

# *Alaska State Legislature*

## *Legislative Affairs Agency*

Administrative Services, Procurement & Supply Section  
120 4<sup>th</sup> Street, State Capitol Room 3, Juneau, AK 99801-1182  
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### MEMORANDUM

**TO:** Senator Gary Stevens, Chair  
Legislative Council

**FROM:** JC Kestel, Procurement Officer  
Legislative Affairs Agency

**DATE:** November 22, 2020

**SUBJ:** Mat-Su Office Space Lease Assignment and Subordination Agreement

The Legislature's Mat-Su office space located at 600 East Railroad avenue in Wasilla has been purchased by 600 E Railroad Avenue, LLC, owned by Dr. Tony Nimeh. The office space is currently occupied by Senator Hughes, Senator Wilson, Senator Shower, Representative Neuman, Representative Tilton, Representative Sullivan-Leonard, Representative Johnson, Representative Eastman, Representative Rauscher, and the Mat-Su Legislative Information Office.

Our procurement procedures require a Lease Assignment with Subordination Agreement be considered and approved by a majority of the members of Legislative Council.

LAA requests that Legislative Council approve the Lease Assignment and Consent with the Subordination Agreement of the existing Mat-Su lease agreement from Wasilla Station, LLC to 600 E Railroad Avenue, LLC for the duration of the Lease. Once approved, all obligations under the original lease agreement would be transferred to 600 E Railroad Avenue, LLC. The Subordination Agreement would exist between 600 E Railroad Avenue, LLC, Northrim Bank, and the Legislative Affairs Agency. If the Lease Assignment and Consent is not approved by the Council, a new RFP will have to be issued for Mat-Su office space.

I have included a copy of the draft Subordination Agreement for review and am available to answer any questions about the Lease Assignment and Consent.

**MOTION 1: I MOVE THAT LEGISLATIVE COUNCIL APPROVE ASSIGNMENT OF THE LEASE FOR MAT-SU OFFICE SPACE FROM WASILLA STATION, LLC TO 600 E RAILROAD AVENUE, LLC FOR THE DURATION OF THE LEASE.**

**MOTION 2: I MOVE THAT LEGISLATIVE COUNCIL APPROVE THE SUBORDINATION AGREEMENT FOR MAT-SU OFFICE SPACE BETWEEN 600 E. RAILROAD AVENUE, LLC, NORTHRIM BANK, AND THE LEGISLATIVE AFFAIRS AGENCY FOR THE DURATION OF THE LEASE.**

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## SUBORDINATION, NONDISTURBANCE AND ATTORNMEN T AGREEMENT AND ESTOPPEL CERTIFICATE

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMEN T AGREEMENT AND ESTOPPEL CERTIFICATE ("Agreement") is made on November XX, 2020, between State of Alaska Legislative Affairs Agency, whose address is State Capitol, Room 3, Juneau AK 99801-1182 ("Tenant") and NORTHRIM BANK whose address is PO Box 241489, Anchorage, Alaska 99524-1489 ("Lender"), which is organized and existing under the laws of the State of Alaska. 600 E RAILROAD AVENUE, LLC, an Alaska Limited Liability Company, whose address is 607 OLD STEESE HWY SUITE B306, FAIRBANKS, Alaska 99701 ("Landlord") is the fee owner of the following described real property:

Address: 600 E Railroad Avenue, Wasilla, Alaska 99654

Legal Description: Block 5B, FLOYD 2010 SUBDIVISION, according to the official plat thereof, filed under Plat Number 2010-102, in the records of the Palmer Recording District, Third Judicial District, State of Alaska.

Parcel ID/Sidwell Number: 7011B5B0000

("Property"). The Landlord has given a security interest in the Property to Lender pursuant to an instrument dated October 13, 2020 ("Security Instrument") which was as Instrument No. \_\_\_\_\_, records of Palmer Recording District of Third Judicial District, State of Alaska, Pursuant to a lease dated November 15, 2007 ("Lease") by and between Tenant and Landlord, Tenant leases a portion of the structure located upon the Property and more commonly described as approximately 6,927 square feet of office space located at 600 East Railroad Avenue, Lot 5, Floyd Subdivision, Wasilla AK. ("Premises").

The parties to this Agreement hereby agree as follows:

**SUBORDINATION.** Except as otherwise provided in this Agreement, the Lease, and all rights of the Tenant under the Lease and to the Property, including without limitation any option to purchase or otherwise acquire title to the Property, are hereby subjected and subordinated, and shall remain in all respects and for all purposes subject and subordinate, to the lien of the Security Instrument, and to the rights and interest of the Lender and its successors and assigns, as fully and with the same effect as if the Security Instrument had been duly executed, acknowledged and recorded, and the indebtedness secured thereby had been fully disbursed prior to the execution of the Lease or possession of the Property by Tenant, or its predecessors in interest.

**NON-DISTURBANCE.** Until the Security Instrument is satisfied and released, Lender agrees that so long as the Tenant is not in default (beyond any period given the Tenant under the Lease to cure such default) in the payment of rent or in the performance of any of the terms, covenants, or conditions of the Lease, the Lender will not join the Tenant as a party defendant in any action or proceeding foreclosing the Security Instrument unless required to foreclose the Security Interest, and then only for such purpose and not for the purpose of terminating the Lease. Lender further agrees that the Tenant's possession of the Property and the Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with the Lease, shall not be

diminished or interfered with by the Lender, and the Tenant's occupancy of the Property shall not be disturbed by the Lender.

**ATTORNMEN**T. If the interest of the Landlord shall be transferred to and owned by the Lender by reason of foreclosure of the Security Instrument or other proceedings brought in lieu of or pursuant to a foreclosure, or in any other manner, and the Lender succeeds to the interest of the Landlord under the Lease, the Tenant shall be bound to the 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 of the Lease, with the same force and effect as if the Lender were originally the landlord under the Lease. The Tenant hereby attorns to the Lender as its Landlord, such attornment to be automatically effective immediately upon the Lender's succeeding to the interest of the Landlord under the Lease without the execution of any further instruments on the part of any of the parties hereto. The respective rights and obligations of the Tenant and the Lender upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals hereto, shall be and are the same as now set forth in the Lease, the terms of which are hereby fully incorporated herein by reference and made a part of this Agreement.

**LENDER NOT BOUND BY CERTAIN ACTS OF LANDLORD**. If the Lender shall succeed to the interest of the Landlord under the Lease, the Lender shall not be: (a) liable for any act or omission of Landlord; (b) subject to any offsets or defenses which the Tenant might have against the Landlord; (c) bound by any rent or additional rent which the Tenant might have paid for more than the then current installment; nor (d) bound by any amendment or modification of the Lease made without the Lender's consent.

#### TENANT ESTOPPEL CERTIFICATE

**TENANT REPRESENTATIONS AND WARRANTIES**. Tenant, for itself, its heirs, personal representatives, successors, and assigns, represents, warrants, covenants and agrees with Lender, its successors and assigns, as follows:

**Rent Payment**. The minimum rent payment currently payable per annum under the terms of the Lease is \$15,670.76. Payment in full has been tendered for all Lease payments through November 31, 2020.

**Lease Term**. The term of the Lease has commenced and will terminate on July 31, 2022 subject to any renewal or cancellation rights specified in the Lease. Except as specifically provided in the Lease, Tenant does not have an option or right to renew or cancel the Lease, to lease additional space in the Premises, nor to purchase any part of the Premises.

**Security Deposit**. As required by the terms of the Lease, Tenant has paid to Landlord a security deposit in the amount of \$N/A which is to be applied by Landlord or returned to the Tenant in accordance with the terms of the Lease. Tenant agrees and consents that Lender will have no responsibility or liability for any security deposit, except where the security deposit has been actually received by Lender.

**Complete Lease Attached**. Tenant hereby warrants that as of November XX, 2020 a true, correct and complete copy of the Lease including all amendments modifications thereof is attached to this Agreement. The Lease constitutes the entire agreement between the Tenant and Landlord with respect to the Premises, has not been modified, changed, altered, or amended other than as attached to this Agreement. The terms of the Lease remain in full force and effect.

**Improvements**. As of the date this Agreement is executed, all contributions required to be paid by Landlord for improvements to the Premises have been paid in full. Landlord has fully performed all obligations with respect to Tenant improvements on the Premises and Tenant has accepted the Premises as is, subject only to those conditions specifically enumerated in the Lease.

**No Bankruptcy**. There are no actions, whether voluntary or otherwise, pending against the Tenant or any other party responsible for payment of the Tenant's obligations under the Lease pursuant to the bankruptcy or insolvency laws of the United States or the law of state.

**No Default**. Tenant affirms that to the best of his/her knowledge and belief, no party to the Lease is in default under the terms of the Lease. To the best knowledge of the Tenant, no event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default. The interest of the Tenant in the Lease has not been assigned or encumbered. The Tenant is not entitled to any credit against

any rent or other charge or rent concession under the Lease except as set forth in the Lease. No rental payments have been made more than one month in advance.

No Hazardous or Toxic Waste. Tenant represents and warrants that it has not used, generated, released, discharged, stored or disposed of any hazardous waste, toxic substances or related materials (collectively, "Hazardous Materials") on, under, in or about the Premises, or transported any Hazardous Materials to or from the Premises, other than Hazardous Materials used in the ordinary and commercially reasonable course of the Tenant's business in compliance with all applicable laws. The term "Hazardous Materials" shall mean:

(a) any "hazardous substance" as such term is presently defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.) and any regulations promulgated thereunder ("CERCLA"); (b) any additional substances or materials which are hereafter incorporated in or added to the definition of "hazardous substance" for purposes of CERCLA; and (c) any additional substances or materials which are now or hereafter defined as "hazardous substances," "hazardous waste," "toxic substances" or "toxic waste" under any other federal law or under any state, county, municipal or other law applicable to the Premises or under any regulations promulgated pursuant thereto.

Acknowledgment. Tenant hereby acknowledges that Landlord intends to encumber the Property with a real estate security instrument in favor of Lender. Tenant further acknowledges the right of Landlord, Lender and any and all of Landlord's present and future lenders to rely upon the statements and representations of the Tenant contained in this Agreement and further acknowledges that any loan secured by this, and any future, real estate security instruments will be made and entered into in material reliance on this Agreement.

NOTICES AND WAIVER OF NOTICE. Unless otherwise required by applicable law, any notice or demand given by Lender to any party is considered effective when it is deposited in the United States Mail with the appropriate postage, mailed to the address of the party given at the beginning of this Agreement unless an alternative address has been provided to Lender in writing. To the extent permitted by law, Landlord and Tenant waive notice of Lender's acceptance of this Agreement, defenses based on suretyship, any defense arising from any election by Landlord or Tenant under the United States Bankruptcy Code, Uniform Commercial Code, as enacted in the state where Lender is located or other applicable law or in equity, demand, notice of acceleration, notice of nonpayment, presentment, protest, notice of dishonor and any other notice.

LENDER'S RIGHTS AND REMEDIES. The rights and remedies of the Lender under this Agreement are cumulative, and are not in lieu of, but are in addition to all other rights and remedies which Lender has under this Agreement and the Security Instrument.

SUCCESSORS AND ASSIGNS. All covenants and agreements contained in this Agreement shall bind, and the rights hereunder shall inure to the respective successors and assigns of the Lender, Landlord, and Tenant.

ENTIRE AGREEMENT; MODIFICATIONS; SEVERABILITY. This Agreement shall constitute the entire agreement between Lender, Landlord, and Tenant. Any modification of this Agreement shall be binding only if placed in writing and signed by the Lender, Landlord, and Tenant. The invalidity of any provision of this Agreement shall not affect the validity of any other provision.

PARAGRAPH HEADINGS; SINGULAR AND PLURAL TERMS. The titles to the paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to interpret this Assignment. Whenever used, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders.

GOVERNING LAW. This Agreement will be governed by the laws of the State of Alaska including all proceedings arising from this Agreement.

WAIVER OF JURY TRIAL. All parties to this Agreement hereby knowingly and voluntarily waive, to the fullest extent permitted by law, any right to trial by jury of any dispute, whether in contract, tort, or otherwise, arising out of, in connection with, related to, or incidental to the relationship established between them in this Agreement or any other instrument, document or agreement executed or delivered in connection with this Agreement or the related documents.

ORAL AGREEMENTS DISCLAIMER. This Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

By signing this Agreement, the parties acknowledge reading, understanding, and agreeing to all its provisions.

600 E RAILROAD AVENUE, LLC

By: TONY NIMEH Date  
Its: MEMBER

BUSINESS ACKNOWLEDGMENT

STATE OF ALASKA )  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged on the \_\_\_\_\_, by

TONY NIMEH, MEMBER on behalf of 600 E RAILROAD AVENUE, LLC, an Alaska Limited Liability Company, who personally appeared before me.

In witness whereof, I hereunto set my hand and, if applicable, official seal.

My commission expires: \_\_\_\_\_  
\_\_\_\_\_ residing at \_\_\_\_\_,  
\_\_\_\_\_, in \_\_\_\_\_  
\_\_\_\_\_ County.  
\_\_\_\_\_ County, AK  
Identification Number \_\_\_\_\_

(Official Seal)

STATE OF ALASKA  
LEGISLATIVE COUNCIL, CHAIR

By Senator Gary Stevens Date  
Its: Chair, Legislative Council

STATE OF ALASKA  
LEGISLATIVE AFFAIRS AGENCY

By Jessica Geary Date  
Its: Executive Director

STATE OF ALASKA  
LEGISLATIVE LEGAL SERVICES

By Emily Nauman \_\_\_\_\_ Date \_\_\_\_\_  
Its: Deputy Director of Legal Services

STATE OF ALASKA                    )  
  )  
COUNTY OF \_\_\_\_\_  )

This instrument was acknowledged on the \_\_\_\_\_, by Senator Gary Stevens, Chair on behalf of the Alaska, Legislative Council who personally appeared before me. In witness whereof, I hereunto set my hand and, if applicable, official seal.

My commission expires: \_\_\_\_\_  
\_\_\_\_\_ residing at \_\_\_\_\_,  
\_\_\_\_\_, in \_\_\_\_\_  
\_\_\_\_\_ County.  
\_\_\_\_\_  
\_\_\_\_\_ County, AK  
Identification Number \_\_\_\_\_

(Official Seal)

STATE OF ALASKA                    )  
  )  
COUNTY OF \_\_\_\_\_  )

This instrument was acknowledged on the \_\_\_\_\_, by Jessica Geary, Executive Director on behalf of the Legislative Affairs Agency who personally appeared before me. In witness whereof, I hereunto set my hand and, if applicable, official seal.

My commission expires: \_\_\_\_\_  
\_\_\_\_\_ residing at \_\_\_\_\_,  
\_\_\_\_\_, in \_\_\_\_\_  
\_\_\_\_\_ County.  
\_\_\_\_\_  
\_\_\_\_\_ County, AK  
Identification Number \_\_\_\_\_

(Official Seal)

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By signing this Agreement, Lender acknowledges reading, understanding and agreeing to all of its provisions.

NORTHRIM BANK

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By: Scotty Watkins  
Its: Loan Officer

Date

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BUSINESS ACKNOWLEDGMENT

STATE OF ALASKA )  
)

COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged on the \_\_\_\_\_, by Scotty Watkins, Loan Officer on behalf of NORTHTRIM BANK, a(n) an Alaska Banking Organization, who personally appeared before me.

In witness whereof, I hereunto set my hand and, if applicable, official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_residing at \_\_\_\_\_,

\_\_\_\_\_, in

\_\_\_\_\_County.

\_\_\_\_\_County, AK

Identification Number \_\_\_\_\_

(Official Seal)

THIS INSTRUMENT PREPARED BY:  
NORTHTRIM BANK  
3111 C Street  
PO Box 241489  
Anchorage, AK 99524-1489

AFTER RECORDING RETURN TO:  
NORTHTRIM BANK  
3111 C Street  
PO Box 241489  
Anchorage, AK 99524-1489