

RESOLUTION NO. 19-284

**A RESOLUTION APPROVING AN ECONOMIC INCENTIVE  
CONTRACT AND LOAN AGREEMENT BETWEEN THE CITY OF  
PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT  
CORPORATION AND ROBOGISTICS, LLC. FUNDING AVAILABLE  
IN PAEDC ACCOUNT NO. 120-1429-582.59-10**

**WHEREAS,** the City Council deems it is the public interest to authorize the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") to enter into an Economic Incentive Contract and Loan Agreement (the "Agreement") with Robogistics; and

**WHEREAS,** Germer PLLC has indicated that Robogistics has presented an application qualifying as a Section 4A project as set forth in the Executive Summary of the Agreement attached hereto as **Exhibit "A"**; and

**WHEREAS,** the PAEDC has reviewed the Robogistics application and accompanying financial statements presented by Robogistics and recommends approval thereof; and

**WHEREAS,** at a special called Board meeting on June 10, 2019, the PAEDC Board of Directors approved entering into an Economic Incentive Contract and Loan Agreement with Robogistics offering an incentive of \$495,100 to locate it business operation in the City of Port Arthur; and

**WHEREAS,** Robogistics will lease an approximately 26,000 square foot building from the City of Port Arthur, and will report to PAEDC CEO, on an annual

basis, their extension of the lease on the existing Port Arthur facility or their intent to lease or build another facility in Port Arthur at least three (3) months prior to the expiration of Incentive Recipient's lease with the City of Port Arthur; and

**WHEREAS**, Robogistics shall generate a total of approximately \$2,000,000 in wages to Port Arthur residents by June 2022 as detailed in the Agreement attached hereto as **Exhibit "A"**; and

**WHEREAS**, Robogistics has reviewed and approved the Agreement.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR, TEXAS:**

**Section 1.** That the facts and opinions in the preamble are true and correct.

**Section 2.** That the PAEDC is herein authorized to enter into an Economic Incentive and Loan Agreement with Robogistics, and the President and Secretary of the PAEDC are authorized to sign the Agreement in substantially the same form attached hereto as **Exhibit "A"**.

**Section 3.** That the Economic Incentive and Loan Agreement is contingent on the approval of the lease with the City of Port Arthur, and EDA approval.

**Section 4.** That a copy of the caption of this Resolution be spread upon the Minutes of the City Council.

READ, ADOPTED AND APPROVED on this 2<sup>nd</sup> day of July A.D., 2019,  
at a Meeting of the City Council of the City of Port Arthur, Texas, by the  
following vote: AYES:

Mayor Mayor Pro Tem Bruce

Councilmembers Scott, Kinlaw, Moser and  
Frank.

NOES: None.

Derrick Freeman  
Derrick Freeman, Mayor

ATTEST:

Sherri Bellard  
Sherri Bellard, City Secretary

APPROVED:

Floyd Batiste

Floyd Batiste, PAEDC CEO

Rebecca Underhill

Rebecca Underhill, Interim City Manager

# Exhibit "A"

**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT  
BETWEEN THE CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION  
&  
ROBOGISTICS, LLC**

Robogistics, LLC ("Incentive Recipient") is a Texas limited liability company which was established in 2019. Incentive Recipient is a designer, manufacturer and integrator of intelligent robotic gantry systems and material handling logistics solutions for applications in manufacturing facilities, distribution warehouses and fulfillment centers. Incentive Recipient customer markets include Fortune 500 companies, food, beverage, consumer goods, personal care, automotive, plastic packaging and industrial. Incentive Recipient plans to locate its manufacturing and logistics facility to Port Arthur, Texas and lease the armory building for a twelve (12) month period from the City of Port Arthur. At the expiration of the lease between Incentive Recipient and the City of Port Arthur, Incentive Recipient shall build a new manufacturing and logistics facility in the City of Port Arthur. Incentive Recipient plans to utilize incentive funds acquired through the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") to construct purchase equipment and fixtures for its new manufacturing and logistics facility.

PAEDC has agreed as consideration for the promise and performance of Incentive Recipient to conditionally grant Incentive Recipient \$495,100.00 in accordance with an Economic Incentive Contract & Loan Agreement (the "Agreement") for the purchase of equipment. . PAEDC and Incentive Recipient have agreed that incentive credits shall be in an amount not to exceed \$495,100.00.

Incentive Recipient shall comply with the Performance Milestone Schedule in the Agreement to meet its promised performance under the Agreement, and to provide all reports and other affirmative commitments as outlined in the Agreement.

Incentive Recipient shall secure the conditional loan by a first lien on approximately \$732,000.00 of equipment that will be acquired through incentive proceeds. In addition to providing the reports and verification that all collateral shall be free of liens and encumbrances and documentation to show by purchase order or sales invoice the acquisition of the equipment as collateral for the Agreement, Incentive Recipient shall provide periodic status reports as set forth in the Performance Milestone Schedule of the Agreement.

Incentive Recipient has further agreed to execute the First Source Referral Agreement and to utilize the services of the PAEDC on a non-exclusive basis to find qualified applicants for employment at the Project.

**ECONOMIC INCENTIVE & LOAN AGREEMENT BETWEEN  
THE CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION  
AND  
ROBOGISTICS, LLC  
("INCENTIVE RECIPIENT")**

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**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT BETWEEN  
THE CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION  
AND  
ROBOLOGISTICS, LLC  
("INCENTIVE RECIPIENT")**

**INTRODUCTION**

The Incentive Recipient is a Texas limited liability company in Houston, Texas. The Incentive Recipient shall enter into a lease agreement with the City of Port Arthur and lease the old armory building for a twelve (12) month period for its manufacturing and logistics facility building located in Port Arthur, Texas 77642 (the "Property"). At the expiration of the lease between Incentive Recipient and the City of Port Arthur, Incentive Recipient shall build a new manufacturing and logistics facility in the City of Port Arthur. The City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") will assist Incentive Recipient in this expansion by providing the hereinafter described conditional grant or other incentives in exchange for the promise by Incentive Recipient of creation of permanent jobs.

**AGREEMENT TERM**

**EFFECTIVE DATE**

1. This Economic Incentive Contract and Loan Agreement ("Agreement") is entered into with an effective date of \_\_\_\_\_, 2019 (the "Effective Date"), by and between the PAEDC and Incentive Recipient.

**TERMINATION DATE**

2. This Agreement expires the earlier of June 30, 2022, or thirty (30) days after Incentive Recipient either performs fully or breaches the Agreement subject to earlier termination or extension, voluntary or involuntary, as provided herein. The period from the effective date of this Agreement through and including the expiration date of this Agreement as provided in the previous sentence hereof, is sometimes referred to in this Agreement as the "Term" of this Agreement.

**PARTIES**

3. City of Port Arthur Section 4A Economic Development Corporation ("PAEDC"), located at 501 Procter Street, Port Arthur, Texas, 77640, is a non-profit corporation. It is duly authorized to do business in the State of Texas under Chapter 504, Local Government Code (the "Development Corporation Act of 1979" as amended) and duly authorized by Resolution of the City Council of the City of Port Arthur (the "City") to enter into this Agreement. As so authorized and as provided by the PAEDC bylaws, the President and Secretary of the PAEDC Board have the authority to execute this Agreement.

4. Robogistics, LLC ("Incentive Recipient") is a Texas limited liability company. The registered agent in Texas for the Incentive Recipient is Salahuddin F. Khan, 7802 Beaver Lake Court, Humble, Texas 77346.

#### **PROMISED PERFORMANCE**

5. The parties agree to perform as follows.

##### **(a) PERFORMANCE BY PAEDC**

- i. PAEDC shall conditionally grant Incentive Recipient an incentive of \$495,100.00, subject to the conditions and limitations herein, which Incentive Recipient is not required to repay unless Incentive Recipient breaches this Agreement. If Incentive Recipient breaches this Incentive Agreement, then the conditional grant will become a loan as provided in **Exhibit "A"** and made a part hereof for all purposes.
- ii. The conditional grant to Incentive Recipient shall be the amount of the Incentive credited as a \$1.00 credit for each \$4.77 in payroll to new full and part-time employees who are Port Arthur residents hired by Incentive Recipient.
- iii. PAEDC will use its best efforts to pay invoices or reimburse Incentive Recipient immediately but not longer than within thirty (30) days of receipt for the equipment capital outlays listed in **Exhibit "D"**.

HOWEVER, PAEDC WILL ONLY RELEASE FUNDS IN AN AMOUNT EQUIVALENT TO EQUIPMENT FOR WHICH PAEDC HAS DULY EXECUTED COLLATERAL SECURITY INTEREST. AS TO CAPITAL OUTLAYS, AS HEREIN DESCRIBED, PAEDC WILL ONLY RELEASE FUNDS UPON RECEIPT OF REQUIRED DOCUMENTATION OF THE PURCHASE, BY INCENTIVE RECIPIENT OF SUCH CAPITAL EQUIPMENT AND MATERIALS FREE OF ANY LIEN OR ENCUMBRANCE.

These payments are PAEDC's only obligations.

##### **(b) PERFORMANCE BY INCENTIVE RECIPIENT**

- (1) Incentive Recipient promises to employ nine (9) Port Arthur Residents with an average annualized payroll of \$40,000.00 per employee and achieve an annual annualized payroll of \$360,000 by June 2020. Incentive Recipient promises to employ an additional ten (1) employees with an annualized payroll of \$40,000 per employee and achieve an annualized payroll of \$400,000 by June 2021. Incentive Recipient promises to provide to PAEDC evidence of annualized payroll of \$800,000 by June 30, 2021. Incentive Recipient promises to employ an additional seven (7) employees with an annualized payroll of \$40,000 per employee and an



annualized payroll of for the seven employees of \$280,000 by June 30, 2022 in additional to the annualized payroll of \$800,000 achieve in years 2020 and 2021.

- (2) Incentive Recipient shall receive a \$1.00 credit for each \$4.77 of payroll to new full-time employees who are Port Arthur residents hired in accordance with the Performance Milestone Schedule set forth in paragraph 7 of this Agreement. Incentive Recipient shall receive this credit for a period not to exceed the Term of this agreement. The incentive credit shall not exceed a total credit of \$495,100.00.
- (3) Incentive Recipient will be required to meet the conditions and agreements set forth in the First Source Referral Agreement attached hereto as **Exhibit "G"** and made a part hereof for all purposes as to any employees hired by Incentive Recipient at the Property.
- (4) Further, if the Loan or Conditional Grant by PAEDC to Incentive Recipient is to be secured additionally or alternatively by other collateral security agreements including but not limited to a commercial security agreement as specified in **Exhibit "B"** and filed of record with the Secretary of State for the State of Texas by a Uniform Commercial Code filing as described in **Exhibit "C"**, Incentive Recipient will provide a detailed outlay of all equipment and material to be acquired and to be secured by the collateral security agreement by providing an enumeration of capital outlays as described on **Exhibit "D"**.
- (5) Incentive Recipient shall use the Grant monies provided by the PAEDC exclusively for the capital outlays that are not materially different<sup>1</sup> from the list provided to PAEDC by Incentive Recipient, a copy of which is attached as **Exhibit "D"**. With each invoice or request for reimbursement sent to PAEDC, Incentive Recipient will provide a listing of the specific equipment, material or other capital outlays requested for reimbursement and covenant that such request for reimbursement is being made for the specific assets and that all such assets have been acquired by the Incentive Recipient free of any lien or encumbrance. This will enable PAEDC to verify compliance with the list in **Exhibit "D"**.
- (6) Incentive Recipient shall provide PAEDC documentation showing: (a) its purchase of property in Port Arthur, Texas to build its manufacturing and logistics warehouse, (b) a letter showing its commitment to extend the lease on the existing Port Arthur facility or (c) a letter of intent to lease another facility in Port Arthur at least three (3) months prior to the expiration of Incentive Recipient's lease with the City of Port Arthur. Failure to provide this documentation will be considered a breach of a Performance Milestone.

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<sup>1</sup> "Materially different" is defined as a change in the type of asset that changes the overall business plan in place at the time that this contract was executed.

- (7) On demand by PAEDC and in response to Incentive Recipient's failure to achieve a performance milestone, Incentive Recipient shall provide PAEDC with reasonable assurances, proposed by Incentive Recipient and reasonably acceptable to PAEDC, that it has both the intention and the capabilities to perform fully its contractual obligations.

**(C) CREDITS – SUBSTITUTE PERFORMANCE**

Incentive Recipient may earn credits according to the following terms, to either reduce the duration of this Agreement or reduce the amount of liquidated damages in the event Incentive Recipient breaches the Agreement.

- (1) Total credits cannot exceed \$495,100.00.
- (2) Incentive Recipient will forfeit any credits it earned during a period for which a report is scheduled but Incentive Recipient fails to issue the report despite notice of need for such report from PAEDC.
- (3) Once Incentive Recipient has earned credits equal to \$495,100.00, the conditional grant and all obligations to PAEDC shall terminate; however, no termination of the obligations for a conditional grant shall eliminate the obligations of Incentive Recipient to PAEDC to repay any loan described in **Exhibit "A"**.

**(d) FIRST SOURCE REFERRAL AGREEMENT**

PAEDC has adopted policies and procedures to assist Incentive Recipient in locating a qualified workforce within the City. The First Source Referral Agreement is incorporated into this Agreement in **Exhibit "G"** ("First Source"). Incentive Recipient has agreed to the policies and procedures within First Source as a resource and referral for all appropriate new job openings of Incentive Recipient at the Property.

**PERFORMANCE MILESTONE SCHEDULE**

6. Upon failure to achieve a performance milestone and after Incentive Recipient has been given an opportunity of no less than thirty (30) days to cure a default, PAEDC may demand reasonable assurances<sup>2</sup> from Incentive Recipient that it can and will fully perform its contractual obligations. Failure to provide such reasonable assurances following demand of PAEDC is a breach of contract.

7. Incentive Recipient's performance milestones are contained in the following table. Upon receipt of any status report listed below, PAEDC shall, as requested by Incentive Recipient, issue documentation to the Incentive Recipient setting forth the total

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<sup>2</sup> Examples of reasonable assurances are copies of pending leases, contracts and customer commitment letters and/or payment of an agreed amount showing commitment to contractual obligations.

uncredited/unpaid amount remaining. The deadlines in the Performance Milestone Schedule may be adjusted by PAEDC based on the date of initiation of business operations on the Property by Incentive Recipient.

# **PERFORMANCE MILESTONE SCHEDULE**

## **ROBOGISTICS, LLC MILESTONE SCHEDULE**

	<u>Deadline</u>	<u>Milestone</u>
(a)	JULY 31, 2019	Robogistics will issue a <u>status report</u> on their move into the lease space and the purchase of equipment and installation completion date to PAEDC
(b)	JUNE 30, 2020	Achieve full-time permanent employment of nine (9) new employees with an average payroll of <b>\$40,000</b> per employee
(c)	JUNE 30, 2020	Robogistics average annualized payroll for nine (9) new employees is not less than <b>\$360,000</b>
(d)	JUNE 30, 2020	Robogistics will provide PAEDC with W-2's for all new employees hired during Year 1 (12 month period ending 6/30/2020)
(e)	JUNE 30, 2021	Robogistics will employ an additional ten (10) permanent employees with an annualized payroll of <b>\$40,000</b> per employee
(f)	JUNE 30, 2021	Robogistics average annualized payroll for the ten (10) new permanent Robogistics employees is not less than <b>\$400,000</b>
(g)	JUNE 30, 2021	Robogistics total payroll for permanent employees for years ending 6/30/20 and 6/30/21 should be not less than <b>\$800,000</b>
(h)	JUNE 30, 2021	Robogistics will provide PAEDC with W-2's for permanent employees Employed during Year 2 (12 month period ending 6/30/21)
(i)	JUNE 30, 2022	Robogistics will employ an additional seven (7) permanent employees with an annualized payroll of <b>\$40,000</b> per employee
(j)	JUNE 30, 2022	Robogistics average annualized payroll for the seven (7) new permanent employees is not less than <b>\$280,000</b>

## **PAEDC'S CONDITIONAL OBLIGATIONS AND LIMITED LIABILITY**

8. Incentive Recipient agrees to indemnify and hold PAEDC harmless from any claim or cause of action arising out of its business operation at the Property. Additionally, on or before the execution of this Agreement, Incentive Recipient shall provide to PAEDC a certificate of insurance identifying all commercial auto, workmen's compensation, blanket coverage or other business insurance that covers the Property. Incentive Recipient further agrees to provide endorsements to all policies of insurance covering the equipment to name PAEDC as an additional named insured.

9. Incentive Recipient may not assign any of its rights under this Agreement without the prior written consent of the PAEDC and the City nor may Incentive Recipient make any subordinate deed of trust or collateral security agreements as to the Property without the prior written consent of PAEDC.

## **LIQUIDATED DAMAGES FOR BREACH OF AGREEMENT**

10. In the event Incentive Recipient fails to perform its obligations under this Agreement, following notice thereof from PAEDC and following a thirty (30) day opportunity to cure the default, the PAEDC grant, minus any credits earned, will automatically convert to a loan (liquidated damages), effective on the day of breach, as agreed by Incentive Recipient in the executed Conditional Commercial Promissory Note contained in **Exhibit "A"**. Further, the PAEDC shall be entitled to recover its reasonable and customary attorney's fees and court costs incurred in collection of said obligation and such remedies as are provided at law or in equity.

11. It is expressly understood and agreed by the parties that the exercise of any right or remedy shall not preclude the exercise of any other right or remedy under this Agreement or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

## **RECORDS / INSPECTION / PAEDC AUDIT**

12. Incentive Recipient must establish and maintain sufficient records, as reasonably determined by the PAEDC, to account for the employment and payroll which are the basis of the conditional grant to Incentive Recipient from PAEDC under the terms and conditions of this Agreement.

13. Incentive Recipient shall maintain employment records as necessary to allow the PAEDC to audit and verify any utilization of First Source and to verify any and all other covenants, representations and warranties contained herein and in Incentive Recipient's Application.

14. Upon advance notice, Incentive Recipient shall give the PAEDC, or any of its duly authorized representatives, access to and right to examine all books, accounts, records, reports, files and other papers, things or property directly related to this Agreement and belonging to or in use by Incentive Recipient. Such rights to access shall continue as long as the records related to this Agreement are retained by Incentive Recipient. Incentive Recipient agrees to maintain such records in an accessible location. All information obtained by the PAEDC, or its duly authorized representatives, shall be regarded as the confidential business information of Incentive Recipient and the PAEDC shall take reasonable measures to protect such information from disclosure to third parties; however, PAEDC is subject to the requirements of the Texas Open Meetings Act and Open Records Act (Tex. Gov. Code, 551 & 552). Incentive Recipient agrees that disclosures to the public required by the Texas Open Meetings Act, Texas Open Records Act, or any other legal requirement will not expose PAEDC (or any party acting by, through or under PAEDC) to any claim, liability or action by Incentive Recipient (or any party working by, through or under).

15. All records pertinent to this Agreement shall be retained by Incentive Recipient at least three years following the date of termination of this Agreement, whether said termination is a result of default or whether said termination is a result of final submission of a close out report by Incentive Recipient detailing its compliance with its obligations provided herein. Further, in the event any litigation, claim or audit arising out of or related to this Agreement is instituted before the expiration of the three (3) year period and extends beyond the three year period, the records will be maintained until all litigation, claims or audit findings involving this Agreement and the records made the basis of same have been resolved.

16. Incentive Recipient shall provide PAEDC with all reports necessary for PAEDC compliance with the Development Corporation Act of 1979, as amended.

17. It is expressly understood and agreed by the parties hereto that if Incentive Recipient fails to submit to PAEDC in a timely and satisfactory manner any report required by this Agreement, PAEDC may, at its sole discretion, demand assurances that Incentive Recipient can and will fully perform its contractual obligations. If Incentive Recipient fails to provide adequate assurances then Incentive Recipient is in breach, and any monies advanced by PAEDC automatically become a loan.

18. The PAEDC reserves the right, from time to time, to carry out field inspections/audits to ensure compliance with the requirements of this Agreement. After completion of any such audit, the PAEDC may provide Incentive Recipient with a written report of the audit findings. If the audit report details deficiencies in its performance under the terms and conditions of this Agreement, the PAEDC may establish requirements for the timely correction of any such deficiencies by Incentive Recipient.

#### **HOLD HARMLESS**

19. INCENTIVE RECIPIENT AGREES TO HOLD HARMLESS THE PAEDC AND THE CITY OF PORT ARTHUR FROM ANY AND ALL CLAIMS, DEMANDS, AND

CAUSES OF ACTION OF ANY KIND OR CHARACTER WHICH MAY BE ASSERTED BY ANY THIRD PARTY OCCURRING, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE PROJECT MADE THE BASIS OF THIS AGREEMENT, AND THE UTILIZATION OF GRANT FUNDS PROVIDED BY THIS AGREEMENT, PROVIDED THAT SUCH CLAIM, DEMAND OR CAUSE OF ACTION DOES NOT ARISE FROM ANY FRAUD OR MISCONDUCT ON THE PART OF THE PAEDC OR THE CITY OF PORT ARTHUR, OR ANY AGENT, EMPLOYEE OR REPRESENTATIVE OF EITHER.

### **SUBCONTRACTS**

20. Incentive Recipient may not subcontract for performance credits described in this Agreement without obtaining PAEDC's written approval, which may be withheld for any reason. Incentive Recipient shall only subcontract for performance credits described in this Agreement after Incentive Recipient has submitted a Subcontractor Eligibility Request, as specified by PAEDC, for each proposed subcontract, and Incentive Recipient has obtained PAEDC's prior written approval. Incentive Recipient, in subcontracting for any performances described in this Agreement, expressly understands that in entering into such subcontracts, PAEDC is in no way liable to Incentive Recipient's subcontractor(s).

21. In no event shall PAEDC's prior written approval of a subcontractor's eligibility, be construed as relieving Incentive Recipient of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this Agreement, as if such performances rendered were rendered by Incentive Recipient. PAEDC's approval does not constitute adoption, ratification, or acceptance of Incentive Recipient's or subcontractor's performance hereunder. PAEDC maintains the right to insist upon Incentive Recipient's full compliance with the terms of this Agreement, and by the act of subcontractor approval, PAEDC does not waive any right of action which may exist or which may subsequently accrue to PAEDC under this Agreement.

22. Incentive Recipient, as well as all of its approved subcontractors, shall comply with all applicable federal, state, and local laws, regulations, and ordinances for making procurement under this Agreement.

### **CONFLICT OF INTEREST / DISCLOSURE OBLIGATION**

23. Conflict of Interest: No employee, agent, officer or elected or appointed official of the City of Port Arthur or the PAEDC who has participated in a decision making process related to this Agreement (without recusing him/herself and executing a conflict affidavit) may obtain a personal or financial interest or benefit from an PAEDC assisted activity, or have an interest in any contract, subcontract, or agreement (or proceeds thereof) with respect to an PAEDC assisted activity, during their tenure or for one (1) year thereafter. Insofar as relates to the conduct hereunder of Incentive Recipient, its agents, employees or representatives, Incentive Recipient shall ensure compliance with applicable provisions under Chapter 504, Local Government Code and Chapter 171 Local Government Code V.T.C.A.

24. **Disclosure:** In conjunction with execution of this Agreement, Incentive Recipient has fully disclosed to PAEDC all known and potential owners of interests in Incentive Recipient (whether shareholder, partner, limited partner, manager, member or otherwise). In the event of any change in ownership or control of Incentive Recipient of twenty percent (20%) or greater, Incentive Recipient shall notify PAEDC in writing. Further, Incentive Recipient shall be obligated to notify in writing the PAEDC in the event any time prior to, during or one (1) year after the term of this Agreement, any City or PAEDC employee or representative or any third party with a conflict of interest obtains or proposes to obtain a financial benefit, direct or indirect, from Incentive Recipient. Failure to provide said notice immediately or no later than five (5) business days after receipt of information shall constitute a default herein.

### **NONDISCRIMINATION / EMPLOYMENT / REPORTING**

25. Incentive Recipient shall ensure that no person shall on the grounds of race, color, religion, sex, handicap, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds provided under this Agreement. Additionally, funds shall be used in accordance with the following requirements:

- (a) To the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of any project assisted with PAEDC funds provided under this Agreement be given to Port Arthur residents; and
- (b) To the greatest extent feasible, agreements for work to be performed in connection with the Project shall be awarded to Port Arthur residents and businesses, including, but not limited to, individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the City.
- (c) If Incentive Recipient advertises for employment then it shall among any other advertising that it chooses to undertake covenants that it will advertise in the Port Arthur News. Incentive Recipient acknowledges that PAEDC does not intend to restrain any advertising in additional publications or media nor direct any others than that stated.

### **LEGAL AUTHORITY**

26. Incentive Recipient assures and guarantees it possesses legal and/or corporate authority (i) to enter into this Agreement, receive the conditional grant authorized by this Agreement, and (ii) to perform the obligations hereunder. Incentive Recipient has provided, or shall provide, as requested by the PAEDC, such resolutions or other required authorizations necessary to evidence this authority.

27. The person or persons signing and executing this Agreement on behalf of Incentive Recipient, or representing themselves as signing and executing this Agreement on behalf of Incentive Recipient, do hereby warrant and guarantee that he, she, or they have been duly authorized by Incentive Recipient to execute this Agreement on behalf of Incentive Recipient and to validly and legally bind Incentive Recipient to all terms, performances, and provisions herein set forth.

#### **NOTICE OF LEGAL OR REGULATORY CLAIMS**

28. Incentive Recipient shall give PAEDC immediate notice in writing of 1) any material legal or regulatory action, including any material proceeding before an administrative agency filed against Incentive Recipient; and 2) any material claim against Incentive Recipient, which may impact continued operations. For purposes herein, "material" claims shall mean claims in excess of \$50,000. Except as otherwise directed by PAEDC, Incentive Recipient shall furnish immediately to PAEDC copies of all pertinent documentation of any kind received by Incentive Recipient with respect to such action or claim.

#### **CHANGES AND AMENDMENTS**

29. Except as specifically provided otherwise in this Agreement, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment in writing and executed by all parties to this Agreement. Such amendments must be approved by the PAEDC Board of Directors and, by the City Council.

30. It is understood and agreed by the parties hereto that performances under this Agreement must be rendered in accordance with the regulations promulgated under the Development Corporation Act, the assurances and certifications made to PAEDC by Incentive Recipient, and the assurances and certifications made to the City with regard to the operation of the PAEDC's Projects. Based on these considerations, and in order to ensure the legal and effective performance of this Agreement by all parties, it is agreed by the parties hereto that the performances under this Agreement are by the provisions of the PAEDC Program and any amendments thereto and may further be amended in the following manner: PAEDC may from time to time during the period of performance of this Agreement issue policy directives which serve to interpret, or clarify performance requirements under this Agreement. Such policy directives shall be promulgated by the PAEDC Board of Directors in the form of PAEDC issuances, shall be approved by the City Council and shall have the effect of qualifying the terms of this Agreement and shall be binding upon Incentive Recipient, as if written herein, and if approved by the Incentive Recipient. If Incentive Recipient does not approve a policy directive as so submitted, then Incentive Recipient may exercise its rights under paragraph 5(c)(4).

31. Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in Federal, state law or local law are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

#### **DEFAULT / TERMINATION**



32. In the event of default of any of the obligations of Incentive Recipient detailed herein or in the event of breach of any of the representations of or warranties of Incentive Recipient either detailed herein or in its application to the PAEDC, and following any notice and opportunity to cure and Incentive Recipient's failure to cure such default within thirty (30) days, the PAEDC may, at its sole option, terminate this Agreement, in whole or in part. In the event of such termination, the PAEDC may, at its sole option, utilize one or more of the following actions to resolve or otherwise remedy said default:

- (a) Declare the Note executed in conjunction with this Agreement immediately effective. If Incentive Recipient defaults on the note, then the PAEDC may exercise its default remedies provided under collateral documentation executed in conjunction with said Note and this Agreement.
- (b) Exercise any remedies provided herein and/or within the Deed of Trust or any Collateral Security Documents.
- (c) Disallow all or a part of the incentives which are not in compliance with the terms and conditions of this Agreement or in compliance with the representations and warranties contained within this Agreement and Incentive Recipient's application to the PAEDC.
- (d) Withhold and/or disallow further PAEDC incentives to Incentive Recipient.
- (e) Exercise any and all other remedies that may be legally available to the PAEDC, under the laws of the State of Texas and as authorized by the terms and conditions of this Agreement.

33. In addition to the foregoing, the parties agree that this Agreement may be terminated at any time when both parties agree, in writing, to the terms and conditions of any such voluntary termination.

#### **COMPLIANCE AUDITS**

34. If directed by PAEDC Board, and in no case more than once per year, Incentive Recipient shall arrange for the performance of a compliance audit, by a certified public accountant, of performances rendered under this Agreement, subject to the following conditions and limitations:

- (a) Incentive Recipient shall have a compliance audit which may be limited to use of funds received from the PAEDC, made for any of its fiscal years included within the Term of this Agreement in which Incentive Recipient receives more than \$50,000 in PAEDC financial assistance provided by PAEDC in the form of grants, contracts,

loans, loan guarantees, property, cooperative agreements, interest subsidies, or direct appropriations. Said audit must be received and accepted by the Chief Executive Officer of PAEDC and/or the PAEDC Board.

- (b) Unless otherwise specifically authorized by PAEDC in writing, Incentive Recipient shall submit the report of such audit to PAEDC within thirty (30) days after completion of the audit, but no later than one hundred twenty (120) days after the end of each fiscal period included within the Term of this Agreement.

35. Incentive Recipient understands and agrees that it shall be liable to reimburse immediately PAEDC for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Agreement.

36. Incentive Recipient shall take all necessary actions to facilitate the performance of any and all such audits, whether annual, mandatory or otherwise requested under this Agreement.

37. Subject to financial privacy requirements of Incentive Recipient and properly designated requests for non-disclosure due to proprietary reasons, all approved audit reports may be made available for public inspection.

#### **SUPPLEMENTAL COVENANT**

38. Incentive Recipient and any branch, division or department of Incentive Recipient certifies that they have not and will not knowingly employ an "undocumented worker" which means "an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States."

39. Incentive Recipient acknowledges that it has reviewed Chapter 2264, Texas Government Code and hereby affirmatively agrees by execution of this Agreement to repay the amount of any incentive with interest at the rate of ten (10%) percent per annum not later than the 120<sup>th</sup> day after the date PAEDC notifies Incentive Recipient of a violation.

40. Incentive Recipient acknowledges PAEDC may bring a civil action or cover any amounts owed under this Chapter and further acknowledges that PAEDC may recover court costs and reasonable attorneys' fees incurred in an action brought under §2264.101(a). Incentive Recipient is not liable for a violation of this Chapter by a subsidiary, affiliate or franchisee of the Incentive Recipient or by a person with whom the Incentive Recipient contracts.

#### **ENVIRONMENTAL REQUIREMENTS**

41. Incentive Recipient understands and agrees that by execution of this Agreement, Incentive Recipient shall be responsible for providing to PAEDC all information, concerning this PAEDC funded project, required for PAEDC to meet its responsibilities for environmental review, decision making, and other action which applies to PAEDC in accordance with and to the extend specified in Federal, State, and Local law. Incentive Recipient shall make all

reasonable efforts to assist PAEDC in handling inquiries and complaints from persons and agencies seeking redress in relation to environmental reviews covered by approved certifications.

#### **ORAL AND WRITTEN AGREEMENTS / PRIOR AGREEMENTS**

42. All oral and written contracts between the parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

43. The documents required below are hereby made a part of this Agreement, and constitute promised performances by Incentive Recipient in accordance with this Agreement:

#### **Required**

Exhibit "A"	Conditional Commercial Promissory Note
Exhibit "B"	Commercial Security Agreement
Exhibit "C"	UCC-1 Financing Statement
Exhibit "D"	Equipment List
Exhibit "E"	Certification Regarding Lobbying
Exhibit "F"	Compliance Statement
Exhibit "G"	First Source Referral Agreement
Exhibit "H"	Executed Lease Agreement

#### **VENUE**

44. For purposes of litigation that may accrue under this Agreement, venue shall lie in Jefferson County, Texas, where substantially all the performance will occur.

#### **ADDRESS OF NOTICE AND COMMUNICATIONS**

City of Port Arthur Section 4A Economic Development Corporation  
501 Procter Street  
Port Arthur, Texas 77640  
ATTN: Floyd Batiste, Chief Executive Officer

Incentive Recipient  
Robogistics, LLC  
363 North Sam Houston Parkway East  
Suite 1100  
Houston, Texas 77060  
ATTN: Salahuddin Wyatt-Khan

#### **CAPTIONS**

45. This Agreement has been supplied with captions to serve only as a guide to the contents. The caption does not control the meaning of any paragraph or in any way determine its interpretation or application.

#### **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

46. Incentive Recipient shall comply with all Federal, State and local laws, statutes, ordinances, resolutions, rules, regulations, orders and decrees of any court or administrative body or tribunal, including those related to the activities and performances of Incentive Recipient under this Agreement. Upon request by PAEDC and by the City, Incentive Recipient shall furnish satisfactory proof of its compliance herewith.

#### **CONDITIONS PRECEDENT**

47. This agreement has no legal consequences, and neither party shall rely on the agreement, unless and until

- a. Both the PAEDC Board and the Port Arthur City Council approve the Agreement in its final executed form.
- b. The Port Arthur City Council approves and executes the lease agreement in substantially the same form as the one attached to this Agreement with the Incentive Recipient.
- c. \_\_\_\_\_.
- d. \_\_\_\_\_.

**ATTORNEY APPROVALS**

APPROVED AS TO FORM:

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General Counsel for PAEDC

VERIFIED BY  
CITY COUNCIL RESOLUTION:

Resolution Number: \_\_\_\_\_

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Valecia R. Tizeno, City Attorney

**AGREEMENT EXECUTION**

**CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT  
CORPORATION**

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 2019.

By: \_\_\_\_\_ By: \_\_\_\_\_  
President Secretary

**ROBOGISTICS, LLC**

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 2019.

By: \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Acknowledgment

## EXHIBIT "A"

### CONDITIONAL COMMERCIAL PROMISSORY NOTE

Port Arthur, Texas

This COMMERCIAL PROMISSORY NOTE becomes effective on the date when Robogistics, LLC, a Texas limited liability company (hereinafter called "Maker") breaches that certain Economic Incentive Contract and Loan Agreement between the City of Port Arthur Section 4A Economic Development Corporation (hereinafter called "Lender") and Maker, dated \_\_\_\_\_, 20\_\_.

**Effective Date of Note:** This Note shall become effective on the date of breach of its obligations under this Agreement and following notice thereof from PAEDC and thirty-day (30-day) opportunity to cure, said date being the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Note Date").

**Principal Amount:** \$ \_\_\_\_\_, which is \$ \_\_\_\_\_ minus the incentive credits earned by Maker according to that certain Economic Incentive Contract and Loan Agreement between the Lender and Maker (described hereinbefore).

**Term of the Loan:** This loan shall have a term from the Note Date to \_\_\_\_\_ (the "Final Payment Date").

**Payment Schedule:** The principal amount together with interest at the hereinafter described rate shall be payable in equal monthly installments from the Note Date until \_\_\_\_\_, and all outstanding principal and interest due hereunder shall be due and payable.

FOR VALUE RECEIVED, the undersigned "Maker", promises to pay to Lender, at its office at P.O. Box 1089, Port Arthur, Texas, 77640-1089, or such other place or places as the holder hereof shall from time to time designate in written notice to Maker, the principal amount, in legal and lawful money of the United States of America, together with interest thereon from the date hereof until maturity at the rate of **ten percent (10%)** per annum as detailed herein.

All past due principal and interest shall bear interest from date of maturity until paid at the rate of **fifteen percent (15%)** per annum, or to the maximum extent allowed by law (whichever is greater) as may hereafter be in effect, payable on demand after maturity.

Any notices required or permitted to be given by the holder hereof to Maker pursuant to the provisions of this note shall be in writing and shall be either personally delivered or transmitted by first class United States mail, addressed to Maker at the address designated below for receipt of notice (or at such other address as Maker may, from time to time, designate in writing to the holder hereof for receipt of notices hereunder). Any such notice personally delivered shall be effective as of the date of delivery, and any notice transmitted by mail, in accordance with the foregoing provisions, shall be deemed to have been given to and received by Maker as of the date on which such notice was deposited with the United States Postal Service, properly addressed and with postage prepaid.

This note is also secured by and entitled to the benefits of all other security agreements, pledges, collateral assignments, deeds of trust, guaranties, mortgages, assignments, and lien instruments, if any, of any kind executed by Maker or by any other party as security for any loans owing by Maker to the Lender. Such lien instruments shall include those executed simultaneously herewith, those heretofore executed, and those hereafter executed.

If any installment or payment of principal or interest of this note is not paid when due or any drawer, acceptor, endorser, guarantor, surety, accommodation party or other person now or hereafter



primarily or secondarily liable upon or for payment of all or any part of this note (each hereinafter called an "other liable party") shall die, or become insolvent (however such insolvency may be evidenced); or if any proceeding, procedure or remedy supplementary to or in enforcement of judgment shall be resorted to or commenced against Maker or any other liable party, or with respect to any property of any of them; or if any governmental authority or any court at the instance thereof shall take possession of any substantial part of the property of or assume control over the affairs or operations of, or a receiver shall be appointed for or take possession of the property of, or a writ or order of attachment or garnishment shall be issued or made against any of the property of Maker or any other liable party; or if any indebtedness for which Maker or any other liable party is primarily or secondarily liable shall not be paid when due or shall become due and payable by acceleration of maturity thereof, or if any event or condition shall occur which shall permit the holder of any such indebtedness to declare it due and payable upon the lapse of time, giving of notice or otherwise; or if Maker or any other liable party (if other than a natural person) shall be dissolved, wound up, liquidated or otherwise terminated, or a party to any merger or consolidation without the written consent of Lender; or if Maker or any other liable party shall sell substantially all or an integral portion of its assets without the written consent of Lender; or if Maker or any other liable party fails to furnish financial information requested by Lender; or if Maker or any other liable party furnishes or has furnished any financial or other information or statements which are misleading in any respect; or if a default occurs under any instrument now or hereafter executed in connection with or as security for this note; or any event occurs or condition exists which causes Lender to in good faith deem itself insecure or in good faith believe the prospect of payment or performance by Maker or any other liable party under this note, under any instrument or agreement executed in connection with or as security for this note, or under any other indebtedness of Maker or any other liable party to Lender is impaired; thereupon, at the option of Lender, the principal balance and accrued interest of this note and any and all other indebtedness of Maker to Lender shall become and be due and payable forthwith without demand, notice of default, notice of acceleration, notice of intent to accelerate the maturity hereof, notice of nonpayment, presentment, protest or notice of dishonor, all of which are hereby expressly waived by Maker and each other liable party. Lender may waive any default without waiving any prior or subsequent default.

If this note is not paid at maturity whether by acceleration or otherwise, and is placed in the hands of any attorney for collection, or suit is filed hereon, or proceedings are had in probate, bankruptcy, receivership, reorganization, arrangement or other legal proceedings for collection hereof, Maker and each other liable party agree to pay Lender its collection costs, including court costs and a reasonable amount for attorney's fees.

It is the intention of Maker and Lender to conform strictly to applicable usury laws. Accordingly, if the transaction contemplated hereby would be usurious under applicable law, then, in that event, notwithstanding anything to the contrary herein or in any agreement entered into in connection with or as security for this note, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under applicable law that is taken, reserved, contracted for, charged or received under this note or under any of the other aforesaid agreements or otherwise in connection with this note shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on this note by the holder hereof (or, if this note shall have been paid in full, refunded to Maker); (ii) in the event that maturity of this note is accelerated by reason of an election by the holder hereof resulting from any default hereunder or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest may never include more than the maximum amount allowed by applicable law, and excess interest, if any, provided for in this note or otherwise shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore prepaid, shall be credited on this note (or if this note shall have been paid in full, refunded to Maker); and (iii) all calculations of the rate of interest taken, reserved, contracted for, charged or received under this note or under any of the other aforesaid agreements or otherwise in connection with this note, that are made for the purpose of determining whether such rate exceeds the maximum lawful rate shall be made, to the extent permitted by applicable law, by amortizing, prorating, allocating, and spreading such interest over the entire term of the loan evidenced by this note (including all renewal and extended terms).

Maker may prepay all or any part of the principal of this note before maturity without penalty. No partial prepayment shall reduce, postpone or delay the obligation of Maker to continue paying the installments herein provided on their respective due dates following any such partial prepayment until this note is fully paid.

The Maker shall be directly and primarily liable for the payment of all sums called for hereunder; and, except for notices specifically required to be given by the holder hereof to Maker pursuant to the earlier provisions of this note, Maker and each other liable party hereby expressly waive demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intention to accelerate maturity, notice of acceleration of maturity, and all other notice, filing of suit and diligence in collecting this note or enforcing or handling any of the security therefor, and do hereby agree to any substitution, exchange or release, in whole or in part, of any security here-for or the release of any other liable party, and do hereby consent to any and all renewals or extensions from time to time, of this note, or any part hereof, either before or after maturity, all without any notice thereof to any of them and without affecting or releasing the liability of any of them. Each holder hereof, in order to enforce payment of this note by any other liable party, shall be required to first institute suit or exhaust its remedies against Maker and to enforce its rights against any security therefor prior to enforcing payment of this Note by any other liable party.

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**ROBOGISTICS, LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
Signature

Its: \_\_\_\_\_  
Title

**THE STATE OF TEXAS**  
**COUNTY OF JEFFERSON**

§  
§  
§

**ACKNOWLEDGEMENT**

**BEFORE ME, THE UNDERSIGNED** Notary Public, on this day personally appeared Salahuddin F. Wyatt-Khan, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as the act and deed of \_\_\_\_\_, a \_\_\_\_\_, for the purposes and consideration therein expressed, and the Capacities therein stated.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this the \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public, State of Texas

**MAKERS' ADDRESS FOR RECEIPT OF NOTICE:**

Robogistics, LLC  
363 North Sam Houston Parkway East  
Suite 1100  
Houston, TX 77060  
Attention: Salahuddin Wyatt-Khan

## EXHIBIT "B"

### COMMERCIAL SECURITY AGREEMENT

Dated \_\_\_\_\_, 2019

<u>Debtor(s)</u>	<u>Secured Party</u>
Robogistics, LLC	Port Arthur Economic Development Corporation ("PAEDC")
363 North Sam Houston Parkway East Suite 1100	501 Procter Street
Houston, Texas 77060	Port Arthur, Texas 77640

(hereinafter referred to as "Debtor" whether one or more) (hereinafter referred to as "Secured Party")

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, Debtor grants to Secured Party the security interest (and the pledges and assignments as applicable) hereinafter set forth and agrees with Secured Party as follows:

A. **OBLIGATIONS SECURED.** The first priority lien and pledges and assignments as applicable granted hereby are to secure punctual payment and performance of the following: (i) certain promissory note(s) of even date herewith in the original principal sum of \$\_\_\_\_\_, executed by Debtor and payable to the order of Secured Party, and any and all extensions, renewals, modifications and rearrangements thereof, (ii) certain obligations of Debtor to Secured Party under that certain Economic Incentive Contract and Loan Agreement of even date and all extensions, renewals, modifications and rearrangements thereof, and (iii) any and all other indebtedness, liabilities and obligations whatsoever and of whatever nature of Debtor to Secured Party whether direct or indirect, absolute or contingent, primary or secondary, due or to become due and whether now existing or hereafter arising and howsoever evidenced or acquired, whether joint or several, or joint and several (all of which are herein separately and collectively referred to as the "Obligations"). Debtor acknowledges that the security interest (and pledges and assignments as applicable) hereby granted shall secure all future advances as well as any and all other indebtedness, liabilities and obligations of Debtor to Secured Party whether now in existence or hereafter arising.

B. **USE OF COLLATERAL.** Debtor represents, warrants and covenants that Collateral will be used by the Debtor primarily for business use.

C. **DESCRIPTION OF COLLATERAL.** Debtor hereby grants to Secured Party a first priority lien in (and hereby pledges and assigns as applicable) and agrees that Secured Party shall continue to have a security interest in (and a pledge and assignment of as applicable), the following property, to wit: (DEBTOR TO INITIAL APPROPRIATE BLANKS)

\_\_\_\_ ☐ **All Accounts.** A security interest in all accounts now owned or existing as well as any and all that may hereafter arise or be acquired by Debtor, and all the proceeds and products thereof, including without limitation, all notes, drafts, acceptances, instruments

and chattel paper arising therefrom, and all returned or repossessed goods arising from or relating to any such accounts, or other proceeds of any sale or other disposition of inventory.

☐ **Specific Accounts.** A security interest in the supervised account at Texas State Bank, including earned interest, described by the Deposit Agreement between the Financial Institution, the Debtor and the Secured Party. Such agreement attached or which may hereafter be attached hereto.

☐ **All Inventory.** A security interest in all of Debtor's inventory, including all goods, merchandise, raw materials, goods in process, finished goods and other tangible personal property, wheresoever located, now owned or hereafter acquired and held for sale or lease or furnished or to be furnished under contracts for service or used or consumed in Debtor's business and all additions and accessions thereto and contracts with respect thereto and all documents of title evidencing or representing any part thereof, and all products and proceeds thereof, including, without limitation, all of such which is now or hereafter located at the following locations: (give locations)

☐ **All Fixtures.** A security interest in all of Debtor's fixtures and appurtenances thereto, and such other goods, chattels, fixtures, equipment and personal property affixed or in any manner attached to the real estate and/or building(s) or structure(s), including all additions and accessions thereto and replacements thereof and articles in substitution therefor, howsoever attached or affixed, located at the following locations: (give legal address)

The record owner of the real estate is: \_\_\_\_\_.

☐ **All Equipment.** A security interest in all equipment of every nature and description whatsoever now owned or hereafter acquired by Debtor including all appurtenances and additions thereto and substitutions therefor, wheresoever located, including all tools, parts and accessories used in connection therewith.

☐ **General Intangibles.** A security interest in all general intangibles and other personal property now owned or hereafter acquired by Debtor other than goods, accounts, chattel paper, documents and instruments.

☐ **Chattel Paper.** A security interest in all of Debtor's interest under chattel paper, lease agreements and other instruments or documents, whether now existing or owned by Debtor or hereafter arising or acquired by Debtor, evidencing both a debt and security interest in or lease of specific goods.

☐ **Farm Products.** A security interest in alt of Debtor's interest in any and all crops, livestock and supplies used or produced by Debtor in farming operations wheresoever

located: Debtor's residence is in the county shown at the beginning of this Agreement and Debtor agrees to notify promptly Secured Party of any change in the county of Debtor's residence; all of Debtor's crops or livestock are presently located in the following counties: (give counties)

☐ **Securities.** A pledge and assignment of and security interest in the securities described below, together with all instruments and general intangibles related thereto and all monies, income, proceeds and benefits attributable or accruing to said property, including, but not limited to, all stock rights, options, rights to subscribe, dividends, liquidating dividends, stock dividends, dividends paid in stock, new security or other properties or benefits to which the Debtor is or may hereafter become entitled to receive on account of said property. (give description)

☐ **Certificates of Deposit.** A pledge and assignment of and security interest in all of Debtor's interest in and to the certificates of deposit described below and instruments related thereto, and all renewals or substitutions therefor, together with all monies, income, interest, proceeds and benefits attributable or accruing to said property or to which Debtor is or may hereafter be entitled to receive on account of said property. (give description)

☐ **Instruments.** A pledge and assignment of and security interest in all of Debtor's now owned or existing as well as hereafter acquired or arising instruments and documents.

☒ **Other.** A first priority lien on all of Debtor's interest, now owned or hereafter acquired, in and to all the equipment, as detailed in that certain Economic Incentive Contract and Loan Agreement between Debtor and Secured Party including that identified in **Exhibit "D"** to the Economic Incentive Contract and Loan Agreement. See **Schedule 1** attached hereto and made a part hereof for all purposes including but not limited to the invoice from Verdant Technology Invoice Number 4001-2019 dated 05/21/2019 in the amount of \$732,000.

**Serial Number: R.C.W.I.10.0001**

The term "Collateral" as used in this Agreement shall mean and include, and the security interest (and pledge and assignment as applicable) shall cover, all of the foregoing property, as well as any accessions, additions and attachments thereto and the proceeds and products thereof, including without limitation, all cash, general intangibles, accounts, inventory, equipment, fixtures, farm products, notes, drafts, acceptances, securities, instruments, chattel paper, insurance proceeds payable because of loss or damage, or other property, benefits or rights arising therefrom, and in and to all returned or repossessed goods arising from or relating to any of the property described herein or other proceeds of any sale or other disposition of such property.

As additional security for the punctual payment and performance of the Obligations, and as part of the Collateral, Debtor hereby grants to Secured Party a security interest in, and a pledge and assignment of, any and all money, property, deposit accounts, accounts, securities, documents, chattel paper, claims, demands, instruments, items or deposits of the Debtor, and each of them, or to which any of them is a party, now held or hereafter coming within Secured Party's custody or control, including without limitation, all certificates of deposit and other depository accounts, whether such have matured or the exercise of Secured Party's rights results in loss of interest or principal or other penalty on such deposits, but excluding deposits subject to tax penalties if assigned. Without prior notice to or demand upon the Debtor, Secured Party may exercise its rights granted above at any time when a default has occurred or Secured Party deems itself insecure. Secured Party's rights and remedies under this paragraph shall be in addition to and cumulative of any other rights or remedies at law and equity, including, without limitation, any rights of set-off to which Secured Party may be entitled.

**D. REPRESENTATIONS, WARRANTIES AND COVENANTS OF DEBTOR.**  
Debtor represents and warrants as follows:

1. **Ownership; No Encumbrances:** Except for the security interest (and pledges and assignments as applicable) granted hereby, the Debtor is, and as to any property acquired after the date hereof which is included within the Collateral, Debtor will be, the owner of all such Collateral free and clear from all charges, liens, security interests, adverse claims and encumbrances of any and every nature whatsoever.

2. **No Financing Statements:** There is no financing statement or similar filing now on file in any public office covering any part of the Collateral, and Debtor will not execute and there will not be on file in any public office any financing statement or similar filing except the financing statements filed or to be filed in favor of Secured Party.

3. **Accuracy of Information:** All information furnished to Secured Party concerning Debtor, the Collateral and the Obligations, or otherwise for the purpose of obtaining or maintaining credit, is or will be at the time the same is furnished, accurate and complete in all material respects.

4. **Authority:** Debtor has full right and authority to execute and perform this Agreement and to create the security interest (and pledges and assignment as applicable) created by this Agreement. The making and performance by Debtor of this Agreement will not violate any articles of incorporation, bylaws or similar document respecting Debtor, any provision of law, any order of court or governmental agency, or any indenture or other agreement to which Debtor is a party, or by which Debtor or any of Debtor's property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture or other agreement, or result in the creation or imposition of any charge, lien, security interest, claim or encumbrance of any and every nature whatsoever upon the Collateral, except as contemplated by this Agreement.

5. **Addresses:** The address of Debtor designated at the beginning of this Agreement is Debtor's place of business if Debtor has only one place of business; Debtor's chief executive

office if Debtor has more than one place of business; or Debtor's residence if Debtor has no place of business. Debtor agrees not to change such address without advance written notice to Secured Party.

E. **GENERAL COVENANTS.** Debtor covenants and agrees as follows:

1. **Operation of the Collateral:** Debtor agrees to maintain and use the Collateral solely in the conduct of its own business, in a careful and proper manner, and in conformity with all applicable permits or licenses. Debtor shall comply in all respects with all applicable statutes, laws, ordinances and regulations. Debtor shall not use the Collateral in any unlawful manner or for any unlawful purposes, or in any manner or for any purpose that would expose the Collateral to unusual risk, or to penalty, forfeiture or capture, or that would render inoperative any insurance in connection with the Collateral.

2. **Condition:** Debtor shall maintain, service and repair the Collateral so as to keep it in good operating condition. Debtor shall replace within a reasonable time all parts that may be worn out, lost, destroyed or otherwise rendered unfit for use, with appropriate replacement parts. Debtor shall obtain and maintain in good standing at all times all applicable permits, licenses, registrations and certificates respecting the Collateral.

3. **Assessments:** Debtor shall promptly pay when due all taxes, assessments, license fees, registration fees, and governmental charges levied or assessed against Debtor or with respect to the Collateral or any part thereof.

4. **No Encumbrances:** Debtor agrees not to suffer or permit any charge, lien, security interest, adverse claim or encumbrance of any and every nature whatsoever against the Collateral or any part thereof.

5. **No Removal:** Except as otherwise provided in this Agreement, Debtor shall not remove the Collateral from the county or counties designated at the beginning of this Agreement without Secured Party's prior written consent.

6. **No Transfer:** Except as otherwise provided in this Agreement with respect to inventory, Debtor shall not, without the prior written consent of Secured Party, sell, assign, transfer, lease, charter, encumber, hypothecate or dispose of the Collateral, or any part thereof, or interest therein, or offer to do any of the foregoing.

7. **Notices and Reports:** Debtor shall promptly notify Secured Party in writing of any change in the name, identity or structure of Debtor, any charge, lien, security interest, claim or encumbrance asserted against the Collateral, any litigation against Debtor or the Collateral, any theft, loss, injury or similar incident involving the Collateral, and any other material matter adversely affecting Debtor or the Collateral. Debtor shall furnish such other reports, information and data regarding Debtor's financial condition and operations, the Collateral and such other matters as Secured Party may request from time to time.



8. **Landlord's Waivers:** Debtor shall furnish to Secured Party, if requested, a landlord's waiver of all liens with respect to any Collateral covered by this Agreement that is or may be located upon leased premises, such landlord's waivers to be in such form and upon such terms as are acceptable to Secured Party.

9. **Additional Filings:** Debtor agrees to execute and deliver such financing statement or statements, or amendments thereof or supplements thereto, or other documents as Secured Party may from time to time require in order to comply with the Texas Uniform Commercial Code (or other applicable state law of the jurisdiction where any of the Collateral is located) and to preserve and protect the Secured Party's rights to the Collateral.

10. **Protection of Collateral:** Secured Party, at its option, whether before or after default, but without any obligation whatsoever to do so, may (a) discharge taxes, claims, charges, liens, security interests, assessments or other encumbrances of any and every nature whatsoever at any time levied, placed upon or asserted against the Collateral, (b) place and pay for insurance on the Collateral, including insurance that only protects Secured Party's interest, (c) pay for the repair, improvement, testing, maintenance and preservation of the Collateral, (d) pay any filing, recording, registration, licensing or certification fees or other fees and charges related to the Collateral, or (e) take any other action to preserve and protect the Collateral and Secured Party's rights and remedies under this Agreement as Secured Party may deem necessary or appropriate. Debtor agrees that Secured Party shall have no duty or obligation whatsoever to take any of the foregoing action. Debtor agrees to promptly reimburse Secured Party upon demand for any payment made or any expense incurred by the Secured Party pursuant to this authorization. These payments and expenditures, together with interest thereon from date incurred until paid by Debtor at the maximum contract rate allowed under applicable laws, which Debtor agrees to pay, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.

11. **Inspection:** Debtor shall at all reasonable times allow Secured Party by or through any of its officers, agents, attorneys or accountants, to examine the Collateral, wherever located, and to examine and make extracts from Debtor's books and records.

12. **Further Assurances:** Debtor shall do, make, procure, execute and deliver all such additional and further acts, things, deeds, interests and assurances as Secured Party may require from time to time to protect, assure and enforce Secured Party's rights and remedies.

13. **Insurance:** Debtor shall have and maintain insurance at all times with respect to all tangible Collateral insuring against risks of fire (including so-called extended coverage), theft and other risks as Secured Party may require, containing such terms, in such form and amounts and written by such companies as may be satisfactory to Secured Party, all of such insurance to contain loss payable clauses in favor of Secured Party as its interest may appear. All policies of insurance shall provide for ten (10) days written minimum cancellation notice to Secured Party and at the request of Secured Party shall be delivered to and held by it. Secured Party is hereby authorized to act as attorney for Debtor in obtaining, adjusting, settling and canceling such insurance and endorsing any drafts or instruments. Secured Party shall be authorized to apply the proceeds from any insurance to the Obligations secured hereby whether or not such Obligations

are then due and payable. Debtor specifically authorizes Secured Party to disclose information from the policies of insurance to prospective insurers regarding the Collateral.

14. **Additional Collateral:** If Secured Party should at any time be of the opinion that the Collateral is impaired, not sufficient or has declined or may decline in value, or should Secured Party deem payment of the Obligations to be insecure, then Secured Party may call for additional security satisfactory to Secured Party, and Debtor promises to furnish such additional security forthwith. The call for additional security may be oral, by telegram, or United States mail addressed to Debtor, and shall not affect any other subsequent right of Secured Party to exercise the same.

F. **ADDITIONAL PROVISIONS REGARDING ACCOUNTS.** The following provisions shall apply to all accounts included within the Collateral:

1. **Definitions:** The term "account", as used in this Agreement, shall have the same meaning as set forth in the Uniform Commercial Code of Texas in effect as of the date of execution hereof, and as set forth in any amendment to the Uniform Commercial Code of Texas to become effective after the date of execution hereof, and also shall include all present and future notes, instruments, documents, general intangibles, drafts, acceptances and chattel paper of Debtor, and the proceeds thereof.

2. **Additional Warranties:** As of the time any account becomes subject to the security interest (or pledge or assignment as applicable) granted hereby, Debtor shall be deemed further to have warranted as to each and all of such accounts as follows: (a) each account and all papers and documents relating thereto are genuine and in all respects what they purport to be; (b) each account is valid and subsisting and arises out of a bona fide sale of goods sold and delivered to, or out of and for services theretofore actually rendered by the Debtor to the account debtor named in the account; (c) the amount of the account represented as owing is the correct amount actually and unconditionally owing except for normal cash discounts and is not subject to any setoffs, credits, defenses, deductions or countercharges; and (d) Debtor is the owner thereof free and clear of any charges, liens, security interests, adverse claims and encumbrances of any and every nature whatsoever.

3. **Collection of Accounts:** Secured Party shall have the right in its own name or in the name of the Debtor, whether before or after default, to require Debtor forthwith to transmit all proceeds of collection of accounts to Secured Party, to notify any and all account debtors to make payments of the accounts directly to Secured Party, to demand, collect, receive, receipt for, sue for, compound and give acquittal for, any and all amounts due or to become due on the accounts and to endorse the name of the Debtor on all commercial paper given in payment or part payment thereof, and in Secured Party's discretion to file any claim or take any other action or proceeding that Secured Party may deem necessary or appropriate to protect and preserve and realize upon the accounts and related Collateral. Unless and until Secured Party elects to collect accounts, and the privilege of Debtor to collect accounts is revoked by Secured Party in writing, Debtor shall continue to collect accounts, account for same to Secured Party, and shall not commingle the proceeds of collection of accounts with any funds of the Debtor. In order to assure collection of accounts in which Secured Party has a security interest (or pledge or

assignment of as applicable) hereunder, Secured Party may notify the post office authorities to change the address for delivery of mail addressed to Debtor to such address as Secured Party may designate, and to open and dispose of such mail and receive the collections of accounts included herewith. Secured Party shall have no duty or obligation whatsoever to collect any account, or to take any other action to preserve or protect the Collateral; however, should Secured Party elect to collect any account or take possession of any Collateral, Debtor releases Secured Party from any claim or claims for loss or damage arising from any act or omission in connection therewith.

4. **Identification and Assignment of Accounts:** Upon Secured Party's request, whether before or after default, Debtor shall take such action and execute and deliver such documents as Secured Party may reasonably request in order to identify, confirm, mark, segregate and assign accounts and to evidence Secured Party's interest in same. Without limitation of the foregoing, Debtor, upon request, agrees to assign accounts to Secured Party, identify and mark accounts as being subject to the security interest (or pledge or assignment as applicable) granted hereby, mark Debtor's books and records to reflect such assignments, and forthwith to transmit to Secured Party in the form as received by Debtor any and all proceeds of collection of such accounts.

5. **Account Reports:** Debtor will deliver to Secured Party, prior to the tenth (10) day of each month, or on such other frequency as Secured Party may request, a written report in form and content satisfactory to Secured Party, showing a listing and aging of accounts and such other information as Secured Party may request from time to time. Debtor shall immediately notify Secured Party of the assertion by any account debtor of any set-off, defense or claim regarding an account or any other matter adversely -affecting an account.

6. **Segregation of Returned Goods:** Returned or repossessed goods arising from or relating to any accounts included within the Collateral shall if requested by Secured Party be held separate and apart from any other property. Debtor shall as often as requested by Secured Party, but not less often than weekly even though no special request has been made, report to Secured Party the appropriate identifying information with respect to any such returned or repossessed goods relating to accounts included in assignments or identifications made pursuant hereto.

G. **ADDITIONAL PROVISIONS REGARDING INVENTORY.** The following provisions shall apply to all inventory included within the Collateral:

1. **Inventory Reports:** Debtor will deliver to Secured Party, prior to the tenth (10th) day of each month, or on such other frequency as Secured Party may request, a written report in form and content satisfactory to Secured Party, with respect to the preceding month or other applicable period, showing Debtor's opening inventory, inventory acquired, inventory sold, inventory returned, inventory used in Debtor's business, closing inventory, any other inventory not within the preceding categories, and such other information as Secured Party may request from time to time. Debtor shall immediately notify Secured Party of any matter adversely affecting the inventory, including, without limitation, any event causing loss or depreciation in the value of the inventory and the amount of such possible loss or depreciation.

2. **Location of Inventory:** Debtor will promptly notify Secured Party in writing of any addition to, change in or discontinuance of its place(s) of business as shown in this agreement, the places at which inventory is located as shown herein, the location of its chief executive office and the location of the office where it keeps its records as set forth herein. All Collateral will be located at the place(s) of business shown at the beginning of this agreement as modified by any written notice(s) given pursuant hereto.

3. **Use of Inventory:** Unless and until the privilege of Debtor to use inventory in the ordinary course-of Debtor's business is revoked by Secured Party in the event of default or if Secured Party deems itself insecure, Debtor may use the inventory in any manner not inconsistent with this Agreement, may sell that part of the Collateral consisting of inventory provided that all such sales are in the ordinary course of business, and may use and consume any raw materials or supplies that are necessary in order to carry on Debtor's business. A sale in the ordinary course of business does not include a transfer in partial or total satisfaction of a debt.

4. **Accounts as Proceeds:** All accounts that are proceeds of the inventory included within the Collateral shall be subject to all of the terms and provisions hereof pertaining to accounts.

5. **Protection of Inventory:** Debtor shall take all action necessary to protect and preserve the inventory.

H. **ADDITIONAL PROVISIONS REGARDING SECURITIES AND SIMILAR COLLATERAL.** The following provisions shall apply to all securities and similar property included within the Collateral:

1. **Additional Warranties:** As to each and all securities and similar property included within the Collateral (including securities hereafter acquired that are part of the Collateral), Debtor further represents and warrants (as of the time of delivery of same to Secured Party) as follows: (a) such securities are genuine, validly issued and outstanding, fully paid and non-assessable, and are not issued in violation of the preemptive rights of any person or of any agreement by which the issuer or obligor thereof or Debtor is bound; (b) such securities are not subject to any interest, option or right of any third person; (c) such securities are in compliance with applicable law concerning form, content and manner of preparation and execution; and (d) Debtor acquired and holds the securities in compliance with all applicable laws and regulations.

2. **Dividends and Proceeds:** Any and all payments, dividends, other distributions (including stock redemption proceeds), or other securities in respect of or in exchange for the Collateral, whether by way of dividends, stock dividends, recapitalizations, mergers, consolidations, stock splits, combinations or exchanges of shares or otherwise, received by Debtor shall be held by Debtor in trust for Secured Party and Debtor shall immediately deliver same to Secured Party to be held as part of the Collateral. Debtor may retain ordinary cash dividends unless and until Secured Party requests that same be paid and delivered to Secured Party (which Secured Party may request either before or after default).

3. **Collections:** Secured Party shall have the right at any time and from time to time (whether before or after default) to notify and direct the issuer or obligor to make all payments, dividends and distributions regarding the Collateral directly to Secured Party. Secured Party shall have the authority to demand of the issuer or obligor, and to receive and receipt for, any and all payments, dividends and other distributions payable in respect thereof, regardless Of the medium in which paid and whether they are ordinary or extraordinary. Each issuer and obligor making payment to Secured Party hereunder shall be fully protected in relying on the written statement of Secured Party that it then holds a security interest which entitles it to receive such payment, and the receipt by Secured Party for such payment shall be full acquittance therefor to the one making such payment.

4. **Voting Rights:** Upon default, or if Secured Party deems itself insecure, Secured Party shall have the right, at its discretion, to transfer to or register in the name of Secured Party or any nominee of Secured Party any of the Collateral and/or to exercise any or all voting rights as to any or all of the Collateral. For such purposes, Debtor hereby names, constitutes and appoints the President or any Vice President of Secured Party as Debtor's proxy in the Debtor's name, place and stead to vote any and all of the securities, as such proxy may elect, for and in the name, place and stead of Debtor, as to all matters coming before shareholders, such proxy to be irrevocable and deemed coupled with an interest. The rights, powers and authority of said proxy shall remain in full force and effect, and shall not be rescinded, revoked, terminated, amended or otherwise modified, until all Obligations have been fully satisfied.

5. **No Duty:** Secured Party shall never be liable for its failure to give notice to Debtor of default in the payment of or. upon the Collateral: Secured Party shall have no duty to fix or preserve rights against prior parties to the Collateral and shall never be liable for its failure to use diligence to collect any amount payable in respect to the Collateral, but shall be liable only to account to Debtor for what it may actually collect or receive thereon. Without limiting the foregoing, it is specifically understood and agreed that Secured Party shall have no responsibility for ascertaining any maturities, calls, conversions, exchanges, offers, tenders, or similar matters relating to any of the Collateral or for informing Debtor with respect to any of such matters (irrespective of whether Secured Party actually has, or may be deemed to have, knowledge thereof). The foregoing provisions of this paragraph shall he fully applicable to all securities or similar property held in pledge hereunder, irrespective of whether Secured Party may have exercised any right to have such securities or similar property registered in its name or in the name of a nominee.

6. **Further Assurances:** Debtor agrees to execute such stock powers, endorse such instruments, or execute such additional pledge agreements or other documents as may be required by the Secured Party in order effectively to grant to Secured Party the security interest in (and pledge and assignment of) the Collateral and to enforce and exercise Secured Party's rights regarding same.

7. **Securities Laws:** Debtor hereby agrees to cooperate fully with Secured Party in order to permit Secured Party to sell, at foreclosure or other private sale, the Collateral pledged hereunder. Specifically, Debtor agrees to fully comply with the securities laws of the United States and of the State of Texas and to take such action as may be necessary to permit Secured

Party to sell or otherwise transfer the securities pledged hereunder in compliance with such laws. Without limiting the foregoing, Debtor, at its own expense, upon request by Secured Party, agrees to effect and obtain such registrations, filings, statements, rulings, consents and other matters as Secured Party may request.

8. **Power of Attorney:** Debtor hereby makes, constitutes, and appoints Secured Party or its nominee, its true and lawful attorney in fact and in its name, place and stead, and on its behalf, and for its use and benefit to complete, execute and file 'with the United States Securities and Exchange Commission one or more notices of proposed sale of securities pursuant to Rule 144 under the Securities Act of 1933 and/or any similar filings or notices with any applicable state agencies, and said attorney in fact shall have full power and authority to do, take and perform all and every act and thing whatsoever requisite, proper or necessary to be done, in the exercise of the rights and powers herein granted, as fully to all intents and purposes as Debtor might or could do if personally present. This power shall be irrevocable and deemed coupled with an interest. The rights, powers and authority of said attorney in fact herein granted shall commence and be in full force and effect from the date of this agreement, and such rights, powers and authority shall remain in full force and effect, and this power of attorney shall not be rescinded, revoked, terminated, amended or otherwise modified, until all Obligations have been fully satisfied.

9. **Private Sales:** Because of the Securities Act of 1933, as amended, or any other laws or regulations, there may be legal restrictions or limitations affecting Secured Party in any attempts to dispose of certain portions of the Collateral in the enforcement of its rights and remedies hereunder. For these reasons Secured Party is hereby authorized by Debtor, but not obligated, in the event any default hereunder, to sell all or any part of the Collateral at private sale, subject to investment letter or in any other manner which will not require the Collateral, or any part thereof, to be registered in accordance with the Securities Act of 1933, as amended, or the rules and regulations promulgated thereunder, or any other law or regulation. Secured Party is also hereby authorized by Debtor, but not obligated, to take such actions, give such notices, obtain such rulings and consents, and do such other things as Secured Party may deem appropriate in the event of a sale or disposition of any of the Collateral. Debtor clearly understands that Secured Party may in its discretion approach a restricted number of potential purchasers and that a sale under such circumstances may yield a lower price for the Collateral or any part or parts thereof than would otherwise be obtainable if same were registered and sold in the open market, and Debtor agrees that such private sales shall constitute a commercially reasonable method of disposing of the Collateral.

I. **ADDITIONAL PROVISIONS REGARDING CERTIFICATES OF DEPOSIT AND SIMILAR COLLATERAL.** The following provisions shall apply to certificates of deposit and similar property included within the Collateral:

1. **Collection of Deposits:** Debtor agrees that Secured Party may, at any time (whether before or after default) and in its sole discretion, surrender for payment and obtain payment of any portion of the Collateral, whether such have matured or the exercise of Secured Party's rights results in loss of interest or principal or other penalty on such deposits, and, in connection therewith, cause payment to be made directly to Secured Party.

2. **Notice to Third Party Issuer:** With regard to any certificates of deposit or similar Collateral for which Secured Party is not the issuer, Debtor agrees to notify the issuer or obligor of the interests hereby granted to Secured Party and to obtain from such issuer or obligor acknowledgement of the interests in favor of Secured Party and the issuer's or obligor's agreement to waive in favor of Secured Party any and all rights of set-off or similar rights or remedies to which such issuer or obligor may be entitled, and, in connection therewith, to execute and cause the issuer or obligor to execute, any and all acknowledgments, waivers and other agreements in such form and upon such terms as Secured Party may request.

3. **Proceeds:** Any and all replacement or renewal certificates, instruments, or other benefits or proceeds related to the Collateral that are received by Debtor shall be held by Debtor in trust for Secured Party and immediately delivered to Secured Party to be held as part of the Collateral.

4. **No Duty:** Secured Party shall never be liable for its failure to give notice to Debtor of default in the payment of or upon the Collateral. Secured Party shall have no duty to fix or preserve rights against prior parties to the Collateral and shall never be liable for its failure to use diligence to collect any amount payable in respect to the Collateral, but shall be liable only to account to Debtor for what it may actually collect or receive thereon. Without limiting the foregoing, it is specifically understood and agreed that Secured Party shall have no responsibility for ascertaining any maturities or similar matters relating to any of the Collateral or for informing Debtor with respect to any of such matters (irrespective of whether Secured Party actually has, or may be deemed, to have, knowledge thereof).

J. **EVENTS OF DEFAULT.** Debtor shall be in default hereunder upon the happening of any of the following events or conditions: (i) non-payment when due (whether by acceleration of maturity or otherwise) of any payment of principal, interest or other amount due on any Obligation; (ii) the occurrence of any event which under the terms of any evidence of indebtedness, indenture, loan agreement, security agreement or, similar instrument permits the acceleration of maturity of any obligation of Debtor (whether to Secured Party or to others); (iii) any representation or warranty made by Debtor to Secured Party in connection with this Agreement, the Collateral or the Obligations, or in any statements or certificates, proves incorrect in any material respect as of the date of the making or the issuance thereof; (iv) default occurs in the observance or performance of, or if Debtor fails to furnish adequate evidence of performance of, any provision of this Agreement or of any note, assignment, transfer, other agreement, document or instrument delivered by Debtor to Secured Party in connection with this Agreement, the Collateral or the Obligations; (v) death, dissolution, liquidation, termination of existence, insolvency, business failure or winding-up of Debtor or any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations; (vi) the commission of an act of bankruptcy by, or the application for appointment of a receiver or any other legal custodian for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceedings under any bankruptcy, arrangement, reorganization, insolvency or similar laws for the relief of debtors by or against, the Debtor or any maker, endorser, guarantor, surety or other party primarily or secondarily liable for any of the Obligations; (vii) the Collateral becomes, in the judgment of Secured Party,

impaired, unsatisfactory or insufficient in character or value; or (viii) the filing of any levy, attachment, execution, garnishment or other process against the Debtor or any of the Collateral or any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations.

K. **REMEDIES:** Upon the occurrence of an event of default, or if Secured Party deems payment of the Obligations to be insecure, Secured Party, at its option, shall be entitled to exercise any one or more of the following remedies (all of which are cumulative):

1. **Declare Obligations Due:** Secured Party, at its option, may declare the Obligations or any part thereof immediately due and payable, without demand, notice of intention to accelerate, notice of acceleration, notice of non-payment, presentment, protest, notice of dishonor, or any other notice whatsoever, all of which are hereby waived by Debtor and any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations.

2. **Remedies:** Secured Party shall have all of the rights and remedies provided for in this Agreement and in any other agreements executed by Debtor, the rights and remedies Of the Uniform Commercial Code of Texas, and any and all of the rights and remedies at law and in equity, all of which shall be deemed cumulative. Without limiting the foregoing, Debtor agrees that Secured Party shall have the right to: (a) require Debtor to assemble the Collateral and make it available to Secured Party at a place designated by Secured Party that is reasonably convenient to both parties, which Debtor agrees to do; (b) peaceably take possession of the Collateral and remove same, with or without judicial process; (c) without removal, render equipment included within the Collateral unusable, and dispose of the Collateral on the Debtor's premises; (d) sell, lease or otherwise dispose of the Collateral, at one or more locations, by public or private proceedings for cash or credit, without assumption of credit risk; and/or (e) whether before or after default, collect and receipt for, compound, compromise, and settle, and give releases, discharges and acquittances with respect to, any and all amounts owed by any person or entity with respect to the Collateral. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will send Debtor reasonable notice of the time and place of any public sale or of the time after which any private sale or other disposition will be made. Any requirement of reasonable notice to Debtor shall be met if such notice is mailed, postage prepaid, to Debtor at the address of Debtor designated at the beginning of this Agreement, at least five (5) days before the day of any public sale or at least five (5) days before the time after which any private sale or other disposition will be made.

3. **Expenses:** Debtor shall be liable for and agrees to pay the reasonable expenses incurred by Secured Party in enforcing its rights and remedies, in retaking, holding, testing, repairing, improving, selling, leasing or disposing of the Collateral, or like expenses, including, without limitation, attorneys' fees and legal expenses incurred by Secured Party. These expenses, together with interest thereon from date incurred until paid by Debtor at the maximum contract rate allowed under applicable laws, which Debtor agrees to pay, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.



4. **Proceeds, Surplus, Deficiencies:** Proceeds received by Secured Party from disposition of the Collateral shall be applied toward Secured Party's expenses and other Obligations in such order or manner as Secured Party may elect. Debtor shall be entitled to any surplus if one results after lawful application of the proceeds. Debtor shall remain liable for any deficiency.

5. **Remedies Cumulative:** The rights and remedies of Secured Party are cumulative and the exercise of any one or more of the rights or remedies shall not be deemed an election of rights or remedies or a waiver of any other right or remedy. Secured Party may remedy any default and may waive any default without waiving the default remedied or without waiving any other prior or subsequent default.

#### L. OTHER AGREEMENTS.

1. **Savings Clause:** Notwithstanding any provision to the contrary herein, or in any of the documents evidencing the Obligations or otherwise relating thereto, no such provision shall require the payment or permit the collection of interest in excess of the maximum permitted by applicable usury laws. If any such excessive interest is so provided for, then in such event (i) the provisions of this paragraph shall govern and control; (ii) neither the Debtor nor his heirs, legal representatives, successors or assigns or any other party liable for the payment thereof, shall be obligated to pay the amount of such interest to the extent that is in excess of the maximum amount permitted by law; (iii) any such excess interest that may have been collected shall be, at the option of the holder of the instrument evidencing the Obligations, either applied as a credit against the then unpaid principal amount thereof or refunded to the maker thereof; and (iv) the effective rate of interest shall be automatically reduced to the maximum lawful rate under applicable usury laws as now or hereafter construed by the courts having jurisdiction.

2. **Joint and Several Responsibility:** If this Security Agreement is executed by more than one Debtor, the obligations of all such Debtors shall be joint and several.

3. **Waivers:** Debtor and any maker, endorser, guarantor, surety or other party liable in any capacity respecting the Obligations hereby waive demand, notice of intention to accelerate, notice of acceleration, notice of non-payment, presentment, protest, notice of dishonor and any other similar notice whatsoever.

4. **Severability:** Any provision hereof found to be invalid by courts having jurisdiction shall be invalid only with respect to such provision (and then only to the extent necessary to avoid such invalidity). The offending provision shall be modified to the maximum extent possible to confer upon Secured Party the benefits intended thereby. Such provision as modified and the remaining provisions hereof shall be construed and enforced to the same effect as if such offending provision (or portion thereof) had not been contained herein, to the maximum extent possible.

5. **Use of Copies:** Any carbon, photographic or other reproduction of any financing statement signed by Debtor is sufficient as a financing statement for all purposes, including

without limitation, filing in any state as may be permitted by the provisions of the Uniform Commercial Code of such state.

6. **Relationship to Other Agreements:** This Security Agreement and the security interests (and pledges and assignments as applicable) herein granted are in addition to (and not in substitution, novation or discharge of) any and all prior or contemporaneous security agreements, security interests, pledges, assignments, liens, rights, titles or other interests in favor of Secured Party or assigned to Secured Party by others in connection with the Obligations. All rights and remedies of Secured Party in all such agreements are cumulative, but in the event of actual conflict in terms and conditions, the terms and conditions of the latest security agreement shall govern and control.

7. **Notices:** Any notice or demand given by Secured Party to Debtor in connection with this Agreement, the Collateral or the Obligations, shall be deemed given and effective upon deposit in the United States mail, postage prepaid, addressed to Debtor at the address of Debtor designated at the beginning of this Agreement. Actual notice to Debtor shall always be effective no matter how given or received.

8. **Headings and Gender:** Paragraph headings in this Agreement are for convenience only and shall be given no meaning or significance in interpreting this Agreement. All words used herein shall be construed to be of such gender or number as the circumstances require.

9. **Amendments:** Neither this Agreement nor any of its provisions may be changed, amended, modified, waived or discharged orally, but only by an instrument in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.

10. **Continuing Agreement:** The security interest (and pledges and assignments as applicable) hereby granted and all of the terms and provisions in this Agreement shall be deemed a continuing agreement and shall continue in full force and effect until terminated in writing. Any such revocation or termination shall only be effective if explicitly confirmed in a signed writing issued by Secured Party to such effect and shall in no way impair or affect any transactions entered into or rights created or Obligations incurred or arising prior to such revocation or termination, as to which this Agreement shall be fully operative until same are repaid and discharged in full. Unless otherwise required by applicable law Secured Party shall be under no obligation to issue a termination statement or similar documents unless Debtor requests same in writing and, provided further, that all Obligations have been repaid and discharged in full and there are no commitments to make advances, incur any Obligations or otherwise give value.

11. **Binding Effect:** The provisions of this Security Agreement shall be binding upon the heirs, personal representatives, successors and assigns of Debtor and the rights, powers and remedies of Secured Party hereunder shall inure to the benefit of the successors and assigns of Secured Party.

12. **Governing Law:** This Security Agreement shall be governed by the law of the State of Texas and applicable federal law.

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**ROBOGISTICS, LLC**

**SIGNED AND AGREED TO** on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**ROBOGISTICS, LLC**

By: \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Acknowledgment

**EXHIBIT “C”**

**UCC-1**

**To be Provided.**

**EXHIBIT "D"**  
**EQUIPMENT LIST**

**See Attached.**

**EXHIBIT "E"**

**CERTIFICATION REGARDING LOBBYING**

For Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his knowledge and belief, that:

1. No funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of the City or of the PAEDC in connection with the awarding of any contract, the making of any grant, the making of any loan, the entering into of any cooperative agreement, or modification of any contract, grant, loan, or cooperative agreement.
2. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all Subs shall certify and disclose accordingly.

This certification is material representation of fact which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction.

**ROBOGISTICS, LLC**

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 2019.

**ROBOGISTICS, LLC**

By: \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Acknowledgmen

## **EXHIBIT "F"**

### **COMPLIANCE STATEMENT**

**Robogistics, LLC** hereby certifies that it has fully complied with Local Government Code §176.006, effective June 18, 2005, which mandates the disclosure requirements for persons who contract or seek to contract with a local governmental entity.

**ROBOGISTICS, LLC**

By: \_\_\_\_\_

## **EXHIBIT “G”**

### **FIRST SOURCE REFERRAL AGREEMENT**

**Resolution Number:** \_\_\_\_\_

**Project Name:** Robogistics, LLC

**Project Address:** 3451 57<sup>th</sup> Street Port Arthur, Texas 77640

**Project Contact Person:** Salahuddin Wyatt-Khan

**Project Contact Person Phone Number:** 513-515-7920

This First Source Referral Agreement (the “Agreement”), for recruitment, referral, and placement of **City of Port Arthur Section 4A Economic Development Corporation** (the “PAEDC”), hereinafter, and **Robogistics, LLC** (the “EMPLOYER”). Under this Agreement, the EMPLOYER will use PAEDC as its first source for recruitment, referral, and placement of new hires or employees for the new jobs created by their project and will hire the number of Port Arthur residents specified for new jobs created by the Project in that certain Economic Incentive Contract & Loan Agreement (the “Incentive Agreement”) between PAEDC and the EMPLOYER.

#### **I. GENERAL TERMS**

A. The EMPLOYER will use PAEDC as its first source for the recruitment, referral and placement of employees.

B. PAEDC participation in this Agreement will be carried out by its Chief Executive Officer which is responsible for referral and placement of employees, designated by PAEDC.

C. PAEDC will provide recruitment, referral and placement services to the EMPLOYER subject to the limitations set out in this Agreement.



D. This Agreement shall take effect when signed by the parties below and shall be fully effective for the duration of the incentive contract and any extensions or modifications to the contract.

E. PAEDC and the EMPLOYER agree that for purposes of this Agreement, new hires and jobs created include all EMPLOYER'S job openings and vacancies in the Port Arthur Area created as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this project.

## **II. RECRUITMENT**

A. The EMPLOYER will complete the attached Employment Plan, which will indicate the number of new jobs projected, salary range, and hiring dates. The EMPLOYER will notify PAEDC of its specific need for new employees as soon as that need is identified.

B. Notification of specific needs, as set forth in Section II.A. must be given to PAEDC at least five (5) business days (Monday - Friday) before using any other referral source, and shall include, at a minimum, the number of employees needed by job title, qualification, hiring date, rate of pay, hours of work, duration of employment, and work to be performed.

C. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce need not be referred to PAEDC for placement and referral.

D. The EMPLOYER will submit to PAEDC, prior to starting work on the project, the names, and social security numbers of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the project.

## **III. REFERRAL**

PAEDC will screen and refer applicants according to the qualifications supplied by the EMPLOYER.

#### **IV. PLACEMENT**

A. PAEDC will notify the EMPLOYER, prior to the anticipated hiring dates, of the number of applicants PAEDC will refer. PAEDC will make every reasonable effort to refer at least two qualified applicants for each job opening.

B. The EMPLOYER will make all decisions on hiring new employees but will in good faith use reasonable efforts to select its new hires or employees from among the qualified persons referred by PAEDC.

C. In the event PAEDC is unable to refer the qualified personnel requested, within five (5) business days (Monday - Friday) from the date of notification, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. Notwithstanding, the EMPLOYER will still be required to hire Port Arthur residents in the percentage specified for new jobs created by the Project in that certain Economic Incentive Contract & Loan Agreement (the "Incentive Agreement") between PAEDC and the EMPLOYER.

D. After the EMPLOYER has selected its employees, PAEDC will not be responsible for the employees' actions and the EMPLOYER hereby releases PAEDC, from any liability for employees' actions.

#### **V. TRAINING**

PAEDC and the EMPLOYER may agree to develop skills training and on-the-job training programs; the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and PAEDC and set forth in a separate Training Agreement.

## **VI. CONTROLLING REGULATIONS AND LAWS**

A. To the extent this Agreement is in conflict with any labor laws or governmental regulations, the laws or regulations shall prevail.

B. PAEDC will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party.

C. The EMPLOYER will provide PAEDC with written documentation that the EMPLOYER has provided the representative of any involved collective bargaining unit with a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to PAEDC.

## **VII. EXEMPTIONS**

A. Employment openings the contractor will fill with individuals already employed by the company.

B. Job openings to be filled by laid-off workers according to formally established recall procedures and rosters.

C. Suppliers located outside of the Port Arthur Area and who will perform no work in the Port Arthur Area.

## **VIII. AGREEMENT MODIFICATIONS, RENEWAL, MONITORING, AND PENALTIES**

A. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise, the EMPLOYER as a condition of transfer shall:

1. Notify the party taking possession of the existence of the EMPLOYER'S Agreement.
2. Notify the party taking possession that full compliance with this Agreement is required in order to avoid termination of the project.

3. EMPLOYER shall, additionally, advise PAEDC within seven (7) business/calendar days of the transfer. This advice will include the name of the party taking possession and the name and telephone of that party's representative.

B. PAEDC shall monitor EMPLOYER'S performance under this Agreement. The EMPLOYER will cooperate in PAEDC' monitoring effort and will submit a Contract Compliance Form to PAEDC quarterly.

C. To assist PAEDC in the conduct of the monitoring review, the EMPLOYER will make available payroll and employment records for the review period indicated.

D. If additional information is needed during the review, the EMPLOYER will provide the requested information to PAEDC.

E. With the EMPLOYER submission of the final request for closure of Agreement from the Board, the EMPLOYER shall:

1. Document in a report to the Compliance Officer compliance with the hiring requirements specified in the Incentive Agreement to be Port Arthur residents; or
2. Submit a request to the Compliance Officer for a waiver of compliance with the hiring requirement at the project to be Port Arthur residents and include the following documentations:
  - a. Material supporting a good faith effort to comply;
  - b. Referrals provided by PAEDC and other referral sources; and
  - c. Advertisement of job openings listed with PAEDC and other referral sources.

F. Willful breach of the First Source Referral Agreement by the EMPLOYER, or failure to submit the Compliance Report may be enforced by the Compliance Officer through notification and possible termination of the Incentive Agreement.

G. The EMPLOYER and PAEDC, or such other agent as PAEDC may designate, may mutually agree to modify this Agreement.

H. The project may be terminated because of the EMPLOYER'S noncompliance with the provisions of this Agreement.

**CITY OF PORT ARTHUR SECTION  
4A ECONOMIC DEVELOPMENT CORPORATION**

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 2019.

By: \_\_\_\_\_ By: \_\_\_\_\_  
Ingrid Holmes, President \_\_\_\_\_, Secretary

\_\_\_\_\_  
**EDC Representative**

\_\_\_\_\_  
**EDC Representative**

**ROBOGISTICS, LLC**

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 2019.

By: \_\_\_\_\_

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**Acknowledgment**

**EXHIBIT "H"**  
**LEASE AGREEMENT**

**Commercial Lease**

**Basic Information**

**Date:** June \_\_\_\_, 2019

**Landlord:**

City of Port Arthur, a Texas a municipality created under the laws of the State of Texas

**Landlord's Address:**

City of Port Arthur  
444 4th Street  
Port Arthur, TX 77640

**Tenant:**

Robogistics, LLC, a Texas corporation

**Tenant's Address:**

Robogistics, LLC  
363 N. Sam Houston Pkwy. East  
Suite 1100  
Houston, Texas 77060

**Premises:**

Approximate square feet: 26,059 square feet

Street address/suite: 3451 57th Street

City, state, zip: Port Arthur, Texas 77642

**Term (months):** Twelve (12)

**Commencement Date:** June 18, 2019

**Termination Date:** December 17, 2020

**Base Rent (monthly):** \$10,400.00

**Security Deposit:** \$20,800.00



**Permitted Use:**

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**Tenant's Insurance:** As required by Insurance Addendum

**Landlord's Insurance:** As required by Insurance Addendum

**Tenant's Rebuilding Obligations:** If the Premises are damaged by fire or other elements, caused by Tenant then Tenant will be responsible for repairing or rebuilding the damage.

**A. Definitions**

*A.1.* "Agent" means agents, contractors, employees, licensees, and, to the extent under the control of the principal, invitees.

*A.2.* "Essential Services" means utility connections reasonably necessary for occupancy of the Premises for the Permitted Use.

*A.3.* "Injury" means (1) harm to or impairment or loss of property or its use, (2) harm to or death of a person, or (3) "personal and advertising injury" as defined in the form of liability insurance Tenant is required to maintain.

*A.4.* "Lienholder" means the holder of a deed of trust covering the Premises.

*A.5.* "Rent" means Base Rent plus any other amounts of money payable by Tenant to Landlord.

**Clauses and Covenants**

**B. Tenant's Obligations**

*B1.* **Tenant agrees to -**

*B.1.a.* Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*B.1.b.* Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use and in compliance with ABA and Texas law.

*B.1.c.* Obey (a) all laws relating to Tenant's use, maintenance of the condition, and occupancy of the Premises and Tenant's use of any common areas and (b) any requirements imposed by utility companies serving or insurance companies covering the Premises.

*B.1.d.* Pay monthly, in advance, on the first day of the month, the Base Rent to Landlord

at Landlord's Address.

*B.1.e.* Pay a late charge of 10 percent of any Rent not received by Landlord by the tenth day after it is due.

*B.1.f.* Obtain and pay for all utility services used by Tenant and not provided by Landlord.

*B.1.g.* Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants. ,

*B.1.h* Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear is excepted.

*B.1.i.* Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord. Landlord is to provide the repairs, replacement, and maintenance within a reasonable time but not to exceed 15 days or perform the task immediately if Tenant is unable to use certain part of all part of the facility.

*B.1.j.* Vacate the Premises on the last day of the Term.

*B.1.k.* INDEMNIFY, DEFEND, AND HOLD LANDLORD AND ITS RESPECTIVE AGENTS, HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) OCCURRING IN ANY PORTION OF THE PREMISES. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF TENANT'S INSURANCE, (ii) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (iii) WILL SURVIVE THE END OF THE TERM, AND (iv) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD AND ITS RESPECTIVE AGENTS.**

**B2. Tenant agrees not to -**

*B.2.a.* Use the Premises for any purpose other than the Permitted Use.

*B.2.b.* Create a nuisance.

*B.2.c.* Permit any waste.

*B.2.d.* Use the Premises in any way that would increase insurance premiums or void insurance on the Premises.

*B.2.e.* Alter the Premises.

*B.2.f.* Allow a lien to be placed on the Premises.

*B.2.g.* Assign this lease or sublease any portion of the Premises without Landlord's prior written consent.

**C. Landlord's Obligations**

***C.1.* Landlord agrees to -**

*C.1.a.* Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*C.1.b.* Obey all laws relating to Landlord's operation of the Premises.

*C.1.c.* Repair, replace, and maintain the (a) roof, (b) foundation, and (c) structural soundness of the exterior walls, excluding windows and doors.

*C.1.d.* Return the Security Deposit to Tenant, less itemized deductions, if any, on or before the thirtieth day after the date Tenant surrenders the Premises.

***C.2.* Landlord agrees not to -**

*C.2.a.* Interfere with Tenant's possession of the Premises while Tenant is not in default.

*C.2.b.* Unreasonably withhold consent to a proposed assignment or sublease.

**D. General Provisions**

**Landlord and Tenant agree to the following:**

*D.1. Alterations.* Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

*D.2. Abatement.* Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant will not be entitled to abate Rent for any reason.

*D.3. Insurance.* Tenant and Landlord will maintain the respective insurance coverages that (1) insures their respective properties and (2) indemnifies the other party against that party's liability for loss (personal or property) or damages (personal or property).

*D.4. Release of Claims/Subrogation.* LANDLORD AND TENANT RELEASE EACH OTHER AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE PREMISES, DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE PREMISES, AND LOSS OF BUSINESS OR REVENUES THAT ARE COVERED BY THE RELEASING PARTY'S PROPERTY INSURANCE OR THAT WOULD HAVE BEEN COVERED BY THE REQUIRED INSURANCE IF THE PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGES REQUIRED BY THIS LEASE. THE PARTY INCURRING THE DAMAGE OR LOSS WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER ITS PROPERTY INSURANCE. LANDLORD AND TENANT WILL NOTIFY THE ISSUING PROPERTY INSURANCE COMPANIES OF THE RELEASE SET FORTH IN THIS PARAGRAPH AND WILL HAVE THE PROPERTY INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE. THIS RELEASE WILL NOT APPLY IF IT INVALIDATES THE PROPERTY INSURANCE COVERAGE OF THE RELEASING PARTY. **THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY OR ITS AGENTS BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY OR ITS AGENTS.**

*D.5. Casualty/Total or Partial Destruction*

*D.5.a.* If the Premises are damaged by casualty and can be restored within ninety days, Landlord will, at its expense, restore the roof, foundation, and structural soundness of the exterior walls of the Premises and any leasehold improvements within the Premises that are not within Tenant's Rebuilding Obligations to substantially the same condition that existed before the casualty and Tenant will, at its expense, be responsible for replacing any of its damaged furniture, fixtures, and personal property and performing Tenant's Rebuilding Obligations. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may terminate this lease effective immediately upon by written notice to by Tenant to Landlord before Landlord completes Landlord's restoration obligations.

*D.5.b.* If Landlord does not complete the portion of the restoration for which Landlord is responsible within ninety days, from the date of written notification by Tenant to Landlord of the casualty, and Tenant has not terminated this lease as provided in D.5a. above, Tenant may grant the Landlord the option to restore the Premises upon such terms and conditions acceptable to both Tenant and Landlord. If Tenant and Landlord cannot agree on the terms and conditions for the Landlord's option to restore the Premises as set forth in this paragraph, then this lease terminates without further notice effective on the ninetieth day from the date of written notification by Tenant to Landlord of the casualty.

*D.5.c.* To the extent the Premises are untenable after the casualty, the Rent will be adjusted as may be fair and reasonable.

*D.6. Condemnation/Substantial or Partial Taking*

*D.6.a.* If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

*D.6.b.* If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

*D.6.c.* Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

*D.7. Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this lease within thirty days after written notice is given by Tenant.

*D.8. Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages.

*D.9. Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning the Premises or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b).

*D.10. Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises and sue for Rent as it accrues; (b) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the Rent directly by reason of the reletting, and Tenant agrees to reimburse Landlord for any expenditures made in order to relet; (c) enter the Premises and perform Tenant's obligations; and (d) terminate this lease by written notice and sue for damages. Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Tenant or any other person who may be occupying the Premises, until the default is cured, without being liable for damages.

*D.11. Default/Waiver.* It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of a remedy does not preclude pursuit of another remedy.

*D.12. Mitigation.* Landlord has mitigated the loss of rent if Landlord, within thirty days after Tenant's loss of possession, (a) places a "For Lease" sign at the Premises, (b) places the Premises on Landlord's inventory of properties for lease, (c) makes Landlord's inventory available to area brokers on a monthly basis, (d) advertises the Premises for lease in a suitable trade journal in the county in which the Premises are located, and (e) shows the Premises to prospective tenants who request to see it.

*D.13. Security Deposit.* If Tenant defaults, Landlord may use the Security Deposit to pay arrears of Rent, to repair any damage or injury, or to pay any expense or liability incurred by Landlord as a result of the default.

*D.14. Holdover.* If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

*D.15. Alternative Dispute Resolution.* Landlord and Tenant agree to mediate in good faith before filing a suit for damages.

*D.16. Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.

*D.17. Venue.* Exclusive venue is in Jefferson County, Texas.

*D.18. Entire Agreement.* This lease, its exhibits, addenda and riders, are the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There are no representations, warranties, agreements, or promises pertaining to the Premises or the lease of the Premises by Landlord to Tenant, and Tenant is not relying on any statements or representations of any agent of Landlord, that are not in this lease and any exhibits, addenda, and riders.

*D.19. Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

*D.20. Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

*D.21. Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

*D.22. Abandoned Property.* Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

*D.23. Asbestos.* Buildings or structures located on the Premises may contain asbestos-

containing material or presumed asbestos-containing material as defined by OSHA regulations. Tenant has inspected the Premises and conducted such tests and inspections as Tenant deems necessary or desirable. Tenant will provide Landlord with copies of all such test results and inspections. Tenant will comply with all rules and regulations relating to asbestos in performing any maintenance, housekeeping, construction, renovation, or remodeling of the premises, and Tenant will bear all costs related to removal and disposal of asbestos from the Premises.

*D.24. Insurance.* All insurance must be written by an insurer licensed to conduct business in the State of Texas, unless otherwise permitted by Landlord in writing. Tenant shall, at its own expense, purchase, maintain and keep in force insurance that will protect against injury and/or damages which may arise out of or result from operations under this lease, whether the operations be by Tenant or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, of the following types and limits:

1. Standard Worker's Compensation Insurance:
2. Commercial General Liability occurrence type insurance City of Port Arthur, its officers, agents, and employees must be named as an additional insured:
  - a. Bodily injury \$500,000 single limit per occurrence or \$500,000 each person/\$500,000 per occurrence for contracts of \$100,000 or less; or Bodily injury \$1,000,000 single limit per occurrence or \$500,000 each person/\$1,000,000 per occurrence for contracts in excess of \$100,000; and,
  - b. Property Damage \$100,000 per occurrence regardless of contract amount; and,
  - c. Minimum aggregate policy year limit of \$1,000,000 for contracts of \$100,00 or less; or, Minimum aggregate policy year limit of \$2,000,000 for contracts in excess of \$100,000.
3. Commercial Automobile Liability Insurance (Including owned, non-owned and hired vehicles coverage's).
  - a. Minimum combined single limit of \$500,000 per occurrence, for bodily injury and property damage.
  - b. If individual limits are provided, minimum limits are \$300,000 per person, \$500,000 per occurrence for bodily injury and \$100,00 per occurrence for property damage.

Tenant shall cause Tenant's insurance company or insurance agent to fill in all information required (including names of insurance agency, Tenant and insurance companies, and policy numbers, effective dates and expiration dates) and to date and sign and do all other things necessary to complete and make into valid certificates of insurance and pertaining to the above listed items, and before commencing any of the work and within the time otherwise

specified, Tenant shall file completed certificates of insurance with the Landlord.

None of the provisions in said certificate of insurance should be altered or modified in any respect except as herein expressly authorized. Said CERTIFICATE OF INSURANCE Form should contain a provision that coverage afforded under the policies will not be altered, modified or canceled unless at least fifteen (15) days prior written notice has been given to the City of Port Arthur. Said completed CERTIFICATE OF INSURANCE FORM (s) shall in any event be filed with the City of Port Arthur not more than ten (10) days after execution of this Lease.

*D.25. Indemnification:* The Tenant shall defend, indemnify, and hold harmless the Landlord and their respective officers, agents, and employees, from and against all damages, claims, losses, demands, suits, judgments, and costs, including reasonable attorney's fees and expenses arising out of or resulting from the performance of the work, provided that any such damages, claim, loss, demand, suit, judgment, cost or expense:

Is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from.

Is caused in whole or in part by any negligent act or omission of the Tenant, or Subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

City of Port Arthur, a Texas a municipality created  
under the laws of the State of Texas,

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Rebecca Underhill  
Interim City Manager

Robogistics, a Texas corporation,

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Salahuddin Wyatt-Khan President & CEO