

13470419  
11/23/2020 1:53:00 PM \$40.00  
Book - 11066 Pg - 1601-1612  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 12 P.

Recording Requested By  
And When Recorded Mail To:

ALTABANK  
P.O. Box 307  
American Fork, Utah 84003  
Attention: Loan Processing

16-06-177-010

135120 - ETP

(Space Above For Recorder's Use)

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

**NOTICE: THIS SUBORDINATION, NON-DISTURBANCE, ATTORNMENT AND ESTOPPEL AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

THIS SUBORDINATION, NON-DISTURBANCE, ATTORNMENT AND ESTOPPEL AGREEMENT (this "*Agreement*") is entered into effective as of November 13, 2020, by and between ALTABANK, a Utah corporation ("*Lender*"), DTOWN 275, LLC, a Utah limited liability company ("*Landlord*"), and SALT LAKE LEGAL DEFENDER ASSOC., a Utah non-profit corporation ("*Tenant*").

**RECITALS**

A. Lender and Landlord have entered into that certain Business Loan Agreement dated November 13, 2020 (as amended or modified from time to time, the "*Loan Agreement*"), pursuant to which Lender has made a loan to Landlord in the original principal amount of \$9,225,000.00 (the "*Loan*") on the terms and conditions contained therein. The Loan is evidenced by a Promissory Note made by Landlord in favor of Lender dated November 13, 2020 (as amended or modified from time to time, the "*Promissory Note*"). The Loan and Promissory Note are secured by, among other things, that certain Deed of Trust (as amended or modified from time to time, the "*Deed of Trust*") dated November 13, 2020, encumbering, among other things, the property described on Exhibit A attached hereto and made part hereof and all improvements thereon (the "*Property*").

B. Tenant has entered into that certain Single Tenant Office Lease with Landlord dated October 2, 2019, as amended by that certain First Amendment to Single Tenant Office Lease dated June 2020 (as amended, the "*Lease*"), pursuant to which Landlord has leased a portion of the Property, as described in the Lease, to Tenant for the term and on the terms and conditions set forth in the Lease.

C. The parties desire to agree upon the relative priority of their interests in the Property and their rights and obligations if certain events occur.

NOW, THEREFORE, in consideration of the mutual covenants and agreements and the terms and conditions contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the parties hereto agree as follows:

1. SUBORDINATION.

(a) Subordination of Lease. The Deed of Trust and any and all extensions, renewals, modifications, and replacements thereof shall be and at all times remain a lien or charge on the Property prior and superior to the Lease and any other rights of Landlord or Tenant in the Property. Landlord and Tenant intentionally and unconditionally waive, relinquish, and subordinate the priority and superiority of the Lease, including any right or interest of either Landlord or Tenant to the Property thereunder, to the lien or charge of the Deed of Trust, and any and all extensions, renewals, modifications, and replacements thereof.

(b) Reliance. Landlord and Tenant acknowledge that Lender, in making or continuing to make the Loan to Landlord, is doing so in material reliance on this Agreement.

(c) Tenant Acknowledgments. Tenant acknowledges and agrees that it has such information with respect to the Loan, the Loan Agreement, the Promissory Note, the Deed of Trust, and all other documents executed in connection with the Loan, as it deems necessary in order to grant this subordination. Tenant further agrees that Lender is under no obligation or duty to, nor has Lender represented that it has or will, see to the application of the proceeds of the Loan, and any application or use of any such proceeds for purposes other than those for which they were intended shall not defeat this subordination.

(d) Entire Subordination Agreement. This Agreement constitutes the whole and only agreement between the parties hereto with regard to the subordination of the Lease to the lien or charge of the Deed of Trust; there are no agreements (written or oral) outside or separate from this Agreement with respect to the subject matter hereof; and all prior negotiations with respect thereto, if any, are merged into this Agreement. This Agreement shall supersede and cancel, but only insofar as would affect the priority between the Deed of Trust and the Lease, any prior agreements as to such subordination, including without limitation those provisions, if any, contained in the Lease which provide for the subordination thereof to the lien of a deed of trust or mortgage affecting all or any portion of the Property.

2. LEASE. Tenant hereby covenants and agrees that, so long as the Deed of Trust remains in force and effect:

(a) No Modification, Termination, or Cancellation. Tenant shall not consent to any modification (including without limitation any change in rent or term provisions), termination, or cancellation of the Lease without Lender's prior written consent.

(b) Notice of Default; Lender's Right to Cure. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any remedies under the Lease, Tenant shall provide Lender with written notice of the breach or default by Landlord giving rise to the same (a "**Default Notice**") and, thereafter, the opportunity to cure such breach or default as follows:

i. After Lender receives a Default Notice, Lender shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord (the "**Cure Period**").

ii. As to any breach or default by Landlord, the cure of which would require Lender to possess and control the Property, then, so long as Lender provides Tenant written notice within thirty (30) days of Lender's receipt of the Default Notice of Lender's intent to cure such default or breach, the Cure Period shall automatically be extended for such additional time as Lender may reasonably require to obtain possession and control of the Property and thereafter to cure the breach or default with reasonable diligence and continuity. So long as any receiver of the Property has been appointed at the request of Lender and is continuing to serve, then Lender shall be deemed to have possession and control of the Property.

iii. Notwithstanding anything in this Agreement to the contrary, Lender shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord except to the extent that Lender agrees or undertakes otherwise in writing.

(c) No Advance Rents. Tenant shall not make any payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease.

(d) Assignment of Rents. Tenant acknowledges and agrees that the Lease has been assigned to Lender. Upon receipt by Tenant of written notice from Lender directing Tenant to make payment thereof to Lender, Tenant shall comply with such direction to pay and shall not be required to determine whether Landlord is in default under any obligations to Lender.

3. ATTORNMENT. If Lender or any other transferee acquires Landlord's right, title, and interest in and to the Property (a "**Transferee**") pursuant to a judicial or non-judicial foreclosure of the Deed of Trust or a deed in lieu thereof or in any other manner whereby Lender or such Transferee succeeds to the interest of Landlord under the Lease, Tenant agrees as follows for the benefit of Lender or such Transferee:

(a) Payment of Rent. Tenant shall pay to Lender or such Transferee all rental payments required to be made by Tenant pursuant to the terms of the Lease for the remaining term thereof. In accordance with Section 2(c) above, neither Lender nor such Transferee, as applicable, shall be bound by any payment of base rent or any additional or other rent made by Tenant to Landlord (or any previous landlord) for more than one (1) month in advance, unless such advanced payments of rent shall have been actually delivered to Lender or such Transferee.

(b) Continuation of Performance. Tenant shall be bound to Lender or such Transferee in accordance with all of the terms and conditions of the Lease for the remaining term thereof, and

Tenant hereby attorns to Lender or such Transferee as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Lender or such Transferee succeeding to Landlord's interest in the Lease and providing written notice thereof to Tenant.

(c) No Offset. Neither Lender nor such Transferee, as applicable, shall be (i) liable for the return of any sums which Tenant may have paid to Landlord under the Lease as security deposits or otherwise, except to the extent that such sums are actually delivered by Landlord to Lender or such Transferee, or (ii) subject to any offsets or defenses which Tenant might have against Landlord (or any previous landlord).

(d) Amendments; Termination. In accordance with Section 2(a) above, neither Lender nor such Transferee, as applicable, shall be bound by any amendment or modification of the Lease, or waiver of any of its terms, made without Lender's or such Transferee's consent, or by any surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant.

(e) Liability. Neither Lender nor such Transferee, as applicable, shall be liable for any act or omission, any breach of representation or warranty, or any construction obligation of Landlord (or any previous landlord) or liable for any damages or other relief attributable to any latent or patent defects in construction with respect to any portion of the Property.

(f) Subsequent Transfer. If Lender or such Transferee, by succeeding to Landlord's interest under the Lease, becomes obligated to perform the covenants of a landlord thereunder, then, upon any further transfer by Lender or such Transferee of its interest as a lessor under the Lease, all of such obligations shall terminate as to Lender or such Transferee.

(g) Limitation of Lender's Liability. Tenant agrees to look solely to Lender's or such Transferee's interest in the Property and the rent, income, or proceeds derived therefrom for the recovery of any damages or judgment against Lender or such Transferee, and in no event shall Lender or such Transferee, or any of its affiliates, officers, directors, shareholders, partners, agents, representatives, or employees, be personally liable to Tenant for any such obligation, liability, or judgment.

4. NON-DISTURBANCE. In the event of a foreclosure of the Deed of Trust, or a transfer of the Property in lieu thereof or in any other manner whereby Lender or such Transferee succeeds to the interest of Landlord under the Lease, then, so long as there shall then exist no breach, default, or event of default by Tenant under the Lease, (a) the leasehold interest of Tenant shall not be extinguished or terminated by reason of such foreclosure, (b) the Lease shall continue in full force and effect, and (c) Lender and its successors-in-interest shall recognize and accept Tenant as the tenant under the Lease, subject to the terms and conditions of the Lease as modified by this Agreement.

5. ESTOPPEL. Landlord and Tenant each acknowledge and represent that:

(a) Lease Effective. The Lease has been duly executed and delivered by Landlord and Tenant, and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Landlord and Tenant, as applicable, thereunder are valid and binding, and there have been no amendments, modifications, or additions to the Lease (written or oral) other than those included in the Lease definition set forth above. The Lease constitutes the entire agreement between Landlord and Tenant with respect to the Property, and Tenant claims no rights to the Property other than as set forth in the Lease.

(b) No Default. As of the date hereof, (i) there exists no breach of or default under the Lease, nor any condition, act, or event which with the giving of notice or the passage of time, or both, would constitute such a breach or default, and (ii) there are no existing claims, defenses, or offsets against rental due or to become due under the terms of the Lease.

(c) No Prepaid Rent. No deposits or prepayments of rent have been made in connection with the Lease, except for a standard security deposit.

6. ACKNOWLEDGEMENT AND AGREEMENT BY LANDLORD. Landlord acknowledges and agrees for itself and its heirs, successors, and assigns to each of the following:

(a) No Release of Obligations. 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 Loan Agreement, the Promissory Note, the Deed of Trust, or any other documents executed in connection with the Loan.

(b) Consent to Attornment. In the event of a default under the Loan Agreement, the Promissory Note, the Deed of Trust, or any other document executed in connection with the Loan, Landlord hereby consents to Tenant's attornment to Lender or a successor Transferee as set forth herein and acknowledges and agrees that Tenant shall pay all rent and all other sums due under the Lease to Lender or a successor Transferee.

7. MISCELLANEOUS.

(a) Remedies Cumulative. All remedies provided herein are cumulative, not exclusive, and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Landlord or any other person or entity.

(b) Costs, Expenses and Attorney Fees. If any party hereto institutes any judicial or administrative action or proceeding to enforce any rights or obligations under this Agreement, or seeking damages or any other judicial or administrative remedy, the prevailing party shall be entitled to recover from the other party all costs and expenses, including reasonable attorney fees (to include outside counsel fees and all allocated costs of the prevailing party's in-house counsel), whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including

without limitation, any adversary proceeding, contested matter, or motion brought by Lender or any other person) relating to the Property, Landlord, Tenant, or any other person or entity.

(c) Notices. All notices, requests, and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing and shall be deemed given or made as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid; and (iii) if sent by telecopy or electronic mail, upon receipt, in every case addressed to the party to be notified as follows:

**Lender:**

Altabank  
33 East Main  
American Fork, UT 84003  
Attention: Derek Tuckett  
Fax: 801.763.6666  
Email: [Derek.Tuckett@altabank.com](mailto:Derek.Tuckett@altabank.com)

with a copy to:

Altabank  
1 East Main  
American Fork, UT 84003  
Attention: Legal Department  
Fax: 801.763.6666  
Email: [Burke.Gappmayer@altabank.com](mailto:Burke.Gappmayer@altabank.com)

**Landlord:**

Dtown 275, LLC  
c/o Rockworth Companies, LLC  
4655 South 2300 East, Suite 205  
Holladay, UT 84117  
Attention: Tom Henriod  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**Tenant:**

Salt Lake Legal Defender Assoc.  
275 East 200 South  
Salt Lake City, UT 84111  
Attention: McCaye Christianson  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Any party may change its address hereunder to any other address by giving written notice to the other parties in the manner set forth above.

(d) Further Assurances. At the request of any party hereto, each other party shall execute, acknowledge, and deliver such other documents and/or instruments as may be reasonably required by the requesting party in order to carry out the purpose of this Agreement, provided that no such document or instrument shall modify the rights and obligations of the parties set forth herein.

(e) Successors, Assigns; Governing Law. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, legal representatives, successors, assigns, and other transferees of the parties hereto, and shall be governed by and construed in accordance with the laws of the State of Utah. If Lender assigns the Deed of Trust, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of Lender hereunder shall terminate.

(f) Jury Waiver. TO THE EXTENT PERMITTED BY LAW, THE PARTIES HERETO WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO.

(g) Conflicts. In the event of any inconsistency between the terms of this Agreement and the Lease, the terms of this Agreement shall control.

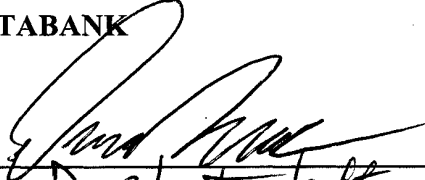
(h) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

*[Signature Pages to Follow]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

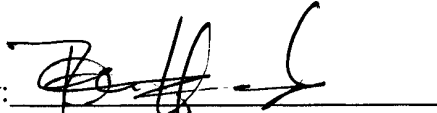
LENDER:

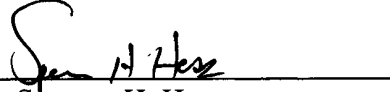
**ALTABANK**

By:   
Name: Derek Tuckett  
Title: VP

LANDLORD:

**DTOWN 275, LLC**

By:   
Name: Tom Henriod  
Title: Manager

By:   
Name: Spencer H. Hess  
Title: Manager

TENANT:

**SALT LAKE LEGAL DEFENDER ASSOC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first written above.

LENDER:

**ALTABANK**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LANDLORD:

**DTOWN 275, LLC**

By: \_\_\_\_\_  
Name: Tom Henriod  
Title: Manager

By: \_\_\_\_\_  
Name: Spencer H. Hess  
Title: Manager

TENANT:

**SALT LAKE LEGAL DEFENDER ASSOC.**

By: Richard P. Maulo  
Name: RICHARD P. MAULO  
Title: EXECUTIVE DIRECTOR

STATE OF UTAH )  
 ) ss.  
COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of November, 2020, by Derek Tuckett, as VP of ALTABANK, a Utah corporation.

Sarah M. Street  
Notary Public



My commission expires: 10-16-2023

Residing at: Salt Lake County, UT

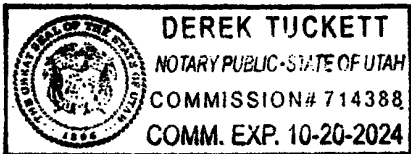
STATE OF UTAH )  
 ) ss.  
COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of November, 2020, by Tom Henriod, as Manager of DTOWN 275, LLC, a Utah limited liability company.

Derek Tuckett  
Notary Public

My commission expires: 10/20/2024

Residing at: American Fork, Utah



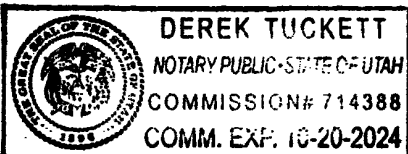
STATE OF UTAH )  
 ) ss.  
COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of November, 2020, by Spencer H. Hess, as Manager of DTOWN 275, LLC, a Utah limited liability company.

Derek Tuckett  
Notary Public

My commission expires: 10/20/2024

Residing at: American Fork, Utah



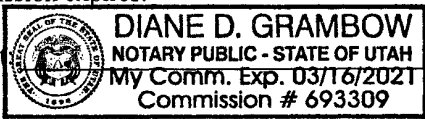
STATE OF UTAH )  
 ) ss.  
COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me this 20 day of November, 2020, by Richard P. Mauro, as Executive Director of SALT LAKE LEGAL DEFENDER ASSOC., a Utah non-profit corporation.

Diane D Grambow  
Notary Public

My commission expires:

Residing at



**EXHIBIT A  
TO  
SUBORDINATION, NON-DISTURBANCE, ATTORNMENT  
AND ESTOPPEL AGREEMENT**

Legal Description of Property:

Real property located in Salt Lake County, Utah:

Tax Identification No: 16-06-177-010

Beginning at the Southeast corner of Lot 1, Block 72, Plat "A", Salt Lake City Survey, and running thence North 00°02'04" West 165 feet; thence South 89°58'22" West 165 feet; thence South 00°02'04" East 165 feet; thence North 89°58'22" East 165 feet to the point of beginning.

Also described of record as follows:

Beginning at the Southeast corner of Lot 1, Block 72, Plat "A", Salt Lake City Survey, and running thence North 165 feet; thence West 165 feet; thence South 165 feet; thence East 165 feet to the point of beginning.