

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

16-93-157-014

This Subordination, Non-Disturbance and Attornment Agreement is made this 7 day of May, 2020 between Mountain America Federal Credit Union ("**Lender**") and Anvil Construction, Inc. ("**Tenant**").

Recitals

- A. Millcreek Center Shops, LLC, a Utah limited liability company ("**Landlord**"), own(s) the real property located at 3630-3650 South Highland Drive, Salt Lake City, Utah and legally described on attached Exhibit "A" ("**Property**").
- B. Tenant is the occupant of a portion of the Property (the "**Premises**") under a Lease, dated on or about April 1, 2016 ("**Lease**") with Landlord.
- C. Lender has made or agreed to make a loan ("**Loan**") to Landlord, secured by, among other things, a mortgage or deed of trust ("**Deed of Trust**") encumbering the Property. The Deed of Trust includes an assignment to Lender of all right, title, and interest of Landlord under the Lease.
- D. Lender's agreement to make the Loan requires Tenant's subordination of the Lease to the Deed of Trust, and Tenant's agreement to attorn to Lender if Lender obtains possession of the Premises by foreclosure or deed in lieu of foreclosure. Tenant is willing to do so in consideration of Lender's agreement not to disturb Tenant's possession of the Premises under the Lease, and to recognize the Lease and Tenant's rights thereunder, all as provided herein.

Agreement

NOW, THEREFORE, Lender and Tenant agree as provided below.

1. **Consent.** Lender consents to the Lease and to Tenant's use and occupancy of the Leased Premises under the Lease.

2. **Subordination.** Subject to paragraph 3 below, Tenant hereby subordinates the Lease and all of its rights thereunder to the lien of the Deed of Trust, including any and all renewals, modifications and extensions thereof, subject nonetheless to the terms and provisions hereof.

3. **Nondisturbance.** Lender agrees that Tenant's possession of the Premises shall not be disturbed by Lender during the term of the Lease, and Lender shall not join Tenant in any action or proceeding for the purpose of terminating the Lease, except in connection with the occurrence of a default by Tenant under the Lease and the continuance of such default beyond any cure period given to Tenant under the Lease.

4. **Attornment.** If Lender obtains possession of the Premises by foreclosure or deed in lieu of foreclosure, Lender will not join Tenant in summary or foreclosure proceedings and the Lease shall continue in full force and effect and Lender shall recognize Tenant and its rights thereunder and will thereby establish direct privity of estate and contract between Lender and Tenant with the same force and effect as though the Lease were made directly between Lender and Tenant. In such event, Tenant shall attorn to Lender and recognize Lender as the landlord under the Lease for the unexpired term of the Lease. Lender's obligations as landlord under the Lease after obtaining possession of the Premises by foreclosure or deed in lieu of foreclosure shall terminate upon Lender's subsequent transfer of its interest in the Premises, provided that Lender's successor assumes such liability.

5. **Covenants of Tenant.** Tenant covenants and agrees with Lender as follows:

(a) Tenant shall pay to Lender all rent and other payments otherwise payable to Landlord under the Lease upon written demand from Lender. The consent and approval of Landlord to this Agreement shall constitute an express authorization for Tenant to make such payments to Lender, a release and discharge of all liability of Tenant to Landlord for any such payments made to Lender, and Landlord agrees that Tenant will not be deemed in default of the Lease by reason of its compliance with such notice.

(b) Tenant shall promptly deliver written notice to Lender of any default by Landlord under the Lease and agrees to recognize any cure by Lender as a cure by Landlord.

6. **Effect of Assignment.** Notwithstanding that Landlord has made a present assignment of all of its rights under the Lease to Lender, Lender shall not be liable for any of the obligations of Landlord to Tenant under the Lease until Lender has obtained possession of the Premises by foreclosure or deed in lieu of foreclosure, and then only to the extent provided in Section 4.

7. **Costs and Attorneys' Fees.** In the event of any litigation as to a dispute arising out of this Agreement, the party that substantially prevails shall be awarded, in addition to all other relief, all reasonable attorneys' fees and other costs and expenses incurred in connection with such litigation; including without limitation those fees, costs, and expenses incurred in any appeal, any proceedings under any present or future bankruptcy act or state receivership, and any post-judgment proceedings.

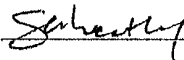
8. **Notices.** All notices to be given under this Agreement shall be in writing and personally delivered, or by over-night courier service, or mailed, postage prepaid, certified or registered mail, return receipt requested, to Lender and Tenant at the respective addresses indicated below, All notices which are mailed shall be deemed given three (3) days after the postmark thereof. Either party may change their address by delivery of written notice to the other party.

9. **Miscellaneous.** This Agreement may not be modified except in writing and executed by the parties hereto or their successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. As used herein, "**Landlord**" shall include Landlord's predecessors and successors in interest under the Lease, and "**Lender**" shall include any purchaser of the Premises at any foreclosure sale. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, such provision shall be considered severed from the rest of this Agreement and the remaining provisions shall continue in full force and effect as if such provision had not been included. This Agreement shall be construed in accordance with and governed by the laws of the state where the Property is located.

10. **Counterpart Signatures.** This document may be executed in one or more identical counterparts each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same document

IN WITNESS WHEREOF, the parties execute this Agreement as of the day and year first above written.

Mountain America Federal Credit Union

By:  _____

Anvil Construction, Inc.

By: _____
Randy O. Deem, President

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Mountain America Federal Credit Union

By: _____

Anvil Construction, Inc.

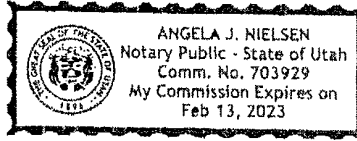
By: 
Randy O. Deem, President

The undersigned Landlord hereby consents and agrees to the foregoing Subordination, Non-disturbance and
Attornment Agreement.

**Millcreek Center Shops, LLC, a Utah limited liability
company**

By: 
David Rasmussen, Member/Manager

STATE OF UTAH)
COUNTY OF SALT LAKE)



On May 8th, 2020 before me, Angela J. Nielsen, a Notary Public, personally appeared Keith Whittington 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 Utah that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Angela J. Nielsen

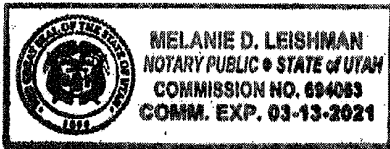
STATE OF Utah)
COUNTY OF Box Elder)

On ~~April~~ ^{May} 8, 2020 before me, Melanie D. Leishman, a Notary Public, personally appeared Randy O. Deem, 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 Utah that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Melanie D. Leishman



STATE OF UTAH)
COUNTY OF SALT LAKE)

On May 7, 2020 before me, MARK HENDRY, a Notary Public, personally appeared DAVID RAMUSSEN 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.

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Signature _____

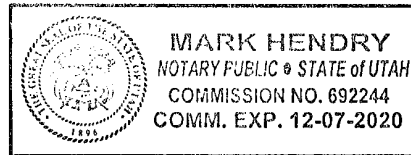


EXHIBIT "A"

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BEGINNING AT A POINT THAT IS 942.01 FEET EAST FROM THE SOUTHWEST CORNER OF LOT 14, BLOCK 23, TEN ACRE PLAT "A", BIG FIELD SURVEY; SAID POINT ALSO BEING SOUTH 1763.65 FEET AND WEST 1185.88 FEET FROM THE NORTH QUARTER CORNER OF SECTION 33, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; SAID POINT IS ALSO BEING NORTH 24°48'32" WEST 511.96 FEET AND NORTH 89°50'00" WEST 44.10 FEET FROM A SALT LAKE COUNTY MONUMENT IN THE INTERSECTION OF HIGHLAND DRIVE AND SIGGARD DRIVE; AND RUNNING THENCE NORTH 89°55'00" WEST 377.61 FEET; THENCE NORTH 00°58'00" EAST 317.60 FEET; THENCE SOUTH 88°01'12" EAST 228.74 FEET; THENCE SOUTH 24°48'32" EAST 342.34 FEET TO THE POINT OF BEGINNING