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RASHELLE HOBBS
Recorder, Salt Lake County, UT
TITLE GUARANTEE - LAYTON
BY: eCASH, DEPUTY - EF 10 P.

WHEN RECORDED, RETURN TO:

America First Federal Credit Union
4646 South 1500 West, Suite 130
Riverdale, Utah 84405
Attn: Commercial Real Estate Department

Loan No. 724663005

Tax Parcel No. 21012050180000

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

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is entered into as of 11/23, 2020 (the "Effective Date"), between **AMERICA FIRST FEDERAL CREDIT UNION** (the "Lender") and **Merchants Metals LLC, a Delaware limited liability company** (the "Tenant").

WHEREAS, by Office lease agreement dated October 6, 2015 between Arrowhead Capital Corporation, a Utah corporation ("Landlord") and Merchants Metals LLC, a Delaware limited liability company ("Tenant") as amended by that certain Amendment and Extension of Lease dated July 13, 2020 (together, the "Lease"), Landlord has leased to Tenant and Tenant has rented from Landlord a building of approximately 11,282 rentable square feet situated upon approximately 2.5 acres of leased premises ("Tenant's Premises") within the commercial property located at 4255 South 300 West, Murray, Salt Lake County, Utah 84107 as more fully described in Exhibit A attached hereto and incorporated by reference (such real property and all other improvements located thereon, as more fully described in the Lease, are collectively referred to herein as the "Property"); and

WHEREAS, Lender has made a loan to Landlord (the "Loan"); and

WHEREAS, to secure the Loan, Landlord, as trustor, has encumbered the Property by entering into that certain Deed of Trust concurrently herewith, in favor of Lender, as beneficiary (as amended, increased, renewed, extended, spread, consolidated, severed, restated or otherwise changed from time to time, the **DEED of TRUST**") which has been recorded in the Office of the County Recorder where the Property is located.

WHEREAS, Tenant desires that Lender recognize Tenant's rights under the Lease upon the occurrence of a Foreclosure Event (as defined below), and Tenant is willing to agree to attorn to the Successor Landlord (as defined below) upon the occurrence of such Foreclosure Event if Lender will recognize Tenant's right of possession under the Lease.

NOW, THEREFORE, for and in consideration of their respective covenants herein made and the receipt of other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Definitions.** The following terms shall have the following meanings for purposes of this Agreement.

1.1 *Foreclosure Event.* A “*Foreclosure Event*” means: (a) foreclosure under the Deed of Trust; (b) any other exercise by Lender of rights and remedies (whether under the Deed of Trust, or any of the other documents evidencing or pertaining to the Loan [collectively, the “Loan Documents”] or under applicable law, including, without limitation, bankruptcy law) as holder of the Loan and/or the Deed of Trust, as a result of which Successor Landlord becomes owner of the Property; or (c) delivery by Landlord to Lender (or its designee or nominee) of a deed or other conveyance of Landlord’s interest in the Property in lieu of any of the foregoing.

1.2 *Successor Landlord.* A “*Successor Landlord*” means any party that becomes the owner of the Property including, without limitation, the holder or beneficiary of the Loan, as the result of a Foreclosure Event.

Any defined term not otherwise defined in this Section 1 shall have the meaning given in the Lease.

2. **Subordination.**

2.1 *Subordination of Leasehold Estate.* The Lease and Tenant’s leasehold estate rights created by the Lease shall be, and shall at all times remain, subject and subordinate to the lien of the Deed of Trust, and all advances made under the Loan or any of the Loan Documents.

2.2 *Tenant Acknowledgement of Extension of Credit.* Tenant acknowledges that Lender, in extending or continuing to extend credit to Landlord secured by the Property, is doing so in material reliance on this Agreement.

2.3 *Tenant Acknowledgement of Information.* Tenant acknowledges that it has such information with respect to any credit extended by Lender to Landlord, and all loan documents executed in connection therewith, as Tenant 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 any such credit by any person or entity, and any application or use of any such proceeds for purposes other than those for which they were intended shall not defeat this subordination.

3. **Non-disturbance, Recognition and Attornment.**

3.1 *No Exercise of Deed of Trust Remedies Against Tenant.* Lender shall not name or join Tenant as a defendant in any exercise of Lender’s rights and remedies arising upon a default under the Deed of Trust unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies under the Deed of Trust or any of the other Loan Documents. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant’s rights under the Lease or this Agreement in such action.

3.2 *Non-disturbance and Attornment.* Upon any Foreclosure Event, and provided that no event of default by Tenant has occurred and is continuing beyond any applicable notice and cure period under the Lease, then, when Successor Landlord takes title to Property: (a) Successor Landlord shall not terminate or disturb Tenant's possession or quiet enjoyment of Tenant's Premises under the Lease, except in accordance with the terms of the Lease; (b) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease as affected by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant.

3.3 *Further Documentation.* The provisions of this Section 3 shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Section 3 in writing upon request by either of them.

4. **Protection of Successor Landlord.** Notwithstanding anything to the contrary in the Lease or the Deed of Trust, Successor Landlord shall not be: (a) liable for any act or omission of, or any claims against, any prior landlord (including Landlord) arising prior to the date Successor Landlord obtains title to the Property, except to the extent that such act or omission is non-monetary and has resulted in an adverse condition which continues after such date and for which Successor Landlord obtains title to the Property and is responsible for remedying pursuant to the Lease, such non-monetary act or omission is capable of cure by Successor Landlord and Successor Landlord shall have received written notice of and an opportunity to cure such act or omission in accordance with Sections 5.1 and 6.1 below, or (b) liable for any damages or other relief attributable to any latent or patent defects in construction with respect to any portion of the Premises which was discovered prior to the date Successor Landlord obtains title to the Property and Successor Landlord shall have received written notice of and an opportunity to cure such act or omission in accordance with Sections 5.1 and 6.1 below; or (c) liable for any offsets or defenses which Tenant might have against any prior landlord (including Landlord) arising prior to the date Successor Landlord obtains title to the Property; or (d) bound by any amendment or modification of the Lease made without Lender's prior written consent; or (e) intentionally deleted; or (f) required to construct any improvements on the Premises. Regardless of anything in the Lease or this Agreement to the contrary, in acquiring the interest of Landlord as a result of such action or proceeding, Successor Landlord shall have no obligation or liability beyond its interest in the Premises. Tenant shall look exclusively to Successor Landlord's interest in the Property for payment and discharge of any of their respective obligations under this Agreement or under the Lease. Tenant shall not collect or attempt to collect any judgment based upon such obligations out of any other assets of Lender or Successor Landlord. In addition, upon any sale or transfer of its interest in the Property, Successor Landlord shall not have any further obligation under the Agreement or the Lease with respect to matters occurring after such sale or transfer. By executing this Agreement, Landlord specifically acknowledges and agrees that nothing contained in this Section shall impair, affect, lessen, abrogate or otherwise modify the obligations of Landlord to Tenant under the Lease.

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

5.1 *Notice of Default.* Tenant shall notify Lender in writing of any breach of or default by Landlord under the Lease that would result in the Lease being terminated. Tenant agrees that Lender shall have the right (but not the obligation) to cure any breach or default specified in such notice for a period of thirty (30) days in addition to the time period set forth in the Lease for Landlord's performance.

5.2 *Assignment of Rents.* Upon receipt by Tenant of written notice from Lender that Lender has elected to terminate the license granted to Landlord to collect rents, as provided in the Deed of Trust or any of the other Loan Documents, and directing Tenant to make payment thereof to Lender, Tenant agrees to pay all Rent to Lender, without setoff or deduction, at such place as Lender may direct, and Tenant shall not be required to determine whether Landlord is in default under any obligations to Lender before complying with such direction and shall not be liable to Landlord for failure to pay Landlord any sums that are paid instead to Lender. Notwithstanding Lender's exercise of the foregoing rights to receive payments from Tenant, Lender shall not be responsible for Landlord's duties and obligations under the Lease, unless Lender or any Successor Landlord acquires title to the Property.

6. **Miscellaneous.**

6.1 *Notices.* All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Notices shall be effective the next business day after being sent by overnight courier service, and three (3) business days after being sent by certified mail (return receipt requested). Unless and until notice of a change of address is given under this Agreement, notices or other communications shall be given to Lender, Landlord and Tenant, respectively, at the following address:

Lender: America First Federal Credit Union
4646 South 1500 West, Suite 130
Riverdale, Utah 84405
Attn: Commercial Real Estate Department

Tenant: Merchants Metals LLC
211 Perimeter Center Parkway, Suite 250
Atlanta, GA 30346. Attn: Aaron Wysko – VP Finance

King & Spalding LLP
1100 Louisiana Street, Suite 4100
Houston, TX 77002
Attn: Jason Peters

6.2 *Successors and Assigns.* This Agreement shall bind and benefit the parties their successors and assigns, any Successor Landlord, and its successors and assigns.

6.3 *Entire Agreement.* This Agreement constitutes the entire agreement between Lender and Tenant regarding the subordination of the Lease to the Loan, the Deed of Trust and the other Loan Documents and the rights and obligations of Tenant and Lender as to the subject matter of this Agreement.

6.4 *Interaction with Lease and with Deed of Trust.* If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties to this Agreement and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of non-disturbance agreements by the holder of the Deed of Trust. Lender confirms that Lender has consented to Landlord's entering into the Lease.

6.5 *Interpretation; Governing Law.* The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State where the Premises is located, notwithstanding the conflict of laws principles to the contrary.

6.6 *Amendments.* This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by all parties to this Agreement.

6.7 *Execution.* This Agreement may be executed electronically and in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

6.8 *Representations.* Each party represents that it has full authority to enter into this Agreement and that those signatories executing this Agreement on its behalf have full power and authority to executed this Agreement.

6.9 *Recordation.* Upon full execution, this Agreement may be recorded in the real property records of the county in which the Premises is located by either party hereto.

[signature pages to follow]

Exhibit "A"
Property Description

Parcel 1

Beginning at a point on the East line of 300 West Street, said point being South 550.75 feet and East 351.62 feet from the North quarter corner of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian and running thence North 82°01'51" East 173.11 feet; thence East 301.54 feet to the West line of the Denver and Rio Grande Western Railroad right of way; thence along said West line South 14°53'00" East 50.30 feet; thence along said West line South 13°41'00" East 138.21 feet; thence West 518.20 feet to said East line; thence North 08°08'30" West 158.90 feet, more or less to the point of beginning.

Address: 4191 South Commerce Drive, Salt Lake City, Utah 84107
Tax Serial No. 21-01-205-015

Parcel 2

Beginning at a point on the East line of 2nd West Street, said point being South 526.75 feet and East 351.56 feet and South 00°08'30" East 182.9 feet from the North quarter corner of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence East 518.2 feet to an old fence line on the West right of way line of the Denver and Rio Grande Western Railroad; thence South 13°41' East 178.83 feet along an old fence line of said West line; thence leaving said fence and said West line and running thence South 06°30' East 22.57 feet; thence North 81°45' West 568.65 feet to the East line of 2nd West Street; thence North 00°08'30" West 114.58 feet along said East line to the point of beginning.

Address: 4195 South Commerce Drive, Salt Lake City, Utah 84107
Tax Serial No. 21-01-205-013

Parcel 3

A parcel of land located in the Northeast quarter of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and being a part of Lots 4 and 5, of Block 10, Ten Acre Plat "A", Big Field Survey, more particularly described as follows:

Beginning on the East line of 2nd West Street, said point being South 529.65 feet and East 351.59 feet and South 00°08'30" East 294.58 feet from the North Quarter corner of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running thence South 00°08'30" East 318.75 feet; thence North 87°31' East 486.58 feet thence North 43°47' East 36.35 feet; thence North 32°28' East 58.06 feet; thence North 23°58' East 69.68 feet to an old fence line on the West right of way line of the Denver and Rio Grande Western Railroad; thence North 6°30' West 77.41 feet, more or less, along said old fence line; thence leaving said fence line and

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running thence North 81°45' West 568.65 feet to the point of beginning.

Address: 4205 South Commerce Drive, Salt Lake City, Utah 84107
Tax Serial No. 21-01-205-010

Parcel 4

Beginning at a point on the East line of 300 West Street, said point being 529.65 feet South and 351.59 feet East and South 0°08'30" East 613.33 feet from the North quarter corner of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running thence North 87°31' East 486.58 feet to a point on that certain boundary line pursuant to that certain Quit Claim of Property and Boundary Line Agreement, dated July 30, 1982, and recorded August 11, 1982, as Entry No. 3701429 in Book 5402 at Page 879 of Official Records; thence along said boundary line the following three (3) courses: South 43°47' West 38.28 feet; South 23°41'07" West 173.20 feet; South 45°28' West 92.57 feet; thence leaving said boundary line and running thence West 24.68 feet to the Southerly side of a retaining wall; thence Southwesterly along the Southerly side of said retaining wall the following five (5) courses: South 55°05'27" West 26.70 feet; South 47°35'09" West 6.40 feet; South 67°53'37" West 23.53 feet; South 77°58'52" West 87.05 feet; South 72°42'44" West 50.02 feet; thence North 88°46'53" West 117.26 feet to the Easterly right of way line of 300 West Street; thence along said right of way line North 0°08'30" West 298.05 feet to the point of beginning.

Address: 4255 South Commerce Drive, Salt Lake City, Utah 84107
Tax Serial No. 21-01-205-018