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9 UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF NEVADA

11 * * * * *

12 IN RE:

Case No.: BK-13-52337-btb
(Chapter 11)

13 DAVID M. SEMAS and
14 SUSAN O. SEMAS,

**REVESTED DEBTORS' MOTION FOR
ORDER AUTHORIZING SALE OF
PERSONAL PROPERTY (11 U.S.C.
§363(b) and (f))**

Debtors.

**DATE: February 22, 2017
TIME: 2:00 p.m.
Est. Time: 20 minutes
Set by: Calendar Clerk**

15 _____/

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19 DAVID M. SEMAS and SUSAN O. SEMAS, husband and wife, Revested Debtors
20 herein ("Revested Debtors"), by and through their attorney STEPHEN R. HARRIS, ESQ. of
21 HARRIS LAW PRACTICE LLC, hereby file their REVESTED DEBTORS' MOTION FOR
22 ORDER AUTHORIZING SALE OF PERSONAL PROPERTY (11 U.S.C. §363(b) and (f))
23 ("Motion"), and state and allege as follows:

24 **FACTS**

25 1. On December 11, 2013, Debtors David M. Semas and Susan O Semas filed their
26 Voluntary Petition for relief under Chapter 11 of the United States Bankruptcy Code. On April
27 6, 2015, this Court entered its ORDER CONFIRMING DEBTORS' SECOND AMENDED
28 PLAN OF REORGANIZATION, AS AMENDED (Docket No. 321) ("Confirmation Order").

1 As a result of the Confirmation Order, the assets of the bankrupt estate revested in the Debtors
2 upon Plan confirmation, thereby making them Revested Debtors.

3 2. Revested Debtor David Semas previously scheduled a 20% ownership interest
4 (“Semas Ownership”) in Metalast International, LLC, a Nevada limited liability company
5 (“MILLC”), and Revested Debtor David Semas also scheduled a claim against MILLC for
6 unpaid wages, bonuses and promissory notes payable (collectively the “Semas Claims”).
7 Unbeknownst to Revested Debtor David Semas, during the course of the State Court
8 receivership of MILLC, the Receiver changed the name of MILLC to MI94, LLC, a Nevada
9 limited liability company. While the assets of MILLC/MI94 were purchased by certain parties
10 pursuant to a State Court Order, the ownership of MILLC/MI94 did not change. Additionally,
11 Revested Debtor David Semas is the owner of the Metalast Trademark, also as previously
12 scheduled with the Court.

13 3. Revested Debtors have received an offer from MI-16, LLC, a Nevada limited
14 liability company (“Buyer”), for a) the purchase of the Semas Claims, including the surrender
15 and release of any claim for unpaid wages, bonuses and/or promissory notes payable held by
16 Revested Debtor David Semas against MILLC and/or MI94, LLC, b) for the purchase of the
17 Semas Ownership, and c) for the purchase of the Metalast Trademark, for the total sum of
18 \$7,500,000.00, payable upon the following terms and conditions:

19 a. Within thirty (30) days from approval of this Motion by the Court, the Buyer
20 will pay the sum of \$100,000.00 to the bankrupt estate of the Revested Debtors, to be
21 applied to the outstanding post-confirmation attorney’s fees owed to Harris Law Practice
22 LLC (estimated at \$50,000.00) and to Hoy Chrissinger Kimmel, PC (estimated at
23 \$50,000.00). Additionally, the Buyer shall pay \$25,000.00 to Metalast International,
24 Inc. (“MI”) and \$25,000.00 shall be paid to Metalast, Inc. (“MTI”), which entities, in
25 exchange for payment of these monies, will amend their articles of incorporation to
26 change their names so that the companies no longer utilize the term “Metalast” as part of
27 the corporate names;

1 b. Revested Debtor David Semas shall transfer and assign all rights to the Metalast
2 Trademark to MI-16, including the right to defend the pending Petition For Cancellation
3 now pending with the United States Patent and Trademark Office Before the Trademark
4 Trial and Appeal Board (“TTAB”) in Case No. 92064833. Due to the fact that a Motion
5 for Partial Summary Judgment is pending before the United States District Court, on
6 January 18, 2017, David M. Semas, in Pro Se filed a motion before TTAB under Rule
7 2.117(a) Suspension of Proceeding, seeking to suspend the Petition for Cancellation of
8 the Metalast Trademark that was filed by the Meilings on or about November 16, 2016;

9 c. Within thirty (30) days of entry of the Court Order approving the sale, the
10 Buyer’s offer to purchase herein shall be evidenced by execution of a Senior Secured
11 Promissory Note in the stated principal amount of \$7,350,000.00, coupled with
12 execution of a Security Agreement joined with a filed UCC-1, and after payment of the
13 initial non-refundable \$150,000.00, the principal amount of \$7,350,000.00 shall accrue
14 interest at the rate of 6% per annum and will be all due and payable within three (3)
15 years from the date of funding of the initial deposit, or within ten (10) days of receipt of
16 a settlement or court award in the class action law suit that has been filed in the United
17 States District Court, captioned as Jerry Alexander, et al. v. Dean Meiling, Madylon
18 Meiling, James Proctor, Janet Chubb, Chemeon Surface Technology, LLC, Metalast
19 Surface Technology, LLC, D&M-MI, LLC, DSM Partners, Ltd., Meiling Family
20 Partners, Ltd., and Meridian Advantage; Case No. 3:16-cv-00572-MMD-VPC (“Investor
21 Litigation”). Copies of the Senior Secured Promissory Note and the Security
22 Agreement are both attached hereto as Exhibit A. Upon approval of this Motion by the
23 Court, and payment of the non-refundable down payment by the Buyer, Buyer shall seek
24 to become a member of the proposed Class in the Investor Litigation; and

25 d. Until such time as the \$150,000.00 down payment is paid, Revested
26 Debtors shall retain the right to terminate the transaction at their sole and complete
27 discretion, notwithstanding Court approval of this proposed sale. Further, Revested
28 Debtors reserve the right to sell the Metalast Trademark to a third party for any amount

1 of cash or consideration as they deem reasonable, subject to Court approval, in which
2 case the Buyer may still purchase the Semas Claims.

3
4 **LEGAL ARGUMENT**

5 4. This Court has jurisdiction over this matter by reason of 28 U.S.C. 157(b) and
6 1334(a). This is a core matter by reason of 28 U.S.C. §§157(b)(2)(M), (N) and (O).

7 5. Bankruptcy Code § 363(b) provides that “the trustee [or debtor-in-possession],
8 after notice and hearing, may use, sell, or lease other than in the ordinary course of business,
9 property of the estate.” This provision generally allows a trustee, subject to court approval, to
10 sell property of the estate outside of the ordinary course of business when proposed sale is a
11 sound exercise of trustee’s business judgment and when the sale is proposed in good faith and
12 for fair value. Committee of Equity Security Holders v. Lionel Corporation (In re Lionel
13 Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); In re Ernst Homes Center, Inc., 209 B.R. 974, 980
14 (Bankr. W.D. Wash. 1997); Walter v. Sunwest Bank (In re Walter), 83 B.R. 14, 1988 Bankr.
15 LEXIS 579, 18 Collier Bankr. Cas. 2d (MB) 26, 17 Bankr. Ct. Dec. 101 (B.A.P. 9th Cir. Cal.
16 1988);. When a debtor articulates a reasonable basis for its business decisions, “Courts will
17 generally not entertain objections to the debtor’s conduct.” Committee of Asbestos-Related
18 Litigants v. Johns-Manville Corp. (In re Johns- Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.
19 N.Y. 1986). In making such a determination, courts may look to the following factors, not all of
20 which are relevant here:
21

- 22 1. Has the debtor articulated a business justification for the request;
- 23 2. Is it good business judgment for the debtor to enter into the proposed transaction;
- 24 3. Will the proposed transaction further the diverse interest of the debtor, creditors and
25 equity holders alike;
- 26 4. Is the asset increasing or decreasing in value;
- 27 5. Does the proposed transaction specify terms for adoption of the reorganization plan;
28 and

1 6. Will approval of the proposed transaction effectuate a de facto reorganization in such
2 a fundamental fashion as to render creditors' rights under the other provisions of
chapter 11 meaningless?

3 In re Work Recovery, 202 B.R. 301, 1996 Bankr. LEXIS 1405 (Bankr. D. Ariz. 1996); In re
4 Wilde Horse Enterprises, Inc., 136 B.R. 830, 1991 Bankr. LEXIS 2028 (Bankr. C.D. Cal. 1991)
5 (“In any sale of estate assets, the ultimate purpose is to obtain the highest price for the property
6 sold.”).

7 11 U.S.C 363(f) further provides:

8 f) The trustee may sell property under subsection (b) or (c) of this section free and clear
9 of any interest in such property of an entity other than the estate, only if—

- 10
- 11 • (1) applicable non-bankruptcy law permits sale of such property free and clear of such
interest;
 - 12 • (2) such entity consents;
 - 13 • (3) such interest is a lien and the price at which such property is to be sold is greater
14 than the aggregate value of all liens on such property;
 - 15 • (4) such interest is in bona fide dispute; or
 - 16 • (5) such entity could be compelled, in a legal or equitable proceeding, to accept a
money satisfaction of such interest.

17 Rule 6004(f) of the Federal Rules of Bankruptcy Procedure provides that “[a]ll sales
18 not in the ordinary course of business may be by private sale or by public auction.” A trustee
19 has broad discretion in determining the manner of sale, including whether to sell property by
20 public or private sale. In re Canyon Partnership, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1986; In
21 re Frezzo, 217 B.R. 985, 989 (Bankr. M.D. Penn. 1988). Sales of property other than in the
22 ordinary course of business of a debtor are to be approved only after notice and a hearing.
23 Sections 363(a) and (b). A trustee or debtor in possession is entitled to utilize its business
24 judgment in determining the merits of a sale such as the one contemplated in this Motion.
25 The rule is as stated in Southwestern Media, Inc., v. Rau, 708 F.2d 419 (9th Cir. 1983):

26 “The decision concerning the form of sale therefore rested within the business
27 judgment of the trustee. Liability will not be imposed for the exercise of such
28 judgment, absent negligence. See Mosser v. Darrow, 341 U.S. 267, 272-73, 95
L. Ed. 927, 71 S.Ct 680 (1952); In re Cochise College Park, Inc., 703 F.2d 1339,

1 1357”

2 6. The Revested Debtors are charged with the duty of liquidating the Revested
3 Debtors’ non-exempt assets pursuant to the terms of their confirmed Plan, and are entitled to
4 exercise their business judgment in determining how to best liquidate their non-exempt assets
5 in order to obtain a fair market value for those assets to be sold. Further, the confirmed Plan
6 called for the Revested Debtors to market the Metalast Trademark for sale, a process that has
7 been hindered by the constant and multiple litigation efforts of Madylon and Dean Meiling
8 and Chemeon Surface Technology, LLC (collectively the “Meilings”). Ownership of the
9 Metalast Trademark is the Revested Debtors’ most valuable non-exempt asset, and the assets
10 to be sold herein are not encumbered

11 7. As this Court is well aware, the Metalast Trademark has been the subject of
12 significant dispute during the course of this Chapter 11 case. In a settlement agreement that
13 resulted from a mediation with Judge Gregg Zive and approved by this Court on March 11,
14 2015 (Docket No. 305), the parties agreed that the Meilings would no longer utilize the term
15 “Metalast” in any fashion after a 90 day period, and that the ownership of the Metalast
16 Trademark was specifically determined to be the personal property of Revested Debtor David
17 Semas. In spite of that Court approved settlement agreement, the Meilings, through Chemeon
18 Surface Technology, LLC, have continued to use the Metalast Trademark, and have instituted
19 and are still pursuing litigation in the United States District Court as Case No. 3:15-cv-
20 000294, which litigation seeks to nullify Revested Debtor David Semas’ ownership of the
21 Metalast Trademark. Additionally, the Meilings have now initiated and filed a PETITION
22 FOR CANCELLATION with the United States Patent and Trademark Office (“USPTO”),
23 before the Trademark Trial and Appeal Board (“TTAB”), Cancellation No. 92064833. All of
24 the Meilings’ efforts to separate the Metalast Trademark from Revested Debtor David Semas
25 without compensation have continued, even while the Meilings have attempted to determine
26 who Revested Debtor David Semas may be negotiating with for the sale of the Metalast
27 Trademark (see Docket No. 446 – Request for Production Number 9) and complaining that
28 the Revested Debtors have not complied with their confirmed Plan by not selling the Metalast
Trademark.

1 8. There is ample justification for approving this proposed sale. The Metalast
2 Trademark and Revested Debtor David Semas' potential interest in and claims against
3 MILLC/MI94, LLC, are the estate's largest remaining non-exempt assets. The sale of these
4 assets may provide sufficient proceeds to make payment to the remaining allowed general
5 unsecured creditors estimated at \$2,500,000.00 to \$3,000,000.00 over the life of the
6 confirmed Plan, and will eliminate ongoing legal expenses to the Revested Debtors in
7 defending Revested Debtor David Semas' ownership of the Metalast Trademark. While it is
8 anticipated that the Meilings will object to the proposed sale detailed herein, the ultimate
9 transfer of these assets to a third party will resolve trademark issues as they relate to the
10 Revested Debtors, and will allow for closure of this long-running Chapter 11 case after the
11 Senior Secured Promissory Note is paid.

12 9. Revested Debtors respectfully request that the proposed sale proceed forward
13 subject to overbid(s) in open Court, however, the potential overbidding buyer would only be
14 purchasing the Metalast Trademark, and would not acquire the Semas Ownership interest in
15 MILLC/MI94, nor would it acquire any claims of Revested Debtor David Semas for unpaid
16 wages/bonuses and promissory notes payable from MILLC/MI94. Further, as the
17 overbidding buyer would only be acquiring the Metalast Trademark, that overbidder would
18 be required to pay the entire purchase price to the Revested Debtors within five (5) days of
19 entry of the Court Order approving the sale. Any overbid must exceed the estimated value of
20 the Metalast Trademark of \$2,350,000.00, by at least 5%, with bids thereafter to be made in
21 increments to be established by the Court. Further, any potential overbidder(s) must provide
22 written proof of funds available to consummate the transaction to the Revested Debtors'
23 attorney at least 24 hours prior to the scheduled hearing for approval of this sale, and must
24 also concurrently provide a cashier's check payable to the Client Trust Account of Harris
25 Law Practice LLC for a minimum amount of \$150,000.00.

26 Revested Debtors request that the Court order that the proposed sale of the Semas
27 Claims, the Semas Ownership and the Metalast Trademark not be subject to the 14 day stay
28 provisions of Fed. R. Bankr. P. 6004(h).

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CONCLUSION

Based on the foregoing, the Revested Debtors respectfully request that this Court enter its Order authorizing the Revested Debtors to a) sell Revested Debtor David Semas' 20% interest in MILLC/MI94, to sell the Metalast Trademark and to surrender and release David Semas' claims of unpaid wages, bonuses and promissory notes payable against MILLC/MI94, LLC, for a total of \$7,500,000.00, upon the terms and conditions set forth above; b) for a waiver of the stay provisions contained in FRBP 6004(h); c) execute any documents necessary in order to effect the transfer of these assets; d) for an Order that the Buyer is deemed a good faith purchaser and is protected by the "safe harbor" provisions contained in 11 U.S.C § 363(h); and e) for such other relief as the Court may deem appropriate under the circumstances.

Dated this 23rd day of January, 2017.

STEPHEN R. HARRIS, ESQ.
HARRIS LAW PRACTICE LLC

/s/ Stephen R. Harris

Attorneys for Revested Debtors

EXHIBIT “A”

EXHIBIT “A”

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement") is made and effective as of this 20th day of January, 2017, by and between Manager MI-16, LLC, a Nevada limited liability company ("MI-16" or "Debtor") and David M. Semas, an individual or his nominee (hereinafter "Secured Party"). Debtor and Secured Party agree as follows:

WITNESSETH

WHEREAS, Debtor has, executed a Senior Secured Promissory Note ("Promissory Note") in favor of Secured Party. An important term and consideration of the Promissory Note is Debtor's agreement to enter into this Agreement for the benefit of Secured Party whereby Debtor will grant, transfer and assign to Secured Party a superior, unsubordinated security interest in and to the collateral, as defined below as security for Debtor's repayment of the Promissory Note; and

WHEREAS, Debtor intends to secure its obligations to Secured Party as specified in the Promissory Note by granting a security interest in all of Debtor's rights, title and interest to including, without limitation its intellectual property, copyrights, partnership agreements, all other contracts, accounts receivable and all amounts received from awards of the Court, legal settlements from private parties, insurance carriers, financial institutions or the U.S. Government (hereinafter "Collateral"). The Collateral owned by Debtor pursuant to the provisions of this Agreement and the Promissory Note, a copy of which is attached hereto as Exhibit "A" and incorporated herein as if set forth in full; and

WHEREAS, pursuant to the Operating Agreement of Debtor, the Debtor's Manager has full, exclusive and complete authority to act for Debtor in all matters, without Preferred or Common Interests owners' approval, including, without limitation, approval of all contracts, promissory notes and other instruments which the Manager may authorize, including this Agreement.

NOW, THEREFORE, in consideration of the above-stated recitals, each and every one of which are true and accurate, and an important term and condition of this Agreement and incorporated into this Agreement as though set forth verbatim below and upon the following terms and provisions, the parties hereto agree as follows:

1. Grant of Security Interest: Providing Debtor pays the Secured Party the sum of \$150,000.00 as a down payment in accordance with paragraph 2 of the Promissory Note attached hereto as Exhibit A Debtor hereby grants, transfers and assigns to Secured Party, its successors and assigns, a security interest in all of Debtor's rights, title and interest in its Collateral including all of the above-referenced property, whether now owned or subsequently acquired and wherever located, of every kind and description, and shall include all tangible and intangible personal property, and shall include every deposit account of Debtor with any financial or

banking institution, and any other claim of Debtor against any person or entity, and all money, instruments, securities, documents, chattel paper, claims and any other property of Debtor, including proceeds.

In addition to the above-described Collateral, there is also included within the security interest granted to Secured Party in this Agreement, any and all other assets of Debtor, the purpose of this Agreement being that all property of Debtor of every kind and nature, and all beneficial interests belonging to or to which Debtor may be entitled, and all property and assets that shall after the effective date of this Agreement come into the possession of or belong to Debtor, are included within the scope of this Agreement.

2. Representations and Warranties Concerning Collateral: The Debtor further represents and warrants to the Secured Party that the Debtor is the owner of the Collateral, free from any right or claim or any person or any adverse lien, security interest or other encumbrance, except for the security interest created by this Agreement.

3. Filing Financial Statements; Further Acts: The Secured Party, in its sole discretion, may file one or more Financial Statements (including initial financing statements, amendments and extensions thereto) under the Uniform Commercial Code adopted by the State of Nevada in any appropriate filing office, naming Debtor as debtor and Secured Party as secured party, and indicating the Collateral specified in this Agreement. Without prior written consent of Secured Party, Debtor shall not file or permit to be filed any Financing Statement in which Secured Party is not named as the sole senior secured Secured Party. Debtor further agrees, at the request of Secured Party, to promptly take all other actions Secured Party determines to be necessary or useful for the attachment, perfection and first priority of, and the ability of Secured Party to enforce the security interest in the Collateral. Secured Party may record this Agreement, an abstract thereof, or any other document describing Secured Party's interest in the Collateral with any applicable U. S. federal agency, at the expense of Debtor.

4. Termination: Debtor and Secured Party agree that, upon Debtor's satisfaction of all payment and other obligations under the Promissory Note as specified pursuant to its terms, specifically pursuant to Paragraph 8 of the Promissory Note, Secured Party will release all security interests in Debtor's Collateral and will release any UCC Financing Statement filed with the Nevada Secretary of State. Upon Debtor's satisfaction of all payment and other obligations under the Promissory Note, Secured Party agrees that it shall execute such instrument or instruments reasonably required by Debtor to release, cancel and rescind this Agreement and UCC Financing Statement, which has been filed.

5. Default: Until default, Debtor may have possession of the Collateral and use it in any lawful manner, and upon default Secured Party shall have the immediate right to the possession of the Collateral. Debtor shall be in default under this Security

Agreement upon the happening of any of the following events (an "Event of Default"):

- (a) default in the payment or performance of any obligation, covenant or Liability contained or referred to in the Promissory Note or in this Security Agreement; or
- (b) loss, theft, damage or destruction to or of any of the Collateral which shall materially and substantially diminish the aggregate value of the Collateral, the sale or encumbrance of any of the Collateral, or the making of any levy, seizure or attachment on or to the Collateral.

Upon an event of Default and at any time thereafter, Secured Party may declare the Promissory Note immediately due and payable and shall have the remedies of a secured party under the applicable provisions of the Uniform Commercial Code adopted by the State of Nevada (the "Code"). Secured Party may require Debtor to assemble the Collateral and deliver or make it available to Secured Party at a place to be designated by Secured Party which is reasonably convenient both parties.

Debtor agrees to pay to Secured Party in addition to the indebtedness secure hereby, all expenses of retaking, holding, preparing for sale and selling incurred by Secured Party in connection with realization on the Collateral including reasonable attorneys' fees and costs. In addition, in the event suit or action is instituted to enforce or interpret this Agreement (including without limitation efforts to modify or vacate any automatic stay or injunction), the prevailing party shall be entitled to recover all expenses reasonably incurred at, before or after trial and on appeal whether or not taxable as costs, or in any bankruptcy proceeding, including, without limitation, attorneys' fees, witness fees (expert and otherwise), deposition costs, copying charges and other expenses.

Secured Party's rights under this Agreement, on the default of Debtor, shall be in addition to those rights and remedies of Secured Party as provided the Promise of the Promissory Note.

6. Debtor's Secured Parties: Debtor's Manager shall reflect on the books and records of MI-16 that Secured Party enjoys a senior secured position as a creditor of the Debtor in the amount of \$7,350,000.00, plus accrued interest as adjusted on a monthly basis, and that all other creditors of Debtor, except as provided in paragraph 5 of the Promissory Note shall be subordinate to Secured Party's rights as provided in this Agreement and in the Promissory Note. All of the Collateral subject to this Agreement is for the security of Secured Party, and for the performance of the terms of the Promissory Note.

7. Miscellaneous Provisions:

a. Any notice, demand, request or other instrument, which may be given under this Agreement shall be delivered in person or sent by United States certified mail, postage prepaid, and shall be addressed:

To Secured Party:

David M. Semas
9900 Wilbur May Parkway
Unit 2406
Reno, NV 89521

To Debtor:

MI-16, LLC
Attention: Marc Harris and Jeffrey M. Mackinen, Co-Managers
P.O. Box 1311
Minden, NV 89423

b. This Agreement shall be construed according to the laws of the State of Nevada as amended from time to time. Venue of any proceedings brought to enforce the Promissory Note shall be in the U.S. District Court, District of Nevada.

c. Failure of the Secured Party to exercise any right or remedy hereunder or under applicable law shall not constitute a waiver of the right to exercise the same right or remedy in the event of any subsequent default, or in the event of any continuance of any existing default.

d. No provision of this Agreement shall be modified except by written instrument expressly referring to this Agreement and to the provision modified, and signed by Secured Party and Debtor. This Agreement and its provisions are binding on the heirs, executors, administrators, assigns or successors of Secured Party and Debtor.

e. The waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or any subsequent breach of the same, or any other term, covenant or condition herein contained. The subsequent acceptance hereunder by a party hereto shall not be deemed to be a waiver of any preceding breach by the other party of any term, covenant or condition. No term, covenant or condition of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing signed by both parties.

f. If for any reason whatsoever any one or more of the provisions of this

Agreement shall be held or deemed to be illegal, inoperative, unenforceable or invalid as applied to any particular case or in all cases, such holding or determination shall not have the effect of rendering such provision illegal, inoperative, unenforceable or invalid in any other case or of rendering any of the other provisions of this Agreement

illegal, inoperative, unenforceable or invalid. Furthermore, in lieu of each illegal, invalid, unenforceable or inoperative provision, the provision shall be construed so as not to be an illegal, invalid, unenforceable or inoperative provision. The remainder of this Agreement, and the application of such provision, covenant or condition to persons or circumstances other than those as to which it is held or determined to be illegal, invalid, inoperable or unenforceable shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

g. This Agreement and the Promissory Note sets forth all the covenants, promises, agreements, conditions and understandings between Debtor and Secured Party concerning the Collateral, and there are no covenants, promises, agreements, conditions or understandings either oral or written between them other than as are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon Debtor and Secured Party unless reduced to writing and signed by both of them.

h. The headings appearing in this Agreement are inserted only as a matter of convenience, and in no way define, limit, construe or describe the scope or intent of each section or article of this Agreement, nor in any way affect this Agreement.

i. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one in the same instrument; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. It is not necessary that each party hereto execute the same counterpart so long as identical counterparts are executed by all parties.

j. The parties agree that they have had an opportunity to have this Agreement reviewed by each party's respective counsel. The parties agree that this Agreement has been mutually prepared. Since the Agreement was mutually prepared, the terms of this Agreement shall not be construed or interpreted against any one party hereto.

k. Any rights not expressly granted herein are reserved.

8. **Successors:** The rights and obligations of the parties to this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors, executors, administrators and heirs.

9. **Amendments.** This Agreement shall not be amended, altered or modified except by written instrument signed by Finder and the Company.

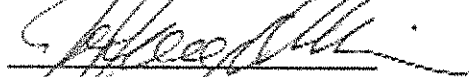
10. **Complete Agreement.** This Agreement sets forth the entire understanding of the parties hereto and supersedes all prior contracts, agreements, communications, representations, warrants, whether oral or written, by any party hereto.

IN WITNESS WHEREOF this Agreement has been executed as of the date first above-written.

"DEBTOR":



Marc Harris, Co-Manager
MI-16, LLC, a Nevada limited liability company



Jeffrey M. Mackinen, Co-Manager
MI-16, LLC, a Nevada limited liability company

"SECURED PARTY":



DAVID M. SEMAS, an individual

EXHIBIT "A"
PROMISSORY NOTE

SENIOR SECURED PROMISSORY NOTE

\$7,350,000.00

Reno, Nevada
January 20, 2017

FOR VALUE RECEIVED, MI-16, a Nevada limited liability company ("MI-16") ("Promisor"), and David M. Semas, an individual ("Promisee" or "Semas") and Semas as President/CEO of Metalast International, Inc., ("MII") and Semas as President/CEO of Metalast, Inc. ("MTI"), both Nevada corporations, enter into this senior secured promissory note ("Promissory Note"), subject to terms, conditions and provisions as herein defined.

1. Promisor and Promisee agree that as of the date of approval of this Promissory Note, if so approved by the U.S. Bankruptcy Court, District of Nevada and funding of the \$150,000.00 down payment delineated in paragraph 2 below, Promisor shall, at maturity of this Promissory Note pay Promisee, the principal sum of **SEVEN MILLION THREE HUNDRED AND FIFTY THOUSAND DOLLARS (\$7,350,000.00)**, together with interest accrual at the rate of six percent (6%) per annum. The consideration is for an assignment of all Semas owned rights to the "Metalast®" trademark and MI94 LLC, a Nevada limited liability company formerly known as Metalast International, LLC ("MI94") ownership interests and debt obligations owed and/or legal rights as Semas has or may have in MI94 as hereinafter defined.

2. Within 30-days after the approval of the bankruptcy court Promisor shall pay the total sum of \$150,000.00 ("down payment") allocated with \$100,000.00 paid to Semas, \$25,000.00 to MII and \$25,000.00 to MTI for all rights granted to Promisor herein. As provided in paragraph 11, within 90-days after the receipt by Promisor of the down payment, MII and MTI shall stop the use of the Metalast® name.

3. The rights granted to Promisor shall include all rights owned by Semas to the United States Patent and Trademark Office ("USPTO") registered Metalast® trademarks, service marks, applications for registration, trade name, logo,

EXHIBIT "A"
PROMISSORY NOTE

common law rights and the entire goodwill associated with the Metalast name and brand ("trademarks"). Specifically, included in the sale and transfer of the trademarks from Promisee to Promisor, but in no way intended to limit Promisor's legal rights, whatever they may be to the trademarks, are the Promisee's interests and ownership rights to pursue trademark infringement and false claims of ownership or legal rights of use by all third parties presently infringing on the trademarks. This includes but is not limited to third parties claiming a false designation of origin and without authorization licensing or sub-licensing the trademarks, manufacturing, labeling technical literature, selling and advertising the trademarks. The trademarks have been owned or controlled by Semas since first put into commerce in 1993 and formally registered with the USPTO in 1997. These legal ownership rights were further validated under the terms and conditions of a binding settlement agreement approved by the U.S. Bankruptcy Court – District of Nevada (Case No. BK-N-13-52337-BTB) on March 11, 2015 by Judge Bruce T. Beesley.

4. In consideration of the down payment and good will MI-16 shall receive all Semas owned MI94 Membership Interests, MI94 warrants and an assignment of 100% ownership to all Semas Promissory Notes documenting loans made to MI94. MI-16 also receives assignment of wages or compensation due Semas or Metalast International, Inc. and any other rights Semas has or is entitled to with reference to all other monetary obligations as may be owed by MI94 to Semas ("MI94 Interests").

5. The Promisor and its individual LLC members filed a class action lawsuit against the parties that acquired the MII LLC assets and others, *Alexander v. Meiling*, Case No. 3:16-CV-00572 ("class action"). The Promisor shall reflect the obligations herein on the books and records of MI-16, subject only and subordinate to class action attorney fees, court costs, MI-16 class action contributor loans advanced and accrued interest to be paid. This Promissory Note shall be assigned a first priority of repayment over all other debt of Promisor and all Preferred and Common Interests of the Promisor in MI94 and in MI-16 until the Promissory Note is repaid in full or as maybe discounted at the sole and complete discretion of Semas.

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6. Subject to the provisions in paragraph 5 above Promisor agrees to execute the Security Agreement attached assigning Promisee a superior secured position for repayment of this Promissory Note secured by the assets of Promisor, including, without limitation, all of Promisor's rights and future rights, title and interest in its owned or controlled intellectual property, copyrights, partnership agreements, all other contracts, accounts receivable and all amounts received from awards of the Court, legal settlements from private parties, insurance carriers, financial institutions or the U.S. Government.

Promisor consents to the preparation and filing of a UCC-1 Financing Statement with the Nevada Secretary of State evidencing Promisor's obligation to repay the Promissory Note and all other obligations herein. Promisee in its sole discretion may file one or more financing statements, in any appropriate filing office under the Uniform Commercial Code naming Promisor (MI-16) as Debtor and Promisee as the senior secured party and referring to and receiving the collateral specified in the Security Agreement and this Promissory Note. Without prior written consent of Promisee, Promisor shall not file or permit to be filed, any financial statement in which Promisee is not named as the sole secured party.

7. Until the down payment is paid by the Promisor and received by Promisee as defined in paragraph 2, the Promisee shall have the right to terminate this transaction for any reason in its sole and complete discretion. Further, Promisee has the right to sell the trademarks to a third party for any amount of cash or other forms of consideration as it deems reasonable, subject only to court approval. In the event of any such sale by the Promisee all rights contemplated to be granted herein to MI94 and MI-16, specifically as defined in paragraph 4 may remain intact and if mutually agreed to the financial obligation of the Promisor under this Promissory Note shall be reduced by an amount equal to the net sale proceeds received by Promisee.

8. The term of the Promissory Note is three(3) years from date of the receipt by Promisee of the down payment, or 10-days after Promisor receives a settlement or court award of the class action, whichever occurs first ("maturity date").

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9. Promisee shall assign all rights in the trademark to Promisor including the right to defend the pending legal action with the Trademark Trial and Appeal Board and USPTO (No. 92064833), or file a Rule 2.117(a) Suspension of Proceedings.

10. All payments of principal and interest of this Promissory Note are payable in lawful money of the United States of America.

11. As the founder of the Metalast® trademark, name and brand Semas and his family members shall have the irrevocable right to reference Metalast® as a part of their history. This includes but is not limited to publishing, printing or in any manner whatsoever publicly using the Metalast® trademark, name and logo and all other MI94, LLC owned images or service marks. As provided for in paragraph 2 Semas shall change the names of MII and MTI and shall not use the Metalast® trademark or name in commerce in the metal finishing or chemical industry.

12. Time is of the essence for the payment of the Promissory Note. Upon failure to make payment of the principal, interest and any other amount due under this Promissory Note at the maturity date termination the Promisor shall be in default, upon which any unpaid principal sum and accrued interest thereon shall become immediately due and payable. After any default and so long as such default remains uncured, the unpaid principal sum of this Promissory Note shall bear interest at the rate of twelve percent (12%) per annum. At such time as a judgment is obtained for any and all amounts owing under this Promissory Note, interest shall continue to accrue on the amount of the judgment at eighteen percent (18%) per annum.

13. This Promissory Note may be prepaid at any time, without penalty. All payments shall be applied first to the principal and then to accrued interest.

14. This Promissory Note shall be construed according to the laws of the State of Nevada as amended from time to time. Venue of any proceedings brought to enforce this Promissory Note shall be in the U.S. District Court, District of Nevada, City of Reno, State of Nevada.

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15. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.


16. No provision of this Promissory Note shall be modified except by written instrument expressly referring to this Promissory Note and to the provision modified, and signed by Promisee and Promisor. This Promissory Note and its provisions are binding and shall inure to the benefit of on the heirs, executors, administrators, assigns or successors of Promisor or Promisee.

17. Should Promisor fail to fund the down payment as required by paragraph 2, unless extended by Promisee the Promissory Note and Security Agreement shall be immediately terminated. Upon such event all provisions herein shall be null and void and both parties shall be relieved of any responsibility or liability to each other.

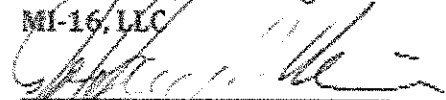
18. This Agreement sets forth the entire understanding of the parties hereto and supersedes all prior agreements, communications, representations, warrants, whether oral or written, by either party hereto.

IN WITNESS WHEREOF this Senior Secured Promissory Note has been executed as of the date first above-written.

"PROMISOR" - Accepted




Marc Harris, Co-Manager
MI-16, LLC

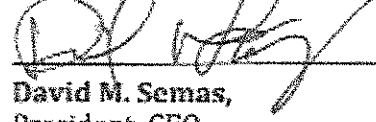


Jeffrey M. Mackinen, Co-Manager
MI-16, LLC


"PROMISEE" - Agreed To



David M. Semas,
An individual



David M. Semas,
President, CEO
Metalast International, Inc.



David M. Semas,
President, CEO
Metalast, Inc.