

LEASE

between

**ROCKLAND OPERATIONS, LLC
as Landlord**

and

**CITY OF KEY WEST
as Tenant**

Premises: The vacant land located at
129 Toppino Industrial Drive
Rockland Key, FL 33042

DATED: February 21, 2019

LEASE

I. **Parties:** This lease ("Lease") dated 2-21-19 is made by and between the Landlord and the Tenant, who are identified as follows:

Landlord:

Rockland Operations, LLC, a Florida limited liability company
PO Box 787
Key West, FL 33041

with a copy to:

Barton W. Smith, Esq.
Smith Hawks, PL
138 Simonton Street
Key West, FL 33040

Tenant:

City of Key West
City Manager
1300 White Street
Key West, FL 33040

with a copy to:

City Attorney
1300 White Street
Key West, FL 33040

2. **Leased Premises:** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the following "Leased Premises" upon all of the terms, covenants and conditions set forth in this Lease: the vacant land with a physical address of 129 Toppino Industrial Drive, Rockland Key, FL 3304 which is further identified and shown in **Exhibit A**.

Tenant hereby accepts the Leased Premises in its "AS-IS" condition as of the date of this Lease and during the entirety of the Term, it being understood and agreed that Landlord shall have no additional obligation to renovate or remodel the Leased Premises as a result of this Lease.

3. **Use of Leased Premises:** Tenant represents to Landlord that it will use the Leased Premises for the purpose of operating a staging site for debris collection and clean up resulting from storm damage occurring in the City of Key West at any time during the lease term.

4. **Term of the Lease:** This Lease is for three years commencing February 1, 2019 (the "Commencement Date").

This Agreement may be extended for two consecutive one-year terms based upon the same terms and conditions as provided for herein, except for the base rent which is as follows:

5. **Base Rent:** The amount Tenant shall pay to the Landlord for the Leased Premises shall be as follows based upon a daily rate as needed by Tenant in Tenant's absolute and sole discretion in the event of a storm strike causing Tenant to activate the lease.

Year One and Year Two:

Four Hundred Dollars (\$400.00) per day per acre for ten (10) acres for a total amount of Four Thousand Dollars Per Day as base rent ("Base Rent"). Tenant is a duly incorporated municipality of the State of Florida and is not obligated to pay sales tax. If any sales tax is due, Tenant is solely responsible for any and all sales tax.

Year Three and Four

Four Hundred Twenty Dollars (\$420.00) per day per acre for ten (10) acres for a total amount of Four Thousand Two Hundred Dollars Per Day as base rent ("Base Rent").

Year Five

Four Hundred Forty Dollars (\$440.00) per day per acre for ten (10) acres for a total amount of Four Thousand Four Hundred Dollars Per Day as base rent ("Base Rent").

6. **Payment of Rent:** Tenant shall pay to Landlord Base Rent plus any applicable sales tax and other monetary obligations of Tenant to Landlord under the terms of this Lease (such other monetary obligations are herein referred to as "Additional Rent") in lawful money of the United States, without offset or deduction, in advance on or before the first (15th) day of each month. Notwithstanding the foregoing, the Parties acknowledge and understand that this lease is being executed on the 21st of February and the first payment shall not be due until fifteen (15) days after the activation of the Lease by Tenant following a storm event. Payment of Base Rent and Additional Rent shall be made to Landlord at its address stated herein or to such other persons or at such other addresses as Landlord may from time to time designate in writing to Tenant. Base Rent and Additional Rent are collectively referred to as "Rent" or "rent". All monetary obligations of Tenant to Landlord under the terms of this Lease are deemed to be Rent.

7. **Late Payment Charge:** Except as provided in paragraph 6. Above, if any Rent is received by the Landlord after the tenth (10th) day of the month, the Tenant shall pay to the Landlord, in addition to the Rent, a late charge. The amount of the late charge shall be ten percent (10%) of the Rent due.

8. **Utilities and Other Tenant Responsibilities:** Beginning on the Commencement Date of this Lease Tenant shall pay for all utilities (gas, electricity, oil, water, sewer, etc.) which may service the Leased Premises. For any utilities that are or can be separately metered to the Leased Premises, Tenant shall pay directly to any public utility provider. All utilities, including those that are separately metered or assessed, are Tenant's responsibility to pay for as of the Commencement Date.

9. **Alterations and Improvements:** Tenant shall not make nor cause to be made any alterations and improvements in, on, under or about the Leased Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Upon Landlord consent being received, Tenant shall bear the sole cost of such alterations and improvements. Alterations and improvements are further described as any change or addition to the grounds, or boundaries of the Leased Premises. This includes personal property, equipment, machinery, trade fixtures and

installations that are attached, fastened or installed on the Leased Premises. Tenant will obtain, at its sole cost and expense, all permits and approvals required in connection with any alterations or installations and Landlord shall reasonably approve all plans prior to the commencement of such work. All contractors working on such work shall be licensed in the state of Florida and have appropriate insurance for such work, which insurance shall name Landlord as additional insured. Nothing in this Lease shall be deemed to be, or construed in any way as constituting, the consent or request of Landlord, expressed or implied, by inference or otherwise, to any person, firm or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Leased Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials which might in any way give rise to the right to file any lien against Landlord's interest in the Leased Premises. Tenant shall promptly pay for all materials supplied and work done in respect of the Leased Premises so as to ensure that no lien is recorded against any portion of the Leased Premises or against Landlord's or Tenant's interest therein. If a lien is so recorded, Tenant shall discharge it within thirty (30) days by payment or bonding or shall be in default under this Lease. If any such lien is recorded and not discharged by Tenant as above required, Landlord shall have the right to remove such lien by bonding or payment and the cost thereof shall be paid immediately from Tenant to Landlord. Landlord and Tenant expressly agree and acknowledge that no interest of Landlord in the Leased Premises shall be subject to any lien for improvements made by Tenant in or for the Leased Premises, and Landlord shall not be liable for any lien for any improvements made by Tenant, such liability being expressly prohibited by the terms of this Lease, and Tenant hereby agrees to inform all contractors and material suppliers performing work in or for or supplying materials to the Leased Premises of the existence of said prohibition. Landlord shall have the right to post and keep posted at all reasonable times on the Leased Premises any notices which Landlord shall be required so to post for the protection of Landlord and the Leased Premises from any such lien. Tenant agrees to promptly execute such instruments in recordable form in accordance with the terms and provisions of Section 713.10, Florida Statutes, as are necessary to give public notice of the terms and conditions hereof. Tenant is hereby informed that Landlord may have already filed a notice in the public records which precludes the Landlord's interest in the Leased Premises from being subject to the liens of contractors performing work for Tenant.

10. **Landlord's Access, Showing Premises:** At any reasonable time and in any reasonable manner, the Landlord may inspect the Leased Premises, and show the same to prospective tenants, purchasers, lienholders or any other person having a legitimate interest therein. Landlord and Landlord's agents shall have the right to enter the Leased Premises at any time, in the case of an emergency, and otherwise at reasonable times upon reasonable notice for the purpose of showing the same to prospective purchasers or tenants, and lenders, provided that Landlord shall use commercially reasonable efforts to not materially interfere with Tenant's use and enjoyment of the Leased Premises. Landlord may at any time place, on or about the Leased Premises, any ordinary "For Sale" signs and Landlord may at any time place on or about the Leased Premises any ordinary "For Lease" signs at which time Landlord may bring any prospective tenants thru the space with 24 hour notice. All such activities of Landlord shall be without abatement of rent or liability to Tenant.

11. **Subordination and Non-Disturbance:** This Lease is subject and subordinate to a first mortgage now or hereafter effecting or covering the Leased Premises. Tenant agrees to attorn to and to recognize the mortgagee or the purchaser at foreclosure sale as Tenant's landlord for the balance of the term of this Lease. Tenant hereby agrees, however, that such mortgagee or the purchaser at foreclosure sale shall not be (i) liable for any act or omission of Landlord, (ii)

subject to any offsets or defenses which Tenant might have against Landlord, (iii) bound by any Rent or Additional Rent which Tenant may have paid to Landlord for more than the current month, (iv) bound by any amendment or modification of this Lease made without its consent. The aforesaid subordination and attornment provisions shall be self-operative; however, Tenant agrees to promptly execute any other agreement submitted by Landlord in confirmation or acknowledgment of same within ten (10) days of its presentation to Tenant. However, notwithstanding the provisions of this Paragraph, so long as Tenant is not in default of the provisions of this Lease, the Landlord and the holder of any mortgage or any purchaser agree that Tenant's peaceful possession of the Leased Premises shall not be disturbed.

12. **Property Conditions and Liability** Landlord and Tenant recognize that the leased premises have previously been used as vacant land as well as an industrial yard. Tenant agrees to be responsible and hold the Landlord harmless from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) incurred by reason of tenants use of the property as a collection and staging area to the extent permitted by Florida Statute 768.28

Notwithstanding anything contained in this document to the contrary, Tenant, as a government of the State of Florida does not waive and expressly reserves its sovereign immunity except as provided in Florida Statute 768.28.

13. **Waiver of Subrogation:** With respect to insurance policies of Tenant should Tenant so choose to hold, and only to the extent that such policies permit, Landlord hereby releases Tenant from liability for loss or damages on or to the Leased Premises or the contents thereof to the extent such loss or damages is covered by such policies.

14. **Vacancy:** In the event that Tenant vacates the Leased Premises during the Term of the Lease, Tenant shall be obligated to continue to pay Rent and otherwise comply with all of the other terms of this Lease until the expiration of the Term as may be applicable.

15. **Fire or Casualty:** If the Leased Premises should be damaged by fire or other casualty during the Term of the Lease:

a) If part of the Leased Premises are unfit for tenancy but Tenant can reasonably occupy the balance of the Leased Premises and use them for their intended purpose, the Rent shall be abated for the portion of the Leased Premises which cannot be so occupied.

b) If Landlord's reasonable estimate of the time required for repair exceeds three hundred sixty-five (365) days, the Landlord or Tenant may terminate this Lease.

c) Tenant will give full cooperation in permitting the repairs, including temporarily vacating the Leased Premises if requested by Landlord.

16. **Condemnation:** If the whole of the Leased Premises, or such portion thereof as will make the Leased Premises unusable for the purposes leased hereunder, shall be taken by any public authority under the power of eminent domain or sold to any public authority under threat or in lieu of such taking, the Term shall cease as of the day possession or title shall be taken by such public authority, whichever is earlier ("Taking Date"), whereupon Rent shall be paid up to

the Taking Date with a proportionate refund by Landlord of any Rent paid for a period subsequent to the Taking Date. If less than the whole of the Leased Premises, or less than such portion thereof as will make the Leased Premises unusable for the purposes leased hereunder, shall be taken, the Term shall cease only as to the part so taken as of the Taking Date, and Tenant shall pay Rent up to the Taking Date, with appropriate credit by Landlord (toward the next installment of Rent due from Tenant) of any Rent paid for a period subsequent to the Taking Date. Base Rent and other charges payable to Landlord shall be reduced in proportion to the amount of the Leased Premises taken. All compensation awarded or paid upon a total or partial taking of the Leased Premises including the value of the leasehold estate created hereby shall belong to and be the property of Landlord without any participation by Tenant; Tenant shall have no claim to any such award based on Tenant's leasehold interest. However, nothing contained herein shall be construed to preclude Tenant, at its cost, from independently prosecuting any claim directly against the condemning authority in such condemnation proceeding for damage to, or cost of removal of, stock, trade fixtures, furniture, and other personal property belonging to Tenant, improvements paid for by Tenant, and moving and other reasonable relocation expenses; provided, however, that no such claim shall diminish or otherwise adversely affect Landlord's award.

17. **Surrender of Possession:** Tenant shall surrender possession of the Leased Premises to Landlord upon expiration of the Term of this Lease, in the same condition in which the Leased Premises were when this Lease was executed, normal wear and tear accepted. Any personal property of Tenant's left in the Leased Premises shall become the property of the Landlord or shall be returned to the Tenant at the Tenant's cost.

18. **Estoppel Certificate:** Tenant shall, at any time and from time to time, within ten (10) business days after written request by Landlord, execute, acknowledge and deliver to Landlord, or its mortgagee or trustee, a statement in writing duly executed by Tenant (i) certifying that this Lease is in full force and effect (if that be the case) without modification or amendment (or, if there have been any modifications or amendments, that this Lease is in full force and effect as modified and amended and setting forth the modifications and amendments), (ii) certifying the dates to which rental have been paid, and (iii) either certifying that to the knowledge of the Tenant no default exists under this Lease or specifying each such default; it being the intention and agreement of Landlord and Tenant that any such statement by Tenant may be relied upon by a prospective purchaser or a prospective or current mortgagee of the Leased Premises, or by others, in any matter affecting the Leased Premises.

19. **Events of Default:** Tenant shall be in default under this Lease upon the happening of any of the following events (each an "Event of Default"):

a. Tenant's failure to pay the Rent or any other charge for which it may be liable, or any portion of it, for a period extending ten (30) days or more after its due date.

20. **Landlord's Remedies:** In the event of Tenant's default, Landlord shall have all rights available under Florida law.

21. **No Set-Off:** The Lease sets forth the entire agreement between Landlord and Tenant concerning the Leased Premises and Tenant's use and occupancy thereof and there are no other agreements between them. Landlord and Tenant each hereby acknowledge and affirm that, as of the date hereof, the Lease is in full force and effect and there are no claims, offsets, or breaches of the Lease, or any action or causes of action by Tenant against Landlord or Landlord against Tenant, respectively, directly or indirectly relating to the Lease.

22. **Governing Law:** This is a Florida contract, governed by Florida law. In the event of any dispute between the parties regarding the terms and provisions of this Lease, the parties agree that the Courts in Monroe County, Florida shall have exclusive jurisdiction over such dispute.

23. **Binding Effect:** This Lease shall be binding upon the parties, their personal representatives, successors and assigns

24. **Cumulative Remedies:** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies in law or in equity.

25. **Authority:** The parties each represent and warrant to the other that each has full authority to execute this Lease without the joinder or consent of any other party and that each party has not assigned any of its right, title, and interest in the Lease to any other party.

26. **Interest on Past-Due Obligations:** Any monetary payment due Landlord hereunder not received by Landlord within ten (10) days following the date on which it was due shall bear interest from the date due at ten percent (10%) per annum, but not exceeding the maximum rate allowed by law in addition to the late charge provided for in Paragraph 7.

27. **Notices:** All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be sent by certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by nationally recognized overnight courier service, and shall be deemed sufficiently given if served in a manner specified in this Paragraph. The addresses noted adjacent in Paragraph 1 this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice purposes, except that upon Tenant's taking possession of the Leased Premises, the Leased Premises shall constitute Tenant's address for the purpose of mailing or delivering notices to Tenant. A copy of all notices required or permitted to be given to Landlord hereunder shall be concurrently transmitted to such party or parties at such addresses as noted below Landlord's signature block or as Landlord may from time to time hereafter designate by written notice to Tenant.

28. **Date of Notice:** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery

of the same to the United States Postal Service or courier. If notice is received on a Saturday or a Sunday or a legal holiday, it shall be deemed received on the next business day.

29. **Attorneys' Fees and Other Costs:** If any Party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the "Prevailing Party" (as hereafter defined) in any such proceeding shall be entitled to reasonable attorneys' fees. The term "Prevailing Party" shall include, without limitation, a Party who substantially obtains or defeats the relief sought.

30. **Security Measures:** Tenant acknowledges that Landlord does not include the cost of guard service or other security measures. Landlord has no obligations to provide same. Tenant assumes all responsibility for the protection of the Leased Premises, Tenant, its agents and invitees and their property from the acts of third parties.

31. **Reservations:** Landlord reserves the right to grant such easements that Landlord deems necessary and to cause the recordation of parcel maps, so long as such easements and maps do not unreasonably interfere with the use of the Leased Premises by Tenant. Tenant agrees to sign any documents reasonably requested by Landlord to effectuate any such easements or maps. Tenant agrees that Landlord may at any time following the execution of this Lease, either directly or through Landlord's agents, identify Tenant's name in materials required by relevant regulations or any potential sale materials, and Tenant waives any and all claims in connection therewith.

32. **Conflict:** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions, if any, shall be controlled by the typewritten or handwritten provisions.

33. **Amendments:** This Lease may be modified only in writing, signed by the parties in interest at the time of the modification .

34. **Lease Captions:** The captions of this Lease are for convenience only and are not a part of this Lease, and do not in any way define, limit, describe or amplify the terms or provisions of this Lease or the scope or intent thereof.

35. **Interpretation:** The parties acknowledge that this Lease is the result of negotiations between the parties, and in construing any ambiguity hereunder, no presumption shall be made in favor of either party. No inference shall be made from any item, which has been stricken from this Lease other than the deletion of such item.

36. **Signing of Documents:** Tenant shall sign and deliver any instrument or documents necessary or appropriate to evidence any such assignment or subordination or agreement to do so. Tenant shall sign such instrument or documents, provided, however, Tenant receives a non-disturbance provision from Landlord that for so long as Tenant is not in default under this Lease, Tenant's occupancy of the Leased Premises shall not be disturbed.

37. **Independent Covenants:** The doctrine of independent covenants will apply in all matters relating to this Lease including, without limitation, all obligations of Landlord and Tenant to perform their respective obligations under this Lease. The preceding sentence shall

apply notwithstanding that Landlord may have defaulted in fulfilling a covenant to maintain or repair the Leased Premises even if such default results in the unsuitability of the Leased Premises for Tenant's intended commercial use.

38. **Force Majeure:** Any prevention, delay, or stoppage due to strikes, lockouts, labor disputes, acts of God, including inclement weather and/or periods of rain or other weather conditions, inability to obtain labor or materials, or reasonable substitutes therefore, governmental restrictions or requirements, governmental regulations, governmental controls, inability to timely obtain governmental approvals, failure of power, riots, insurrection, war or other enemy or hostile government action, civil commotion, fire or other casualty, early closure of asphalt plants, and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay, or stoppage, including the obligations of Landlord to deliver the Leased Premises. The foregoing force majeure provisions are inapplicable to any payments of money due under this Lease.

39. **Joint and Several Liability:** All parties signing this Lease as Tenant shall be jointly and severally liable for all obligations of Tenant.

40. **No Partnership:** Nothing in this Lease creates any relationship between the parties other than that of landlord and tenant, and nothing in this Lease constitutes the Landlord a partner of Tenant or a joint venturer or member of a common enterprise with Tenant.

41. **OFAC Compliance/Patriot Act:** Each of Landlord and Tenant represents and warrants that: (a) neither it nor any person or entity that directly or indirectly owns an interest in it nor any of its officers, directors, or managing members is a person or entity (each, a "**Prohibited Person**") with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including Executive Order 13224 (the "**Executive Order**") signed on September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), or other governmental action, (b) its activities do not violate the International Money Laundering Abatement and Financial Anti Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the "**Money Laundering Act**") (i.e., Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "**Patriot Act**"), and (c) throughout the Term of this Lease, Landlord and Tenant shall comply with the Executive Order, the Money Laundering Act, and the Patriot Act.

42. **Counterparts:** This Lease may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one instrument. A PDF signature shall be deemed for all purposes to be an original.

43. **Time is of the essence:** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

44. **Severability:** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall not affect the validity of any other provision hereof.

45. **Entire Contract; Amendment:** This document expresses the entire agreement between the parties and may not be amended or enlarged except by writing.

46. **No Recording:** Neither party shall record this Lease, nor any memorandum of it.

47. **Further Assurances:** Tenant will execute, acknowledge, and deliver all such instruments and take all actions as Landlord from time to time may require to document and maintain the tenancy created hereby including, but not limited to, estoppel letters and subordination agreements.

48. **Copy Received:** Tenant hereby acknowledges receiving a copy of this Lease.

49. **Limitation of Warranties:** There are no implied warranties of merchantability or fitness or of any other kind arising out of this Lease.

50. **No Prior or Other Agreements:** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and supersedes all oral, written prior or contemporaneous agreements or understandings.

51. **Waiver of Jury Trial:** EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING UNDER THIS LEASE OR (ii) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS LEASE OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING. EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS LEASE WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

52. **Broker Commissions:** Both Tenant and Landlord warrant that no brokers procured this transaction. The parties agree to indemnify each other against any liability for commissions to any brokers regarding this transaction.

53. **Radon Disclosure:** In accordance with Florida Statutes, the following information is provided:

Radon Gas: Radon is a naturally occurring radioactive gas that when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

IN WITNESS WHEREOF, the parties have set their hands and seals as of this

21st day of FEB, 2019.

WITNESSES:

Lucan B. Harrison



TENANT:

City of Key West

By: Jim Scholl
Jim Scholl, City Manager

LANDLORD:

Rockland Operations LLC, A Florida Limited Liability
Company

Barr Smith
Barr Smith

By: Richard Toppino
Richard Toppino, Vice President

EXHIBIT A

LEASED PREMISES



Boundary Sketch