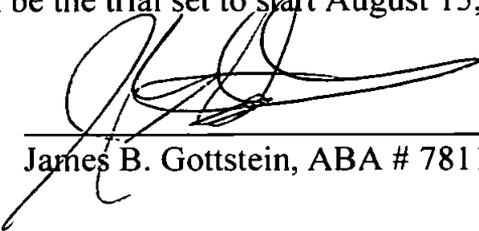
⁸ 650 P.2d at 356.

characterizing a case as political in nature does not render it immune from judicial scrutiny.¹⁰ The Legislative Affairs Agency not only has not raised the justiciability issue, but has asked for a decision as soon as practicable. Alaska Building, Inc., respectfully suggests the Legislative Affairs Agency's request be accommodated.

D. Conclusion

For the foregoing reasons it is respectfully suggested the Court should, (1) Grant plaintiff Alaska Building, Inc.'s Motion for Partial Summary Judgment (Not Extension), (2) Declare that the Lease does not comply with AS 36.30.083(a) because it does not extend a real property lease, and (3) Set a hearing for further necessary or proper relief pursuant to AS 22.10.020(g), which can be the trial set to start August 15, 2016.¹¹

Dated February 23, 2016.


James B. Gottstein, ABA # 7811100

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof and revised proposed order to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner,.

Dated February 23, 2016.


Jim Gottstein

⁹ 743 P.2d at 336.

¹⁰ None of the five other factors under *Baker v. Carr*, 369 U.S. 186, 210 217, 82 S.Ct. 691, 710 (US 1962) apply here.

¹¹ A revised proposed order reflecting this further hearing is being lodged herewith.

FILED
STATE OF ALASKA
THIRD DISTRICT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2016 FEB 16 PM 4:16

THIRD JUDICIAL DISTRICT AT ANCHORAGE

CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiff,)

vs.)

) Case No.: 3AN-15-05969 CI

716 WEST FOURTH AVENUE LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)
Defendants.)

**AFFIDAVIT OF JEFFREY W. ROBINSON IN SUPPORT OF 716 WEST
FOURTH AVENUE, LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)**

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case, and submit this affidavit in support of 716 West Fourth Avenue, LLC's Opposition to Plaintiff's Motion for Partial Summary Judgment (Not Extension). I have personal knowledge of all facts described herein.

2. I have correctly attached true and correct copies of Exhibits A through G to 716's Opposition

3. I declare under penalty of perjury that the foregoing is true and correct.

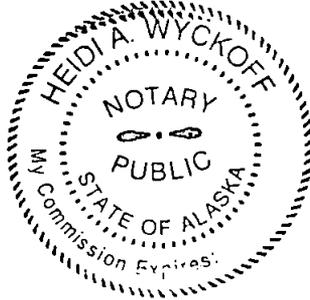
ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

FURTHER YOUR AFFIANT SAYETH NAUGHT.

[Signature]
Jeffrey W. Robinson

SUBSCRIBED AND SWORN to before me this 16 day of February, 2016.

[Signature]
NOTARY PUBLIC in and for Alaska
My Commission Expires: 7/11/2019



ASHBURN & MASON INC.
LAWYERS
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AFFIDAVIT IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 16 day of January, 2016, 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 A. Wyckoff
Heidi Wyckoff

ASHBURN & MASON INC.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

AFFIDAVIT IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

S-16371

3AN-15-05969 CI

VOLUME 7

In the Supreme Court of the State of Alaska

716 West Fourth Avenue LLC,

Petitioner,

v.

Alaska Building, Inc.,

Respondent.

Supreme Court No. S-16062

Order

Petition for Review

Date of Order: 9/24/15

Trial Court Case # 3AN-15-05969CI

Before: Stowers, Chief Justice, Fabe, Winfree, Maassen, and Bolger,
Justices.

On consideration of the petition for review filed on 9/2/15, and the response
filed on 9/14/15,

IT IS ORDERED:

The petition for review is **DENIED**.

Entered by direction of the court.

Clerk of the Appellate Courts

Meredith Montgomery

Meredith Montgomery, Chief Deputy Clerk

cc: Supreme Court Justices
Judge McKay
Trial Court Clerk

Distribution:

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Kevin Cuddy
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Blake H Call
Call Hanson & Kell, P.C.
413 G Street
Anchorage AK 99501

IN THE SUPREME COURT FOR THE STATE OF ALASKA

716 WEST FOURTH AVENUE, LLC)
)
 Petitioner.)
 vs.)
)
 ALASKA BUILDING, INC., an Alaska)
 corporation,)
)
 Respondent.)
)
)
)
)
)

Supreme Court No. _____
Case No.: 3AN-15-05969 Civil

I certify that the typeface used
in this document is 13 Point

CORRECTED AFFIDAVIT OF SERVICE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Heidi A. Wyckoff, being first duly sworn upon oath, depose and state:

1. I am employed by the law firm of Ashburn & Mason, P.C., counsel for Petitioner in the above-captioned matter.
2. I am filing this Corrected Affidavit of Service to correct the caption contained in the previously filed Affidavit of Service dated September 2, 2015.
3. Pursuant to Appellate Rule 403 (a)(1)(A), I served a copy of the Docketing Statement, Petition for Review and Affidavit of Service, via hand delivery on September 3, 2015 to:

Chambers of the Honorable Judge Patrick A. McKay
Anchorage Superior Court
425 W. 4th Avenue
Anchorage, Alaska 99501

4. Pursuant to Appellate Rule 403 (a)(1)(A), I served a copy of the Addendum to Docketing Statement, corrected Affidavit of Service, via hand delivery on September 3, 2015 to:

Chambers of the Honorable Judge Patrick A. McKay
Anchorage Superior Court
425 W. 4th Avenue
Anchorage, Alaska 99501

5. Pursuant to Appellate Rule 403 (a)(1)(A), I served a copy of the Docketing Statement, Petition for Review and Affidavit of Service on September 2, 2015 and on September 3, 2015, a copy of the Addendum to Docketing Statement B and the Corrected Affidavit of Service on the following parties via U.S. mail:

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501

Mark P. Scheer
Scheer & Zehnder LLP
701 Pike Street, Suite 2200
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Stoel Rives, LLP
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Cynthia L. Ducey
Delaney Wiles
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Dan Quinn
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Anchorage, AK 99501

Blake Call
Call & Hanson, P.C.
413 G Street
Anchorage, Alaska 99501

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Heidi A. Wyckoff
Heidi A. Wyckoff

SUBSCRIBED AND SWORN to before me this 3rd day of September, 2015.



Jennifer N. Tschek
NOTARY PUBLIC in and for Alaska
My Commission Expires: 9/17/17

Counsel of Record
Excludes Dismissed Parties

KEEP ON TOP OF FILE

Updated: 6/11/2015
11:42 am

Case Number: 3AN-15-05969CI

Plaintiff

Alaska Building Inc

Attorney: James B. Gottstein Bar No: 7811100 Primary Attorney
406 G St Ste 206
Anchorage AK 99501
Fax Number (907) 274-9493
Primary Phone (907) 274-7686

JT

Defendant

716 West Fourth Avenue LLC

Attorney: Jeffrey W Robinson Bar No: 0805038 Primary Attorney
1227 W 9th Ave Ste 200
Anchorage AK 99501
Business Email jeffrey@anchorlaw.com

276-4331

Defendant

Koonce Pfeffer Bettis Inc

Attorney: Daniel T Quinn Bar No: 8211141 Primary Attorney
360 K St Ste 200
Anchorage AK 99501
Fax Number (907) 276-2953
Primary Phone (907) 276-5727
Business Email dquinn@richmondquinn.com

DIS

Defendant

Pfeffer Development LLC

Attorney: Cynthia L Ducey Bar No: 8310161 Primary Attorney
1007 W 3rd Ave Ste 400
Anchorage AK 99501
Fax Number (907) 277-1331
Primary Phone (907) 279-3581
Business Email cld@delaneywiles.com

DIS

Defendant

Legislative Affairs Agency

Attorney: Kevin M Cuddy Bar No: 0810062 Primary Attorney
510 L St Ste 500
Anchorage AK 99501
Fax Number (907) 227-5370
Primary Phone (907) 277-1900

dant

Criterion General Inc

Attorney: **Mark P Scheer** **Bar No: 8807153** **Primary Attorney**
701 Pike St Ste 2200
Seattle WA 98101
Fax Number (206) 223-4065
Primary Phone (206) 262-1200
Business Email mscheer@scheerlaw.com

D/S

Attorney: **Blake H Call** **Bar No: 8911051** **Co-Counsel**
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Business Email bhc@ChkLaw.net

D/S

End of Form - TF900

Counsel of Record
Excludes Dismissed Parties

KEEP ON TOP OF FILE

Updated: 5/26/2015
11:20 am

Case Number: 3AN-15-05969CI

Plaintiff

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Defendant

716 West Fourth Avenue LLC

Attorney: Jeffrey W Robinson Bar No: 0805038 Primary Attorney
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Anchorage AK 99501

Defendant

Koonce Pfeffer Bettis Inc

Attorney: Daniel T Quinn Bar No: 8211141 Primary Attorney
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Defendant

Pfeffer Development LLC

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Defendant

Legislative Affairs Agency

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Primary Phone (907) 277-1900

endant

Criterion General Inc

Attorney:	Mark P Scheer 701 Pike St Ste 2200 Seattle	Bar No: 8807153	Primary Attorney
Fax Number	(206) 223-4065	WA 98101	
Primary Phone	(206) 262-1200		

End of Form - TF900

CASE DESCRIPTION – SUPERIOR COURT

Case Number: 3an 15-5969CI

Type of Action	For Court Use Only	
Check the box that best describes the case. Mark one box only. For district court cases, use form CIV-125D.	Case Type	Action Code
Domestic Relations		
<input type="checkbox"/> Divorce With Children (or Pregnant)	Div or Cust w/Children	CISDVC
<input type="checkbox"/> Divorce Without Children	Divorce Without Children	CISDIV
<input type="checkbox"/> Uncontested Divorce With Children (or Pregnant)	Div or Cust w/Children	CISUDVC
<input type="checkbox"/> Uncontested Divorce Without Children	Divorce Without Children	CISUDIV
<input type="checkbox"/> Custody (Unmarried Parents)	Div or Cust w/Children	CISCUS
<input type="checkbox"/> Uncontested Custody (Unmarried Parents)	Div or Cust w/Children	CISUCUS
<input type="checkbox"/> Visitation by Person Other than Parent	Domestic Relations Other	CIVIS
<input type="checkbox"/> Property Division – Unmarried Partners	Domestic Relations Other	CISPROP
<input type="checkbox"/> Legal Separation With Children (or Pregnant)	Legal Separation	CICLS
<input type="checkbox"/> Legal Separation Without Children	Legal Separation	CISLS
<input type="checkbox"/> Annulment	Domestic Relations Other	CIANNUL
<input type="checkbox"/> Paternity - Establishment	Domestic Relations Other	CISPAT
<input type="checkbox"/> Paternity - Disestablishment	Domestic Relations Other	CIDPAT
<input type="checkbox"/> Genetic Testing - Failure to Comply with Order for Testing	Domestic Relations Other	CIOSCP
<input type="checkbox"/> Administrative Child Support Order – Modification or Enforcement	Domestic Relations Other	CIPCS
<input type="checkbox"/> PFD or Native Dividend Case	Domestic Relations Other	CIPND
<input type="checkbox"/> Foreign Support Order - Registration, Modification or Enforcement under AS 25.25	Domestic Relations Other	CIUIFSA
<input type="checkbox"/> Foreign Custody Order – Registration, Modification or Enforcement under AS 25.30	Domestic Relations Other	DR483
<input type="checkbox"/> <u>Both</u> Foreign Custody & Support Order – Registration, Modification or Enforcement under AS 25.30 and AS 25.25	Domestic Relations Other	CIFCS
<input type="checkbox"/> Foreign Domestic Relations Order (Not Custody or Support) – Registration, Modification or Enforcement	Domestic Relations Other	CIDRFJ
Landlord/Tenant		
<input type="checkbox"/> Eviction (May Include Rent or Damages)	Eviction-Superior Court	CISFED
<input type="checkbox"/> Other Landlord/Tenant (No Eviction)	Civil Superior Court	CISLT
Debt/Contract		
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<input type="checkbox"/> Claim by Buyer Against Seller of Goods/Services	Civil Superior Court	CISCLAIM
<input type="checkbox"/> Employment – Discrimination	Civil Superior Court	CISEMPD
<input type="checkbox"/> Employment – Other Than Discrimination	Civil Superior Court	CISEMP
<input type="checkbox"/> Other Contract	Civil Superior Court	CISOCT
Real Property Actions		
<input type="checkbox"/> Condemnation	Civil Superior Court	CISCNDM
<input type="checkbox"/> Foreclosure	Civil Superior Court	CISFOR
<input type="checkbox"/> Quiet Title	Civil Superior Court	CISQIT
<input type="checkbox"/> Real Property Tax Foreclosure	Superior Court Misc Petition	CISTAX
<input checked="" type="checkbox"/> Other Real Estate Matter	Civil Superior Court	CISREM

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska)
 corporation,)
)
 Plaintiffs,)
)
 vs.)
)
 716 WEST FOURTH AVENUE LLC,)
 KOONCE PFEFFER BETTIS, INC., d/b/a)
 KP ARCHITECTS, PFEFFER)
 DEVELOPMENT, LLC, LEGISLATIVE)
 AFFAIRS AGENCY, and CRITERION)
 GENERAL, INC.,)
 Defendants.)

Case No.: 3AN-15-05969 CI

FILED
 STATE OF ALASKA
 THIRD DISTRICT
 2015 JUN 24 PM 4:45
 CLERK TRIAL COURT
 BY: DEPUTY CLERK

NOTICE TO PARTIES

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that from June 30 2015 through July 15, 2015, Jeffrey Robinson, attorney for Defendant 716 West Fourth Avenue, LLC will be unavailable from June 30, 2015 through approximately July 15, 2015. Accordingly, undersigned counsel will not be able to respond to any case-related motion or matter.

ASHBURN & MASON, P.C.
 Attorneys for 716 West Fourth Avenue, LLC

DATED: 6/24/15

By: *JWR*

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 24 day of June 2015, on:

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
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Mark P. Scheer
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701 Pike Street, Suite 2200
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Kevin Cuddy
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Delaney Wilson, Inc.
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Dan Quinn
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Blake Call
Call & Hanson P.C.
413 G Street
Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

NOTICE TO PARTIES
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

{10708-101-00274608;1}

FILED
STATE OF ALASKA
THIRD DISTRICT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE 2015 JUN -8 PM 4:10

Alaska Building, Inc., an Alaska Corporation,

Plaintiff,

v.

716 West Fourth Ave. LLC, Koonce Pfeffer Bettis, Inc., d/b/a KPBA Architects, Pfeffer Development, LLC, Legislative Affairs Agency, and Criterion General, Inc.

Defendants

CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

Case No.: 3AN-15-05969CI

ENTRY OF APPEARANCE

COMES NOW CALL & HANSON, P.C., and enters its appearance as Co-counsel attorneys of record on behalf of defendant, **CRITERION GENERAL, INC.**, along with counsel Mark Scheer and service may be had on such defendant by delivering mailings or pleadings to the undersigned attorneys at 413 G Street, Anchorage, Alaska 99501 and at Scheer and Zehnder at 701 Pike Street, Suite 2200 Seattle, WA 98101

DATED at Anchorage, Alaska, this 8th day of June, 2015.

CALL & HANSON, P.C.
Attorneys for Defendant Criterion General, Inc.

By: Blake H. Call
Blake H. Call
ABA No.: 8911051

CALL & HANSON, P.C.

413 G Street
Anchorage, Alaska 99501-2126
Phone (907) 258-8864 • Fax (907) 258-8865

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was
 faxed hand delivered and/or
 mailed this 8 day of June, 2015 to:

James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501

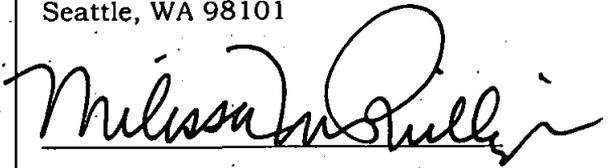
Jeffrey W. Robinson
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Mark P. Scheer
Scheer & Zehnder
701 Pike Street, Suite 2200
Seattle, WA 98101



FILED
STATE OF ALASKA
THIRD DISTRICT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiff,)

v.)

716 WEST FOURTH AVENUE, LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.)

Case No. 3AN-15-05969 CI

ENTRY OF APPEARANCE

COME NOW RICHMOND & QUINN and enters their appearance as attorneys of record on behalf of defendant Koonce Pfeffer Bettis, Inc. d/b/a KPB Architects and request that all future pleadings and documents in the above cause be served upon them at their office address of 360 "K" Street, Suite 200, Anchorage, Alaska 99501.

LAW OFFICES
RICHMOND & QUINN
A PROFESSIONAL CORPORATION
360 K STREET, SUITE 200
ANCHORAGE, ALASKA 99501-2038
(907) 276-5727
FAX (907) 276-2953

DATED this 30th day of April, 2015, at Anchorage, Alaska.

RICHMOND & QUINN
Attorneys for Defendant
Koonce Pfeffer Bettis, Inc. d/b/a KP
Architects

By: 
Daniel T. Quinn
Alaska Bar No. 8211141

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct
copy of the foregoing was served by mail this
30th day of April, 2015, on:

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501

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RICHMOND & QUINN

520.002\PLD\Entry of Appearance

Entry of Appearance
Alaska Building, Inc. v. KP Architects, et al., Case No. 3AN-15-05969 CI
Page 2 of 2

LAW OFFICES
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STATE OF ALASKA
THIRD DISTRICT

2015 APR 23 PM 5:07

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Kevin Cuddy (Alaska Bar #0810062)
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: (907) 277-1900
Facsimile: (907) 277-1920

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

ENTRY OF APPEARANCE

COMES NOW Kevin M. Cuddy, of Stoel Rives LLP, and enters his appearance as attorney of record on behalf of Defendant Legislative Affairs Agency and requests that copies of any future pleadings and other documents served upon the Defendant Legislative Affairs Agency be directed to him at Stoel Rives, LLP, 510 L Street, Suite 500, Anchorage, Alaska 99501, 907/277-1900 (office) and 907/277-1922 (facsimile).

ENTRY OF APPEARANCE OF KEVIN M. CUDDY FOR DEFENDANT LEGISLATIVE AFFAIRS AGENCY
ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI

Page 1 of 2

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STOEL RIVES LLP
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Main (907) 277-1900 Fax (907) 277-1920

002202

DATED: April 23, 2015

STOEL RIVES LLP

By: 
KEVIN CUDDY
(Alaska Bar #0810062)
Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on April 23, 2015, a true and correct copy of the foregoing was served via First Class Mail on:

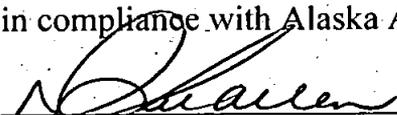
James B. Gottstein, Esq.
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(Attorney for Plaintiff)

Mark P. Scheer
Scheer & Zehnder LLP
701 Pike Street, Suite 2200
Seattle, WA 98101
(Attorneys for Def/Criterion General, Inc.)

Jeffrey W. Robinson
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth
Avenue, LLC and Pfeffer Development,
LLC)

Jeffrey Koonce
KPB Architects
500 L Street, Suite 400
Anchorage, AK 99501
Defendant Koonce Pfeffer Bettis, Inc.,
d/b/a KPB Architects

I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).


Debby Allen, Practice Assistant

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DELANEY WILSON, INC.

DATED: April 21, 2015

By: Cynthia L. Ducey
Cynthia L. Ducey
Alaska Bar No. 8310161

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 22 day of April 2015, on:

James B. Gottstein
Law Offices of James B. Gottstein
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Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

ASHBURN & MASON INC.
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SUBSTITUTION OF COUNSEL
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

{10708-101-00261244;1}

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

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THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

NOTICE OF SUBSTITUTION OF COUNSEL

Defendant Pfeffer Development, LLC hereby gives notice that Cynthia L. Ducey of Delaney Wiles, Inc. is substituted for Jeffrey W. Robinson of Ashburn & Mason, P.C. as its counsel of record in the above captioned matter. All further correspondence shall be directed to Cynthia L. Ducey at Delaney Wiles, Inc., 1007 W. 3rd Avenue, Suite 400, Anchorage, Alaska 99501.

ASHBURN & MASON, P.C.
Attorneys for Pfeffer Development, LLC

DATED: 4/2/15

By: JWR
Jeffrey W. Robinson
Alaska Bar No. 0805038

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D

FILED
STATE OF ALASKA
THIRD DISTRICT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2015 APR 15 PM 4:14

THIRD JUDICIAL DISTRICT AT ANCHORAGE

CLERK TRIAL COURT

ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiffs,)

vs.)

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

BY: _____
DEPUTY CLERK

Case No.: 3AN-15-05969 Civil

ENTRY OF APPEARANCE

PLEASE TAKE NOTICE that Jeffrey W. Robinson of the law firm of Ashburn & Mason, P.C. makes his appearance as counsel on behalf of defendant 716 West Fourth Avenue, LLC, in the above-captioned matter and requests that copies of all further pleadings be delivered to his office address at 1227 West Ninth Avenue, Suite 200, Anchorage, Alaska 99501.

ASHBURN & MASON, P.C.
Attorneys for Pfeffer Development, LLC

DATED: 4/15/15

By: Jeffrey W. Robinson
Jeffrey W. Robinson
Alaska Bar No. 0805038

ASHBURN & MASON INC.
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 15 day of April 2015, on:

James B. Gottstein
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ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

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ENTRY OF APPEARANCE
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

1
2 Mark P. Scheer, ASBA No. 8807153
3 mscheer@scheerlaw.com
4 Scheer & Zehnder LLP
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Tel: 206-262-1200
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Attorney for Defendant Criterion General, Inc.

FILED
STATE OF ALASKA
THIRD DISTRICT

2015 APR -9 AM 10:50

CLERK TRIAL COURTS

BY _____
DEPUTY CLERK

8 IN THE SUPERIOR COURT OF THE STATE OF ALASKA
9 THIRD JUDICIAL DISTRICT, AT ANCHORAGE

10 ALASKA BUILDING, INC., an Alaska
11 corporation,
12
13 Plaintiff,
14
15 v.
16 716 WEST FOURTH AVENUE LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
17 DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,
18
19 Defendants.

CASE NO. 3AN-15-05969CI

20 NOTICE OF APPEARANCE

21 TO: ALASKA BUILDING, INC., plaintiff; and

22 TO: JAMES B. GOTTSTEIN, attorney for plaintiff

23 PLEASE TAKE NOTICE THAT the appearance of the Defendant Criterion
24 General, Inc., is hereby entered in the above-entitled action through the undersigned
25 attorney, without waiving objections as to improper service, jurisdiction, or any other
26 defenses available under Rule 12.

NOTICE OF APPEARANCE – Page 1

SCHEER & ZEHNDER LLP
701 PIKE STREET, SUITE 2200
SEATTLE, WA 98101
P: (206) 262-1200 F: (206) 223-4065

1 You are hereby directed to serve all future pleadings or papers, except process, upon
2 said attorneys, at their address below stated.

3
4 DATED this 6th day of April, 2015.

5 SCHEER & ZEHNDER LLP

6
7 By 
8 Mark P. Scheer, ASBA No. 8807153
9 mscheer@scheerlaw.com
10 Scheer & Zehnder LLP
11 701 Pike Street, #2200
12 Seattle, WA 98101
13 Tel: 206-262-1200
14 Fax: 206-223-4065
15 Attorney for Defendant Criterion General, Inc.

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington, that the following is true and correct:

I am employed by the law firm of Scheer & Zehnder LLP.

At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On the date set forth below I served the document(s) to which this is attached, in the manner noted on the following person(s):

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
<u>Counsel for Plaintiff</u> James B. Gottstein Law Offices of James B. Gottstein 406 G Street, Suite 206 Anchorage, AK 99501	<input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Legal Messenger <input checked="" type="checkbox"/> Via E-Mail <input type="checkbox"/> Via Overnight Mail

DATED this 6th day of April, 2015, at Seattle, Washington.


Magdalen Diaz, Legal Secretary

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

2015 APR -8 PM 1:07

CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

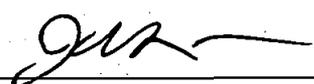
Defendants.

ENTRY OF APPEARANCE

PLEASE TAKE NOTICE that Jeffrey W. Robinson of the law firm of Ashburn & Mason, P.C. makes his appearance as counsel on behalf of defendant Pfeffer Development, LLC in the above-captioned matter and requests that copies of all further pleadings be delivered to his office address at 1227 West Ninth Avenue, Suite 200, Anchorage, Alaska 99501.

ASHBURN & MASON, P.C.
Attorneys for Defendant

DATED: 4/8/15

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

ASHBURN & MASON P.C.
LAWYERS
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 8th day of April 2015, on:

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Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

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ENTRY OF APPEARANCE
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan)
corporation,)
Plaintiff,)
vs.)
716 WEST FOURTH AVENUE, LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)
Defendants.)
_____)

3AN-15-05969 CI

ORDER ON MOTION FOR SUMMARY JUDGMENT RE: LEASE IS NOT AN
EXTENSION

INTRODUCTION

On September 9, 2013, the Legislative Affairs Agency (LAA) and the 716 West Fourth Avenue LLC (716) entered into an agreement to renovate and expand the existing Legislative Information Office (LIO Project). The project required a virtual "gutting" and reconstruction of the existing rental space, demolition and subsequent construction of a separate building on an adjoining lot, increasing the square footage of the leasehold from approximately 23,645 square feet to approximately 64,048 square feet¹. The agreement called for the LAA to pay for certain tenant improvements estimated to have cost in excess of \$7.5 million. The project required relocation of the tenants for several months. At the completion of this project, the LAA once again leased the office space. Construction began in December 2013 and was completed around January 9,

¹ 170% increase in square footage.

2015. The monthly rental increased from \$56,863.05 to \$281,638 and the term of the lease was extended to May 31, 2024.²

Plaintiff, Alaska Building, Inc. (ABI) has moved for partial summary judgment asking the court to declare that the lease is not a permissive non-competitive bid "extension" under AS 36.30.083(a) and to find the lease invalid as a matter of law. LAA first argues that the lease is an "extension" under AS 36.30.083(a); secondly argues that the Legislative Council developed and followed its own procurement regulations in extending the lease; and finally argues that portions of the dispute are non-justiciable.

716 supports the LAA arguments regarding the legality of the "extension" and further argues the entire dispute is non-justiciable³, requiring summary dismissal.

As more fully explained herein, this court finds that to the extent this dispute is justiciable, the lease does not qualify as an "extension" under AS 36.30.083(a) and is illegal. The court further finds that portions of the dispute are in fact not justiciable.

I. Background

The Legislative Council (Council) is an interim legislative committee created by the Alaska Constitution.⁴ It "may meet between legislative sessions ... [and] may perform duties and employ personnel as provided by the

² 395% increase in monthly rent.

³ Actually 716 first raised the issue of justiciability in its memorandum opposing this motion for partial summary judgment. LAA did not raise this issue until prompted by the court to state its position. See LAA's Response to Court's Request Dated February 26, 2016.

⁴ Alaska Constitution Art. II §11.

legislature.⁵ The Alaska Legislature made it a permanent interim committee⁶ recognizing the legislature's need "for full-time technical assistance in accomplishing the research, reporting, bill drafting, and examination and revision of statutes, and general administrative services essential to the development of sound legislation in the public interest." The Legislature also granted the Council certain powers including the power to:

- (1) to organize and adopt rules for the conduct of its business;...
- (4) in addition to providing the administrative services required for the operation of the legislative branch...
 - (E) to do all things necessary to carry out legislative directives and law, and the duties set out in the uniform rules of the legislature...
- (5) to exercise control and direction over all legislative space, supplies, and equipment and permanent legislative help between legislative sessions; the exercise of control over legislative space is subject to AS 36.30.080 (c) if the exercise involves the rent or lease of facilities...⁷

The Legislature further granted the Council the authority to:

adopt and publish procedures to govern the procurement of supplies, services, professional services, and construction by the legislative branch. The procedures must be based on the competitive principles consistent with this chapter and must be adapted to the special needs of the legislative branch as determined by the legislative council. ...The procedures must be consistent with the provisions of AS 36.30.080 (c) - (e) and 36.30.085. Notwithstanding the other provisions of this section, the legislative agencies subject to the legislative council's regulations shall comply with AS 36.30.170(b).⁸

⁵ *Id.*

⁶ AS 24.20.010 (emphasis added).

⁷ AS 24.20.060

⁸ AS 36.30.020

AS 36.30.080 provides that:

(c) If ... the legislative council intends to enter into or renew a lease of real property with an annual rent to the ... legislative council that is anticipated to exceed \$500,000, or with total lease payments that exceed \$2,500,000 for the full term of the lease, including any renewal options that are defined in the lease, ... the legislative council ... shall provide notice to the legislature.

The notice must include the anticipated annual lease obligation amount and the total lease payments for the full term of the lease.

"The ... legislative council ... may not enter into or renew a lease of real property

(1) requiring notice under this subsection unless the proposed lease or renewal of a lease has been approved by the legislature by law; an appropriation for the rent payable during the initial period of the lease or the initial period of lease renewal constitutes approval of the proposed lease or renewal of a lease for purposes of this paragraph;

(2) under this subsection if the total of all optional renewal periods provided for in the lease exceeds the original term of the lease exclusive of the total period of all renewal options.

(d) When the department is evaluating proposals for a lease of space, the department shall consider, in addition to lease costs, the life cycle costs, function, indoor environment, public convenience, planning, design, appearance, and location of the proposed building.

(e) When the department is considering leasing space, the department should consider whether leasing is likely to be the least costly means to provide the space.⁹

Under its authority to "adopt rules for the conduct of its business" the Council unanimously passed four motions on June 7, 2013: "1) a motion allowing the Chairman to negotiate all the terms and conditions necessary to extend the lease under AS 36.30.083(a); 2) a motion for the Legislative Council to adopt

⁹ AS 36.30.080 (c)-(e).

Amendment No.12 to the Legislative Procurement Procedure 040 to allow the Agency to materially modify an existing lease that was previously competitively procured; 3) a motion to authorize material amendments to the lease, including the addition of 712 West Fourth Ave with other terms and conditions necessary to accommodate renovations and 4) a motion of the legislative council to authorize the Alaska Housing Finance Corp to act as its representative during negotiations.”¹⁰

Pursuant to the Council’s regulations, the Legislative Affairs Agency (LAA) and 716 signed a lease in September 2013, which under the new regulations, purported to extend the April 2004 lease for LIO office space with 716. Alaska Building, Inc. argues that the lease between LAA and 716 violates AS 36.30.083(a) because it “does not extend a real property lease.”¹¹ 716 counters that this issue presents a nonjusticiable political question because the court will be reviewing the legislature’s application of its internal regulations to itself. The LAA agreed with 716 in part. In its briefing, the LAA agreed that the legislature’s findings under the Legislative Procurement Procedures are discretionary determinations and as such are nonjusticiable.¹² However, the LAA conceded that the court can review the lease’s compliance with AS 36.30.083.¹³

¹⁰ 716 LLC’s Opposition to Plaintiff’s Motion for Partial Summary Judgment (Not Extension) at 4. See also 28th Legislature (2013-2014) Committee Minutes from June 7, 2013, 716’s Opposition Exhibit B.

¹¹ Memorandum in Support of Plaintiff’s Motion for Partial Summary Judgment (Not Extension) at 1.

¹² LAA’s Response to Court’s Request Dated February 26, 2016 at 1.

¹³ *Id.* at 2.

II. Legal Standard

Summary judgement is appropriate where “there is no issue as to any material fact and the moving party is entitled to a judgement as a matter of law.”¹⁴ The non-moving party must “set forth specific facts showing that he could produce evidence reasonably tending to dispute or contradict the movant’s evidence and thus demonstrate that a material issues of fact exists.”¹⁵ Alaska has a lenient summary judgement standard,¹⁶ but mere allegations are insufficient and the non-moving party “must set forth specific facts showing that there is a genuine issue of material fact.”¹⁷ The court views “the facts in the light most favorable to the non-moving party and draw[s] all factual inferences in the non-moving party's favor.”¹⁸

III. Issues Presented

- A. Is this case justiciable in whole or in part?
- B. Does the lease does comply with AS.36.30.083?

IV. Analysis

A. *Justiciability*

“[T]he political question doctrine is essentially a function of the separation of powers, existing to restrain courts from inappropriate interference in the

¹⁴ Alaska R. Civ. P. 56(c).

¹⁵ *Christensen v. Alaska Sales and Service, Inc.* 335 P.3d 514, 517 (Alaska 2014).

¹⁶ *Estate of Milos v. Quality Asphalt Paving, Inc.*, 145 P.3d 533, 537 (Alaska 2006).

¹⁷ *Kelly v. Municipality of Anchorage*, 270 P. 3d 801, 803 (Alaska 2012) (internal citations omitted).

¹⁸ *Kalenka v. Jadon, Inc.*, 305 P.3d 346, 349 (Alaska 2013).

business of the other branches of Government, and deriving in large part from prudential concerns about the respect [the judiciary] owe[s] the political departments.”¹⁹ It is difficult to “defin[e] the contours of the doctrine of justiciability” because it is “not a legal concept with a fixed content or susceptible of scientific verification.”²⁰ Nonjusticiable political questions nevertheless share common characteristics:

Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.²¹

The Alaska Supreme Court has examined the boundaries of judicial authority to review laws regulating the legislature's own actions. In *Abood v. League of Women Voters of Alaska*, 743 P.2d 333, (Alaska 1987), the League of Women Voters of Alaska and others (the League) brought suit against certain members of the legislature for holding closed meetings, which the League alleged violated Alaska's Open Meeting Act (AS 44.62.310) and the legislature's Uniform Rule 22. The court held that “out of respect owed to a coordinate branch

¹⁹ *Nixon v. United States*, 506 U.S. 224, 252-53 (1993).

²⁰ *Abood v. League of Women Voters of Alaska*, 743 P.2d 333, 336 (Alaska 1987) (internal citations omitted).

²¹ *Baker v. Carr* 369 U.S. 186, 217 (1962).

of state government, we must defer to the wisdom of the legislature concerning violations of legislative rules which govern the internal workings of the legislature."²² It further found, that "it is the legislature's prerogative to make, interpret and enforce its own procedural rules and the judiciary cannot compel the legislature to exercise a purely legislative prerogative."²³ Unless the legislature's action are infringing upon a constitutional right or impacting a person not in the legislature, courts are reluctant to interfere because "it is not the function of the judiciary to require that the legislature follow its own rules."²⁴

In another similar case, *Malone v. Meekins*, 650 P.2d 351 (Alaska 1982), the former Speaker of the House of Representatives, Representative Duncan, appealed from a lower court decision in which he brought suit against various members of the legislature alleging that they had illegally and unconstitutionally replaced him as Speaker of the House. As part of his complaint, he alleged that another Representative had violated AS 24.10.020, which allows the majority leader to preside only if the elected officer "resigns, becomes incapacitated, or dies," by calling to order a meeting in which the House voted to replace Representative Duncan. Because none of the contingencies provided for in AS 24.10.020 were present when the other Representative called to order the meeting, Representative Duncan urged the court to find that the Representative had usurped power. The Alaska Supreme Court declined to address whether AS 24.10.020 vested the power to convene meetings solely in Representative Duncan as Speaker because even if he was correct:

²²*Abood*, 743 P.2d at337.

²³*Id.* at 338.

²⁴*Id.*

it would still be improper for a court to declare the June 16th election of Representative Hayes to the Speakership invalid.

Such a declaration would, in our view, be an unwarranted intrusion into the business of the House. To be sure, the judicial branch of government has the constitutionally mandated duty to ensure compliance with the provisions of the Alaska Constitution, including compliance by the legislature. But a statute such as AS 24.10.020 relates solely to the internal organization of the legislature, a subject which has been committed by our constitution to each house. Insofar as compliance with such a statute is concerned, we believe that a proper recognition of the respective roles of the legislature and the judiciary requires that the latter not intervene.²⁵

The court recognizes that the political question doctrine seemingly may leave a plaintiff such as ABI without a remedy. But the doctrine simply affirms that in some limited cases, the constitutional requirement of separation of powers shifts the ultimate resolution of certain disputes from the courts back to the governmental branch involved in the dispute- whether it be through further discussion with their colleagues or ultimately the citizens who placed them in their position.

716 argues that the present suit is almost identical to *Abood* and *Malone*. It argues that the Legislative Council, a constitutionally created entity, adopted internal procurement procedures pursuant to its statutorily granted authority to do so.²⁶ The Council then followed its own regulations (as amended) and made the

²⁵ 650 P.2d at 356.

²⁶ AS 36.30.020.

written findings necessary to utilize the exemption amendment. 716 contends that these actions all fall within the legislature's constitutionally mandated prerogative to regulate itself.²⁷

The LAA agrees that there are portions of this lease extension issue that are nonjudicial because they "lack ... judicially discoverable and manageable standards for resolving [the issue]."²⁸ Specifically, the LAA argues that the Procurement Officer's written findings under Procurement Procedure 040 are nonjudicial discretionary policy decisions. Beyond these determinations, the LAA allowed that the court could rule on whether the lease is in fact an extension under AS 36.30.083.²⁹

Based upon the pleadings and case law cited above, the court agrees with LAA position as stated herein. Despite 716's argument that the entire dispute is nonjusticiable, it would seem particularly inappropriate to fail to rule on the main issue in this dispute out of deference to a branch of government which is not asking for deference. It is this key fact that distinguishes this case from *Abood* or *Malone*. In both those cases, legislators raised the political question doctrine defense which prompted the Court in both cases to defer to the legislature. Because the legislature is not requesting such deference here, this court can review the lease's legality without concern that it is not showing due respect for

²⁷ ABI briefly raises the issue that 716 may not be allowed to raise a nonjusticiable political question defense. Though often the party raising the defense of a "textually demonstrable constitutional commitment of the issue to a coordinate political department" (*Baker v. Carr*, 369 U.S. 186, 217 (1962)), belongs to one of the three branches of government, (see e.g. *Nixon v. U.S.*, 506 U.S.224 (1993)), a party does not have to belong to the government to raise this defense. See e.g. *Corrie v. Caterpillar, Inc.*, 503 F. 3d 974 (9th Cir. 2007).

²⁸ LAA's Response to Court's Request Dated February 26, 2016; *Baker v. Carr*, 369 U.S. 186, 217 (1962).

²⁹ *Id.* at 2.

an equal branch of government. However, out of due respect for the legislature, the court will not look behind the legislative curtain and will only consider whether the lease is a valid extension under AS 36.30.083(a).³⁰

B. The lease does not comply with AS.36.30.

LAA and 716 argue that to extend a real property lease under AS 36.30.083(a) they are only required to demonstrate a 10% savings and it does not matter whether the contract sought to be extended is substantively modified. AS 36.30.083(a) reads:

Notwithstanding any other provision of this chapter ... the legislative council ... may *extend* a real property lease that is entered into under this chapter 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.³¹

Thus the first requirement of this section is that the instrument in question is in fact a lease extension. Certainly, one of the provisions of the 2013 document extended the time LAA had the right to remain in the leased premises. But the

³⁰As a separate and likely also another nonjusticiable matter, the court does not agree that that the Legislative Council's promulgated procurement regulations, and the amendments thereto specifically promulgated to accommodate the lease at issue, comport with the state's procurement code. The Legislative Council has the authority to enact regulations to "... govern the procurement of supplies, services, professional services..." (AS 36.30.020). This provision is limited, however, by the mandate that these rules "be based on the competitive principles consistent with the legislative chapter of the state procurement code." In this court's opinion, altering the requirements of the procurement code to exempt certain legislative leases from the bidding process does not conform to the chapter's "competitive principles." (Id.). This finding is only included to permit review and prevent the need for remand and further expensive litigation if a reviewing court finds this issue is justiciable. But the believes this is not a justiciable issue under *Abood* and *Malone*, supra

³¹ Emphasis added.

court does not accept the argument that the contract is only an extension simply because that is what 716 and LAA named it in the document.

Black's Law Dictionary 523 (5th Ed. 1979) defines an "extension" generally as "an increase in length of time." As it relates to leases, it defines an extension as "a prolongation of the previous leasehold estate...*the same lease* continues in force during additional period upon performance of stipulated act."³² Likewise Garner's Dictionary of Legal Usage 346 (3rd Ed. 2011) defines "extension" as a legal contract that "continues *the same contract* for a specified period..."³³ Other jurisdictions have contemplated the meaning of a lease extension when differentiating between an extension and a lease renewal.³⁴ For example, the Minnesota Supreme Court has said that "[t]he legal distinction between an extension and a renewal of a lease is that an *extension merely continues the original lease*, while a renewal requires a new lease."³⁵ When considering the difference between an option to extend a contract and an agreement to negotiate a contract extension, a Florida court found that negotiating to extend a contract created "new and successive contracts. [Exercising an option to extend] merely operated to extend the duration of the agreement for specified periods under the same terms and conditions, all of which...had been subject of the initial bidding procedure."³⁶ The common theme throughout these definitions and explanations is that a lease extension only alters the time period of the contract while the remainder of the contract remains in full effect. The court finds the plain meaning

³² Emphasis added.

³³ Emphasis added

³⁴ See e.g. *Med-Care Associates, Inc. v. Noot*, 329 N.W. 2d 549, (Minn. 1983).

³⁵ *Id.* at 551 (emphasis added).

³⁶ *City of Lakeland, Fla. V. Union Oil Co. of Cal.*, 352 F. Supp. 758 (M. D. Florida 1973).

of AS 36.30.083(a) is to exempt an extension of the length of a lease (without substantive modification to the terms of the lease) from the competitive bidding requirement. As the parties argued before the court, AS 36.30.083(a) does not specifically prohibit substantive modification. The court agrees but further notes that AS 36.30.083(a) does not *permit* substantive modification either, except for rental amount to meet the cost savings requirement. This statutory silence actually supports the court's finding that an extension of a lease does not contemplate substantive modification of the terms.

As additional support for its findings, the court first notes that the legislature separated new leases and lease renewals from lease extensions.³⁷ By creating separate statutes to govern these different contractual principles, the legislature recognized the differences among these contracts and chose differing statutory approaches, requiring new leases and renewals to be subject to competitive bidding, and exempting only extensions with a 10% savings over market rate. The court assumes that the legislature did this purposefully and was mindful of not muddling the two statutes by conflating a lease extension with either a new lease or a lease renewal.

AS 36.30.083(a) permits a lease extension and, impliedly, the ability to modify the monthly rental payment to 90% of market value established "by a real estate broker's opinion of the rental value or by an appraisal the rental value". The lease between the LAA and 716 does not fit within the definitions of "extension" as articulated above because the 2013 lease is undoubtedly a different lease instrument from the 2004 contract. Significantly, the subject

³⁷ Compare AS 36.30.080 (Leases/Renewals) with AS 36.30.083 (Lease Extensions Authorized).

property of the 2013 lease is vastly different from the 2004 lease subject property. As the LAA states, the 2013 lease:

provided for demolishing the former restaurant/bar known as the Anchor Bar, aside from its east wall, and remodeling, renovating, and expanding the existing LIO so that it now covered both lots on the combined site from the old LIO building and the Anchor Bar. It provides for site demolition of the existing structures and nearby sidewalk, excavation and backfill on top of the existing foundation, abandonment of existing water services and installation of a new water service to connect to the main, installation of new sanitary sewer service, and construction of the current structure based on new plumbing, heating, fuel system, ventilation, electrical, and insulation designs. The Alaska State Legislature vacated the premises for over 13 months during the demolition and reconstruction process.³⁸

The fact that the previous LIO absorbed the next door building significantly increasing the square footage of the building and the extensiveness of the new construction and reconstruction persuade this court that the 2013 lease's subject property is different from the subject property in the 2004 lease. Other factors that influence the court's decision include that the 2013 lease provides substantially altered rights and obligations for the parties³⁹ along with a 395% price increase.⁴⁰

³⁸ Legislative Affairs Agency Opposition at 6-7. The court finds no genuine issue of material fact.

³⁹ See e.g. Section 3 Extension of Lease and Lease Amendment No. 3.

⁴⁰ *Id.* at Section 1.1(c).

The court similarly does not agree that the contracting parties' interpretation of an "extension" falls within the meaning the legislature intended when it passed AS 36.30.083(a). Legislative history indicates that the primary impetus for enacting the revised version of this statute was to save money by reduced rent and make it easier for agencies to remain in their current building and avoid the costs of moving and re-procurement, especially since initial construction costs are usually amortized over the building's first years. As the then Chief Procurement Officer stated during one committee hearing:

...(T)he upfront construction and tenant improvement costs are generally financed and amortized over the initial firm term of the lease. The lessor is afforded an opportunity to bid a different price during the option periods of a lease. Generally, there is a dramatic decrease in prices after the initial firm period is over.⁴¹

.....

Tenant improvements and upfront construction [to prepare a new office for agency needs] are generally substantial for a large-size lease. There are also telephone relocations and CAT-5 cables are expensive... Furthermore, the disruption of a relocation is difficult to quantify.⁴²

In agreeing to setting the incentive rate at 10% below market value, then Representative Rokeberg stated that it would "allow the department to move

⁴¹ *Background and History of HB 545 – State Real Property Lease Extensions: Hearing Before the House Labor and Commerce Standing Committee*, April 16, 2004, at p.8. (Statement of Mr. Vern Jones, Chief Procurement Officer, Division of General Services, Department of Administration); Exhibit 1 to Plaintiff's Memorandum in Support of Motion For Partial Summary Judgment.

⁴² *Id.* at p.11.

forward with a sole source type contract and ...avoid the appearance of any noncompetitive type of acquisition or continuation of lease."⁴³

The legislative history indicates that permitting sole-source contracting when there was a 10% savings was intended as both a cost saving measure and for agency convenience. Here, the legislature paid \$7,500,000.00 for additional tenant improvements and disrupted the legislature by relocating for over a year while the existing building was essentially demolished to its structural framing, rebuilt and new construction was completed on newly acquired premises. Thus none of the legislature's stated purposes for exempting a lease extension from the competitive bid process was realized from this lease "extension." The court does not find that the legislative history supports the positions of LAA and 716.

Finally, plain common sense -a principle which jurisprudence should not require to be checked at the courtroom door- mandates a finding that a contract to lease over 2.5 times more newly constructed space for just under 5 times the current rent with an introductory payment of \$7.5 million⁴⁴ for leasehold improvements is not a simple lease extension. A court finding that this leasing scheme could be sole-sourced would eviscerate the competitive principles of the state procurement code. The court finds this lease invalid as it does not comply with AS 38.30.083 (a).

⁴³*Background and History of HB 545 – State Real Property Lease Extensions: Hearing Before the House Labor and Commerce Standing Committee, April 16, 2004, at p. 25.*

⁴⁴ The court notes that this amount is significantly more than the LAA paid for rent in toto for 9 years under the 2004 lease.

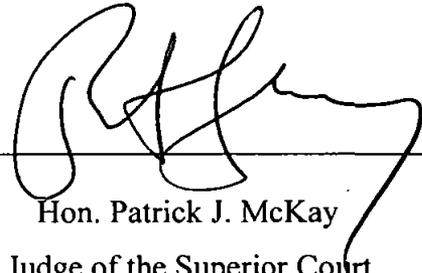
V. Conclusion

Though 716 initially invoked the political question doctrine, the LAA agreed that the court can decide whether the lease is an extension under AS 36.30.083. After reviewing various definitions and interpretations of a lease extension, the plain meaning of the words of the statute, the legislative history and intent, this court finds that this contract is not an agreement to extend a lease but rather a wholly new lease instrument altogether and should have been competitively bid. Summary judgment is GRANTED in favor of plaintiff ABI that the lease is not an extension under AS 38.30.083 (a).

The court further enters, as the final appealable order⁴⁵, a declaratory judgment that the lease is invalid based on the lease's non-compliance with AS 38.30.083(a). Because the court finds the lease invalid, all further proceedings are vacated as it is not necessary to decide whether the lease rate is 10% below the current market rate.⁴⁶

3/24/16

DATE



Hon. Patrick J. McKay

Judge of the Superior Court

I certify that on 3/24/16 a copy of the following was mailed/faxed/hand-delivered to each of the following at their addresses of mailed record. James Gottsleben
Jeffrey Robinson / Kevin Cuddey
Administrative Assistant Ki

⁴⁵ Declaratory judgment is the only remaining relief requested in ABI's Second Amended Complaint dated August 25, 2015.

⁴⁶ This ruling renders current pending motions MOOT.

FILED
STATE OF ALASKA
THIRD DISTRICT

2015 SEP -9 PM 4:17

CLERK OF COURT
BY: _____
DEPUTY CLERK

Kevin Cuddy (Alaska Bar #0810062)
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: (907) 277-1900
Facsimile: (907) 277-1920

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

Case No.: 3AN-15-05969CI

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

ANSWER TO SECOND AMENDED COMPLAINT

Defendant Legislative Affairs Agency (“LAA”), by and through its undersigned
counsel, for their answer to the corresponding numbered paragraphs of Plaintiff Alaska
Building, Inc.’s Second Amended Complaint, admits, denies and asserts as follows:

1. With regard to Paragraph 1 of Plaintiff's Second Amended Complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

2. Paragraph 2 of the Second Amended Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, this answering defendant lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 2 of the Second Amended Complaint and therefore denies the same.

3. Admitted.

4. LAA admits that it entered into the Extension of Lease and Lease Amendment No. 3 with 716 West Fourth Avenue LLC on September 19, 2013. The terms of that document speak for themselves. LAA denies the characterization of that document as contained in Paragraph 4 insofar as they differ from the terms of that document.

5. This paragraph consists of a legal conclusion to which no response is required.

6. This paragraph consists of a legal conclusion to which no response is required.

7. Denied.

8. Denied.

9. Denied.

10. This paragraph consists of a legal conclusion to which no response is required. To the extent a response is deemed required, LAA denies the allegation.

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim upon which relief may be granted.
2. Plaintiff lacks standing to bring this claim.
3. Plaintiff's claim for "10% of the savings to the Legislative Affairs Agency as a result of the invalidation of the LIO Project Lease" fails to state a claim upon which relief may be granted and the requested relief has no legal support.
4. Plaintiff's claims are barred or may be reduced by the doctrines of waiver, estoppel, unclean hands, release, and/or other inequitable conduct.
5. Plaintiff's claims are barred by the doctrine of laches.
6. Answering Defendant reserves the right to assert additional affirmative Defenses as discovery and further investigation reveals.
7. Defendant Legislative Affairs Agency adopts all affirmative defenses alleged by other defendants and reserves the right to assert further defenses and claims pending discovery and investigation in this case.

DEFENDANTS' PRAYER FOR RELIEF

WHEREFORE, Defendant prays for relief and judgment as follows:

1. That Plaintiff take nothing from the Second Amended Complaint and that it be dismissed against Defendant Legislative Affairs Agency in its entirety with prejudice;

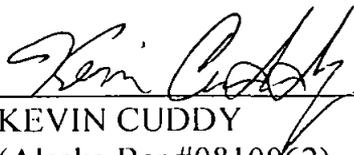
STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

2. That Defendant Legislative Affairs Agency be awarded its costs and attorney's fees; and

3. That this Court grant such other and further relief as it deems proper.

DATED: September 9, 2015.

STOEL RIVES LLP

By: 
KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

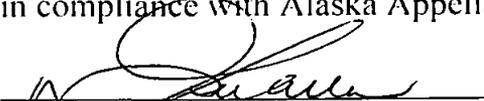
CERTIFICATE OF SERVICE AND OF FONT

This certifies that on September 9, 2015, a true and correct copy of the foregoing was served on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)

I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).


Debby Allen, Practice Assistant

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

FILED
2015 SEP -8 PM 11:40
BY [Signature]

ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

716 WEST FOURTH AVENUE, LLC'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

Defendant 716 West Fourth Avenue, LLC, by and through its attorney, Jeffrey W. Robinson of Ashburn & Mason, P.C., hereby answers Plaintiff's Second Amended Complaint as follows:

ANSWER

I. Parties

1. On information and belief, Defendant admits that Alaska Building Inc. ("ABI") filed a biennial report in 2014, and as of the date of this Answer is in good standing with the State of Alaska Department of Commerce, but denies the remaining allegations of this paragraph.

2. Defendant admits that 716 West Fourth Avenue is an Alaska Limited Liability Company.

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

3. Paragraph 3 of the Amended Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, on information and belief, the Legislative Affairs Agency is an agency of the State of Alaska.

4. Defendant admits that the LAA entered into a 10-year lease extension and amendment for the Anchorage LIO with its Lessor, Defendant, and that the agreement provided for expansion and renovation of the LIO. Otherwise, Defendant denies the remainder of paragraph 4.

5. Defendant objects that the allegation in paragraph 5 calls for a legal conclusion. To the extent an answer is required, it is denied.

6. Defendant objects that the allegations in paragraph 6 call for a legal conclusion. To the extent an answer is required, Defendant denies the allegation.

7. Defendant objects that the allegations in paragraph 7 calls for a legal conclusion. To the extent an answer is required, Defendant denies the allegation.

8. Defendant objects that the allegation in paragraph 8 calls for a legal conclusion. To the extent an answer is required, Defendant denies the allegations of this paragraph.

9. Defendant denies the allegations of this paragraph.

10. Defendant objects that the allegation in paragraph 10 calls for a legal conclusion. To the extent an answer is required, Defendant denies the allegation.

RESPONSE TO PRAYER FOR RELIEF

To the extent that the prayer for relief in the Second Amended Complaint requires an answer, defendant denies them all.

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim upon which relief may be granted.
2. Plaintiff may have failed in whole or in part to mitigate, minimize, or avoid the damages allegedly sustained, and any recovery must be reduced by that amount.
3. Plaintiff's damages, if any, may have been proximately caused in whole or in part by the actions and/or negligence of the Plaintiff. Plaintiff's recovery, if any, should be reduced in proportion to the percentage of Plaintiff's and/or other third parties' fault.
4. Plaintiff's recovery should be reduced by the comparative fault of persons other than defendant.
5. Plaintiff's claims are barred by waiver, estoppel, and/or release,
6. Plaintiff's recovery is barred by the doctrine of accord and satisfaction.
7. Plaintiff's claims are barred by bad faith, unclean hands, and/or other inequitable conduct.
8. Plaintiff's claims may be barred by the doctrine of lack of privity.

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716 WEST FOURTH AVENUE, LLC'S ANSWER TO SECOND AMENDED COMPLAINT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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9. Plaintiff's claims may be barred by the doctrine of laches.

10. Plaintiff has no standing to bring an action against 716 regarding the legality of the lease in question.

11. Defendant asserts all defenses stated in Rule 12(b).

12. Defendant adopts all affirmative defenses alleged by other defendants and reserves the right to assert further defenses and claims pending discovery and investigation in this case.

PRAYER FOR RELIEF

WHEREFORE, having answered plaintiff's Amended Complaint, and having asserted affirmative defenses, defendant prays that the Court enter judgment in its favor and against plaintiff as follows:

1. Dismissal of plaintiff's claims against Defendant, with prejudice;
2. An award of its reasonable expenses and costs incurred by defendant, including attorney's fees, against plaintiff.
3. For such further relief as this Court deems equitable and just.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 9/8/2015

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

49806035 *PC*

716 WEST FOURTH AVENUE, LLC'S ANSWER TO SECOND AMENDED COMPLAINT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 8th day of September 2015, on:

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501

Mark P. Scheer
Scheer & Zehnder LLP
701 Pike Street, Suite 2200
Seattle, WA 98101

Kevin Cuddy
Stoel Rives, LLP
510 L Street, Suite 500
Anchorage, Alaska 99501

Cynthia L. Ducey
Delaney Wilson, Inc.
1007 W. 3rd Avenue, Ste. 400
Anchorage, Alaska 99501

Dan Quinn
360 K Street, Suite 200
Anchorage, AK 99501

Blake H. Call
Call & Hanson, P.C.
413 G St.
Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

716 WEST FOURTH AVENUE, LLC'S ANSWER TO SECOND AMENDED COMPLAINT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

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STATE OF ALASKA
THIRD DISTRICT
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CLERK TRIAL COURT

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

Case No. 3AN-15-3AN-15-05969CI

SECOND AMENDED COMPLAINT

Plaintiff Alaska Building, Inc., an Alaska corporation, by and through its attorney, Law Offices of James B. Gottstein, for its claims against 716 West Fourth Avenue LLC, and the Alaska Legislative Affairs Agency, hereby alleges as follows.

1. Plaintiff Alaska Building, Inc., is an Alaska corporation, has filed its biennial report and paid its corporate taxes last due, is in good standing, and is qualified in all respects to bring this action.

2. Defendant 716 West Fourth Avenue LLC is an Alaska Limited Liability Company, located in Anchorage, Alaska (716 LLC).

3. Defendant Legislative Affairs Agency (LAA) is an agency of the State of Alaska.

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 208
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

4. On September 19, 2013, 716 LLC entered into an agreement with LAA to:

- (a) demolish the existing Anchorage Legislative Information Office down to its steel frame and foundation, demolish the adjacent Empress Theatre building then occupied by the Anchor Pub, and

- (b) lease a newly constructed office building on the combined site to LAA for the Anchorage Legislative Information Office

(LIO Project Lease).

5. Under AS 36.30, leases by the Legislative Affairs Agency are normally subject to the competitive procurement process.

6. Under AS 36.30.083(a) an existing lease by the Legislative Affairs Agency may be extended for up to ten years without compliance with the normal competitive procurement process if there is a minimum cost savings of at least 10 percent below the market rental value of the real property at the time the extension.

7. The LIO Project Lease is not a lease extension.

8. The rental rate of the LIO Project Lease is not at least 10 percent below the market rental value of the real property at the time the LIO Project Lease was executed.

9. In fact, the rental rate of the LIO Project is at least twice the market rental value at the time the LIO Project Lease was executed.

10. The LIO Project Lease is illegal because it does not comply with AS 36.30.

WHEREFORE, Plaintiff prays for the following relief:

A. Judgment declaring the September 19, 2013, agreement between 716 West Fourth Avenue LLC and the Legislative Affairs Agency pertaining to the Anchorage Legislative Information Office building illegal, null and void.

B. A Judgment in favor of Alaska Building, Inc., in the amount of 10% of the savings to the Legislative Affairs Agency as a result of the invalidation of the LIO Project Lease.

C. Punitive damages against 716 West Fourth Avenue LLC.

D. Costs and attorney's fees.

E. Such other further and additional relief as the Court find just.

DATED August 25, 2015.

Law Offices of James B. Gottstein, attorney for
Plaintiff, Alaska Building, Inc.

By: 

James B. Gottstein
Alaska Bar No. 7811100

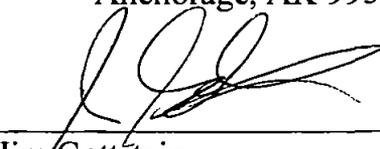
CERTIFICATE OF SERVICE

A copy hereof was mailed this date to:

Jeffrey W. Robinson/
Eva R. Gardner
Ashburn & Mason, PC
1227 W. 9th Ave., Ste. 200
Anchorage, AK 99501

Kevin M. Cuddy
Stoel Rives LLP
510 L St., Ste. 500
Anchorage, AK 99501

Dated, August 25, 2015.


Jim Gottstein

Second Amended Complaint

Page 3

002241

LAW OFFICES OF
JAMES B. GOTTSTEIN
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ANCHORAGE, ALASKA
99501

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(907) 274-9493

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an)
Alaska corporation,)
)
Plaintiff,)
)
v.)
)
716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC.,)
d/b/a KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)
)
Defendants.)

Case No. 3AN-15-05969 CI

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STATE OF ALASKA
THIRD JUDICIAL DISTRICT
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CLERK TRIAL COURT

PFEFFER DEVELOPMENT, LLC'S ANSWER TO AMENDED COMPLAINT

Pfeffer Development, LLC answers Plaintiff's Amended Complaint as follows:

1. The allegations in paragraph 1 apply to other Defendants; however to the extent an answer is required, answering Defendant is without sufficient information to admit or deny the allegations and therefor denies same.

2. The allegations in paragraph 2 apply to other Defendants; however to the extent an answer is required, answering Defendant is without sufficient information to admit or deny the allegations and therefor denies same.

DELANEY WILES, INC.
SUITE 400
1007 WEST 3rd AVENUE
ANCHORAGE, ALASKA
99501
(907) 279-3581
FAX (907) 277-1331

3. The allegations in paragraph 3 are directed to other defendants. To the extent an answer is required, on information and belief, Koonce Pfeffer Bettis, Inc. is an Alaska corporation located in Anchorage.

4. The allegations in paragraph 4 are admitted.

5. The allegations in paragraph 5 apply to other Defendants; however to the extent an answer is required, answering Defendant is without sufficient information to admit or deny the allegations and therefor denies same.

6. The allegations in paragraph 6 apply to other Defendants; however to the extent an answer is required, answering Defendant is without sufficient information to admit or deny the allegations and therefor denies same.

7. On information and belief the allegations in paragraph 7 are admitted.

8. Answering defendant lacks sufficient information and belief to admit or deny the allegations in paragraph 8 and therefor denies the allegations in paragraph 8.

9. The allegations in paragraph 9 are admitted.

10. Answering defendant lacks sufficient information and belief to admit or deny the allegations in paragraph 10 and therefor denies the allegations in paragraph 10.

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11. Answering defendant lacks sufficient information and belief to admit or deny the allegations in paragraph 11 and therefor denies the allegations in paragraph 11.

12. Answering defendant lacks sufficient information and belief to admit or deny the allegations in paragraph 12 and therefor denies the allegations in paragraph 12.

13. Answering defendant lacks sufficient information and belief to admit or deny the allegations in paragraph 13 and therefor denies the allegations in paragraph 13.

14. Answering defendant lacks sufficient information and belief to admit or deny the allegations in paragraph 14 and therefor denies the allegations in paragraph 14.

15. Answering defendant lacks sufficient information and belief to admit or deny the allegations in paragraph 15 and therefor denies the allegations in paragraph 15.

16. The allegations contained in paragraph 16 are directed to other defendants and thus require no answer from answering defendant; however to the extent an answer is required, answering defendant admits paragraph 16 accurately describes the first paragraph of section 10 of the Access, Insurance and Indemnity Agreement.

17. The allegations in paragraph 17 are directed to other defendants and also allege legal conclusions to which no answer

is required; however to the extent an answer is required the allegations are denied.

18. The allegations in paragraph 18 are directed to other defendants and also allege legal conclusions to which no answer is required; however to the extent an answer is required the allegations are denied.

19. The allegations in paragraph 19 are directed to other defendants and also allege legal conclusions to which no answer is required; however to the extent an answer is required the allegations are denied.

20. The allegations in paragraph 20 are directed to other defendants and also allege legal conclusions to which no answer is required; however to the extent an answer is required the allegations are denied.

21. The allegations in paragraph 21 are directed to other defendants and also allege legal conclusions to which no answer is required; however to the extent an answer is required the allegations are denied.

22. The allegations in paragraph 22 are directed to other defendants and also allege legal conclusions to which no answer is required; however to the extent an answer is required the allegations are denied.

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23. The allegations in paragraph 23 are directed to other defendants; however to the extent an answer is required, answering defendant admits 716 West Fourth Avenue LLC is the owner/lessor of the building.

24. The allegations in paragraph 24 are directed to other defendants; however to the extent an answer is required, on information and belief KPB Architects was an architect on the LIO project.

25. Answering defendant admits Pfeffer Development provided project management services on the project. The remaining allegations in paragraph 25 are denied.

26. The allegations in paragraph 26 are directed to other defendants; however to the extent an answer is required, on information and belief, Criterion provided general contractor services for the LIO project.

27. The allegations in paragraph 27 are denied.

28. The allegations in paragraph 28 allege legal conclusions for which no answer is required; however to the extent an answer is required, the allegations are denied.

29. The allegations in paragraph 29 are directed to other defendants; however to the extent an answer is required, answering defendant lacks sufficient information to admit or deny the allegations and therefor denies same.

30. The allegations in paragraph 30 are directed to other defendants; however to the extent an answer is required, answering defendant lacks sufficient information to admit or deny the allegations and therefor denies same.

31. The allegations in part are directed to other defendants and answering defendant lacks sufficient information to admit or deny same and thus denies same. To the extent the allegations allege allegations against answering defendant, the allegations are denied.

32. The allegations in paragraph 32 are denied.

33. The allegations in paragraph 33 are denied.

34. The allegations in paragraph 34 are in part directed to other defendants and Answering Defendant is without sufficient knowledge to respond to the allegations not directed to Answering Defendant. With respect to the allegations directed toward Answering Defendant, the allegations are denied.

35. The allegations in paragraph 35 are directed toward other defendants. However, to the extent an answer is required the allegations in paragraph 35 are denied.

36. The allegations in paragraph 36 are directed toward other defendants. However, to the extent an answer is required the allegations in paragraph 36 are denied.

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37. The allegations in part are directed to other defendants and Answering Defendant lacks sufficient information to admit or deny same and thus denies same. To the extent the allegations are directed against Answering Defendant, the allegations are denied.

AFFIRMATIVE DEFENSES

1. The complaint in whole or in part fails to state a claim for relief.

2. Plaintiff has failed to mitigate its damages.

3. To the extent plaintiff suffered any damages, they may be due in whole or in part due to its comparative negligence.

4. To the extent plaintiff suffered any damages, they may be due in whole or in part to the negligence of other parties or other entities or persons who have not been joined in the action.

5. Plaintiff's claims may be reduced by the doctrines of waiver, estoppel, laches and unclean hands.

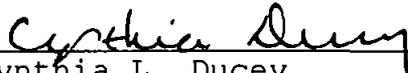
6. The claims are barred by lack of privity.

7. The claims are barred by accord and satisfaction.

8. Answering defendant reserves the right to assert additional affirmative defenses as discovery and further investigation reveals.

DATED this 6 day of July, 2015, at Anchorage, Alaska.

DELANEY WILES, INC.
Attorneys for Defendant
Pfeffer Development, LLC


Cynthia L. Ducey
Alaska Bar Assoc. No. 8310161

CERTIFICATE OF SERVICE

This certifies that I am an authorized agent of Delaney Wiles, Inc., for service of papers pursuant to Civil Rule 5, and that on this 6th day of July 2015, a copy of the foregoing document was served by first class mail upon:

James B. Gottstein
Law Offices of James B. Gottstein
406 G St., Ste. 206
Anchorage, AK 99501

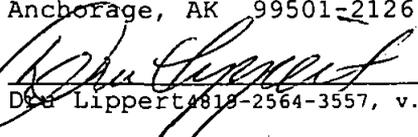
Jeffrey W. Robinson
Ashburn & Mason, PC
1227 W. 9th Ave., Ste. 200
Anchorage, AK 99501

Daniel T. Quinn
Richmond & Quinn
360 K St., Ste. 200
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Kevin M. Cuddy
Stoel Rives LLP
510 L St., Ste. 500
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Mark P. Scheer
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701 Pike St., Ste. 2200
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Don Lippert 4818-2564-3557, v. 1

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Alaska Building, Inc. v. 716 W. 4th Ave., LLC, et al. Case No. 3AN-15-05969 CI
PFEFFER DEVELOPMENT, LLC'S ANSWER TO COMPLAINT Page 8 of 8

002249

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

FILED
STATE OF ALASKA
THIRD DISTRICT
2015 JUN 22 PM 4:55
CLERK TRIAL COURTS
BY
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

716 WEST FOURTH AVENUE, LLC'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

Defendant 716 West Fourth Avenue, LLC, by and through its attorney, Jeffrey W. Robinson of Ashburn & Mason, P.C., hereby answers Plaintiff's Amended Complaint as follows:

ANSWER

I. Parties

1. On information and belief, Defendant admits that Alaska Building Inc. ("ABI") filed a biennial report in 2014, and as of May 1, 2015 is in good standing with the State of Alaska Department of Commerce, but denies the remaining allegations of this paragraph.

2. Defendant admits that 716 West Fourth Avenue is an Alaska Limited Liability Company.

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3. Paragraph 3 of the Amended Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, on information and belief, Koonce Pfeffer Bettis, Inc. is an Alaska corporation located in Anchorage, Alaska.

4. Paragraph 4 of the Amended Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, on information and belief, Pfeffer Development, LLC, is an Alaska Limited Liability Company located in Anchorage, Alaska.

5. Paragraph 5 of the Amended Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, on information and belief, the Legislative Affairs Agency is an agency of the State of Alaska.

6. Paragraph 6 of the Amended Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, on information and belief, Criterion General, Inc., is an Alaska corporation located in Anchorage, Alaska.

II. Alaska Building Background

7. Defendant incorporates by reference its answers to paragraphs 1 through 6. Defendant admits that plaintiff owns the Alaska Building.

8. Defendant lacks sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 8 of the Amended Complaint and therefore denies the allegations in this paragraph.

716 WEST FOURTH AVENUE, LLC'S ANSWER TO AMENDED COMPLAINT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

9. Defendant admits the two buildings shared a party wall, but otherwise denies the remainder of the allegations contained in this paragraph.

10. Defendant lacks knowledge or information sufficient to form a belief about the historical significance of the Alaska Building and therefore denies the allegation contained in paragraph 10 of the Amended Complaint.

11. Defendant lacks knowledge or information sufficient to form a belief about the purchase of the Alaska Building in 1926 and therefore denies this allegation.

12. Defendant lacks knowledge or information sufficient to form a belief about the ownership of the building in 1972 and therefore denies this allegation.

13. Defendant lacks knowledge or information sufficient to form a belief as to the chain of title and intent of the purchase of the Alaska Building and therefore denies this allegation.

III. Legislative Information Office Project

14. Defendant incorporates by reference its answers to paragraphs 1 through 13. Defendant admits that the LAA entered into a 10-year lease extension and amendment for the Anchorage LIO with its Lessor, Defendant, and that the agreement provided for expansion and renovation of the LIO. Otherwise, Defendant denies the remainder of paragraph 14.

15. Defendant admits the allegations contained in this paragraph.

16. Defendant admits that paragraph 16 of the Amended Complaint accurately describes the first paragraph of Section 10 of the Access, Indemnity, and Insurance Agreement between Defendant and Plaintiff.

IV. Count One –Illegality of LIO Project

17. Defendant incorporates by reference its answers to paragraphs 1 through 16. Defendant objects that the allegation in paragraph 17 calls for a legal conclusion. To the extent an answer is required, it is denied.

18. Defendant objects that the allegations in paragraph 18 call for a legal conclusion. To the extent an answer is required, it is denied.

19. Defendant objects that the allegation in paragraph 19 calls for a legal conclusion. To the extent an answer is required, Defendant denies the allegation.

20. Defendant objects that the allegation in paragraph 20 calls for a legal conclusion. To the extent an answer is required, Defendant denies the allegations of this paragraph.

21. Defendant denies the allegations of this paragraph.

22. Defendant objects that the allegation in paragraph 22 calls for a legal conclusion. To the extent an answer is required, Defendant denies the allegation.

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716 WEST FOURTH AVENUE, LLC'S ANSWER TO AMENDED COMPLAINT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

V. Count Two-LIO Project Damage to Alaska Building

23. Defendant incorporates by reference its answers to paragraphs 1 through 22. Defendant admits it is the owner and lessor of the LIO building but otherwise denies the remainder of the allegations of this paragraph.

24. Paragraph 24 of the Amended Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, on information and belief, KPB was an architect providing services for the LIO Project.

25. Paragraph 25 of the Amended Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, on information and belief, Pfeffer Development provided project management services for the LIO Project.

26. Paragraph 26 of the Amended Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, on information and belief, Criterion provided general contractor services for the LIO Project.

27. Defendant denies the allegations of Paragraph 27.

28. Defendant denies the allegations of Paragraph 28.

29. Defendant objects that the allegations in paragraph 29 call for a legal conclusion. To the extent a response is required, defendant denies the allegations of this paragraph.

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716 WEST FOURTH AVENUE, LLC'S ANSWER TO AMENDED COMPLAINT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

30. Defendant objects that the allegations in paragraph 30 call for a legal conclusion. To the extent a response is required, defendant denies the allegations of this paragraph.

31. Defendant denies the allegations of Paragraph 31.

32. Defendant denies the allegations of Paragraph 32.

33. Defendant denies the allegations of Paragraph 33.

34. Defendant denies the allegations of Paragraph 34 directed specifically to the answering Defendant, and is without sufficient to respond to the allegations of this paragraph not directed to the answering Defendant.

35. Defendant denies the allegations of Paragraph 35.

36. Defendant denies the allegations of Paragraph 36.

37. Defendant denies that it is responsible for damaging the Alaska Building, and is without sufficient to respond to the allegations of this paragraph not directed to the answering Defendant.

RESPONSE TO PRAYER FOR RELIEF

To the extent that the prayer for relief in the Amended Complaint requires an answer, defendant denies them all.

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim upon which relief may be granted.

716 WEST FOURTH AVENUE, LLC'S ANSWER TO AMENDED COMPLAINT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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2. Plaintiff may have failed in whole or in part to mitigate, minimize, or avoid the damages allegedly sustained, and any recovery must be reduced by that amount.

3. Plaintiff's damages, if any, may have been proximately caused in whole or in part by the actions and/or negligence of the Plaintiff. Plaintiff's recovery, if any, should be reduced in proportion to the percentage of Plaintiff's and/or other third parties' fault.

4. Plaintiff's recovery should be reduced by the comparative fault of persons other than defendant.

5. Plaintiff's claims are barred by waiver, estoppel, and/or release,

6. Plaintiff's recovery is barred by the doctrine of accord and satisfaction.

7. Plaintiff's claims are barred by bad faith, unclean hands, and/or other inequitable conduct.

8. Plaintiff's claims may be barred by the doctrine of lack of privity.

9. Plaintiff's claims may be barred by the doctrine of laches.

10. Plaintiff has no standing to bring an action against 716 regarding the legality of the lease in question.

11. Defendant asserts all defenses stated in Rule 12(b).

12. Defendant adopts all affirmative defenses alleged by other defendants and reserves the right to assert further defenses and claims pending discovery and investigation in this case.

PRAYER FOR RELIEF

WHEREFORE, having answered plaintiff's Amended Complaint, and having asserted affirmative defenses, defendant prays that the Court enter judgment in its favor and against plaintiff as follows:

1. Dismissal of plaintiff's claims against Defendant, with prejudice;
2. An award of its reasonable expenses and costs incurred by defendant, including attorney's fees, against plaintiff.
3. For such further relief as this Court deems equitable and just.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 6/22/15

By: 

Jeffrey W. Robinson
Alaska Bar No. 0805038

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716 WEST FOURTH AVENUE, LLC'S ANSWER TO AMENDED COMPLAINT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 22 day of June 2015, on:

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501

Mark P. Scheer
Scheer & Zehnder LLP
701 Pike Street, Suite 2200
Seattle, WA 98101

Kevin Cuddy
Stoel Rives, LLP
510 L Street, Suite 500
Anchorage, Alaska 99501

Cynthia L. Ducey
Delaney Wilson, Inc.
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Dan Quinn
360 K Street, Suite 200
Anchorage, AK 99501

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Call & Hanson, P.C.
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Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

716 WEST FOURTH AVENUE, LLC'S ANSWER TO AMENDED COMPLAINT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED
STATE OF ALASKA
DISTRICT
2015 JUN -8 AM 11:18
CLERK TRIAL COURTS
BY: BETTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff
vs.
716 WEST FOURTH AVENUE LLC,
KOONCE PFEFFER BETTIS, INC., d/ba/
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,
Defendants.

Case No. 3AN-15-3AN-15-05969CI

AMENDED COMPLAINT

Plaintiff Alaska Building, Inc., an Alaska corporation, by and through its attorney, Law Offices of James B. Gottstein, for its claims against 716 West Fourth Avenue LLC, Koonce Pfeffer Bettis, Inc., d/b/a KPG Architects, Pfeffer Development, LLC, the Alaska Legislative Affairs Agency, and Criterion General, Inc., hereby alleges as follows.

I. Parties

1. Plaintiff Alaska Building, Inc., is an Alaska corporation (Alaska Building), has filed its biennial report and paid its corporate taxes last due, is in good standing, and is qualified in all respects to bring this action.
2. Defendant 716 West Fourth Avenue LLC is an Alaska Limited Liability Company, located in Anchorage, Alaska (716 LLC).

LAW OFFICES OF JAMES B. GOTTSSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 274-7686
FACSIMILE (907) 274-9493

3. Defendant Koonce, Pfeffer, Bettis, Inc., is an Alaska corporation, doing business as KPB Architects, located in Anchorage, Alaska (KPB).

4. Defendant Pfeffer Development, LLC, is an Alaska Limited Liability Company located in Anchorage, Alaska (Pfeffer).

5. Defendant Legislative Affairs Agency (LAA) is a State of Alaska agency.

6. Defendant Criterion General, Inc., is an Alaska corporation located in Anchorage, Alaska (Criterion).

II. Alaska Building Background

7. Plaintiff owns a combination retail and office building located at 4th and G Streets in Anchorage, Alaska, more particularly 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 Alaska Building).

8. Constructed in 1916, the Alaska Building was, along with the adjacent Empress Theatre, the first of Anchorage's concrete buildings.

9. The Alaska Building and the Empress Theatre Building were constructed with a party wall for the north 50 feet of the Empress Theatre Building's east wall, meaning that both buildings shared the wall.

10. The Alaska Building has historical significance.

11. J.B. (Jake) Gottstein purchased the Alaska Building in 1926.

12. Jake's son, Barnard Jacob (B.J.) Gottstein acquired the Alaska Building from Anna J. Gottstein, his mother and Jake Gottstein's widow, in 1972.

13. Plaintiff, which is 100% owned by James B. (Jim) Gottstein, purchased the Alaska Building from Jim's father, B.J. Gottstein, in 1995, in order to preserve the Alaska Building as long as possible.

III. Legislative Information Office Project

14. On September 19, 2013, 716 LLC entered into an agreement with LAA to

(a) demolish the existing Anchorage Legislative Information Office down to its steel frame and the Empress Theatre building, and

(b) lease a newly constructed office building to LAA for the Anchorage Legislative Information Office

(LIO Project).

15. On September 23, 2013, 716 LLC completed its purchase of the Empress Theatre (then occupied by the Anchor Pub).

16. On December 6, 2013, 716 LLC and Alaska Building entered into that certain Access, Indemnity, and Insurance Agreement, Paragraph 10 of which provides in pertinent part:

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 [Alaska Building, Inc. (ABI)] . . . 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.

IV. Count One—Illegality of LIO Project

17. Under AS 36.30, leases by the Legislative Affairs Agency are normally subject to the competitive procurement process.

18. Under AS 36.30.83 an existing lease by the Legislative Affairs Agency may be extended for up to ten years without compliance with the normal competitive procurement process if there is a minimum cost savings of at least 10 percent below the market rental value of the real property at the time the extension.

19. The LIO Project is not a lease extension.

20. The rental rate of the LIO Project is not at least 10 percent below the market rental value of the real property at the time the extension.

21. In fact, the rental rate of the LIO Project is at least twice the market rental value.

22. The LIO Project is illegal because it does not comply with AS 36.30.

V. Count Two--LIO Project Damage To Alaska Building

23. 716 LLC is the owner and lessor of the building constructed by the LIO Project.

24. Upon information and belief, KPB was/is the architect for the LIO Project

25. Upon information and belief, Pfeffer was/is the project manager for the LIO Project.

26. Criterion was/is the general contractor for the LIO Project.

27. The LIO Project caused damage to the Alaska Building of at least \$250,000.

28. The LIO Project was negligently designed, managed, or constructed, or any combination thereof, resulting in damage to the Alaska Building.

29. As one owner of the party wall, 716 LLC is obligated to maintain the party wall and not damage the Alaska Building through work impacting the party wall, and is liable to Alaska Building for any and all damage caused by the LIO Project as a result of its work impacting the party wall.

30. 716 LLC is otherwise obligated not to damage the Alaska Building and liable to Alaska Building for any damage to the Alaska Building.

31. By entering into the LIO Project, 716 LLC and LAA caused the damage to the Alaska Building.

32. Damage to the Alaska Building as a result of the LIO Project was foreseeable.

33. Damage to the Alaska Building as a result of the LIO Project was foreseen.

34. Jim Gottstein, president of the Alaska Building, Inc., advised 716 LLC (through Pfeffer, its representative), Pfeffer, and Criterion that damage to the Alaska Building was all but certain if the LIO Project proceeded.

35. Jim Gottstein attempted to convince 716 LLC to not proceed with the LIO Project because of (a) the all but certain damage to the Alaska Building that would result, and (b) the illegality of the LIO Project.

36. 716 LLC refused and proceeded with the LIO Project, resulting in damage to the Alaska Building.

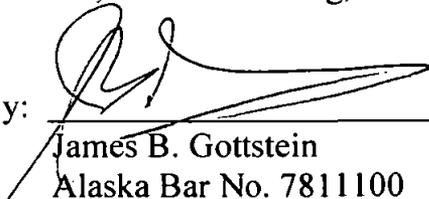
37. 716 LLC, Pfeffer, KPB, Criterion, and LAA are liable to Alaska Building, Inc., for all damage and costs to the Alaska Building caused by the LIO Project.

WHEREFORE, Plaintiff prays for the following relief:

- A. Judgment declaring the September 19, 2013, agreement between 716 West Fourth Avenue LLC and the Legislative Information Office pertaining to the LIO Project, illegal, null and void.
- B. A Judgement reforming the LIO Project lease to market value.
- C. A Judgment in favor of Alaska Building of 10% of the savings to the Legislative Affairs Agency for invalidation or reformation of the LIO Project Lease.
- D. Judgment against Pfeffer Development, LLC., 716 West Fourth Avenue LLC, Legislative Affairs Agency, and Criterion General, LLC, jointly and severally, for damage to the Alaska Building in the amount of \$250,000 or more as proved at trial.
- E. Punitive damages against 716 West Fourth Avenue LLC.
- F. Costs and attorney's fees.
- G. Such other further and additional relief as the Court find just.

DATED June 8, 2015.

Law Offices of James B. Gottstein, attorney for
Plaintiff, Alaska Building, Inc.

By: 

James B. Gottstein
Alaska Bar No. 7811100

LAW OFFICES OF JAMES B. GOTTSTEIN

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2015 MAY 14 PM 3:53

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
CLERK TRIAL COURT

THIRD JUDICIAL DISTRICT AT ANCHORAGE

DEPUTY CLERK

ALASKA BUILDING, INC., an)
 Alaska corporation,)
)
 Plaintiff,)
)
 v.)
)
 716 WEST FOURTH AVENUE LLC,)
 KOONCE PFEFFER BETTIS, INC.,)
 d/b/a KPB ARCHITECTS, PFEFFER)
 DEVELOPMENT, LLC, LEGISLATIVE)
 AFFAIRS AGENCY, and CRITERION)
 GENERAL, INC.,)
)
 Defendants.)

Case No. 3AN-15-05969 CI

PFEFFER DEVELOPMENT, LLC'S ANSWER TO COMPLAINT

Pfeffer Development, LLC answers Plaintiff's complaint as follows:

1. The allegations in paragraph 1 apply to other Defendants; however to the extent an answer is required, answering Defendant is without sufficient information to admit or deny the allegations and therefor denies same.

2. The allegations in paragraph 2 apply to other Defendants; however to the extent an answer is required, answering Defendant is without sufficient information to admit or deny the allegations and therefor denies same.

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3. The allegations in paragraph 3 are directed to other defendants. To the extent an answer is required, on information and belief, Koonce Pfeffer Bettis, Inc. is an Alaska corporation located in Anchorage.

4. The allegations in paragraph 4 are admitted.

5. The allegations in paragraph 5 apply to other Defendants; however to the extent an answer is required, answering Defendant is without sufficient information to admit or deny the allegations and therefor denies same.

6. The allegations in paragraph 6 apply to other Defendants; however to the extent an answer is required, answering Defendant is without sufficient information to admit or deny the allegations and therefor denies same.

7. On information and belief the allegations in paragraph 7 are admitted.

8. Answering defendant lacks sufficient information and belief to admit or deny the allegations in paragraph 8 and therefor denies the allegations in paragraph 8.

9. The allegations in paragraph 9 are admitted.

10. Answering defendant lacks sufficient information and belief to admit or deny the allegations in paragraph 10 and therefor denies the allegations in paragraph 10.

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11. Answering defendant lacks sufficient information and belief to admit or deny the allegations in paragraph 11 and therefor denies the allegations in paragraph 11.

12. Answering defendant lacks sufficient information and belief to admit or deny the allegations in paragraph 12 and therefor denies the allegations in paragraph 12.

13. Answering defendant lacks sufficient information and belief to admit or deny the allegations in paragraph 13 and therefor denies the allegations in paragraph 13.

14. Answering defendant lacks sufficient information and belief to admit or deny the allegations in paragraph 14 and therefor denies the allegations in paragraph 14.

15. Answering defendant lacks sufficient information and belief to admit or deny the allegations in paragraph 15 and therefor denies the allegations in paragraph 15.

16. The allegations contained in paragraph 16 are directed to other defendants and thus require no answer from answering defendant; however to the extent an answer is required, answering defendant admits paragraph 16 accurately describes the first paragraph of section 10 of the Access, Insurance and Indemnity Agreement.

17. The allegations in paragraph 17 are directed to other defendants and also allege legal conclusions to which no answer

is required; however to the extent an answer is required the allegations are denied.

18. The allegations in paragraph 18 are directed to other defendants and also allege legal conclusions to which no answer is required; however to the extent an answer is required the allegations are denied.

19. The allegations in paragraph 19 are directed to other defendants and also allege legal conclusions to which no answer is required; however to the extent an answer is required the allegations are denied.

20. The allegations in paragraph 20 are directed to other defendants and also allege legal conclusions to which no answer is required; however to the extent an answer is required the allegations are denied.

21. The allegations in paragraph 21 are directed to other defendants and also allege legal conclusions to which no answer is required; however to the extent an answer is required the allegations are denied.

22. The allegations in paragraph 22 are directed to other defendants and also allege legal conclusions to which no answer is required; however to the extent an answer is required the allegations are denied.

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23. The allegations in paragraph 23 are directed to other defendants; however to the extent an answer is required, answering defendant admits 716 West Fourth Avenue LLC is the owner/lessor of the building.

24. The allegations in paragraph 24 are directed to other defendants; however to the extent an answer is required, on information and belief KPB Architects was an architect on the LIO project.

25. Answering defendant admits Pfeffer Development provided project management services on the project. The remaining allegations in paragraph 25 are denied.

26. The allegations in paragraph 26 are directed to other defendants; however to the extent an answer is required, on information and belief, Criterion provided general contractor services for the LIO project.

27. The allegations in paragraph 27 are denied.

28. The allegations in paragraph 28 allege legal conclusions for which no answer is required; however to the extent an answer is required, the allegations are denied.

29. The allegations in paragraph 29 are directed to other defendants; however to the extent an answer is required, answering defendant lacks sufficient information to admit or deny the allegations and therefor denies same.

30. The allegations in paragraph 30 are directed to other defendants; however to the extent an answer is required, answering defendant lacks sufficient information to admit or deny the allegations and therefor denies same.

31. The allegations in part are directed to other defendants and answering defendant lacks sufficient information to admit or deny same and thus denies same. To the extent the allegations allege allegations against answering defendant, the allegations are denied.

AFFIRMATIVE DEFENSES

1. The complaint in whole or in part fails to state a claim for relief.
2. Plaintiff has failed to mitigate its damages.
3. To the extent plaintiff suffered any damages, they may be due in whole or in part due to its comparative negligence.
4. To the extent plaintiff suffered any damages, they may be due in whole or in part to the negligence of other parties or other entities or persons who have not been joined in the action.
5. Plaintiff's claims may be reduced by the doctrines of waiver, estoppel, laches and unclean hands.
6. The claims are barred by lack of privity.
7. The claims are barred by accord and satisfaction.

8. Answering defendant reserves the right to assert additional affirmative defenses as discovery and further investigation reveals.

PRAYER FOR RELIEF

Defendant requests the following relief:

1. That the case against answering defendant be dismissed in its entirety and judgment be entered in favor of Pfeffer Development, LLC.

2. That the court award Pfeffer Development, LLC its attorney's fees and costs.

3. For such other relief as the court deems just under the circumstances.

DATED this 14 day of May, 2015, at Anchorage, Alaska.

DELANEY WILES, INC.
Attorneys for Defendant
Pfeffer Development, LLC



Cynthia L. Ducey
Alaska Bar Assoc. No. 8310161

DELANEY WILES, INC.
SUITE 400
1007 WEST 3rd AVENUE
ANCHORAGE, ALASKA
99501
(907) 279-3581
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CERTIFICATE OF SERVICE

This certifies that I am an authorized agent of Delaney Wiles, Inc., for service of papers pursuant to Civil Rule 5, and that on this 14th day of May, 2015, a copy of the foregoing document was served by first class mail upon:

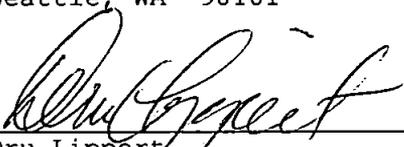
James B. Gottstein
Law Offices of James B. Gottstein
406 G St., Ste. 206
Anchorage, AK 99501

Jeffrey W. Robinson
Ashburn & Mason, PC
1227 W. 9th Ave., Ste. 200
Anchorage, AK 99501

Daniel T. Quinn
Richmond & Quinn
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Seattle, WA 98101



Dru Lippert
4832-1593-4500, v. 1

DELANEY WILES, INC.
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FILED
STATE OF ALASKA
THIRD DISTRICT

2015 MAY -6 PM 3:44

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

CLERK OF COURT

THIRD JUDICIAL DISTRICT AT ANCHORAGE

DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska)
corporation,)
))
Plaintiff,)
))
v.)
))
716 WEST FOURTH AVENUE, LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)
))
Defendants.)

Case No. 3AN-15-05969 CI

ANSWER

COMES NOW defendant, Koonce Pfeffer Bettis, Inc. d/b/a KPB Architects, by and through counsel, Richmond & Quinn, and for answer to plaintiff's complaint admits, denies and alleges as follows:

1. With regard to paragraph 1 of plaintiff's complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

LAW OFFICES
RICHMOND & QUINN
A PROFESSIONAL CORPORATION
360 K STREET, SUITE 200
ANCHORAGE, ALASKA 99501-2038
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D

2. With regard to paragraph 2 of plaintiff's complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

3. With regard to paragraph 3 of plaintiff's complaint, answering defendant admits the allegations contained therein.

4. With regard to paragraph 4 of plaintiff's complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

5. With regard to paragraph 5 of plaintiff's complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

6. With regard to paragraph 6 of plaintiff's complaint, answering defendant admits the allegations contained therein.

7. With regard to paragraph 7 of plaintiff's complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

8. With regard to paragraph 8 of plaintiff's complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

9. With regard to paragraph 9 of plaintiff's complaint, answering defendant admits the allegations that the two buildings shared the wall, but lacks sufficient information to form a belief as to the truth of the remaining allegations contained therein.

10. With regard to paragraph 10 of plaintiff's complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

11. With regard to paragraph 11 of plaintiff's complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

12. With regard to paragraph 12 of plaintiff's complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

13. With regard to paragraph 13 of plaintiff's complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

14. With regard to paragraph 14 of plaintiff's complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

15. With regard to paragraph 15 of plaintiff's complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

16. With regard to paragraph 16 of plaintiff's complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

17. With regard to paragraph 17 of plaintiff's complaint, the allegations contain legal conclusions to which no responsive answer is required, and on that basis, denies those allegations.

18. With regard to paragraph 18 of plaintiff's complaint, the allegations contain legal conclusions to which no responsive answer is required, and on that basis, denies those allegations.

19. With regard to paragraph 19 of plaintiff's complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

20. With regard to paragraph 20 of plaintiff's complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

21. With regard to paragraph 21 of plaintiff's complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

22. With regard to paragraph 22 of plaintiff's complaint, the allegations contain legal conclusions to which no responsive answer is required, and on that basis, denies those allegations.

23. With regard to paragraph 23 of plaintiff's complaint, answering defendant admits the allegations contained therein.

24. With regard to paragraph 24 of plaintiff's complaint, answering defendant admits the allegations contained therein.

25. With regard to paragraph 25 of plaintiff's complaint, answering defendant admits the allegations contained therein.

26. With regard to paragraph 26 of plaintiff's complaint, answering defendant admits the allegations contained therein.

27. With regard to paragraph 27 of plaintiff's complaint, answering defendant denies the allegations contained therein.

28. With regard to paragraph 28 of plaintiff's complaint, answering defendant denies the allegations contained therein.

29. With regard to paragraph 29 of plaintiff's complaint, the allegations contain legal conclusions to which no responsive answer is required, and on that basis, denies those allegations.

30. With regard to paragraph 30 of plaintiff's complaint, the allegations contain legal conclusions to which no responsive answer is required, and on that basis, denies those allegations.

31. With regard to paragraph 31 of plaintiff's complaint, answering defendant denies the allegations contained therein.

AFFIRMATIVE AND ADDITIONAL DEFENSES

By way of further answer and by way of:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to state a claim for relief.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate its damages, if any.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's own conduct was comparatively negligent and such conduct should serve to reduce its damages, if any.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, are a result of pre-existing conditions in the building and not a result of construction activities.

FIFTH AFFIRMATIVE DEFENSE

Some or all of plaintiff's claims are barred by the applicable statute of limitations and/or laches.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's recovery, if any, should be reduced by fault of parties other than defendants.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims may be barred by a lack of privity.

FURTHER AFFIRMATIVE DEFENSES

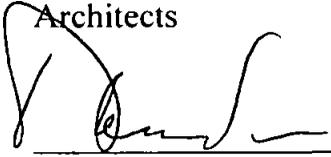
Defendant reserves the right to assert whatever other affirmative defenses and/or counterclaims that may become available as discovery progresses.

WHEREFORE, having answered the plaintiff's complaint, defendant prays that the same be dismissed with prejudice; that plaintiff takes nothing from defendant; that defendant be awarded its costs and attorney's fees incurred in defending this action; and for such other and further relief as this court deems just and equitable.

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FAX (907) 276-2953

DATED this 6th day of May, 2015, at Anchorage, Alaska.

RICHMOND & QUINN
Attorneys for Defendant
Koonce Pfeffer Bettis, Inc. d/b/a KPB
Architects

By: 

Daniel T. Quinn
Alaska Bar No. 8211141

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct
copy of the foregoing was served by mail this
6th day of May, 2015, on:

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501

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Delaney Wiles, Inc.
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Kevin M. Cuddy
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Mark P. Scheer
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Jeffrey W. Robinson
Ashburn & Mason
1227 W. 9th Avenue, Suite 200
Anchorage, AK 99501


RICHMOND & QUINN

520.002\PLD\Answer

Answer
Alaska Building, Inc. v. KPB Architects, et al., Case No. 3AN-15-05969 CI
Page 8 of 8

2015 MARCH 25 PM 4:25

CLERK TRIAL COURTS

ALASKA BUILDING, INC., an Alaska corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

716 WEST FOURTH AVENUE, LLC'S ANSWER TO COMPLAINT

Defendant 716 West Fourth Avenue, LLC, by and through its attorney, Jeffrey W. Robinson of Ashburn & Mason, P.C., hereby answers Plaintiff's Complaint as follows:

ANSWER

I. Parties

1. On information and belief, Defendant admits that Alaska Building Inc. ("ABI") filed a biennial report in 2014, and as of May 1, 2015 is in good standing with the State of Alaska Department of Commerce, but denies the remaining allegations of this paragraph.

2. Defendant admits that 716 West Fourth Avenue is an Alaska Limited Liability Company.

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LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

3. Paragraph 3 of the Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, on information and belief, Koonce Pfeffer Bettis, Inc. is an Alaska corporation located in Anchorage, Alaska.

4. Paragraph 4 of the Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, on information and belief, Pfeffer Development, LLC, is an Alaska Limited Liability Company located in Anchorage, Alaska.

5. Paragraph 5 of the Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, on information and belief, the Legislative Affairs Agency is an agency of the State of Alaska.

6. Paragraph 6 of the Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, on information and belief, Criterion General, Inc., is an Alaska corporation located in Anchorage, Alaska.

II. Alaska Building Background

7. Defendant incorporates by reference its answers to paragraphs 1 through 6. Defendant admits that plaintiff owns the Alaska Building.

8. Defendant lacks sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 8 of the Complaint and therefore denies the allegations in this paragraph.

9. Defendant admits the two buildings shared a party wall, but otherwise denies the remainder of the allegations contained in this paragraph.

716 WEST FOURTH AVENUE, LLC'S ANSWER TO COMPLAINT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

10. Defendant lacks knowledge or information sufficient to form a belief about the historical significance of the Alaska Building and therefore denies the allegation contained in paragraph 10 of the complaint.

11. Defendant lacks knowledge or information sufficient to form a belief about the purchase of the Alaska Building in 1926 and therefore denies this allegation.

12. Defendant lacks knowledge or information sufficient to form a belief about the ownership of the building in 1972 and therefore denies this allegation.

13. Defendant lacks knowledge or information sufficient to form a belief as to the chain of title and intent of the purchase of the Alaska Building and therefore denies this allegation.

III. Legislative Information Office Project

14. Defendant incorporates by reference its answers to paragraphs 1 through 13. Defendant admits that the LAA entered into a 10-year lease extension and amendment for the Anchorage LIO with its Lessor, Defendant, and that the agreement provided for expansion and renovation of the LIO. Otherwise, Defendant denies the remainder of paragraph 14.

15. Defendant admits the allegations contained in this paragraph.

16. Defendant admits that paragraph 16 of the Complaint accurately describes the first paragraph of Section 10 of the Access, Indemnity, and Insurance Agreement between Defendant and Plaintiff.

716 WEST FOURTH AVENUE, LLC'S ANSWER TO COMPLAINT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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IV. Count One –Illegality of LIO Project

17. Defendant incorporates by reference its answers to paragraphs 1 through 16. Defendant objects that the allegation in paragraph 17 calls for a legal conclusion. To the extent an answer is required, it is denied.

18. Defendant objects that the allegations in paragraph 18 call for a legal conclusion. To the extent an answer is required, it is denied.

19. Defendant objects that the allegation in paragraph 19 calls for a legal conclusion. To the extent an answer is required, Defendant denies the allegation.

20. Defendant objects that the allegation in paragraph 20 calls for a legal conclusion. To the extent an answer is required, Defendant denies the allegations of this paragraph.

21. Defendant denies the allegations of this paragraph.

22. Defendant objects that the allegation in paragraph 22 calls for a legal conclusion. To the extent an answer is required, Defendant denies the allegation.

V. Count Two-LIO Project Damage to Alaska Building

23. Defendant incorporates by reference its answers to paragraphs 1 through 22. Defendant admits it is the owner and lessor of the LIO building but otherwise denies the remainder of the allegations of this paragraph.

716 WEST FOURTH AVENUE, LLC'S ANSWER TO COMPLAINT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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24. Paragraph 24 of the Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, on information and belief, KPB was an architect providing services for the LIO Project.

25. Paragraph 25 of the Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, on information and belief, Pfeffer Development provided project management services for the LIO Project.

26. Paragraph 26 of the Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, on information and belief, Criterion provided general contractor services for the LIO Project.

27. Defendant denies the allegations of Paragraph 27.

28. Defendant denies the allegations of Paragraph 28.

29. Defendant objects that the allegations in paragraph 29 call for a legal conclusion. To the extent a response is required, defendant denies the allegations of this paragraph.

30. Defendant objects that the allegations in paragraph 30 call for a legal conclusion. To the extent a response is required, defendant denies the allegations of this paragraph.

31. Defendant denies the allegations of Paragraph 31.

RESPONSE TO PRAYER FOR RELIEF

To the extent that the prayer for relief in the Complaint requires an answer, defendant denies them all.

716 WEST FOURTH AVENUE, LLC'S ANSWER TO COMPLAINT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim upon which relief may be granted.
2. Plaintiff may have failed in whole or in part to mitigate, minimize, or avoid the damages allegedly sustained, and any recovery must be reduced by that amount.
3. Plaintiff's damages, if any, may have been proximately caused in whole or in part by the actions and/or negligence of the Plaintiff. Plaintiff's recovery, if any, should be reduced in proportion to the percentage of Plaintiff's and/or other third parties' fault.
4. Plaintiff's recovery should be reduced by the comparative fault of persons other than defendant.
5. Plaintiff's claims are barred by waiver, estoppel, and/or release,
6. Plaintiff's recovery is barred by the doctrine of accord and satisfaction.
7. Plaintiff's claims are barred by bad faith, unclean hands, and/or other inequitable conduct.
8. Plaintiff's claims may be barred by the doctrine of lack of privity.
9. Plaintiff's claims may be barred by the doctrine of laches.

716 WEST FOURTH AVENUE, LLC'S ANSWER TO COMPLAINT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 4th day of May 2015, on:

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501

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Scheer & Zehnder LLP
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ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

716 WEST FOURTH AVENUE, LLC'S ANSWER TO COMPLAINT
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

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1 Mark P. Scheer, Bar No. 8807153
2 SCHEER & ZEHNDER, LLP
3 701 Pike Street, Suite 2200
4 Seattle, WA 98101
5 Telephone: (206) 262-1200
6 Facsimile: (260) 223-4065
7 E-Mail: mscheer@scheerlaw.com

FILED
STATE OF ALASKA
THIRD DISTRICT
2015 MAY -4 AM 11:23
CLERK TRIAL COURTS

5 IN THE SUPERIOR COURT OF THE STATE OF ALASKA
6 THIRD JUDICIAL DISTRICT, AT ANCHORAGE

BY
DEPUTY CLERK

7 ALASKA BUILDING, INC., an Alaska
8 corporation,

9 Plaintiff,

10 v.

11 716 WEST FOURTH AVENUE LLC,
12 KOONCE PFEFFER BETTIS, INC., d/b/a
13 KP ARCHITECTS, PFEFFER
14 DEVELOPMENT, LLC, LEGISLATIVE
15 AFFAIRS AGENCY, and CRITERION
16 GENERAL, INC.,

17 Defendants.

NO. 3AN-15-05969CI

18 **DEFENDANT CRITERION GENERAL, INC.'S ANSWER
19 AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

20 Defendant Criterion General, Inc., by and through its attorneys, Scheer & Zehnder,
21 LLP, submits its Answer and Affirmative Defenses to plaintiff's Complaint by admitting,
22 denying, and alleging as follows:

23 **ANSWER**

24 1. Defendant objects that the allegations in paragraph 1 of the Complaint call for
25 a legal conclusion. Otherwise, defendant admits that plaintiff is an Alaska corporation which
26 filed a biennial report in 2014, and as of the date of this pleading is in good standing with the
State of Alaska Department of Commerce.

DEFENDANT CRITERION GENERAL, INC.'S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT - Page 1

SCHEER & ZEHNDER LLP
701 PIKE STREET, SUITE 2200
SEATTLE, WA 98101
P: (206) 262-1200 F: (206) 223-4065

1 2. Paragraph 2 of the Complaint is not directed to this answering defendant, and
2 therefore no response is required. To the extent a response is required, this answering
3 defendant lacks sufficient knowledge and information to form a belief as to the truth of the
4 allegations in paragraph 2 of the Complaint and therefore denies the same.

5 3. Paragraph 3 of the Complaint is not directed to this answering defendant, and
6 therefore no response is required. To the extent a response is required, this answering
7 defendant lacks sufficient knowledge and information to form a belief as to the truth of the
8 allegations in paragraph 3 of the Complaint and therefore denies the same.

9 4. Paragraph 4 of the Complaint is not directed to this answering defendant, and
10 therefore no response is required. To the extent a response is required, this answering
11 defendant lacks sufficient knowledge and information to form a belief as to the truth of the
12 allegations in paragraph 4 of the Complaint and therefore denies the same.

13 5. Paragraph 5 of the Complaint is not directed to this answering defendant, and
14 therefore no response is required. To the extent a response is required, this answering
15 defendant lacks sufficient knowledge and information to form a belief as to the truth of the
16 allegations in paragraph 5 of the Complaint and therefore denies the same.

17 6. Defendant admits the allegations in paragraph 6 of the Complaint.

18 7. Defendant admits the allegations in paragraph 7 of the Complaint.

19 8. Paragraph 8 of the Complaint is not directed to this answering defendant, and
20 therefore no response is required. To the extent a response is required, this answering
21 defendant lacks sufficient knowledge and information to form a belief as to the truth of the
22 allegations in paragraph 8 of the Complaint and therefore denies the same.
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9. Defendant admits the allegations in paragraph 9 of the Complaint.

10. Paragraph 10 of the Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, this answering defendant lacks sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 10 of the Complaint and therefore denies the same.

11. Paragraph 11 of the Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, this answering defendant lacks sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 11 of the Complaint and therefore denies the same.

12. Paragraph 12 of the Complaint is not directed to this answering defendant, and therefore no response is required. To the extent a response is required, this answering defendant lacks sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 12 of the Complaint and therefore denies the same.

13. Defendant lacks sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 13 of the Complaint and therefore denies them.

14. Defendant lacks sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 14 of the Complaint and therefore denies them.

15. Defendant lacks sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 15 of the Complaint and therefore denies them.

16. Defendant admits the allegations in paragraph 16 of the Complaint to the extent that paragraph 10 of the Access, Indemnity, and Insurance Agreements states what is quoted in the Complaint. Otherwise, defendant lacks sufficient knowledge and information

1 to form a belief as to the truth of the allegations in paragraph 16 of the Complaint and
2 therefore denies them.

3 17 – 22. Paragraphs 17-22 of the Complaint are not directed to this answering
4 defendant, and therefore require no response. To the extent a response is required, defendant
5 objects as these paragraphs call for a legal conclusion, and this answering defendant lacks
6 sufficient knowledge and information to form a belief as to the truth of the allegations and
7 therefore denies the same.
8

9 23. Paragraph 23 of the Complaint is not directed to this answering defendant, and
10 therefore no response is required. To the extent a response is required, this answering
11 defendant lacks sufficient knowledge and information to form a belief as to the truth of the
12 allegations in paragraph 23 of the Complaint and therefore denies the same.
13

14 24. Paragraph 24 of the Complaint is not directed to this answering defendant, and
15 therefore no response is required. To the extent a response is required, this answering
16 defendant lacks sufficient knowledge and information to form a belief as to the truth of the
17 allegations in paragraph 24 of the Complaint and therefore denies the same.
18

19 25. Paragraph 25 of the Complaint is not directed to this answering defendant, and
20 therefore no response is required. To the extent a response is required, this answering
21 defendant lacks sufficient knowledge and information to form a belief as to the truth of the
22 allegations in paragraph 25 of the Complaint and therefore denies the same.

23 26. Defendant admits the allegations in paragraph 26 of the Complaint.

24 27. Defendant denies the allegations in paragraph 27 of the Complaint.

25 28. Defendant denies the allegations in paragraph 28 of the Complaint.
26

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington, that the following is true and correct:

I am employed by the law firm of Scheer & Zehnder LLP.

At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

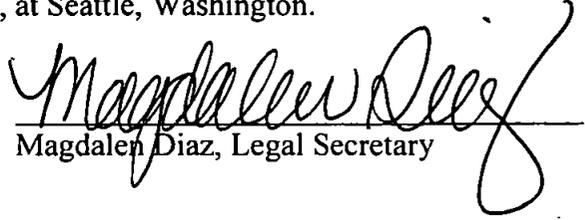
On the date set forth below I served the document(s) to which this is attached, in the manner noted on the following person(s):

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
<u>Counsel for Plaintiff</u> James B. Gottstein Law Offices of James B. Gottstein 406 G Street, Suite 206 Anchorage, AK 99501	(X) Via U.S. Mail () Via Legal Messenger (X) Via E-Mail () Via Overnight Mail
<u>Counsel for Defendant</u> <u>716 West Fourth Avenue LLC</u> Jeffrey W. Robinson Ashburn & Mason P.C. 1227 West 9th Avenue, Suite 200 Anchorage, Alaska 99501-5914	(X) Via U.S. Mail () Via Legal Messenger (X) Via E-Mail () Via Overnight Mail
<u>Counsel for Defendant</u> <u>Pfeffer Development, LLC</u> Cynthia L. Ducey Delaney Wiles 1007 W. 3rd Avenue, Suite 400 Anchorage, AK 99501	(X) Via U.S. Mail () Via Legal Messenger (X) Via E-Mail () Via Overnight Mail

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<u>Counsel for Defendant</u> <u>Legislative Affairs Agency</u> Kevin M. Cuddy Stoel Rives LLP 510 'L' St., Suite 500 Anchorage, AK 99501	<input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Legal Messenger <input checked="" type="checkbox"/> Via E-Mail <input type="checkbox"/> Via Overnight Mail
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DATED this 29th day of April, 2015, at Seattle, Washington.


Magdalen Diaz, Legal Secretary

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

STATE OF ALASKA
THIRD JUDICIAL DISTRICT
ANCHORAGE
MAR 31 PM 1:20
FILED
BY *UC*

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC,
KOONCE PFEFFER BETTIS, INC., d/ba/
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No. 3AN-15- 5969 CI

COMPLAINT

Plaintiff Alaska Building, Inc., an Alaska corporation, by and through its attorney, Law Offices of James B. Gottstein, for its claims against 716 West Fourth Avenue LLC, Koonce Pfeffer Bettis, Inc., d/b/a KPG Architects, Pfeffer Development, LLC, the Alaska Legislative Affairs Agency, and Criterion General, Inc., hereby alleges as follows.

I. Parties

1. Plaintiff Alaska Building, Inc., is an Alaska corporation (Alaska Building), has filed its biennial report and paid its corporate taxes last due, is in good standing, and is qualified in all respects to bring this action.

2. Defendant 716 West Fourth Avenue LLC is an Alaska Limited Liability Company, located in Anchorage, Alaska (716 LLC).

LAW OFFICES OF JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA 99501
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3. Defendant Koonce, Pfeffer, Bettis, Inc., is an Alaska corporation, doing business as KPB Architects, located in Anchorage, Alaska (KPB).

4. Defendant Pfeffer Development, LLC, is an Alaska Limited Liability Company located in Anchorage, Alaska (Pfeffer).

5. Defendant Legislative Affairs Agency is a State of Alaska agency.

6. Defendant Criterion General, Inc., is an Alaska corporation located in Anchorage, Alaska (Criterion).

II. Alaska Building Background

7. Plaintiff owns a combination retail and office building located at 4th and G Streets in Anchorage, Alaska, more particularly 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.

(Alaska Building).

8. Constructed in 1916, the Alaska Building was, along with the adjacent Empress Theatre, the first of Anchorage's concrete buildings.

9. The Alaska Building and the Empress Theatre Building were constructed with a party wall for the north 50 feet of the Empress Theatre Building's east wall, meaning that both buildings shared the wall.

10. The Alaska Building has historical significance.

11. J.B. (Jake) Gottstein purchased the Alaska Building in 1926.

12. Jake's son, Barnard Jacob (B.J.) Gottstein acquired the Alaska Building from Anna J. Gottstein, his mother and Jake Gottstein's widow, in 1972.

13. Plaintiff, which is 100% owned by James B. (Jim) Gottstein, purchased the Alaska Building from Jim's father, B.J. Gottstein, in 1995, in order to preserve the Alaska Building as long as possible.

III. Legislative Information Office Project

14. On September 19, 2013, 716 LLC entered into an agreement with the Legislative Affairs Agency to (a) demolish the existing Anchorage Legislative Information Office down to its steel frame and the Empress Theatre building and (b) lease a newly constructed office building to the Legislative Affairs Agency for the Anchorage Legislative Information Office (LIO Project).

15. On September 23, 2013, 716 LLC completed its purchase of the Empress Theatre (then occupied by the Anchor Bar).

16. On December 6, 2013, 716 LLC and Alaska Building entered into that certain Access, Indemnity, and Insurance Agreement, Paragraph 10 of which provides in pertinent part:

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 [Alaska Building, Inc. (ABI)] . . . 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.

IV. Count One—Illegality of LIO Project

17. Under AS 36.30, leases by the Legislative Affairs Agency are normally subject to the competitive procurement process.

18. Under AS 36.30.83 an existing lease by the Legislative Affairs Agency may be extended for up to ten years without compliance with the normal competitive procurement process if there is a minimum cost savings of at least 10 percent below the market rental value of the real property at the time the extension.

19. The LIO Project is not a lease extension.

20. The rental rate of the LIO Project is not at least 10 percent below the market rental value of the real property at the time the extension.

21. In fact, the rental rate of the LIO Project is at least twice the market rental value.

22. The LIO Project is illegal because it does not comply with AS 36.30.

V. Count Two--LIO Project Damage To Alaska Building

23. 716 LLC is the owner and lessor of the building constructed by the LIO Project.

24. Upon information and belief, KPB was/is the architect for the LIO Project

25. Upon information and belief, Pfeffer was/is the project manager for the LIO Project.

26. Criterion was/is the general contractor for the LIO Project.

27. The LIO Project caused damage to the Alaska Building of at least \$250,000.

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28. The LIO Project was negligently designed, managed, or constructed, or any combination thereof, resulting in damage to the Alaska Building.

29. As one owner of the party wall, 716 LLC is obligated to maintain the party wall and not damage the Alaska Building through work on the party wall, and is liable to Alaska Building for any and all damage caused by the LIO Project as a result of its work on the party wall.

30. 716 LLC is otherwise obligated not to damage the Alaska Building and liable to Alaska Building for any damage to the Alaska Building.

31. 716 LLC, Pfeffer, KPB, and Criterion are liable to Alaska Building for all damage and costs to the Alaska Building caused by the LIO Project.

WHEREFORE, Plaintiff prays for the following relief:

A. Judgment declaring the September 19, 2013, agreement between 716 West Fourth Avenue LLC and the Legislative Information Office pertaining to the LIO Project, illegal, null and void.

B. A Judgement reforming the LIO Project lease to market value.

C. A Judgment in favor of Alaska Building of 10% of the savings to the Legislative Affairs Agency for invalidation or reformation of the LIO Project Lease.

D. Judgment against Pfeffer Development, LLC., 716 West Fourth Avenue LLC, and Criterion General, LLC, jointly and severally, for damage to the Alaska Building in the amount of \$250,000 or more as proved at trial.

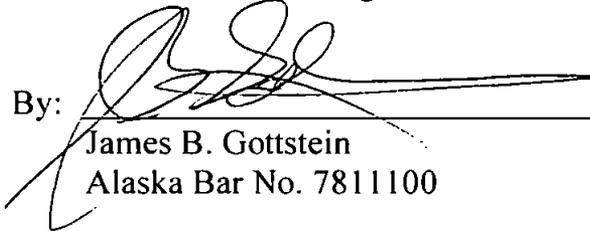
E. Punitive damages against 716 West Fourth Avenue LLC.

F. Costs and attorney's fees.

G. Such other further and additional relief as the Court find just.

DATED March 31, 2015.

Law Offices of James B. Gottstein, attorney for
Plaintiff, Alaska Building, Inc.

By: 

James B. Gottstein
Alaska Bar No. 7811100

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In the Superior Court at Anchorage Alaska

Media No: 301

Judge: P. McKay

Date: Tuesday, March 22, 2016

Clerk: R. Usry

Case No: 3AN-15-05969CI

Case Title: Alaska Building Inc.

Vs.

716 West 4th Ave LLC et al

Type of Proceeding: Oral Argument re: partial SJM

Counsel Present:

Plaintiff: James Gottstein – attorney present w/out client
Defendant: Jeffrey Robinson – attorney present w/out client
Kevin Cuddy – attorney present w/out client

Court Orders: Pre-set Trial call on August 3rd, 2016 @ 3:30pm and trial week of August 15th, 2016 – remains
Matter is taken under advisement

Summary of Proceedings:

2:31:28 PM

On Record
Court identifies case and parties

COURT:

We are here for a partial summary judgment on the motion for the lease extension

2:31:49 PM

Mr. Gottstein

- Cites statute
- There has been a lot of attention given to the issue in regards to . . . but this motion is about the agreement extends a real property lease
- We raised a point that the LAA did raise an issue that . . . and they filed a response to the question which I would character that . . . the claim that the Alaska Building LLC did raise is . . .
- On page 2, it reads . . . (reads from)

2:34:06 PM

COURT:

I believe that the legislature had conceded the effect . . . and can issue a decision

Mr. Gottstein

- The agreement called for the demolition of the old building and construct a building while the tenant vacated the building for over a year
 - The LAA doesn't really dispute that characterization of the fact
 - One of the things that they did say on page 11 of their opposition is that they are renting the same space but I wouldn't consider it to be new space
 - It was an agreement to construct a building and then . . .
- 2:36:19 PM
- It didn't merely extend the time; the original lease had 45 sections and 34 of them were replaced or deleted and restated
 - The rent was increased for per square footage rent; the lease went to 64,000 gross square feet and the operating costs were increased
 - Think just reading the statute on its own, is pretty clear but if you look at the history and

the reason for the statute was . . . and therefore the landlord could give a break on the rent and the history contemplated that this was existing space

- With respect to Laches, I think that this court has declared that the lease be . . .

2:38:50 PM

Mr. Cuddy

- Think that the court already gets it in terms of the inquiry that there is a finer point on the sword . . . but we do accept that the court has the ability to . . .

2:40:19 PM

- There are a number of potential preliminary findings that the court could find
- Do agree with the first half of Mr. Gottstein's argument in regards to a lease extension
- We are left with the question of whether or not, it does extend
- There is a sliding scale that is discussed in the trial brief that . . . and we believe that both parts here are compelling in . . .
- Mr. Gottstein has already quoted the Black's Law definition of extend and . . .
- The legislative history does confirm 3 characteristics for . . . and its talk about the same landlord, same space and any modifications to the land

2:43:12 PM

- On page 4-5 of Exhibit 1 to the plaintiff's motion talks about landlords . . .

COURT:

What about the addition of 712, does this not come into at all

Mr. Cuddy

- The second point does talk about avoiding the need for relocation but that highlights the same idea for the same space
- The LAA did need to leave the space because the scope of the modification was . . .
- The third piece as to this modification is also discussed . . .
- The same consideration does apply here; some changes are contemplated here
- With every lease renewal, there was going to be need some change like less or more parking or changing the shape what is going on in the building

2:45:05 PM

COURT:

Are you saying that there is no limit on the modifications, whatsoever

Can you argue that you rented a parking space and then modified it to a parking garage . . .

Mr. Cuddy

- You are talking about the change of one parking space to a parking garage but we are talking about a building that did get bigger
- These procurement procedures are to be used to comply with the needs of the legislative
- We will need to have modifications to the building as things change

2:47:26 PM

COURT:

You are saying that if 716 owned another building next door then . . . part of it is the same legal description

Mr. Cuddy

- This was a rare instance when the legislative had a choice in regards to the building
- Under section 40, there are material modifications that are permitted; we are expanding the footprint modestly
- We are growing a building to figure out those needs . . . those determinations of the procurement officer in establishing the needs of the legislative to . . . and included the change of the lease, those sort of modifications are . . .
- There are no limits expressed in the cited statute and we think that it would be an unfortunate and dangerous precedent to . . . and changes are expected under the statute and are required in making sure that it is going to be that 10% below market value

2:50:18 PM

- The parties' intent and the language of the transaction is . . . (reads from document)
- Have addressed some of the changes that have gone on

(pause)

2:52:11 PM

Mr. Robinson

- 716 was a contract to the party and . . . we did rely on the procurement decision

COURT:

You are telling me that you aren't bound to the commission and that we can decide this only under the statute

Mr. Robinson

- In order to get to the analysis, we have to go through a different statute that . . .

2:54:43 PM

COURT:

It does make sense to the court already

Mr. Robinson

- Setting aside the statutes, why this never the less is a valid extension then . . .
- The agencies' decision to extend the lease was proper under the procurement code
- The lease extension in this case did not happen in a vacuum; it was understood that the lease couldn't be extended without any modification

2:56:33 PM

- the counsel then issued an RFI in May 2013 to fully assess any other building to . . .
- in the June 7th, 2013 meeting this is where things progressed
- in the meetings of the 6/7/2013, Representative Hawker talked about . . . not wanting new construction and the counsel determined that the space being offered were inadequate to meet its own needs

2:58:40 PM

- pursuant to that meeting, Representative Hawker made 4 different motions but the one that is important is the modification for section 42 of the lease
- that motion passed without fail and there were other modifications that could be considered material but . . .

3:00:02 PM

- the second modification allowed with amendment 12 to allow for material modifications with 6 things that needed to be looked for
- the second finding was that Representative Hawker had to find that the . . . and without the modification, then the lease wouldn't be . . .
- the Legislative counsel made the decision that . . . and if you read the minutes from the meeting, you would find that there were issues

3:03:09 PM

- this lease was entered into in 2004. . . and it was decided that the growth in staff was . . .
- they found that the two responses was . . . and this is incorporated in the first page of the lease
- the legislative council decided what the needs of the council were at the time and decided that they wanted to extend the lease and they decided that the property adjacent was . . .
- they decided that the property provided central access for people to meet, it was close to hotels and there was dedicated parking
- reads quote from Representative Hawker

3:05:30 PM

- the only requirement after having going over that process is a 10% cost savings issue
- one of the powers of the council is to exercise control of . . .

3:07:50 PM

- the other motion was to authorize Mr. Hawker to negotiate all terms of the extension
- they have followed and adapted the needs of the legislature and because they did, it can't be ignored that it was done
- let's look at the actual terms of the lease and the first place that we look at to see if this is a lease extension is by the name

3:09:38 PM

- cites statute
- even leaving all of the history and the decisions made, it is very clear an extension of the lease
- the intent of the parties is clearly within the body of the lease itself; there is nothing prohibited about adding additional space

3:11:18 PM

- there is some trust that the council will go through an appropriate process to . . .
- we have the title of the lease being an extension and we have the actions of the parties which is continued payments of the lease extension
- the fundamental principle is . . . and that is why they decided to try the 10% to the market rate instead of the . . .

3:13:15 PM

- under the terms of lease, we needed to produce the building and . . .
- one case in which I do disagree with is the Senner case out of Maryland
- cites statute

3:15:15 PM

- it would be a big mistake if the court overlooked the steps at 6/13 meeting and Hawker's findings were at least 9 pages

COURT:

What are the material facts that you think are issue here

Mr. Robinson

- there was the foundation and the steel outputs

COURT:

There is no dispute that there was steel structure . . . what is the disputed material issue of fact

Mr. Robinson

3:17:44 PM

- think that it would be fair game to figure out why there was the 9 pages were done
- think that the court should defer to the final . . .
- If the court is only to look at this in terms of the extension but . . . there was a very comprehensive project that took all of this into consideration

COURT:

You are basically saying that if the legislative council did . . .

Mr. Robinson

- Think that those procurement findings are in there for a reason

3:20:11 PM

Mr. Gottstein

- Mr. Robinson stated that . . .
- There is no independent constitutional amendment for . . .
- The paradigm for procurement of space is a public bidding process and there was an exception for the legislative council to bypass that

COURT:

They are saying that there is no limits to the modifications and . . .

Mr. Gottstein

- Demolishing the building and building a whole new one is not an extension

COURT:

LAA says that they go to the statute and 716 says that . . . they are saying that the court can't decide it because . . .

3:23:30 PM

Mr. Gottstein

- If you look at the Baker Vs. Carr factors then . . .

COURT:

They authorized payment under this lease and the council did authorize Mr. Hawker to do it

Mr. Gottstein

- This is not the kind of issue that is not susceptible to judicial determination

COURT:

You are saying that I ignore what the legislative did here and just look at the document and . . .

Mr. Gottstein

- You could characterize it that way
- The only other thing that I would say is that opposing counsel assert that if it is called a lease extension then it is a lease extension
- Just by calling it an extension doesn't make it one

3:25:36 PM

COURT:

Would you agree that a portion of this is non-judiciary

Mr. Gottstein

- The LAA is saying that the legislative council complied with its own procedures
- The question is whether or not this contract extends a real property lease and whether or not that jump through all these hoops then . . .

3:27:29 PM

COURT:

Mr. Cuddy, is there anything that you needed to add

Mr. Cuddy

- No I don't

COURT:

Will get this portion resolved as quickly as I can; do expect a ruling on this pretty quickly

3:28:42 PM

Off Record

In the Superior Court at Anchorage Alaska

Media No: 301

Judge: P. McKay

Date: Wednesday, December 16, 2015

Clerk: R. Usry

Case No: 3AN-15-05969CI

Case Title: Alaska Building Inc

Vs.

716 West 4th Ave LLC et al

Type of Proceeding: Oral Argument

Counsel Present:

Plaintiff: James Gottstein – attorney present w/out client
Defendant: Kevin Cuddy – attorney present w/out client
Jeff Robinson – attorney present w/out client

Court Orders: Matter is taken under advisement

Pre-set Trial call on 8/3/16 at 3:30pm and trial during the week of 8/15/16 – remains

Summary of Proceedings:

2:33:12 PM

On Record
Court identifies case and parties

COURT:

We are here for the laches motion oral argument

Mr. Cuddy

- There are a number of facts here for a motion for summary judgment that are undisputed
- In October 2013, Alaska Building Inc. learned about the lease
- Alaska Building was so convinced that . . . he recognized that real dollars were going to be spent
- Why are we here some time later in regards to a building that has been . . .
- They never raised the legal challenge; after the construction work was done and tens of millions of dollars were spent

2:35:20 PM

- Alaska Building Inc. knew this but didn't do anything about it; it had its hands seeking project related payments
- They actively negotiated with . . . a plaintiff cannot sleep on its rights . . .
- The work has already been done and Laches does . . . Mr. Gottenstein admits that he knew in October 2013 that the construction was going to cost a lot of money but . . .
- The Alaska Supreme court has held that Laches should apply that . . .
- When there were positive steps taken by the defendants that . . .
- Both the Alaska Supreme Court and the Alaska Building Inc. focused on was when the construction had started

2:37:44 PM

- Instead of bringing that claim, the plaintiff were getting funds and . . .
- 2 months after the building was completed, was when the suit was brought
- Cites case

COURT:

Do you think that the supreme court result would have been the same with the road in Juneau and then maintain the road for . . . one is the construction of the road and then being paid monthly, do you think that the supreme court would have come up with the same thing

2:39:39 PM

Mr. Cuddy

- When you recognize that there is an issue and the code might have been violated, then that is the moment when the obligation should be triggered

COURT:

You don't see a difference between . . .

Mr. Cuddy

- There is not a difference here; we are talking about a procurement decision
- There is a decision that is made and before the parties began putting shovels in the ground, that is when the action must be triggered

COURT:

What if this contract did not request some 40 million dollars of work but just an extension of the lease for 10 years, so you are saying that when occupancy of the building is done . . .

2:41:18 PM

Mr. Cuddy

- The unfair prejudice here has to do with the wasting of money
- If someone were to enter into a lease but . . . think we would be hard pressed to show . . .

COURT:

There is a 10 year lease that didn't meet the procurement code, this is just hypothetical

Mr. Cuddy

- It depends on what the court decides to do . . . the party is no longer on the hook for . . .

COURT:

What if I had a 10 year lease and I have to find someone to lease it

Mr. Cuddy

- We have two different defendants with two different issues
- The prejudice is concerned with the wasted resources
- If Alaska Building Inc. does have their way then . . .

COURT:

What if the resources are recoverable

2:43:51 PM

Mr. Cuddy

- They are improvements that are built into the building
- The issue is on this prejudice issue, the landlord is going to have concerns and issues about the type of prejudice that is suffered

COURT:

He might get that 10% back that hasn't been charged to the state

Mr. Cuddy

- Some tenants with deep pockets and may pay the market rate
- We don't have any evidence of any deep-pocketed tenant at the time
- If the lease is voided, Mr. Robinson will tell you about the landlord's concerns and the kind of problems
- As to the agency, we are talking about our \$7 million dollars in improvements

2:45:36 PM

COURT:

Do I balance the money that won't be paid and . . . if you are paying well over market value, you don't think that the state might be saving rather than . . .

Mr. Cuddy

2:47:17 PM

- Alaska Building Inc. hasn't identified that . . . there is isn't any evidence in the record for the balancing to be applied
- In terms of what is available now for the agency, the loss is concrete and guaranteed and everything else is hope
- Suddenly, it might happen at a different rate; we do not have the luxury in living with these hypotheticals
- We are left where we are today with a guaranteed \$7 million dollars and everything else is questionable
- On footnote 15 of the Breck decision . . . (reads from)
- We are in the same boat here; no one is denying that . . . we can also speculate about the possibility that things could get better but we don't have the luxury of knowing that today
- All that we have is a guaranteed loss of \$7 million plus additional losses for Mr. Robinson's clients

2:49:22 PM

COURT:

The fact that the lease extension allows the legislature to back out of it, has no bearing in this discussion regarding Laches

Mr. Cuddy

2:51:26 PM

- There is no impact on the Laches decision
- Those are a serious of hypotheticals that
- Think that we have hit on the prejudice issue pretty quickly
- The improvements that my client has to pay for had to escalate; if the notice was provided before, we could have avoided all of these issues
- Because of the year and a half delay and after the building is completed . . .

COURT:

Do you think that the court should distinguished between a plaintiff who is a citizen taxpayer or . . . Many of the arguments are directed against Mr. Gottstein couldn't apply if . . .

Mr. Cuddy

2:53:44 PM

- They apply painfully clear to Mr. Gottstein because he has admitted to knowing what was going to happen and not doing anything about it
- This was not under cover of night but there was constant press coverage . . . this was not a surprise, so whether or not other taxpayers would be in the same boat but that is an issue for another day
- Instead of taking appropriate actions and before the prejudice to occur, he decided to get some payments for construction related work . . . he then sued the other defendants for \$2 million
- The unreasonable delay is clear and we haven't heard clear argument for the plaintiff about why this wasn't dealt with sooner
- There was no reason for this delay, Mr. Gottstein allowed this to happen and he took photos and then after it was all said and done . . . rather than dealing with the procurement code issue and . . .

Mr. Robinson

- Will speak after Mr. Gottstein

2:56:13 PM

Mr. Gottstein

- It would be my preference for Mr. Robinson to go now
 - The first thing that I want to say is that summary judgment is only allowed when . . .
 - Think that there are admissions that mandate denials of motion but . . .
 - There are three hurdles that the LAA and the landlord needs to get over to prevail the Laches Doctrine
 - Had filed a conditional motion for 56f request to conduct more discovery on the unclean hands and the prejudice but there is enough to show that they have unclean hands
- 2:58:22 PM
- They need to have engaged in some sort of wrong doings
 - The e-mail said that it was illegal and the LAA . . .

COURT:

Didn't see anything that he just said

Mr. Robinson

- He files three new motions and one of them is for a 56f motion
- What he is arguing now . . . he wants the court to deny the motion outright and he wants more time to get new discovery
- Don't want to turn this into a discovery hearing but my objection is that this is beyond the scope of the objection for the Laches Doctrine

3:00:19 PM

COURT:

Went through the motions today; you didn't cite to me anything that you wish me to prepare for so you are now talking about evidence that is not before the court in a proper format
Do understand that you mentioned the 56f motion and I will consider it as needed
Let's stay on track as to what the oral argument today with is the pleadings in regards to the Laches Doctrine

Mr. Gottstein

- The two other things that they need to prove is . . . the unreasonable delay looks a lot like the Breck case and the supreme court found that there was unreasonable delay
 - The question is whether or not the delay was unreasonable; the attorney for the landlord when the plaintiff brought up this issue said "even you can't afford the bond" and considering that Alaska Building decided not to pursue the building
- 3:03:18 PM
- The threat to the building was perceived as real; the developer did threaten to cut off the gas in the middle of winter and tear down the wall
 - Think were they had the most issue was due to the prejudice
 - There was a notice of admission made by the LAA and . . . the state will save \$22 million if it moves into the Atwood building which it has space

Mr. Cuddy

- Do have the same objection

COURT:

My issue is that this is a moving target but I am going to have to find prejudice here
Don't know what the prejudice is at this point; will allow him to argue that to a certain extent
These are things that are occurring and I could delay this oral argument and . . .

Mr. Cuddy

- Would like an opportunity to speak on the incorrect statements that have been made

COURT:

Please stick to the facts

3:06:12 PM

Mr. Gottstein

- There is a disputed fact that . . . with respect to the landlord they assert that . . . think they are stuck with that amount

COURT:

You really don't think that the issue of remodeling is . . .

Mr. Gottstein

- They are stuck with the issue of it being 10% under market value
- It is a factual time at this time
- The final backstop argument is there are various levels of . . . that in itself does not cause any harm to anyone
- If there is a determination that it is illegal, then under the statute, it should be found that . .
- The Lavery case made that distinction

(pause)

3:09:11 PM

Mr. Robinson

- Would like to stick to the four corners of the actual Laches motion because . . .

COURT:

Let's not restate the argument that Mr. Cuddy has already mentioned

Mr. Robinson

- Will address the three specific arguments that he made in his motion
- The agency and 716 executed the lease back in 2013; by October 3rd, Mr. Gottstein comes to the conclusion that the lease in his opinion is in violation of the procurement code
- He mentioned to another person that he was going to file a preliminary injunction

COURT:

Didn't see it in the opposition

3:12:00 PM

Mr. Robinson

- If Mr. Gottstein wants to dispute that now . . . he drafted the agreement as he is writing letters and claiming that the lease was illegal
- He is writing letters to his building tenants as well at this time
- He is billing for professional time and . . . by virtue of the space lease, he was aware that the contractor was going to be in his building space
- The Breck court looks at two different factors, one was when the contract was signed and the . . .
- In the Breck case, the plaintiff contacted the mayor of Juneau before the construction
- Mr. Gottstein never alerted anyone to this
- Mr. Gottstein did nothing and Ms. Breck filed suit in her case
- He waits until construction and 42.5 million has been spent by my client
- His major claim against my client is that he doesn't think that he was treated fairly
- The court can find that the 17 month delay is reasonable

3:15:06 PM

COURT:

Can you address the same question where . . .

Mr. Robinson

3:17:05 PM

- Don't think that it matters because the lease talks about the unique design of the building and the lease being extended for 10 years and I don't see any distinction
- Don't think that Mr. Gottstein contests that . . . don't think that he contests the other financial commitments that were made
- The expectation in regards to the building was that there was . . . (cites statute)
- *Gives example*
- If you read the lease, the building was designed to meet the needs of the agency

COURT:

Do see a difference between this building and the one across the street

Mr. Robinson

3:19:16 PM

- In the Breck case, they were dealing with \$5 million but now with this case, we are dealing with a lot more money
- The Moore case addressed this by considering the public significance of the issue; the suit was brought a year later after . . . the commercial fisherman pursued other avenues
- Mr. Gottstein came to the conclusion that the lease was illegal and the court needs to take a look at the plaintiff and . . . he rented office space to the entity that did the construction
- This doctrine doesn't just go towards . . .

COURT:

Would like you to address the prejudice . . . in regards to the 90 day termination

Mr. Robinson

3:21:35 PM

- Think there is a difference in what that clause means versus as to what is going on now
- Am hesitant to go there and this is the wait and see approach
- Do think that the lease needs to be read entirely

COURT:

Reads from section in the lease regarding 90 day notice

Mr. Robinson

- Think that we have demonstrated enough . . .

COURT:

Doesn't that go away since there is a 90 day out

Mr. Robinson

- Am being cautious because this argument has to do with the unreasonable delay

3:23:38 PM

COURT:

If the court found that it allowed a 90 day out then . . .

Mr. Robinson

- You are asking a fair question but . . .
- If the court is inclined to take to grant him a 56f extension then . . .

COURT:

Would have an opportunity to give supplemental briefing
Will ask Mr. Cuddy this question

3:24:54 PM

Mr. Cuddy

- There are two issues that I wanted to touch on

- In terms of this document . . .the legislative is working hard in regards to . . .
- The memorandum that Mr. Gottstein has presented to the court discuss 5 different scenarios
- It is not an admission of what space might be available and . . .

COURT:

Do understand that

Mr. Cuddy

3:26:35 PM

- During the various hearings and discussions on this document, there were a number of issues and concerns raised in regards to inflation or even if the numbers were correct
- For all of those reasons, these can't be . . .
- Issue 2 has to do with the moving party . . . we don't know what it is going to happen
- The summary judgment briefing that has been . . . the affidavits and all of the information before the court does deal with . . . because we don't know what the future may hold or might possibly happen as a result of those decisions

3:28:26 PM

- There is some scenario that . . . it is not the scenario that . . .
- In terms of this floating prejudice, if the non-appropriation clause doesn't apply then . . .
- As to the LAA, it would if the lease was voided, it would forfeit the \$7 million in improvements
- It could be any number of things but we don't know and all that we do know, if the lease goes away then the agency is out \$7 million then . . . we do not have the ability to assume that there will be some better deal if this lease goes away and nothing in the record before the court to show that there is a better deal and . . .

3:30:12 PM

COURT:

Can be assured that I am not getting my evidence from the media

Tell me your thoughts if Laches could be applied towards the remedy (gives example)

Mr. Cuddy

- Think the issue is sufficiently undeveloped and I would like to give the court an informed answer

COURT:

Will take the matter under advisement but I don't know when I am going to get to this but I will as timely as I can

Mr. Robinson

- Depending on how this issue, we might need to set a future hearing on those other motions

COURT:

Do have a total of 6 ripe motions that I need to make a decision

3:32:36 PM

Off Record

In the Superior Court at Anchorage Alaska

Media No: 301

Judge: P. McKay

Date: Tuesday, September 15, 2015

Clerk: R. Usry

Case No: 3AN-15-05969CI

Case Title: Alaska Building Inc.

Vs.

716 West Fourth Avenue LLC

Type of Proceeding: Scheduling Conference

Counsel Present:

Plaintiff: James Gottstein – attorney present w/out client
Defendant: Kevin Cuddy – attorney (for Legislative Affairs) present w/out client
Jeffrey Robinson – attorney (for 716 West Fourth Ave) present w/out client
Dan Doty – attorney (for Cynthia Ducey representing Pfeffer Development) – present w/out client

Court Orders: Pre-set Trial call date of August 3rd, 2016 @ 3:30pm and trial week of August 15th, 2016 – remains
Court dismisses Criterion General and Pfeffer Development from this case
Court grants the request for extension in regards to the summary judgment motion
Court grants a 56f continuance until the end of January
Court decides that the motion filed by Criterion is moot and will be decided in another manner

Summary of Proceedings:

3:29:33 PM

On Record
Court identifies case and parties

COURT:

Are we doing anything with count II

Mr. Gottstein

- Did file an amended complaint

Mr. Robinson

- Did file a motion on . . . what case will be that motion be considered in

COURT:

In regards to the second amended complaint, it does bring actions against 716 and the Legislative Affairs and not the other parties

Mr. Cuddy

- In regards to . . .

3:31:16 PM

COURT:

Mr. Gottstein, there is still a statute of limitations thing

Mr. Gottstein

- Do plan on filing something really soon

COURT:

Am not dealing with that at this time

Am dismissing the other parties (Pfeffer and Criterion)

Let's make a decision right now

Mr. Doty is now free to leave this hearing

Am going to consider the motion to dismiss from Criterion is moot and will be dealt with in the other matter

3:33:12 PM

Am going to grant an extension for the summary judgment motion that was filed

Do need to know when discovery can be done

Mr. Gottstein

- Would want the date shorter rather than longer
- The motion was filed on June 12th and the discovery had ended back in August
- There is this effort to prolong it and . . .
- Had talked about really by the end of the month for discovery
- Don't plan on taking any deposition

3:35:02 PM

COURT:

You are making a claim that you want me to find that . . .

Mr. Gottstein

- In regards to the statute that . . .

COURT:

Do you think that those facts are not subject to any dispute

Mr. Gottstein

- They might have some other facts
- There might be an estoppel argument from my client
- Never needed any discovery

Mr. Robinson

- We tried to follow the court's order after the oral argument
- The three parties have been talking over e-mails but I don't think that either one of us is on an immediate schedule
- There is a long history of my client being the lessor for . . .
- Will need to have Mr. Gottstein produce what I asked him to produce
- This matter shouldn't be expedited because Mr. Gottstein said that it should be
- There has been a lot of motion work . . . there is a lot of movement and a lot of activity for this matter . . . we could set a deadline of 4-5 months to agree that discovery will be done on this issue

3:37:13 PM

COURT:

That would make sense to me that would be the discovery date and we get a date 10 days after the session starts

Am going to grant a 56f continuance until the end of January; Mr. Robinson, you have a week during the session and it does make sense to me that way

3:39:30 PM

Don't see any reason why we can't set a trial date right now

Am not saying that this case will ever be tried but I don't want to wait until some future date

How long are the parties going to be needing for trial

Mr. Gottstein

3:41:12 PM

- It looks like we do have a future trial date and it looks like we have 2 weeks set aside
- It seems to be safe that . . .

COURT:

If I set aside two weeks, then I do want to know that the parties will use that time

Mr. Robinson

- Do think that two weeks would be fine

COURT:

If we do get to trial, then there will be a lot of experts that we will be hearing about
Is there anything that needs to be calendared at this time; if the parties are happy with the pre-trial order then that is fine with me

3:43:23 PM

Mr. Cuddy

- The only other issue is the 10% relief
- There has been some discussion about how . . .

COURT:

There might be a motion to dismiss that request . . . would fully expect that those motions . . .

3:44:27 PM

Off Record

In the Superior Court at Anchorage Alaska

Media No: 301

Judge: P. McKay

Date: Tuesday, August 18, 2015

Clerk: R. Usry

Case No: 3AN-15-05969CI

Case Title: Alaska Building Inc. Vs. 716 West 4th Ave. LLC et al

Type of Proceeding: Oral Argument

Counsel Present:

Plaintiff: James Gottstein – attorney present w/out client
Defendant: Jeffrey Robinson – attorney for 716 West Fourth Avenue LLC present w/out client
Kevin Cuddy – attorney for Legislative Affairs Agency present w/out client
Cynthia Ducey – attorney for Pfeffer Development LLC present w/out client

Court Orders: Matter is taken under advisement
Scheduling hearing is set for September 15th, 2015 @ 3:30-4pm
Motion to dismiss is denied
Motion to sever is granted

Summary of Proceedings:

2:32:25 PM

On Record
Court identifies case and parties

COURT:

We are here for a hearing on the motion to dismiss

Mr. Robinson

- We had discussed order . . .

Mr. Cuddy

- The key question for this court to decide whether or not the plaintiff is the right party to bring this claim to court
- There are two very odd features of this case; while Alaska Building Inc is the plaintiff in this matter . . . all of the cost savings that Mr. Gottstein believes is out there then . . .
- Why would we fight this, we believe that the claims lack merits and this isn't the right way to proceed
- The standing doctrine states that . . . that would bring us to the second oddity, this case is about which procurement procedure should be used
- The plaintiff is unable to . . . the standing requirement requires adversity of . . . on the interest injury piece . . . need to show the injury of the plaintiff's interest

2:34:19 PM

COURT:

There is that 10% claim out there

2:36:11 PM

Mr. Cuddy

- There is no such harm identified here and under Keller that is fatal here
- It does ask for 10% as a finder's fee . . . do need to show an interest that . . .
- This theory would gut the standard because if you have interest injury standard that . . .

2:38:51 PM

- Under civil rule 82, any prevailing party has that opportunity to recover some additional funds
- If Mr. Gottstein is able to make a fictional request to make an interest injury claim then . . .
- In regards to a type of test that . . .
- The litigant must show that the issues are of . . . cites 3 cases that confirm that Alaska Building LLC isn't the appropriate party in this case
- the key portion of the test is that there is a plaintiff that is . . .

COURT:

In Ruckels, they did bring suit . . .

Mr. Cuddy

- the participant in the procurement process is . . .

COURT:

Do you have a participant that is . . .

Mr. Cuddy

- no we don't; we don't know if anyone else is going to file suit and we don't believe that anyone else will
- anyone has the same ability to file suit and we don't think that was warranted

2:40:20 PM

COURT:

That is coming to the facts, you are getting away from the law

Mr. Cuddy

- once, you have this finding like in Ruckels, there are the more appropriate plaintiffs
- in both cases cited, there was no one else that had filed suit
- there were showings that they were unlikely to follow suit . . .
- despite the absence of someone filing suit or the imminent that someone would file suit, the supreme court did find that . . . the court found that individuals who are more directly affected would be . . .

2:42:38 PM

COURT:

Do you think that it overrule Ruckel

Mr. Cuddy

- it simply found in that case and given those cases, the Alaska Supreme court did say something about a bidder . . .

COURT:

The U.S. attorney could have sued . . .

Mr. Cuddy

- this is involving the ASD
- what the supreme court said in the Keller case that the test as I was quoting it to earlier was that party might sue or might bring suit
- the supreme court said that there is too literal of a reading of the test
- that is the rule of Keller . . . what one would end up with is there is two lessons that come from these three cases
- under the Ruckel case . . . who is the most directed litigant but the hypothetical person
- when we get to the next phrase with Keller and the Law project, they do exercise in that hypothetical

2:44:31 PM

2:46:17 PM

- the children whose rights were being infringed in the Law project, were directly effected
- there are these other groups that we know of . . . could bring suit if they wanted to

COURT:

Enlighten the court who you think that the more appropriate plaintiff might be

Mr. Cuddy

- if any entity said that . . . Mr. Gottstein hasn't said that . . . this is a large amount of space and there is a large number of people that could have taken action
- if they wanted to bring suit now to say no, this process should have been more wide open
- those are the entities like in Ruckels, that would be more directly effected
- can address the motion to sever

2:48:26 PM

(pause)

Mr. Robinson

- am going to start with the citizen taxpayer prong here because there needs to be two findings made
- the case in question has to be one of public significance . . . there is no constitutional issue raised here
- think that the court needs to look at the parties that brought forth the claim in the case
- ABI has asserted that this case is significant because it said it is
- The court needs to make that issue of . . .

2:50:08 PM

COURT:

Are you claiming that this insignificance

Mr. Robinson

- The court needs to listen to . . . Mr. Gottstein has been yelling corruption and . . .

COURT:

He is claiming a breach of procurement

Mr. Robinson

- There are three subprongs that need to be found
- The first one is that the plaintiff is a sham plaintiff; since the plaintiff has claimed that his building was damaged during . . .
- Judge Smith did address this things in regards to the psychiatric case . . .
- In this case, the mere seeking of damages is . . . the plaintiff's only reason to name my client is to seek punitive damages
- The second subprong is the plaintiff must be able to competently advocated the position that the lease is illegal
- There has never an argument that he would have bid upon the project had it been open to competitive bidding
- ABI is wanting to come up with a private whistleblower; the plaintiff has been unable to articulate what interest that he had . . .
- In his opposition in the motion to dismiss, Mr. Gottstein had claimed that . . . he cited the Larson case and the court found that the prisoner was . . .
- There has no nexus between . . .
- In regards to the 3 prong of the appropriateness inquiry . . . the court said even if the governor did not intend to sue but if she thoughts that her rights were violated then she wouldn't be able to sue

2:52:48 PM

2:54:41 PM

2:56:51 PM

COURT:

Is it your position, that only people can afford to . . .

Mr. Robinson

- That is not my position
- Am not saying that you need to be a wealthy landowner to sue and ABI is far from that

COURT:

Am talking about the citizen taxpayer

Mr. Robinson

- The first prong does say that the plaintiff can't be a sham plaintiff
- Under subprong A, Mr. Gottstein needs to identify what interest was put at risk
- It is even more troubling that . . . 716 as a private lessor has nothing to do with the legislative affairs . . .
- *Gives example*
- The fundamental inquiry for the court is . . . we don't have to identify who that potential plaintiff might be
- The holding of Ruckel is that . . . with Keller and the law project case, it didn't mean that . .

2:58:21 PM

3:00:19 PM

COURT:

If I found the other basis are present here, it doesn't mean that anyone else might be able to sue then . . .

Mr. Robinson

- The test is very clear . . . that person needs to advocate his position
- The press releases and the arguments of corruption and . . . that is not advocating his position and he needs to state what injury has been effected
- He wants the court to create a whistleblower action and reward him; this isn't about the interest of the citizens of Alaska but only the Alaska Building Inc.

3:02:16 PM

COURT:

Do you think that he would drop this case if . . .

Mr. Robinson

- No I don't think that this is the end of it
- The question was Governor Palin who would have been effected by the investigation then what it said . . .
- Mr. Gottstein may have standing to bring interests on count 2
- What interests that he had at risk, Mr. Gottstein hasn't been able to show
- What ABI is looking at a personal windfall at 10%
- With looking at citizen taxpayer . . . have been quoting language from Keller then . . .
- This is simply a question where a different plaintiff that would be able to sue and I would say that the answer is yes
- The standing is a rule of judicial restraint; ABI is asking the court to take an extreme . . .
- We would ask that this court would not have subject matter jurisdiction

3:04:09 PM

3:06:21 PM

Mr. Gottstein

- With respect of the issue with people wanting to sue and then . . . if you look at those 3 cases which are Keller and . . . those are really private rights that were wronged
- Think that is really the way to look at those things; the employees at the school district could have sued and Governor Palin could have sued
- Those are private rights and wrongs and . . . don't think that overruled the trustees for

Alaska line of cases

- 3:09:03 PM
- The other thing that I didn't articulate at all, is respect to this 10%
 - It is a whistleblower kind of action that I want to establish
 - When you bring those kinds of cases then . . . Mr. Cuddy indicated that his agency wasn't interested in that
 - Do think that where is the interest injury standard does come into effect

COURT:

You don't think that you need standard to challenge the lease but you would need . . . let's focus on the citizen taxpayer standing issue

Mr. Gottstein

- 3:11:22 PM
- There is over \$21 million in overcharges and . . . Coghill vs. Baucher (sp.) case does state that (reads from)
 - The integrity of the procurement process doesn't result . . .
 - In the McBurney case, they stated that . . . (reads from)
 - Think that it is a matter of public significance
 - In the McBurney case, the supreme court did affirm that . . .
 - The next issue is that if ABI is an appropriate plaintiff
 - One is allowed to stand on that basis and . . . there hasn't been any prospective plaintiffs and they are saying that everyone has chosen not to sue
- 3:13:23 PM
- It is hard to say when the standard would ever be allowed if it isn't allowed in this case
 - Think the court did focus on Ruckel but in that case, it was based on another bidder brought suit and we agreed to . . .
 - If you look around at prospective plaintiffs, I don't think that there is any more directed effective builders, would be Alaska Building LLC due to the illegal lease

COURT:

Are you saying that would give you a leg up then . . . the formation of the lease didn't damage the building but the construction . . .

Mr. Gottstein

- 716 claims that the plaintiff is a sham one; the type of sham plaintiff that the supreme court discussed was . . .

3:15:56 PM

COURT:

There might not be any diversity

Mr. Gottstein

- In regards to the competence issue, that is up for the court to decide

COURT:

Just because there might not be a violation of . . .

Mr. Robinson

- Have no stake in the severance portion of

3:17:36 PM

Mr. Gottstein

- If the case is severed then count II should get a new case number or be bifurcated
- It doesn't seem to me that filing a new complaint is proper and . . .

Ms. Ducey

- Do have a dog in that fight

COURT:

She would still have to . . . how can you be filing these briefs and . . . Ms. Ducey is a part of this lawsuit at this point

3:19:10 PM

Mr. Gottstein

- We shouldn't have to file something new and start everything all over again
- It wasn't the issue that . . .

COURT:

You do not object that these issues are going to be tried at different times and it is just the matter of what is convenient to the court and . . .

3:21:09 PM

Mr. Cuddy

- In regards to severance, I am not sure that there is a great deal more to say
- If in fact, the formation lease did not cause any . . . we would expect that those cases would be handled differently
- That process is not necessary if count I is . . . we would like to see the two counts be dealt with in two cases
- The court asked a couple of questions that seemed to be central to a couple of concerns
- The Alaska Supreme court has said that sometimes there is a limited universe of people
- It is not unusual in these cases for . . . that does not in any way diminish the strengths
- For any issue that can meet that first hurdle, then any public procurement would . . .

3:23:21 PM

COURT:

Can you give me a decision that said the opposite of what is being said

Mr. Cuddy

- Alaska Case law isn't as developed on this part
- In the ruckels case, the court looks at a citizen taxpayer on one side then . . .
- With the psychiatric rights case then . . . (reads from)
- On this appropriate litigant prong, we would submit that Alaska Building Inc. would fall short
- There is always going to be a limitation on that universe

3:25:08 PM

COURT:

Can you cite me any case that says that you must be economically effected when a citizen does challenge a procurement matter

Mr. Cuddy

- it is this hypothetical . . . in the Keller and Law project case, it states that . . . if Laidlaw had done so, they would have in the same position of . . . in all of those cases, in each of those instances, the plaintiffs didn't say that they didn't want any part of . . .

COURT:

We are talking about a mis-expenditure of public money

Mr. Cuddy

- in the law of psychiatric rights case, one was talking about the rights of the children and the parents

3:27:43 PM

COURT:

Don't you see the difference that the people who are effected by . . .

Mr. Cuddy

- anything that the government is doing, there is going to be some sort of funds spent
- all of these things trickle down to the taxpayer at some point
- the principal doesn't change and . . . in each instance, one is talking is about the conduct
- Mr. Gottstein does feel like the door should have been opened wider
- the people that are paying the bill are . . . whether you are talking about the procurement process, the funding of Mr. Branchflower or . . . the point is that one has the imposition of taxpayer funds then . . . need to look and see if this is the right person to bring the case

3:29:21 PM

COURT:

How would you respond to what was stated with Alaska Trustee . . . (reads over cite)

Mr. Cuddy

- as you move forward from trustees, then that same argument is going to be pushed very hard . . . the Alaska Supreme court did have the chance that someone must have sued before the citizen taxpayer gets involved
- unless we can show that someone else is about to sue, then . . . as long as you can identify whose those people are then is there is something preventing them from coming forward, then that the citizen taxpayer should . . .

3:31:38 PM

Mr. Robinson

- have no need to address severance

Mr. Gottstein

- in regards to . . .

3:33:26 PM

Ms. Ducey

- on count II, Mr. Quinn and I would like to deal with the case as soon as possible
- we would like to see count II advance as soon as the possible

Mr. Quinn

- think that for severance, the allegation about the lease are not directed to us and the comments earlier for Ms. Ducey to read everything
- our preference would be to sever the case just so there is no interconnection

3:34:53 PM

COURT:

Will prepare a written order on this; we are going to sever the case and I will make them separate With regards to the other ripe motions that I had, it looks like we have the motion to dismiss and the motion to stay

Mr. Gottstein

- think that was the request for additional time for summary judgment
- there is a pending motion to stay the proceedings which might be . . . there are two requests for additional time to respond to the partial summary judgment motion

COURT:

Am going to grant him citizen taxpayer standing here; do understand the argument to the contrary but if there are other developers out there . . . think that the supreme court would say that doesn't mean that other people that are situated to Mr. Gottstein are inappropriate plaintiffs

3:37:40 PM

if there were other plaintiffs out there . . . the claim to the damage of the building might be . . .

Any citizen taxpayer should be able to . . . do think that there has been a stay of discovery on the partial summary judgment

Mr. Robinson

- the court hasn't ruled on our stay to discovery motion

COURT:

Both of these sides need to be expedited; the question is how much time is needed for discovery

Mr. Robinson

- would think that I would need 30 days

3:39:23 PM

COURT:

Am not granting this in an expedited status

Mr. Robinson

- would need a significant amount of time (around 4 months)

COURT:

Do the parties want me to schedule a status hearing; want to make sure that everyone is on the same page . . .

Mr. Robinson

- just to clarify the ruling . . .

COURT:

Did find that Mr. Gottstein that . . .

Mr. Robinson

- did hear that any taxpayer that . . .

3:41:09 PM

COURT:

When you are challenging a process, I think that a citizen taxpayer could . . .

Am going to do a written process and I would like to arrange my thoughts in an appropriate manner

Mr. Gottstein

- think that there is really two aspects of discovery

COURT:

There is disputed facts here

Mr. Gottstein

- there is a motion for partial summary judgment pending
- do think that it is a separate time frame . . .

3:43:44 PM

COURT:

There is no stay in discovery at this point

Want the three of you to try and come up with an appropriate schedule and if the parties don't then I will

Looks over calendar with parties

3:30pm-4:00pm on September 15th, 2015 for a scheduling hearing

Am more interested in scheduling the 56f motion

3:45:06 PM

Will figure out how to sever the case

3:45:24 PM | Off Record

APPLICATION FOR COURT APPROVAL OF MEDIA COVERAGE

Case Name: Alaska Building v. 716 West 4th Avenue, LLC

Case Number: 3AN-15-05969CI Judge: McKay

Requesting Organization: KTUU

Names of all media representatives who may attend the proceeding:
Albert Lutan Kendall Bantista
Nikki Carvajal

Type of Coverage:

Television Still Camera Radio
 Sketch Artist Audio Digital

Proceeding to be covered: Oral Argument
(Trial, Motion, Appellate Argument, etc. If coverage of activity during recesses is requested, include "recesses.")

Dates for which coverage is requested: 3/22/16

I request permission to cover the above proceeding pursuant to Administrative Rule 50 as promulgated by the Alaska Supreme Court. I understand and agree to abide by the provisions of that rule and Administrative Bulletin No. 45.

If consent of the parties is required under Administrative Rule 50(c), the consents are attached.

3/22/16
Date

[Signature]
Signature of Media Representative

907-762-9260
Office Phone Number

Clinton W. Bennett
Print Name and Title

APPROVAL BY COURT

Permission for the media coverage requested above is: GRANTED DENIED
Reason for denial or special restrictions imposed: _____

3/22/16 Date [Signature] Judge / Clerk of the Appellate Courts

Distribution: (1) Media File; (2) Court File (if applicable); (3) Media Representative

APPLICATION FOR COURT APPROVAL OF MEDIA COVERAGE

Case Name: Alaska Building vs. 716 W. 4th

Case Number: 3AN-15-05969CI Judge: McKen

Requesting Organization: ADN

Names of all media representatives who may attend the proceeding:
Nathaniel Herz

Type of Coverage:

- Television
- Sketch Artist
- Still Camera
- Audio
- Radio
- Video

Proceeding to be covered: ORAL argument
(Trial, Motion, Appellate Argument, Oral Argument, Evidentiary Hearings, Other Hearings, etc. If coverage of activity during recesses is requested, include "recesses.")

Dates for which coverage is requested: _____

I request permission to cover the above proceeding pursuant to Administrative Rule 50 as promulgated by the Alaska Supreme Court. I understand and agree to abide by the provisions of that rule and Administrative Bulletin No. 45.

If consent of the parties is required under Administrative Rule 50(c), the consents are attached.

12/16
Date

Nathaniel Herz
Signature of Media Representative

Nathaniel Herz, reporter
Print Name and Title

793-0312
Phone Number

301 U. 3rd Ave.
Address Line 1

nherz@alaskadigital.com
E-mail Address

Anchorage, AK 99501
Address Line 2

APPROVAL BY COURT

Permission for the media coverage requested above is: GRANTED DENIED
Reason for denial or special restrictions imposed:

12/16/15
Date

[Signature]
Judge / Clerk of the Appellate Courts
McKen
Type or Print Name

Distribution: (1) Media File; (2) Court File (if applicable); (3) Media Representative

APPLICATION FOR COURT APPROVAL OF MEDIA COVERAGE

Case Name: Alaska Building Inc v Legislative Affairs Agency et al
Case Number: 3AN-15-05969CI Judge: Mckay

Requesting Organization: KTUU Channel 2 News

Names of all media representatives who may attend the proceeding:

James Austin Baird
George Ilutsk

Type of Coverage:

- Television
- Sketch Artist
- Still Camera
- Audio
- Radio
- mobile Internet

Proceeding to be covered: Oral Argument
(Trial, Motion, Appellate Argument, etc. If coverage of activity during recesses is requested, include "recesses.")

Dates for which coverage is requested: 12/16/15

I request permission to cover the above proceeding pursuant to Administrative Rule 50 as promulgated by the Alaska Supreme Court. I understand and agree to abide by the provisions of that rule and Administrative Bulletin No. 45.

If consent of the parties is required under Administrative Rule 50(c), the consents are attached.

12/16/15 Date [Signature] Signature of Media Representative

762-9260 Office Phone Number Kortnic Horazdovsky - Planning Mgr. Print Name and Title

APPROVAL BY COURT

Permission for the media coverage requested above is: GRANTED DENIED

Reason for denial or special restrictions imposed: _____

12/16/15 Date [Signature] Judge / Clerk of the Appellate Courts

Distribution: (1) Media File; (2) Court File (if applicable); (3) Media Representative



APPLICATION FOR COURT APPROVAL OF MEDIA COVERAGE

Case Name: Nadia Builders Inc. vs. Yancey Alfred Baker Inc

Case Number: JAN-15-0596501 Judge: McKay

Requesting Organization: WTVA-TV

Names of all media representatives who may attend the proceeding:
Vanessa Smith Felicia Marshall

Type of Coverage:

- Television
- Sketch Artist
- Still Camera
- Audio
- Radio

Proceeding to be covered: Arguments
(Trial, Motion, Appellate Argument, etc. If coverage of activity during recesses is requested, include "recesses.")

Dates for which coverage is requested: 8/18/15

I request permission to cover the above proceeding pursuant to Administrative Rule 50 as promulgated by the Alaska Supreme Court. I understand and agree to abide by the provisions of that rule and Administrative Bulletin No. 45.

If consent of the parties is required under Administrative Rule 50(c), the consents are attached.

8/18/15
Date

[Signature]
Signature of Media Representative

907-234-1111
Office Phone Number

[Print Name and Title]
Print Name and Title

APPROVAL BY COURT

Permission for the media coverage requested above is: GRANTED DENIED.

Reason for denial or special restrictions imposed: _____

8/18/15
Date

[Signature]
Judge / Clerk of the Appellate Courts

Distribution: (1) Media File; (2) Court File (if applicable); (3) Media Representative

APPLICATION FOR COURT APPROVAL OF MEDIA COVERAGE

Case Name: 716 West Fourth Avenue LLC

Case Number: 3AN-15-05969CI Judge: McKay

Requesting Organization: KTIUU

Names of all media representatives who may attend the proceeding:

Shawn Wilson

Type of Coverage:

- Television
- Sketch Artist
- Still Camera
- Audio
- Radio
- Digital

Proceeding to be covered: Oral Argument
(Trial, Motion, Appellate Argument, etc. If coverage of activity during recesses is requested, include "recesses.")

Dates for which coverage is requested: 8/18/15

I request permission to cover the above proceeding pursuant to Administrative Rule 50 as promulgated by the Alaska Supreme Court. I understand and agree to abide by the provisions of that rule and Administrative Bulletin No. 45.

If consent of the parties is required under Administrative Rule 50(c), the consents are attached.

8/18/15
Date

[Signature]
Signature of Media Representative

762-9260
Office Phone Number

Clinton Bennett, Assignment Mgr.
Print Name and Title

APPROVAL BY COURT

Permission for the media coverage requested above is: GRANTED DENIED

Reason for denial or special restrictions imposed: _____

8/18/15
Date

[Signature]
Judge/Clerk of the Appellate Courts

Distribution: (1) Media File; (2) Court File (if applicable); (3) Media Representative

APPLICATION FOR COURT APPROVAL OF MEDIA COVERAGE

Case Name: Alaska Building Inc vs 716 W Fourth Ave LLC

Case Number: 3AN-15-05969CI Judge: Patrick McKay

Requesting Organization: Fox | ABC

Names of all media representatives who may attend the proceeding:

Jessica Gruenling

Type of Coverage:

- Television
- Sketch Artist
- Still Camera
- Audio
- Radio
- Video

Proceeding to be covered: Oral Argument

(Trial, Motion, Appellate Argument, Oral Argument, Evidentiary Hearings, Other Hearings, etc. If coverage of activity during recesses is requested, include "recesses.")

Dates for which coverage is requested: 8/18/15

I request permission to cover the above proceeding pursuant to Administrative Rule 50 as promulgated by the Alaska Supreme Court. I understand and agree to abide by the provisions of that rule and Administrative Bulletin No. 45.

If consent of the parties is required under Administrative Rule 50(c), the consents are attached.

8/18/15
Date

Jessica Gruenling
Signature of Media Representative
Jessica Gruenling
Print Name and Title

907-777-5059
Phone Number

2700 E TUDOR RD
Address Line 1

jgruenling@jur.alaska.gov
E-mail Address

Address Line 2

APPROVAL BY COURT

Permission for the media coverage requested above is: GRANTED DENIED
Reason for denial or special restrictions imposed:

8/18/15
Date

Patrick McKay
Judge/ Clerk of the Appellate Courts
Type or Print Name

Distribution: (1) Media File; (2) Court File (if applicable); (3) Media Representative.

APPLICATION FOR COURT APPROVAL OF MEDIA COVERAGE

Case Name: Alaska Building Inc. vs. 716 West Fourth Avenue, LLC

Case Number: 3AN-15-05969CI Judge: McKay

Requesting Organization: Alaska Dispatch News

Names of all media representatives who may attend the proceeding:
Nathaniel Herz

Type of Coverage:

- Television
- Sketch Artist
- Still Camera
- Audio
- Radio
- Print
- Video

Proceeding to be covered: Oral Argument

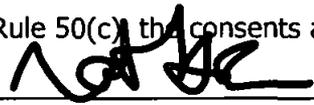
(Trial, Motion, Appellate Argument, Oral Argument, Evidentiary Hearings, Other Hearings, etc. If coverage of activity during recesses is requested, include "recesses.")

Dates for which coverage is requested: Aug. 18

I request permission to cover the above proceeding pursuant to Administrative Rule 50 as promulgated by the Alaska Supreme Court. I understand and agree to abide by the provisions of that rule and Administrative Bulletin No. 45.

If consent of the parties is required under Administrative Rule 50(c) the consents are attached.

8/17/2015
Date


Signature of Media Representative
Nathaniel Herz, Reporter
Print Name and Title

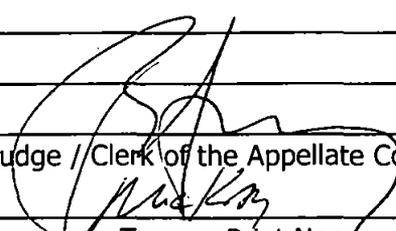
907-793-0312
Phone Number
nherz@alaskadispatch.com
E-mail Address

1600 W. 14th Ave.
Address Line 1
Anchorage, AK 99501
Address Line 2

APPROVAL BY COURT

Permission for the media coverage requested above is: GRANTED DENIED
Reason for denial or special restrictions imposed:

8/17/15
Date


Judge / Clerk of the Appellate Courts
McKay
Type or Print Name

Distribution: (1) Media File; (2) Court File (if applicable); (3) Media Representative

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

MAY 31 2016

Kevin Cuddy (Alaska Bar #0810062)
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: (907) 277-1900
Facsimile: (907) 277-1920

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

Case No. 3AN-15-05969 CI

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

344
**[PROPOSED] ORDER GRANTING LEGISLATIVE AFFAIRS AGENCY'S
MOTION FOR RULES 11 AND 82 ATTORNEYS' FEES**

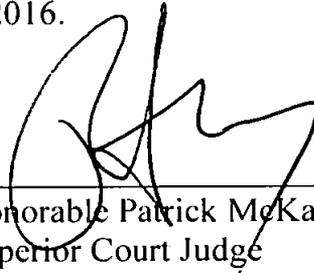
Defendant Legislative Affairs Agency ("LAA") has moved for Rules 11 and 82 attorney fees against Plaintiff Alaska Building, Inc. relating to its fees incurred in the defense of Plaintiff's qui tam request for relief and Count 2 of Plaintiff's June 8, 2015 Amended Complaint.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

THIS COURT, upon consideration of the motion and responses thereto, finds LAA is the prevailing party as to Count 2 of Plaintiff's June 8, 2015 Amended Complaint, and hereby **GRANTS** LAA's Motion for Rule 82 Attorneys' Fees. The Court also finds that Plaintiff's request for relief in the form of 10% of the alleged savings to the LAA for lease invalidation was frivolous and hereby **GRANTS** LAA's Motion for Rule 11 Attorneys' Fees.

IT IS HEREBY ORDERED that Defendant's Legislative Affairs Agency is awarded its fees of \$ 2217.80 ~~due and payable on or before~~ see separate order. May be applied toward ABI ~~2016.~~ fee recovery.

DATED this 23rd day of May, 2016.



Honorable Patrick McKay
Superior Court Judge

CERTIFICATE OF SERVICE

This certifies that on May 31, 2016, I caused a true and correct copy of the foregoing to be served by first class mail on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)



Debby Allen, Litigation Practice Assistant

86689858.1 0081622-00003

I certify that on 6/24/16 a copy of the following was mailed ~~faxed~~ ~~hand-delivered~~ to each of the following at their addresses of ~~sent~~ record. James Gottstein
Jeffrey Robinson
Kevin Cuddy

Administrative Assistant Ky

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

Kevin Cuddy (Alaska Bar #0810062)
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: (907) 277-1900
Facsimile: (907) 277-1920

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

Case No. 3AN-15-05969 CI

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

**[PROPOSED] ORDER IN RESPONSE TO ALASKA BUILDING, INC., MOTION
FOR COSTS AND ATTORNEY'S FEES AGAINST LEGISLATIVE AFFAIRS
AGENCY**

Plaintiff Alaska Building, Inc. ("ABI") requested attorney's fees in the amount of \$144,329.09. Defendant Legislative Affairs Agency ("LAA") opposed fees that were not "necessarily incurred,"¹ including litigation narrowly and exclusively focused on 716 and

¹ Alaska R. Civ. P. 82(b)(2).

JUN 6 2016

002336

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

claimed monetary relief (\$35,865.76 in fees), litigation regarding property damage (\$8,220.33 in fees), litigation related to Rep. Hawker's email request (\$482.08 in fees), and litigation related to ABI's "qui tam" claim (\$5,444.83 in fees). ABI's fees related to these four categories were \$50,013.00. LAA further argued that no upward adjustment was warranted from the 20% default based on Rule 82(b)(2) and (3) because this case was not complex, ABI failed to show that its attorney's hourly rates were reasonable, the claims pursued by ABI were unreasonable, and LAA's defenses were reasonable, among other factors.

Upon consideration of the motion and responses thereto, and for the reasons stated in LAA's opposition, the amount of fees to which ABI may be entitled is \$18,863.22², subject to an offset for any amount awarded to LAA through its pending May 31, 2016 Motion for Rule 11 and Rule 82 Fees. Pursuant to the opposition brief filed by 716 LLC this amount is further reduced \$2217.80.

IT IS HEREBY ORDERED that Plaintiff ABI is awarded fees of \$16,741.54² against LAA, jointly with 716, and payable on or before June 23, 2016.

DATED this 23rd day of June, 2016.

Honorable Patrick McKay
Superior Court Judge

I certify that on 6/24/16 a copy of the following was mailed/faxed/hand-delivered to each of the following at their addresses of record.

James Gottstein
Jeffrey Robinson
Kevin Cuddy
Administrative Assistant

² [\$144,329.09 - \$50,013.00] * 0.20

CERTIFICATE OF SERVICE

This certifies that on June 6, 2016, I caused a true and correct copy of the foregoing to be served by first class mail on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)


Debby Allen, Litigation Practice Assistant

86741333.1 0081622-00003

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

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.)

GRANTING
PROPOSED ORDER DENYING ALASKA BUILDING, INC.'S MOTION AND
MEMORANDUM FOR COSTS AND ATTORNEY'S FEES AGAINST 716
WEST FOURTH AVENUE, LLC AND LEGISLATIVE AFFAIRS AGENCY

The Alaska Building, Inc.'s Motion and Memorandum For Costs and Attorney's Fees is hereby ~~DENIED~~ *GRANTED*. ABI shall not be awarded prevailing party status and no fees are appropriate in this matter. *fees in the amount of \$26,132.78, of which \$16,741.54 is jointly owed with LAA.*

The grand total of Attorney fees awarded is \$26,132.78.

DATED: 6/23/16

[Signature]
HON. PATRICK J. MCKAY
Superior Court Judge

I certify that on 6/24/16 a copy of the following was ~~mailed/faxed~~ hand-delivered to each of the following at their addresses of ~~sent~~ record. *James Epstein*
Jeffrey Robinson
Kevin Cuddy
Administrative Assistant

JUN 8 2016

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 8 day of June 2016, 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 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-15-05969CI

⁴⁵
**ORDER GRANTING
ALASKA BUILDING, INC., MOTION FOR COSTS AND
ATTORNEY'S FEES AGAINST 716 WEST FOURTH AVENUE LLC
AND LEGISLATIVE AFFAIRS AGENCY**

Plaintiff, Alaska Building, Inc., has moved for costs and attorney's fees against defendants 716 West Fourth Avenue LLC and the Alaska Legislative Affairs Agency pursuant to Civil Rules 79 and 82. Upon consideration of the motion and responses thereto, the finds Alaska Building, Inc., is indeed the prevailing party, and **GRANTS** the motion.

IT IS FURTHER ORDERED:

1. Alaska Building, Inc., is awarded 1,815.60 in costs against defendants 716 West Fourth Avenue LLC and the Legislative Affairs Agency, equally split between them.
2. Substantially enhanced fees are warranted here because _____

MAY 26 2016

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501

TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

002341

3. Alaska Building, Inc., is awarded _____ in attorney's fees against defendants 716 West Fourth Avenue LLC and the Legislative Affairs Agency, equally split between them.

Dated _____, 2016.

Not used

James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

FILED
STATE OF ALASKA
THIRD DISTRICT

2016 JUN 20 PM 4:05

CLERK TRIAL COURT

BY: JEFFREY J. COOPER

Kevin Cuddy (Alaska Bar #0810062)
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: (907) 277-1900
Facsimile: (907) 277-1920

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY, and
CRITERION GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969 CI

**DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S NOTICE OF FILING
SIGNED COPY OF THE AFFIDAVIT OF KEVIN M. CUDDY
(Unsigned Copy Filed May 31, 2016)**

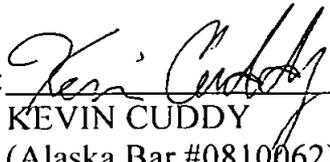
Defendant Legislative Affairs Agency hereby notifies this Court of filing the signed copy of the Affidavit of Kevin M. Cuddy submitted in support of Defendant Legislative Affairs Agency's Motion for Rule 82 Attorneys' Fees filed on May 31, 2016.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

d

DATED: June 20, 2016

STOEL RIVES LLP

By: 
KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE

This certifies that on June 20, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
Eva R. Gardner
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)


Debby Allen, Litigation Practice Assistant
86831373.1 0081622-00003

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

2. I am an attorney with the law firm of Stoel Rives, LLP, counsel for Defendant Legislative Affairs Agency (“Agency”) in the above-captioned litigation and submit this affidavit in support of Defendant Legislative Affairs Agency’s Motion for Rule 82 Attorneys’ Fees.

3. I have been admitted to practice law in Alaska for more than 8 years, all in private practice. I have served as lead counsel in numerous complex litigation matters before this court and other Alaska courts.

3. Stoel typically bills its clients on a monthly basis, preparing comprehensive time records describing all tasks performed by attorneys and paralegals, and the time spent on each. In this matter, such monthly invoices were prepared and sent to LAA.

5. I reviewed the monthly invoices each month to ensure that the tasks and time reflected on them were described accurately and were necessary and reasonable.

6. I have had overall leadership responsibility for this litigation for Stoel.

7. In preparation for this filing, I have reviewed Stoel’s invoices and identified those containing attorney’s fees incurred in defense of Plaintiff Alaska Building, Inc.’s (ABI) qui tam request for relief and Count 2 (property damage claim) of Plaintiff’s June 8, 2015 Amended Complaint under Rules 11 and 82.

8. Attached as Exhibit A is a true and correct compilation of attorney and paralegal time worked in this matter by Stoel for the first eight months of this litigation. Exhibit A includes comprehensive time records for all of the attorney and paralegal fees charged by Stoel for which LAA is seeking an award from ABI as described in our

briefing. Attorney-client privileged information and unrelated information has been redacted from the invoices. Unredacted copies of the actual invoices are available if requested by the Court, or to the extent necessary to address any opposition to LAA's request for fees and costs, LAA will file a copy of the unredacted invoices under seal for the Court's eyes only.

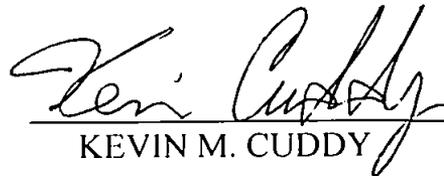
10. In addition to the invoices marked as Exhibit A, Stoel will bill LAA for work on this matter for which a printed invoice has not yet been generated.

11. These legal fees were specifically and necessarily incurred for the reasons described in detail in the "Facts" section of the accompanying memorandum in support of the fees motions.

12. Based on my knowledge of the Alaska legal market, the billing rates for which LAA seeks its recovery are consistent with rates charged by other legal professionals similarly situated in this market, and are appropriate given the nature and complexity of the work performed.

13. I declare under penalty of perjury that the foregoing is true and correct.

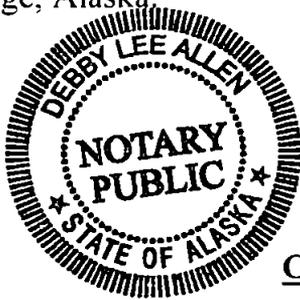
DATED this 20th day of June, 2016.



KEVIN M. CUDDY

SUBSCRIBED AND SWORN to before me this 20th day of June 2016 in

Anchorage, Alaska




Notary in and for the State of Alaska
My Commission expires: 12/17/16

CERTIFICATE OF SERVICE

This certifies that on June 20, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
Eva R. Gardner
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)


Debby Allen, Litigation Practice Assistant
86689197.1 0081622-00003

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920



510 L STREET, SUITE 500
ANCHORAGE, AK 99501-1959
Telephone (907) 277-1900
Fax (907) 277-1920
For Billing Inquiries 1-800-305-8453
Or Email Billing@stoel.com

TO: LEGISLATIVE AFFAIRS AGENCY
DOUG GARDNER, DIR. OF LEGAL SERVICES
STATE CAPITOL, MAIL STOP 3101
JUNEAU, AK 99801

INVOICE DATE 06/23/15
INVOICE NUMBER 3832342
JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY
00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING INC.

STATEMENT OF SERVICES, DISBURSEMENTS, AND OTHER CHARGES THROUGH 05/31/15

Balance From Previous Statement		Redacted
Payment(s) Received		Redacted
Current Activity:		
Fees for Professional Services (see attached for detail)	Redacted	
Disbursements and Other Charges	Redacted	
TOTAL CURRENT AMOUNT DUE		Redacted
Total Outstanding Balance as of 06/23/15		Redacted

Statements are due within 30 days after the invoice date printed on the statement. A monthly late fee equal to 8 percent per annum, commencing on the due date, will be charged on all amounts not paid within 60 days after the invoice date.

Remit to: Stoel Rives LLP, 900 SW Fifth Ave., Suite 2600, Portland, OR 97204

EXHIBIT A | Page 1 of 20
3AN-15-05969C1



510 L STREET, SUITE 500
 ANCHORAGE, AK 99501-1959
 Telephone (907) 277-1900
 Fax (907) 277-1920
 For Billing Inquiries 1-800-305-8453
 Or Email Billing@stoel.com

0081622 LEGISLATIVE AFFAIRS AGENCY
 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING
 00003 INC.

INVOICE DATE 06/23/15
 INVOICE NUMBER 3832342
 JET

Employer's Identification No. 93-0408771

DATE	CURRENT SERVICES THROUGH 05/31/15	ATTY	HOURS
Redacted	[Redacted]	[Redacted]	[Redacted]
Redacted	[Redacted]	[Redacted]	[Redacted]
05/08/15	Continue drafting motion to dismiss for lack of standing	RLD	3.0
[Redacted]	[Redacted]	[Redacted]	[Redacted]
05/13/15	Revise motion to dismiss; research re same	KMC	2.1
05/14/15	Review and revise motion to dismiss; send updated draft to Kevin Cuddy	RLD	1.3
05/15/15	Review and revise edits to draft motion to dismiss; revise and add analysis to discuss why Plaintiff is not an appropriate plaintiff and lacks standing	RLD	1.4
05/15/15	Draft, research, and revise motion to dismiss; email with client re same	KMC	1.8
Redacted	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
05/27/15	Call with client re filing; revise proposed order re dismissal; review filings; arrange for filing and service of motion to dismiss and motion to stay of discovery; call with Jeff Robinson re same	KMC	2.1
05/27/15	Review and analyze documents filed in case today	RLD	.1
	Total		[Redacted]



510 L STREET, SUITE 500
 ANCHORAGE, AK 99501-1959
 Telephone (907) 277-1900
 Fax (907) 277-1920
 For Billing Inquiries 1-800-305-8453
 Or Email Billing@stoel.com

0081622 LEGISLATIVE AFFAIRS AGENCY
 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING
 00003 INC.

INVOICE DATE 06/23/15
 INVOICE NUMBER 3832342
 JET

Employer's Identification No. 93-0408771

TOTAL CURRENT SERVICES

\$8,797.50

TIME RECAP

KEVIN M. CUDDY (KMC)
 RACHEL L. DUNNINGTON (RLD)

HOURS	RATE	VALUE
Redacted	360	Redacted
Redacted	255	Redacted
Redacted		Redacted

TIMEKEEPER TOTALS



510 L STREET, SUITE 500
ANCHORAGE, AK 99501-1959
Telephone (907) 277-1900
Fax (907) 277-1920
For Billing Inquiries 1-800-305-8453
Or Email Billing@stoel.com

0081622 LEGISLATIVE AFFAIRS AGENCY
00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING
INC.

INVOICE DATE 06/23/15
INVOICE NUMBER 3832342
JET

Employer's Identification No. 93-0408771

CURRENT DISBURSEMENTS AND OTHER CHARGES THROUGH 05/31/15

DATE	ITEM	AMOUNT
05/06/15	Document Reproduction	3.60
05/18/15	Document Reproduction	9.72
05/27/15	Document Reproduction	27.72
05/05/15	Computerized Research - Westlaw Redacted	27.72
05/08/15	Computerized Research - Westlaw Redacted	93.52
05/14/15	Computerized Research - Westlaw Redacted	13.86
05/21/15	Computerized Research - Westlaw Redacted	20.79
05/22/15	Computerized Research - Westlaw Redacted	86.59
05/22/15	Computerized Research - Westlaw Redacted	13.86
TOTAL CURRENT CHARGES		\$297.38



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TO: LEGISLATIVE AFFAIRS AGENCY
DOUG GARDNER, DIR. OF LEGAL SERVICES
STATE CAPITOL, MAIL STOP 3101
JUNEAU, AK 99801

INVOICE DATE 07/28/15
INVOICE NUMBER 3838247
JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY

STATEMENT OF SERVICES, DISBURSEMENTS, AND OTHER CHARGES THROUGH 06/30/15

Balance From Previous Statement		Redacted
Payment(s) Received		Redacted
Current Activity:		
Fees for Professional Services (sec attached for detail)	Redacted	
Disbursements and Other Charges	Redacted	
TOTAL CURRENT AMOUNT DUE		Redacted
Total Outstanding Balance as of 07/28/15		Redacted

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TO: LEGISLATIVE AFFAIRS AGENCY
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 STATE CAPITOL, MAIL STOP 3101
 JUNEAU, AK 99801

INVOICE DATE 07/28/15
 INVOICE NUMBER 3838247
 JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY

MATTER NUMBER/NAME	Balance Per Previous Statement	Payments	Current Services	Current Charges	Current Totals
Redacted 00002 LEGISLATIVE AFFAIRS AGENCY 00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING IN	9094.88	9094.88	12990.00	661.40	13651.40
TOTALS	Redacted	Redacted	Redacted	Redacted	Redacted



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0081622 LEGISLATIVE AFFAIRS AGENCY
00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING
INC.

INVOICE DATE 07/28/15
INVOICE NUMBER 3838247
JET

Employer's Identification No. 93-0408771

TOTAL CURRENT SERVICES

Redacted



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00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING
INC.

INVOICE DATE 07/28/15
INVOICE NUMBER 3838247
JET

Employer's Identification No. 93-0408771

CURRENT DISBURSEMENTS AND OTHER CHARGES THROUGH 06/30/15

DATE	ITEM	AMOUNT
06/03/15	Document Reproduction	1.44
06/09/15	Document Reproduction	89.36
06/10/15	Document Reproduction	.12
06/12/15	Document Reproduction	11.00
06/15/15	Document Reproduction	33.48
06/15/15	Document Reproduction	3.60
06/18/15	Document Reproduction	8.64
06/19/15	Document Reproduction	9.60
06/29/15	Document Reproduction	46.08
06/06/15	Computerized Research - Westlaw Redacted	27.72
06/11/15	Computerized Research - Westlaw Redacted	34.65
06/16/15	Computerized Research - Westlaw Redacted	62.37
06/17/15	Computerized Research - Westlaw Redacted	238.07
06/17/15	Computerized Research - Westlaw Redacted	54.04
06/25/15	Computerized Research - Westlaw Redacted	41.23
TOTAL CURRENT CHARGES		\$661.40



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STATE CAPITOL, MAIL STOP 3101
JUNEAU, AK 99801

INVOICE DATE 09/25/15
INVOICE NUMBER 3850093
JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY

STATEMENT OF SERVICES, DISBURSEMENTS, AND OTHER CHARGES THROUGH 08/31/15

Balance From Previous Statement		Redacted
Payment(s) Received		Redacted
Current Activity:		
Fees for Professional Services (see attached for detail)	Redacted	
Disbursements and Other Charges	Redacted	
TOTAL CURRENT AMOUNT DUE		Redacted
Total Outstanding Balance as of 09/25/15		Redacted

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002359



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 STATE CAPITOL, MAIL STOP 3101
 JUNEAU, AK 99801

INVOICE DATE 09/25/15
 INVOICE NUMBER 3850093
 JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY

MATTER NUMBER/NAME	Balance Per Previous Statement	Payments	Current Services	Current Charges	Current Totals
[Redacted] [Redacted] 00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING IN	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
TOTALS	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]



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0081622	LEGISLATIVE AFFAIRS AGENCY	INVOICE DATE	09/25/15
	LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING		
00003	INC.	INVOICE NUMBER	3850093
			JET

Employer's Identification No. 93-0408771

DATE	CURRENT SERVICES THROUGH 08/31/15	ATTY	HOURS
08/03/15	Review proposed stipulation of dismissal for Criterion; finalize and serve initial disclosures; call re tender issues; begin preparation for oral argument	KMC	.9
08/06/15	Call with counsel for 716 regarding tender of defense and strategy for resolving Count 2 of amended complaint	KMC	.3
08/13/15	Research re court's discretion in denying a case based on standing; draft email to Kevin Cuddy re the same	RLD	1.8
08/13/15	Preparation for oral argument on motion to dismiss	KMC	2.1
08/14/15	Oral argument preparation for hearing on motion to dismiss	KMC	1.8
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
08/17/15	Prepare for oral argument on motions to dismiss and sever claims	KMC	4.4
08/18/15	Oral argument on motion to dismiss and sever; prep for same; meeting with client to discuss next steps in litigation; review case law and briefing on standing issues	KMC	1.0
08/18/15	Review and analyze court order granting 716's request for ruling and joining as a party for oral argument	RLD	.1
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



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0081622 LEGISLATIVE AFFAIRS AGENCY
00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING
INC.

INVOICE DATE 09/25/15
INVOICE NUMBER 3850093
JET

Employer's Identification No. 93-0408771

DATE	CURRENT SERVICES THROUGH 08/31/15	ATTY	HOURS
Redacted	[Redacted]		
Total			[Redacted]
TOTAL CURRENT SERVICES			[Redacted]



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0081622 LEGISLATIVE AFFAIRS AGENCY
00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING
INC.

INVOICE DATE 09/25/15
INVOICE NUMBER 3850093
JET

Employer's Identification No. 93-0408771

CURRENT DISBURSEMENTS AND OTHER CHARGES THROUGH 08/31/15

DATE	ITEM	AMOUNT
08/03/15	Document Reproduction	7.92
08/03/15	Document Reproduction	12.50
08/31/15	Document Reproduction	455.96
08/13/15	Computerized Research - Westlaw Redacted	55.44
08/17/15	Computerized Research - Westlaw Redacted	13.86
08/21/15	Computerized Research - Westlaw Redacted	6.93
08/23/15	Computerized Research - Westlaw Redacted	6.93
TOTAL CURRENT CHARGES		\$559.54



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STATE CAPITOL, MAIL STOP 3101
JUNEAU, AK 99801

INVOICE DATE 11/20/15
INVOICE NUMBER 3861997
JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY

STATEMENT OF SERVICES, DISBURSEMENTS, AND OTHER CHARGES THROUGH 10/31/15

Balance From Previous Statement		Redacted
Payment(s) Received		Redacted
Current Activity:		
Fees for Professional Services (see attached for detail)	Redacted	
Disbursements and Other Charges	Redacted	
TOTAL CURRENT AMOUNT DUE		Redacted
Total Outstanding Balance as of 11/20/15		Redacted

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 STATE CAPITOL, MAIL STOP 3101
 JUNEAU, AK 99801

INVOICE DATE 11/20/15
 INVOICE NUMBER 3861997
 JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY

MATTER NUMBER/NAME	Balance Per Previous Statement	Payments	Current Services	Current Charges	Current Totals
<small>Redacted</small> 00003 Redacted LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING IN	<small>Redacted</small> 3359.32	<small>Redacted</small> 3359.32	<small>Redacted</small> 18108.00	<small>Redacted</small> 443.10	<small>Redacted</small> 18551.10
TOTALS	<small>Redacted</small>	<small>Redacted</small>	<small>Redacted</small>	<small>Redacted</small>	<small>Redacted</small>



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0081622	LEGISLATIVE AFFAIRS AGENCY	INVOICE DATE	11/20/15
00003	LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING INC.	INVOICE NUMBER	3861997 JET

Employer's Identification No. 93-0408771

DATE	CURRENT SERVICES THROUGH 10/31/15	ATTY	HOURS
10/21/15	Revise non-opposition re qui tam damages; email with client re same; review and finalize motion for summary judgment on laches; review updated affidavit; arrange for filing and service of same; email re request for oral argument	KMC	.5
Redacted	Redacted	Redacted	Redacted
Redacted	Redacted	Redacted	Redacted
10/26/15	Draft, research, and revise reply brief in support of fees	KMC	2.3
Redacted	Redacted	Redacted	Redacted
10/28/15	Draft, research, and revise reply brief in support of ruling of law on qui tam damages	KMC	2.3
10/29/15	Draft, research and revise reply brief in support of motion to preclude qui tam relief for plaintiff; emails re same	KMC	2.9
Redacted	Redacted	Redacted	Redacted
	Total		Redacted
	TOTAL CURRENT SERVICES		Redacted



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0081622 LEGISLATIVE AFFAIRS AGENCY
 00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING
 INC.

INVOICE DATE 11/20/15
 INVOICE NUMBER 3861997
 JET

Employer's Identification No. 93-0408771

CURRENT DISBURSEMENTS AND OTHER CHARGES THROUGH 10/31/15

DATE	ITEM	AMOUNT
10/09/15	Document Reproduction	.24
10/12/15	Document Reproduction	5.04
10/15/15	Document Reproduction	3.36
10/16/15	Document Reproduction	1.08
10/21/15	Document Reproduction	72.52
10/23/15	Document Reproduction	3.00
10/27/15	Document Reproduction	2.40
10/29/15	Document Reproduction	24.54
10/19/15	Court Reporter Services -- Vendor: Redacted	Redacted
	[Redacted]	
09/09/15	[Redacted]	Redacted
TOTAL CURRENT CHARGES		\$443.10

FILED
JUDICIAL DISTRICT
2016 JUN 20 PM 4:04
CLERK TRIAL COURT
BY: DEPT 11711711

Kevin Cuddy (Alaska Bar #0810062)
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
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Facsimile: (907) 277-1920

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY, and
CRITERION GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969 CI

**LEGISLATIVE AFFAIRS AGENCY'S REPLY IN SUPPORT OF ITS MOTION
FOR RULE 11 AND RULE 82 FEES**

The Legislative Affairs Agency (LAA) is entitled to its attorneys' fees pursuant to Civil Rule 82 as to the "property damage" claim (sometimes called "Count 2," since it was originally the second count in ABI's complaint). ABI was required to have brought that claim in a separate lawsuit, and LAA is clearly the prevailing party as to that claim.

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LAA is also entitled to its attorneys' fees pursuant to Civil Rule 11 with respect both to the "property damage" claim *and* the "qui tam" claim – in which ABI sought damages for 10% of any "savings" the State received from the invalidation of the underlying lease – because ABI had no good faith basis for bringing either claim. ABI's arguments to the contrary lack merit.

I. LAA IS ENTITLED TO RULE 82 FEES

LAA is the prevailing party with respect to the property damages claim. As explained in the earlier briefing,¹ ABI was required to bring the property damage claim in a separate lawsuit from the declaratory judgment claim regarding the legality of the lease. After amending its complaint to add allegations against LAA with respect to the property damage claim, ABI functionally dismissed LAA from the claim when the claim was severed from the original lawsuit and brought separately.

ABI originally argued to the Court that LAA should not be deemed the prevailing party solely because LAA "was not named in the separate action [which related just to property damage, and is pending in another court] because the claim against it was for vicarious liability for the actions of Criterion, which was included in the \$50,000

¹ See Defendant Legislative Affairs Agency's Motion and Memorandum in Support of Request for Entitlement to Attorneys' Fees and Costs (filed Oct. 15, 2015); Defendant Legislative Affairs Agency's Reply in Support of Request for Entitlement to Attorneys' Fees and Costs (the "Fees Reply") (filed Oct. 29, 2015).

settlement.”² That is, ABI’s claim against LAA was just for vicarious liability and, since ABI secured a settlement from Criterion, the reason for the claim against LAA no longer applied. *This was an objectively false representation to the Court, as ABI now admits.*³ In fact, ABI continued to press LAA for payment of tens of thousands of dollars *after* getting a settlement from Criterion.⁴ Either ABI did not know what the basis for its property damage claim against LAA was, or ABI attempted to mislead the Court as to why it brought the property damage claim against LAA in the first place.

ABI now changes its tune. It now says that it believes it still has a “colorable claim” against LAA for property damage, but has just opted not to pursue it.⁵ If ABI’s earlier statement to the Court was true – i.e., the claim against LAA was for vicarious liability, which was resolved by the Criterion settlement – then this current statement is untrue. Even assuming *arguendo* that ABI is now telling the truth, its theory is incorrect. By functionally dismissing LAA from the property damages lawsuit, LAA became the prevailing party. If ABI *later* decides to bring suit against LAA for property damages as a tenant (which lacks any legal support), then there would be a separate determination as

² Opposition to Legislative Affairs Agency’s Motion for Entitlement to Attorney’s Fees and Costs at 1-2 (filed Oct. 23, 2015).

³ See Alaska Building, Inc., Opposition to Legislative Affairs Agency’s Motion for Rule 11 and Rule 82 Fees at 5 n.1 (“Opp.”) (filed June 10, 2016) (admitting that ABI “got the timing wrong on the Criterion settlement”).

⁴ See Fees Reply at 2-3.

⁵ See Opp. at 5 & n.1.

to whether LAA or ABI was the prevailing party when the latter lawsuit was resolved. But it does not change the fact that LAA is the prevailing party as to the property damage claim now. Otherwise, there could never be a prevailing party award as to a dismissed party because it would always be possible that the claimant could decide to bring some other claim within the statute of limitations.

ABI next argues that it was the prevailing party as to the principal issue and that the Court should decline to apportion the fees by issue. ABI misses the point. The property damage claim was not properly included in this lawsuit in the first place, as the Court held, because of misjoinder. The declaratory judgment issue was not the “principal issue” as compared to the property damage issue because these were always required to be two separate lawsuits. As to the property damage lawsuit, LAA is a prevailing party.⁶

In a single sentence, ABI questions (but does not actually dispute) the Court’s jurisdiction to award fees as to the severed claim. In the September 15, 2015 status hearing, the Court indicated that it would entertain a motion for “prevailing party” fees after determining whether ABI would proceed with a separate property damage lawsuit. This Court is the correct one to address the fees associated with the severed claim

⁶ Likewise, this was not an “abandoned claim” within a lawsuit. These were two entirely distinct claims that were required to be litigated in two separate lawsuits. ABI cannot claim an entitlement to fees for work on a claim that was required to be litigated elsewhere. LAA also notes that ABI misstates the holding in *Tenala, Ltd. v. Fowler*, 993 P.2d 447, 450 (Alaska 1999). The Alaska Supreme Court did not reject a claim for attorney’s fees for an abandoned claim. Rather, it allowed a prevailing party to include work for an abandoned claim when that claim was an “important component” of the quiet title action in which the plaintiff ultimately prevailed.

because all of the work relating to that severed claim was performed under this Court's jurisdiction. As a practical matter, LAA would be unable to pursue its fees in the other lawsuit because it is not a party to any other lawsuit regarding these claims.

Lastly, ABI does not challenge the reasonableness of any of LAA's fees, but complains that the Court cannot evaluate those fees because there is no allocation. A cursory review of the invoices confirms that all of the work that predates October 20, 2015 relates to the property damage claim, and all of the work from October 20, 2015 onward relates to the qui tam claim.⁷

II. LAA IS ENTITLED TO ATTORNEYS' FEES UNDER RULE 11

In its opening brief, LAA requested a full fee award under Civil Rule 11 for both the "property damage" claim and the "qui tam" claim because ABI had no good faith basis for bringing those claims.⁸ In its opposition brief, *ABI does not dispute that it had no good faith basis for bringing the property damage claim against LAA.* ABI does not address the issue at all. Given this concession, LAA should be awarded its full fees for defending against that baseless claim. There is simply no legal authority to support a claim against a tenant for property damage relating to construction work that was not controlled or performed by that tenant. ABI has never attempted to identify any such

⁷ See Affidavit of Kevin M. Cuddy in Support of Legislative Affairs Agency's Motion for Rule 82 Attorney's Fees.

⁸ See Memorandum in Support of Legislative Affairs Agency's Motion for Rule 11 and 82 Fees at 2-3 (filed May 31, 2016).

legal support – and LAA is not aware of any – and persisted with its claim even after any conceivable vicarious liability was resolved by the Criterion settlement.

As to the “qui tam” claim, ABI argues that its claim was an attempt to “establish new law.”⁹ An attorney is required to certify that to the best of his knowledge, information, and belief, formed after a reasonable inquiry, the claims and legal contentions in his pleadings to the Court are warranted (1) by existing law or (2) by a nonfrivolous argument for extending, modifying, or reversing existing law or (3) by a nonfrivolous argument for establishing new law.¹⁰ This is an objective standard and is more stringent than mere “good faith.”¹¹ ABI admits, as it must, that to the best of its counsel’s knowledge and belief, the “qui tam” claim was not warranted by existing law or by any nonfrivolous argument for extending or modifying existing law. In fact, more than six months *after* bringing the claim, ABI’s counsel admitted under oath that he still had not located any statutory or common law basis for the claim.¹² Instead, ABI asserts exclusively that the third prong applies here because ABI purportedly made a nonfrivolous argument for establishing new law. As explained below, ABI’s argument was frivolous.

⁹ Opp. at 4.

¹⁰ See Civil Rule 11(b)(2).

¹¹ See *Keen v. Ruddy*, 784 P.2d 653, 658 (Alaska 1989).

¹² See Memorandum in Support of Legislative Affairs Agency’s Motion for Rules 11 and 82 Fees, Exh. A.

Importantly, the Court already addressed – and rejected – ABI’s contention that its *qui tam* claim warrants the establishment of new law. The Court held that “*ABI does not provide any legal theory upon which this court could justify creating new law.* Rather, ABI’s argument is one of public policy, which is better left to [the] legislature[.]”¹³ ABI has never presented any legal theory whatsoever that would justify the creation of new law by the Court. Indeed, as LAA already pointed out, the courts have already clearly held that there is no room for the creation of “new” or additional common law to supplement the comprehensive legislative scheme present under the False Claims Act.¹⁴ According to the United States Supreme Court, no common law *qui tam* claim has ever been available in this country – even in Colonial times.¹⁵ ABI’s request was and is, by definition, frivolous. ABI complains that granting sanctions here would “stifle creative advocacy” or punish ABI for pursuing a losing theory. To be very clear, that is not what happened here. ABI pursued a manufactured claim for common law *qui tam* relief that flies in the face of hundreds of years of legal precedent. The claim had no legal support

¹³ Order Regarding ABI’s *Qui Tam* and Punitive Damages Request for Relief at 4 (emphasis added).

¹⁴ See Legislative Affairs Agency’s Non-Opposition to 716’s Motion for Ruling of Law Precluding ABI’s Claims for Qui Tam Damages at 3-4 (filed Oct. 24, 2015) (citing *Mortgages, Inc. v. United States Dist. Court for the Dist. of Nevada (Las Vegas)*, 934 F.2d 209 (9th Cir. 1991) and *Vt. Agency of Nat. Resources v. U.S. ex rel. Stevens*, 529 U.S. 765 (2000)).

¹⁵ *Vt. Agency of Nat. Resources*, 529 U.S. at 776.

whatsoever and ABI's counsel knew it. His decision to pursue that claim with a frivolous argument for the creation of a new common law *qui tam* remedy is sanctionable.

Underlining the Court's conclusion that ABI's request for *qui tam* relief was not a valid request for the Court to create new law under any existing legal theory, ABI's counsel confirmed as much in a published piece in the newspaper. On February 8, 2016, ABI's counsel published an article in the *Alaska Dispatch News* urging the Legislature to "pass a law similar to the federal False Claims act, just as most other states have already done."¹⁶ This was necessary "for future lawsuits" like his.¹⁷ The article reflects the author's belated conclusion that only the Legislature could create the statutory law that would permit the type of *qui tam* claim he brought in this lawsuit. In other words, while Mr. Gottstein insisted during this lawsuit that his claim was not really a *qui tam* claim under the False Claims Act, this was untrue. His claim for 10% of the savings was precisely a *qui tam* claim, but there was not any False Claims Act under Alaska law that would have enabled his claim to proceed. In the absence of a valid underlying statute – which was a prerequisite to his claim – Mr. Gottstein simply made up a new claim out of whole cloth and hoped the Court would ignore centuries of legal history to permit it. It was and is a frivolous argument.

¹⁶ See <http://www.adn.com/commentary/article/jim-gottstein-why-i-am-willing-settle-taj-mahawker-lawsuit/2016/02/08/>.

¹⁷ *Id.*

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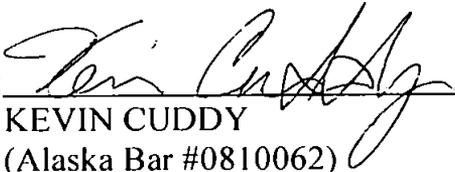
Whether under Rule 11 or Rule 82(b)(3)(F) – which relates to “the reasonableness of the claims and defenses pursued by each side” – LAA is entitled to its full fees and costs for litigating the frivolous *qui tam* claim.

III. CONCLUSION

For the foregoing reasons, LAA respectfully requests that the Court grant LAA’s motion for fees and costs pursuant to Civil Rules 11 and 82. LAA also requests its fees for preparing this briefing.

DATED: June 20, 2016

STOEL RIVES LLP

By: 
KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE

This certifies that on June ~~20~~ 2016, a true and correct copy of the foregoing was served via First Class Mail on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
Eva R. Gardner
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)


Debby Allen, Litigation Practice Assistant
86806898.1 0081622-00003

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED
STATE OF ALASKA
THIRD DISTRICT
JUN 13 PM 3:37
CLERK TRIAL COURTS
BY: DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

Case No. 3AN-15-05969CI

**REPLY Re:
ALASKA BUILDING, INC., MOTION FOR COSTS AND
ATTORNEY'S FEES AGAINST 716 WEST FOURTH AVENUE LLC
AND LEGISLATIVE AFFAIRS AGENCY**

This replies to the oppositions of both the Legislative Affairs Agency and 716 West Fourth Avenue LLC (716 LLC) to Alaska Building, Inc.'s Motion for Costs and Attorney's Fees Against 716 West Fourth Avenue LLC and Legislative Affairs Agency.

A. Alaska Building Inc., is the Prevailing Party

Both the Legislative Affairs Agency and 716 LLC assert plaintiff Alaska Building, Inc., is not the prevailing party because it did not prevail on peripheral claims. 716 LLC cites *Alliance of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough*,¹ for the proposition that the court may decide there is no prevailing party, but *Alliance of Concerned Taxpayers* only held that permissible. *Alliance* also held a prevailing party

¹ 273 P.3d 1123 (Alaska 2012).

LAW OFFICES OF
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determination will only be overturned if it is manifestly unreasonable.² It is respectfully suggested that Alaska Building, Inc., is the prevailing party on the main issue in the case, which is the illegality of the lease.

B. Attorney's Fees Should Not Be Apportioned by Issue

The Legislative Affairs Agency argues that this Court should engage in an exercise to apportion fees by issue, but the Alaska Supreme Court has a long jurisprudence that Rule 82 fees are to be awarded to the party "who prevails on the principal dispositive issue" and not apportioned by issue. *Gold Bondholders Protective Council v. Atchison, Topeka and Santa Fe Railway Co.*,³ through *Nautilus Marine Enterprises, Inc. v. Exxon Mobil Corp.*,⁴ citing to *Gold Bondholders*. In *Tenala, Ltd. v. Fowler*,⁵ for example, the Alaska Supreme Court held:

Rule 82(a) does not require that attorneys' fees be calculated with reference to the disposition of individual issues. Rather, it expressly provides that a reasonable award of fees shall be made, at the trial court's discretion, to the prevailing party. The clear meaning of that provision is that the party who prevails on the principal dispositive issue is entitled to reasonable costs calculated according to the trial court's discretion. We refuse to now alter the purview of Rule 82 by requiring the niceties in apportionment urged by the Bondholders. We hold that the superior court did not abuse its discretion by awarding Santa Fe attorneys' fees for time spent on issues on which Santa Fe did not prevail.

² 273 P. 3d at 1126.

³ 658 P.2d 776 , 779 (Alaska 1983).

⁴ 332 P.3d 554, 564 (Alaska 2014) , citing *Gold Bondholders*.

⁵ 993 P.2d 447, 450 (Alaska 1999), footnote omitted.

*Reply Re: Alaska Building
Motion for Attorney's Fees*

(emphasis added). Objection was made to including fees for work on the 10% of savings and punitive damages claims.⁶ The fees relating to these should be included in accordance with the longstanding jurisprudence in Alaska.

Objection was also made to fees relating to Count 2 for damage to the Alaska Building, which was severed from this action. In *Tenala*, the argument that fees for work on an abandoned count should not have been awarded was rejected by the Supreme Court. It is therefore respectfully suggested the attorney's fees for Count 2, which was severed from this case, should be included.⁷ At pages 7-8 of its opposition, the Legislative Affairs Agency cites *Nautilus* in the middle of the sentence for the proposition that fees do not have to be apportioned by issue and then makes the statement that "wholly separate claims that have been severed into independent suits must stand on their own for calculating attorney's fees," without citing any authority whatsoever. This appears to be deliberately misleading. Fees relating to Count 2 should be included.⁸

⁶ 716 LLC and the Legislative Affairs Agency present an untrue description of the basis for Alaska Building, Inc.'s 10% of savings claim. For an accurate description *see*, Alaska Building, Inc.'s June 10, 2016 Opposition to the Legislative Affairs Motion for Rule 11 and Rule 82 Fees.

⁷ At page 7 of its Opposition, the Legislative Affairs Agency stated that there was no basis for bringing the damages claim against it because the Legislative Affairs agency "played no role in the construction of the building." The truth is the Legislative Affairs Agency was extensively involved in the construction as demonstrated by the 55 pages of plans attached to the lease, specifying the work to be performed including that which damaged the Alaska Building. Exhibit A to June 12, 2015, Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment (Not Extension).

⁸ At footnote 3 of its opposition, 716 LLC suggests that an award relating to the fees identified as being for the severed Count 2 should make clear that Alaska Building, Inc.,

*Reply Re: Alaska Building
Motion for Attorney's Fees*

The requests to have this Court parse the attorney's fees by issue should be rejected.

C. Enhanced Fees Should Be Awarded

Alaska Building Inc., will address just a few points made by the Legislative Affairs Agency and 716 LLC regarding attorney fee enhancement, relying primarily on the reasons set forth in the Fee Motion for why full attorney's fees should be awarded or substantially enhanced.

(1) Full Fees Are Appropriate Because of the Frivolous Defense of the Lease's Legality

The Legislative Affairs Agency and 716 LLC are simply incorrect when they state full fees may only be awarded if the losing party acted in bad faith or engaged in vexatious conduct. Both the Legislative Affairs Agency and 716 LLC ignore that the Supreme Court held in *Johnson v. Johnson*,⁹ that full fees can be awarded if a defense is frivolous even in the absence of bad faith. Here, the defense of the legality of the lease was frivolous as it obviously did not "extend a real property lease," nor was the rent at least 10% below market rent,¹⁰ as required by AS 36.30.083(a). And the parties knew it as shown by the e-mail correspondence cited by Alaska Building, Inc. Full fees are certainly justified here.

may not also seek recovery of those fees in the new case, 3AN-15-09875CI. Alaska Building, Inc., does not object to such a clarification.

⁹ 239 P.3d 393, 400 (Alaska 2010).

¹⁰ The Legislative Affairs Agency asserts that the later appraisal submitted to it proved that 716 LLC's recognition that the project could not be constructed for a cost that would allow a lease at least 10% below market rent was unfounded. The March 24, 2016, Order On Motion for Summary Judgment Re: Lease is Not An Extension, which was entered as a

*Reply Re: Alaska Building
Motion for Attorney's Fees*

(2) Substantial Enhancement Over the Default Should be Awarded

Even if full fees are not awarded, substantial enhancement over the default should be awarded. It is respectfully suggested that at least 75% of full fees be awarded. There are a lot similarities between this case and the 75% of full fees approved by the Alaska Supreme Court in *United Services Auto. Ass'n v. Pruitt ex rel. Pruitt*.¹¹

(3) The Legislature Paying Continuing Rent With No Apparent Legal Authority Is No Reason to Reduce Attorney's Fees to Alaska Building, Inc.

At footnote 30 of its opposition, 716 LLC states that because the Legislature continues to occupy the Anchorage Legislative Information Office Building and continues to pay rent it is not certain the State will achieve any cost savings as a result of this Court's declaratory judgment that the lease is illegal and invalid.¹² Alaska Building, Inc., is unaware of any authority for the continued payment of rent under the lease which this court has declared illegal and invalid. While perhaps not technically being a contempt of court because this court did not order such illegal payments be stopped, that the Legislature continues to pay and 716 LLC continues to receive rent under a lease that has

final appealable order, mooted consideration of the fraudulent nature of that appraisal, but the only actual evidence in this case on market rental value is the October 2, 2015, Affidavit of Larry Norene, filed on October 6, 2016, in support of Alaska Building, Inc.'s Motion for Preliminary Injunction. A logical conclusion why no actual evidence was presented purporting to prove that the lease was at least 10% below market rent is no appraiser was willing to swear or affirm that the lease was at least 10% below market rent.

¹¹ 38 P.3d 528, 535 (Alaska 2001).

¹² On the other hand, at page 14 of its opposition, the Legislative Affairs Agency states it is going to be forced to leave.

*Reply Re: Alaska Building
Motion for Attorney's Fees*

been declared illegal and invalid should not be the occasion to reduce the attorney's fee award to Alaska Building, Inc.

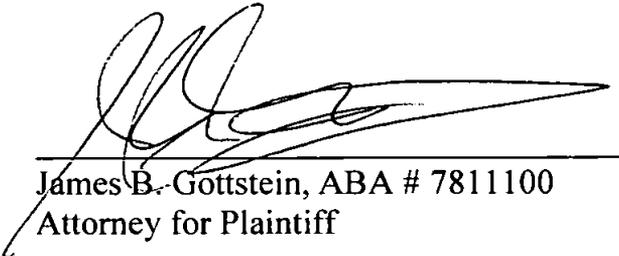
D. Unequal Apportionment Between the Legislative Affairs Agency and 716 LLC is Permissible.

The Legislative Affairs Agency argues that substantially more than half the attorney's fees award should be assessed against 716 LLC. This is permissible and Alaska Building, Inc., has no objection.

E. Conclusion

For the foregoing reasons Alaska Building, Inc.'s Motion for Costs and Attorney's Fees Against 716 West Fourth Avenue LLC and Legislative Affairs Agency should be **GRANTED.**

Dated June 13, 2016.

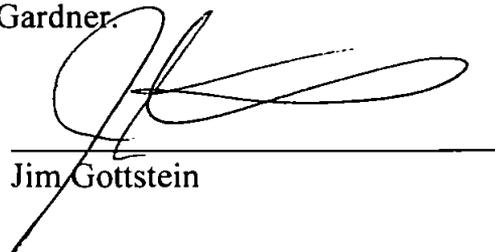


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated June 13, 2016.



Jim Gottstein

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*Reply Re: Alaska Building
Motion for Attorney's Fees*

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT
2016 JUN 10 PM 4:23

CLERK TRIAL COURT

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

Case No. 3AN-15-05969CI

^{#46}
**ALASKA BUILDING, INC., OPPOSITION TO
LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR
RULE 11 AND RULE 82 FEES**

Alaska Building, Inc., opposes the Legislative Affairs Agency's Motion for Rule 11 and Rule 82 Fees.

A. Rule 11 Fees Are Not Appropriate Here

At page 3 of its Memorandum, the Legislative Affairs asserts that "Under Rule 11(b)(2), claims, defenses and other legal contentions must be 'warranted by existing law.'" At page 4, the Legislative Affairs Agency also argues sanctions under Rule 11 are appropriate when a pleading "is not warranted by existing law or a reasonable argument for its extension," citing to 2 cases considering a prior version of Rule 11. The Legislative Affairs Agency then submits a single page of a deposition stating Alaska Building, Inc., admitted under oath it had no support for its claim for 10% of the savings to accrue to the State from the lease being declared illegal.

First, Rule 11(b)(2) provides:

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: . . .

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(emphasis added).

Attached hereto as Exhibit 1, is the full deposition testimony regarding the issue, which is as follows:

Q. (Kevin Cuddy) Under a qui tam case like you pursued in the Matsutani case, the complaint is filed under seal. Is that right?

A. (Jim Gottstein) Yes.

Q. And that was not done here?

A. No. It's not really a qui tam case.

Q. Okay.

A. And...

Q. So I think we can agree on that, that this is not a qui tam case. What is the basis for claiming an entitlement to 10 percent of the savings?

A. I think that it's -- it's a way to make real the citizen taxpayers' right to bring actions on behalf of the government to stop government -- illegal government action.

What we had -- from about 1974 through 1998, the Alaska Supreme Court had established what's called a public interest exception to Civil Rule 82, providing that public interest litigants that were truly suing on behalf of the public were not subjected to having attorneys' fees against them and would have -- if they prevailed, would have -- be awarded full attorneys' fees.

So there wasn't really -- if they could establish that they were public interest litigants, they wouldn't really face the risk of having attorneys' fees awarded against them.

In 2003, the Alaska legislature passed a statute that changed that, except with respect to constitutional claims, basically because they were tired of paying attorneys' fees in all these cases where the government was found to have acted illegally.

And so now you have a situation where anybody trying to bring such a suit faces potentially ruinous attorneys' fees if they don't prevail, or certainly large attorneys' fees if they don't prevail. And that, in my -- my sense of it, has essentially virtually dried up public interest litigation, and so now the government pretty much has free rein to act illegally without any kind of check through this public interest litigation.

And so by -- in these types of cases, where a big, you know, savings or recovery on behalf of the government is achieved, this is a way to really make real the citizens' rights to sue to redress illegal government action.

Q. So thank you for the answer. I'm going to go back to my original question, which is: What is the basis for your claim to an entitlement of 10 percent of the fees?

A. I just said it.

Q. I'm not sure that you have. You gave me a history lesson about the public interest exception for Rule 82. Is there a statute?

A. No.

Q. False Claims Act? This isn't a qui tam case, right?

A. Correct.

Q. Is there any common law that you can point to to say that a savings of this type had been given a private litigant?

A. No. Well, not yet anyway. So, I mean, it's possible I'll come up with some, but I haven't found -- I haven't seen any yet.

I mean, I think that the -- this is a very important public issue, and the point is, is that if this right of public -- the public citizens to sue over illegal government action is to have any, you know, reality at all, there

needs to be some countervailing element for the prospect of attorneys' fees being awarded against a plaintiff if they're unsuccessful.

Exhibit 1. Perhaps more coherently, Alaska Building Inc., made the same argument in its October 27, 2015 Opposition to 716's Motion for Ruling of Law Precluding ABI's Claims for *Qui Tam* and Punitive Damages, Section B. The 10% of Savings Remedy Should Not Be Foreclosed.

Alaska Building, Inc., was clear that it was attempting to establish new law to partially ameliorate the adverse effects of the Legislature's abrogation of the Public Interest Litigant Exception to Rule 82. This is specifically allowed under Rule 11(b)(2), as set forth above. In fact, the amendment to Rule 11 in 2012 through Supreme Court Order No. 1728, specifically added that a nonfrivolous argument for establishing new law is not grounds for Rule 11 sanctions. It is also respectfully suggested this Court should heed the Supreme Court's caution that Rule 11 should not "stifle creative advocacy or chill an attorney's enthusiasm in pursuing factual or legal theories." *Enders v. Parker*, 125 P.3d 1027, 20132 (Alaska 2005) (internal quotations omitted).

In *Alaska State Employees Ass'n v. Alaska Public Employees Ass'n.*, 813 P.2d 669, 672 (Alaska 1991), the Supreme Court reversed an award of Rule 11 sanctions holding, the party's "position was not so devoid of merit as to justify the imposition of sanctions." The Supreme Court also noted that "Under Rule 11, a court cannot impose sanctions on a party simply for losing." 813 P.2d at 671. Moreover, even if this Court were to find that Rule 11 was violated, this Court acts within its discretion to deny sanctions. *Rude v. Cook Inlet*

Region, Inc., 322 P.3d 853, 860 (Alaska 2014). *See, also, Enders v. Parker*, 125 P.3d 1027, 1037 (Alaska 2005).

B. Rule 82 Fees Should Not Be Awarded to the Legislative Affairs Agency

The Legislative Affairs Agency also asks this Court to award it fees with respect to what was Count 2. This would be improper.

First, the Legislative Affairs Agency is not a prevailing party even with respect to what was Count 2. In its August 20, 2015, Order, this Court ordered Count 2 be severed from this action:

Count One should be severed from Count Two. Plaintiff shall file an amended complaint in this action as to the allegations in Count One. Plaintiff shall file a separate action, if desired, on the allegations in Count Two. . . .

RULING

. . . This Court further finds that the claims present in Court Two shall be SEVERED from the current matter and a new suit shall proceed separately.

This does not make the Legislative Affairs Agency the prevailing party on Count 2. That Alaska Building, Inc., did not name the Legislative Affairs Agency in the new suit does not change that. In fact, Alaska Building, Inc., could still amend the complaint in that suit to name the Legislative Affairs Agency.¹ In any event, this question was essentially

¹ In its October 29, 2015, Reply In Support of Request for Entitlement to Attorneys' Fees and Costs, the Legislative Affairs Agency correctly points out that Alaska Building, Inc., got the timing wrong on the Criterion settlement. However, Alaska Building, Inc., believes it had and still has a colorable claim against the Legislative Affairs Agency for damage to the Alaska Building. It just has so far chosen not to pursue it in the separate suit.

answered in *Tenala, Ltd. v. Fowler*, 993 P.2d 447, 450 (Alaska 1999) where the Supreme Court rejected a claim for attorney's fees for an abandoned claim.

Second, the Supreme Court has a long jurisprudence that Rule 82 fees are to be awarded to the party "who prevails on the principal dispositive issue" and not apportioned by issue *Gold Bondholders Protective Council v. Atchison, Topeka and Santa Fe Railway Co.*, 658 P.2d 776 , 779 (Alaska 1983); *Nautilus Marine Enterprises, Inc. v. Exxon Mobil Corp.*, 332 P.3d 554, 564 (Alaska 2014), citing *Gold Bondholders*.

Third, it is unclear that this Court even has jurisdiction to award fees as to a severed claim.

Finally, there is no way to really evaluate the reasonableness of the fees because there is no allocation to the issues for which the Legislative Affairs Agency seeks fees.

C. Conclusion

For the foregoing reasons, the Legislative Affairs Agency's Motion For Rule 11 And Rule 82 Fees should be **DENIED**.

Dated June 10, 2016.

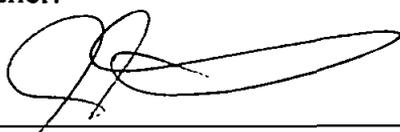


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated June 10, 2016.



Jim Gottstein

*Opposition to Legislative Affairs Agency
Motion for Rule 11 and Rule 82 Fees*

In the Matter Of:
ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

JAMES GOTTSTEIN - VOLUME I

October 16, 2015

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1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3
4 ALASKA BUILDING, INC., an
5 Alaska corporation,

6 Plaintiff,

7 vs.

8 716 WEST FOURTH AVENUE LLC,
9 and LEGISLATIVE AFFAIRS
10 AGENCY,

11 Defendants.

12 Case No. 3AN-15-05969 CI

13 DEPOSITION OF JAMES B. GOTTSTEIN

14 VOLUME I

15 Pages 1 - 58, inclusive

16 Friday, October 16, 2015
17 2:00 P.M.

18
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 that. I would be -- I'd welcome any kind of any
2 indication of that.

3 Q. Under a qui tam case like you pursued in
4 the Matsutani case, the complaint is filed under
5 seal. Is that right?

6 A. Yes.

7 Q. And that was not done here?

8 A. No. It's not really a qui tam case.

9 Q. Okay.

10 A. And...

11 Q. So I think we can agree on that, that this
12 is not a qui tam case. What is the basis for
13 claiming an entitlement to 10 percent of the
14 savings?

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16 real the citizen taxpayers' right to bring actions
17 on behalf of the government to stop government --
18 illegal government action.

19 What we had -- from about 1974 through 1998,
20 the Alaska Supreme Court had established what's called
21 a public interest exception to Civil Rule 82,
22 providing that public interest litigants that were
23 truly suing on behalf of the public were not subjected
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2 So there wasn't really -- if they could
3 establish that they were public interest litigants,
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6 In 2003, the Alaska legislature passed a
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10 where the government was found to have acted
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12 And so now you have a situation where anybody
13 trying to bring such a suit faces potentially ruinous
14 attorneys' fees if they don't prevail, or certainly
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17 virtually dried up public interest litigation, and so
18 now the government pretty much has free rein to act
19 illegally without any kind of check through this
20 public interest litigation.

21 And so by -- in these types of cases, where a
22 big, you know, savings or recovery on behalf of the
23 government is achieved, this is a way to really make
24 real the citizens' rights to sue to redress illegal
25 government action.

1 Q. So thank you for the answer. I'm going to
2 go back to my original question, which is: What is
3 the basis for your claim to an entitlement of
4 10 percent of the fees?

5 A. I just said it.

6 Q. I'm not sure that you have. You gave me a
7 history lesson about the public interest exception
8 for Rule 82. Is there a statute?

9 A. No.

10 Q. False Claims Act? This isn't a qui tam
11 case, right?

12 A. Correct.

13 Q. Is there any common law that you can point
14 to to say that a savings of this type had been given
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16 A. No. Well, not yet anyway. So, I mean,
17 it's possible I'll come up with some, but I haven't
18 found -- I haven't seen any yet.

19 I mean, I think that the -- this is a very
20 important public issue, and the point is, is that if
21 this right of public -- the public citizens to sue
22 over illegal government action is to have any, you
23 know, reality at all, there needs to be some
24 countervailing element for the prospect of attorneys'
25 fees being awarded against a plaintiff if they're

1 unsuccessful.

2 Q. So I'm going to switch gears.

3 MR. ROBINSON: Before you do that, Kevin, I'm
4 going to request a brief restroom break. Is that
5 okay?

6 MR. CUDDY: Sure. Yeah.

7 MR. ROBINSON: Just a couple minutes.

8 (Recess taken.)

9 MR. CUDDY: Okay. I am ready whenever you
10 are.

11 Q. Mr. Gottstein, just stepping back for a
12 minute, the construction in this project started in,
13 roughly, early December of 2013. Is that right?

14 A. Yes.

15 Q. And once construction started, you had no
16 reason to believe that the Legislative Affairs
17 Agency was going to abandon the lease due to any
18 alleged problem with the procurement process,
19 correct?

20 A. Yes.

21 Q. And you were aware, once construction
22 started, that the defendants were going to be
23 committing millions of dollars to the project in
24 order to complete the construction?

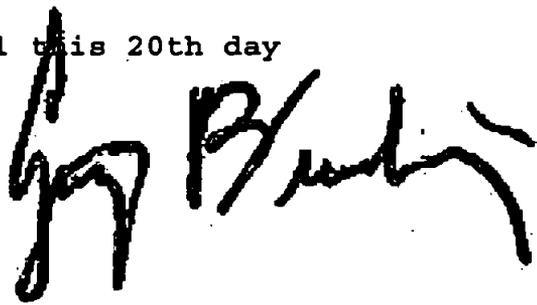
25 A. It's been asked and answered, hasn't it?

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CERTIFICATE

I, GARY BROOKING, Registered Professional Reporter and Notary Public in and for the State of Alaska, do hereby certify that the witness in the foregoing proceedings was duly sworn; that the proceedings were then taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed by computer transcription; that the foregoing is a true record of the testimony and proceedings taken at that time; and that I am not a party to nor have I any interest in the outcome of the action herein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 20th day of October, 2015.



GARY BROOKING, RPR
My Commission Expires 6/28/2016

GB4223

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2016 JUN -8 PM 4:30

THIRD JUDICIAL DISTRICT AT ANCHORAGE

CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiff,)

vs.)

Case No.: 3AN-15-05969 CI

716 WEST FOURTH AVENUE LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)
Defendants.)

**AFFIDAVIT OF JEFFREY W. ROBINSON IN SUPPORT OF 716 WEST
FOURTH AVENUE, LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)**

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case, and submit this affidavit in support of 716 West Fourth Avenue, LLC's Opposition to Plaintiff's Motion for Costs and Attorney's Fees. I have personal knowledge of all facts described herein.

2. I certify that the exhibits attached to 716's opposition are true and correct exhibits and appropriately submitted.

3. I declare under penalty of perjury that the foregoing is true and correct.

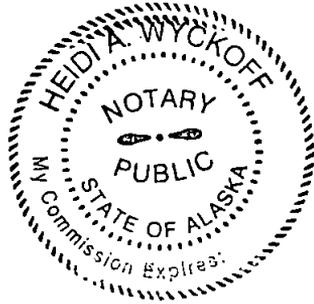
FURTHER YOUR AFFIANT SAYETH NAUGHT.

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

Ja
Jeffrey W. Robinson

SUBSCRIBED AND SWORN to before me this 8 day of June, 2016.

Heidi A. Wyckoff
NOTARY PUBLIC in and for Alaska
My Commission Expires: 7/14/2019



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AFFIDAVIT IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION FOR COSTS AND ATTORNEY'S FEES
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
facsimile U.S. Mail on the 9th day of June, 2016, on:

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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

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AFFIDAVIT IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION FOR COSTS AND ATTORNEY'S FEES
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FILED
STATE OF ALASKA
THIRD DISTRICT

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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CLERK TRIAL COURTS

BY: _____
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ALASKA BUILDING, INC.,)
Plaintiff,)
)
vs.)
)
716 WEST FOURTH AVENUE LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)
Defendants.)

Case No.: 3AN-15-05969 CI

716 WEST FOURTH AVENUE, LLC'S OPPOSITION TO ALASKA BUILDING, INC.'S MOTION FOR COSTS AND ATTORNEY'S FEES

#5

COMES NOW, Defendant, 716 West Fourth Avenue, LLC ("716") and hereby opposes Plaintiff Alaska Building Inc.'s ("ABI") motion for attorney's fees.

In its Motion, ABI asks that the Court disregard its prior rulings dismissing several of ABI's claims; ignore Civil Rule 82 and Alaska precedent; and enter an enhanced award totaling 100% of its fees. There are several problems with this request. First, ABI incorrectly assumes it prevailed in this action, despite the fact that 716 won on three of the four claims asserted. Second, ABI fails to identify any legal precedent or basis in the record for the extreme 100% fee award it requests. Third, ABI fails to identify any facts that justify enhancement of a fee award above the presumptive 20% award provided by rule. Finally, ABI's own conduct in this litigation has been so egregious, and many of its claims so frivolous, that a downward adjustment to 0% is warranted.

ABI's fee motion is the latest iteration of its ongoing attempt to profit from the LIO Project. 716 respectfully requests that the Court view it as such, and decline to

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award any fees to ABI.

I. ARGUMENT

A. ABI is not the prevailing party in this action.

ABI's motion incorrectly assumes, without explanation or justification that it has prevailed in this action. Here, it is questionable whether ABI successfully prosecuted its case. "[I]n considering prevailing party status for purposes of an attorney fee award, the trial court should ask the objective question whether the party obtained the relief it sought."¹ As explained below, ABI was not awarded the relief it sought.

ABI sought four remedies in this suit: (1) a *qui tam* award to itself of over two million dollars;² (2) punitive damages; (3) injunctive relief; and (4) declaratory judgment.³ 716 prevailed on the first, second, and third claims for relief when this Court denied ABI's motion for injunctive relief⁴ and granted 716's motion for summary

¹ *Taylor v. Moutrie-Pelham*, 246 P.3d 927 (Alaska 2011).

² ABI sought to recover a \$2.1 million whistle blower award for itself. Ex. A, Oct. 23, 2015 Dep. of James Gottstein, Oct. 23, 2015, at 76:19-24 (Q: And you still believe you're entitled to roughly a \$2.1 million windfall if the court accepts your *qui tam* argument? A: Well, I object to the characterization as 'windfall,' and we'll see whether or not the courts agree with it, but I'm certainly making that claim.") This number was derived from 10% of retired broker Larry Norene's opinion of the total amount the Agency would have "overpaid" under AS 36.30.083(a), assuming the lease term of ten years was fulfilled. Aff. of Larry Norene; see also ABI Opposition to 716 Qui Tam & Punitive Damages Law Motion at 2.

³ ABI is also seeking fees related to its litigation of its original construction-related claim, which has been severed and is being addressed in 3AN-15-09875CI. To the extent the Court finds those fees indistinguishable from fees incurred in litigation the non-severed causes of action, and enters an award that includes them, it should make clear that ABI may not *also* seek recovery of those fees in 3AN-15-09875CI. In other words, if ABI is awarded fees for its holistic litigation of the case prior to severance, the fee award order should provide that ABI may not double-recover the pre-severance fees if it also prevails in 3AN-15-09875CI.

⁴ Order dated Jan. 11, 2016.

judgment dismissing the *qui tam* and punitive damage claims.⁵ Although ABI obtained a summary judgment ruling in its favor on the fourth claim, this Court also ruled “that portions of the dispute are in fact not justiciable.”⁶ Thus, ABI’s “victory” on the fourth claim was only partial.

In evaluating a Rule 82 fee request, the Court must decide which party, if any, has “prevailed” under the Rule. The superior court may opt not to designate a prevailing party when both parties prevail on main issues, and can, in its discretion, deny attorney costs and fees to either side in such instances when appropriate.⁷ As a practical matter, the superior court must identify the “main issues” litigated in the case.⁸

Cases presenting multiple issues, decided separately in favor of different parties, often do not have a single prevailing party. In *Alliance of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough*, a declaratory judgment action brought by a citizen group, the Alaska Supreme Court upheld the superior court’s determination that the parties, both of whom were granted partial summary judgment on various issues, should be classified as the prevailing party for purposes of attorney fees and costs recovery.⁹ The Supreme Court identified three principal issues in that case and concluded that they were decided

⁵ Order Denying Motion for Reconsideration of Declaratory Judgment and Summary Judgment at 2; *see also* Order on Motion for Summary Judgment: Lease is not an Extension at 17, FN 45 (noting that declaratory judgment was the only remaining relief requested in ABI’s Second Amended Complaint.)

⁶ Order dated Mar. 23, 2016 at 2.

⁷ *Alliance of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough*, 273 P.3d 1123, 1126 (Alaska 2012).

⁸ *Id.*

⁹ *Id.*

on distinct legal grounds.¹⁰

Here, the Court delivered specific rulings on each of ABI's requested remedies, delivered in multiple orders. Each claim was decided on distinct legal grounds and constituted "main issues" in this case. It is therefore appropriate for this Court to consider each of ABI's distinct claims when conducting its prevailing party inquiry.

716 prevailed on three main issues, and ABI prevailed—partially—on one. Accordingly, the Court should rule that ABI was not the prevailing party, and decline to issue a fee award in ABI's favor.

B. Even if the Court rules that ABI is the prevailing party, ABI has identified no reason for the Court to award full fees.

Rule 82(b)(2) provides clear guidance on an appropriate fee award in cases similar to the one at hand:

In cases in which the prevailing party recovers no money judgment, the court shall award the prevailing party in a case which goes to trial 30 percent of the prevailing party's reasonable actual attorney's fees which were necessarily incurred, and shall award the prevailing party in a case resolved without trial 20 percent of its actual attorney's fees which were necessarily incurred. The actual fees shall include fees for legal work customarily performed by an attorney but which was delegated to and performed by an investigator, paralegal or law clerk.

Thus, in a case involving no money judgment resolved without trial, the presumptive award is 20%. That is the framework facing the Court here. Yet ABI seeks 100% of its total fees incurred, in the amount of \$144,329.09—an award *five times higher* than the norm.

¹⁰ *Id.* at 1127.

The Court has discretion to vary its award upward or downward based upon the factors enumerated in Rule 82(b)(3)(A)-(K). However, the Alaska Supreme Court has consistently held that “[a]n award of full attorney’s fees is ‘manifestly unreasonable’ in the absence of bad faith or vexatious conduct by the losing party.”¹¹

Here, the only purportedly vexatious or bad faith conduct ABI points to is (1) a single 2013 e-mail exchange between parties and (2) 716’s assertion of its legal defenses in this suit.

As a threshold matter, 716 disputes that the 2013 e-mail, sent during lease negotiations, contains any hint of bad faith or vexatious conduct.¹²

Substantively, the 2013 e-mail exchange is irrelevant to this motion, as it does not relate in any way to the litigation of this action. For fee award purposes, the bad faith or vexatious conduct must relate to the litigation itself. ABI cites *Crittell v. Bingo* to support its statement that the conduct “includes pre-litigation conduct as well as the conduct of the litigation”—but that case still defines relevant conduct in relation to the lawsuit itself.¹³ In *Crittell*, the Alaska Supreme Court in fact held that “an award of enhanced fees under Rule 82 may be based on vexatious and bad faith litigation ‘both as

¹¹ *Demoski v. New*, 737 P.2d 780, 788 (Alaska 1987) (quoting *State v. University of Alaska*, 624 P.2d 807, 817 (Alaska 1981)).

¹² 716 addressed the email in depth in its Reply to ABI’s Opposition to 716’s Motion to Dismiss Qui Tam and Punitive Damages Claims and incorporates that discussion here by reference.

¹³ Fee Motion at 4 (citing 83 P.3d 532 (Alaska 2004)).

to the filing of the case and the prosecution of it.”¹⁴ While the “filing of the case” may technically occur prior to litigation, it is still an element of the litigation itself. The conduct in *Crittell* involved fraud upon the court—the plaintiffs had asserted a fraudulent claim, and fraudulently prosecuted it.¹⁵ Similarly, in *Garrison v. Dixon*, the Court “considered the issue both as to the filing of the case and the prosecution of it,” and affirmed a full fee award that was based on a finding that the action was entirely frivolous and had been brought solely to harass the defendants.¹⁶

ABI tries to draw a parallel between *Alaska Fur Gallery, Inc. v. First National Bank Alaska*¹⁷ and the facts here to suggest that it should be entitled to full fees. But *Alaska Fur Gallery*, like *Crittell* and *Garrison*, involved a situation where enhanced fees were authorized based on Defendant’s bad faith related to and during the litigation. No such allegations have been made by ABI here. Moreover, adopting the rule proposed by ABI would have far-reaching consequences, as it would authorize full fee awards in *any* case asserting intentional tort or fraud claims. Neither the Alaska Legislature nor the Alaska Supreme Court has authorized such a broad expansion of Rule 82.

¹⁴ *Crittell*, 83 P.3d 532, 537 (quoting *Garrison v. Dixon*, 19 P.3d 1229, 1234 (Alaska 2001)).

¹⁵ *Id.* (“In awarding enhanced fees in the present case, the superior court relied on both the fraudulent nature of the Crittells’ underlying claims and the fraudulent manner in which they prosecuted their claims. And as we have already indicated, ample evidence supports the court’s findings that the will advocated by the Crittells was both conceived in fraud and advanced at trial through the Crittells’ fraudulent actions. Thus, the superior court properly applied the concept of vexatious and bad faith conduct in enhancing the attorney’s fee award.”).

¹⁶ *Garrison v. Dixon*, 19 P.3d 1229, 1234-5 (Alaska 2001).

¹⁷ 345 P.3d 76, 89 (Alaska 2015).

ABI's other allegation of bad faith and vexatious conduct is that 716's defense was *per se* frivolous. But the Court—which is not shy about sharing its candid opinions with the parties—has never indicated in any way, in its numerous written rulings or in its statements from the bench, that 716's defense was “frivolous.” Rather, the Court gave serious consideration to all of 716's defenses, and ruled in 716's favor on several of the main issues in this case because it accepted those very defenses. The Court's ultimate finding that the lease should have been competitively bid (*i.e.*, that it should not have been extended under AS 36.30.080(a)), is not tantamount, in any way, to a finding that 716 defended the case “frivolously.”

ABI has failed to show any conduct by 716 in this action that satisfies the factor (G) standard. ABI's only allegation of bad faith or vexatious conduct involved a single e-mail that occurred before litigation that does not relate to how the case was prosecuted in any way. The vexatious and bad faith conduct factor is thus inapplicable, and a full fee award is “manifestly unreasonable” under well-settled Alaska law.¹⁸

C. ABI has presented no reason for any upward enhancement from the presumptive 20% award.

716 opposes an enhanced award to ABI in any amount. ABI has failed to make any showing that warrants an enhancement under the Rule 82(b)(3) factors. Its arguments that enhancement is warranted under factors (A), (F), (H), and (K) lack any basis in the record.

¹⁸ *Demoski*, 737 P.2d at 788 (Alaska 1987) (quoting *State v. University of Alaska*, 624 P.2d at 817).

(1) **Factor A: This case was not complex.**

ABI asks for an enhanced award based on the complexity of the case under Civil Rule 82(b)(3)(A). ABI's citation to *Alaskaland.Com, LLC v. Cross* is misplaced.¹⁹ In *Alaskaland.Com*, the plaintiff brought a common law misappropriation claim that had "never been recognized in Alaska."²⁰ The defendants, who prevailed, "were merely reacting to the complexity of the novel legal theories pled" and were awarded 35% of their reasonably incurred actual attorney's fees because these claims lacked merit, the plaintiff failed to prove any damages to support its numerous claims, and the plaintiff's actions resulted in "unnecessarily complex litigation."²¹

This case involved legal questions of justiciability, equitable defenses, and statutory interpretation. There were no disputed issues of fact, and no novel or complex legal theories, or matters of first impression in Alaska. Neither ABI nor the Court ever referred to either the equitable doctrine of laches defense or the justiciability defenses as "novel" or "complex." In fact, the only theory identified by the Court as "novel" in this

¹⁹ 357 P.3d 805, 826 (Alaska 2015). ABI also cites to *Ware v. Ware*, 161 P.3d 1188 (Alaska 2007) for complexity enhancement. That case is similarly inapposite. In *Ware*, the superior court enhanced a fee of \$1,986.30 to \$8,000 (80%) because of the application of no less than *five* subsections of Rule 82. *Ware* was an action by a sister alleging that her brother exerted undue influence over their mother in conveying a homestead to her brother. The court found that the daughter's conduct increased the difficulty of the litigation because she failed to file a witness list, an exhibit list, or a trial brief, made unreasonable claims, acted in bad faith, provided no evidence to support her theories, and the mother's own deposition testimony refuted the daughters' claims. *See Id.* at 1199-1200.

²⁰ *Alaskaland.Com*, 357 P.3d at 826.

²¹ *Id.* The 35% award was based on the combination of factors enumerated in Rule 82(b)(3)(A), (E), (G), and (K).

case was ABI's frivolous *qui tam* claim.²² ABI's common law claim was, as he admitted, not supported by law, and he failed to "come up" with law to justify the request.²³ ABI fails to articulate why the well-settled doctrine of laches, justiciability, and statutory interpretation are so "complex" as to justify enhancement.

(2) Factor (F): 716's defenses were reasonable.

716's vigorous defense of the lease extension was reasonable. The lease extension incorporated written findings by the Legislative Council's Chief Procurement Officer and the Legislative Affairs Agency's Executive Director certifying the lease's compliance with legislative procurement procedures and AS 36.30.083.²⁴ 716 relied upon those certifications to expend over \$37 million in costs to develop the project and borrowed over \$28 million dollars to finance a project that may soon lack a tenant. In light of these certifications supporting the extension, and 716's reliance upon them, 716's defense was eminently reasonable.

This Court also agreed with 716 in numerous other defenses in this case, including that ABI lacked interest-injury standing to prosecute the case because it had no personal interest adversely affected by the formation of the lease,²⁵ and that Mr. Gottstein's awareness of the potential illegality of the lease within weeks of its announcement and deliberate decision to then wait seventeen months and until the

²² Order on Standing at 4, n.15.

²³ Ex. B to Agency's Motion for Rules 11 and 82 fees (Deposition of Gottstein, Oct. 16, 2015).

²⁴ These documents were incorporated into the September 19, 2013 lease extension as Exhibits C and D.

²⁵ Order on Standing, Aug. 20, 2015.

completion of the project to bring suit was unreasonable under the equitable doctrine of laches.²⁶ Finally, after 716 raised the defense that the dispute was nonjusticiable, the Court specifically issued a special question to the Agency asking it whether it agreed with 716's arguments. The Agency, for reasons not of record, declined the invitation.

Although 716 disagrees with the ultimate decision reached by the Court, there is no doubt that the Court seriously considered 716's reasoned arguments on their merits, rather than disregarding them as frivolous.

(3) Factor H: This case did not involve an unusual relationship between work performed and the significance of the matters at stake.

ABI seeks further enhancement under Factor (H), which addresses the relationship between the amount of work performed and the significance of the matters at stake. It cites *BP Pipelines (Alaska) v. State, Department of Revenue* as support for this enhancement.²⁷ But the comparison does not support ABI's argument.

In *BP Pipelines*, the fee award was based on three factors: (A) ("the complexity of the litigation"), (B) ("the length of trial"), and (H) ("the relationship between the amount of work performed and the significance of the matters at stake").²⁸ The facts in that case presented nearly textbook examples of each of those factors. The case was litigated for over eight years, involved a five-week trial, addressed "the valuation of one of the largest assets in the state," and resulted in a tax supplement to state and municipal

²⁶ Order re: Laches at 5.

²⁷ 327 P.3d 185 (Alaska 2014).

²⁸ *Id.* at 197.

governments in an amount over \$152,000,000 for the fiscal year at issue.²⁹ Even on those facts, the trial court awarded (and the Supreme Court affirmed) only a 15% enhancement.

Here, by contrast, the case was litigated for slightly over one year, resolved entirely on motion practice, and resulted in no money judgment.³⁰ It was originally filed as a construction damage case, but ABI “threw in” a challenge to the legality of the lease. ABI has admitted that had it been compensated for the alleged damage to the building in a timely manner, it would never have raised the lease claim.³¹

In addition, ABI devoted significant time and effort (and thus expense) to litigating its frivolous *qui tam* claim—the sole purpose of which was to provide ABI with millions of dollars, and which has no conceivable public significance. These facts are entirely distinguishable from those in *BP Pipelines* and do not merit an enhancement under the factor applied in that case.

(4) Factor K: No other equitable reason exists to enhance ABI’s fee award.

ABI seeks enhancement under the catchall “other equitable factors” provision of Civil Rule 82(B)(3)(K). It contends that if this Court declared the entire case non-

²⁹ *Id.*

³⁰ Nor is there any certain cost savings to the State—the Legislature continues to occupy the building and pay rent.

³¹ Ex. B, Deposition of Gottstein, Oct. 23, 2015, at 124:10-18 (“Q: So just to be very clear, had you been compensated \$250,000 by March 31st, you never would have raised the illegality of the lease claim in a filing, in a lawsuit? A: I think that’s right. In fact, I – I gave – sent Ms. Windt a copy of the copy of the draft complaint that included the illegality of the lease, and pointed out that that was in there. So yes.”).

justiciable or barred by laches, it could have risked an adverse fees award. Surely, ABI must not mean that 716's exercise of its due process right to present its defenses, even if ultimately rejected by the Court, should mean that a variance should come as a matter of course. This argument would vitiate the carefully thought-out default fee schedule already provided for in Rule 82(b)(3). And the Agency's service of a nominal \$1 offer to ABI (in which 716 had no part) should hardly be considered an "attempt to intimidate" ABI into dropping the case. ABI was represented by Mr. Gottstein, a lawyer who is Alaska Building's sole member and President. Mr. Gottstein is no stranger to initiating litigation, and he began submitting invoices to 716 for "professional services" affiliated with the case *seventeen months* before ABI filed the instant litigation.³²

As ABI has failed to identify any reason to vary the default twenty percent award, its request for enhancement should be denied.³³

D. The Rule 82(b)(3) factors warrant a downward enhancement, not an upward one.

ABI's own conduct in this litigation implicates Rule 82(b)(3) factors (A), (E) (F), and (G), and merits a downward adjustment to an award of zero. 716 addresses each of

³² Ex. C, Ex. C to Deposition of Gottstein, Oct. 23, 2015.

³³ In addition, ABI's request to enhance the award by a factor of 1.66 lacks a basis in law or fact and should be denied. Plaintiff's Memorandum in Support of Motion for Costs and Attorney's Fees at 6; Affidavit of Mr. Gottstein at ¶ 9. ABI bases this enhancement argument on the hourly rate of Walter Featherly, an attorney in Anchorage with Holland & Knight, who purportedly charged \$540 per hour in 2014. ABI's memorandum and affidavit are devoid of any analysis as to why the billing rate of Mr. Featherly, whom Mr. Gottstein labels as a "contemporary," has any bearing on this case.

the relevant factors below.

(1) Factors (A) and (F)

The manner in which ABI brought and litigated this case needlessly increased its complexity. Many of ABI's alleged facts and arguments in this proceeding were patently unreasonable, and have been rejected out of hand by the Court as unfounded in either fact or law. Several of them are detailed briefly below.

- ABI's claim for 10% *qui tam* damages, which Mr. Gottstein admitted had no basis in law and which was dismissed.
- ABI repeatedly alleged that there was "pervasive corruption," which should move the Court to "award ABI 10% of the savings" for bringing the action.³⁴ These allegations were effectively dismissed, and rendered moot, by the Court's denial of the *qui tam* and punitive damages claims.
- ABI accused 716 of threatening to disconnect his gas meter during construction.³⁵ The Court found that this accusation, even in the light most favorable to ABI, lacked merit.³⁶
- Despite his awareness of the Legislature's 2003 passage of HB 145, codified as AS 09.06.010(b)9(3), which abolished the Alaska Supreme Court's public interest exception to Rule 82, ABI continued to doggedly pursue a whistleblower award for himself. ABI goaded the press with unfounded accusations of

³⁴ Plaintiff's Sur-Reply at 2.

³⁵ Plaintiff's Opposition to Motion for Summary Judgment (Laches) at 4-5.

³⁶ Order re: Laches at 6, n.31.

“corruption” despite never properly bringing a *legal* claim to justify these unfounded accusations.

(2) Factor (E): ABI litigated in a manner that drove up fees.

ABI made no effort to minimize its fees: its frequent filings and insistence on pursuing claims and theories that admittedly had no legal basis did not represent an efficient or economical prosecution.³⁷

(3) Factor (G): ABI’s conduct in filing and prosecuting this case was vexatious and in bad faith.

Two of ABI’s actions in this litigation support this factor: his intentional delay in filing suit in an attempt to obtain financial gain, and his conduct in discovery.

With regard to the first action, this Court has already made relevant factual findings. The Court specifically found that Mr. Gottstein financially gained from the very project he accused of being illegal, and that these gains amounted to “acquiescence” in the wrongdoing.³⁸ The Court found that Mr. Gottstein was aware of the potential illegality of the contract within weeks of its announcement, and then unreasonably delayed seventeen months (and **after** construction was complete) to bring suit.³⁹ This is exactly the type of vexatious and bad faith conduct “as to the filing of the case” contemplated in *Crittell* and *Garrison*, cited above. This alone warrants a fee award of zero.

³⁷ This is likely because ABI’s sole member is its attorney in this action, Mr. Gottstein—any fees ABI “paid” would thus flow directly back to its principal.

³⁸ Order re: Laches at 6.

³⁹ *Id.*

ABI's conduct in discovery provides additional support for a zero award. In defiance of standard professional practice and reasonable professional expectations, ABI has posted *all* discovery in this case on his website. Such pleadings include personal information regarding the parties and their attorneys, including an email from the undersigned detailing counsel's paternity leave as attached to Plaintiff's Motion to Compel Discovery.⁴⁰ And although, this Court ordered ABI to not publish financial documents not referencing public governmental figures on his website absent court order, discovery regarding 716's finances are still readily obtainable on ABI's counsel's website.

While this conduct may not be actionable under the Rules, it has caused significant embarrassment and inconvenience to 716 and its counsel. It is certainly "vexatious" under the meaning of the rule. Moreover, allowing it to pass unremarked will set a disturbing precedent for discovery practice in this state.

CONCLUSION

For the foregoing reasons, 716 respectfully requests that the Court decline to rule that ABI is the prevailing party and decline to issue a fee award in ABI's favor. If the Court determines a non-zero fee award is appropriate, 716 requests in the alternative that the award be limited to the 20% provided in Rule 82(b)(2).

⁴⁰ Ex. 1 to Plaintiff's Motion to Compel Discovery.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 6-8-16

By: 
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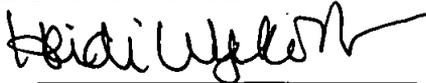
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 8 day of June, 2016, on:

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In the Matter Of:

ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

JAMES GOTTSTEIN - VOL. II

October 23, 2015

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Anchorage, Alaska 99501

1 a consequence of this illegal lease is that the
2 Alaska Building was damaged.

3 Q. So by entering the lease, therefore the
4 building was damaged. Will you maintain that
5 position --

6 A. Well, as a result of the lease, my -- the
7 building, the Alaska Building, was damaged.

8 Q. Did the execution of the lease in September
9 of 2013 damage your building?

10 A. You know, I answered that in my responses
11 to your discovery requests.

12 Q. Can you kindly answer again?

13 A. What's the question?

14 Q. Do you believe the execution of the
15 contract in September 2013 damaged your building?

16 A. A result of the execution was that it
17 damaged the building. The actual signing, putting
18 the pen to the paper, did not damage my building.

19 Q. And you still believe you're entitled to
20 roughly a \$2.1 million windfall if the court accepts
21 your qui tam argument?

22 A. Well, I object to the characterization as
23 "windfall," and we'll see whether or not the courts
24 agree with it, but I'm certainly making that claim.

25 Q. And you previously admitted that there's no

In the Matter Of:

ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

JAMES GOTTSTEIN - VOL. II

October 23, 2015

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1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3
4 ALASKA BUILDING, INC., an
5 Alaska corporation,

6 Plaintiff,



7 vs.

8 716 WEST FOURTH AVENUE LLC,
9 and LEGISLATIVE AFFAIRS
10 AGENCY,

11 Defendants.

12 Case No. 3AN-15-05969 CI

13 DEPOSITION OF JAMES B. GOTTSTEIN
14 VOLUME II

15 Pages 59 - 147, inclusive

16 Friday, October 23, 2015
17 9:00 A.M.

18
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

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.

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



EXHIBIT C
Page 1 of 5

002423

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

Jim,

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

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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 BBPM 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 Redl, 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, L.L.C 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

DATE	WORK PERFORMED	HOURS	RATE	TERMS
				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

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiffs,)

vs.)

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)

Defendants.)

**[PROPOSED] ORDER GRANTING THE UNOPPOSED MOTION TO EXTEND
TWO DAY DEADLINE FOR 716 WEST FOURTH AVENUE, LLC TO FILE ITS
OPPOSITION TO PLAINTIFF'S MOTION FOR FEES AND COSTS**

This Court, having reviewed 716 West Fourth Avenue LLC's Unopposed Motion to Extend Deadline for 716 West Fourth Avenue, LLC to file its Opposition to Plaintiff's Motion for Fees and Costs, and being duly advised in the premises, enters the following ORDER:

716 West Fourth Avenue, LLC shall have until **Wednesday, June 8, 2016** to file its Opposition.

DATED this 7th day of June, 2016.



HON. PATRICK J. MCKAY
Superior Court Judge

JUN 08 2016

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 6 day of June, 2016.

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

I certify that on 6/7/16 a copy of the following was mailed/ faxed/ hand-delivered to each of the following at their addresses of record.

J. Robinson
J. Gottstein
K. Cuddy
Administrative Assistant Can

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

[PROPOSED] ORDER RE UNOPPOSED MOTION TO EXTEND DEADLINE FOR 716 TO FILE OPPOSITION TO MOTION FOR FEES AND COSTS

Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969 Civil

{10708-101-00340997;1}

FILED
STATE OF ALASKA
THIRD DISTRICT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

2016 JUN -6 PM 4: 45

CLERK TRIAL COURT

BY: DEPUTY CLERK

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 JEFFREY W. ROBINSON IN SUPPORT OF UNOPPOSED MOTION TO EXTEND DEADLINE FOR 716 WEST FOURTH AVENUE, LLC TO FILE OPPOSITION TO PLAINTIFF'S MOTION FOR FEES AND COSTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case, and submit this affidavit in support of 716 West Fourth Avenue, LLC's Unopposed Motion to Extend Deadline for 716 West Fourth Avenue, LLC to file its Opposition to Plaintiff's Motion for Fees and Costs. I have personal knowledge of all facts described herein.

2. I have personally received assurances from counsel for the Legislative Affairs Agency and for Alaska Building, Inc. that they do not oppose the requested extension.

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

3. This motion is not made for purposes of undue harassment or delay.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

6-16-16

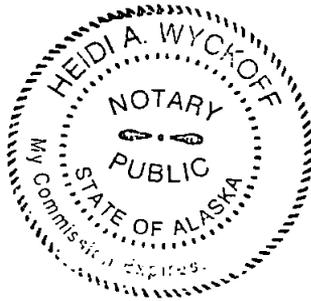
Jeffrey W. Robinson

SUBSCRIBED AND SWORN to before me this 6th day of June, 2016.

Heidi A. Wyckoff

NOTARY PUBLIC in and for Alaska

My Commission Expires: ~~8/1/2019~~ *7/11/2019*



ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION TO EXTEND DEADLINE TO FILE OPPOSITION TO MOTION FOR FEES AND COSTS

Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
facsimile U.S. Mail on the 6 day of January, 2016, 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 P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION TO EXTEND DEADLINE TO FILE OPPOSITION TO MOTION FOR FEES
AND COSTS

Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

FILED
STATE OF ALASKA
THIRD DISTRICT

2015 JUN -6 PM 4:45

CLERK TRIAL COURT

BY: _____
DEPUTY CLERK

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.)

**UNOPPOSED MOTION TO FOR TWO DAY EXTENSION OF TIME FOR 716
WEST FOURTH AVENUE, LLC TO FILE ITS OPPOSITION TO PLAINTIFF'S
MOTION FOR FEES AND COSTS**

Defendant 716 West Fourth Avenue, LLC ("716"), by and through counsel Ashburn & Mason, P.C., hereby moves the court to extend the deadline by which it is to file its Opposition to Plaintiff's Motion for Fees and Costs. 716 seeks an additional two (2) days to submit its opposition. Counsel for the Agency and ABI do not oppose this request. This motion is accompanied by the attached proposed order and affidavit of counsel.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 6-16-16

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

d

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 6 day of June, 2016, 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

FILED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT
2015 JUN 6 PM 4:45

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC.,)
Plaintiff,)
vs.)
716 WEST FOURTH AVENUE LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)
Defendants.)

CLERK TRIAL COURT
BY: _____
DEPUTY CLERK

Case No.: 3AN-15-05969 CI

716 WEST FOURTH AVENUE, LLC'S JOINDER IN DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S OBJECTION TO PLAINTIFF'S MOTION FOR COSTS

COMES NOW, Defendant 716 West Fourth Avenue, LLC ("716"), and hereby respectfully joins in Defendant Legislative Affairs Agency's (the "Agency's") Objection to Plaintiff's Motion for Costs.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 6-6-20

By: JW
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 6th day of ~~April~~ June, 2016, 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 P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

FILED
STATE OF ALASKA
THIRD DISTRICT

2016 JUN -6 PM 4:15

CLERK TRIAL COURT

BY: _____
DEPUTY CLERK

Kevin Cuddy (Alaska Bar #0810062)
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: (907) 277-1900
Facsimile: (907) 277-1920

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

Case No. 3AN-15-05969 CI

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

AFFIDAVIT OF KEVIN M. CUDDY

**(Re: LEGISLATIVE AFFAIRS AGENCY'S OPPOSITION TO PLAINTIFF
ALASKA BUILDING, INC.'s MOTION FOR COSTS AND ATTORNEY'S FEES
AGAINST 716 FOURTH AVENUE LLC AND LEGISLATIVE AFFAIRS
AGENCY)**

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, KEVIN M. CUDDY, being sworn on oath, say as follows:

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

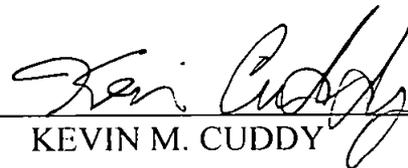
1. I am over the age of eighteen and have personal knowledge of the statements contained in this declaration.

2. I am an attorney with the law firm of Stoel Rives, LLP, counsel for Defendant Legislative Affairs Agency ("Agency") in the above-captioned litigation and submit this affidavit in support of Defendant Legislative Affairs Agency's Opposition to Alaska Building, Inc.'s Motion for Costs and Attorney's Fees Against 716 West Fourth Avenue LLC and Legislative Affairs Agency.

3. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the deposition of James Gottstein taken October 16, 2015.

I declare under penalty of perjury that the foregoing is true and correct.

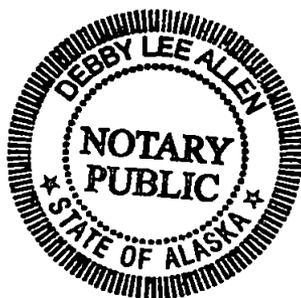
DATED this 6th day of June, 2016.

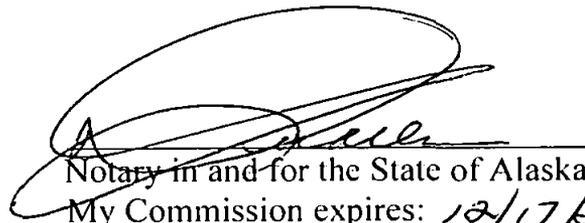


KEVIN M. CUDDY

SUBSCRIBED AND SWORN to before me this 6th day of June 2016 in

Anchorage, Alaska.





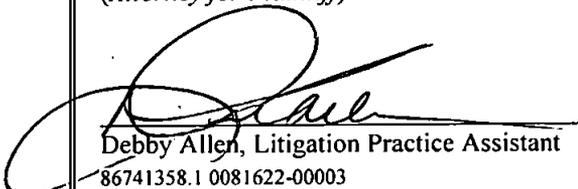
Notary in and for the State of Alaska
My Commission expires: 12/17/2016

CERTIFICATE OF SERVICE

This certifies that on June 6, 2016, a true and correct copy of the foregoing was served by first class mail as follows on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)



Debby Allen, Litigation Practice Assistant
86741358.1 0081622-00003

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

In the Matter Of:

ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

JAMES GOTTSTEIN - VOLUME I

October 16, 2015

PACIFIC RIM REPORTING

STENOGRAPHIC COURT REPORTERS

711 M STREET, SUITE 4

ANCHORAGE, ALASKA 99501

907-272-4383

www.courtreportersalaska.com

EXHIBIT A | Page 1 of 5

002440

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3
4 ALASKA BUILDING, INC., an
5 Alaska corporation,

6 Plaintiff,

7 vs.

8 716 WEST FOURTH AVENUE LLC,
9 and LEGISLATIVE AFFAIRS
10 AGENCY,

11 Defendants.

12 _____
13 Case No. 3AN-15-05969 CI

14 DEPOSITION OF JAMES B. GOTTSTEIN

15 VOLUME I

16 Pages 1 - 58, inclusive

17 Friday, October 16, 2015
18 2:00 P.M.

19 Taken by Counsel for
20 Defendant 716 West Fourth Avenue LLC
21 at
22 ASHBURN & MASON
23 1227 West 9th Avenue, Suite 200
24 Anchorage, Alaska

25

**CERTIFIED
TRANSCRIPT**

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A-P-P-E-A-R-A-N-C-E-S

For Plaintiff:

James B. Gottstein
LAW OFFICES OF JAMES B. GOTTSSTEIN
406 G Street, Suite 206
Anchorage, Alaska 99501
907/274-7686

For Defendant 716 West Fourth Avenue LLC:

Jeffrey W. Robinson
Eva Gardner
ASHBURN & MASON
1227 West 9th Avenue, Suite 200
Anchorage, Alaska 99501
907/276-4331

For Defendant Legislative Affairs Agency:

Kevin M. Cuddy
STOEL RIVES
510 L Street, Suite 500
Anchorage, Alaska 99501
907/277-1900

Court Reporter:

Gary Brooking, RPR
PACIFIC RIM REPORTING
711 M Street, Suite 4
Anchorage, Alaska 99501

1 Q. So thank you for the answer. I'm going to
2 go back to my original question, which is: What is
3 the basis for your claim to an entitlement of
4 10 percent of the fees?

5 A. I just said it.

6 Q. I'm not sure that you have. You gave me a
7 history lesson about the public interest exception
8 for Rule 82. Is there a statute?

9 A. No.

10 Q. False Claims Act? This isn't a qui tam
11 case, right?

12 A. Correct.

13 Q. Is there any common law that you can point
14 to to say that a savings of this type had been given
15 a private litigant?

16 A. No. Well, not yet anyway. So, I mean,
17 it's possible I'll come up with some, but I haven't
18 found -- I haven't seen any yet.

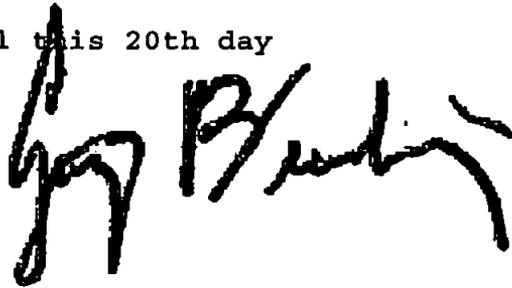
19 I mean, I think that the -- this is a very
20 important public issue, and the point is, is that if
21 this right of public -- the public citizens to sue
22 over illegal government action is to have any, you
23 know, reality at all, there needs to be some
24 countervailing element for the prospect of attorneys'
25 fees being awarded against a plaintiff if they're

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CERTIFICATE

I, GARY BROOKING, Registered Professional Reporter and Notary Public in and for the State of Alaska, do hereby certify that the witness in the foregoing proceedings was duly sworn; that the proceedings were then taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed by computer transcription; that the foregoing is a true record of the testimony and proceedings taken at that time; and that I am not a party to nor have I any interest in the outcome of the action herein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 20th day of October, 2015.



GARY BROOKING, RPR
My Commission Expires 6/28/2016

GB4223

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STATE OF ALASKA
THIRD DISTRICT

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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY, and
CRITERION GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969 CI

**LEGISLATIVE AFFAIRS AGENCY'S OPPOSITION TO ALASKA BUILDING,
INC.'S MOTION FOR COSTS AND ATTORNEY'S FEES AGAINST 716 WEST
FOURTH AVENUE LLC AND LEGISLATIVE AFFAIRS AGENCY**

Defendant Legislative Affairs Agency ("LAA") hereby opposes the motion by Alaska Building Inc. ("ABI") for costs and attorneys' fees against 716 West Fourth Avenue LLC ("716") and LAA. Recoverable attorneys' fees must be reasonable and

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necessary,¹ and here an overwhelming proportion of ABI's fees were neither. ABI is not entitled to fees for litigation that was not "necessarily incurred,"² which includes litigation narrowly and exclusively focused on 716 and claimed monetary relief, litigation regarding property damage, litigation related to Rep. Hawker's email request, and litigation related to ABI's "qui tam" claim. Not only does ABI seek fees that were not necessarily incurred in this litigation, but ABI also seeks *enhanced* fees – up to full fees – that far exceed the partial compensation contemplated by Rule 82. ABI is plainly not entitled to full fees because there was no vexatious or bad faith conduct by LAA, nor is it entitled to enhanced fees because none of the Rule 83(b)(3) factors warrant any upward adjustment.

I. ABI Is Not Entitled to Fees for Litigation That Was Not "Necessarily Incurred," Which Includes Litigation Narrowly Focused on 716, Litigation Regarding Property Damage, Litigation Related to the Rep. Hawker's Email Request, and Litigation Related to ABI's Qui Tam Claim

ABI is only entitled to fees that are reasonable and were "necessarily incurred."³

Litigation related to the following categories was not "necessarily incurred" with regard to LAA.

A. Litigation Narrowly Focused on 716

There can be no argument that fees from litigation directed solely at 716, which in no way concerned LAA, was "necessarily incurred" in relation to LAA. ABI made this a

¹ Alaska R. Civ. P. 82(b)(2).

² *Id.*

³ *Id.*

dramatically more expensive and contentious litigation with a wide range of motions and filings that were narrowly focused on 716. ABI's decision to pursue injunctive relief, intrusive discovery, and sanctions against 716 all added to the cost of this case and did nothing to advance it. Because the following filings related exclusively to 716 and ABI, LAA should not be assigned any unnecessarily incurred fees relating to these 716-specific filings:

- i. Discovery requests made to parties other than LAA (principally 716)
- ii. ABI's motion for preliminary injunction and related briefing (Oct. 6 & Nov. 9, 2015)
- iii. ABI's motion to compel 716 (Oct. 6 & Nov. 18, 2015)
- iv. ABI's response to motion for protective order (Nov. 10, 2015)
- v. ABI's request for in camera review (Jan. 22 and Feb. 25, 2016)
- vi. ABI's motion to show cause (Feb. 22 and Feb. 29, 2016)
- vii. ABI's response to the motion for protective order (Feb. 29, 2016)
- viii. Response to petition for review (Sept. 14, 2015)

These fees total: \$35,865.76, given 110.6399 hours of work and Mr. Gottstein's rate of \$325/hour (save one entry for 10/7/2015 billed at \$150/hour). The fee entries related to this total are:

Date	Work Performed	Hours	Amount
7/2/2015	Opposition to Expedited Consideration, Opposition to 716 Discovery Stay Motion, Interrogatory No. 4 to Criterion, serve & file, Opposition to 716 Rule 56(f) Request, serve & file, e-mail to M. Scheer & B. Call, review KPB Initial Disclosures	7.66667	\$2,491.67
7/3/2015	Review KPB Discovery	1.63	\$529.75
7/8/2015	Opposition to 716 Dismissal Motion	0.5	\$162.50
7/9/2015	Opposition to 716 Dismissal Motion	1.35	\$438.75
7/10/2015	716 Dismiss Motion Opposition, serve & file	3.95	\$1,283.75
9/9/2015	Review 716 discovery responses, e-mail	3.25	\$1,056.25

Date	Work Performed	Hours	Amount
	from/to/fr/to K. Cuddy, conference with L. Norene, review 716 LLC Partial Opposition to Criterion Dismissal, call to Blake Call, e-mail from/to J. Robinson		
9/12/2015	Reply re: Criterion Dismissal, e-mail from L. Norene, call to L. Norene, e-mail to L. Norene	0.75	\$243.75
9/23/2015	Review & file Pfeffer Dev Offer of Judgment	0.05	\$16.25
9/23/2015	Letter to J. Robinson re: 1st Production Responses	0.87	\$282.75
9/24/2015	Letter to J. Robinson re: Discovery Failures, e-mail to J. Robinson, call to J. Robinson, Rule 37(d) Certificate, motion for preliminary injunction, Supplement to Initial Disclosures	4.53	\$1,472.25
9/25/2015	E-mail from/to/from J. Robinson	0.05	\$16.25
9/25/2015	Call from E. Gardner, call to/from J. Schwamm, Review Notice of Deposition	0.01	\$3.25
9/28/2015	E-mail from/to L. Norene, Motion for Preliminary Injunction (1.75 to 3.47)	1.72	\$559.00
9/29/2015	Motion for Preliminary Injunction (1.64 to 5.76)	4.12	\$1,339.00
9/30/2015	E-mail from/to J. Robinson, prepare for meeting (to .22), Discovery consultation with J. Robinson (1.38 to 0.4), confirmation e-mail to J. Robinson (0.4 to 3.43)	2.27	\$737.75
10/1/2015	E-mail from/to J. Robinson re: Requests for Production	0.2	\$65.00
10/2/2015	Motion for Preliminary Injunction, Motion to Compel 716 LLC Production	3.96667	\$1,289.17
10/3/2015	Motion to Compel	0.48	\$156.00
10/4/2015	Motion to Compel (to 3.57)	3.57	\$1,160.25
10/5/2015	Motion to Compel (1.77 to 2.18)	0.41	\$133.25
10/6/2015	Motion for Preliminary Injunction	1.85	\$601.25
10/7/2015	Respond to 716 Discovery	0.53333	\$80.00
10/8/2015	Respond to 716 Discovery Requests	1.91667	\$622.92
10/9/2015	Respond to 716 Discovery (to 1.87), Opposition to 716 Law Motion (1.97 to 2.52)	2.42	\$786.50
10/14/2015	Look at 716 e-mail production	0.1	\$32.50
10/16/2015	E-mail to/from J. Robinson, opposition to Qui Tam/Punitive[] dismissa[] to, scan 716 Production, JG Deposition, E-mail to J. Robinson/Eva Gardner	4.85	\$1,576.25
10/17/2015	Review 716 LLC Discovery	1.5	\$487.50

Date	Work Performed	Hours	Amount
10/18/2015	Review 716 produced e-mails, e-mail from J. Robinson (0.15 to 1.03)	0.88	\$286.00
10/19/2015	E-mail from J. Robinson, e-mail to K. Cuddy, Review 716 LLC Discovery, e-mails to K. Cuddy, e-mail from K. Cuddy, e-mail to J. Robinson, look at deposition transcript ⁴	3.16667	\$1,029.17
10/20/2015	Review 716 Discovery (1.38 to 1.82)	0.44	\$143.00
10/21/2015	Review 716 Discovery	4.61667	\$1,500.42
10/26/2015	Settlement mtg with J. Robinson	0.2	\$65.00
10/30/2015	Review 716 LLC Opposition to Motion to Compel, review LLC Opposition to Preliminary Injunction, e-mail to H. Wyckhoff, e-mail to/from/to H. Wyckhoff, look at Motion for Protective Order (to 0.93)	0.93	\$302.25
11/7/2015	Protective Order Opposition	3.5333	\$1,148.33
11/8/2015	Opposition to Protective Order	3.1833	\$1,034.58
11/9/2015	Preliminary Injunction Reply (0.35 to 0.65)	0.3	\$97.50
11/10/2015	Protective Order Opposition (0.25 to 1.17)	0.92	\$299.00
11/11/2015	Discovery letter & e-mail to J. Robinson, Compel Reply (0.1 to 2.35)	2.25	\$731.25
11/12/2015	Compel 716 Reply	1.37	\$445.25
11/14/2015	Compel 716 Production Reply	1.12	\$364.00
11/15/2015	Compel 716 Production Reply	4.2333	\$1,375.83
11/17/2015	Compel 716 Production Reply (0.15 to 2.28)	2.13	\$692.25
11/18/2015	Compel 716 Production Reply	0.36667	\$119.17
11/26/2015	Review 716 Protective Order Reply	0.05	\$16.25
11/27/2015	Review Qui Tam/Punies Replies	0.55	\$178.75
12/7/2015	Discovery letter to J. Robinson (1.12 to 1.82)	0.7	\$227.50
12/8/2015	Discovery letter to J. Robinson, e-mail to J. Robinson (to 1.60)	1.60	\$520.00
1/13/2016	Review Compel 716 LLC Order (0.5 to 0.63)	0.13	\$42.25
1/14/2016	E-mail from/to J. Robinson, call to J. Robinson, e-mail to J. Robinson	0.09	\$29.25
1/15/2016	Prepare for and conference with J. Robinson, e-mail to J. Robinson, e-mail from/to J. Robinson	1.16	\$377.00

⁴ The individual tasks within this time entry are not separated into hourly increments.

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Date	Work Performed	Hours	Amount
1/21/2016	AHFC Discovery, review J. Robinson e-mail and 716 Settlement proposal, e-mail to J. Robinson, call from/to/from J. Robinson, e-mail to J. Robinson, continue AHFC Discovery, e-mail to Maryellen Beardsley, revise draft settlement agreement, e-mail to J. Robinson	3.74	\$1,215.50
1/22/2016	Request for In Camera Review Package (to 0.8), e-mail from/to J. Robinson, e-mail from/to Mary Ellen Beardsley, e-mail from/to J. Robinson, e-mail from/to Mary Ellen Beardl[e]y, e-mail from/to J. Robinson, email from J. Robinson, review & revise new draft settlement agreement, e-mail to J. Robinson (from 0.98 to 3.95)	3.77	\$1,225.25
1/23/2016	E-mail to J. Robinson	0.15	\$48.75
1/24/2016	E-mails from J. Robinson, e-mail to J. Robinson, e-mail from J. Robinson, review & revise settlement agreement, e-mail to J. Robinson, e-mail to M. Bahr, e-mail to J. Robinson, e-mail from/to M. Bahr, e-mail to J. Robinson	1.45	\$471.25
1/25/2016	E-mails from J. Robinson, e-mail to J. Robinson, call from M. Bahr, e-mail from M. Bahr, call from J. Robinson (to 0.25), e-mail to/from J. Robinson, e-mail from/to J. Robinson	0.25	\$81.25
1/26/2016	E-mail from J. Robinson, review & revise settlement agreement, e-mail to J. Robinson (to 0.43), e-mail from/to J. Robinson (0.02)	0.45	\$146.25
2/1/2016	Call to J. Robinson	0.1	\$32.50
2/4/2016	Call to J. Robinson	0.08	\$26.00
2/5/2016	Review P. Varni analysis of 716 LLC proposal, call to J. Robinson	0.15	\$48.75
2/7/2016	E-mails to J. Robinson, e-mail from J. Robinson	0.27	\$87.75
2/11/2016	E-mails from/to J. Robinson	0.15	\$48.75
2/17/2016	Review 716 LLC summary judgment opposition	0.45	\$146.25
2/24/2016	In Camera Request Review Reply (2.43 to 4.52)	2.09	\$679.25
2/25/2016	Call from/to/from J. Schwamm, e-mail to J. Schwamm, In Camera Review Request Reply, finalize, serve & file, prepare for L. Norene deposition, Show Case Reply	1.01667	\$330.42
2/26/2016	Opposition to 716 Protective Order Motion	2.70	\$877.5
2/27/2016	Opposition to Motion for Protective Order (2 to	0.33	\$107.25

Date	Work Performed	Hours	Amount
	2.33)		
2/29/2016	Opposition to Protective Motion (to 1.73)	1.73	\$562.25
3/4/2016	Review 716 LLC privilege log, letter to J. Robinson	3.33	\$1,083.33

B. Litigation Regarding ABI’s Property Damage Claim

Litigation regarding ABI’s property damage claim was not “necessarily incurred” in relation to LAA because there is no basis for bringing any property damage claim against a lessee who played no role in the construction of the building. LAA did not cause any of the property damage at issue, and ABI was fully aware that there was no reasonable basis in fact or in law for contending that LAA was responsible for any such property damage.

Moreover, ABI is not entitled to fees related to Claim 2 (property damage) because that claim was severed from this action. On August 20, 2015 this Court ruled that ABI’s Count 2 claim for property damage was not properly part of this action and accordingly severed it. That claim is still proceeding in another courtroom. When a judge issues a final order on that claim, and if ABI is the prevailing party in that now-separate action, then and only then can ABI pursue fees in connection with Count 2. But not before, and certainly not now. While “attorney fees do not have to be apportioned with reference to the disposition of individual issues,”⁵ wholly separate claims that have been severed into independent suits must stand on their own for calculating attorneys’

⁵ *Nautilus Marine Enterprises, Inc. v. Exxon Mobil Corp.*, 332 P.3d 554, 564 (Alaska 2014), *reh’g denied* (Nov. 3, 2014) (internal quotation marks omitted).

fees. ABI is thus not entitled to any attorneys' fees from LAA associated with the now-severed Count 2.

ABI never should have included LAA in its property damage claim. After the claim was severed by the Court, ABI functionally conceded the invalidity of the claim against LAA by not naming LAA as a defendant in the new lawsuit. Not only should LAA not have to pay for ABI's fees for anything related to the now-separate property damage claim, but ABI should be ordered to pay LAA's fees for this baseless claim. As briefed in LAA's October 15, 2015 Motion and Memorandum in Support of Request for Entitlement to Attorneys' Fees and Costs and its October 29, 2015 Reply in Support of Request for Entitlement to Attorneys' Fees and Costs, LAA is in fact the prevailing party on Count 2 and is thus entitled to its fees as requested on May 31, 2016. Because ABI functionally dismissed LAA from Count 2 without any payment, LAA was the prevailing party as to that entirely distinct claim which should have been brought in a separate proceeding. ABI's fees from its response to LAA's motion for fees (October 23, 2015) were thus not "necessarily incurred."

The fees that ABI improperly seeks to charge LAA for time spent on its property damage claim (Count 2) total \$8,220.33, as detailed in Exhibit A, page 11 of Mr. Gottstein's Affidavit in Support of ABI's Motion for Costs and Attorney's Fees.

C. Litigation Related to the Rep. Hawker Email Request

ABI's motion to compel Rep. Hawker to produce emails (December 14, 2015) was unnecessary because LAA voluntarily complied with ABI's initial request for the emails.

ABI admitted that it filed this motion before giving LAA an opportunity to respond. Filings related to the Rep. Hawker email request were thus unreasonably litigious and not “necessarily incurred.” LAA should not have to pay any fees for this unnecessary briefing. Mr. Gottstein logged 1.48 hours on December 14, 2015 at a rate of \$325/hour related to this work for a fee total of \$482.08.

D. Litigation Related to ABI’s Qui Tam Claim

Fees related to ABI’s qui tam⁶ claim, including those related to ABI’s response to the motion to dismiss this claim (October 27, 2015), were not “necessarily incurred” because ABI had no reasonable basis for its qui tam claim.⁷ ABI’s president, Mr. James Gottstein, *admitted under oath that ABI had no legal support for its request for relief in the form of 10% of the alleged savings to the LAA for lease invalidation,*⁸ which this Court recognized in its January 13, 2016 Order Regarding ABI’s *Qui Tam* and Punitive

⁶ Though the Court found that ABI did not in fact bring a formal qui tam action in its January 13, 2016 Order Regarding ABI’s *Qui Tam* and Punitive Damages Request for Relief, this memorandum characterizes ABI’s June 8, 2015 request for relief in the form of “10% of the savings to the Legislative Affairs Agency for invalidation or reformation of the LIO Project Lease” as a qui tam request because the motions and briefing related to this issue all used that term.

⁷ This issue was discussed in LAA’s May 31, 2016 Memorandum in Support of LAA’s Motion for Rules 11 and 82 Fees.

⁸ See Oct. 16, 2015 Deposition of James Gottstein, Exhibit A, at 43:6-9 (admitting that Mr. Gottstein is unaware of any statute that would authorize Plaintiff’s request for 10 percent of any savings); 43:13-18 (“Q. Is there any common law that you can point to to say that a savings of this type had been given to a private litigant? A. No. Well, not yet anyway. So, I mean, it’s possible I’ll come up with some, but I haven’t found – I haven’t seen any yet.”); see also LAA’s October 21, 2015 Non-Opposition to 716’s Motion for Ruling of Law Precluding ABI’s Claims for *Qui Tam* Damages and November 20, 2015 Joinder of Reply in Support of 716’s Motion for Ruling of Law Precluding ABI’s Claims for *Qui Tam* Damages.

Damages Request for Relief. As the Court stated, “there is no statutory authority” for that request, and “ABI does not provide any legal theory upon which this court could justify creating new law.”⁹ The Court highlighted this to Mr. Gottstein at the outset of the case, noting during oral argument on the motion to sever claims that ABI was asking the Court to “create” a new remedy for it. Despite this, ABI doubled down and included its qui tam request again in its amended complaint. ABI’s request for relief in the form of 10% of the alleged savings to the LAA for lease invalidation was not supported by existing law because Alaska has not enacted a version of the False Claims Act, as discussed in LAA’s November 20, 2015 Joinder of Reply in Support of 716’s Motion for Ruling of Law Precluding ABI’s Claims for *Qui Tam* Damages. Moreover, ABI could not have had a reasonable argument for extending the law based on the Alaska Legislature’s 2003 passage of HB 145, codified as AS 09.06.010(b)-(3), which clearly abolished the Alaska Supreme Court’s public interest exception to Rule 82 and was discussed by this Court in its January 13, 2016 order.

Not only should LAA not have to pay for ABI’s fees for its frivolous qui tam briefing, but ABI should be required to pay LAA’s fees for responding to this baseless request for relief, as detailed in LAA’s May 31, 2016 Motion in Support of Request for Rules 11 and 82 Fees. If Rule 11 violations do not apply when an attorney admits under oath that he has no legal support for his claim, then Rule 11 has no meaning. ABI should

⁹ January 13, 2016 Order Regarding ABI’s *Qui Tam* and Punitive Damages Request for Relief, at 4.

be held accountable for its frivolous arguments. Mr. Gottstein logged 16.7533 hours at a rate of \$325 for this work, bringing fees related to ABI's qui tam claim to \$5,444.83.

The fee entries related to this total are:

Date	Work Performed	Hours	Amount
10/24/2015	Opposition to 716 Qui Tam/Punies Motion	1.8333	\$595.83
10/25/2015	Opposition to 716 Qui Tam and Punies Motion	5.2	\$1,690.00
10/26/2015	Opposition to 716 Qui Tam/Punies Motion (.2 to 7.57)	7.55	\$2,453.75
10/27/2015	Opposition to 716 Qui Tam/Punies Motion	2.17	\$705.25

II. ABI Is Not Entitled to Full Fees Under Rule 82(b)(3)(G) Because There Was No Vexatious or Bad Faith Conduct by LAA

ABI is not entitled to full fees from LAA because there was no vexatious or bad faith conduct on the part of LAA. "A Rule 82(b)(3) award of full fees is manifestly unreasonable absent a finding of bad faith or vexatious conduct."¹⁰

There was no bad faith or vexatious conduct by LAA. ABI's argument in this regard is simply illogical. ABI first argues that an email from 716 describing 716's proposal for how to structure the lease extension evinces bad faith, but it is undisputed that this proposal was ultimately not implemented, and was in fact opposed by LAA. ABI next argues that another email from 716 shows bad faith when the sender merely expressed skepticism that the renovations could be completed for 10% less than the appraisal. But it is undisputed that this skepticism was unfounded based on the later appraisal submitted to LAA. The renovations were indeed completed for 10% less than

¹⁰ *Johnson v. Johnson*, 239 P.3d 393, 400 (Alaska 2010) (internal quotation marks omitted).

the appraised value. The communications cited by ABI – none of which are actually from LAA or its representatives – in no way suggest that LAA or Representative Hawker intended to disregard any statutory requirements. ABI’s suggestions to the contrary are wholly inaccurate and baseless.

III. ABI Is Not Entitled To Enhanced Fees Under Rule 83(b)(3) Because The Remaining Factors Do Not Warrant Any Upward Adjustment

In addition to the factor regarding vexatious or bad faith conduct discussed above,¹¹ ABI is not entitled to enhanced fees under Rule 83(b)(3) because none of the remaining relevant factors – including the complexity of the litigation,¹² the reasonableness of the attorneys’ hourly rates,¹³ the reasonableness of the claims and defenses pursued by each side,¹⁴ the relationship between the amount of work performed and the significance of the matters at stake,¹⁵ and other equitable factors¹⁶ – warrant any upward adjustment.

A. This Case Was Not Complex

ABI’s brief requesting summary judgment was seven pages long – the argument section was less than two pages long. It actually started off with “The argument is

¹¹ Rule 82(b)(3)(G).
¹² Rule 82(b)(3)(A).
¹³ Rule 82(b)(3)(C).
¹⁴ Rule 82(b)(3)(F).
¹⁵ Rule 82(b)(3)(H).
¹⁶ Rule 82(b)(3)(K).

simple.”¹⁷ There was nothing complex about ABI’s claim or its pursuit of that claim. Further, ABI raised no complex opposition to the defenses raised by the defendants. ABI simply asserts in a single paragraph that the case was complex without any supporting explanation. This case undoubtedly has significant local import and impact, but that does not in and of itself make this a complex case.

B. ABI’s Hourly Rate Was Unreasonable

ABI asserts that its counsel’s hourly rate was reasonable because it was less than Walter Featherly’s rate. But ABI makes no effort to demonstrate that Mr. Featherly’s rate is reasonable or consistent with what he charges on a regular basis.

C. ABI’s Property Damage and Qui Tam Claims were Unreasonable and Unnecessary

As discussed above, ABI’s property damage and qui tam claims were wholly unreasonable, as recognized by this Court’s August 20, 2015 order severing ABI’s property damage claim and its January 13, 2016 order concluding that ABI’s qui tam claim was wholly lacking in merit or any legal support. Because these claims were not reasonable, they do not warrant any enhanced fees under Rule 82(b)(3)(F).

D. LAA’s Defense Was Reasonable

It is absurd to say that LAA’s defense was frivolous. This Court agreed with LAA on a portion of the standing defense, but disagreed that standing should be denied entirely. This Court also agreed with LAA that the laches doctrine should apply to ABI’s

¹⁷ ABI Memorandum in Support of Motion for Partial Summary Judgment Re: Not Extension, at 5.

claim – and that ABI had improperly delayed bringing its claim – but nevertheless found that the defense did not apply because it was uncertain whether LAA would suffer economic harm from that delay. Finally, this Court agreed that AS 36.30.083(a) did not prohibit substantive modification, but determined that the statute did not expressly permit such modifications, either – this Court interpreted the statutory silence to mean that the statute did not allow such modifications.¹⁸ Reasonable minds can differ as to whether this statutory silence suggests that modifications are or are not permitted as part of the extension of a lease. The Court ultimately disagreed with LAA’s position, but that does not render LAA’s defense frivolous as either lacking in good faith, factual or legal support, or otherwise.

E. The Relationship Between the Amount of Work and the Significance of the Matters at Stake Is Unclear

The relationship between the amount of work and the significance of the matters at stake is unclear because this litigation may potentially have a *negative* fiscal impact on the government, in contrast to *BP Pipelines (Alaska) Inc. v. State, Dept. of Revenue*.¹⁹ While ABI pats itself on the back for “sav[ing] the State of Alaska tens of millions of dollars,”²⁰ ABI fails to provide any evidentiary support for this claim. As it currently stands, LAA will soon be forced to exit the building and leave behind \$7.5 million in

¹⁸ See Order on Motion for Summary Judgment re: Lease is Not an Extension, March 24, 2016, at 13.

¹⁹ 327 P.3d 185, 197-98 (Alaska 2014).

²⁰ ABI’s Motion for Costs and Attorney’s Fees Against 716 West Fourth Avenue and Legislative Affairs Agency, at 8.

tenant improvements. It is unknown whether LAA will be able to recoup any of those amounts. Further, as this Court held, it is unknown whether LAA will be in a better or worse financial position as a result of a ruling invalidating the lease. ABI's self-congratulation aside, the State is currently out \$7.5 million. These costs could have been avoided if ABI had brought this lawsuit earlier.

F. No Other Equitable Factors Provide A Reason for Enhanced Fees

No other equitable factors provide a reason for enhanced fees here. The fact that ABI faced some financial risk for bringing this case does not warrant enhanced fees. All litigants face financial risk when bringing litigation in Alaska. Further, ABI took the unusual stance of announcing in the newspaper that it was more than happy to settle the lawsuit for a payout as soon as the Court denied the *qui tam* portion of ABI's claim.²¹

Finally, ABI's use of confidential settlement communications to bolster its claim is outrageous and contrary to Evidence Rule 408. ABI could have relied on the offer itself to make its point, but instead ABI gratuitously included confidential settlement communications (which were expressly made pursuant to Rule 408) as part of the pleading. Worse still, email communication from ABI's president and counsel, Mr. Gottstein, makes clear that he did not view the offer of judgment as "intimidation" at all (as he now conveniently claims) – he confirmed his view that the offer was invalid and had no legal effect.

²¹ See <http://www.adn.com/commentary/article/jim-gottstein-why-i-am-willing-settle-taj-mahawker-lawsuit/2016/02/08/>.

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IV. CONCLUSION

Because the vast majority of ABI's attorneys' fees were neither reasonable nor "necessarily incurred" as related to LAA, LAA should not have to pay a large proportion of ABI's fees, as detailed herein. ABI is simply not entitled to fees for litigation that was not "necessarily incurred." ABI is not entitled to full fees, nor should it receive enhanced fees under the factors enumerated in Rule 83(b)(3).

DATED: June 6, 2016

STOEL RIVES LLP

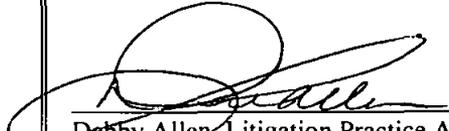
By: 
for KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE

This certifies that on June 6, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

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Debby Allen, Litigation Practice Assistant

86685143.3 0081622-00003

Kevin Cuddy (Alaska Bar #0810062)
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

FILED
STATE OF ALASKA
THIRD DISTRICT
2016 JUN -2 PM 4:31
CLERK TRIAL COURT
BY: DEPUTY CLERK

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

Case No. 3AN-15-05969 CI

**ERRATA TO LEGISLATIVE AFFAIRS AGENCY'S MEMORANDUM IN
SUPPORT OF MOTION FOR RULES 11 AND 82 FEES**

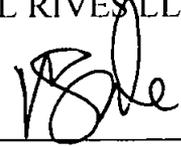
COMES NOW Defendant Legislative Affairs Agency (LAA), by and through its
counsel of record, and hereby corrects its filing entitled *Memorandum in Support of
Legislative Affairs Agency's Motion for Rules 11 and 82 Fees* filed with this court on
May 31, 2016 to correct the Exhibit identified as Exhibit B to Exhibit A and to include
Exhibit A which was inadvertently omitted from the May 31, 2016 filing.

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Exhibit A is attached hereto.

DATED: June 2, 2016

STOEL RIVES LLP

By:  #0911060

 KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE

This certifies that on June 2, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
Eva R. Gardner
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)


Debby Allen, Litigation Practice Assistant
86718366.1 0081622-00003

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

In the Matter Of:

ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC

JAMES GOTTSTEIN - VOLUME I

October 16, 2015

PACIFIC RIM REPORTING

STENOGRAPHIC COURT REPORTERS

711 M STREET, SUITE 4

ANCHORAGE, ALASKA 99501

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EXHIBIT A | Page 1 of 5

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A-P-P-E-A-R-A-N-C-E-S

For Plaintiff:

James B. Gottstein
LAW OFFICES OF JAMES B. GOTTSTEIN
406 G Street, Suite 206
Anchorage, Alaska 99501
907/274-7686

For Defendant 716 West Fourth Avenue LLC:

Jeffrey W. Robinson
Eva Gardner
ASHBURN & MASON
1227 West 9th Avenue, Suite 200
Anchorage, Alaska 99501
907/276-4331

For Defendant Legislative Affairs Agency:

Kevin M. Cuddy
STOEL RIVES
510 L Street, Suite 500
Anchorage, Alaska 99501
907/277-1900

Court Reporter:

Gary Brooking, RPR
PACIFIC RIM REPORTING
711 M Street, Suite 4
Anchorage, Alaska 99501

1 Q. So thank you for the answer. I'm going to
2 go back to my original question, which is: What is
3 the basis for your claim to an entitlement of
4 10 percent of the fees?

5 A. I just said it.

6 Q. I'm not sure that you have. You gave me a
7 history lesson about the public interest exception
8 for Rule 82. Is there a statute?

9 A. No.)

10 Q. False Claims Act? This isn't a qui tam
11 case, right?

12 A. Correct.

13 Q. Is there any common law that you can point
14 to to say that a savings of this type had been given
15 a private litigant?)

16 A. No. Well, not yet anyway. So, I mean,
17 it's possible I'll come up with some, but I haven't
18 found -- I haven't seen any yet.)

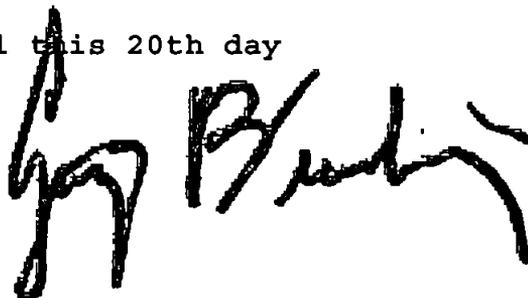
19 I mean, I think that the -- this is a very
20 important public issue, and the point is, is that if
21 this right of public -- the public citizens to sue
22 over illegal government action is to have any, you
23 know, reality at all, there needs to be some
24 countervailing element for the prospect of attorneys'
25 fees being awarded against a plaintiff if they're

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CERTIFICATE

I, GARY BROOKING, Registered Professional Reporter and Notary Public in and for the State of Alaska, do hereby certify that the witness in the foregoing proceedings was duly sworn; that the proceedings were then taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed by computer transcription; that the foregoing is a true record of the testimony and proceedings taken at that time; and that I am not a party to nor have I any interest in the outcome of the action herein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 20th day of October, 2015.



GARY BROOKING, RPR
My Commission Expires 6/28/2016

GB4223

FILED
STATE OF ALASKA
THIRD DISTRICT

2016 JUN -2 PM 4:31

CLERK TRIAL COURT

BY: DEPILO GILFRK

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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

Case No. 3AN-15-05969 CI

**DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S OBJECTION TO
PLAINTIFF'S MOTION FOR COSTS**

COMES NOW Defendant Legislative Affairs Agency (LAA), by and through its counsel of record, and in response to the Motion for Costs filed by Plaintiff Alaska Building, Inc.'s Motion which seeks a total of \$1,815.60 for various costs, LAA hereby submits the following objections:

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Westlaw (\$1,300.00): Charges for computerized research are allowed per Rule 79(f)(11); however, Plaintiff's counsel is merely "estimating" his costs based on his estimate that he used "well over" half of his Westlaw usage during the time he worked on the case,¹ and indicating his monthly charge for his Westlaw account is \$222.65. No back-up documentation was provided to even substantiate his \$222.65 per month Westlaw charge. Therefore, LAA objects to this cost as an estimation and not properly supported.

Copies and Postage (\$100.00): By his own admission Plaintiff's counsel states that "some years ago I quit keeping track of copies and postage."² Postage costs are allowable only when process is served by certified mail.³ In-house copies are allowed at \$.15 per page.⁴ Plaintiff's counsel has not differentiated between copies and postage and is estimating. Therefore, LAA objects to these costs as an estimation, not permitted under Rule 79 and not properly supported.

Out of Pocket Costs:

Plaintiff identifies Costs of \$240.00: Of that amount, there are two notary costs for \$10.00 each.⁵ LAA objects to these costs as not allowable under Rule 79.

Plaintiff identifies a charge of \$69.00 for the cost of the purchase of a license for a computer program, i.e., *Outlook PST File Viewer Pro - Single Use License*⁶. LAA objects to this costs as not permitted under Rule 79.

¹ See, Affidavit of James Gottstein, ¶8.

² See, Affidavit of James Gottstein, ¶7.

³ Rule 79(2).

⁴ Rule 79(12).

⁵ Exhibit B, pages 13 and 15.

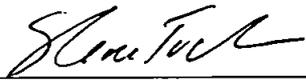
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Plaintiff identifies two additional notary charges totaling \$25.00.⁷ LAA objects to these costs as not allowable under Rule 79.

LAA does not object to the \$150.00 filing fee or the \$151.60 cost relating to the copies of the October 16, 2015 deposition of James Gottstein.

DATED: June 2, 2016

STOEL RIVES LLP

By: 
KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

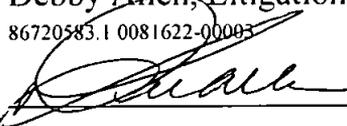
CERTIFICATE OF SERVICE

This certifies that on June 2, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
Eva R. Gardner
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1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)

Debby Allen, Litigation Practice Assistant
86720583.1 0081622-00003



(... continued)

⁶ Exhibit B, page 12.

⁷ Exhibit C, page 8 and 9.

FILED
STATE OF ALASKA
THIRD DISTRICT
2016 MAY 31 PM 4:24
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BY: DEPUTY CLERK

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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY, and
CRITERION GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969 CI

**MEMORANDUM IN SUPPORT OF LEGISLATIVE AFFAIRS AGENCY'S
MOTION FOR RULES 11 AND 82 FEES**

Defendant Legislative Affairs Agency (LAA) seeks to recover attorneys' fees for its defense of Plaintiff Alaska Building, Inc.'s (ABI) qui tam request for relief¹ and Count

¹ Though the Court found that ABI did not in fact bring a formal qui tam action in its January 13, 2016 Order Regarding ABI's *Qui Tam* and Punitive Damages Request for Relief, this memorandum characterizes ABI's June 8, 2015 request for relief in the form (continued . . .)

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2 (property damage claim) of Plaintiff's June 8, 2015 Amended Complaint under Rules 11 and 82.

LAA requests Rule 82 fees related to Count 2 (property damage) since LAA was the prevailing party on that claim under the Court's August 20, 2015 order granting LAA's motion to sever the property damage claim and ordering that the claim must proceed, if at all, in a new lawsuit. LAA briefed why it is the prevailing party as to that ruling in its October 15, 2015 Motion and Memorandum in Support of Request for Entitlement to Attorneys' Fees and Costs and its October 29, 2015 Reply in Support of Request for Entitlement to Attorneys' Fees and Costs. LAA hereby references and incorporates that briefing here.

Though Rule 82(b)(2) provides for 20% of a prevailing party's fees, LAA requests a full fee award under Rule 11² for the qui tam and property damage issues because LAA had no good faith basis for bringing its claims. ABI's president, Mr. James Gottstein, admitted under oath that ABI had no legal support for its request for relief in the form of

(. . . continued)

of "10% of the savings to the Legislative Affairs Agency for invalidation or reformation of the LIO Project Lease" as a qui tam request because the motions and briefing related to this issue all used that term.

² Alaska Civil Rule 95 states that a court "may withhold or assess costs or attorney's fees" for "any infraction of these rules," including Civil Rule 11; *see also Enders v. Parker*, 125 P.3d 1027, 1037 n.37 (Alaska 2005).

10% of the alleged savings to the LAA for lease invalidation,³ and there was and is similarly no good faith basis for bringing any property damage claim against a lessee who played no role in the construction of the building. LAA did not cause any of the property damage at issue, and ABI was fully aware that there was no good faith basis in fact or in law for contending that LAA was responsible for any such property damage.

Under Rule 11(b)(2), claims, defenses, and other legal contentions must be “warranted by existing law.” Pleadings must also not “needlessly increase the cost of litigation” under Rule 11(b)(1). ABI brazenly violated Rule 11 by admitting that there was no statutory support for its request for relief in the form of 10% of the alleged savings to the LAA for lease invalidation, which this Court recognized in its January 13, 2016 Order Regarding ABI’s *Qui Tam* and Punitive Damages Request for Relief. As the Court stated, “there is no statutory authority” for that request, and “ABI does not provide any legal theory upon which this court could justify creating new law.”⁴

As the Alaska Supreme Court held in *Keen v. Ruddy*, Rule 11 sanctions are

³ See Oct. 16, 2015 Deposition of James Gottstein, Exhibit B, at 43:6-9 (admitting that Mr. Gottstein is unaware of any statute that would authorize Plaintiff’s request for 10 percent of any savings); 43:13-18 (“Q. Is there any common law that you can point to to say that a savings of this type had been given to a private litigant? A. No. Well, not yet anyway. So, I mean, it’s possible I’ll come up with some, but I haven’t found – I haven’t seen any yet.”); see also LAA’s October 21, 2015 Non-Opposition to 716’s Motion for Ruling of Law Precluding ABI’s Claims for *Qui Tam* Damages and November 20, 2015 Joinder of Reply in Support of 716’s Motion for Ruling of Law Precluding ABI’s Claims for *Qui Tam* Damages.

⁴ January 13, 2016 Order Regarding ABI’s *Qui Tam* and Punitive Damages Request for Relief, at 4.

appropriate when a court “finds that a pleading signed by [an attorney] is not well grounded in fact, is not warranted by existing law or a reasonable argument for its extension, or is interposed for an improper purpose.”⁵ It is clear that ABI’s request for relief in the form of 10% of the alleged savings to the LAA for lease invalidation was not supported by existing law because Alaska has not enacted a version of the False Claims Act, as discussed in LAA’s November 20, 2015 Joinder of Reply in Support of 716’s Motion for Ruling of Law Precluding ABI’s Claims for *Qui Tam* Damages. Moreover, ABI could not have had a good faith argument for extending the law based on the Alaska Legislature’s 2003 passage of HB 145, codified as AS 09.06.010(b)-(3), which clearly abolished the Alaska Supreme Court’s public interest exception to Rule 82 and was discussed by this Court in its January 13, 2016 order.

Rule 11 no longer strictly requires willful conduct or subjective bad faith to impose sanctions.⁶ Rather, the determining factor is whether there was a reasonable basis for the attorney’s signature.⁷ Rule 11 sanctions are warranted here because ABI and its representative Mr. James Gottstein could not have had a reasonable belief that the

⁵ 784 P.2d 653, 658 (Alaska 1989); *see also State Employees Assoc. v. Pub. Emp. Assoc.*, 813 P.2d 669, 671 (Alaska 1991) (holding that a court can impose sanctions when it finds that the pleadings were not warranted by existing law or a reasonable argument for their extension, modification, or reversal).

⁶ *See Alaska Fed. Savings & Loan Assoc. of Juneau v. Bernhardt*, 794 P.2d 579 (Alaska 1990).

⁷ *See id.*

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pleadings were supported by existing law or that there was a good faith argument for extending the law.

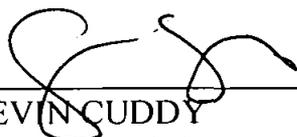
REQUEST

The hourly attorney and paralegal fees claimed are reasonable, were actually incurred, and are supported by the Affidavit of Kevin M. Cuddy filed concurrently herewith. The invoices attached to the Affidavit of Kevin M. Cuddy as Exhibit A include comprehensive time records for all of the attorney fees charged by the firms for which LAA is seeking an award. These legal fees and costs were specifically and necessarily incurred in connection with LAA's defense of ABI's qui tam request for relief and Count 2 of its Amended Complaint.

LAA seeks an award of attorneys' fees of at least 20% of \$11,089.00. This request is based on prevailing fees for rates in Anchorage, Alaska, as described in the accompanying Kevin M. Cuddy Affidavit.

DATED: May 31, 2016

STOEL RIVES LLP

By: 
for KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE

This certifies that on May 31, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
Eva R. Gardner
Ashburn & Mason
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FILED
STATE OF ALASKA
THIRD DISTRICT
2016 MAY 31 PM 4:25
CLERK TRIAL COURTS
BY: _____
DEPUTY CLERK

Kevin Cuddy (Alaska Bar #0810062)
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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
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ALASKA BUILDING, INC., an Alaskan
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Defendants.

Case No. 3AN-15-05969 CI

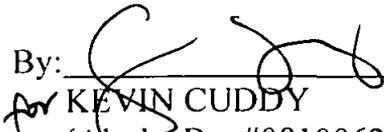
**DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S NOTICE OF FILING
UNSIGNED COPY OF THE AFFIDAVIT OF KEVIN M. CUDDY**

Defendant Legislative Affairs Agency hereby notifies this Court of filing an unsigned copy of the Affidavit of Kevin M. Cuddy submitted in support of Defendant Legislative Affairs Agency's Motion for Rule 82 Attorneys' Fees. The original signed affidavit will be filed with the Court promptly upon Mr. Cuddy's return to the State of Alaska.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

DATED: May 31, 2016

STOEL RIVES LLP

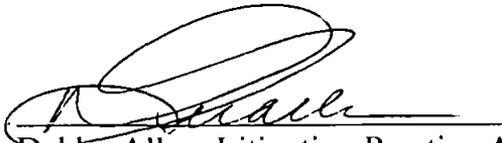
By: 
for KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE

This certifies that on May 31, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
Eva R. Gardner
Ashburn & Mason
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Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)



Debby Allen, Litigation Practice Assistant
86704144.1 0081622-00003

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
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2. I am an attorney with the law firm of Stoel Rives, LLP, counsel for Defendant Legislative Affairs Agency (“Agency”) in the above-captioned litigation and submit this affidavit in support of Defendant Legislative Affairs Agency’s Motion for Rule 82 Attorneys’ Fees.

3. I have been admitted to practice law in Alaska for more than 8 years, all in private practice. I have served as lead counsel in numerous complex litigation matters before this court and other Alaska courts.

3. Stoel typically bills its clients on a monthly basis, preparing comprehensive time records describing all tasks performed by attorneys and paralegals, and the time spent on each. In this matter, such monthly invoices were prepared and sent to LAA.

5. I reviewed the monthly invoices each month to ensure that the tasks and time reflected on them were described accurately and were necessary and reasonable.

6. I have had overall leadership responsibility for this litigation for Stoel.

7. In preparation for this filing, I have reviewed Stoel’s invoices and identified those containing attorney’s fees incurred in defense of Plaintiff Alaska Building, Inc.’s (ABI) qui tam request for relief and Count 2 (property damage claim) of Plaintiff’s June 8, 2015 Amended Complaint under Rules 11 and 82.

8. Attached as Exhibit A is a true and correct compilation of attorney and paralegal time worked in this matter by Stoel for the first eight months of this litigation. Exhibit A includes comprehensive time records for all of the attorney and paralegal fees charged by Stoel for which LAA is seeking an award from ABI as described in our

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briefing. Attorney-client privileged information and unrelated information has been redacted from the invoices. Unredacted copies of the actual invoices are available if requested by the Court, or to the extent necessary to address any opposition to LAA's request for fees and costs, LAA will file a copy of the unredacted invoices under seal for the Court's eyes only.

10. In addition to the invoices marked as Exhibit A, Stoel will bill LAA for work on this matter for which a printed invoice has not yet been generated.

11. These legal fees were specifically and necessarily incurred for the reasons described in detail in the "Facts" section of the accompanying memorandum in support of the fees motions.

12. Based on my knowledge of the Alaska legal market, the billing rates for which LAA seeks its recovery are consistent with rates charged by other legal professionals similarly situated in this market, and are appropriate given the nature and complexity of the work performed.

13. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 31st day of May, 2016.

KEVIN M. CUDDY

SUBSCRIBED AND SWORN to before me this 31st day of May 2016 in

Anchorage, Alaska.

Notary in and for the State of Alaska
My Commission expires: _____

CERTIFICATE OF SERVICE

This certifies that on May 31, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
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Debby Allen, Litigation Practice Assistant
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Fax(907) 277-1920
For Billing Inquiries 1-800-305-8453
Or Email Billing@stoel.com

TO: LEGISLATIVE AFFAIRS AGENCY
DOUG GARDNER, DIR. OF LEGAL SERVICES
STATE CAPITOL, MAIL STOP 3101
JUNEAU, AK 99801

INVOICE DATE 06/23/15
INVOICE NUMBER 3832342
JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY
00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING INC.

STATEMENT OF SERVICES, DISBURSEMENTS, AND OTHER CHARGES THROUGH 05/31/15

Balance From Previous Statement		Redacted
Payment(s) Received		Redacted
Current Activity:		
Fees for Professional Services (see attached for detail)	Redacted	
Disbursements and Other Charges	Redacted	
TOTAL CURRENT AMOUNT DUE		Redacted
Total Outstanding Balance as of 06/23/15		Redacted

Statements are due within 30 days after the invoice date printed on the statement. A monthly late fee equal to 8 percent per annum, commencing on the due date, will be charged on all amounts not paid within 60 days after the invoice date.

Remit to: Stoel Rives LLP, 900 SW Fifth Ave., Suite 2600, Portland, OR 97204

EXHIBIT A | Page 1 of 20
3AN-15-05969CI

002483



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 Or Email Billing@stoel.com

0081622 LEGISLATIVE AFFAIRS AGENCY
 00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING
 INC.

INVOICE DATE 06/23/15
 INVOICE NUMBER 3832342
 JET

Employer's Identification No. 93-0408771

DATE	CURRENT SERVICES THROUGH 05/31/15	ATTY	HOURS
Redacted	[Redacted]	[Redacted]	[Redacted]
Redacted	[Redacted]	[Redacted]	[Redacted]
05/08/15	Continue drafting motion to dismiss for lack of standing	RLD	3.0
Redacted	[Redacted]	Redacted	Redacted
05/13/15	Revise motion to dismiss; research re same	KMC	2.1
05/14/15	Review and revise motion to dismiss; send updated draft to Kevin Cuddy	RLD	1.3
05/15/15	Review and revise edits to draft motion to dismiss; revise and add analysis to discuss why Plaintiff is not an appropriate plaintiff and lacks standing	RLD	1.4
05/15/15	Draft, research, and revise motion to dismiss; email with client re same	KMC	1.8
Redacted	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
05/27/15	Call with client re filing; revise proposed order re dismissal; review filings; arrange for filing and service of motion to dismiss and motion to stay of discovery; call with Jeff Robinson re same	KMC	2.1
05/27/15	Review and analyze documents filed in case today	RLD	.1
	Total		Redacted



510 L STREET, SUITE 500
ANCHORAGE, AK 99501-1959
Telephone(907) 277-1900
Fax(907) 277-1920
For Billing Inquiries 1-800-305-8453
Or Email Billing@stoel.com

0081622 LEGISLATIVE AFFAIRS AGENCY
00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING
INC.

INVOICE DATE 06/23/15
INVOICE NUMBER 3832342
JET

Employer's Identification No. 93-0408771

TOTAL CURRENT SERVICES

\$8,797.50

TIME RECAP

KEVIN M. CUDDY (KMC)
RACHEL L. DUNNINGTON (RLD)

HOURS	RATE	VALUE
Redacted	360	Redacted
Redacted	255	Redacted
Redacted		Redacted

TIMEKEEPER TOTALS



510 L STREET, SUITE 500
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 Or Email Billing@stoel.com

0081622 LEGISLATIVE AFFAIRS AGENCY
 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING
 00003 INC.

INVOICE DATE 06/23/15
 INVOICE NUMBER 3832342
 JET

Employer's Identification No. 93-0408771

CURRENT DISBURSEMENTS AND OTHER CHARGES THROUGH 05/31/15

DATE	ITEM	AMOUNT
05/06/15	Document Reproduction	3.60
05/18/15	Document Reproduction	9.72
05/27/15	Document Reproduction	27.72
05/05/15	Computerized Research - Westlaw Redacted	27.72
05/08/15	Computerized Research - Westlaw Redacted	93.52
05/14/15	Computerized Research - Westlaw Redacted	13.86
05/21/15	Computerized Research - Westlaw Redacted	20.79
05/22/15	Computerized Research - Westlaw Redacted	86.59
05/22/15	Computerized Research - Westlaw Redacted	13.86
TOTAL CURRENT CHARGES		\$297.38



510 L STREET, SUITE 500
ANCHORAGE, AK 99501-1959
Telephone (907) 277-1900
Fax (907) 277-1920
For Billing Inquiries 1-800-305-8453
Or Email Billing@stoel.com

TO: LEGISLATIVE AFFAIRS AGENCY
DOUG GARDNER, DIR. OF LEGAL SERVICES
STATE CAPITOL, MAIL STOP 3101
JUNEAU, AK 99801

INVOICE DATE 07/28/15
INVOICE NUMBER 3838247
JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY

STATEMENT OF SERVICES, DISBURSEMENTS, AND OTHER CHARGES THROUGH 06/30/15

Balance From Previous Statement		Redacted
Payment(s) Received		Redacted
Current Activity:		
Fees for Professional Services (see attached for detail)	Redacted	
Disbursements and Other Charges	Redacted	
TOTAL CURRENT AMOUNT DUE		Redacted
Total Outstanding Balance as of 07/28/15		Redacted

Statements are due within 30 days after the invoice date printed on the statement. A monthly late fee equal to 8 percent per annum, commencing on the due date, will be charged on all amounts not paid within 60 days after the invoice date.

Remit to: Stoel Rives LLP, 900 SW Fifth Ave., Suite 2600, Portland, OR 97204

EXHIBIT A | Page 5 of 20
3AN-15-05969CI

002487



510 I. STREET, SUITE 500
 ANCHORAGE, AK 99501-1959
 Telephone (907) 277-1900
 Fax (907) 277-1920
 For Billing Inquiries 1-800-305-8453
 Or Email Billing@stoel.com

TO: LEGISLATIVE AFFAIRS AGENCY
 DOUG GARDNER, DIR. OF LEGAL SERVICES
 STATE CAPITOL, MAIL STOP 3101
 JUNEAU, AK 99801

INVOICE DATE 07/28/15
 INVOICE NUMBER 3838247
 JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY

MATTER NUMBER/NAME	Balance Per Previous Statement	Payments	Current Services	Current Charges	Current Totals
Redacted 00002 LEGISLATIVE AFFAIRS AGENCY 00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING IN	9094.88	9094.88	12990.00	661.40	13651.40
TOTALS	Redacted	Redacted	Redacted	Redacted	Redacted



510 I. STREET, SUITE 500
ANCHORAGE, AK 99501-1959
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Or Email Billing@steel.com

0081622 LEGISLATIVE AFFAIRS AGENCY
00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING
INC.

INVOICE DATE 07/28/15
INVOICE NUMBER 3838247
JET

Employer's Identification No. 93-0408771

TOTAL CURRENT SERVICES

Redacted



510 L STREET, SUITE 500
 ANCHORAGE, AK 99501-1959
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 Or Email Billing@stoel.com

0081622 LEGISLATIVE AFFAIRS AGENCY
 00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING
 INC.

INVOICE DATE 07/28/15
 INVOICE NUMBER 3838247
 JET

Employer's Identification No. 93-0408771

CURRENT DISBURSEMENTS AND OTHER CHARGES THROUGH 06/30/15

DATE	ITEM	AMOUNT
06/03/15	Document Reproduction	1.44
06/09/15	Document Reproduction	89.36
06/10/15	Document Reproduction	.12
06/12/15	Document Reproduction	11.00
06/15/15	Document Reproduction	33.48
06/15/15	Document Reproduction	3.60
06/18/15	Document Reproduction	8.64
06/19/15	Document Reproduction	9.60
06/29/15	Document Reproduction	46.08
06/06/15	Computerized Research - Westlaw Redacted	27.72
06/11/15	Computerized Research - Westlaw Redacted	34.65
06/16/15	Computerized Research - Westlaw Redacted	62.37
06/17/15	Computerized Research - Westlaw Redacted	238.07
06/17/15	Computerized Research - Westlaw Redacted	54.04
06/25/15	Computerized Research - Westlaw Redacted	41.23
TOTAL CURRENT CHARGES		\$661.40



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ANCHORAGE, AK 99501-1959
Telephone (907) 277-1900
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For Billing Inquiries 1-800-305-8453
Or Email Billing@stoel.com

TO: LEGISLATIVE AFFAIRS AGENCY
DOUG GARDNER, DIR. OF LEGAL SERVICES
STATE CAPITOL, MAIL STOP 3101
JUNEAU, AK 99801

INVOICE DATE 09/25/15
INVOICE NUMBER 3850093
JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY

STATEMENT OF SERVICES, DISBURSEMENTS, AND OTHER CHARGES THROUGH 08/31/15

Balance From Previous Statement		Redacted
Payment(s) Received		Redacted
Current Activity:		
Fees for Professional Services (see attached for detail)	Redacted	
Disbursements and Other Charges	Redacted	
TOTAL CURRENT AMOUNT DUE		Redacted
Total Outstanding Balance as of 09/25/15		Redacted

Statements are due within 30 days after the invoice date printed on the statement. A monthly late fee equal to 8 percent per annum, commencing on the due date, will be charged on all amounts not paid within 60 days after the invoice date.

Remit to: Stoel Rives LLP, 900 SW Fifth Ave., Suite 2600, Portland, OR 97204



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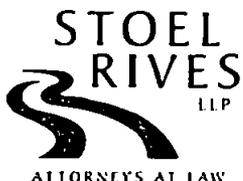
TO: LEGISLATIVE AFFAIRS AGENCY
 DOUG GARDNER, DIR. OF LEGAL SERVICES
 STATE CAPITOL, MAIL STOP 3101
 JUNEAU, AK 99801

INVOICE DATE 09/25/15
 INVOICE NUMBER 3850093
 JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY

MATTER NUMBER/NAME	Balance Per Previous Statement	Payments	Current Services	Current Charges	Current Totals
Redacted Redacted 00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING IN	Redacted	Redacted	Redacted	Redacted	Redacted
TOTALS	Redacted	Redacted	Redacted	Redacted	Redacted



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0081622 LEGISLATIVE AFFAIRS AGENCY
00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING
INC.

INVOICE DATE 09/25/15
INVOICE NUMBER 3850093
JET

Employer's Identification No. 93-0408771

DATE	CURRENT SERVICES THROUGH 08/31/15	ATTY	HOURS
08/03/15	Review proposed stipulation of dismissal for Criterion; finalize and serve initial disclosures; call re tender issues; begin preparation for oral argument	KMC	.9
08/06/15	Call with counsel for 716 regarding tender of defense and strategy for resolving Count 2 of amended complaint	KMC	.3
08/13/15	Research re court's discretion in denying a case based on standing; draft email to Kevin Cuddy re the same	RLD	1.8
08/13/15	Preparation for oral argument on motion to dismiss	KMC	2.1
08/14/15	Oral argument preparation for hearing on motion to dismiss	KMC	1.8
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
08/17/15	Prepare for oral argument on motions to dismiss and sever claims	KMC	4.4
08/18/15	Oral argument on motion to dismiss and sever; prep for same; meeting with client to discuss next steps in litigation; review case law and briefing on standing issues	KMC	1.0
08/18/15	Review and analyze court order granting 716's request for ruling and joining as a party for oral argument	RLD	.1
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



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0081622 LEGISLATIVE AFFAIRS AGENCY
 00003 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING
 INC.

INVOICE DATE 09/25/15
 INVOICE NUMBER 3850093
 JET

Employer's Identification No. 93-0408771

DATE	CURRENT SERVICES THROUGH 08/31/15	ATTY	HOURS
	Redacted		
	Total		Redacted
	TOTAL CURRENT SERVICES		Redacted



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0081622 LEGISLATIVE AFFAIRS AGENCY
 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING
 00003 INC.

INVOICE DATE 09/25/15
 INVOICE NUMBER 3850093
 JET

Employer's Identification No. 93-0408771

CURRENT DISBURSEMENTS AND OTHER CHARGES THROUGH 08/31/15

DATE	ITEM	AMOUNT
08/03/15	Document Reproduction	7.92
08/03/15	Document Reproduction	12.50
08/31/15	Document Reproduction	455.96
08/13/15	Computerized Research - Westlaw Redacted	55.44
08/17/15	Computerized Research - Westlaw Redacted	13.86
08/21/15	Computerized Research - Westlaw Redacted	6.93
08/23/15	Computerized Research - Westlaw Redacted	6.93
TOTAL CURRENT CHARGES		\$559.54



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ANCHORAGE, AK 99501-1959
Telephone (907) 277-1900
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For Billing Inquiries 1-800-305-8453
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TO: LEGISLATIVE AFFAIRS AGENCY
DOUG GARDNER, DIR. OF LEGAL SERVICES
STATE CAPITOL, MAIL STOP 3101
JUNEAU, AK 99801

INVOICE DATE 11/20/15
INVOICE NUMBER 3861997
JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY

STATEMENT OF SERVICES, DISBURSEMENTS, AND OTHER CHARGES THROUGH 10/31/15

Balance From Previous Statement		Redacted
Payment(s) Received		Redacted
Current Activity:		
Fees for Professional Services (see attached for detail)	Redacted	
Disbursements and Other Charges	Redacted	
TOTAL CURRENT AMOUNT DUE		Redacted
Total Outstanding Balance as of 11/20/15		Redacted

Statements are due within 30 days after the invoice date printed on the statement. A monthly late fee equal to 8 percent per annum, commencing on the due date, will be charged on all amounts not paid within 60 days after the invoice date.

Remit to: Stoel Rives LLP, 900 SW Fifth Ave., Suite 2600, Portland, OR 97204



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 Fax (907) 277-1920
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 Or Email Billing@stoel.com

TO: LEGISLATIVE AFFAIRS AGENCY
 DOUG GARDNER, DIR. OF LEGAL SERVICES
 STATE CAPITOL, MAIL STOP 3101
 JUNEAU, AK 99801

INVOICE DATE 11/20/15
 INVOICE NUMBER 3861997
 JET

Employer's Identification No. 93-0408771

0081622 LEGISLATIVE AFFAIRS AGENCY

MATTER NUMBER/NAME	Balance Per Previous Statement	Payments	Current Services	Current Charges	Current Totals
<small>Redacted</small> 00003 <small>Redacted</small> LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING IN	<small>Redacted</small> 3359.32	<small>Redacted</small> 3359.32	<small>Redacted</small> 18108.00	<small>Redacted</small> 443.10	<small>Redacted</small> 18551.10
TOTALS	<small>Redacted</small>	<small>Redacted</small>	<small>Redacted</small>	<small>Redacted</small>	<small>Redacted</small>



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0081622 LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING
00003 INC.

INVOICE DATE 11/20/15
INVOICE NUMBER 3861997
JET

Employer's Identification No. 93-0408771

DATE	CURRENT SERVICES THROUGH 10/31/15	ATTY	HOURS
10/21/15	Revise non-opposition re qui tam damages; email with client re same; review and finalize motion for summary judgment on laches; review updated affidavit; arrange for filing and service of same; email re request for oral argument	KMC	.5
Redacted	Redacted	Redacted	Redacted
Redacted	Redacted	Redacted	Redacted
10/26/15	Draft, research, and revise reply brief in support of fees	KMC	2.3
Redacted	Redacted	Redacted	Redacted
10/28/15	Draft, research, and revise reply brief in support of ruling of law on qui tam damages	KMC	2.3
10/29/15	Draft, research and revise reply brief in support of motion to preclude qui tam relief for plaintiff; emails re same	KMC	2.9
Redacted	Redacted	Redacted	Redacted
Total			Redacted
TOTAL CURRENT SERVICES			Redacted



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 ANCHORAGE, AK 99501-1959
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0081622 LEGISLATIVE AFFAIRS AGENCY
 LEGISLATIVE AFFAIRS AGENCY V. ALASKA BUILDING
 00003 INC.

INVOICE DATE 11/20/15
 INVOICE NUMBER 3861997
 JET

Employer's Identification No. 93-0408771

CURRENT DISBURSEMENTS AND OTHER CHARGES THROUGH 10/31/15

DATE	ITEM	AMOUNT
10/09/15	Document Reproduction	.24
10/12/15	Document Reproduction	5.04
10/15/15	Document Reproduction	3.36
10/16/15	Document Reproduction	1.08
10/21/15	Document Reproduction	72.52
10/23/15	Document Reproduction	3.00
10/27/15	Document Reproduction	2.40
10/29/15	Document Reproduction	24.54
10/19/15	Court Reporter Services -- Vendor: Redacted	Redacted
	[Redacted]	
09/09/15	[Redacted]	Redacted
	TOTAL CURRENT CHARGES	\$443.10

FILED
IN THE DISTRICT
2016 MAY 31 PM 4:24
CLERK TRIAL COURT
ANCHORAGE, ALASKA

Kevin Cuddy (Alaska Bar #0810062)
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: (907) 277-1900
Facsimile: (907) 277-1920

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY, and
CRITERION GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969 CI

**LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR
RULE 11 AND RULE 82 FEES**

Defendant Legislative Affairs Agency (LAA), moves for an award of its attorneys' fees incurred in connection with its defense of Plaintiff Alaska Building, Inc.'s (ABI) qui

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

tam request for relief¹ and Count 2 (property damage claim) under Rules 11 and 82. LAA is the prevailing party on Count 2 for the reasons explained in its October 15, 2015 Motion and Memorandum in Support of Request for Entitlement to Attorneys' Fees and Costs and its October 29, 2015 Reply in Support of Request for Entitlement to Attorneys' Fees and Costs.

Attached to the Affidavit of Kevin M. Cuddy filed concurrently with this Motion are true and correct copies of Stoel Rives LLP invoices identified as Exhibit A. Exhibit A includes comprehensive time records for attorney and paralegal fees Stoel Rives LLP charged LAA, was paid by LAA, and for which LAA is seeking an award from Alaska Building Inc.

Actual attorneys' fees billed in this matter for which LAA seeks to recover under Rules 11 and 82 total \$11,089.00. LAA seeks an award of attorney's fees of no less than twenty percent of that amount under Rule 82(b)(2), but requests that the Court award full fees related to LAA's defense of the property damage claim and qui tam request for relief because, under Rules 82(b)(3) and Rule 11, ABI had no good faith basis or legal support for bringing those claims. LAA therefore seeks an award of fees in the total amount of \$11,089.00.

¹ Though the Court found that ABI did not in fact bring a formal qui tam action in its January 13, 2016 Order Regarding ABI's *Qui Tam* and Punitive Damages Request for Relief, this motion and accompanying memorandum characterize ABI's June 8, 2015 request for relief in the form of "10% of the savings to the Legislative Affairs Agency for invalidation or reformation of the LIO Project Lease" as a qui tam request because the motions and briefing related to this issue all used that term.

DATED: May 31, 2016

STOEL RIVES LLP

By: _____

for

KEVIN CUDDY

(Alaska Bar #0810062)

Attorney for Defendant

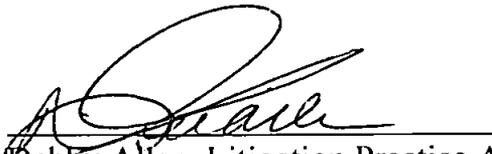
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE

This certifies that on May 31, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, AK 99501
(Attorney for Plaintiff)

Jeffrey W. Robinson
Eva R. Gardner
Ashburn & Mason
1227 West Ninth Avenue, Suite 200
Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)



Debby Allen, Litigation Practice Assistant
86688838.1 0081622-00003

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

FILED
STATE OF ALASKA
THIRD DISTRICT
MAY 26 PM 1:20
CLERK TRIAL COURTS
BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff
vs.
716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY
Defendants.

CERTIFICATE OF SERVICE

Case No. 3AN-15-05969CI

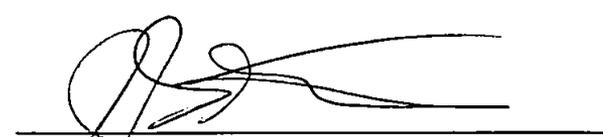
I hereby certify that on this date I hand delivered a copy of:

1. Alaska Building Motion for Costs and Attorney's Fees Against 716 West Fourth Avenue LLC and Legislative Affairs Agency;
2. Memorandum in Support of Alaska Building Motion for Costs and Attorney's Fees Against 716 West Fourth Avenue LLC and Legislative Affairs Agency;
3. Affidavit of James B. Gottstein, Esq., in Support of Alaska Building Motion for Costs and Attorney's Fees
4. (proposed) Order Granting Alaska Building Motion for Costs and Attorney's Fees Against 716 West Fourth Avenue LLC and Legislative Affairs Agency; and
5. this Certificate of Service, to:

Jeffrey W. Robinson/
Eva R. Gardner
Ashburn & Mason, PC
1227 W. 9th Ave., Ste. 200
Anchorage, AK 99501

Kevin M. Cuddy
Stoel Rives LLP
510 L St., Ste. 500
Anchorage, AK 99501

Dated: May 26, 2016



Jim Gottstein

LAW OFFICES OF
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
99501
TELEPHONE
(907) 274-7686
FACSIMILE
(907) 274-9493

as pertaining to Count Two are highlighted in yellow and the last page of Exhibit A is the allocation of amounts billed to Count Two .

3. Attached hereto as Exhibit B is my invoice for attorney's fees for work in this matter in the amount of \$64,856.81 and \$240.60 in costs from July 23, 2015, through January 14, 2016.

4. Attached hereto as Exhibit C is my invoice for attorney's fees in the amount of \$26,020.59 and \$25 in costs from January 15, 2016, through March 24, 2016.

5. Attached hereto as Exhibit D, is my invoice for attorney's fees in the amount of \$11,589.51 from March 25, 2016, through May 20, 2016.¹

6. Attached hereto as Exhibit E is the receipt for the filing fee of \$150.

7. Some years ago I quit keeping track of copies and postage. I estimate that well over \$100 in copies at \$.10 per copy and postage has been paid in this case.

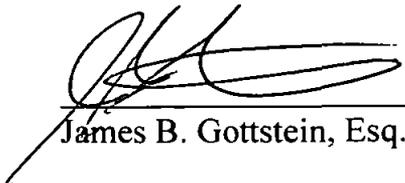
8. The Westlaw account I use has a flat monthly charge of \$222.65 per month. I estimate that well over half of the Westlaw usage during the time I worked on this case was for this case. I believe \$100 per month allocated to Westlaw for 13 months is more than fair.

¹ There is one stray entry from July 7, 2015, which had been missed in previous invoices.

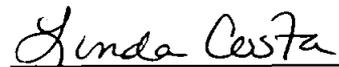
9. As of June of 2014, the hourly rate of Walter Featherly, a contemporary of mine, was \$540 per hour.

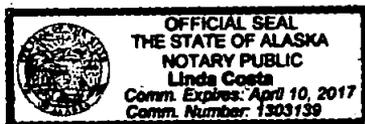
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 25th day of May, 2016.


James B. Gottstein, Esq.

SUBSCRIBED AND SWORN TO before me this 25 day of May, 2016.


Notary Public in and for Alaska
My Commission Expires: 04/10/2017



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 #
1/14/2016	3415

BILL TO
Alaska Building 406 G St, Ste 206 Anchorage, AK 99501

				TERMS
DATE	WORK PERFORMED	HOURS	RATE	AMOUNT
3/2/2015	Picture of Server Room Floor, e-mail to R. Windt (.2)	0.2	325.00	(65.00)
3/10/2015	e-mail to E. Follett, call to/fr E. Follett (.67)	0.66667	325.00	216.67
3/18/2015	Call to E. Follett (.03), conference with E. Follett (.98)	1.01	325.00	328.25
3/19/2015	Complaint (.78)	0.78333	325.00	254.58
3/20/2015	Complaint (1.87)(to 2.62), e-mail to R. Windt (to 3.02), research damages/remedies (to 3.55), e-mail to/from/to R. Windt, e-mails from/to Sandra Heiden (to 3.68)	3.68333	325.00	1,197.08
3/23/2015	E-mail from/to S. Heiden, e-mail to D. DeRoberts (.72)	0.72	325.00	(234.00)
3/25/2015	Call from Mark Scheer, E-mail from M. Scheer, e-mails to Mark Scheer (.52)	0.52	325.00	(169.00)
3/26/2015	E-mail from/to M. Scheer (.05), call to D. Berry (to .32), e-mail from R. Windt, e-mail to J. Robinson (.52)	0.51667	325.00	(167.92)
3/27/2015	E-mail from J. Robinson, abandoned response (.15)	0.15	325.00	(48.75)
3/30/2015	E-mail from M. Scheer, e-mail to M. Scheer, call from M. Scheer, e-mail from M. Scheer, revise e-mail to M. Scheer, e-mail from M. Scheer, e-mail from J. Robinson, e-mail to M. Scheer (1.12), revise complaint (.2)	1.32	325.00	(429.00)
			Total	

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				TERMS
DATE	WORK PERFORMED	HOURS	RATE	AMOUNT
3/31/2015	Revise Complaint (1.28), file (no charge), e-mail to M. Scheer & J. Robinson, e-mail to C. Richards & P. Varni (.2), e-mails to media (to 1.87), e-mail from J. Robinson (.02), e-mail from/to M. Scheer (.03)	1.92	325.00	624.00
4/1/2015	E-mails from/to L. Gara & B. Wielechowski, call from/to L. Norene, Service Instructions (1.2)	1.2	325.00	390.00
4/2/2015	E-mail from M. Scheer, call to B. Dickson, review discovery rules, e-mail to M. Scheer (.63), call from S. Harrison, e-mail to S. Harrison (to .82), e-mails from S. Combs, call from S. Combs (.2)	1.02	325.00	331.50
4/3/2015	E-mail from/to M. Scheer, e-mail from/to L. Norene (.60)	0.6	325.00	195.00
4/6/2015	Review Scheer Entry of Appearance (.05), conference with L. Norene (to .28)	0.28333	325.00	92.08
4/7/2015	E-mail from/to M. Scheer, e-mails from/to S. Harrison (.1), call from M. Scheer, e-mail to J. Robinson & S. Harrison (to .20)	0.2	325.00	65.00
4/9/2015	E-mail from J. Robinson, review & revise stipulation, e-mail to J. Robinson, M. Scheer & K. Cuddy (.42), e-mails from J Robinson & M. Scheer, review revised stipulation (.1)	0.52	325.00	169.00
			Total	

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4/10/2015	E-mail from/to K. Cuddy (.05), e-mail from/to/from/to Shane Durand (.05), e-mail to D. Berry (.02), call to/from/to K. Cuddy (to .30), e-mail from/to J. Robinson (.1)	0.4	325.00	130.00
4/12/2015	E-mail from M. Scheer (.02)	0.02	325.00	6.50
4/14/2015	E-mail from/to J. Robinson (.05), prepare for meeting (to .53), Inspection with M. Scheer, B. Harrower, J. Robinson, D.DeRoberts, B. O'Nell, Barry, Kendall Wilson(to 3.20)	1.2	325.00	390.00
4/15/2015	E-mail from J. Robinson (.02), e-mail from/to D. Berry (.05)	0.07	325.00	22.75
4/17/2015	Discovery (.32)	0.31667	325.00	102.92
4/19/2015	1st Set of Interrogatories to 716 LLC (1.98), assemble & serve (no charge), e-mail to J. Robinson, M. Scheer & K. Cuddy (.05)	2.03	325.00	659.75
4/20/2015	Interrogatories to LAA (.68), assemble & serve (no charge), Interrogatories to KPBB, Criterion & Pfeffer Dev. (to 1.45) (to 2.87), serve (no charge)	2.86667	325.00	931.67
4/21/2015	e-mail from K. Cuddy, update citizen-taxpaper standing research, e-mail to K. Cuddy (.5), call to M. Scheer, call from K. Cuddy (to .78), e-mail from J. Robinson, upload video, e-mail to J. Robinson & C. Ducey (to .98)	0.98	325.00	318.50
			Total	

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4/22/2015	E-mail from/to D. Wilson (.22)	0.21667	325.00	(70.42)
4/23/2015	Review Lease "Extension" (.85), substitution (.02)	0.87	325.00	282.75
4/27/2015	Call to Cindy Ducey, call to/from J. Robinson (.23)(to .35), e-mail to/from J. Robinson (to .82)	0.78333	325.00	(254.58)
4/28/2015	Call from K. Cuddy (.05), call to J. Koonce (.12)	0.11667	325.00	37.92
4/29/2015	Review Criterion Answer (.1) Call from D. Quinn (.1)	0.2	325.00	(65.00)
5/1/2015	Call from M. Scheer (.18), Review D. Quinn Appearance & KPBJ Jury Demand (.02)	0.2	325.00	(65.00)
5/4/2015	Review 716 Answer (.18), call to D. Berry-left v-mail (to .22)	0.21667	325.00	(70.42)
5/5/2015	Call from/to/from D. Quinn (.1), inspection/conference by/with D. Quinn & J. Koonce (.7), call from M. Juarros (.05), e-mail from/to M. Juarros (to 1.12), e-mail to M. Juarros (.1), e-mail from/to K. Cuddy (.05), e-mail from/to K. Cuddy (.05)	1.32	325.00	429.00
5/6/2015	Review Initial Pretrial Order (.3)	0.3	325.00	97.50
			Total	

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5/7/2015	E-mail from J. Robinson, review calendar and reserve dates, e-mail to J. Robinson, e-mail from D. Quinn (.1), e-mail from/to J. Robinson (.05), KPB Answer, LAA Extension Motion (.2)	0.35	325.00	113.75
5/11/2015	Call to/from D. Berry (v-mail)(.1)	0.1	325.00	(32.50)
5/12/2015	E-mail from K. Cuddy, e-mail to M. Scheer & C. Ducey, e-mail from/to M. Scheer, e-mail from J. Robinson, E-mail from C. Ducey (.1)	0.1	325.00	32.50
5/13/2015	E-mail to/from D. Berry (.06), Joint Trial Dates Submission drafts, e-mails to/from counsel (to .48)	0.48333	325.00	157.08
5/15/2015	Video Screening/Conference/Inspection with D. Berry (.45), e-mail to D. Berry (.05)	0.5	325.00	(162.50)
5/18/2015	Finalize Trial Dates Submission (.1), serve & file (no charge)	0.1	325.00	32.50
5/19/2015	Initial Disclosures (.1)	0.1	325.00	32.50
5/26/2015	Call to D. Berry (.03)	0.03333	325.00	(10.83)
5/27/2015	Discovery, including e-mails to J. Robinson, C. Ducey (.58), call from D. Berry (to .63)	0.63333	325.00	(205.83)
5/29/2015	Review LAA Motion to Dismiss or Sever (.65)	0.65	325.00	211.25
6/1/2015	E-mail from/to J. Robinson (.05)	0.05	325.00	16.25
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6/2/2015	Call from/to/from J. Robinson (.08), Initial Disclosures, review (Pfeffer Verification Page, call to M. Scheer, call from K. Cuddy, e-mail to/from K. Cuddy (2.15)(to 3.67)(to 4.38)(to 5.18)	5.18	325.00	1,683.50
6/3/2015	Initial Disclosures (2.08)(to 2.58)(to 4.27)(to 4.58)	4.58333	325.00	1,489.58
6/4/2015	Initial Disclosures (2.92), KPB's Responses to First Interrogatories, e-mail from/to D. Berry (.2)	3.12	325.00	1,014.00
6/5/2015	Opposition to Discovery Stay, review initial disclosures (2.87)	2.87	325.00	932.75
6/6/2015	Opposition to Discovery Stay, Amended Complaint, Review Initial Disclosures (5.28)	5.28	325.00	1,716.00
6/7/2015	Opposition to Stay Motion (2.98)	2.98	325.00	968.50
6/8/2015	Finalize, serve & file Amended Answer & Opposition to Discovery Stay (no charge), Call from G. Thatcher, e-mail to G. Thatcher (.05), review discovery (to .62), e-mail to D. Berry, Opposition to Dismiss or Sever, call to D. Berry (to 1.03)(to 1.25)(to 1.30)	1.3	325.00	422.50
			Total	

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6/9/2015	Opposition to Dismiss or Sever, Call from Sue Hume, call from T. Aglietti, conferences with H. Schouten, e-mail from/to J. Robinson x2 (.68)(to 1.62)(to 2.55)(to 3.27)	3.27	325.00	1,062.75
6/10/2015	Opposition to Motion to Dismiss or Sever (1.67)(to 3.42)(4.38), "Extension" Summary Judgment Motion (to 5.50)	5.5	325.00	1,787.50
6/11/2015	"Extension" Summary Judgment, review discovery, call to D. Berry (2.55)(to 3.30)(to 4.02)(to 5.87)	5.87	325.00	1,907.75
6/12/2015	Extend Summary Judgment, Opposition to Motion to Dismiss or Sever (4.33), serve & file (no charge) conference with J. Robinson (.05), call from K. Cuddy (to 4.52), e-mail to K. Cuddy (.02)	4.54	325.00	1,475.50
6/15/2015	E-mail from/to K. Cuddy (.05) e-mail to/from/to K. Cuddy (.05). e-mail to J. Robinson (.02), e-mail from K. Cuddy (.02), review LAA stay proceedings pleadings (.1)	0.29	325.00	94.25
6/16/2015	Opposition to Proceedings Stay (1.15)	1.15	325.00	373.75
6/17/2015	Opposition to Proceedings Stay (1.02)	1.01667	325.00	330.42
6/18/2015	Call from J. Robinson (.07), review Motion for Reconsideration (.1)	0.17	325.00	55.25
			Total	

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6/19/2015	Request and Order for Oral Argument (.15), serve & file (no charge), Opposition to Stay of Proceedings, call to D. Berry (to 3.93)(to 4.77)	4.77	325.00	1,550.25
6/22/2015	Opposition to Proceedings Stay, Review Reply re: Dismiss or Sever (2.78)	2.78	325.00	903.50
6/23/2015	Sur-Reply Package (2.12)(to 2.70), review 716 LLC Answer to Amended Complaint (.05)	2.75	325.00	893.75
6/24/2015	Opposition to Proceedings Stay, (call to D. Berry (.95)) look at 716 filings (to 1.17)	1.16667	325.00	379.17
6/25/2015	Opposition to Proceedings Stay (3.22), e-mail from/to J. Robinson (.05)	3.27	325.00	1,062.75
6/26/2015	E-mail to/from/to J. Robinson, Opposition to Rule 56(f) Request (1.87)	1.86667	325.00	606.67
6/29/2015	Opposition to Rule 56(f) Request (1.17)	1.46667	325.00	476.67
6/30/2015	Call to D. Berry (.08), review LAA	0.52	325.00	169.00
7/1/2015	Opposition to Partial Summary Judgment and Rule 56(f) Request (to .52) Conference with B. Call (.05), opposition to 716 Rule 56(f) Request (to 1.02)(to 2.93), review 716 extension package (to 3.22)(to 3.77)	3.77	325.00	1,225.25
			Total	

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7/2/2015	Opposition to Expedited Consideration, Opposition to 716 Discovery Stay Motion, Interrogatory No. 4 to Criterion (1.98)(to 3.12), serve & file (no charge), Opposition to 716 Rule 56(f) Request (to 4.95)(to 5.88)(to 6.37), serve & file (no charge), e-mail to M. Scheer & B. Call, review KPB Initial Disclosures (to 7.67)	7.66667	325.00	2,491.67
7/3/2015	Review KPB Discovery (1.63), review LAA Proceeding Stay Reply (to 1.80)	1.8	325.00	585.00
7/5/2015	Partial Summary Judgment Reply (2.37)	2.37	325.00	770.25
7/6/2015	Partial Summary Judgment Reply, call from/to/from D. Berry (.83)(to 1.47)(to 2.52)(to 3.02)	3.01667	325.00	980.42
7/7/2015	Motion for Partial Summary Judgment Reply (3.98) serve & file (no charge)	3.98333	325.00	1,294.58
7/8/2015	Opposition to 716 Dismiss Motion (.5)	0.5	325.00	162.50
7/9/2015	Opposition to 716 Dismissal Motion (1.35)	1.35	325.00	438.75
7/10/2015	716 Dismiss Motion Opposition (1.77)(to 2.38)(to 3.03)(to 3.95), serve & file (no charge)	3.95	325.00	1,283.75
7/13/2015	Discovery on Criterion (1.5), Review LAA & 716 Pleadings (.5), e-mail from/to B. Call, call to B. Call (.05)	2.05	325.00	666.25
			Total	

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7/14/2015	Conference with B. Call , Discovery on Criterion(2.12)	2.12	325.00	(689.00)
			Total	\$41,862.18

Allocation to Count Two

Date	Count 2	Allocation
3/2/2015	\$ 65.00	All
3/20/2015	\$ 598.54	Half
3/23/2015	\$ 234.00	All
3/25/2015	\$ 169.00	All
3/26/2015	\$ 167.92	All
3/30/2015	\$ 429.00	All
3/31/2015	\$ 162.50	.5 hours
4/2/2015	\$ 331.50	All
4/3/2015	\$ 32.50	.1 hours
4/6/2015	\$ 16.25	.05 hours
4/7/2015	\$ 65.00	All
4/9/2015	\$ 169.00	All
4/10/2015	\$ 6.50	.02 hours
4/12/2015	\$ 6.50	All
4/21/2015	\$ 123.50	.38 hours
4/22/2015	\$ 70.42	All
4/23/2015	\$ 6.50	.02 hours
4/27/2015	\$ 254.58	All
4/28/2015	\$ 39.00	.12 hours
4/29/2015	\$ 65.00	All
5/1/2015	\$ 65.00	All
5/4/2015	\$ 70.42	All
5/5/2015	\$ 260.00	.8 hours
5/11/2015	\$ 32.50	All
5/15/2015	\$ 162.50	All
5/26/2015	10 44/53	All
5/27/2015	\$ 205.83	All
6/2/2015	\$ 32.50	.1 hour
6/3/2015	\$ 744.79	Half
6/4/2016	\$ 858.00	Half
6/8/2015	\$ 65.00	.2 hours
6/24/2015	\$ 32.50	.1 hours
6/20/2015	\$ 26.00	.08 hours
7/1/2015	\$ 16.25	.05 hours
7/2/2015	\$ 487.50	1.5 hours
7/3/2015	\$ 529.75	1.63 hours
7/6/2015	\$ 269.75	.83 hours
7/13/2015	\$ 650.00	2 hours
7/14/2015	\$ 689.00	All
Total	\$ 8,220.33	

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7/23/2015	Call from K Cuddy (.3)	0.3	325.00	97.50
7/24/2015	E-mail to K. Cuddy (.45), e-mail from K. Cuddy, review offer of judgment, e-mail to K. Cuddy (.2)	0.65	325.00	211.25
7/25/2015	Work on e-mail to K. Cuddy (.92)	0.91667	325.00	297.92
7/26/2015	E-mail to K Cuddy, Count One Offer of Judgment (3.03), e-mail from/to K. Cuddy (to 3.58)	3.58333	325.00	1,164.58
7/27/2015	E-mail to J. Robinson & K. Cuddy (.05)	0.05	325.00	16.25
7/30/2015	Discovery on 716 & LAA (1.82)	1.81667	325.00	590.42
7/31/2015	Discovery, Discovery on 716 & LAA (2.62)	2.62	325.00	851.50
8/3/2015	E-mail from B. Call (.02)	0.02	325.00	6.50
8/3/2015	Discovery on LAA & 716 (1.33), Discovery on Pfeffer Dev (to 2.08), assemble & serve (no charge), e-mail to K. Cuddy, e-mail to J. Robinson, e-mail to C. Ducey (to 2.23)	2.23333	325.00	725.83
8/6/2015	Review LAA Initial Disclosures (.08)	0.08	325.00	26.00
8/16/2015	Prepare for Oral Argument (1.02)	1.05	325.00	341.25
8/17/2015	Prepare for Oral Argument (1.87)(to 2.38)(to 3.20)(to 4.82)(to 5.37)	5.36667	325.00	1,744.17
8/18/2015	Prepare for Oral Argument (4.98), oral argument 2)	6.98	325.00	2,268.50
8/19/2015	Call from J. Robinson (.05), conference with J. Robinson (to .42). call from/to D. Quinn (to .47)	0.46667	325.00	151.67
			Total	

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8/20/2015	E-mail from/to/from/to J. Schwamm, call to J. Schwamm (.48), call from L. Norene, organize information (to .88)	0.88333	325.00	287.08
8/21/2015	Review Order (.1)	0.1	325.00	32.50
8/25/2015	E-mail to/from/to K. Cuddy & J. Robinson (.13), 2nd Amended Complaint (to .33)(to .82), finalize, serve & file (no charge), e-mail to K. Cuddy & J. Robinson (.05)	0.87	325.00	282.75
8/31/2015	Review Deficiency Notice, call to Clerk (.13)	0.13333	325.00	43.33
9/3/2015	Review Discovery Responses (.43)	0.43333	325.00	140.83
9/4/2015	E-mail to J. Robinson (.05), review LAA discovery (.to .27), e-mail from/to/from J. Robinson (.05)	0.32	325.00	104.00
9/5/2015	Response to LAA Discovery Requests (1.67)(to 2.90)	2.9	325.00	942.50
9/6/2015	Respond to LAA Discovery Requests (1.42)(to 2.88)	2.88	325.00	936.00
9/9/2015	Review 716 discovery responses, e-mail from/to/fr/to K. Cuddy, conference with L. Norene, review 716 LLC Partial Opposition to Criterion Dismissal, call to Blake Call (2.92)(to (3.15), e-mail from/to J. Robinson (.1), e-mail from/to K. Cuddy (.1)	3.35	325.00	1,088.75
9/10/2015	Review Discovery (.63)	0.78333	325.00	254.58
			Total	

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9/12/2015	Reply re: Criterion Dismissal (.5), e-mail from L. Norene, call to L. Norene, e-mail to L. Norene (to .75)	0.75	325.00	243.75
9/15/2015	Discovery (.27), prepare for scheduling hearing, scheduling hearing (1.47)	1.47	325.00	477.75
9/22/2015	LAA discovery response (.52)	0.52	325.00	169.00
9/23/2015	Review & file Pfeffer Dev Offer of Judgment (.05)	0.05	325.00	16.25
9/23/2015	Letter to J. Robinson re: 1st Production Responses (.87)	0.87	325.00	282.75
9/24/2015	Letter to J. Robinson re: Discovery Failures (.22)(to 1.87)(to 2.53), e-mail to J. Robinson (to 2.60), call to J. Robinson (.02), Rule 37(d) Certificate, (.19) motion for preliminary injunction (to 4.03), Supplement to Initial Disclosures (.5)	4.53	325.00	1,472.25
9/25/2015	E-mail from/to/from J. Robinson (.05)	0.05	325.00	16.25
9/25/2015	Call from E. Gardner (.03), call to/from J. Schwamm (.02), Review Notice of Deposition (.01)	0.01	325.00	3.25
9/28/2015	Review LAA Discovery (1.75), e-mail from/to L. Norene, Motion for Preliminary Injunction (to 3.47)	3.47	325.00	1,127.75
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9/29/2015	Review LAA Discovery (1.64), Motion for Preliminary Injunction (to 3.28)(to 4.72)(to 5.76)	5.76	325.00	1,872.00
9/30/2015	E-mail from/to J. Robinson, prepare for meeting (.22), review LAA Discovery (to 1.38), Discovery consultation with J. Robinson (.4), confirmation e-mail to J. Robinson (to 3.43), continue review LAA Discovery (to 4.88)	4.88	325.00	1,586.00
10/1/2015	E-mail from/to J. Robinson re: Requests for Production (.2), review LAA Discovery (to 1.37)(to 3.02)(to 3.98)	3.98	325.00	1,293.50
10/2/2015	Motion for Preliminary Injunction (.45)(to 1.22)(to 2.50), Motion to Compel 716 LLC Prouction (to 3.42)(to 3.97)	3.96667	325.00	1,289.17
10/3/2015	Motion to Compel (.48)	0.48	325.00	156.00
10/4/2015	Motion to Compel (1.08)(to 2.68)(to 3.57), Response to LAA Discovery (to 3.98)	3.98333	325.00	1,294.58
10/5/2015	Respond to LAA Discovery (1.32)(to 1.77), serve (no charge), Motion to Compel (to 2.18)	2.18333	325.00	709.58
10/6/2015	Motion for Preliminary Injunction (1.85),discovery letter to K. Cuddy (.3)	2.15	325.00	698.75
10/7/2015	Respond to 716 Discovery (.53)	0.53333	150.00	80.00

Total

Law Offices of James B. Gottstein

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DATE	INVOICE #
1/14/2016	3416

BILL TO
Alaska Building, Inc. 406 G St. Ste 206 Anchorage, AK 99501

				TERMS
DATE	WORK PERFORMED	HOURS	RATE	AMOUNT
10/8/2015	Respond to 716 Discovery Requests (1.18)(to 1.92)	1.91667	325.00	622.92
10/9/2015	Respond to 716 Discovery (.87)(to 1.22)(to 1.87), call to K. Cuddy, Rule 37(d) Certificate (to 1.97), Opposition to 716 Law Motion (to 2.52)	2.51667	325.00	817.92
10/13/2015	Look at K. Cuddy Letter (.02)	0.02	325.00	6.50
10/14/2015	E-mail to K. Cuddy (.02), look at 716 e-mail production (.1)	0.12	325.00	39.00
10/16/2015	E-mail from/to J. Robinson (.02), opposition to Qui Tam/Punitives dismissa to (.65), scan 716 Production (2), JG Deposition (1.7), E-mail to J. Robinson/Eva Gardner (.5)	4.85	325.00	1,576.25
10/17/2015	Review 716 LLC Discovery (1.5), e-mail to K. Cuddy (.02)	1.52	325.00	494.00
10/18/2015	E-mail from/to K. Cuddy (.15), review 716 produced e-mails, e-mail from J. Robinson (to .63)(to 1.03), e-mail from/to K. Cuddy (.05)	1.08	325.00	351.00
10/19/2015	E-mail from J. Robinson, e-mail to K. Cuddy, Review 716 LLC Discovery, e-mails to K. Cuddy, e-mail from K. Cuddy, e-mail to J. Robinson, look at deposition transcript (.52)(to 1.83)(to 2.72)	3.16667	325.00	1,029.17
			Total	

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DATE	WORK PERFORMED	HOURS	RATE	AMOUNT
10/20/2015	Extension Motion, serve & file (no charge), review 716 discovery (1.38)(to 1.82)	1.82	325.00	591.50
10/21/2015	Review 716 Discovery (1.22)(to 3.33)(to 4.62)	4.61667	325.00	1,500.42
10/23/2015	JG Deposition (2.15), opposition to prevailing party motion (to 3.87)(to 4.57), finalize, serve & file (no charge), Review Laches Oral Argument Request, review extension orders (.02), e-mail from/to J. Robinson (.05)	5.04	325.00	1,638.00
10/24/2015	Opposition to 716 Qui Tam/Punies Motion (1.83)	1.83333	325.00	595.83
10/25/2015	Opposition to 716 Qui Tam and Punies Motion (.45)(to 3.23)(to 5.20)	5.2	325.00	1,690.00
10/26/2015	Settlement mtg with J. Robinson (.2), Opposition to 716 Qui Tam/Punies motion (to 1.35)(to 3.13)(to 4.28)(to 6.82)(to 7.57)	7.56667	325.00	2,459.17
10/27/2015	Opposition to 716 Qui Tam/Punies Motion (.55)(to 2.17), finalize, serve & file (no charge), e-mail from/to J. Robinson (.02)	2.19	325.00	711.75
10/28/2015	Review Deficiency Notice, Proper Proof of Service, serve & file (no charge), call from H. Wyckoff (.02), Look at 2nd Production supplement (to .53)	0.53333	325.00	173.33
10/29/2015	E-mail to H. Wyckoff (.02)	0.02	325.00	6.50
			Total	

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DATE	WORK PERFORMED	HOURS	RATE	AMOUNT
10/30/2015	Review 716 LLC Opposition to Motion to Compel (.18), review LLC Opposition to Preliminary Injunction, e-mail to H. Wyckoff (to .93), e-mail to/from/to H. Wyckoff, look at Motion for Protective Order, look at LAA Attorney Fee Motion Reply (.4)	1.33	325.00	432.25
11/1/2015	Laches Opposition (.77)	0.77	325.00	250.25
11/2/2015	Opposition to Laches (1.63)	1.63333	325.00	530.83
11/3/2015	Laches Opposition, e-mail from/to J. Robinson (1.58)(to 2.55)(to 3.18)	3.18333	325.00	1,034.58
11/4/2015	Laches Opposition (1.75)(to 2.97)(to 3.58)(to 4.95)(5.55)(6.47)	6.46667	325.00	2,101.67
11/5/2015	Laches Opposition (.95)(to 1.73), finalize, serve & file (no charge)	1.73333	325.00	563.33
11/6/2015	Call to M. Bahr, call to K. Cuddy, e-mail to/from/to M. Bahr (.48), Response to Protective Order Motion (to 2.25), e-mails from/to H. Wyckoff & E. Gardner (to 2.80)	2.8	325.00	910.00
11/7/2015	Protective Order Opposition (.85)(to 2.38)(to 3.53)	3.53333	325.00	1,148.33
11/8/2015	Opposition to Protective Order (2.30)(to 3.18)	3.18333	325.00	1,034.58
			Total	

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11/9/2015	e-mail from/call to/fr M. Bahr (.35) Preliminary Injunction Reply (to .65), call from K. Cuddy (.08) (to 1.60)(to 2.98), finalize, serve & file (no charge)	2.98333	325.00	969.58
11/10/2015	Review Laches extension motion, e-mail to/from/to J. Robinson (.25), Protective Order Opposition (to 1.17), finalize, serve & file (no charge), call from/to K. Cuddy (to 1.18)	1.18333	325.00	384.58
11/11/2015	Call from K. Cuddy (.1), Discovery letter & e-mail to J. Robinson (to 2.12), Compel Reply (to 2.35)	2.35	325.00	763.75
11/12/2015	Compel 716 Reply (1.37)	1.37	325.00	445.25
11/14/2015	Compel 716 Production Reply (1.12)	1.12	325.00	364.00
11/15/2015	Compel 716 Production Reply (1.42)(to 2.88)(to 4.23)	4.23333	325.00	1,375.83
11/17/2015	Review LAA Laches Reply (.15), Compel 716 Production Reply (to 1.97)(to 2.28)	2.28333	325.00	742.08
11/18/2015	Compel 716 Production Reply (.37)	0.36667	325.00	119.17
11/26/2015	Review 716 Protective Order Reply (.05)	0.05	325.00	16.25
11/27/2015	Review Qui Tam/Punies Replies (.55)	0.55	325.00	178.75
12/7/2015	Notice of Admissions by LAA (1), serve & file (no charge), e-mail to K. Cuddy (to 1.12), discovery letter to J. Robinson (to 1.82)	1.81667	325.00	590.42
			Total	

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12/8/2015	Discovery Letter to J. Robinson, e-mail to J. Robinson (1.60), prepare for oral argument (1.8), Rule 56(f) Request (.5)	3.9	325.00	1,267.50
12/9/2015	Rule 56(f) Request (1.45)(to 2.47)	2.46667	325.00	801.67
12/10/2015	E-mail to K. Cuddy re: Rep. Hawker's gci e-mail (1.5), e-mail from/to/from G. Callow (.05)	1.55	325.00	503.75
12/11/2015	Call to G. Callow (.02)	0.02	325.00	6.50
12/12/2015	Prepare for oral argument (.33)	0.33	325.00	107.25
12/14/2015	Motion Re: Hawker GCI e-mails (1.48), serve & file (no charge)	1.48333	325.00	482.08
12/15/2015	Prepare for oral argument (.92)	0.92	325.00	299.00
12/16/2015	Prepare for oral argument (4), oral argument (to 5.28)	5.28	325.00	1,716.00
12/30/2015	Review Opposition to Rule 56(f) Request, Rule 56(f) Reply, review LAA Mootness Motion, e-mail to K. Cuddy (1.67) (to 1.95)	1.95	325.00	633.75
12/31/2015	Conditional Civil Rule 56(f) Reply(1.45)(to 2.20)	2.2	325.00	715.00
1/1/2016	Conditional Rule 56(f) Reply, Status Conference Request, Preliminary Witness List, Request for Production No. 5 to LAA (1.33)(to 2.30)	2.3	325.00	747.50
1/2/2016	Conditional Rule 56(f) Reply, e-mail to M. Buller (1.23)(to 2.03)	2.03333	325.00	660.83
			Total	

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1/3/2016	Status Conference Request, Conditional Rule 56(f) Request Reply (2.02), serve (no charge).	2.01667	325.00	655.42
1/4/2016	File Conditional Rule56(f) Reply & status conference request (no charge), e-mail to K. Cuddy (.15), call from M. Buller (.to .20), e-mail to/from M.E. Beardsley (.05), e-mail from/to K. Cuddy (to .30), prepare for K. Cuddy Mtg (.05)	0.35	325.00	113.75
1/6/2016	Review Deficiency Notice, Response to Deficiency Notice (.23) serve & file (no charge), e-mail from/to J. Robinson (.0o2)	0.25	325.00	81.25
1/7/2016	Prepare for conference with K. Cuddy (2.24), conference with K. Cuddy (1.2), review Laches Denial Order (to 3.53)	3.53333	325.00	1,148.33
1/8/2016	Call from/to J. Crawford (.15), discovery letter to K. Cuddy (to 2.28)	2.28333	325.00	742.08
1/11/2016	Request for Production No. 6 to LAA (.8)	0.8	325.00	260.00
1/13/2016	AHFC Deposition (.5), review Compel 716 LLC Order (to .63), look at QuiTam/Punies Order (to .72)	0.71667	325.00	232.92
1/14/2016	E-mail from/to J. Robinson (.05), call to J. Robinson, e-mail to J. Robinson (to .09)	0.09	325.00	29.25
7/31/2015	Outlook PST File Viewer Pro - Single User License		69.00	69.00
			Total	

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BILL TO
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				TERMS
DATE	WORK PERFORMED	HOURS	RATE	AMOUNT
10/15/2015	Notary signature		10.00	10.00
10/19/2015	Copy - compression/word index, electronic transcript Exhibits (electronically scanned and hyperlinked/archived/e-mailed)		151.60	151.60
11/5/2015	Notary Signature		10.00	10.00
	Total Reimbursable Expenses			240.60
			Total	\$65,097.41

Outlook PST Viewer Pro Reimbursement

<input type="checkbox"/> 08/01/2015	FS *systoolsgroup 877-3278914 CA Transaction date: 07/31/2015 Card type: Visa Transaction type: Purchases Merchant description: DIRECT MARKETING/MARKETERS - NOT ELSEWHERE CL Merchant Information: 877-3278914 , CA Reference number: 6389		\$69.00
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Bill	
Vendor Jim Gottstein -exp <input type="button" value="v"/>	Date 07/31/2015 <input type="button" value="c"/>
Address Jim Gottstein -exp <input type="text"/>	Ref. No. SysTools
	Amount Due 69.00
Terms <input type="button" value="v"/>	Bill Due 08/10/2015 <input type="button" value="c"/>
Memo <input type="text"/>	

Expenses	\$69.00	Items	\$0.00
Account	Amount	Memo	
Computer Expense	69.00	Outlook PST File Viewer Pro - Single User License	

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Notary - 1 Signature

SubTotal \$ 10.00
Total \$ 10.00

VISA \$ 10.00
ACCOUNT NUMBER * *****8295
Appr Code: (S) Sale

Receipt ID 83839372663277888382 001 Items
CSH: LINDA Tran: 1255 Reg: 001

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Anchorage, Alaska 99501

ATTENTION:

J. Gottstein

Invoice

DATE	INVOICE ...
10/19/2015	15-20219
TERMS	
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REPOR... BROOKING

DATE TAKEN	DESCRIPTION	AMOUNT
10/16/2015	ALASKA BUILDING, INC. v 716 WEST FOURTH AVENUE LLC, ET AL. DEPOSITION OF JAMES GOTTSTEIN - VOLUME I Copy - Compression/word index, electronic transcript Exhibits (electronically scanned and hyperlinked/archived/e-mailed)	142.10 9.50
Thank you for choosing Pacific Rim Reporting.		Total \$151.60

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to keep your business going.



001 500060 (011) TO \$ 10.00
Notary - 1 Signature

SubTotal \$ 10.00
Total \$ 10.00

VISA \$ 10.00
ACCOUNT NUMBER * *****8295
Appr Code: (S) Sale

A large, stylized handwritten signature in black ink, appearing to be 'Linda'.

Receipt ID 82839379859118888381 001 Items
CSH: LINDA Tran: 3660 Reg: 002

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3/25/2016	3419

BILL TO
Alaska Building, Inc. 406 G St. Ste 206 Anchorage, AK 99501

				TERMS
DATE	WORK PERFORMED	HOURS	RATE	AMOUNT
1/15/2016	Prepare for and conference with J. Robinson (1.03), e-mail to J. Robinson (.1), e-mail from/to J. Robinson (.03)	1.16	325.00	377.00
1/20/2016	Review Motion for Reconsideration (.12), review extension motion (.02), e-mail to K. Cuddy (.02)	0.16	325.00	52.00
1/21/2016	AHFC Discovery (.13), review J. Robinson e-mail and 716 Settlement proposal, e-mail to J. Robinson (.2), call from/to/from J. Robinson, e-mail to J. Robinson (to 1.23), e-mail from/to K. Cuddy (.08), continue AHFC Discovery (to 1.77), e-mail to Maryellen Beardsley (.05), revise draft settlement agreement, e-mail to J. Robinson (2)	3.82	325.00	1,241.50
1/22/2016	Request for In Camera Review package (.8), serve & file (no charge), call from K. Cuddy, e-mail to J. Robinson (to .98), e-mail from/to J. Robinson (to 1.49), e-mail from/to Mary Ellen Beardsley (.05) e-mail from/to J. Robinson (.01), e-mail from/to Mary Ellen Beardsley (.01), e-mail from/to J. Robinson (to 1.70), e-mail from J. Robinson, review & revise new draft settlement agreement, e-mail to J. Robinson (to 2.67)(to 3.95)	3.95	325.00	1,283.75
			Total	

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1/23/2016	E-mail to J. Robinson (.15)	0.15	325.00	48.75
1/24/2016	E-mails from J. Robinson, e-mail to J. Robinson (.03), e-mail from J. Robinson, review & revise settlement agreement, e-mail to J. Robinson, e-mail to M. Bahr, e-mail to J. Robinson (to 1.43), e-mail from/to M. Bahr, e-mail to J. Robinson (.02)	1.45	325.00	471.25
1/25/2016	E-mails from J. Robinson, e-mail to J. Robinson, call from M. Bahr (.12), e-mail from M. Bahr, call from J. Robinson (to .25), letter from K Cuddy (.1), e-mail from/to J. Robinson (to .24), e-mail from/to J. Robison (.05)	0.29	325.00	94.25
1/26/2016	E-mail from J. Robinson, review & revise settlement agreement, e-mail to J. Robinson (.43), review Laches Reconsideration Denial, review final settlement agreement (to .77), conference with J. Robinson (.3), call from K. Cuddy (.02), e-mail from/to J. Robinson (.02)	1.11	325.00	360.75
1/28/2016	Look at Documents from AHFC (.3), e-mail to M.E. Beardsey (.02)	0.32	325.00	104.00
2/1/2016	Call to J. Robinson (.10)	0.1	325.00	32.50
			Total	

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2/4/2016	Call to J. Robinson (.08), review LAA Not Extension S/J Opposition & cases (to .91)(to 1.45), e-mail to K. Cuddy, e-mail to J. Robinson (to 1.57)	1.56667	325.00	509.17
2/5/2016	Look at LAA Response to Request for Production No. 5, call to K. Cuddy (.30), Extension motion, serve & file (no charge), e-mail from/to J. Robinson, call to J. Robinson, review Rule 41 (to .52), review P. Varni analysis of 716 LLC proposal, call to J. Robinson (.15)	0.67	325.00	217.75
2/7/2016	E-mails to J. Robinson, e-mail from J. Robinson (.27)	0.27	325.00	87.75
2/8/2016	Discovery letter to K. Cuddy (1.58)	1.58333	325.00	514.58
2/11/2016	E-mails from/to J. Robinson (.15)	0.15	325.00	48.75
2/12/2016	Call from J. Robinson (.03), review K. Cuddy Discovery Letter (.05), e-mail to K. Cuddy (to .63)	0.63333	325.00	205.83
2/16/2016	Look at LAA Supplemental Production (.13)	0.13333	325.00	43.33
2/17/2016	Review 716 LLC summary judgment opposition (.45)	0.45	325.00	146.25
			Total	

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2/18/2016	Review LAA Response to In Camera Request, Review LAA Response to RFP No. 6, Not Extension Summary Judgment Reply, e-mail from/to/from/to J. Robinson, e-mail from K. Cuddy, review 716 LAA Motion for Protective Order, Notice Of Compliance and Production (.65)(2.78)	2.78	325.00	903.50
2/19/2016	Not Extension Summary Judgment Reply (1.35)(to 3.98)(to 6.12)	6.11667	325.00	1,987.92
2/20/2016	Motion for Contempt (.87) (to 1.22)	1.21667	325.00	395.42
2/21/2016	Motion for Contempt (1.32)(to 2.55)(to 4.73)	4.73	325.00	1,537.25
2/22/2016	Contempt Motion (1.38), finalize, serve & file (no charge), Not Extension Summary Judgment Reply (to 1.82)(to 3.05)	3.05	325.00	991.25
2/23/2016	Not Extension Summary Judgment Reply (2.78)(to 3.12), finalize, serve & file (no charge)	3.11667	325.00	1,012.92
2/24/2016	E-mail from A. Mcleod, review M. Pfeffer APOC reports, e-mail to A. Mcleod (.3)	0.3	325.00	97.50
			Total	

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2/24/2016	Discovery letter to K. Cuddy (.35)(to .53), (to 2.33) call from L. Norene (.1), e-mail to J. Robinson, e-mail from/to H. Wyckoff, review Opposition to Contempt Motion, In Camera Request Review Reply (to 4.52), e-mail from J. Schwamm, call to J. Schwamm (.05)	4.57	325.00	1,485.25
2/25/2016	Call from/to/from J. Schwamm, e-mail to J. Schwamm, In Camera Review Request Reply (.35)(to .58)(to .67), finalize, serve & file (no charge), prepare for L. Norene deposition, Show Cause Reply (to 1.02)	1.01667	325.00	330.42
2/26/2016	Opposition to 716 Protective Order Motion (.62)(to 1.92)(to 2.70), call from/to J. Robinson, review and contemplate Calendaring Order (to 2.83)(to 4.13), Contempt Motion Reply (to 4.37)	4.37	325.00	1,420.25
2/27/2016	Contempt Motion Reply (2), Opposition to Motion for Protective Order (to 2.33)	2.33333	325.00	758.33
2/29/2016	Opposition to Protective Motion (1.32)(to 1.73), Contempt Motion Reply (to 2.55)(to 3.57), finalize, serve & file (no charge), review Discovery Letter from K. Cuddy (.05).	3.62	325.00	1,176.50
			Total	

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3/2/2016	E-mail from J. Robinson, Review Discovery Motions stay, call to K. Cuddy, call to P. Shorett (.35), call to J. Robinson (to .37)	0.36667	325.00	119.17
3/3/2016	Call from L. Norene (.48), e-mail to/from P. Shorett (.75), e-mail to K. Cuddy (to 1.62), witness list, call from J. Robinson (to 1.75)	1.9	325.00	617.50
3/4/2016	Review 716 LLC privilege log (.17), letter to J. Robinson (to .95)(to 3.33)	3.33333	325.00	1,083.33
3/5/2016	Preliminary Witness List (1.17)	1.16667	325.00	379.17
3/7/2016	E-mail from/to/from/to J. Robinson (.2), Preliminary Witness List, Non-retained Experts summary (.77), e-mail from/to K. Cuddy (.05)	0.82	325.00	266.50
3/8/2016	Preliminary Witness List & Non-Retained Expert Summary (1.52)	1.51667	325.00	492.92
3/10/2016	Review file, call to/fr K. Cuddy (.48). Witness List (.4)	0.52	325.00	169.00
3/11/2016	Preliminary Witness List, e-mail from/to J. Robinson (.72), E-mail from/to K. Cuddy, Review LAA Justiciability Response (.5)	1.22	325.00	396.50
3/13/2016	Preliminary Witness List and Non-Retained Expert Summary (.88)	0.88	325.00	286.00
3/15/2016	Rview LAA Preliminary Witness List & Expert Disclosure (.03)	0.03	325.00	9.75
3/16/2016	Review J. Robinson Discovery Letter (.15)	0.15	325.00	48.75

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 #
3/25/2016	3419

BILL TO
Alaska Building, Inc. 406 G St. Ste 206 Anchorage, AK 99501

				TERMS
DATE	WORK PERFORMED	HOURS	RATE	AMOUNT
3/17/2016	Review 716 LLC Witness List (.1)	0.1	325.00	32.50
3/18/2016	Prepare for oral argument (.18)	0.18333	325.00	59.58
3/19/2016	Prepare for oral argument (1)	1	325.00	325.00
3/20/2016	Prepare for Oral Argument (.63)(to 1.78)(to 2.54)	2.54	325.00	825.50
3/21/2016	Prepare for Oral Argument (3.28)	3.28	325.00	1,066.00
3/22/2016	Prepare for oral argument (4.17), oral argument (1.5 hours)	5.67	325.00	1,842.75
3/24/2016	Review Not Extension Summary Judgment Order (.2)	0.2	325.00	65.00
	Total Reimbursable Expenses			25.00
			Total	\$26,045.59

LOW OFFICE (11/29/16) LIB

The UPS Store - #131
645 G Street, Suite 100
Anchorage, AK 99501
(907) 276-7888

LOK

01/26/16 02:04 PM

We are the one stop for all your shipping, postal and business needs.

We offer all the services you need to keep your business going.



001 500060 (011)	TO \$ 10.00
Notary - 1 Signature	
002 500059 (011)	TO \$ 5.00
Notary 2-10 Sig.	

SubTotal	\$ 15.00
Total	\$ 15.00

VISA \$ 15.00

ACCOUNT NUMBER * *****8295
Appr Code: (S) Sale

Receipt ID 83839318219478888372 002 Items
CSH: Peggy Tran: 3750 Reg: 001

Thank you for visiting our store.
Please come back again soon.

Whatever your business and personal needs, we are here to serve you.

We're here to help.
Join our FREE email program to receive great offers and resources.

www.theupsstore.com/signup

Exhibit C, page 8 of 9.

Low ofc
Illegal L to Lease

The UPS Store - #131
645 G Street, Suite 100
Anchorage, AK 99501
(907) 276-7888

02/22/16 10:35 AM

We are the one stop for all your
shipping, postal and business needs.

We offer all the services you need
to keep your business going.



001 500060 (011) TO \$ 10.00
Notary - 1 Signature

SubTotal \$ 10.00
Total \$ 10.00

VISA \$ 10.00
ACCOUNT NUMBER * *****8295
Appr Code: (S) Sale



Receipt ID 83839318790020888383 001 Items
CSH: LINDA Tran: 4424 Reg: 001

Thank you for visiting our store.
Please come back again soon.

Whatever your business and personal
needs, we are here to serve you.

We're here to help.
Join our FREE email program to receive
great offers and resources.

www.theupsstore.com/signup

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 #
5/20/2016	3421

BILL TO
Alaska Building, Inc. 406 G St. Ste 206 Anchorage, AK 99501

				TERMS
DATE	WORK PERFORMED	HOURS	RATE	AMOUNT
7/7/2015	Call to K. Cuddy (.13)	0.13333	325.00	43.33
3/25/2016	e-mail to K. Cuddy (.32)	0.31667	325.00	102.92
3/26/2016	E-mail from/to/from/to K. Cuddy (1.85), fee application (.5)	2.35	325.00	763.75
3/27/2016	E-mail to/from/to/from/to K. Cuddy (.6)	0.5	325.00	162.50
3/28/2016	Fee Application (1.23)	1.23	325.00	399.75
3/29/2016	Fee Application (1.20)(to 2.73)(to 3.33), e-mail to/from/to K. Cuddy (.5)	3.83	325.00	1,244.75
3/30/2016	Fee Application (.95)(to 3.68)	3.68	325.00	1,196.00
3/31/2016	Fee Application, e-mail to K. Cuddy, e-mail to J. Robinson (deferred b/c reconsideration motion) (1.52) (to 3.02) review motion for reconsideration, review request for responses, Motion for Enlargement of Time (to 3.72)(to 4.52), finalize, serve & file (no charge), Response to Reconsideration motion (to 5.52)(6.42)	6.41667	325.00	2,085.42
4/1/2016	Call from/to K. Cuddy (.52), Reconsideration Response, e-mail to K. Cuddy (to 1.02)(to 2.88)	2.88333	325.00	937.08
4/4/2016	Call from K. Cuddy(.4), call to/from J. Robinson, e-mail to/from/to K. Cuddy (to .43)(.2)	0.63	325.00	204.75
4/6/2016	Reconsideration Response (1.85)(to 2.70)(to 3.82)(to 5.65)(1)	6.65	325.00	2,161.25
			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 #
5/20/2016	3421

BILL TO
Alaska Building, Inc. 406 G St. Ste 206 Anchorage, AK 99501

				TERMS
DATE	WORK PERFORMED	HOURS	RATE	AMOUNT
4/7/2016	Check Court View, e-mail to K. Cuddy (.02), Reconsideration Response, e-mail from/to K. Cuddy, Review Extension Motion (to .43)(to 1.72), serve (inc. e-mail to K. Cuddy) & file Extension Opposition (no charge)(to 2.53)(to 3.12), mail missing proposed order & e-mail to K. Cuddy & J. Robinson (no charge)	3.11667	325.00	1,012.92
4/8/2016	Reconsideration Response (.85)	0.85	325.00	276.25
4/10/2016	Reconsideration Response (.2)	0.2	325.00	65.00
4/11/2016	Reconsideration Response (2.02), serve & file (No charge), Review Reconsideration Response Extension Reply (.05)	2.07	325.00	672.75
4/15/2016	Call to K. Cuddy (.32)	0.31667	325.00	102.92
4/26/2016	E-mail to K. Cuddy (.05)	0.05	325.00	16.25
4/28/2016	Call to K. Cuddy (.07)	0.07	325.00	22.75
4/29/2016	Call from K. Cuddy (.22)	0.21667	325.00	70.42
5/2/2016	Review LAA Extension Motion, Review Extension Order (.05)	0.05	325.00	16.25
5/10/2016	Review LAA Response to Reconsideration (.05)	0.05	325.00	16.25
5/20/2016	Review Reconsideration Denial (.05)	0.05	325.00	16.25
			Total	\$11,589.51

ALASKA COURT SYSTEM

Receipt Type Case Outstanding Amount 0.00
Receipt Number 1160385 Receipt Date 03/31/2015

Case Number	3AN-15-05969CI
Description	Alaska Building Inc vs. 716 West Fourth Avenue LLC

Received From Law Offices of James B. Gottstein
On Behalf Of Alaska Building Inc

Itemized Listing:

Description	Amount
Complaint Re Real Estate Matter	150.00

Receipt Payments	Amount	Reference Description
Check/Money Order	150.00	10513

Total Received	150.00
Net Received	150.00
Change	0.00

Comments

Deputy Register gmills Transaction Date 03/31/2015
11:28:53.23

Agency received two extensions for its response and reconsideration was denied on May 20, 2016. Alaska Building, Inc., is thus the prevailing party in this action.

I. Fees and Costs

Filed herewith is the Affidavit of James B. Gottstein, Esq., In Support of Alaska Building Motion for Attorney's Fees (Affidavit of Counsel), which establishes the following costs and attorney's fees:

Date	Description	Fees	Costs
3/3/2015	Filing Fee		\$ 150.00
	Westlaw		\$ 1,300.00
	Copies & Postage		\$ 100.00
1/14/2016	Both Counts	\$ 41,862.18	
1/14/2016	Illegal Lease	\$ 64,856.81	\$ 240.60
3/25/2016	Illegal Lease	\$ 26,020.59	\$ 25.00
5/20/2016	Illegal Lease	\$ 11,589.51	\$ -
Total		\$ 144,329.09	\$ 1,815.60

II. Civil Rule 82

Civil Rules 82(a) &(b) (2) provide that the prevailing party in a civil case that recovers no money judgment shall be awarded 20% of reasonable actual attorney's fees as the default. Within the \$144,329.09 in attorney's fees, \$8,220.33, highlighted in yellow, has been identified as being for work on what was Count Two of the original complaint pertaining to damage to the Alaska Building, which was severed from this action. These have been identified because of an expected challenge to them, but "attorney fees do not have to be apportioned 'with reference to the disposition of individual issues,' " *Nautilus Marine Enterprises, Inc. v. Exxon Mobil Corp.*, 332 P.3d 554, 564 (2014). Thus, the entire

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*Memorandum in Support of Motion
for Costs and Attorney's Fees*

Page 2 of 10

002549

\$144,329 in fees should be the basis upon which the attorney's fees are awarded. Alaska Building, Inc., believes enhanced fees are appropriate here.

(a) Enhanced Fees Are Appropriate Here

Civil Rule 82(b)(3) allows the court to vary from the default percentage upon consideration of the following factors as relevant here:

- (A) the complexity of the litigation;
- (C) the reasonableness of the attorneys' hourly rates and the number of hours expended;
- (F) the reasonableness of the claims and defenses pursued by each side;
- (G) vexatious or bad faith conduct;
- (H) the relationship between the amount of work performed and the significance of the matters at stake;
- (K) other equitable factors deemed relevant.

The Court has broad discretion to vary its award from the default percentage so long as it explains the reasons for the variation:

"[I]n general, a trial court has broad discretion to award Rule 82 attorney's fees in amounts exceeding those prescribed by the schedule of the rule, so long as the court specifies in the record its reasons for departing from the schedule."

*Johnson v. Johnson.*¹ Because Rule 82 is to only partially compensate prevailing parties for their attorney's fees, full fees are only allowed if the claim or defense is frivolous or constitutes vexatious or bad faith conduct. *Id.*, n. 20. For the following reasons, Alaska Building, Inc., believes full fees are appropriate here, and if not, substantially enhanced fees over the default Rule 82 schedule should be awarded.

¹ 239 P.3d 393, 400 (Alaska 2010).

(i) Full Fees Should Be Awarded Here

In *Crittell v. Bingo*,² the Supreme Court held that full attorney's fees for vexatious or bad faith conduct under Civil Rule 82(b)(3)(G), includes pre-litigation conduct as well as the conduct of the litigation. In *Johnson*,³ the Supreme Court stated trial courts may award full fees under Civil Rule 82 if a claim or defense is frivolous even in the absence of bad faith. Here, there was bad faith conduct before the litigation, the defense of which was frivolous here. The parties knew the lease did not comply with AS 36.30.083(a) and when the lease was challenged in this litigation, the defense of the blatantly illegal lease was frivolous.

The bad faith conduct is demonstrated by the June 20, 2013, e-mail from Mark Pfeffer forwarding to Rep. Hawker, the chair of the Legislative Council, "the back channel between lawyers." Exhibit 1. In it Mr. Steiner reported that "the intent was to extend [the lease] based on beating the as-is [value] by 10%, but then NOT being limited by that standard in the material modification." In other words, the plan was to extend the lease under AS 36.30.083(a) with no physical modifications and then use the just adopted revised procurement procedures to perform the demolition of the two buildings and construction of the new office building as a "major modification" of the by then extended lease.

Mr. Steiner then reported "I don't know whether beating a post-renovation [Broker Opinion of Value] or appraisal by 10% will prove feasible, but I do not believe Rep.

² 83 P.3d 532 (Alaska 2004).

³ 239 P.3d at n. 20.

Hawker wants or expects to be told that standard limits improvements to the building."

Id. In this e-mail, Mr. Steiner is reporting Rep. Hawker intended to disregard AS 36.30.083(a)'s requirements. 716 LLC acceded, resulting in this lawsuit challenging its legality. This is bad faith conduct on both parties justifying full fees.

Then, when the legality of the lease was challenged in this action, the defense of the blatantly illegal lease was frivolous. This Court's March 24, 2016, Order On Motion for Summary Judgment Re: Lease is Not an Extension, suggests as much at p. 16 where this Court stated, "A court finding that this leasing scheme could be sole-sourced would eviscerate the competitive principles of the state procurement code." In *Alaska Fur Gallery, Inc. v. First Nat. Bank Alaska*,⁴ the Supreme Court affirmed an award of full fees where the Superior Court found the non-prevailing party had not adequately explained inconsistency in testimony. Here, neither 716 LLC, nor the Legislative Affairs Agency even attempted to address their moving forward with a lease they knew did not comply with AS 26.30.083(a).

Thus, the conduct leading to this lawsuit was in bad faith and the defense of this litigation was frivolous, either of which support an award of full attorney's fees. Even if full fees are not awarded here, they should be substantially enhanced.

⁴ 345 P.3d 76, 89 (Alaska 2015).

(ii) Complexity

Civil Rules 82(b)(3)(A) allows enhancement of fees based on the complexity of the litigation. In *Alaskasland.Com, LLC v. Cross*,⁵ the Supreme Court held the complexity of the case alone could have supported an enhanced award of 35%. The complexity factor, however, is often used in combination with other factors to enhance fees far beyond 35%. See, e.g. *Ware v. Ware*⁶ approving an 80% award. In this case, the fundamental merits of the case were not particularly complex, but the defendants interposed complex standing, *laches* and justiciability defenses. This is grounds for an enhanced award.

(iii) Reasonableness of Rate and Hours Expended

Civil Rules 82(b)(3)(C) allows the Court to vary its attorney's fee award from the default 20% in consideration of the reasonableness of the attorneys' hourly rates and the number of hours expended. Counsel charged \$325/hour, while the rate for his contemporary, Walter Featherly, was \$540/hour as of June of 2014. Affidavit of Counsel, ¶9. A factor of 1.66 would be applied to the rate of counsel for Alaska Building, Inc., to equalize with Mr. Featherly's rate.

Alaska Building, Inc., also respectfully suggests that the number of hours expended was modest in light of resolving the case through an early summary judgement motion. While challenging the lease as not extending a real property lease as required by AS 36.30.083(a) seems obvious once Alaska Building, Inc., raised it, everyone else was focused on the fact that the rental rate was well over 2 times the market rate in violation of

⁵ 357 P.3d 805 (Alaska 2015).

⁶ 161 P.3d 1188, 1199-1200 (Alaska 2007).

AS 36.30.083(a)'s requirement that it be at least 10% below. This, of course is a completely legitimate complaint and was included in this action, but by filing the motion for summary judgment regarding the lease not being an extension, a great deal of litigation was avoided. In fact, the defendants substantially prolonged the litigation and increased its expense by obtaining Civil Rule 56(f) extensions to conduct discovery on the issue when there was never any material fact in dispute regarding whether the lease was an extension.

Market value is inherently a factual issue that was going to involve discovery, perhaps extensive, and expert witnesses. The unclean hands doctrine was going to be pursued against the *laches* defense, which was also going to involve a lot of discovery which had already engendered a number of motions. In fact, the judgment declaring the lease illegal and invalid vacated pending discovery motions, including a motion to show cause why 716 LLC should not be held in contempt for disobeying this Court's order compelling certain discovery. By filing the Motion for Partial Summary Judgement Re: Not Extension, all of this was avoided.

(iv) Unreasonable Defense

Civil Rule 82(b)(3)(F) allows enhancement of fees for the unreasonable defense of any claim(s). In this case, the defense of the blatantly illegal lease was unreasonable, justifying an enhanced award.

(v) Vexatious or Bad Faith Conduct

Civil Rule 82(b)(3)(G) allows enhancement of fees for vexatious or bad faith conduct even if it doesn't rise to the level of awarding full fees. The analysis set forth in subsection (i) above thus also applies here.

(vi) Relationship Between Amount of Work and Significance of the Matters at Stake.

Civil Rule 82(b)(3)(H) allows enhanced fees above the default 20% based on the relationship between the amount of work performed and the significance of the matters at stake. It is respectfully suggested that whether the lease was illegal was of great significance and achieving its invalidation was accomplished with great efficiency. One matter at stake was the integrity of the procurement process itself. The result has been restoration of public confidence that at least the Court will step in and require compliance with the competitive requirements of the procurement code.

In addition, by bringing this case, Alaska Building, Inc., has saved the State of Alaska tens of millions of dollars. *BP Pipelines (Alaska) Inc. v. State, Dept. of Revenue*⁷ seems particularly instructive on this point. There, the Supreme Court approved enhancement under Civil Rule 82(b)(3)(H) based on its positive fiscal impact on government.

(vii) Other Equitable Factors

Civil Rule 82(B)(3)(K) allows for enhancement of fees for other equitable factors deemed relevant. It is respectfully suggested that the considerable financial risk of a substantial attorney fee award against it that Alaska Building, Inc., took is an equitable factor strongly favoring enhanced fees. The Legislative Affairs Agency and 716 West Fourth Avenue LLC attempted to have Alaska Building, Inc.'s claim dismissed for lack of standing and under the *laches* doctrine and 716 West Fourth Avenue LLC attempted to

⁷ 327 P.3d 185, 197-198 (Alaska 2014).

have the entire case declared non-justiciable. At a minimum if any of these efforts had been successful it would have subjected Alaska Building to the risk of considerable attorney's fees, even at the default 20% rate.⁸ In addition, the Legislative Affairs Agency served an offer of judgment of \$1 in an attempt to intimidate Alaska Building, Inc., into dropping the case, stating "unless you are able to beat the offer of judgment, the Legislative Affairs Agency will be entitled to recovery of 75% of its reasonable actual attorney's fees."⁹ Exhibit 2, page 2.

(viii) Multiple Civil Rule 82(b)(3) Factors Augur for Enhancement

In *United Services Auto. Ass'n v. Pruitt ex rel. Pruitt*,¹⁰ the Alaska Supreme Court upheld a 75% enhanced fee award that the Superior Court explained as follows,

In this case, the issue was of substantial importance to defendant and was vigorously defended by it. The issues were unique and plaintiff's efforts were effective, efficient and although driven by economic motive, also had broad beneficial effect for the public,

saying:

These reasons readily fall within some of the reasons for deviation that the rule contemplates. The court's explanation relates to "the complexity of the litigation;" "the reasonableness of the attorneys' hourly rates and the number of hours expended;" "the relationship between the amount of work performed

⁸ Alaska Building, Inc., could have sought a reduction or elimination under Civil Rule 82(b)(3), but it was still incurring considerable risk in prosecuting this case.

⁹ Evidence Rule 408 does not prohibit the use of this e-mail because (a) the offer was not for a valuable consideration, and (b) it is not presented "to prove liability for or invalidity of the claim or its amount." As allowed by Evidence Rule 408 it is offered for another purpose, i.e., to establish equitable grounds under Civil Rule 82(b)(3)(K) for enhanced fees. Civil Rule 68(a) allows use of the Legislative Affairs Agency's Offer of Judgment to determine costs, which presumably means attorney's fees.

¹⁰ 38 P.3d 528, 535 (Alaska 2001).

and the significance of the matters at stake;" and "the extent to which the fees incurred by the prevailing party suggest that they had been influenced by considerations apart from the case at bar, such as a desire to discourage claims by others against the prevailing party or its insurer." We conclude that it meets the requirements of Rule 82(b)(3).

(footnotes omitted). It is respectfully suggested a similar award is justified here.

(b) Apportionment between Non-Prevailing Parties

The default or normal allocation between non-prevailing parties is to split the attorney fee equally. The default apportionment is equally between non-prevailing defendants¹¹ and the proposed order lodged herewith does so. However, the Court may find a reason or reasons to apportion unequally.

III. Conclusion

For the foregoing reasons Alaska Building Inc., requests the Court to award it full attorney's fees in the amount of \$144,329.09 or, in the alternative substantially enhanced fees, plus costs of \$1,815.60 apportioned equally between defendants 716 West Fourth Avenue LLC and the Legislative Affairs Agency.

Dated May 26, 2016.



James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

¹¹ *Thorstenson v. ARCO Alaska, Inc.*, 780 P.2d 371, 376 (Alaska 1989).

From: Mark Pfeffer
Sent: Thursday, June 20, 2013 10:55 AM
To: Mike Hawker (mhawker@gci.net)
Subject: FW: LAA procurement issues

FYI,

The back channel between lawyers.

Mark Pfeffer

PFEFFER DEVELOPMENT, LLC
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907 646 4644 | f 907.646.4655 |

Cell Phone
807 317 6030

From: John L. Steiner
Sent: Thursday, June 20, 2013 10:39 AM
To: Donald W. McClintock; Mark Pfeffer
Cc: Heidi A. Wyckoff
Subject: RE: LAA procurement issues

Don, I just spoke to Mark (before either of us had seen your email) and reviewed some of the background stuff. I gathered enough to know that the intent was to extend based on beating the as-is BOV by 10%, but then NOT being limited by that standard in the material modification. If the lease can be materially modified, why only in some respects and not in others? (That's a rhetorical question.)

I don't know whether beating a post-renovation BOV or appraisal by 10% will prove feasible, but I do not believe Rep. Hawker wants or expects to be told that standard limits improvements to the building. Getting the full first year appropriation done next session should be done in any event.

I still have some stuff to look through to be prepared to talk to Doug, but will get there shortly.

John L. Steiner
Project Director and Counsel

Pfeffer Development, LLC
Commercial Real Estate Developers
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907.646.4644 | f 907.646.4655
d:907 770.4306 | c 907.382.2300

This email may contain confidential or attorney-client privileged information and is in any case confidential. If you are not the intended recipient of this email please notify the sender then delete it permanently.

From: Donald W. McClintock [mailto:dwm@anchorjaw.com]
Sent: Thursday, June 20, 2013 10:18 AM

James B. Gottstein

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Sunday, July 26, 2015 9:56 AM
To: 'Cuddy, Kevin M.'
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Follow-Up/Settlement Offer

Hi Kevin,

Upon further consideration I have decided to not be so inscrutable about your e-mail and Offer of Judgment. First, Evidence Rule 408 makes such communications inadmissible for certain purposes; it does not make them "confidential." As you know, the issue of the LIO Lease is a matter of great public interest. I would hope that the Legislative Affairs Agency's attempt to intimidate Alaska Building, Inc., into caving by threatening penalty attorney's fees under Civil 68 would also be a matter of public interest.

In any event, the Legislative Affairs Agency's Offer of Judgment is invalid. As the Alaska Supreme Court held in *Gold Country Estates Preservation Group, Inc. v. Fairbanks*, 270 P.3d 787 (Alaska 2012)

A Rule 68 offer of judgment serves no legitimate purpose in a citizen's Open Meetings Act claim against the government where there is no accompanying claim for monetary damages. To allow the recovery of attorney's fees would force the citizen litigant to drop its suit or face a potentially ruinous attorney's fee award, despite its good-faith effort to require the government to follow its own processes.
...

This rule [82] provision embodies the concern expressed by Justice Matthews in his dissenting opinion in *Bozarth v. Atlantic Richfield Oil Co.*,⁵² where he cautioned: "If the superior court is to serve its constitutional purpose as a forum available to all the people, superior court judges must consider whether an award of attorney's fees will impair the constitutional right of access to the courts.

Except for the Alaska Building's claim for 10% of the savings, that is precisely the situation here. The Legislative Affairs Agency is trying to force Alaska Building, Inc., to drop its suit by threatening a large attorney fee award against it for attempting to require the government to follow its own processes.

Also, the \$1 Offer of Judgment is invalid on its face.

When nominal offers are made at the outset of a case and have no prospect of acceptance or of furthering settlement negotiations, they are simply attempts to shift the cost of litigation onto the other party, without regard to the purpose and intent of Rule 68.

Anderson v. Alyeska Pipeline Service Co., 234 P.3d 1282 (Alaska 2010). In fact, footnote 76 of the case you cite in your Offer of Judgment for the proposition that a \$1 offer of judgment is valid, *Lowell v. Hayes*, 117 P.3d 745 (Alaska 2005), states that the court did not consider that point because Lowell did not challenge the validity of the \$1 offer of judgment:

⁷⁶Lowell does not challenge the defendants' offer as unreasonable or made in bad faith. A Rule 68 offer of judgment may be invalid where a party disingenuously makes a low offer so that it may benefit from Rule 68. See *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268, 274 (1983)

With respect to the claim for 10% of the savings, Alaska Building, Inc., is willing to drop it if the Legislative Affairs Agency reduces the rent to \$100,000 per month, and thereby comply with AS 36.30.083(a).

This is an offer you are required to communicate to your client under Rule 1.4(a) of the Alaska Rules of Professional Conduct and Comment [2] thereto.

Sincerely,

Jim 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: Cuddy, Kevin M. [mailto:kevin.cuddy@stoel.com]
Sent: Friday, July 24, 2015 4:32 PM
To: James B. Gottstein
Subject: RE: Follow-Up

Dear Jim,

Thanks for your note. As I trust you'll recall, our discussion about the potential settlement of your claims was pursuant to Alaska Rule of Evidence 408, and our statements (as well as this email) are confidential settlement negotiations.

I still think that the parties should consider resolving their disputes short of trial. I received your offer of judgment earlier today and I expect that you have received the offer of judgment we served by hand this afternoon as well. I hope that you will give it serious consideration. (Unless you are able to beat the offer of judgment, the Legislative Affairs Agency will be entitled to recovery of 75% of its reasonable actual attorney's fees.) The stay of discovery will expire on August 3, and we will need to begin spending considerable time responding to discovery requests with respect to both counts of the Complaint. We will also spend significant time preparing for the upcoming oral argument. That will start now. It is difficult to envision a scenario whereby Alaska Building, Inc., will be able to recover anything from the Legislative Affairs Agency under Count 2 in light of the Criterion payment, AS 09.17.080, and your problems of proof concerning damages. For reasons you and I have discussed, I believe that you have substantial risks when it comes to the standing argument. In light of those risks, and the significant risk that you will be on the hook for Rule 68 fees, I hope you will take seriously the offer of judgment.

-Kevin

From: James B. Gottstein [mailto:james.b.gottstein@gottsteinlaw.com]
Sent: Friday, July 24, 2015 12:00 PM
To: Cuddy, Kevin M.
Cc: james.b.gottstein@gottsteinlaw.com
Subject: Follow-Up

Dear Mr. Cuddy,

I have been thinking about our conversation regarding the Legislature being unlikely to resolve the issue of the new LIO Lease, which is within its power. In a nutshell, that exemplifies the pervasive acceptance of corruption by officialdom and why the lawsuit over the illegal nature of the new LIO Lease needs to go forward.

Perhaps the trial court will decide my client lacks standing, in which case we will be on appeal. If not, then we will be in discovery, which will likely reveal the details of the corruption. The only way I see to avoid this is for the Legislature to take up the issue and decide in full public view whether or not to continue to lease a building at well over two times market rate, to the tune of \$177,328 per month more than allowed under AS 36.30.083(a).

Yesterday neither of us thought the Legislature was likely to take up the issue, but, assuming Count One is not dismissed for lack of standing, if the powers that be want to avoid exposure of the corruption that is what must be done. Personally, I would rather have the corruption exposed.

Sincerely,

James B. Gottstein
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e-mail: James.B. Gottstein@GottsteinLaw.Com

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RECEIVED
JUL 24 2015
BY:

Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No.: 3AN-15-05969CI

LEGISLATIVE AFFAIRS AGENCY'S OFFER OF JUDGMENT

Defendant Legislative Affairs Agency, (the "Agency") by and through its undersigned counsel, and pursuant to Alaska R. Civ. P. 68 and Alaska Statute 09.30.065 and *Lowell v. Hayes*, 117 P.3d 745 (Alaska 2005), hereby offers to allow entry of judgment for Plaintiff Alaska Building, Inc. ("ABI"), and against the Agency, in the amount of one dollar (\$1.00), in resolution of all claims against the Agency inclusive of

LEGISLATIVE AFFAIRS AGENCY'S OFFER OF JUDGMENT
ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI
Page 1 of 3

Exhibit 2, page 4 of 5

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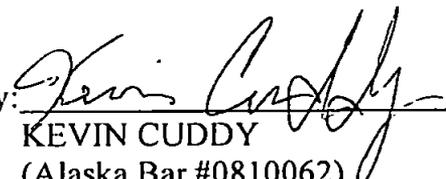
STOEL RIVES LLP
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all interest, attorney's fees, and costs. This is not an admission of liability, and the Agency expressly disclaims any liability as alleged by Plaintiff.

This is an offer of judgment only and is not to be construed as an admission or as constituting any evidence of any kind at any trial of this matter. This offer of judgment shall expire ten (10) days from the date of service on the offeree as provided in Alaska R. Civ. P. 68(a), and AS 09.30.065.

DATED: July 24, 2015.

STOEL RIVES LLP

By: 
KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on July 24, 2015, a true and correct copy of the foregoing was served on:

HAND-DELIVERED

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BY U.S. MAIL

Mark P. Scheer
Scheer & Zehnder LLP
701 Pike Street, Suite 2200
Seattle, WA 98101
(Attorneys for Def/Criterion General, Inc.)

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

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STATE OF ALASKA
THIRD DISTRICT

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CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

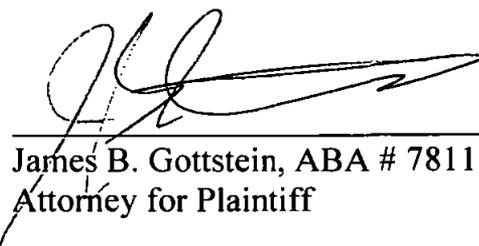
Defendants.

Case No. 3AN-15-05969CI

**ALASKA BUILDING, INC., MOTION FOR COSTS AND
ATTORNEY'S FEES AGAINST 716 WEST FOURTH AVENUE LLC
AND LEGISLATIVE AFFAIRS AGENCY**

Pursuant to Civil Rules 79 and 82, Plaintiff, Alaska Building, Inc., moves for costs and attorney's fees against defendants 716 West Fourth Avenue LLC and the Legislative Affairs Agency.

Dated May 26, 2016.



James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

d

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Alaska Building Inc.,)
)
 Plaintiff,)
)
 v.)
)
 716 West Fourth Avenue LLC, and)
 Legislative Affairs Agency,) Case No. 3AN-15-05969CI
)
 Defendants.)

**ORDER DENYING MOTION FOR RECONSIDERATION OF DECLARATORY
JUDGMENT AND SUMMARY JUDGMENT**

716 has moved for reconsideration of the 3/24/16 order granting summary judgment and entering a declaratory judgment declaring the 716/LAA lease extension invalid. LAA partially joins the request. ABI opposes the request.

716 believes it was denied due process because the court did not give them a sufficient opportunity to argue against the court's declaratory judgment invalidating the lease rather than simply a finding that the competitive principles of the procurement code were not met. 716 further resurrects its argument that the entire dispute is non-justiciable.

Both 716 and LAA want the court to retain jurisdiction essentially to adjudicate nonexistent cross-claims they may have against each other.

ABI is content that the court ruled on the only issues placed before the court.

So is the court. The motion for reconsideration is DENIED.

The Second Amended Complaint dated 8/25/15 requests three (3) forms of relief; declaratory judgment, *qui tam* damages, and punitive damages.¹ Neither 716 nor LAA filed counterclaims or cross-claims with their answers. ABI's request for *qui tam* and punitive damages were dismissed by motion.² The only requested relief remaining before the court when ruling on the motion for summary judgment was the request for a declaratory judgment. Any issues regarding a preliminary injunction, *qui tam* and punitive damages had been resolved. The parties had not raised any issues of "unique facts" that would prevent the court from ruling as a matter of law the lease extension did not comply with AS 36.30.083(a). ABI did not pursue a request for any monetary damages that had not been dismissed (no Third Amended Complaint). Tactically, 716 and LAA did not pursue any claims against each other (no request to amend answer to add cross-claim).

Simply put, there is no properly pled remaining relief requested to which the defense of *laches* would be applicable. The court has decided the only issue remaining before it- the lease extension does not comply with AS 36.30.083(a) and is invalid. All parties had ample opportunity to address the issue.

If the court's ruling that the lease "extension" is invalid raises justiciable issues between 716 and LAA, neither is precluded by the court's ruling from pursuing their remedies (perhaps other than requesting a subsequent court to revisit the lease extension's compliance with AS 36.30 083{a} which is presumably *res judicata* between the parties). But this court is not going to retain jurisdiction, after fully resolving the issues presented, just in case one of the defendants wants to further utilize the courts to resolve their unpled, potential claims against each other.

Finally, the court declines 716's invitation to revisit it's ruling on justiciability simply because 716 now raises an issue under AS 36.30.080(c) (1)³, rather than AS 36.30.083(a). As noted in the decision⁴, and cited in 716's request to reconsider, the

¹ At the time of the court's ruling on *laches*, ABI had filed a motion for preliminary injunction, subsequently denied.

² See Order Regarding ABI's *Qui Tam* and Punitive Damages Requests for Relief dated 1/13/16.

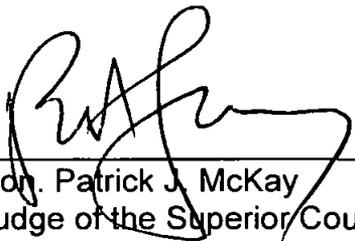
³ A careful review of 716's opposition to the underlying motion reveals one citation to AS 36.30.080(a), not (c), at p. 6, which the court believes was a miscite to AS 36.30.083(a).

⁴ At p.11, footnote 30.

court did not find the Legislative Council's compliance with AS 36.30.020 to be a justiciable issue, but gave an advisory opinion that should the Alaska Supreme Court find justiciability, this court would not find that the newly adopted procurement procedures were consistent with the required competitive principles of the procurement code. This was solely an attempt to limit expensive litigation should the case be remanded on this issue. This court fails to see how the reasoning would differ if the word "extension" was systematically removed from every newly amended regulation, procedure, or "finding" and viewed under the prism of AS 36.30.080(c). Additionally, the Legislature has not extended the same invitation to the court to weigh in on this issue.

The motion for reconsideration is DENIED.

May 20, 2016
DATE



Hon. Patrick J. McKay
Judge of the Superior Court

I certify that on 5/20/16,
a copy of the above was mailed to each of
the following at their addresses of record:

James Gottstein
Jeffrey Robinson / Kevin Cuddy
K. Nixon/Judicial Assistant kn

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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

Case No.: 3AN-15-05969CI

§ 20
[PROPOSED] FINDING

THIS COURT, having reviewed Defendant Legislative Affairs Agency's (the "Agency") request for a finding that it is the prevailing party with respect to the property damage claim raised against it by Plaintiff Alaska Building, Inc. ("ABI"), any opposition and/or responses thereto, and being duly advised in the premises, this Court finds and ORDERS as follows:

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The Legislative Affairs Agency is the "prevailing party" with respect to the property da
claim that was originally described in Count 2 of the First Amended Complaint (which v
subsequently severed and is now proceeding in *Alaska Building, Inc. v. Pfeffer Developmen.
LLC*, 3AN-15-09785CI). The Legislative Affairs Agency may bring a motion for attorney's fees
and costs under Civil Rules 68, 79, and 82 within 10 days of the date shown on the clerk's
certificate of distribution on the final judgment in this matter.

DATED this ____ day of _____, 2015.

Honorable Patrick McKay
Superior Court Judge

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on October 15, 2015, I caused a true and correct copy of the foregoing
to be served on:

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Jeffrey W. Robinson
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(Attorneys for Defendant 716 West Fourth
Avenue, LLC)

I further certify that this document was substantively produced in Times New Roman 13,
in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).


Debby Allen, Practice Assistant

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
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

[PROPOSED] ORDER GRANTING MOTION FOR RECONSIDERATION

Having considered the parties' briefing regarding Defendant 716 West Fourth Avenue, LLC's Motion for Reconsideration of the Court's Order on Motion for Summary Judgment Re: Lease is Not an Extension, the request is GRANTED. Any party who wishes to file a response shall do so by _____ 716 shall file its reply brief within five days thereafter.

DATED: _____

HON. PATRICK J. McKAY
Superior Court Judge

NOTICED

MAR 3 0 2016

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

MAR 3 0 2016

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CLERK TRIAL COURTS

BY: _____
DEPUTY CLERK

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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY, and
CRITERION GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969 CI

**LEGISLATIVE AFFAIRS AGENCY'S RESPONSE TO 716'S MOTION FOR
RECONSIDERATION**

Pursuant to Civil Rule 77(k)(3), Legislative Affairs Agency ("LAA") responds to the pending motion for reconsideration from 716 West Fourth Avenue, LLC ("716") with respect to the legality of the September 19, 2013 lease for the Legislative Information Office building (the "Lease Extension").

I. THE COURT'S INVALIDATION OF THE LEASE EXTENSION DOES NOT TERMINATE THE PROCEEDINGS HERE.

In Plaintiff's ("ABI") motion for partial summary judgment, ABI requested that the Court find that the Lease Extension did not comply with AS 36.30.083(a).¹ ABI also explicitly noted that further proceedings would be required to address the appropriate relief that would accompany such a ruling:

If the Court issues a declaratory judgment that the LIO lease is illegal, i.e., a violation of AS 36.30.083(a), proceedings for "further necessary or proper relief . . . after reasonable notice and hearing," can be held to determine exactly what further or proper relief should be fashioned.²

This was highlighted again in ABI's reply brief in support of its motion for partial summary judgment.³ As ABI requested, and as all parties anticipated, the Court was required to give reasonable notice and hearing with respect to necessary or proper relief that would follow any determination that the Lease Extension did not comply with AS 36.30.083(a). The parties were entitled to a hearing on these issues, as requested by ABI.

The need for such a hearing has been made very clear by 716's recent statements

¹ See [Proposed] Order Granting Plaintiff's Motion for Partial Summary Judgment (Not Extension) (filed June 12, 2015) (asking the Court to order that the Lease Extension "does not comply with AS 36.30.083(a) in that it does not extend a real property lease"); Plaintiff's Motion for Partial Summary Judgment (Not Extension) (filed June 12, 2015) (same).

² Opposition to Defendant Legislative Affairs Agency's Motion for Summary Judgment Under the Laches Doctrine at 8-9 (filed Nov. 5, 2015).

³ See Reply to: Legislative Affairs Agency's and 716 LLC's Oppositions to Plaintiff's Motion for Partial Summary Judgment (Not Extension) at 9 & n.11 (filed Feb. 23, 2016) (asking the Court to set a hearing for any further necessary or proper relief pursuant to AS 22.10.020(g) if Plaintiff's motion was successful).

that it intends to pursue an estoppel claim against LAA if LAA fails to abide by the now-invalidated Lease Extension.⁴ If such a claim is permitted and successful, this would constitute “prejudice” under the laches doctrine. The Court previously held that the defense of laches was available to this lawsuit (though not as an affirmative basis for summary judgment) and that ABI’s delay seemed unreasonable, but declined to apply the laches doctrine because it was unclear whether the defendants would be harmed by an order determining the legality of the Lease Extension.⁵ If 716 has a valid claim against LAA, which LAA vehemently disputes, such a claim may constitute prejudice that would trigger application of the laches doctrine.

With the invalidation of the lease, the Court will also need to consider necessary or proper relief as to both LAA and 716 under AS 22.10.020(g). This will include, for example, whether 716’s purported estoppel claim for this multi-year invalidated lease is viable in light of the provision that states the lease is only funded on a year-to-year basis and may terminate if not funded by the Legislature.⁶ The Court may also be asked to consider whether LAA is entitled to a refund of some or all of the \$7.5 million in tenant improvements that it made to the Legislative Information Office building. The Court must therefore retain jurisdiction over these issues and the parties to resolve these

⁴ See Motion for Reconsideration of the Court’s Order Granting Motion for Summary Judgment re: “Not Extension” at 2 n.3 (filed Mar. 30, 2016).

⁵ See Order Denying Motion for Summary Judgment re: Laches at 7 (filed Jan. 7, 2016).

⁶ See *id.* at 8 & n.36.

outstanding issues.

LAA now finds itself in exactly the situation that the laches doctrine is designed to prevent: The Court found that it was premature to apply the laches doctrine because there was no concrete proof of prejudice or damages. Then the Court invalidated the Lease Extension, which 716 alleges caused exactly that type of prejudice. If the Court concludes that 716 will not suffer the prejudice it claims – because 716’s estoppel claim lacks merit – then the invalidation of the lease may not trigger the laches doctrine. If, however, 716 is able to demonstrate that the Court’s invalidation of the lease caused it damage for which LAA may be responsible, then LAA must be allowed to invoke the laches defense because both the “unreasonable delay” and “prejudice” elements of the laches defense would be satisfied.

In short, the Court must retain jurisdiction of this matter in order to determine what further necessary or proper relief is appropriate here under AS 22.10.020(g). The invalidation of the lease triggers potential cross-claims and, therefore, potential application of the laches doctrine as a result of those cross-claims. The Court misconceived or overlooked the application of the laches doctrine as relates to the lease invalidation, as well as the need to address any further necessary or proper relief pursuant to AS 22.10.020(g), and these are material questions in this case.⁷ Given the Court’s intimate familiarity with the parties, the lease, and the underlying facts, the Court should

⁷ See Civil Rule 77(k)(1)(ii), (iii).

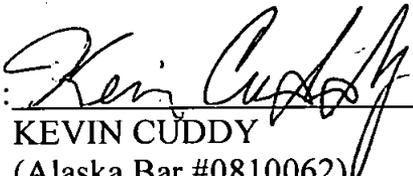
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not vacate all further proceedings in this case and should retain jurisdiction to address these remaining issues.

For the foregoing reasons, LAA respectfully requests that 716's motion for reconsideration be granted to the extent stated above. The Court should reconsider its ruling that "all further proceedings are vacated" and that the order dated March 24, 2016 is a final appealable order. Instead, the Court should allow proceedings for such further necessary or proper relief as may be occasioned by the Court's invalidation of the lease.

DATED: May 6, 2016

STOEL RIVES LLP

By: 
KEVIN CUDDY
(Alaska Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

CERTIFICATE OF SERVICE

This certifies that on May 6, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

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(Attorneys for Defendant 716 West Fourth Avenue, LLC)


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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

Case No. 3AN-15-05969 CI

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

**ORDER GRANTING LEGISLATIVE AFFAIRS AGENCY'S UNOPPOSED
MOTION FOR EXTENSION OF TIME TO FILE RESPONSE TO MOTION FOR
RECONSIDERATION**

THIS COURT, having reviewed Defendant Legislative Affairs Agency's ("LAA")
Unopposed Motion for Extension of Time to File Its Response to Motion for
Reconsideration, and being duly advised in the premises, this Court finds and ORDERS
as follows:

ORDER GRANTING LAA'S MOT. FOR EXT. TO FILE RESPONSE TO MOT. FOR RECONSIDERATION
ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI

Page 1 of 2

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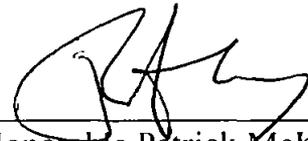
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APR 29 2016

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
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IT IS HEREBY ORDERED that the Defendant's Legislative Affairs Agency's Motion for Extension of Time to File Its Response to Motion for Reconsideration IS GRANTED. *until 5/16/16. @** This extension tolls the Court's deadline for ruling upon the motion for reconsideration, as well as all applicable appellate deadlines. See Civil Rule 77(k)(4).

DATED this 2d day of May, 2016.



Honorable Patrick McKay
Superior Court Judge

** The Court will not grant further extensions. The Court ruling is not dependant on future actions of the parties. (PW)*

CERTIFICATE OF SERVICE

This certifies that on April 29, 2016, I caused a true and correct copy of the foregoing to be served by first class mail on:

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1227 West Ninth Avenue, Suite 200
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(Attorneys for Defendant 716 West Fourth Avenue, LLC)



Practice Assistant

I certify that on 5/2/16 a copy of the following was ~~mailed~~ ~~faxed~~ ~~hand-delivered~~ to each of the following at their addresses of ~~mailed~~ record. *James Gottstein*
Kevin Cuddy / Jeffrey Robinson
Administrative Assistant *Ku*

FILED
STATE OF ALASKA
THIRD DISTRICT

2016 APR 29 PM 6:00

CLERK OF COURT

BY: _____
DEPUTY CLERK

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Attorneys for Defendant
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and
LEGISLATIVE AFFAIRS AGENCY, and
CRITERION GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969 CI

**LEGISLATIVE AFFAIRS AGENCY'S UNOPPOSED MOTION FOR
EXTENSION OF TIME TO FILE ITS RESPONSE TO MOTION FOR
RECONSIDERATION**

On March 30, 2016, defendant 716 West Fourth Avenue, LLC ("716") filed a motion for reconsideration of this Court's summary judgment order concerning the lease for the Legislative Information Office building ("LIO") in Anchorage. On March 31, 2016, the Court issued an order requesting that the other parties respond to that motion on

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d

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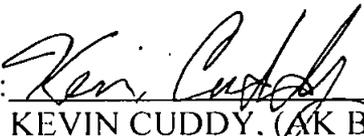
or before April 11, 2016. In light of a recent actions by the Legislative Council regarding a potential purchase offer for the LIO, the Legislative Affairs Agency (“LAA”) requested an extension of time to file its response, which the Court granted. LAA now submits this unopposed request for an additional two-week extension of time in which to file its response to 716’s motion for reconsideration. No party will be prejudiced by this extension of time. LAA’s response, currently due on May 2, 2016, would now become due on or before May 16, 2016. This extension would also toll the Court’s deadline for ruling upon the motion for reconsideration, as well as applicable appellate deadlines. See Civil Rule 77(k)(4).

While the Second Regular Session of the Legislature was scheduled to conclude on April 17, the Legislature continues to work on budgetary issues and other matters presently. Accordingly, the parties do not yet have the anticipated clarity on any potential purchase of the LIO or how that may affect this proceeding. The requested two-week period will hopefully provide that clarity.

Counsel for LAA has communicated with counsel for Plaintiff and 716 and can report that both parties assent to this request.

DATED: April 29, 2016

STOEL RIVES LLP

By: 
KEVIN CUDDY, (AK Bar #0810062)
Attorney for Defendant
LEGISLATIVE AFFAIRS AGENCY

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510 L Street, Suite 500, Anchorage, AK 99501
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CERTIFICATE OF SERVICE

This certifies that on April 29, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

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(Attorney for Plaintiff)

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Anchorage, AK 99501
(Attorneys for Defendant 716 West Fourth Avenue, LLC)


Practice Assistant

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska Corporation,
Plaintiff,
vs.
716 WEST FOURTH AVENUE, LLC,
and LEGISLATIVE AFFAIRS AGENCY,
Defendants.
_____) Case No. 3AN-15-05969 CI

**ORDER REQUESTING RESPONSE
TO MOTION FOR RECONSIDERATION**

Pursuant to Alaska Rule of Civil Procedure 77 (k) (3), Alaska Building, Inc. and Legislative Affairs Agency are requested to respond to Defendant 716 West Fourth Avenues, LLC's Motion for Reconsideration dated March 30, 2016 on or before April 11, 2016. No further pleadings are requested.

IT IS SO ORDERED this 31st day of March, 2016 at Anchorage, Alaska.



PATRICK J. MCKAY
Superior Court Judge

I certify that on 3/31/16 a copy
Of the above order was e-mailed to:
James Gottstein
Kevin Cuddy
Jeffrey Robinson

K. Nixon/Administrative Assistant 