



## GIVENS INC WAREHOUSE STORAGE AGREEMENT

THIS WAREHOUSE STORAGE AGREEMENT (the “Agreement”) is made as of \_\_\_\_\_ (the “Contract Date”) by and between Givens, Incorporated, a Virginia Corporation (“Givens”) and \_\_\_\_\_ (the “Depositor”).

### §1 – ACCEPTANCE, TERM, TERMINATION.

(a) This Agreement, including rates and accessorial charges that may be attached hereto, must be accepted within 30 days from the Contract Date by signature of the Depositor. In the absence of written acceptance, the act of tendering Goods (later defined) within 30 days from the Contract Date, or the rendering of other services to Depositor by Givens within such time period, shall constitute acceptance by Depositor of all of the terms and conditions of this Agreement. Depositor has had the opportunity to review and inspect the warehouse facility described below

(b) The term of this Agreement shall commence as of the Contract Date and shall continue thereafter in full force and effect for a period of \_\_\_\_\_ and shall thereafter automatically renew on a \_\_\_\_\_ to \_\_\_\_\_ basis.

(c) This Agreement may be cancelled by either party upon 60 day's written notice and is cancelled if no services are performed for a period of 90 days. Termination charges may apply as outlined in Exhibit A.

### §2 – GOODS AND RIGHT TO STORE WITH GIVENS.

(a) Any goods accepted by Givens shall constitute Goods under this Agreement (“Goods”).

(b) The Depositor represents and warrants that it is lawfully possessed of the Goods and has the right and authority to store them with Givens and shall defend, indemnify and hold Givens harmless from all loss, cost and expense (including reasonable attorneys’ fees) which Givens pays or incurs as a result of any claim, dispute or litigation, whether instituted by Givens or others, respecting Depositor’s right, title or interest in the Goods. Such amounts shall be charges in relation to the Goods and subject to Givens' lien.

### §3 – BILLING AND PAYMENT.

(a) Depositor agrees that all amounts due for storage and other services are payable to Givens at 1720 S. Military Highway, Chesapeake, VA 23320.

(b) Depositor agrees that all invoices are due upon presentation, without deduction or setoff, within 30 days from the date of invoice. If any amounts due are not paid within said period, interest at the rate of 1.5% per month of the outstanding amount shall be added to the sum due, unless a billing dispute is resolved in favor of Depositor in which case the disputed amount and any interest collected thereon will be returned to the Depositor.

(c) If Depositor disputes any portion of any invoice, Depositor shall notify Givens within thirty (30) days of the date of the invoice as to the amount disputed and the reason that the amount is disputed. If Depositor does not notify Givens within 30 days of the date of the invoice, Depositor waives the dispute and agrees to pay the invoice in full. Any dispute as to the amount of the invoice shall be resolved promptly once it is paid. Claims for loss or damage to the Goods shall not be deducted from the invoices, but shall be handled separately.

(d) Depositor agrees to pay, in the event its account becomes delinquent and is turned over to any attorney for collection, reasonable attorneys’ fees plus all court and attendant collection costs, and any costs and fees incurred during mediation and/or arbitration.

(e) Notwithstanding any provisions in this Agreement to the contrary, in the event Depositor orders the removal of all, or substantially all, Goods, from the Facility (later defined), including any series of orders for



removal of Goods which would, in the reasonable judgment of Givens, result in the removal of all, or substantially all, Goods from the Facility, all charges must be paid in full before any Goods are removed from the Facility.

**§4 – SHIPMENTS TO AND FROM WAREHOUSE.**

Depositor agrees that all Goods shipped to and from Givens shall identify Depositor on the bill of lading or other contract of carriage as the named consignee, in care of Givens, and shall not identify Givens as the consignee. If, in violation of this Contract, Goods are shipped to Givens as named consignee on the bill of lading or other contract of carriage, Depositor agrees to immediately notify carrier in writing, with copy of such notice to Givens, that Givens named as consignee is the “in care of party” only and has no beneficial title or interest in the Goods. Furthermore, Givens shall have the right to refuse such Goods and shall not be liable for any loss, mis-consignment, or damage of any nature to, or related to, such Goods. The parties agree that, regardless of whether Givens is incorrectly identified as named consignee, or Depositor fails to notify carrier of the incorrect identification on the bill of lading or other contract of carriage, under no circumstances shall Givens be considered the consignee for purposes of identifying the “importer” under 21 U.S.C. § 384a. The parties further agree that, regardless of whether Givens is named as an “agent” for purposes of 21 U.S.C. § 350d or receives notification from the U.S. government with respect to confirmation of Givens’ status as “agent” under 21 U.S.C. § 350d, under no circumstances shall Givens be an agent for purposes of identifying the “importer”. Givens shall not be responsible for complying with or performing the duties required of an “importer” under 21 U.S.C. § 384a. Whether Givens accepts or refuses Goods shipped in violation of this Section, Depositor agrees to indemnify and hold Givens harmless from all claims for transportation, storage, handling and other charges relating to such Goods, including undercharges, rail/port demurrage, truck/intermodal detention, and any fines, penalties, costs and expenses (including attorney’s fees) and other charges of any nature whatsoever, resulting from Depositor’s failure to comply with the requirements of this Section

**§5 – TENDER OF GOODS.**

Goods shall be delivered at the Facility in a segregated manner properly marked and packaged for storage and handling. Givens is not a guarantor of the condition of such Goods under any circumstances, including, but not limited to hidden, concealed, or latent defects in the Goods. Concealed shortages, damage, inherent vice or tampering will not be the responsibility of Givens. Depositor shall be solely liable the packaging requirements for its Goods, Givens shall have no duty and no liability, whatsoever, to advise Depositor with respect to the adequacy of its packaging and no liability, whatsoever, for any damage to Goods as a result of inadequate, defective or improper packaging. Depositor shall furnish, at or prior to delivery, a manifest showing marks, brands or sizes to be kept and accounted for separately and other services desired. Otherwise, the Goods may be shelved, stored in bulk or assorted lots at the sole discretion of Givens. Givens shall have no duty to inspect packaging, or advise Depositor with regard to its packaging.

**§6 – FACILITY, LOCATION OF GOODS.**

Givens operates warehouse facilities located generally at 1720 S. Military Highway, Woodlake Drive, Woodlake Circle, and Steppingstone Square, all within the City of Chesapeake, Virginia and periodically leases other warehouse buildings and space both within and without the City of Chesapeake, Virginia. As used in this Agreement, the terms “Facility,” “warehouse” and “warehouse facility” means the particular owned or leased warehouse building where Givens chooses at any particular time, and from time to time, in its sole discretion, to store the Goods. Givens may, at its expense and at any time, and from time to time, 7 calendar days after notice is sent to Depositor by certified mail or recognized overnight delivery to the Depositor, move any Goods in storage from the Facility in which they are stored within and between, any one or more of the other warehouse buildings



which comprise Givens' warehouse facilities and any new location shall be deemed included within the term "Facility".

**§7 – STORAGE PERIOD AND CHARGES.**

(a) Unless otherwise agreed in writing, all charges for storage are per package or other agreed unit per month, and are set out on the Rate Quote Sheet that may be attached hereto as Exhibit B. The Rate Quote Sheet may be amended from time to time with respect to charges for new services and, upon the expiration of the initial term and thereafter, to reflect changes in rates, by notice from Givens to Depositor. Upon receipt of the new Rate Quote Sheet, Depositor shall be deemed to accept the new Rate Quote Sheet unless Depositor notifies Givens within fifteen (15) calendar days of receipt that the terms of the new Rate Quote Sheet are not accepted. When based on weight, rates are computed on gross weight.

(b) The storage month, and storage charges, begins on the date that Givens accepts care, custody and control of the Goods, regardless of unloading date or date of issue of any warehouse receipt.

(c) A full month's storage charge will apply on all Goods received during a calendar month, and a full month's storage charge will apply to all Goods in storage on the first day of the next and succeeding calendar months. All storage charges are due and payable on the first day of storage for the initial month and thereafter on the first day of the calendar month.

(d) A storage month shall extend from a date in one calendar month to, but not including, the same date of the next and all succeeding months. All storage charges are due and payable on the first day of the storage month.

(e) Any invoice over 30 days past due may be assessed a service charge of 1.5% APR per month or a charge otherwise permitted by law. Any dispute as to the amount of the invoice shall be claimed in writing within 30 days from date of invoice. Depositor may not offset payment of invoices under any circumstances without the prior written consent of Givens.

**§8 – TRANSFER, TERMINATION OF STORAGE, REMOVAL OF GOODS.**

(a) Instructions to transfer Goods on the books of Givens are not effective until delivered to and accepted by Givens. All charges up to the time transfer is made are chargeable to Depositor. If a transfer involves rehandling the Goods, such will be subject to a charge. When Goods in storage are transferred from one party to another through issuance of a new warehouse receipt, a new storage date is established on the date of transfer.

(b) Givens reserves the right to require advance payment of all past, present, and future charges prior to removal of the Goods from the Facility.

(c) Givens may, upon written notice of not less than 30 days to the Depositor and any other person known by Givens to claim an interest in the Goods, require the removal of any Goods. Such notice shall be given to the last known place of business of the person to be notified. If Goods are not removed before the end of the notice period, Givens may sell them in accordance with applicable law.

(d) If Givens in good faith believes that the Goods are about to deteriorate or decline in value to less than the amount of Givens' lien before the end of the 30-day notice period referred to above, Givens may specify in the notification any reasonable shorter time for removal of the Goods and if the Goods are not removed, may sell them at public sale held one week after a single advertisement or posting as provided by law.

(e) If as a result of a quality or condition of the Goods of which Givens had no notice at the time of deposit the Goods are a hazard to other property or to the FACILITY or to persons, Givens may: i) sell the Goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the Goods, ii) return Goods freight collect, or iii) dispose of GOODS. Pending such disposition, sale or return of the Goods, Givens may remove the Goods from the FACILITY and shall incur no liability by reason of such removal.



(f) If, after a reasonable effort, Givens is unable to sell the Goods pursuant to this Section, Givens may dispose of the Goods in any lawful manner and shall incur no liability by reason of such disposition.

**§9 – HAZARDOUS GOODS.**

(a) Depositor shall notify Givens in writing, prior to the delivery of any Goods to the Facility, of the characteristics of any Goods that (1) require special handling instructions, material, equipment or precautions; (2) may be hazardous or dangerous to Givens’ employees or agents, whether by handling or exposure; (3) are defined as hazardous materials under any Federal, State or local law or regulation governing the environment, including, without limitation, The Resource Conservation and Recovery Act (RCRA) and The Comprehensive Environmental Response, Compensation and Liability Act of 1960, as amended (CERCLA); or (4) are or should be reasonably believed or known to be likely to cause damage to the warehouse, Goods, or to other goods that may be stored by Givens. Givens may, in its sole discretion, refuse to accept any such Goods and shall incur no liability for such refusal.

(b) If, as a result of a quality or condition of the Goods, of which Givens had no notice at the time of deposit, the Goods are a hazard to other property or to the Facility or to persons, Givens may sell the Goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the Goods. If Givens, after a reasonable effort, is unable to sell the Goods, Givens may dispose of them in any manner lawful in Virginia and shall incur no liability by reason of such disposition. Pending such disposition, sale or return of the Goods, Givens may remove the Goods from the Facility and shall incur no liability by reason of such removal.

**§10 – HANDLING.**

(a) Handling charges cover the ordinary labor involved in receiving Goods at warehouse door, placing Goods in storage and returning Goods to warehouse door, all during normal business hours.

(b) Unless otherwise agreed in writing, labor and materials for unloading and loading Goods will be subject to a charge. Additional expenses incurred by Givens in receiving and handling damaged Goods and additional expenses in unloading from or loading into cars or vehicles not at warehouse door and labor and other charges in altering the manner of storage will be charged to Depositor.

(c) When Goods are ordered out in quantities less than in which received, Givens may make an additional charge for each order or each item of an order.

(d) Givens shall not be liable for any demurrage or detention, any delays in unloading inbound cars, trailers or other containers, any delays in obtaining and loading cars, trailers, or other containers for outbound shipment, unless Givens has failed to exercise reasonable care.

(e) Labor and materials in loading rail cars or other vehicles are chargeable to the Depositor.

**§11 – DELIVERY REQUIREMENTS.**

(a) No Goods shall be delivered or transferred except upon receipt by Givens of Depositor’s complete written instructions. Written instructions shall include, but are not limited to, FAX, EDI, TWX, electronic mail (E-Mail) or similar electronic communication. Instructions shall not be accepted by telephone or voice mail.

(b) Depositor agrees that Givens may refuse to ship any Goods and/or provide any other services if (i) there are sums due on invoices that remain unpaid for a period of time in excess of sixty (60) days from the date of the invoice, and such amounts remain unpaid five (5) days after Givens’ notice to Depositor of the nonpayment and/or (ii) if Depositor orders out of the Facility all or substantially (in the reasonable business judgment of Givens) all of its Goods, either in one order or in a series of orders, without payment in full of all amounts due under this Agreement. Upon payment in full of all outstanding and unpaid invoices, including interest charges,



Givens shall immediately recommence shipment of the Goods and provision of the other services under this Agreement.

(c) When Goods are ordered out, a reasonable time shall be given to Givens to carry out instructions and if it is unable to do so because of acts of God, war, public enemies, seizure under legal process, strikes, outbreak of disease, terrorism, lockouts, riots or civil commotion, or any other reason beyond Givens' control, or because of loss of or damage to Goods for which Givens is not liable, or because Depositor has not paid Givens' invoices, or because of any other excuse provided by law, Givens shall not be liable for failure to carry out such instructions and Goods remaining in storage shall continue to be subject to storage and other charges under this Agreement.

#### **§12 – EXTRA SERVICES, ADDITIONAL CHARGES.**

(a) Warehouse labor required for services other than ordinary handling and storage will be charged to the Depositor.

(b) Special services requested by Depositor, including, but not limited to, compiling of special stock statements previously undescribed labor, product manipulation, modification, repair, reporting marked weights, serial numbers or other data from packages, physical check of Goods, and handling transit billing will be subject to a charge.

(c) Dunnage, bracing, packing materials or other special supplies, may be provided for the Depositor at a charge in addition to Givens' cost.

(d) All inbound shipments must be scheduled. By prior written arrangement, Goods may be received or delivered during other than usual business hours, subject to a charge.

(e) Communication expense, including postage, overnight delivery, or telephone, will be charged to the Depositor if such concern more than normal inventory and warehouse reporting or if, at the request of the Depositor, communications are made other than by electronic means or regular United States Mail.

(f) Trash removal and disposal related to handling the Goods shall be charged to the Depositor at a charge in addition to Givens' cost, and Depositor shall pay all landfill and similar charges. Any and all charges related to environmental remediation, including reasonable attorney's fees, shall be paid by the Depositor and shall be the Depositor's sole responsibility and cost.

#### **§13 – BONDED AND FOREIGN TRADE ZONE STORAGE.**

(a) A charge in addition to regular rates will be made for merchandise in bond or in a foreign trade zone.

(b) Givens shall have no liability for Goods seized or removed by U.S. Customs.

#### **§14 – MINIMUM CHARGES.**

(a) A minimum handling charge per lot and a minimum storage charge per lot per month may be made. When a lot is in assortment, a minimum charge per mark, brand, or variety will be made.

(b) A minimum monthly charge to one account for storage and/or handling may be made. This charge will apply also to each account when one customer has several accounts, each requiring separate records and billing.

#### **§15 – LIABILITY AND LIMITATION OF DAMAGES.**

(a) GIVENS SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE TO GOODS TENDERED, STORED, OR HANDLED HOWEVER CAUSED, UNLESS SUCH LOSS OR DAMAGE RESULTED FROM THE FAILURE BY GIVENS TO EXERCISE SUCH CARE IN REGARD TO THEM AS A REASONABLY CAREFUL MAN WOULD EXERCISE UNDER LIKE CIRCUMSTANCES AND GIVENS IS NOT LIABLE FOR DAMAGES WHICH COULD NOT HAVE BEEN AVOIDED BY THE EXERCISE OF SUCH CARE.



(b) GOODS ARE NOT INSURED BY GIVENS AGAINST LOSS OR DAMAGE HOWEVER CAUSED. DEPOSITOR SHALL INSURE THE GOODS AND ANY OF ITS OTHER PROPERTY.

(c) THE DEPOSITOR DECLARES THAT DAMAGES ARE LIMITED TO TWENTY-FIVE CENTS (\$.25), PER POUND, PER ITEM LOST OR DAMAGED, PROVIDED THE DEPOSITOR AGREES THAT THE MAXIMUM LIABILITY FOR ALL DAMAGES IN ANY ONE OCCURRENCE SHALL BE ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), AND THE DEPOSITOR AGREES TO CAUSE ITS INSURANCE CARRIERS TO WAIVE SUBROGATION FOR DAMAGES IN EXCESS OF SUCH DOLLAR LIMITATION. HOWEVER, THAT SUCH LIABILITY MAY, BY DEPOSITOR'S WRITTEN NOTICE DELIVERED TO GIVENS WITHIN THIRTY (30) DAYS OF THE CONTRACT DATE, BE INCREASED ON PART OR ALL OF THE GOODS HEREUNDER, IN WHICH EVENT AN ADDITIONAL MONTHLY CHARGE WILL BE MADE BASED UPON SUCH INCREASED VALUATION.

(d) WHERE LOSS OR INJURY OCCURS TO STORED GOODS FOR WHICH GIVENS IS NOT LIABLE, THE DEPOSITOR SHALL BE RESPONSIBLE FOR THE COST OF REMOVING AND DISPOSING OF SUCH GOODS AND THE COST OF ANY ENVIRONMENTAL CLEAN UP AND SITE REMEDIATION RESULTING FROM THE LOSS OR DAMAGE TO THE GOODS.

(e) With respect to any claim arising from or related to this agreement, or otherwise arising from the relationship of the parties, in no event will Givens be liable for special, indirect, exemplary, punitive, or consequential damages of any kind, including but not limited to lost profits, lost sales, or damages due to business interruption, regardless of whether such damages were foreseeable or Givens had notice of the possibility of such damages.

#### **§16 – NOTICE OF CLAIM AND FILING OF SUIT.**

(a) Claims by Depositor and all other persons must be presented in writing to Givens within a reasonable time and in no event any later than the earlier of: (i) 60 days after delivery of the Goods by Givens, or (ii) 60 days after Depositor is notified by Givens that loss or damage to part or all of the Goods has occurred.

(b) No lawsuit or other action, including, without limitation, mediation or arbitration, may be maintained by Depositor or others against Givens for loss or damage to the Goods unless timely written claim has been given as provided in paragraph (a) of this Section and unless such lawsuit or other action is commenced by no later than the earlier of: (i) nine months after delivery by Givens, or (ii) nine months after Depositor is notified that loss or damage to part of all the Goods has occurred.

(c) When Goods have not been delivered, Givens may give Depositor notice of known loss or damage to the Goods and the time limitations for presentation of claim in writing and maintaining of a lawsuit or other action after notice begin with such notice .

(d) The notice requirements of this section shall not apply to any action brought under those sections herein entitled “**CONFIDENTIALITY**” and “**NONSOLICITATION OF EMPLOYEES**”.

#### **§17 – LIABILITY FOR MISSHIPMENT AND CHARGEBACKS.**

(a) If Givens negligently misships Goods, Givens shall pay the reasonable transportation charges incurred to return the misshipped Goods to the Facility. If the consignee fails to return the Goods, Givens maximum liability shall be for the lost or damaged Goods as specified in that Section hereof entitled **LIABILITY AND LIMITATION OF DAMAGES**, and Givens shall have no liability for damages due to the consignee's acceptance or use of the Goods whether such Goods be those of the Depositor or another.

(b) Givens shall not be responsible for chargebacks of any kind.

(c) Any and all claims made pursuant to this Section must be in compliance with the requirements set forth in Section 16.



**§18 – MYSTERIOUS DISAPPEARANCE AND SHRINKAGE ALLOWANCE.**

Any presumption of conversion imposed by law shall not apply to any loss of Goods by mysterious disappearance and a claim by Depositor of conversion must be established by affirmative evidence that Givens converted the Goods to Givens' own use. Givens shall be liable for loss of Goods due to inventory shortage or unexplained or mysterious disappearance of Goods only if Depositor establishes such loss occurred because of Givens' failure to exercise the care required of Givens under that Section hereof entitled **LIABILITY AND LIMITATION OF DAMAGES**. Givens shall have a shrinkage allowance of one half of one percent (00.50%) of the annual landed cost throughput which shall be prorated monthly if storage period is less than one year.

**§19 – ACCURATE INFORMATION.**

Depositor will provide Givens with information concerning the Goods which is accurate, complete and sufficient to allow Givens to comply with all laws and regulations concerning the storage, handling and transporting of the Goods. Depositor will defend, indemnify and hold Givens harmless from all loss, cost, penalty and expense (including reasonable attorneys' fees) which Givens pays or incurs as a result of Depositor failing to fully discharge this obligation.

**§20 – INDEPENDENT CONTRACTOR.**

Givens shall act as an independent contractor under this Agreement. It shall perform its obligations under this Agreement using its own employees or agents. Givens shall decide on the manner and means of accomplishing its obligations and shall direct, control and supervise its employees. Givens shall comply with all payroll tax, withholding, social security, unemployment and related employer tax obligations.

**§21 – SEVERABILITY AND WAIVER .**

(a) If any provision of this Agreement, or any application thereof, should be construed or held to be void, invalid or unenforceable, by order, decree or judgment of a court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected thereby but shall remain in full force and effect.

(b) The failure of either party to require strict compliance with any provision of this Agreement shall not constitute a waiver or estoppel to later demand strict compliance with that or any other provision(s) of this Agreement.

(c) The provisions of this Agreement shall be binding upon each party's successors and assigns; contain the sole agreement governing Goods stored with Givens; and, cannot be modified except by a writing signed by Givens and the Depositor.

**§22 – FORCE MAJEURE.**

Neither party shall be liable to the other for default in the performance or discharge of any duty or obligation under this Contract, except for Depositor's obligation to pay for services rendered by Givens, when caused by acts of God, hurricanes, tidal waves, flood, tornadoes, cyclone, wind storm, earthquake, public enemy, civil commotion, strikes, labor disputes, work stoppages or other difficulties within the workforce, failure to provide power by the utility provider, intentional or malicious acts of third persons or any other organized opposition, cyber-attacks, viruses, corruption, depredation, accidents, explosions, fire, water sprinkler leakage, moths, vermin, insect, seizure under legal process, embargo, prohibition of import or export of GOODS, closure of public highways, railways, airways or shipping lanes, governmental interference, order, regulation, or other action(s) by governmental authority, national, regional, or local emergency(ies), plague, epidemic, pandemic, outbreaks for infectious disease or any public health crisis, including but not limited to compliance with related



practices required or recommended by governmental or health organizations (including but not limited to quarantine or other employee restrictions) or other contingency(ies), similar or dissimilar to the foregoing, beyond the reasonable control of the affected party. Upon the occurrence of such an event the party seeking to rely on this provision shall promptly give written notice to the other party of the nature and consequences of the cause. If the cause is one which nevertheless requires Givens to continue to protect the GOODS, Depositor agrees to pay the storage or similar charges associated with Givens' obligation during the continuance of the force majeure. All GOODS are stored, handled, and transported at Depositor's sole risk of loss, damage, or delay caused by any of the above.

### **§23 – NOTICES.**

Any notice to either party to this Agreement by the other shall be by certified mail, return receipt requested, or by overnight delivery by the United States Postal Service or other recognized courier, at the address listed below the party's signature line, and shall be deemed given at the earliest of receipt by the party, two days after delivery to the United States Postal Service or one day after delivery to a recognized overnight courier, postage prepaid, addressed to such address. Either party may change the address of that party for purposes of this Agreement by giving the other party notice of such change in the manner set forth above.

### **§24 – MEDIATION.**

EXCEPT for enforcement of Givens general warehouseman's lien, actions seeking injunctive relief in the case of breaches of the obligations under those sections entitled "CONFIDENTIALITY" and "NONSOLICITATION OF EMPLOYEES," and the collection of sums due hereunder, all of which shall be brought in a court of competent jurisdiction in the City of Chesapeake, Virginia, the parties agree to attempt to resolve any breach under this agreement by good faith negotiation. Actions under those sections entitled "CONFIDENTIALITY" and "NONSOLICITATION OF EMPLOYEES" may be brought without notice of breach and any action to collect any sums due hereunder may be brought following ten (10) days' notice of the failure to pay. A party believing there has been a breach of this Agreement shall give the other a written notice setting forth the nature of the breach or dispute (the "Breach Notice"). If the parties cannot settle the breach by good faith negotiation within ten (10) days after delivery of the Breach Notice, the parties shall then attempt, in good faith, to resolve the breach by mediation to be held in the City of Chesapeake, Virginia. If the parties cannot agree on the selection of a mediator within twenty (20) days after delivery of the Breach Notice, the Chief Judge of the Circuit Court of the City of Chesapeake, Virginia, shall select a mediator. Each party shall pay for its own legal counsel, experts, travel costs and other fees and costs.

### **§ 25 – LIEN.**

Givens shall have a general warehouse lien for all lawful charges for storage and preservation of all of the Goods in storage at any time; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, cooperating, and other charges and expenses in relation to such Goods, and for the balance on any other accounts that may be due. Givens further claims a general warehouse lien for all such charges, advances and expenses with respect to any other Goods stored by the Depositor at any time in any other facility owned or operated by Givens. In order to protect its lien, Givens reserves the right to require advance payment of all charges prior to shipment of Goods. The Depositor hereby grants Givens, and any auctioneer or other party selling Goods for Givens, a license to use any trademark, trade name, service mark, copyright or similar intellectual property in the advertising of Goods for sale in the event Givens advertises Goods for sale in connection with the exercise of





its lien or in connection with any other sale of Goods permitted by this Agreement. This license shall not expire until all Goods have been sold.

**§26 – DOCUMENTS OF TITLE.**

Documents of title, including warehouse receipts, may be issued either in physical or electronic form at the option of the parties.

**§27 – CONFIDENTIALITY.**

(a) The Depositor agrees to maintain as confidential the terms and conditions of this Agreement and all information concerning Givens' sales, customers, business, and any other aspect of Givens' operations ("Givens' Confidential Information") which is learned as a result of performance under this Agreement. Givens' Confidential Information does not include information that is publicly available. Depositor will not disclose Givens' Confidential Information to any third party without the written authorization of Givens, except to the extent that such disclosure is necessary to the performance of Depositor's obligations under this Agreement or is required to be disclosed pursuant to a properly executed subpoena or other regulatory or court order ("Order") provided Depositor (i) gives reasonable written notice to Givens and (ii) limits disclosure to that portion of Givens' Confidential Information required by the Order.

(b) Givens agrees to maintain as confidential the terms and conditions of this Agreement and all information concerning Depositor's sales, customers, business, and any other aspect of Depositor's operations ("Depositor's Confidential Information") which is learned as a result of performance under this Agreement. Depositor's Confidential Information does not include information that is publicly available. Givens will not disclose Depositor's Confidential Information to any third party without the written authorization of Depositor, except to the extent that such disclosure is necessary to the performance of Givens' obligations under this Agreement or is required to be disclosed pursuant to a properly executed subpoena or other regulatory or court order ("Order") provided Givens (i) gives reasonable written notice to Depositor and (ii) limits disclosure to that portion of Depositor's Confidential Information required by the Order.

(c) Notwithstanding any provision in this Agreement to the contrary, in the event of a violation of this section, the injured party shall, in addition to any other remedies available at law or equity, be entitled to obtain injunctive relief in the Circuit Court for the City of Chesapeake, Virginia.

**§28 – NONSOLICITATION OF EMPLOYEES.**

Depositor, independent of any other obligation under this Agreement, during the term of the Agreement and for a period of two (2) years following the termination of the Agreement, shall not, directly or indirectly induce any employee of Givens to terminate his or her employment with Givens or to interfere in any manner with a contractual relationship between Givens and any third party. Notwithstanding any provision in this Agreement to the contrary, in the event of a violation of this section, Givens shall, in addition to any other remedies available to it at law or equity, be entitled to obtain injunctive relief in the Circuit Court for the City of Chesapeake, Virginia.

**§29 – ELECTRONIC TRANSACTIONS.**

**The Depositor and Givens agree to conduct the warehouse transactions contemplated in this Agreement by electronic means, except, telephone or voice mail shall not constitute an electronic record. Amended Rate Quote sheets, warehouse receipts, invoices, instructions to transfer Goods, damage reports, claims and notices may all be created, generated, sent, communicated, received or stored by electronic**



means, except telephone or voice mail. Any requirement in this Agreement for written instructions or written notice may be accomplished by electronic records, except voice mail or telephone. EXCEPT, notices shall not be given by electronic mail.

**§30 – RECALL.**

In the event a recall, field alert, product withdrawal or field correction (together, “Recall”) may be necessary with respect to any Goods provided under this Contract, Depositor shall immediately notify Givens in writing. Givens will not act to initiate a Recall without the express prior written approval of Depositor unless otherwise required by applicable laws. The cost of any Recall shall be borne by Depositor. Depositor shall indemnify and hold harmless Givens from all loss, cost, penalty, and expense (including reasonable attorneys’ fees) which Givens pays or incurs as a result of a Recall.

**§31 – ENTIRE AGREEMENT.**

This Agreement embodies the entire agreement and understanding between the parties and supersedes all prior agreements and understandings between them relating to the subject matter hereof. In the event of a conflict between the Storage Agreement and the Rate Quote, or any other document, the Storage Agreement will control.

**§32 – GOVERNING LAW.**

The provisions of this Agreement shall be governed by, construed and interpreted according to the laws of the Commonwealth of Virginia.

**§33 – ASSIGNMENT.**

Neither party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, except, Givens may without Depositor’s consent, upon notice to Depositor, assign this Agreement and all of its rights and obligations to any entity that is directly or indirectly controlled by, or under common control with, Givens.

**§34 – CAPTIONS.**

Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

**§35 – CONSTRUCTION.**

Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.



**§36 – EXECUTION AND COUNTERPARTS.**

This Agreement and any amendments may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one agreement. The signature of any party on any counterpart agreement or counterpart signature page shall be deemed to be a signature to, and may be appended to, one document.

In Witness Whereof, the parties have caused this Agreement to be executed by their authorized representatives as of the day and year first above written.

**The parties acknowledge the Limitation of Liability and Damages set forth in that Section hereof entitled “LIABILITY AND LIMITATION OF DAMAGES.”**

Depositor  
By \_\_\_\_\_

Title \_\_\_\_\_

Address for Notice:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Givens, Incorporated  
By \_\_\_\_\_

Title \_\_\_\_\_

Address for Notice:  
1720 S. Military Highway  
Chesapeake, Virginia 23320  
Attention: Trevor Dunlap, President



Exhibit A

#### TERMINATION.

Concurrently with notice of termination of this Agreement for any reason, Depositor agrees to reimburse Givens for all costs incurred by Givens for minimum charges, including but not limited to monthly storage charges, facility lease, equipment and assets which are dedicated, purchased or leased by Givens for the purpose of providing the Services to Depositor. Additionally, if the Agreement is terminated prior to the end of the initial term, Depositor shall reimburse Givens for all costs relating to the portion of the Facilities allocated to Depositor as they become due each month for the remainder of what would have been the initial term. The monthly cost will be established by taking the average of all storage charges for the last three full months prior to the notice of termination. All past, present and future costs, expenses and charges for storage shall be subject to Givens' general warehouse lien. In order to protect its lien, Givens reserves the right to require advance payment of all such charges prior to shipment of Goods.

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