

***REAL PROPERTY LEASE***

***AT***

***PORT OF PENSACOLA***

***BETWEEN***

***MARTIN MARIETTA MATERIALS, INC.***

***AND***

***CITY OF PENSACOLA, FLORIDA***

***EFFECTIVE DATE: \_\_\_\_\_, 2022***

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**EXHIBIT A - LEASED PREMISES**

**PORT OF PENSACOLA  
REAL PROPERTY LEASE**

**THIS REAL PROPERTY LEASE** (this “Lease”) is hereby made and entered into as of the Effective Date (hereinafter defined), by and between **MARTIN MARIETTA MATERIALS, INC.**, a North Carolina corporation authorized to transact business in the State of Florida (“the Company” or “Tenant”), and the **CITY OF PENSACOLA, FLORIDA**, a Florida municipal corporation (“the City” or “Landlord”), in its capacity as owner and operator of **PORT OF PENSACOLA** (“the Port”). The City and the Company may, from time to time, be referred to in this Lease individually as “a Party” and collectively as “the Parties.”

**RECITALS**

WHEREAS, the City is the owner and operator of the Port (as hereinafter defined); and

WHEREAS, it is in the best interest of the community for the City to encourage and support local economic development for the City of Pensacola Port of Pensacola and to efficiently operate the Leased Premise; and

WHEREAS, the City, as lessor, desires to lease to the Company, as lessee, and the Company desires to lease from the City, the Leased Premises for the use, upon the terms, and subject to the conditions hereinafter set forth; and

WHEREAS, the Company has been a tenant of the Port of Pensacola since February 2002; and

WHEREAS, the Company always fully and timely performed all obligations under its original lease and its subsequent short-term operating agreement;

NOW, THEREFORE, in consideration of the promises, covenants, terms, and conditions herein set forth, the Parties hereby agree as follows:

[THIS SPACE INTENTIONALLY LEFT BLANK]

## ARTICLE 1. DEFINITIONS

### Section 1.01 DEFINITIONS

The following words and phrases, wherever used in this Lease, shall, for purposes of this Lease, have the following meanings:

**“Additional Rent”** means, collectively, all amounts payable by the Company under this Lease which are expressly designated as “Additional Rent,” in addition to the Base Rent.

**“Affiliate”** means any corporation or other entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with, the Company.

**“Base Rent”** means the annual rent for the Leased Premises as specified or determined in this Lease.

**“Bond Resolution”** means any Resolution of the City regulating or authorizing the issuance of Bonds payable from Port revenue.

**“City”** means the City of Pensacola, Florida, and any successor to the City in ownership of the Port.

**“Common Port Facilities”** means all necessary cargo area appurtenances, including, but not limited to, laydown areas, berth aprons, and other common facilities and infrastructure appurtenant to the Port.

**“Company”** means the lessee under this Lease as identified in the first paragraph of this Lease, and any assignee of this Lease pursuant to an assignment permitted by this Lease.

**“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

**“Effective Date”** means the date upon which this Lease is executed by the last Party to execute this Lease, as shown by the respective dates set forth after the places provided herein below for the Parties’ execution of this Lease. The parties agree that time is of the essence and each agrees to act with diligence and all due haste to expedite its portion of the execution process.

**“Environmental Laws”** means, collectively, all federal, state, water management district, and local environmental, land use, safety, or health laws, rules, regulations, ordinances, and common law, including, but not limited to, the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.) (“CAA”); the Safe Drinking Water Act (42 U.S.C. §§ 300f-300j), the Federal Water Pollution Control Act (commonly known as the Clean Water Act) (33 U.S.C. §§ 1251-1387), and

Sections 253, 373, 376 and 403, Florida Statutes, as any of the foregoing may hereafter be amended, any rule or regulation pursuant thereto, and any other present or future law, ordinance, rule, regulation, code, permit or permit condition, order, notice of violation, decree, consent agreement, or directive addressing an environmental, safety, or health issue of or by the federal government, or of or by any state or other political subdivision thereof, or any agency, court, or body of the federal government or any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory, or administrative functions. The term “Environmental Laws” also shall mean and include the Port of Pensacola’s Storm Water Pollution Prevention Plan (“SWPPP”) and all future amendments thereto.

“**Event of Default**” shall have the meaning assigned in Article 15 below.

“**Exclusive Use Leased Premises**” means the spaces and areas within the Leased Premises for the use and occupancy of the Company to the exclusion of all others.

“**Facilities**” means all future additions and accessions to permanent improvements on the Leased Premises together with any replacements of any such new Facilities. The parties acknowledge and agree that there are currently no Facilities on the Leased Premises and that all current structures on the Leased Premises (e.g., trailer, maintenance shed, conveyors, etc.) are removable personal property owned by the Company. The Company shall have the non-exclusive right to access, traverse, cross and otherwise utilize all port lands designated for the joint use of all port tenants, users and customers, provided such use does not unreasonably impede, block or otherwise limit the right of other port tenants, users and customers to access, traverse, cross and otherwise use the same port lands. The Company may not moor vessels to any of the port’s public docks without first filing and receiving approval from the port of a Vessel Berth Application.

“**Hazardous Substances**” means any hazardous, toxic, or harmful substances, wastes, materials, pollutants, or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, paint containing more than 0.5% lead by dry weight (“Lead Based Paint”), infectious substances, or raw materials which include hazardous constituents), or any other substances or materials that are included under or regulated by Environmental Laws.

“**Land**” means the land within the Port as depicted on Exhibit A attached hereto and incorporated herein by reference, consisting of approximately 4.96 acres and located at the Port of Pensacola.

“**Leased Premises**” means the Land and all improvements now or hereafter existing on the Land, including without limitation the Facilities and the Preferential Use Apron Area, as more particularly described in Section 2. The entire Leased Premises are Exclusive Use Leased Premises.

“**Lease Term**” shall have the meaning assigned in Section 3.01 below.

**“Lease Year”** means each period of twelve consecutive calendar months that begins on an anniversary of the Effective Date of this Lease or, if the Effective Date of this Lease is not the first day of a month, each period of twelve consecutive calendar months that begins on the first day of the next month after each such anniversary of the Beginning of this Lease; provided, however, that the first Lease Year shall commence on the beginning of this Lease and continue to, but not including, the first day of the next Lease Year.

**“Ordinary Wear and Tear”** means normal deterioration of an improvement to real property or the underlying real property itself that occurs solely from the reasonable and intended use of the improvement over time despite the timely and proper performance of reasonable routine maintenance and preventive maintenance.

**“Port”** means Port of Pensacola located in Pensacola, Florida, as it now exists and as it may exist in the future.

**“Port Director”** means the person who from time to time holds the position of “Port Director” or “Interim Port Director” of the Port. Said term shall also include any person expressly designated by the City to exercise functions with respect to the rights and obligations of the Port enterprise.

**“Port Master Plan”** means the assembly of appropriate documents and drawings addressing development of the Port from physical, economic, social, and political jurisdictional perspectives as designated from time to time by the City and the Port Director as the Port Master Plan. The Port Master Plan includes, without limitation, forecasts of cargo & maritime business activity, a Port land use plan, 2019 Port Vision Plan (or any successor plan), a Port layout plan set, a Port access and parking plan, port storm water master plan, a capital improvement plan, and a budget and/or financial plan.

**“Rent”** means, collectively, the Base Rent and the Additional Rent.

**“Rules and Regulations”** means those ordinances, rules and regulations promulgated from time to time by the City or the Port Director governing conduct on, and operations at, the Port or the use of any of the land and/or facilities at the Port.

**“Subsidiary”** means any corporation or other entity more than fifty percent (50%) of whose outstanding stock (or other form of equity ownership) is, at the relevant time, owned by the Company or by another Subsidiary of the Company.

**“Tariff”** means Port of Pensacola Terminal Tariff No. 5A, as amended and revised from time-to-time, or any successor thereto.

## Section 1.02 CROSS-REFERENCES

All references in this Lease to articles, sections, and exhibits pertain to articles, sections, and exhibits of this Lease unless otherwise specified.

END OF ARTICLE



## ARTICLE 2. LEASED PREMISES

### Section 2.01 LEASED PREMISES

For the Rent, upon the terms, and subject to the conditions set forth in this Lease, the City hereby leases and demises the Leased Premises to the Company, and the Company hereby leases the Leased Premises from the City, subject, however, to all liens, easements, restrictions and other claims and encumbrances of record, provided that such matters do not prevent the Company from conducting its business on the Leased Premises as contemplated herein, and/or otherwise impair its financial structure and future use of the premises.

The Leased Premises consists of approximately 4.96 acres of unimproved open laydown area located in the southeastern quadrant of the Port of Pensacola as per the legal following legal description and as further depicted in Exhibit A attached hereto and incorporated herein by this reference and collectively are known as the “Leased Premises.”

In addition to the above-described Leased Premises, the Company shall also have a right of use over the paved/asphalted apron area running parallel to Port Warehouses 6 and 8 (the “Preferential Use Apron Area”) at no additional cost for the sole purpose of maintaining or replacing conveyors and other similar vessel unloading equipment (the “PUAA Equipment”). The City acknowledges and agrees that such PUAA Equipment is not portable and cannot be easily removed, repositioned, or replaced; is for the sole and exclusive use of the Company and will be removed by Company at the end of the Lease Term. The Company shall pay an additional rental fee of \$1,120.00 per month for the use of the Preferential Use Apron Area, due at the same time and in the same manner as the Rent.

The Company shall have the right to post its unique logo at the Leased Premises in a tasteful manner of an industrial site, provided design and placement of same is in compliance with applicable City of Pensacola sign ordinances, if any, and is approved by the Port Director.

### Section 2.02 NON-EXCLUSIVE PARKING AREA

The Company shall be entitled to non-exclusive use of any and all designated parking areas located on the Port property as currently situated and designated or as may be situated and designated in the future at the Port’s and/or any and all overflow parking lots as currently situated and designated or as may be situated and designated in the future all at the Port’s sole discretion, at no additional charge to the Company. Such areas are made available to all Port tenants and users on a first-come-first-served basis. In using such areas, the Company and Company employees, representatives, agents, contractors, service providers, invitees, customers and visitors shall abide by all applicable rules and regulations of the Port of Pensacola Seaport Security Plan, including if required, but not limited to, the requirement that all personal vehicles entering the Port Restricted Area be registered with the Port’s Facility Security Officer. In no event shall the Company permit parking on the Leased Premises by the general public or by the Company’s guests, invitees, customers, or employees not related to the conduct of the Company’s business on the Leased Premises.

END OF ARTICLE

## ARTICLE 3. TERM

### Section 3.01 LEASE TERM

Subject to compliance with the terms and conditions of this Lease, the Company shall have the right to occupy the Leased Premise beginning on the Effective Date as defined in Section 1.01 of this Lease Agreement for a term of three (3) years (the “Primary Lease Term”). All Rents for the Leased Premises shall commence immediately upon the Effective Date. The Primary Lease Term, the First Renewal Term (if applicable) and the Second Renewal Term (if applicable) are, collectively, the “Lease Term.”

### Section 3.02 RENEWAL

Upon expiration of the Primary Lease Term, this Lease may be renewed for up to two (2) additional three (3) year renewal options subject to the provisions that follow in this Section 3.02.

Provided the Company is not in default of any provisions herein, this Lease Agreement will be renewed for three (3) years commencing upon the Expiration Date and expiring three (3) years thereafter (“First Renewal Term”), unless either party provides written notice of non-renewal at least of three hundred sixty-five (365) days prior to the Expiration Date.

Further, provided the Company is not in default of any provisions herein, this Lease Agreement will be renewed for an additional three (3) years commencing upon the expiration of the preceding term and expiring three (3) years thereafter (“Second Renewal Term”), unless either party provides written notice of non-renewal at least three hundred sixty-five (365) days prior to the then-applicable expiration date.

Rent shall be at the rates outlined in Article 5 of this Lease, except that for any renewal hereunder, the City reserves the right to recalculate the Base Rent payments based upon the then-appraised value of the property provided the renewal period Base Rent rate increase may not exceed ten percent (10%) of the then-current Base Rent as defined in Article 5 herein. For any renewal hereunder, all terms and conditions of this Lease Agreement, other than pertaining to Base Rent, remain the same unless expressly negotiated between the parties. Any renewal hereunder shall be memorialized in writing, executed by the parties in the same formality herewith.

### Section 3.03 COMPANY’S RIGHTS UPON EXPIRATION OR EARLIER TERMINATION OF LEASE

Subject to Section 3.04, upon expiration of the Lease Term or earlier termination of this Lease, all of the Company’s rights, authority, and privileges to use the Leased Premises, services, facilities and property of the Port as granted herein shall automatically cease without notice to the Company except such notice, if any, as is expressly required by this Lease with respect to an earlier termination of this Lease.

### Section 3.04 SURRENDER OF LEASED PREMISES

Upon expiration of the Lease Term or earlier termination of this Lease, the Company shall promptly remove all remaining stockpile aggregate placed upon the Leased Premises except that

this Lease shall be extended to the extent necessary for the Company to be afforded reasonable opportunity to fulfill the product delivery obligations of any active contract(s) held by the Company. The Company may be requested, to the extent possible without revealing any confidential or proprietary business information, to provide documentary evidence of contracts held and/or corresponding product delivery schedules in order for City to grant any such extension. Following completion of such contracts, the Company shall promptly complete the removal of any remaining aggregate stockpiles, equipment and other facilities.

Upon expiration of the Lease Term or earlier termination of this Lease and final removal of all remaining stockpile aggregate, equipment and facilities as provided in the preceding paragraph, the Company shall surrender the Leased Premises to the City in the same or better condition than at the time of this Lease, except for Ordinary Wear and Tear and except for damage caused by an insured casualty or a condemnation for which the City is fully compensated by insurance proceeds actually received by the City and by deductible amounts actually paid by the Company to the City, with respect to an insured casualty loss, or by a condemnation award pursuant to an order of a court of competent jurisdiction or payment in lieu thereof acceptable to the City, with respect to a condemnation.

The parties acknowledge and agree that any periods of occupancy and use by the Company related to the provisions of this Section 3.04 shall be subject to all of the terms and conditions of this Lease other than Article 16.

The provisions of this Section 3.04 shall survive the expiration of the Lease Term or earlier termination of this Lease, as the case may be, and shall be fully enforceable by the City against the Company notwithstanding the termination of this Lease.

END OF ARTICLE

## ARTICLE 4. USE OF LEASED PREMISES

### Section 4.01 PERMITTED USE OF LEASED PREMISES

Continuously during the Lease Term, the Company shall use the Leased Premises solely for receiving, storage and shipping of bulk materials including, but not limited to, limestone aggregates, granite, gravel, rip rap rock, and other similar products. The performance of any other activities consistent with and allowable in the Industrial District M-1 Zoning Designation as defined in the City of Pensacola Code, Part II - Code of Ordinances. Title XII - Land Development Code, Chapter 12.2 - Zoning Districts, Sections 12-2-1 and 12-2-9 shall be allowed only upon advance written consent of the City, which consent may be allowed or withheld in the City's sole and absolute discretion.

Consistent with the permitted use of the Leased Premises stated in this Section 4 and solely in furtherance of such use, Company shall, at Company's sole cost and expense, complete all necessary improvements on the Leased Premise in order to conduct the authorized activities thereon and/or required to fulfill any and all other obligations under this Lease. Any such improvements to the Leased Premises must comply with all approval and permitting requirements of the City of Pensacola Inspection Services and Code Enforcement Divisions, if applicable, and must be approved in advance by the Port Director.

### Section 4.02 ADDITIONAL RESTRICTIONS

Notwithstanding any contrary provision in this Lease, the Company shall not, and the Company shall not suffer or permit any of its agents, employees, directors, officers, contractors, customers, guests, invitees, licensees, or representatives to:

- (a) Do, suffer, or permit anything that may interfere with the effectiveness or accessibility of any drainage and sewage system, electrical system, air conditioning system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, at any time installed or located on or within the premises of the Port.
- (b) Do, suffer, or permit anything that may invalidate or conflict with any fire or other casualty insurance policies covering the Port or any part thereof or improvements thereon.
- (c) Keep or store or suffer or permit to be kept or stored, at any time, flammable or combustible liquids except in storage facilities especially constructed for such purposes in accordance with applicable federal, State, and City laws and ordinances, including the Uniform Fire Code and the Uniform Building Code. For purposes of this Lease, flammable or combustible liquids shall have the same definitions as set forth in the Uniform Fire Code, as that Code may be amended from time to time.
- (d) Engage in any business or activity not specifically permitted by this Lease.
- (e) In addition to the provisions of Article 14 herein, the Company shall not allow any discernable noxious odors to emanate beyond the confines of the Port of Pensacola at any time under normal & routine weather conditions for the area. If any such odor does occur and creates a nuisance impact to the surrounding geographic area, as evidenced by documented odor reports or complaints, the City will engage Florida Department of Environmental Protection (FDEP) or a local environmental engineer of its choice, to determine the source of the odor. If such odor is determined to be a result of the Tenant's operations, the City reserves the right to order the cessation of the Company's operations until such time as appropriate

ventilation and/or filtration systems can be installed by and at the sole expense of the Company to eliminate such nuisance.

**Section 4.03 NON-EXCLUSIVE RIGHTS AND PRIVILEGES**

Granting of this Lease to the Company does not constitute a right of exclusivity for the business types and activities to be conducted by the Company upon the Leased Premises.

END OF ARTICLE

## ARTICLE 5. RENTS, FEES, CHARGES AND SALES TAX

In consideration for the Company's use of the Leased Premises, the rights and privileges granted to the Company hereunder, and for the undertakings of City hereunder, the Company agrees to pay the City, without invoicing, notice, demand, deduction or set-off, the Base Rent, Additional Rent, fees, other charges, and sales and use tax as set forth in this Lease, as from time to time recalculated according to the procedures described herein below.

**Section 5.01 BASE RENT THE BASE RENT ("BASE RENT") PAYABLE BY THE COMPANY TO THE CITY SHALL BE EIGHT THOUSAND SIX HUNDRED EIGHTY DOLLARS (\$8,680.00) PER MONTH, PRO-RATED FOR ANY PARTIAL MONTHS.**

**Section 5.02 SUBMERGED LANDS LEASE RATE**  
NOT APPLICABLE

**Section 5.03 BASE RENT PAYMENT**

The annual Base Rent shall be paid by the Company to the City without invoicing, notice, demand, deduction, or set-off, in equal monthly installments payable in advance on or before the first day of each calendar month, beginning immediately upon the Effective Date and continuing through the remainder of the Lease Term. Should the Effective Date be on any date other than the first (1<sup>st</sup>) of the month, Base Rent shall commence on the first day of the following month.

**Section 5.04 OTHER RENTS, FEES AND CHARGES**

Notwithstanding any contrary provision in this Lease, the City reserves the right to charge, in addition to Base Rent other fees and charges expressed in this Lease, fees and charges for miscellaneous items and services, including, but not limited to current and future taxes, fees and assessments, as well as any fees and charges assessed by the City in connection with the ordinary use of Port facilities that all of the foregoing are equally applicable to all similarly situated parties and consistent with past practice.

**Section 5.05 SALES TAX**

The Company shall pay to City all sales and use taxes imposed by Florida Statutes Section 212.031 and any future amendments thereto, or other applicable Florida law in effect from time to time (collectively, the "Sales Tax"), on the Base Rent and Additional Rent due under this Lease and on any other payments required by this Lease to be made by the Company to or for the benefit of the City which are taxable under applicable Florida law. Such sales or use tax shall be due and payable concurrently with the payment of the Base Rent, Additional Rent, or other payment with respect to which such tax is required to be paid.

**Section 5.06 MODE OF PAYMENT**

The payment of all Base Rent, Additional Rent, Sales Tax, fees, and charges that become due and payable by the Company under this Lease shall be paid to the City of Pensacola without the City invoicing the Company. Payments shall be mailed or delivered to City of Pensacola Treasury Department, PO Box 12910, Pensacola, Florida 32521-0044, or to such other payment address as the City notifies the Company in writing. The City reserves the right to require that payment be made by ACH or wire transfer.

**Section 5.07 LATE FEE AND INTEREST**

If Base Rent, Additional Rent, or any other fee, charge or payment due and payable under this Lease by the Company to the City is not paid within thirty (30) calendar days after such Base Rent, Additional Rent, or other fee, charge or payment became due, a Late Fee of five percent (5%) of the amount due shall be due and payable to the City to compensate the City for its added expenses due to said late payment. Further, any Base Rent, Additional Rent, or other fee, charge or payment due and payable under this Lease by the Company to the City that is not paid within thirty (30) calendar days after its date due shall bear Interest at eighteen percent (18%) per annum, or the highest rate allowed by law, whichever is less, from the date due until the date paid in full.

**Section 5.08 PORT TARIFF**

Except as otherwise specified herein, all provisions of the Port Tariff 5A, as defined herein, shall remain in full force and effect.

**Section 5.09 WHARFAGE AND CARGO FEES**

Product received into the Company’s leasehold, whether received by waterborne or landside conveyance, shall be subject to the following cargo fees:

Wharfage.....	\$0.71 per short ton
Stevedore Fee.....	\$0.15 per short ton
Cargo Security.....	per the Port Tariff

**Section 5.10 COMMON AREA INFRASTRUCTURE MAINTENANCE FEE**

In addition to Base Rent and Wharfage and Cargo Fees as described elsewhere herein, the Company shall make an annual lump sum maintenance fee payment for Port common area infrastructure of \$7,812.00 (= \$8,680/month \* 12 months \* 0.075%) per year for the duration of the Lease Term (“Common Area Infrastructure Maintenance Fee” or “CAIM”), payable on January 1 of each year and due no later than April 1 of each year (pro-rated for any partial years). This CAIM fee, or equivalent, is being assessed against all similar leases for Port property and facilities executed on or after Oct. 1, 2020.

END OF ARTICLE

## ARTICLE 6. PERFORMANCE GUARANTEE

The Company will provide a letter of credit, an investment grade security or other means of collateral that may be acceptable to the parties to guarantee the performance of the lease. This security requirement shall expire after three (3) years of the anniversary of the final execution hereof.

Without limiting the generality of the foregoing, the minimum initial term of such letter of credit or quick pay bond shall be for a term of one (1) year. The security can be called and shall be payable in full upon the Company's receipt of written certification by the City that there exists an uncured Event of Default under this Lease by the Company.

The amount of such security shall at all times during the Lease Term be in an amount equal to fifty (50%) of the annual Base Rent payable to the City.

In the event City is required to draw down or collect against the Company's security due to an Event of Default hereunder, the Company shall, within ten (10) business days after City's written demand, either cause security to be replenished to its original value or provide a replacement security from another source so that the aggregate of letters of credit or quick pay bonds are equal to the total amount required above.

If the Company shall fail to obtain or keep in force such security required hereunder and does not promptly restore such security within ten (10) business days after City's written notice, such failure shall be an Event of Default under this Lease. The City's rights under this Article shall be in addition to all other rights and remedies provided to City under this Lease.

END OF ARTICLE



## ARTICLE 7. INSURANCE AND INDEMNIFICATION

### Section 7.01 **REQUIRED INSURANCE**

Prior to the Effective Date, the Company shall procure and maintain insurance of the types and to the limits specified herein, all of which shall be in full force and effect as of the Effective Date.

As used in this Article, “the City” is defined to mean the City of Pensacola itself and all political subdivisions thereof.

The amounts, forms, and types of insurance required to be provided and maintained by the Company shall conform to the following minimum requirements, each as/if applicable:

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<b>Insurance Requirements</b>		
<b>Type</b>		<b>Amount</b>
(1)	Worker’s Compensation and Employer’s Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000 (including USL&H and Jones Act, if applicable)
(2)	Broad Form General Liability Policy to include coverage for the following (must include liability for marine vessels):	Combined Single Limit for Bodily Injury and Property Damage of \$5,000,000 per occurrence or its equivalent in excess or umbrella coverage with an aggregate of not less than \$5,000,000
	(A) Premises Liability	
	(B) Independent Contractors	
	(C) Personal Injury	
(3)	Property Insurance including flood insurance for physical damage to the property of the Company, including improvements and betterments to the Leased Premises and the PUAA Equipment	In an amount as determined by Company
(4)	Property Insurance for physical damage to the Facilities, including improvements and betterments to the Leased Premises, resulting from fire, theft, vandalism, windstorm, flood (if and to the extent any of the Facilities are located in a federally-designated special flood hazard area), and other risks commonly insured against for similar port improvements	In an amount as determined by Company
(5)	Automobile Liability (any automobile)	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent in excess of umbrella coverage, \$5,000,000 per occurrence or its equivalent in excess of umbrella coverage for vehicle(s) with access to the Air Operations Area.
(6)	Above Ground and/or Underground Storage Tank Liability (but only if such tanks exist at the Leased Premises)	\$1,000,000 per claim

**Section 7.02 POLICY ENDORSEMENTS; COPIES OF POLICIES; CERTIFICATES OF INSURANCE**

All insurance policies required by this Lease to be furnished by the Company shall be endorsed to provide that the insurance carrier shall give the City written notice at least thirty (30) days in advance of any cancellation or nonrenewal in coverage. In addition, Company shall promptly provide written notice to City of any material adverse change or restriction in coverage.

Each policy of property insurance shall be endorsed to name (or provide by blanket endorsement) the City as an Additional Insured and Loss Payee, as its interest may appear, and each policy of liability insurance shall be endorsed to name (or provide by blanket endorsement) the City as an Additional Insured.

As part of the City’s approval process for this Lease and thereafter within ten (10) business days after the City’s written requests from time to time (but no more than annually), the Company shall furnish certificates of insurance for all policies required to be provided by Company with respect to the Leased Premises or this Lease. Company acknowledges and agrees that City may require copies of Company’s applicable insurance policies if Company requests a change in the

scope of Company's use of the Leased Premises or related to request by Company to conduct special events or operations at the Leased Premises.

Certificates of property insurance shall be provided on the "Certificate of Insurance" form in the current ACORD form or as may otherwise be mutually agreed upon by the parties and approved by the Company's insurers. The name and address of the City on each certificate of insurance required by this Lease shall be: City of Pensacola, Department of Risk Management, Post Office Box 12910, Pensacola, Florida 32521. In addition, Company will endeavor to additionally provide a copy of each Certificate of Insurance to Port of Pensacola, Attn: Port Director, PO Box 889, Pensacola, Florida 32591.

The Company shall immediately replace any cancelled, materially adversely change or restricted, or non-renewed policies with equivalent policies and shall provide to the City copies of Certificates of Insurance regarding the new policies, prior to the effective date of such cancellation or nonrenewal. All written notices of claims made to carriers that relate to the use, damage, impairment, or condition of the Leased Premises shall be copied to the City's Department of Risk Management at the following address: City of Pensacola, Department of Risk Management, Post Office Box 12910, Pensacola, Florida 32521. An additional copy shall be sent to Port of Pensacola, Attn: Port Director, PO Box 889, Pensacola, Florida 32591.

#### **Section 7.03 INSURANCE OF THE COMPANY PRIMARY**

The insurance coverage required of the Company shall be considered primary, and all other insurance shall be considered as excess, over and above the Company's required coverage.

#### **Section 7.04 LOSS CONTROL, SAFETY, AND SECURITY**

The Company shall retain full control over its employees, agents, servants, contractors, customers, guests, and invitees, as well as its and their activities on and about the Leased Premises and the manner in which such activities shall be undertaken; to that end, the Company shall not be deemed to be an agent of the City. Precaution shall be exercised by the Company at all times regarding the protection of all persons, including employees, and property. The Company shall make reasonable effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected. The Company and its employees, agents, servants, contractors, customers, guests, and invitees, shall at all times comply with all federal and State laws with respect to Seaport Security, including but not limited to, the Port of Pensacola Seaport Security Plan, current edition as amended from time to time or any successor thereto, as/when applicable to the Company's operations upon the Leased Premises and its use of Port facilities.

#### **Section 7.05 ACCEPTABILITY OF INSURERS**

All policies written pursuant to this Article 7 shall be with insurers (i) licensed to do business in the State of Florida and (ii) carrying A.M. Best ratings of at least A-X or higher.

#### **Section 7.06 HOLD HARMLESS**

The Company, for itself and its successors and assigns, shall, and does hereby, covenant and agree to, FULLY AND FOREVER RELEASE, INDEMNIFY, DEFEND, and HOLD HARMLESS the City and its elected officials, employees, officers, directors, volunteers, and

representatives, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, arbitration awards, regulatory actions, administrative actions, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including, but not limited to, personal or bodily injury, death, environmental remediation and damage, and property damage, made upon or suffered or incurred by the City to the extent caused by to any breach or default by the Company under this Lease, or the negligent activities, acts or omissions of the Company under this Lease or at or within the Port, including, but not limited to, any acts or omissions of the Company, its successors or assigns, including any of its or their respective agents, officers, directors, representatives, employees, consultants, contractors or subcontractors, and their respective officers, agents, employees, directors, and representatives. The Company's indemnity obligations provided for in this Section shall not extend to and the Company and its respective insurers have no obligation to indemnify any third parties, including the City, its officers, or employees for any claims or liabilities arising from such parties' negligent or intentional acts or omissions. The City shall, upon notice thereof, immediately transmit to the Company every demand, notice, summons, or other process received in any claim or legal proceeding contemplated herein. Payments on behalf of the City under this Section 7.06 shall be in addition to any and all other legal remedies available to the City and shall not be considered to be the City's exclusive remedy.

**Section 7.07 NON-LIABILITY OF THE CITY**

The City shall not, in any event, be liable to the Company or to any other person or entity for any acts or omissions of the Company, its successors, assigns, or sublessees or for any condition resulting from the operations or activities of the Company or any such person or entity.

Without limiting the generality of the foregoing, the City shall not be liable for the Company's failure to perform any of the Company's obligations under this Lease or for any delay in the performance thereof, nor shall any such delay or failure be deemed a default by the City.

**Section 7.08 RESERVED**

**Section 7.09 NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing in this Article shall be deemed a change or modification in any manner whatsoever of the method, conditions, limitations, or restrictions of preserving, asserting, or enforcing any claim or legal liability against the City. This Article shall in no way be construed as a waiver, in whole or in part, of the City's sovereign immunity under the Constitution, statutes and case law of the State of Florida.

END OF ARTICLE

## **ARTICLE 8. COMMON PORT FACILITIES; INSPECTION OF FACILITIES**

### **Section 8.01 USE OF COMMON FACILITIES**

The City hereby grants to the Company, and to the Company's agents, employees, customers, guests, and invitees, the following general, nonexclusive privileges, uses, and rights, subject to the Rules and Regulations, the payment of all applicable fees and charges, and the terms, conditions, and covenants of this Lease:

(a) The general use by the Company of all Common Port Facilities.

(b) The right of ingress to and egress from the Leased Premises over and across public roadways serving the Port for the Company, its agents, employees, customers, guests, invitees, suppliers of services, furnishers of materials, and permitted sublessees/sublicensees.

The privileges, uses, and rights granted or permitted under this Article shall be exercisable only if and to the extent necessary in connection with the Company's business on the Leased Premises permitted under Article 4 above.

### **Section 8.02 COMPLIANCE**

The rights and privileges granted pursuant to Section 8.01 above shall be exercised subject to and in accordance with all laws (including without limitation all Environmental Laws), ordinances, Rules and Regulations, and Port policies of the United States, the State of Florida, Escambia County, the City of Pensacola and the Port, including without limitation the rules and regulations promulgated with reference to navigation, security, and all applicable charter provisions, rules, regulations, and ordinances of the City, now in force or hereafter prescribed or promulgated by charter authority or by law.

### **Section 8.03 INSPECTION OF FACILITIES AND IMPROVEMENTS**

The City reserves the right to enter the Leased Premises during normal business hours with three (3) business days prior notice to the Company, unless in the event of an emergency in which event no prior notice is required, for the purpose of inspecting same or verifying that Environmental Laws, fire regulations, safety regulations, and other applicable laws, rules and regulations, as well as the provisions contained in this Lease, are being adhered to by the Company. During its presence in the Leased Premises, the City shall make reasonable efforts to avoid undue interference with the Company's operations.

END OF ARTICLE

ARTICLE 9. ACCEPTANCE AND CONDITION OF LEASED PREMISES

THE COMPANY HAS INSPECTED AND EXAMINED ALL OF THE LEASED PREMISES, INCLUDING WITHOUT LIMITATION THE FACILITIES AND ALL OTHER BUILDINGS, STRUCTURES, IMPROVEMENTS, FACILITIES, AND INFRASTRUCTURE. THE PARTIES AGREE THAT THIS LEASE IS GRANTED BY THE CITY, AT THE COMPANY'S REQUEST, AND THAT THE LEASED PREMISES AND ALL PORTIONS THEREOF SHALL BE AND HEREBY ARE ACCEPTED BY THE COMPANY IN THEIR "AS IS" CONDITION.

THE COMPANY HEREBY ACKNOWLEDGES AND AGREES THAT THE CITY LEASES THE LEASED PREMISES, INCLUDING ALL PORTIONS, PARTS, AND COMPONENTS THEREOF, TO THE COMPANY, AND THE COMPANY ACCEPTS THE LEASED PREMISES, AS IDENTIFIED IN EXHIBIT A OF THIS LEASE, FROM THE CITY, "AS IS, WHERE IS AND WITH ALL FAULTS" AS IDENTIFIED BY THE CITY, EXPRESS OR IMPLIED, WRITTEN OR ORAL, OF ANY KIND WHATSOEVER, AND SUBJECT TO ALL DEFECTS, LATENT AND PATENT. THE CITY SHALL HAVE NO OBLIGATION WHATSOEVER TO REPAIR, MAINTAIN, RENOVATE OR OTHERWISE INCUR ANY COST OR EXPENSE WITH RESPECT TO THE LEASED PREMISES OR ANY PORTION THEREOF UNLESS AND EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE.

THE COMPANY'S TAKING POSSESSION OF THE LEASED PREMISES SHALL BE CONCLUSIVE EVIDENCE OF THE COMPANY'S ACCEPTANCE THEREOF IN AN "AS IS" CONDITION AND THAT THE COMPANY DEEMS THE LEASED PREMISES SUITABLE FOR THE PURPOSES FOR WHICH THEY ARE BEING LEASED.

THE CITY MAKES NO REPRESENTATIONS REGARDING THE CONDITION OF THE LEASED PREMISES AND NO PROMISES TO IMPROVE THE SAME. ANY SUCH REPRESENTATIONS OR PROMISES PREVIOUSLY MADE, IF ANY, SHALL NOT BE BINDING UPON THE CITY UNLESS EXPRESSLY CAPTURED AND DETAILED IN THIS LEASE AGREEMENT.

END OF ARTICLE

## ARTICLE 10. CONSTRUCTION BY THE COMPANY

### Section 10.01 **GENERAL REQUIREMENTS**

The Company shall not construct, alter, remodel, renovate, remove, or demolish improvements on the Leased Premises without the prior written approval of the City, which approval shall not be unreasonably withheld, delayed, or conditioned.

In the event that the Company desires to construct, alter, remodel, renovate, remove, or demolish any improvements on the Leased Premises, it shall submit to the Port Director plans and specifications and a construction time schedule for such work prepared by Florida-registered architects and engineers, such other information and documents as may be required by the Port Director, all of which shall be in sufficient detail for the Port Director, to determine, whether or not the proposed work is consistent with the Company's use of the Leased Premises as defined in Section 4.01 but in any event the approval of proposed construction, remodel, renovation, removal or any other improvements for the Company business shall not be unreasonably withheld, delayed or conditioned, provided the proposed work is deemed to be consistent with Section 4.01 of this Lease. Upon pre-approval of reasonable estimated expenses as further described below, the Company will reimburse the City upon demand for the out of pocket expenses incurred by the City to review and act upon the Company's request, which expenses may include without limitation the fees and expenses of architects, engineers, attorneys and other professionals. Prior to engaging professionals or incurring other expenses, the City shall provide an estimate of those costs to the Company, and should the Company wish to continue its request, then the Company must approve of the expenses estimated to be incurred prior to incurring any responsibility for costs. The Port Director, acting on behalf of the City, shall have a total of thirty (30) days to provide written approval or disapproval of such work.

The Company shall not commence any such work unless and until the City, through the Port Director, has given its written approval of such work, and the Company has provided to the Port Director any payments, bonds and/or securities as required herein below.

Company shall be solely responsible for payment of all hard and soft costs of such work, and, prior to commencement of any work on the Leased Premises Company shall provide City with reasonably satisfactory evidence of Company's ability to pay the costs of such work as and when due.

Further, prior to the commencement of any such work, the Company shall procure and provide to the Port Director any and all additional approvals of such work and/or the plans and specifications for such work required by any federal, state, water management district, county, or municipal government, or authority, agency, officer, department, or subdivision thereof, having jurisdiction with respect to such work, and shall obtain and provide to the Port Director any and all requisite development, building and construction licenses, orders, permits, and approvals. The Company shall be solely responsible for obtaining and paying the costs of obtaining all required licenses, orders, permits, and approvals for such work.

All such work shall substantially conform to the plans and specifications, construction timetable and other documentations submitted to the City by the Company; all conditions and requirements

imposed by the City as a condition of its approval, including but not limited to applicable federal, state, and local laws, codes, ordinances, rules, and regulations, including but not limited to the Rules and Regulations and the federal Americans with Disabilities Act and regulations thereunder. In no event shall the approval of the City required by this Article be deemed to be any acknowledgement by the City that such work or any plans, specifications, or other information or documentation submitted to the City complies or will comply with applicable laws, codes, ordinances, rules, and regulations, including but not limited to those of the City of Pensacola, and shall not relieve Company from obtaining all required governmental authorizations, permits and approvals, including but not limited to authorizations, permits and approvals required by the ordinances, codes, rules and regulations of the City of Pensacola, all of which shall be obtained prior to the commencement of such work. Further, the City, by giving its approval of such work, assumes no liability or responsibility therefor or for any defects in such plans and specifications or for any defects in any of such work.

Upon the commencement of any work permitted under this Article, Company shall thereafter diligently and continuously prosecute such work to completion within a reasonable time. Company shall cause all work on the Leased Premises to be performed and constructed by appropriately licensed contractors, with high quality, new materials, in a good and workmanlike manner, and pursuant to valid building permits. All improvements (expressly excluding, however, movable office furniture and trade fixtures, and trade equipment) installed or constructed on the Leased Premises by the Company shall be deemed to be the sole property of the Company during the Lease Term. Unless otherwise agreed by the Parties, all improvements shall remain upon and be surrendered with the Leased Premises upon the expiration or termination of the Lease Term. Company shall indemnify, defend and hold the City free and harmless from and against any and all liabilities, claims, demands, lawsuits, administrative proceedings, loss, and damages or any kind, including but not limited to attorneys' fees and costs, arising out of any work done or material supplied to the Leased Premises by or at the request of Company.

Prior to commencement of any work on the Leased Premises for a total cost (both hard and soft costs, as estimated by the City) in excess of Seventy-Five Thousand Dollars (\$75,000.00), Company shall provide to the City payment bonds obtained by each general or sub-contractor of Company ensuring performance of that general contractor's obligations under the construction contract between that general contractor and the Company and payment of that contractor's subcontractors and suppliers with respect to the construction, alteration, removal or demolition of any improvements. Each of the bonds must (i) be issued by a Qualified Surety (hereinafter defined), (ii) be in form and substance satisfactory to the City, (iii) run in favor of the City, (iv) be in the amount of the total cost of constructing, altering, removing or demolishing, as the case may be, the improvements as approved by the City, as such cost is stipulated in the construction contract between the Company and its general contractor, and (v) conform to the provisions of Section 255.05, Florida Statutes, whether or not such statute applies to such work, and any other statutory requirements. A "Qualified Surety" is a corporate surety or insurer authorized to do business, and to issue bonds for construction payment and performance, in the State of Florida and possessing a rating of A/VIII or better in A.M. Best's Insurance Reports.



Upon completion of all renovations, construction, alterations, or improvements on the Leased Premises, the Company shall provide to the Port Director an accurate and complete conformed set of "as built" plans and specifications, certified by the appropriate contractor(s) and design professional(s), and a copy of the government-issued Certificate of Occupancy, if required for such work.

#### **Section 10.02 CONSTRUCTION REQUIREMENTS**

Immediately upon receipt of all approvals by the City required by this Lease and all permits and approvals required by all federal, state, and local governmental units and agencies having jurisdiction, the Company shall proceed with construction of said improvements. Work shall not be performed on days or at times other than those approved in writing by the Port Director.

The Company shall construct all improvements and additions to the Leased Premises at its own expense. Although the City has the right to review proposed improvement plans, and not approve the plans if the plans are inconsistent with the Company's use of the Leased Premises, and construction quality and design control within the norms of the proposed construction or improvements, pursuant to the standards set forth above, if the City does approve the improvement plans, and the Company thereafter constructs the improvements, the improvements shall be commissioned and constructed at the Company's sole initiative and behest, and nothing herein shall be construed as an authorization by City to the Company to construct the improvements, or as an agreement by City to be responsible for paying for the improvements, and neither the Leased Premises, including those structural improvements constructed in compliance with Section 4.01 herein, nor the City's interest in said Leased Premises, shall be subjected to any construction lien for any improvements constructed by the Company hereunder.

Should the Company construct improvements, alterations, or additions without fulfilling its obligations hereunder, the Company shall remove said improvements, alterations, or additions if so directed by the City, and shall do so at its own expense and within the time limits specified.

The City shall, at any period during construction of the Company's improvements, alterations, or additions, have the right, but not the obligation, to inspect any or all construction work, workmanship, material and installation involved in, or incidental to, the construction or installation of the improvements, alterations, or additions, for conformance with the applicable standards set forth in this Lease and within normally acceptable industry practices, provided that such inspection shall not include internal work that is exclusively of an operations (non-structural) nature, and provided further that no such inspections shall be deemed to constitute consent to or approval of any such work.

Immediately upon completion of any improvements, alterations, or additions, the Company shall submit to the City a detailed, certified statement from the construction contractor(s), architect(s), and engineer(s) specifying the total construction costs, both hard costs such as building contractor and material costs and soft costs such as architect fees, financing costs, bond costs, letter of credit fees, attorney fees to review and negotiate construction contracts and resolution of construction issues and for loan closing, and design and closing costs, but excluding debt service.

END OF ARTICLE

## ARTICLE 11. LIENS PROHIBITED

Notwithstanding any other provision of this Lease, the City's fee simple estate and interest in the Leased Premises shall not be subject to any lien, statutory or otherwise, by reason of any improvements constructed or altered upon, removed from, or demolished on the Leased Premises or work, labor, services or materials performed upon or supplied to the Leased Premises, by or upon the order or request of the Company or its agents, employees or contractors, or any permitted sublessee of the Company, or anyone acting by, through or under the Company. All persons performing labor or service or furnishing materials to the Leased Premises on the order of the Company must look solely to the Company for payment. If the City notifies Company in writing that such a lien has been filed against the Leased Premises by Company or by any contractor or other entity performing work or providing services at the Leased Premises related to Company, then Company shall have the lien removed or bonded off and released of record at Company's sole cost and expense within thirty (30) days of Company's receipt of such written notice. The Company shall defend, indemnify and hold the City harmless from and against any such lien or claim or action thereon, together with costs of suit and reasonable attorneys' fees and costs incurred by the City in connection with any such lien, claim or action. In addition to complying with all requirements of Article 10 above, before commencing any work of any kind on or to the Leased Premises with a cost of \$75,000.00 or more, the Company shall give the City at least ten (10) business days' written notice of the proposed work and proposed commencement date in order to afford the City an opportunity to post appropriate notices of non-responsibility.

END OF ARTICLE

## ARTICLE 12. MAINTENANCE AND REPAIR

### Section 12.01 NET LEASE

This Lease constitutes a net lease of the Leased Premises and, notwithstanding any language herein to the contrary, it is intended and the Company expressly covenants and agrees that all Base Rent, Additional Rent, and other payments herein required to be paid by the Company to the City shall be absolutely net payments to the City, meaning that, during the Lease Term, the City is not and shall not be required to expend any money or do any acts or take any steps affecting or with respect to the use, occupancy, operation, maintenance, preservation, repair, restoration, protection, or insuring of the Leased Premises, or any part thereof, notwithstanding any contrary provision in this Lease.

### Section 12.02 COMPANY RESPONSIBILITIES

Notwithstanding the provisions of any previous lease of any of the Leased Premises or any previous course of dealing, course of performance, or understanding between the City and the Company, the Company shall, throughout the Lease Term of this Lease, be solely and entirely responsible for all costs and expenses for, related to or arising out of the use, operation, repair, maintenance and replacement of the Leased Premises, including but not limited to, the Facilities, all buildings, improvements, pavement, fencing, landscaping, irrigation, foundations, utility lines, doors, locks, windows, ceilings, partitions, walls, interior and exterior lighting, roofs, drainage installations, curbs, islands, sidewalks, driveways, parking areas, and improvements thereon and all components thereof, whether such repair, maintenance or replacement be ordinary, extraordinary, structural, or otherwise. Additionally, without limiting the foregoing, the Company shall:

- (a) At all times perform commercially reasonably routine maintenance and preventive maintenance of the Leased Premises, the Facilities, and all buildings, improvements, and pavement on the Leased Premises and all components thereof and maintain all of the foregoing in a good and clean condition, repair and preservation;
- (b) Replace or substitute any fixtures, equipment and components that have become inadequate, obsolete, worn out, unsuitable, or undesirable with replacement or substitute new fixtures, equipment and components of equal or greater value, free of all liens and encumbrances, that shall automatically become a part of the buildings and improvements;
- (c) At all times keep the grounds, pavement and exterior of the Leased Premises, its buildings and improvements, fixtures, landscaping, equipment, and personal property in a maintained, clean, and orderly condition and appearance;
- (d) Provide, and maintain in good working order, all obstruction lights and similar devices, fire protection and safety equipment, and all other equipment of every kind and nature required by applicable laws, rules, orders, ordinances, resolutions, or regulations of any competent authority, including the City and the Port Director, provided that such rules, regulations, and ordinances shall be applicable in a non-discriminatory manner to all similarly situated parties;

(e) Observe all insurance regulations and requirements concerning the use and condition of the Leased Premises for the purpose of reducing fire hazards and increasing the safety of the Company's operations on the Port;

(f) Repair any damage to paving or other surfaces of the Leased Premises or the Port caused by the Company, its employees, agents, sublessees, licensees, contractors, suppliers, guests or invitees as the result of any oil, gasoline, grease, lubricants, flammable liquids, or substances having a corrosive or detrimental effect thereon or as the result of any cause whatsoever; but in no event shall this relieve the City of its' obligations to maintain the land not a portion of the leased premises in good working order for the operations of the Company's business as defined in Section 2.01;

(g) Comply with the Port's Storm Water Pollution Prevention Plan and plan and take measures to prevent erosion;

(h) Be responsible for the maintenance and repair of all utility services lines upon and serving the Leased Premises, including, but not limited to, water and gas lines, electrical power and telephone conduits and lines, sanitary sewers, and storm sewers;

(i) Keep and maintain all vehicles and equipment operated on the Port by the Company in safe condition, good repair, and insured, as required by this Lease;

(j) Replace broken or cracked plate glass, paint/repaint structures upon the Leased Premises, regularly mow all grass within the Leased Premises, and weed and maintain any landscaping retain or installed by the Company on the Leased Premises; and

(k) Provide and use suitable covered metal receptacles for all garbage, trash, and other refuse; assure that boxes, cartons, barrels, or similar items are not piled in an unsightly, unsafe manner on or about the Leased Premises; provide a complete and proper arrangement, satisfactory to the Port Director, for the adequate sanitary handling and disposal away from the Port, of all trash, garbage, and refuse resulting from operation of the Company's business.

### **Section 12.03 SAFE, CLEAN AND ORDERLY OPERATION**

During the Lease Term, the Company agrees to maintain all portions of the Leased Premises, and any improvements, alterations, or additions thereon, in a safe, clean, and neat condition, and not permit any accumulation of wreckage, debris, or trash. The Company agrees to provide for complete, proper and adequate sanitary handling and disposal, away from the Port, of all trash, garbage, waste and other refuse caused as a result of the Company's operations; to provide and use suitable covered metal receptacles, to be approved by the Port Director, for all trash, garbage and other refuse on or about the Leased Premises, and not to pile boxes, cartons, carts, drums, or the like on the outside of the buildings, or dump any waste matter of any nature, in a liquid state or otherwise, on the Leased Premises nor to permit contamination of the Port's stormwater or sanitary sewer systems.

The Company agrees to promptly install, without cost or expense to the City, any other device or devices for the handling and disposition of refuse and all manner of waste (liquid or otherwise) as may reasonably be required by the City or the Port Director.

Should the Company fail to comply with the terms and conditions of this Article within a period of thirty (30) days following written notice of such failure, or for those items that cannot be reasonably cured within 30 days, or the Company fails to diligently pursue remediation of the failure, the city reserves the right to take any action to cure said failure. Should the City take action to cure failures, the Company shall pay to the City an amount equal to the City's cost for such actions. Said payment is Additional Rent and is to be made by the 10th day of the following month in addition to any other payments.

#### **Section 12.04 OTHER SERVICES**

At its own expense the Company shall provide interior and exterior painting, janitorial, trash removal and all other services necessary or desirable for the operation of the Company's business on the Leased Premises permitted under Article 4 above. The Port provides 24/7/365 controlled gate access to the Port facility as well as a roving patrol during normal operating hours. Should the Company require specialized security services at its Leased Premises, the Company must contract for same separately and may engage any properly licensed security services provider for the provision of same.

#### **Section 12.05 QUARTERLY CONDITION SURVEYS**

The Port's Maintenance Superintendent or other Port representative as designated by the Port Director, together with a representative of the Company may, at the City's option, inspect the Leased Premises quarterly to observe and note its condition, cleanliness, and existing damage and to determine required repairs and maintenance, provided that such inspections do not materially interfere with the Company's use of the Leased Premises. Neither the City's inspection of the Leased Premises nor the City's failure to inspect the Leased Premises shall relieve the Company of any of its obligations under this Lease or applicable law.

#### **Section 12.06 PERFORMANCE**

In the event that the Company refuses or fails to undertake and complete any maintenance, repair or replacements within thirty (30) days after written notice from the Port Director or, in the event of exigent circumstances, such lesser time as the Port Director specifies in such written notice, then and in any such event the City shall have the right, but not the obligation, to perform such maintenance, repair or replacement on behalf of and for the Company. The costs of such maintenance, repair or replacement, plus ten percent (10.0%) for administration, shall be reimbursed by the Company to the City no later than 30 days following receipt by the Company of written demand from the City for same.

#### **Section 12.07 UTILITIES**

The Company shall, at no cost to the City or Port, arrange for all utilities necessary to serve the Leased Premises and promptly pay when due all the utilities costs incurred with respect to the Leased Premises. The Company shall pay or cause to be paid any and all charges for water, heat, gas, electricity, sewer, telephone, internet, cable, and any and all other utilities used on the Leased Premises throughout the Lease Term, including, but not limited to, any connection fees

and any and all additional third party costs related to utility connection, metering, maintenance, repair, and usage.

The Company shall be responsible for the maintenance and repair of all exterior telephone, internet, cable, water, gas, sewer, and electrical utility lines required for the Leased Premises commencing at the point(s) where said utilities enter upon the Leased Premises. The City shall have no obligations related to said maintenance and repair. The Company shall coordinate any required maintenance and repair with the appropriate utility company and the office of the Port Director.

The City reserves to itself the right, at its expense, to install, maintain, repair, replace, or remove and replace water and sewer pipes, electrical lines, cable lines, internet lines, gas pipes, and any other utilities or services located on the Leased Premises as necessary or appropriate, in the City's judgment, to make such utilities available to the City or other tenants, together with the right to enter the Leased Premises at all reasonable times in order to accomplish the foregoing, provided, however, that (i) the City shall not disrupt the operations of the Company without prior written approval of the Company and shall take reasonable precautions to avoid the disruption of the Company's authorized activities; (ii) the alteration and additions after installation do not lessen the utilities previously available to the Company; (iii) the City and/or the ultimate user of such utilities will be responsible to repair and maintain such utilities; and (iv) such utilities will be separately metered for different users.

Throughout the Lease Term, the Company shall not render any utility lines inaccessible.

#### **Section 12.08 UTILITIES SUPPLY OR CHARACTER**

The City shall not be liable in any way to the Company for any failure or defect in the supply or character of electrical energy, internet service, cable service, gas, water, sewer, or other utility service furnished to the Leased Premises by reason of any requirement, act, or omission of the City in its capacity as a utility provider or of any public utility providing such service or for any other reason other than due to the City's gross negligence or willful misconduct with respect to the Leased Premises. The City shall have the right to shut down electrical and other utility services to the Leased Premises when necessitated by fire, safety or emergency exigencies, and in advancement of and consistent with the provisions of Section 12.07 herein above whether the need for such utility work arises with respect to the Leased Premises or any other facility at the Port. Whenever reasonable under the circumstances, the City shall give the Company not less than five (5) days' prior notice of any such utility shutdown. In no event shall the planned loss of utility services occur during normal manufacturing hours without the express knowledge and written consent of the Company. The City shall not be liable to the Company for any losses, including the loss of income or business interruption, resulting from any interruptions or failure in the supply of any utility to the Leased Premises whether said utility supply is controlled by the City or by a public utility provider.

END OF ARTICLE

## ARTICLE 13. TITLE TO IMPROVEMENTS AND PERSONAL PROPERTY

### Section 13.01 TITLE TO IMPROVEMENTS

Title to all permanent buildings, structures, pavement, and other improvements presently existing upon the Leased Premises or any part thereof is vested in the City. Improvements made upon the Leased Premises by the Company, except those structural improvements constructed in compliance with Section 4.01 herein, shall for financial purposes, be owned and claimed by the Company during the Lease Term.

Title to all permanent buildings, structures, pavement, and other improvements not considered to be trade fixtures or personal property of the Company constructed or installed on the Leased Premises by the Company during the Lease Term, shall become vested in the City immediately and automatically upon completion thereof, without notice to the Company or any action by the City.

### Section 13.02 TITLE TO PERSONAL PROPERTY

Except as otherwise provided in this Section 13.02, all trade fixtures and equipment and other business personal property installed or placed by the Company at its sole expense, in the Leased Premises that can be removed without structural damage to the Leased Premises or any other City-owned property shall remain the property of the Company, subject, however, to the provisions of this Section 13.02, unless otherwise provided in subsequent agreements between the Company and the City. The Company shall have the right at any time during the Lease Term and prior to its expiration or earlier termination of this Lease to remove any and all of said property from the Leased Premises including, without limitation, the existing trailer, tool shed and conveyors. The Company shall promptly repair or pay for all damages, if any, resulting from such removal, Ordinary Wear and Tear excepted. All City property damaged by or as a result of removal of the Company's property by the Company shall promptly be restored at the Company's expense to substantially the same condition as it was prior to such damage, Ordinary Wear and Tear excepted.

Notwithstanding the foregoing but expressly subject to Section 3.04, above, any and all property not removed by the Company prior to the expiration of the Lease Term or the earlier termination of this Lease shall become a part of the land upon which it is located and title thereto shall automatically vest in the City with prior written notice to the Company within ten (10) days of suggested transfer of ownership. The City reserves the right to remove and dispose of any or all of such property not removed by the Company prior to the expiration of the Lease Term or earlier termination of this Lease, without any liability or obligation to the Company.

The provisions of this Section shall survive the expiration of the Lease Term or earlier termination of this Lease, as the case may be, and shall be fully enforceable by the City against the Company notwithstanding the termination of this Lease.

END OF ARTICLE

## ARTICLE 14. ENVIRONMENTAL COMPLIANCE

### Section 14.01 ENVIRONMENTAL LAWS

The Company shall, at all times, abide by all Environmental Laws applicable to, concerning, or arising from the Company's actions or inactions resulting directly or indirectly from its occupancy, use, or lease of the Leased Premises, including, without limitation, state and federal laws regulating storm water runoff contamination and pollution prevention, numeric nutrient criteria requirements, state and federal laws regulating soil, water, and groundwater quality, and state and federal laws regulating air quality. Prior to the beginning of any Lease Term, the Company shall identify in writing to the Port Director and its Fire Department all Hazardous Substances that are or may be used in the course of its occupation of the Leased Premises. The City acknowledges and agrees that the Company currently utilizes a 550-gallon skid mounted diesel tank on the Leased Premises and such tank is hereby deemed reported to the Port Director and its Fire Department pursuant to the previous sentence. This list shall be updated by Company in March of each year and include quantities of materials stored on the Leased Premises. Subject to any notice provisions contained in this Lease, the City shall have the right to inspect the Leased Premises at any reasonable time to ensure compliance with Environmental Laws and the provisions of this Article.

The City, acting through its Port Director, has the right to limit the amount of Hazardous Substances used and stored on the Leased Premises that are not reasonably used in the course of manufacturing for the authorized purposes herein.

The Company shall comply with the Port's Storm Water Pollution Prevention Plan and all amendments thereto irrespective of whether it has its own Storm Water Pollution Prevention Plan.

The Company shall not, directly or indirectly, allow the disposal or discharge of Hazardous Substances on the Leased Premises or other Port property, but in no way does this prohibit material to be properly stored in the Leased premises consistent with the proposed use of the premises and consistent with all applicable laws governing storage of same.

The Company shall be solely responsible for the payment of any and all fines, fees, penalties, assessments or citations issued as a result of the Company's failure to comply with applicable environmental laws whether such fine, fee, penalty, assessment or citation be issued to the Company directly or the City or Port as the property owner.

### Section 14.02 ENVIRONMENTAL CONDITIONS

The City represents and warrants to its actual knowledge without independent investigation that:

- (i) it has not received any notice of violation of any environmental laws with respect to the Leased Premises or any property adjacent to the Leased Premises.
- (ii) it has not been a party to any actions, suits, proceedings or damage settlements related in any way to contamination in, upon, over or from the Leased Premises; and
- (iii) the Leased Premises is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites, CERCLIS, or any other list of hazardous sites maintained by any federal, state or local government agency.



**Section 14.03 REMEDIATION OF ENVIRONMENTAL CONDITIONS**

If, following the vacating, abandonment or surrender of the Leased Premises or any portion thereof by the Company, an assignee or a sublessee, the City has reason to believe any contamination of the Leased Premises occurred during the Lease Term, the City may at its own cost and expense undertake any environmental site assessment(s) need to verify the existence and extent of any such contamination. Should any contamination attributable to the activities of the Company, an assignee or a sublessee be confirmed, the responsible party shall be required to perform any and all assessments, remediation, and/or monitoring activities required by law at its sole cost and expense.

**Section 14.04 ENVIRONMENTAL REPORTS**

The Company promptly shall provide to the Port Director, on an ongoing basis and as updates are required, copies of all Company environmental permits and reports related to the Leased Premises, as well as any notices, orders, decrees, citations, or inspection reports issued by environmental regulatory authorities.

**Section 14.05 SURVIVAL OF OBLIGATIONS**

The obligations of this Article shall survive the expiration, termination, and full or partial assignment of this Lease, as well as the sublease of all or any portion of the Leased Premises.

**Section 14.06 NPDES AND SWPPP**

The Company shall comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) program delegated by the United States Environmental Protection Agency (EPA) to the state of Florida and administered in part by the Florida Department of Environmental Protection (FDEP). The City and the Company are required to be covered by a Multi-Sector Generic Permit (MSGP) which is currently identified as “co-located permittees,” and the Company shall submit the required Notice of Intent (NOI) to FDEP and provide a copy of the NOI and related Storm Water Pollution Prevention Plans (SWPPP) to the City. The Port Administrative Office maintains copies of the most current SWPPP for tenants. All tenants and users (including the Company) are responsible for obtaining and maintaining a current copy of the SWPPP, as well as informing and familiarizing their employees, agents, contractors, and visitors of the SWPPP contents and their responsibilities thereunder. The City has control over the establishment and implementation of all policies relating to storm water associated with port docks and tenant areas, including the Leased Premises. All tenants and users (including the Company) shall comply with the most current SWPPP and with the most current Best Management Practices (BMPs) applicable to their facilities and operations contained in the document entitled “Port Pensacola BMPs for Potential Pollutant Sources,” copies of which are available from the Port Director.

END OF ARTICLE

## ARTICLE 15. EVENTS OF DEFAULT; REMEDIES; TERMINATION

### Section 15.01 COMPANY EVENTS OF DEFAULT

The occurrence of any one or more of the following events (each such event being referred to in this Lease as an “Event of Default”) shall constitute a material default and breach of this Lease by the Company:

(a) The Company fails to make any monetary payment required to be made by the Company hereunder, as and when due, and such failure shall continue for a period of five (5) business days after written notice thereof by the City to the Company; or

(b) The Company materially fails to observe, keep, or perform any of the material terms, covenants, agreements, and conditions of any of Articles 4, 6, 7, 10, or 19, and such failure shall continue for a period of fifteen (15) business days after written notice thereof by the City to the Company; or

(c) The Company materially fails to observe or perform any material covenant, condition or provision of this Lease to be observed or performed by the Company, other than as described in subparagraph (a) or (b) above or subparagraphs (d), (e), (f), (g), or (h) below, and such failure shall continue for a period of thirty (30) days after written notice thereof by the City to the Company; provided, however, that if the nature of such failure is such that more than thirty (30) days are reasonably required for its remedy or cure, then such 30-day period shall be extended for up to thirty (30) additional days provided that the Company begins such remedy or cure within such 30-day period and thereafter diligently and continuously prosecutes such remedy or cure to completion within such additional 30-day period; or

(d) The Company files a voluntary petition in bankruptcy or any petition or answer seeking or acquiescing in any reorganization, rehabilitation, arrangement, composition, readjustment, liquidation, dissolution or other relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or an order for relief is entered in an involuntary bankruptcy case filed against the Company; or the Company seeks or consents to or acquiesces in the appointment of any trustee, custodian, receiver or liquidator of itself or of all or any part of its assets or any interest therein; or the Company shall make a general assignment for the benefit of its creditors; or the Company commits any act providing grounds for the entry of an order for relief under any chapter of the federal bankruptcy code; or

(e) A petition or case is filed against the Company seeking any reorganization, rehabilitation, arrangement, composition, readjustment, liquidation, dissolution or other relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the appointment of any trustee, custodian, receiver or liquidator of the Company or of all or any part of its assets or any interest therein, and such petition, case or appointment is not dismissed within sixty (60) days after such filing or appointment; or

(f) The Company abandons all or any material part of the Company's business on the Leased Premises permitted under Article 4 above or ceases to conduct all or any material part of the Company's business at the Leased Premises permitted under Article 4 above for forty-five (45) days during any period of ninety (90) consecutive days provided that any such abandonment or cessation of conduct of business caused by an event of force majeure pursuant to Section 23.07 shall not be deemed to be a breach by Company hereunder; or

(g) The Company knowingly employs or contracts with or for work or services performed on or from the Leased Premises, any unauthorized alien as described by Section 274(e) of the Federal Immigration and Nationalization Act. Failure to comply with this paragraph (g) shall not constitute a material breach by the Company, provided the Company has undertaken reasonable efforts to ensure compliance with the Act through its practices and policies.

**Section 15.02 REMEDIES.**

Upon the occurrence of any Event of Default, the City may at any time thereafter, with or without notice or demand (except as expressly specified in Section 17.01 above or elsewhere in this Lease), and without limiting the City in the exercise of any right or remedy that the City may have by reason of such Event of Default:

(a) Terminate the Company's right to possession of the Leased Premises by any lawful means, in which case this Lease shall terminate and the Company shall surrender possession of the Leased Premises to the City within the provisions of the lease termination. In such event the City shall be entitled to recover from the Company all damages incurred by the City by reason of the Company's default, including but not limited to the cost of recovering possession of the Leased Premises; cost of repairs for any and all damages to the Leased Premises, Ordinary Wear and Tear excepted; cost of any repairs or improvements required to bring the Leased Premises up to code and obtain an Certificate of Occupancy, if said Leased Premises is left in an untenable state by the Company; and the worth at the time of award by the court having jurisdiction thereof of (i) the amount of unpaid Rent and other unpaid amounts under this Lease which had been earned at the time of termination, and (ii) the unpaid Rent and other amounts under this Lease which would have been earned after termination until the time of award. The worth at the time of award of the sums referred to in clauses (i) and (ii) above shall be computed by allowing interest from the due date at the greater of five percent (5%) per annum or the legal rate applicable to money judgments entered by the courts of the State of Florida provided that such rate shall not exceed eight percent (8%).

(b) Without terminating this Lease, enter and repossess the Leased Premises, remove the Company's property and signs therefrom, and re-let the same for such rent and upon such terms as shall be satisfactory to the City without such re-entry and repossession working a forfeiture of the Rent and other amounts to be paid and prior to the lease termination, the covenants to be performed by the Company during the remaining Lease Term. For the purpose of such re-letting, the City shall be entitled to make any repairs, changes, alterations or additions in or to the Leased Premises that may be necessary or convenient, and the City shall be entitled to recover from the Company the cost of repairs for any and all damages to the Leased Premises, Ordinary Wear and Tear excepted; and, cost of any repairs or improvements required to bring the

Leased Premises up to code and obtain an Certificate of Occupancy, if said Leased Premises is left in an untenable state by the Company.

(c) Maintain the Company's right to possession, in which case this Lease shall continue in effect whether or not the Company shall have abandoned the Leased Premises. In such event the City shall be entitled to enforce all of the City's rights and remedies under this Lease, including the right to recover Rent and other amounts as they become due hereunder.

(d) Pursue any other remedy now or hereafter available to the City at law or in equity under the laws or judicial decisions of the State of Florida, including without limitation any right or remedy available to a creditor under the Uniform Commercial Code.

**Section 15.03 RIGHTS AND REMEDIES OF THE CITY CUMULATIVE**

All rights and remedies of the City herein created or otherwise existing or arising at law or in equity by reason of any Event of Default are cumulative, and the exercise of one or more rights or remedies shall not operate to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently. Further, failure by the City to take any authorized action upon the occurrence of an Event of Default shall not be construed to be or act as a waiver of said Event of Default or of any subsequent Event of Default. The City's acceptance of Base Rent, Additional Rent or other amounts or payments by the Company for any period or periods after the occurrence of an Event of Default shall not be deemed a waiver of such Event of Default or a waiver of or estoppel to enforce any right or remedy on the part of the City arising or existing by reason of such Event of Default.

END OF ARTICLE

## ARTICLE 16. HOLDING OVER

It is agreed and understood that any holding over by the Company, with the City's written consent, after the termination of this Lease, shall not serve to renew and extend same, but shall operate and be construed as a tenancy from month-to-month, subject to all terms and conditions of this Lease, including without limitation all Rent provisions.

Should the Company hold over without the City's written consent, the Company agrees to pay to the City, as monthly Rent during such period of holding over, for such Leased Premises for each month until the Company completely vacates the Leased Premises, one hundred fifty percent (150%) of the sum of Base Rent payable for the last month of the Lease Term, including without limitation applicable taxes, as well as all Additional Rent and other fees and charges required by this Lease or by City ordinance to be paid by the Company.

The Company shall be liable to the City for all loss or damage resulting from any holding over against the City's will after the termination of this Lease, whether such loss or damage may be contemplated at this time or not. It is expressly agreed that acceptance of the foregoing rental by the City, in the event that the Company fails or refuses to surrender possession, shall not serve to grant the Company any right to remain in possession beyond the period for which such amount has been paid nor shall it constitute a waiver by the City of its right to immediate possession thereafter.

END OF ARTICLE

## ARTICLE 17. ASSIGNMENT AND SUBLEASE

### Section 17.01 LEASE ASSIGNMENT

The Company shall not assign this Lease or the Company's interest in or to the Leased Premises, or any part thereof, without first having obtained the City's prior written consent which consent may be given or withheld in the City's sole and absolute discretion; provided, however, that this section is not intended to apply to or prevent the assignment of this Lease, in its entirety, to any corporation or other entity with which the Company may merge or to an Affiliate or Subsidiary. Should there be an internal assignment by the Company of the lease to an entity that has common ownership or is otherwise an Affiliate or Subsidiary or a transfer of the equity ownership of the Company to an Affiliate or Subsidiary, then no approval by the City is required, but the Company shall provide prompt written notice of any such assignment. Nothing in this provision shall impair the responsibilities of the Company to the City until the City provides any required approval of the assignment. Without limiting the foregoing, it is a precondition to City review and approval of a requested assignment of this Lease that there shall then exist no uncured Event of Default nor any event or state of facts which with notice or the lapse of time, or both, would constitute an Event of Default. Any transfer of more than fifty percent (50%) of the equity ownership of the Company other than to an Affiliate or Subsidiary, whether such transfer of equity ownership occurs pursuant to a single transaction or a series of related transactions, shall be deemed to be an assignment of this Lease for purposes of this Section 17.01.

In the event that the Company requests permission to assign this Lease in whole or in part, the request shall be submitted to the Port Director not less than thirty (30) days prior to the proposed effective date of the assignment requested, and shall be accompanied by a copy of the proposed assignment agreement(s) and of all agreement(s) collateral thereto, together with the following information and any other reasonable and pertinent information requested by the Port Director: the identity and contact information of the assignee, whether the requested assignment is a full or partial assignment of this Lease, the type of business to be conducted on the Leased Premises by the assignee, and reasonable financial history and financial information of the Assignee if the purpose of the Leased premises is to be different than the proposed usage in Section 2.01.

### Section 17.02 LEASED PREMISES SUBLEASE

The Company shall not sublet the Leased Premises or any part thereof other than to an Affiliate or Subsidiary, regardless of the time period, without having first obtained the City's prior written consent, which consent shall not be unreasonably withheld. Without limiting the generality of the foregoing, it is a precondition to City review and approval of a proposed sublease of the Leased Premises that there shall then exist no uncured Event of Default nor any event or state of facts that with notice or the lapse of time, or both, would constitute an Event of Default.

In the event that the Company requests permission to sublet the Leased Premises in whole or in part, except to an Affiliate or Subsidiary, the request shall be submitted to the Port Director not less than sixty (60) days prior to the proposed effective date of the sublease requested, and shall be accompanied by a copy of the proposed sublease agreement(s) and of all agreement(s) collateral thereto, together with the following information and any other information requested by the Port Director: the identity and contact information of the sublessee, a description of the part of the Leased Premises to be subleased, a statement of the entire consideration to be

received by the Company by reason of such sublease (including but not limited to sublease rent and other fees and charges payable by the sublessee), the type of business to be conducted on subleased premises by the sublessee, and reasonable financial history and financial information of the sublessee.

For purposes of this Section 17.02 and Section 17.03 below, “sublease” and related terms shall include, without limitation, any sublease, license, or agreement, regardless of how denominated, that permits a third party to occupy or use all or any part of the Leased Premises other than those persons who use the Leased Premises in the ordinary course of Company’s business for the use permitted under Article 4 above.

**Section 17.03 CONSUMMATION OF ASSIGNMENT OR SUBLEASE**

The City’s consent for the assignment or sublease for which the City’s consent is required and for which such consent has been given shall be by written instrument, in a form reasonably satisfactory to the Port Director and the City Attorney, and shall be executed by the assignee or sublessee who shall agree, in writing, for the benefit of the City, to be bound by and to perform all the terms, covenants, and conditions of this Lease. Four (4) executed copies of such written instrument shall be delivered to the City. Failure either to obtain the City’s prior written consent or to comply with the provisions of this Lease shall serve to prevent any such transfer, assignment, or sublease from becoming effective and shall constitute an Event of Default by the Company.

The Company agrees and acknowledges that it shall remain fully and primarily liable for all obligations of lessee under this Lease, notwithstanding any full or partial assignment of this Lease or any sublease of all or any portion of the Leased Premises.

Notwithstanding Section 23.20, the City shall reasonably cooperate with the Company, to the greatest extent permitted by applicable law, in protecting any confidential information required to be provided to the City in connection with any of the foregoing consents.

END OF ARTICLE

## ARTICLE 18. DAMAGE OR DESTRUCTION OF LEASED PREMISES; TAKING BY EMINENT DOMAIN

### Section 18.01 LEASED PREMISES -- DAMAGE OR DESTRUCTION

If at any time during the Lease Term, the Leased Premises shall be so destroyed or so injured by fire or other casualty as to be unfit for full occupancy and use by the Company, and such destruction or injury could reasonably be repaired within one hundred eighty (180) days from the date of such destruction or injury, then the Company shall not be entitled to surrender possession of the Leased Premises; provided, however, that the Company's obligation to pay Rent shall be equitably reduced to the extent of the diminution in use to the Company resulting from such destruction or injury until full use and occupancy is restored to the Company. The Company shall repair the damage with all reasonable speed at least to the extent of the value and as nearly as possible to the character and quality of the building and improvements existing immediately prior to such occurrence, Ordinary Wear and Tear excepted.

If the Leased Premises shall be so destroyed or injured by fire or other casualty that such destruction or injury could not reasonably be repaired within one hundred eighty (180) days from the date of such destruction or injury, the Company shall have the option, upon written notice given to the City within thirty (30) days from the date of such destruction or injury, to terminate this Lease, and upon giving of such notice this Lease shall be terminated as of the date of such destruction or injury. In the event the Company elects not to terminate this Lease in accordance with the foregoing options, the Company's obligation to pay Rent shall be equitably reduced to the extent of the diminution in use to the Company resulting from such destruction or injury until full use and occupancy is restored to the Company and the Company shall repair the damage and restore or rebuild the building and improvements as promptly as reasonably possible after the one hundred eighty (180) day period.

Notwithstanding the foregoing provisions of this Article, in the event of damage or destruction, as aforesaid, such that fifty percent (50%) or more of the total floor area of the Facilities is rendered unfit for occupancy and use by the Company during the last three (3) years of the Lease Term, then either Party shall have the option, upon written notice given to the other Party within thirty (30) days from the date of such destruction or injury, to terminate this Lease, and upon the giving of such notice this Lease shall be terminated as of the date of such destruction or injury.

### Section 18.02 TAKING BY EMINENT DOMAIN

In the event that the Leased Premises or any portion thereof shall be taken for public or quasi-public use or condemned under eminent domain, the Company shall be entitled to claim or have paid to the Company compensation, loss of business facilities or damages but nothing herein contained shall be construed to prevent the Company from asserting against the condemn or any separate claim for damages to the Company occurring by reason of said condemnation, including without limitation loss or damage to leasehold improvements, personal property, business, fixtures, goodwill, cost of removing fixtures or equipment or loss of future profits.

In the event of any such taking or condemnation referred to in the preceding paragraph, then if and when there is an actual taking, in whole or in part, of physical possession of the Leased Premises which shall render the Leased Premises unfit for the use and occupancy by the



Company substantially as used and occupied prior to such taking, the Company may terminate this Lease. The Leased Premises shall be deemed to be unfit for use by the Company if the area of the portion thereof remaining after such taking is less than sufficient to accommodate the operations carried on by the Company just prior to such taking. If the Company elects to terminate this Lease as provided above, it shall give written notice to the City within thirty (30) days after the later of (a) the entry of the final order of court authorizing the taking or appropriation or the date of settlement, as the case may be, or (b) the taking of physical possession by the condemner.

END OF ARTICLE

## ARTICLE 19. FEDERAL, STATE, AND LOCAL REGULATIONS

### Section 19.01 COMPLIANCE WITH RULES AND REGULATIONS

The Port Director is charged with administering the provisions of this Lease, and is authorized from time to time to promulgate and enforce such Rules and Regulations and policies as the Port Director deems necessary. All such Rules and Regulations and policies so promulgated shall not be inconsistent with any legally authorized rule or regulation of any federal or State of Florida agency, which is binding in law on the Company, as the same now are or may from time to time be amended or supplemented, nor inconsistent with the reasonable exercise by the Company of any right or privilege granted under this Lease shall be applicable in a non-discriminatory manner to all similarly situated parties.

The Company shall not, and the Company shall not suffer or knowingly permit any of its officers, representatives, agents, employees, guests, patrons, contractors, subcontractors, licensees, subtenants, invitees, or suppliers to, violate or to cause another person to violate any of the Rules and Regulations while engaged in activities related to this Lease.

### Section 19.02 COMPLIANCE WITH LAW

The Company shall not use the Port or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, contractors, invitees, or licensees for any illegal purposes.

At all times during the Lease Term, the Company shall, in connection with its activities and operations at the Port:

Comply with and conform to all applicable current and future statutes and ordinances, and regulations promulgated thereunder, of all federal and State of Florida agencies of competent jurisdiction that apply to or affect, either directly or indirectly, the Company or the Company's operations and activities under this Lease. Without limiting the generality of the foregoing, the Company shall comply with the United States of America, United States Department of Homeland Security, United States Citizenship and Immigration Services E-Verify in order to implement the legal requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101), as may be amended from time to time, and federal regulations promulgated thereunder that may be applicable as a result of activities conducted by the Company.

Subject to the prior written approval of the Port Director, make, at its own expense, all improvements, repairs, and alterations to the Leased Premises and all buildings and improvements thereon and to its equipment and personal property that are required to comply with or conform to any of such statutes, ordinances, or regulations. Notwithstanding the foregoing, if the cost of such improvements, repairs or alterations exceeds fifty percent (50%) of the remaining Base Rent in the Lease Term, the Company shall have the right to terminate this Lease on thirty (30) days written notice to the City.

Regarding the City, be and remain an independent contractor with respect to all installations, construction, and services performed by or on behalf of the Company hereunder.

**Section 19.03 COMPLIANCE WITH ENVIRONMENTAL LAWS**

At all times during the Lease Term, the Company shall not cause, permit or allow any Hazardous Substances to be placed, stored, dumped, dispensed, released, discharged deposited, used, transported or located on any portion of the Premises; provided, however, that quantities of such Hazardous Substances may be used or stored by Company on the Leased Premises in the ordinary course of business on the condition that such quantities and the use thereof are:

- (a) Identified in the Hazardous Substances listing described in Section 17.01,
- (b) Permitted by or are exempt from applicable governmental regulations, and
- (c) Are transported, stored and utilized in accordance with applicable governmental regulations and the best practices of the Company's industry.

To the extent caused by or resulting from the acts of the Company, its agents, servants, employees, or contractors, Company agrees that it shall, to the extent necessary to bring the Leased Premises into compliance with any and all applicable Environmental Laws regarding Hazardous Substances and clean-up thereof, investigate and promptly (but in any event within the time period permitted by applicable Environmental Laws) clean up Hazardous Substances found in, on, under, around, or within any portion of the Leased Premises and, with respect to such matters as described herein for which Company is responsible, to remediate the Leased Premises, and to pay for all reasonable clean-up and remediation costs at no cost to the City. All clean-up and remediation shall be performed to meet pre-existing conditions, and in no instance shall clean-up or remediation or related agreements with state or federal regulators include restrictions placed on the use of the Leased Premises or any part thereof.

Company shall perform Environmental Reporting required under this Section as described in Section 14.04.

**Section 19.04 LICENSES AND PERMITS**

The Company shall obtain in a timely manner and thereafter maintain in full force and effect during the Lease Term all licenses, permits and other approvals required by the federal, state, county, and municipal authorities in order to engage in the Company's business on the Leased Premises as permitted under Article 4 above, and consistent with Section 2.01.

END OF ARTICLE

## ARTICLE 20. TAXES

### Section 20.01 PAYMENT OF TAXES

The Company shall pay all taxes that may be levied upon, assessed, or charged the Company or its property located on the Port by the United States, the State of Florida or any of its political subdivisions, or Escambia County or the City, and shall obtain and pay for all licenses and permits required by law.

### Section 20.02 REAL PROPERTY TAXES

The Company shall be responsible for all real property taxes applicable to the Leased Premises during the Lease Term. If any such taxes paid by the Company shall cover any period of time prior to or after the expiration of the Lease Term, the Company's share of such taxes shall be equitably prorated to cover only the period of time within the tax year during which this Lease shall be in effect, and the City shall reimburse the Company for any periods during which the Lease is not in effect. If the Company shall fail to pay any such taxes, the City shall have the right, but not the obligation, to pay the same, in which case the Company shall repay such amount to the City with the Company's next Base Rent installment, together with interest at the highest rate allowed by law.

### Section 20.03 DEFINITION

As used herein the term "real property tax" shall mean all ad valorem and non-ad valorem taxes and assessments (including interest and penalties thereon) which are imposed against any legal or equitable interest of the City or the Company in the Leased Premises or any portion thereof by the City, Escambia County or the State of Florida or by any school, agricultural, lighting, fire, mosquito control, water, drainage or other improvement, benefits or tax district thereof, and which are collected by the Escambia County, Florida, Tax Collector, together with any tax imposed in substitution, partially or totally, of any tax previously included within the definition of "real property tax" and any additional tax the nature of which was previously included within the definition of "real property tax".

### Section 20.04 CONTEST

The Company may contest the legal validity or amount of any taxes, assessment, or charges for which the Company is responsible under this Lease, and may institute such proceedings as the Company considers necessary. If the Company protests any such tax, assessment or charge, the Company may withhold or defer payment or pay under protest but shall indemnify and hold the City and the Leased Premises harmless from and against any claim or lien against the City or the Leased Premises arising out of the Company's failure to pay the contested taxes, assessments or charges.

### Section 20.05 PERSONAL PROPERTY TAXES

The Company shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of the Company contained in the Leased Premises. When possible, the Company shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the Land and Leased Premises. If any of the Company's said personal property shall be assessed with the

Land or Leased Premises, the Company shall pay the taxes attributable to the Company within ten (10) days prior to the delinquency date for payment of such taxes.

END OF ARTICLE

## ARTICLE 21. ENCUMBRANCE OF LEASEHOLD ESTATE AND NOTICE TO MORTGAGEES

Company shall not encumber by mortgage or other security instrument, by way of collateral assignment, or otherwise, Company's interest in this leasehold estate without the prior written consent of City.

Provided that City has given its prior written consent to such encumbrance and that Company's lender who has been granted a lien on or security interest in the Company's leasehold estate in the Leased Premises ("Lender") has provided City written notice thereof, including Lender's address for receipt of notices:

(a) Lender shall have the right:

1. To do any act or thing required of Company hereunder and all such acts or things done and performed shall be as effective to prevent a forfeiture of Company's rights hereunder as if done by the Company; and
2. To realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or in equity or by the security documents (hereinafter sometimes collectively referred to as "foreclosure sale") or to acquire by deed-in-lieu, and to transfer, convey, or assign the title of Company to the leasehold estate created hereby to any purchaser at any such foreclosure sale or transfer from Lender if Lender acquires by a deed-in-lieu and to acquire and succeed to the interest of Company hereunder by virtue of any such foreclosure sale or deed-in-lieu.

(b) In the event of a default by the Company under this Lease, the rights of City may not be exercised until written notice of such default is delivered to Lender, or to the person or firm designated by any such Lender, by written notice to City, to accept such notices, and any applicable cure period has expired. Lender shall have the same notice and cure rights as are provided to Company under this Lease, except that Lender shall have the right to cure a monetary default as described in Section 17.01(a) within ten (10) days from delivery of said notice.

(c) Lender shall not be liable to the City as an assignee of this Lease unless and until such time as such Lender shall acquire the rights of Company hereunder through foreclosure or other appropriate proceedings in the nature thereof, or by deed-in-lieu, or as a result of any other action or remedy provided for by such mortgage, or which may otherwise be provided by law.

(d) No modification or voluntary surrender by the Company of this Lease shall be made without the consent of Lender if Lender has requested such authority to consent by written notice delivered to City.

(e) The City agrees to provide an estoppel certificate upon written request of Lender acknowledging that (to the extent true and noting any exceptions) this Lease is in full force and effect; that there are no defaults that exist under the Lease; that the Rent is current; and such other matters as Lender may reasonably require.

(f) Notwithstanding the foregoing, the ultimate transferee of Company's leasehold estate under the Lease, in the event of foreclosure, deed-in-lieu or otherwise, is subject to the written approval of the City, such approval not to be unreasonably withheld, conditioned or delayed. As a minimum, such ultimate successor must be able to demonstrate sufficient financial ability to conduct the operations permitted under Article 4 above and have at least five (5) years' experience in the operation of a business of a similar size and offering similar services as that conducted by the Company under this Lease as permitted under Article 4 above.

END OF ARTICLE

## ARTICLE 22. PORT DEVELOPMENT RIGHTS

The City reserves the right to further develop or improve all areas within the Port as the City may determine in its sole discretion to be in the best interests of the Port, regardless of the desires or views of the Company, and without interference or hindrance from the Company.

Except as may be required by this Lease or any other agreement between the parties, the City reserves the right, but shall not be obligated to the Company, to keep and repair all areas of the Port. All obligations of the City hereunder are subject to annual appropriation. However, this provision shall not excuse the City's performance of any of its responsibilities or obligations hereunder.

Company acknowledges and agrees that the City may move or reconfigure the existing entrance to the Leased Premises in accordance with the Port Master Plan (an "Entrance Relocation") provided that such change (including, without limitation, related construction activity) does not unreasonably impair or interfere with Company's use or enjoyment of the Leased Premises including, without limitation, the operational efficiency thereof. In the event that an Entrance Relocation results in the Company relocating its equipment and personal property (e.g., scales, trailers, conveyors, etc.), the City shall promptly reimburse the Company for the reasonable and actual cost thereof. Any reduction in the size of the Leased Premises due to an Entrance Relocation shall result in a pro-rata reduction in Base Rent and the CAIM expressly provided that neither Base Rent nor CAIM shall be increased due to an Entrance Relocation for any reason. The City will provide Company with reasonable prior written notice of any such activity and cooperate with Company in ensuring that the contemplated change meets the foregoing requirements.

END OF ARTICLE



## ARTICLE 23. GENERAL PROVISIONS

### Section 23.01 **ACKNOWLEDGMENT**

The Parties hereto acknowledge that they have thoroughly read this Lease, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel necessary for them to form a full and complete understanding of their rights and obligations hereunder. The Parties further acknowledge that this Lease is the result of extensive negotiations between the Parties and shall not be interpreted against the City by reason of the preparation of this Lease by the City.

### Section 23.02 **AUTHORITY OF THE PORT DIRECTOR**

The Port Director or his designee may exercise all rights and obligations of the City under this Lease, unless otherwise specifically provided in this Lease or required by law.

### Section 23.03 **CAPACITY TO EXECUTE**

The individuals executing this Lease personally warrant that they have full authority to execute this Lease on behalf of the entity for whom they are acting hereunder.

### Section 23.04 **DELIVERY OF NOTICES**

Any notices permitted or required by this Lease shall be in writing and delivered personally or sent by registered or certified U. S. mail, postage prepaid, or by courier service, such as FedEx or UPS. Any such notice shall be deemed to have been delivered to and received by the addressee (i) upon personal delivery to the Company's address below between 9:00 a.m. and 5:00 p.m. on any business day (i.e., any day other than a Saturday, Sunday, or a federally-designated official holiday), (ii) the next business day after deposit with a courier service such as FedEx or UPS, or (iii) five (5) business days after deposit in the U. S. mail.

Notices to the City shall be addressed to:

City of Pensacola  
Port of Pensacola  
Attention: Port Director  
PO Box 889  
Pensacola, Florida 32591

Notices to the Company shall be addressed to:

Martin Marietta Materials, Inc.  
2235 Gateway Access Point, Suite 400  
Raleigh, North Carolina 27607  
Attn: Division President

With a copy to:

Martin Marietta Materials, Inc.  
4123 Parklake Avenue  
Raleigh, North Carolina 27612  
Attention: General Counsel

The parties may from time to time designate, in writing, changes to the addresses stated.

#### **Section 23.05 EMPLOYEES OF THE COMPANY**

The Company shall require all of its employees, subcontractors, and independent contractors hired by the Company and working in view of the public to wear clean and neat attire and to display appropriate identification. Company employees shall obtain identification badges from the City. The Company shall be responsible for paying the cost of DHS/TSA-required employee background checks and badging to include a Transportation Worker Identification Credential (TWIC).

#### **Section 23.06 ENTIRE AGREEMENT**

This Lease constitutes the entire agreement between the Parties on the subject matter hereof and may not be changed, modified, discharged, or extended except by written instrument duly executed by the City and the Company, and all prior and contemporaneous agreements and understandings, written as well as oral, are hereby superseded. The Company agrees that no representations or grants of rights or privileges shall be binding upon the City unless expressed in writing in this Lease. The parties acknowledge and agree that that certain Short Term Operating Agreement (the "STOA"), made and entered into as of May 22, 2015 under which the Company currently occupies the Leased Premises shall continue in full force and effect until the Effective Date, upon which Effective Date the STOA shall automatically terminate and be of no further force or effect.

#### **Section 23.07 FORCE MAJEURE**

Neither the City nor the Company shall be deemed to be in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, tides, riots, rebellion, sabotage, pandemic, disease, any responsive measure or state of emergency declared by a governmental entity in relation to pandemic or disease or any other circumstances for which it is not responsible or which is not in its control; provided, however, that these circumstances shall not excuse the Company from making, as and when due, any monetary payment required under this Lease or by the Rules and Regulations, including but not limited to Base Rent, Additional Rent, port rentals, fees, and charges, Taxes under Article 20, and insurance premiums. But the Company in a Force Majeure event shall be entitled to waiver of Base Rent, fees, and charges, listed above for up to one hundred eighty (180) days after the cessation of the Force Majeure event or until performance under this Lease can be reestablished, whichever occurs first, on election to do so with written notice to the City and/or Port Director.

**Section 23.08 RULES OF CONSTRUCTION**

Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Lease Agreement: words importing the singular number shall include the plural number and vice versa; captions and headings herein are for convenience but are to be read in unison with the language of the section to include its defined meaning or generally accepted meaning of the header and is otherwise also for reference and should constitute a material part of this Lease Agreement, but shall affect and read in toto to its meaning, construction or effect; words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neutral genders, and words of the neutral gender shall be deemed and construed to include correlative words of the masculine and feminine genders; all references in this Lease Agreement to particular “articles,” “sections,” or “paragraphs” are references to articles, sections or paragraphs within this Lease Agreement, unless specifically indicated otherwise; and, days are measured in calendar days unless expressly listed in business days.

Both City and Tenant acknowledge that they have each had meaningful input into the provisions and conditions of this Lease Agreement.

**Section 23.09 GENERAL INTERPRETATION**

Insofar as this Lease grants, permits, or contemplates the use of space or facilities or the doing of any other act or thing at the Port by the Company, such use or the doing of such act or thing by the Company is to be in connection with the purchase, preparation for resale, and resale of construction materials and aggregates. Each of the Parties has entered into this Lease solely for its own benefit; and (without limiting the right of either Party to maintain suits, actions, or other proceedings because of breaches of this Lease) this Lease does not grant to any third person (excepting a successor party to the City or the Company) a right to claim damages or bring any suit, action, or other proceeding against either the City or the Company because of any breach hereof.

**Section 23.10 GOVERNING LAW**

The laws of the State of Florida shall govern this Lease and all disputes arising hereunder, with venue in Escambia County, Florida.

**Section 23.11 INCORPORATION OF EXHIBITS**

All exhibits referred to in this Lease are intended to be and hereby are specifically incorporated and made a part of this Lease.

**Section 23.12 INCORPORATION OF REQUIRED PROVISIONS**

The Parties hereto incorporate herein by this reference all applicable provisions lawfully required to be contained herein by any governmental body or agency.

**Section 23.13 INVALID PROVISIONS**

In the event that any covenant, condition, or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition, or provision shall in no way affect any other covenant, condition, or provision herein contained, provided that the invalidity of any such covenant, condition, or provision does not materially prejudice either the City or the Company in its respective rights and obligations contained in the valid covenants, conditions, and provisions of this Lease.

**Section 23.14 NONLIABILITY OF INDIVIDUALS**

No director, officer, agent, elected official, or employee of either Party shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Lease or because of any breach hereof or because of its or their execution or attempted execution.

**Section 23.15 NONINTERFERENCE WITH PORT OPERATIONS**

The Company, by executing this Lease, expressly agrees for itself, its successors, and assigns that it will not make use of its Leased Premises in any manner that would reasonably be expected to interfere with other operations at the Port or otherwise constitute a hazard. In the event that the aforesaid covenant is breached, the City reserves the right to enter the Company's Leased Premises and cause the abatement of such interference or hazard at the expense of the Company, but the Company has a ten (10) day right to cure if the situation is a non-emergency.

**Section 23.16 NOTICE OR CONSENT**

Any notice or consent required herein to be obtained from or given by the City (or the Port Director) may be given by the Port Director unless otherwise provided. Unless otherwise expressly stated to the contrary, any consent or approval of either Party when required herein shall not be unreasonably withheld, delayed, or conditioned.

**Section 23.17 NONWAIVER**

The acceptance of rentals, fees, and charges by the City for any period or periods after a default of any of the terms, covenants, and conditions contained herein to be performed, kept, and observed by the Company shall not be deemed a waiver of the event of the default cured by payments made by the Company to the City, and any right on the part of the City to terminate this Lease after the default is cured and payment is received by the City is waived by the City's acceptance of the money that may be the basis of the event of the default.

**Section 23.18 OTHER LAND AND BUILDINGS EXCLUDED**

It is agreed and understood that this Lease and any exhibit hereto is not intended to provide for the lease of any building, land, space, or area or to set any rental rates for any building, land, space, or area other than that specifically described herein.

**Section 23.19 PATENTS AND TRADEMARKS**

The Company represents that it is the owner of, or fully authorized to use, any and all services, processes, machines, articles, marks, names, or slogans used by it in its operations under, or in connection with, this Lease. The Company shall indemnify, defend and hold harmless the City, its elected officials, employees, volunteers, representatives and agents from and against any loss, liability, damage, expense, suit, or claim for damages in connection with any actual or alleged

infringement of any patent, trademark, or copyright, or from any claim of unfair competition or other similar claim, arising out of the Company's operations under or in connection with this Lease.

#### **Section 23.20 PUBLIC RECORDS LAWS**

The Florida Public Records Law, as contained in Chapter 119, Florida Statutes (collectively, "Public Records Law"), is very broad. As a result, any written communication created or received by the City will be made available to the public and media, upon request, unless a statutory exemption from such disclosure exists. The Company is a private, non-governmental entity and is not ordinarily subject to Public Records Law but shall comply with the Public Records Law in effect during the Lease Term but only to the extent of provisions that are mandatory and applicable to the Company. Notwithstanding the foregoing, the City will reasonably cooperate with the Company to the greatest extent permitted by Public Records Law to afford confidential treatment of any confidential business information of the Company.

#### **Section 23.21 REMEDIES TO BE NONEXCLUSIVE**

All remedies provided in this Lease shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the City at law or in equity (to the extent not inconsistent with the express provisions hereof) and the exercise of any remedy or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

#### **Section 23.22 SIGNS AND LOGOS**

The installation and operation of identifying signs, posters, and graphics on the Leased Premises are subject to the prior written approval of the Port Director. Such signs shall be substantially uniform in size, type, and location with those of other tenants, and consistent with the City's graphics standards and the Port Rules and Regulations, and in compliance with all applicable laws and ordinances. The signs shall be for the purpose of assigning Port users with wayfinding. Signs that constitute advertising are prohibited and will not be approved.

Sign(s) and location(s) may be changed and altered from time to time with the written approval of the Port Director, said approval not to be unreasonably denied or delayed. At the expiration of the Lease Term or earlier termination of this Lease the Company, upon written request from the City, shall remove, at the Company's expense, all lettering and signs so erected on the Leased Premises.

The Company Logo will be permitted to be affixed to the side of the Leased premises provided same is affixed in a manner that is in compliance with applicable City of Pensacola sign ordinances.

In addition, Company will be permitted to paint its Company Logo on the side of the Facilities.

#### **Section 23.23 SUCCESSORS AND ASSIGNS**

The provisions of this Lease shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto; provided, however, that this provision shall in no way whatsoever alter the restriction herein regarding assignment and sublease by the Company.

**Section 23.24 NO PARTNERSHIP**

Nothing in this agreement constitutes a partnership or joint venture between the Parties. It is the express intention of the Parties to deny any such relationship.

**Section 23.25 THIRD PARTIES**

Nothing in this Lease, express or implied, is intended to or shall confer upon any person, other than the Parties and their respective permitted successors and assigns, any right, benefit or remedy of any nature whatsoever under or by reason of this Lease.

**Section 23.26 TIME IS OF THE ESSENCE**

Time is of the essence of this Lease.

**Section 23.27 MEMORANDUM OF LEASE**

Concurrently with the execution of this Lease, the Parties shall execute a short-form memorandum of this Lease satisfactory to the City Attorney, in form suitable for recording, and in substance sufficient to provide constructive notice to third parties of the material terms and provisions of this Lease. The Company shall cause such memorandum to be recorded in the public records of Escambia County, Florida.

**Section 23.28 REPRESENTATIONS AND WARRANTIES OF CITY AND COMPANY**

City hereby represents and warrants to the Company that as of the Effective Date:

- a. The City is the fee simple owner and record title holder of the Leased Premises.
- b. The City has the full right and authority to make, execute and perform this Lease and grant the rights contained herein to the Company.

The Company hereby represents and warrants to the City that as of the Effective Date:

- a. The Company has the full right, power and authority to make, execute and perform this Lease.
- b. This Lease is binding upon and enforceable against the Company in accordance with its terms.

END OF ARTICLE

IN WITNESS WHEREOF, the undersigned have duly executed this Lease as of the dates set forth below.

**CITY:**

**COMPANY:**

**CITY OF PENSACOLA,**  
a Florida municipal corporation

**MARTIN MARIETTA MATERIALS,**  
**INC.,** a North Carolina corporation

By: \_\_\_\_\_  
Grover C. Robinson, IV, Mayor

By:   
Ronald M. Kopplin, President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

Signed by Company in the presence of:

\_\_\_\_\_  
Ericka Burnett, City Clerk

  
\_\_\_\_\_  
Print Name: \_Brian K. North

Signed by Mayor in the presence of:

  
\_\_\_\_\_  
Print Name: \_Mark Patterson

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Approved as to form

\_\_\_\_\_  
City Attorney Office

Approved as to content:

\_\_\_\_\_  
M. Clark Merritt Jr., Port Director

**EXHIBIT A - LEASED PREMISES AERIALY DEPICTED**

