

State of Alaska

Legislative Affairs Agency

Administrative Services, Supply Section

State Capitol Room 3 ~ Juneau, AK 99801-1182 ~ Phone (907) 465-3853 ~ Fax (907) 465-2918



MEMORANDUM

TO: Pamela A. Varni, Executive Director
Legislative Affairs Agency

FROM: Tina Strong, Procurement Officer *TS*
Legislative Affairs Agency

DATE: October 21, 2013

SUBJ: Sitka Lease Transfer to SCOJO, LLC and approval of Subordination, Non-Disturbance and Attornment Agreement

The building that the Sitka Legislative Information Office, Senator Bert Stedman, and Representative Jonathan Kreiss-Tomkins are located in has been sold to SCOJO, LLC. Per our procurement procedures a novation or change of name requires a majority of the members to approve the change. Therefore, I ask that Legislative Council approve the name change of our Sitka landlord on our lease document from Shee Atiká Management, LLC to SCOJO, LLC.

Evergreen Business Capital, the lender of SCOJO, LLC would like the Agency to agree to a Subordination, Non-Disturbance and Attornment Agreement. Legislative Council has approved these agreements in the past.

The agreement protects the lender's interests that they're taking in this property so they can be in first position should it become necessary to foreclose on the lessor. The lender is requesting that the Legislature accept being in a position behind them and that we accept them as the new lessor should there be a foreclosure. The lender agrees that if there is a foreclosure, they will not evict us. The agreement will only be invoked should a foreclosure take place. The lender would then step in and the Legislature would be allowed to finish the lease under the existing terms.

Legal has reviewed the agreement and is working with the lender on a few changes to make the agreement more clear. The draft agreement with the suggested changes is attached for your review. I ask that Legislative Council approve Legal Services to work with the parties involved to amend the proposed Subordination, Non-Disturbance and Attornment Agreement with Evergreen Business Capital and our Sitka landlord SCOJO, LLC, and that Legislative Council approve at this time the Agreement as so amended.

Enclosure

Subordination - our interests placed after lender's on record, even though recorded before

Non-disturbance - Usually : Lender won't terminate lease if foreclosure

Attornment - Substitution of Lender for Lessor if Lender gets the property.

AFTER RECORDING, RETURN TO:
Bendich, Stobaugh & Strong, P.C.
701 Fifth Avenue, Suite 6550
Seattle, WA 98104

Subordination, Non-Disturbance and Attornment

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

(hereinafter "Agreement")

THIS AGREEMENT is made this ____ day of _____, 2013 between
State of Alaska for the Legislative Affairs Agency (hereinafter called "Tenant"), and
Evergreen Business Capital (hereinafter called "Lender").

RECITALS:

following

1. The Tenant entered into a lease (hereafter the "Lease") with Shee Atika
Incorporated covering portion of the real property (the "Premises") described as:

SCOJO LLC.
and Alaska Limited Liability
Company (hereinafter
"Landlord")

Lot One (1) Totem Square Subdivision, according to the plat thereof filed September 25,
2006 as Plat No. 2006-18, Sitka Recording District, First Judicial District, State of
Alaska.

The reference to this lease was originally recorded on July 26, 2004 in the Sitka
Recording District at Document No. 2004-001329-0. The last renewal was recorded on
January 3, 2012 in the Sitka Recording District as Document No. 2012-000014-0. The
landlord's interest in the lease is now held by SCOJO, LLC ("Landlord").

approximately 1325 Square feet located at Suite 103
of the building at 201 Kathleen Street, Sitka, Alaska, on

2. The Lender has agreed to make a loan of \$1,945,000 to Landlord secured by a Deed of Trust covering the real property described at Exhibit A, provided, however, that said Lease is subordinate to the lien of the Deed of Trust; and

((not attached)))

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, the parties hereto mutually covenant and agree as follows:

1. The Lease and any extensions, renewals, replacements or modifications thereof, and all of the right, title and interest of the Tenant in and to said Premises are and shall be subject and subordinate to the Deed of Trust and to all of the terms and conditions contained herein, and to any renewals, modifications, replacements, consolidations and extensions thereof.

2. Lender consents to the Lease and, in the event of foreclosure of said Deed of Trust, Lender agrees to recognize Tenant and further agrees that Tenant shall not be disturbed in its possession of the Premises for any reason other than one which would entitle the Landlord to terminate the Lease under its terms or would cause, without further action by such Landlord, the termination of the Lease or would entitle such Landlord to dispossess the Tenant from the Premises. , and lender ^{shall be} bound to the Tenant,

3. Tenant agrees with Lender that if the interests of Landlord in the Premises ^{all} shall be transferred to and owned by Lender by reason of foreclosure or other proceedings brought by ^{the Lender} it, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be affected in accordance with any option ^{for renewal} therefor in the Lease, with the same force and effect as if Lender were the Landlord under the Lease, and Tenant does hereby attorn to Lender as its Landlord, said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Lender providing Tenant written notice that Lender has acquired title to the Premises. ^{Sec. 5 of this Agreement will not apply after attornment under this sec. 3.} and ^{verification} ^{reasonable}

((Q: Was the deed Sec. 2 upgrade been done?)))

unless the lender continues the action or omission after the attornment

4. Tenant agrees with Lender that if Lender ~~shall~~ succeed to the interest of Landlord under the Lease, Lender shall not be (a) liable for any action or omission of any prior landlord under the Lease, or (b) subject to any offsets or defenses which Tenant might have against any prior landlord, or (c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, or (d) bound by any security deposit which Tenant may have paid to any prior Landlord, unless such deposit is in an escrow fund available to Lender, or (e) bound by any amendment or modification of the Lease made without Lender's consent, ^{or (f) bound by any provision in the Lease which obligates the Landlord to erect or complete any building or to perform any construction work or to make any improvements to the Premises.}

((f) could be interpreted to wipe out ADA Compliance, repairs, etc.)))

, which may not be unreasonably withheld, after the date of this

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Subordination, Non-Disturbance and Attornment Agreement.

In this paragraph 4, "amendment" or "modification" does not mean a lease renewal; a lease extension; a termination by the Tenant if sufficient funds are not appropriated for the lease.

by Lender or Lender's

5. In the event that the Landlord shall default in the performance or observance of any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to the Lender and the Lender shall have the right (but not the obligation) to cure such default. Tenant shall not take any action with respect to such default under the Lease, ~~including and without limitation, any action in order to terminate, rescind or avoid the Lease or to withhold any rental thereunder,~~ for a period of ten (10) days after receipt of such written notice thereof by the Lender with respect to any such default capable of being cured by the payment of money and for a period of thirty (30) days after receipt of which written notice thereof by the Lender with respect to any other such default (provided, that in the case of any default which cannot be cured by the payment of money and cannot with diligence be cured within such thirty (30) day period because of the nature of such default or because Lender requires time to obtain possession of the Premises in order to cure the default, if Lender shall proceed promptly to attempt to obtain possession of the Premises, where possession is required, and to cure the same and thereafter shall prosecute the curing of such default with diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of the same diligence and continuity). *← ((BRI Section # 1)))*

6. This Agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns. As used herein the term "Tenant" shall include the Tenant, its successors and assigns; the words "foreclosure" and "foreclosure sale" as used herein shall be deemed to include the acquisition of Landlord's estate in the Premises by voluntary deed (or assignment) in lieu of foreclosure, and the word "Lender" shall include the Lender herein specifically named and any of its successors and assigns, including anyone who shall have succeeded to Landlord's interest in the Premises by, through or under foreclosure of the Deed of Trust.

8. ~~7.~~ *← ((Insert # 2)))* This Agreement shall not be modified or amended except in writing signed by all parties hereto.

9. ~~8.~~ *← ((Insert # 3)))* The use of the neuter gender in this Agreement shall be deemed to include any other gender, the words in the singular number shall be held to include the plural, when the sense requires.

10. *← ((Insert # 3)))* IN WITNESS WHEREOF the parties hereto have placed their hands and seals the day and year first above written.

TENANT: STATE OF ALASKA

By: _____

Name: _____

Title: _____

*Remedy
LAWY CONFUSION,
ONE SIGNED FOR
OTHER*

*Insert
Initial
Signature
Printed
Full Name*

State of Alaska)
) ss.
_____Judicial District)

I certify that I know or have satisfactory evidence that _____ signed
this instrument, on oath stated that s/he was authorized to execute the instrument and
acknowledged it as the _____ of STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY to be the free and voluntary act of such party for
the uses and purposes mentioned in the instrument.

Dated _____

(Seal or stamp)

NOTARY PUBLIC in and for the State of
Alaska, residing at _____
My appointment expires _____

((Handwrit signature block))

Evergreen Business Capital

✓

By: _____
Edna L. Peterson Vice President

STATE OF Washington)
) ss.
County of King)

I certify that I know or have satisfactory evidence that Edna L. Peterson signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the Vice President of Evergreen Business Capital to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated _____

(Seal or stamp)

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My appointment expires _____

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INSERT # 1

5. Tenant agrees with the Lender that, notwithstanding sec. 32 (Remedies on ^{1 or} Default) ^{the Lender will} of the Lease, ^{under sec 32 of the lease} not to seek to terminate the Lease because of a default of the Landlord without giving prior written notice ^{of the default} to the Lender and allowing the lapse of the time allowed under sec. 32 for the Landlord to remedy the default and an additional ~~30~~ ¹⁵ days after the expiration of the time allowed under sec. 32 for the Landlord to remedy the default. However, with respect to a default of the Landlord under the Lease that cannot ^{be} remedied within the time allowed under the Lease plus the ^{additional 15} ~~30~~ days, if Lender begins to cure the default within that time and diligently proceeds with those efforts and pursues the efforts to completion, Lender may have the time that is reasonably necessary to ~~complete curing the default~~. Notwithstanding the foregoing, if either the Lender or the Landlord ^{do} ~~not cure or begin curing~~ the default within the time provided to Landlord under the Lease and the nature of the default threatens Tenant's ability to conduct its daily business or threatens to materially or adversely damage Tenant's property located on the Premises, Tenant may exercise its rights under the Lease, including, but not limited to, termination, without further consent by Lender.

the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of annual rent or in the performance of any of the terms, covenants, and conditions of the Lease on Tenant's part to be performed that are available to Landlord under the Lease. Tenant shall have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant might have had against Landlord if Lender had not succeeded to the interest of Landlord; provided, however, that Lender shall not be:

- (A) Liable for any act or omission of or any claims against any prior landlord, including Landlord; or
- (B) Subject to any offsets or defenses which Tenant might have against any prior landlord, including Landlord; or
- (C) Bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, including Landlord; or
- (D) Bound by any amendment or modification of the Lease, or waiver of any of its terms, made without its consent, which may not be unreasonably withheld; in this paragraph (D), "amendment" or "modification" does not mean a Lease renewal; or
- (E) Liable for any sum that any prior landlord, including Landlord, owed to Tenant, including without limitation any security deposit, unless the amount owed was actually delivered to Lender; or
- (F) Bound by any surrender, cancellation, or termination of the lease, in whole or in part, agreed upon between Landlord and Tenant; in this paragraph (F), "surrender, cancellation, or termination" does not mean a termination under the Right to Cure section of this Agreement or a termination under sec. 42 of the Lease for failure to appropriate sufficient funding; or
- (G) Liable for any construction obligation of any prior landlord, including Landlord; or
- (H) Liable for any breach of representation or warranty of any prior landlord, including Landlord.

NEW LEASE. If Lender shall succeed to the interest of the Landlord under the Lease, upon the written request of Lender to Tenant, Tenant shall execute and deliver to Lender a lease of the Real Property upon the same terms and conditions as the Lease between Landlord and Tenant, which lease shall cover any unexpired term and renewals of the Lease existing prior to such transfer.

~~ACKNOWLEDGMENT AND AGREEMENT BY LANDLORD.~~ Landlord, as landlord under the Lease, acknowledges and agrees for itself and its heirs, successors and assigns to each of the following:

*Insert
2*

- (A) This Agreement does not in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Note, Lender's Lien or any other documents executed in connection with the Loan.
- (B) In the event of a default under the ^{Deed of Trust} Note, or any of the other documents executed in connection with the Loan, Landlord hereby consents to Tenant's attornment to Lender and, upon such event, Tenant shall pay all rent and all other sums due under the Lease to Lender as provided in the Lease.

RIGHT TO CURE. Tenant hereby warrants and represents, covenants and agrees to and with Lender not to seek to terminate the Lease by reason of any default of Landlord without prior written notice thereof to Lender and the lapse thereafter of such time as under the Lease was offered to Landlord in which to remedy the default, and the lapse of 30 days after the expiration of such time as Landlord was permitted to cure such default; provided, however, that with respect to any default of Landlord under the Lease which cannot be remedied within such time, if Lender commences to cure such default within such time and thereafter diligently proceeds with such efforts and pursues the same to completion, Lender shall have such time as is reasonably necessary to complete curing such default. Notwithstanding the foregoing, in the event either Lender or Landlord do not cure or commence curing such default within the time provided to Landlord under the Lease and the nature of the default threatens Tenant's ability to conduct its daily business or threatens to materially or adversely damage tenant's property located on the Leased Premises, Tenant shall be permitted to exercise its rights under the Lease, including termination, without further consent by Lender.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement 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.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Agreement, Lender shall be entitled to recover such sum as the court may adjudge

3. The Employee will not receive State of Alaska health insurance benefits.
(Insert "will" or "will not")

4. The Employee will receive leave benefits.
(Insert "will" or "will not")

~~VENUE~~

~~If~~ ^{Agreement} ~~In the event that the parties to this contract find it necessary to litigate the terms of the~~ ^{this Agreement} ~~contract, venue shall be the State of Alaska, First Judicial District, at Juneau, and the~~ ~~contract shall be interpreted according to the laws of Alaska.~~

Insert
#3.

MODIFICATION AND PREVIOUS AGREEMENTS

This document contains all terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind either of the parties to this contract.

This document is void unless in writing and signed by the parties to this