

AGREEMENT TO LICENSE, ASSIGN, CONSTRUCT, AND PURCHASE THE BLOCK 70 PARKING GARAGE

This Agreement to License, Assign, Construct, and Purchase the Block 70 Parking Garage is made this 31st day of August 2006, between the Municipality of Anchorage ("MOA") and the Alaska Housing Finance Corporation ("AHFC").

RECITALS

- A.** Under Chapter 47 of the Session Laws of Alaska 2006, the Alaska State Legislature found there is insufficient parking available for the Atwood Office Building in downtown Anchorage and the purchase of a new garage to provide parking for the Atwood Office Building tenants, who include numerous Alaska state departments and agencies, would serve a public purpose. By this legislation, AHFC is authorized to finance and purchase a parking garage, the price for which may not exceed \$44,000,000, including the costs of purchasing and issuing bonds for the facility.
- B.** AHFC is the fee-simple title owner of the south half of Block 70, an area of land on the north side of Seventh Avenue, across the street from the Atwood Office Building.
- C.** Until April 12, 2006, AHFC was the owner of Block 80, a parcel of real property adjacent to and used for parking for the Atwood Office Building. MOA has undertaken the development of a new Anchorage civic and convention center on Block 80 through a design-build procurement. One element of that procurement required recommendations for the coordination and relocation of parking in downtown Anchorage and foresaw the need for the design and construction of a new parking garage to serve the Atwood Office Building, the convention center, and the public at large.
- D.** The Alaska Center for Convention & Trade, LLC ("ACCT") was the successful proposer on MOA's request for proposal for the convention center project. In consummation of this proposal, MOA, through its successor-in-interest CivicVentures, entered into a development agreement with ACCT on November 10, 2004 and into the Amended and Restated Development Agreement on January 19, 2006. In addition to providing for the design and construction of the convention center, the Amended and Restated Development Agreement permitted MOA to further contract with ACCT for the design and construction of a new parking garage.

- E. Contemporaneous with the execution of this Agreement, MOA is entering into the Block 70 Parking Garage Development Agreement with ACCT for the design and construction of the parking garage permitted under the Amended and Restated Development Agreement for the convention center.
- F. AHFC believes that the Block 70 Parking Garage as set forth and described under the Block 70 Parking Garage Development Agreement will serve the parking needs contemplated under the legislative authorization. So long as the Block 70 Parking Garage substantially meets the design guidelines set forth under this Agreement, MOA desires to assign some of its rights and responsibilities under the Block 70 Parking Garage Development Agreement to AHFC and to sell the completed garage to AHFC.
- G. Therefore, AHFC and MOA desire to work together to see the design and construction of the Block 70 Parking Garage come to completion. To achieve this aim, the Parties for their mutual and best interests, enter into this Agreement to License, Assign, Construct, and Purchase the Block 70 Parking Garage.

1. DEFINITIONS

- 1.1. **"Agreement"** means this Agreement to License, Assign, Construct, and Purchase the Block 70 Parking Garage.
- 1.2. **"Block 70 Parking Garage"** means the garage to be constructed under the Block 70 Parking Garage Development Agreement.
- 1.3. **"Block 70 Parking Garage Development Agreement"** means the agreement between MOA and ACCT for the design and construction of the Block 70 Parking Garage that is effective as of August 31, 2006.
- 1.4. **"Effective Date"** means August 31, 2006.
- 1.5. **"Parties"** means AHFC and MOA.
- 1.6. **"Property"** means that half of Block 70, more particularly described as:

Tract 1, Block 70, Anchorage Original Townsite, according to
Plat No. _____ situated in the Anchorage Recording District,
Third Judicial District, State of Alaska.
- 1.7. **Additional Defined Terms.** Additional capitalized words used in this Agreement shall have the same meaning as the capitalized words under the Block 70 Parking Garage Development Agreement. Words of technical

usage such as “substantial completion” or “final completion” shall have a common meaning under both this Agreement and the Block 70 Parking Garage Development Agreement.

2. LICENSE TO DEVELOP PROPERTY

2.1 License. As of the Effective Date, AHFC grants to MOA a non-exclusive license to enter upon and develop the Property for the design and construction of the Block 70 Parking Garage and for any other purpose incidental or relevant to such design and construction.

2.1.1 Assignment of License. MOA shall assign its license to enter upon and develop the Property to ACCT. Notwithstanding this assignment to ACCT, MOA reserves for itself the right to enter upon the Property so that it may monitor and protect its interests related to environmental indemnification as set forth in Section 5.5.7.5 of the Block 70 Parking Garage Development Agreement. When entering upon the Property, however, MOA shall first notify ACCT of its intended entry, comply with all necessary job-site safety rules imposed by ACCT or its contractor while present on the Property during construction, and not interfere with ACCT’s use of the Property or construction of the Block 70 Parking Garage.

2.1.2 Access and Site Control. The Parties hereby incorporate the provisions of Section 5.5.4 of the Block 70 Parking Garage Development Agreement regarding access and site control into this Agreement.

2.2 Reserved Rights. Notwithstanding Section 2.1, AHFC reserves for itself, its representatives, and its assigns the right to enter upon the Property at any time and for any purpose, so long as AHFC shall notify ACCT and does not interfere with ACCT’s use of the Property or construction of the Block 70 Parking Garage. AHFC shall comply with all necessary job-site safety rules imposed by ACCT or its contractor while present on the Property during construction.

2.3 Termination of License. Unless otherwise extended by mutual agreement, MOA’s license to enter upon and develop the Property terminates upon any of the following events:

2.3.1 AHFC’s election under Section 4.4 of the Block 70 Parking Garage Development Agreement not to proceed to Phase II.

3.2, MOA assigns to AHFC all of its rights, duties, and responsibilities under the Block 70 Parking Garage Development Agreement.

3.2 Reservation of Assignment. MOA reserves for itself the following rights, duties, and responsibilities under the Block 70 Parking Garage Development Agreement.

- 3.2.1 Those rights, duties, and responsibilities occurring during the Pre-development Phase as described in Section 3 of the Block 70 Parking Garage Development Agreement, excluding the obligation to make payment set forth in Section 3.3 of such agreement.
- 3.2.2 Those rights, duties, and responsibilities set forth in Section 5.5.7.4 (COST OVERRUNS) (Changes to Municipal code or regulations) of the Block 70 Parking Garage Development Agreement.
- 3.2.3 Those rights, duties, and responsibilities set forth in Section 5.5.7.5 (COST OVERRUNS) (Environmental) of the Block 70 Parking Garage Development Agreement.
- 3.2.4 MOA shall receive a copy of the deliverables described in section 4.1 of the Block 70 Parking Garage Development Agreement at the same time the deliverables are given to AHFC.
- 3.2.5 MOA shall have the right to participate in all negotiations between AHFC or its consultants and ACCT or its consultants described and set forth in Section 4.4 of the Block 70 Parking Garage Development Agreement where such negotiations are relevant to the design features described in Section 4.2 of this Agreement. Notwithstanding this provision, AHFC shall have exclusive right to determine in its sole discretion whether to proceed to Phase II pursuant to Sections 4.4 and 5.4 of the Block 70 Parking Garage Development Agreement.

- 3.2.6 MOA shall have the right provided in section 5.5.4 of the Block 70 Parking Garage Development Agreement to visit and inspect the site from time to time at its sole discretion for the purpose of evaluating and monitoring environmental activities for which MOA has potential indemnification responsibility, so long as MOA complies with the access and entry provisions set forth in Section 2.1.1 of this Agreement.
- 3.2.7 All non-financial obligations imposed by Anchorage Municipal Code 07.40.010 - 07.40.080 relating to funds for work of art in public facilities. AHFC shall be responsible for payment to MOA for the costs of implementing the one percent for the Art program per the requirements of Section 4.3.
- 3.3 AHFC's Acceptance of Assignment.** AHFC accepts the assignment of rights and assumes the duties and responsibilities under the Block 70 Parking Garage Development Agreement from MOA as set forth in Section 3.1 and limited by Section 3.2 of this Agreement.
- 3.4 Cooperation.** MOA and AHFC agree they will cooperate in good faith to facilitate AHFC's assumption and implementation of AHFC's assigned rights and responsibilities.
- 3.5 Indemnification.** Subject to a specific appropriation by the legislature for this purpose, AHFC agrees to indemnify MOA against all claims arising out of or asserted against MOA as a result of performance of those rights, duties, and responsibilities assigned to AHFC under Section 3.1 of this Agreement; however such obligation does not extend to claims arising out of or asserted against MOA as a result of performance of those rights, duties, and responsibilities reserved to MOA by Section 3.2 of this Agreement or extend to damages caused by MOA's own negligence. All Parties to this Agreement recognize and agree that AHFC has no appropriation currently available to it to indemnify MOA under this section and that enactment of an appropriation in the future to fund a payment under this section remains in the sole discretion of the legislature. The legislature's failure to make such an appropriation fully rescinds any liability on the part of AHFC under this Section and creates no further liability or obligation of AHFC for indemnification or other action.

4. DESIGN AND CONSTRUCTION OF THE BLOCK 70 PARKING GARAGE

4.1 Predevelopment and Phase I Activities. AHFC agrees that until such time as AHFC, as the assignee of the MOA, elects to proceed to Phase II under Sections 4.4 and 5.4 of the Block 70 Parking Garage Development Agreement, AHFC will keep MOA informed of all meetings, events, and decisions concerning design, schedule, budget, or cost of the Block 70 Parking Garage and that MOA will be permitted to send a representative to all meetings between AHFC or its consultants and ACCT or its consultants or between ACCT and its contractors or consultants.

4.2 Design Features.

4.2.1 Design Features. If AHFC elects to proceed to Phase II under Section 5.4 of the Block 70 Parking Garage Development Agreement, the Block 70 Parking Garage shall be designed and constructed to contain the following design features:

4.2.1.1 The garage shall be located at the northern property line of the Property so that the width of the sidewalks along 7th Avenue is maximized.

4.2.1.2 The first floor of the structure shall contain commercial or retail space along E Street, F Street, and Seventh Avenue.

4.2.1.3 The sidewalks on the E Street, F Street, and Seventh Avenue sides of the garage shall be heated from the outside face of the commercial or retail space storefront to the back of the curb.

4.2.1.3.1 MOA and AHFC agree that should AHFC elect to proceed to Phase II and the Block 70 Parking Garage be constructed, AHFC shall be responsible for any maintenance of the sidewalks around the garage. However, should the MOA undertake any activities within its right-of-way, MOA shall be responsible for any damage to or impacts upon the heating system caused by those activities.

4.2.1.4 No vehicle entry or exit shall be designed or constructed on the F Street side of the garage.

4.2.1.5 The garage shall be designed and constructed to provide for two lanes of access to the garage to or from E Street. The E Street access shall not diminish the twenty-nine (29) feet of sidewalk measured from the outside face of the commercial or retail storefront (nineteen (19) feet from the face of the structure) to the back of curb.

4.2.1.6 The garage shall be designed and constructed with an exterior skin as such skin is described and depicted in Exhibits A and H to the Block 70 Parking Garage Development Agreement. Any change to the exterior skin that does not conform to Exhibits A and H must be approved in writing by the mayor of the MOA.

4.2.1.7 The garage shall be designed and constructed to include a stair-elevator tower and pedestrian plaza that conforms with the tower and pedestrian plaza described and depicted in Exhibits A and G to the Block 70 Parking Garage Development Agreement. Any change to the tower and plaza that does not conform to Exhibits A and G must be approved in writing by the mayor of the MOA.

4.3 One Percent for Art. MOA shall undertake and perform all legal responsibilities imposed by Anchorage Municipal Code 07.40.010 - 07.40.080 regarding funds for works of art in public facilities and shall be responsible for administering such program for the Block 70 Parking Garage. Appointments to the committee or jury for art collection shall be structured so that AHFC and ACCT representatives compose the majority of members. As such, the five-person committee or jury for selecting art shall be appointed as follows: two members by AHFC; two members by MOA; and one member by ACCT. AHFC funds allocated to the one percent for the arts shall be used to cover the cost of the art, the costs of installing the art on or at the Block 70 Parking Garage, and the MOA administrative fee described in this Section. The MOA administrative fee shall equal ten percent of the one percent for art budget. One half of such fee shall be paid within 30 days after the selection committee is appointed and the remainder of such fee shall be paid after all of the artwork has been selected and contracts awarded to the artists. As to payment for the art, MOA shall notify AHFC when payment to the selected artist or artist is due not later than 35 days prior to the due date, and AHFC shall provide the funding for one-percent for art directly to MOA not less than five business days prior to the date upon which payment to the artists is due.

- 4.4 Assembly Approval.** MOA shall submit to the Anchorage Assembly and use its best efforts to obtain passage of a municipal ordinance concerning public facility site review for the Project. The submitted ordinance shall provide for the Anchorage Assembly to follow substantially similar expedited procedures for approvals of site review and public hearings used for the Anchorage convention center.

5. PURCHASE AND SALE OF THE BLOCK 70 PARKING GARAGE

- 5.1 Purchase Price.** The purchase price for the Block 70 Parking Garage shall equal the amount payable to ACCT for design and construction of the Project as set forth in the Block 70 Parking Garage Development Agreement, plus the administrative fee payable to MOA under Section 5.2 of this Agreement. The purchase price shall not exceed Forty-Four Million Dollars (\$44,000,000) less AHFC's costs for bonding and purchasing the garage. Cost overruns for bonding and purchasing the garage in excess of those amounts set forth in Exhibit B-1 to the Block 70 Parking Garage Development Agreement shall be borne by AHFC. If AHFC does not elect under Sections 4.4 and 5.4 of the Block 70 Parking Garage Development Agreement to proceed to Phase II, the purchase price shall not be owed, but the payments required under Section 6 of the Block 70 Parking Garage Development Agreement shall be made by AHFC directly to ACCT.

- 5.2 MOA Administrative Fee.** As part of the purchase price, AHFC shall pay an administrative fee directly to MOA of Two Hundred Twenty Thousand Dollars and no cents (\$220,000). Payment of such fee beyond the initial payment shall be made only if AHFC elects under Section 4.4 and 5.4 of the Block 70 Parking Garage Development Agreement to proceed to Phase II. Payment of the fee shall be made in installments as follows:

5.2.1 One hundred and Ten Thousand Dollars (\$110,000.00) -- Thirty days following the Effective Date

5.2.2 Fifty Five Thousand Dollars (\$55,000.00) -- Thirty days following the signing of the Notice to Proceed described under Section 5.4 of the Block 70 Parking Garage Development Agreement.

5.2.3 Fifty Five Thousand Dollars (\$55,000.00) -- Upon beginning of construction.

- 5.3 Installment Payments of Purchase Price.** If AHFC elects under Sections 4.4 and 5.4 of the Block 70 Parking Garage Development

Agreement to proceed to Phase II, AHFC shall pay the balance of the purchase price in excess of the administrative fee provided for under Section 5.2 of this Agreement in installments paid directly to ACCT as provided in Section 6 of the Block 70 Parking Garage Development Agreement. AHFC shall provide MOA with documentation showing that such payments have been made within fifteen (15) days of the date such payments are made.

5.4 Warranties. Except as provided in Sections 5.4.1 and 5.4.2 of this Agreement, MOA does not warrant, in any manner whatsoever, title to the Property or the quality, condition, or fitness of the Property for use of the Block 70 Parking Garage.

5.4.1 Nothing contained in Section 5.4 shall be construed to limit any warranties assigned by MOA to AHFC pursuant to Section 3 of this Agreement.

5.4.2 Nothing contained in Section 5.4 shall be construed to limit the limited warranty provided by MOA as described in Section 5.5 and Exhibit A to this Agreement.

5.5 Closing. The closing for AHFC's acquisition of the Block 70 Parking Garage shall be contemporaneous with AHFC's acceptance of substantial completion of the Block 70 Parking Garage. At such time, MOA shall furnish AHFC with a quitclaim deed with one limited warranty. The quitclaim deed with one limited warranty shall be in substantial compliance with Exhibit A to this Agreement.

6. ADDITIONAL PROVISIONS

6.1. Termination of Agreement. Termination. This Agreement may be terminated by any of the following events:

6.1.1 AHFC's election under Section 4.4 of the Block 70 Parking Garage Development Agreement not to proceed to Phase II.

6.1.2 Termination of the Block 70 Parking Garage Development Agreement.

6.1.3 Upon mutual agreement of the Parties.

6.1.4 Upon AHFC's acceptance of final completion of the Block 70 Parking Garage.

6.2 Effect of Termination. In the event of termination, this Agreement shall be of the following force and effect.

6.2.1 If AHFC does not elect to proceed to Phase II construction and management under Section 4.4 of the Block 70 Parking Garage Development Agreement, this Agreement shall be without further force and effect. However, this clause shall not be interpreted to dispense with AHFC's obligations to make the payments to ACCT required by Section 6 of the Block 70 Parking Garage Development Agreement or to limit AHFC's ownership of the Phase I deliverables as governed by Section 9 of the Block 70 Parking Garage Development Agreement.

6.2.2 If the Agreement is terminated pursuant to Section 6.1.2 of this Agreement, MOA shall immediately transfer ownership of the Block 70 Parking Garage to AHFC in whatever state of completion by provision of the quitclaim deed with one limited warranty in substantial compliance with Exhibit A to this Agreement. With the exception of the following listed provisions of this Agreement, the remainder of this Agreement shall be without force and effect.

6.2.2.1 Section 3 (ASSIGNMENT OF DEVELOPMENT AGREEMENT), including AHFC's ability to exercise remedies for default under the Block 70 Parking Garage Development Agreement.

6.2.2.2 Section 4.1 (DESIGN AND CONSTRUCTION OF DOWNTOWN PARKING GARAGE -- Predevelopment and Phase I Activities).

6.2.2.3 Section 5.2 (PURCHASE AND SALE OF THE BLOCK 70 PARKING GARAGE-MOA Administrative Fee).

6.2.2.4 Section 5.4 (PURCHASE AND SALE OF THE BLOCK 70 PARKING GARAGE --Warranties).

6.2.2.5 Section 6 (ADDITIONAL PROVISIONS).

6.3 Loss or Damage. In the event of loss or damage to the Property as a result of flood, fire, earthquake, or other casualty, risk of loss shall be as set forth in the Block 70 Parking Garage Development Agreement.

6.4 Notices. All notices, demands, and requests which may be or are required to be given by either party to the other shall be in writing and shall be personally served, delivered by express courier, or sent by facsimile transmission (if sent by facsimile transmission a duplicate copy shall be sent by mail) to the individuals identified below:

If to MOA:

Municipal Manager
Municipality of Anchorage
632 W. Sixth Ave., Ste. 830
Anchorage, Alaska 99501
(907) 343-7110
Fax: (907) 343-7140

If to AHFC:

Executive Director
Alaska Housing Finance
Corporation
4300 Boniface Parkway
Anchorage, Alaska 99504
(907) 330-8452
Fax: (907) 338-9218

And

And

Municipal Attorney
632 W. Sixth Ave.,
Suite 730
Anchorage, Alaska 99501
(907) 343-4545
Fax: (907) 343-4550

Department of Administration
Division of General Services
Attn: Tanci Mintz
550 W. Seventh Ave., Suite 1970
Anchorage, Alaska 99501
(907) 269-0300
Fax: (907) 269-0308

6.5 Consultation. MOA and AHFC independently represent that each has had an adequate opportunity to consult with its own tax, legal, and other advisor prior to executing this Agreement. This Agreement when executed shall represent the agreement of the Parties and the rule of construction that ambiguities are construed against the drafter shall not apply.

6.6 No Third Party Beneficiaries. With the exception of Section 6.6.1, this Agreement creates no third party beneficiaries and no private rights of action that can be exercised by anyone other than the Parties to this Agreement, their successors, or assigns.

- 6.6.1 ACCT is a third-party beneficiary of Section 5.1 of this Agreement in the limited and only circumstance as follows: ACCT is a third-party beneficiary and may bring a private cause of action to enforce the obligations of AHFC set forth in Section 5.1 of this Agreement for payment of Pre-development and Phase I fees as such payment is required by and described in Section 6 of the Block 70 Parking Garage Development Agreement. AHFC agrees that ACCT may proceed in reliance upon this covenant, even if the Assembly does not approve the Block 70 Parking Garage Development Agreement and this Agreement, provided only that ACCT complies with its obligation to license its Phase 1 deliverables to AHFC upon such payment.
- 6.7 **Binding Effect.** This Agreement is binding on and shall inure to the benefit of the Parties and their respective legal representatives, successors, and assigns.
- 6.8 **Governing Law; Jurisdiction.** This Agreement shall be construed and interpreted and the rights of the Parties determined in accordance with the laws of the State of Alaska. Should any legal proceeding be necessary under this Agreement, the same shall be commenced in the Superior Court of the State of Alaska, Third Judicial District at Anchorage, Alaska. MOA and AHFC agree specifically that venue and jurisdiction in that court are proper and further agree to submit themselves to the jurisdiction of that court as a result of any matter arising under this Agreement.
- 6.9 **Headings and Subheadings.** Headings and subheadings are provided for descriptive purposes only and shall not be interpreted as obligations of this Agreement.
- 6.10 **Enforceability of Agreement.** Invalidity or unenforceability of any provision of this Agreement shall not affect the remainder.
- 6.11 **Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by the Party who is bound to perform under the waived provision.
- 6.12 **Integration; Amendment.** This Agreement is the entire agreement of the Parties relating to the Property and it supersedes all prior agreements, understandings, representations, and negotiations. This Agreement may not be amended verbally or by any course of dealing, but only in writing signed by both parties.

6.13 Disputes. The Parties agree to apply the alternative disputes resolution procedures set forth in section 13.1 and 13.2 of the Block 70 Parking Garage Development Agreement to disputes between MOA and AHFC regarding this Agreement or the Parties' obligations or performance hereunder. Notwithstanding this provision, the alternative disputes resolutions procedures of Section 13.1 and 13.2 of the Block 70 Parking Garage Development Agreement shall not be applicable to any of the following: those matters set forth under this Agreement as being under the exclusive authority or sole discretion of either MOA or the AHFC; those matters which would subject AHFC to cost overruns under Section 5.5.7 of the Block 70 Parking Garage Development Agreement; or those matters, if any, subject to AHFC's administrative claims procedures.

DATED this 11th day of September, 2006.

MUNICIPALITY OF ANCHORAGE
A municipal corporation

By: [Signature]
Mark Begich
Its: Mayor

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 11th day of September, 2006, by Mark Begich, (title) Mayor of the City of Anchorage.

[Signature]
Notary Public in and for Alaska
My commission expires: 10/16/06

State of Alaska
NOTARY PUBLIC
Demetria Veasy
My Commission Expires October 16, 2006

DATED this 11th day of September, 2006.

ALASKA HOUSING FINANCE CORPORATION

By: [Signature]
Daniel R. Fauske
Its: Chief Executive Officer/Executive Director

STATE OF ALASKA

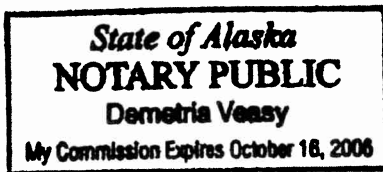
)

) ss.

THIRD JUDICIAL DISTRICT

)

The foregoing instrument was acknowledged before me this 14th day of September, 2006, by Daniel Fauske, (title) CEO/Exec Director of the Alaska Housing Fin. Corp.



Demetria Veasy
Notary Public in and for Alaska
My commission expires: 10/16/06

QUITCLAIM DEED WITH ONE LIMITED WARRANTY

WITNESSETH:

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

Page 1 of 2

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

Notary Public in and for Alaska

My Commission expires: _____