

Adopted: March 21, 2019

Resolution No. 2019-04

Relating to the Sale of Railroad Land Underlying the Whittier Manor Condominium Building in the Alaska Railroad Whittier Reserve

WHEREAS, the Alaska Railroad Corporation (“ARRC”) owns a parcel of land comprising approximately 58,730 square feet in the Alaska Railroad Whittier Reserve in Whittier, Alaska, which is more particularly described and shown on Exhibit 1 attached to this resolution (the “Property”); and

WHEREAS, the federally-owned Alaska Railroad, as lessor and predecessor in interest to ARRC, entered into a ground lease pertaining to the Property dated February 15, 1980, with the Whittier Manor Condominium Association (the “Association”), as lessee, which ground lease is currently administered as ARRC Contract No. 5136 (the “Association Lease”); and

WHEREAS, the Association Lease is for a term of forty (40) years and is scheduled to expire on December 31, 2019; and

WHEREAS, ARRC and the City of Whittier (the “City”) entered into a Ground Lease and Management Agreement dated November 13, 1998, currently administered as ARRC Contract No. 7531 (the “Master Lease”) that pertained to multiple parcels of land ARRC owns within the boundaries of the City, including the Property; and

WHEREAS, Section 5.1 of the Master Lease provides that the Association Lease is to remain in place during the entire term of the Association Lease, with ARRC continuing to administer, manage and retain the revenues from the Association Lease until its expiration date of December 31, 2019; and

WHEREAS, Section 5.1 of the Master Lease further provides that upon expiration of the Association Lease, the Property will be added to the leased premises subject to the Master Lease, and that the City will thereafter hold and manage the Property in accordance with the terms of the Master Lease, presumably under a sublease with the Association; and

WHEREAS, Section 6.2 of the Master Lease provides that for properties controlled and managed by the City pursuant to subleases under the Master Lease, the City and ARRC shall share the rent revenues attributable for each such property, with the City receiving 80% and ARRC receiving 20% of rent revenues for the first five (5) years of a sublease, and with the City receiving 60% and ARRC receiving 40% of rent revenues for all succeeding years during the term of the sublease; and

WHEREAS, the Master Lease is currently scheduled to expire on November 12, 2033, although the City holds two (2) extension options of thirty-five (35) years each; and

WHEREAS, pursuant to Section 2.4 of the Master Lease, during any portion of an extended term of the Master Lease resulting from the exercise by the City of one or both of its extension options, ARRC will have the right to terminate the Master Lease as to any portion of its leased premises if the Property becomes needed for railroad purposes; and

WHEREAS, the relative timing of the expiration of the Association Lease at the end of 2019 (with the associated taking control of the Property by the City) and the expiration of the Master Lease in 2033 (with the associated commencement of early termination rights in ARRC should the City exercise its option to extend) has made it infeasible for the homeowner members of the Association and/or prospective buyers of condominium units located on the Property to obtain adequate financing for purchasing or refinancing said condominium units; and

WHEREAS, as a result of the financing difficulties described in the preceding recital, the Association has requested that ARRC sell the Property to the Association; and

WHEREAS, an appraisal of the fair market value of the Property was conducted in 2015, as reflected by an appraisal report dated January 7, 2015, which appraisal found a fair market value of the Property was \$170,000 (the "2015 Appraisal"), and

WHEREAS, ARRC's Real Estate Department has determined that utilizing the 2015 Appraisal to determine the sale price of the Property would be commercially reasonable; and

WHEREAS, any sale of the Property by ARRC to the Association would require the City to rescind its future leasehold rights in the Property under the Master Lease; and

WHEREAS, the Association commissioned an economic report from Dr. Stephen Colt dated November 8, 2018 (the "Colt Report"), which opined that ARRC's ownership interest and the City's lease rights under the Master Lease supported a division of sales proceeds between ARRC and the City of between 42.2% and 43.4% to ARRC and between 56.6% and 57.8% to the City, and ARRC's Real Estate Department has agreed with that conclusion; and

WHEREAS, ARRC is authorized to sell its land pursuant to AS 42.40.285, 42.40.350 and 42.40.352 upon (i) the making by the Board of Directors of certain findings relating to sale of the Property, (ii) the provision of public notice of ARRC's intent to sell the Property, (iii) the provision to the existing lessee of a right of first refusal to purchase the Leased Parcel; and (iv) approval of the proposed sale by the Alaska Legislature; and

WHEREAS, the Property is not currently included in ARRC's formal planning for operations within the Whittier Reserve, but may someday be a necessary parcel for expansion of the Whittier Rail Yard; and

WHEREAS, the Board of Directors finds that providing an option for the Association, its members and their prospective buyers to be able to obtain financing to refinance or purchase condominium units in Whittier Manor would be beneficial not only to those parties, but, given the limited residential housing options available in the City of Whittier and if provisions are included in the conveyance for ARRC to retain future rights to repurchase or redeem the Property, would also benefit ARRC and the State; and

WHEREAS, the Board of Directors specifically and expressly finds that (i) the Property is not currently necessary for railroad purposes, but might become so in the future, and (ii) the sale of the land to the Association would be, if made subject to the retention by ARRC of certain rights to repurchase and/or redeem the Property, in the best interest of the State of Alaska; and

WHEREAS, the Board of Directors has reviewed the terms and conditions of the proposed sale of the Property set forth on the Summary of Terms and Conditions attached to this resolution as Exhibit 2.

NOW, THEREFORE, BE IT RESOLVED that the ARRC Board of Directors hereby approves the proposed sale of the Property to the Association exchange for a cash payment to ARRC equal to the \$170,000 fair market value of a fee simple interest in the Property as determined in the 2015 Appraisal, less (i) the fair market value of the City's contingent future leasehold interest taking into account the terms of the Master Lease applicable to the Property, which amount is to be determined consistent with the conclusions of the Colt Report; and (ii) reasonable Seller's closing costs, with such sale being strictly subject to all the following conditions:

- a) The Association shall obtain from the City an agreement under which the City shall relinquish any and all rights the City has under the Master Lease that relate to the Property, with any payment to the City for said relinquishment to be made by the Association; and
- b) The Association shall obtain, during 2019, approval of the Alaska Legislature for the sale by ARRC of the Property to the Association and ARRC shall cooperate in supporting the Association's attempt to obtain said legislative approval; and
- c) Any deed conveying the Property from ARRC to the Association shall reserve and/or contain the following rights and restrictions: (i) rights of first option and first refusal pursuant to which ARRC shall have the right to purchase the Property and any improvements thereon for fair market value, as determined by appraisal, in the event the Association decides to sell the Property; (ii) a future right in ARRC, commencing within no more than forty (40) years from the date of this resolution, to obtain conveyance of the Property and the improvements thereon in exchange for a cash payment equal to no more than 125% of their fair market value as determined by appraisal, with this right to be exercised only in the event that ARRC determines in its reasonable discretion and consistent with the definition of necessity found in Section 2.4 of the Master Lease that the Property has become necessary for railroad purposes; (iii) a right in ARRC, to the extent allowed by applicable law, to

exercise on its own behalf any rights the Association may have with respect to any foreclosure proceeding against the Property by a creditor or taxing authority, or with respect to any bankruptcy and/or receivership proceedings involving the Property, including any right held by the Association to redeem or repurchase the Property; and (iv) a provision that the conveyance of the Property to the Association shall be made on an "as-is, where-is" basis; and

- d) Where the above conditions require a future finding of the fair market value of the Property and/or the improvements thereon, such value shall be determined based on the use of the Property and the improvements for multi-unit residential condominium purposes; and
- e) The purchase transaction contemplated by this resolution shall be closed on or before December 31, 2019, except that if the City has by that time relinquished its interest in the Property under the Master Lease, then ARRC and the Association may extend this deadline upon their mutual, written agreement; and

NOW, THEREFORE, BE IT FURTHER RESOLVED that the ARRC Board of Directors hereby directs and authorizes the President and CEO, or his designee, to take such actions as are reasonably necessary to meet all obligations of ARRC relating to the sale of the Property as described above, including but not limited to (i) issuing required public notice; (ii) cooperating with the Association with respect to appropriate legislation to secure the approval of the Alaska Legislature for the proposed sale of the Property; and (iii) if legislative approval is obtained and all other conditions are met, negotiating, finalizing and executing all documents necessary to complete said transaction.

This is to certify that I am the Secretary of the Board of Directors of the Alaska Railroad Corporation, and the above Resolution No. 2019-04 is a true and correct copy of the resolution adopted by the Alaska Railroad Corporation's Board of Directors at its special board meeting on Thursday, March 21, 2019.

Date

March 21, 2019

Andrew Behrend

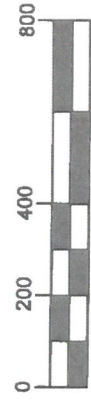
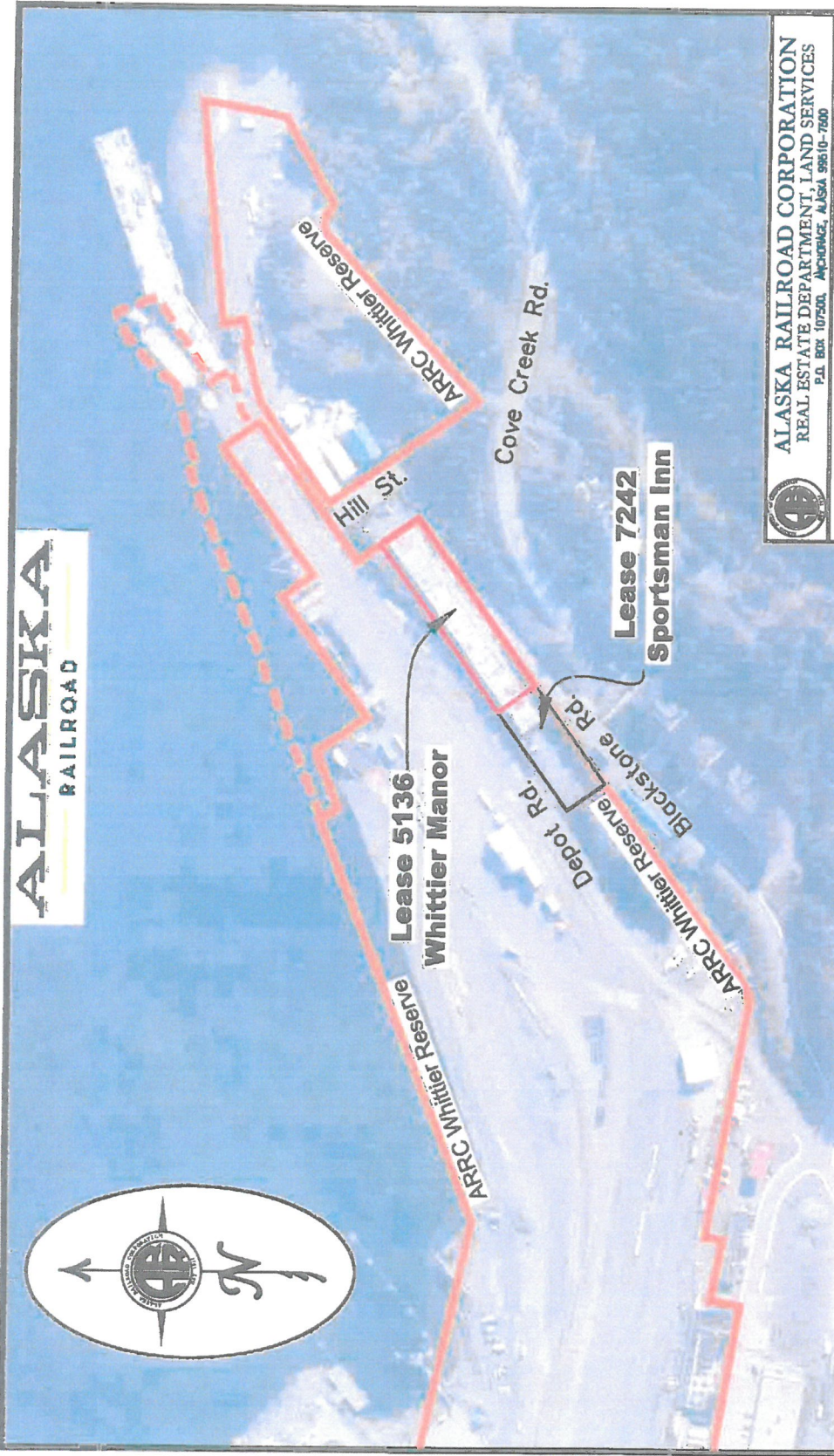
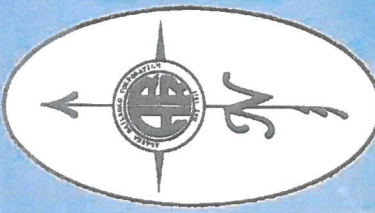
Andrew Behrend
Board Secretary

Corporate Seal



Legal Description

Beginning at Corner "G", City of Whittier Subdivision phase one, part of USS 2559; thence N 76° 29' E, 42.18 feet; thence N 55° 39' E, 915.58 feet to true point of beginning; thence N 34° 21' W, 115.0 feet; thence N 55° 39' E, 510.7 feet; thence S 34° 21' E, 115.0 feet; thence S 55° 39' W, 510.7 feet to the true point of beginning. Said parcel contains 58,730.5 square feet more or less as shown in "RED" on the attached print.



1 Inch = 400 Feet

For indexing purposes this property is located in the S1/2 Sec. 13, and the N1/2 Sec. 24, both within, T8N, R4E, S.1M.

ALASKA RAILROAD CORPORATION
REAL ESTATE DEPARTMENT, LAND SERVICES
P.O. BOX 107500, ANCHORAGE, ALASKA 99510-7500

Contract No. 5136 - Exhibit A
Whittier Manor Condominium Association
Area = 58,730 sq ft ± (1.35 ac ±)

ARRC title - Patent 50-2005-0045 - USS 9008 Lot 8
DRAWN BY: AMB SCALE: 1" = 400' DATE: 2016-06-04
CHECKED BY: DAS
APPROVED BY: DAS

Whittier Terminal Reserve
R:\00 RED LEASES\WHM\5136-L Overview.dwg

AlaskaRailroad.com

Exhibit 2 to Resolution No. 2019-04. Summary of Terms and Conditions for Sale of Railroad Land Underlying the Whittier Manor Condominium Building in the Alaska Railroad Whittier Reserve:

Property: An approximately 58,730 square-foot parcel of land underlying the Whittier Manor Condominium building in the Alaska Railroad Whittier Reserve, as more particularly described on Exhibit 1 attached to this resolution, which is currently subject to a ground lease between ARRC and the Whittier Manor Condominium Association, ARRC Contract No. 5136, referred to herein as the Association Lease.

Title to be Conveyed: Fee simple, on an as-is, where-is basis, subject to any easements or other encumbrances remaining after the City of Whittier rescinds its interest in the Property under the Master Lease, and also subject to the following rights being reserved to ARRC:

(i) Rights of first option and first refusal providing the right to purchase the Property and any improvements thereon for fair market value, as determined by appraisal, in the event the Association decides to sell the Property and improvements, or to purchase the property and improvements by matching a bona fide offer of a third-party to purchase the same; and

(ii) A future right in ARRC, commencing forty (40) years from the date of this resolution and requiring 3 years advance notice to the Association, to obtain conveyance of the Property and the improvements thereon in exchange for a cash payment equal to 125% of their fair market value as determined by appraisal, with such right to be exercised only in the event that ARRC determines in its reasonable discretion consistent with the definition found in Section 2.4 of the Master Lease that the Property has become necessary for railroad purposes; and

(iii) A right, to the extent allowed by applicable law, for ARRC to exercise on its own behalf the any rights the Association may have with respect to any foreclosure proceeding against the Property by a creditor or taxing authority, or with respect to any bankruptcy and/or receivership proceedings involving the Property, including any right held by the Association to redeem or repurchase the Property.

Sale Price and Additional Consideration: A cash payment by the Association to ARRC of \$170,000, less the fair market value of the City's contingent future leasehold interest taking into account the terms of the Master Lease applicable to the Property, which amount is to be determined consistent with the conclusions of the Colt Report, and also less any settlement costs to be paid by ARRC.

Estimated Date of Sale: 2019. The sale is conditional upon the approval of the sale by the Alaska Legislature during 2019. The actual date of the sale will depend on the timing of such approval and the timing of completion of the obligations of ARRC and the Association required to close the transaction.