

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") effective as of the ____ day of _____, 2016, by and between **SULLIVAN NEWPORT LTD.** whose mailing address is P.O. Box 3088, Galveston, Texas 77552 ("**Landlord**") and **THE CITY OF GALVESTON**, having an office for the transaction of business at 823 Rosenberg Galveston, Texas 77553 ("**Tenant**").

WITNESSETH

In consideration of Ten Dollars (\$10.00) and other good and valuable consideration, and the mutual covenants contained herein, Landlord and Tenant hereby agree as follows:

Section 1. Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and subject to the terms, conditions, covenants and provisions hereof and in their current **AS IS, WHERE IS** condition, the following:

That certain tract of improved real property located in Galveston County, Texas, consisting of approximately 5,000 square feet of warehouse & office space, .45 acres of land to be used as a laydown yard, together with an additional enclosed storage bay of approximately 840 square feet known as mini warehouse unit number 5. Tenant shall also be allowed access to utilize an additional .5 acre parcel for parking equipment and is further defined in Section 5 of this agreement. The leased premises is shown on the attached Exhibit "A" (the "Premises").

Section 2. Term. The term of this Lease (the "Lease Term") shall be for the period of two (2) years, beginning on October 1, 2016 (the "Commencement Date"), unless extended or sooner terminated as herein provided.

Section 3. Rent. Beginning October 1, 2016 and continuing for each month thereafter during the Term of this Lease, Tenant agrees to pay Landlord for the Premises, without offset or deduction, and without previous demand therefor, rent at the rate set forth below. All rent shall be payable by Tenant in the amount specified on the first day of each and every calendar month during the Lease Term. Rent shall be prorated for any partial months during the Lease Term. The basic rent payable (the "Base Rent") on or before the first day of each month during the Lease Term shall be FOUR THOUSAND AND NO/100 DOLLARS (\$4,000) per month.

Section 4. Proration of Rent. If the Commencement Date is other than the first day of a calendar month or if this Lease expires or terminates on a day other than the last day of a calendar month, then the installments of Rent and Additional Rent for such month or months shall be prorated and the installment or installments so prorated shall be paid in advance. Installments for such prorated month or months shall be calculated by multiplying the Monthly Rent by a fraction, the numerator of which shall be the number of days occupied or used during

the partial month, as the case may be, and the denominator of which shall be the number of days in said month.

Section 5. Additional Acreage Tenant shall be allowed access to utilize an additional .5 acre parcel located at Newport Marine Terminal for parking equipment. Landlord and Tenant agree that this specific .5 acres of laydown acreage can be relocated but will remain on Newport Marine Terminal property. Landlord will give written notice to Tenant of need for relocation with specification of the new, comparable parking area. Tenant will relocate to the new designated area within 30 days of receipt of the written notice from Landlord.

Section 6. Place of Payment. All amounts payable to Landlord under Section 3 of this Lease, as well as all other amounts payable by Tenant to Landlord under the terms of this Lease, shall be paid at the office of Landlord set forth above, or at such other place as Landlord may from time to time designate by written notice to Tenant.

Section 7. Rent to be Absolutely Net to Landlord. It is the intention of Landlord and Tenant that the Rent payable hereunder shall be absolutely net to Landlord so that this Lease shall yield, net to Landlord, the Rent specified herein during the term of this Lease. In addition to payment of the Rent outlined hereinabove and subject to the allowance granted the Tenant as set forth in this document, Tenant shall be solely responsible for all other costs associated directly with the Premises, including but not limited to those for insurance, utilities and ordinary maintenance and for Tenant's pro rata share of all personal and real property taxes which may be levied or assessed against the Land or Tenant's property thereon (collectively, the "Additional Rent"). Notwithstanding the foregoing, Tenant shall not be required to pay any costs related to Landlord's other property adjacent to the Land, except to the extent that such costs are caused by the acts or omissions of Tenant, its business invitees, or its operations.

Section 7 (A) Landlord obligation and allowance for initial modifications. Notwithstanding anything to the contrary in this Lease, Landlord shall be responsible for the upkeep and repair of the major components of the structure including the slab, external walls, roof, air conditioning and heating systems, electric lines and electrical panel, water heater and roll up doors. However, Tenant shall be and remain responsible for repairs of any damage to the Premises caused by Tenant, its employees agents or contractors, in connection with its use of the Premises. Landlord agrees to perform the following repairs, at its sole cost and expense, prior to Tenant taking possession of the Premises:

- (i) Repair roof leaks;
- (ii) Repair HVAC system and return to normal service;
- (iii) Repair existing roll-up doors and return to normal service;
- (iv) Repair plumbing issues and return to normal service; and
- (v) Restore existing electrical infrastructure and service to the Premises.

In addition, the Landlord extends to the Tenant an allowance of up to FIVE THOUSAND DOLLARS (\$5,000) for any incidental modifications or repairs to the Premises which may be desired by the Tenant during the Term of this Lease. Tenant shall submit requests to Landlord for approval for any desired modifications or repairs prior to commencing work, which approval

shall not be unreasonably withheld. Any repairs or modifications made by Tenant shall conform with all applicable laws, codes and regulations, including without limitation all building codes of the City of Galveston.

Section 8. Security Deposit. Tenant shall deposit with Landlord as of the Effective Date, as security for Tenant's performance hereunder, a security deposit in the amount of FOUR THOUSAND AND NO/100 DOLLARS (\$4,000).

Section 9. Use of Premises. The Premises may be used solely for Tenant's general office purposes, storage of equipment and/or materials, and other reasonably necessary purposes incident to Tenant's management of a commercial construction project located in Galveston County, Texas.

Section 10. Taxes and Utility Expenses.

(a) Tenant shall, during the term of this Lease, be responsible for, as and when the same shall become due and payable, Tenant's pro rata share of ad valorem taxes which shall or may during the term of this Lease be charged, levied, laid, assessed, imposed, become due and payable against the Premises, or liens upon or for or with respect to the Premises or any part thereof, together with all interest and penalties thereon, under or by virtue of all present or future laws, ordinances, requirements, orders, directives, rules or regulations of the federal, state and county governments and of all other governmental authorities whatsoever (hereinafter referred to as "Taxes").

(b) Tenant shall pay to Landlord monthly, as Additional Rent, Tenant's pro rata share of Taxes covering the Premises. Tenant's pro rata share shall be determined based upon the previous year's (i.e. 2015) tax statement, which currently equates to **\$190.36 per month** payable by Tenant to Landlord, in addition to any other amounts due hereunder. On or before August 1, 2017 (and on or before each successive anniversary of the Commencement Date during the Lease Term), Tenant and Landlord shall meet and reconcile the payments made in accordance with the preceding sentence, against the actual assessed and levied Taxes covering the Premises for such calendar year, and any balance owing to/from Landlord shall be paid within five (5) days of such meeting.

(c) Tenant shall also be responsible for payment of any special assessments or levies against the Premises arising as a result of Tenant's use or possession of the Premises. Any special assessments made or assessed after the Commencement Date shall be payable in accordance with Section 10(b), above.

(d) In addition, Tenant shall, during the term of this Lease, be solely responsible for filing all required renditions with the appropriate taxing authorities and satisfying any and all ad valorem tax obligations which shall or may during the term of this Lease, be charged, levied, laid, assessed, imposed, and/or become due and payable, with respect to Tenant's business personal property and equipment which is or may be located within the Premises, together with all interest and penalties thereon, under or by virtue of all present or

future laws, ordinances, requirements, orders, directives, rules or regulations of the federal, state and county governments and of all other governmental authorities whatsoever

(e) During the term of this Lease, Tenant shall also pay directly to the respective service provider, as and when the same shall become due and payable, all utility, telephone, waste disposal, and other costs for services furnished to the Premises, to the improvements thereon, or to the occupants thereof, during the Term of this Lease.

Section 11. Improvements, Repairs, Additions, Replacements.

Tenant shall not make alterations or improvements to the Premises without Landlord's prior written consent, which may reasonably be withheld. Any approved alterations or improvements shall be performed in accordance with all applicable government laws and regulations and in a good and workmanlike manner. Further, any approved alterations or improvements shall become part of the realty and unless otherwise approved in writing by Landlord, and shall remain on the Premises at the expiration or termination of this Lease.

Upon expiration or termination of this Lease, Tenant shall have ten (10) days to remove its removable trade fixtures, goods and effects, including all equipment and products in inventory (collectively, "Tenant's Property"). In no event shall Tenant be permitted to or obligated to remove any permanent alterations, additions, improvements and installations, but shall instead peaceably and quietly surrender to Landlord, possession of the Premises and shall leave the Premises broom clean and in good repair, order and condition, normal wear and tear excepted. Tenant's obligations to observe and perform this covenant shall survive the expiration or termination of this Lease. In the event of Tenant's failure to remove any of Tenant's Property from the premises within ten (10) days after the expiration or termination of this Lease, Landlord is authorized, without liability to Tenant for loss or damage thereto and at the sole risk of Tenant, to remove and store any of such Tenant's Property, at Tenant's expense, or to retain the same under Landlord's control or to sell at public or private sale, without notice, any or all of the Tenant's Property not so removed, and to apply the net proceeds of such sale to the payment of any sum due hereunder, and the balance, if any, shall be paid to Tenant.

Tenant shall have the right to maintain, at Tenant's sole expense and subject to Landlord's express consent and approval, signs on the Premises which evidence Tenant's presence and business on the Land. Any signage placed on or within the Premises must comply with all applicable local governmental requirements for same.

Section 12. Requirements of Public Authorities. As it relates to the Leasehold interest only, during the term of this Lease, Tenant shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, hazardous substance laws, environmental laws, and all requirements, orders, directives, rules and regulations of the federal, state, and county governments and of all other governmental authorities affecting the Premises or appurtenances thereto or any part thereof whether the same are in force at the commencement date of this Lease or may in the future be passed, enacted or directed, and Tenant shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands that may in any manner arise out of or be imposed because of the failure of Tenant to comply with the covenants

of this Section. Landlord has no obligation or duty to contest or challenge any such requirements, and should Tenant choose to do so, it shall be solely responsible for any costs or damages associated therewith.

Section 13. Covenant against Liens. If, because of any act or omission of Tenant, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Landlord or the interest of Landlord in and to any portion of the Land, Tenant shall, at its own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after written notice from Landlord to Tenant of the filing thereof; and to the extent permitted by law Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord) and hold harmless Landlord against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees, resulting therefrom.

Section 14. Other Covenants of Tenant.

(a) Tenant may be requested to supply documentation, acceptable to Landlord, indicating that all commodities/materials brought onto, or stored within the Premises are covered by insurance that will pay all clean up costs of soil, air, and water of any environmental contaminants or hazardous waste. Tenant, to the extent such is caused solely by the actions of Tenant, its employees, agents, contractors and/or invitees, will be responsible for all damages, fines, and/or clean up costs resulting from contamination of soil, air or water as a result of any such commodities being placed or released by Tenant, its employees, agents, contractors and/or invitees, on or near the Premises. Tenant will be solely responsible for obtaining and maintaining all necessary permits; complying with all laws, regulations, and ordinances governing Tenant's operations; and paying all relevant fees and obligations required for Tenant's operation. Landlord shall be solely responsible for all damages, fines, and/or clean up costs resulting from contamination of soil, air or water as a result of any such commodities that are existing on the Premises prior to Tenant taking possession of the Premises.

(b) Tenant hereby acknowledges and agrees to use the Premises strictly pursuant to the terms of this Lease and in accordance with all laws and ordinances.

(c) Tenant hereby acknowledges and agrees it shall not commit, or suffer to be committed, any waste on the Premises, or shall it maintain, or permit the maintenance or commission, of any nuisance on the Premises.

(d) Except for pre-existing condition, Tenant hereby acknowledges and agrees to keep and maintain and surrender Premises in an environmentally clean condition until termination of this Lease agreement, reasonable wear and tear expected.

(e) Tenant shall, at its sole cost and expense, maintain and keep in good repair all fences surrounding the Premises throughout the Term of this Lease.

(f) Tenant shall be responsible for the conduct and acts of its employees and customers both on the Premises and Landlord's adjoining property at all times during Tenant's use and occupancy of the Premises and shall, to the extent permitted by law, hold and save

harmless the Landlord from the claims of any and all persons arising from such use and occupancy by Tenant.

(g) Landlord shall be responsible for the conduct and acts of its employees and invitees both on the Premises and Landlord's adjoining property at all times during Tenant's use and occupancy of the Premises and shall, to the extent permitted by law, hold and save harmless the Tenant from the claims of any and all persons arising from such use and occupancy by Landlord.

Section 15. Access to Land. Landlord or Landlord's agents and designees shall have the right, but not the obligation, to enter upon the Land after reasonable prior notice to Tenant, to examine same to verify Tenant's compliance with the terms of this Lease, and to exhibit the Land to prospective purchasers and, not less than six (6) months prior to the expiration of any existing lease term or any Renewal Term (as applicable), to prospective tenants.

Section 16. Assignment and Subletting. Tenant may not assign, mortgage or otherwise encumber this Lease, or sublease all or any part of the Land without Landlord's prior written approval, which approval may be withheld for any or no reason. If the Landlord permits any sublease or assignment, Tenant shall nevertheless, notwithstanding such approval, be and remain fully responsible for all obligations under this Lease.

Section 17. Not used.

Section 18. Insurance. Tenant shall pay directly to Landlord on demand, and as Additional Rent hereunder, Tenant's prorated share of insurance premiums covering the improvements located within the Premises. Tenant's current share of such premiums, as of the date of execution of this Lease, is **\$535.56 per month**, which amount shall be paid in the same manner as the Rent described above, but shall be subject to adjustment during the Term of this Lease upon renewal of such policy or policies by Landlord, in which event Landlord shall provide Tenant with no less than fourteen (14) days written notice of any such change in premium.

In addition to all other amounts payable by Tenant hereunder, Tenant shall also provide at its own expense and keep in force during the term of this Lease, the following policies of insurance:

(a) General Liability

Tenant is a participant in the Texas Municipal League Risk Pool. The Risk Pool will issue a certificate noting the Landlord is the owner of the property. The limits of liability are set out in the Texas Tort Claims Act as \$250,000 per individual and \$500,000 per occurrence.

(b) Workers Compensation

Tenant shall provide a certificate from the Texas Municipal League evidencing that it has

workers compensation insurance coverage with statutory limits as set by The State of Texas.

(c) Landlord Insurance

Landlord shall maintain all-peril insurance covering the Premises against casualty loss during the Lease Term. Notwithstanding the foregoing, Landlord shall not be responsible for insuring Tenant's personal property against loss or damage.

Section 19. Eminent Domain. As used in this Section 19, the term "Taking" shall mean and refer to the event of vesting of title in a competent authority vested with the power of eminent domain or condemnation pursuant to any action or proceeding brought by such authority in exercise of such power, including a voluntary sale to such authority, either under threat of, or in lieu of, condemnation, or while a condemnation action or proceeding is pending. If, at any time during the term of this Lease (or during any Renewal Term, as applicable), there shall be a Taking of all or any part of the Premises, this Lease shall terminate as to the Premises so taken and Landlord and Tenant shall recover damages from the taking party as their interests may appear, provided that Landlord shall recover the value of the Premises so taken as if the land had been free to lease.

Section 20. Quiet Enjoyment; Status of Landlord's Title.

(a) Tenant, upon paying the rent and additional rent and all other sums and charges to be paid by it as herein provided, and observing and keeping all covenants, warranties, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the term of this Lease, and any Renewal Term (as applicable).

(b) Landlord represents and warrants to Tenant that Landlord owns fee simple title to the Premises and that Landlord has the power and authority to execute and deliver this Lease and to carry out and perform all covenants to be performed by Landlord hereunder. Further, Landlord represents and warrants that the Premises are not subject to liens or encumbrances which prevent Landlord from executing and performing under this Lease.

Section 21. Default.

(a) The following events shall constitute events of default by Tenant under this Lease:

(1) Tenant's failure to pay any installment of Base Rent and/or Additional Rent when the same shall be due and payable, within five (5) business days of the date due; or

(2) Tenant's failure to perform any of the other covenants, conditions and agreements herein contained on Tenant's part to be kept or performed and the continuance of such failure without the curing of same for a period of fifteen (15) business days after receipt by Tenant of notice from Landlord specifying the nature of such failure; or

(3) If Tenant shall (i) file a petition commencing a voluntary case under any applicable federal or state bankruptcy, insolvency or other similar law; (ii) make a general assignment for the benefit of its creditors; (iii) file an application for, or consent to, the appointment of any receiver or a permanent or interim trustee of Tenant or of all or a substantial portion of its property; (iv) file a petition seeking a reorganization of its financial affairs or to take advantage of any bankruptcy, insolvency or similar law, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law; (v) take any action for the purpose of effecting any of the foregoing; or (vi) be the subject of a decree or order for relief by a court having jurisdiction in respect of Tenant in any involuntary case under any applicable federal or state bankruptcy, insolvency or similar law; or

(4) If any proceedings brought against Tenant seeking any of the relief mentioned in Section 21(a)(3) shall not have been dismissed within ninety (90) days.

(5) If for reasons other than those set out in this Section, Tenant fails to conduct regular business upon the Premises for a period of ninety (90) days or more.

(6) Failure of Landlord to make any required repairs to the structure of the building, as described more particularly in Section 7A above, within sixty (60) days after receipt of written notice from Tenant requesting same.

(b) Upon the occurrence of an event of default and failure of Tenant to cure the same within any cure period specified herein, Landlord may, at its option, (i) give Tenant a notice of election to end the term of this Lease (or any Renewal Term, as applicable) upon a date specified in such notice, which date shall be not less than ten (10) business days after the date of receipt by the Tenant of such notice, and upon the date specified in said notice, and provided such event of default has not been cured, the term and estate hereby vested in Tenant shall cease and any and all other right, title and interest of Tenant hereunder shall likewise cease without further notice or lapse of time, as fully and with like effect as if the entire term of this Lease had elapsed, however, Tenant shall continue to be liable to Landlord as hereinafter provided, (ii) file suit in a court of appropriate jurisdiction for the collection of rent or additional rent due hereunder without cancellation or termination of this Lease, or (iii) pursue any other remedy available to Landlord at law or in equity.

(c) Upon any termination of the term of this Lease (or any Renewal Term, as applicable) due to a default by Tenant, Landlord may, in addition to and without prejudice to any other rights and remedies Landlord shall have under Section 21(b) above, and at law or in equity, re-enter the Premises and recover possession thereof and dispossess any or all occupants of the Premises and recover possession by the statute relating to summary proceedings, or similar statutes.

Section 22. Interest and Late Charges. All past-due Rents or other amounts owed under this Lease shall bear interest from the date due until paid at the rate of six percent (6%) per annum. In addition, in the event any installment of Rent under this Lease shall not be paid on or before the fifth (5th) business day after the due date, a "late charge" of \$250.00 may be charged

by Landlord, as Additional Rent, for the purpose of defraying Landlord's administrative expenses incident to the handling of such overdue payment.

Section 23. Waivers. Failure of Landlord or Tenant to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Landlord or Tenant at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision.

Section 24. Notices. Every notice, approval, consent, or other communication authorized or required by this Lease shall not be effective unless same shall be in writing and delivered in person or by courier or sent postage prepaid by United States registered or certified mail, return receipt requested, directed to the other party at its address set forth in the first paragraph of this Lease, or such other address as either party may designate by notice given from time to time in accordance with this Section. Such notices or other communications shall be effective (i) in the case of personal delivery or courier delivery, on the date of delivery to the party to whom such notice is addressed as evidenced by a written receipt signed on behalf of such party, and (ii) in the case of registered or certified mail, the earlier of the date receipt is acknowledged on the return receipt for such notice or five (5) business days after the date of posting by the United States Post Office. The rent payable by Tenant hereunder shall be paid to Landlord at the same place where a notice to Landlord is herein required to be directed.

Section 25. Governing Law. This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Texas, and venue for any action or proceeding brought in connection with this Lease shall be proper only in the District Courts or County Courts at Law of Galveston County, Texas.

Section 26. Partial Invalidity. If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provisions of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 27. Interpretation. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The term "Landlord" whenever used herein shall mean only the owner at the time of Landlord's interest herein, and upon any sale or assignment of the interest of Landlord, its successors in interest and/or assigns shall, during the term of its ownership of its estate herein, be deemed to be Landlord.

Section 28. Entire Agreement. No oral statement or prior written matter shall have any force or effect. Landlord and Tenant agree that they are not relying on any representations or agreements other than those contained in this Lease. This Lease shall not be modified or canceled except by writing executed by Landlord and Tenant.

Section 29. Parties. Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors, successors in title, administrators and assigns.

Section 30. Extension of term. At the option of Tenant, this Lease may be extended on a semi-annual basis for up to two (2) six-month periods. Tenant may exercise its option to extend this Lease by providing written notice to Landlord not less than sixty (60) days prior to the end of the Initial Term. Tenant may exercise its option to extend this Lease for the subsequent six-month period by providing written notice to Landlord not less than thirty (30) days prior to the end of the then-current period. If extensions are required beyond the two (2) six-month periods contemplated in this Section, the parties will execute an addendum to this Lease or a new Lease entirely.

Section 31. City acting in governmental capacity. The parties agree that in entering into this Lease the City of Galveston is operating in its governmental capacity. Landlord agrees that it will not assert for any reason that in entering into this Lease the City is performing a proprietary function.

Signature Page to Follow

Signature page to Lease Agreement

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease effective as of this _____ day of _____ 2016.

LANDLORD

SULLIVAN NEWPORT LTD

By: John R. Sullivan
Its: Authorized Representative

TENANT

CITY OF GALVESTON

By: Brian Maxwell
Its: City Manager

EXHIBIT "A"
DESCRIPTION OF PREMISES