

Recording Requested By  
And When Recorded Mail To:

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

13756588  
8/27/2021 12:13:00 PM \$40.00  
Book - 11229 Pg - 3802-3813  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
ALTA TITLE  
BY: eCASH, DEPUTY - EF 12 P.

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(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 August 3, 2021, by and between ALTABANK, a Utah corporation ("*Lender*"), JMK LIMITED PARTNERSHIP, a California limited partnership ("*Landlord*"), and MAXTEC, LLC, a Utah limited liability company ("*Tenant*").

**RECITALS**

A. Lender and Landlord have entered into that certain Business Loan Agreement dated on or about August 3, 2021 (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 \$5,750,000.00 (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 on or about August 3, 2021 (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 on or about August 3, 2021, 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 Amended and Restated Commercial Lease with Landlord, as successor to The Brierley Family, LLC, dated effective September 1, 2020, as amended by that certain Amendment to Amended and Restated Commercial Lease dated effective December 1, 2020 (as amended, the "*Lease*"), pursuant to which Landlord is leasing 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.

altatitle # 21055

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 acknowledged, the parties hereto agree as follows:

1. SUBORDINATION.

(a) Subordination of Lease. The lien of 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 up to an additional ninety (90) days to allow Lender to obtain possession and control of the Property and 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. ATTORNTMENT. 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 for Security Deposit. Neither Lender nor such Transferee, as applicable, shall be 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.

(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 ("**Pre-Foreclosure Damages**"); provided, however, that in the event Tenant has offset rights available under the Lease for any Pre-Foreclosure Damages, Tenant may exercise such offset rights against payment of rent to Lender or such Transferee, as applicable, so long as (i) Tenant has provided a copy of the Default Notice to Lender pursuant to Section 2(b) above related to the defaults giving rise to the Pre-Foreclosure Damages and (ii) Tenant has provided a second notice to Lender after the expiration of any cure period related to any such defaults and at least five (5) business days prior to exercising any self-help rights related thereto.

(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 beyond the expiration of any applicable notice and/or cure period, (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, to Tenant's actual knowledge (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  
10757 South River Front Parkway, Suite 150  
South Jordan, UT 84095  
Attention: Joe Trunzo  
Fax: 801.763.6666  
Email: [Joe.Trunzo@altabank.com](mailto:Joe.Trunzo@altabank.com)

with a copy to:

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

**Landlord:**

JMK Limited Partnership  
290 Los Gatos-Saratoga Road  
Los Gatos, CA 95030  
Attention: John Kirkorian  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**Tenant:**

Maxtec, LLC  
c/o Perma Pure LLC  
1001 New Hampshire Avenue  
Lakewood, NJ 08701  
Attention: Allan Klimusko  
Fax: \_\_\_\_\_  
Email: AKLIMUSKO@PERMAPURE.COM

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: [Signature]  
Name: Joe Trunzo  
Title: Vice President

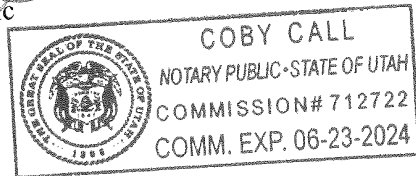
STATE OF UTAH )  
COUNTY OF Salt Lake ) ss.

The foregoing instrument was acknowledged before me this 4 day of August, 2021, by Joe Trunzo, as Vice President of ALTABANK, a Utah corporation.

[Signature]  
Notary Public

My commission expires: 6/23/2024

Residing at: Altabank





LANDLORD:

**JMK LIMITED PARTNERSHIP**

By: [Signature]  
Name: JOHN KIRKORIAN  
Title: MEMBER OF GENERAL PARTNER

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, as \_\_\_\_\_ of JMK LIMITED PARTNERSHIP, a California limited partnership.

*see attached*

\_\_\_\_\_  
Notary Public

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

Residing at: \_\_\_\_\_

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Santa Clara )

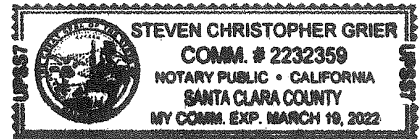
On August 3, 2021 before me, Steven Grier, Notary Public  
(insert name and title of the officer)

personally appeared John Kirkorian,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



TENANT:

MAXTEC, LLC

By: Alan Klimusko  
Name: ALAN J KLIMUSKO  
Title: CFO

STATE OF New Jersey)  
) ss.  
COUNTY OF Ocean)

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of August, 2021, by ALAN KLIMUSKO, as Chief Financial Officer of MAXTEC, LLC, a Utah limited liability company.

Beverly Pyciak-Vlassis

Notary Public

BEVERLY A. PYCIAK-VLASSIS  
NOTARY PUBLIC OF NEW JERSEY  
Commission # 50112188  
My Commission Expires 9/5/2024

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: 15-23-176-010

The consolidated parcel combining tax parcels 15-23-176-007 and 15-23-176-009 situate in the West Half of the Northwest Quarter of Section 23, Township 1 South, Range 1 West, Salt Lake Base and Meridian, described as follows:

Beginning at a point which is South 1471.81 feet and East 1588.15 feet from the Northwest Corner of Section 23, Township 1 South, Range 1 West, Salt Lake Base and Meridian, basis of bearing is North 89°59'15" East 2638.94 feet measured between said Northwest Corner and the North Quarter Corner of same said section, said point of beginning being on a 450.00 foot radius curve to the right; thence 165.36 feet along the arc of said curve, chord bears North 14°36'17" East 164.43 feet to a point of a 745.00 foot radius compound curve to the right; thence 182.80 feet along the arc of said curve, chord bears North 32°09'39" East 182.34 feet, to a point on a 90.00 foot radius curve to the left; thence 44.92 feet along the arc of said curve, chord bears South 73°09'05" East 44.45 feet; thence South 41°54'55" East 873.83 feet to a point on the northerly right of way line of 2320 South Street; thence South 89°55'00" West 743.09 feet along said northerly right of way line; thence North 34°49'36" West 29.01 feet to a point on the easterly right of way line of 1070 West Street; thence North 00°03'40" West 107.66 feet along said easterly right of way line of 1070 West Street; thence South 89°56'20" West 6.0 feet; to a point on said easterly right of way line; thence North 00°03'40" West 114.34 feet along said easterly right of way line; thence North 02°37'24" East 37.93 feet along said easterly right of way line; thence South 89°44'14" East 7.31 feet; thence North 17°33'30" East 21.44 feet; thence North 00°06'01" West 46.61 feet; thence West 14.33 feet to the point of beginning.